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Court of Appeals No. 67034-4-I

SUPREME COURT
OF THE STATE OF WASHINGTON

SHAUN LACOURSIERE,
a single individual,

Plaintiff-Petitioner,

v.

CAMWEST DEVELOPMENT, INC., a Washington corporation, and ERIC H.
CAMPBELL, an individual,

Defendants-Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In his Petition for Review, Plaintiff Shaun LaCoursiere asked the Court to grant review with regard to two discrete issues: (1) whether the trial court correctly dismissed his Wage Rebate Act (“WRA”) claims as a matter of law; and (2) whether Defendants CamWest Development, Inc.¹ (“CamWest”) and Eric Campbell are entitled to recover attorneys’ fees and costs as prevailing parties. As set forth below, the court of appeals correctly ruled in favor of CamWest and Campbell on both issues.

Starting with LaCoursiere’s WRA claims, the court of appeals correctly affirmed the trial court’s dismissal of those claims because the WRA does not apply to the discretionary bonus structure at issue. Washington courts have repeatedly held that bonuses are considered “wages” *only* if they are given so regularly that they create an implied contract and reliance. That body of law is fatal to LaCoursiere’s WRA claims because it is undisputed that the bonus payments at issue were not given regularly and were wholly discretionary. In addition, LaCoursiere’s WRA claims also fail because there was not in any event a rebate of wages (all bonuses were paid in accordance with the applicable bonus structure)

¹ After the briefing before the court of appeals was completed, both CamWest Development, Inc. and CamWest Managers, LLC ceased to exist. That development does not materially affect any of the issues, claims, or defenses discussed herein.

and because LaCoursiere knowingly submitted to the alleged violation (by choosing the enhanced bonus system). For any or all of these reasons, the trial court correctly dismissed LaCoursiere's WRA claims on summary judgment. *See* Section II.A below.

If the Court agrees that LaCoursiere's WRA claims fail as a matter of law, it must then decide whether CamWest and Campbell are entitled to recover attorneys' fees and costs as prevailing parties, as the court of appeals also held. Although LaCoursiere has repeatedly characterized this lawsuit as a WRA case, the parties' employment agreement was and remains central to his claims. Indeed, that agreement not only governed LaCoursiere's employment, it included significant terms that governed the bonus structure at issue in this litigation, including the allocation between direct payments and capital contributions. CP 103 (§ 2.2.5). LaCoursiere necessarily emphasized those terms in both his complaint and his summary judgment briefing. *See, e.g.*, CP 238-42, 247, 252-56, 394-99. Because the employment agreement is central to LaCoursiere's claims, the court of appeals correctly concluded that CamWest and Campbell are entitled to recover attorneys' fees as prevailing parties under the agreement. *See* Section II.B below.

II. ARGUMENT

A. The Court Of Appeals Correctly Affirmed The Trial Court's Dismissal Of LaCoursiere's WRA Claims On Summary Judgment.

The WRA makes it unlawful for an employer to “collect or receive from any employee a *rebate* of any part of *wages* theretofore paid by such employer to such employee.” RCW 49.52.050(1) (emphases added). It also permits an aggrieved employee to bring a civil action to recover “twice the amount of the *wages* unlawfully *rebated*.” RCW 49.52.070 (emphases added). Lastly, the statute also makes clear – by its plain terms – that “the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.” *Id.*

This Court, in *State v. Carter*, 18 Wn.2d 590 (1943), recognized the purpose of the WRA in similar terms. It stated:

[T]he fundamental purpose of the [WRA] . . . is to protect the *wages* of an employee In other words, the aim or purpose of the [WRA] is to see that the employee shall realize the full amount of the wages which by statute, ordinance, or contract he is entitled to receive from his employer, and which the employer is obligated to pay

Id. at 621. As the foregoing makes clear, the WRA applies only to *wages* that an employee is *entitled* to receive and an employer is *obligated* to pay.

Applying these legal principles, the court of appeals affirmed the trial court's dismissal of LaCoursiere's WRA claims on three separate and

independent grounds. First, the court of appeals held that the discretionary bonus payments at issue were not “wages” as required to establish liability under RCW 49.52.050(1) and .070. *LaCoursiere v. CamWest Dev., Inc.*, 172 Wn. App. 142, 152 (2012). Second, the court found that there was not in any event a rebate of wages as is also required to establish liability under the same statutory provisions. *Id.* And third, the court held that “even if the ... bonus structure amounts to a prohibited rebate of wages, LaCoursiere knowingly submitted to the violation.” *Id.* Any one of these grounds is sufficient to affirm. As set forth below, each is correct.

