

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

No. 40767-1-II

TACOMA PIERCE COUNTY SMALL BUSINESS INCUBATOR, a
Washington Non-Profit Corporation, d/b/a WILLIAM M. FACTORY,
SMALL BUSINESS INCUBATOR,

Appellants,

vs.

SANDRA KENNEDY and JOHN DOE KENNEDY, a marital
community, SCOTT KENNEDY and JANE DOE KENNEDY, a marital
community, d/b/a SK Enterprises, a sole proprietorship, SK
LANDSCAPE, LLC, a Washington limited liability company,

Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

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BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in denying the Incubator's motion to set aside the Kennedys' Request for Trial de Novo. RP (4/16/2010) 3-8; CP 306-208.

2. The trial court erred in determining that filing proof of service of the Request for Trial de Novo on April 14, 2010, forty (40) days after the Arbitration Award was filed, constitutes substantial compliance with MAR 7.1 due to e-filing. CP 307 (Finding of Fact 4).

3. The trial court erred in ruling that all claims between and amongst the parties shall proceed to trial. CP 307 (Finding of Fact 5); CP 357 (Finding of Fact 5).

4. The trial court erred in denying the Incubator an award of attorney's fees. RP (4/16/2010) 8.6; CP 307.

5. The trial court erred in denying the Incubator's motion for reconsideration. RP (5/14/2010) 13.2-10; CP 357.

B. Issues Pertaining to Assignments of Error

1. Was it reversible error for the trial court to deny the Incubator's motion to dismiss the Kennedys' Request for Trial de Novo, where no proof of service of the Request for Trial de Novo was filed until forty (40) days after the Arbitration Award, and the only proof of service

on file does not state that all parties were served with the Request for Trial de Novo?

2. Did the trial court commit reversible error in determining that filing proof of service of the Request for Trial de Novo on April 14, 2010, constitutes substantial compliance with MAR 7.1 due to electronic filing, where the record contains no proof that the Incubator was electronically served with the Request for Trial de Novo or that the Incubator agreed to accept electronic service of pleadings? (Assignment of Error 2).

3. Did the trial court commit reversible error in ruling all claims between and amongst the parties should proceed to trial, where the only proof of service of the Request for Trial de Novo was filed forty (40) days after the Arbitration Award and fails to state all parties were served? (Assignment of Error 3).

4. Was it reversible error for the trial court to deny the Incubator an award of attorney's fees, where the Request for Trial de Novo should have been dismissed, and therefore the requesting parties failed to improve their position at trial? (Assignment of Error 4).

5. Was it reversible error for the trial court to deny the Incubator's motion for reconsideration, where all parties were not served

with the Request for Trial de Novo, and there was no proof of electronic service on file? (Assignment of Error 5).

6. Is the Incubator entitled to attorney's fees and costs on appeal?

II. STATEMENT OF THE CASE

A. Factual Background

This case involves an action for breach of a commercial lease between Tacoma Pierce County Small Business Incubator (hereinafter "the Incubator") and Scott Kennedy, as well as Sandra Kennedy's breach of a personal guarantee for the same. CP 3-57. On July 1, 2005, Defendant Scott Kennedy, doing business as SK Enterprises, entered into a one-year lease agreement with the Incubator (hereinafter the "Enterprises Lease") to rent Room Number 310 in the Incubator. CP 11-22. Scott and Mary Kennedy are and were husband and wife. CP 4 (Paragraph 1.5), 112 (Paragraph 5). The Enterprises Lease provides that SK Enterprises will pay \$450.00 per month in rent, plus a late fee of 5% of the monthly rent, and interest at 1% per month on delinquent accounts. CP 11. Section 36 of the Enterprises Lease provides that Scott Kennedy pledges an unconditional personal guarantee to make all required payments for rent and services. CP 15.

Scott Kennedy, d/b/a SK Enterprises, vacated the rented premises on August 15, 2006. CP 5 (Paragraph 2.4). At that time, Scott Kennedy/SK Enterprises owed \$5,159.90 in past due rent and telecommunication charges to the Incubator. CP 5 (Paragraph 2.4); 113 (Paragraph 11).

On August 16, 2006, Sandra Kennedy, the managing member of SK Landscape, LLC, entered into a one-year lease agreement with the Incubator (hereinafter the "LLC Lease") to rent the same room Scott Kennedy vacated (Room Number 310) in the Incubator. CP 5 (Paragraph 2.6), 26-37. Sandra Kennedy is and was married to Jack Kennedy, and Scott Kennedy is their son. CP 4 (Paragraph 1.6), 5 (Paragraph 2.7), 209 (Paragraph 6), 210 (Paragraph 14).

The LLC Lease provides that Defendant SK Landscape, LLC, will pay \$450.00 per month in rent, plus a late fee of 5% of the monthly rent, and interest at 1% per month on delinquent accounts. CP 26. As a condition to entering into the LLC Lease, Sandra Kennedy and SK Landscape, LLC, personally promised to repay the \$5,159.90 past due balance of SK Enterprises. CP 5 (Paragraph 2.9). A memorandum of that agreement was put into writing, signed by Sandra Kennedy, and attached to the LLC Lease, indicating that she would pay \$292.00 or more per

month over a two-year period toward the outstanding past due balance.

CP 6 (Paragraph 2.10), 39.

Section 36 of the LLC Lease provides that Sandra Kennedy pledges an unconditional personal guarantee to make all required payments for rent and services. CP 30. Section 37 of the LLC Lease provides that, in the event a dispute arises between the parties, the prevailing party is entitled to attorney's fees and costs. CP 30.

On July 1, 2007, SK Landscape, LLC, entered into a second lease with the Incubator (hereinafter the "Second LLC Lease"), by and through Sandra Kennedy. CP 41-53. The Second LLC Lease provides that SK Landscape, LLC, will pay \$830.00 per month in rent, plus a late fee of 5% of the monthly rent, and interest at 1% per month on delinquent accounts. CP 41. Section 24 of the Second LLC Lease provides that "[a]ny payment, where appropriate, may be in the form of service to the project. Only the Executive Director, at his or her discretion, will authorize service in lieu of payment." CP 44. Section 39 of the Second LLC Lease provides that Sandra Kennedy pledges an unconditional personal guarantee to make all required payments for rent and services. CP 45. Section 40 of the Second LLC Lease provides that, in the event a dispute arises between the parties, the prevailing party is entitled to attorney's fees and costs. CP 45.

