

FILED  
COURT OF APPEALS  
DIVISION II

NO. 42013-9-II

11 OCT -6 PM 12:04

COURT OF APPEALS STATE OF WASHINGTON  
DIVISION II BY ca  
OF THE STATE OF WASHINGTON

---

JULIE EASTMAN,

Respondent(s),

v.

PUGET SOUND BUILDERS NW, INC., a Washington corporation,

Petitioner,

And

COMMERCIAL INTERIORS, INC., a Washington corporation,  
COCHRAN, INC., a Washington corporation, STAR DOG FLOORING,  
INC., a Washington corporation, THE FLOOR GUYS,

Respondents.

---

ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT  
HONORABLE BRYAN E. CHUSHCOFF  
Pierce County Superior Court Cause No. 09-2-14951-3

---

STAR DOG FLOORING, INC.'S <sup>Respondent</sup> ~~APPELLATE BRIEF~~

---

James B. Meade, WSBA #22852  
Amanda M. Searle, WSBA #42632  
Attorneys for Respondent Star Dog Flooring, Inc.  
FORSBERG & UMLAUF, P.S.  
705 S. Ninth Street, Suite 302  
Tacoma, WA 98405  
Telephone: (253) 572-4200

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. STATEMENT OF THE ISSUES .....2

III. COUNTERSTATEMENT OF THE CASE.....2

    A. General Contractor Puget Sound Builders entered into a lump sum contract with Owner Macy’s for remodel work known as the Macy’s Northwest Puyallup Mall Expansion.....2-3

    B. PSB employee timesheets indicate that its employees spent at least thirty six hours doing “Demo for Carpet” on the week of November 18<sup>th</sup>, 2006.....3-5

    C. PSB’s contract imposes obligations to supervise, examine, and verify work furnished by others and to be fully responsible to Owner Macy’s for the acts and omissions of its contractors and those directly or indirectly employed by them.....5-7

    D. On November 18<sup>th</sup>, 2006, Ms. Eastman, an employee of Owner Macy’s, allegedly stumbled and sustained injuries when her heel got caught in a depression in the carpet, later claimed to have been created by a missing outlet cover.....8

    E. The trial court appropriately denied PSB’s motion for summary judgment and motion for reconsideration when it determined genuine issues of material fact remained as to whether PSB was liable for Ms. Eastman’s injuries.....8-9

IV. ARGUMENT.....9

    A. Standard of Review.....9-10

    B. Under RCW 4.24.155, a general contractor entering into a construction contract is liable for damages arising out of bodily injury caused by the negligence of his agents or employees.....11

C. PSB’s contract with Macy’s creates an agency between PSB and the flooring contractors and imposes liability on PSB for the acts and omissions of Commercial Interiors, “The Floor Guys,” and Star Dog.....11-16

D. The trial court did not commit reversible error when it refused to insert additional terms into the contract that were not contemplated by the parties and appropriately determined that PSB may be responsible to Ms. Eastman for the acts and omissions of the flooring contractors.....16-17

V. CONCLUSION.....17-18

## TABLE OF AUTHORITIES

### STATE CASES

<u>Dishman v. Whitney</u> , 121 Wn. 157, 192, 209 P. 12, 13 (1922).....	12
<u>Fairbanks v. J.B. McLoughlin Co.</u> , 131 Wn.2d 96 (1997).....	10
<u>Franklin v. Puget Sound Tug and Barge Co.</u> , 21 Wn.App. 517, 530-532, 586 P.2d 489, 497 (1978).....	13
<u>Hontz v. State</u> , 105 Wn.2d 302 (1986).....	10
<u>Jacobson v. State</u> , 81 Wn.2d 104 (1979).....	10
<u>Massey v. Tube Art Display, Inc.</u> , 15 Wn.App. 782, 551 P.2d 1387 (1976) .....	10
<u>Morris v. McNicoll</u> , 83 Wn.2d 491, 519 P.2d 7 (1974).....	9
<u>Ski Acres, Inc. v. Kittitas County</u> , 118 Wn.2d 852, 854, 827 P.2d 1000 (1992).....	9
<u>Yakima Fruit and Cold Storage Co. v. Central Heating and Plumbing, Co.</u> , 81 Wn.2d 528, 503 P.2d 108 (1972).....	10
<u>Young v. Key Pharmaceutical, Inc.</u> , 112 Wn.2d 216, 770 P.2d 182 (1989). .....	10

### FEDERAL CASES

<u>McGuire v. United States</u> , 349 F.2d 644 (1965).....	12
--	----

### STATUTES

RCW 4.24.115.....	11
-------------------	----

## I. INTRODUCTION

Although Puget Sound Builder's brief lists two appellate issues, this entire appeal essentially turns on one single point:

General Contractor, Puget Sound Builders, entered into a lump sum contract with Owner Macy's, agreeing **“that he is as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them,** as he is for the acts and omissions of persons directly employed by him.

