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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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No. 72595-5-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

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

Plaintiffs/Respondents,

v.

ADRIAN AYALA, et. al.

Defendants/Appellants.

SECOND SUPPLEMENTAL BRIEF OF RESPONDENTS

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RCW 4.24.525 1, 2, 3, 4, 5

I. INTRODUCTION

Plaintiff Leenders Drywall, Inc. (“Leenders Drywall”) submits this second supplemental brief in accordance with the Court’s September 15, 2015 notation ruling.

II. STATEMENT OF THE CASE

1. The fifteen defendants (“Defendants”), former employees of Leenders Drywall, filed liens against four construction projects, alleging they were owed wages for their work on those projects. Leenders Drywall’s complaint alleges (a) the four liens are wilfully and obviously excessive, and (b) Defendants refuse to release two liens that have plainly expired. Defendants’ bad faith acts have damaged Leenders Drywall because, among other things, general contractors continue to withhold hundreds of thousands of dollars from Leenders Drywall as a result of the grossly excessive liens. **CP 1-11.**

2. Defendants’ Special Motion to Strike the complaint was plainly based on RCW 4.24.525, not RCW 4.24.510. For instance, the caption of the motion is “DEFENDANTS’ SPECIAL MOTION TO STRIKE AND REQUEST FOR DAMAGES, FEES AND COSTS PURSUANT TO RCW 4.24.525” **CP 14** (emphasis added). Further, Defendants’ Special Motion to Strike begins as follows:

[Defendants] hereby move, on behalf of themselves and their respective marital communities, to strike Plaintiffs' complaint, filed on July 10, 2014, pursuant to RCW 4.24.525, and for recovery of statutory damages, attorney's fees, and costs incurred in filing this Motion.

CP 15 (emphasis added). According to Defendants' Special Motion to Strike, the issues are:

Whether the Plaintiffs' Complaint should be stricken as barred by RCW 4.24.525; and

If the Plaintiffs' Complaint is properly stricken, whether Defendants are entitled to statutory damages and attorney's fees and costs.

CP 17 (emphasis added). In the Authority section of their Special Motion to Strike, Defendants devote one page to RCW 4.24.510 [**CP 24**] - the remainder pertains solely to RCW 4.24.525 [**CP 17-26**].

3. Because Defendants' motion was based on RCW 4.24.525, Plaintiffs' Response [**CP 120-140**] does not even mention RCW 4.24.510.

4. Defendants' reply brief was captioned "DEFENDANTS' REPLY ON SPECIAL MOTION TO STRIKE AND REQUEST FOR DAMAGES, FEES, AND COSTS PURSUANT TO RCW 4.24.525" **CP 243** (emphasis added). Similarly, the Authority section of Defendants' Reply devotes one page to RCW 4.24.510 [**CP 249-250**] - the remainder pertains solely to RCW 4.24.525 [**CP 245-256**]. Defendants' Reply also states:

On August 20, 2014, Defendants moved to strike Plaintiffs' complaint pursuant to RCW 4.24.525 . . . CP 245 (emphasis added); and

Given that the Plaintiffs' Complaint is barred by RCW 4.24.525, the Defendants are each entitled to statutory damages of ten thousand dollars, as well as reasonable attorney's fees incurred in bringing this Special Motion to Strike. **CP 256** (emphasis added).

5. In denying Defendants' Special Motion to Strike, Judge Rogoff issued a seven page order captioned "ORDER ON MOTION FOR DEFENDANTS' SPECIAL MOTION TO STRIKE PURSUANT TO RCW 4.24.525" **CP 289** (emphasis added). The seven page Order [**CP 289-295**] analyzes RCW 4.24.525 in great length - tellingly, like the Response of Leenders Drywall, it does not even mention RCW 4.24.510.

6. The appellate briefs are the same. For instance, the Introduction in **Appellants' Brief [at 2]** states "the Complaint must be stricken according to RCW 4.24.525" (emphasis added); similarly, Defendants' Assignments of Error [**at 2**] are as follows:

1. The King County Superior Court erred in denying the Workers' Special Motion to Strike all of the claims in Leenders' Complaint pursuant to RCW 4.24.525, Washington's "anti-SLAPP" statute.
2. The King County Superior Court erred by not awarding the Workers ten thousand dollars each in statutory damages as well as reasonable attorney's fees under RCW 4.24.525(6)(a).

(emphasis added). Further, as in the trial court, **Appellants' Brief** only briefly alludes to RCW 4.24.510 [21-22] and the **Brief of Respondents** never mentions RCW 4.24.510.

III. ARGUMENT

In Davis v. Cox, 183 Wn.2d 269, 351 P.3d 862 (2015), the Washington Supreme Court held that RCW 4.24.525 is unconstitutional. Defendants' Special Motion to Strike and their appeal here are plainly based on RCW 4.24.525. Because RCW 4.24.525 is unconstitutional, the appeal should be dismissed and the case remanded to the trial court.

In their Supplemental Appeal Brief, Defendants assert they can proceed with their appeal because they are also entitled to relief under RCW 4.24.510. This ignores the following, among many other things:

1. Under RCW 4.24.525(4), an aggrieved party could file a Special Motion to Strike - this was the process employed by Defendants. RCW 4.24.510 has no such provision,
2. RCW 4.24.525(5)(d) provides for an "expedited appeal" of a trial court's decision on a Special Motion to Strike - this is why Defendants' appeal is before this Court. RCW 4.24.510 has no such provision,
3. Defendants barely briefed the applicability of RCW

4.24.510, Leenders Drywall did not brief this statute at all in its Response below [CP 120] and in its **Brief of Respondents** in this Court, and the trial court's seven page opinion [CP 289] also did not mention the statute, and

4. Defendants' filing of liens is nothing more than an attempt to recover money. As such, the liens are plainly not a protected communication to a public agency under RCW 4.24.510. See, e.g. Bevan v. Meyers, 183 Wn. App. 177, 334 P.3d 39 (2014) (complaint to Department of Health is protected under RCW 4.24.525 but claim for damages in a lawsuit is not protected).

IV. CONCLUSION

For the reasons set forth above, the Court should dismiss Defendants' appeal and remand the case to the trial court.

October 7, 2015

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**COURT OF APPEALS, STATE OF WASHINGTON
DIVISION ONE**

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

NO. 72595-5

Plaintiffs/Respondents,)

DECLARATION OF MAILING

vs.)

ADRIAN AYALA, et. al.,)

Defendants/Appellants.)

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on the date below I caused copies of the following documents: (1) Second Supplemental Brief of Respondents and (2) this Declaration of Mailing to be served upon the following persons in the manner provided below:

Attorney for Adrian Ayala, et. al (via legal messenger)
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DATED this 8th day of October, 2015.

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and David Leenders