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## APPELLANTS' REPLY BRIEF

### A. Statutory Interpretation under the Plain Meaning Rule

1. Appellants Had Right, Constitutional and Statutory, to an Interpreter Under RCW 2.43.020.

Both Respondents argue that Appellants were not entitled and had no right to an interpreter and that it was Appellants' obligation to secure assistance of an interpreter. Appellants challenge Respondents' position as implausible, unsound and contrary to the laws of the State of Washington for the following reasons.

Plethora of legal authorities and case law exists with regards to the statutory interpretation under the Plain Meaning Rule, which is consistently followed in the United States.

Under the Plain Meaning Rule, the courts said that in determining the meaning of a statute, we apply general principles of statutory construction.<sup>1</sup> These principles begin with the premise that if the statute is plain and unambiguous, its meaning must be derived from the language of the statute itself.<sup>2</sup> Only when the meaning of the statute is ambiguous and not plain should this court apply principles of statutory construction to

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<sup>1</sup> *Harmon v. Department of Social and Health Services, State of Washington*, 134 Wash.2d 523, at 530, 951 P.2d 770 (1998).

<sup>2</sup> *Id.*, at 530, citing *State v. Mollichi*, 132 Wash.2d 80, 87, 936 P.2d 408 (1997); *Marquis v. City of Spokane*, 130 Wash.2d 97, 107, 922 P.2d 43 (1996). Also see *Carr v. Blue Cross of Washington and Alaska*, 93 Wash.App. 941, at 946, 971 P.2d 102 (1999) (citing *Cherry v. Municipality of Metro. Seattle*, 116 Wash.2d 794, at 799, 808 P.2d 746, (1991)

ascertain the legislature's purpose.<sup>3</sup> A statute that is plain on its face is not subject to construction.<sup>4</sup> A statute that is susceptible to two or more reasonable interpretations is ambiguous.<sup>5</sup> Terms that are undefined in the statute do not necessarily give rise to ambiguity.<sup>6</sup> Rather, undefined terms should be given their plain and ordinary meaning unless a contrary legislative intent appears from the wording of the statute itself.<sup>7</sup> When this court interprets a statute, it looks first to the ordinary meaning of the words used by the legislature.<sup>8</sup> In such cases, our primary duty is to ascertain and give effect to the intent and purpose of the legislature.<sup>9</sup> If the language is unambiguous, the plain wording of the statute controls.<sup>10</sup> Ordinary, when a statute is unambiguous, there is no room for interpretation.<sup>11</sup> Statutes must be construed as a whole, and, if possible,

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<sup>3</sup> *Carr v. Blue Cross of Washington and Alaska*, 93 Wash.App. 941, at 946, 971 P.2d 102 (1999) (citing *Cherry v. Municipality of Metro. Seattle*, 116 Wash.2d 794, at 799, 808 P.2d 746, (1991)).

<sup>4</sup> *In Re the Detention of Louis Brock*, 99 Wash.App. 722, at 724, 995 P.2d 111 (2000) (citing *In re Marriage of Kovacs*, 121 Wash.2d 795, 804, 854 P.2d 629 (1993)).

<sup>5</sup> *Carr v. Blue Cross of Washington and Alaska*, 93 Wash.App. 941, at 946, 971 P.2d 102 (1999) (citing *State v. Sunich*, 76 Wash.App. 202, 206, 884 P.2d 1 (1994); *Morris v. Blaker*, 118 Wash.2d 133, 142-43, 821 P.2d 482 (1992)).

<sup>6</sup> *Carr v. Blue Cross of Washington and Alaska*, 93 Wash.App. 941, at 946, 971 P.2d 102 (1999).

<sup>7</sup> *Id.*, at 947, citing *Canyon Conservancy v. Bosley*, 118 Wash.2d 801, at 813, 828 P.2d 549 (1992).

<sup>8</sup> *Anderson v. City of Seattle*, 123 Wash.2d 847, at 851, 873 P.2d 489 (1994) (citing *Sofie v. Fiberboard Corp.*, 112 Wash.2d 636, 668, 771 P.2d 711, 780 P.2d 206 (1989)).

