

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Sep 08, 2015, 4:58 pm
BY RONALD R. CARPENTER
CLERK

NO. 92085-1

E

ODF

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

SETH BURRILL PRODUCTIONS, INC., a Washington corporation,

Respondent,

vs.

REBEL CREEK TACKLE, INC., a Washington corporation,

Appellant/Petitioner

ANSWER TO PETITION FOR REVIEW

Jeffrey R. Smith
WSBA No. 37460
Lee & Hayes, PLLC
601 West Riverside, Suite 1400
Spokane, Washington 99201

Attorney for Respondent

i
 ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. IDENTITY OF RESPONDENTS	1
II. COURT OF APPEALS DECISION	1
III. ISSUES PRESENTED FOR REVIEW	2
IV. STATEMENT OF THE CASE.....	3
A. Arbitration Proceedings	3
B. Superior Court Proceedings	4
C. Appellate Court Proceedings	6
V. ARGUMENT.....	7
A. The Court should deny the petition because the issues presented do not satisfy the criteria for review under RAP 13.4(b)	7
1. RAP 13.4(b)(1)	8
2. RAP 13.4(b)(2)	9
3. RAP 13.4(b)(3) & (4).....	10
VI. CONCLUSION.....	11
CERTIFICATE OF SERVICE	13
APPENDIX.....	14

TABLE OF AUTHORITIES

	Page(s)
State Cases	
<i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971).....	9
<i>Matter of J.S.</i> , 124 Wn.2d 689, 880 P.2d 976 (1994).....	9
<i>King v. Department of Soc. and Health Svs.</i> , 110 Wn.2d 793, 756 P.2d 1303 (1998).....	9
<i>In re Marriage of Humphreys</i> , 79 Wn. App. 596, 903 P.2d 1012 (Div. 3, 1995).....	10
<i>In re Marriage of LeRoue</i> , 56 Wn. App. 320, 783 P.2d 1092 (Div.1, 1989).....	10
<i>In re Marriage of Matthews</i> , 70 Wn. App. 116, 853 P.2 462 (Div.3, 1993).....	10
<i>Rhinevault v. Rhinevault</i> , 91 Wn. App. 688, 959 P.2d 687 (Div. 1, 1998).....	10
<i>Seth Burrill Productions, Inc., v. Rebel Creek Tackle, Inc.</i> , 2015 WL 4094246 (2015).....	7
<i>Shuster v. Shuster</i> , 90 Wn.2d 626, 585 P.2d 130 (1978).....	9
<i>State v. Berty</i> , 136 Wn. App. 74, 147 P.3d 1004 (Div. 2, 2006).....	10
<i>State v. Caffrey</i> , 70 Wn.2d 120, 422 P.2d 307 (1966).....	9
<i>State v. Dugan</i> , 96 Wn. App. 346, 979 P.2d 885 (Div. 2, 1999).....	10

<i>State v. Jordan</i> , 146 Wn. App. 395, 190 P.3d 516 (Div. 2, 2008)	10
<i>State v. Miller</i> , 74 Wn. App. 334, 875 P.2d 1197 (Div 1, 1994)	10
<i>State v. Powell</i> , 126 Wn.2d 244, 893 P.2d 615 (1995).....	9
<i>Yamaha Motor Corp., v. Harris</i> , 29 Wn. App. 859, 631 P.2d 423 (Div. 3, 1981)	10
State Statutes	
RCW 7.21.010	12
Rules	
RAP 13.4.....	10
RAP 13.4(b)	7, 11, 12
RAP 13.4(b)(1)	2, 8
RAP 13.4(b)(2)	9
RAP 13.4(b)(3)	2
RAP 13.4(b)(3) and (4)	10
RAP 13.4(b)(4)	2

I. IDENTITY OF RESPONDENT

Seth Burrill Production, Inc., a Washington corporation, submits this answer in response to the petition for review filed on behalf of Rebel Creek Tackle, Inc., a Washington corporation.

