

70327-7

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No. 70327-7-I

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

UNION BANK, N.A., a national banking association, *Appellant*,

v.

ELIZABETH Y. VANDERVEEN and A. MARK VANDERVEEN,
individually and the marital community thereof; HARLEY O'NEIL, JR.
and MICHELE O'NEIL, individually and the marital community thereof;
the TORI LYNN NORDSTROM TRUST, a Washington state trust; and
HARLEY O'NEIL, JR., Trustee for the Tori Lynn Nordstrom Trust,
Respondents.

**RESPONDENTS HARLEY AND MICHELE O'NEIL, THE TORI
LYNN NORDSTROM TRUST, AND HARLEY O'NEIL, JR., AS
TRUSTEE FOR THE TORI LYNN NORDSTROM TRUST'S
JOINDER IN BRIEF OF RESPONDENTS VANDERVEEN**

Craig Simmons, WSBA #38064
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Attorneys for Respondents O'Neil et al.
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Respondents HARLEY O'NEIL, JR., MICHELE O'NEIL, TORI LYNN NORDSTROM TRUST AND HARLEY O'NEIL, JR., AS TRUSTEE FOR THE TORI LYNN NORDSTROM TRUST'S (collectively "O'Neil Respondents") hereby join the Vanderveen Respondents' Brief of Respondents, and fully adopt the arguments therein, filed on or about October 21, 2013.

**THE O'NEIL RESPONDENTS ARE ENTITLED TO AN
AWARD OF ATTORNEY'S FEES ON APPEAL**

At the trial court level, the O'Neil Respondents prevailed in their defense of the breach of contract claims brought by Appellant against them. As a result, and because the contract on which Appellant brought suit contained an attorney fee provision for the prevailing party,¹ the trial court awarded the O'Neil Respondents their costs, expenses, and reasonable attorney's fees incurred in the successful defense of the dismissed claims. The same contractual authority providing the basis for the award of attorney's fees at the trial court level also supports such an award on appeal. *See* RAP 18.1; *West Coast Stationary Eng'rs Welfare Fund v. Kennewick*, 39 Wn.App. 466, 477, 694 P.2d 1101 (1985). A contract which provides for attorney's fees to enforce a provision of the

¹ To the extent that the contractual language at issue provided only for attorney fees to be awarded one way, from borrower to lender, RCW 4.84.330 renders such language reciprocal, with any prevailing party entitled to an award of attorney's fees based on the terms of the contract.

contract necessarily provides for attorney's fees on appeal. *See Granite Equip. Leasing Corp. v. Hutton*, 84 Wn.2d 320, 327, 525 P.2d 223 (1974).

The O'Neil Respondents are entitled to an award of their costs, expenses, and reasonable attorney fees incurred in responding the instant appeal, the amount of which to be determined by subsequent affidavit pursuant to RAP 18.1(d).

RESPECTFULLY SUBMITTED this 21st day of October, 2013.

ROMERO PARK P.S.



Craig Simmons
Attorney for O'Neil Respondents

STATE OF WASHINGTON
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HARLEY O'NEIL, JR., Trustee for the Tori Lynn Nordstrom Trust,
Respondents.

**CERTIFICATE OF SERVICE OF
RESPONDENTS HARLEY AND MICHELE O'NEIL, THE TORI
LYNN NORDSTROM TRUST, AND HARLEY O'NEIL, JR., AS
TRUSTEE FOR THE TORI LYNN NORDSTROM TRUST'S
JOINDER IN BRIEF OF RESPONDENTS VANDERVEEN**

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

2. On Monday, October 21, 2013, I caused one copy of the following:

- A. Respondents Harley and Michele O'Neil, the Tori Lynn Nordstrom Trust, and Harley O'Neil, Jr., as Trustee for the Tori Lynn Nordstrom Trust's Joinder in Brief of Respondents Vanderveen; and
- B. This Certificate of Service.

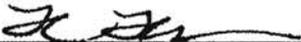
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RESPECTFULLY SUBMITTED this 21st day of October, 2013.

ROMERO PARK P.S.



Kathy Koback, Legal Assistant



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