

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION 1

ABOVE ALL ROOFING  
SPECIALISTS, INC. And  
JOHN DOE d/b/a Above All  
Roofing Specialists,

C of A Case #63651-1-1<sup>1</sup>

No. 07-2-29746-4 SEA

Respondent,

v.

RICHARD PEDOWITZ,

Appellant.

**BRIEF OF PLAINTIFF/APPELLANT**

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COURT OF APPEALS DIVISION 1  
STATE OF WASHINGTON  
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September 30, 2009

<sup>1</sup>

The original appeal number 63993-9-1 was consolidated into number 63651-1-1.

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## **INTRODUCTORY STATEMENT**

This is an appeal from the decision granting summary judgment of dismissal, dismissing the action with prejudice and with costs made by Hon. Douglass North and entered in the office of the Clerk of the Superior Court, King County, on May 14, 2009.

This is also an appeal from so much of the Final Judgment made by Hon. Douglass North entered in the office of the Clerk of the Superior Court, King County, on June 16, 2009 and filed on June 18, 2009, as (i) awarded Defendant Statutory Attorney's Fees, Reasonable Attorney fees for 85.2 hours of attorney time, and costs, and sanctions for late opposition; (ii) found Defendant to be the prevailing party and eligible for reimbursement of clerk's fees; (iii) found that Defendant's attorney's expenditure of 85.2 hours of time was reasonable and necessary as supported by its attorney's summary of time expended and declaration; (iv) found that the

written contract provides for the recovery of reasonable attorney fees and costs to be awarded to the prevailing party in the event that a complaint is filed with the court; (v) made the Conclusions of Law as set forth therein; and (vi) provided for the judgment to bear interest at 12% per annum; which Final Judgment was entered in the office of the Clerk of the Superior Court, King County, on June 18, 2009.

Plaintiff Appellant Richard Pedowitz (“Plaintiff”) requests that the decision granting summary judgment be reversed, that this action be reinstated, that the award of attorney fees and costs to Defendant should be vacated and this action be returned to the trial court for further proceedings.

### **ASSIGNMENTS OF ERROR**

1. The court below erred in finding that plaintiff failed to timely file or timely toll a contractual statute of limitations;

2. The court below erred in finding that there were

no questions of material fact that precluded the granting of summary judgment;

3. The court below erred in failing to assume all issues of material fact favor of the non-moving party Plaintiff;

4. The court below erred in finding that the contract sued upon required both filing and service within a prescribed period of time;

5. The court below erred in finding that the 18 month period within which to file constituted a statute of limitations;

6. The court below erred by finding Defendant to be the prevailing party and awarding Defendant Statutory Attorney's Fees, Reasonable Attorney fees for 85.2 hours of attorney time, and costs, and sanctions for late opposition;

7. The court below erred by finding Defendant to be the prevailing party and eligible for reimbursement of clerk's fees on a counterclaim that was dismissed;

8. The court below erred by finding that Defendant's

attorney's expenditure of 85.2 hours of time was reasonable and necessary as supported by its attorney's summary of time expended and declaration;

9. The court below erred by finding that the written contract provides for the recovery of reasonable attorney fees and costs to be awarded to the prevailing party where the action terminated short of a hearing and where the claims of both Plaintiff and Defendant were dismissed; and

10. The court below erred by making the Conclusions of Law as set forth in the Final Judgment.

### **STATEMENT OF THE CASE**

This action was brought by Plaintiff homeowner against Defendant roofing contractor because Defendant never completed the job it was hired to do and because the work done was materially non-conforming and/or defective. CP 11-12. A printed form contract for the job was signed on January 19, 2006 (CP 13) and changed on January 21, 2006 (CP 38).

Defendant walked off the job without finishing it at some time after March 17, 2006. CP- 90.

The Summons and Complaint (CP 10-14) were filed on September 12, 2007 and served on April 2, 2008 (CP 32). Defendant answered denying the material allegations and counterclaimed for unpaid labor and materials. CP 105-106. No affirmative defenses were set forth in the Defendants' Answer. CP 106. The Answer to Counterclaim was duly served by Plaintiff denying Defendant's counterclaim allegations. CP 15-17.

