

No. 67393-9-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

VILA PACE-KNAPP
Appellant

v.

DICK PELASCINI, CECELIA PELASCINI; THOMAS BOBOTH; and
PACIFIC SHORELINE MORTGAGE, INC.

Respondents

APPELLANT'S BRIEF

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TABLE OF CONTENTS

A.	IDENTITY OF PARTIES.....	1
B.	STATEMENT OF ISSUES PRESENTED ON APPEAL.....	1
	1. Whether Ms. Pace-Knapp is entitled to interest on the entire Judgment amount.....	1
	2. Whether Ms. Pace-Knapp is entitled to her attorneys' fees and costs incurred in trying to collect on the Judgment.....	1
	3. Whether the trial court erred when it released the funds held in the Court Registry to the Defendants.....	2
	4. Whether the Judgment should be amended to reflect the correct date that Ms. Pace-Knapp lost her equity.....	2
C.	NATURE OF THE CASE AND DECISION BELOW.....	2
D.	ARGUMENT AND AUTHORITY.....	5
	1. Ms. Pace-Knapp is entitled to interest on the entire Judgment dating from December 1, 2006.....	5
	2. Ms. Pace-Knapp is entitled to all of her attorneys' fees and costs incurred in connection with enforcement and collection.....	9
	3. The trial court erred in releasing the cash amounts to the Defendants when Ms.Pace-Knapp was entitled to those funds.....	10
	4. The date that Ms. Pace-Knapp's equity was lost to the Defendants is October 26, 2001 not October 26, 2002.....	13
E.	MS. PACE-KNAPP IS ENTITLED TO HER ATTORNEYS' FEES AND COSTS ON APPEAL.....	13
F.	CONCLUSION.....	14

TABLE OF AUTHORITIES

PAGE(S)

A. CASES

1. WASHINGTON STATE SUPREME COURT:

Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 65, 738 P.2d 665 (1987).....9
Fisher Properties, Inc. v. Arden-Mayfair, Inc., 115 Wn.2d 364, 378,
 798 P.2d 799 (1990).....9
Hansen v. Rothaus, 107 Wn.2d 468, 473, 730 P.2d 662 (1986).....9
Lampson Universal Rigging, Inc. v. Wash. Pub. Power Supply Sys.,
 105 Wn.2d 376, 378, 715 P.2d 1131 (1986).....11
Mahler v. Szucs, 135 Wn.2d 398, 429 (1998).....9
Norco Construction v. King County, 106 Wn.2d 290, 721 P.2d 511 (1986).....11
Rufer v. Abbott Labs, 154 Wn.2d 530, 114 P.3d 1182 (2005).....7
Wash. St. Physicians Ins. Exchange & Ass'n v. Fisons Corp.,
 122 Wn.2d 299, 858 P.2d 1054 (1993).....13
Yarno v. Hedlund Box & Lumber Co., 135 Wash. 406, 237 P. 1002 (1925).....6

2. WASHINGTON STATE COURT OF APPEALS:

Brooke v. Robinson, 125 Wn.App. 253 (2004).....11
Coulter v. Asten Group, Inc., 155 Wn.App. 1 (2009).....6
Estate of Spahi v. Hughes-Northwest, Inc., 107 Wn.App. 763 (2001).....11
Fulle v. Boulevard Excavating, Inc., 25 Wn.App. 520, 610 P.2d 387.....6
Landberg v. Carlson, 108 Wn.App. 749, 758 33 P.2d 406 (2001).....13
Lindsay v. Pac. Topsoils, Inc., 129 Wn.App. 672, 120 P.3d 102 (2005).....8
Malo v. Anderson, 76 Wn.2d 1, 454 P.2d 828 (1969).....12
Murphee v. Rawlings, 3 Wn.App. 880, 479 P.2d 139 (1970).....12
National Steel Constr. Co. v. National Union Fire Ins. Co., 14 Wn.App. 573,
 543 P.2d 642 (1975).....5
Seven Elect Church v. Rogers, 34 Wn.App. 105, 660 P.2d (1983).....8
Sintra, Inc. v. City of Seattle, 96 Wn.App. 757, 980 P.2d 796 (1999).....6
Womack v. Rardon, 133 Wn.App. 254, 135 P.3d 542 (2006).....7
Wilkinson v. Smith, 31 Wn.App. 1, 639 P.2d 768.....12

B. RULES

RAP 8.1(b) 10
 RAP 8.1(c)(2).....10
 RAP 18.8.....13

A. Identity of Parties.

Appellant Vila Pace-Knapp (“Pace-Knapp”) was the Plaintiff in the trial court proceeding who has prevailed on every previous appeal. Appellees Dick Pelascini, Cecelia Pelascini, Thomas Boboth and Pacific Shoreline Mortgage, Inc. (collectively, “Defendants”) were the Defendants at the trial court level and have lost all of their previous appeals.

