

FILED
September 4, 2015
Court of Appeals
Division I
State of Washington

COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

LEENDERS DRYWALL, INC.; and DAVID J.
LEENDERS, individually and on behalf of his marital
community,

Plaintiffs,

v.

ADRIAN AYALA, individually and on behalf of his
marital community; CHRISTIAN BARRUETA,
individually and on behalf of his marital community;
JOAQUIN CADENA, individually and on behalf of his
marital community; LEONEL CASTANEDAD,
individually and on behalf of his marital community;
FIDEL CASTRO, individually and on behalf of his
marital community; ABRAHAM JIMINEZ ARCE,
individually and on behalf of his marital community;
GABRIEL LARIOS, individually and on behalf of his
marital community; RAFAEL LARIOS, individually
and on behalf of his marital community; CRUZ
LAUREANO, individually and on behalf of his marital
community; JUAN MARTINEZ, individually and on
behalf of his marital community; GONZALO MACIEL
GARCIA, individually and on behalf of his marital
community; SALVADOR MACIEL GARCIA,
individually and on behalf of his marital community;
FREDY OROZCO, individually and on behalf of his
marital community; ANGEL GUADALUPE OYTUZ,
individually and on behalf of his marital community;
and ARTURO SOLIS, individually and on behalf of his
marital community;

Defendants.

No. 72595-5

**SUPPLEMENTAL APPEAL
BRIEF**

1 **ARGUMENT**

2 Despite the Supreme Court’s decision in Davis v. Cox, 351 P.3d 862 (2015), this Court
3 can nevertheless reverse the trial court’s decision because the Workers are immune from suit
4 under RCW 4.25.510, as the Workers argued at both the trial level and in their opening brief.
5 “[E]vidence and issues called to the attention of the trial court may be considered on appeal.”
6 Manor v. Nestle Food Co., 78 Wn.App. 5 (Div. 3, 1995), *citing* RAP 9.12. The Workers argued
7 directly to the trial court and in their appeal brief to this Court that they were immune from
8 liability on all claims because communications to any governmental entity are privileged and
9 cannot serve as a basis for a lawsuit under RCW 4.25.510. CP 24-25; Appeal Brief at 18-19.
10 Because the Workers made this argument at the trial court level, this Court may consider the
11 issue on appeal.
12

13 As previously described, the Workers are immune from liability for suit based on their
14 communications to the government. “A person who communicates a complaint or information to
15 any branch or agency of federal, state, or local government...is immune from civil liability for
16 claims based upon the communications to the agency or organization regarding any matter
17 reasonably of concern to that agency or organization.”¹ RCW 4.24.510. “The legislature enacted
18 RCW 4.24.510 to encourage the reporting of potential wrongdoing to governmental entities.”
19 Gonthmakher v. City of Bellevue, 120 Wn. App. 365, 366, 85 P.3d 926 (2004).
20

21 Leenders’ lawsuit is based entirely upon the Workers’ communication of information and
22 complaints to a branch or agency of government. The Complaint repeatedly references the filing
23 of the Notices of Claim as the bases for Leenders’ causes of action. *See* CP. 1-11, ¶¶ 11-15, 20,
24

25 ¹ The statute does not provide any exception to this immunity, rendering it absolute. Thus, even if the
Notices of Claim were in fact frivolous – which they are not – the Workers would still remain immune from any suit
based on their act of filing.

1 25, 31, 33, 37, 41-43. The Notices of Claim were sent to the respective agencies in conformance
2 with state and federal law. By sending the Notices of Claim, the Workers were alerting four
3 government agencies that they had not been paid according to prevailing wage law. The
4 Workers filed the Notices of Claim in part to petition the agencies to redress their grievances in
5 any way they could, including by continuing to withhold the retainages on each project. As such,
6 the Notices of Claim are communications to a branch of government covered by RCW 4.24.510.

7
8 In addition, the Workers' communications undoubtedly regarded a matter reasonably of
9 concern to the agencies; namely, that the Workers on the agencies' respective projects had not
10 been paid in conformance with state or federal law. Thus, the Workers are immune from civil
11 liability based upon those communications. Given that fact, the Court of Appeals may, despite
12 the Supreme Court's ruling in Davis, reverse the trial court's decision in this matter. The
13 Workers remain entitled to statutory damages as well as fees and costs incurred at both the trial
14 court level and on appeal. *See* RCW 4.25.510.

15 CONCLUSION

16 For the foregoing reasons, Leenders' Complaint should be stricken, and the Workers
17 should be awarded their reasonable attorneys' fees and costs incurred both at the trial court level
18 and on appeal, as well as \$10,000 in statutory damages.

19 DATED this 4th day of September, 2015.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 4th, 2015 I electronically filed the foregoing
3 **SUPPLEMENTAL APPEAL BRIEF** with the Court of Appeals for the State of Washington
4 Division I. On this same day, I caused the original of the above-named document to be sent via
5 hand delivery and electronic mail, to:

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