

73464-4

73464-4

NO. 73464-4-I

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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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TERENCE RAYMOND JOHNSON,

Appellant,

v.

C & R ELECTRIC, INC., a Washington corporation,

Respondent.

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

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BRIEF OF APPELLANT

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## I. INTRODUCTION AND SUMMARY

The underlying lawsuit giving rise to this appeal involved a small collection action on an alleged oral contract, along with a request that the plaintiff be awarded a lien against commercial property owned by one of the defendants for the work performed, and for an order foreclosing that claim of lien. On March 20, 2015, the trial court entered an Order Granting Summary Judgment against Defendant Terence R. Johnson (“Johnson”) on Plaintiff C&R Electric, Inc.’s (“C&R”) claim for breach of contract in the principal amount of \$7,506.30 (the “Summary Judgment Order”). [CP 138-141] The trial court further found that one of the four invoices on which the complaint was based involved work that constituted an improvement to real property that is lienable under Washington’s lien statute, and allowed a lien in favor of C&R in the amount of \$3,626.01 on that single invoice. [CP 140] The trial court further awarded C&R full attorney’s fees and costs in the amount of \$21,883.84. [CP 138; 140]

Johnson appeals the Summary Judgment Order because a material issue of fact exists whether C&R performed its work pursuant to a contract with Johnson, as the owner, as opposed to a contract with Johnson’s tenant, and because the trial court awarded \$21,883.84 in attorney’s fees and costs without C&R having submitted to the court any invoices for the costs, expenses and legal fees awarded, without engaging in the required

lodestar analysis on which an award of fees is conditioned, and without segregating the fees allocable to legal services related to the work subject to the lien statute from all of the other legal work performed for which there is no basis for an award of legal fees.

## **II. ASSIGNMENTS OF ERROR**

Appellant makes the following assignments of error:

1. The trial court erred in granting the Summary Judgment Order because material issues of fact exist whether the work was performed pursuant to an oral contract with the owner and regarding the amount owing for the work subject to a claim of lien.

2. The trial court erred when it awarded full costs and attorney's fees to C&R without a proper evidentiary basis in the record, without performing the required lodestar analysis, without entering any findings of fact to support the award of costs and attorney's fees, and without segregating the attorney's fees between the services that were the subject of the lien award and all of the other work for which no legal basis exists for an award of attorney's fees.

## **III. ISSUES PRESENTED**

1. Did the trial court err as a matter of law when it granted the Summary Judgment Order due to material issues of fact being disputed as to whether the work was performed pursuant to an oral contract with the

owner and regarding the amount owing for the work subject to a claim of lien?

2. Did the trial court err as a matter of law in awarding attorney's fees and costs to Respondents without a proper evidentiary basis in the record, without performing the required lodestar analysis, without entering findings of fact to support the award of costs and attorney's fees, and without segregating the attorney's fees between the services that were the subject of the lien award and all of the other work for which no legal basis exists for an award of attorney's fees?

#### **IV. STATEMENT OF THE CASE**

##### **A. Statement of Facts.**

Johnson is the owner of record of commercial real property located at 21104 International Boulevard, SeaTac, Washington (the "Property"). [CP 88] By Lease Agreement dated December 13, 2012, T&C Premier Auto ("T&C") leased a portion of the Property for the purpose of operating an auto body business. [CP 62; 69-85] The Lease Agreement authorized T&C to install a free standing paint spraying booth that was not to become a part of the building, and required T&C to remove the free standing booth and related equipment at the expiration of the leasehold. [CP 85]

After entering into the Lease Agreement, T&C proceeded to purchase a used free standing paint booth, disassemble it at its former location, and reassemble it at the premises leased under the Lease Agreement. [CP 62-64; 87] This work was performed in consultation with Terry Johnson, as the building owner. [CP 64]