II. COURT OF APPEALS DECISION

On July 7, 2015, the Court of Appeals of the State of Washington, Division III, issued its unpublished opinion in *Seth Burrill Productions, Inc., v. Rebel Creek Tackle, Inc.*, (Court of Appeals No. 32119-3-III).¹ In this case, which was an appeal from a finding of contempt for violation of an order resolving a previous licensing dispute between the parties, the Court found the “appeal completely without merit,” and affirmed the contempt finding as well as awarding costs and attorney fees for the appeal.

¹ A copy of the Court of Appeals Decision is reproduced in the attached Appendix.

III. ISSUES PRESENTED FOR REVIEW

After missing its opportunity to appeal certain issues decided at arbitration, Petitioner has at every turn, repeatedly cast its net broadly to include these issues in hopes of re-litigating matters decided long ago. Although Petitioner submits multiple “assignment of issues,” only one is germane to the matter before the court. Petitioner’s appeal before the Court of Appeals, Division III, and this current petition for review, pertain only to the issue of contempt.

The issues raised in the petition for review can thus be summarized as follows:

1. Is the Court of Appeals decision regarding contempt, in conflict with the Supreme Court or other Court of Appeals decisions regarding contempt thus satisfying RAP 13.4(b)(1) or (2)? *See Rebel Creek Tackle, Inc. Pet. For Rev.*, at 5.
2. Does the appellant raises a significant Washington State or United States Constitutional question thus satisfying RAP 13.4(b)(3)?
3. Does the appellant raise an issue of substantial public interest which should be determined by the Supreme Court thus satisfying RAP 13.4(b)(4)? *See Rebel Creek Tackle, Inc. Pet. For Rev.*, at 9.

IV. STATEMENT OF THE CASE²

This case arises out of a license agreement (“Contract”) between Seth Burrill Productions, Inc. (“SBPI”) and Rebel Creek Tackle, Inc. (“RCTI”). The Contract between the parties was for an exclusive license to utilize certain patents for fishing devices. CP 12-17. The Contract gave SBPI the exclusive right to sell the completed device, known as “Bud’s Diver.” *Id.* In exchange for the exclusive right to use the patent and sell the device, SBPI agreed to pay a royalty to RCTI. *Id.* At the time of the material breach by RCTI, the injection molds used to produce the fishing devices was in the possession of Plastic Injection Molding Company (“PIM”), a company located in Richland, Washington.

A. Arbitration Proceedings

Based on an arbitration clause in the Contract, SBPI initiated a cause of action against RCTI for material breach of the Contract. CP 2. On May 2, 2013, SBPI was declared the prevailing party to the arbitration, and was issued a final award. CP 26-30. Most importantly, the arbitrator’s award required that “[SBPI] shall have full, unrestricted use of the injection molds during the term of the contract, and [RCTI] shall cooperate in the transfer and/ or delivery of said molds as requested by [SBPI].” CP 29.

² Clerk’s Papers are referred to hereinafter as “CP.”

Ostensibly, this part of the arbitrator's decision was due to the fact that PIM participated in RCTI's material breach of the Contract. In addition, RCTI was enjoined from "engaging in any activity in competition with or obstruction of [SBPI]'s rights under the contract, from interfering in any way with [SBPI]'s performance of the contract, and are further enjoined from interfering and/or infringing on [SBPI]'s trademark and copyrights." CP 29. Despite the arbitrator's decision, RCTI refused to comply with the transfer and/or delivery of the injection molds to SBPI. Most importantly, RCTI did not timely file any appeal of the arbitrator's decision.

