

90283-6

No. 696122
COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

Alex Ravikovich, Appellant

v.

V-SQUARED, LLC, Respondent

PETITION FOR REVIEW

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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STATE OF WASHINGTON
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A. Identity of Petitioner

Appellant, Alexander Ravikovich, hereby seeks discretionary review of the decision issued on March 17, 2013, by the Washington Court of Appeals, Division I.

B. Issues Presented for Review

1. In July 2008, V-Squared arbitrated its breach of contract for moneys due lawsuit against Ravikovich. In arbitration only the issue of enforceability of contract and was decided. In June 2011, Ravikovich filed his lawsuit against V-Squared, LLC, claiming violation of the Consumer Protection Act (CPA). Does the doctrine of collateral estoppel foreclose the assertion of Ravikovich's present violation of CPA claims?
2. In 2008 action brought by V-Squared against Ravikovich, only V-Squared, LLC, made claims against Ravikovich for breach of contract and money due. Ravikovich asserted defenses to such V-Squared claims, but Ravikovich did not counterclaim against V-Squared, because at that time easement was not an issue. It was barely mentioned during the litigation as an example of contractor's negligence (V-Squared). But the lawsuit against Ravikovich was filed by Long, the neighbor, after the arbitration. So, at the time of the arbitration there were no damages to claim from this issue. In 2011, Ravikovich filed separate lawsuit against V-Squared, LLC, alleging CPA violations. Was the doctrine of collateral estoppel properly

invoked against Appellant's present CPA claims merely because V-Squared and Ravikovich arbitrated breach of contract in their earlier action, even though Ravikovich's CPA claim was not in issue and was not adjudicated?

C. Statement of the Case:

1. The Parties

Alex Ravikovich, appellant herein, is a resident in Seattle, King County, Washington.

V-Squared, LLC, respondent herein, is a Limited Liability Company, licensed to operate business in the state of Washington.

2. Factual Background

Appellant Alex Ravikovich is the legal owner of the real property in Bellevue, King County Washington, located at 2190 140th PL S.E. Bellevue, WA 98007.

Robert Long is the legal owner of the real property located at 2186 140th PL S.E. Bellevue, WA 98007. Robert Long's parcel is adjacent to Ravikovich's property. Robert Long is not a party to this appeal.

Respondent V-Squared LLC, is a Washington Limited Liability Company and registered to operate its business in the state of Washington. On April 28, 2006, Respondent V-Squared LLC as principal through its

agent-managing member Vadim Tsemekhman, entered into contract with Ravikovich to build a house on Ravikovich's property at the aforesaid address. (CP 28-40).

On July 24, 2006, Respondent V-Squared LLC entered into a verbal agreement with Ravikovich's neighbor Robert Long whereby Robert Long agreed to permanently grant an easement allowing V-Squared LLC construction of a retaining wall on Long's property. (CP 109-112). V-Squared failed to inform Ravikovich about such agreement and necessity for an easement at the time of construction. V-Squared did not create any clear agreement between V-Squared and Long, the neighbor, regarding the responsibilities of both parties. V-Squared did not prepare, signed, nor registered an easement, before the construction of the driveway took place. Respondent V-Squared LLC constructed driveway and retaining wall. Respondent V-Squared LLC billed Ravikovich for Construction of above said Driveway and retaining wall. According to Long, the work performed by Respondent V-Squared LLC did not satisfy conditions of the agreement with Long.

Respondent V-Squared LLC did not disclose to Ravikovich such Respondent's failure to follow agreed upon terms with Long and Ravikovich was not aware of any problems developing with Long at the

time. After construction of the driveway, approximately in August 2007, V-Squared LLC abandoned any further work on Appellant's property.

After V-Squared abandoned any further work on appellant's property, he informed Ravikovich about necessity to prepare, sign and register an easement, which lead to necessity of communication between Ravikovich and Long. Ravikovich has made his first contact with his neighbor Robert Long regarding the driveway. During the first meeting between Ravikovich and Long, Long instructed Ravikovich to prepare the easement for ingress, egress and utilities, which Long promised to sign. Under Long's conditions Ravikovich was to clean up the debris left after V—Squared work, to pressure wash his house, to paint his front deck and rear deck.

