

71691-3

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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

Jeffrey HALEY,  
Counterclaimant & Appellant

No. 71691-3-1

v.

MJD Properties LLC  
Counter-Defendant & Respondent

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**BRIEF OF APPELLANT**

2019 DEC 19 AM 11:24  
COURT OF APPEALS  
STATE OF WASHINGTON

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## ASSIGNMENTS OF ERROR

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4           (1) The order by the Superior Court granting summary judgment to  
5 MJD dismissing Haley's claim for nuisance from a bright light shining in  
6 Haley's bedroom window at night.

7           (2) The order by the Superior Court granting summary judgment to  
8 MJD dismissing Haley's claim that MJD erected in front of Haley's view  
9 window a tall tree out of spite, in violation of the spite structure statute.

10           (3) The orders by the Superior Court declining to award costs and  
11 fees to Haley as a prevailing party and declining to remand to the arbitrator to  
12 do so.

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## STATEMENT OF THE ISSUES

2           (1) In a residential neighborhood, can the casting of excessive light  
3 onto a neighbor's property at night constitute a statutory or common law  
4 nuisance in the State of Washington?

5           In other words, do those who erect outdoor lights in a residential  
6 neighborhood, have a duty to shield the light so that it does not cast excessive  
7 light at night onto the windows of nearby residences of others?

8           (2) Do the words "any structure" in the Washington spite structure  
9 statute literally mean *any* structure, or are living plant structures implicitly  
10 excluded?

11           In other words, although a non-living sculpture of a tree would  
12 qualify, does a large living tree not qualify because the tree is alive?

13           (3) Where a defendant presents an unrelated counterclaim that is not  
14 a compulsory counterclaim under CR 13 and prevails on that counterclaim, is  
15 the defendant entitled to an award of costs and fees as a prevailing party even  
16 if the plaintiff received a larger award on the plaintiff's claim?

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1 **STATEMENT OF FACTS**

2 John Pugh is the controlling owner of the Respondent, MJD  
3 Properties LLC. He and Jeff Haley, became residential neighbors in May  
4 2005. More than six years later, the owner of a property that adjoins both of  
5 their properties sold his property to Pugh so that Pugh then owned two of the  
6 three adjoining properties. Pugh formed MJD Properties LLC to be the  
7 owner of record of his newly acquired property. Pugh remodeled the house  
8 on the newly acquired property and now resides there.

9 The disputes in this appeal arose from redevelopment of the newly  
10 acquired property by Pugh via his LLC, MJD Properties. In the course of  
11 that redevelopment, Pugh (a) trespassed on Haley's property and wrongfully  
12 removed a plant, (b) erected a new light on a pole over his new driveway  
13 without adjusting the shield on the light to prevent it from shining in Haley's  
14 bedroom window, and (c) planted an 18 feet tall cedar tree right in front of  
15 Haley's view window.

16 Haley complained to the City and other authorities about the  
17 inadequately adjusted shield on the light and about Pugh having an illegally  
18 located boatlift in the adjoining lake.

19 One month after Haley complained about the boatlift and five months  
20 after MJD bought the property, MJD acquired from the former owner of the  
21 property a claim against Haley for trimming a tree on the former owner's side

1 of the property line nine months earlier. MJD then commenced this  
2 litigation. That claim was decided and resolved below and is not the subject  
3 of an appeal.

4 In the proceeding commenced by MJD, Haley brought a non-  
5 compulsory counterclaim for trespass for removal of the plant. Haley  
6 prevailed on this claim, obtaining an award more than double Haley's  
7 settlement offer made early in the litigation, giving Haley an entitlement to an  
8 award of costs and fees which the trial court declined to award.

9 Haley also brought a counterclaim for nuisance from the bright light  
10 being installed without an adjustment to its shield for directing light only  
11 downward to block light from reaching Haley's bedroom window. The trial  
12 court dismissed this claim on summary judgment, ruling that a bright light  
13 shining onto neighboring property cannot constitute a statutory or common  
14 law nuisance. (Report of Proceedings page 18, lines 2-3.)