SK Landscape, LLC, vacated the premises at the end of September 2008. CP 7 (Paragraph 2.19), 57. After being credited the last month's rent paid in advance, but before accounting for the debt of Scott Kennedy/SK Enterprises, SK Landscape, LLC, had a credit in the amount of \$591.82. CP 7 (Paragraph 2.19), 57. However, Scott Kennedy, Sandra Kennedy, and SK Landscape, LLC, failed and refused to pay the \$5,159.90 past due balance on the Enterprises Lease, plus applicable late fees and accrued interest. CP 5 (Paragraph 2.4); 7 (Paragraph 2.20), 113 (Paragraph 11).

B. Procedural History

The Incubator commenced suit against Sandra and Jack Kennedy (hereinafter "the Kennedys"), SK Landscape, LLC, and Scott and Mary Kennedy, husband and wife, for past due rent and the personal guarantee related thereto. CP 1-57. Steven M. Bobman appeared as attorney of record for the Kennedys (Sandra and Jack only) and SK Landscape, LLC, on September 3, 2009. CP 224-225. Scott and Mary Kennedy appeared and represented themselves pro se. CP 66-69. The Kennedys and SK Landscape, LLC, filed several counterclaims against the Incubator. CP 207-221. All counterclaims were dismissed prior to the arbitration, with the exception of a claim for payment for bird spikes installed at the

Incubator, and a claim that the Incubator withheld SK Landscape, LLC's mail after it vacated the premises. CP 260-262.

The matter was arbitrated on February 18, 2010, and the Arbitration Award was filed March 5, 2010. CP 282, 289. Mr. Bobman electronically filed a Request for Trial de Novo and For Sealing Arbitration Award on March 22, 2010, on behalf of Sandra Kennedy (although he still represented Jack Kennedy and SK Landscape, LLC, as well). CP 266. No proof of service of the Request for Trial de Novo was filed at that time. CP 266-268.

On April 1, 2010, the Incubator filed a motion to set aside the Request for Trial de Novo, unseal the Arbitration Award, and award the Incubator its attorney's fees, based upon the failure to file proof of service of the Request for Trial de Novo. CP 272-277, 281-288. The Kennedys filed a response on April 14, 2010, as well as a Certificate of Service. CP 289-298. The Certificate of Service states that the Request for Trial de Novo was delivered on March 23, 2010, to Nicole Bolan, attorney for the Incubator, and the Pierce County Superior Court Arbitration Department. CP 298-299. The Certificate of Service does not state that the Request for Trial de Novo was delivered to Scott or Mary Kennedy. CP 298-299.

The trial court heard the Incubator's motion to set aside the Request for Trial de Novo, unseal the Arbitration Award and award

attorney's fees on April 16, 2010. RP (4/16/2010) 3-8; CP 306-308. The trial court denied the Incubator's motion on the basis that the Request for Trial de Novo was electronically filed. RP (4/16/2010) 8.

The Incubator then filed a motion for reconsideration of the trial court's decision on April 19, 2010. CP 311-329. In response thereto, the Kennedys argued that counsel for the Incubator was automatically electronically served with the Request for Trial de Novo when it was filed, but submitted no evidence of the same, or evidence that proof of electronic service was filed within twenty (20) days of the Arbitration Award. CP 330-337. In reply, the Incubator submitted evidence that its counsel was not electronically served with the Request for Trial de Novo. CP 339 (Paragraph 4), 344.

On May 14, 2010, the trial court heard the Incubator's motion for reconsideration. RP (5/14/2010) 3-13; CP 345-347. At the hearing, Mr. Bobman admitted he did not send a copy of the Request for Trial de Novo to Scott or Mary Kennedy, but argued for the first time that he represented Scott and Mary Kennedy, and therefore it was not necessary to send them a copy of the Request for Trial de Novo. RP (5/14/2010) 11, 12.

The trial court denied the Incubator's motion for reconsideration. RP (5/14/2010) 12-13; CP 345-247. This appeal followed. CP 350-358.

III. ARGUMENT

A. THE PROOF OF SERVICE FOR THE REQUEST FOR TRIAL DE NOVO IS DEFECTIVE BECAUSE IT WAS NOT FILED WITHIN 20 DAYS OF THE ARBITRATION AWARD, NOR DOES IT DEMONSTRATE THAT ALL PARTIES WERE SERVED WITH THE REQUEST FOR TRIAL DE NOVO.

The trial court committed reversible error in denying the Incubator's motion to dismiss the Kennedys' Request for Trial de Novo, where no proof of service of the Request for Trial de Novo was filed until forty (40) days after the Arbitration Award was filed, and the only proof of service on file does not state that all parties were served with the Request for Trial de Novo. RP (4/16/2010) 3-8; CP 298-299, 306-308.

This court reviews the trial court's application of the mandatory arbitration rules de novo. *Christensen v. Atlantic Richfield Co.*, 130 Wn. App. 341, 344, 122 P.3d 937 (2005).

1. Filing proof of service of the Request for Trial de Novo within twenty (20) days of the Arbitration Award is a strict requirement to obtaining a trial de novo.

MAR 7.1(a) provides that a party requesting a trial de novo must not only file a request for trial de novo within twenty (20) days of the arbitration award being filed, but proof of service of the request for trial de novo must also be filed with the court within twenty (20) days of filing of the arbitration award. If the party requesting a trial de novo following

arbitration fails to file and serve proof of service within twenty (20) days of filing of the award, then the request for trial de novo must be denied, and the court must enter a judgment pursuant to the arbitration award. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 812, 947 P.2d 721 (1997).

In *Nevers*, the Supreme Court held as follows:

We are of the view that timely filing of a request for trial de novo of an arbitrator's decision in court ordered arbitration is necessary for the superior court to conduct a trial de novo...It follows, we believe, that the requirement in MAR 7.1(a) that proof of service of copies of the request for trial de novo be filed is also a prerequisite to obtaining a trial de novo. Our conclusion in that regard is dictated by the provisions of MAR 7.1, which make it clear that while one must timely file a request in order to obtain a trial de novo, mere filing of the request is not, by itself, sufficient. The request must, according to that rule, be filed "along with" proof that a copy of it was served on all parties to the case. We agree with Fireside that it is only when there has been timely service *and* filing of proof of that service, that the court may conduct a trial de novo. Both steps must be taken, and on this the rule is unambiguous.

