

**NO. 44209-4-II**

**COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON**

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**FA ALA A. SAILI and LISA A. SAILI,  
Respondent**

**vs.**

**PARKLAND AUTO CENTER, INC.,  
Appellant**

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**RESPONDENT'S BRIEF CORRECTED**

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I

RESPONSE TO THE DEFENDANT'S ARGUMENT THAT THE  
TRIAL COURT ERRED BY DENYING MOTION TO ARBITRATE

[1] The clerk's papers considered by the trial court on hearing the defendant's motion to compel arbitration are as follows.

a) Defendant's note and motion to stay proceedings and compel arbitration, filed January 20, 2012, CP 35-64.

b) Plaintiff's statement of the case authority and statutes which preclude the defendant from compelling arbitration filed January 20, 2012, CP 66-82.

c) Defendant's reply in support of motion to stay proceedings and compel arbitration, filed February 1, 2012, CP 213-239.

d) The court's order denying defendant's motion to stay proceedings and compel arbitration, filed February 6, 2012, CP 262-262.

[2] DISCUSSION.

Before the trial court defendant urged three bases on which the defendant's right to arbitration rests. The first basis is that the contractual documents that provide any dispute would be subject to arbitration. CP 38 The second basis is that defendant did not waive the right to arbitrate by engaging in litigation. The third basis is

that the arbitration provisions are not substantively or procedurally unconscionable. CP 39

Before this Court the defendant's brief appears not to address the contractual basis for the arbitration procedure and from the defendant's brief (pages 16-18) it appears that defendant is relying primarily on the strong public policy which favors enforcement of arbitration when the contract provides that arbitration is required by the terms of the contract.

The defendant's brief cites the Court of Appeals (Div. III) for *Perez v. Mid Century Ins.*, 85 Wn.App.760, 765, 934 P.2d 731 (1997), to illustrate that public policy favors arbitration. In *Perez v. Mid Century Ins.*, the Court said at page 765:

"The sole issue in this case is whether a court may intervene in the prearbitration process to disqualify an arbitrator-nominee to a tripartite panel where one party alleges that the nominee is partial in that the nominee has an ongoing professional relationship with the party that made the appointment."

*Perez v. Mid Century Ins.*, *supra*, made no reference to enforcement of arbitration in the context of a retail installment sale contract.

The decision of the Court of Appeals (Div. I) in *LWSD v. Mobile Modules*, 28 Wn. App. 59, 621 P.2d 791 (1980) cited in defendant's brief (page 16-17) to support defendant's argument

for arbitration did address the issue of waiver. The court ruled that defendant's limited discovery did not constitute a waiver of the right to arbitrate. It should be noted that the Court of Appeals in *LWSD vs. Mobile Modules, supra*, at 59, found that "Mobile Modules answered denying the claim and counterclaiming for final payment under the contract. In its answer, Mobile Modules referred to the arbitration clause in the contract and prayed for a stay of court proceedings pending arbitration". Further, the Court of Appeals stated that Mobile Modules moved for a stay on May 15, 1979, after formally demanding arbitration in April 1979. There was a very short time between the submission of defendant's answer and the answer invoked arbitration which was shortly followed by the defendant's motion to stay the trial pending arbitration.

Defendant also cited *McKee v. AT&T, Corp.*, 164 Wnd. 372, 191 P.3d 845 (2008), in which the Supreme Court addressed the issues of substantive and procedural unconscionability. Although the Court's opinion is quite complex on issues raised concerning federal preemption, the nub of the Court's opinion on unconscionability is contained in the following quotation at page 396:

“Whether an agreement is unconscionable is a question of law for the courts. *Nelson*, 127 Wn.2d at 131. Agreements may be either substantively or procedurally unconscionable. *Zuver*, 153 Wn.2d at 303. Substantive unconscionability involves those cases where a clause or term in the contract is one-sided or overly harsh. *Id.* Substantive unconscionability alone is sufficient to support a finding of unconscionability. “

The Supreme Court found numerous provisions of the AT&T Corporation arbitration provisions to be unconscionable including clauses which required confidentiality, limited the time to sue and restricted recovery of attorney fees.

The other authority cited in the defendant’s brief (pg. 18) is *Alder v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004), in which an arbitration contract was invoked by the defendant when plaintiff sued for age discrimination. In this case the Supreme Court focused on the Federal Arbitration Act which the Court said applies to all employment contracts with exception of certain transportation workers. The Court reiterated the following rules which are applicable on hearing a motion to compel or deny arbitration, at page 342: “We engage in de novo review of a trial court’s decision to compel or deny arbitration. (Citations omitted).