By Motion for Terms dated April 10, 2008 Defendant asked the court to assess terms against Plaintiff for having served defendant without obtaining an order enlarging the time to serve and for not failing to serve the defendant a Case Schedule. R 141-144. No terms were assessed, the Case Schedule was subsequently served, and the case proceeded through discovery (CP 110) and to arbitration. At arbitration

the arbitrator denied Plaintiff's Motion to Strike Defendant's Answer and also denied Defendant's Motion to Dismiss; and then granted each party the right to amend their pleadings. CP 30-31. An Amended Complaint and an Amended Answer were subsequently filed. CP 18-29.

Defendant brought a motion for summary judgment dated March 17, 2009 seeking dismissal asserting that (i) the contractual requirement of any claims having to be filed within 18 months of substantial completion of the work was the equivalent of a statute of limitations; and that (ii) the contractual requirement of filing necessarily meant that service needed to be had within 90 days as required by RCW 4.16.170. CP 1-9; and that (iii) Plaintiff had not served within the required amount of time. Plaintiff duly answered Defendant's Motion (CP 72-144) and Defendant replied CP 146-149.

Thereafter, by Motion and Declaration dated May 22, 2009 Defendant moved for entry of judgment, attorneys fees

and costs. R-159-171. Plaintiff opposed the motion (CP 172-196) and Defendant replied (CP 197-201).

The Order Granting Summary Judgment is dated May 14, 2009 (CP 151-152) and the Final Judgment is dated June 16, 2009 (CP 210-212). Notices of Appeal were duly served and filed. CP 153 and 213.

This Brief is submitted by Plaintiff in support of his appeal which seeks to reverse the two decisions of the court below and to have the action reinstated. Notices of Appeal were filed separately, but the matter has been consolidated for hearing pursuant to this court's order of July 27, 2009.

## **ARGUMENT**

### **I.**

#### **SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN FAVOR OF DEFENDANT**

The standard of review on summary judgment decisions was recently stated by this Court in *Ripley v. Lanzer*, --- P.3d

----, 2009 WL 2915689 (Wash.App. Div. 1, 2009).

This court reviews an order of summary judgment de novo, considering the facts in the light most favorable to the nonmoving party.

*See also, Briggs v. Nova Services*, 213 P.3d 910 (2009).

A. Background and Summary.

This action concerns a contract to install a new roof on Plaintiff's home in Seattle and the non-conforming, defective, and incomplete work done by Defendant. CP 18-25.

Defendant stopped working in the second half of March, 2006, after Plaintiff paid Defendant the last payment. CP 90. As of the date of the last payment by Plaintiff, Defendant had put the wrong shingle on the house, damaged Plaintiff's property, and had not substantially completed the job. CP 88-89.

The Contract sued upon is a printed form that is comprised of small print. It was signed on January 19, 2006 (R36-37) and changed on January 21, 2006 (CP 38-39). The Contract does not set forth the grade, quality, or brand name of

the materials to be used or the notice regarding the right to cancel that is required by RCW 19.186.020. Paragraph #7 on the back of the Contract (CP 39) states in material part as follows:

Any claim by either Contractor or Customer arising out of or in any way relating to the work performed under this Agreement, including warranty claims involving Contractor, must be filed within eighteen (18) months of substantial completion . . . . (emphasis added).

There is no language in the Contract defining what the term "filed" means, or explaining where the filing is to be accomplished, or connecting the word "filed" to a legal action. The phrase "legal action" does not appear until paragraph #8 of the Contract and it makes no reference to paragraph #7. CP 39.

Defendant sued Plaintiff for unpaid monies in Small Claims Court by Notice dated April 18, 2006. CP 40. Defendant's claim was denied with the following explanation of the court's decision:

Plaintiff claimed a failure to pay under a roofing contract. Defense presented significant evidence of claims for defects in workmanship. These claims have not ripened because of a continuing nature of the damage and the time since the initial construction work and today's date. It is apparent that this is a larger construction defect case than (sic) should be addressed in small claims. This case is dismissed (sic).

CP 41. Accordingly, by no later than May 18, 2006 Defendant was fully aware of Plaintiff's claims.

