

73807-1

FILED
November 30, 2015
Court of Appeals
Division I
State of Washington

73807-1

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,

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

In between personal attacks on the undersigned, the Answering Brief manages to state “fully compensated”, “paid in full,” or similar words some 25 times to argue that Jesse Fuller (“the deckhand”) had no basis upon which to claim additional compensation. Answering Brief of Respondents/Cross Appellants Fishermen’s Finest and North Pacific Fishing, Inc. (“the fishing company.”), passim. Yet the fishing company does not explain why the deckhand was not able to make a good

faith claim for more than just \$250 paid as “a *refund* for two hours of legal expenses at \$125 per hour.” CP 342 (emphasis added). The fishing company would have this Tribunal believe that it paid the deckhand money it didn’t owe out of the goodness of its heart. The fishing company “gratuitously (paid) Mr. Fuller the disputed amount (including) a courtesy payment of \$250 for legal expenses.” Answering Brief at p. 7. Such largesse!

The fishing company further fails to explain why the deckhand and his counsel were not able to make good faith claims for a higher crewshare, wage penalties under state law, and punitive damages under the federal maritime law.

The fishing company provides no case law supporting its novel, disingenuous, and erroneous interpretation of the employment contract, requiring a “period of effectiveness” pursuant to 46 U.S.C. § 10601. Employment contracts for fishermen cannot be extended indefinitely at the whim of the Captain, as is urged by the fishing company in this case, Answering Brief at p. 5. The deckhand had a very viable claim that the written contract of employment required by that statute had expired and that, therefore, he was entitled to a higher crewshare.

Although irrelevant to this appeal, the undersigned feels compelled to address one of the fishing company's personal attacks that is a slur on this practitioner's integrity. At page 12 of the Answering Brief, the fishing company accuses counsel for the deckhand of misrepresenting his bankruptcy to the trial court when opposing the fishing company's motion to increase the amount of the supersedeas bond. It states that the "bankruptcy was over four years old," and therefore didn't affect the undersigned's ability to obtain the funds needed to post an increased supersedeas bond. Id., p.12 at n. 4. The Chapter 13 bankruptcy lasts for five years. In Re: John W. Merriam et al., Chapter 13 No. 11-12939 (W.D. Wash) (Plan filed 3/17/11). The bankruptcy is indeed "over four years old" and is still ongoing. This debtor has no credit and "shall incur no additional debt except after obtaining prior Court permission;" Id., Order of 7/14/11, a copy of which appears in the Appendix hereto. That the Chapter 13 proceeding is still open and pending is obvious from recent entries therein attached to the Answering Brief's Appendix. This practitioner did not make misrepresentations to the trial court or anyone else. Such an accusation is unwarranted, unprofessional, and unfounded. The fishing company needs to do a better job of investigating before attacking the character of the undersigned.

At p.17 of the Answering Brief the fishing company accuses the deckhand and counsel of making false statements in the Amended Complaint by claiming non-payment of amounts that were already paid. A close reading of the Amended Complaint is in order here. At paragraphs 8 and 9 it is alleged that the contract completion bonus and air fare reimbursement were not paid, but it is not stated *when* those amounts were not paid. CP 8. The payments admittedly were later paid, before the Amended Complaint was filed. The *initial* nonpayment of wages, however, is a necessary predicate upon which to base claims for wage penalties, punitive damages, and attorney fees. Note that in the prayer for relief in the Amended Complaint, CP 9, there is no claim for the contract completion bonus or air fare reimbursement, only for *increased* wages, penalties, and attorney fees. There are no frivolous claims in the Amended Complaint.

Finally, the fishing company did very much intend to seek attorney fees during the JAMS arbitration, and so indicated to Judge Doran. At page 10 of the Answering Brief the fishing company states that it, “reserved the right to request attorneys’ fees as part of [Fishermen’s Finest] counterclaim.” The counterclaim by the fishing company included a cause of action requesting fees based on the deckhand filing a frivolous

lawsuit and violation of CR11 by the deckhand's counsel. CP 14 and 22.

This was recognized by Judge Doran.

“Counsel for Respondents (the fishing company) reserved the right to request attorneys’ fees as part of respondents’ counterclaim. After reading this opinion and considering the “American Rule”, counsel may wish to reconsider the matter requesting attorneys’ fees.”