Clerk's Papers (“CP”) at 136 (emphasis added).<sup>1</sup>

On July 24, 2006, Macy's contracted with general contractor PSB for remodel and a build-out to create additional retail space. CP at 66.<sup>2</sup> PSB agreed that it would be fully responsible for the work of its subcontractors and those directly employed by them. CP at 67.<sup>3</sup> PSB subcontracted with Commercial Interiors, Inc., who subcontracted with “The Floor Guys” and Star Dog Flooring, Inc. to provide carpet installation. CP at 59. During the week of November 18<sup>th</sup>, 2006, PSB employee timesheets, to include those of Roger Redden and Brett Carr, indicate that they collectively spent at least 36 hours on “demo for carpet.” CP at 78-79. On November 18<sup>th</sup>, 2006, Macy's employee Ms. Eastman,

---

<sup>1</sup> “Lump Sum Contract” Paragraph 31 (d).

<sup>2</sup> Macy's “Lump Sum Contract”, Articles of Agreement.

<sup>3</sup> Macy's “Lump Sum Contract”, Article I, Section (b).

who was on shift in the women's Sportswear department, allegedly stumbled when her heel was caught in a slight depression in the carpet. This case arises out of the alleged negligent installation of the carpet and the injuries Ms. Eastman sustained as a result. CP at 244.

The trial court understandably denied a motion for summary judgment on these facts. Although this Court is to review the question *de novo*, material facts are as disputed now as they were before—and Star Dog believes that the Court will find the record clear and the disposition straightforward.

## II. STATEMENT OF THE ISSUES

Summary judgment is appropriate if there are no genuine issues as to any material fact. A material fact exists as to whether PSB is liable for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them. Should PSB's motion for summary judgment be granted when a genuine issue of material fact exists?

## III. COUNTERSTATEMENT OF THE CASE

### A. General Contractor Puget Sound Builders entered into a lump sum contract with Owner Macy's for remodel work known as the Macy's Northwest Puyallup Mall Expansion.

Macy's, Inc., as an agent of Federated Department Stores, Inc. ("Macy's" or "Owner"), entered into a "Lump Sum Contract" with PSB in

the amount of one million three hundred forty-five thousand four hundred fifty-seven dollars and eighty cents (\$1,345,457.80) for additional remodel work known as the Macy's Northwest Puyallup Mall Expansion ("the project") at the South Hill Mall. CP 66-76. The project involved multiple phases and spanned over a year.

Part of the project involved removing and replacing carpet. PSB, as general contractor, subcontracted portions of the work to a flooring company, Commercial Interiors, Inc., ("Commercial"). CP at 26. Commercial hired various carpet, tile, vinyl, and other flooring contractors, including "The Floor Guys" and Star Dog, to perform various tasks over the course of many months under the supervision of the general contractor, PSB. CP at 56, 59.

**B. PSB employee timesheets indicate that its employees spent at least thirty six hours doing "Demo for Carpet" on the week of November 18<sup>th</sup>, 2006.**

A material fact exists as to who conducted the demolition and removed the outlet covers in the area where Ms. Eastman allegedly stumbled. Star Dog Flooring, Inc. was one of the carpet installers who worked on the project for approximately five months on both Phase I and Phase II (CP at 56), but does not remember ever carpeting the area where Ms. Eastman allegedly sustained her injury. CP 109.

Mr. DiMaggio claims, on behalf of “The Floor Guys,” that he did not carpet the area and concludes it must have been Star Dog. Star Dog’s former half-owner, Mr. Ben Adamski, testified at his deposition that he does not remember ever carpeting the area in question because of the lack of other materials, including tile that needed to be installed prior to the carpet. CP at 108.

According to Mr. Adamski, it would have been common practice for PSB’s employees to assist in the removal of outlet covers between 25-50 percent of the time. CP at 57. He also believed that on the Puyallup Macy’s project, some of the outlet covers were removed by PSB employees because of the need to work as a collaborative team and turn over the particular section overnight. CP at 57.