B. Superior Court Proceedings

On May 17, 2013, SBPI scheduled a Motion for an Order to Confirm the Arbitration Award, Obtain a Judgment, and Permanent Injunction Against RCTI in Spokane County Superior Court. CP 41. RCTI filed no motion in opposition to SBPI, nor did it appear, and on June 7, 2013, the Court granted the motion in full by confirming the arbitration award, entering a judgment in favor of SBPI, and issuing a permanent injunction against RCTI. CP 42-44. The permanent injunction specifically required that "SBPI shall have full, unrestricted use of the injection molds during the term of the license agreement, and RCT shall cooperate in the transfer and/or delivery of said molds as requested by SBPI." CP 43. SBPI fully understood the ownership of the molds remained with RCTI, and that this

court order merely dictated possession of the molds which enabled SBPI to chose a different manufacturer. RCTI did not file a timely appeal to this court order.

Despite repeated attempts to obtain the molds per the court order, over a period of several months, counsel for RCTI gave a directive to PIM “that the molds not be released to [SBPI].” CP 84. Multiple requests were directed to RCTI’s counsel as to the rationale for refusal to transfer the molds to SBPI, but no response was ever received. *Id.*

As a last resort, SBPI filed a Motion for Remedial Sanctions (Contempt) and Other Relief in Spokane County Superior Court on October 15, 2013. A month later, on November 15, 2013, following a hearing on the matter, the Court granted the motion. CP 271-272.

The Court made four findings of fact: (1) On June 7, 2013, Order Confirming Arbitration Award was signed by Judge Ellen Kalama Clark and Judgment in favor of SBPI was entered in Spokane County Superior Court in the total amount of \$67,451.62; (2) the Order and Judgment allow SBPI full, unrestricted use of the injection molds and requires that RCTI cooperate in the transfer and/ or delivery of said molds as requested by SBPI; (3) RCTI has refused to comply with the terms of the Order and Judgment, and has interfered with the transfer of the molds to SBPI; and,

(4) the Court has found the term “transfer and/ or delivery” in the Order as unambiguous.” CP 272.

Hence, the Court found RCTI to be in contempt, and enjoined RCTI from further interference with the transfer of the molds. The Court ordered RCTI to transfer the molds immediately and directed PIM to release the molds to SBPI. CP 272. In addition, the Court awarded attorney fees to SBPI. *Id.* Finally, only after being found in contempt, RCTI cooperated in transferring the molds to SBPI. To date however, SBPI has never received any monetary satisfaction of the judgment or award of attorney fees.

C. Appellate Court Proceedings

RCTI timely appealed the Order of Contempt to the Washington Court of Appeals, Division III on December 18, 2013. The Court of Appeals accepted review of the case and all briefing was completed by September 2, 2014. Oral arguments were initially scheduled for January 29, 2015. RCTI requested that oral arguments be postponed until March 2015. On March 18, 2015 both parties presented oral arguments before a three judge panel consisting of Judges Korsmo, Brown, and Lawrence-Berrey. On July 7, 2015, the Court issued an unpublished opinion authored by Judge Korsmo and concurred by Judge Lawrence-Berrey and Acting Chief Judge Brown.

Applying an abuse of discretion standard, the Court affirmed the order of contempt and in the course of its decision, added, “this appeal is completely without merit...[that] RCT has appealed from a finding of contempt, while conceding all of the essential facts establishing that it intentionally violated a court order...RCT has failed to demonstrate that the trial court’s finding of contempt was in any manner untenable...[and] RCT has not presented any debatable issue...[hence] SBP is awarded its costs and attorney’s fees....” *Seth Burrill Productions, Inc., v. Rebel Creek Tackle, Inc.*, 2015 WL 4094246 *2 (2015).

V. ARGUMENT

A. **The Court should deny the petition because the issues presented do not satisfy the criteria for review under RAP 13.4(b).**

RAP 13.4(b) states, “... A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b). In its petition for review, appellant strays from the essence of the appeal. That essence is simply the issue of

contempt. Whether or not the Court of Appeals decision in affirming the lower Court's order, conflicts with decisions of other Washington Court of Appeals or the Washington Supreme Court related to contempt, or raises significant constitutional questions or matters of public interest, should be the sole consideration.