1. The Discretionary Bonus Payments At Issue Are Not “Wages” As Required To Establish Liability Under The WRA.

As noted above, the WRA applies only where there is an alleged rebate of *wages* that an employee is *entitled* to receive and an employer is *obligated* to pay. There is, as the court of appeals recognized (*id.* at 150-51), an established body of law in Washington regarding that determination. This Court first addressed the issue in *Powell v. Republic Creosoting Co.*, 172 Wn. 155 (1933). The Court held that the bonuses paid to the plaintiff in the first three years of his employment “may have been a gratuity only.” *Id.* at 158. The Court found an “implied agreement” that the plaintiff’s compensation would include a yearly bonus only *after* the bonuses were “paid regularly over a long term of years.” *Id.*

Because the payments were “regularly made” and “regularly increasing,” they were “compensation” rather than “a pure gratuity.” *Id.*

Applying *Powell*, the court of appeals has reached differing results based on the facts at issue. In *Simon v. Riblet Tramway Co.*, 8 Wn. App. 289 (1973), the court followed *Powell* and found that “the parties had an implied agreement to pay a bonus as part of plaintiff’s earned compensation” under circumstances it found to be “factually very similar” to *Powell*. *Id.* at 292-93. As in *Powell*, the employer in *Simon* had paid the plaintiff a steadily increasing bonus every year for over a decade. *Id.* The court also noted that the parties had not expressly agreed that the bonus would be discretionary and that “there was no relation between profitability of defendant and the payment of any bonus.” *Id.* at 291.

In *Byrne v. Courtesy Ford, Inc.*, 108 Wn. App. 683 (2001), the court reached the opposite result on different facts. The issue in *Byrne* was whether the employer had violated the WRA by demanding that an employee return to the employer a television that the employee had received from the employer. The court treated the television set as a “discretionary bonus” and concluded that this bonus was a “mere gratuity,” not wages or compensation, because there was no evidence that the bonus had been “given regularly to create an implied contract and

reliance.” *Id.* at 690-91. Relying on *Powell*, the court held that the WRA did not apply because “a discretionary bonus, unless given consistently and repeatedly, is a mere gratuity, not compensation.” *Id.*

The body of law requires dismissal of LaCoursiere’s WRA claims. There is no dispute that CamWest paid bonuses to LaCoursiere in only *three of the four years* in which LaCoursiere worked as a Project Manager and that the bonuses paid were in *decreasing* amounts. CP 6 (¶¶ 16-18), 58 (39:17-18), 66 (71:13-17), 162-63 (¶¶ 7, 9-10, 12), 212, 214-18, 220-22, 224, 226-28. Thus, as the court of appeals held, the facts at issue are similar to *Byrne*, which, as here, did not involve regular and increasingly large bonuses paid over the course of a decade as in *Powell* and *Simon*. *Byrne*, 108 Wn. App. at 690-91; *Powell*, 172 Wn. App. at 158; *Simon*, 8 Wn. App. at 292-93. Critically, this Court recognized in *Powell* that three years of discretionary bonuses are “a gratuity only.” 172 Wn. App. at 158. This case is no different in that regard.

In addition, as the court of appeals also recognized, the employment agreement in this case “was remarkably clear regarding the nature of LaCoursiere’s bonuses.” *LaCoursiere*, 172 Wn. App. at 151. The agreement stated that any bonuses would be discretionary, with the amounts linked to CamWest’s profits. CP 291 (§ 2.2). LaCoursiere does

not dispute that he did not, in fact, expect to be paid a bonus every year. See CP 56 (30:18-19), 160, 163, 236, 251, 291, 394-96. He has also admitted that he “is *not* arguing that an implied contract somehow obligates the defendants to pay him a fourth bonus.” CP 394 (emphasis added). The court of appeals relied on the absence of any such agreement or understanding in *Simon*. 8 Wn. App. at 290-91. That analysis, applied here, likewise shows that the bonus payments at issue are not “wages.”

The court of appeals aptly summarized its analysis regarding this issue as follows:

Under these circumstances, the bonuses were mere gratuities: they were not given regularly, did not create an implied contract that they would be paid every year, and LaCoursiere could not have relied upon them, given he knew CamWest had no obligation to provide them.

