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COA No. 69009-4-I
Sup Ct. No. 11-2-33919-0 SEA

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

HAFID TAHRAOUI,

Appellant,

v.

PAN ABODE HOMES, INC.,
a Washington corporation,

Respondent.

RESPONDENT'S BRIEF

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COURT OF APPEALS
STATE OF WASHINGTON

ORIGINAL

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I. INTRODUCTION

Once the bald assertions and specious arguments of Appellant Hafid Tahraoui are cleared away, this matter boils down to a simple case. Mr. Tahraoui is continuing to claim that Respondent Pan Abode Homes Inc. breached a contract that Mr. Tahraoui terminated prior to the purported breach. The trial court properly granted summary judgment in favor of Pan Abode and supported the award of attorneys' fees and costs to Pan Abode with sufficient findings. Mr. Tahraoui then filed an untimely motion for reconsideration and, even if the motion for reconsideration were timely, an untimely notice of appeal. Mr. Tahraoui's appeal is frivolous. The judgment of the trial court should be affirmed and Pan Abode should be awarded its attorneys' fees and expenses on appeal.

II. STATEMENT OF ISSUES

1. Where (1) Mr. Tahraoui's notice of appeal was filed on the 31st day following the trial court's ruling on his motion for reconsideration of the trial court's judgment, which resolved all issues in the case except for the amount of the award of attorneys' fees to Pan Abode, and (2) where Mr. Tahraoui did not file a memorandum explaining the grounds for his motion for reconsideration until more than

ten days after said judgment was entered, should Mr. Tahraoui's appeal be dismissed as untimely?

2. Does the trial court's concurrence with Pan Abode's legal analysis regarding dismissing Mr. Tahraoui's claims constitute a violation of the appearance of fairness doctrine and due process?

3. Where (1) Mr. Tahraoui's lease with Pan Abode was terminated during the time period for which he asserts Pan Abode refused him access to remove items from the formerly leased premises, (2) Mr. Tahraoui had more than sufficient time to remove his items after the lease was terminated and while an unlawful detainer proceeding was pending, and (3) Pan Abode gave Mr. Tahraoui additional time to remove equipment after the writ of restitution was executed against Mr. Tahraoui, did Pan Abode breach the lease by failing to allow Mr. Tahraoui even more time to remove items from the formerly leased premises?

4. Whether the narrow doctrine of equitable tolling can be applied to resurrect Mr. Tahraoui's lease such that Mr. Tahraoui can then claim that Pan Abode violated it; and whether, even if the theory

could be applied, it should be applied where Mr. Tahraoui waited almost six years after the lease was terminated to assert his claim?

5. Where (1) Mr. Tahraoui asserted Pan Abode breached a contract that contained an attorneys' fees clause that would apply if Mr. Tahraoui were to prevail, (2) Pan Abode established that the contract did not apply, and (3) cases such as *Park v. Ross Edwards, Inc.*, 41 Wn. App. 833, 706 P.2d 1097 (1985), establish that a party in Pan Abode's circumstances is entitled to attorneys' fees, did the trial court abuse its discretion by awarding Pan Abode attorneys' fees?

6. Did the trial court abuse its discretion in relation to or fail to make adequate findings in support of the amount of attorneys' fees it awarded to Pan Abode?

7. Where Mr. Tahraoui has failed to establish that the decision of the trial court should be reversed, should he be awarded attorneys' fees?

8. Where (1) Mr. Tahraoui asserted Pan Abode breached a contract that contained an attorneys' fee clause that would apply if Mr. Tahraoui were to prevail, (2) Pan Abode established that the contract did not apply, (3) cases such as *Park v. Ross Edwards, Inc.*, 41 Wn. App.

833, 706 P.2d 1097 (1985), establish that a party in Pan Abode's circumstances is entitled to attorneys' fees, and (4) the trial court awarded Pan Abode attorneys' fees and costs in relation to Mr. Tahraoui's breach of contract claim, is Pan Abode entitled to attorneys' fees and costs on appeal?

8. Where Mr. Tahraoui's appeal is entirely frivolous, is Pan Abode entitled to its attorneys' fees and expenses on appeal?

III. STATEMENT OF CASE

A. Facts Determined in Relation to Previous Eviction Action.

Mr. Tahraoui rented space from Pan Abode pursuant to a written lease. (CP 49-51, ¹ 61.) The lease provides for an award of reasonable attorney's fees and costs to the substantially prevailing party in litigation arising under the lease. (CP 54-55, 112.)

Mr. Tahraoui gave notice of intent to terminate the lease on September 1, 2005. The notice stated "[T]his is a 30 days notice to terminate my storage license agreement. On or before October 1, 2005, I will vacate my property now stored at Pan Abode facility." (CP 51-52,

¹ The ruling of the trial court was ultimately affirmed on appeal as evidenced by the mandate issued by the Court of Appeals, CP 56-57, and the Opinion of the

67.).

Mr. Tahraoui was found to be in unlawful detainer effective October 1, 2005. (CP 52-53.) Mr. Tahraoui was in unlawful detainer because he continued in possession of the premises after the lease was terminated. (*See* CP 52-53, 61-62, 104, 107, 366/Appendix A-3;² App.'s Br. at 15 (“When the license agreement was terminated on October 1, 2005,....”).)