Appellant brings up multiple issues which are unrelated to the contempt matter. These are issues which, if appellant wished to appeal them, should have been appealed in a timely fashion several years ago. Having missed its opportunity to argue contract construction, contract ambiguity, intent of the parties, and credibility of the respondent, appellant continues to employ this strategy of re-litigating issues which are unrelated to the order of contempt. Appellant's petition for review delves deeply into all of these issues which are only tangentially related and not at the crux of the contempt order.

1. RAP 13.4(b)(1)

In order to justify review, RAP 13.4(b)(1) requires a conflict between a decision of the Court of Appeals and a decision of the Supreme Court. Appellant provides no case law to demonstrate such a conflict exists related to the actual Court of Appeals decision affirming the order of contempt, and a decision of the Supreme Court. In fact, a review of the Supreme Court's decisions on contempt, are perfectly in line with the

decision of the Court of Appeals in its affirmation of the lower court's decision. The Supreme Court has long held that a finding of contempt is within the discretion of the trial court and will not be reversed absent an abuse of that discretion. *Shuster v. Shuster*, 90 Wn.2d 626, 630, 585 P.2d 130 (1978). *See also*, *King v. Department of Soc. and Health Svs.*, 110 Wn.2d 793, 756 P.2d 1303 (1998); *Matter of J.S.*, 124 Wn.2d 689, 880 P.2d 976 (1994); *State v. Caffrey*, 70 Wn.2d 120, 422 P.2d 307 (1966); *State v. Powell*, 126 Wn.2d 244, 893 P.2d 615 (1995). The Supreme Court has further noted that discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). In this case, the Court of Appeals properly applied and analyzed the lower court's decision through an abuse of discretion standard. Finding no abuse of discretion and that RCTI failed to demonstrate the trial court's finding of contempt was in any manner untenable, the Court of Appeals affirmed the lower court's finding of contempt. The application of the abuse of discretion standard is in direct alignment with the Supreme Court's decisions on the issue of contempt.

2. RAP 13.4(b)(2)

RAP 13.4(b)(2) provides for review, "if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals." RAP 13.4(b)(2). Here again, appellant has failed to cite one decision from any

division of the Washington Court of Appeals which is in conflict with the Court of Appeals decision in the case at hand. To the contrary, all divisions of the Court of Appeals apply the same standard when reviewing cases of contempt, and like the Supreme Court, are in direct alignment with the Court of Appeals affirmation of the order of contempt, in the case at bar. *See, In re Marriage of Humphreys*, 79 Wn. App. 596, 903 P.2d 1012 (Div. 3, 1995); *In re Marriage of Matthews*, 70 Wn. App. 116, 853 P.2 462 (Div.3, 1993); *Yamaha Motor Corp., v. Harris*, 29 Wn. App. 859, 631 P.2d 423 (Div. 3, 1981); *State v. Dugan*, 96 Wn. App. 346, 979 P.2d 885 (Div. 2, 1999); *State v. Jordan*, 146 Wn. App. 395, 190 P.3d 516 (Div. 2, 2008); *State v. Berty*, 136 Wn. App. 74, 147 P.3d 1004, (Div. 2, 2006); *Rhinevault v. Rhinevault*, 91 Wn. App. 688, 959 P.2d 687 (Div. 1, 1998); *State v. Miller*, 74 Wn. App. 334, 875 P.2d 1197 (Div 1, 1994); *In re Marriage of LeRoue*, 56 Wn. App. 320, 783 P.2d 1092 (Div.1, 1989).

Appellant fails to demonstrate the Court of Appeals decision in affirming the lower court's order of contempt is in any way in conflict with any other Washington Court of Appeals decisions regarding contempt.

