

Appellate Court No. 62892-5-1
Skagit County Superior Court No. 07-2-00173-8

IN THE COURT OF APPEALS - STATE OF WASHINGTON
DIVISION ONE

RICHARD W. PIERSON,

Appellant,

v.

WESLEY F. RIEDEL and LANA L. RIEDEL,
husband and wife, and Skagit County,

Respondents.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 NOV - 5 AM 10:52

RESPONDENTS' BRIEF

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I. INTRODUCTION

The State of Washington filed a condemnation action against the Riedels' home and businesses. The parties stipulated to public use and necessity, but engaged in mediation over compensation. During the mediation the State agreed to pay the Riedels' costs and attorney fees to date.

Mr. Pierson represented the Riedels. He determined the total fees and costs the Riedels had paid through his office, and the amount that was due to date. The Riedels gave him a list of what they had paid directly. Pierson then assured the Riedels that the correct fee and cost total was just under \$45,000. The number was rounded up and the State agreed to pay \$45,000. A settlement agreement was signed partially on that basis.

The Riedels were very unhappy with Mr. Pierson's representation and felt they were coerced into signing a settlement agreement that was unjust. They fired Pierson the next day. Pierson then filed a lien for attorney fees. The Riedels contested the lien because it greatly exceeded the total that Pierson had assured them was correct, and which they relied on, at mediation. They have paid the fee and cost total presented at mediation.

After a hearing the trial court ordered the lien removed. Pierson has appealed, arguing the trial court should not have considered the Riedels'

reliance on his assurance that all fees and costs were covered by the settlement amount.

II. STATEMENT OF FACTS

The State of Washington filed a condemnation petition against the Riedel property in January of 2007. On October 24, 2007 the parties engaged in a mediation. Attorney Richard W. Pierson represented the Riedels. The State agreed to pay the Riedels' attorney fees and costs to date as part of a settlement. CP 28.

Mr. Pierson was not prepared on the fee and cost issue. The Riedels provided him with a list of costs and fees they had paid directly. CP 15¹, 28. He then contacted his office to determine the fees and costs to date. His office sent him a fax stating the fee and cost total was \$44,668. CP 16. The State agreed to pay the fees and costs requested, rounded to \$45,000. The Riedels would not have settled the fee and cost issue if they had known they were not being fully compensated for all fees and costs to date. CP 28. A settlement agreement was signed.²

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However, on November 6, 2007, despite the fact he had been discharged by the Riedels, he wrote to the opposing party in an attempt to have the \$45,000 for fee and cost reimbursement paid directly to him. CP 18. His request was rejected by counsel for the State. CP 19.

On November 9, 2007 Pierson signed and filed a Notice of Attorney's Lien claiming unpaid fees and costs in the amount of \$17,276.30. CP 3. On November 20, 2007 the Riedels sent Pierson a check for \$6,448.30 accompanied by a letter stating the check was full payment on the account. CP 20, 28-29. Pierson cashed the check. Even if not honored as full payment, this payment should have left a balance of \$10,828.

On November 27, 2007, Pierson acknowledged the payment but claimed the balance of the account was now \$10,834.31. CP 21. An April 2008 invoice from his office claims a balance due of 12,314.60. CP 22. But also in April of 2008 Pierson wrote to the Bar Association claiming an outstanding balance of

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\$9,997.40. CP 23-24. On Appeal Pierson claims the balance is \$11,881.52, and that the lien he filed was “in that amount”. *Appellant's Brief at 1*. However, Pierson has taken no action to reduce the \$17,276 lien he filed with the trial court.

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In fact the fee and cost total provided by Pierson at mediation not only did not include the \$10,000 or so he would later request, it also did not include the \$3,750 in costs the Riedels had paid directly despite the fact they gave him a list of these costs in writing prior to Pierson providing the fee and cost total. CP 28.

After discharging Pierson the Riedels attempted to get their file from him. The Bar Association sent a letter March 31, 2008 encouraging release of the file. CP 25. Pierson then sent the Riedels a letter stating he would not provide their file, but they could advise him if they wanted some portion of the file that they

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III. ARGUMENT

The attorney lien statute is strictly construed to limit its breadth, and any lien is limited to what was obtained by the attorney's representation. Ross v. Scannell 97 Wn.2d 598, 647 P.2d 1004 (1982). Here Pierson claims that his lien for money the Riedels would have obtained in the settlement, but lost due to his lack of preparation, should be enforced against the Riedels.

It is not the Riedels' fault that Pierson caused them to rely on an incorrect amount to their detriment. They would never have settled the fee and cost issue for \$45,000 if they had known there was an additional \$10,000 in outstanding billing, and that the \$3,750 costs they paid directly were not included. CP 28.