<sup>9</sup> *Harmon v. Department of Social and Health Services, State of Washington*, 134 Wash.2d 523, at 530, 951 P.2d 770 (1998) (citing *State v. Hennings*, 129 Wash.2d 512, 522, 919 P.2d 580 (1996)).

<sup>10</sup> *Id.*, at 851, citing *Geschwind v. Flanagan*, 121 Wash.2d 833, 841, 854 P.2d 1061 (1993).

<sup>11</sup> *Frank v. Fischer*, 46 Wash.App. 133, at 136, 730 P.2d 70 (1987).

effect must be given to each word, phrase, clause and sentence of the act.<sup>12</sup> It is elementary that the ultimate aim of rules of interpretation is to ascertain the intention of the legislature in the enactment of a statute, and that intention, when discovered, must prevail.<sup>13</sup> If, however, the intention of the legislative is perfectly clear from the language used, rules of construction are not to be applied.<sup>14</sup> We are not allowed to construe that which has no need of construction.<sup>15</sup> This court has many times held that it will not insert, in legislative acts, words which were seemingly unintentionally omitted, nor disregard any words which may appear to us to have been inadvertently included.<sup>16</sup> We will not construe the statute so as to render any portion of it inoperative or superfluous unless it is a result of obvious error.<sup>17</sup> It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the

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<sup>12</sup> *Frank v. Fischer*, 46 Wash.App. 133, at 136, 730 P.2d 70 (1987) (citing *McKenzie v. Mukilteo Water Dist.*, 4 Wash.2d 103, 112, 102 P.2d 251 (1940)).

<sup>13</sup> *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *State of Washington, on the Relation of Jerry Hagan, v. Chinook Hotel, Inc.*, 65 Wash.2d 573, at 578, 399 P.2d 8 (1965).

<sup>17</sup> *Public School Employees of Sunnyside Teaching Assistants v. Sunnyside School District*, 69 Wash.App. 630, at 634, 849 P.2d 1287 (1993) (citing *Cossel v. Skagit Cy.*, 119 Wash.2d 434, 437, 834 P.2d 609 (1992); *Cox v. Helenius*, 103 Wash.2d 383, 388, 693 P.2d 683 (1985)).

law-making body which passed it, the sole function of the courts is to enforce it according to its terms.<sup>18</sup>

The Appellants urge this court to apply and follow the traditional Plain Meaning Rule when reading and reviewing the relevant and applicable to this case sections and subsections of the Title 2 RCW, Chapter 43. Thus, the language of the RCW 2.43.010 Legislative Intent clearly states and reflects legislative intent to protect interests and rights of the Appellants, as well as the rights of the similarly situated persons, in that the statute clearly and unambiguously states that the statute intends provide protections “...of persons who, because of a non-English-speaking cultural background, are unable to readily understand *or communicate* in the English language.... (Emphasis added); and RCW 2.43.020 provides (1) “Non-English-speaking person” means *any* person involved in a legal proceeding who cannot *readily speak or* understand the English Language....”

Here, both Mr. Harper and Ms. Kudina are immigrants from the former Soviet Union and their primarily communication language is Russian. Although the record reflects numerous pleadings filed by the Appellants, such pleading should not be determinative because preparation of the legal documents outside the court could be done with assistance of

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<sup>18</sup> *Caminetti v. U.S.*, 242 U.S. 470, 485-486 (1917).

the English speaking individuals as well as dictionaries and other contemporary resources. As indicated on the record, both Appellants stated that they could not proceed at Summary Judgment Hearing without assistance of a Russian interpreter due to their inability and limitations to specifically participate and respond during oral arguments.<sup>19</sup> Consequently, although Mr. Harper stated on the record under oath that both Appellants have good reading comprehension, he also clearly stated that “we requested interpreter on oral arguments.”<sup>20</sup> In addition, Appellants submitted Notice of Hearing Strike, in which Appellants indicated that they would not be able to participate in oral arguments without assistance of an interpreter. For those reasons, under statutory language, Appellants were entitled to be assisted by a Russian speaking interpreter at oral arguments.

Furthermore, under RCW 2.43.020, subsection (5) “Appointing authority” *means the presiding officer or similar official of any court...*<sup>21</sup> (Emphasis added). In our case, it is unclear on what grounds the trial court shifted and imposed its statutory obligation appointing an interpreter on the Appellants. As the record indicates, the trial judge stated that “you

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<sup>19</sup> RP at 5.