Id. at 811-812. The *Nevers* Court went on to state:

If we were to conclude that it is not necessary to timely file proof of service of the request for trial de novo in order to obtain a trial de novo in superior court, we would in essence be extending the time within which to request a trial de novo. This we cannot do because we would be contradicting the additional language in MAR 7.1(a) that "[t]he 20-day period within which to request a trial de novo may not be extended." Furthermore, we would be

flying in the face of MAR 6.3 which indicates that the prevailing party in an arbitration may present a final judgment '[i]f within 20 days after the award is filed no party has sought a trial de novo under rule 7.1.'

Id. at 812. Therefore, it is a strict requirement of MAR 7.1 that the proof of service of the Request for Trial de Novo be filed within twenty (20) days of the Arbitration Award.

At the time the Request for Trial de Novo was electronically filed on March 22, 2010, the Kennedys failed to file proof of service of the same. CP 266-268. The Request for Trial de Novo itself does not contain a certificate of service, nor was one separately filed. CP 266-268. It was not until after the Incubator filed its motion to set aside the Request for Trial de Novo that the Kennedys filed a Certificate of Service on April 14, 2010, forty (40) days after the Arbitration Award was filed. CP 274-277, 281-288, 298.

Although strict compliance with MAR 7.1 may appear harsh and technical, the *Nevers* Court specifically addressed the fact that its ruling furthers Washington's public policy to reduce court congestion and delay in hearing civil cases:

Although our ruling is dictated by the plain language of MAR 7.1, we observe that requiring strict compliance with the filing requirements set forth in the rule better effectuates the Legislature's

intent in enacting the statutes providing for mandatory arbitration of certain civil cases. The primary goal of the statutes providing for mandatory arbitration (RCW 7.06) and the Mandatory Arbitration Rules that are designed to implement that chapter is to “reduce congestion in the courts and *delays in hearing civil cases.*” (citations omitted). Were we to conclude that the specific requirement of MAR 7.1 that copies of a request for trial de novo be served within 20 days of the filing of the arbitration award and that proof of that service be filed within that same period may be satisfied by substantial compliance, we would be subverting the Legislature's intent by contributing, inevitably, to increased delays in arbitration proceedings.

Id. at 815. Because the court record is clear that no proof of service was filed until April 14, 2010, forty (40) days after the Arbitration Award was filed, the trial court erred in denying the Incubator’s motion to dismiss the Request for Trial de Novo.

2. The Request for Trial de Novo was admittedly not sent to all parties of record, and therefore the request for a new trial should be dismissed.

MAR 7.1(a) specifically provides that the requesting party must file proof that a copy of the Request for Trial de novo “has been served on all other parties appearing in the case.” The Certificate of Service filed on April 14, 2010, alleges that the Request for Trial de Novo was delivered only to counsel for the Incubator and the Pierce County Arbitration

Department. CP 298-299, 346. The Certificate of Service makes no mention of the document being delivered to the two pro se parties, Scott and Mary Kennedy. CP 298-299, 346. The record is unambiguous that Mr. Bobman represented only SK Landscape, LLC, Sandra Kennedy and Jack Kennedy, and that Scott and Mary Kennedy were pro se. CP 66-69, 224-225, 280, 306-307, 309, 345-346, 348. Mr. Bobman admitted he did not send a copy of the Request for Trial de Novo to Scott or Mary Kennedy. RP (5/14/2010) 11. Therefore, the Kennedys failed to timely file and serve the Request for Trial de Novo on all parties as required by MAR 7.1(a). The trial court erred in denying the Incubator's motion to dismiss the Request for Trial de Novo.

B. THE FACT THAT THE REQUEST FOR TRIAL DE NOVO WAS ELECTRONICALLY FILED HAS NO BEARING ON WHETHER PROOF OF SERVICE WAS PROPERLY FILED WITHIN TWENTY DAYS OF THE ARBITRATION AWARD.

1. **MAR 7.1 requires that a party filing a request for trial de novo file proof of service of the request within twenty (20) days of the Arbitration Award, regardless of how the request for trial de novo was filed.**

The trial court erred in determining that filing proof of service of the Request for Trial de Novo on April 14, 2010, constitutes substantial compliance with MAR 7.1 due to electronic filing of the Request for Trial de Novo. CP 307 (Finding of Fact 4). The *Nevers* Court specifically

rejected a substantial compliance argument, finding that to allow substantial compliance with the twenty (20) day requirement to file both the Request for Trial de Novo and the proof of service would subvert the Legislature's intent by contributing to increased delays. *Nevers v. Fireside, Inc.*, 133 Wn.2d at 815. Therefore, filing outside of the twenty (20) day time limit is not excused for any reason, including electronic filing.

Further, the fact that the Request for Trial de Novo was electronically filed has no bearing on the requirement to file proof of service. The court file clearly demonstrates that no proof of service, whether by electronic service or legal messenger, was filed by the Kennedys until April 14, 2010. CP 298-299. Therefore, the fact that the Request for Trial de Novo may have been electronically filed with the court has no impact on the failure to file proof of service, by whatever means, within twenty (20) days of the Arbitration Award.

2. **Even assuming, for the sake of argument, that the Request for Trial de Novo was electronically served on counsel for the Incubator, service would have been insufficient, and there was still no proof of service filed within twenty days of the Arbitration Award.**

The Kennedys argued that the Request for Trial de Novo was electronically served upon the Incubator, and that the electronic system itself constitutes sufficient proof of service. RP (4/16/10) 6. However,

there is no evidence in the file that the Request for Trial de Novo was electronically served upon the Incubator, nor is there evidence that the electronic filing system keeps “proof of service.” The Certificate of Service filed in this matter states only that a copy of the Request for Trial de Novo was delivered to counsel for the Incubator by legal messenger; nowhere does it mention or allege that the document was electronically served upon the Incubator’s counsel. CP 298-299. Further, the LINX document submitted by the Incubator’s counsel shows all documents electronically served on the attorney for the Incubator for the period of January 1, 2010, to May 13, 2010, none of which are in the subject case. CP 344. Therefore, the record is uncontroverted that the Request for Trial de Novo was electronically filed, but not electronically served upon the Incubator’s counsel.