A) The Trial Court Properly Set the Lien Aside.

Pierson concedes that a hearing on an attorney lien is equitable in nature, and that the appropriate standard of review is abuse of discretion. He does not

⁵ Making this assertion, even if true, appears to violate the confidentiality mandate of RPC 1.6, and is not permitted by RPC 1.6(5).

argue the court lacked jurisdiction to conduct the hearing or assign error to the manner in which it was conducted. In fact both parties had asked the court to grant summary relief. CP 11, 32. Nor does Pierson claim that he was in any way restricted in the introduction of evidence.

Pierson asserts that the “trial court erred by applying a reliance analysis to a summary lien proceeding.”⁶ He does not assign error to the trial court's finding “That at mediation the Riedels relied on Mr. Pierson's representation as to the value of the services he provided, and settled the case based on that representation, at least in part.” CP 8. He does not argue that the finding lacks support in the evidence.

Nor does Pierson offer any authority for the proposition that a court sitting in equity may not consider a party's reliance on representations made by the other party. He has not provided any law in support of his assignment of error.

In fact the court has broad discretion when fashioning equitable remedies when an attorney fee lien is asserted in a condemnation proceeding. King County v. Seawest, 141 Wn. App. 304, 170 P.3d 53 (2007).

In Seawest the trial court's summary determination of an attorney fee lien was challenged on appeal. The trial court, finding at a hearing that there was a written and binding agreement and that the fees requested were reasonable,

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entered an order directing disbursement. The trial court's equitable power and broad discretion to summarily deal with the lien was upheld against various challenges. Here the court had the equitable power and the broad discretion to determine that the lien was barred by the Riedels' justifiable reliance on Pierson's representations at mediation.

B) The Trial Court Made All the Necessary Findings.

The court entered findings and an order removing Pierson's lien. It found that the Riedels' reliance on the fee and cost total supplied by Pierson was reasonable, that it was reasonable and justifiable for them to enter an agreement on that basis, and that Pierson's lien for fees he failed to claim at mediation must therefore, in equity, be removed. CP 8-9. This was the relief the Riedels requested. The relief is supported by the findings.

Pierson asserts that the “trial court erred by failing to enter sufficient findings regarding the reasonableness of attorney fees.”⁷ Pierson had the burden of proving below that he was owed further attorney fees. A lack of a finding on the issue is therefore construed as a finding against him. Baker v. Advanced Silicon Materials, LLC, 131 Wn. App. 616, __ P.3d __ (2006).

Pierson makes no reference to facts in the record below that would support

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a determination that he is owed further fees. He does not set forth what findings he believes the court should have made. In fact the Riedels' account of Pierson's representation would support a reduction of the fees he was paid. CP 80-94, 27-29.

The court made appropriate findings in support of the relief it granted. The lack of findings on issues on which Pierson had the burden must be construed against him. The trial court made all the necessary findings.

C) There Has Been No Settlement Between the Parties.

Pierson argues that he cannot be deprived of his fees by a settlement of the claim, citing RCW 60.40.010(4). The statute provides that a settlement by the “parties to the action” does not defeat an attorney's lien.

Far from settling, the parties to the action continue to battle over the “settlement agreement” that Pierson coerced the Riedels to sign. The lien was removed in equity because the Riedels' justifiably relied on Pierson's statement of how much had been paid and how much was owed to date. The lien was not compromised by any settlement between the parties, it was removed by the court.

D) Attorney Fees and Costs.

The fee agreement between Pierson and the Riedels provides for payment of attorney fees and costs to the prevailing party. CP 55. It is respectfully

requested that attorney fees and costs be awarded to the Riedels.

IV. CONCLUSION

The Riedels relied to their detriment on Pierson's representation as to the fee and cost total. The trial court therefore, in equity, removed the lien. It had broad discretion, and did not abuse that discretion by doing so.

RESPECTFULLY SUBMITTED this 4th day of November, 2009.



K. CARL LONG, WSBA #13569
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The Honorable John M. Meyer
Department I
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APPEARANCES:

For the Plaintiff: AMANDA G. PHILY
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Construction Division
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Olympia, WA 98504-0113

For the Defendant: GARL LONG
Attorney at Law
Law Offices of Garl Long
1215 S. Second
Mount Vernon, WA 98273

DATE: December 19, 2008

REPORTED BY: JENNIFER CHRISTINE SCHROEDER,
RPR, CCR #2221, OFFICIAL REPORTER

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MR. LONG: Yes.

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BY MR. LONG:

Q. Alright. You've heard your husband testify about the events with the State?

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PO Box 40113
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For the Defendant: GARL LONG
Attorney at Law
Law Offices of Garl Long
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