

No. 62627-2-1

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

JANET DORRIES AND HENRY WEST, APPELLANTS

V.

G.E. IONICS, INC, RESPONDENT

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

REPLY BRIEF OF APPELLANT'S
JANET DORRIES AND HENRY WEST

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
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ARGUMENT

THE RESPONDENT'S CLAIM THAT THE APPELLANT'S APPEAL SHOULD BE DISMISSED FOR FAILURE CITE THE COURT CITATIONS IS SHOULD BE DENIED.

The Respondent claims that the Court of Appeals does not consider arguments for which the party has cited no authority or citations and claim that failure to cite to page citations, citing the cases of *State v. Bello*, 142, Wn.App. 930, 932 n.3, 176 P.3d 554 (2008); *Post v. City of Tacoma*, 140 Wn.App. 155, 160. n2, 165 P. 3d 37 (2007) and *State v. Nelson*, 131 Wn. App. 108, 117, 125 P.3d 1008 (2006).

In *State v. Bello*, 142, Wn. App. 930, 176 P.3d 554 (2008), the Appellant failed to cite any legal authority or legal argument in his brief, in addition to wholly failing to cite to any portion of the record. *Id.* at 932, n.3.

In *Post v. City of Tacoma* 140 Wn. App. 155(2007) the Court held that the Plaintiff claims were time-barred because the Plaintiff had failed to comply with the procedural requirements of the Land Use Petition Act, not because of failure to cite page citations.

In appellant in State v. Nelson, 131 Wn. App. 108, 125 P.3d 1008 (2006) 1 did not cite to the record on his assignments of error at all. Therefore, in that case, the court held that it was unable to identify to what the Appellant was assigning error, stating, “We do not review assignments of error without citation to the record.” Id. at 117. In this case, the page numbers may not have been referred to, but the clerk’s papers number was referenced in the assignment of errors.

The other two cases cited are federal cases; one from the Seventh Circuit Court of Appeals and one from the Ninth Circuit Court of Appeals. Certainly while this court may rely upon these decisions for guidance, it certainly is not bound by those decisions. While I am certain the Respondent’s found humor in the language of the Seventh Circuit’s Court of Appeals, the underlying issue is the application of respect and justice to all parties that come before this Court.

Next, the Respondents contend that somehow this appeal should not be allowed to proceed because the Appellants sought continuances for the filing of the opening brief. Each continuance was timely applied for and granted. All issues before this court in this case are on the record and the Respondent’s have not suffered in harm in the continuance of filing the brief.

Likewise, the Respondent's have not suffered any harm or incurred any additional expense by any failure to properly cite to a page number. The documents are not so voluminous that any additional time would have been incurred by the Respondent.

Next, the fact that the record on appeal contains portions of the response to the Respondent's Motion to Dismiss is relevant to this appeal and should be considered by this court on the appeal. The Respondent used the motion to dismiss as a precursor to its motion for summary judgment and was and is a part of this appeal.

THE PRESENT CASE IS NOT A BREACH OF ORAL CONTRACT CLAIM AS THE RESPONDENT WOULD HAVE THIS COURT BELIEVE.

The Respondent attempts to frame this appeal as an oral contract for which, they assert, the statute of limitations had run prior to filing suit.

As stated in Appellants' Opening Brief, the touchstone of contract interpretation is the parties' intent. *Martinez v. Kitsap Pub. Servs.*, 94 Wn.App. 935, 942, 974 P.2d 1261(1999). Black letter Washington law provides that:

"The intent of the parties is reducing an agreement to writing may be discovered from the actual language of the agreement, as well as from the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties, and the reasonableness of respective interpretations advocated by the parties. "

Martinez, supra, 94 Wn. App. at 943, quoting Tanner Elec. Co-op v. Puget Sound Power & Light, 128 Wn.2d 656, 674, 911 P.2d 1301(1996).

Further, the use of parol, or extrinsic, evidence as an aid to interpretation does not convert a written contract into a partly oral, partly written contract. DePhillips v. Zolt Constr. Co., 136 Wn.2d 26, 36, 959 P.2d 1104 (1998).

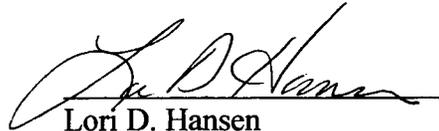
THE RESPONDENT CANNOT HIDE BEHIND THE CLAIM THAT DAMAGES ARE SPECULATIVE WHERE THE OWN ACTIONS HAVE PREVENTED AN ACCURATE TAX CALCULATION.

The Respondent's also ask this court to dismiss the appeal, claiming that the damages are speculative. However, it is the sole action of the Respondent that results in a tax calculation being unable to be prepared, absent the ever-sought after amended W2s. The Respondent should not be allowed to rely on the acts of its own unclean hands.

D. CONCLUSION

Based upon the foregoing, the Appellants' respectfully request that this court reverse the trial court motion granting the Defendant's motion for summary judgment and remand the matter for further proceedings and further deny any relief requested in the Respondent's Brief.

Respectfully submitted this 29th day of June, 2009



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