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No. 238423

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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

DAVID L. HORNBACK and SUSAN HORNBACK, husband and wife,
Appellants/Cross Respondents

vs.

KEN WENTWORTH and DIANE WENTWORTH, husband and wife,
Respondents/Cross Appellants

REPLY BRIEF OF CROSS-APPELLANTS

LARRY W. LARSON
WSBA #06522
MITCHELL J. HEAPS
WSBA #35457
Attorneys for Respondents
Ken and Diane Wentworth

LUKINS & ANNIS, P.S.
1405 S Pioneer Way
Moses Lake, WA 98837-2458
(509) 765-9555

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I. DISCUSSION

A. Attorneys' fees on appeal.

Under RAP 18.1 a party may be entitled to attorneys' fees on appeal assuming there is some other basis, whether contractual or statutory, upon which the party may rely in collecting its fees. RAP 18.1(a). In their initial appellate brief, Wentworth's mistakenly asserted that they are entitled to fees under RCW 4.84.250. Such is not the case and Wentworths and their counsel regret the error.

II. CONCLUSION

Wentworths have opted not to provide a supplemental brief in this appeal but respectfully submit that the Court affirm the Superior Court regarding the denial of statutory rescission and attorneys' fees under RCW 58.17 as argued in their initial appellate brief. Wentworths further request that the Court uphold the trial court's decision regarding the date from which prejudgment interest is to accrue, but reverse the trial court on the issue of the rate of interest. Finally, Wentworths ask that the Court reverse the lower court's ruling that Hornbacks are entitled to common law rescission of the real estate contract.

RESPECTFULLY SUBMITTED this 25th day of August, 2005.

LUKINS & ANNIS, P.S.

By  WSBA # 35457
LARRY W. LARSON

WSBA #06522

MITCHELL J. HEAPS

WSBA #35457

Attorneys for Respondents

Ken and Diane Wentworth