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No. 68578-3-I

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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ROBERT KANANY,

Appellant,

vs.

OVIDIO ESCAMILLA,

Respondent.

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RESPONDENTS' RESPONSE BRIEF

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ORIGINAL

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## I. INTRODUCTION

This is a simple case of sour grapes. Appellant Robert Kanany failed to pay for services related to Kanany's development of six parcels of real property. A mechanic's lien was recorded against the real property by Concrete Services, Inc. Kanany sold one of the parcels to Respondent Ovidio Escamilla and did not disclose the existence of the mechanic's lien. A lawsuit was initiated against, among others, Kanany and Escamilla. Kanany was served. A default judgment was obtained against Kanany by Concrete Services on September 24, 2009 (the "Default Judgment"). Concrete Services assigned the Default Judgment to Escamilla, dismissed its claims against Escamilla, and released its lien against Escamilla's parcel all in exchange for the payment of \$10,000.

Kanany admits he "just kind of left" the Default Judgment sitting there until May 2011, when Kanany filed a motion to vacate the default judgment due to lack of service. Kanany claimed that his brother was served at his house and that his brother was not a resident of his house. The trial court held an evidentiary hearing, during which it became clear to the trial court that Kanany had personally been served and gave the process server his brother's name.

After Kanany's testimony, Kanany's counsel, on the record, conceded service and asked the Court to amend Kanany's motion to vacate to seek relief on the ground that the Default Judgment should be deemed satisfied because, although Concrete Services was informed that it could not cash the check for \$10,000 until the assignment of judgment was executed and returned, Concrete Services received the check prior to its execution of the assignment document. The trial court allowed the amendment, but rejected the requested relief. The court further found that Kanany should be sanctioned pursuant to CR 11 as he had lied to the court regarding service and his motion was frivolous and without legal or factual basis.

Instead of simply accepting their lumps, Kanany and his counsel have pursued this frivolous appeal. The rulings of the trial court should be affirmed and attorneys' fees and expenses of this appeal should be awarded to Escamilla. Further, both Kanany and his counsel should be sanctioned pursuant to RAP 18.9 for filing a frivolous appeal.

## II. STATEMENT OF ISSUES

As a technical matter, the issues presented by Appellant are:

1. Whether Kanany has adequately assigned error to, and, if he has, substantial evidence supports, the trial court's Findings of Fact #1-3, 4, 8 & 12?

2. Whether Kanany has adequately assigned error to Conclusions of Law #1-8, and, if he has, whether the conclusions are erroneous?

3. Whether the trial court's entry of the March 6, 2012 order denying Kanany's amended motion to vacate and awarding Escamilla attorneys' fees and costs was an abuse of discretion?

4. Whether the trial court's entry of the March 28, 2012 Supplemental Judgment was an abuse of discretion?

As a practical matter, the Appellant's appeal essentially comes down to this question: Did the payment of \$10,000 on behalf of Escamilla in exchange for, *inter alia*, the assignment of the Default Judgment amount to a satisfaction of the Default Judgment? Because the answer to this question is clearly no, the Default Judgment awarded attorneys' fees and costs, and this appeal is frivolous, the rulings of the trial court should be affirmed and the attorneys' fees and expenses

incurred by Escamilla in relation to this appeal should be awarded to him as against Kanany and Kanany's counsel.

### III. STATEMENT OF CASE

On or about February 7, 2009, Concrete Services, Inc., filed an amended complaint against, among others, Kanany and Escamilla (the "Complaint"). (CP 1-11.) The Complaint sought to collect money that Concrete Services was owed by Kanany related to work completed in February 2008 on six parcels of property in King County, Washington. (*Id.*; CP 29-34.) The Complaint also sought foreclosure of a mechanics' lien against the six parcels. (CP 1-11) Prior to the lawsuit, one of the parcels was sold to Escamilla by Kanany. (CP 5-6, 227 & 234-36 (Kanany Dep. Tr.)l App.'s Br. at 12.)

On March 1, 2009, at 8:55 PM, Kanany was served with a copy of the Complaint along with a summons. (CP 12-13 (Decl. of Service), 153-54 & 157-76 (Colbo Decl. and fax from Kanany); 9/26/11 RP 31-33 (Kanany testimony re descriptions of Kanany and his brother Kamran Kanany), 37-40 (Kanany testimony re admitting sending fax to Colbo with summons and Complaint), 65-68 & 72-73 (Process Server testimony re service on someone looking like Kanany); 10/6/11 RP 3-4

(Kanany's attorney conceding service on the record); CP 435 (trial court finding that Kanany was not credible).)

Kanany did not appear or otherwise defend against the Complaint, and a default judgment against Kanany was entered on September 4, 2009, for \$11,306.26, which included an award of attorneys' fees and costs (the "Default Judgment"). (CP 43-45.) A certified copy of the Default Judgment was recorded in Pierce County and a certified abstract of the Default Judgment was filed with the Pierce County Superior Court Clerk on December 29, 2009. (CP 480-88.) The Default Judgment was assigned to Escamilla in exchange for consideration, including the payment of \$10,000 to Concrete Services and the dismissal of Concrete Services claims against Escamilla. (CP 373-74 (Letter to Concrete Services's attorney), 404 (Ursich Decl.), 406-408 (Assignment); CP 48-50 (Dismissal re Escamilla).) The \$10,000 came from title insurer Ticor Title as Ticor Title insured Escamilla in relation to his transaction with Kanany and Ticor Title has subrogation rights. (CP 366-67 (Letter from Ticor Title and \$10,000 check); CP 409-21 (Escamilla title insurance policy).)<sup>1</sup>

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<sup>1</sup> To the extent that Kanany's brief can be read to assert that Ticor Title has some liability to Kanany or Concrete Services, such assertion is legally  
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Despite having been served with a summons and the Complaint, and despite having personally contacted Gregg Colbo at Ticor Title on March 9, 2009, and Escamilla's attorney, Greg Ursich, on July 16, September 2, 4, 15, and 21, 2009, March 29, 2011, and in April 2011 regarding the lawsuit, (CP 153-54, 157-76 (Colbo Decl. and Kanany fax); 9/26/11 RP 37-40 (Kanany testimony re admitting sending fax to Colbo); CP 132-34 (Ursich Decl.)), Kanany waited until May 2011 to file a motion to vacate the Default Judgment, (CP 56). The motion asserted that the Default Judgment should be vacated because service was improperly served on Kanany's brother, Kamran Kanany, at Kanany's home because Kamran Kanany was not a resident at the time. (CP 433 (Trial Court Findings); CP 56-70 (Motion to Vacate).)<sup>2</sup>

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unfounded. Under Washington law, "title insurance companies have no general duty to disclose potential or known title defects in preliminary title commitments." *Barstad v. Stewart Title Guaranty Company*, 145 Wn.2d 528, 530, 39 P.3d 984 (2002). In addition, neither Kanany nor Concrete Services is an insured under Escamilla's insurance policy. (CP 411 & 416.)

