

No. 391571-II

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II**

**MORCOS BROTHERS, INC., NADER MORCOS,
and NABIL MORCOS, Appellants,**

and

**MERIDIAN PLACE LLC, and
GREG STEIN, Respondents.**

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

I. The Judgment Must Be Reversed Because It Is Not Supported by Written Findings.

a. Morcos Did Not Waive the Right to Written Findings.

Morcos cannot be deemed to have waived its objection to the lack of written findings to support the judgment. A party does not waive the right to written findings and conclusions by failing to move to vacate the judgment. A party is not obligated to file a motion to vacate under CR 52(d) in order to preserve the objection. In *State v. Kingman*, 77 Wn.2d 551, 463 P.2d 638 (1970), the judgment appealed from was not supported by written findings and conclusions. The Supreme Court noted that the appellate process could have been avoided had a motion to vacate the judgment been filed. *Id.* at 553. However, the failure to vacate the judgment did not prevent the court from setting the judgment aside and remanding the case back to the trial court for further proceedings. *Id.* A holding that Morcos waived its objection when it did not file a motion to vacate would be inconsistent with *Kingman*.

In re Dependency of B.S.S., 56 Wn. App. 169, 782 P.2d 1100 (1989), cited by Meridian, is inapplicable. The appellant in *Dependency of B.S.S.* had filed a motion for revision of a commissioner's ruling, but the judge agreed with the commissioner and adopted the commissioner's

findings of fact. *Id.* at 170-71. The court addressed the question of whether a commissioner's findings can be adopted by a judge and held that they could. *Id.* at 171. The case did not involve a judgment without any written findings, the court did not address how a party can properly preserve an objection to a judgment without written findings, and the footnote reference to CR 52(d) was dicta.

Morcos's failure to renew its objection in its post-trial motions also cannot operate as a waiver of the objection that had already been raised. The objection was raised and discussed on the record prior to entry of judgment, and it did not need to be raised again in post-trial motions.

It is a long standing and well-established rule of decision of this court that, where a question has been presented to the lower court during the progress of the trial and such court has ruled thereon, the question can be raised on appeal without the necessity of first making a motion for a new trial.

Keilhamer v. West Coast Telephone Co., 11 Wn.2d 24, 31-32, 118 P.2d 173 (1941). Further, given the trial judge's direction that written findings be prepared, RP (March 6, 2009) 19, counsel for Morcos had no reason to raise the objection again in the motion for reconsideration.¹

Morcos sufficiently preserved its objection for appeal. Morcos filed a written objection to entry of judgment without written findings. CP

¹ The Motion for New Trial again referenced the lack of written findings and conclusions. CP 236.

207. Counsel for Morcos again raised the objection on the record prior to entry of judgment, and after some discussion, the trial judge directed that written findings and conclusions be prepared. RP (March 6, 2009) 5, 19-20. Morcos did not waive the objection.

b. The Requirement for Written Findings Was Not Satisfied by Referencing the Oral Ruling in the Judgment.

The reference in the judgment to oral findings does not satisfy the requirement for written findings and conclusions. CP 214. The prevailing party in *People's Nat'l Bank of Wash. v. Birney's Enterprises, Inc.*, 54 Wn. App. 668, 670, 775 P.2d 466 (1989), prepared findings that said only "the court's oral findings of fact of September 25, 1987, are hereby incorporated by reference herein." This reference to oral findings was inadequate, and was a practice that the court said it "will not tolerate." *Id.*

Contrary to Meridian's position, *DGHI, Enterprises v. Pacific Cities, Inc.*, 137 Wn.2d 933, 977 P.2d 1231 (1999), did not hold that oral findings are adequate if they are adopted on the record. Resp. Br. 18-20. Prior to his death, Judge McCutcheon reviewed proposed written findings and stated on the record that he "intended to adopt" the proposed findings. *Id.* at 940. However, this oral statement had no binding effect because it was not "formally incorporated into findings, conclusions, and judgment." *Id.* at 944. The trial judge could have changed his decision even after

reviewing the proposed findings and orally indicating that they were acceptable. *Id.* at 978-48. The law requires “findings of fact and conclusions of law, signed by the court and filed, before judgment [can] be entered.” *Id.* at 948. In summarizing its reasons for requiring a remand, the Court noted that the trial judge did not “indicate, either by explicit statement or by his oral decision, that that decision purported to constitute a ‘written’ opinion with included findings of fact and conclusions of law.” *Id.* at 951.

