

No. 67521-4-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

KAM SITTHIDETH,

Appellant

v.

CEDAR RIVER WATER & SEWER DISTRICT

Respondent

BRIEF OF RESPONDENT

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A. IDENTITY OF RESPONDENT

Cedar River Water and Sewer District was the defendant in a King County Superior Court case, bearing Cause No. 10-2-13092-6 SEA.

B. DECISION

Respondent requests this Court to AFFIRM the trial court's Order Granting Defendant's Motion for Summary Judgment Dismissal, entered July 22, 2011. (CP 297-298)

Respondent requests this Court to AFFIRM the trial court's denial of Plaintiff's Motion for Leave to Amend Complaint, entered May 31, 2011. (CP 83)

C. STATEMENT OF THE CASE

1. Factual Background

a. District Generally:

Cedar River Water and Sewer District (herein the "District") is a municipal Water and Sewer District organized on June 21, 1960, pursuant to 57 RCW and is governed by three elected commissioners. (CP 123). It services approximately 37 square miles including portions of Fairwood, Maple Heights, Maple Valley, Hobart and unincorporated King County. (*Id.*) The District's water service area is much larger than its sewer service

area. In those instances, sewer service is provided by neighboring governmental entities. (CP 123-124, 128-129)

The District does not have general taxing authority and is operated from water and sewer rates. (CP 124) It is subject to a yearly audit by the Washing State Auditor's Office which includes review of policies and practices related to customer billings, penalties, cash handling, deposits, and fraud. (*Id.*) For more than twelve years, the Auditor has found the District in compliance with applicable State law and accounting procedures. (*Id.*)

The District bills base charges for water and sewer service, which rates and charges are set by resolution. (CP 125; CP 257-259) The base charge amounts are:

	<u>Water¹</u>	<u>Sewer²</u>	<u>KC Sewer</u>	=	<u>Bi-Monthly Amount</u>
2009	\$16.92/mo	\$17.40/mo	\$31.90/mo	=	\$132.44
2010	\$17.26/mo	\$17.75/mo	\$31.90/mo	=	\$133.82
2011	\$18.99/mo	\$18.64/mo	\$36.10/mo	=	\$147.46

(CP 126) The "KC Sewer" charge is a pass through charge by King County Metro for sewer treatment and disposal. (*Id.*) These base charges are billed to customers actually connected to the system even when a customer elects not to use the service or is disconnected for non-payment.

¹ Charged by the District

² Charged by the District

(Id.) In addition, customers are charged additional amounts for their consumption of water based upon meter readings showing actual water used.

The District charge of base rates is typical of municipal water providers. (CP 288-289) The average rates charged by the District for water usage compared to other municipal water providers are on the lower to middle end in a survey of several local water providers. (CP 291-293)

The District charges penalties on unpaid charges of 10% of the bi-monthly billed amount, which penalty does not compound. (CP 124) The District adopted by District Resolution, a Policy and Procedure manual including a Late Fee Policy and Notice of Hearing and Disconnect policy. (CP 124; 138-140). The District also files Certificate of Delinquency with the King County Department of Records and Elections which essentially causes a lien to be placed upon property for non-payment. *(Id.)* The District charges a one-time fee of \$7.50 as a "Final Notice Fee" which is a letter informing a customer that the service is subject to being shut-off. (CP 282-283; CP 131-132; CP 260). The Policy further provides customers with a right to a hearing prior to shut-off of service. *(Id.)*

When a property is not receiving water service, it still receives a benefit for the availability of water and sewer service. A few of these

benefits include fire flow protection, allowance for occupancy of a home which is conditioned upon the availability of water and sewer service, maintenance of the water and sewer system, and the right to use the water and sewer system at any time upon payment of appropriate charges. (CP126) In addition, the sewer service is not disconnected and a customer can still use the sewer system while the water is shut off at the water meter if they use their own water or other waste. (*Id.*)

b. Mr. Sitthideth's water and sewer service:

Appellant Kam Sitthideth's home is within the service area for water and sewer provided by the District. (CP 124) The home was built in 1998, and contains 2,154 square feet plus an attached 460 square foot garage. (CP 118, 120) The property is zoned Single Family Residential and had a tax assessed value of \$322,000.00 in 2011. (CP 121) It is located in a residential neighborhood of similar homes. (*Id.*)