B. Dismissal on Statute of Limitations Grounds for "Late" Service Was Error.

For purposes of the Motion for Summary Judgment Defendant agreed that the filing of the Summons and Complaint on September 12, 2007 was timely. CP 7, lines 18-22. Defendant then argued, and the court below erroneously found, that dismissal was appropriate because Defendant was not served within the time provided by RCW 4.16.170. CP 8, 151, 152. That decision was wrong because Defendant was timely served, service and filing were done

within the statute of limitations, and the issue of tolling was irrelevant. *Collins v. Lomas & Nettleton Co.*, 29 Wash.App. 415, 418, 628 P.2d 855, 857 (Wash.App., 1981)(Where both the service and the filing were accomplished before the statutory period of limitation had expired the issue of tolling does not arise. RCW 4.16.170 is not applicable); *Hansen v. Watson*, 16 Wash.App. 891, 893, 559 P.2d 1375, 1376 (Wash.App. 1, 1977).

This action asserts three causes of action: (i) breach of contract which has a 6 year statute of limitations, RCW 4.16.040; (ii) misrepresentation which has a 3 year statute of limitations, RCW 4.16.130; and (iii) declaratory judgment which has the statute of limitations of the applicable matter, in this case a contract, or as provided in RCW 4.16.130. Furthermore, RCW 19.86.120 prescribes a four year statute of limitations which applies as a matter of public policy. The Court below's analysis also failed to consider CR 3 which

reinforces the contention that this action was properly commenced:

COMMENCEMENT OF ACTION

(a) Methods. Except as provided in rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. (Emphasis added).

Since none of the applicable statutes of limitations had passed by the time service and filing were both completed, there is no question but that the action was timely commenced.

C. Service Within a Set Time Is Not Required under the Contract.

The contractual provision requiring a filing to be made within 18 months says nothing about "service". The Court below erred when it ruled that the provision in paragraph #7 of the Contract was the equivalent of a statute of limitations, that a claim had to be filed with the court within 18 months, and that the failure to serve the papers in the manner needed to toll an 18 month statute of limitations required dismissal.

In fact the provision in the Contract is not a statute of limitations and it was error for the Court below to hold that because the contract says that something must be "filed" that it means "filed and served."

D. The 18 Month Period in the Contract Is Not a Statute of Limitations.

The Court below erred in finding that the part of paragraph #7 of the Contract which talks about something being file within 18 months is a statute of limitations. Statutes of limitation are rules promulgated by the legislature. The provision in this private agreement regarding when a claim should be filed did not ipso facto become a statute of limitations because the provision purports to require something to be done by a date certain. This is made clear in the Revised Code of Washington §4.16.005 which clearly delineates the meaning of a statute of limitations as being legislatively adopted:

Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has accrued.

Blacks Law Dictionary defines a statute of limitation as being "a law that bars claims after a specified period." Blacks Law Dictionary, (8th ed. 2004). In *Norgart v. Upjohn Co.*, 21 Cal.4th 383, 981 P.2d 79, Cal., 1999 a California court explained that: "Statute of limitations" is the "collective term ... commonly applied to a great number of acts," or parts of acts, that "prescribe the periods beyond which" a plaintiff may not bring a cause of action. So too, in *Besette v. Enderlin School Dist. No. 22*, 288 N.W.2d 67, at 74, N.D., 1980 a North Dakota court quoted from the Georgia Court of Appeals which stated that:

A statute of limitations is any law which fixes the time within which parties must take judicial action to enforce rights or else be thereafter barred from enforcing them. *Prudential Insurance*

*Co. v. Sailors*, 69 Ga.App. 628(4), 26 S.E.2d 557.

The contractual provision at issue in this case falls short of being a privately created limitation period. It: (i) does not mention the concept of a statute of limitations; (ii) does not say that it is to be considered as a statute of limitations; (iii) does not say that the provision is to be applied in lieu of an applicable statute of limitations; and (iv) does not say that it modifies a statute of limitations.

Moreover, while the provision says that a claim has to be "filed" within 18 months it does not even say that something has to be filed in court.

The facts presented in this case are fundamentally different from those presented in *Southcenter View Condominium Owners' Association v. Condominium Builders, Inc.*, 47 Wash.App. 767, 736 P.2d 1075 (Wash.App. 1, 1987) ("*Southcenter*"). In *Southcenter* this Court held that a "contracted limitation of 1 year in which to commence an

action [was] valid." *id.* 47 Wash.App. at 770, 736 P.2d at 1077. What materially distinguishes *Southcenter* from this case is that in *Southcenter* the limiting provision appeared at least six times in documents signed by the purchasers and the operative language specifically stated that "no action may be commenced or maintained"; language which expressly put someone on notice that the limitation affected one's right to bring suit.