DGHI does not support Meridian’s suggestion that the statement in the judgment that it was entered “pursuant to findings of fact and conclusions of law read into the record from time to time” is sufficient to adopt the oral ruling and satisfy the requirement for written findings. CP 214. *DGHI* did not address whether such a statement would be sufficient because there was no such statement in the record in that case. However, *People’s Nat’l Bank* did address that question, and answered it in the negative. 54 Wn. App. at 670. Furthermore, the language in *DGHI* that Meridian relies upon mentions an “explicit statement” by the judge that the oral decision constitutes “a ‘written opinion’ with included findings of fact and conclusions of law.” *DGHI*, 137 Wn.2d at 951. The portion of Meridian’s judgment cited by Meridian has no indication that the oral ruling was adopted as a “written opinion” by the trial court. CP 214.

The only ways to properly adopt findings and conclusions are to sign and file a written version or to issue a written opinion including findings and conclusions. See *DGHI*, 137 Wn.2d at 951; *WESCO Distribution, Inc. v. M.A. Mortenson Co.*, 88 Wn. App. 712, 716, 946 P.2d 413 (1997). Clearly, the statement in Meridian’s judgment that it was entered “pursuant to findings of fact and conclusions of law read into the record from time to time” is no better than the intolerable practice rejected in *People’s Nat’l Bank*. CP 214. As discussed above, the proposed written findings in *DGHI* were insufficient because the trial judge did nothing to adopt the findings as his written opinion, and he could have changed his decision even after indicating on the record that the proposed written findings were acceptable. *DGHI*, 137 Wn.2d at 949, 950. Similarly, Judge Hecht only stated his decision orally and did nothing to adopt the oral findings as his written opinion. The requirements of CR 52 were not met.

c. The Judgment Cannot Be Upheld Based Only on the Oral Ruling.

The trial court’s oral decision cannot be relied upon to support the judgment. Several cases confirm that CR 52 requires entry of written findings of fact and conclusions of law to support a judgment. *E.g. People’s Nat’l Bank*, 54 Wn. App. at 670 (“CR 52 requires written

findings.”); *see also* *DGHI*, 137 Wn.2d at 951; *WESCO Distribution, Inc.*, 88 Wn. App. at 716. Entry of written findings serves various purposes. One purpose for entering written findings “is to facilitate review by appellate courts.” *WESCO Distribution, Inc.*, 88 Wn. App. at 716. But CR 52 is not limited in application only to those cases that are appealed.

The preparation of proposed written findings by the prevailing party also allows the trial court and the opposing party an opportunity to review and refine the findings, and to object to them. *See* CR 52(c) (requiring presentation of proposed findings with five days’ notice). The requirement of written findings is “for the protection of the court and parties” and it “gives an opportunity to place upon the record its view of the facts and the law in definite written form, sufficiently at large that there may be no mistake. To the parties it furnishes the means of having their causes reviewed in many instances without great expense.” *DGHI*, 137 Wn.2d at 948 n.68 (quoting *Western Dry Goods Co. v. Hamilton*, 86 Wash. 478, 480, 150 P. 1170 (1915)).

It is sometimes said that the requirement that the trial judge file findings of fact is for the convenience of the upper courts. While it does serve that end, it has a far more important purpose—that of evoking care on the part of the trial judge in ascertaining the facts.

US v. Forness, 125 F.2d 928, 942-43 (2d Cir. 1942).

In light of these considerations, any exceptions from the requirement of written findings of fact and conclusions of law should be construed narrowly. As Meridian points out in its response, there are circumstances where an appeals court has reviewed the transcript of a judge's decision, but none of those circumstances apply in this case. There is no case where an oral ruling was sufficient to uphold a judgment in the absence of written findings and conclusions or a written decision.

