

73807-1

73807-1

FILED
October 7, 2015
Court of Appeals
Division I
State of Washington

No. 73807-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

JESSE FULLER,

Plaintiff-Appellant,

v.

FISHERMEN'S FINEST AND
NORTH PACIFIC FISHING, INC.

Defendants-Respondents-Cross Appellants.

BRIEF OF APPELLANT

John W. Merriam, WSBA No. 12749

John Merriam Law

4005 20th Ave. W., No. 110

Seattle, WA 98199

Telephone: (206) 729-5252

Facsimile: (206) 729-1012

Attorney for Plaintiff/Appellant

Jesse Fuller

TABLE OF CONTENTS

I. INTRODUCTION1

II. ASSIGNMENTS OF ERROR3

1. The trial court erred in awarding attorney fees to the fishing company based on evidence that was present to the JAMS arbitrator but not yet to the trial judge.....3

2. The trial court erred in Finding of Fact no. 2 that there was a bona fide dispute over whether or not the deckhand was entitled to his contact completion bonus.....3

3. The trial court erred in Finding of Fact no. 3 that the fishing company paid the deckhand in full on January 29, 2014.....3

4. Trial court erred in Conclusion of Law no. 1 that this lawsuit was frivolous and in violation of Civil Rule (CR)11.....3

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR3

1. Should the trial judge have sanctioned the deckhand and his lawyer for filing a frivolous lawsuit when that finding was based upon evidence heard by the JAMS arbitrator but not yet by the trial court, and after the JAMS arbitrator refused to award attorney fees to either party?3

2. Did the deckhand have a good faith argument that he was entitled to wage penalties under RCW 4.52.050 and .070 if there was no bona fide dispute that he was entitled to additional wages and had to hire a lawyer to get those wages?4

3. Did the deckhand have at least an arguable entitlement to compensation in addition to that paid by the fishing

company on January 9, 2014, consisting of additional attorney fees, a higher crewshare, state law wage penalties and/or punitive damages under federal maritime law.....4

- 4. Was it frivolous for the deckhand to claim additional compensation in this lawsuit in the form of more attorney fees, an increased crewshare, state law wage penalties, and/or punitive damages under federal maritime law?4

- III. STATEMENT OF THE CASE.....5
- IV. SUMMARY OF ARGUMENT.....11
- V. ARGUMENT12
 - A. The Deckhand Is Entitled To Additional Wage Compensation and Penalties13
 - 1. There was no written contract in effect after August 31, 2013.....13
 - 2. The deckhand is entitled to a higher crewshare after expiration of the written contract of employment.....15
 - 3. The deckhand was entitled to state law wage penalties and/or punitive damages under the federal maritime law for non-payment of the wages for which there is no bona fide dispute.....16
 - B. The Deckhand is Entitled to Attorney Fees.....17
 - 1. Reasonable attorney fees under state law.....17
 - 2. Attorney fees for bad faith under federal maritime law...17
 - 3. Attorney fees awarded in equity as an element of compensatory damages.....18
- VI. CONCLUSION19
- VII. APPENDIX22
 - Findings of Fact and Conclusions of Law.....A1-A6
- VIII. DECLARATION OF MAILING.....23

TABLE OF AUTHORITIES

CASES

Day v. American Seafoods, 557 F.3d 1056 (9th Cir. 2009).....14

Dean v. Fishing Company of Alaska, 177 Wn. 2d 399 (2013).....20

Greene v. Pacific King Fisheries,
1993 A.M.C. 2578 (W.D. Wash. 1993).....16

Griffin v. Oceanic Contractors, 664 F.2d 36 (5th Cir. 1981) reversed and
remanded on other grounds, 458 U.S. 564 (1982).....18

Gruver v. Lessnan, 2005 A.M.C 1434 (W.D. Wash. 2005).....16

Jones v. Reagan, 748 F.2d 1331 (9th Cir. 1984), cert. denied, 472 U.S.
1029.....20

Lundborg v. Keystone Shipping, 138 Wn. 2d 658 (1999).....20

Seattle First National Bank v. F/V Lady Lynne, 98 F.3d 1195, 1197 (9th
Cir. 1996).....12, 15

STATUTES

RCW 4.52.0504, 16, 17

RCW 4.52.0704, 16, 17

RCW 4.84.1852, 8, 9, 10, 20

RCW 49.48.030.....17

46 U.S.C. § 1107..... 15, 17

9 U.S.C. § 1.....12

46 U.S.C. § 10601.....12, 14, 15

46 U.S.C. § 10602.....6, 15

OTHER AUTHORITIES

REGULATIONS

Civil Rule (CR) 113, 8, 9, 10

RPC 4.22, 7, 8

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JESSE FULLER
Plaintiff /Appellant,

v.