From 1998 through February 2003, Mr. Sitthideth was current in the payment of his water bill. (CP 124) Beginning on April 1, 2003, Mr. Sitthideth was billed \$98.34 for water service. (*Id.*) Mr. Sitthideth was billed an additional \$100.02 on June 2, 2003, for water service provided since the previous billing, bringing the balance due to \$208.19. Mr. Sitthideth paid \$108.17 on June 9, 2003, reducing his balance to \$100.02,

and the District agreed to remove the penalty, leaving a leaving a balance of \$90.19. (*Id.*) From 2004 through June 29, 2009, Mr. Sitthideth was usually current in the payment of his water and sewer bill, though there were times when payment was not made and he was charged a 10% penalty on the billed amount. (*Id.*) Ultimately, the account was paid in full by Mr. Sitthideth during that time frame. (*Id.*) Based upon these billings, Mr. Sitthideth was aware of the charges of the District, including the penalty, for many years.

Beginning with a charge of \$132.44 on July 31, 2009, for water and sewer service, Mr. Sitthideth began missing payments. (CP 125) By March of 2010, his account balance was \$980.56 and he had not made any payments during that period of time. (*Id.*) Mr. Sitthideth water service was shut off on November 4, 2009, after notice was given. (*Id.*) As part of the shutoff, the District charged Mr. Sitthideth a disconnect fee of \$25.00, a lien letter notice in the amount of \$25.00, and a lien filing/certificate of delinquency recording fee of \$190.00. (*Id.*)

On October 25, 2010, Mr. Sitthideth paid \$320.35 of his bill. The District took the unusual step of offering to turn his water back on if he promised to keep charges current on future bills, and reserve the disputed charges for determination by the trial court. (CP 126) This offer was

contrary to the policy set forth in Section 6.7.3 of the Policy Manual but within the discretion of District Commissioners. (CP126; 140) Mr. Sitthideth informed the District that he did not want water service restored and the payment was therefore applied to his account balance per District policy. (*Id.*)

With monthly base charges continuing to accrue, the balance due as of June 1, 2011, was \$1,719.27. (CP 125) After the water service was shut off, Mr. Sitthideth informed the District that he was not going to have the water turned back on. (CP 125). The District informed Mr. Sitthideth on several occasions that he would still be responsible for the base service charges. (*Id.*)

The District consistently offered to meet with Mr. Sitthideth and the elected District Commissioners at an open public meeting. (CP 126) Mr. Sitthideth refused to meet. (*Id.*)

2. Procedural Background.

On April 6, 2010, Mr. Sitthideth commenced an action against the District with a "Complaint for Declaratory Judgment". (CP 3-9) Mr. Sitthideth alleged that the District was charging and penalizing customers without providing product or service, not acting in compliance with RCW 57.08.081, that the District was a public utility company and not part of

the government, and that it engaged in acts of "bribery", "secret meetings", "scams", "rip offs" and corruption, . (*Id.*)

On May 10, 2011, the District answered the Complaint. (CP 25-27) The District answered that it is a Washington Municipal Corporation, that its rates and charges are appropriate and authorized by State statute, that service to Mr. Sithideth's property continues to be available for the property's use and benefit including for fire protection, that it has not engaged in any type of inappropriate or illegal activity, and that the lawsuit is frivolous. (*Id.*)

On May 24, 2011, Mr. Sithideth brought a "Motion for leave to amend Plaintiff Complaint for Declaratory judgment" adding claims of "damages for false/deceptive charges", "physical and mental pains, public slander", violation of the Fair Debt Credit Practices Act, Federal and State Consumer Protection Acts, and Human Right violations. (CP 31-67) On May 27, 2011, the District opposed the motion due to undue delay in bringing the motion to amend just three months before trial, non-compliance with the case schedule deadline for adding new claims, and failure to comply with RCW 4.96.020. (CP 68-72) On May 31, 2011, the trial court denied Mr. Sithideth's motion as being untimely, with new claims asserted well after the Confirmation of Joinder Deadline of KCLCR

4 and the Civil Case Schedule, and prejudice to the District due to the approaching discovery cutoffs and trial. (CP 83)