The evidence relied upon by the Kennedys as proof of electronic service was the Filing Notification from the Pierce County Superior Court LINX System. CP 294. However, the Filing Notification fails to satisfy the requirements of MAR 7.1 for two reasons: 1) nowhere in the document does it state that the Request for Trial de Novo was delivered to the Incubator or its counsel, it simply states that the document was received by the Pierce County Clerk’s Office; and 2) the Filing Notification was never filed until April 14, 2010, the same day the

Certificate of Service was filed. CP 294. Even assuming, for the sake of argument, that the Filing Notification was somehow sufficient proof of service, that document was not filed until forty (40) days after the Arbitration Award. CP 294. Therefore, the Filing Notification is not proof of service, nor was it filed within twenty (20) days of the Arbitration Award. MAR 7.1(a).

Even assuming, again for the sake of argument, that the Request for Trial de Novo was electronically served, GR 30 provides that “parties may electronically serve documents on other parties of record only by agreement.” GR 30. In this case, there was no evidence that counsel for the Incubator agreed to accept electronic service of documents in the case. Therefore, electronic service of the Request for Trial de Novo would have been ineffective. GR 30.

The fact that the Request for Trial de Novo was electronically filed, and even if it was electronically served, completely misses the point of MAR 7.1 and *Nevers*. The rule is that the requesting party must file proof of service within twenty (20) days of the Arbitration Award, demonstrating that the Request for Trial de Novo was served. MAR 7.1; *Nevers v. Fireside, Inc.*, 133 Wn.2d at 812. The issue in this case is not whether the Request for Trial de Novo was timely served, *but whether the proof of service was timely filed.*

The record is clear, the only proof of service was filed April 14, 2010, forty (40) days after the Arbitration Award. CP 298-299. As a result, the Request for Trial de Novo should be dismissed. MAR 7.1(a); *Nevers v. Fireside, Inc.*, 133 Wn.2d at 812.

C. THE TRIAL COURT HAS NO AUTHORITY TO CONDUCT A TRIAL ON THE CLAIMS BETWEEN AND AMONGST THE PARTIES.

The trial court erred in ordering that all claims between and amongst the parties shall proceed to trial. CP 307 (Finding of Fact 5); CP 357 (Finding of Fact 5). MAR 6.3 provides:

If within 20 days after the award is filed no party has sought a trial de novo under rule 7.1, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment.

MAR 6.3. "Failure to strictly comply with the requirement to file proof of service within 20 days of the arbitration award limits a trial court's authority to entering judgment upon the arbitrator's decision and award." *Kim v. Pham*, 95 Wn. App. 439, 445, 975 P.2d 544, *review denied*, 139 Wn.2d 1009, 994 P.2d 844 (1999). Because the Kennedys failed to strictly comply with the requirement to file proof of service within twenty (20) days of the Arbitration Award, the trial court's authority is limited to entering judgment upon the arbitrator's decision and award, and the trial

court erred in ordering that all claims between and amongst the parties shall proceed to trial. *Id.*

D. THE INCUBATOR IS ENTITLED TO ITS ATTORNEY'S FEES INCURRED AFTER THE ARBITRATION AWARD AS THE KENNEDYS FAILED TO IMPROVE THEIR POSITION AT TRIAL.

The trial court erred in failing to award the Incubator its attorney's fees incurred in pursuing the motion to dismiss the Request for Trial de Novo and the motion for reconsideration. RP (4/16/2010) 8; (5/14/2010) 9, 12-13; CP 307, 317, 346. This court reviews whether a party is entitled to an award of attorney's fees de novo. *Bloor v. Fritz*, 143 Wn. App. 718, 747, 180 P.3d 805 (2008).

A party that requests a trial de novo but fails to improve its position in the trial court must pay attorney's fees to the non-appealing party from the date of the request for trial de novo. MAR 7.3; RCW 7.06.060. In *Kim v. Pham*, the requesting party failed to file proof of service of the request for trial de novo within twenty (20) days of the arbitration award, so the request for trial de novo was denied. *Kim v. Pham*, 95 Wn. App. at 446-7. The non-appealing party was awarded attorney's fees pursuant to MAR 7.3, as the appealing party failed to improve its position. *Id.* In this case, because the trial court should have dismissed the Kennedys' request for a new trial, the trial court erred in

refusing to award the Incubator its attorney's fees incurred after the Request for Trial de Novo was filed. *Id.*

E. THE INCUBATOR'S MOTION FOR RECONSIDERATION SHOULD HAVE BEEN GRANTED.

The trial court committed reversible error in denying the Incubator's motion for reconsideration. RP (5/14/2010) 13.2-10; CP 357. This court reviews a trial court's denial of a motion for reconsideration for abuse of discretion. *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 497, 183 P.3d 283 (2008). A trial court abuses its discretion only if its decision is manifestly unreasonable or rests upon untenable grounds. *Id.*

The court denied the Incubator's motion for reconsideration on the basis that "there's been a vast technological change in the way that the courts are doing business," since *Nevers* was decided, and courts are encouraging counsel to electronically file documents. RP (5/14/2010) 12-13. The court did not address the issue raised by the Incubator on reconsideration, that defendants Scott and Mary Kennedy had not been served with the Request for Trial de Novo as required by MAR 7.1(a). RP (5/14/2010) 12-13. However, the record is uncontroverted that Mr. Bobman did not send a copy of the Request for Trial de Novo to Scott or Mary Kennedy, nor did he represent them. RP (5/14/2010) 11; CP 66-69, 224-225, 280, 306-307, 309, 345-346, 348.

Further, the basis of the court's ruling (that the Request for Trial de Novo was electronically filed) has nothing to do with the issue at hand. MAR 7.1(a) requires proof of service to be filed within twenty (20) days, in addition to the Request for Trial de Novo itself. The manner of filing the Request for Trial de Novo has no impact on whether a proof of service is timely filed. No proof of service was filed until forty (40) days after the Arbitration Award, on April 14, 2010. CP 298-299.