While the work was in progress, issues arose with the electrical work due to a change in inspectors. [CP 65; 90-91] Johnson offered to assist T&C in locating a licensed electrical contractor to perform the needed electrical work for the paint booth. [CP 65; 90-91] Johnson then introduced Antonio Lopez Miranda, the president of T&C, to a representative of C&R at the Property to view the site and discuss the work to be performed. Mr. Lopez explained to C&R's representative at this meeting that Johnson was the building manager and was assisting T&C with the work, and that the work was being done at the request of, and for the benefit of T&C, as tenant of the Property. [CP 65; 91] The electrical permit prepared and applied for by C&R stated the work was a "tenant improvement" and identified the project as "T&C Premier Auto." In the permit application, C&R further valued the work in the amount of \$1,000, and identified T.R.J. Development, Inc. as the owner, with an address of 4146 53<sup>rd</sup> Ave. S.W., Seattle, WA 98116. [CP 182]

During the course of its performance of electrical work at the Property, the Property was vandalized and copper wire was taken. At Johnson's request, C&R replaced the stolen copper wire. [CP 178]

C&R issued four invoices for its work at the Property: (1) an invoice dated April 26, 2013 in the amount of \$831.38; (2) an invoice dated June 5, 2013 in the amount of \$2,044.67; (3) an invoice dated June 25, 2013 in the amount of \$3, 626.01; and (4) an invoice dated June 25, 2013 in the amount of \$1,004.24. [CP 178; 185-88] The invoices were sent to the Property address, to "T&C Auto / TRJ Development," and not to the address of the owner. [CP 185-88; 91-92] Johnson did not receive the invoices, as he has no office or place of business at the Property. [CP 91-92]

T&C did not pay any of the invoices, and Johnson initially was unaware of them because they had not been sent to him. On July 17, 2013, C&R recorded a Claim of Lien against the Property for the principal sum of \$7,539.63 and a \$280 lien fee. [CP 179; 190-93]

**B. Summary of Proceedings Below.**

On November 20, 2013, C&R filed a Complaint for Breach of Contract and Lien Foreclosure with the clerk of the King County Superior Court. [CP 158-164] Johnson answered and denied the existence of a contract with C&R that would give rise to any liability to C&R. [CP 1-2]

On January 27, 2015, C&R filed a Motion for Summary Judgment against Johnson, [CP 165-174] and in support thereof C&R submitted the Declarations of Marc Gartin (the president of C&R) [CP 175-195] and Stephan Wakefield (C&R's attorney). [CP 196-233] In the Motion, C&R asked the court to (1) enter judgment against Johnson for breach of contract in the principal sum of \$7,506.30; (2) award C&R a lien against the Property and order foreclosure of the lien; and (3) award attorney's fees and costs.

In C&R's Motion for Summary Judgment, C&R makes the following allegations of fact:

While C&R provided prior bids to Terry Johnson to repair damaged light fixtures on the Property, it had never worked for him until he walked into the C&R offices, without an appointment, in April of 2013 (See Gartin Declaration). At the time, he frantically reported that he needed an electrician to complete his paint booth project at the Property because he had been "red tagged" for having no permit. C&R thus agreed to obtain the permit and perform the work on a "time and materials" basis, meaning it would charge all the time for electricians on an hourly basis, as well as all materials used on the project. [CP 167]

Terry Johnson agreed to the C&R terms (See Gartin Declaration). He represented that the Property was owned by TRJ for which he was the owner and representative (See Gartin Declaration). Thus on April 23, 2013, C&R obtained the permit to perform the work listing TRJ as the applicant and Terry Johnson as the representative (See Ex. A, Gartin Declaration). Upon completion of the work which lasted over two months, the permit was "signed off"

as complete by the City of SeaTac on June 24, 2013 (See Gartin Declaration). [CP 167]

During the time that C&R worked at the Property, there was an apparent theft whereby copper wire was stolen which severely damaged the electric service for the entire Property. Since C&R was already working on-site, Terry Johnson asked it to effectuate repairs which were performed in June of 2013 (See Gartin Declaration). The work was not related to the paint booth project. Nonetheless, all work performed by C&R was for the benefit of the Property at the bequest of Terry Johnson (See Gartin Declaration). [CP 167]