On June 8, 2011, the District filed a Motion for Summary Judgment with supporting Declaration of District Office Manager, Sean Vance, seeking dismissal of Mr. Sitthideth's lawsuit on grounds that the District billed appropriate charges and penalties, and that the charges and penalties are in compliance with RCW 57.08.081. (CP 110-140) On July 8, 2011, Mr. Sitthideth filed his Response and Declaration opposing the Motion. (CP 158-166; 152-157) On July 15, 2011, the District filed its Reply brief in support of the Motion. (CP 278-294) On July 22, 2011, following oral argument, the trial court dismissed Mr. Sitthideth's claims with prejudice and in their entirety. (CP 296; 297-298)

D. ARGUMENT

1. The standard of review for summary judgment is *de novo*.

Mr. Sitthideth brings this appeal pursuant to the authority granted in RAP 2.2(a)(1) permitting appellate review of the final judgment of any action or proceeding. As Mr. Sitthideth appeals from the trial court's grant of summary judgment, the appellate court may consider only evidence and documents called to the attention of the trial court prior to entry of the dismissal order. RAP 9.12; *see also, Lewis v. Bell*, 45 Wash. App. 192, 95,

724 P.2d 425 (1986). On July 28, 2011, after the Summary Judgment ruling, Mr. Sitthideth filed a document entitled, "Evidences associating with Liability Defendant owes to Plaintiff." (CP 299-315) These documents are not part of the court record and are objected to.

The appellate court reviews the trial court's ruling on summary judgment *de novo*. *Allen v. State of Washington*, 118 Wash.2d 753, 757, 826 P.2d 200 (1992). The appellate court, like the trial court before it, analyzes whether any genuine issues of material fact exist and whether one party is entitled to judgment as a matter of law. *Id.* The mere existence of factual questions is insufficient to warrant denial of summary judgment. *Id.* Instead, denial of summary judgment on the basis that factual issues remain is only appropriate where the factual questions are material to resolving the legal issue at stake. *Id.*; *see also, Lewis*, 45 Wash. App. at 195; *Clements v. Travelers Indemnity Co.*, 121 Wash.2d 243, 249, 850 P.2d 1298 (1993) (material fact is one upon which the outcome of the litigation depends); *see also, Young v. Key Pharmaceuticals, Inc.*, 112 Wash.2d 216, 225, 770 P.2d 182 (1989) (the plaintiff's failure to produce evidence essential to its case requires entry of summary judgment). As the court's review is *de novo*, any findings of fact are disregarded as superfluous. *Thongchoom v. Graco Children's Products*, 117 Wash.App.

299, 309, 71 P.3d 214 (2003) *rev. denied* 151 Wash.2d 1002, 87 P.3d 1185 (2004).

Here, upon the facts presented by Mr. Sitthideth, the trial court correctly held Mr. Sitthideth failed to show any factual or legal basis that the District was improperly charging him or engaging in any other inappropriate practices, and properly dismissed his claims. Further, the District established that its rates and charges are statutorily authorized and within the sound discretion of the elected commissioners.

2. The standard of review for denial of a motion to amend a complaint is abuse of discretion.

Mr. Sitthideth's brief claims that the court erred by granting the motion for summary judgment. (Appellant's Brief, pg. 2) However, much of the brief is focused on Mr. Sitthideth's perceived tort damages. Those damages are not part of the Complaint and his attempt to amend the Complaint was denied. (CP 3-9; 83) To the extent this is an appeal of the trial court denying the motion to amend, the trial court's decision should be affirmed.

Civil Rule 15 provides that amendments to a complaint are generally freely given. However, amendments stating new causes of action have not been allowed. For example, a plaintiff in a wrongful termination case brought a complaint for discrimination and various other

torts. *Dewey v. Tacoma School Dist. No. 10*, 95 Wash. App. 18, 974 P.2d 847 (1999). Later, the plaintiff sought to amend the complaint to add claims for violation of the First Amendment and free speech. The court noted that those terms were not found in the original complaint. The court found that although "inexpert pleadings is permitted, insufficient pleading is not." (*Id.*)

The undue delay in seeking to amend a complaint is a proper ground for denial of a motion for leave to amend. *Elliott v. Barnes*, 32 Wash.App. 88, 92, 645 P.2d 1136 (1982). In *Elliott*, the court found that the denial of a request allowing amendment was appropriate when "the plaintiffs' motion for leave to amend came more than a year after the original complaint was filed but less than a week before a the scheduled trial date." (*Id.*) In this case, the District would have been prejudiced by the amendment. Trial was just over three months away at the time of the motion, the deadline for adding claims under the local civil rule and long expired, and adding new claims would have required a significant amount of additional trial preparation. The trial court did not abuse its discretion in denying the motion to amend.