“The party opposing the arbitration bears the burden of showing that the agreement is not enforceable.”

Further, at page 346-347, in *Alder v. Fred Lind Manor, supra*,

the Court said “[W]e hold that substantive unconscionability alone can support a finding of unconscionability.”

The issue of waiver of arbitration by conduct is addressed at pages 16-17 of defendant’s brief. Defendant appears to rely principally on the decision of the Court of Appeals, (Division I), in the case of Lake Washington School District v. Mobile, 28 Wn.App. 59, 621 P.2d 791 (1980). This case is readily distinguished from the facts in the immediate case because the Court found that the defendant had demanded arbitration approximately three months after the complaint was filed. Further the Court found that defendant, in answer to the complaint, referred to arbitration and prayed for a stay of proceedings pending arbitration. At page 61, the Court stated the rule that a party may waive arbitration by failing to invoke the clause when an action is commenced and arbitration has been ignored. (Citations omitted)

Waiver of the right to arbitrate is addressed by the Court in *Adler v. Fred Lind Manor, supra*, at page 362. In this portion of the opinion the Court said, quoting with approval from the decision of Division One of the Court of Appeals in Steele v. Lundgren, 85 Wn.App. 845, 849, 935 P.2d 671, (1997), there are three factors to determine whether a party waives his right to compel arbitration under the Federal Arbitration Act: “(1) knowledge of an existing right to compel arbitration, (2) acts inconsistent with that right, and (3) prejudice.” The Supreme Court did

not find that the defendant waived the right to arbitrate in *Adler v. Fred Lind Manor, supra*. What the Court did find, at page 362, and stated, is the controlling factor: “Fred Lind Manor raised its defense of arbitration in its initial answer to Adler’s complaint and promptly moved to compel arbitration after serving its answer. “

The plaintiff responded to the defendant’s motion to compel arbitration. Plaintiff’s response was filed January 20, 2012, CP 66-82. The plaintiff offered four bases to support a decision denying the motion to compel arbitration.

The first basis is that the contract arbitration clauses that defendant invoked were not contained in the retail installment sale contract. The first document on which defendant relied to require arbitration was the printed form, titled VEHICLE BUYERS ORDER. A copy of this document is found as an attachment, Exhibit A to the declaration of the defendant’s attorney, CP 45-49. The alternative document on which defendant relies for arbitration is titled SUPPLEMENTAL DISCLOSURE AND AGREEMENT, and a copy of the signed document is shown as Exhibit B to the declaration of defendant’s attorney, CP 52.

The Retail Installment Sales Act, RCW 63.14.020, (copy of the statute is included in the appendix to the respondent’s brief), makes it mandatory that the retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties. The

retail installment sale contract at issue in this lawsuit, (copy of the signed contract is found at CP 442) is referenced in plaintiff's index to the pleadings and documents offered in support of motion for summary judgment, CP 17. The retail installment sale contract does not make any reference to the Vehicle Buyers Order, nor does the Vehicle Buyers Order make any reference to the signed retail installment sale contract. The retail installment sale contract does not contain any provision for arbitration. The retail installment sale contract does not contain any reference to the Supplemental Disclosure document. To enforce the arbitration clause in documents, separate and apart from the retail installment sale contract, would serve to condone the violation of RCW 64.14.020 that the retail installment sale shall be contained in a single document which shall contain the entire agreement of the parties.

The second basis for not enforcing the arbitration clauses invoked by defendant is that the retail installment sale contract executed by the plaintiff and defendant (CP 442-443) stipulates "This contract contains the entire agreement between you and us relating to this contract." This provision is entirely misleading and deceptive in fact if the entire agreement is not contained in the retail installment contract signed by the parties..

The third basis on which plaintiff urges the court not to enforce arbitration is that the arbitration clauses in the separate documents are

substantively unconscionable under the circumstances of this case. The argument of plaintiff opposing arbitration (CP 66-82) called attention (at pages 13-14) to the fact that in the arbitration clause under the Vehicle Purchase Order (CP 48-50) it is stated: “*You and we retain any rights to self-help remedies, such as repossession.*” What this clause means is that even if one of the parties elected to have a dispute arbitrated, defendant is still permitted to exercise a self-help remedy by repossession. The clause goes on to state: “Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit.” In effect, the defendant would have his cake and eat it too because while the plaintiff is compelled to arbitrate, defendant is permitted to exercise self-help by repossession.

The Supreme Court stated in *Alder v. Fred Lind Manor, supra*, at page 344, “Substantive unconscionability involves those cases where a clause or a term in the contract is alleged to be one-sided or overly harsh.”

