COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Case No. 340899

Appeal from Spokane County Superior Court, No.12-2032348

ANDREWS MECHANICAL, INC.
Plaintiff/ Respondent

Vs.

AARON LOWE
Defendant/ Appellant

REPLY BRIEF OF APPELLANT

AARON LOWE
Appellant
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REGARDING FACTS OUTLINED BY ANDREWS

In an introductory section, Andrews sets forth some of the history in this matter. (Pages 1-4 of Respondent's Brief). The pleadings from the court have been supplied to this appellate court and they speak for themselves. Thus, Mr. Lowe will not reiterate this procedural history other than to note, he always, after making a payment, requested that a satisfaction of the judgment be entered. It is clear that Andrews will never provide a satisfaction of judgment in this matter so the key question to be answered herein is: Was the judgment in this matter "satisfied" when Mr. Lowe overpaid the judgment in May, 2015?

As outlined below, Andrews agreed that the judgment was "satisfied," or alternatively, the judgment was "paid" when Mr. Lowe overpaid the judgment in May, 2015, but in a retromingent statement for the first time on appeal, Andrews now attempts to contend that the judgment was not paid.

Why would Andrews now attempt this 180 degree change from its sworn pleadings and statements on the record that the judgment had been "satisfied?" The answer to this question is because Andrews finally realized that since the judgment was "satisfied," it has no factual or legal basis to argue otherwise.

With Andrews now attempting to run away from its sworn statements, and oral statements on the record, Andrews's actions raises new questions like: Was Andrews lying in its sworn pleadings and oral statements on the record in 2015, or is it lying now, by attempting to change those statement in its responsive brief? If this Court believes Andrews' latest flip-flop on this issue, it means that Andrews knowingly and intentionally submitted false information to the lower court. Moreover, the lower court based its decision to further increase the judgment in January, 2016, on this false information, which is another reason the judgment must be voided.

As stated in RCW 4.56.100 a judgment can either be: (1) paid ; or (2) satisfied. Since Andrews will never enter a satisfaction of judgment, even after the judgment was "satisfied," this Court must determine if the judgment had been "paid" to Andrews since the Spokane County Civil District Court (SCDC) refuses to accept any payments on any civil judgments.

In a sworn pleading, Andrews stated:

> Plaintiff (Andrews) acknowledges that with the May 19, 2015 (cashier's) check from Defendant (Mr. Lowe) in the amount of $1660 (which has yet to be cashed), he Mr. Lowe ***satisfied*** the Superior Court Judgment. (References in parenthesis and emphasis added)

(CP 52. Page 4 Lines 6-8). Moreover, Andrews reaffirmed on the record later that Mr. Lowe fully satisfied the judgment when it stated:

> So your Honor, as set forth in the affidavit of Mr. Floyd, Mr. Floyd does acknowledge that the May 19 check in the amount of $1660 that the defendant previously references, and has yet to be cashed, ***does satisfy*** (sic) the Superior Court Judgment. (Emphasis added)

(RP Page 15 Lines 7-11).

Even though Andrews is now attempting for the first time in this appeal to totally change its own statements outlined above without specifically addressing how or why these earlier factual statements are false or incorrect, the next logical question that has to be answered in determining this factual issue is: What was the amount of the judgment when Mr. Lowe paid it in May, 2015?

In answering this question, it is undisputed that Mr. Lowe asked on the record in May, 2015, what was the amount of the judgment so he could pay it, and the lower court agreed and asked Andrews on the record what was the outstanding amount of the judgment. Andrews could not relate the amount of the judgment that was outstanding. In response to Andrews' evasiveness, the lower court stated how Mr. Lowe could determine the amount of the judgment to be paid. It is also undisputed by the parties, the outstanding amount of the judgment including all the interest at the time was $1580. Mr. Lowe overpaid the judgment by

paying Andrews $1660, but this overpayment is not even discussed in Andrews' brief. Accordingly, when the judgment was "paid" or "satisfied" in May, 2015, there was no other amount to be paid by Mr. Lowe because he paid all of the judgment. The judgment was satisfied at the time of Mr. Lowe's payment in May, 2015. Andrews had to submit another judgment to before it could be paid more money. Thus, this case was over, and the lower court had no jurisdiction to take any other action, after Mr. Lowe's satisfaction of the judgment. Andrews did not make, nor did the lower court grant, a motion to reopen the judgment. Accordingly, Andrews misguided attempt to now for the first time on appeal to totally mischaracterize its own statements under oath and on the record are nothing more than false.