15 Haley also brought a counterclaim for violation of the spite structure  
16 statute resulting from Pugh's placement of the large cedar tree. The trial  
17 court dismissed this claim on summary judgment, ruling that a newly planted  
18 live tree, however large and no matter what the motivation, cannot qualify as  
19 a spite structure under the spite structure statute. (Report of Proceedings  
20 page 22, lines 9-12 and page 18, lines 19-21.)

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**Detailed Statement of Facts**

**A. Excessive light cast into Haley’s bedroom window**

Because the Superior Court ruled on this issue on summary judgment, the evidence Haley offered by declaration must be accepted as true, and it was not challenged below. See Haley’s First Declaration, pages 4-5, CP 59-60.

1. In September, 2012, Pugh installed a light pole in his new parking area with a light that includes a shield to prevent it from shining in an upward direction and casting excessive light into the neighborhood. However, the shield was not adjusted properly and it allows light to extend beyond Pugh’s property and into windows of the master bedroom of Haley’s house. Those windows are set high on the bedroom wall -- the bottom of each window is 10 feet higher than Pugh’s parking area. CP 59.

2. When the light pole was installed, it would have cost nothing extra to tilt the shield downward on the side toward Haley’s windows to prevent light from entering them. At this time, the cost to go up a ladder and adjust the shield on the light would be negligible. CP 59.

3. Adjusting the shield so that it does not cast light into Haley’s bedroom window would not compromise in the least the usefulness of the light for Pugh’s property. It would still cast light to at least eleven feet above all parts of the parking area. CP 59.

1           4.       In September, 2012, Haley requested that Pugh adjust the  
2 shield to solve this problem. Pugh refused. Then, in October, 2012, Haley  
3 complained to the City and asked them to force Pugh to adjust the shield. CP  
4 60.

5           5.       The shield has not been adjusted and excessive light is still  
6 cast into Haley's bedroom window at night. Pugh still refuses to adjust the  
7 shield on the light or even allow Haley to pay an expert to adjust the shield  
8 on the light.

9           **B. Excessively large spite tree planted to block Haley's view**

10           Because the Superior Court ruled on this issue on summary judgment,  
11 the evidence Haley offered by declaration must be accepted as true, and it  
12 was not challenged below. See Haley's First Declaration, page 5, CP 60.

13           6.       As built by the family that originally owned all three lots, the  
14 house on Haley's lot has primary view windows and a deck on the second  
15 story designed for good views. The windows and an edge of the deck are  
16 five feet from the property line of Pugh's new lot. CP 60.

17           7.       About a month after Haley complained to the City about  
18 Pugh's new driveway light, in November, 2012, Pugh planted an eighteen  
19 feet tall cedar tree with its trunk three feet from the property line, eight feet  
20 from Haley's view windows. The tree blocks views from Haley's second  
21 story primary view windows and the second story deck. On the day it was

1 planted, it was so tall that it extends a foot above eye level of a person  
2 standing on the second floor of Haley's house. CP 60.

3 8. Pugh selected a variety and size of tree to maximally block  
4 Haley's views. Pugh could have planted a variety of tree that will grow no  
5 taller than about 14 feet so that it would not block Haley's views from the  
6 second floor. Any typical person would find such a tree to be just as  
7 aesthetic for decorating Pugh's lot as the tree selected by Pugh. CP 60.

8 9. In selecting a tree to plant, Pugh had a motive to act spitefully  
9 and with malice toward Haley because Haley had complained to local  
10 authorities about illegal land use actions of MJD and John Pugh, both the  
11 unshielded light on a pole and a boatlift placed in an illegal location in the  
12 adjoining lake.