The arbitration clause in the document titled Vehicle Buyer’s Order is one-sided because it permits the defendant to resort to self-help and repossession while it restricts the plaintiff to arbitration. Substantive unconscionability is addressed in the Retail Installment Sales Act in the following section.

///

**RCW 63.14.136**  
**RETAIL INSTALLMENT SALES TRANSACTION.**  
**UNCONSCIONABLE – JUDICIAL ACTION**

With respect to a retail installment transaction, as defined in \*RCW 63.14.010(8), if the court as a matter of law finds the agreement or contract, or any clause in the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or contract, may enforce the remainder of the agreement or contract, or may limit the application of any unconscionable clause to avoid an unconscionable result.

In this case, the court determined not to enforce the arbitration clause. The substantively unconscionable terms of the arbitration clause serves as the third basis for the court to deny enforcement of arbitration.

The fourth basis on which plaintiff argued against arbitration is waiver. As the clerk papers reflect, the plaintiff made written demand upon defendant to restore plaintiff's Chevrolet Suburban prior to filing suit. Refer to CP 428, plaintiff's request for admission #48, and CP 438, defendant's response to plaintiff's request #48. The demand letter dated June 1, 2011, was received by defendant June 8, 2011. CP 468. There was no response.

The summons, (CP 1) and complaint (CP 2-9) was filed June 10, 2011, and defendant answered the complaint July 28, 2011, (CP 10-12). The answer did not make any reference to arbitration. As set forth in the plaintiff's statement opposing arbitration, at pages 9-10, (CP 73-74), there was extensive discovery conducted by both

parties before the plaintiff filed the motion for summary judgment on December 20, 2011. Both parties submitted and received written interrogatories and requests for production. Plaintiff included numerous requests propounded to defendant to admit facts and the authenticity of documents which were served to defendant September 8, 2011, and responses received October 5, 2011. (CP 421, 440) Plaintiff's counsel made request for further production of written documents and traveled to the office of defendant's counsel on Dec. 2<sup>nd</sup>, 2011 to examine documents. As plaintiff's counsel informed the court, (CP 75), at no time during the litigation process was the plaintiff or plaintiff's counsel informed that defendant was requesting arbitration.

The defendant's request for arbitration was not served until January 5, 2011 (CP 63) which was two weeks after the plaintiff filed the motion for summary judgment, (CP 15) together with plaintiff's pleadings to support the motion (CP 17-34). The plaintiff submitted a statement of case authority to oppose the arbitration (CP 66-82). An arbitration was unduly prejudicial to the plaintiff when the request was made by defendant because an arbitration would delay the hearing on the plaintiff's motion for summary judgment. The delay would continue to deny plaintiff the right to recover possession of her car which defendant held more than six

months when the request for arbitration was raised.

The plaintiff's statement of authority to preclude arbitration (CP 66-82) included references to numerous decisions of the courts which recognize and enforce the doctrine of waiver when one party to the litigation failed to request arbitration within a reasonable time after the commencement of a lawsuit. (CP 77). In addition to the case decisions cited by the plaintiff's attorney, including *Ives v. Ramsden*, 142 Wn.App. 369, 382, 174 P.3d 1231 (2008) by the Court of Appeals, Div. II, the plaintiff's counsel submitted his declaration (CP 85-88) to explain why the defendant's late filing of the motion to compel arbitration was prejudicial to plaintiff.

In conclusion, the Court's holding in *Ives v. Ramsden*, *supra*, should be controlling in the immediate case. After conducting extensive discovery by both parties, after the complaint and answer were served without any mention of arbitration, defendant's motion for stay and to require arbitration was denied, and the lower court's order should be sustained.

THE TRIAL COURT'S DECISION GRANTING PLAINTIFF  
SUMMARY JUDGMENT SHOULD BE SUSTAINED

[1] The defendant assigns error to the trial court's decision granting summary judgment based on the defendant's assertion that the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there are genuine issues of material fact. CR 56(c)

A.) The defendant's brief (at page -9-) refers to one and only one disputed material fact, namely, whether Reliable Credit declined to accept the retail installment sale contract. According to the defendant's argument, the testimony of Lonn Ostream (at CP 108-112) shows Reliable Credit did accept the loan thru what is known as "Book of Business" where the dealership unconditionally guarantees the loan.

B.) What defendant may have overlooked is that affidavits, to be considered by the court on hearing a motion for summary judgment, *shall set forth such facts as would be admissible in evidence*. CR 56(e) The testimony of Lonn Ostrom (CP 109) is not based on facts that would be admissible because the critical point he made about the finance company's willingness to accept the contract is hearsay. ER 801(c) It is clearly hearsay for Lonn Ostrom to testify to what he recalled was said to him by the manager at Reliable Credit about the company's willingness to

accept the retail installment sale contract if Lonn Ostrom would give an unconditional guaranty.