<sup>20</sup> RP at 5.

<sup>21</sup> RCW 2.43.020(1) and (5).

understand you have the responsibility of hiring your own interpreter.”<sup>22</sup> Perhaps such trial judge’s conclusion should be attributed to the frivolous arguments on this point presented by the Respondents, where they both argued on the record that it was Appellants’ obligation to secure assistance of an interpreter without reference to any specific rules that would support such argument.<sup>23</sup>

Finally, the language of the RCW 2.43.060 Waiver of Right to Interpreter clearly and unambiguously states that (1) The right to a qualified interpreter may not be waived except when: (a) A non-English-speaking person requests a waiver; and (b) The appointing authority determines on the record that the waiver has been made knowingly, voluntarily, and intelligently. (2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, *at any time during the proceedings*. (Emphasis added).

In our case, both Respondents in their briefs argue that Appellants failed to provide timely notice of their motion for continuance and on this ground Appellants’ request for continuance was properly denied. However, from the language of the statute it is clear that Appellants could request an interpreter at any time during the proceedings, which they did in writing and orally on the record. There is nothing in the statutory

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<sup>22</sup> See RP at 2, 3 and 5.

<sup>23</sup> See RP 4-5.

language which would indicate any time limitations on the Appellants' right to request assistance of an interpreter. On the contrary, the statutory language clearly anticipates that if any party to the proceedings experiences concerns with regards to that party's ability to communicate with the court due to the non-English speaking background, the statute permits to make such request for an interpreter's assistance at any time without limitations. For the same reason, the trial judge's inquiries regarding Appellants' indigence bear no relevance in determination as to whether the Appellants were entitled to an appointment of an interpreter,<sup>24</sup> because the language of RCW 2.43.040 reads that (3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. Consequently, under the statute the trial court should merely impose any costs for an interpreter on the Appellants, not to deny their right to an interpreter on the grounds that Appellants did not raise claim of indigence.

Respondents failed to cite any single authority that would assign any contrary interpretation of the Title 2 RCW, Chapter 43 than that clearly expressed by the statutory language. For this reason, the Appellate

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<sup>24</sup> RP at 2.

Court should find that Appellants under the statute had a right to an interpreter and that it was the trial court's obligations to appoint one.

2. The Trial Court's Failure to Grant Appellants' Request for Continuance or in Alternative to Appoint an Interpreter Constitutes Abuse of Discretion.

Whether a motion for continuance should be granted or denied is a matter discretionary with the trial court, reviewable on appeal for manifest abuse of discretion.<sup>25</sup> In exercising its discretion, the court may properly consider the necessity of reasonably prompt disposition of the litigation; the needs of the moving party; the possible prejudice to the adverse party; the prior history of the litigation, including prior continuances granted the moving party; any conditions imposed in the continuances previously granted; and any other matters that have a material bearing upon the exercise of the discretion vested in the court.<sup>26</sup> A party does not have an absolute right to a continuance, and the granting or denial of a motion for a continuance is reversible error only if the ruling was a manifest abuse of discretion.<sup>27</sup> A manifest abuse of discretion occurs where the ruling is manifestly unreasonable or is based on untenable grounds or done for

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<sup>25</sup> *Martonik v. Durkan*, 23 Wash.App. 47, at 50, 596 P.2d 1054 (1979) (citing *Balandzich v. Demeroto*, 10 Wash.App. 718, 720, 519 P.2d 994 (1974); *Jankelson v. Cisel*, 3 Wash.App. 139, 473 P.2d 202 (1970)).

<sup>26</sup> *Id.*, at 50.

<sup>27</sup> *Wallapa Trading Co., Inc. v. Muscanto, Inc.*, 45 Wash.App. 779, at 785, 727 P.2d 687 (1986).

untenable reasons.<sup>28</sup> A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.<sup>29</sup>

In case at hand, as reflected in the Appellants' Notice of Hearing Strike filed on October 31, 2006<sup>30</sup> and in Report of Proceedings<sup>31</sup> of the hearing conducted on November 3, 2006, Appellants clearly and specifically indicated to the trial court that assistance of an interpreter at oral arguments would be necessary for the Appellants. Appellant Harper under oath stated that assistance of an interpreter was necessary. However, an interpreter was not available on that particular date and for that reason Appellants requested continuance, so that they could secure assistance of an interpreter at a later date.<sup>32</sup> Although, Respondent Pyramid Homes Incorporated argues that the trial court weighed the history of the litigation and determined that Respondents were adequately versed in the English

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<sup>28</sup> *Wallapa Trading Co., Inc. v. Muscanto, Inc.*, 45 Wash.App. 779, at 785, 727 P.2d 687 (1986).