FISHERMEN'S FINEST AND
NORTH PACIFIC FISHING, INC.
Defendant /Appellee/Cross Appellants.

BRIEF OF APPELLANT

I. INTRODUCTION

This case started as a claim for \$5,000-plus in wages due a deckhand. Plaintiff/Appellant Jesse Fuller (herein after "Fuller" or "the deckhand") was cheated out of his contract completion bonus and reimbursement of airfare by a fishing company, causing the deckhand to retain counsel. The fishing company, Defendant/Appellee Fishermen's Finest -- aka North Pacific Fishing (hereinafter "the fishing company") through counsel denied that the deckhand was due any wages. The

deckhand's lawyer stated that he intended to file a lawsuit. Within hours of receiving that communication, the fishing company's in-house counsel, Dennis Moran, directed a subordinate to pay the wages in dispute directly to the deckhand without informing the deckhand's lawyer. Included in that payment was \$250 "for two hours of legal expense at \$125 per hour". The deckhand assumed his lawyer had arranged for the payment and knew about it. The deckhand's lawyer did not know about the payment and filed suit for wages, increased wages for failure to have a written contract of employment in effect, double wage penalties, attorney fees, and punitive damages. When informed about the payment of wages, the deckhand's lawyer amended the complaint to claim tortious interference with the attorney-client relationship by violation of Rules of Professional Conduct (RPC) 4.2.

The case was put into arbitration with the Judicial Arbitration and Mediation Service (JAMS) over the deckhand's objection. The JAMS arbitrator rendered a defense award, but refused to grant the fishing company's request for attorney fees based on its counterclaim for a frivolous lawsuit per RCW 4.84.185. The fishing company then went back to King County Superior Court and persuaded the trial judge that the deckhand and his lawyer had filed a frivolous lawsuit. The trial judge

entered judgment for \$16,074.13 jointly and severally against the deckhand and his lawyer. The deckhand and the undersigned appeal.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in awarding attorney fees to the fishing company based on evidence that was presented to the JAMS arbitrator but not yet to the trial judge.
2. The trial court erred in Finding of Fact no. 2 that there was a bona fide dispute over whether or not the deckhand was entitled to his contact completion bonus.
3. The trial court erred in Finding of Fact no. 3 that the fishing company paid the deckhand in full on January 29, 2014.
4. The trial court erred in Conclusion of Law no. 1 that this lawsuit was frivolous and in violation of Civil Rule (CR)11.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should the trial judge have sanctioned the deckhand and his lawyer for filing a frivolous lawsuit when that finding was based upon evidence heard by the JAMS arbitrator but not yet by the trial court, and after the JAMS arbitrator refused to award attorney

fees to either party? The standard of review for this issue is abuse of discretion.

2. Did the deckhand have a good faith argument that he was entitled to wage penalties under RCW 4.52.050 and .070 if there was no bona fide dispute that he was entitled to additional wages and had to hire a lawyer to get those wages? The standard for review for this issue is clearly erroneous.
3. Did the deckhand have at least an arguable entitlement to compensation in addition to that paid by the fishing company on January 29, 2014, consisting of additional attorney fees, a higher crewshare, state law wage penalties and/or punitive damages under federal maritime law? The standard of review for this issue is clearly erroneous.
4. Was it frivolous for the deckhand to claim additional compensation in this lawsuit in the form of more attorney fees, an increased crewshare, state law wage penalties, and/or punitive damages under federal maritime law? The standard review for this issue is abuse of discretion.

III. STATEMENT OF THE CASE

Until this dispute arose, deckhand Jesse Fuller, plaintiff/appellant at bar, was a valued employee aboard defendant's commercial fishing vessel American No. 1. "He (Fuller) has been an asset to our team by showing dedication to our company." To whom it may concern letter from Fishermen's Finest, Clerk's Papers (CP) 320.