PSB’s records indicate that during the week of November 18, 2006 (the week of the alleged incident), Roger Redden logged ten hours of work related to “demo for carpet” (November 13, 2006), ten hours of work related to “carpet” (November 14, 2006), and ten hours of work related to “carpet” (November 15, 2006). CP at 78. In addition, Brett Carr’s timesheet indicates that he spent 6 hours on the week of November 18, 2006 on “PUB Carpet.” Yet, PSB claims that the work was done by a “carpeting specialist without supervision.” CP at 19.

PSB contends that it should be dismissed from this lawsuit because “the carpet layers job, literally, could have been done without the involvement of the general contractor whatsoever...” CP at 19. It supports this with evidence that no PSB employee was at or near the location of the alleged incident when Ms. Eastman sustained her injuries. The undisputed evidence shows, however, that PSB employees were conducting demo work on the carpet the week of Ms. Eastman’s accident in a rushed attempt to keep the job on schedule.

**C. PSB’s contract imposes obligations to supervise, examine, and verify work furnished by others and to be fully responsible to Owner Macy’s for the acts and omissions of its contractors and those directly or indirectly employed by them.**

Assuming for this appeal only that Star Dog or “The Floor Guys” were responsible for replacing the missing outlet covers in the area where Ms. Eastman stumbled, PSB’s contract with Macy’s, nevertheless, imposes a duty to supervise the work and to be responsible for the flooring contractors’ acts and omissions. In subsection (b) under Article I of the contract’s performance conditions states that:

Contractor shall do all work in accordance with the Contract Documents...the term “Work” shall mean (1) all the labor, materials, services, machinery, equipment, tools, plant facilities and other items required...(2) the **coordination of Contractor’s Work with that of the other**

**trades and the other contractors and subcontractors.** (Emphasis added)

CP at 67.<sup>4</sup>

The contract further requires that PSB examine and verify the work furnished by others, which would include Star Dog Flooring. It states in relevant part:

The Contractor shall, therefore, examine and verify any work in place or furnished by others upon which his work is in any way dependent for its perfect efficiency...if the contractor shall connect his work to such erroneous work of other contractors, he shall assume all charges and make any changes to his work made necessary by his failure to observe this condition.

CP at 26.<sup>5</sup>

As to supervision and direction of Star Dog's work, the contract provides the following relevant provisions:

The Contractor agrees that he is as **fully responsible** to the Owner for the **acts and omissions of his Subcontractors** and of **persons either directly or indirectly employed by them**, as he is for the acts and omissions of persons directly employed by him.

CP at 136.<sup>6</sup>

---

<sup>4</sup> Macy's Lump Sum Contract, Article I, Section (b).

<sup>5</sup> Macy's Lump Sum Contract, Section 8(b).

<sup>6</sup> Macy's Lump Sum Contract, Paragraph 31(d), CP at 136 (Emphasis Added).

\*\*\*

The Contractor **shall supervise and direct the Work**<sup>7</sup> both at the site and at the fabricating shops. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. He shall place a competent superintendent in charge of the Work at the site...who shall remain until final completion and acceptance of the Work...The Contractor shall also employ an assistant superintendent, depending upon job requirements, **so that all operations can be satisfactorily supervised.**

CP at 136.<sup>8</sup>

Finally, the contract requires PSB to “take all necessary precautions for the safety of employees on the Work” and to “comply with all applicable provisions of federal, state, county and local safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed.” CP at 135.<sup>9</sup>

---

<sup>7</sup> “Work” shall mean (1) all the labor, materials, services, machinery, equipment, tools, plant facilities and other items required...(2) the coordination of Contractor’s Work with that of the other trades and the other contractors and subcontractors.”

<sup>8</sup> Macy’s Lump Sum Contract, Paragraph 31(d). (Emphasis Added).

<sup>9</sup> Macy’s Lump Sum Contract, p. 34, Section 15. (b).

**D. On November 18<sup>th</sup>, 2006, Ms. Eastman, an employee of Owner Macy's, allegedly stumbled and sustained injuries when her heel got caught in a depression in the carpet, later claimed to have been created by a missing outlet cover.**

According to the Complaint, on November 18, 2006, Ms. Eastman was working in the Women's Sportswear department as an employee of Owner Macy's when her heel was allegedly caught in a depression in the carpet, causing her to stumble and sustain an injury. CP at 12. Shelley Lauderback, the Puyallup Macy's store manager observed that there was an indentation under the carpet where Ms. Eastman allegedly stumbled. CP at 232-234.