3. RAP 13.4(b)(3) and (4)

The final two subsections of RAP 13.4 require a significant question of law under the Constitution of the State of Washington or of the United States; or an issue of substantial public interest that should be determined

by the Supreme Court. RAP 13.4(b)(3) and (4). Under the umbrella of the issue of contempt, the appellant has not clearly stated any significant question of law pertaining to the Constitution of the State of Washington nor the United States, and neither has the appellant plainly argued or identified any issue of substantial public interest which should be decided by the Supreme Court.

The Supreme Court may grant review only if the Court of Appeals decision is in conflict with a Supreme Court or Court of Appeals decision, if the appellant raises a significant Constitutional question, or if the issue raised is of substantial public interest which should be determined by the Supreme Court. RAP 13.4 (b). The appellant has failed to simply identify, argue, or articulate any of the above. Because appellant has failed to comply with RAP 13.4 (b), the Supreme Court should deny its petition for review.

VI. CONCLUSION

From the outset, this case has been very straight forward, free of any complexity. An arbitration was conducted under the provisions of the Contract between the parties. The arbitrator found in favor of the respondent. The appellant failed to timely appeal the arbitrator's award. Following a Motion on behalf of the respondent, a valid order was then signed by a Superior Court Judge. Again, the appellant failed to timely appeal that order. Instead, the appellant willfully disobeyed and

intentionally refused to comply with the valid order. The Superior Court Judge properly applied the statute and found the appellant in contempt for willfully and intentionally disobeying a lawful court order. RCW 7.21.010. There was no evidence the Superior Court Judge abused her discretion. Nevertheless, the appellant appealed the contempt order. The Court of Appeals, in its decision, found the appeal completely without merit and noted the appellant did not present any debatable issue. Now the appellant submits its petition for review. However, in asking the Supreme Court to review the Court of Appeals decision affirming the order of contempt, appellant fails to comply with any aspect of RAP 13.4(b). Therefore, respondent respectfully asks the Supreme Court to deny appellant's petition for review.

Submitted this 8th day of September, 2015.

LEE & HAYES, PLLC

A handwritten signature in black ink, appearing to read "Jeffrey R. Smith", with a stylized flourish at the end.

Jeffrey R. Smith, WSBA #37460

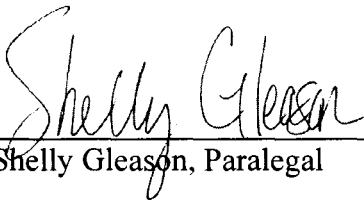
Attorney for Respondent

Seth Burrill Productions, Inc.

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 8th day of September 2015, the foregoing ANSWER TO PETITION FOR REVIEW was caused to be served to the following by the method indicated below:

Floyd E. Ivey IVEY Law Offices, PS 7233 West Deschutes Ave. Ste. C, Box #3 Kennewick, WA 99336	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Fax Transmission <input checked="" type="checkbox"/> Email: feivey@bossig.com Feivey@3-cities.com
--	--



Shelly Gleason, Paralegal

APPENDIX

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

July 7, 2015

Jeffrey Ray Smith
Lee & Hayes, PLLC
601 W Riverside Ave Ste 1400
Spokane, WA 99201-0627
jeffreys@leehayes.com

Floyd Edwin Ivey
Ivey Law Offices
7233 W Deschutes Ave Ste C
Kennewick, WA 99336-6707
feivey@3-cities.com

CASE # 321193
Seth Burrill Productions, Inc. v. Rebel Creek Tackle, Inc.
SPOKANE COUNTY SUPERIOR COURT No. 132019820

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:ko
Attach.
c: E-mail Hon. Ellen Kalama Clark

FILED
JULY 7, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

SETH BURRILL PRODUCTIONS, INC.,)		
a Washington corporation,)		No. 32119-3-III
)	
Respondent,)		
)	
v.)		
)	UNPUBLISHED OPINION
REBEL CREEK TACKLE, INC.,)		
)	
Appellant.)		