C.) The testimony of Lonn Ostrom is set forth in his affidavit at CP 109 as follows.

When Ms. Saili's retail installment sales contract was sent to Reliable Credit, the manager there called me on May 11<sup>th</sup>, 2011 and told me that her credit history was insufficient unless I wanted to give an unconditional guaranty. I maintain a "book of business" with Reliable Credit where Reliable Credit agrees to purchase any loan that I send to them if I unconditionally guaranty the performance of that loan. I agreed to transfer the loan to my "book of business" and unconditionally guaranty the loan. It is my understanding that Reliable Credit sent a declination letter to Ms. Saili by mistake on May 17, 2011, as I had already agreed to place the loan in my "book of business" with Reliable Credit. There was no decline of the terms and conditions of Ms. Saili's loan by Reliable Credit, only the requirement that I unconditionally guaranty the loan, which I did.

It will be noted in the foregoing testimony that Lonn Ostrom is the witness testifying under oath to what the manager [who is the declarant] said when he was asked to purchase the loan on the retail installment contract with plaintiff. The statement offered by the witness which is hearsay is what the witness testified the manager said Reliable Credit was willing to do i.e. purchase the loan if the witness would give an unconditional guaranty. Notably

Lonn Ostrom did not testify that Reliable Credit accepted the contract nor did he testify that he ever put his unconditional guaranty in writing before Reliable Credit sent the declination letter

to plaintiff on May 17, 2011. The implication defendant urged the court to accept from the testimony of the witness is that Reliable Credit accepted the contract with the unconditional guaranty that Lonn Ostrom said he would give.

D) Hearsay is not admissible except as provided by the rules of court, or by statute. ER 802 While there are numerous exceptions to the hearsay rule, (ER 803-804), none of the exceptions apply to testimony of Lonn Ostrom as to what the manager at Reliable Credit said about the retail installment contract at issue in this lawsuit. Moreover, the underlying rationale of excluding hearsay is quite well illustrated in this case because nothing was offered in writing as evidence to corroborate what the witness said the manager said at Reliable Credit or that Reliable Credit made any commitment at all to accept the retail installment contract. In fact the evidence offered at the hearing on summary judgment was contrary to what Lonn Ostrom testified.

Plaintiff submitted a request that defendant admit on May 17, 2011, Reliable Credit gave written notice to plaintiff that the credit application submitted by the plaintiff was rejected. (CP 423, referencing plaintiff's request for admission #16.) Defendant did admit that the letter was sent. The defendant also admitted that Exhibit H to plaintiff's request for admissions (CP 451) is a true copy of the declination letter sent to plaintiff by Reliable Credit.

[2] The trial court was justified if the court excluded the hearsay testimony of Lonn Ostrom from consideration. But even if the court accepts the testimony of this witness, the evidence clearly shows there is no issue of fact regarding whether the retail installment contract was terminated when the plaintiff's credit application was turned down. The reason is that three -3- of the documents presented by defendant and signed by plaintiff in conjunction with the retail installment sale clearly and unequivocally terminated the sale if the plaintiff's application for third-party financing was rejected.

A) The first of these documents is the Vehicle Buyer's Order. This document is identified as Exhibit A to declaration of defendant's attorney at CP 48; and defendant admitted that a copy of this document attached as Exhibit A to the plaintiff's request for admissions is a true copy of the original. (CP 441) This document makes the following provision as part of the sales agreement: "If the buyer is buying the vehicle in a credit sale transaction with Dealer evidenced by a signed retail sale contract, this Agreement is binding when the retail sale contract is signed, but will not remain binding if a third party finance source does not agree to purchase the retail installment sale contract executed by Buyer and Dealer based on this agreement". {Italics and emphasis supplied}

B) The second document which terminates the sale is the

document bearing title, CREDIT APPLICATION PROCESSING shown as Exhibit D to the plaintiff's request for admissions at CP 447. Defendant admitted the copy of the document attached to plaintiff's request for admission #8 was a true copy, CP 422. As part of the credit application this document contains the following provision:

"If loan/lease approval is denied for any reason, we will timely notify you of that denial, and you will be obligated to return our vehicle to us, and we will return to you any trade-in or down payment that you made."

C) The third document which shows that the retail installment sale contract was conditioned on the approval of the plaintiff's credit application is the document titled CONDITION OF FINANCING. A copy of this document bearing plaintiff's initials is shown as Exhibit C to plaintiff's request for admissions (CP 446) and was admitted by defendant to be a true copy of the original. (CP 436, Response to Request for Admission #6)

According to the terms stated in the condition to financing document it provided as follows.