The cases cited by Meridian in support of the proposition that the oral findings are sufficient are all distinguishable. In *Backlund v. University of Washington*, 137 Wn.2d 651, 656 n.1, 975 P.2d 950 (1999), the trial court prepared and signed a written decision. Findings and conclusions were not included in the memorandum decision, but the prevailing party had requested entry of separate findings and conclusions. *Id.* The majority opinion felt it was improper to penalize the prevailing party "for the trial court's ill-advised failure to comply with CR 52(a)(4)," and reviewed the memorandum decision despite the lack of formal findings. *Id.* Similarly, the trial judge in *Knudsen v. Patton*, 26 Wn. App. 134, 135 n.1, 611 P.2d 1354 (1980), issued a written memorandum decision, which was held sufficient under CR 52(a)(4). In contrast, the judgment against Morcos is not supported by a written memorandum decision, and Meridian did not request entry of written findings. *Backlund*

and *Knudsen* do not justify allowing an exception for the lack of written findings and conclusions in this case.

As mentioned above, the prevailing party in *People's Nat'l Bank*, 54 Wn. App. at 670, simply referred to the oral decision without entering formal findings, which was not acceptable on appeal. Similarly, the final order in *Sheldon v. Dep't of Licensing*, 68 Wn. App. 681, 845 P.2d 341 (1993), was also not supported by written findings. There is no indication in either opinion that the non-prevailing party objected to the lack of written findings, as Morcos did. Further, although the appellate court in each opinion did review the trial court's oral decision, in both cases it did so to support its decision to *reverse* the judgment, not to uphold it. *People's Nat'l Bank*, 54 Wn. App. at 674; *Sheldon*, 68 Wn. App. at 687.

Marriage of Booth, 114 Wn.2d 772, 791 P.2d 519 (1990), did not involve a judgment entered after trial where findings and conclusions are required by CR 52. Rather, it involved an order on a petition to amend a decree of dissolution to increase child support. Further, the court referenced the oral opinion to clarify the conclusion of law included in the written order. *Id.* at 777. The court relied on *Goodman v. Darden, Doman & Stafford Assocs.*, 100 Wn.2d 476, 481-82, 670 P.2d 648 (1983), in which the court reviewed the trial court's oral opinion to clarify an issue not addressed in the written findings. Thus, *Marriage of Booth* and

Goodman justified reviewing the transcript of the judge's decision only to clarify a written finding of fact or conclusion of law. In contrast, Meridian's judgment against Morcos has nothing in the nature of findings or conclusions, but is only an award of damages.

Meridian cannot dispute that several cases have been remanded on appeal where written findings and conclusions were not entered by the trial court. *Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wn.2d 413, 886 P.2d 172 (1994); *State v. Helsel*, 61 Wn.2d 81, 377 P.2d 408 (1963); *Boe v. Hodgson Graham Co.*, 97 Wash. 444, 166 P. 779 (1917). Unlike the cases cited by Meridian, there are no circumstances here that justify departure from the rule requiring entry of written findings and conclusions.

To allow the judge's oral findings to support the judgment in this case would erode the purpose of the rule requiring written findings. In effect, Meridian argues that a trial judge does not need to enter written findings and conclusions as long as he or she attempts to set forth a detailed oral decision. Adopting such a rule will virtually eliminate any requirement for written findings. In the case at hand, the trial judge gave an oral decision on February 23 and entered judgment on March 6, 2009. Proposed findings were never prepared and presented to Morcos in compliance with CR 52(c), which requires five days' notice and an

opportunity to object to proposed findings. If written findings had been prepared, Morcos could have clarified the court's findings and conclusions through objections. Morcos's ability to review and object to the findings prior to entry of judgment was significantly limited because the findings and conclusions were only read orally into the record. Entry of judgment based solely on oral findings and conclusions does not comply with the spirit or the purpose of CR 52 and renders the rule meaningless.

Even if the oral ruling is considered, Meridian's judgment cannot be upheld because portions of the decision were vague and incomplete. For example, it is not clear whether the trial judge construed the lease as requiring substantial completion of the landlord's work for delivery of the premises. Further, no findings or conclusions were entered regarding Morcos's requested offset for additional rent received from the replacement tenant or for the \$87,000 tenant improvement allowance. RP (February 23, 2009) 26-27; CP 349-350. The fact that Morcos assigned error to portions of the judge's decision, exercising an abundance of caution and in an attempt to comply with RAP 10.3 as much as possible, certainly does not mean that Morcos agrees that the decision was sufficiently clear to enable this court to review the matter on appeal. The judgment cannot be upheld without written findings of fact and conclusions of law.