Throughout the course of work, C&R provided four invoices to Terry Johnson totaling \$7,506.30. The first invoice (i.e. Invoice No. 28502), outlining the hourly charges for a journeyman electrician as well as costs of materials, was sent on April 26, 2013 (i.e. soon after C&R started work at the Property) (See Invoices, Exhibit B, Gartin Declaration). After receiving the first invoice and throughout the project, Terry Johnson did not complain about the invoice amounts, allowed the work to proceed and as mentioned above, even asked C&R to repair the electrical service damaged during the alleged burglary. It is noteworthy that one of the four invoices (Invoice No. 28607 for the amount of \$3,626.01), is related only to the work for the above described electric service repair and not the paint booth project (see Gartin Declaration). [CP 168]

Unfortunately, no invoices were paid causing C&R to record a Claim of Lien against the Property on July 17, 2013 (i.e. less than 30 days after last providing work to the Property) (see Ex. C, Gartin Declaration). [CP 168]

In response to C&R's Motion for Summary Judgment, Johnson filed Defendant Terry Johnson's Opposition to Motion for Summary Judgment Counterstatement, [CP 51-61] together with a Declaration of Terry R. Johnson [CP 88-95] and a Declaration of Antonio Lopez Miranda

(the president of Johnson's tenant, T&C). [CP 62-87] The material facts presented to the trial court through these declarations include the following:

Johnson owns the building located at 21104 International Boulevard, SeaTac, Washington, where C&R alleges it performed work for the benefit of Johnson's tenant, T&C. [CP 88]

T&C has been in the auto repair and sales business for many years. In December 2012, T&C signed a two-year lease to lease the building and property at 21104 International Boulevard South, SeaTac, Washington, for the purpose of having a better sales location and more parking than T&C had at its old location on Martin Luther King Way. [CP 62]

At its previous location, T&C had a paint spray booth built into the building. T&C discussed with Johnson the installation of a freestanding paint spray booth in one of the bays of the SeaTac building. Johnson was unwilling to allow any booth to be built into the building. T&C and Johnson agreed that it would be T&C's responsibility to locate, purchase, own, install, and maintain the booth and its systems and controls and to remove the same at the expiration of the lease term. [CP 62-63]

The paint booth installed by T&C is a very simple device, approximately 30 years old, with no gas heaters or computer controls. Freestanding booths of this nature may be purchased on-line if one simply Googles "paint spray booth". T&C purchased a used booth from a body shop in Tacoma and it came with a fire suppression system, an outdated control system, and an exhaust fan with piping. The booth was a complete package that required little modification to the place inside of the service bay of the building. Unlike a paint spray area incorporated into a permanent, built-in industrial application, such paint booths are, as in this case, commonly disconnected from power, disassembled into numbered panels, and transported from

shop-to-shop, as their use is specific to the auto body trade. Such equipment typically moves when the owner or user changes location. [CP 63]

T&C disassembled the paint booth from its former location and reassembled it at the Property. T&C paid for the electrical breakers, the electrical power supply cable, new “sealed lights” in the booth and bay area, and a modern control system to operate the booth. T&C likewise paid to have the fire suppression system inspected and installed, as well as the venting system. There were no “building” permits for the booth as it was not made part of the building’s structure, but was simply placed inside one of the garage bays. Only mechanical, fire suppression, and electrical permits were required in connection with this equipment. [CP 63-64]

C&R became involved in finishing the electrical work on the booth on T&C’s behalf because the electrical inspector had changed and Johnson was unable to get the needed electrical permit for T&C to complete the booth installation work. C&R Electric was the contractor who performed that work, and at a brief meeting on site, C&R was shown the work that needed to be done. Antonio Lopez Miranda of T&C was present at the meeting, as was Johnson. C&R was told that the work to be performed by C&R was to be done on behalf of the building’s tenant, and that Johnson’s role was that of the building’s manager. The permit that C&R took out stated that the work was a “tenant improvement” and identified the project as “T&C Premier Auto.” [CP 65]

