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COURT OF APPEALS DIV I  
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NO. 69843-5-I

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COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION I

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WILLIE RUSSELL and CHRISTINE F. HARPER,  
husband and wife,

Plaintiffs/Petitioners,

vs.

CARLEEN MATSON NICOLE NG-A-QUI,  
JEFFREY ST. GEORGE, LYNN BAMBERGER and  
STEPHAN BAMBERGER and the marital community composed  
thereof; and LYNNE WORLEY-BARTOK and JOHN DOE WORLEY-  
BARTOK, and the marital community composed thereof,

Defendants/Respondents.

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RESPONDENTS' BRIEF

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## **I. INTRODUCTION**

Appellants Willie Russell and Christine Harper (hereinafter “Russell”) appeal an award of sanctions below. Russell brought a lawsuit against several individual members of the homeowners association of The Broadway Condominiums (the “Association”). CP 490-95, 519-31. These individual defendants (“Defendants”) consist of four former Board members of the Association’s Board of Directors, two homeowners, and one spouse of a former Board member. CP 491. In his Amended Complaint, Russell claimed, among other things, that these individuals prohibited him from gaining access to Association records and prevented him from being elected to the Board. CP 490-95. The trial court dismissed the action on Defendants’ motion, and Defendants then moved for sanctions and fees. CP 379-91, 437-38. The trial court granted these sanctions, and Russell now appeals. App. Br.; CP 1-8.

## **II. RESTATEMENT OF ASSIGNMENTS OF ERROR AND ASSOCIATED ISSUES**

1. Did the trial court abuse its discretion in granting sanctions under CR 11 where Russell filed an unlawful lawsuit and CR 11 explicitly allows for sanctions when a pleading is not “warranted by existing law or a good faith argument for the extension . . . of existing law”?

2. Did the trial court abuse its discretion in granting sanctions under CR 11 where it found that Russell brought the lawsuit as part of a pattern of harassment and CR 11 explicitly allows for sanctions when a lawsuit is filed for an “improper purpose, such as to harass”?

3. Did the trial court abuse its discretion in granting fees under RCW 4.84.185 which requires a finding that the lawsuit was frivolous where the trial court found that Russell did not have standing and that the suit clearly was not lawful?

4. Did Russell waive his appeal on the reasonableness of the amount of the award, where he did not ask for a detailed accounting of the fees below?

5. Did the trial court abuse its discretion in granting fees of the same amount requested by Defendants, where the trial court found the fees reasonable and Russell did not assign error to that finding?

### **III. RESTATEMENT OF THE CASE**

#### **A. Procedural Background**

Defendant Willie Russell is a disgruntled member of the Association, which is located in Everett, Washington. CP 529-31. In May 2009, the Association held a vote to decide whether the Bylaws should be amended to add two additional positions to the Board, increasing the Board from three members to five. CP 87. The vote was extended beyond the meeting, and some homeowners allegedly changed their votes from “yes” to “no.” *Id.* The amendment did not pass. *Id.* Mr. Russell, apparently believing he would have won one of the additional seats on the Board, brought a lawsuit against 20 homeowners he claimed changed their votes. *Id.* Russell voluntarily dismissed the suit on October 25, 2010. *Id.*

On November 12, 2010, Russell filed the underlying lawsuit at issue in this appeal, against seven of the defendants named in the previous action. CP 529-31. These defendants were made up of four former board members, two non-board member homeowners, and the spouse of one of the former board members. *Id.* Defendants filed a Motion for a More Definite Statement on February 16, 2011. CP 514-18. The trial court granted the Motion for a More Definite Statement on March 18, 2011. CP 512-13. On April 7, 2011, Plaintiffs filed an Amended Complaint, adding the Association as a defendant and including general claims regarding Defendants' alleged improper acts as board members. CP 490-95. Russell later dismissed the Association as a defendant. CP 488-89.

On May 21, 2012, Defendants filed a Motion to Dismiss on the bases that (1) the Amended Complaint did not identify the legal theories upon which Russell sought recovery; (2) it failed to articulate any damage to Russell; and (3) Russell was not the real party in interest and lacked standing to file suit against Defendants on behalf of the Association. CP 460-72. Defendants stated that, because the real party in interest was the Association, this was a derivative action, and derivative actions on behalf of non-profit corporations such as the Association are not warranted under Washington law. CP 469-70. As part of this Motion, Defendants asked for attorney fees and sanctions under RCW 4.84.185. CP 470-71.