Mr. Tahraoui was evicted from the leased premises on February 2, 2006, and asserts that he was not able to access remaining personal property after that. (CP 52-55.) The remaining items on the leased premises were removed by Pan Abode prior to March 6, 2012. (CP 160.) Pan Abode did not receive money related to the removal of the items, in fact, it incurred costs from having to take some items to the dump. (*Id.*)

Court of Appeals, CP 58-66.

² The Declaration of Mark Leen in Support of Motion for Partial Summary Judgment and Plaintiff's Motion for Leave to Amend Complaint were omitted from the Clerk's Papers identified by Appellant. Respondent is submitting a Supplemental Clerk's Papers designation contemporaneously with this brief. The Clerk's Papers numbers should be CP 364-67 for the Declaration of Mark Leen in Support of Motion for Partial Summary Judgment and CP 368-71 for Plaintiff's Motion for Leave to Amend Complaint. In an abundance of caution and for ease of reference of the Court, those documents are included as an appendix to this brief and numbered A-1-4 and B-1-4 respectively.

B. Mr. Tahraoui's Previous Complaint.

On April 6, 2009, Mr. Tahraoui filed a complaint against Pan Abode, King County, and the King County Sheriff with the King County Superior Court that, in large part (at least as far as the allegations and claims against Pan Abode are concerned), is virtually identical to the pending complaint. (CP 3-9, 124-31.) All of the claims asserted against Pan Abode in the pending matter were asserted in the previous complaint (breach of contract, negligence, tortious breach of contract, constructive bailment, conversion, CPA, and negligent infliction of emotional distress). (*Id.*)

Mr. Tahraoui never served Pan Abode, King County, or the King County Sheriff (King County and the King County Sheriff are collectively referred to as the "King County Defendants") with the previous complaint, but the King County Defendants apparently discovered the lawsuit. (CP 132-33, 160-61.) The King County Defendants filed a motion to dismiss Mr. Tahraoui's complaint, noting, among other things, that the statute of limitations had run. (CP 134-36.) The motion indicates that a copy was mailed to Mr. Tahraoui. (*Id.*) After the motion to dismiss was filed, Mr. Tahraoui stipulated to the

dismissal of the previous complaint, dismissing the claims against the King County Defendants with prejudice and the claims against Pan Abode without prejudice. (CP 137-38.) Significantly, Mr. Tahraoui tacitly admitted that only his purported breach of contract claim against Pan Abode was not time barred:

Plaintiff and King County and the King County Sheriff's Office hereby stipulate that this matter may be dismissed with prejudice as to King County and the King County Sheriff's Office and dismissed without prejudice as to Pan Abode Homes as the claim against this defendant is based on contract and the statute of limitations has not expired.

(Id.)

C. The Complaint in This Action.

On September 29, 2011, Mr. Tahraoui filed the complaint in this action. It asserted claims for breach of contract, negligence, tortious breach of contract, constructive bailment, conversion, CPA, and negligent infliction of emotional distress. (CP 3-9.)

D. Notice to Mr. Tahraoui re: Frivolous Claims.

In or around early January 2012, the undersigned spoke with Mr. Tahraoui on the phone regarding the fact that his non-contract claims

were time barred and that the lease was terminated as of October 1, 2005. (CP 367/Appendix A-4.) Also, Pan Abode's Answer, Affirmative Defenses, and Counterclaims specifically asserted (1) a statute of limitation affirmative defense, (2) the lease was terminated in October 2005, and (3) that Pan Abode sought an award pursuant to CR 11 and RCW 4.84.185. (CP 147-51.) In addition, the undersigned sent Mr. Tahraoui an email on February 10, 2012, concerning the frivolousness of his claims and the intention of Pan Abode to seek sanctions and followed that up, on February 10, 2012, with a phone call to Mr. Tahraoui in which the frivolousness of Mr. Tahraoui's claims was discussed. (CP 153.)

E. Trial Court Proceedings.

On or about February 16, 2012, Pan Abode moved for summary judgment on Mr. Tahraoui's claims. (CP 47.) Mr. Tahraoui moved to amend his complaint to remove his tort claims. (CP 162-65, 179, 368-71/Appendix B-1-4.) Mr. Tahraoui stated:

Plaintiff, Hafid Tahraoui, moves the Court for an order granting leave to amend his complaint to reflect that his claims are based entirely on breach of contract and there is no need for torts claims.

(CP 368/Appendix B-1.) Pan Abode generally did not oppose the amendment, although Pan Abode asserted that this made Mr. Tahraoui's equitable tolling argument irrelevant and continued to assert its entitlement to attorneys' fees and expenses. (CP 240-42.)

At the summary judgment hearing on April 13, 2012, the Court granted Mr. Tahraoui's motion to amend his complaint and granted Pan Abode's motion for summary judgment, except that it only awarded attorneys' fees in relation to Mr. Tahraoui's breach of contract claim. (CP 267-72.). The Court's judgment resolved all issues in the case except for the amount of attorneys' fees and costs to be awarded to Pan Abode. (*Id.*)

On the tenth day following the entry of the Court's judgment, April 23, 2012, Mr. Tahraoui filed a document styling itself as a motion for reconsideration. (CP 305-06.) Mr. Tahraoui baldly that the trial court "was in error when it found in favor of the Defendant, did not dismiss Defendant's motion for partial summary judgment and awarding attorneys' fees, and it failed to find that Defendant breached the license agreement." (CP 306.) Mr. Tahraoui filed a memorandum in support of his motion, which made his legal arguments, on May 8, 2012. (CP 308-

11.) The trial court denied Mr. Tahraoui's motion for reconsideration in an order signed on May 17, 2012. (CP 343-44.) The order indicates it was filed on May 25, 2012. (*Id.* at 343.)