The employment giving rise to this dispute commenced on June 24, 2013 when the deckhand signed a 60-day contract of employment, a copy of which is at CP 321-23. The 60-day contract of employment expired on August 23, 2013 when the F/V American No. 1 was still at sea. Pursuant to the terms of the contract, it was automatically extended until the termination of Trip no. 27, ending with an offload of the fish on August 31, 2013. See Declaration of Darrin Vanderpol, Master of the F/V American No. 1, referenced at CP 314. Fuller continued working on the vessel until October 20, 2013. See Last Day of Work Form, CP 324. Mr. Fuller applied for and received unemployment compensation after his departure from the vessel, without dispute from Fishermen's Finest. Deposition of Jesse Fuller at p. 32, CP 366. Fuller was not paid his contract completion bonus or reimbursed his airfare to Alaska earlier deducted from his wages and a dispute arose over payment. The fishing

company contended that Mr. Fuller was not entitled to a contract completion bonus because he “quit”. See e-mail string between the deckhand’s counsel and fishing company counsel, William Walsh, at CP 335-340.

In addition to the dispute over wages, Mr. Fuller complained that he was not given an accounting of the catch as required by 46 USC § 10602. Fuller Deposition at CP 367. He hired a lawyer. CP 362. The deckhand’s lawyer wrote a letter of representation to the fishing company dated November 26, 2013. CP 333. Receiving no response, the deckhand’s lawyer sent a second letter to the fishing company on December 16, 2013. CP 334. The fishing company retained Mr. Walsh to defend against the deckhand’s claims. Communication between counsel commenced. See e-mail string at CP 335-340.

On January 15, 2014, Mr. Walsh wrote to the deckhand’s lawyer stating that the deckhand was not entitled to any further compensation because he “quit”. CP 338-39. On January 27th Mr. Walsh stated that he was going to “step out” of the case, and concluded with: “Please forward all future communications regarding this matter to Fishermen’s Finest in-house counsel, Dennis Moran (copied here).” CP 337-338 (emphasis added). A few minutes later on the same day, Mr. Moran e-mailed the

deckhand's lawyer requesting information he already had (through Mr. Walsh). Id. at CP 336-37. At 6:53 in the morning of January 28, 2014 the deckhand's lawyer wrote Mr. Moran that he was not interested in playing games and that he intended to file suit as soon as he could get to it, estimated at roughly a month thereafter. Id. at 335-36. At 3:47 that afternoon, 1/28/14, Mr. Moran directed an employee of Fisherman's Finest to send the wages at issue directly to Mr. Fuller at his home in Oregon -- by direct deposit to his bank account -- without informing the deckhand's lawyer. See e-mail from Fishermen's Finest to Mr. Fuller of January 28, 2014 promising payment by direct deposit, a copy of which is reproduced at CP 341.

The deckhand never informed his lawyer of this payment, assuming that defendants, "had went through my lawyer with the pay and then I received mine." Fuller deposition at p. 29, CP 363. Unaware of this payment by the fishing company, the deckhand's lawyer filed suit on February 19, 2014. Process was served on the fishing company on February 21, 2014. The same day that the fishing company was served with process, the deckhand's lawyer was belatedly sent copies of the e-mail and checkstub to the deckhand that had been transmitted the afternoon of January 28, 2014. The complaint was then amended to assert

a violation of Rules of Professional Conduct (RPC) 4.2. CP 7-10. The deckhand's lawyer filed a bar complaint against Dennis Moran, asserting violation of RPC 4.2 for contact with and payment of money to the deckhand without informing the deckhand's counsel. Disciplinary counsel dismissed the grievance, finding "insufficient evidence exists of unethical conduct by Mr. Moran by a clear preponderance of the evidence in this matter." The letter from disciplinary counsel is at CP 370-72. The letter went on to state: "Because the line between Mr. Moran's dual role as corporate counsel and president was somewhat unclear, the better practice would have been for Fisherman's Finest to copy you on any transmittal to Mr. Fuller." Id.

After the lawsuit was filed, the fishing company belatedly tried to contest Mr. Fuller's eligibility for unemployment compensation. Fuller Deposition at p. 35, CP 366.

The fishing company counterclaimed in its Answer asserting a frivolous lawsuit and prayer for attorney fees per RCW 4.84.185 and Civil Rule (CR) 11. CP 14. See also Answer to Amended Complaint and Counterclaim, CP 19-24.