II. The Motion for a New Trial Should Have Been Granted.

The decision denying Morcos's request for a new trial should also be reversed. Morcos did not waive the right to move for a new trial. There is nothing in the record to substantiate Meridian's claim that Morcos knew of the investigation or of any wrongdoing by Judge Hecht until the motion for new trial was filed. Formal charges against Judge Hecht were not filed until February 27, 2009, after he gave his oral decision against Morcos. CP 240. The fact that Morcos with the benefit of hindsight was able to identify incidents that evidenced the trial judge's preoccupation with the investigation does not support Meridian's baseless assertion that Morcos knew of the investigation at the time and made a tactical decision to wait before raising the issue.

Where an order on a motion for new trial "is predicated upon rulings of law, no element of discretion is present," and the order must be reviewed de novo. *Allyn v. Boe*, 87 Wn. App. 722, 729, 943 P.2d 364 (1997). Where no facts are in dispute, the only remaining questions must be questions of law. Whether a judge is distracted may be a factual determination, but it is undisputed that Judge Hecht was subject to a criminal investigation at the time of the trial, so whether he was fit to act as an arbiter of justice is a question of law.

Carkonen v. Columbia & P.S.R. Co., 102 Wash. 11, 14, 172 P. 816 (1918), does not stand for the proposition that any successor judge's decision on a motion for new trial is reviewed for abuse of discretion, but only that the successor judge has authority to decide a motion for a new trial even if he or she did not preside at trial.

Contrary to Meridian's position, a party does not need to establish actual prejudice in order to be entitled to a new trial. *State v. Post*, 118 Wn.2d 596, 619 n.9, 826 P.2d 172 (1992) (evidence of potential bias is sufficient to implicate the appearance of fairness doctrine). A new trial should be granted where there is "a reasonable doubt that the plaintiff received a fair trial," *Spratt v. Davidson*, 1 Wn. App. 523, 525-26, 463 P.2d 179 (1969). To put it another way, if a reasonably disinterested person would conclude that the proceedings appeared to be unfair, a new trial should be granted. *See State v. Ra*, 142 Wn. App. 688, 705, 175 P.3d 609 (2008).

Meridian misconstrues the holding of *Kramer v. J.I. Case Mfg. Co.*, 62 Wn. App. 544, 815 P.2d 798 (1991). Meridian implies that an error that did not in fact affect the outcome does not require a new trial, regardless of whether it could have. Resp. Br. 30. A new trial is required where circumstances exist that *could have* affected the outcome of trial,

regardless of whether they in fact did affect the outcome. *E.g. Morris v. Nowotny*, 68 Wn.2d 670, 415 P.2d 4 (1966).

Meridian's reliance upon *Commonwealth v. Hewett*, 380 Pa. Super. 334, 551 A.2d 1080 (1988), is also questionable. *Hewett* held that a party is only entitled to a new trial if he establishes that "bias, prejudice or partiality infected the jury or otherwise deprived him of a fair trial." *Id.* at 1085. Thus, the rule in Pennsylvania is that a litigant is entitled to a new trial only if actual prejudice is shown that necessarily affected the outcome. *E.g. Commonwealth v. Shaw*, 398 Pa. Super. 341, 580 A.2d 1379, 1381 (1990) (appeal denied because appellant was "unable to establish actual prejudice resulting from the judge's extrajudicial conduct"). As discussed above, however, Washington allows a new trial based upon potential bias that could have affected the outcome of the trial. Further, the trial in *Hewett* was a jury trial, which minimized the effect of an unfit judge, and the appellant did not challenge any of the trial judge's rulings of law. *Hewett*, 551 A.2d at 1085. In contrast, the trial between Morcos and Meridian was a bench trial, and Morcos has assigned error to most of the judge's decision.

Meridian complains that it would be unjust to grant a new trial because it has already spent significant time and resources in this litigation. Resp. Br. 31. But a judgment in the amount of \$377,657.49

was imposed on Morcos. CP 215. In light of the magnitude of the judgment, care should be taken to ensure that the trial was just, even if it means that the parties have to incur additional expense for a second trial.

As acknowledged by Judge Hecht himself, the judicial office “requires the highest degree of trust and responsibility” and he recognized that the pending criminal charges may impair “the confidence of the public in the Superior Court.” CP 243. The pending criminal charges caused Judge Hecht to take a leave of absence “to assure continued high public esteem” of the court. *Id.* The same concerns that led to Judge Hecht’s leave of absence based on the criminal charges support a finding of reasonable doubt in his ability to conduct a fair trial. Morcos deserves a fair trial in front of an untainted judge, and order denying their request for a new trial should be reversed.