Johnson never had any discussions with C&R regarding price, hourly rates, value of work, or other terms under which C&R would perform the work. Johnson and C&R never entered into any agreement, oral or written, that C&R would be performing the work for Johnson. [CP 91-92]

C&R never sent any bills for its work to any address other than the Property address. Johnson had no office or place of business at the Property, and received none of the invoices. [CP 91-92]

In its invoices, C&R did not segregate its charges for the work it performed on the booth and related equipment from its charges for work on the building itself related to the copper wire repair. [CP 60]

In his declaration in support of C&R's Summary Judgment Motion, C&R's attorney, Stephan Wakefield, presented the following statements in support of C&R's request for attorney's fees and costs (although no invoices or billing statements were attached documenting and itemizing the services and associated fees):

Unfortunately, the fees and costs have been somewhat expensive. Most importantly, the Defendants appeared to be avoiding service which required numerous service attempts and thereafter, having to prepare and file a motion to serve by publication. [CP 198]

The Court has already determined through the Default Judgment against TRJ and Tyko Johnson, that the fees and costs incurred to that point of \$7,750.00 (i.e. \$6,150 in fees and \$1,600 in costs), was fair and reasonable (see Default Judgment). [CP 198]

Since the Default Judgment, we billed for additional work. I bill at a rate of \$300 per hour which is both fair and reasonable for an attorney with my experience. My paralegal bills at a rate of \$150 per hour which is fair and reasonable for a paralegal with her experience. [CP 198]

C&R filed a Summary Judgment Motion against Terry Johnson in July of 2014. Immediately before the August 2014 hearing, Terry Johnson filed a chapter 13 bankruptcy which stayed the current litigation. For the next four months, Terry Johnson filed numerous bankruptcy motions, various creditor payback plans, supplemental schedules and reconsideration motions. Ultimately, the Bankruptcy Court dismissed Terry Johnson's bankruptcy case because he

failed to make two promised plan payments (i.e. for a total of \$3,920). [CP 198]

As a result of Terry Johnson's bankruptcy, C&R was forced to incur even greater fees and costs. C&R has presently incurred \$20,000.00 in attorney's fees and \$1,883.84 in costs. Thus, the total judgment amount including principal balance due, interest, as well as attorney's fees and costs is \$30,846.16. [CP 198]

Following oral argument on the Summary Judgment Motion, the trial court granted C&R's claim for breach of contract against Johnson and entered judgment against him in the principal amount of the four invoices in the amount of \$7,506.30, plus interest in the amount of \$1,506.70, attorney's fees in the amount of \$20,000, and costs in the amount of \$1,883.84. [CP 138-141] The court further awarded C&R a lien in the amount of \$3,626.01 (the single invoice C&R identified as relating to the replacement of the stolen copper wire in the building), but the court did not award C&R a lien for the remainder of its work because an issue of fact existed whether the work relating to the paint booth constituted an improvement to the real property. [CP 140]

The trial court entered no findings of fact in support of the attorney's fee award. [CP 138-141] Because C&R submitted no time sheets or fee statements from its counsel detailing the services rendered and associated fees, [CP 198; 200-233] the trial court did not, and could not, engage in a lodestar analysis, and likewise did not and could not make

an allocation of attorney's fees for services rendered in prosecuting C&R's claim on the alleged oral contract for the work on the paint booth, or of the attorney's fees incurred in connection with Johnson's bankruptcy case, or of the attorney's fees incurred in pursuing claims against the other defendants, or for the services performed to collect for the copper wire damage repair (the latter being the only portion of C&R's claim to which the lien statute applies and for which attorney's fees could be awarded).