B. Statement of Issues Presented on Appeal.

The original dispute between the parties arose out of the Defendants’ violations of the Washington Consumer Protection Act, RCW 19.86 which resulted in the loss of Ms. Pace-Knapp’s home and her equity therein. The Defendants have appealed twice to this Court and each time Plaintiff has prevailed and been identified by this Court as the “substantially prevailing party” in the first appeal in this case. (COA Case No. 59321-8-I).

1. Ms. Pace-Knapp maintains that she is entitled to interest on the entire Judgment amount (except pre-judgment interest), including attorneys fees and costs, dating from December 1, 2006.

2. Ms. Pace-Knapp is entitled to her attorneys’ fees and costs incurred in trying to lift the stay and to otherwise enforce and collect on the Judgment in the requested amount of \$5,570.50. Further, Ms. Pace-Knapp is entitled to all of her reasonably incurred attorneys’ fees and costs

incurred in enforcement and collection in a dollar amount to be determined by the trial court.

3. The trial court erred when it released the funds held by the Court Registry to the Defendants.

4. Ms. Pace-Knapp's lost equity occurred on October 26, 2001 and not October 26, 2002. Thus, the calculations used in the Judgment to determine the amount of interest accrued on the lost equity is incorrect and should be corrected to reflect the actual date of the loss.

C. Nature of the Case and Decision Below.

As a result of the Defendants' second appeal, this Court entered an Order finding that Ms. Pace-Knapp was entitled to Judgment in the newly calculated amount and her attorneys' fees and costs, including a lodestar multiplier. (COA Case No. 63758-4-I, February 14, 2011) This Court sent the case back to the trial court for the exclusive purpose of making some mathematical corrections that were necessary. All other portions of the trial court's decision were following the remand affirmed. *Id.*

While the parties were waiting for a decision from the Supreme Court on the Defendants' second Petition for Review, on March 4, 2011, Plaintiff filed a Motion to Lift the Stay and/or Increase the Amount of the Supersedeas Bond. (CP 225-231). After the appropriate pleadings were filed, on March 21, 2011, the trial court entered an Order Increasing the

Amount of the Supersedeas Bond to \$300,000.00, and required the Defendants to post the bond by March 28, 2011. (CP 357-358) There was a delay in receipt of the pleading by the parties and Plaintiff was required to file another pleading seeking to compel either the lifting of the stay. (CP 485-496). Eventually the Court gave Defendants another chance to post an increased bond when it entered another Order on June 8, 2011. (CP 601-602).

The Supreme Court denied review to the Defendants in connection with the second appeal on July 3, 2011. (COA Case No. 63758-4-I; Supreme Court Case No. 85771-7).

Defendants filed a Motion to Establish Judgment and indicated in that pleading and in others filed during that time period that Ms. Pace-Knapp was not entitled to interest on portions of her Judgment, including the attorneys' fees and costs and was also disputing when interest that was accruing would accrue (beginning in 2006 when the first Judgment was entered or in 2009 when the new Judgment was entered after the first appellate decision). (CP 262-271; 272-349; 361-368; 369-453). Thus, Ms. Pace-Knapp was required to also ask the trial court to issue a ruling to resolve the dispute among the parties, and she asked the trial court to award her attorneys' fees and costs for all of her collection efforts and the motion practice. (CP 485-496).

On April 22, 2011, the trial court entered a new Judgment which did make the changes required by this Court in its Order. However, the form submitted to the trial court by the Defendants and signed by the trial court specifically altered the original Judgment by specifying that interest only accrued on the principal portion of the Judgment, which was not a part of the Order of this Court. (CP 570-572) Not only did this document directly contravene the Order of this Court by changing the interest rate, but the language was in direct contravention of the Washington judgment statutes and case law. *Id.*; COA Opinion dated 2/14/11.