Andrews contends, without citation to any supportive legal authority, that even though Mr. Lowe overpays the amount on the judgment, that the judgment was not "fully" satisfied because in the meantime Andrews may possibly have a new idea on how to churn more fees. In the lower court, Mr. Lowe equated this misconception of the law on judgments is like the old joke where a person has a first time checking account. This person writes checks until there is no money left in his/her account. This person's response to the insufficient funds notice from the bank is s/he cannot be out of money because s/he still has checks.

Andrews is basically contending that it cannot be out of jurisdiction because it can dream up more ways to generate more fees, but all the cases outlined in the opening brief generally hold that once the judgment is paid, there is no more jurisdiction to modify or increase the judgment. Andrews attempt to bootstrap RCW 12.40.105 to hold it is a basis to reopen the judgment, but Andrews did not even move to reopen the judgment, and this statute is not a basis for post judgment relief. Moreover, Andrews has not cited to any case authority to support this false contention.

It is almost like Andrews is arguing that the judgment was not "satisfied" because Andrews did not cash Mr. Lowe's cashier check which would then provide more of an opportunity for Andrews to attempt to dream up more costs and fees since the lower court granted whatever Andrews asked for which is yet another example of "gamesmanship" on behalf of Andrews. The reality is that Mr. Lowe "satisfied" the judgment when the check was given to Andrews since SCDC refused to accept payments on this judgment. What, and when, Andrews did with Mr. Lowe's cashier's check was on Andrews, and not Mr. Lowe. Andrews dilatory actions in holding the check does not somehow magically extend jurisdiction in this matter. Andrews has not cited to any legal authority that is own dilatory actions extended jurisdiction because there is no such

legal authority. The lower court's jurisdiction ended when Mr. Lowe "satisfied" the judgment with is overpayment of $1660 in May, 2015.

REGARDING LEGAL ISSUES OUTLINED BY ANDREWS

Not only do Andrews contentions fail on a factual basis, but its arguments also fail on a legal basis. Andrews begins its legal analysis by citing the statutory basis of how this matter began. RCW 12.40 et seq., is the Small Claims Act. There is no appellate case authority construing RCW 12.40.105, but Andrews believes that this statute states more than it actually does.

Andrews believes, without citation to some other construing legal authority, that RCW 12.40.105 somehow would provide an additional jurisdiction for more costs and fees even after the judgment was "satisfied." RCW 12.40.105 does not provide that: (1) this statute will overrule all other statutes and case authority regarding post judgments payments; (2) with a mere citation to this statute a plaintiff does not have to move to reopen a judgment after it has been "satisfied" to obtain more costs and fees; (3) under this statute, defendants must be punished beyond any other case authority or statute involving judgments; and/or (4) once this statute is cited, it is the basis for all continuing jurisdiction even after the judgment has been satisfied. Of course, all of these contentions are false and without any legal authority. Andrews' reliance on this

statute as a legal basis to provide costs and fees stopped when Mr. Lowe "satisfied" the outstanding judgment in May, 2015. After Mr. Lowe satisfied the outstanding judgment, this case ceased to be active, and the lower court no longer had jurisdiction to increase the judgment, or take any other action in this matter, especially since Andrews did not even move to reopen the judgment.

