

*Original*

Cause No. 34988-4-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

TIMOTHY J. EPHREM and TINA EPHREM

Appellants,

vs.

CARY FALK,

Respondent.

APPELLANT'S REPLY TO RESPONDENT'S  
CROSS APPELLANT'S OPENING BRIEF  
FILED  
MAY 10 2011  
COURT OF APPEALS  
DIVISION II  
TACOMA, WASHINGTON

APPEAL FROM THE SUPERIOR COURT  
FOR PIERCE COUNTY  
THE HONORABLE BEVERLY GRANT

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APPELLANT TIMOTHY J. EPHREM'S REPLY TO RESPONDENT/  
CROSS APPELLANT FALK'S OPENING BRIEF

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**1. Identity of Moving Party:**

Respondent Timothy Ephrem (Tim) replies to Cross Appellant/ Respondent's Falk Opening Brief as stated in paragraph 2 below.

**2. Statement of Relief Sought:**

Tim requests that this court affirm the trial court's Order Confirming That the Judgments Herein Have Been Fully Satisfied and that he be awarded his attorney fees and costs incurred in responding to Falk's appeal of said order.

**3. Statement of Case and Argument:**

*A. Facts and Argument.* Appellant Timothy Ephrem by and through his attorney of record George Kelley, P.S., agrees with the Statement of Issues factual assertions, analysis and conclusions as set forth in the Brief of Appellant (filed herein on November 17, 2006) and Response of Appellant/Cross Respondent Tina Ephrem to Appellant/Cross Respondent Falk's Brief (filed herein on May 17, 2007). Tim adopts the arguments set forth in those briefs as if they were fully set forth herein.

*B. Attorney fees and costs.* For the reasons referenced above it is respectfully submitted that Tim should be the prevailing party in this appeal. As a prevailing party and pursuant to RAP 18.1 Tim requests that this Court award him the attorney fees and costs that he has incurred in responding to Falk's appeal.

This request is based upon the subject contract, which contains an attorney fee award clause. CP 336. RCW 4.84.330 entitles Tim, as the prevailing party, to a fee award. The statute provides:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, *the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.* RCW 4.84.330 (Italic added).

“RCW 4.84.330 permits an award of attorney fees and costs on appeal in any action on a contract that provides for attorney fees and costs to one of the parties.” *Kirkpatrick v. Cheff*, 118 Wn. App. 772, 779-80, 76 P.3d 1211, 1215 (2003).

Thus, pursuant contract and RCW 4.84.330 Tim is entitled to an award of attorney fees and costs incurred in responding to Falk's appeal.

#### 4. Conclusion

For the reasons stated above, it is respectfully requested that the trail court's Order Confirming That the Judgments Herein Have Been Fully Satisfied be affirmed and that Tim be awarded his attorney fees and costs incurred in responding to Falk's appeal of said order.

RESPECTFULLY SUBMITTED this 17 day of May 2007.

GEORGE S. KELLEY



George S. Kelley, WSBA # 2981  
Attorney for Appellant Tim Ephrem

COUNTY OF TACOMA  
CLERK OF SUPERIOR COURT

JULY 18 PM 1:48

STATE OF WASHINGTON  
BY mm  
DEPUTY

**CERTIFICATE OF SERVICE**

I, Patricia L. Shuman, hereby certify that I am over the age of 18 years and not a party to the within action; my business address is and I am employed by George S. Kelly, 535 East Dock Street, Suite 100, Tacoma, Washington 98402. On the 17<sup>th</sup> day of May 2007, a true and correct copy of each of the following document:

- (1) Appellant Timothy J. Ephrem's Reply to Respondent/Cross Appellant Falk's Opening Brief;

was delivered to:

Ed Winskill  
Davies Pearson  
920 Fawcett Ave.  
Tacoma, WA 98405

Garold E. Johnson  
Mann, Johnson, Wooster &  
McLaughlin  
820 A Street, Suite 550  
Tacoma, WA 98402

by the following method:

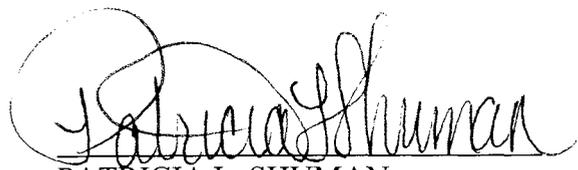
Depositing same postage prepaid in the United States Mail addressed to the person(s) identified above.

Depositing a true and accurate copy of the same with ABC-Legal Messenger Service, Inc., with appropriate instructions to deliver the same to the person(s) identified above on May 18<sup>th</sup>, 2007.

Personally delivering copies to the person(s) identified above.

I hereby certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington, this 17<sup>th</sup> day of May, 2007.

  
PATRICIA L. SHUMAN