3. The Consumer Protection Act (CPA) and Fair Debt Collection Practices Act (FDCPA) do not apply.

While not part of the Complaint, Mr. Sithideth's alleges on appeal that the District violated the CPA, RCW 19.86. The CPA does not apply to the District. RCW 19.86.170 states in part, "Nothing in this chapter shall apply to actions or transactions ... permitted by any ... regulatory body or officer acting under statutory authority of this state".

The FDCPA does not apply to the District. The Act applies only to "debt collectors", which does not include creditors collecting in its own name, but rather businesses hired to collect debt. FDCPA Sec. 803. Further, it does not apply to "any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties." FDCPA, Sec. 803(6)(c). "State" includes "any political subdivision" of any State. (*Id.*)

Regardless of the foregoing, the District has not violated any provision of the CPA, FDCPA, contractual or tort duty. As discussed below, the rates and penalties charged by the District are reasonable, statutorily authorized, and within the sound discretion of the elected officials.

4. Mr. Sitthideth is not entitled to remedies in tort.

Mr. Sitthideth's Complaint did not seek tort remedies that he is now claiming on appeal. Even if he had plead for tort remedies, those are not allowed under the law.

In Eastwood v. Horse Harbor Foundation, Inc., the court observed that in all cases in which there are contractual and tort claims, the issue is whether the injury suffered by the party claiming breach of a duty or duties is only an economic loss remediable under the law of contracts or whether it is also a tort. *Id.*, 170 Wn.2d 380, 387, 241 P.3d 1256 (2010). Stated another way, it is whether a breach of contract can simultaneously be a breach of a tort duty that arises independently of the contract's terms. *Id.* The Eastwood court answered that it can be, but only when an independent tort duty overlaps with a contractual obligation. *Id.*

Ordinary tort principles have always resolved this question: "An injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract. The court determines whether there is an independent tort duty of care, and '[t]he existence of a duty is a question of law and depends on mixed considerations of logic, common sense, justice, policy, and precedent.'" (*Id.* at 389) (alteration in original) (internal quotation marks omitted) (quoting *Snyder v. Med. Serv.*

Corp. of E. Wash., 145 Wn.2d 233, 243, 35 P.3d 1158 (2001)). “When no independent tort duty exists, tort does not provide a remedy.” Id.

Here, the relationship between the parties is fundamentally contractual and Mr. Sitthideth has not articulated any independently existing duties breached by the District. He is not entitled to tort remedies.

It is also worth noting that Mr. Sitthideth never filed a claim as required by RCW 4.96.020.

5. The District is a governmental agency with broad authority to set rates and policies.

At the heart of Mr. Sitthideth's complaint appears to be a misunderstanding of the role and legal standing of water and sewer districts. 57 RCW et. al. sets forth the manner in which a water and sewer district is formed and provides statutory authority for its existence together with the powers given. The District Commissioners are akin to City or County Council members. They are elected by all voters choosing to vote in an election "conducted under general election laws." RCW 57.02.090. RCW 57.12 et. al. sets forth the number of commissioners, term of office, and compensation rights. Districts must have at least three commissioners, who serve terms of six years and receive "per diem" compensation "for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other

official services or duties on behalf of the district." RCW 57.12.010, RCW 57.12.030.