III. The Lease Was Misinterpreted by the Trial Court.

The judgment against Morcos must be reversed because the trial court misconstrued the lease provisions at issue. Morcos does not argue that the Delivery Date was the same as the Commencement Date, or that the landlord’s work needed to be entirely complete in order to trigger delivery. Rather, Morcos argues that the lease requires *substantial* completion of the landlord’s work prior to the delivery date, and that the landlord breached the lease by failing to substantially complete its work

prior to October 1, 2009. Clearly, full completion and substantial completion are two different concepts. *E.g. Honeywell, Inc. v. Babcock*, 68 Wn.2d 239, 242-43, 412 P.2d 511 (1966) (discussing whether limitation provision began to run from date of substantial completion or actual completion); *1519-1525 Lakeview Blvd. Condominium Ass'n v. Apartment Sales Corp.*, 101 Wn. App. 923, 932, 6 P.3d 74 (2000) (substantial completion can occur even if additional work is performed later).

Construing paragraphs 5.2, 12.1(c), and 12.2 of the lease together, the delivery date is tied to the condition of the premises as it relates both to the status of landlord's work and the reasonableness of commencing tenant's work. Ex. 112. In order for the delivery date to occur, the landlord's work had to be substantially complete and the premises had to be in such a condition that the tenant could reasonably commence its work.

The trial court's oral decision focused only on whether it was possible for the tenant to begin its work and ignored the status of the landlord's work. RP (February 23, 2009) 13; CP 336. Meridian agrees that the trial court construed the lease with reference to the condition reasonably required for the commencement of tenant's work, not the status of landlord's work. Resp. Br. 35. The trial court erred either by failing to

consider whether the landlord's work was substantially complete as of October 1, 2006, or by finding that the landlord's work was substantially complete, contrary to substantial evidence in the record.

As referenced in the opening brief, significant aspects of the landlord's work were not complete as of October 1, and the landlord's own witnesses testified that the landlord's work was not substantially complete until November. *See* Opening Br. 23. Meridian has not argued in its response that the landlord's work was in fact substantially complete as of October 1. In fact, Meridian states that the landlord's work was substantially complete as of January 1, 2006. Resp. Br. 13. The judgment must be reversed because the landlord breached the lease by not substantially completing its work by October 1, 2007, as required for delivery.

IV. The Trial Court Did Not Apply the Correct Measure of Damages.

Judgment should also be reversed because the trial court improperly determined the damages resulting from any breach. The measure of damages is a question of law, and the amount of damages is a question of fact. *Sherman v. Kissinger*, 146 Wn. App. 855, 873-74, 195 P.3d 539 (2008). There was no dispute as to the amount of the tenant improvement allowance; the only dispute was whether it should be applied

as an offset. Further, there were no findings of fact regarding the tenant improvement allowance. Whether Morcos was entitled to an offset should be reviewed de novo.

Hargis v. Mel-Mad Corp., 46 Wn. App. 146, 730 P.2d 76 (1986), is inapplicable to the present dispute. *Hargis* involved breach of a commercial lease by the tenant, who was held liable for unpaid rent until a replacement tenant leased the space. *Id.* at 152. The monthly rent under the replacement tenant's lease was more than what the tenant had been obligated to pay, so the tenant claimed that it was entitled to a setoff against damages in the amount of the excess rent. *Id.* The court rejected this argument in part because the landlord had not yet actually received the rent, and there was no guarantee that the replacement tenant would continue to pay the rent, so the amount of the setoff would be speculative. *Id.* at 154. Further, the court applied the holding of a New Jersey decision that if the facts resulted in an inequity that must fall on one of the parties, it should fall on the breaching party. *Id.* (quoting *N.J. Indus. Props., Inc. v. Y.C. & V.L., Inc.*, 100 N.J. 432, 495 A.2d 1320, 1329-30 (1985)).