Also on April 22, 2011 the trial court entered an Order denying Ms. Pace-Knapp's Motion For Contempt, to Fix the Amount of Additional Attorneys' Fees and to Clarify the Date on which the Judgment Began to Accrue Interest. (CP 568-569) Ms. Pace-Knapp filed a Motion for Reconsideration related to portions of that Order, which was eventually denied by the trial court. (CP 575-582) The trial court also refused to explain the basis for its refusal to award Ms. Pace-Knapp the attorneys' fees and costs to which she was entitled by statute. *Id.* The trial court did also lift the stay, but provided the Defendants with yet again more time to post a bond. (CP 601-602) Eventually, the Defendants were given almost three months by the trial court to post an increased bond and they refused to do so. *Id.* In connection with the lifting of the stay, the trial court

inexplicably released the cash bond amount that had been paid by the Defendants to the trial court in 2006 back to the Defendants, even though Ms. Pace-Knapp was entitled to those funds. *Id.*

Ms. Pace-Knapp filed an Emergency Request for a Hearing on the above issues with the trial court and especially in order to prevent the release of the funds to the Defendants. (CP 607-613) This hearing was taken off calendar by the Court without explanation and the Motion was denied. *Id.* (CP 625-627; 651-652) Meanwhile, Ms. Pace-Knapp filed this appeal.

D. Argument.

1. Ms. Pace-Knapp is entitled to interest on the entire Judgment dating from December 1, 2006.

Washington law is explicitly clear that prevailing parties are entitled to interest from the date that the Judgment was entered. The case of National Steel Constr. Co. v. National Union Fire Ins. Co., 14 Wn.App. 573, 543 P.2d 642 (1975) makes it clear that entry of the judgment, not the oral decision, accomplishes liquidation of damages for attorney's fees. Once attorney's fees become liquidated, they begin accruing judgment interest. Similarly, the judgment statute makes it clear that:

[J]udgment shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 **on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in**

any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the “rate applicable to civil judgments” for purposes of RCW 10.82.090.

RCW 4.56.110(4) (emphasis added). The interest rate on judgments at this time is 12% per annum. RCW 19.52.020.

Where an appellate court merely modifies the trial court award and leaves the court on remand with a mere mathematical problem in the calculation of interest, interest runs from the date of the original judgment. Sintra, Inc. v. City of Seattle, 96 Wn.App. 757, 980 P.2d 796 (1999); *see also*, Yarno v. Hedlund Box & Lumber Co., 135 Wash. 406, 237 P. 1002 (1925) and Fulle v. Boulevard Excavating, Inc., 25 Wn.App. 520, 610 P.2d 387, review denied, 93 Wn.2d 1030 (1980) (trial court must award interest on judgment on remand, even though trial court did not address that issue). As the Court of Appeals noted in Coulter v. Asten Group, Inc., 155 Wn.App. 1 (2009), citing to the Fisher decision,

interest runs from the date of the original judgment where an appellate court merely modifies the award “and the only action necessary in the trial court is compliance with the mandate,” whereas interest runs from the new judgment where an appellate court “has reversed the trial court judgment and directed that a new money judgment be entered.” *Id.* at 373

Coulter v. Asten, *supra* at 15. Following the first appeal, this Court remanded to have the trial court recalculate damages. It affirmed the findings of a violation of the Consumer Protection Act but would not affirm the method of calculation of damages originally used by this Court - rescission. The trial court used the same dollar amounts it had used originally that were incorporated into the unchallenged Findings of Facts and Conclusions of Law, which constituted the original Final Judgment. The trial court “complied with a mandate” and thus interest runs from the date of the original judgment. *Id.*

Further, under RCW 4.56.110, post judgment interest is **mandatory**. Womack v. Rardon, 133 Wn.App. 254, 135 P.3d 542 (2006) (emphasis added). While the Court in Womack was discussing interest on a tort judgment, and this case involves a violation of a statute, the Consumer Protection Act, RCW 19.86, *et seq.*, the plain language of the decision is still applicable here. Post judgment interest is mandatory on the Judgment. It is not mandatory on portions of the Judgment – it is mandatory on the entirety of the Judgment and that interest begins to accrue from the date of entry of the Judgment. In this case, the Judgment was originally entered on October 16, 2006.

In the case of Rufer v. Abbott Labs, 154 Wn.2d 530, 114 P.3d 1182 (2005), the Washington Supreme Court made it clear that the Court

of Appeals did not have the authority to excuse a party against whom a money judgment had been awarded from its portion of the post-judgment interest that accrued during a delay in the appeal because the party could have paid its financial obligation and still appealed the judgment. It chose not to and, consequently, should have been responsible for interest accruing on its portion of the judgment until it was paid.

The purpose of requiring the defendant to pay interest on a judgment is to compensate the plaintiff for the lost value of money when it was properly attributable to the plaintiff, but in the defendant's possession. Interest is not imposed as a punishment. See Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 835-36, 110 S. Ct. 1570, 108 L. Ed. 2d 842 (1990) (" '[T]he purpose of postjudgment interest is to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant.' " (quoting Poleto v. Conrail Corp., 826 F.2d 1270, 1280 (3d Cir. 1987))).