<sup>29</sup> *In re marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997); *Accord Ryan v. State*, 112 Wn.App. 896, 899-900, 51 P.3d 175 (2002) (also observing that "[a] decision based on a misapplication of the law rests on untenable grounds").

<sup>30</sup> See CP Notice of Hearing Strike-P, Docket Date 10-31-2006 pp. 1-2.

<sup>31</sup> RP at 5.

<sup>32</sup> RP at 2-3.

language<sup>33</sup>, there is nothing in the record to indicate that the trial court conducted such findings and made such determinations. On the contrary, the trial court never doubted Appellants' inadequate English language skills. The trial court denied Appellants' request for continuance and interpreter without any plausible reasons that can be inferred from the record.

Furthermore, it remains absolutely unclear why the trial court imposed its duty to secure assistance of an interpreter on Appellants. The case continued to conclusion in the presence of the Appellants, yet without Appellants ability to participate at the hearing, clearly in violation of the Appellants' due process rights. The superior court has abused its discretion when it conducted hearing without an interpreter because lack of interpreter deprived Appellants' right to participate in legal proceedings and to express Appellants' position at the hearing. Thus, the trial court's denial of continuance, and in alternative not appointing an interpreter, strongly suggests "manifestly unfair, untenable or unreasonable grounds" and thus constitute abuse of the trial court discretion.

Finally, the court's primary purpose and role is to administer justice and not to convert court proceedings into "drive through McDonald's type services." "A good judge should do nothing of his own

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<sup>33</sup> See Respondent Pyramid Homes Incorporated Response pp. 4-5.

arbitrary will, nor on the dictate of his personal wishes, but should decide according to law and justice.”<sup>34</sup> “*He who decides anything without hearing both sides, although he may decide correctly, has by no means acted justly.*”<sup>35</sup> (Emphasis added) “The hastening of justice is the stepmother of misfortune.”<sup>36</sup>

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is not to draw his inspiration from consecrated principle. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated by “the primordial necessity of order in the social life.” Wide enough in all conscience is the field of discretion that remains.<sup>37</sup>

In case at hand, the Appellants had reasonable grounds for continuance, which would not unreasonably delay the case. Even though Appellants’ request for continuance could entail “detrimental effect upon the court calendar” and cause “substantial inconvenience” to the Respondents, where as here the motion to continue was made early on, such considerations provide an insufficient basis for denying Respondents’ requests because assistance of an interpreter was absolute necessity.<sup>38</sup> For

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<sup>34</sup> Quoting from *Legal Thesaurus*, by William C. Burton, p. 306(2<sup>nd</sup> Ed., Macmillian, 1992).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Benjamin N. Cardozo, *The Nature of the Judicial Process* 141 (1921).

<sup>38</sup> *Intercapital Corporation of Oregon v. Intercapital Corporation of Washington*, 41 Wash.App. 9, 17, 700 P.2d 1213 (1985).

this reason, Respondents' position lacks any merits and not supported by the case law.

3. Respondents Coldwell Banker Barbara Sue Seal Properties Procured Ruling on Appellants' Need of an Interpreter by Crafty Deception.

Where here is no evidence in the record to support a finding and while findings of fact which are supported by substantial evidence will not be disturbed on appeal, unsupported findings cannot stand.<sup>39</sup> The general rule is that, where a judgment rests on inconsistent findings of fact, the judgment must be reversed.<sup>40</sup> But that rule is subject to an important exception: where one of the two inconsistent findings is without support in the record, an appellate court will strike the unsupported finding and, if the other finding supports the judgment, will affirm.<sup>41</sup>

Both Respondents argue and make repeated references that the trial court ruled that the Plaintiffs did not need an interpreter and that the record supports the trial court's conclusion that plaintiffs' comprehension of English was adequate.<sup>42</sup> However, there is nothing on the record to

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<sup>39</sup> *Washington State Physicians Insurance Exchange & Association v. Fisons Corporation*, 122 Wash.2d 299, at 345, 858 P.2d 1059 (1993) (citing *Bering v. Share*, 106 Wash.2d 212, 220, 721 P.2d 918 (1986), cert. dismissed, 479 U.S. 1050, 107 S.Ct. 940, 93 L.Ed.2d 990 (1987)).