The contract of employment between the deckhand and the fishing company has a clause requiring arbitration with the Judicial Arbitration and Mediation Service (JAMS). CP 321-23. The fishing company moved to enforce arbitration. CP 25. The deckhand opposed assignment to JAMS for arbitration. CP 34. The trial court entered an Order enforcing the arbitration clause. CP 52.

JAMS arbitrator Judge Robert Doran (ret.) decided the case on the briefs submitted in late September 2014 and issued an award in favor of the fishing company on October 20, 2014. CP 390-409. Judge Doran refused to award attorney fees to either side. CP 408.

On November 13, 2014, the fishing company petitioned for attorney fees to the trial court, after not being awarded fees by the arbitrator. CP 54-65. On February 2, 2015, the trial judge granted attorney fees to the fishing company, simply signing the proposed order submitted by the fishing company. CP 165-66. The trial judge entered this Order without any of the findings required by RCW 4.84.185 and CR 11, and without reviewing any of the evidence considered by the JAMS arbitrator.

Without Findings of Fact and Conclusions of Law, the trial court later entered an order granting attorney fees and costs in the amount of \$29,635.33 on May 14, 2015. CP 235. The trial court entered a judgment

for that amount listing the deckhand and his lawyer as joint and several debtors. CP 242-43.

The deckhand objected to entry of judgment without the findings required for RCW 4.84.185 and CR 11, and protested that Judge Doran of JAMS made no finding of a frivolous lawsuit. CP 266-67. The deckhand objected to the Findings of Fact and Conclusions of Law belatedly proposed by the fishing company because they were based on evidence never submitted to the trial court and heard only by the JAMS arbitrator. CP 280-293.

On June 3, 2015, the trial judge entered Final Judgment, for \$16,074.43, simply signing the fishing company's proposed Final Judgment. CP 300-301. Findings of Fact and Conclusions of Law were also signed on June 3, 2015 and filed on June 4. CP 302-05. Again, the trial judge adopted verbatim the Findings and Conclusions submitted by the fishing company. Copies of the Findings of Fact, Conclusions of Law and Final Judgment are reprinted at the Appendix attached hereto.

The deckhand moved for reconsideration, asking the trial court to review evidence submitted to JAMS because it had never done so before, and submitted 16 exhibits considered by Judge Doran in the deckhand's

opposition to the fishing company's summary judgment motion during the JAMS proceeding. CP 306-372.

On June 30, 2015, the trial judge entered an order giving the fishing company until July 11 to respond to the deckhand's Motion for Reconsideration. The deckhand was allowed to reply by July 17, 2015. CP 374. Within hours of the filing of the deckhand's Reply on reconsideration, July 17, 2015, the trial judge entered an order denying reconsideration. CP 492-93. The deckhand and his lawyer appealed. CP 491.

IV. SUMMARY OF ARGUMENT

There was no bona fide dispute that the deckhand was entitled to his contract completion bonus. On his Last Day of Work Form, dated October 20, 2013, the Captain checked the box marked "Contract Complete" and signed it. CP 324. The deckhand had to hire a lawyer before he was paid the contract completion bonus and the airfare to Alaska that had been previously deducted from his wages. The fishing company finally paid the deckhand, behind the back of his lawyer, when his lawyer stated he was going to file a lawsuit. The fishing company acknowledged that the deckhand had incurred legal fees by including a token payment of

an additional \$250 as “a refund for two hours of legal expenses at \$125 per hour.” CP 342.

After receiving this payment, the deckhand continued the lawsuit for additional remedies of a more realistic amount of attorney fees; an increased crewshare based upon an expired written contract of employment as required by 46 USC § 10601; wage penalties under state law, and punitive damages under the federal maritime law.

This lawsuit was not frivolous.

V. ARGUMENT

“A seaman’s right to wages owed to him has traditionally received substantial legal protection, perhaps greater than the protection received by any other class of workers.”

Seattle First National Bank v. F/V Lady Lynne, 98 F.3d 1195, 1197 (9th Cir. 1996).

By way of preface, deckhand Jesse Fuller defines the scope of this appeal: The erroneous Order Enforcing Arbitration, CP 52, is beyond the scope of this appeal. See 9 U.S.C. § 1, the Federal Arbitration Act, excluding contracts of employment for seamen like the deckhand at bar.

Also beyond the scope of this appeal is the erroneous interpretation of the maritime law by Judge Doran (ret.) of JAMS.