<sup>2</sup> The motion falsely stated that the declaration of service "fairly describes the physical appearance of Kamran Kanany[,] (CP 57; CP 433), and Kanany swore under oath that he was "served neither summons nor complaint, (CP 91 (Kanany Decl.); CP 433). The declaration of service indicated the summons and Complaint were left with "Cameron Kanany Co Resident" and described him as "50'S, 210, 5'10, C/M[.]" which meant "50s, 210 pounds, five-foot-ten Caucasian male." (CP 12-13; 9/26/2011 RP 63 (Process server testimony); CP 432-33.) As found by the trial court based on admitted photographs and Kanany's appearance in court, "Kanany appears to be a Caucasian man in his early 50s who weighs well over 200 pounds" and Kamran Kanany "appears to

In relation to responding to Kanany's motion, Escamilla took the depositions of Kanany and Kamran Kanany. (CP 448 (Ursich Decl.)) Escamilla's response focused on establishing that Kamran Kanany was a "resident" at the time of service. (CP 116-27 (Resp. to Mot. to Vacate), 433.) Following a hearing on Kanany's motion, the Court ordered an evidentiary hearing. (CP 432-35.)

On September 26, 2011, Kanany testified under oath that he was not served with the summons and complaint and had not misrepresented himself as Kamran Kanany. (9/26/2011 RP 47-48 & 84.) Following the testimony of Kanany and the process server, the hearing was continued until October 6, 2011. (CP 435; 9/26/11 RP 86.)<sup>3</sup>

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be even younger than his reported 32 years, with dark skin and hair, and who appears to weigh less than 200 pounds." (CP 434.) These descriptions are consistent with Kanany's testimony. (9/26/11 RP 31-33.) Further, the process server, Bernard Dunayski, looked at the photographs and testified that between Kamran Kanany and Kanany the person he served looked like Kanany. (9/26/11 RP 65-68 & 72-73.) Not surprisingly, the trial court found, based on this substantial evidence and on Kanany's lack of credibility, "Kanany had been personally handed the summons and complaint at his home on March 1, 2009, and that he had told the process server that he was Kamran Kanany, in order to mislead the process server, and in preparation for his misleading this court." (CP 435.)

<sup>3</sup> The Court's Findings of Fact indicate that Gregg Colbo testified at the evidentiary hearing. (CP 433, 435.) However, Mr. Colbo was supposed to testify on October 6, 2011, but did not do so because Kanany conceded service. (9/26/2011 RP 78; 10/6/11 RP 3-5.) A review of the Findings of Fact makes clear that the inclusion of Greg Colbo was simply a clerical error. (CP 432-39.) The actual discussion of testimony focuses on Kanany and the process

Two days after Kanany's testimony, Kanany filed a motion seeking to change the ground for vacating the Default Judgment to CR 60(b)(6) (satisfaction of judgment). (CP 344.) Kanany asserted that, since Ticor Title (who insured Escamilla related to the sale of property from Kanany to Escamilla) paid \$10,000 to Concrete Services in exchange for the assignment of the Default Judgment to Escamilla and the dismissal of Concrete Services separate claims against Escamilla, the Default Judgment, in the face amount of \$11,306.26, had been satisfied. (CP 344-55.) This argument was based on Kanany's further incorrect assertion that Ticor Title had no subrogation rights. (CP 350, 412.) Kanany asserted he raised this new ground based on "newly discovered evidence" that it was the title company and not Escamilla who paid Concrete Services related to the assignment of the Default Judgment. (CP 346.)

Escamilla did not oppose the change of grounds per se, but expressly "reserve[d] all rights in relation to recovering the amounts, including attorneys' fees and costs, incurred in defending against

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server and notes that not all witnesses were heard from. (CP 434-35.) Therefore, this Court may simply correct the mistake. *Callihan v. Dep't of Labor & Indus.*, 10 Wn. App. 153, 156, 516 P.2d 1073 (1973) ("An appellate  
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Defendant Kanany's attempt to vacate the default judgment." (CP 379.) Escamilla further contended that Kanany's assertion that the Default Judgment was satisfied because the check for \$10,000 came from Ticor Title instead of directly from Escamilla was unfounded. (CP 375-82.) In addition, Escamilla pointed out that Kanany had delayed in seeking relief since Kanany spent years as a realtor so would have known how title insurance works. (CP 381-82; *see also* 191-93 (Kanany Dep. Tr.).)

In his reply, apparently realizing that the subrogation argument was incorrect, Kanany asserted that it was the fact the check was received by Concrete Services at the same time the unsigned assignment was received that resulted in a satisfaction of judgment. (CP 428-29.) Of course, the check was accompanied by a letter from Escamilla's counsel explaining it was not to be cashed until the assignment was executed. (CP 373-74; *see also* CP 349-50 (Kanany's counsel explaining the conditions sent by the letter to Concrete Services's attorney).)

At the hearing on October 6, 2011, Kanany's counsel conceded Kanany was served and then the trial court heard oral argument on

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court may itself correct a clerical error in a judgment appealed from without remanding the judgment to the trial court for that purpose.").