Rufer v. Abbott Labs, *supra*, at 552-553. This Court should also consider the opinion in Lindsay v. Pac. Topsoils, Inc., 129 Wn.App. 672, 120 P.3d 102 (2005), where the Court of Appeals reversed a trial court's decision because it did not calculate the interest from the date of entry of verdict after the defendant unsuccessfully appealed the merits of the case.

Ms. Pace-Knapp has been denied the "use value" of her monies during the pendency of this litigation and its multiple appeals. Similarly, her counsel has been deprived of the use of the attorneys' fees and costs.

They are both entitled to all of the interest available to them under the statutes and case law. Mahler v. Szucs, 135 Wn.2d 398, 429 (1998), citing to Hansen v. Rothaus, 107 Wn.2d 468, 473, 730 P.2d 662 (1986).

2. Ms. Pace-Knapp is entitled to all of her attorneys' fees and costs incurred in connection with enforcement and collection of the Judgment.

Washington law is clear that a party which is already entitled to attorney's fees and costs can recover his/her attorney's fees and costs incurred in making the request for attorney's fees and/or defending the entitlement to those fees. Fisher Properties, Inc. v. Arden-Mayfair, Inc., 115 Wn.2d 364, 378, 798 P.2d 799 (1990). Ms. Pace-Knapp is also entitled to her attorney's fees and costs incurred in trying to collect on the Judgment and to make sure that it was entered again correctly by the trial court. Thus, Ms. Pace-Knapp is entitled to the reasonable attorney's fees and costs which she has incurred since the date of the most recent opinion by this Court on February 14, 2011 because all of the work undertaken has been defending her entitlement to those fees, enforcing the Judgment and making additional requests for attorney's fees.

The award or refusal to award attorneys fees and costs are within the sound discretion of the trial court. Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 65, 738 P.2d 665 (1987). Here, the trial court did not provide any basis for its refusal to award Ms. Pace-Knapp her attorneys' fees and

costs. (CP 568-569; 625-627)

3. The trial court erred in releasing the cash amounts to the Defendants when Ms. Pace-Knapp was entitled to those funds.

The release of the funds by the trial court is entirely contrary to the law of this state and was done without explanation or reason. (CP 601-602; 625-627; 651-652) Simply put, there is no rational explanation for the release of the funds to the Defendants. While the damage to Ms. Pace-Knapp by this release of funds cannot be undone, this Court should nevertheless make clear that it was done in contravention of the law.

RAP 8.1(b) requires:

A trial court decision may be enforced pending appeal or review unless stayed pursuant to the provisions of this rule. Any party to a review proceeding has the right to stay enforcement of a money judgment or a decision affecting real, personal or intellectual property, pending review

(1) Money Judgment. Except when prohibited by statute, a party may stay enforcement of a money judgment by filing in the trial court a supersedeas bond or cash, or by alternate security approved by the trial court pursuant to subsection (b)(4).

The amount should be fixed consistent with RAP 8.1(c)(2), which provides in pertinent part,

The supersedeas amount shall be the amount of any money judgment, plus interest and attorneys' fees, costs and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. **Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review.**

RAP 8.1(c)(2) (emphasis added).

“A supersedeas bond serves two purposes: it serves the interest of the judgment debtor by delaying execution of the judgment and **it serves the interest of the judgment creditor by ensuring that the judgment debtor’s ability to satisfy the judgment will not be impaired during the appeal process.**” Estate of Spahi v. Hughes-Northwest, Inc., 107 Wn.App. 763 (2001), citing to Lampson Universal Rigging, Inc. v. Wash. Pub. Power Supply Sys., 105 Wn.2d 376, 378, 715 P.2d 1131 (1986) (emphasis added). Here, the trial court effectively gutted the ability of Ms. Pace-Knapp to satisfy a portion of her judgment from the deposited funds, which was the purpose for requiring the deposit in the first place.

In Seven Elect Church v. Rogers, 34 Wn.App. 105, 660 P.2d (1983), the Court of Appeals found that it was appropriate for the bond to represent a “potential fund available to the Church should the Church ultimately be able to demonstrate damages”. *See also*, Norco Construction v. King County, 106 Wn.2d 290, 721 P.2d 511 (1986). Here, the bond represented just a small portion of the monies owed to Ms. Pace-Knapp and without reason or explanation, the Court released it to the Defendants.