A. The Deckhand Is Entitled To Additional Wage Compensation and Penalties.

1. There was no written contract in effect after August 31, 2013.

Deckhand Jesse Fuller signed a 60-day contract of employment on June 24, 2013 which, by its terms, expired on August 23, 2013 unless the vessel was at sea. See employment contract at CP 321-23. In that case, the contract was extended until the Captain dismissed the crewmember following the next offload. Id. Trip number 27 ended with an off-load on August 31, 2013. See Captain Vanderpol's declaration, referenced at CP 314. The fishing company quotes the employment contract as lasting "until the vessel next returns to port for an off-load and the crew member is released by the Captain after the off-load is completed." CP 314.

(Emphasis to "and" supplied by defendant.) What this means is that the contract is extended only until the crew member is released by the Captain after the first off-load is completed following expiration of the contractual term. Interpreting the language otherwise would mean the contract can be

extended indefinitely, for any number of off-loads until “the crew member is released”, at the Captain’s whim, whenever that may be. This position contradicts the fishing company’s own “Contract Complete” notation by the Captain on the Last Day of Work Form at CP 324. The argument is also disingenuous. Fishing companies in general like to have short-term employment contracts -- for less than the traditional duration of the fishing season -- to minimize their liability for unearned wages in the event of injury. See, Day v. American Seafoods, 557 F.3d 1056 (9th Cir. 2009). The proposition that contracts are for a definite term, and not open-ended, is taken for granted in the maritime bar. See Captain Jacobson’s two Declarations at CP 326-29. 46 USC § 10601 requires a “period of effectiveness” for employment contracts. To leave that period open-ended would render the requirement meaningless. What really happened is that the written contract expired after the first off-load after 8/23/13, on 8/31/13. There was an oral contract of employment thereafter, of indefinite term, during which employment was only then, ‘at will’, This was recognized by Mr. Fuller. It was up to him how long he kept working after the 60-day contract was over. This was a common situation, and one understood by Mr. Fuller. He worked “almost twice my contract”. Fuller Deposition at CP 353-369.

2. The deckhand is entitled to a higher crewshare after expiration of the written contract of employment.

Judge Doran of JAMS was wrong on the law when he ruled at arbitration that the written contractual terms required by 46 USC § 10601 could be verbally extended. See JAMS “Confidential”, CP 390.

The deckhand’s written contract of employment expired following the off-load completed on August 31, 2015. Employment thereafter did not meet the requirements of 46 USC § 10601. Mr. Fuller joined the American No. 1 at Dutch Harbor, Alaska. Fuller Declaration, CP 368. An experienced deckhand on a similar vessel out of Dutch Harbor would receive a 1.3% or 1.5% crewshare as opposed to the 1% crewshare paid Mr. Fuller. CP368-69. Oral contracts of employment are void. The fisherman’s remedy for a void contract is an entitlement to the highest crewshare paid in the port of engagement, per 46 USC § 1107. Seattle First National Bank v. F/V Lady Lynne, *supra*. The deckhand at bar was entitled to additional compensation for working under an expired written contract of employment. He also has a claim to additional compensation

for the fishing company's failure to timely provide an accounting of the catch as required by 46 USC § 10602. See Fuller Deposition at CP 367.

3. The deckhand was entitled to state law wage penalties and/or punitive damages under the federal maritime law for non-payment of the wages for which there was no bona fide dispute.

Putting aside for the moment the deckhand's entitlement to a higher crewshare, he was refused payment of the contract completion bonus and airfare admittedly due until after he had hired a lawyer. The fishing company claims there was a bona fide dispute over wages because the deckhand "quit". See e-mail string between counsel at CP 339. See also, "Contract Complete" box marked on the Last Day of Work Form at CP 324.

RCW 49.52.050 and .070 provide for wage penalties and attorney fees to employees bringing successful wage claims. The fishing company claimed that Washington's wage penalty statutes are preempted by the federal maritime law. False. In Greene v. Pacific King Fisheries, 1993 A.M.C. 2578 (W.D. Wash. 1993), Judge Zilly found that the wage statutes of Washington could apply to a maritime claim for wages and were not

preempted by federal law. See also, Gruver v. Lessnan, 2005 A.M.C 1434 (W.D. Wash. 2005)(state law wage penalties under 49.52.050 and .070 can be imposed on maritime wages already increased under federal law by the terms of 46 USC § 1107.) Judge Doran of JAMS ruled that state law wage penalties were prohibited by language in the employment contract saying that the federal maritime law applies exclusively. CP 390. That position is at least arguable. Even if state law wage penalties were preempted by the maritime law, which they are not, plaintiff asserts an entitlement to punitive damages. Even though Judge Doran disagreed, the behavior exhibited by the fishing company in this case certainly demonstrates bad faith, inviting an award of punitive damages.