Finally, there is no evidence in the record that electronically filing the Request for Trial de Novo impacted service of the document in any way. The Kennedys submitted no evidence demonstrating electronic service of the Request for Trial de Novo, and the Incubator submitted evidence that it was *not* electronically served with the document. CP 294, 298-299, 344. Therefore, even assuming electronic *service* (as opposed to mere electronic filing) of a document through the court system somehow impacts the requirement to file proof of service, there is no evidence demonstrating electronic service in this case. For these reasons, the trial court's failure to grant the Incubator's motion for reconsideration was an abuse of discretion.

F. THE INCUBATOR IS ENTITLED TO AN AWARD OF FEES AND COSTS ON APPEAL.

The Incubator respectfully requests an award of fees and costs on appeal. RAP 18.1 provides for an award of costs and fees on appeal if otherwise permitted by applicable law. RAP 18.1(a). This court has authority to award fees on appeal where a statute or contract allows an award of attorney's fees at trial. *Bloor v. Fritz*, 143 Wn. App. at 753. In the present case, attorney's fees and court costs should have been awarded to the Incubator when the Kennedys failed to improve their position after filing the Request for Trial de Novo. MAR 7.3; RCW 7.06.060. In addition, the LLC Leases provide that the prevailing party is entitled to an award of attorney's fees. CP 30, 45. As a result, fees as costs are authorized on appeal. RCW 4.84.330; RCW 7.06.060; RAP 18.1(a); MAR 7.3; *Bloor v. Fritz*, 143 Wn. App. at 753. The Incubator requests permission to file an affidavit of fees and costs pursuant to RAP 18.1(d) following the decision on this appeal.

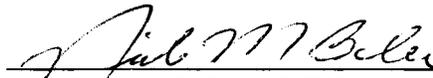
IV. CONCLUSION

The Incubator asks that this court reverse the order of the trial court denying the Incubator's motion to dismiss the Kennedys' request for trial de novo, or in the alternative, reverse the order of the trial court denying the Incubator's motion for reconsideration. The Kennedys' Request for Trial de Novo must be dismissed because no proof of service was filed until forty (40) days after the Arbitration Award was filed, and

the trial court's authority is therefore limited to entering judgment on the arbitrator's award. The trial court decisions should be reversed, and the Incubator should be awarded fees and costs in this matter as the prevailing party.

Respectfully submitted this 13 day of September, 2010.

BLADO KIGER, P.S.



NICOLE M. BOLAN, WSBA #35382
Attorneys for Tacoma Pierce County Small
Business Incubator

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 14th day of September, 2010, she placed with ABC Legal Messengers, Inc. an original Brief of Appellants and Certificate of Service for filing with the Court of Appeals, Division II, and true and correct copies of the same for delivery to each of the following parties or their counsel of record:

Attorneys for Respondents, Sandra Kennedy and Jack Kennedy, and SK Landscape, LLC:

Steven M. Bobman
8701 45th Street West
University Place, WA 98466

Pro se parties:

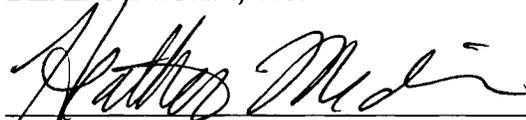
Scott Kennedy
11802 28th Ave. E.
Tacoma, WA 98445

FILED
COURT OF APPEALS
DIVISION II
10 SEP 15 PM 1:31
STATE OF WASHINGTON
BY 
OFFICIAL

Mary Kennedy
11802 28th Ave. E.
Tacoma, WA 98445

DATED this 14th day of September, 2010, at Tacoma, Washington.

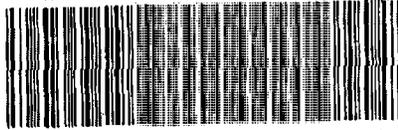
BLADO KIGER, P.S.

A handwritten signature in black ink, appearing to read "Heather Medina", written over a horizontal line.

Heather Medina, Paralegal

Appendix A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

TACOMA PIERCE COUNTY SMALL
BUSINESS INCUBATOR, a Washington
Non-Profit Corporation, d/b/a WILLIAM M.
FACTORY, SMALL BUSINESS
INCUBATOR,

Plaintiff,

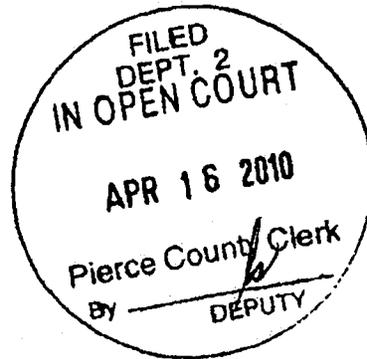
vs.

SANDRA KENNEDY and JOHN DOE
KENNEDY, a marital community, SCOTT
KENNEDY and JANE DOE KENNEDY, a
marital community, d/b/a SK Enterprises, a
sole proprietorship, SK LANDSCAPE, LLC, a
Washington limited liability company,

Defendants.

No. 09-2-04652-8

ORDER DENYING PLAINTIFF'S MOTION
TO ASIDE REQUEST FOR TRIAL DE
NOVO, UNSEALING ARBITRATION
AWARD AND AWARING ATTORNEY'S
FEES



THIS MATTER having come on regularly for hearing before the undersigned Judge of
the above-entitled court upon Plaintiff's motion for an order setting aside Defendants' Request
for Trial de Novo, unsealing the arbitration award, and awarding attorney's fees. Plaintiff,
TACOMA PIERCE COUNTY SMALL BUSINESS INCUBATOR, d/b/a WILLIAM M.
FACTORY, SMALL BUSINESS INCUBATOR, appearing by and through its attorney of

**ORDER DENYING PLAINTIFF'S MOTION TO
SET ASIDE DEFENDANTS' REQUEST FOR
TRIAL DE NOVO, UNSEALING ARBITRATION
AWARD, AND AWARING ATTORNEY'S FEES -
1 OF 3**

BLADO KIGER, P.S.
ATTORNEYS AT LAW
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1 record, NICOLE M. BOLAN of BLADO KIGER, P.S., defendants SANDRA and JACK
2 KENNEDY and SK LANDSCAPE, LLC, appearing through their attorney of record STEVEN
3 BOBMAN, and defendants SCOTT and MARY KENNEDY, failing to appear. The court
4 having heard the argument of counsel, having reviewed the records and files herein and being
5 fully advised in the premises, the Court finds as follows:

- 6 1. The Arbitration Award was filed March 5, 2010;
- 7 2. Defendants filed a Request for Trial de Novo on March 22, 2010;
- 8 3. The proof of service of the Request for Trial de novo was filed April 14, 2010;
- 9 4. Filing the proof of service on April 14, 2010, constitutes substantial compliance with
10 MAR 7.14 due to e-filing; *KUS*
- 11 5. Pursuant to Defendants' request for trial e novo, all claims between and amongst the
12 parties shall proceed to trial as scheduled in this matter;
- 13 6. There is no just reason for delay in entry of a final judgment on this matter.