LaCoursiere, 172 Wn. App. at 151. As set forth above, the court of appeals was correct in so holding.²

² In his Petition for Review, LaCoursiere focused exclusively on the definition of “wage” in the Minimum Wage Act (“MWA”). That definition is pulled from a different statutory scheme than the WRA. Regardless, it is wholly consistent with the position of CamWest and Campbell as set forth in the text above. The MWA provides that “‘Wage’ means compensation due to an employee by reason of employment” RCW 49.46.010(7). As discussed herein, an established body of Washington law directly addresses whether a discretionary bonus is “compensation due to an employee” as opposed to a “mere gratuity.” The court of appeals correctly identified and applied that body of law.

2. Even If The Discretionary Bonus Payments At Issue Were “Wages,” The Bonus Structure Did Not Involve A “Rebate” As Is Also Required To Establish Liability Under The WRA.

The court of appeals also affirmed the trial court’s ruling dismissing LaCoursiere’s WRA claims on summary judgment on a second – separate and independent – basis: that there was not in any event a “rebate” of wages. *Id.* at 152. As noted above, the purpose of the WRA is to ensure that employees receive wages, that they are “entitled to receive” from their employers. *Carter*, 18 Wn.2d at 621. Even if the discretionary bonus payments at issue were “wages,” LaCoursiere received those wages. For that reason too, his WRA claims fail as a matter of law.

The evidence regarding this issue is clear and undisputed. The record shows, and LaCoursiere has never disputed, that CamWest compensated LaCoursiere in exactly the manner it was supposed to pursuant to the parties’ employment agreement: it paid a portion of each bonus as a direct check to LaCoursiere and a portion as a contribution to LaCoursiere’s capital account in CamWest Managers, LLC (“the LLC”). *See* CP 6 (¶¶ 16-18), 58 (39:17-18), 162-63 (¶¶ 7, 9-10), 212-28. In connection with his capital account, LaCoursiere received an increasing ownership interest in the LLC and substantial annual interest payments on his capital contributions. *See* CP 160-62 (¶¶ 3, 8), 169-208, 218, 224, 230.

When LaCoursiere's employment with CamWest ended, LaCoursiere received reimbursement in full for his 60% vested membership interest, likewise in accordance with the employment agreement. CP 69-70 (84:25-85:15), 165 (¶ 19), 169-208, 384-86 (¶¶ 2, 5). On these facts, LaCoursiere cannot show that there was an unlawful rebate.

Nor did a "rebate" occur simply because LaCoursiere's membership interest in the LLC had not fully vested upon termination of his employment. That is because LaCoursiere was not entitled to receive the unvested amount, nor was CamWest obligated to pay it, by "statute, ordinance, or contract." *Carter*, 18 Wn.2d at 621. Indeed, if the WRA somehow required employers to pay such amounts to avoid liability, employers would be entirely unable to offer employee compensation packages that require a minimum number of years of service before certain entitlements – such as stock ownership or retirement payments – vest. The Court should reject such an absurd interpretation of the WRA. *City of Auburn v. Gauntt*, 174 Wn.2d 321, 330 (2012) ("We do not interpret statutes so as to achieve absurd results.").

In short, the court of appeals correctly analyzed this issue in holding that LaCoursiere's "rebate" argument "ignores the plain language of the LLC agreement, which contains a vesting schedule for capital

account funds. Given LaCoursiere left when his capital account funds were only 60 percent vested, *he received precisely the funds he agreed to receive when he signed the LLC agreement.*” *LaCoursiere*, 172 Wn. App. at 152 (emphasis added). That reasoning, too, is correct.

3. Even If There Were A Violation Of The WRA (Which There Was Not), LaCoursiere’s WRA Claims Fail For The Further Reason That He “Knowingly Submitted To Such Violations.”

Finally, there is a third – also separate and independent – ground for affirming the trial court’s dismissal of LaCoursiere’s WRA claims on summary judgment. As noted above, the WRA expressly states that “the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.” RCW 49.52.070. Applying the plain language of the statute, the court of appeals held that “even if the ... bonus structure amounts to a prohibited rebate of wages, LaCoursiere knowingly submitted to the violation.” *LaCoursiere*, 172 Wn. App. at 152. That holding, like the others, is correct.

