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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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NO.

41676-0-II

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

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**JASMEL SANGHA (aka JAS SANGHA)  
and SUSHEEL SANGHA, husband and wife,**  
**Appellants,**

**v.**

**MASCO PETROLUEUM, INC.,  
a Washington Corporation**  
**Respondent.**

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**REPLY BRIEF OF APPELLANT**

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## I. ASSIGNMENTS OF ERROR ARGUMENT

**APPELLANT'S ISSUE NO. 3:** Was Sangha entitled to attorney fees from a prior appeal in which he failed to comply with RAP 18.1? Yes

In the present case, the Respondent appealed a ruling for mandatory arbitration in favor of Jas Sangha. The trial court granted summary judgment against Jas Sangha and he appealed the summary judgment ruling to the Court of Appeals, Division II. The Court of Appeals reversed the grant of summary judgment made by the trial court and remanded it for trial. At trial, Jas Sangha, the Defendant, received a defense verdict. It is clear that Jas Sangha clearly prevailed in the mandatory arbitration appeal and as such, should be entitled to attorney's fees under MAR 7.3 and pursuant to the contract that Masco Petroleum had entered into for Harbor Cascade, Inc.

The Respondent, Masco Petroleum, confused the type of attorney's fees that are awarded in the Court of Appeals. In this regard, the court in *Hudson v. Hapner*, 170 Wash.2d, 22 dealt with a similar issue. In that case, *Hapner* had appealed from a MAR finding in favor of *Hudson*. The matter then went to trial at the Superior court level and *Hudson* once again prevailed. *Hapner* appealed to the Court of Appeals and the judgment was reversed. The matter was remanded for trial. At that time, *Hapner* withdrew his request for trial and his request for an appeal from mandatory arbitration. In this regard, the court stated at page 35:

Attorney's fees under RAP 14.2 are statutory attorney fees and costs are limited to costs on review. A prevailing party is determined by the outcome of the appeal. In

contrast, attorney fees and costs under MAR 7.3 depend on the outcome of a trial de novo and include all costs and reasonable attorney fees incurred after a request for trial de novo is filed. MAR 7.3

In *Hudson I*, *Hapner* substantially prevailed because he succeeded in achieving the relief he requested; reversal of the trial de novo result and remand for retrial. This result does not depend on whether *Hapner* improves his position in the trial de novo. Thus, the Court of Appeals correctly awarded him costs based on RAP 14.2. Of course, if *Hapner* fails to improve his arbitration position, then the trial court must award *Hudson* attorney fees and costs from both appeals under the mandatory provisions of MAR 7.3.

Masco Petroleum fails to note the difference between the two types of attorney's fees award i.e. statutory attorney's fees and costs and attorney's fees and costs awardable under MAR 7.3 or by statute. See *Tribble v. Allstate Prop. & Cas. Ins. Co.*, 134 Wash.App. 163, 174-175, 139 P.3d. 373 (2006), the Court of Appeals held that a party claiming mandatory fees and costs under MAR 7.3 is entitled to all fees and costs from the entire proceedings (i.e. trial and appeals) after the trial de novo request was made. *Tribble*, 134 Wash.App. 163, 174-175, 139 P.3d. 373.

**APPELLANT'S ISSUE NO. 4:** The Plaintiff contends that even though the Judge applied the wrong standard and legal principles to its analysis, as set forth in our previous brief and reply brief, that no error was committed because the Judge had discretion which they claim he did not abuse.

Masco Petroleum contends that there should have been a segregation of effort between fees for Harbor Cascade, Inc. and the

Sanghas. The only evidence in this regard was that only several hours were expended in representing Harbor Cascade, Inc. Harbor Cascade, Inc. which was a defunct corporation with no assets. Only several hours of time were devoted to representing Harbor Cascade, Inc. and an affidavit was filed to that effect by counsel. That affidavit was uncontradicted. (Appellant's Clerk's Papers 125). The summary judgment was granted against them without opposition of Harbor Cascade, Inc. and they did not appeal the summary judgment to the Court of Appeals. The Plaintiffs also contend that since the trial court recognized that the amount in controversy was small as compared to the request for attorney's fees and costs, that the award is reasonable. This is interesting because the trial court ordered over \$20,000.00 in attorney's fees to the Plaintiffs at the time summary judgment was granted against Jas Sangha prior to the subsequent appeal and subsequent jury trial. All of these actions were necessary are caused by the actions of Masco Petroleum and out of control by the Defendants, Jas and Susheel Sangha.

## **II. CONCLUSION**

The trial court applied the incorrect principles of law in this case and used its discretion in the present case and the award of \$5,000.00 attorney's fees.

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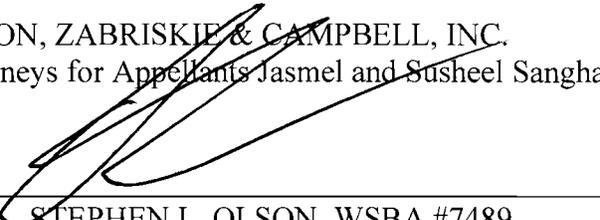
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RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of July,

2011.

OLSON, ZABRISKIE & CAMPBELL, INC.  
Attorneys for Appellants Jasmel and Susheel Sangha

By:   
STEPHEN L. OLSON, WSBA #7489

**PROOF OF SERVICE OF REPLY BRIEF OF APPELLANTS**

The undersigned, under penalty of perjury under the laws of the State of Washington, declares: I am regularly employed by the law firm of Olson, Zabriskie & Campbell, Inc. On July 29, 2011, I duly served Michael Spencer, attorney for Respondent Masco Petroleum, Inc. by placing a true and correct copy of Reply Brief of Appellants in the United States Postal Service, proper postage affixed thereto, to:

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