Part of the earlier appeal in this matter was that the Spokane County Civil District Court (SCDC) refuses to accept any payments on judgments in all civil cases. Accordingly, it is impossible for a defendant in this county to make any payments, full or otherwise, against a civil judgment in SCDC clerk's office which at a minimum must be addressed by this Court for all other current and future litigants in this county. This Court should in its opinion of this matter hold that payment can be made and accepted to SCDC under the various judgment statutes. The SCDC refusal to follow the statutes regarding judgments raises interesting issues like: (1) How is a judgment "satisfied" when a plaintiff cannot be found to be personally paid; and/or (2) How can Mr. Lowe ever satisfy a judgment when there are always more costs and fees alleged even after the judgment paid in full to plaintiff, but plaintiff refuses to enter a satisfaction? Mr. Lowe paid the only entity he could in this matter, Andrews directly.

As a side note, RCW 12.40.227 in part provides that matters in small claims court cannot be removed to superior court. The superior court judge's view of jurisdiction and extent of legal analysis in this matter was basically, she had jurisdiction because the parties were standing before her. RCW 12.40.227, however, can be implied to infer jurisdiction regarding attorney fees regarding the original claim only back to the district court, and not superior court, which is another legal basis how the superior court did not have jurisdiction to increase the judgment after it had been satisfied.

Next, Andrews contends that *Lindsey v. Pacific Topsoil, Inc.*, 129 Wn.App. 672, 120 P.3d 102 (2005) is controlling in this matter, but *Lindsey, supra*, is not controlling because it has different facts. Some of major differences include: (1) The defendant paid an lesser amount to the clerk of court than the amount of the judgment with interest; (2) the defendant made an offer to plaintiff that if plaintiff would accept this lesser amount, it would amount to a satisfaction of the judgment; (3) the defendant's offer was rejected; (4) there was a dispute regarding the amount of the interest accrued; (5) the parties did not agree that the defendant "satisfied" the judgment; (6) the acceptance and payment of defendants offer was "conditional."

All of these major factors are not present in this matter. Mr. Lowe did not pay a lesser amount of the judgment. Mr. Lowe overpaid the outstanding judgment including all the interest. Mr. Lowe did not make any offer to accept a lesser amount than the judgment. Andrews did not accept Mr. Lowe's offer, because Mr. Lowe did not make such an offer. Mr. Lowe did not dispute the amount of interest that he paid in May, 2015. Even Andrews in sworn pleadings and on the record agree that Mr. Lowe "satisfied" the judgment, and in an attempt to obtain more fees and costs, Andrews obtained another judgment because Mr. Lowe already "satisfied" the judgment in May, 2015. Accordingly, Andrews' attempted reliance on *Lindsey, supra*, is inapposite because the facts here are so dissimilar.

Andrews next argues that the legal maximum of "gamesmanship" should be employed to continue Mr. Lowe's punishment, even though he has paid about 15 times the amount of judgment in Andrews' never ending merry-go-round of attorney fees. In Andrews' view, the judgment will never be "satisfied" because it can always think of more ways to churn fees even after the total amount of the judgment was fully paid. Andrews cites *State v. Yates,* 111 Wash.2d 793, 802, 765 P.2d 291 (1988) for support of this legal maximum and the general overruling of the case authority on judgments. Mr. Lowe would also invite all of this Court's personnel to read page 802 of *Yates, supra*, to inquire if this criminal case

has any applicability in this matter. Even for the sake of argument, what was the "game" allegedly being played on the court in Yates? It was a surprise involving discovery at trial, but Mr. Lowe has been more than consistent with asking for satisfaction of judgment be entered after each payment where he "satisfied" the outstanding amount of the judgment against him. It is Andrews who is playing "games" with this Court for even attempting to argue such a frivolous inapplicable concept, but it shows the lack of legal authority Andrews has in support of its contentions.

Mr. Lowe outlined above why *Lindsey, supra,* is not applicable in this matter. There are a number of cases that have ruled on similar factual patterns regarding judgments that are outlined in Mr. Lowe's opening brief. These cases all include: (1) A judgment that was obtained against a defendant; (2) the judgment was paid by the defendant; (3) later, the plaintiff attempted to obtain more funds beyond the satisfied judgment; and (4) the appellate court ruled that once the original judgment had been paid or satisfied, there was no jurisdiction to further modify or increase the judgment. These particular issues have not been decided by an appellate court yet in this context in Washington. All of Mr. Lowe's briefs on these issues regarding judgments are incorporated by reference.