Both *Hargis* and *N.J. Industrial Properties* dealt with excess rent from a replacement tenant. In contrast, Morcos requests a setoff not for excess rent, but for the tenant improvement allowance Meridian would have had to pay had there been no breach. The setoff is required by basic

principles of contract damages: a party is entitled to recover the amount he would have received had the contract been performed, but not more than that amount. *E.g. Platts v. Arney*, 50 Wn.2d 42, 46, 309 P.2d 372 (1957) (“If the defendant, by his breach, relieves the plaintiff of duties under the contract which would have required him to spend money, an amount equal to such expenditures must be deducted from his recovery.”). The amount of the tenant improvement allowance is not an “inequity” to be apportioned between the parties as in *Hargis*; rather, it is an expense the landlord saved as a result of the tenant’s breach, and must be applied to reduce the landlord’s damages under the rule of *Platts* and similar cases.

Any factual findings the trial court may have made regarding this issue were not supported by the evidence. Meridian suggests that the tenant improvement allowance was not due, but the lease does not condition payment of the tenant improvement allowance on completion of the tenant’s work. Ex. 112 at D; RP VIII 1107. Mr. Stein testified that he would have paid the allowance regardless of what Morcos spent it on. RP VIII 1107. Meridian was obligated to pay the tenant improvement allowance the moment it signed the lease. At a minimum, the ambiguity regarding timing of the payment should be construed in the tenant’s favor.

E.g. McGary v. Westlake Investors, 99 Wn.2d 280, 287, 661 P.2d 971 (1983).

Further, there was no evidence that the landlord would have received a benefit at the end of the lease term from the tenant improvements. *See* Resp. Br. 42. It is more likely that any improvements would have been torn out for a replacement tenant, as happened here with the improvements that were constructed by Morcos. RP VII 983-85. Any speculative value that would have remained from Morcos's improvements has not been lost because there is a tenant in the space who constructed improvements that also become the landlord's property at the end of the lease. Ex. 57 at ¶¶ 21.1, .37.

V. Morcos's Claim for Fraud Should Not Have Been Dismissed.

The trial court's judgment dismissing Morcos's claim for fraud and misrepresentation should also be reversed. First, the decision is not supported by written findings of fact as required by CR 52(a)(5)(B), and so the decision must be reversed for the reasons discussed in Section I, *supra*. In addition, whether a party's reliance on a misrepresentation is justified depends on the particular circumstances presented. *E.g. Lawyers Title Ins. Corp. v. Baik*, 147 Wn.2d 536, 551, 55 P.3d 619 (2002). Further, a party is not bound to a document when the party's signature is procured

through fraud, deceit, or coercion. *E.g. Sherman v. Lunsford*, 44 Wn. App. 858, 861, 723 P.2d 1176 (1986); *Lyll v. DeYoung*, 42 Wn. App. 252, 711 P.2d 356 (1985).

Mr. Stein knew that the Olive Garden lease was Morcos's final offer, Ex. 108, but he made changes to that version and copied his changes so that they would appear in black, making it harder to distinguish the changes to the Morcos's proposal, RP VI 695. The next day, there were copies of both the Olive Garden version and what became the Starbucks version present at the Starbucks meeting. RP I 86; RP III 356; RP VI 745. Based upon the parties' review of some provisions of the lease and on Mr. Stein's representation that the copies were exactly the same as the Olive Garden version, Nabil Morcos was justified in signing the lease without carefully reviewing it. RP III 397. The dismissal of the misrepresentation claim should be reversed.

CONCLUSION

The judgment against Morcos cannot be upheld. The judgment is not supported by written findings of fact and conclusions of law in violation of CR 52. In addition, Morcos should have been granted a new trial based on the criminal investigation against the trial judge during trial. The judgment must be reversed because the trial judge misconstrued the

lease and ignored the fact that the landlord had not substantially completed its work by the delivery date as required and because he failed to credit an offset for the tenant improvement allowance. Finally, Morcos requests that the dismissal of its claim for misrepresentation be reversed.

Respectfully submitted this 29th day of January, 2010.

DICKSON STEINACKER PS

A handwritten signature in black ink, appearing to read "Kevin T. Steinacker", written over a horizontal line.

KEVIN T. STEINACKER, WSBA No. 35475
Attorneys for Appellants Morcos Brothers, Inc.,
Nabil Morcos, and Nader Morcos

Certificate of Service

I, the undersigned, hereby certify under penalty of perjury of the laws of the State of Washington that I caused the foregoing Reply Brief of Appellant to be served upon:

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DATED this 29 day of January, 2010 at Tacoma, Washington.


Kevin Steinacker