Consistent with the plain language of the WRA, this Court has confirmed that “[i]f an employee exercises his free choice in making a contribution [to the employer], even though in response to a request, his act does not amount to a rebate of his wages within the meaning of the statute” *Carter*, 18 Wn.2d at 623. The court of appeals has

consistently applied that rationale in holding that employees who “deliberately and intentionally deferred to [the employer] the decision of whether they would ever be paid” cannot bring claims under the WRA because they knowingly submitted to such conduct. *Chelius v. Questar Microsys., Inc.*, 107 Wn. App. 678, 682-83 (2001); *see also Durand v. HIMC Corp.*, 151 Wn. App. 818, 836-37 (2009).

This statutory limitation is likewise fatal to LaCoursiere’s WRA claims. LaCoursiere was not obligated, either as a condition of his employment or as a condition of receiving bonuses associated with his employment, to select the bonus structure at issue in this litigation. To the contrary, the record shows – without dispute – that LaCoursiere had a choice among different bonus structures: he could elect to receive (i) a pure percentage-of-salary bonus that would be paid to him directly or (ii) an enhanced bonus that would be paid to him directly *in part* with the balance paid to a capital account that would vest over time. *See* CP 54 (24:19-21), 65 (65:8-19), 70 (86:14-24), 161 (¶ 4). LaCoursiere testified that he agreed to the enhanced bonus structure because he thought it would provide greater compensation. CP 65 (65:8-19).

It is equally clear that LaCoursiere made a knowing and informed decision. LaCoursiere was an experienced manager who worked with

contracts as a regular aspect of his position. *See* CP 54 (22:6-18), 55 (26:16-23), 58 (38:13-39:3). He had ample time to review the terms of the bonus structure and ask questions if necessary. *See* CP 53 (19:10-19, 20:16-21:24), 55 (25:21-24), 58 (37:25-38:1), 60 (47:13-48:10), 61 (50:1-4), 73 (¶ 4), 97-98 (¶¶ 3, 7). LaCoursiere also acknowledged that he was aware from the beginning of his employment that he was an at-will employee who “was always at risk of being let go from a job,” something that could occur before his capital interest was 100% vested. CP 53 (18:6-19:2), 161, 210.

It is likewise undisputed that LaCoursiere did not feel pressured to agree to the bonus structure. *See* RP 44:3-4. Nor did he raise any objections to the bonus structure or request to opt out of it at any time during his employment. *See* CP 57 (33:19-21, 35:19-21), 60 (47:25-48:6), 70 (87:17-20), 73 (¶ 4), 97-98 (¶¶ 3, 7), 163 (¶ 11). To the contrary, LaCoursiere continued to enjoy, without objection, the substantial benefits of the bonus program, including enhanced bonuses, an ownership interest in the LLC, and annual interest payments on the contributions to his capital account in the LLC. On these undisputed facts, LaCoursiere’s WRA claims fail because he “knowingly submitted” to any alleged violation. RCW 49.52.070.

In his Petition for Review (at page 20), LaCoursiere argued, *for the very first time in this proceeding*, that he did not “knowingly submit” to the bonus structure because “[t]he LLC agreement he signed makes clear the vesting schedule applied to his share of the fair market value of the LLC, *not* to the bonuses he earned.” That is incorrect. The employment agreement and LLC agreement expressly provided that LaCoursiere’s membership interest in the LLC (which was acquired through the bonus payments contributed to his capital account) would vest in annual increments of 20%, that CamWest would buy out LaCoursiere’s vested membership interest in the LLC upon termination of LaCoursiere’s employment, and that the value of the vested membership would be calculated as “the fair market value of the Company ... divided by the total number of Units held by Members ... times the applicable percentage” of LaCoursiere’s vested membership interest. CP 195-96 (§§ 12.3-12.4). There is nothing unclear about these provisions, and it is *undisputed* that CamWest paid LaCoursiere *in full* for his 60% vested membership interest just as the parties had agreed. *See* CP 69-70 (84:25-85:15), 165 (¶ 19), 195 (§ 12.4), 385-86 (¶ 5).

In sum, the court of appeals aptly summarized both the applicable legal principles and relevant facts as follows:

LaCoursiere voluntarily entered into the employment and LLC agreements. These agreements made it clear that the bonuses were entirely discretionary; that the purpose of the capital accounts was to provide the LLC with capital; and that the capital account funds were subject to a vesting and forfeiture schedule. Under these circumstances, we conclude LaCoursiere “knowingly submitted” to any violation.