Pan Abode filed its motion to quantify the award of attorneys' fees and costs on April 20, 2012. (CP 273-76.) The motion was supported by the declaration of the undersigned. (CP 280-317.) Mr. Tahraoui opposed the motion, including in his opposition hearsay statements regarding what constituted a reasonable hourly rate. (CP 336.) Pan Abode requested that the hearsay statements be stricken. (CP 319.) On May 30, 2012, the trial court struck the hearsay statements and granted Pan Abode attorneys' fees and costs in the principal amount of \$11,330.00. (CP 345-48.)

On June 25, 2012, Mr. Tahraoui filed his notice of appeal. (CP 349-363)

IV. ARGUMENT

A. Standard of Review

Review of a motion for summary judgment is de novo. *Failor's Pharmacy v. DSHS*, 125 Wn.2d 488, 493, 886 P.2d 147 (1994). Review of an award of attorneys' fees is for an abuse of discretion. *See*

Loeffelholz v. C.L.E.A.N., 119 Wn. App. 665, 690, 82 P.3d 1199 (2004).

B. Mr. Tahraoui's Appeal is Untimely

Mr. Tahraoui's notice of appeal is untimely. A party may appeal a final judgment by *filing* a notice of appeal within thirty days of the entry of the final judgment. RAP 5.2(a). Filing is effecting upon receipt by the Court. RAP 18.6(c). A judgment is final even if it "reserves for future determination an award of attorney fees or costs." RAP 2.2(a)(1). When a motion for reconsideration is *timely* filed, the time for filing a notice of appeal is extended until thirty days after the entry of the trial court's ruling on the motion. RAP 5.2(e). In order to timely file a motion for reconsideration of an order or judgment, a party must file a motion "identify[ing] the specific reasons in fact and law as to each ground on which the motion is based" within ten days of the entry of the order or judgment. CR 59(b). An untimely filed motion for reconsideration does not toll the time to file a notice of appeal. *Shaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 849 P.2d 1225 (1993) (dismissing appeal where untimeliness of motion for reconsideration resulted in notice of appeal being filed well beyond thirty

day limit). In this case, the trial court entered a final judgment resolving all issues save for the amount of attorneys' fees and costs on April 13, 2013. Mr. Tahraoui's "motion for reconsideration" filed on April 23, 2013, does not "identify the specific reasons in fact and law as to each ground on which the motion is based." CR 59(b). Therefore, Mr. Tahraoui's motion was untimely and did not toll the thirty day appeal period from the trial court's April 13, 2013, judgment. In addition, even if Mr. Tahraoui's "motion" was sufficient to toll the appeal period, Mr. Tahraoui's notice of appeal was filed *at least* thirty days after it was entered (whether the date of entry was May 17, 2013, or May 25, 2013). Thus, Mr. Tahraoui's appeal is untimely and should be dismissed.

C. The Trial Court did not Violate the Appearance of Fairness Doctrine or Due Process by Agreeing with Pan Abode's Legal Arguments.

Mr. Tahraoui's contention that the trial court's agreement with Pan Abode's legal position constitutes a violation of the appearance of fairness doctrine and due process is frivolous. "Due process[and] the appearance of fairness... require that judges disqualify themselves from hearing a case if that judge is biased against a party or if his or

impartiality may be reasonably questioned.” *In re Meredith*, 148 Wn. App. 887, 903, 201 P.3d 1056 (2009). “Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing. *Id.* “A trial court is presumed to perform its functions regularly and properly without bias or prejudice.” *Id.* Thus, in order to proceed with a claim based on bias, a party must produce “evidence of a judge’s actual or potential bias[.]” *Id.* “[B]ald accusations” of bias are not sufficient. *Id.* at 905. The cases cited by Mr. Tahraoui indicate that questions by a court that are relevant to the issue a court is resolving and statements regarding legal consequences of a position generally do not support a bias claim. *See id.* at 905-06; *In re Wallace*, 111 Wn. App. 697, 706, 45 P.3d 1131 (2002). Mr. Tahraoui does not cite to much specific language from the court, choosing instead to generally rely on bald assertions. In addition, Mr. Tahraoui asserts that the trial court was biased because it stated the obvious point that Mr. Tahraoui’s presence at the premises prevented Pan Abode from making a profit, questioned Mr. Tahraoui regarding the contents of the lease, agreed with Pan Abode that it was entitled to attorneys’ fees, may have

misspoken regarding the legal basis for the award of attorneys' fees at one point during the hearing (and was corrected by Pan Abode's counsel), and, worst of all, agreed with Pan Abode's legal arguments. This is simply insufficient to support a claim of bias.