Macy's maintenance technician, Christopher Fergelic, discovered that the indentation was created by an uncovered electrical outlet box, and took subsequent remedial measures by installing a brass electrical outlet cover to ensure that no further incidents would occur. CP at 238-242.

**E. The trial court appropriately denied PSB's motion for summary judgment and motion for reconsideration when it determined genuine issues of material fact remained as to whether PSB was liable for Ms. Eastman's injuries.**

On January 27, 2011, PSB filed a motion for summary judgment to dismiss all claims against PSB, alleging there were no genuine issues of material fact, or inferences therefrom, which would establish that PSB could be held vicariously liable for the negligent acts of the flooring

subcontractors. CP at 16-22. Commercial Interiors and Star Dog relied on the provisions of PSB's contract with Macy's, in which the parties contemplated that PSB has a duty to Owner Macy's and its employee, Ms. Eastman, for the acts and omissions of its subcontractors and those employed by them. CP at 136. On February 25, 2010, the Honorable Bryan E. Chushcoff heard oral arguments from the parties and denied summary judgment, despite PSB's argument that it owed no contractual duty to "third party" Ms. Eastman, an employee of Owner Macy's. RP (Feb 25, 2010) at 1-2. On March 18<sup>th</sup>, 2011, the trial court signed an order denying PSB's motion for reconsideration. CP at 310-312.

#### IV. ARGUMENT

##### A. Standard of Review.

An appellate court reviews an order or denial of summary judgment *de novo*, performing the same inquiry as the trial court. Ski Acres, Inc. V. Kittitas County, 118 Wn.2d 852, 854, 827 P.2d 1000 (1992). The standard for summary judgment, of course, is well known. When defendants move for summary judgment, it is their burden to show the absence of a genuine issue of material fact. Young v. Key Pharmaceutical, Inc., 112 Wn.2d 216, 770 P.2d 182 (1989). A material fact is one upon which the outcome of the litigation depends. Morris v. McNicoll, 83 Wn.2d 491, 519 P.2d 7 (1974). When considering the

motion, all facts and reasonable inferences are considered in the light most favorable to the non-moving party. Yakima Fruit and Cold Storage Co. vs. Central Heating & Plumbing Co., 81 Wn.2d 528, 503 P.2d 108 (1972).

In considering all the facts and all reasonable inferences therefrom, in the light most favorable to the non-moving party, the court's function does not extend to resolving existing factual issues, nor can the court resolve a genuine issue of credibility of any witnesses. Fairbanks v. J.B. McLoughlin Co., 131 Wn.2d 96 (1997). Summary judgment may only be granted when the court is convinced there is no genuine issue of material fact, that reasonable minds could reach only one conclusion from the undisputed facts, and that the moving party is entitled to judgment as a matter of law. Jacobson v. State, 81 Wn.2d 104 (1979). Furthermore, summary judgment should only be granted if the pleadings, depositions, answers to interrogatories, admissions and affidavits show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56)(c), Hontz v. State, 105 Wn.2d 302 (1986).

In this case, there are a number of legal and factual allegations yet to be determined and based upon the depositions and documentary exhibits, significant direct and circumstantial evidence exists which could

lead a trier of fact to reasonably conclude that PSB's acts and/or omissions were a proximate cause that led to Plaintiff's alleged damages.

**B. Under RCW 4.24.155, a general contractor entering into a construction contract is liable for damages arising out of bodily injury caused by the negligence of his agents or employees.**

RCW 4.24.115 states:

A covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair...improvement to, or maintenance of any building...purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property...caused by or resulting from the sole negligence of the indemnity, **his or her agents or employees is against public policy and is void and unenforceable.** (Emphasis Added).

Washington law is clear that general contractors entering into construction contracts may not assign away their tort liability. RCW 4.24.115. Accordingly, PSB's contract with Macy's is in alignment with this law and it cannot contractually evade responsibility if the jury determines its agents or employees were at fault.