Kanany's newly filed motion. (10/6/2011 RP 3-5; CP 435.)<sup>4</sup> Escamilla requested CR 11 sanctions at this hearing. (10/6/2011 RP 12.) On March 6, 2012, the trial court executed its Findings of Fact, Conclusions of Law, and Order on Defendant Kanany's Motion to Vacate Default Order and Judgment. The trial court (a) allowed Kanany to amend the basis for his motion to vacate, (b) denied the motion as amended, (c) found Kanany had lied to the title court and that his motion "was a frivolous motion without legal or factual basis" that "served to waste resources of the parties, attorneys, and the Court[,] " and (d) concluded that Escamilla was entitled to an award of attorneys' fees and costs "in relation to defending the Default Judgment, including the attorneys' fees and costs associated with all of the depositions conducted on behalf of, the pleadings and papers filed on behalf of, the witnesses presented on behalf of, and the oral arguments made on behalf of Defendant Escamilla." (CP 432-39.) The trial court's ruling on Escamilla's entitlement to attorneys' fees and costs was based on CR 11 and the fact

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<sup>4</sup> Interestingly, it appears that Kanany's counsel cannot keep straight whether or not he actually concedes service occurred. See App. Br. at 13 ("Concrete Services served the named Defendants...."). The telling language in Kanany's brief is, "[The contention that service was improper] was ultimately dropped for, *inter alia*, the reason that whether or not he was properly served was moot

that the Default Judgment contained an award of attorneys' fees and costs. (CP 438; *see also* CP 499-501.)

Escamilla moved to quantify the award of attorneys' fees and costs and requested that the priority of the supplemental judgment relate back to the Default Judgment. (CP 440-88.) Kanany objected to the motion "very briefly, and for the purpose of preserving the general issue of the award of fees and costs on review[.]" (CP 489-90.) On March 27, 2012, the trial court executed a Supplemental Judgment Re: Default Judgment awarding Escamilla \$23,381.20 in attorneys' fees and costs to share the same priority as the Default Judgment. (CP 498-502.)

On April 4, 2012, Kanany appealed the Findings of Fact, Conclusions of Law, and Order on Defendant Robert Kanany's Motion to Vacate Default Order and Judgment and the Supplemental Judgment Re: Default Judgment. (CP 503-18.)

#### IV. ARGUMENT

Kanany generally attacks the trial court's rulings based on his argument that the \$10,000 check resulted in a satisfaction of the Default

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grounded on the issues presented in this Appeal...." (App. Br. at 13 n.23.)  
The use of the phrase "*inter alia*" speaks volumes.

Judgment. (App. Br. at 11 (Issues Relating to Assignments of Error).)

Kanany also makes the following assignments of error:

- Kanany objects to Finding of Fact #1 regarding the trial court's finding that the testimony of Kanany was not credible and the testimony of Colbo and process server Bernard Dunayski was credible. Kanany's objection is that Colbo did not testify and that Kanany testified "candidly, openly, and consistently as to his recollections of the time and events surrounding the asserted personal service." (App. Br. 2-3 & n. 1.)
- Kanany objects to Finding of Fact #2 regarding Kanany's counsel's concession of service and the trial court's independent finding that Kamran Kanany was personally served and told the process server that his name was Kamran Kanany. Kanany's objection is that (a) Kanany denied he answered the door as Kamran, Kanany claimed he was not home at the time of service, and evidence indicated Kamran Kanany was home at the time of service and (b) Kanany's counsel simply did not "challenge the trial court's characterization as to service of process" since the issue was moot. (App. Br. at 3 & n.2.)
- Kanany objects to Finding of Fact #3 that the Default Judgment was assigned to Escamilla and the claims against Escamilla were dismissed in exchange for the payment of the \$10,000. Kanany's objection is based on his \$10,000 argument and the assertion that Concrete Services dismissed all of its claims because the Default Judgment had been satisfied.. (App. Br. at 4 & n.3.)
- Kanany objects to Finding of Fact #4 that the \$10,000 check was paid to Concrete Services on behalf of Defendant Escamilla by Ticor Title. Kanany's

objection is that Ticor Title actually paid Concrete Services to settle Concrete Services lien claim against all six lots. (App. Br. at 4 & n.4.)

- Kanany objects to Finding of Fact #8 regarding the fact that the \$10,000 was not paid to satisfy the Default Judgment but was consideration for the assignment of the Default Judgment. Kanany's objection is based on his \$10,000 argument. (App. Br. at 4-5 & n.5.)
- Kanany objects to Finding of Fact #12 regarding the fact that Escamilla's litigation activities in relation to defending the Default Judgment were essential. Kanany's objection is based on the \$10,000 argument and the assertion that Escamilla should not have accepted the assignment of the purportedly satisfied Default Judgment. (App. Br. at 5 & n.6.) It is also based on the assertion that the trial court did not do a complete assessment of the issues. (App.Br. at 46-47.)
- Kanany objects to Conclusion of Law #1 regarding Kanany being validly and properly served. Kanany's objection is based on his objections to Findings of Fact #1 and #2. (App. Br. at 6 & n.7.)
- Kanany objects to Conclusion of Law #2 regarding the \$10,000 check not resulting in the satisfaction of the Default Judgment. Kanany's objection is based on his objections to Findings of Fact #3-4 & 8. (App. Br. at 6 & n.8.)
- Kanany objects to Conclusion of Law #3 regarding the conclusion that whether Ticor Title paid the \$10,000 was not material. Kanany's objection is based on his objections to Findings of Fact #3-4 & 8 and the added semantic argument that he asked that the Default

Judgment be satisfied not vacated. (App. Br. at 6-7 & n.9.)

- Kanany objects to Conclusion of Law #4 regarding the Default Judgment being properly assigned to Escamilla. Kanany's objection is based on his objections to Findings of Fact #3-4 & 8. (App. Br. at 7 & n.10.)
- Kanany objects to Conclusion of Law #5 regarding Kanany not showing that the Default Judgment should be vacated pursuant to CR 60(b)(6). Kanany's objection is based on his objections to Findings of Fact #3-4 & 8 and the added semantic argument that he asked that the Default Judgment be satisfied not vacated. (App. Br. at 7-8 & n.11.)
- Kanany objects to Conclusion of Law # 6 regarding Kanany's unreasonable delay in seeking relief. Kanany's objection is based on his objections to Findings of Fact #3-4, 8 & 12. (App. Br. at 8 & n.12.) It is also based on the argument that there is no timeliness requirement and that Kanany did not delay. (App. Br. at 40-46.)
- Kanany objects to Conclusion of Law #7 regarding Escamilla being entitled to his attorneys' fees and costs because the Default Judgment awarded attorneys' fees and costs. Kanany's objection is based on his objections to Findings of Fact #3-4, 8 & 12. (App. Br. at 8 & n.13.) It is also based on the assertion that the trial court did not do a complete assessment of the issues. (App.Br. at 46-47.)
- Kanany objects to Conclusion of Law #8 regarding Escamilla's entitlement to attorneys' fees and costs under CR 11. Kanany's objection is based on his objection to Findings of Fact #1-4, & 12. (App. Br.

at 8-9 & n. 14.) It is also based on the assertion that the trial court did not do a complete assessment of the issues. (App.Br. at 46-47.)