The trial court granted Defendants' Motion to Dismiss on July 30, 2012 for lack of standing. CP 437-38. The court failed to issue a ruling on or even mention Defendants' request for fees and sanctions under

RCW 4.84.185. *Id.* Within 30 days of the ruling, as required under RCW 4.84.185, Defendants filed a Motion for Sanctions pursuant to both CR 11 and RCW 4.84.185. Defendants' Motion argued that the suit was not warranted under existing law, and that it was filed for an improper purpose — specifically, to harass Defendants. CP 379-91.

**B. Russell Repeatedly Omits Harassment**

In his Response to Defendants' Motion for Sanctions, Russell incorrectly claimed that the only reason cited by Defendants for the imposition of sanctions was his lack of standing. CP 374. To rebut this, Defendants provided several declarations detailing the history of harassment against Defendants at the hands of Plaintiff Russell. CP 108-275, 283-370. In their declarations, Defendants described a pattern of harassment, threats, and lawsuits at the hands of Plaintiff Russell, beginning as early as 2009 and continuing beyond the filing of the underlying lawsuit at issue in this appeal. CP 108-18, 205-09, 272-75, 283-87, 322-27, 338-40.

On October 18, 2012, the trial court denied Russell's Motion to Strike the various declarations, and asked Defendants to combine their Motion for Sanctions with their planned Motion for Vexatious Litigant Designation.<sup>1</sup> CP 106-07. Defendants filed their Revised Motion for Sanctions Pursuant to CR 11 and RCW 4.84.185 and to Determine

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<sup>1</sup> Defendants informed the trial court in their Motion for Sanctions that they intended to file a motion asking that Plaintiff Russell be deemed a vexatious litigant. CP 393.

Plaintiff Willie Russell a Vexatious Litigant on October 26, 2012. CP 84-105. On November 21, 2012, the trial court denied Defendants' Motion for Vexatious Litigant Designation, but granted Defendants' Motion for Sanctions, and ordered Russell to pay Defendants \$76,427.50 in sanctions and attorney fees. CP 9-14.

**C. Insufficient Assignments of Error on Appeal**

Russell appealed.<sup>2</sup> Russell's sole Assignment of Error on appeal is the following: "The trial court erred when it granted Defendants/Respondent's (sic) Motion for Sanctions and granted judgment against Plaintiffs/Petitioners in the amount of \$76,710.14." App. Br. at 1. Unchallenged findings of fact are verities on appeal. *Keever & Associates, Inc. v. Randall*, 129 Wn. App. 733, 741, 112, 119 P.3d 926 (2005). Furthermore, RAP 10.3(g) requires that "[a] separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number." Therefore, Russell did not assign error to the following findings of fact and they are verities on appeal:

- Russell harassed Defendants "[o]ver the course of at least one year prior to the filing of this lawsuit, and continuing beyond the filing of the lawsuit." Finding of Fact 1.2.
- Russell lacked standing. Finding of Fact 1.10.

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<sup>2</sup> As noted in Appellants' Brief, Russell did not appeal the Motion to Dismiss. App. Br. at 6. Therefore, the finding that Russell lacked standing to bring the lawsuit is not at issue on appeal. CP 4-5.

- “None of the claims made in the Amended Complaint were personal to Plaintiffs.”<sup>3</sup> Conclusion of Law 2.2.
- The Association is a nonprofit corporation. Conclusion of Law 2.5.
- Russell “attempted to bring a derivative suit against Defendants on behalf of the Association.” Conclusion of Law 2.5.
- “[T]his lawsuit was part of an overall course of conduct which resulted in harassment of the Defendants.” Conclusion of Law 2.7.
- “The Defendants were the prevailing party.” Conclusion of Law 2.9.
- “It was reasonable for the Defendants to have to expend attorney fees in order to defend against the numerous lawsuits and against this lawsuit because they are all linked together.” Finding of Fact 1.12.
- Defendants were billed “\$282.64 in costs in relation to the suits brought by Plaintiffs, including this lawsuit.” Finding of Fact 1.13.