A particularly analogous case is Brooke v. Robinson, 125 Wn.App. 253 (2004), in which the trial court erroneously released the monies deposited with the Court Registry in order to secure payment to the

prevailing party. In its decision, the Court of Appeals stated, “It was **clear error** to release the funds before the judgment against the firm was satisfied.” Brooke v. Robinson, *supra*, at 254. The same is true here. The trial court committed a clear error by releasing the funds deposited with the Court to the Defendants, thereby depriving Ms. Pace-Knapp of one of her means of recovery when those funds were intended for that purpose. *See also*, Murphee v. Rawlings, 3 Wn.App. 880, 479 P.2d 139 (1970) and Malo v. Anderson, 76 Wn.2d 1, 454 P.2d 828 (1969).

4. The date that Ms. Pace-Knapp’s equity was lost to the Defendants is October 26, 2001 not October 26, 2002.

An error was made during the last round of appeals in that the date of the transfer of Ms. Pace-Knapp’s home to the Defendants was repeatedly referred to as October 26, 2002 rather than the correct date, October 26, 2001. (CP 188-197) Counsel for Ms. Pace-Knapp contributed to the confusion because some of her pleadings mistakenly listed the 2002 date rather than the 2001 date. This was a “typo” which was certainly known to the Defendants, who allowed the error to be perpetuated. The Defendants perpetuated the error, presumably intentionally, by using the incorrect date on the newly entered Judgment. (CP 570-572)

This Court has the ability to correct this error as failure to do so would constitute a manifest injustice. RAP 18.8. The incorrect date on the Judgment deprives Ms. Pace-Knapp of interest to which she is entitled and provides a windfall to the Defendants. This Court “may waive or alter the provisions of any of these rules ... in order to serve the ends of justice.” RAP 18.8(a). These Defendants should not benefit from this error, especially given their track record of doing everything within their power to deprive Ms. Pace-Knapp of the benefits of her Judgment.

E. Ms. Pace-Knapp is entitled to her attorneys fees and costs on appeal.

Ms. Pace-Knapp has been the prevailing party on the two previous appeals filed by the Defendants and she has been forced into filing this third appeal because the Defendants have refused to adhere to the Order of this Court. Wash. St. Physicians Ins. Exchange & Ass’n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993); Wilkinson v. Smith, 31 Wn.App. 1, 639 P.2d 768, *review denied*, 97 Wn.2d 1023 (1982); Landberg v. Carlson, 108 Wn.App. 749, 758 33 P.2d 406 (2001), *review denied*, 146 Wn2d 1008, 51 P.3d 86 (2002) (“If fees are allowable at trial, the prevailing party may recover fees on appeal as well.”)

She is also entitled to her attorneys fees and costs for having to pursue this appeal because that time is also related to efforts to enforce the collection of the Judgment and its terms. RCW 4.65.

CONCLUSION

For the reasons set out above, Vila Pace-Knapp respectfully requests that this Court render a finding that:

1. Ms. Pace-Knapp is entitled to interest on the entire Judgment amount (except pre-judgment interest), including attorneys fees and costs, dating from December 1, 2006.

2. Ms. Pace-Knapp is entitled to her attorneys' fees and costs incurred in trying to lift the stay and to otherwise enforce and collect on the Judgment in the requested amount. Further, Ms. Pace-Knapp is entitled to all of her reasonably incurred attorneys' fees and costs incurred in enforcement and collection in a dollar amount to be determined by the trial court.

3. The trial court erred when it released the funds held by the Court Registry to the Defendants.

4. Ms. Pace-Knapp's lost equity occurred on October 26, 2001 and not October 26, 2002. Thus, the calculations used in the Judgment to determine the amount of interest accrued on the lost equity is incorrect and should be corrected to reflect the actual date of the loss.

Respectfully submitted this 6th of September 2011.

A handwritten signature in cursive script, reading "Melissa A. Huelsman", written in black ink. The signature is fluid and includes a long horizontal flourish at the end.

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No. 67393-9-I

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Respondents

CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

I Monique Lefebvre, declare as follows:

1. I am over the age of eighteen years, a citizen of the United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on September 6, 2011 a copy of the Plaintiff Vila Pace-Knapp's Appellant's Brief; Case No. 67393-9-I and Certificate of Service of same were delivered via legal messenger to Bernard G. Lanz, The Lanz Firm, P.S., 1200 Westlake Avenue North, Suite 809, Seattle, Washington 98109. The Certificate of Services is attached hereto.

3. That on September 6, 2011 Plaintiff Vila Pace-Knapp's Appellant's Brief; Case No. 67393-9-I and Certificate of Service of same were delivered via legal messenger to the Court of Appeals Division I of the State of Washington to be filed with the Court.

Respectfully submitted this 6th day of September 2011.

The Law Offices of Melissa A. Huelsman, P.S.



Monique Lefebvre