- Kanany objects to the Order. Kanany's objection appears to be based on all of his objections. (App. Br. at 9-10 & n.15-16.)
- Kanany objects to the Supplemental Judgment. Kanany's objection is based on his \$10,000 check argument and that Escamilla was not forthcoming regarding from where the \$10,000 came from. (App. Br. at 10 & n. 17.) It is also based on the assertion that the trial court did not do a complete assessment of the issues. (App.Br. at 46-47.)

Because Kanany relies most substantially on his \$10,000 check argument, that issue will be addressed first. Kanany's semantic argument regarding the type of relief he requested will then be addressed. Next, Kanany's failure to adequately attack the award of attorneys' fees and costs will be addressed. Finally, the remaining mélange of objections to the findings, conclusions, order, and judgment will be addressed.

Escamilla does not dispute the following standards of review asserted by Kanany:

- Review of a trial court's decision on a CR 60(b)(6) motion is for abuse of discretion.

- A trial court abuses its discretion when it acts on untenable grounds or for untenable reasons or its order is manifestly unreasonable.
- Review of challenged findings of facts is for substantial evidence.
- Review of challenged conclusions of law is de novo.

Escamilla notes the following additional standards of review:

- **Award of Sanctions:** Review of a trial court’s entry of sanctions is for abuse of discretion. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 903, 969 P.2d 64 (1998)
- **Findings of Fact:** While it is true that an appellate court reviews a trial court’s findings of fact for substantial evidence, “[e]ven where the evidence conflicts, a reviewing court must determine only whether the evidence most favorable to the prevailing party supports the challenged findings.” *State v. Black*, 100 Wn.2d 793, 802, 676 P.2d 693 (1984). In addition, “[c]redibility determinations cannot be reviewed on appeal.” *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).
- **New Argument:** As a general matter, a party may not raise an asserted error by the trial court for the first time on appeal; on the other hand, “[a] party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.” *See* RAP 2.5(a).

**A. Mere Delivery of a Check When Conditions are Placed on Its Cashing does Not Result in Payment until After Conditions are Satisfied.**

The keystone to Kanany’s argument that the Default Judgment was satisfied is his contention that the delivery of the check along with the unsigned assignment document resulted in the Default Judgment

being satisfied before the assignment occurred. This specious argument ignores one crucial fact. The check was accompanied by a letter instructing that the check was not to be cashed until the assignment was executed and returned to Escamilla's attorney. (CP 373-74; Finding of Fact #7 (CP 436).)

Just as post-dating a check changes the date of payment, *see* RCW 62A.3-113(a), so too does placing an explicit condition on when the check can be cashed, *see* RCW 62A.3-117 (discussing agreements modifying obligation to pay instrument). This is in accord with RCW 62A.3-310(b)(1) regarding the taking of an uncertified check for an obligation:

*Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:*

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(Emphasis added.) Pursuant to the letter from Escamilla’s counsel, in order to cash the check, Concrete Services had to execute and return the assignment; this is akin to a unilateral contract (contract accepted by performance). *See* RCW 62A.3-310(b) (“Unless otherwise agreed....”). Thus, the check could only be *taken* if the assignment were executed and returned. *Id.*<sup>5</sup>

The case emphasized by Kanany to support his argument that satisfaction occurred is not on point.<sup>6</sup> In *Strong Memorial Hospital*, a garnishee debtor (a garnishment judgment was entered against this entity) apparently paid off the full amount owed by the debtor in or around May 1983. 470 N.Y.S.2d 542, 543 (1983). “On June 29, 1983, [the creditor] purported to assign the original judgment it received” against

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<sup>5</sup> This case does not involve the rights of a holder in due course to enforce the check if Concrete Services were to have negotiated the check contrary to the terms of the letter. *See e.g.*, RCW 62A.3-305.

<sup>6</sup> Kanany’s citation to 47 Am. Jur. 2d *Judgments* § 811 regarding the “one satisfaction rule” is misleading. (App. Br. at 34 & n.42.) Kanany leaves out the beginning language of §811 which states:

“A judgment creditor can assign his rights in the judgment to a third party. *However, if the judgment debtor satisfies the judgment before it is assigned by the judgment creditor, the satisfaction would bar the assignee from enforcing the judgment.*”

the debtor to the garnishee debtor. *Id.* Thus, the assignment occurred over one month after the satisfaction of the judgment. Since the payment in the case at bar was made after the assignment, there was no satisfaction and *Strong* does not apply.

Further, even if the payment had been made before the assignment, there still would not have been a satisfaction. 60 Am. Jur. 2d Payment § 5 (2012) (“A third person's payment of a debtor's obligation differs from the third person's purchase of the debt in that payment discharges the debt while purchase does not discharge the debt, which is enforceable by the third person. Ordinarily, the intention of the parties determines whether a transfer of money by a third person to a creditor constitutes a discharge or purchase of an underlying debt.”). The letter to Concrete Services alone provides substantial evidentiary support to the trial court’s finding that the \$10,000 was consideration for the assignment (purchase) of the Default Judgment. *See* CP 436 (Finding of Fact #3), 373-74 (letter to Concrete Services’s attorney); *see also* CR 48-50 (Dismissal re Escamilla), 46-47 (assignment of Default Judgment against Kanany), 367 (\$10,000 check; App. Br. at 17 (noting

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(2012) (Emphasis added; footnote omitted.) Further the title of §811 is “Where judgment creditor receives satisfaction before assigning the judgment lien[.]”

that Concrete Services recorded a “*Partial Release of Lien*...releasing the Escamilla property from its claim of lien”); CP 39 (Concrete Services’s Attorney’s itemization of fees noting call with Escamilla’s attorney on 7/20/09 regarding possible settlement of “Escamilla Claim”).

Kanany also attempts to raise a new argument regarding the payment of a judgment by one of multiple joint defendants. (App. Br. at 34 n.42, 36-37.) This argument should be disregarded as it was not raised to the trial court. RAP 2.5(a). To the extent this Court does entertain the argument, it should be rejected.