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<sup>3</sup> “A conclusion of law erroneously described as a finding of fact is reviewed as a conclusion of law. The corollary must also follow; a finding of fact erroneously described as a conclusion of law is reviewed as a finding of fact.” *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (internal citation omitted).

- “As prevailing party, Defendants are also entitled to \$125.00 in statutory attorney fees pursuant to RCW 4.84.030.” Finding of Fact 1.14.
- “The fees and costs of \$76,710.14 are reasonable.” Finding of Fact 1.10.

#### IV. ARGUMENT

##### A. **The Trial Court Properly Exercised Its Discretion When It Ordered Sanctions Against Russell**

Russell argues on appeal that the trial court’s decision to impose sanctions “was clearly error and should be reversed.” App. Br. at 11. But this is not the standard of review on appeal. “The appropriate standard of review regarding sanctions under either RCW 4.84.185 or CR 11 is abuse of discretion.” *State ex rel. Quick-Ruben v. Verharen* , 136 Wn.2d 888, 903, 969 P.2d 64 (1998). “Such abuse occurs when the trial court takes a view no reasonable person would take, or applies the wrong legal standard to an issue.” *Wright v. Dave Johnson Ins. Inc.*, 167 Wn. App. 758, 786, 275 P.3d 339 (2012). Therefore, for the Court to overturn the trial court’s determination to issue sanctions against Russell, it must decide that no reasonable person would have issued them. *Id.*

The trial court issued sanctions and fees against Russell under both CR 11 and RCW 4.84.185. CP 3-7. CR 11 allows a trial court to issue sanctions if a pleading or other filing:

- (1) is not well grounded in fact;

- (2) is not warranted by existing law “or a good faith argument for the extension, modification, or reversal of existing law”;  
or
- (3) it is “interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

“CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings.” *Biggs v. Vail*, 124 Wn.2d 193, 876 P.2d 448 (1994) (“*Biggs II*”). RCW 4.84.185 states, in part: “[T]he court having jurisdiction may, upon written findings by the judge that the action . . . was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action.”

The trial court ruled that the “dismissal was granted because the plaintiff had no standing to bring a shareholders’ derivative suit against a nonprofit association. That’s the law in the State of Washington and it’s very clear.” CP 10. He further ruled that “[i]t was not a legitimate action to bring” and that “there is a CR 11 violation here under the component of harassment.” CP 12. Therefore, the trial court found that CR 11 sanctions were appropriate under two theories: (1) the lawsuit was not warranted by existing law, and (2) it was brought for an improper purpose, specifically, to harass Defendants. CP 10-12. He then stated that, in relation to RCW 4.84.185 fees, “the plaintiff assumed the risk when he took the tactical course that he did. He assumed the risk that if he used a very

aggressive legal approach against individual members of the homeowners association . . . that they would have to respond in kind.” CP 12. The trial court then found the amount of fees reasonable. *Id.*

The trial court’s findings regarding CR 11 and RCW 4.84.185 were reasonable. Russell cannot show that “the trial court t[ook] a view no reasonable person would take” in sanctioning him for bringing this unlawful derivative action. *Wright*, 167 Wn. App. at 786. This Court must uphold the trial court’s finding that sanctions were warranted because the trial court did not abuse its discretion.

**B. CR 11 Sanctions Were Appropriately Ordered Against Russell Under Two Theories**

As stated above, Russell completely ignores the harassment element of the trial court’s ruling in favor of sanctions. App. Br. at 6, 9-11. Russell alleges that “[t]he sole basis for [Defendants’ Motion for Sanctions] was that Plaintiffs lacked standing which they seemed to argue was a per se CR 11 violation.” App. Br. at 6. But not only is this a complete misstatement of the facts, it is entirely irrelevant since Washington courts have held that a lack of standing is enough to warrant sanctions.