CP 408 (emphasis added). The fishing company did indeed “reconsider”.

Instead of requesting attorney fees from Judge Doran of JAMS, it went back to the trial court for a second bite of the apple, to make an identical request as prayed for in the fishing company’s counterclaim.

II. CONCLUSION

A fishing company that cheated its deckhand out of his contract completion bonus and the price of a plane ticket, forcing him to retain a lawyer to get paid, now wants to be rewarded with \$70,000 in attorney fees plus more fees on appeal. The law and the facts of this case do not allow such a result. The judgment should be reversed and vacated.

RESPECTFULLY SUBMITTED THIS 30th DAY OF NOVEMBER 2015.

LAW OFFICE OF JOHN MERRIAM



JOHN MERRIAM, WSBA #12749

Attorney for Jesse Fuller, Deckhand/Plaintiff/
Appellant

4005 20th Ave. W., No. 110
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Attorney for Plaintiff/Appellant

III. APPENDIX

In Re: John W. Merriam et al., Chapter 13 No. 11-12939 (W.D. Wash.)

.....A1

Entered on Docket July 15, 2011

Judge: Marc Barreca
Chapter: 13

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

1 In Re:
2 JOHN W MERRIAM AND
3 BRENDA KAYE WALKER

IN CHAPTER 13 PROCEEDING
NO. 11-12939

ORDER CONFIRMING
CHAPTER 13 PLAN

4 Debtors.

5 **This Matter** having come on for hearing this date before the undersigned bankruptcy Judge, and the Court
6 having heard the arguments, if any, for and against confirmation of the plan proposed herein, and having heard the
7 Trustee's recommendations concerning the plan, the Court does therefore hereby ORDER:

- 8 1. That subject to the terms of this order, the plan proposed by the debtors dated 03-17-11 is hereby confirmed;
- 9 2. That original attorney fees are set in the amount of \$3,500.00;
- 10 3. That the debtors shall incur no additional debt except after obtaining prior Court permission;
4. That the debtors shall inform the Trustee of any change in circumstances, or receipt of additional income, and shall further comply with any requests of the Trustee with respect to additional financial information the Trustee may require;
5. That the Trustee shall charge such percentage fee as may periodically be fixed by the Attorney General pursuant to 28 U.S.C. section 586(e);
6. That during the pendency of the plan hereby confirmed, all property of the estate, as defined by 11 U.S.C. section 1306(a), shall remain vested in the debtors, under the exclusive jurisdiction of the Court, and further, that the debtors shall not, without specific approval of the Court, lease, sell, transfer, encumber or otherwise dispose of such property;
7. That all disposable income received by the debtors beginning on the date the first payment is due under the plan shall be applied as payments under the plan pursuant to 11 U.S.C. section 1325(b)(1)(B), unless the Court orders otherwise.

Dated: July 14, 2011


Marc Barreca, Judge

Presented by:

VII. DECLARATION OF SERVICE BY MAIL

Pursuant to 28 U.S.C § 1746 (1976), John Merriam declares as follows:

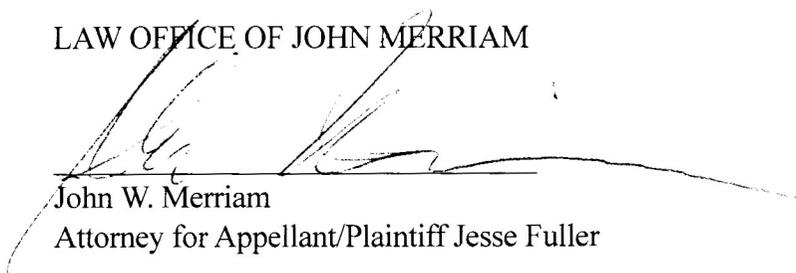
On November 30, 2015, I caused to be filed and served true and correct originals and/or copies of Appellants' Opening Brief submitted herein, by depositing the same in the United States mail, first class, postage prepaid, to:

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

Dated this 30th day of November, at Seattle, Washington.

LAW OFFICE OF JOHN MERRIAM


John W. Merriam
Attorney for Appellant/Plaintiff Jesse Fuller