B. The Deckhand is Entitled to Attorney Fees.

1. Reasonable attorney fees under state law.

In addition to entitlement to reasonable attorney fees pursuant to RCW 49.52.050 and .070, already discussed, wage claimants are entitled to attorney fees under RCW 49.48.030 when successful in recovering any amount of wages. The mere fact that the deckhand here had to get a lawyer before he got paid wages admittedly due entitles him to reasonable attorney fees. RCW 49.48.030.

2. Attorney fees for bad faith under federal maritime law.

Judge Doran of JAMS sua sponte held that the American Rule prohibited the award of attorney fees to either side. See Confidential Arbitration Opinion (JAMS) at CP 407-09: “After reading this opinion and considering the ‘American Rule’, counsel (for the fishing company) may wish to reconsider the matter requesting attorney fees (based on the fishing company’s counterclaim).” CP 408. As recognized even by Judge Doran, however, attorney fees in seamen’s wage claims are available upon a showing of bad faith. See, Griffin v. Oceanic Contractors, 664 F.2d 36 (5th Cir. 1981) reversed and remanded on other grounds, 458 U.S. 564 (1982). Even though Judge Doran found no bad faith, an assertion of bad faith by the deckhand is amply supported by the fishing company’s actions in this case.

3. Attorney fees awarded in equity as an element of compensatory damages.

When the deckhand at bar was denied payment of wages that he was owed, even by the fishing company’s calculation, he retained a lawyer on a contingency fee basis. Fuller Declaration at CP 364. See Contingent Fee Agreement at CP 330-31. Of the wages he finally

received from the fishing company, the deckhand owed his lawyer either 25% or 33%-1/3% of the amount recovered. Id. He was not fully compensated because he had to use part of his wages to retain a lawyer to see that he got paid at all. See Fuller Declaration at CP 362.

The \$5,816.43 payment made by the fishing company to the deckhand on January 29, 2014 included, “a refund for two hours of legal expenses at \$125 per hour.” CP 342 (emphasis added). Despite the opinion of Judge Doran at JAMS, the fishing company thus acknowledges that Mr. Fuller had to expend funds on a lawyer to receive his wages. Where can one find experienced maritime counsel for \$125 per hour? The fisherman’s lawyer, Mr. Walsh, charges \$375 per hour, CP 68-69, with less experience than the deckhand’s lawyer. How can a case like this be resolved in two hours, given the denials put up by defense counsel at CP 339 and the stalling tactics used by Mr. Moran in the same e-mail string? At absolute minimum, regardless of whether state or federal law applies, Mr. Fuller was entitled to 25% of what he was finally paid by defendants -- an attorney fee \$1,454.11 -- in addition the contract completion bonus and airfare refund, to be made whole.

VI. CONCLUSION

As soon as he was informed that the JAMS arbitrator had handed down a defense award, the trial judge immediately assumed that this lawsuit was frivolous. The trial judge awarded attorney fees before even looking at the evidence submitted to the JAMS arbitrator. When reminded by the deckhand that written findings were required under RCW 4.84.185, he simply signed off on the Findings and Conclusions presented by the fishing company. The Findings of Fact are clearly erroneous and the Conclusions of Law are an abuse of discretion. Had the trial judge taken a close look at the evidence presented in the JAMS arbitration, he would never have made those Findings and Conclusions.

The undersigned lawyer for the deckhand is a respected, 33-year member of the local maritime bar with more than 20 significant reported decisions to his credit. See, e.g., Dean v. Fishing Company of Alaska, 177 Wn. 2d 399 (2013); Lundborg v. Keystone Shipping, 138 Wn. 2d 658 (1999); Jones v. Reagan, 748 F.2d 1331 (9th Cir. 1984), cert. denied, 472 U.S. 1029. This practitioner does not file frivolous lawsuits. This case was not frivolous. The trial court's judgment should be reversed.