**1. Washington courts have held that a lack of standing is sufficient to issue sanctions.**

Russell claims in his opening brief that “the mere fact that Plaintiffs may have lacked standing pursuant to Judge Dingley’s decision is not a per se violation of CR 11.” App. Br. at 11. But Russell cites to no

case law in support of his contention. In fact, Washington case law allows for CR 11 sanctions even if the only basis is lack of standing. In *State ex rel. Quick-Ruben v. Verharen*, for example, the Washington Supreme Court held that the trial court's decision to award sanctions under CR 11 and RCW 4.84.185 was not an abuse of discretion where "no claim survived to trial" and Mr. Quick-Ruben had no standing. 136 Wn.2d 888, 904-05, 969 P.2d 64 (1998). In holding that the trial court did not abuse its discretion, the Court quoted the trial court as follows:

Having standing is fundamental to being able to bring an action. Mr. Quick-Ruben did not have standing, which reasonable inquiry would have shown him. . . . **When he filed an action in which he either knew or should have known that he lacked standing, his action was frivolous and was advanced without reasonable cause.** An award of attorney fees is appropriate under RCW 4.84.185.

*Id.* at 904. Even if lack of standing was the only reason upon which the trial court issued sanctions, it would not have been an abuse of discretion for the trial court to award sanctions because Russell knew or should have known after "reasonable inquiry" that derivative suits on behalf of non-profit corporations is not permitted. *Id.*

**2. Russell not only lacked standing, but he also brought the lawsuit for the improper purpose of harassing Defendants.**

But the question of whether lack of standing is sufficient for sanctions is not relevant here, since the trial court imposed sanctions for an additional reason. The trial court also held that Russell brought the lawsuit as part of a pattern of harassment against the defendants, in

violation of subsection (3) of CR 11. CP 4, 6. Russell failed to mention the harassment element in his response to Defendants' Motion for Sanctions below, and fails again to mention it on appeal.<sup>4</sup> See CP 374 ("The sole argument that Defendants seem to make in their motion [for sanctions] is that because Plaintiffs lack standing the Complaint was violative of CR 11."); App. Br. at 6 ("The sole basis for the motion [for sanctions] was that Plaintiffs lacked standing . . .").

Here, the trial court found that Russell's Amended Complaint violated CR 11 for two reasons, as stated above. Therefore, the trial court was within its discretion to impose sanctions, including attorney fees, against Russell. The trial court did not abuse that discretion.

**C. Russell Received Sufficient Notice That Sanctions May Be Sought For Advancing A Frivolous And Baseless Lawsuit**

Russell claims that "CR 11 sanctions are unavailable in the late stages of litigation without prior notice to the opposing party." App. Br. at 11. But this argument is baseless for two reasons: (1) Russell had notice of possible CR 11 sanctions; and (2) the litigation was far from the "late stages," since discovery had not even begun.

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<sup>4</sup> Indeed, it was the Plaintiffs' failure to acknowledge Defendants' harassment argument in its Response that prompted Defendants to produce the "voluminous declarations" in support of their Reply. App. Br. at 7. Defendants supplied the declarations to provide the history of Russell's harassment and abuse to the trial court and to show that the lawsuit was brought for an improper purpose. See CP 277 ("[A]s argued in Defendants' Motion and as supported by the declarations attached to this Reply, Plaintiffs brought this suit 'for an improper purpose, such as to harass.'").

**1. Russell received sufficient notice of CR 11 sanctions when Defendants sought RCW 4.84.185 sanctions and fees.**

Russell was put on notice in the Motion to Dismiss that Defendants intended to seek their attorneys' fees under RCW 4.84.185, and such notice is sufficient to implicate a motion for fees based on CR 11 and RCW 4.84.185. *Biggs II*, 124 Wn.2d at 199. In *Biggs II*, the Washington Supreme Court held that notice of possible sanctions under RCW 4.84.185 was sufficient for purposes of later CR 11 sanctions. *Id.* (“[W]e find that notice in general that sanctions are contemplated is sufficient for the later imposition of CR 11 sanctions.”). Defendants sought sanctions, citing RCW 4.84.185, in their Motion to Dismiss. CP 470-71. Though the trial court failed to rule on the RCW 4.85.185 fees at that time, the fact that Defendants argued in favor of such fees in their Motion to Dismiss gave Russell sufficient notice of the possibility that Defendants would seek CR 11 sanctions. *Biggs II*, 124 Wn.2d at 199.