<sup>40</sup> *Pacific Hospital of Long Beach v. Lackner*, 90 Cal. App. 3d 294, 299; 153 Cal. Rptr. 182 (1979).

<sup>41</sup> *Id.*, citing *Wallace Ranch W. Co. v. Foothill D. Co.* (1935) 5 Cal.2d 103, 118 [53 P.2d 929]; *Mirich v. Underwriters at Lloyd's London* (1944) 64 Cal.App.2d 522, 528-529 [149 P.2d 19]; 4 Witkin, Cal. Procedure (2d ed. 1971) Trial, § 344, p. 3146.

<sup>42</sup> Respondents' Coldwell Banker Barbara Sue Seal Properties Responding Brief, p. 9.

indicate and to support that the trial court made such findings. On the contrary, the record clearly indicates that the trial judge ruled only on the issue as to whether it was the Plaintiffs' obligation to secure assistance of an interpreter. There is no other trial court's ruling on the record to support such Respondents position.<sup>43</sup> Although, Respondent Coldwell Banker Barbara Sue Seal Properties made references to the trial judge's Order Denying Plaintiffs' Notice of Hearing Strike, the order was prepared and presented to the trial judge for signing by the Respondent *after* Appellants initiated this appeal. It is clear from the record that in attempt to gut Appellants' appeal, Respondents Coldwell Banker Barbara Sue Seal Properties deceptively inserted finding No.2 stating that Plaintiffs appear to speak and comprehend English competently and an interpreter is not required to adjudicate the matter.<sup>44</sup> This was crafty deception, which suggests less than honorable intent on the Respondent's part because the trial court never made such findings. In addition the record clearly reflects that while the Appellants repeatedly made demand for an interpreter, the trial judge ignored Appellants' demands and continued Summary Judgment proceeding. For this reason, Appellants urge the Court of Appeals to strike the finding No.2 as deception by the Respondent's

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<sup>43</sup> See RP 5.

<sup>44</sup> CP 216, Finding 2.

Coldwell Banker Barbara Sue Seal Properties and not consider such finding for the purposes of this appeal.

**B. Because Only Defendants Presented Their Case at Summary Judgment Hearing, the Merits of the Appellants' Case should not be Raised on Appeal**

Generally, an appellate court will only review claimed error included in an assignment of error.<sup>45</sup> However, under RAP 1.2 (a) a “technical violation of the rules will not ordinarily bar appellate review, where justice is to be served by such a review....<sup>46</sup> Where the nature of the challenge is perfectly clear, and the challenged finding is set forth in the appellate brief, this court will consider the merits of the challenge.”<sup>47</sup>

In case at hand, the nature of the Appellants' challenge is clear and the challenged findings are set forth in the Appellants' brief where Appellants raise the issue of the validity of the trial court's legal proceedings without an interpreter as a whole. The Appellants challenge the trial court's legal process without an interpreter in its entirety on the ground that only Respondents presented and expressed their positions during oral arguments at summary judgment hearing, not Appellants.

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<sup>45</sup> *Community College v. Personnel Board*, 107 Wn.2d 427, at 431, 730 P.2d 653 (1986) (citing *Lehmann v. Board of Trustees*, 89 Wn.2d 874, 576 P.2d 397 (1978)).

<sup>46</sup> *Id.*, at 431.

<sup>47</sup> *Id.*, at 431 citing *State v. Williams*, 96 Wn.2d 215, 220, 634 P.2d 868 (1981) quoting from *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 710, 592 P.2d 631 (1979).