14 Based upon the above findings, it is hereby:

15 **ORDERED, ADJUDGED and DECREED** as follows:

- 16 1. Plaintiff's motion is denied. Defendants' request for trial de novo is granted and the
17 parties shall proceed to trial;
- 18 2. The Arbitration Award filed March 5, 2010 shall remain sealed;
- 19 3. *No fees to either party.*

20 DONE IN OPEN COURT this *16* day of April, 2010.

21 DEPT. 2
IN OPEN COURT

22 APR 16 2010

23 Pierce County Clerk

[Signature]
24 HONORABLE KATHERINE M. STOLZ

24 ORDER DENYING PLAINTIFF'S MOTION TO
SET ASIDE DEFENDANTS' REQUEST FOR
TRIAL DE NOVO, UNSEALING ARBITRATION
AWARD, AND AWARDING ATTORNEY'S FEES -
2 OF 3

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1. Presented by:

2 **BLADO KIGER, P.S.**

3
4 
5 **NICOLE M. BOLAN, WSBA #35382**
6 Attorney for Plaintiff

7 Approved:
8 
9 **STEVEN M. BOBMAN, WSBA #9045**
10 Attorney for Defendants
11 SK Landscape, LLC, Jack and Sandra Kennedy

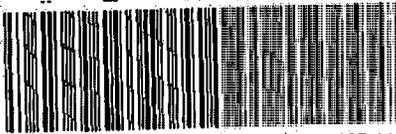
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**ORDER DENYING PLAINTIFF'S MOTION TO
SET ASIDE DEFENDANTS' REQUEST FOR
TRIAL DE NOVO, UNSEALING ARBITRATION
AWARD, AND AWARING ATTORNEY'S FEES -
3 OF 3**

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Appendix B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

TACOMA PIERCE COUNTY SMALL
BUSINESS INCUBATOR, a Washington
Non-Profit Corporation, d/b/a WILLIAM M.
FACTORY, SMALL BUSINESS
INCUBATOR,

Plaintiff,

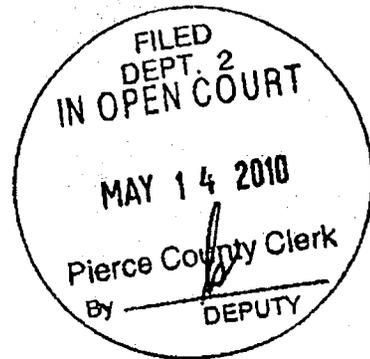
vs.

SANDRA KENNEDY and JOHN DOE
KENNEDY, a marital community, SCOTT
KENNEDY and JANE DOE KENNEDY, a
marital community, d/b/a SK Enterprises, a
sole proprietorship, SK LANDSCAPE, LLC, a
Washington limited liability company,

Defendants.

No. 09-2-04652-8

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF ORDER
DENYING PLAINTIFF'S MOTION TO SET
ASIDE DEFENDANTS' REQUEST FOR
TRIAL DE NOVO



THIS MATTER having come on regularly for hearing before the undersigned Judge of
the above-entitled court upon Plaintiff's Motion for Reconsideration of the Court's order
denying Plaintiff's motion to set aside Defendants' Request for Trial de Novo, unsealing the
arbitration award, and awarding attorney's fees. Plaintiff, TACOMA PIERCE COUNTY
SMALL BUSINESS INCUBATOR, d/b/a WILLIAM M. FACTORY, SMALL BUSINESS

**ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ORDER DENYING
PLAINTIFF'S MOTION TO SET ASIDE
DEFENDANTS' REQUEST FOR TRIAL DE NOVO**

- 1 OF 3

BLADO KIGER, P.S.
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3408 South 23rd Street
Tacoma, WA 98405
Tel (253) 272-2997 Fax (253) 627-6252

1 INCUBATOR, appearing by and through its attorney of record, NICOLE M. BOLAN of
2 BLADO KIGER, P.S., defendants SANDRA and JACK KENNEDY and SK LANDSCAPE,
3 LLC, appearing through their attorney of record STEVEN BOBMAN, and defendants SCOTT
4 and MARY KENNEDY, failing to appear. The court having heard the argument of counsel,
5 having reviewed the records and files herein and being fully advised in the premises, the Court
6 finds as follows:

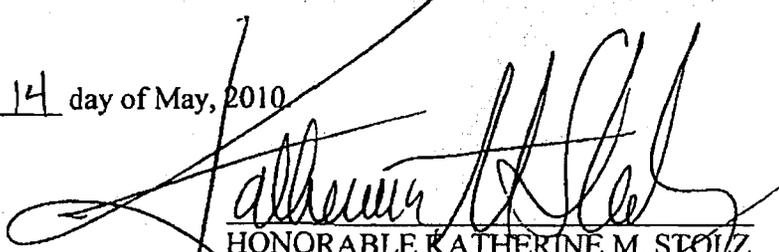
- 7 1. The Arbitration Award was filed March 5, 2010;
- 8 2. Defendants e-filed a Request for Trial de Novo on March 22, 2010;
- 9 3. The proof of service of the Request for Trial de Novo was filed April 14, 2010;
- 10 4. The proof of service states a copy of the Request for Trial de Novo was delivered to
11 Plaintiff's counsel by legal messenger. It does not state a copy was e-served upon her,
12 nor does it state a copy was delivered to Scott or Mary Kennedy;
- 13 5. Pursuant to Defendants' request for trial e novo, all claims between and amongst the
14 parties shall proceed to trial as scheduled in this matter;
- 15 6. There is no just reason for delay in entry of a final judgment on this matter.

16 Based upon the above findings, it is hereby:

17 **ORDERED, ADJUDGED and DECREED** as follows:

- 18 1. Plaintiff's motion for reconsideration is denied.
- 19 2. All terms of the April 16, 2010 order remain in full force and effect.