Likewise, in *Hunter v. Regence Blue Shield*, 134 Wash.App. 1045, Not Reported in P.3d, 2006 WL 2396643 (Wash.App. Div I, 2006)[an unpublished decision that is not of precedential value] this court upheld a contractual limitation where it specifically gave notice that legal rights were affected

*no action at law or in equity shall be commenced* against the Company for any claim under this contract unless brought within two Years after the rendering of the services upon which such claim is based. (emphasis added)

*Id.*

And, in *Ashburn v. Safeco*, 42 Wash.App. 692, 713 P.2d 742 (Wash.App. II, 1986) the court upheld a contractually agreed upon shortening of a limitation period where the operative language gave specific notice that legal rights were being affected:

*No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all requirements of this policy shall have been complied with, and unless commenced within twelve months next after the inception of the loss. (emphasis added*

*Id.*, 42 Wn.App. at 694, 713 P.2d at 743.

The contractual provision in this case does not reference the signer's legal rights, does not reference the signer's right to bring a cause of action, and does not clearly state that the signer must bring a lawsuit within a certain period of time or risk losing his ability to do so. The

provision is radically distinct from those upheld by the courts and it was error to deem it the equivalent of a statute of limitations.

E. The Limiting Language Is Ambiguous and Does Not Support a Forfeiture.

The contractual provision requiring that claims be "filed" within 18 months appears in the middle of paragraph #7 on the back of a printed form (CP 39) that was tendered by Defendant to Plaintiff for signature. The provision was not the subject of negotiation (CP 90), is part of a form presented by Defendant, and for purposes of contractual construction must be viewed as having been drafted by Defendant.

Contracts are to be construed against their drafters and therefore the contract should not be read to include language that it does not contain. *King v. Rice*, 146 Wash.App. 662, 191 P.3d 946 (Wash.App. Div. 1, 2008); *Rouse v. Glascam Bldrs., Inc.*, 101 Wash.2d 127, 135, 677 P.2d 125 (1984); *Guy*

*Stickney, Inc. v. Underwood*, 67 Wash.2d 824, 827, 410 P.2d 7 (1966). Specifically, no requirement for service to be made within any period of time should have been read into the Contract.

The record does not support an interpretation to the effect that the parties intended or understood the word "filed" meant both a filing in court and the unstated requirement that service be made within a period of time. Defendant did not assert that the term was discussed with Plaintiff or that he reviewed it with Plaintiff and Plaintiff specifically denied that. CP 90. The word "filed" in paragraph #7 on the back side of the Contract appears in isolation and without any explanatory text. CP 39.

"Filed" as a word in paragraph #7 is susceptible of many meanings and is therefore "ambiguous". By way of illustration and not limitation, it could mean filing with the Attorney General pursuant to RCW 19.86.080, or filing with

the investigations unit of the Attorney General's office pursuant to RCW 19.86.085, or simply filing the claim with the roofer itself, or filing with a court. The Contract gives no guidance and as such it should be interpreted against the Drafter/Defendant. *Adler v. Fred Lind Manor*, 153 Wash.2d 331, 355, 103 P.3d 773, 786 (2005); *Pierce County v. State of Washington*, 144 Wash.App. 783, 813, 185 P.3d 594, 610 (Wash.App. Div. II, 2008). This rule of interpretation, of course, also applies to contracts of adhesion such as this one. *Peterson-Gonzalez v. Garcia*, 120 Wash.App. 624, 632, 86 P.3d 210, 214 (Wash.App. Div. III, 2004); *Mendez v. Palm Harbor Homes, Inc.*, 111 Wash.App. 446, 459, 45 P.3d 594, 602 (Wash.App. Div. III, 2002).

Plaintiff is a high school graduate with no prior experience in bringing a case in the Superior Court. CP 87. The term was never discussed with Plaintiff. (CP 90) and Plaintiff represented himself when he commenced this action

(CP 10). While Defendant has interpreted the word as meaning "filed in court", other reasonable meanings are also possible.

Absent definitive language the ambiguous provision in paragraph #7 should not be interpreted to effect a forfeiture of Plaintiff's remedy at law and no requirement for service to be made within a contractually prescribed time should have been found.