//

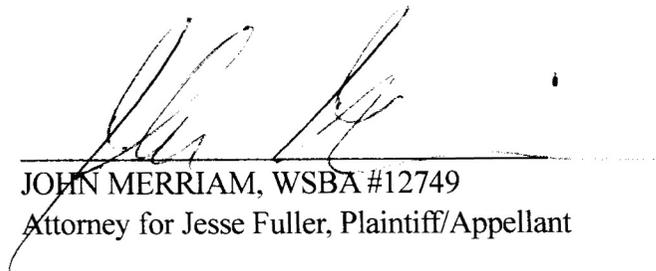
//

//

//

Respectfully submitted this 1st day of October, 2015.

LAW OFFICE OF JOHN MERRIAM



JOHN MERRIAM, WSBA #12749
Attorney for Jesse Fuller, Plaintiff/Appellant

VII. APPENDIX

Final Judgment.....A1-A2

Findings of Fact and Conclusions of Law.....A3-A6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
KING COUNTY WASHINGTON

JUN 04 2015
SUPERIOR COURT CLERK
BY Theresa Graham
DEPUTY

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

JESSE FULLER,

Plaintiff,

v.

FISHERMEN'S FINEST and NORTH PACIFIC
FISHING, INC.,

Defendants.

Cause No.: 14-2-05490-4 SEA

FINAL JUDGMENT

I. JUDGMENT SUMMARY

1. **Judgment Creditor:**
Defendants Fishermen's Finest Inc. and North Pacific Fishing, Inc.
2. **Judgment Debtors:**
Plaintiff Jesse Fuller and his attorney John Merriam, joint and several.
3. **Total Judgment Amount:**
\$ 16,074.43
4. **Principle Judgment Amount:**
\$ 13,561.00
5. **Post Judgment Interest Rate:**
6% APR.
6. **Costs and disbursements Awarded:**
\$ 2,513.43
7. **Attorneys for Judgment Creditor:**
William H. Walsh; Karl R. Neumann; Cozen O'Conner.

FINAL JUDGMENT - 1
CAUSE NO.: 14-2-05490-4 SEA

LEGAL:022848064\17665.0001.000248677.000

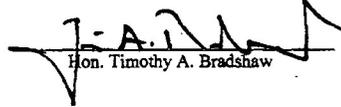
LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
SUITE 1600
888 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 540-1000

ORIGINAL

II. JUDGMENT

1 Judgment is hereby entered in favor of Judgment Creditors Fishermen's Finest, Inc.
2 and North Pacific Fishing, Inc., and against Judgment Debtors Jesse Fuller and John Merriam,
3 jointly and severally, for the a principal judgment amount of Thirteen Thousand Five Hundred
4 Sixty One dollars (\$13,561.00) for modified attorneys' fees, and costs in the amount of Two
5 Thousand Five Hundred and Thirteen Dollars and Forty Three Cents (\$2,513.43) for a Total
6 Judgment Amount of Sixteen Thousand Seventy Four Dollars and Forty Three Cents
7 (\$16,074.43). Post judgment interest shall accrue at the rate of twelve percent annual
8 percentage rate (6% APR) on the Total Judgment Amount from this day forward.

9 Dated this 03rd day of June, 2015.

10
11 
12 Hon. Timothy A. Bradshaw
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FINAL JUDGMENT - 2
CAUSE NO.: 14-2-05490-4 SEA

LEGAL\22848064\1 17665.0001.000248677.000

LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
SUITE 1900
990 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 340-1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
KING COUNTY WASHINGTON
JUN 04 2015
SUPERIOR COURT CLERK
BY Theresa Graham
DEPUTY

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

JESSE FULLER,
Plaintiff,

Cause No.: 14-2-05490-4 SEA

v.

FISHERMEN'S FINEST and NORTH PACIFIC
FISHING, INC.,
Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came before the Court on Defendants Fishermen's Finest and North Pacific Fishing, Inc. ("Defendants") Petition for Attorneys' Fees and Motion for Entry of Final Judgment. The Court has considered the pleadings filed in this action, pertinent legal authorities, and the following documents and evidence:

1. Defendants Fishermen's Finest and North Pacific Fishing, Inc.'s Petition for Attorneys' Fees and Increase in Bond Amount;
2. Declaration of William H. Walsh in Support of Defendants Fishermen's Finest and North Pacific Fishing, Inc.'s Petition for Attorneys' Fees and Increase in Bond Amount and all attachments thereto;
3. Plaintiff's Opposition; and

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 1
CAUSE NO.: 14-2-05490-4 SEA

ORIGINAL

- 1 4. Defendants Fishermen's Finest and North Pacific Fishing, Inc.'s Reply in Support
2 of Petition for Attorneys' Fees and Increase in Bond Amount and supporting
3 declarations and exhibits;
4 5. Opposition to Defendant's Proposed FOF/COL; and
5 6. Defendant's Reply in Support of Proposed FOF/COL.