Appellant Ravikovich made various improvements to Long's property in reliance on Long's promise to grant a permanent easement authorizing the retaining wall. Upon completion of all the work for Robert Long, Long refused to sign the easement. Long thereafter began demanding financial compensation from Ravikovich by requesting various sums of money in return for the promise to sign the easement agreement.

In 2008, Long demanded removal or reconstruction of the portions of the Ravikovich's house that encroached on Long's property.

D. Argument.

I. RAVIKOVICH'S ISSUES IN HIS CPA CLAIMS WERE NOT IDENTICAL TO THE ISSUES ARBITRATED IN PRIOR LITIGATION BETWEEN RAVIKOVICH AND V-SQUARED

The purpose of collateral estoppel is to prevent relitigation of a particular issue or a determinative fact after the party estopped has a full and fair opportunity to present its case in order to promote the policy of ending disputes.¹

Collateral estoppel requires:

- (1) the issue decided in the prior adjudication must be identical with the one presented in the second;
- (2) the prior adjudication must have ended in a final judgment on the merits;
- (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and
- (4) application of the doctrine must not work an injustice.²

The first prerequisite for collateral estoppel is that the issues in the two suits must be the same. Therefore, analysis of collateral estoppel should always begin with a determination of what was decided in the

¹ *Seattle-First National Bank v. Cannon*, 26 Wash.App. 922, 927, 615 P.2d 1316 (1980) (citing *State v. Dupard*, 93 Wash.2d 268, 609 P.2d 961 (1980); *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 929, 610 P.2d 962 (1980).

² *Bull v. Fenich*, 34 Wn. App. 435, 438, 661 P.2d 1012, 1014 (1983).

first action. In this case the issue in the first suit was whether Ravikovich's defense under RCW 18.27.080 defeated V-Squared, LLC, and claim for breach of contract on the grounds that V-Squared, LLC, failed to register. (CP 13-16). The arbitrator entered his finding that Ravikovich's defense under RCW 18.27.080 was not adequate to defeat V-Squared, LLC, claim for breach of contract. The arbitrator made a finding that the contract between the parties was not effected until May 20, 2006. (CP 15). The arbitrator further determined that there was contract between Ravikovich and V-Squared, LLC. (CP 16). The arbitrator further considered two other issues: the elevation problem and change orders. (CP 16).

The issue in Ravikovich's present suit was whether V-Squared, LLC, violated Consumer Protection Act by building Ravikovich's house so that it intruded on the Long's property and required removal or reconstruction to correct the problem. Ravikovich's CPA claim also has absolutely distinct type of remedy, which entitles him to treble damages if he prevails.

In sum, Ravikovich's CPA claim was based on a different factual issue, which was not raised in the prior suit, simply because this issue did not exist, and must be litigated in the new one.

II. V-SQUARED, LLC, FAILED TO CARRY ITS BURDEN OF PROOF OF SHOWING THAT THE ISSUES IN ITS PRIOR ACTION WERE MATERIAL AND NOT MERELY INCIDENTAL OR COLLATERAL TO RAVIKOVICH'S PRESENT CPA CLAIM

The party asserting the doctrine of collateral estoppel has the burden to show that the determinative issue was litigated in a prior proceeding.³ Issues not material in the first adjudication, although determined therein, do not necessarily become precluded by operation of collateral estoppel.⁴

The party asserting the doctrine must prove that the fact determined in the first action is essential, and not merely collateral or incidental, to the right asserted in the second.⁵

It is usually said that collateral estoppel will not apply unless the decision on the issue in the prior action was necessary to the court's judgment.⁶

Our Supreme Court has recently discussed this question and has

³ *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 930, 610 P.2d 962 (1980) (citing *Luisi Truck Lines, Inc. v. Washington Utilities and Transportation Comm'n.*, 72 Wash.2d 887, 894, 435 P.2d 654 (1967); *Meder v. CCME Corp.*, 7 Wash.App. 801, 807, 502 P.2d 1252 (1972)).