**C. PSB's contract with Macy's creates an agency between PSB and the flooring contractors and imposes liability on PSB for the acts and omissions of Commercial Interiors, "The Floor Guys" and Star Dog.**

Under Washington law, a general contractor is responsible for the negligence of its agents. "Where the facts presented are as consistent with

the theory of agency as that of independent contractor, the burden is upon the one asserting the independency of the contractor to show the true relation of the parties.” Dishman v. Whitney, 121 Wn. 157, 162, 209 P. 12, 13 (1922). Additionally, the “true relation” of the parties presents a question of fact for the jury. The determination of an individual's status as an employee or an independent contractor is one of fact. See McGuire v. United States, 349 F.2d 644 (9th Cir. 1965).

In determining whether one performs services for another as an employee or as an independent contractor, there are several factors or elements which should be taken into consideration:

- (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
- (b) whether or not the one employed is engaged in a distinct occupation or business;
- (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (d) the skill required in the particular occupation;
- (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (f) the length of time for which the person is employed;
- (g) the method of payment, whether by the time or by the job;
- (h) whether or not the work is part of the regular business of the employer;
- (i) whether or not the parties believe they are creating the relation of master and servant; and
- (j) whether the principal is or is not in business.

Franklin v. Puget Sound Tug & Barge Co., 21 Wn.App. 517, 530-532, 586 P.2d 489, 497 (1978). All of the factors listed are of varying importance in making the determination. Id. Franklin, at 530. With the exception of the element of control, however, it is not necessary that all remaining factors be present, for no one factor is conclusive and, in the final analysis, all directly or indirectly relate to, or inferentially bear upon, the crucial factor of control or right of control resident in the employer or principal. It is sufficient, then, if enough of the remaining factors are present, in favorable force, to permit an appropriate determination that the employer or principal exercised or retained any right of control over the manner, method, and means by which the work involved was to be performed and the desired result was to be accomplished. Id.

The Court's analysis of these factors in Massey v. Tube Art Display, Inc is instructive on how they should be interpreted in the present case. In Massey v. Tube Art Display, Inc., 15 Wn.App. 782, 551 P.2d 1387 (1976), Tube Art Display, a sign company, hired a backhoe operator to dig a hole for the relocation of a sign. In performing the work, he struck a small natural gas pipeline. Finding no indication of a break or leak, he left the site. The next day an explosion and fire occurred which was triggered by the broken pipeline, as a result of which two persons were killed and the contents of a building destroyed. The trial judge ruled

that the backhoe operator, although supposedly an independent businessman, was an agent of Tube Art and the jury was so instructed, which resulted in a plaintiff's verdict. Massey, at 782.

In Massey, the appellate court upheld the agency relationship as a matter of law even though the backhoe operator had been essentially self-employed for about five years, was free to work for other contractors, selected the time of day to perform the work assigned, paid his own income and business taxes, and did not participate in any of Tube Art's employees' programs. Massey, at 788.

Applying Washington's law on agency to the disputed facts of this case, although PSB may not have had a written agreement directly with Star Dog, the contract with Macy's directly applied to Star Dog, and specifically made PSB "fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him." CP at 136. The "Work" as specified in the contract meant: "(1) all the labor, materials, services, machinery, equipment, tools, plant facilities and other items required...(2) the coordination of Contractor's Work with that of the other trades and the other contractors and subcontractors." CP at 67.

Furthermore, although carpet installers do use independent judgment when installing carpet, due to the nature of the work in this case, and the extremely close proximity, collaboration, and required quick turnaround (overnight), this type of work had to be done under PSB's supervision and the contract so required, which is precisely why PSB appointed a night supervisor. CP at 263. Both the employer and the workman supplied materials as needed, such as floor patch, materials on the PSB truck, and potentially other materials in order to keep the job moving. Additionally, the place of work was furnished by PSB. CP at 67. As to the length of time, Star Dog was onsite for approximately 5 months total, working on both Phase I and Phase II of the project. CP at 56.

Additionally, remodel work is part of the regular business of PSB and Ben Adamski (Star Dog) believed he was under the supervision and direction of Roger Redden (PSB) because he would come to Roger first if he needed assistance. CP at 56.

The agency relationship between PSB and Star Dog was much more dependent and intertwined than the relationship between the contractors in Massey. Among the many ways that PSB directed and supervised its contractors, the evidence shows that: PSB directed the installers to the proper area/pad that they would be working on that night (CP at 56), created and enforced the carpeting schedule (CP at 56),

removed all fixtures which directly impacted flooring work (CP at 56, 98), provided assistance with demolition (CP at 38), including potential removal of outlet covers (CP at 57), assisted with materials (CP at 56), and addressed any problems that the flooring people would have (CP at 56). As the flooring contractors are agents of PSB, it liable for their negligence not only under Washington law but also by virtue of its contract with Macy's.