20
21 DONE IN OPEN COURT this 14 day of May, 2010

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23 
HONORABLE KATHERINE M. STOLZ

24 **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER DENYING PLAINTIFF'S MOTION TO SET ASIDE DEFENDANTS' REQUEST FOR TRIAL DE NOVO**
- 2 OF 3

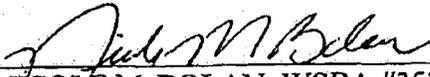
BLADO KIGER, P.S.
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Pierce County Clerk
BY _____
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Presented by:

BLADO KIGER, P.S.



NICOLE M. BOLAN, WSBA #35382
Attorney for Plaintiff

Approved:



STEVEN M. BOBMAN, WSBA #9045
Attorney for Defendants
SK Landscape, LLC, Jack and Sandra Kennedy

Appendix C

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C
 West's Revised Code of Washington Annotated Currentness
 Part IV Rules for Superior Court
 ☑ Superior Court Mandatory Arbitration Rules (Mar)
 ☑ VII. Trial De Novo
 → **RULE 7.1 REQUEST FOR TRIAL DE NOVO**

(a) Service and Filing. Within 20 days after the arbitration award is filed with the clerk, any aggrieved party not having waived the right to appeal may serve and file with the clerk a written request for a trial de novo in the superior court along with proof that a copy has been served upon all other parties appearing in the case. The 20-day period within which to request a trial de novo may not be extended. The request for a trial de novo shall not refer to the amount of the award and shall be in substantially the form set forth below:

SUPERIOR COURT OF WASHINGTON
 FOR [] COUNTY

_____)
Plaintiff,) No. ____
v.) REQUEST FOR
_____) TRIAL DE NOVO
Defendant.)

TO: The clerk of the court and all parties:

Please take notice that [name of aggrieved party] requests a trial de novo from the award filed [date] .

Dated: _____

 [Name of attorney
 for aggrieved party]

(b) Calendar. When a trial de novo is requested as provided in section (a), the case shall be transferred from the arbitration calendar in accordance with rule 8.2 in a manner established by local rule.

CREDIT(S)

[Amended effective September 1, 1989; September 1, 2001.]

Current with amendments received through January 15, 2010.

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END OF DOCUMENT

Appendix D

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(3) Electronic Transmission from the Court. The clerk may electronically transmit notices, orders, or other documents to a party who has filed electronically or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox. It is the responsibility of the filing or agreeing party to maintain an electronic mailbox sufficient to receive electronic transmissions of notices, orders and other documents.

(4) Electronic Service by Parties. Parties may electronically serve documents on other parties of record only by agreement.

(5) A court may adopt a local rule that mandates electronic filing by attorneys provided that the attorneys are not additionally required to file paper copies except for those documents set forth in (b)(2). The local rule shall not be inconsistent with this Rule and the Electronic Filing Technical Standards, and the local rule shall permit paper filing upon a showing of good cause. Electronic filing should not serve as a barrier to access.

COMMENT: When adopting electronic filing requirements, courts should refrain from requiring counsel to provide duplicate paper pleadings as "working copies" for judicial officers.

(C) TIME OF FILING, CONFIRMATION, AND REJECTION.

(1) An electronic document is filed when it is received by the clerk's designated computer during the clerk's business hours; otherwise the document is considered filed at the beginning of the next business day.

(2) The clerk shall issue confirmation to the filing party that an electronic document has been received.

(3) The clerk may reject a document that fails to comply with applicable electronic filing requirements. The clerk must notify the filing party of the rejection and the reason therefor.

(D) AUTHENTICATION OF ELECTRONIC DOCUMENTS.

(1) Procedures.

(A) A person filing an electronic document must have applied for and received a user ID and password from the applicable electronic filing service provider.

COMMENT: The committee encourages local clerks and courts to develop a protocol for uniform statewide single user ID's and passwords.

(B) All electronic documents must be filed using the user ID and password of the filer.

(C) A filer is responsible for all documents filed with his or her user ID and password. No one shall use the filer's user ID and password without authorization of the filer.

(2) Signatures.

(A) Attorney signatures. An electronic document which requires an attorney's signature may be signed with a digital signature or signed in the following manner:

s/ John Attorney

State Bar Number 12345

ABC Law Firm

123 South Fifth Avenue

Seattle, WA 98104

Telephone: (206) 123-4567

Fax: (206) 123-4567

E-mail: John.Attorney@lawfirm.com

(B) Non-attorney signatures. An electronic document which requires a non-attorney's signature and is not signed under penalty of perjury may be signed with a digital signature or signed in the following manner:

s/ John Citizen

123 South Fifth Avenue

Seattle, WA 98104

Telephone: (206) 123-4567

Fax: (206) 123-4567

E-mail: John.Citizen@email.com

(C) Non-Attorney signatures on documents signed under penalty of perjury. Except as set forth in (d)(2)(D)

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of this rule, if the original document requires the signature of a non-attorney signed under penalty of perjury, the filer must either:

- (i) Scan and electronically file the entire document, including the signature page with the signature, and maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter; or
- (ii) Ensure the electronic document has the digital signature of the signer.

(D) Arresting or citing officer signatures on citations and notices of infraction filed electronically in courts of limited jurisdiction. A citation or notice of infraction initiated by an arresting or citing officer as defined in IRLJ 1.2(j) and in accordance with CrRLJ 2.1 or IRLJ 2.1 and 2.2 is presumed to have been signed when the arresting or citing officer uses his or her user id and password to electronically file the citation or notice of infraction.

(E) Multiple signatures. If the original document requires multiple signatures, the filer shall scan and electronically file the entire document, including the signature page with the signatures, unless:

- (i) The electronic document contains the digital signatures of all signers; or
- (ii) For a document that is not signed under penalty of perjury, the signator has the express authority to sign for an attorney or party and represents having that authority in the document.

If any of the non-digital signatures are of non-attorneys, the filer shall maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter.

(F) Court Facilitated Electronically Captured Signatures. An electronic document that requires a signature may be signed using electronic signature pad equipment that has been authorized and facilitated by the court. This document may be electronically filed as long as the electronic document contains the electronic captured signature.