13 **C. Haley's entitlement to costs and fees**

14 (See Haley's Declaration in Support of Motion for Judgment, CP 178-79,  
15 and Haley's Declaration in Support of Motion for Remand, CP 204-05)

16 10. In Haley's answer to MJD's complaint, Haley asserted in  
17 paragraph 4 an unrelated counterclaim for trespass and removal of a  
18 cultivated planting, stating: "When the wood fence was installed, an  
19 intentionally planted and cultivated mature perennial plant, entirely on my  
20 side of the property line, was removed from my property." CP 6. This  
21 counterclaim was not a compulsory counterclaim under CR 13.

1           11.     In Haley’s unrelated counterclaim, he also stated the following  
2 request for relief: “Defendant requests an award of damages, costs and fees  
3 under any provision of law or court rules that may be applicable.” CP 7.

4           12.     The cultivated plant that was removed belonged to Haley’s  
5 wife, Carol Glass, who contributed it to community property. MJD took her  
6 deposition on February 27, 2013. In that deposition, she testified that the  
7 plant was a columbine that she planted, which limited the possible damages  
8 to far less than \$10,000. CP 179.

9           13.     MJD obtained and provided to Haley an expert report dated  
10 May 6, 2013 stating that the value of a columbine plant with labor to plant it  
11 is \$39.75. CP 346 and CP 370.

12           14.     On July 22, 2013, more than 4 months before trial  
13 (arbitration), Haley filed and served on MJD a pleading stating a motion for  
14 summary judgment on Haley’s claim for trespass. On page 10 of Haley’s  
15 pleading wherein he asked for a judgment, Haley stated: “My wife and I  
16 accept the figure of \$39.75” as the amount of the requested judgment. CP  
17 184. This pleading was not provided to the arbitrator who was the trier of  
18 fact.

19           15.     On July 31, 2013, more than 4 months before trial  
20 (arbitration), Haley presented to the court and served on MJD a proposed  
21 order of summary judgment to be entered against MJD in the amount of

1 \$39.75 to resolve Haley's claim. A copy of the proposed order is CP 184-85.  
2 This proposed order was not provided to the arbitrator who was the trier of  
3 fact.

4 16. MJD declined Haley's offer to resolve Haley's claim with a  
5 judgment for \$39.75 and, on August 2, 2013, opposed in court entry of  
6 Haley's proposed judgment for \$39.75. CP 179.

7 17. Despite Haley proposing to MJD more than twice that the  
8 parties discuss settlement of any or all claims, MJD never offered to pay any  
9 amount to settle Haley's claim for damages for removal of the plant. CP 179.

10 18. The arbitrator awarded \$99 on Haley's claim, more than  
11 double the amount of Haley's proposed judgment. CP 116-17.

12 19. On MJD's claim against Haley, the arbitrator awarded 39% of  
13 the lowest amount that MJD had ever offered for settlement of its claim. This  
14 outcome was more than \$5000 closer to Haley's highest offer than to MJD's  
15 lowest offer. CP 182. The final outcome was far closer to Haley's offered  
16 settlement figure than to MJD's offered settlement figure. Nevertheless, the  
17 superior court awarded costs to MJD as a prevailing party (and awarded no  
18 costs to Haley for prevailing on his claim).

19 20. In Haley's pleading for relief, which Haley presented to the  
20 arbitrator as Exhibit 50 in his Prehearing Statement, Haley stated:

21 "Defendant requests an award of damages, costs and fees under

1 any provision of law or court rules that may be applicable.”

2 CP 204 and Exhibit A thereto page 3, CP 208.

3 21. In response to Haley’s request for an award of fees, MJD  
4 stated on page 5 at line 8 in its Prehearing Statement presented to the  
5 arbitrator:

6 “As stated in Judge Erlick’s court order, attorney fees are  
7 reserved for the trial court.”