**D. The trial court did not commit reversible error when it refused to insert additional terms into the contract that were not contemplated by the parties and appropriately determined that PSB may be responsible to Ms. Eastman for the acts and omissions of the flooring contractors.**

As required by law and contemplated by the parties by their contract, PSB agreed to be fully responsible to Macy's for "any acts and omissions of the subcontractors." CP at 136. Although PSB may not have had a written agreement directly with Star Dog Flooring, the contract with Macy's directly applied to Star Dog, who was directly hired by Commercial Interiors to conduct carpet installation. PSB alleges that there is no evidence in the contract "that PSB agreed to step in the shoes of Macy's for purposes of tort liability." PSB's Appellate Brief, at 24. This is simply not true. Not only were the provisions of the contract carefully contemplated by the parties, but many were also required by law. PSB artfully disregards its contract.

PSB's contract with Macy's directly applied to Star Dog, and specifically made PSB "fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him." Judge Chushcoff refused to alter the terms of the contract and determined that there is still an issue of material fact with respect to PSB's tort liability.

#### **V. CONCLUSION**

Substantial evidence exists in favorable force to Star Dog Flooring, to create a genuine issue of material fact as to whether the contract between Macy's and PSB imposed a duty to Ms. Eastman.

At a minimum, PSB cannot credibly argue that the thirty six hours of billed time by its employees during the week in question is an issue of fact that must be decided in its favor. Even if it did, its contract with Macy's and the testimony of its employees substantiate the existence of a material dispute of fact.

While PSB has done an impressive job attempting to ignore its contractual obligations, that does not change the well-settled law upon which the trial court relied in denying PSB's Motion for Summary Judgment and Motion for Reconsideration. Star Dog Flooring requests

that this Court leave the provisions of the contract untouched rather than inserting terms favorable to PSB.

Dated this 4<sup>th</sup> day of October, 2011.

FORSBERG & UMLAUF, P.S.

By:   
James B. Meade, WSBA #22852  
Amanda M. Searle, WSBA #42632  
Attorneys for Respondent Star Dog  
Flooring, Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing **STAR DOG FLOORING, INC.'S RESPONSE TO PUGET SOUND BUILDERS NW, INC.'S MOTION FOR DISCRETIONARY REVIEW** on the following individuals in the manner indicated:

Mr. Thomas West  
Krilich, LaPorte, West & Lockner, P.C.  
524 Tacoma Avenue South  
Tacoma, WA 98402  
Facsimile: 253-383-8053

- Via U.S. Mail
- Via Facsimile
- Via Hand Delivery
- Via ECF/EMAIL

Mr. Adam Cox  
Law Offices of Kelly J. Sweeney  
1191 2nd Ave., Suite 500  
Seattle, WA 98101-2990  
Facsimile: 206-473-4031

- Via U.S. Mail
- Via Facsimile
- Via Hand Delivery
- Via ECF/EMAIL

Deborah Purcell  
Campbell, Dille, Barnett, & Smith, PLLC  
317 South Meridian  
Puyallup, WA 98371-5913  
Facsimile: 253-845-4941

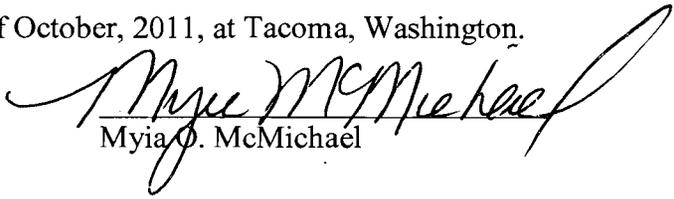
- Via U.S. Mail
- Via Facsimile
- Via Hand Delivery
- Via ECF/EMAIL

Mr. Robert W. Novasky  
Stone Novasky  
1 N. Tacoma Ave., Ste. 201  
Tacoma, WA 98403  
Facsimile: (253) 327-1047

- Via U.S. Mail
- Via Facsimile
- Via Hand Delivery
- Via ECF/EMAIL

STATE OF WASHINGTON  
BY [Signature]  
11 OCT -6 PM 12:04  
CLERK OF SUPERIOR COURT

SIGNED this 4<sup>th</sup> day of October, 2011, at Tacoma, Washington.

  
Myia O. McMichael