KORSMO, J. — This is an appeal from a finding of contempt for violation of an order resolving a previous dispute between the parties. Concluding that this appeal is completely without merit, we affirm the contempt finding and award costs and attorney’s fees for the appeal.

FACTS

Allen Osborn invented and patented a fishing lure, and formed Rebel Creek Tackle, Inc. (RCT) to handle the ensuing business. In order to begin manufacture of the lures, RCT had prototypes and steel injection molds produced in China. RCT then licensed Seth Burrill Productions, Inc. (SBP) to be the exclusive producer and distributor of the lures, granting it “full, unrestricted use of the injection molds.” The molds were

then transferred to Richland based manufacturer, Plastic Injection Molds, Inc. (PIM) for production.

Following a breakdown in relations with SBP, RCT unilaterally terminated the license in 2012, and began its own distribution of lures obtained from PIM. In response, SBP brought an action for breach of contract. In May 2013, an arbitrator found that RCT had breached the licensing agreement, and entered an award providing for damages and the reinstatement of a modified licensing agreement. The arbitration award was then confirmed in a court order filed June 7, 2013. Pertinently, the arbitration award and court order amended the provision in the licensing agreement granting SBP use of the injection molds to additionally require that RCT “cooperate in the transfer and/or delivery of said molds as requested by [SBP].”

Immediately thereafter, SBP contacted PIM to arrange the transfer of the molds. However, because the molds are the property of RCT, PIM would not release the molds without permission. SBP attempted to contact RCT, but was unable. SBP eventually contacted RCT’s attorney, who refused to agree to the transfer, instructed PIM not to release the molds, and then informed SBP that he no longer represented RCT. SBP then made several additional, unsuccessful attempts to directly contact RCT before bringing the present action for contempt, four months after the court order was filed. The trial court found that RCT had intentionally violated the court order and imposed remedial sanctions. RCT appealed.

ANALYSIS

RCT challenges the contempt finding, arguing that the licensing agreement, as modified by the court order, was ambiguous and that its violation of the order was justified in order to protect its property interests. We will address those arguments and then consider SBP's request for attorney's fees.

Contempt

A party is subject to contempt where there is intentional disobedience of a valid court order. RCW 7.21.010. A finding of contempt is within the discretion of the trial court and will not be reversed absent an abuse of that discretion. *Schuster v. Schuster*, 90 Wn.2d 626, 630, 585 P.2d 130 (1978). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

RCT argues that the modification to the licensing agreement imposed by the arbitration award and court order is ambiguous because the word "transfer" can mean alternatively a change in possession or a sale. See BLACK'S LAW DICTIONARY 1727 (10th ed. 2014). However, a term in a contract is not rendered ambiguous merely because one word is susceptible to multiple meanings. *Grant County Constructors v. E.V. Lane Corp.*, 77 Wn.2d 110, 121, 459 P.2d 947 (1969). Rather, the word must be read in the context of the contract as a whole, and where the language used is

unambiguous, an ambiguity will not be read into the contract. *Hering v. St. Paul-Mercury Indem. Co.*, 50 Wn.2d 321, 323, 311 P.2d 673 (1957).

The clause requiring RCT to “cooperate in the transfer and/or delivery of the molds,” unambiguously contemplates only a change in possession in order to facilitate SBP’s use of the molds for the duration of the contract.¹ “Transfer” could not reasonably mean “sale” in this context since that word already is used in the same phrase as an alternative possibility to “transfer.” Furthermore, the parties agree on this meaning of the word “transfer” in this context. Consequently, the modified licensing agreement was unambiguous.