In *Charles P. Young Company v. Anaya*, a New Mexico case relied upon by Kanany:

...members of an association had been found jointly and severally liable for an unpaid debt to a printing company. Several members of the association sued the law firm that had represented the association for legal malpractice and received a judgment compensating them for the money owed the printing company. The printer filed a writ of garnishment against the law firm for the malpractice judgment, and when the garnishment was satisfied assigned the judgment for the unpaid debt to the members of the association who had sued the law firm.

891 P.2d 1203 (N.M. S. Ct. 1995). The Court held the assignment ineffective “because the garnishment was sufficient to satisfy the judgment” and because “[w]here one of several defendants against whom there is a joint judgment pays to the other party the entire sum due, the judgment becomes thereby extinguished....” *Id.* at 1205 (quoting 1 A. C. Freeman, *A Treatise on the Law of Judgments* § 1133, at 2358-59 (Edward W. Tuttle rev., 5<sup>th</sup> ed. 1925 (quoting *Harbeck v. Vanderbilt*, 20 N.Y. 395, 397-98 (1859))). The case at bar does not involve a garnishment sufficient to satisfy a judgment and there is no judgment against Escamilla. In fact, Escamilla requested dismissal of Concrete Services’s claim against him in his answer. (CP 20.)

Moreover, it cannot be overlooked that, although the assignment was in the name of Escamilla, Ticor Title had subrogation rights and issued the check. (CP 436 (Finding of Fact #5), 412.) It is hardly unusual for a title insurer to obtain and enforce judgments when a lien is overlooked. The case *The Credit Bureau Corp. v. Beckstead*, 63 Wn.2d 183, 385 P.2d 864 (1963), is instructive. In that case, there was property encumbered by multiple recorded liens. *Id.* at 184. The senior lien was a default judgment held by The Credit Bureau Corporation

(“Credit Bureau”). *Id.* There was also a junior mortgage held by the Gray Company, Inc. (“Gray Company”) *Id.* The property was sold and Commonwealth Title Insurance Company (“Commonwealth”) was the title insurer. *Id.* at 184-85. The report prepared by Commonwealth did not disclose the Gray Company mortgage or another junior mortgage. *Id.* When the transaction closed, Credit Bureau received payment of a large part of its judgment and filed a partial satisfaction of judgment. *Id.* Commonwealth then discovered the mistake. *Id.* at 185. Of note, the trial court and the appellate court recounted that “Commonwealth...has now paid to [Credit Bureau] additional funds required to purchase [its] judgment...in its entirety and *is entitled to*, and [Credit Bureau] has agreed to assign to ...Commonwealth... said judgment in its entirety.” *Id.* at 185 (emphasis added; internal quotation marks omitted). The litigation was over whether the partial satisfaction should be vacated. *Id.* at 184. The partially satisfied default judgment was ultimately reinstated and placed ahead of the Gray Company mortgage in priority. *Id.* at 186-188. For purposes of this case, however, the key is that *neither the trial court nor the appellate court paused for a moment before finding that the*

*title insurer was “entitled to” Credit Bureau’s default judgment. Id. at 185.*

Because the check sent to Concrete Services could not be cashed until the assignment was executed and returned to Escamilla’s attorney, this Court should affirm the trial court’s ruling that the Default Judgment was properly assigned.

**B. Kanany’s Semantic Argument Regarding “Vacation” Versus “Satisfaction” of the Default Judgment Places Form over Substance.**

Kanany’s original motion was styled a motion to vacate. He then moved to amend the motion to rely on CR 60(b)(6). Whether the trial court used the word “vacate” or “satisfy” in relation to the Default Judgment, the fact of the matter is that the trial court denied Kanany’s amended motion. The use of the word “vacate” or “satisfy” is simply not material. At most it is a clerical error that can simply be corrected by this Court. *Callihan*, 10 Wn. App. at 156. It certainly has not misled Kanany. (App. Br. at 37-38.) Further, even if it was material, the trial court’s findings and conclusions would amply support not deeming the Default Judgment “satisfied.” *See* RAP 2.5(a) (“A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed

to fairly consider the ground.”); CP 437 (“The \$10,000 check paid to Plaintiff Concrete Services, Inc., did not result in the satisfaction of the Default Judgment against Defendant Kanany.”).

**C. Kanany’s Motion was Untimely.**

Kanany asserts that his motion was “timely” because he relied on a representation and warranty from Concrete Services to Escamilla in the assignment filed with the trial court that it had not received any money in satisfaction of the Default Judgment and he did not find out about the \$10,000 payment until he received responses to a subpoena to Ticor Title. (App. Br. at 17-18 & 42-43.) First, Kanany’s focus on the timeliness of the motion is futile. The trial court independently upheld the validity of the assignment, (CP 437-38), and, as demonstrated in this brief, that conclusion is supported by the trial court’s findings and the law.

Second, Kanany’s argument is substantively flawed. CR 60(b) requires that a CR 60 motion “be made within a reasonable time[.]” CR 60(b). Kanany does not site a single Washington case stating there is no time requirement for a CR 60(b)(6) motion. The one Washington case cited by Kanany deals with cases where a court never had any personal jurisdiction (CR 60(b)(5)). *Allstate Insurance v. Khani*, 75 Wn. App.

317, 877 P.2d 724 (1994). In such a case, the judgment is void. *Id.* at 323-24. CR 60(b)(6) does not deal with void judgments.

Moreover, the reasonable time requirement is applicable to the federal analogue of CR 60(b)(6). *See* Fed. R. Civ. P. 60(c) (setting “reasonable time” requirement); 11 Federal Practice & Proc. §2863 at 332 & 2866 at 382, 389 (Updated through 2012 Supp.); *see also The Travelers Indemnity Co. v. United States*, 81 Fed. Cl. 508, 510 (2008) (cited by Kanany); *see also Sunderland v. City of Philadelphia*, 575 F.2d 1089, 1090 (3rd Cir. 1998) (cited by Kanany; noting that there is not a “specific” time limitation).<sup>7</sup>

Kanany was served with a summons and a Complaint in 2009. He did not file his motion to vacate until May 2011. It was not until September 6, 2011, after Kanany sought to vacate the Default Judgment based on insufficient service and after Escamilla had already engaged in costly discovery, briefing, and argument regarding the service issue that Kanany served a subpoena on Ticor Title. (CP 361 (Subpoena Decl. of

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<sup>7</sup> Kanany’s citation to the article Gara, *Challenging the Finality of Tax Court Judgments: When is Final Not Really Final?*, 20 Akron Tax J. 35, 43 (2005) should be disregarded. The citation supporting the language cited is simply to Fed. R. Civ. P. 60(b). Fed. R. Civ. P. 60(c) has a reasonable time requirement (this reasonable time requirement used to be found in Fed. R. Civ. P. 60(b)).