8 CP 204 and Exhibit B thereto, page 5, line 8.

9 22. In reply to the arbitrator on the issue of fees, Haley stated to  
10 the arbitrator (emphasis in original):

11 “The Superior court has not reserved for itself the issue of  
12 attorney fees to be awarded on the above claims, if any. Pugh/MJD’s  
13 Pre-Hearing Statement is flat wrong on this point. The trial court  
14 reserved until after the arbitration whether any attorney fees should be  
15 awarded ‘as sanctions per this court’s Order Compelling Attendance  
16 at Deposition March 29, 2013’ or ‘in defense of frivolous  
17 counterclaims’. See Pleading E, Denial of Summary Judgment, page  
18 2, lines 7-11. The court did not reserve to itself any other fee  
19 determination.”

20 CP 205 and Exhibit C thereto, page 6 section 4 (emphasis in original).

21 23. Despite Haley’s protests to the arbitrator that MJD was  
22 misleading the arbitrator on the issue of which tribunal was to determine any  
23 award of costs and fees, the arbitrator ruled:



1 (3) there is no benefit to MJD's property from the excessive light and  
2 there would be no detriment if abatement is ordered; and  
3 (4) the cost of an adjustment of the shield on the light to abate the  
4 nuisance is negligible.

5 There are two statutes that make this nuisance actionable. RCW 7.48.010  
6 provides:

7 . . . whatever is . . . offensive to the senses . . . is a nuisance and the  
8 subject of an action for damages and other and further relief.

9 RCW 7.48.120 provides:

10 Nuisance consists in unlawfully doing an act, or omitting to perform a  
11 duty, which act or omission either annoys, injures or endangers the  
12 comfort, repose, health or safety of others

13 There is no Washington court opinion which suggests that casting  
14 excessive light with no benefit to the property casting the light cannot be a  
15 nuisance. In its opinion in *Riblet v. Spokane-Portland Cement Company*, 41  
16 Wn.2d 249, 254 (1952), the state Supreme Court asked and responded to the  
17 question, "What is a nuisance?" The Court stated:

18 Our basic point of inquiry relates to the general theory of the  
19 law of nuisance. This appears primarily to be based upon generally  
20 accepted ideas of right, equity, and justice. The thought is inherent  
21 that not even a fee simple owner has a totality of rights in and with  
22 respect to his real property. In so far as the law of nuisance is  
23 concerned, rights as to the usage of land are relative. The general

1 legal principle to be inferred from court action in nuisance cases is  
2 that one landowner will not be permitted to use his land so  
3 unreasonably as to interfere unreasonably with another landowner's  
4 use and enjoyment of his land.

5 The crux of the matter appears to be reasonableness.  
6 Admittedly, the term is a flexible one. It has many shades and  
7 varieties of meaning. In a nuisance case, the fundamental inquiry  
8 always appears to be whether the use of certain land can be  
9 considered as reasonable in relation to all the facts and surrounding  
10 circumstances.

11 Application of the doctrine of nuisance requires a balancing of  
12 rights, interests, and convenience.

13 Applying this analysis, one must balance the interests of Haley and  
14 his wife to darkness at their bedroom windows at night against the burden on  
15 Pugh to adjust the shield on the light, which is negligible.

16 People like to have darkness at their windows at night for many  
17 reasons, including to be able to view distant objects other than a glaring light.

18 Casting of light at night onto other properties is a subject of  
19 environmental concern to the people of the state of Washington as expressed  
20 through their lawmakers. For example, for application of the State  
21 Environmental Policy Act, 43.21C RCW, the Environmental Checklist, WAC  
22 197-11-960, requires consideration of the following:

1 11. Light and glare

2 a. What type of light or glare will the proposal produce? What  
3 time of day would it mainly occur?

4 b. Could light or glare from the finished project be a safety  
5 hazard or interfere with views?

6 c. What existing off-site sources of light or glare may affect  
7 your proposal?