F. Questions of Material Fact Precluded Granting Summary Judgment.

Plaintiff stated that Defendant walked off and never substantially completed the job. CP 89. If the job was never substantially completed then the court below would be wholly unjustified in saying that the action was not commenced in time. That is because paragraph #7 of the Contract says that claims had to be filed within 18 months of "substantial completion". CP 39. The matter of whether there was

substantial completion of the job or not is a disputed material fact.

A question of material fact also exists with respect to the interpretation that should be given to the word "filed" in paragraph #7 of the Contract. Plaintiff contends the term to be ambiguous and one that was not negotiated or discussed by the parties. CP 90. It is only after hearing testimony and reviewing evidence that extrinsic evidence can be ascertained and weighed.

To the extent that the Court below found that Plaintiff failed to timely file that was error since a question of material fact exists with respect to when or if the job was substantially completed. Not only is that because Plaintiff has stated that the job was never completed and that Defendant walked off the job before completing it, but Plaintiff has disputed Defendant's contention that the job was completed within a week or so after it started. CP 89, 90.

For the foregoing reasons, these questions of material fact could not be resolved by summary judgment. Accordingly, the court below erred in granting summary judgment.

## II.

### **ATTORNEY FEES SHOULD NOT HAVE BEEN AWARDED TO DEFENDANT**

The applicable standard of review is one of abuse of discretion. *Frank Coluccio Const. Co., Inc. v. King County*, 136 Wash.App. 751, 150 P.3d 1147 (Wash.App. Div. 1, 2007). This Court recently held that

any award of reasonable attorney fees must be accompanied by findings of fact and conclusions of law establishing both the fee award's justification and its reasonableness in order to allow meaningful appellate review.

*Leda v. Whisnand*, 150 Wash.App. 69, 86, 87, 207 P.3d 468, 477 (Wash.App. Div. 1, 2009). The Final Judgment in this case does not meet this Court's standard for meaningful

appellate review.

A. The Proof Relied Upon Does Not Support an Attorney Fee Award.

The record below was not sufficient to justify an award of attorney fees. Defendant put forward no justification for why laches should not have precluded its award given that it waited almost 1 year after it brought its initial motion to dismiss to bring the motion for summary judgment on the same grounds. Defendant did not include as part of its proof any evidentiary support for the proposition that there was any agreement or understanding whatsoever between Defendant and its attorney that the attorney was to be paid, whether hourly, or according to another formula, or per the contract, or per statutory allowance. CP 159-170, 197-204.

Defendant's moving papers: (i) contain no copies of bills to Defendant from its attorney, or checks paid to its attorney, for services or expenses; and (ii) do not have

detailed billings thereby making it impossible to determine how much time counsel spent in defending, as opposed to on its unsuccessful counterclaim which should not be the subject of a fee award. CP 165-167. In addition, the clerk's fees provided for in the Final Judgment were for filing the counterclaim, something that was unsuccessful and should not have been allowed.

B. Defendant Was Not the Prevailing Party.

Neither party was the prevailing party for purposes of an attorney fee award (*Phillips Bldg. Co., Inc. v. An*, 81 Wash.App. 696, 915 P.2d 1146 (1996) - When both parties to action are afforded some measure of relief and there is no singularly prevailing party, neither party may be entitled to attorney fees; *McGary v. Westlake Investors*, 99 Wash.2d 280, 661 P.2d 971 (1983) - Provision of lease entitling prevailing party to reasonable attorney fees was not applicable in declaratory proceeding where neither party

prevailed on issue of their rights under commercial lease;  
*Hertz v. Riebe*, 86 Wash.App. 102, 936 P.2d 24 (1997) -- If  
both parties prevail on a major issue, neither is a prevailing  
party entitled to attorney fees).

The Claim and the Counterclaim were both material  
and both arose out of the same contractual arrangement. If  
the statute of limitations barred one party from bringing the  
action then it barred both and that is why the decision on  
summary judgment ended the claims of both parties. If  
Plaintiff had moved for summary judgment as to Defendant's  
counterclaim, and if Defendant had simultaneously moved for  
summary judgment on Plaintiff's claim, then applying the law  
as he saw it Judge North would have granted the motions of  
both parties and neither would then have been prevailing. It  
is no different when one party moves for summary judgment  
and ends up having all of the claims and all of the  
counterclaims dismissed for the identical reasons. There is no

prevailing party in such circumstances.