The right to a hearing is one of the rudiments of fair play assured by the Fourteenth Amendment, and there can be no compromise on the footing of convenience or expediency when that minimal requirement has been neglected or ignored.<sup>48</sup> Thus, due process requires, at a minimum, that, absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard.<sup>49</sup>

Both Respondents argue that Appellate court should affirm the judgment of the trial court on the ground that Appellants' case lacks any merits. Appellants urge this court not to accept Respondents position for the following reasons. First, the non-English speakers' right to an interpreter exists irrespectively of the nature and likelihood of success of the merits of their claim. On the contrary, Respondents' position suggests that interpreters should be appointed based on the merits of the non-English speakers case. Such position defeats statutory language of the RCW and the notion of fair play. Second, the purpose of summary judgment hearing is that both parties must be able to present and to express their positions in oral arguments, irrespectively of the pleadings presented to the court, because oral arguments constitute crucial stage of the legal proceedings. In our case, while Appellants were crying and

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<sup>48</sup> 16 B Am. Jur. 2d Constitutional Law § 948 (Updated May 2006) (citations omitted).

<sup>49</sup> *Id.*, citations omitted.

demanding assistance of an interpreter, Respondents presented and expressed their position at oral argument. The trial court concluded summary judgment hearing with such Respondents' exclusive presentation of their position without hearing the Appellants. Such hearing of one party to the legal proceeding, but not of the other, offends notion of fair play and well-settled principles of fair hearing and constitutes mockery of the traditional system of justice. For these reasons Appellants believe that the trial court's hearing of the merits of their case without assistance of an interpreter was in violation of the Appellants' due process rights.

**C. Respondents are not Entitled to Attorney's Fees and Costs**

The Respondents' request attorney's fees, arguing that the appeal is frivolous. An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.<sup>50</sup> CR 11 addresses two separate problems: baseless filings and filings made for an improper purpose.<sup>51</sup> A baseless filing is one that is neither grounded in fact nor warranted by existing law.<sup>52</sup> The author of the pleading must have failed to conduct an objectively reasonable pre-filing inquiry into the factual and

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<sup>50</sup> *State v. Van Woerden*, 93 Wash.App. 110, at 119, 967 P.2d 14 (1998) (citing *Boyles v. Department of Retirement Sys.*, 105 Wash.2d 499, 507, 716 P.2d 869 (1986)).

<sup>51</sup> *In re Cooke*, 93 Wash.App. 526, 529, 969 P.2d 127 (1999).

<sup>52</sup> *Cooke*, at 529.

legal basis of the claim.<sup>53</sup> Fees are not awardable under RCW 4.84.185 if any of the claims are meritorious, then the whole action is not frivolous.<sup>54</sup> Here, Respondent Coldwell Banker attorney, Cecil A. Reniche-Smith's, assertion that Appellants motion is without merits lacks any basis. Appellants base their motion for review on statutory authority and procedural facts that demonstrate the trial court's error. Respondents' failure to cite any single legal authority on point to support Respondents' position with regards to the interpreter's assistance issue makes it obvious that Appellants' position is strongly grounded in RCW 2.43. etc. Because this case presents debatable issues, the court must deny Respondents' request for attorney's fees.<sup>55</sup>

Finally, Respondents failed to request fees and expenses in accordance with RAP 18.1(b). The rule requires that the respondent include its request for fees and expenses in its opening brief.<sup>56</sup> A request for fees must include supporting argument and citation to applicable statutes or case law sufficient to advise the court of the grounds for awarding fees.<sup>57</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *In re Cooke*, 93 Wash.App. 526, 529, 969 P.2d 127 (1999).

<sup>55</sup> See *State v. Van Woerden*, *supra*.

<sup>56</sup> See *RAP 18.1(b)*.

<sup>57</sup> *Wilson Court Ltd. P'ship v. Tony Maroni's Inc.*, 134 Wn.2d 692, 710 n.2, 952 P.2d 590 (1998).

For the above said reasons, the court should deny Respondents' request for attorney fees.

**D. Conclusion**

For the reasons set out above, Appellants, John Harper and Svetlana Khudina, respectfully request that the Court of Appeals finds that the trial court abused its discretion when it denied Appellants' motion for continuance and failed to appoint an interpreter, reverse the trial court's Summary Judgment and remand the case to the trial court for further proceedings with instruction to appoint a Russian speaking interpreter.

Respectfully submitted this 23<sup>rd</sup> day of May, 2007.



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