D. Pan Abode did not Breach the Lease because Mr. Tahraoui had Already Terminated It.

Because Mr. Tahraoui terminated the lease effective October 1, 2005, he cannot claim that Pan Abode breached a contract duty in February 2006. The facts show beyond dispute that Mr. Tahraoui terminated the lease effective October 1, 2005, and Mr. Tahraoui concedes it, (App.'s Br. at 15). Moreover, Mr. Tahraoui cannot contest that he terminated the lease effective October 1, 2005, as the issue was decided in the original eviction proceeding, which ended in a final judgment and involved Mr. Tahraoui, and there is not any injustice in binding Mr. Tahraoui to the earlier determination because there was a full and fair opportunity for him to litigate the issue. *See* 14A Wash. Pract. §35:32 at 550 (and Aug. 2011 Supp. at 19), §35:36 at 564-68 (and Aug. 2011 Supp. at 22) (updated through Aug. 2011 Supp.) (identifying the elements of collateral estoppel and discussing the element of

“avoiding injustice”). Therefore, Pan Abode could not have breached a contract duty by its actions after October 1, 2005, and Mr. Tahraoui’s contract claim was properly dismissed.

Mr. Tahraoui relies on *Kloss v. Honeywell, Inc.*, 77 Wn. App. 294, 890 P.2d 480 (1995), to assert that there was an implied provision of the lease that allowed him to remove personal property from the premises after February 2, 2006 (over *one-hundred-twenty* days after the lease terminated). *Kloss*, an employment case, stands for the proposition that, where the law implies a necessary term as part of an otherwise complete written contract, the contract is not “partly oral” for purposes of the applicable statute of limitation. 77 Wn. App. at 297-300 (finding obligation to pay a reasonable salary was implicit in employment agreement). *Kloss*’s discussion of implied terms does not apply here because (a) the lease specifically provided that it was terminable on at least thirty days written notice, (CP 107), (b) RCW 59.12.030(1) provides that, if one continues in possession of a premises after the term of a lease expires, one is in unlawful detainer (*i.e.*, illegally in possession of the premises), and (c) Mr. Tahraoui was judicially determined to be in unlawful detainer of the premises from October 1,

2005, (CP 52-53). Thus, Mr. Tahraoui's contract claim is meritless as the lease terminated in October 2005.

The claim might be marginally less frivolous (although still frivolous) if the tenancy at issue "was terminable without notice and provided for no monthly or periodic payments." *Turner v. White*, 20 Wn. App. 290, 292, 579 P. 2d 410 (1978). In such a case, there may be, under the common law, an implied reasonable time to vacate after notice is given. *Id.* Here, however, the lease had a specific term, was earlier terminable on thirty days' notice, and provided for payment of monthly rent. (CP 106-07, 114.) Therefore, any contractual right to enter the premises and remove personal property terminated in October 2005.

Mr. Tahraoui's reference to the security deposit and the attorneys' fees provision in the lease does not help his cause. The security deposit provision specifically states that, if the lease is not in default when the lease is terminated, the security deposit shall be returned. (CP 76.) Moreover, in relation to the attorneys' fees clause, Mr. Tahraoui continued to assert a right to remain in the premises after he terminated the lease. The attorneys' fee clause specifically indicates

that it applies to litigation arising under the lease. Even if this provision did not directly apply, it would apply by virtue of cases such as *Park v. Ross Edwards*, 41 Wn. App. 833, 838-39, 706 P.2d 1097 (1985) (awarding defendants attorneys' fees where defendants proved the absence of a contract and the purported contract contained a bilateral attorneys' fee clause).

Even if there were some implied contractual right to continue removing property from the premises after October 1, 2005, Mr. Tahraoui's claim would still be frivolous as the standard would be a "reasonable time." *Cf. Turner v. White*, 20 Wn. App. 290, 292, 579 P.2d 410 (1978). In fact, Mr. Tahraoui states that his purported implied right to remove items would only apply "right after the [lease] is terminated." (App.'s Br. at 16.) Despite Mr. Tahraoui's claim that his access to the premises was interfered with, (App.'s Br. at 7, it was previously judicially determined that there was no "meaningful interference with [Mr. Tahraoui's] access to the premises[,]" (CP 52 & 54).³ Mr. Tahraoui's claim that he should have over *one-hundred-twenty*

³ To the extent Mr. Tahraoui asserts facts inconsistent with the rulings in the previous unlawful detainer litigation, those assertions should be rejected. *See* 14A Wash; Pract. §35:32 at 550 (and Aug. 2011 Supp. at 19), §35:36 at 564-68 442938.1 | 358417 | 0003

days after October 1, 2005, is simply unreasonable as a matter of law. *See Turner*, 20 Wn. App. 290 (discussing provisions of RCW 59.12.030 at the time of that case); RCW 59.12.030; RCW 59.04.020 (thirty days' notice to terminate month-to-month tenancy).

E. Equitable Tolling does Not Apply

It is unclear why Mr. Tahraoui is asserting “equitable tolling” on appeal. His tort claims have all been withdrawn voluntarily and Pan Abode’s primary argument regarding the breach of contract claim focuses on the fact that the contract did not apply at the time in question.

Even if the theory were relevant, Mr. Tahraoui does not assert facts showing he was deceived by Pan Abode in any manner that would have prevented him from pursuing claims. *Cf. Millay v. Cam*, 135 Wn.2d 193, 206-208, 955 P.2d 791 (1998) (indicating that equitable tolling can apply to extend a redemption period where a party tendered a grossly exaggerated or fraudulent statement of the amount required to redeem and the potential redemptioner was unable, with due diligence, to determine the correct amount in time and files a declaratory action within the redemption period). Moreover, were there “bad faith, deception, or

false assurances by” Pan Abode, it is clear that Mr. Tahraoui did not exercise the diligence for him to qualify for equitable tolling by waiting almost six years to assert his claim. *City of Bellevue v. Benyaminov*, 144 Wn. App. 755, 760-61, 183 P.3d 1127 (2008) (noting that equitable tolling is typically applied sparingly).