6 Based on the evidence presented and record, and the Court otherwise deeming itself fully
7 advised, the Court makes the following Findings of Fact and Conclusions of Law:

8 **I. FINDINGS OF FACT**

- 9 1. This maritime wage dispute arose as a result of an alleged underpayment to Plaintiff
10 Jesse Fuller pursuant to his employment contract.
11 2. Defendants initially withheld part of Mr. Fuller's wages because there was a *bona fide*
12 dispute as to whether Mr. Fuller was owed his completion bonus in the underlying
13 employment contract.
14 3. On January 29, 2014, Defendants paid Mr. Fuller's wages in full.
15 4. Despite Mr. Fuller being paid, Mr. Merriam filed the Original Complaint with this
16 Court on February 19, 2014.
17 5. After the Original Complaint was filed, Defendants provided Mr. Merriam
18 documentation that demonstrated his client was fully paid all amounts claimed in the
19 Original Complaint prior to that complaint being filed.
20 6. Even after receiving documentation that Mr. Fuller was fully paid, Mr. Merriam
21 proceeded to file his Amended Complaint on March 7, 2014, which made the same
22 allegations in the Original Complaint regarding the alleged underpayment (plus
23 assertion of bad faith claims).
24
25
26

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 2
CAUSE NO.: 14-2-05490-4 SEA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. CONCLUSIONS OF LAW

1. The filings of the Original Complaint and Amended Complaint were both frivolous and baseless filings in violation of CR 11 and RCW 4.84.185.
2. At the least, Mr. Fuller and his Counsel, Mr. Merriam, should have known that they could not have recovered the disputed wages after those wages were paid in full to Mr. Fuller.
3. Because the wages in dispute were fully paid to Mr. Fuller prior to the filing of the Original and Amended Complaints, both pleadings were not well-grounded in fact and filed without reasonable inquiry. Mr. Merriam should have been aware upon reasonable inquiry of his client that Mr. Fuller had been paid all outstanding wages prior to the filing of the Original and Amended Complaint.
4. Mr. Fuller and Mr. Merriam's claim was advanced without reasonable cause.
5. This Court ordered that fees and costs be awarded to Defendants in its February 2, 2015 Order. On May 14, 2015, this Court ordered that Defendants would be entitled to fees in the amount of \$27,122, and costs in the amount of \$2,513.43, and said amounts were found reasonable as a matter of law.
6. Given a) that the current terms are awarded pursuant CR 11 rather than the contract at bar, b) mandatory arbitration was ordered by the court, and that the actual amount of CR 11 terms is to be exercised with broad discretion tailored to the nature of the particular dispute, the Court imposes all costs and halves the determined amount of reasonable attorney fees.
7. Mr. Fuller and Mr. Merriam shall be held jointly and severally liable for the attorneys' fees and costs that this Court awarded in its February 2, 2015 and May 14, 2015 Orders.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 03rd day of May, 2015.


Hon. Timothy A. Bradshaw

FINDINGS OF FACT AND CONCLUSIONS OF LAW-4
CAUSE NO.: 14-2-05490-4 SEA

VIII. DECLARATION OF SERVICE

Pursuant to 28 USC § 1746 (1976), John Merriam declares as follows:

On October 1, 2015, I caused to be filed and served true and correct originals and/or copies of Appellants' Opening Brief submitted herein, by depositing the same in the United States mail, first class, postage prepaid, to:

<p><i>Counsel for Defendants/Respondents/Cross-Appellants</i></p> <p>William H. Walsh Karl Neumann COZEN O'CONNOR 999 Third Avenue, Suite 1900 Seattle, WA 98104 Telephone: (206) 340-1000 Facsimile: (206) 621-8783 Email: wwalsh@cozen.com Kneumann@cozen.com</p>	<p><i>Via Email and First Class U.S. Mail</i></p>
--	---

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of October, at Seattle, Washington.

LAW OFFICE OF JOHN MERRIAM



John W. Merriam

Attorney for Appellant/Plaintiff Jesse Fuller