## V. ARGUMENT

### A. Standard Of Review.

This Court reviews orders granting motions for summary judgment on a de novo basis. *Hartley v. State*, 103 Wn. 2d 768, 774, 698 P.2d 77 (1985). The amount of attorney's fees to be awarded is reviewed on the substantial evidence test, and the standard of review is abuse of discretion. *Schmidt v. Cornerstone Investments*, 115 Wn. 2d 148, 169, 795 P.2d 1143 (1990).

### B. The Trial Court's Order Granting Summary Judgment Should Be Reversed Because Material Issues of Fact Exist Whether Johnson Entered Into a Contract With C&R and Regarding the Amount Owing for the Copper Wire Repair.

A motion for summary judgment may be granted only if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to any material fact and

that the moving party is entitled to a judgment as a matter of law. CR 56(c). The trial court must consider all evidence and all reasonable inferences from the evidence in favor of the non-moving party, and summary judgment should be granted only if reasonable persons could reach only one conclusion. *Teagle v. Fischer & Porter*, 89 Wn.2d 149, 152, 570 P.2d 438 (1977). Summary judgment is not appropriate when different inferences may be drawn from the undisputed facts, especially inferences concerning ultimate facts such as intent, knowledge, good faith, etc. *Preston v. Duncan*, 55 Wn.2d 678, 681-82, 349 P.2d 605 (1960).

It long has been the law in Washington that summary judgment is not appropriate if a dispute exists with respect to an alleged oral contract. This Court long has followed the rule adopted by the Alaska Supreme Court in *Howarth v. First Nat'l Bank*, 540 P.2d 486 (Alas. 1975):

Oral contracts are often, by their very nature, dependent upon an understanding of the surrounding circumstances, the intent of the parties, and the credibility of witnesses. If a dispute exists with respect to the terms of the oral contract, then summary judgment is not appropriate. Instead, the trier of fact in a trial setting should make the final determination with respect to the existence of the contractual agreement.

*Garbell v. Tall's Travel Shop, Inc.*, 17 Wn.App. 352, 354, 563 P.2d 211 (1977). *See also, Duckworth v. Langland*, 95 Wn.App. 1, 6, 988 P.2d 967 (1998) (quoting *Howarth* as set forth in the *Garbell* decision); *Pease-*

*Graham, LLC v. Loshbaugh*, 164 Wn.App. 530, 541-42, 269 P.3d 1038 (2011) (reversing summary judgment on oral contract where evidence conflicted regarding which of two promissory notes the defendant orally had agreed to sign); *Kilcullen v. Calbom & Schwab, P.S.C.*, 177 Wn.App. 195, 203, 312 P.3d 60 (2013).

Here, the trial court should have denied C&R's motion for summary judgment on its breach of oral contract claim because a material dispute of fact exists whether C&R performed the work concerning the paint booth pursuant to an oral contract with Johnson, or pursuant to an oral contract with T&C. It is undisputed that no written contract ever was executed by C&R with anyone concerning this work. With respect to work related to reinstallation of copper wire to the building, Johnson does not dispute that this work was performed at his request, but he does dispute the contention that all of the work described in the invoice in the amount of \$3,626.01 related to the reinstallation of copper wire, and, in fact, on its face, the invoice demonstrates that most of the work described in that invoice relates to the paint booths. [CP 187]

While C&R provided evidence that it entered into an oral time and material contract with Johnson to perform the paint booth work [CP], Johnson denies that contention and provided contradictory testimony through his declaration [CP 91-92] and through the declaration of his

tenant's principal, Antonio Lopez Miranda. [CP 65] In his declaration, Johnson testified as follows:

As I stated, there had never been any discussion of price, hourly rates, value of work, or other terms of agreement, and there was no agreement, verbal or written, that C&R and either TRJ or T&C. . . . [N]o contract written or verbal ever was made . . . [CP 91-92]

C&R never sent any bills for its work to any address [for] me or TRJ, but it did send a bill for nearly \$8,000 to Antonio at the building. [CP 91]<sup>1</sup>