Defendant did not prevail on any question related to the work that was the subject of the contract: whether its claimed fees or Plaintiff's claims of poor workmanship. Significantly, the prevailing party language appears in paragraph #8, the paragraph talking about legal action necessary to "enforce any provision of this Agreement." The placement of the language following paragraph #7, the one containing the 18 month limitation, strongly suggests that the provision applies only to cases actually heard on their merits. The reason for this is that attorney fees would not be an issue if an action was barred by the terms of paragraph #7. Accordingly no attorney fees should have been awarded.

The language of paragraph #8 talks about an action "to enforce any provision of this Agreement" and the words prevailing party appear after that. This again supports the interpretation that one must prevail on the merits of the

question of whether enforcement is warranted or not before deserving an award of attorney fees.

The phrase "prevailing party" in the context of this contract is reasonably susceptible of more than one meaning. The phrase "prevailing party" was never discussed or negotiated by the parties prior to the execution of the contract. CP 195. Therefore, Plaintiff's meaning should be given effect and attorney fees should be denied (*Humrich v. Kerr*, Unpublished Opinion, not of precedential value, Not Reported in P.3d, 138 Wash.App. 1055, 2007 WL 1536938 (Wash.App. Div. 3, 2007) -- "the prevailing party also means the party who substantially prevailed. *Hertz v. Riebe*, 86 Wn.App. 102, 105, 936 P.2d 24 (1997). Accordingly, if both parties prevail on a major issue, neither party is a prevailing party. *Id.*"

C. Defendant's Supporting Fee Documentation is Inadequate.

Defendant did not provide sufficient documentation to allow a rationally based decision on the amount of attorney fees to be awarded. It was also error to allow compensation for time spent by counsel after Defendant first brought a motion regarding the service and filing. In other words, a party's laches should not allow it to enhance its fee award.

Virtually all of Defendant's attorney's time entries do not distinguish between time spent in defense of Plaintiff's claims or in the prosecution of Defendant's counterclaim, or they request payment for improper entries. CP 165-167. For example, (i) the records do not state how much of the January 11, 2009 entry of 2 hours for the drafting of a settlement proposal is allocable to Plaintiff's claim and how much to Defendant's; (ii) the records do not state how much of the January 18, 2009 entry of 2.3 hours for the drafting of a settlement proposal is allocable to Plaintiff's claim and how much to Defendant's; (iii) the records do not state how much

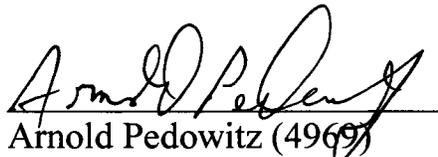
of the January 19, 2009 entry of 1.2 hours for finalizing the prehearing statement is allocable to Plaintiff's claim and how much to Defendant's; (iv) the records do not state how much of the 8.9 hours spent for preparing and attending the arbitration hearing between January 28 and January 29 is allocable to Plaintiff's claim and how much to Defendant's; and (v) the entry for 5 hours on January 12, 2009 for the drafting of a motion to dismiss for the arbitrator pertained to a motion that was never received by the arbitrator and there is no reason for it to be compensated. The court below provided no information for why those entries were allowed or why Defendant was not required to clarify his request.

By failing to detail his time expenditure in the billing summary Plaintiff was rendered unable to object to individual entries by Defendant's counsel and the Court was deprived of accurate data from which to determine the number of hours to credit for attorney fee purposes.

## CONCLUSION

For the foregoing reasons the decision granting summary judgment should be reversed, this action should be reinstated, the award of attorney fees and costs should be vacated and this action should be returned to the trial court for further proceedings.

September 30, 2009

A handwritten signature in black ink, appearing to read "Arnold Pedowitz", written over a horizontal line.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of New York that on this date I served the following documents:

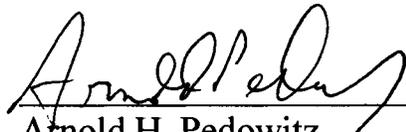
Brief of Plaintiff/Appellant by mail, postage prepaid to:

Alan Bradford Hughes  
Alan B. Hughes PS  
7016 35<sup>th</sup> Ave NE  
Seattle, WA 98115-5917

and Joseph Chalverus  
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PO Box 25050  
Seattle, WA 98165-1950

and by email to: alan@alanbhughesps.com; and  
joe@chalverus.com

In New York, this: September 30, 2009

  
\_\_\_\_\_  
Arnold H. Pedowitz