8 d. Proposed measures to reduce or control light and glare  
9 impacts, if any

10 There is no precedent and no reason to exclude the possibility that  
11 casting of light can be a form of nuisance as the trial court ruled. Other  
12 jurisdictions have held that excessive light inconsistent with the character of a  
13 neighborhood can constitute a nuisance. E.g. *Anderson v. Guerrein Sky-Way*  
14 *Amusement Co.*, 29 A.2d 682 (Pa. 1943).

15 If the Washington courts were to follow the rule announced by this  
16 superior court, a person who intends to harass a neighbor could shine a light  
17 of any brightness on any window for any reason without the neighbor having  
18 grounds for redress. In this case, there is evidence that Pugh has refused to  
19 adjust the shield on the light, or even allow Haley to pay an expert to adjust  
20 the shield on the light, out of malice and spite.

21 The court should remand with directions to allow this nuisance claim  
22 to be decided on the merits.

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**B. LIVE TREE AS A SPITE STRUCTURE**

**Under Washington court opinions, a newly planted large tree  
can be a spite structure.**

RCW 7.40.030 provides:

An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal.

(emphasis added) This statute was most recently interpreted in 1974 by the Court of Appeals in *Baillargeon et al., v. Press*, 11 Wn. App. 59, 66; 521 P.2d 746, stating:

- in order to apply the spite fence statute, [sic. – the word “fence” is not in the statute] RCW 7.40.030, to restrain the erection of a fence or other structure or to abate an existing structure, the court must find
- (1) that the structure damages the adjoining landowner's enjoyment of his property in some significant degree;
  - (2) that the structure is designed as the result of malice or spitefulness primarily or solely to injure and annoy the adjoining landowner; and
  - (3) that the structure serves no really useful or reasonable purpose.

1                                   **Spite Structure Analysis under *Baillargeon***

2                   Because this issue was presented to the court below on MJD's motion  
3 for summary judgment, the Court of Appeals must accept the facts as Haley  
4 presented them by declaration, none of which were contested by MJD.

5                   (1) Haley provided evidence that the newly planted tree significantly  
6 reduces the quality of views from the parts of Haley's house that were  
7 specifically designed to take advantage of the view, and the impact will  
8 increase as the tree grows.

9                   (2) Haley provided evidence from which a trier of fact could  
10 conclude that, in choosing to plant 3 feet from the property line a cedar tree  
11 that was already 18 feet tall when planted and would grow much taller rather  
12 than a tree that will grow no taller than 14 feet to avoid serious impact on  
13 Haley's view, Pugh acted out of malice or spite. Haley provided evidence of  
14 a motive for such malice or spite being revenge for Haley having complained  
15 to the City about the illegal excessive light cast into Haley's bedroom  
16 window and about a boatlift placed in an illegal location.

17                   (3) MJD has built a 6 feet high fence along the property line between  
18 the properties. It is reasonable that MJD would place plantings in front of the  
19 fence for aesthetic reasons. Such plantings should be considered "useful".  
20 But it is not reasonable and not "really useful" for those plantings to be 18  
21 feet high rather than selecting plantings that will not exceed 14 feet high.

1       **Other courts have construed spite “fence” statutes to cover live trees.**

2           MJD argued below that the spite structure statute does not apply to a  
3 large tree planted out of spite. The language of the statute is not limited to  
4 fences or even structures in the nature of a fence. The language specifies :

5           “malicious erection, by any owner or lessee of land, of any structure  
6 intended to spite, injure or annoy an adjoining proprietor.”

7 (emphasis added) In plain language, planting an eighteen feet tall tree is  
8 “erection” of a “structure”. There is no Washington opinion saying or  
9 implying that a tree cannot be a “structure” under this statute.