⁴ *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 930, 610 P.2d 962 (1980) (citing *Luisi Truck Lines, Inc. v. Washington Utilities & Transportation Comm'n.*, supra; *Dolby v. Fisher*, 1 Wash.2d 181, 189, 95 P.2d 369 (1939); *McGee v. Wineholt*, 23 Wash. 748, 751, 63 P. 571 (1901). Accord, *Dixon v. Fiat-Roosevelt Motors, Inc.*, 8 Wash.App. 689, 695, 509 P.2d 86 (1973)).

⁵ *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 930, 610 P.2d 962 (1980) (citing *McGee v. Wineholt*, supra, 23 Wash. at 751-52, 63 P. 571. See also *Pacific Nat'l Bank v. Bremerton Bridge Co.*, 2 Wash.2d 52, 59, 97 P.2d 162 (1939); *In re Richland Hyatt House, Inc.*, 18 Wash.App. 426, 430, 568 P.2d 825 (1977)).

⁶ *Restatement (Second) of Judgments* §27 (1982).

adopted the distinction between ultimate facts and evidentiary facts contained in the Restatement of Judgments.⁷ According to the Restatement, only questions of fact actually litigated and essential to the judgment in the first adjudication become precluded by collateral estoppel:

(1) Where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, the determination is conclusive between the parties in a subsequent action on a different cause of action . . .

(2) A judgment on one cause of action is not conclusive in a subsequent action on a different cause of action as to questions of fact not actually litigated and determined in the first action.⁸

Actual litigation and determination of an issue is not enough. The issue must have been material and essential to the first controversy.⁹ It is axiomatic that for collateral estoppel by judgment to be applicable, that the facts or issues claimed to be conclusive on the parties in the second action were actually and necessarily litigated and determined in the prior action.¹⁰

⁷ *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 930, 610 P.2d 962 (1980) (citing *Seattle-First Nat'l Bank v. Kawachi*, 91 Wash.2d 223, 588 P.2d 725 (1978)).

⁸ *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 930, 610 P.2d 962 (1980).

⁹ *East v. Fields*, 42 Wn. 2d 924, 926, 259 P.2d 639 (1953).

¹⁰ *Dixon v. Fiat-Roosevelt Motors*, 8 Wash.App. 689, 695, 509 P.2d 86 (1973).

Here, the issues are not the same, and the resolution of one should not preclude litigation on the other. Respondent V-Squared brought breach of contract action for moneys due against appellant Ravikovich.

Washington Consumer Protection Act claim brought by appellant Ravikovich in the present suit against respondent V-Squared, LLC, has nothing in common and absolutely lacks any identical issues with classic contract at law. Thus, the Washington Consumer Protection Act (“CPA”) prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”¹¹ A private cause of action exists under the CPA if (1) the conduct is unfair or deceptive, (2) occurs in trade or commerce, (3) affects the public interest, and (4) causes injury (5) to plaintiff’s business or property.¹² Whereas the element of contract: (1) an offer, (2) an acceptance in strict compliance with the terms of the offer, (3) meeting of the minds, (4) each party’s consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding.¹³

It is not clear as to how the trial court found that absolutely two distinct causes of actions had identical issues in prior arbitration to invoke

¹¹ See *RCW 19.86.020*.

¹² *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780 (1986).

¹³ *Havsy v. Flynn*, 88 Wash.App. 514, 518-20, 945 P.2d 221 (1997). *Winchek v. American Express Travel Related Services. Co.*, 232 S.W.3d 197, 202 (2007).

collateral estoppel, if we take into consideration a fact that Long filed a lawsuit against Ravikovich after the arbitration. As clearly seen the elements of CPA claim and a contract have nothing in common. Furthermore, assuming arguendo that in arbitration between V-Squared and Ravikovich some common issue was considered, the trial court still should deny collateral estoppel effect on that issues since it was not essential to the decision of the case. If Ravikovich did appeal arbitration decision on CPA claim, the appellate court would refuse to hear the appeal, since Ravikovich's CPA claim was not resolved at that time and did not affect the outcome of the V-Squared, LLC, breach of contract suit. There has been no final decision on the issue and Ravikovich should not be estopped by the erroneous invocation of collateral estoppel by the trial court.

Consequently, the trial court made an obvious error in dismissing Ravikovich's CPA claim.

