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62369-9

NO.62369-9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

MARTIN HABIB
Plaintiff, Respondent

v.

EMERALD COIN VENDING, INC., a Washington corporation, and
Jason and Francine Nelson
Defendants Appellants

REPLY BRIEF OF RESPONDENT MARTIN HABIB ON CROSS
REVIEW

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STATE OF WASHINGTON

TABLE OF CONTENTS

	<u>Page</u>
I. ARGUMENT IN REPLY TO ARGUMENTS OF APPELLANTS ON CROSS REVIEW	
A. No citation to authority supports the Appellants' argument that no filing fee was paid so the cross review was untimely and it cannot be considered on appeal.	1
B. No filing fee is required in the Rules of Appellant procedure for cross review and the notice of appeal on cross review was timely.	1
C. As no arguments in response to Habib's Cross Review were advanced, no further substantive arguments are submitted in reply.	2
II. CONCLUSION	2

TABLE OF AUTHORITIES

TABLE OF CASES

	<u>Pages</u>
<i>McKee v. American Home Products Corp.</i> , 113 Wn. 2d 701, 705, 782 P. 2d 1045 (1989)	1, 2

RULES

RAP 5.1 (a)	1
RAP 5.1 (b)	1
RAP 5.1 (d)	1
RAP 5.2(f)	2

**I. ARGUMENT IN REPLY TO ARGUMENTS
OF APPELLANTS ON CROSS REVIEW**

A. No citation to authority supports the Appellants' argument that no filing fee was paid so that the cross review was untimely and it cannot be considered on appeal.

The Reply Brief of Appellants argues that Habib's Cross review was untimely because he paid no filing fee to the Superior Court. As only one statutory filing fee is required for consolidated cases and so established by Court Rule, why in the absence of a requirement set forth in the Rules of Appellate procedure should a filing fee be required for Cross Review unless directed to do so by the Court of Appeals? (RAP 5.1(a). The argument cites no authority by citation or otherwise and may not therefore be considered on appeal. *McKee v. American Home Products Corp.*, 113 Wn. 2d 701, 705, 782 P. 2d 1045 (1989).

B. No filing fee is required in the Rules of Appellant Procedure for cross review and the Notice of Appeal on Cross Review was timely.

Rule of Appellate procedure 5.1(b) requires the first party to file a Notice of Appeal (in this case Appellant) to pay the statutory filing fee to the Superior Court. Cross review is permitted by any party already a Respondent and requires only a Notice of Appeal and does not specify a required fee. RAP 5.2(d). The time for filing a Notice of Appeal for cross

review is fourteen days after service of Appellant's notice of appeal. RAP 5.2(f). That requirement was met. The Court of Appeals has provided no notice of deficiency in the cross appeal as usually done and the failure of Appellants to cite any authority for such a requirement should not be considered on appeal. *McKee v. American Home Products Corp.* Id.

C. As no arguments in response to Habib's Cross Review were advanced in Appellants' Reply Brief, no further substantive arguments are submitted in reply.

Habib makes no further arguments in reply since no arguments as to the record or authorities were advanced in the Reply Brief of Appellants.

II. CONCLUSION

Since Appellants have shown no reason why the Cross Review should not be considered on grounds of not paying a filing fee for Respondent's Cross Review not required by the Rules of Appellate Procedure or any case or other cited authority, it should be considered and the relief sought in the Cross Review should be granted.

Respectfully submitted this 31st day of August, 2009.

WOODBERRY LAW GROUP, P.S.

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Attorney for Respondent

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CERTIFICATE OF SERVICE

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STATE OF WASHINGTON
FBI

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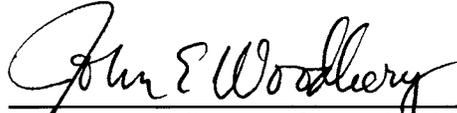
CERTIFICATE OF SERVICE

I, John E. Woodbery, certify that at all times mentioned herein I was and am a citizen of the United States and a resident of the State of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness herein. My office address is 800 Bellevue Way, N.E., Suite 400, Bellevue, Washington 98004. On August 31, 2009, I caused a copy of the Reply Brief of Respondent on Cross Review to be served on the following parties by delivery:

Robert B. Jackson
Eric Henning
2100-116th Ave. N.E.
Bellevue, WA 98004

I declare under the penalty of perjury of the law of Washington State that the foregoing statement is true and correct.

Signed at Bellevue, Washington this 31st day of August 2009.



John E. Woodbery, WSBA# 08209
Attorney for Respondent