10           Courts of other jurisdictions have opined whether a narrower statute  
11 directed only to fences or “any structure in the nature of a fence” may be  
12 violated by planting of trees. The modern view of these opinions is yes. *See,*  
13 *e.g., Wilson v. Handley*, 97 Cal. App. 4th 1301, 119 Cal.Rptr.2d 263  
14 (Cal.Ct.App. 2002)(trees may be enjoined under spite “fence” statute);  
15 *Dowdell v. Bloomquist*, 847 A.2d 827 (RI 2004)(trees may be enjoined under  
16 spite “fence” statute); *Peters et al. v. O’Leary*, 30 A.3d 825, 2011 ME  
17 106(ME 2011)(trees may be enjoined under spite “fence” statute).

18       **There is no coherent line between dead structures and live trees.**

19           Certainly a wall or fence or tower can be a spite structure under the  
20 statute. What about a large sculpture? Suppose Pugh had erected a sculpture  
21 of a tree like the public art tree sculptures in Ballard . Presumably that could

1 be a spite structure. It is hardly different from a tower. Why should it be  
2 different if he chooses to erect an 18 feet tall live tree that could grow to 100  
3 feet high rather than erecting a sculpture of a tree that can never grow taller?

4 The court should remand with directions to allow this spite structure  
5 claim to be decided on the merits.

6 **C. COSTS AND FEES BELOW**

7 **It is undisputable that Haley prevailed on his claim.**

8 Two separate claims were tried, one by each party, and each party  
9 obtained an arbitration award. The question before the court is whether the  
10 party that received the smaller award is entitled to an award of costs and fees.

11 MJD argued below that only one party is entitled to an award of costs  
12 and fees and it is the party that receives the larger award.

13 This is not a case where the claims of each party – claim and  
14 counterclaim – were related to each other. Under CR 13(a), the counterclaim  
15 was not a compulsory counterclaim because it did not arise “out of the  
16 transaction or occurrence that is the subject matter of the opposing party's  
17 claim”. It was a permissive counterclaim under CR 13(b). It could have  
18 been brought in a separate proceeding. Consequently, the analysis of which  
19 party prevailed on each claim should be independent of the outcome on the  
20 other claim.

1           Having received an award that is more than double Haley's settlement  
2 offer and more than double the amount that Haley asked the superior court to  
3 award on summary judgment, it is indisputable that Haley prevailed on his  
4 claim. Having prevailed, Haley should be entitled to an award of his \$240  
5 filing fee cost under RCW 4.84.010 which provides: "there shall be allowed  
6 to the prevailing party" "certain sums for the prevailing party's expenses".

7           Because Haley's settlement offer was made in accordance with RCW  
8 4.84.250, he is also entitled to an award of fees under RCW 4.84.250 which  
9 provides:

10           Notwithstanding any other provisions of chapter 4.84 RCW and RCW  
11 12.20.060, in any action for damages where the amount pleaded by  
12 the prevailing party as hereinafter defined, exclusive of costs, is seven  
13 thousand five hundred dollars or less, there shall be taxed and allowed  
14 to the prevailing party as a part of the costs of the action a reasonable  
15 amount to be fixed by the court as attorneys' fees. (emphasis added)

16           Because Haley's claim could have been brought in a separate  
17 proceeding, it would be a denial of Haley's statutory rights to deny an award  
18 of costs and fees simply because the opposing party's award on its claim is  
19 larger than Haley's award on Haley's claim.

20           Not only was Haley awarded more than double the amount of his  
21 settlement offer on his own claim, he also took the more reasonable position  
22 on MJD's claim -- his settlement offer on MJD's claim was more than \$5000  
23 closer to the outcome than was MJD's best settlement offer. For this reason,

1 MJD does not deserve to be considered a prevailing party at all on either  
2 claim.

3           The purpose of cost shifting and fee shifting rules is to encourage  
4 settlement by shifting costs and fees to the party that takes the least  
5 reasonable position. Haley gave the opposing party an offer to resolve  
6 Haley's claim by agreeing to entry of a judgment for less than half of the  
7 amount Haley was eventually awarded. Haley did not condition the offer on  
8 also settling the opposing party's claim. This matter would have gone to  
9 arbitration on only the opposing party's claim if Haley's offer had been  
10 accepted.