**2. Defendants sought sanctions in early stages of litigation.**

Furthermore, this litigation had not come even close to trial, and therefore Defendants' Motion for Sanctions did not come at the “late stages” of litigation. Defendants moved for dismissal based solely on the Amended Complaint. CP 460-72. As stated in *Biggs II*, the purpose of the prompt notice requirement is to prevent a party from ““tolerating abuses during the course of an action and then punishing the offender *after the trial is at an end.*”” 124 Wn.2d at 198 (quoting *In re Yagman*, 796 F.2d 1165, 1183 (9th Cir. 1986)) (emphasis added). Here, the trial had not

even begun. As such, Russell cannot show any kind of prejudice based on the timing of Defendants' Motion for Sanctions, since no fees or costs related to discovery or trial should have yet been incurred.

**D. The Trial Court Found That Russell's Lawsuit Was Frivolous And Advanced Without Reasonable Cause**

Russell appears to argue that because the trial court's Findings of Fact and Conclusions of Law did not explicitly use the words "Plaintiffs' Complaint was frivolous," sanctions under RCW 4.84.185 should not have been granted. App. Br. at 14. Again, Russell cites to no case law in support of this argument.

The trial court here, though not explicitly stating "Plaintiffs' Complaint was frivolous," outlined the following:

2.8 RCW 4.84.185 states that where the court determines that the action "was frivolous and advanced without reasonable cause," the court may "require the nonprevailing party to pay the reasonable expenses, including fees of attorneys, incurred in opposing such action."

2.9 The Defendants were the prevailing party . . . .

2.10 Defendants are therefore entitled to an award of attorney fees and costs against Plaintiffs pursuant to CR 11 and RCW 4.84.185 . . . .

CP 6-7. Clearly, the trial court found that the action was frivolous, since it determined that Defendants were entitled to an award "pursuant to . . . RCW 4.84.185." *Id.*

"A lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts." *Skimming v. Boxer*, 119 Wn. App. 748,

756, 82 P.3d 707 (2004). RCW 4.84.185 “is designed to discourage abuses of the legal system by providing . . . fees to any party forced to defend against meritless claims advanced for harassment, delay, nuisance, or spite.” *Id.* The trial court held that “the lawsuit was not warranted by existing law” and that it “was part of an overall course of conduct which resulted in harassment of the Defendants.” CP at 6. Defendants were “forced to defend against meritless claims advanced for harassment.” *Skimming*, 119 Wn. App. at 756. As such, Russell’s lawsuit against Defendants was frivolous and advanced without reasonable cause. The trial court did not abuse its discretion in granting Defendants their fees under RCW 4.84.185.

**E. Defendants’ Attorney Fees Incurred In Defending Against Russell’s Frivolous and Harassing Actions Were Reasonable**

Russell also argues that the trial court “had no reasonable basis upon which to order attorney’s fees in the amount of \$74,710.14.” App. Br. at 15. He claims that the declaration provided by Defendants in support of their Motion for Sanctions “sets forth no detailed itemization of hours spent or which tasks were performed by each timekeeper.” *Id.* at 16. First, this argument is raised for the first time on appeal. RAP 2.5. But second, Defendants provided sufficient information regarding attorney fees and time spent. It was within the trial court’s discretion to use the attorney fee amount to determine the sanctions, which were issued under both CR 11 and RCW 4.84.185.

**1. Russell never asked for a more detailed reporting of Defendants’ attorney fees and costs, and the issue is therefore waived.**

In support of his claim that the fees were unreasonable, Russell cites to *224 Westlake v. Engstrom*, in which this Court reversed a finding in favor of attorney fees. 169 Wn. App. 700, 737, 281 P.3d 693 (2012). But in *Engstrom*, the prevailing party asked for \$123,073.50 in fees, and the court awarded \$110,000.00 after an *in camera* review of the detailed bills, without explaining in its findings “why this figure was lower than the [amount] requested.” *Id.* at 736-37. Further, in *Engstrom*, the non-prevailing party requested detailed bills from the party seeking fees, but the prevailing party refused to provide them. *Id.* at 736.