(3) An electronic document filed in accordance with this rule shall bind the signer and function as the signer's signature for any purpose, including CR 11. An electronic document shall be deemed the equivalent of an original signed document if the filer has complied with this rule. All electronic documents signed under penalty of perjury must conform to the oath language requirements set forth in RCW 9A.72.085 and GR 13.

(E) FILING FEES, ELECTRONIC FILING FEES.

(1) The clerk is not required to accept electronic documents that require a fee. If the clerk does accept electronic documents that require a fee, the local courts must develop procedures for fee collection that comply with the

payment and reconciliation standards established by the Administrative Office of the Courts and the Washington State Auditor.

(2) Anyone entitled to waiver of non-electronic filing fees will not be charged electronic filing fees. The court or clerk shall establish an application and waiver process consistent with the application and waiver process used with respect to non-electronic filing and filing fees.

CREDIT(S)

[Adopted effective September 1, 2003; amended effective December 4, 2007.]

Current with amendments received through January 15, 2010.

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Appendix E

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Part IV Rules for Superior Court

↳ Superior Court Mandatory Arbitration Rules (Mar)

↳ VI. Award

→ **RULE 6.3 JUDGMENT ON AWARD**

Judgment. If within 20 days after the award is filed no party has sought a trial de novo under rule 7.1, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment. A judgment so entered is subject to all provisions of law relating to judgments in civil actions, but it is not subject to appellate review and it may not be attacked or set aside except by a motion to vacate under CR 60.

CREDIT(S)

[Amended effective September 1, 1994.]

Current with amendments received through January 15, 2010.

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Appendix F

BLADO KIGER, P.S.

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West's Revised Code of Washington Annotated Currentness
Part IV Rules for Superior Court
 ↖ Superior Court Mandatory Arbitration Rules (Mar)
 ↖ VII. Trial De Novo
 → **RULE 7.3 COSTS AND ATTORNEY FEES**

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.

CREDIT(S)

[Amended effective September 1, 1989; September 1, 1993.]

Current with amendments received through January 15, 2010.

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Appendix G

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West's Revised Code of Washington Annotated Currentness

Title 7. Special Proceedings and Actions (Refs & Annos)

Chapter 7.06. Mandatory Arbitration of Civil Actions (Refs & Annos)

→ 7.06.060. Costs and attorneys' fees

(1) The superior court shall assess costs and reasonable attorneys' fees against a party who appeals the award and fails to improve his or her position on the trial de novo. The court may assess costs and reasonable attorneys' fees against a party who voluntarily withdraws a request for a trial de novo if the withdrawal is not requested in conjunction with the acceptance of an offer of compromise.

(2) For the purposes of this section, "costs and reasonable attorneys' fees" means those provided for by statute or court rule, or both, as well as all expenses related to expert witness testimony, that the court finds were reasonably necessary after the request for trial de novo has been filed.

(3) If the prevailing party in the arbitration also prevails at the trial de novo, even though at the trial de novo the appealing party may have improved his or her position from the arbitration, this section does not preclude the prevailing party from recovering those costs and disbursements otherwise allowed under chapter 4.84 RCW, for both actions.

CREDIT(S)

[2002 c 339 § 2; 1979 c 103 § 6.]

Current with 2010 Legislation effective through January 1, 2011

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Appendix H

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Title 4. Civil Procedure (Refs & Annos)

Chapter 4.84. Costs (Refs & Annos)

→ **4.84.330. Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties--Prevailing party entitled to attorney's fees--Waiver prohibited**

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.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorney's fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

CREDIT(S)

[1977 ex.s. c 203 § 1.]

Current with 2010 Legislation effective through January 1, 2011

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Appendix I

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West's Revised Code of Washington Annotated Currentness

Part III Rules on Appeal

⌘ Rules of Appellate Procedure (Rap)

⌘ Title 18. Supplemental Provisions

→ **RULE 18.1 ATTORNEY FEES AND EXPENSES**

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

(c) Affidavit of Financial Need. In any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses, each party must serve upon the other and file a financial affidavit no later than 10 days prior to the date the case is set for oral argument or consideration on the merits; however, in a motion on the merits pursuant to rule 18.14, each party must serve and file a financial affidavit along with its motion or response. Any answer to an affidavit of financial need must be filed and served within 7 days after service of the affidavit.

(d) Affidavit of Fees and Expenses. Within 10 days after the filing of a decision awarding a party the right to reasonable attorney fees and expenses, the party must serve and file in the appellate court an affidavit detailing the expenses incurred and the services performed by counsel.

(e) Objection to Affidavit of Fees and Expenses; Reply. A party may object to a request for fees and expenses filed pursuant to section (d) by serving and filing an answer with appropriate documentation containing specific objections to the requested fee. The answer must be served and filed within 10 days after service of the affidavit of fees and expenses upon the party. A party may reply to an answer by serving and filing the reply documents within 5 days after the service of the answer upon that party.

(f) Commissioner or Clerk Award Fees and Expenses. A commissioner or clerk will determine the amount of the award, and will notify the parties. The determination will be made without a hearing, unless one is requested by the commissioner or clerk.

(g) Objection to Award. A party may object to the commissioner's or clerk's award only by motion to the appellate court in the same manner and within the same time as provided in rule 17.7 for objections to any other rulings of a commissioner or clerk.

(h) Transmitting Judgment on Award. The clerk will include the award of attorney fees and expenses in the mandate, or the certificate of finality, or in a supplemental judgment. The award of fees and expenses may be enforced in the trial court.

(i) Fees and Expenses Determined After Remand. The appellate court may direct that the amount of fees and expenses be determined by the trial court after remand.

(j) Fees for Answering Petition for Review. If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review. A party seeking attorney fees and expenses should request them in the answer to the petition for review. The Supreme Court will decide whether fees are to be awarded at the time the Supreme Court denies the petition for review. If fees are awarded, the party to whom fees are awarded should submit an affidavit of fees and expenses within the time and in the manner provided in section (d). An answer to the request or a reply to an answer may be filed within the time and in the manner provided in section (e). The commissioner or clerk of the Supreme Court will determine the amount of fees without oral argument, unless oral argument is requested by the commissioner or clerk. Section (g) applies to objections to the award of fees and expenses by the commissioner or clerk.

CREDIT(S)

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