

No. 96952-3

No. 46963-4

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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ROLFE GODFREY and KIRSTINE GODFREY, husband and wife  
and their marital community composed thereof,

Appellants,

v.

STE. MICHELLE WINE ESTATES LTD, dba CHATEAU STE.  
MICHELLE, a Washington Corporation; and SAINT-GOBAIN  
CONTAINERS, INC.,

Respondents.

and

ROBERT KORNFELD,  
Additional Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR PIERCE COUNTY  
THE HONORABLE KATHERINE M. STOLZ

REPLY BRIEF OF APPELLANT ROBERT KORNFELD

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SMITH GOODFRIEND, P.S.

By: Howard M. Goodfriend

WSBA No. 14355

Ian C. Cairns

WSBA No. 43210

1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109  
(206) 624-0974

Attorneys for Appellant Robert Kornfeld

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## I. REPLY ARGUMENT

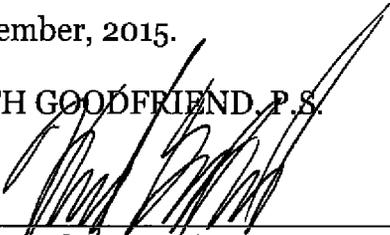
Ste. Michelle concedes that remand is necessary because the trial court failed to make necessary findings to support its \$10,000 attorney's fee sanction imposed personally on Mr. Godfrey's counsel, Robert Kornfeld. (Response to Brief of Kornfeld 2) And instead of rebutting Mr. Kornfeld's assertion that the vast majority of the fee award was unrelated to the "failure" to file a separate Joint Statement of Evidence, Ste. Michelle provides a laundry list of citations to underlying pleadings, stating they "contest[] his arguments." (Response to Brief of Kornfeld 1-3) But this Court does "not permit litigants to use incorporation by reference as a means to argue on appeal." *Diversified Wood Recycling, Inc. v. Johnson*, 161 Wn. App. 859, 890, ¶ 75, 251 P.3d 293, *rev. denied*, 172 Wn.2d 1025 (2011). Because Ste. Michelle has not presented any responsive argument, Mr. Kornfeld stands on the reasons set forth in his opening brief for reversing the fee sanction or alternatively instructing the trial court that its fee award should not exceed \$1,300, the most that could possibly be attributable to the "failure" to file a separate Joint Statement of Evidence.

Additionally, Judge Stolz's failure to recuse herself when presented with a timely affidavit of prejudice under RCW 4.12.050

rendered all of her subsequent rulings void. *Harbor Enterprises, Inc. v. Gunnar Gudjonsson*, 116 Wn.2d 283, 293, 803 P.2d 798 (1991). As the trial court had no authority to deny Mr. Godfrey's statutory right to a new judge, all subsequent rulings by her, including the sanctions imposed against Mr. Kornfeld, are void.

Dated this 2<sup>nd</sup> day of December, 2015.

SMITH GOODFRIEND, P.S.

By:   
Howard M. Goodfriend  
WSBA No. 14355  
Ian C. Cairns  
WSBA No. 43210

Attorneys for Appellant Robert Kornfeld

### DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 2nd, 2015, I arranged for service of the foregoing Reply Brief of Appellant Robert Kornfeld, to the court and to the parties to this action as follows:

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Robert Kornfeld Kornfeld Trudell Bowen & Lingenbrink PLLC 3724 Lake Washington Blvd. N.E. Kirkland, WA 98033-7802	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Seann C. Colgan Emily J. Harris Corr Cronin Michelson Baumgardner & Preece LLP 1001 4th Ave Ste 3900 Seattle, WA 98154-1051	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Russell A. Metz Metz & Associates, P.S. 999 3rd Ave., Ste. 2600 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Kenneth W. Masters Masters Law Group PLLC 241 Madison Ave N Bainbridge Island WA 98110-1811	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 2nd day of December, 2015.

  
\_\_\_\_\_  
Jenna L. Sanders

**SMITH GOODFRIEND PS**

**December 02, 2015 - 3:40 PM**

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Case Name: Godfrey v. Ste. Michelle Wine Estates LTD. et al.

Court of Appeals Case Number: 46963-4

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[russm@metzlawfirm.com](mailto:russm@metzlawfirm.com)

[eharris@corrchronin.com](mailto:eharris@corrchronin.com)

[scolgan@corrchronin.com](mailto:scolgan@corrchronin.com)

[ken@appeal-law.com](mailto:ken@appeal-law.com)

[lnims@corrchronin.com](mailto:lnims@corrchronin.com)

[elesnick@corrchronin.com](mailto:elesnick@corrchronin.com)

[howard@washingtonappeals.com](mailto:howard@washingtonappeals.com)

ian@washingtonappeals.com

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[russm@metzlawfirm.com](mailto:russm@metzlawfirm.com)

[eharris@corrchronin.com](mailto:eharris@corrchronin.com)

[scolgan@corrchronin.com](mailto:scolgan@corrchronin.com)

[ken@appeal-law.com](mailto:ken@appeal-law.com)

[lnims@corrchronin.com](mailto:lnims@corrchronin.com)

[elesnick@corrchronin.com](mailto:elesnick@corrchronin.com)

[howard@washingtonappeals.com](mailto:howard@washingtonappeals.com)

ian@washingtonappeals.com