RCT next contends that its actions were justified as a means to protect its property interests in the molds. It contends that SBP intends to perpetrate fraud by misreporting sales and that SBP could lose or damage the molds while in its possession. However, RCT has presented no evidence that any of these hypothetical future harms will occur²

¹ RCT argues that resolving the ambiguity entails adding conditions to SBP’s possession of the molds. These conditions were not included in the original agreement nor in the court order, and a court order cannot be collaterally attacked in contempt proceedings. *State v. Coe*, 101 Wn.2d 364, 369-70, 679 P.2d 353 (1984). Additionally, even if this were a reasonable interpretation, RCT would still have been in contempt of court for refusing to cooperate with the transfer.

² The contention that SBP intended to defraud RCT stems from the fact that SBP previously failed to submit the quarterly sales reports required by the licensing agreement. However, the arbitrator determined that this failure was inconsequential because SBP had instead reported all sales as they occurred.

nor is there any legal support that this constitutes a defense to contempt. RCT also has the ability to enforce any breach of the agreement by SBP by bringing its own action.

RCT has failed to demonstrate that the trial court's finding of contempt was in any manner untenable. Therefore, we affirm.

Attorney's Fees

SBP requests that this court award costs and attorney's fees as sanctions under RAP 18.9(a) for bringing a frivolous appeal.³ An appeal is frivolous when it presents no debatable issues upon which reasonable minds might differ, and it is so devoid of merit that there is no possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325 (2005). Doubts as to whether an appeal is frivolous should be resolved in favor of the appellant. *Id.* Raising at least one debatable issue precludes a finding of frivolousness. *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010).

Here, RCT has appealed from a finding of contempt, while conceding all of the essential facts establishing that it intentionally violated a court order. It contends instead that its actions were acceptable because the court order is ambiguous. Yet under any interpretation, it would still have been in violation of the order. It also contends that its actions were justified without any factual or legal support. Thus, RCT has not presented

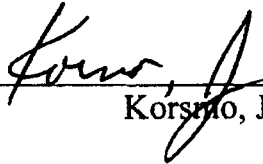
³ Because RCT is not the prevailing party, we need not address its claim for attorney's fees on appeal.

No. 32119-3-III
Burrill v. Rebel Creek

any debatable issue and this appeal is completely without merit. SBP is awarded its costs and attorney's fees for this appeal upon compliance with RAP 18.1(d).

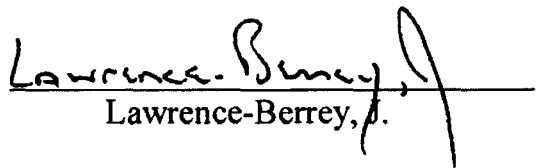
Affirmed

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Korsmo, J.

WE CONCUR:


Brown, A.C.J.


Lawrence-Berrey, J.

OFFICE RECEPTIONIST, CLERK

To: Shelly Gleason
Cc: Jeffrey Smith; Laurie Davis
Subject: RE: FILING:Seth Burrill v Rebel Creek Tackle, Cause No. 92085-1

Received on 09-08-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Shelly Gleason [mailto:ShellyG@leehayes.com]
Sent: Tuesday, September 08, 2015 4:58 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Jeffrey Smith <JeffreyS@LeeHayes.com>; Shelly Gleason <ShellyG@leehayes.com>; Laurie Davis <LaurieD@leehayes.com>
Subject: FILING:Seth Burrill v Rebel Creek Tackle, Cause No. 92085-1

Please find attached Seth Burrill Productions, Inc.'s Answer to Petition for Review for filing.

Shelly Gleason | Lee & Hayes
Litigation Paralegal
ShellyG@leehayes.com

P 509.944.4651 | F 509.323.8979
601 West Riverside Avenue, Suite 1400 | Spokane, Washington 99201

Follow us! [Twitter](#) // [Linked In](#) | www.leehayes.com

NOTE: This email and any attachments contain information from the law firm of Lee & Hayes, pllc, that is confidential and/or subject to the attorney-client privilege. If you are not the intended recipient of this message, please do not read it or disclose it to others. Instead, please delete it and notify the sender immediately.