IV. THE TRIAL COURT LACKED PROPER RECORD WHEN DECIDED TO INVOKE COLLATERAL ESTOPPEL AGAINST CURRENT RAVIKOVICH'S CPA CLAIMS

When collateral estoppel is asserted as a bar, the record of the prior action must be before the trial court so that it may determine if the doctrine precludes re-litigation of the issue in question.¹⁴

At the time of its motion for summary judgment, V-Squared, LLC, presented the following record to the trial court:

- Exhibit “A”-- Order Confirming Arbitration Award (CP 10-12).
- Exhibit “B”—Arbitration Award (CP 13-27).
- Exhibit “C”—Contract (CP 28-40).
- Exhibit “D”—Motion to Vacate Arbitration Award (CP 41-55).
- Exhibit “E”—Submission to Dispute Resolution (CP 56).
- Exhibit “F”—Clerk’s Order of Dismissal (without prejudice) (CP 57-58).
- Exhibit “G”--Ravikovich’s present CPA Complaint (CP 59-78).

The record before the trial court was incomplete because V-Squared, LLC, conveniently omitted submission to the trial court of a copy of its original complaint for breach of contract against Ravikovich, as well as Ravikovich’s answer to the complaint. These were crucial documents that reflected particular claims by V-Squared, LLC, against Ravikovich, which were necessarily for the trial court’s determination as

¹⁴ *Beagles v. Seattle-First National Bank*, 25 Wash.App. 925, 930, 610 P.2d 962 (1980) (citing *Bodeneck v. Cater’s Motor Freight System, Inc.*, 198 Wash. 21, 29, 86 P.2d 766 (1939)). See also *Rufener v. Scott*, 46 Wash.2d 240, 245, 280 P.2d 253 (1955)).

to whether Ravikovich's present issues were not similar to the prior cause of action commenced by V-Squared, LLC.

Consequently, the trial court lacked necessary evidence because V-Squared, LLC, failed to present to the trial court crucial record so that the trial court could determine if the doctrine precludes re-litigation of the relevant issues.

E. Conclusion

For the preceding reasons, this Court should reverse the judgment of dismissal as incorrect and remand this case to the Superior Court for further proceedings.

Respectfully submitted this 30th day of June, 2014.


Alexander Ravikovich, Appellant

APPENDIX

(Washington Court of Appeals, Div. 1, March 17, 2014 Decision)

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

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| ALEX RAVIKOVICH, |) | No. 69612-2-1 |
| |) | |
| Appellant, |) | DIVISION ONE |
| |) | |
| v. |) | |
| |) | |
| ROBERT LONG and JANE DOE |) | |
| LONG, and their marital community |) | UNPUBLISHED OPINION |
| composed thereof, |) | |
| |) | |
| Defendants, |) | |
| |) | |
| V-SQUARED, LLC, a Washington |) | |
| Limited Liability Company, |) | |
| |) | |
| Respondent. |) | FILED: March 17, 2014 |

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAR 17 AM 9: 16

SCHINDLER, J. — Alex Ravikovich appeals summary judgment dismissal of his lawsuit against V-Squared LLC for violation of the Consumer Protection Act, chapter 19.86 RCW. Because the same facts and issues were previously litigated in a binding mandatory arbitration, we affirm.

FACTS

On April 28, 2006, Alex Ravikovich entered into a contract with V-Squared LLC to construct a single family residence in Bellevue, Washington. The contract contained a mandatory arbitration provision. Ravikovich provided V-Squared with site plans he had obtained from a previous contractor.

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At some point after construction began, V-Squared discovered the site plans depicted elevations which differed from actual elevations by more than six feet. Consequently, the slope of the driveway exceeded the maximum allowed by the city of Bellevue. Redesign options for the driveway were greatly limited by the site's topography. In an effort to address this problem, V-Squared asked the adjacent property owner Robert Long for permission to construct retaining walls on his property to laterally support construction of a redesigned driveway on Ravikovich's property.

In late July or early August 2006, Long orally agreed that V-Squared could construct retaining walls on his property on the condition that certain landscaping and other improvements were completed, and that Long and Ravikovich execute and record an easement agreement. V-Squared constructed the driveway and retaining walls.

Long asserted that the conditions had not been met and refused to sign a proposed easement agreement. As a result of this and other problems, Ravikovich disputed the amount owed for the construction project. V-Squared filed a lien foreclosure and breach of contract complaint against Ravikovich.

