

65069-6

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NO. 65069-6-I

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

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DISCOVER BANK, ISSUER OF THE DISCOVER CARD,

Respondent,

v.

LESA M. BUTLER and DOE I, and their marital community composed thereof,

Appellants.

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SUPPLEMENTAL BRIEF OF RESPONDENT

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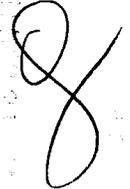
APPEAL FROM ISLAND COUNTY SUPERIOR COURT  
Honorable Vickie I. Churchill

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BISHOP, WHITE, MARSHALL &  
WEIBEL, P.S.

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**A. RESTATEMENT OF ISSUES**

1. Did the Trial Court Correctly Grant Discover Bank's Request for Attorney Fees?

2. Did the Trial Court abuse its discretion in denying Ms. Butler's Motion for Reconsideration?

**B. RESTATEMENT OF THE CASE**

**1. Procedural History**

As part of the appeal filed on March 18, 2010, Discover Bank objected to the narrative Report of Proceedings filed by Ms. Butler. CP 90-96<sup>1</sup>. In its objection, Discover Bank requested its attorney fees for preparing the Objection and attending the hearing on the Objection. CP 95-96. Ms. Butler filed a response thereto. CP 42-48. Discover Bank filed a reply to Ms. Butler's response. CP 33-36. At a hearing on July 19, 2010, the trial court sustained Discover Bank's objection and awarded it \$750.00 in attorney fees. CP 5-6, 27. The trial court denied Ms. Butler's motion for reconsideration on August 23, 2010. CP 7, 9.

**C. ARGUMENT**

1. THE TRIAL COURT PROPERLY GRANTED DISCOVER BANK'S REQUEST FOR ATTORNEY FEES.

An award of attorney fees is reviewed under the abuse of

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<sup>1</sup> All Clerk's Papers citations in the Supplemental Brief of Respondent refer to Volume 2 of the Clerk's Papers filed with the Court on March 2, 2011.

discretion standard. *Crest Incorporated v. Costco Wholesale Corporation*, 128 Wn.App. 760, 772, 115 P.3d 349 (2005). A trial court abuses its discretion only when its decision is manifestly unreasonable. *Id.*

A. Discover Bank's postjudgment attorney fees are authorized by law.

In the present case, the parties' cardmember agreement specifically provides for the award to Discover Bank of its attorney fees in enforcing its rights under the agreement. The cardmember agreement states in pertinent part,

“. . . If we refer the collection of your Account to an attorney or employ an attorney to represent us with regard to money that you owe us, we may charge you reasonable attorneys' fees and court or other collection costs as permitted by law and as actually incurred by us, including fees and costs in connection with any appeal.” CP 95.

RCW 4.84.330 provides in pertinent part that,

In any action on a contract...where such contract...specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract...shall be awarded to one of the parties, the prevailing party...shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements. (Emphasis added.).

For purposes of a contractual provision for an award of attorney fees,

the “prevailing party” is usually one who receives judgment in his or her favor. *Id.* Because the trial court entered summary judgment in Discover Bank’s favor on January 11, 2010, it is the prevailing party under RCW 4.84.330. Provisions in a contract providing for attorney fees apply until the judgment is final. *Woodcraft Construction, Inc. v. Hamilton*, 56 Wn.App. 885, 888, 786 P.2d 307 (1990) (citing *Puget Sound Mut. Sav. Bank v. Lillions*, 50 Wn.2d 799, 314 P.2d 935 (1957)). An appeal from a judgment entered in the trial court is not final until after it is affirmed and the case mandated. *Id.* Here, Ms. Butler appealed the summary judgment entered by the trial court in favor of Discover Bank. Thus, the cardmember agreement applied to postjudgment attorney fees incurred by Discover Bank prior to the Court of Appeals issuing its mandate. The trial court properly granted Discover Bank its attorney fees.

2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MS. BUTLER’S MOTION FOR RECONSIDERATION

Motions for reconsideration are reviewed under the abuse of discretion standard. *Wilcox v. Lexington Eye Institute*, 130 Wn.App. 234, 241, 122 P.3d 729 (2005). A trial court abuses its discretion “when its decision is based on untenable grounds or reasons” *Id.* at 241. Here, as explained above, the trial court had tenable grounds for denying Ms. Butler’s motion for reconsideration because the cardmember agreement

allowed for postjudgment attorney fees. To the extent Ms. Butler is requesting the Court reverse the trial court's denial of her motion for reconsideration, this request should also be denied.

**D. CONCLUSION**

For the reasons set out above, Discover Bank respectfully requests that the Court affirm the trial court's award of attorney fees. The cardmember agreement and Washington law support such an award. Finally, to the extent Ms. Butler is also requesting the Court reverse the trial court's denial of her motion for reconsideration, this request should also be denied because there is no evidence that the trial court abused its discretion.

Respectfully submitted this 30<sup>th</sup> day of March, 2011.

BISHOP, WHITE, MARSHALL & WEIBEL, P.S.



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DIVISION I

DISCOVER BANK, ISSUER OF THE  
DISCOVER CARD

No.: 65069-6-I

Respondent,

vs.

DECLARATION OF MAILING

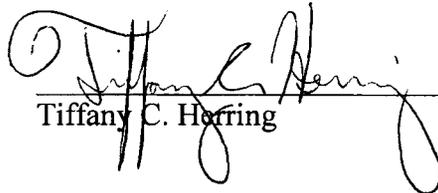
LESA M BUTLER and DOE I, and their marital  
community composed thereof,

Appellants.

On the 30<sup>th</sup> day of March, 2011 at 5:00 P.M., the undersigned sent via  
overnight mail (1) Supplemental Brief of Respondent and (2) Declaration of  
Mailing, addressed to the following:

LESA M BUTLER and DANNY L WATTS  
PO BOX 58  
25180 STATE ROUTE 525  
GREENBANK, WA 98253

I certify under penalty of perjury at Seattle, Washington, and under the  
laws of the State of Washington, that the foregoing is true and correct this 30<sup>th</sup>  
day of March, 2011.

  
Tiffany C. Herring

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