F. Trial Court Properly Awarded Pan Abode Attorneys’ Fees

Mr. Tahraoui attempts to assert that, because the principal of mutuality enshrined in cases such as *Park v. Ross Edwards, Inc.*, 41 Wn. App. 833, 706 P.2d 1097 (1985), is equitable, Pan Abode’s purported deprivation of Mr. Tahraoui’s property should preclude an award of attorneys’ fees. However, the principle is broader than the equities of a particular case. *Park* notes that RCW 4.84.330 makes unilateral attorneys’ fees provisions bilateral and has been interpreted to allow attorneys’ fees to a prevailing party who proves that there is no enforceable contract when the contract has a unilateral attorneys’ fees clause. *Id.* at 838. *Park* holds what is good for the goose (unilateral attorneys’ fees clauses) is good for the gander (bilateral attorneys’ fees

elements of collateral estoppel).

clauses). *Id.* at 839. Because Mr. Tahraoui asserted that Pan Abode violated a contract with a bilateral attorneys' fees clause and Pan Abode demonstrated there was no dispute of material fact and that, as a matter of law, the contract did not apply to the actions of which Mr. Tahraoui complained, *Park* requires an award of attorneys' fees.

Mr. Tahraoui's reference to *Kaintz v. PLG, Inc.*, 147 Wn. App. 782, 197 P.3d 710 (2008), does not support Mr. Tahraoui's assertion that there is some "equity exception" to the "mutuality of remedy" rule. *Kaintz* indicates that the job of the trial court is to look to the contract language in making its determination. *Id.* at 789-90. In *Kaintz*, the leases referred to the prevailing party and the non-breaching party being awarded its attorneys' fees. *Id.* at 790. In this case, the attorneys' fees clause specifically indicates that "[t]he substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, if any." (CP 81.) Mr. Tahraoui asserted that the lease applied to Pan Abode's actions, Pan Abode showed as a matter of law that the lease did not apply, and Pan Abode is the substantially prevailing party, therefore, Pan Abode is entitled to its attorneys' fees and costs.

Finally, Pan Abode repeatedly informed Mr. Tahraoui that his contract claim was meritless. Mr. Tahraoui continued to pursue that claim in the trial court. Mr. Tahraoui continues to pursue that claim on appeal. Mr. Tahraoui cannot now claim it is inequitable that he should have to pay Pan Abode's fees when he could have simply dismissed his case in January 2012.

G. The Findings of the Trial Court Regarding Fees and Expenses are a Verity on Appeal.

Because the trial court made specific findings supporting the reasonableness of the attorneys' fees awarded to Pan Abode and Mr. Tahraoui fails to assign error to those findings, the judgment of the trial court should be affirmed. The trial court found that the attorneys' fees awarded to Pan Abode were reasonable:

The Court specifically finds that the Attorneys' Fees awarded are reasonable, reflect a reasonable hourly rate, and, except where attorneys' fees were not reasonably segregable (all of the claims at issue in the case had a common core of facts and were resolved in relation to Pan Abode's motion for partial summary judgment (Pan Abode's actions in relation to Mr. Tahraoui's motion to amend were generally tied together with the motion for partial summary judgment)), do not reflect time

spent on unsuccessful claims or defending against non-contract claims. The Court also specifically finds the Attorneys' Fees do not reflect duplicated effort or otherwise unproductive time.

(CP 347.) Such findings are sufficient as a matter of law. *Eugster v. City of Spokane*, 121 Wn. App. 799, 815-16, 91 P.3d 117 (2004). Mr. Tahraoui did not assign error to these findings, so they are verities on appeal. *Riley v. Rhay*, 76 Wn.2d 32, 33, 454 P.2d 820 (1969). Moreover, Mr. Tahraoui does not attempt to point out a single time entry that he disagrees with to this Court.

Even if the issues raised by Mr. Tahraoui were preserved for appeal, the trial court did not abuse its discretion in setting the amount of attorneys' fees. *See Loeffelholz v. C.L.E.A.N.*, 119 Wn. App. 665, 690, 82 P.3d 1199 (2004) (trial court's award reviewed for abuse of discretion). First, Mr. Tahraoui baldly asserts that claims were segregable such that the award should have been lower. Mr. Tahraoui cites to *Loeffelholz*, but that case does not aid his argument. The Court in *Loeffelholz*, noted that "[w]here ... the trial court finds the claims to be so related that no reasonable segregation of successful and unsuccessful claims can be made, there need be no segregation of

attorney fees.” *Id.* at 691 quoting *Hume v. American Disposal Co.*, 124 Wn.2d 656, 672-73, 880 P.2d 988 (1994). The Court further noted that the trial court in that case “clearly believed that segregation was possible” and “never found that segregation was not reasonably possible.” *Id.* at 691. Here, the trial court noted that fees had been segregated “except where attorneys’ fees were not reasonably segregable.” (CP 347.) This is not surprising given Mr. Tahraoui’s admission in his motion to amend that his non-contract “claims are based entirely on breach of contract and there is no need for torts claims.” (CP 368/Appendix B-1.) Therefore, *Loeffelholz* is not applicable.