11           All the attorney efforts on both sides incurred to litigate Haley's claim  
12 from that point forward, and the time for the arbitrator and the courts, would  
13 have been avoided if the opposing party had accepted Haley's offer, which  
14 Haley made more than four months before the date of the arbitration. Under  
15 the fee shifting statute, Haley is entitled to recover his fees on this claim.

16                           **The case law is clear that both parties can prevail.**

17           MJD argued below that only one party is entitled to be designated a  
18 prevailing party, not both parties. However, the cases that MJD cited below  
19 in support of this proposition are all cases involving compulsory  
20 counterclaims under CR13(a) because those counterclaims arose arise out of  
21 the transaction or occurrence that was the subject matter of the plaintiff's

1 claim. In those cases, the successful counterclaim simply reduced the amount  
2 of the plaintiff's claim but the plaintiff still obtained a net award. Thus, in  
3 those cases, only the plaintiff substantially prevailed.

4 Furthermore, in cases like those cited by MJD where there are  
5 multiple distinct but related claims, the proper approach is a "proportionality  
6 approach" which awards the plaintiff costs and fees for the claims it prevails  
7 upon, and likewise awards costs and fees to the defendant for the claims it  
8 prevails upon. The awards are then offset. *Marassi v. Lau, et al.*, 71 Wn.  
9 App. 912, 917 (1993).

10 Even under MJD's theory that an award should be made to only one  
11 prevailing party, the required "proportionality approach" was not applied  
12 below. MJD was awarded all of its costs and Haley was awarded none.

13 As the Supreme Court stated in 2010, "A 'prevailing party' is any  
14 party that receives some judgment in its favor." *Guillen v. Contreras*, 169  
15 Wn.2d 769,775 ¶9 (2010). Where the claims of the proceeding are unrelated  
16 and could have been brought in separate proceedings, it should be the clear  
17 rule that both parties can be prevailing parties. Any other interpretation of  
18 the law in this area would eliminate the statutorily intended incentive to settle  
19 a smaller claim in a proceeding where a larger claim cannot also be settled. It  
20 is better to settle some claims than none.

1           **Conclusion and request for fees and expenses on appeal**

2           This matter should be remanded with directions to award to Haley  
3 appropriate costs and fees as a prevailing party. As this appeal was necessary  
4 to obtain a proper award of fees below, fees and expenses on appeal should  
5 also be awarded.

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7                           Dated this 18th day of August, 2014

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Jeffrey T. Haley

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3 COURT OF APPEALS,  
4 DIVISION ONE  
5 OF THE STATE OF WASHINGTON  
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7  
8 Jeffrey HALEY, Appellant,  
9 v.  
10 MJD Properties LLC,  
11 Respondent  
12

13 **No. 71691-3-1**

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15  
16 **Proof of Service**  
17

18 I certify that, on 8- 18 -14, I served a copy of this document on:

19 Frank R Siderius, counsel for Respondent

20 by e-mail of a pdf as agreed.  
21

22 DATED this 18<sup>TH</sup> day of August, 2014



23 Jeffrey Haley, *pro se*  
24

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3 COURT OF APPEALS,  
4 DIVISION ONE  
5 OF THE STATE OF WASHINGTON  
6

7  
8 Jeffrey HALEY, Appellant,  
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10 MJD Properties LLC,  
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12

13 No. 71691-3-1  
14

15  
16 **Certificate of Mailing**  
17

18 I certify that, on 8-18-14, I mailed the enclosed documents with proper postage to the  
19 clerk of the above designated court.  
20

21 DATED this 18<sup>th</sup> day of August, 2014

22 

23 Jeffrey Haley, *pro se*

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STATE OF WASHINGTON