Service).) This could have been done at any time from 2009 through September 2011. *Cf. Sutherland* 575 F.3d at 1090-91 (granting relief under Fed. R. Civ. P. 60(b)(5) where “the opposing party has suffered no prejudice from the moving party’s delay in raising the satisfaction issue”). Kanany unreasonably delayed in seeking relief under CR 60(b)(6) and caused significant prejudice to Escamilla.

**D. Kanany Fails to Adequately Attack the Trial Court’s Award of Attorneys’ Fees and Costs.**

Kanany’s basis for attacking the trial court’s award of attorneys’ fees and costs to Escamilla is the bald assertion that the trial court did not engage in “a fair and impartial assessment of all the circumstances comprising this matter” and his assertion that the whole matter was caused by the failure of Concrete Services and Escamilla to acknowledge the satisfaction of the Default Judgment. (App. Br. at 46-47.) As noted by the trial court and shown in this brief, Kanany’s satisfaction argument is frivolous. Further, the trial court based its award on the fact that Kanany lied to the trial court, his motion was frivolous and “without legal of factual basis[,]” his motion served to waste resources of the parties, attorneys, and the court[,]” and “the Default Judgment contained an award of attorneys’ fees and costs against Defendant Kanany[.]” (CP

438-39; *see also* CP 499-501.) Kanany's unsupported assertions are not sufficient to overcome the trial court's reasoned findings and conclusions. Further, to the extent that Kanany contends that Escamilla should only be awarded a portion of his fees, (App. Br. at 46-47), this is a new argument and should be rejected. RAP 2.5(a); CP 489-90 (stating objection to request for quantification of fees was "for the purpose of preserving the general issue of the award of fees and costs on review").

**E. Kanany's Assignments of Error to Specific Findings, Conclusions, and other Rulings are Meritless.**

Kanany objects to Finding of Fact #1 regarding the trial court's finding that the testimony of Kanany was not credible and the testimony of Colbo and process server Bernard Dunayski was credible on the ground that Gregg Colbo did not testify and that Kanany was credible. First, the language regarding Colbo is a clear scrivener's error that can simply be corrected by this Court. *Callihan*, 10 Wn. App. at 156 ("An appellate court may itself correct a clerical error in a judgment appealed from without remanding the judgment to the trial court for that purpose."). Second, even if it could not be corrected, the testimony of the process server and the Court's finding that Kanany was not credible is more than sufficient to support the trial courts findings that Kanany

lied and was served. *See* RAP 2.5(a) (“A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.”) Third, the trial court’s credibility determination regarding Kanany is not subject to appellate review. *Morse*, 149 Wn.2d at 574. Thus, substantial evidence supports the trial court’s Finding of Fact #1.

Kanany objects to Finding of Fact #2 regarding Kanany’s counsel’s concession of service and the trial court’s independent finding that Kanany was personally served and told the process server that his name was Kamran Kanany based on Kanany’s declaration and the declaration of Kamran Kanany as well as based on Kanany’s assertion that his counsel did not concede service. First, the trial court found Kanany not credible, and that finding is not subject to appellate review. *Morse*, 149 Wn.2d at 574. Second, Kamran Kanany did not testify at the hearing. Third, Kamran Kanany’s declaration merely states he was “likely at Robert’s house in the evening checking on it” on March 1, 2009, and that he had “no specific recollection of being given any legal papers....” (CP 73.) The testimony of the process server and the description in the declaration of service provides more than substantial

support to the trial court's finding of fact. (9/26/11 RP 65-68 & 72-73; CR 12-13.); *Black*, 100 Wn.2d at 802 ("Even where the evidence conflicts, a reviewing court must determine only whether the evidence most favorable to the prevailing party supports the challenged findings."). Fourth, the report of proceedings (which Kanany's counsel conveniently did not request) shows that Kanany's counsel conceded service on the record. (10/6/2011 RP 3-4.) Thus, substantial evidence supports the trial court's Finding of Fact #2.

Kanany attacks Finding of Fact #3 that the Default Judgment was assigned to Escamilla and the claims against Escamilla were dismissed in exchange for the payment of the \$10,000 is based on his \$10,000 argument and the assertion that Concrete Services dismissed all of its claims because the Default Judgment had been satisfied. For the reasons stated in this brief, the \$10,000 argument is frivolous and meritless. Further, Concrete Service's motion to dismiss its remaining claims was filed on *July 12, 2010*. (CP 51-53.) That dismissal is not mentioned in the letter from Escamilla's counsel. (CP 373-74.) Thus, the dismissal does not suggest that the assignment of the Default Judgment to Escamilla was really a satisfaction of the Default Judgment. Even if it

could be viewed that way, substantial evidence supports the trial court's Finding of Fact #3. *State v. Black*, 100 Wn.2d at 802 ("Even where the evidence conflicts, a reviewing court must determine only whether the evidence most favorable to the prevailing party supports the challenged findings."); *see also* CP 48-50 (Dismissal re Escamilla), 46-47 (Assignment), CP 367 & 373-74 (letter to Concrete Services's attorney and \$10,000 check); App. Br. at 17 (noting that Concrete Services recorded a "*Partial Release of Lien*...releasing the Escamilla property from its claim of lien."); CP 39 (Concrete Service's attorney's itemization of fees noting call with Escamilla's attorney on 7/20/09 regarding possible settlement of "Escamilla's claim.").