On August 16, 2007, Ravikovich and V-Squared submitted their dispute to the American Arbitration Association. V-Squared asserted claims for "unpaid charges for workmanship and materials." Ravikovich asserted claims against V-Squared for "filing excessive lien under RCW 60.04.081, and for excessive demand for payment, failure to obtain proper permits, failure to obtain proper approval of change orders, failure to obtain and/or follow site engineering plans and reports, failure to inform homeowner of site problems."

On July 2, 2008, the arbitrator issued a decision. The arbitrator found that “[b]oth parties contributed not only to the creation of some of the problems but also to the difficulty of resolving them because of their departure from the requirement for clear written documents.” The arbitrator awarded damages plus attorney fees and costs for a total judgment of \$159,353.10 to V-Squared. The superior court denied Ravikovich’s motion to vacate the award and entered a judgment against Ravikovich.

On July 11, 2008, Long filed a lawsuit against Ravikovich alleging trespass, breach of agreement, damages, and ejectment. On June 18, 2010, the court dismissed the Long lawsuit without prejudice for failure to prosecute.

On June 6, 2011, Ravikovich filed a lawsuit against V-Squared alleging violation of the Consumer Protection Act (CPA), chapter 19.86 RCW, and unfair or deceptive acts or practices. V-Squared filed a motion for summary judgment arguing Ravikovich’s claims were barred by collateral estoppel, res judicata, and the statute of limitations. The trial court granted summary judgment dismissal. The court ruled that the claims were barred by collateral estoppel based on the issues decided in the prior arbitration. Ravikovich appeals.

ANALYSIS

Ravikovich contends the court erred in dismissing his lawsuit on summary judgment and ruling collateral estoppel barred his CPA claims.¹

“ ‘The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court.’ ” Smith v. Safeco Ins. Co., 150 Wn.2d 478, 483, 78 P.3d 1274 (2003) (quoting Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002)). Summary judgment is proper if the pleadings,

¹ Ravikovich’s arguments on appeal are directed specifically to the CPA claims.

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affidavits, depositions, and admissions on file demonstrate that there are no genuine issues of material fact, and that the moving party is entitled to judgment as a matter of law. CR 56(c).

"Under the doctrine of collateral estoppel, once 'an issue of ultimate fact has . . . been determined by a valid and final judgment, that issue cannot be relitigated between the same parties in any future lawsuit.' " Lopez-Vasquez v. Dep't of Labor & Indus., 168 Wn. App. 341, 345, 276 P.3d 354 (2012)² (quoting State v. Williams, 132 Wn.2d 248, 253-54, 937 P.2d 1052 (1997)). "The purpose of the doctrine is to promote the policy of ending disputes." Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 262, 956 P.2d 312 (1998). Reninger v. Department of Corrections, 134 Wn.2d 437, 449, 951 P.2d 782 (1998), identified the elements of collateral estoppel as follows:

(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

Ravikovich argues the issues are not identical because the contract claims adjudicated in the arbitration and the CPA claims advanced in the current lawsuit are distinct legal theories with different elements and remedies. Ravikovich's argument conflates collateral estoppel with res judicata. The doctrine of collateral estoppel differs from res judicata. Instead of preventing a second assertion of the same claim or cause of action, collateral estoppel prevents relitigation of issues between the parties even though a different claim or cause of action is asserted. Seattle-First Nat'l Bank v. Kawachi, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978). Accordingly, while the contract and CPA claims have differing elements, that has no bearing on the collateral estoppel

² (Alteration in original.)

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analysis. Collateral estoppel prevents relitigation of ultimate facts and issues regardless of the specific cause of action.

Ravikovich claims V-Squared failed to meet its burden of showing "that the fact determined in the first action is essential, and not merely collateral or incidental, to the right asserted in the second." Beagles v. Seattle-First Nat'l Bank, 25 Wn. App. 925, 930, 610 P.2d 962 (1980). Although the arbitrator did not specifically rule on encroachment and trespass, in order to resolve the dispute regarding the amount owed for construction of the residence, the arbitrator had to address the responsibility of the parties regarding easements. Ravikovich argued to the arbitrator that V-Squared failed "to request from owner or obtain easements from adjacent owners prior to grading for driveway." The arbitrator specifically ruled that "[t]he easement and short plat problems relate to title difficulties which are the responsibility of the Owner, not the Contractor. There is no requirement in the contract for the Contractor to apply for easements."