LaCoursiere, 172 Wn. App. at 153. This reasoning is likewise correct and is yet another reason that this Court should affirm.

B. The Court Of Appeals Correctly Concluded That CamWest And Campbell Are Entitled To Recover Attorneys’ Fees And Costs Under The Parties’ Agreement.

1. The Attorneys’ Fees Provision In The Parties’ Agreement Is Applicable Here.

Section 8.6 of the parties’ employment agreement states:

If either party brings an action arising under this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney fees incurred in connection therewith, whether at arbitration, trial or any appeal therefrom.

CP 449 (§ 8.6). There is no dispute, nor could there be, that CamWest and Campbell were the prevailing parties in the trial court and in the court of appeals. As such, the dispositive issue is whether this contractual fee-shifting provision applies here even though LaCoursiere has repeatedly characterized this lawsuit as a WRA case.

Addressing that issue, this Court announced the controlling legal standard in *Seattle First National Bank v. Washington Insurance Guaranty Association*, 116 Wn.2d 398, 413 (1991), as follows: “Under Washington

law, for purposes of a contractual attorneys' fee provision, an action is on a contract if the action arose out of the contract and if the contract is central to the dispute." That legal standard is easily satisfied here because LaCoursiere has repeatedly emphasized the integral connection between the parties' employment agreement and his claims. *See, e.g.*, CP 253 (LaCoursiere arguing that "the defendants simply did not adhere to the contract"); RP 17:18-18:13 (LaCoursiere arguing that CamWest and Campbell violated the employment agreement); RP 22:12-16 (same). In addition, the employment agreement set forth the terms of the bonus structure, and the bonuses issued to LaCoursiere were paid pursuant to those terms. *See* CP 26-28, 162-63, 445-46 (§ 2.2). Indeed, were it not for the employment agreement, there could not have been any alleged entitlement to wages or any alleged rebate.

The court of appeals cited this Court's opinion in *Seattle First* (as well as other cases to the same effect) and held as follows:

Here, the terms and proper enforcement of the employment agreement is central to LaCoursiere's WRA claim. In other words, this action arose out of the parties' employment agreement and that agreement was central to the dispute.

LaCoursiere, 172 Wn. App. at 154. The above analysis is sound. Given the centrality of the parties' employment agreement, this Court should

likewise hold that CamWest and Campbell are entitled to recover attorneys' fees and costs under the parties' agreement.

2. LaCoursiere's Unconscionability Argument Fails Both On Waiver Grounds And On The Merits.

In his Petition for Review, LaCoursiere asserted – for the first time – that the fee-shifting provision in the parties' employment agreement is unconscionable. Neither the trial court nor the court of appeals in this matter addressed that argument because LaCoursiere did not assert the argument until he filed his Petition for Review in this Court. Indeed, as the court of appeals noted in its opinion, LaCoursiere barely mentioned the prevailing party attorneys' fees issue in that court and instead asserted “that ‘employers are never entitled to fees under the WRA’ without acknowledging CamWest’s [contractual fee-shifting] argument.” *Id.* LaCoursiere’s unconscionability argument is therefore waived. *See Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252 (1998) (“This court does not generally consider issues raised for the first time in a petition for review.”); *Pappas v. Hershberger*, 85 Wn.2d 152, 154 (1975) (“Having failed to properly raise or preserve the present issue in either the trial court or Court of Appeals, we will not consider it here for the first time on appeal. The petition for review was improvidently granted.”).

The above waiver principles are especially significant here because the unconscionability analysis is fact-bound. In *Satomi Owners Association v. Satomi, LLC*, 167 Wn.2d 781 (2009), this Court recognized that procedural unconscionability turns on “all the circumstances surrounding the transaction” and that a contract is substantively unconscionable only if the party asserting unconscionability can show that “the disputed provision is so one-sided and overly harsh as to render it unconscionable.” *Id.* at 814-15 (internal quotation marks and citations omitted). CamWest had no reason to fully develop the record regarding these issues because LaCoursiere did not assert an unconscionability argument until he filed his Petition for Review. It would be manifestly unfair to strike down the prevailing party attorneys’ fees provision on this basis. See *In re Audett*, 158 Wn.2d 712, 726 (2006) (“[O]pposing parties should have an opportunity ... to respond to possible claims of error, and to shape their cases to issues and theories, at the trial level, rather than facing newly-asserted errors or new theories and issues for the first time on appeal.” (internal quotation marks and citation omitted)).