Kanany attacks Finding of Fact #4 that the \$10,000 check was paid to Concrete Services, Inc., on behalf of Defendant Escamilla by Ticor Title based on his assertion that Ticor Title's intention was to settle Concrete Services entire lien claim. Kanany bases his attack on language in the stipulation and order of dismissal of Concrete Services claims against Escamilla regarding the parties "compromise[ing] and settle[ing]" the dispute between them and a letter from Ticor Title to Escamilla's attorney (not to Concrete Services) indicating the \$10,000

check is enclosed and is related to settling Claim No. 327611 on which Ovidio Escamilla is the insured. (App. Br. at 28; CP 49, 366.) Kanany then attempts to assert that this, along with Concrete Services eventual dismissal of all of its claims and failure to take additional actions to pursue the case, shows that the settlement was intended to be a full satisfaction of all of Concrete Services' claims.<sup>8</sup>

The record makes clear that the settlement focused solely on resolving the issues between Concrete Services and Escamilla. (CP 48-50 (Dismissal re Escamilla), 46-47 (Assignment), CP 367 & 373-74 (letter to Concrete Services's attorney and \$10,000 check); App. Br. at 17 (noting that Concrete Services recorded a "*Partial Release of Lien*...releasing the Escamilla property from its claim of lien."); CP 39 (Concrete Service's attorney's itemization of fees noting call with Escamilla's attorney on 7/20/09 regarding possible settlement of "Escamilla's claim.")) Thus, substantial evidence supports the trial court's Finding of Fact #4.

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<sup>8</sup> Kanany indicates that he does not actually consider the purported accord and satisfaction between Concrete Services and Escamilla actually is determinative of this matter as he states that this purported accord and satisfaction makes the timing issue the "controlling question[.]" (App. Br. at 30.)

Further, as discussed in relation to Finding of Fact #3, Concrete Service's motion to dismiss its remaining claims was filed on *July 12, 2010*. (CP 51-53.) That dismissal is not mentioned in the letter from Escamilla's counsel. (CP 373-74.) Thus, the dismissal does not suggest that the assignment of the Default Judgment to Escamilla was really a satisfaction of the Default Judgment. Even if it could be viewed that way, substantial evidence supports the trial court's Finding of Fact #4. *State v. Black*, 100 Wn.2d at 802 ("Even where the evidence conflicts, a reviewing court must determine only whether the evidence most favorable to the prevailing party supports the challenged findings.").

Kanany's objection to Finding of Fact #8 regarding the fact that the \$10,000 was consideration for the assignment of the Default Judgment is based on his \$10,000 argument. For the reasons stated in this brief, the \$10,000 argument is frivolous and meritless and substantial evidence supports Finding of Fact #8.

Kanany's objection to Finding of Fact #12 regarding the fact that Escamilla's litigation activities in relation to defending the Default Judgment were essential is based on the \$10,000 argument, the assertion that Escamilla should not have accepted the assignment of the

purportedly satisfied Default Judgment, and the assertion that the trial court did not do a complete assessment of the situation. As demonstrated in this brief, these objections are unfounded. Thus, Finding of Fact #12 is supported by substantial evidence.

Kanany's objection to Conclusion of Law #1 regarding the validity of service is based on his objections to Findings of Fact #1 & #2. Because the objections to the findings are unfounded, the trial court did not commit error in relation to Conclusion of Law #1.

Kanany's objection to Conclusion of Law #2 regarding the payment of the \$10,000 not resulting in the satisfaction of the Default Judgment is based on his objections to Findings of Fact #3-4 & 8. Because the objections to the findings are unfounded, the trial court did not commit error in relation to Conclusion of Law #2.

Kanany's objection to Conclusion of Law #3 regarding the materiality of the fact that Ticor Title paid the \$10,000 is based on his objections to Findings of Fact #3-4 & 8 and his semantic argument regarding "vacation" versus "satisfaction" of the Default Judgment. Because the objections to the findings and the "semantic" argument are

unfounded, the trial court did not commit error in relation to Conclusion of Law #3.

Kanany's objection to Conclusion of Law #4 regarding the fact that the Default Judgment was assigned is based on his objections to Findings of Fact #3-4 & 8. Because the objections to the findings are unfounded, the trial court did not commit error in relation to Conclusion of Law #4.

Kanany's objection to Conclusion of Law #5 regarding Kanany's failure to demonstrate he should be accorded relief under CR 60(b)(6) is based on his objections to Findings of Fact #3-4 & 8 and his semantic argument regarding "vacation" versus "satisfaction." Because the objections to the findings and the "semantic" argument are unfounded, the trial court did not commit any error in relation to Conclusion of Law #5.

Kanany's objection to Conclusion of Law #6 regarding Kanany's unreasonable delay in seeking relief is based on Kanany's objections to Findings of Fact 3-4, 8 & 12 and his assertion that there is no timeliness requirement under CR 60(b)(6) and that Kanany did not delay in bringing the motion. Because the objections to the findings are

unfounded, because there is a timeliness requirement for CR 60(b)(6), because Kanany unreasonably delayed and caused Escamilla significant prejudice, and because the Default Judgment was not satisfied, the trial court did not commit error in relation to Conclusion of Law #6.<sup>9</sup>

Kanany's objection to Conclusion of Law #7 regarding the award to Escamilla of attorneys' fees and costs because the Default Judgment contained such an award is based on Kanany's objections to Findings of Fact # 3-4, 8 & 12 and the assertion that the trial court did not do a complete assessment of the situation. Because the objections to the findings are unfounded and the trial court did a complete assessment, the trial court did not commit error in relation to Conclusion of Law #7.

Kanany's objection to Conclusion of Law #8 regarding the award of attorneys' fees and costs to Escamilla pursuant to CR 11 is based on his objections to Findings of Fact #1-4, 8 & 12 and the assertion that the trial court did not do a complete assessment of the situation. Because the objections to the findings are unfounded and the trial court did a

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<sup>9</sup> To the extent Kanany asserts the sole ground the Court had for denying CR 60(b)(6) relief was a review of dates (App. Br. at 46), such assertion ignores the detailed and extensive factual findings and conclusions of the trial court, including the conclusion that the Default Judgment was not satisfied and that Kanany lied to the Court and wasted the resources of "the parties, attorneys, and the court." (CR 432-39.)

complete assessment, the trial court did not commit error in relation to Conclusion of Law #8.

Kanany's objection to the Order is based on his other objections. As those objections are unfounded, the trial court did not abuse its discretion in denying Kanany's motion or in awarding Escamilla attorneys' fees and costs.