Under the CPA, "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful." RCW 19.86.020. Ravikovich's complaint that V-Squared's actions and omissions in failing to obtain a proper easement is the crux of his CPA claims:

3.9. V-Squared LLC omitted, misrepresented and/or concealed material fact from Mr. Ravikovich that necessary easement registration and recording with King County was [a] necessary requirement to begin construction work.

On appeal, Ravikovich characterizes the issue in the current lawsuit as "whether V-Squared, LLC, violated [the] Consumer Protection Act by building Ravikovich's house so that it intruded on the Long's property and required removal or reconstruction to correct the problem." Ravikovich also claims Long's lawsuit against Ravikovich is a

"different factual issue" that was not present or litigated during the arbitration. However, the record shows that Ravikovich was well aware of problems concerning the placement of the driveway prior to the arbitration.³ Because the essential factual basis of the CPA claim was resolved against Ravikovich in the prior arbitration, the court did not err in concluding that Ravikovich's CPA claims were barred by collateral estoppel.

Ravikovich next argues that the decision of the arbitrator is not a final judgment for purposes of collateral estoppel. We disagree. In Neff v. Allstate Insurance Co., 70 Wn. App. 796, 799-800, 855 P.2d 1223 (1993), we held that an arbitration decision is a prior adjudication for purposes of collateral estoppel.

Similarly, Ravikovich's argument that the trial court lacked a proper record to apply collateral estoppel because it did not have a copy of V-Squared's original complaint for breach of contract against Ravikovich lacks merit. Ravikovich has not explained why the original complaint was necessary for the trial court to determine whether issues adjudicated in the arbitration precluded his CPA claims.

Both parties seek attorney fees and costs on appeal based on the contract. The contract between Ravikovich and V-Squared provides that "[i]n the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses." "We may award attorney fees under RAP 18.1(a) if applicable law grants to a party the right to recover reasonable attorney fees and if the party requests the fees as prescribed by RAP 18.1." Wachovia SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 493, 200 P.3d 683

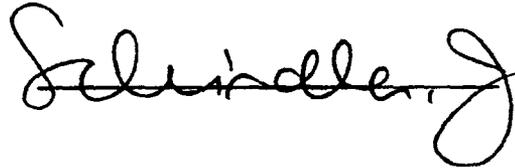
³ Ravikovich also argues that in April 2006, V-Squared's president Vadim Tsemekhman misrepresented that he had a license. But the arbitrator ruled that "[b]ecause there are no documents reflecting what was said, not a contemporaneous memorandum of the negotiations, I cannot conclude that there was any misrepresentation."

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(2009). A contract provision for an award of attorney fees supports an award of attorney fees on appeal under RAP 18.1. W. Coast Stationary Eng'rs Welfare Fund v. City of Kennewick, 39 Wn. App. 466, 477, 694 P.2d 1101 (1985).

Upon compliance with RAP 18.1, as the prevailing party under the contract, V-Squared is entitled to an award of reasonable attorney fees and costs on appeal.

Affirmed.



WE CONCUR:

Cox, J.

Gunn, J.

**COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON**

Alex Ravikovich,

Appellant,

v.

V-SQUARED, LLC,

Respondent,

NO. 696122

**CERTIFICATION OF HAND
DELIVERY**

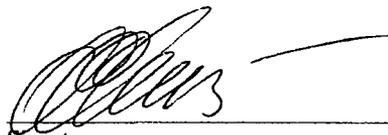
The undersigned STATES that:

1.1 I am a resident of the State of Washington; I am over the age of 18 years.

1.2 On June 30, 2014, a true and correct copy of the foregoing document was hand delivered to William A. Linton, Attorney for Respondent V-Squared, LLC at 10900 N.E. 4th Street, Suite 1500, Bellevue, WA 98004 the following: PETITION FOR REVIEW

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: June 30, 2014, at Bellevue, Washington.



Signature
Olga Efimova, Assistant
Name and Title

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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