If the Court nevertheless addresses the merits of LaCoursiere’s unconscionability argument, it should reject the argument. The centerpiece of the argument, as stated in LaCoursiere’s Petition for

Review (at pages 16-17), is the court of appeals' decision in *Walters v. A.A.A. Waterproofing, Inc.*, 151 Wn. App. 316 (2009), which struck down various provisions in an arbitration agreement on unconscionability grounds – including a prevailing party attorneys' fees provision – because those provisions made the cost of arbitration “prohibitive for this middle class plaintiff.” *Id.* at 319. The reasoning and result in *Walters* do not control here for several reasons.

First, the fee-shifting provision in *Walters* was contained in an arbitration clause; thus, the court of appeals' determination addressed the arbitration-specific question of whether prohibitive costs impacted the plaintiff's ability to vindicate his rights. *Id.* at 321. This case does not involve an arbitration agreement or the associated analysis regarding whether arbitration would be cost-prohibitive. *Walters* is simply not applicable to this situation. See *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 520-21 (2009) (distinguishing attorneys' fees provision from the line of arbitration cases, such as *Walters*, “which were deemed to effectively foreclose legal action for one side”).

Second, *Walters* is factually distinguishable. Significantly, the court in *Walters* specifically noted that it was deciding the unconscionability issue “on the facts presented,” which included (for

example) a declaration that Walters had submitted in the trial court “about his financial circumstances.” 151 Wn. App. at 321. Although this issue was not fully developed in the trial court (for the reasons set forth above), the record shows that LaCoursiere was an experienced construction manager whose position required him to review, interpret, and implement complex contracts on a regular basis. *See* CP 54 (22:6-18), 55 (26:16-23), 58 (38:13-39:3). Equally important, LaCoursiere willingly selected the bonus structure as *one* of the compensation options available to him. *See* Section II.A.3 above. Nor was the agreement at issue a contract of adhesion. *See* CP 102-07. As such, *Walters* is inapposite.³

Finally, LaCoursiere’s reliance on *Walters* ignores this Court’s case law and would lead to an absurd result. In *Torgerson*, this Court rejected an argument that a contractual fee-shifting provision was unconscionable because the plaintiffs were “trained, licensed real estate agents who had a reasonable opportunity to understand the terms of the agreement, which under these circumstances cannot be classified as a contract of adhesion.” 166 Wn.2d at 521. That holding, not *Walters*, is controlling here. Otherwise, *all* fee-shifting provisions in Washington

³ This Court’s decision in *Gandee v. LDL Freedom Enterprises, Inc.*, 176 Wn.2d 598 (2013), is distinguishable for the same reasons.

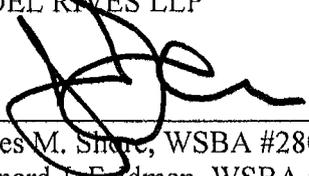
employment contracts, *regardless of circumstances*, would be unconscionable. Such a result would not only rewrite Washington law, it would allow disgruntled employees to file meritless wage claims without fear of liability. That is not the rule in Washington, nor should it be.

III. CONCLUSION

For the foregoing reasons, the Court should hold (a) that the trial court correctly dismissed LaCoursiere's WRA claims on summary judgment, and (b) that CamWest and Campbell are entitled to recover attorneys' fees and costs as prevailing parties.

RESPECTFULLY SUBMITTED this 9th day of August, 2013.

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CERTIFICATE OF SERVICE

I, Diane M. Zeck, certify under penalty of perjury under the laws of the State of Washington that, on August 9, 2013, I caused the foregoing document to be served on the person listed below in the manner shown:

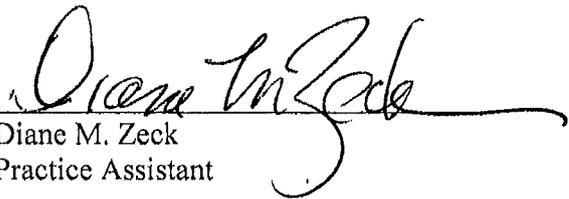
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Dated this 9th day of August, 2013, at Seattle, Washington.


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Enclosed for filing in the above-referenced matter is Respondent's Supplemental Brief, with a Certificate of Service.

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Case number: Supreme Court No. 88298-3.

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Respectfully,

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