Mr. Tahraoui’s complaint about the undersigned’s hourly rates is entirely unsupported and does not demonstrate that the trial court abused its discretion. Mr. Tahraoui attempts to rely on conversations with “four attorneys in the Seattle area,” but this hearsay “evidence” was stricken and Mr. Tahraoui does not assign error to that ruling. (CP 336, 347.) The evidence the trial court had before it amply supports its finding regarding the reasonableness of the undersigned’s rates. The trial court had before it the declaration of the undersigned stating that the rate of \$230.00 for 2011 and \$240.00 for 2012 are “consistent with the hourly

rates of law practitioners of similar age and experience in the greater Seattle area and are reasonable in light of [the undersigned's] experience, education, and skill.” (CP 281.) Moreover, these were the undersigned's regular billing rates for those years, (CP 327). *See Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983) (noting that an attorney's established rate “will likely be a reasonable rate”). Further, the undersigned's declarations amply described the education and experience of and the trial court had the opportunity to view first hand the skill of the undersigned. (CP 280-81, 327-29.) Thus, the trial court did not abuse its discretion in finding the undersigned's regular rates reasonable.

Mr. Tahraoui's complaint about the amount of time necessary to quantify Pan Abode's attorneys' fees is also without merit. Pan Abode's motion documents prepared in relation to the motion to quantify Pan Abode's fees consisted of a four page motion, (CP 273-276), a proposed judgment (that was revised and resubmitted with the reply), (CP 277-79, 323-26), and two declarations (including a redacted six page recap which reflects the fact that substantial effort was made to segregate fees), (CP

280-304, 327-29).⁴ Mr. Tahraoui filed a five page response, (CP 330-34), a two page declaration (including hearsay that Pan Abode successfully had stricken by the trial court), (CP 336-37), and a second, four page response, (CP 338-41). The time expended on this work was before the trial court, and the trial court exercised its discretion to approve it.

Finally, Mr. Tahraoui asserts that he identified specific fees that were “wasteful and invalid” and faults the court for not specifically addressing each specific amount. (App.’s Br. at 23.) First, Mr. Tahraoui fails to cite to the record to support his claim. *See* RAP 10.3(a)(6) (regarding “citations to legal authority and references to relevant parts of the record”). Second, Pan Abode specifically responded to each of Mr. Tahraoui’s arguments in its reply. (CP 320-22.) The trial court had this information before it and specifically found that the attorneys’ fees requested were reasonable.

⁴ Part of the documents include content related to ensuring that the summary judgment record was clear regarding exhibits G1 and G2 of the Declaration of Kevin Sloan and content related to reviewing Mr. Tahraoui’s motion for reconsideration. *See e.g.*, CP 282-83, 328-29.

H. Mr. Tahraoui is Not Entitled to Attorneys' Fees and Costs on Appeal.

As the rulings of the trial court should be affirmed, Mr. Tahraoui is not entitled to attorneys' fees and costs on appeal.

I. Request For Attorneys' Fees and Costs.

Mr. Tahraoui's appeal is completely frivolous such that Pan Abode should be awarded its attorneys' fees and expenses. See RAP 18.9(a); *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969, P2d 04 (1998) ("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. Mr. Tahraoui's appeal is clearly untimely. Mr. Tahraoui has persisted in asserting a breach of contract claim when it is clear that the contract did not govern the time period in question. Mr. Tahraoui has raised "equitable tolling" in relation to his breach of contract claim where the theory clearly has no applicability. Mr. Tahraoui asserts that the trial court was apparently biased because it had the temerity to agree with Pan Abode's arguments. Mr. Tahraoui fails to acknowledge the previous and binding facts established in prior litigation, (App.'s Br. at 3 n.1). Mr. Tahraoui attacks against trial

court's rulings are unsupported and raise no debatable issues. The continuation of this action, particularly in light of the previous litigation and the frivolousness of the theories, justifies an award of attorneys' fees and expenses to Pan Abode.

In addition, as found by the trial court, Pan Abode is entitled to be awarded its attorneys' fees and costs as Mr. Tahraoui asserted contract liability pursuant to a lease with an attorneys' fees provision, (CP 112), and the contract does not apply. *See Park v. Ross Edwards*, 41 Wn. App. 833, 838-39, 706 P.2d 1097 (1985) (awarding defendants attorneys' fees where defendants proved the absence of a contract and the purported contract contained a bilateral attorneys' fee clause); RAP 18.1.

Finally, to the extent not inconsistent with the foregoing, Pan Abode is entitled to its 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.

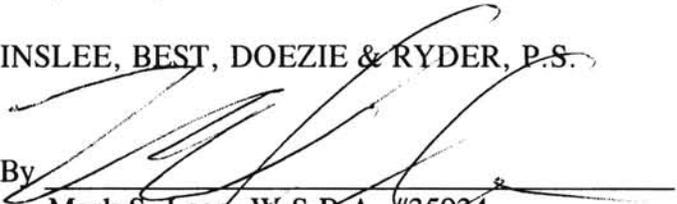
V. CONCLUSION

For the foregoing reasons, the trial court's rulings should be affirmed and Pan Abode should be awarded its attorneys' fees and expenses on appeal.

DATED this 3rd day of July, 2013.

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

By


Mark S. Leen, W.S.B.A. #35934
Attorneys for Respondent Pan Abode Homes,
Inc.