Responsibilities and powers of districts include creating and implementing Comprehensive Plans and forming Local Improvement Districts when needed (RCW 57.16), obtaining bonds and use revenue for appropriate maintenance and administrative purposes (RCW 57.20), extend and provide for appropriate development (RCW 57.22), annex property (RCW 57.24), among other powers and obligations. One benefit of districts is that all revenue is used for the water and sewer system and not for any other governmental purpose. Districts do not have general taxing authority and rely on the revenues for the maintenance and operation of the system. District Commissioners are statutorily required to "provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners". RCW 57.08.085. "Municipal ordinances, like state statutes, are presumed constitutional". *Weden v. San Juan County*, 135 Wash.2d 678, 690, 958 P.2d 273 (1998). "Local governments shoulder 'the ultimate burden and responsibility for planning, ... and implementing a county's or city's future.'" *Futurewise v. Central Puget*

Sound Growth Mngt. Hearings Bd. 141 Wash. App. 202, 218, 169 P.3d 499 (2007). The same is true of districts.

A district has broad powers as set forth in RCW 57.08, including the right to "exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage." RCW 57.08.005. "Where the resulting ordinance is supported by the record, we will not substitute our judgment for that of a county's legislative authority, nor will we reverse a Board's decision that followed a mandatory presumption of validity based on a review of the entire record." *Futurwise, Id.* In fact, a court may only act if it finds "that the board made a clearly erroneous application of the law [and the court is] left with the firm conviction that it made a mistake." *Woods v. Kittitas County*, 130 Wash. App. 573, 588, 123 P.3d 883 (2005).

Mr. Sitthideth sought the wrong forum in which to challenge rates charged by Cedar River and the Court does not have the authority to substitute its judgment for that of the Commissioners when it comes to its legislative decisions. If Mr. Sitthideth does not like the rates and charges of the District, he can encourage the District Commissioners to change the rates/charges the same as any citizen has a right to encourage our elected

officials to change or modify the laws under which we live. A citizen can also run for election, and if elected, attempt to change the law under our legislative process.

6. Mr. Sitthideth was appropriately charged for water and sewer service.

Mr. Sitthideth did not, and does not, object to the Declaration of Mr. Sean Vance or the account balance claimed owed by Cedar River. (CP 3; 131-136). Mr. Sitthideth did raise an issue regarding three charges for "Final Notice Fee" of \$7.50 each billed on December 16, 2009, February 17, 2010, and December 16, 2010. (CP 282-283; CP 131-132; CP 260). Those charges were inadvertently billed by the billing software program and were removed when discovered by the District on February 23, 2011. (CP 131).

Mr. Sitthideth focuses his response on claims that the District charges are unfair, fraudulent, violate the FDCPA, etc. Yet, Mr. Sitthideth does not cite a single case or statute to support his contention. He makes allegations of improper charges, with the "evidence" to support those alleged charges being his own self-serving testimony or documents he created himself. (Appellant's Brief, pg. 10)

Ultimately, his allegations are contrary to State statute which allows charges even when water is not actually delivered. RCW 57.08.005(3) provides,

Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer.

(Emphasis added). In addition, RCW 57.08.081 provides the framework within which District Commissioners operate in order to "provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners". (*Id. at subsection 1*) Commissioners are statutorily permitted to consider factors such as,

The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization

requirements, and all other charges necessary for efficient and proper operation of the system.

Id. at subsection 2.

Once a property is connected to the system, the owner is responsible for payment. A district has expended a great deal of money in building the infrastructure that provides the water and sewer service. Even when a customer is not using the water or sewer service, the customer still receives benefits of the system. For example, the districts are obligated to maintain, operate and repair the system; repay loans, bonds and other obligations used to construct and maintain the infrastructure; must comply with comprehensive plans requirements in which they must prepare for future service, water availability, infrastructure replacement and other short and long range planning; provide fire flow to hydrants for fire protection; make water available upon payment if water is shut off for non-payment; and service allows for occupancy of a home. (CP 126); *see generally RCW 57.08.081 (bonds, special assessments, comprehensive plans, assessments)*. The base rate takes all these factors into consideration and Mr. Sitthideth is benefited by the water system even when he is not actively taking water. In addition, his sewer service is not disconnected and can still be accessed by him. (CP 126)

This issue was previously addressed by the Washington State Supreme Court. In Holmes Harbor Sewer Dist. v. Holmes Harbor Home Bldg. LLC, the sewer district was charging monthly sewer charges against unimproved lots. 155 Wash.2d 858, 123 P.3d 823 (2005). The Court found,