By contrast, Defendants here asked for \$76,710.14, and the trial court granted Defendants the same amount, finding it reasonable. CP 7, 105. And though Russell claims that “the Defendants did not even offer a list of total hours expended by each timekeeper,” App. Br. at 16, Defendants *did* provide such information — twice. CP 64-67, 392-395. First, Defendants included the information in a declaration in support of their original Motion for Sanctions.<sup>5</sup> CP 392-395. Defendants again provided the same information with updated amounts in support of their Revised Motion for Sanctions. CP 65-66. On both occasions, the Defendants also expressly reserved the right “to submit redacted billing

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<sup>5</sup> Defendants provided the following: the number of hours expended and hourly rate for (1) senior attorneys; (2) junior attorneys; and (3) paralegals. CP 394. Defendants also included a detailed list of expenses. *Id.* at 394-395.

statements to substantiate, if necessary, the time billed for each activity.” CP 66, 395. Unlike in *Engstrom*, Russell never asked for such detail. See CP 377; CP 58-63. As such, this argument is raised for the first time on appeal and the Court should not consider it. RAP 2.5.

**2. The trial court did not abuse its discretion in finding the fees and costs a reasonable amount to deter Russell from bringing future baseless filings.**

Even if the Court determines that Russell preserved this argument below, the reasonableness of an attorney fee award is reviewed for an abuse of discretion. *Wash. State. Comm’n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 219, 293 P.3d 413 (2013). The nature and amount of sanctions is discretionary and trial courts have broad discretion to tailor an appropriate sanction. *Miller v. Badgley*, 51 Wn. App. 285, 303, 753 P.2d 530 (1988). Sanctions “may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.” CR 11. Therefore, the trial court’s decision here to use the attorney fees amount as a basis for its sanctions against Russell under CR 11 and RCW 4.84.185 was within its discretion and not an abuse of that discretion. *Highland Sch. Dist. No. 203 v. Racy*, 149 Wn. App. 307, 317, 202 P.3d 1024 (2009).

**F. Defendants Are Entitled To Their Attorney Fees on Appeal**

Defendants ask that the Court require Russell to pay their attorney fees on appeal. Under RAP 18.9(a), the Court “may order a party or

counsel . . . who . . . files a frivolous appeal . . . to pay terms or compensatory damages to any other party who has been harmed . . . or to pay sanctions to the court.” Defendants argue that this appeal is frivolous, and that they are therefore entitled to attorney fees on appeal.

“An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there [i]s no reasonable possibility of reversal.” *Quick-Ruben*, 136 Wn.2d at 905. Here, Russell made no debatable showing of an abuse of discretion by the trial court. It is clear from the findings of fact, conclusions of law, and the trial court’s oral ruling that the trial court did not abuse its discretion in determining that Russell brought an unlawful derivative suit, that he lacked standing, that he brought the suit as a pattern of harassment, and that sanctions were therefore warranted. CP 3-7, 9-13. Therefore, the appeal was devoid of merit, and the Court should grant Defendants their attorney fees on appeal.

**V. CONCLUSION**

For all the foregoing reasons, this Court should affirm each of the trial court's rulings. The Court should grant Defendants their attorney fees on appeal.

RESPECTFULLY SUBMITTED this 6th day of June, 2013.

BETTS, PATTERSON & MINES, P.S.

By: 

Joseph D. Hampton, WSBA #15297

Laura E. Kruse, WSBA #32947

Bridget T. Schuster, WSBA #41081

Attorneys for Respondents

**CERTIFICATE OF SERVICE**

I, Denise Mary Pope, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is Betts Patterson & Mines, One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on June 6, 2013, I caused to be served upon counsel of record at the address below, via ABC Legal Messengers, a true and correct copy of the following document:

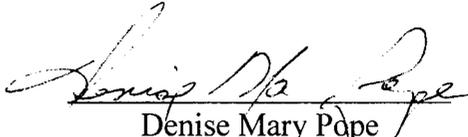
**Respondents' Brief**

***Counsel for Appellants:***

James J. Jameson  
3409 McDougall Ave., Suite 201  
Everett, WA 98201

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of June, 2013.

  
Denise Mary Pope  
Legal Assistant