Antonio Lopez Miranda corroborated that testimony in his declaration, as follows:

C&R became involved in finishing up the work and inspections of the booth on T&C's behalf because the electrical inspector had changed and Terry was unable to get the needed electrical permit for T&C to complete the booth installation work. C&R Electric was the contractor who performed that work. It became clear that even though there was a right to such a permit, it would go much faster according to the SeaTac City Attorney if an electrical contractor were used to inspect and to make sure the work already done was adequate and to perform a few remaining items. C&R Electric was the contractor used, and, in a brief meeting on site, they were shown such work as needed to be done. I was present at the meeting. TRJ's role as building manager and Terry's role as its representative and the fact that the work was to be done on behalf of the building's tenant were explained. I believe it was made completely clear to C&R's representative that the work would be on behalf of a tenant, not for TRJ or Johnson. I understand that the permit that C&R took out

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<sup>1</sup> By contrast, in its building permit application to the City of Seatac, C&R estimated the value of the work to be \$1,000. [CP 182]

stated that the work was a “tenant improvement” and identified the project as “T&C Premier Auto.” [CP 65]

These statements directly controvert the contention by C&R that the work was performed pursuant to an oral contract with the owner, Johnson, rather than pursuant to an oral contract with T&C. Further, C&R mailed the invoices to C&R’s place of business, at the property, and not to the owner’s address listed on the electrical permit, further showing that C&R understood its work was being done for and on the account of T&C, as tenant, and not on the account of Johnson, as the owner. That fact alone gives rise to an inference that C&R’s oral contract was with the T&C as the tenant, and not Johnson as the owner. As such, an issue of fact exists on this core issue regarding the identity of the contracting parties, rendering summary judgment improper.

Johnson further disputes the contention that all of the work described in the invoice in the amount of \$3,626.01 related to the reinstallation of copper wire. With respect to those charges, he explained as follows to the trial court:

In its invoices, C&R did not segregate its charges for the work it performed on the booth and related equipment from its charges for work on the building itself related to the copper wire repair. [CP 60]

Moreover, the invoice on its face demonstrates that most of the work described in that invoice relates to the paint booths. Specifically, the

invoice which C&R claims is for the copper wire repair, in the amount of \$3,626.01 [CP 187], mostly relates to work on the paint booth. Of the work described in the “Work Ordered” section of the invoice, only the “Refeed Service with 4/0 Copper Wire” relates to replacement of the copper wire within the building that had been stolen. The remainder of the work items describe work performed on the paint booth – “Replace, drill, and tap new lugs,” “repair splices,” “pull ground wire to compressor,” and “wire intake fan.” None of this was lienable work.

Because material issues of fact exist as to whether Johnson or T&C was the contracting party, and regarding the amount allocable to the copper wire repair, relief by way of summary judgment was improper, and the Order Granting Summary Judgment should be reversed and remanded for trial.

**C. The Trial Court’s Award of Attorney’s Fees Should Be Reversed.**

The trial court erred as a matter of law in awarding full attorney’s fees to C&R. Washington follows the “American Rule”, where “a party may recover attorneys' fees only if authorized by statute, contract or recognized ground of equity.” *Hsu Ying Li v. Tang*, 87 Wn.2d 796, 557 P.2d 342 (1976). *See Macri v. Bremerton*, 8 Wn.2d 93, 111 P.2d 612 (1941). Further, it is well established under Washington law that if only a

portion of a party's claims are based upon a statute, contract or recognized ground in equity that support an attorney's fee award, only the attorney's fees identifiable to those claims may be awarded. The attorney's fees incurred in prosecuting claims for which no basis exists for a fee award must be identified and segregated, and may not be included in an attorney's fee award. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wn.2d 826, 849-50, 726 P.2d 8 (1986); *Manna Funding, LLC v. Kittitas County*, 173 Wn.App. 879, 901, 295 P.3d 1197 (2013); *CC-Bottlers, Ltd. v. J.M. Leasing, Inc.*, 78 Wn.App 384, 389-90, 896 P.2d 1309 (1995).