In 1959, the legislature amended this statute's predecessor by changing the phrase "to those receiving such service" to read "to those to whom such service is available." Laws of 1959, ch. 103, § 11. The Court of Appeals analyzed this amendment when a property owner challenged the validity of sewer service charges on vacant dwellings physically connected to sewer collection and treatment facilities. *Lake Stevens Sewer Dist. v. Vill. Homes, Inc.*, 18 Wash.App. 165, 566 P.2d 1256 (1977). The property owner argued the dwellings were not furnished with sewer service until they were occupied and actual use began. The court properly rejected this argument, recognizing the amendment to the statute makes the availability of the sewer, not actual use, the basis for imposing charges. The court defined availability as commencing when a physical connection is made between the sewer collecting the sewage flow from a parcel of property and the main or trunk sewers of the sewer district. Under this construction, the sewer district could charge properties for furnishing sewer service upon connection to the system, relieving the district from the burden of monitoring when households were actually using the system, as the previous statutory framework seemed to require.

This is the situation here. Mr. Sitthideth's home is actually connected to the water and sewer system and his service is available. His

water meter has been turned off and locked due solely to his non-payment of his utility bill. Upon making payment of the amounts owed, the water service will be restored. This can literally occur within minutes of payment being made and a District employee driving to the home to unlock and turn the meter back on. Mr. Sitthideth is not being harassed or treated any differently than the many thousands of District customers. In the mean time, he continues to receive the benefit of water and sewer service with the District maintaining the facilities that provide for water and sewer service, paying financial obligations, complying with comprehensive plan requirements, etc.

There is no requirement in the law that Mr. Sitthideth had to sign a contract with Cedar River before receiving service, or that Cedar River had to personally disclose all charges directly to Mr. Sitthideth before he received service. Just as there is no contract for property taxes, fire service, storm drainage service, or the many other charges imposed by government agencies, there is no signed contract for water or sewer service. The "contract" are the laws created by the elected Commissioners and State statute. All such laws are open to the public for review. If the water and sewer rates of the district were a factor in Mr. Sitthideth's

decision to purchase his home, he was more than welcome to obtain that information from Cedar River prior to his purchase.

7. The District charged appropriate penalties.

Mr. Sitthideth's claim that the District is charging unlawful penalties is also without merit and contrary to State statute. (Appellant's Brief, pg. 17) RCW 57.08.081(3) provides the District authority to add "penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution." It has appropriately done so.

Mr. Sitthideth continues to not pay his bi-monthly water and sewer charges, currently \$147.46. As such, a penalty is added to the charge in the amount of \$14.75 on each charge. The District is also authorized to add interest. RCW 57.08.081(3). These charges are considered "a lien against the property upon which the service was received, subject only to the lien for general taxes." *Id.*

8. Mr. Sitthideth is not entitled to damages.

Mr. Sitthideth's claims for allegedly losing financial assistance, supposed lost rental income, pain/suffering, Consumer Protection Act claims, and other damages are simply without any factual or legal basis. (Appellant's Brief, pg's 7-10; 18-19) Mr. Sitthideth must show some sort of violation of the law by the District, before any discussion of damages

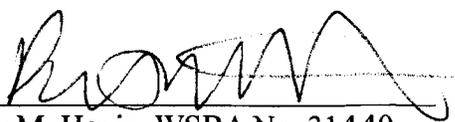
would be appropriate. Any harm or injury Mr. Sitthideth believes he suffered was due solely to his failure to pay his water and sewer bill.

E. CONCLUSION

The District is sympathetic to those that may be unemployed and struggling to pay even for basic services. The elected commissioners of the District are available to hear the concerns of customers and respond within their discretion. The charges of the District are authorized by statute, within the discretion of the elected commissioners, and were appropriately billed to Mr. Sitthideth. The trial court's decision granting summary judgment and denying the motion to amend the complaint should be affirmed.

Respectfully submitted this 18th day of November, 2011.

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By: 

Patrick M. Hanis, WSBA No. 31440

Michael M. Hanis, WSBA No. 6166

Attorneys for Respondent

Cedar River Water and Sewer District

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the below date, I mailed a true copy of this document as follows:

Kam Sitthideth
15405 141st Place SE
Renton, Washington 98058

DATED this 10th day of November, 2011, at Kent, Washington.


Rebecca Simmons