VI. APPENDIX

- A. Declaration of Mark Leen is Appendix A, pages A-1 through A-4**
- B. Plaintiff's Motion for Leave to Amend is Appendix B, pages B-1 through B-4**

FILED

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Honorable Christopher A. Washington
KING COUNTY SUPERIOR COURT CLERK
Hearing Date: March 16, 2012
E-FILED
Hearing Time: 10:00 a.m.
CASE NUMBER: 11-2-33919-0 SEA
With Oral Argument

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HAFID TAHRAOUI, an individual,

Plaintiff,

vs.

PAN ABODE HOMES INC., a Washington
corporation,

Defendant.

NO. 11-2-33919-0 SEA

DECLARATION OF MARK LEEN IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT

MARK LEEN states and declares as follows:

1. I am over the age of 21 years. I am an attorney for Defendant Pan Abode Homes, Inc. in the above-entitled action. I am competent to be a witness, and the content of this declaration is based upon my personal knowledge and based on my knowledge of the case files of Inslee, Best, Doezie & Ryder, P.S. In my position as an attorney at Inslee, Best, Doezie & Ryder, P.S., I regularly deal with and generally have regular access to the case files of Inslee, Best, Doezie & Ryder, P.S. Except where otherwise indicated, all of the documents attached to this declaration are true and correct copies of records maintained by Inslee, Best, Doezie & Ryder, P.S., in the ordinary course of business. The records were made in the ordinary course of business at or near the time of the occurrence of the matters set forth in the records or in this declaration, and the records were kept in the

1 ordinary course of business.

2 2. Attached to the Motion for Partial Summary Judgment (the “Motion”) as
3 **Exhibit A** is a true and correct copy of the Findings & Conclusions entered by the King
4 County Superior Court in case number 05-2-33408-8 SEA (the “Eviction Litigation”).

5 3. Attached to the Motion as **Exhibit B** is a true and correct copy of the mandate
6 issued by the Court of Appeals in relation to the Eviction Litigation without a copy of the
7 decision that is mentioned in the mandate attached.

8 4. Attached to the Motion as **Exhibit C** is a true and correct copy of the Opinion
9 of the Court of Appeals issued in relation to the Eviction Litigation.

10 5. Attached to the Motion as **Exhibit D** is a true and correct copy of the Notice
11 of Termination that is apparently referred to as Exhibit 4 in the Findings & Conclusions
12 entered in the Eviction Litigation. This can be determined from the Court’s Exhibit List
13 attached to the Motion as **Exhibit D-1**, which indicates that Exhibit 4 was a Termination
14 Agreement submitted by Plaintiff Pan Abode in the Eviction Litigation, and Plaintiff’s
15 Amended Witness and Exhibit List from the Eviction Litigation attached to the Motion as
16 **Exhibit D-2**, which indicates that Plaintiff’s Exhibit 4 was a Termination Agreement.
17 Exhibit D is a copy of Exhibit 4 attached to the Plaintiff’s Amended Witness and Exhibit
18 List.

19 6. Attached to the Motion as **Exhibit E** is a true and correct conformed copy of
20 the Order Denying Defendant’s Motion for Revision entered in the Eviction Litigation.

21 7. Attached to the Motion as **Exhibit F** is a true and correct copy of the April
22 26, 2006 Court of Appeals Commissioner Ruling issued in relation to the Eviction

23 DECLARATION OF MARK LEEN - Page 2
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24

1 Litigation.

2 8. Attached to the Motion as **Exhibit G** is a true and correct copy of the
3 Agreement that is apparently referred to as Exhibit 1 in the Findings & Conclusions entered
4 in the Eviction Litigation. This can be determined from the Court's Exhibit List attached to
5 the Motion as Exhibit D-1, which indicates that Exhibit 1 was a document entitled License
6 Agreement submitted by Plaintiff Pan Abode in the Eviction Litigation, and Plaintiff's
7 Amended Witness and Exhibit List from the Eviction Litigation attached to the Motion as
8 Exhibit D-2, which indicates that Plaintiffs' Exhibit 1 was a document entitled License
9 Agreement. Exhibit G is a copy of Exhibit 1 to the Plaintiff's Amended Witness and Exhibit
10 List.

11 9. Attached to the Motion as **Exhibit H** is a true and correct copy of the
12 Complaint in the pending action.

13 10. Attached to the Motion as **Exhibit I** is a true and correct copy of a Complaint
14 that indicates it was filed by Mr. Tahraoui on April 6, 2009 ("Previous Complaint"), which
15 was obtained by me from the King County Superior Court's ECR system.

16 11. Attached to the Motion as **Exhibit J** is a true and correct copy of the
17 appearance filed on behalf of King County and the King County Sheriff in relation to the
18 Previous Complaint, which was obtained by me from the King County Superior Court's
19 ECR system.

20 12. Attached to the Motion as **Exhibit K** is a true and correct copy of the motion
21 to dismiss filed on behalf of King County and the King County Sheriff in relation to the
22 Previous Complaint, which was obtained by me from the King County Superior Court's

1 ECR system.

2 13. Attached to the Motion as **Exhibit L** is a true and correct copy of the
3 stipulation and order of dismissal entered in relation to the Previous Complaint, which was
4 obtained by me from the King County Superior Court's ECR system.

5 14. To the best of my memory, in or around early January 2012, I spoke with
6 Mr. Tahraoui on the phone regarding the fact that his non-contract claims were time barred
7 and that the lease he was attempting to sue on was terminated as of October 1, 2005.