Kanany's objection to the Supplemental Judgment is based on his \$10,000 argument, the assertion that Escamilla was not forthcoming regarding from where the \$10,000 came, and the assertion that the trial court did not do a complete assessment of the situation. The \$10,000 argument should be rejected for the reasons provided in this brief. Further, the trial court did not make a finding that Escamilla was not forthcoming or that this affected Kanany's ability to raise his frivolous arguments, and "[t]he absence of a finding on an issue is presumptively a negative finding against the person with the burden of proof." *Taplett v. Khela*, 60 Wn. App. 751, 760, 807 P.2d 885 (1991). Also, Kanany cites no support in the record for arguing that Escamilla was not forthcoming or that this affected Kanany's ability to raise his frivolous

arguments.<sup>10</sup> (App. Br. at 47.) Finally, the trial court provided ample reasoning to support its award of attorneys' fees and costs. (CP 432-39; 498-502.) Thus, the trial court did not commit error in relation to the Supplemental Judgment.

**F. Request For Attorneys' Fees and Costs**

Kanany's appeal is completely frivolous such that Escamilla should be awarded his attorneys' fees and expenses. *See* RAP 18.9(a); *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d at 905 ("Quick-Ruben's continuation of a meritless claim through appeal entitles Verharen to attorney fees on appeal."); RAP 18.9(a); RAP 18.1; *cf.* RCW 4.84.185. Kanany's and his counsel's argument regarding the \$10,000 and their other mélange of arguments are completely frivolous. In addition, Kanany and his counsel argue regarding the sufficiency of the evidence and whether or not his counsel conceded service without even ordering the verbatim report of proceedings (which shows that Kanany's counsel did concede service). (Notice Not to Provide or File a

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<sup>10</sup> Despite his claims of innocence, Kanany concedes that he was aware of an allegation that a payment had been made to Concrete Services. (App. Br. at 17; *see also* CP 346.) Further, as the trial court was aware, Kanany had been a Realtor for eight years and had also been involved in approximately 45-50 real estate transactions. (CP 116-17, 191, 194, 377.) Thus, his claims of ignorance are specious at best.

Verbatim Report of Proceedings, COA Docket 4/27/2012.). Therefore, the award of attorneys' fees and expenses should be against Kanany and Kanany's counsel. *Fid. Mortgage v. Seattle Times*, 131 Wn. App. 462, 474, 128 P.3d 621 (2005) (awarding attorneys' fees and costs against appellant and his attorney for filing a frivolous appeal).

In addition, the Default Judgment in this case awarded attorneys' fees and costs (citing RCW 60.04.181) and the trial court found that this entitled Escamilla to an award of attorneys' fees and costs incurred in defending the Default Judgment. (CR 438.) Kanany did not appeal this issue such that it is the law of the case. *Detonics ".45" Assocs. v. Bank of Cal.*, 97 Wn. 2d 351, 353, 644 P.2d 1170 (1982) (finding that the failure to appeal a trial court's ruling on preemption made the ruling the law of the case);<sup>11</sup> *see also Stoullil v. Edwin A. Epstein, Jr. Operating Co.*, 101 Wn. App. 294, 299 (2000) (awarding attorney fees where party opposing CR 60(b) motion prevailed on appeal). Therefore, Escamilla is

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<sup>11</sup> Although Kanany assigned error to Conclusion of Law #7 regarding the award of attorneys' fees and costs based on the Default Judgment (App. Br. at 8), this issue is not addressed in Kanany's argument. Moreover, a review of the footnote outlining the basis of the objection makes clear that it is based on Kanany's assertion that the trial court erred in not finding the Default Judgment satisfied. (App. Br. at 8 n. 13, 4 & n. 3-4, 5 & n. 5-6).

entitled to its attorneys' fees and costs for this appeal. *See* RAP 18.1; *see also* RCW 60.04.181.

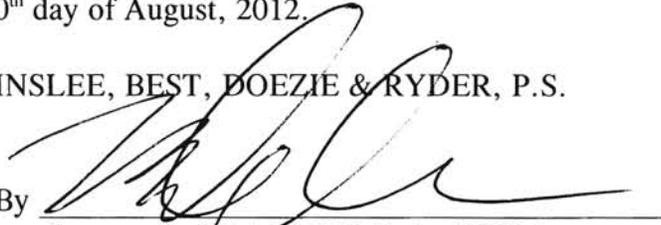
Finally, to the extent not inconsistent with the foregoing, Escamilla is entitled to his costs, including, without limitation, statutory attorneys' fees, as the substantially prevailing party in this appeal. RCW 4.84.080(2) (statutory attorneys' fee of \$200 "[i]n all actions where judgment is rendered in the supreme court or the court of appeals, after argument"); RAP 14.2; RAP 14.3 (outlining costs that can be awarded, including, without limitation, statutory attorneys' fees); RAP 18.1; *see also* RCW 4.84.010, .030.

#### V. CONCLUSION

For the foregoing reasons, the trial court's rulings should be affirmed and Escamilla should be awarded his attorneys' fees and expenses.

DATED this 10<sup>th</sup> day of August, 2012.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By 

Gregory L. Ursich, W.S.B.A. #18614

Mark S. Leen, W.S.B.A. #35934

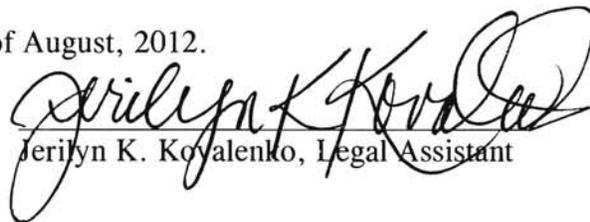
Attorneys for Respondent Ovidio Escamilla

**DECLARATION OF SERVICE**

I hereby declare under penalty of perjury under the laws of the State of Washington that on the 10<sup>th</sup> day of August, 2012, I caused to be served true and correct copies of the foregoing Respondent's Response Brief on the court and counsel as follows:

Court of Appeals Division I One Union Square 600 University Street Seattle, WA 98101-4170	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Fax # <input type="checkbox"/> Email
<i>Attorneys for Appellant</i> Rhys A. Sterling Attorney at Law P.O. Box 218 Hobart, WA 98025-0218	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Fax # <input type="checkbox"/> Email:
<i>Attorneys for Concrete Services, Inc.</i> Brian L. Parker Attorney at Law 25845 - 164 <sup>th</sup> Ave. SE Covington, WA 98042	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Fax # <input type="checkbox"/> Email:
<i>Attorneys for Frontier Bank</i> David R. Riley Weinstein & Riley, P.S. 2001 Western Ave., Ste. 400 Seattle, WA 98121	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Fax # <input type="checkbox"/> Email:

DATED this 10<sup>th</sup> day of August, 2012.

  
 Jerilyn K. Kovalenko, Legal Assistant