Further, Washington courts calculate and award reasonable attorney fees based on the lodestar method. *Mahler v. Szucs*, 135 Wn.2d 398, 433, 957 P.2d 632 (1998); *Manna Funding, supra*, at 901-02. Under this method, the trial court evaluates whether counsel spent a reasonable number of hours—excluding any wasteful or duplicative hours and any hours pertaining to unsuccessful claims—and whether counsel billed a reasonable rate. *Id.* at 434. Courts must take an active role in determining reasonableness, and develop an adequate record upon which to review a fee award. *Id.* at 434-35. Findings of fact and conclusions of law are required to establish such a record. *Id.* at 435. The lodestar is the presumptive measure of a reasonable attorney fee award. *Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 542, 151 P.3d 876 (2007).

Here, the award of attorney's fees must be reversed for two reasons. First, the trial court awarded full attorney's fees and costs in favor of C&R, including attorney's fees incurred in addressing claims against the defaulted defendants, TRJ Development, Inc. and Tyko Johnson [CP 198], attorney's fees incurred in the Johnson Chapter 13 bankruptcy case [CP 198], and attorney's fees incurred in prosecuting the breach of contract claims relating to the work performed regarding the installation of the paint booths for which no legal basis exists for an award of attorney's fees because that was not lienable work. The only basis for an award of attorney's fees that exists in this case is the Washington lien statute, RCW 60.04.181(3). The court did not award a lien in favor of C&R for the work related to the paint booth, which was the primary focus of C&R's summary judgment submissions and involved the large majority of the legal work.<sup>2</sup>

Second, the trial court performed no lodestar analysis, and entered no findings of fact or conclusions of law in support of the award of attorney's fees and costs. [CP 138-141] Indeed, the trial court could perform no lodestar analysis because no "adequate record" was made and

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<sup>2</sup> The portions of the motion for summary judgment relating to replacing the stolen copper wire consists of one paragraph at page 3 (lines 16-22), and lines 8 to 11 on page 4. [CP 167]

presented given the absence of any billing records whatsoever. No substantial evidence was even presented to the trial court, and, as such, no substantial evidence supports the fee award made by the trial court.

Indeed, the trial court could not determine whether counsel “spent a reasonable number of hours,” on the work related to the claim of lien awarded by the court because no such information was presented to the court. The legal requirements for an attorney’s fee award that a record be developed, and that the award must be supported by findings of fact and conclusions of law, were totally disregarded. The award of attorney’s fees cannot be sustained on the basis of this record under established Washington law, and must be reversed.

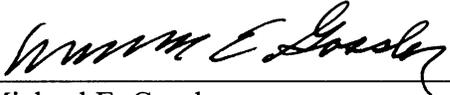
## **VI. CONCLUSION**

The trial court should have denied C&R’s motion for summary judgment because material issues of fact exist as to whether the work relating to the paint booth was performed under an oral contract with Johnson, and regarding the amount owing for work pertaining to the copper wire repair. The award of attorney’s fees should be reversed because the required evidentiary basis for such an award is absent and no substantial evidence supports it, because the trial court did not apply the required lodestar analysis, because the trial court entered no findings of fact and conclusions of law in support of the award of costs and attorney’s

fees, and because the trial court failed to segregate the attorney's fees awarded between the services that were the subject of the lien award and all of the other work for which no legal basis exists for an award of attorney's fees.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of August, 2016.

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## CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

On the date given below, I caused to be served by legal messenger a copy of this document on the following attorney as follows:

Stephan D. Wakefield  
Hecker & Feilberg PS  
321 1<sup>st</sup> Ave. W.  
Seattle, WA 98119-4103

DATED this 11<sup>th</sup> day of August, 2016, at Seattle, Washington.

  
\_\_\_\_\_  
Kevin R. Smith