Andrews next attempts to distinguish the cases cited in Mr. Lowe's opening brief by contending that the facts are different between those cases and the case at bar. Each case will have a different plaintiff and defendant and other unimportant facts like the amount of the judgments, or even statutes as pointed out by Andrews. All the cases cited by Mr. Lowe have the key analogous facts of: (1) Andrews obtain a judgment against Mr. Lowe; (2) the judgment was overpaid by Mr. Lowe in May, 2015; (3) the parties agreed that the judgment was overpaid and satisfied in May, 2014; (4) After the payment, Andrews attempted to have the judgment amount increased since it believed that it still had outstanding costs and fees; (5) Now, this Court should follow all the other courts that have ruled on these issues by holding that the judgment entered in January, 2016, is void because the lower court no longer had jurisdiction to increase or modify the judgment.

Mr. Lowe cites the American Jurisprudence 2d Judgments Section 806 on pages 383-4. In this section this treatise lists and summarizes all the cases that have ruled on similar issues with analogous factual patterns. The treatise summarized all of these cases with the practice note:

> **Caution:** Since satisfaction of a judgment bars any further proceeding on the judgment, a full satisfaction will extinguish plaintiff's right to any post judgment hearing on a claim for additional costs, fees, or legal interest. (Citations Omitted)

Id. Page 384. The cases cited in the opening brief will not be repeated here, but the post judgment relief is denied in the cases because the case is terminated at the time of payment, and there is no longer any jurisdiction for any other action to increase or modify the judgment. RCW 12.40.105 is certainly not a basis for continuing post judgment jurisdiction. All of the cases in the opening brief have a similar or analogous factual pattern to this case at bar especially that the plaintiffs believed moved the lower court for more fees, but the appellate courts ruled that the lower courts no longer had jurisdiction to make any modifications to the judgment.

Andrews contends that even after the judgment is "satisfied" that RCW 12.40.105 would overrule all of the cited case authority in Mr. Lowe's opening brief. Of course, Andrews cites even less legal authority than *Yates, supra* , for this frivolous contention. RCW 12.40.105 was the original basis for Andrews obtain a judgment in the lower court that was "satisfied" by Mr. Lowe. Andrews contends that if it can think of new ways to further churn the fees in this matter, it is the same as if those fees were already part of the judgment. This contention is false. Moreover, Andrews has not cited any statutory or legal authority to support this false contention. In fact, all the legal authority that addresses this issue is

summarized in the practice note cited above which is directly contrary to Andrews' false contention.

If Andrews believed that it was owed more funds than was paid by Mr. Lowe in May, 2015, Andrews should have followed the cases cited in Mr. Lowe's opening brief, and the practice note cited above, and made sure that those alleged fees were included in the judgment before Mr. Lowe paid the outstanding judgment. In applying the rulings in the analogous cases to the case at bar, the overpayment payment of the judgment by Mr. Lowe in May, 2015, "...extinguish(ed) plaintiff's (possible) right to any post judgment hearing on a claim for additional fees, costs, or legal interest." American Jurisprudence 2d Judgment Section 806 page 383-4. Andrews did not move to reopen the judgment after it had been "satisfied." As an additional fact to show that the judgment had been fully paid, Andrews had to request another judgment to add more fees because Mr. Lowe had fully paid the outstanding judgment. As set forth in the opening brief, the lower court was without any personal or subject matter jurisdiction to add to any judgment in January, 2016.

CONCLUSION

For all of the reasons set forth in this, and the opening, brief, Mr. Lowe respectfully requests this Court to order a satisfaction of judgment be entered in this matter, and void the judgment entered in January, 2016.

Dated this 9th day of September, 2016.

AARON LOWE Appellant