8 15. A true and correct copy of Pan Abode's Answer, Affirmative Defenses, and
9 Counterclaims filed in this action are attached to the Motion as **Exhibit M**.

10 16. Attached to the Motion as **Exhibit N** is a true and correct copy of an email I
11 sent to Mr. Tahraoui on February 10, 2012. Following sending the email and still on
12 February 10, 2012, I called Mr. Tahraoui and we discussed, among other things, the
13 frivolousness of his claims.

14 I declare under penalty of perjury under the laws of the State of Washington that this
15 statement is true and correct.

16 DATED this 16th day of February, 2012, at Bellevue, Washington.

17 */s/ Mark S. Leen*
18 _____
19 Mark Leen
20 Street Address:
21 777 - 108th Ave. NE, Suite 1900
22 Bellevue, WA 98004
23 Mailing Address:
24 P.O. Box 90016
Bellevue, WA 98009-9016
Phone: (425) 450-4219
Fax: (425) 635-7720
Email: mleen@insleebest.com

FILED

12 APR -5 PM 3:43

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Honorable Christopher A. Washington
Hearing Date: Friday, April 13, 2012
Hearing Time: 11:00 a.m.
With Oral Argument

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HAFID TAHRAOUI, an individual,

Plaintiff,

vs.

PAN ABODE HOMES INC.,
a Washington corporation,

Defendant.

No. 11-2-33919-0 SEA

**PLAINTIFF'S MOTION FOR LEAVE
TO AMEND COMPLAINT**

A. RELIEF REQUESTED

Plaintiff, Hafid Tahraoui, moves the Court for an order granting leave to amend his complaint to reflect that his claims are based entirely on breach of contract and there is no need for torts claims. Plaintiff will remove all torts claims and proceed only with breach of contract claims which were already raised in the original complaint.

B. STATEMENT OF FACTS

1. On September 29, 2011, Plaintiff filed his original complaint for damages asserting breach of contract and other tort claims.

2. On December 20, 2011, Defendant Pan Abode Homes was served with Plaintiff's complaint.

PLAINTIFF'S MOTION FOR LEAVE
TO AMEND COMPLAINT - 1

1 2. Plaintiff had informed Defendant of his intent to amend his complaint to clarify
2 that his claims are based on breached of contract. Pan Abode, at that time, did not mention
3 that he will oppose the amendment.

4 **C. STATEMENT OF THE ISSUE**

5 Should Plaintiff be granted leave under CR 15(a) to amend his complaint to conform
6 to the theory of breach of contract intended by the Plaintiff?

7 **D. AUTHORITY AND ARGUMENT**

8 Plaintiff's motion is made pursuant to CR 15(a), which provides in pertinent part:

9 "a party may amend the party's pleading only by leave of court
10 or by written consent of the adverse party; and leave shall be
11 freely given when justice so requires. If a party moves to amend
12 a pleading, a copy of the proposed amended pleading,
 denominated "proposed" and unsigned, shall be attached to the
 motion."

13 Plaintiff brought this action based on the breach of contract subject to the 6 years
14 statute of limitation. (See RCW 4.16.040). Plaintiff never claims that the actions complained
15 of did happen less than 3 years ago and had no intention to base his theory on tort. Plaintiff
16 mistakenly mix-up contract and torts claims which resulted in confusion and wants to
17 correct that by amending his complaint.

18 There is no evidence to suggest that Defendant will suffer prejudice from Plaintiff
19 amending his complaint. Defendant stated before that it does not object to the motion but
20 also doesn't want to stipulate to it.

21 The rule makes it clear that "leave shall be freely given when justice so requires".
22 Therefore the court should grant Plaintiff's motion for leave to amend his complaint. A
23 proposed amended complaint is attached to this motion.
24
25

DATED this 5th day of April, 2012.

Signed Hafid Tahraoui

Hafid Tahraoui, Plaintiff
Appearing Pro Se
P.O.Box 45365
Seattle, WA 98145
206-612-7070

CERTIFICATE OF SERVICE

1
2 I hereby declare, under penalty of perjury under the laws of the State of Washington,
3 that On April 5, 2012, I caused to be served true and correct copy of the following
4 document:

5 1. Plaintiff's Answer to Defendant's Counterclaims
6 to the counsel of the record listed below via First Class mail and Email.

7 Attorney for Defendant
8 Mark S. Leen
9 777 108th Avenue N.E. Suite 1900
10 P. O. Box C-90016
11 Bellevue, WA 98009
12 425-455-1234

13 DATED this 5th day of April, 2012.

14 

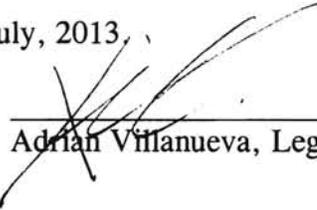
15 Hafid Tahraoui, Plaintiff
16 Appearing Pro Se
17 P.O.Box 45365
18 Seattle, WA 98145
19 206-612-7070
20
21
22
23
24
25

C. DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the 3rd day of July, 2013, I caused to be served true and correct copies of the foregoing Respondent's 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>Plaintiff Pro Se</i> Hafid Tahraoui P.O. Box 45365 Seattle, WA 98145	<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 checked="" type="checkbox"/> E-mail: hafid1416@yahoo.com

DATED this 3rd day of July, 2013, ,



Adrian Villanueva, Legal Assistant