"As provided for in the attached Retail Installment Sale Contract, this sales transaction is expressly conditioned on approval of Buyer's financing or creditworthiness. **IF THIS CONDITION IS NOT MET, THE CONTRACT IS VOID, EXCEPT AS PROVIDED IN ANY ATTACHED SALE DOCUMENTS.** Buyer understands Seller may,

and Buyer hereby consents to Seller so doing, submit Buyer's credit application and sales documents to more than one lending institution.

"Please take notice that within four (4) calendar days, exclusive of Saturday, Sunday or legal holiday, we will notify you, in the event it occurs, that the Seller has not approved the Buyer's financing or creditworthiness. In that event, Washington law requires that we void the contract and ask that you immediately return any motor vehicle we have delivered to you. Conditional upon the return of any delivered motor vehicle, we will tender the refund of any initial payment or security made or given, including but not limited to any down payment, and the return of any the trade-in vehicle, key, or other trade-in, or certificate of title to a trade-in." (Emphasis by underlining supplied)

Contrary to the terms and provisions of the foregoing documents when the plaintiff's credit application was rejected by Reliable Credit the defendant did not return plaintiff's down payment and did not return the plaintiff's Suburban car nor did defendant ever inform the plaintiff her credit was not approved.

D) Defendant's brief asserts that there is a material issue of fact raised based on the testimony of Lonon Ostrom that Reliable Credit in fact accepted the contract based on "book of business"

and that the declination letter sent by Reliable Credit on March 17, 2011 was in error. (Defendant's brief at page 11) But the plain reading of each of the documents referenced in the immediately preceding paragraphs A), B) and C) is that if third-party financing /

loan approval is not obtained, the transaction is cancelled, and that plaintiff is required to restore the vehicle sold under the contract, and that defendant is required to restore plaintiff's down payment and any collateral.

E) Defendant argued before the lower court (CP 93-107) in response to plaintiff's motion for summary judgment (at pages 9-10), that even though Reliable Credit had initially declined to accept plaintiff's credit application, and so stated to defendant, when Lonon Ostrom agreed to an unconditional guaranty, this led to the transaction being "accepted." What the defendant seemingly overlooks is that any acceptance of the real estate installment sale contract was qualified by the terms stated in the contract. The contract, CP 441. The retail installment contract and also the Vehicle Buyers Order, CP 441) recite that the down payment made or to be paid, is one thousand dollars. But the plaintiff never paid the sum of \$1,000. Refer to plaintiff's request for admissions #20-21 (CP 424, 427. The only amount plaintiff paid down was \$500 on

May 4, 2011 (receipt for \$500 paid is shown, Exhibit J, CP 455)

As the testimony of Lonon Ostrom showed, (CP 108-110, declaration of Lonon Ostrom, pages 1-3) plaintiff had deposited

\$500.00 with defendant on May 4, 2011 to apply to the purchase of a different vehicle, and plaintiff signed a promissory note on May 4, 2011, for an additional payment of \$500 to be due May 18, 2011. (A copy of the promissory note is found at CP 445) The check tendered in payment of the balance of the down payment was dishonored at the bank. (CP 456-457) Lon Ostrom testified he notified plaintiff that if she did not make the check good by May 30, 2011, "I would repossess the Sonoma and also the Suburban as additional collateral as agreed upon." Mr. Ostrom testified further "When Ms. Saili didn't bring the money to make the check good, I had the Sonoma and Suburban repossessed. CP 114

F) Under any reasonable interpretation of the documents signed by the plaintiff and defendant in connection with the retail installment sale, the plaintiff's Suburban vehicle was intended to collateralize the purchase of the vehicle being sold by defendant. Lon Ostrom stated in his declaration opposing plaintiff's motion for summary judgment that, "Ms. Saili understood this and agreed to use her 2002 Suburban as additional collateral for the loan." (CP 108) To confirm the understanding that plaintiff's Suburban was used to collateralize the purchase of a vehicle, the defendant pointed out that plaintiff signed a collateral document titled CERTIFICATE OF FACT which appears at CP 459 (being Exhibit L

to the plaintiff's request for admissions, #27). This document recites "I understand that Parkland Auto Center is using my 02 Suburban... as collateral to secure a loan on a 2003 GMC ..." (The VIN numbers in the document are omitted here)

G) The defendant argued before the lower court, (CP 104, at page 12, lines 11-13) "Because the parties intended the Suburban to be 'additional collateral' to the Retail Installment Sale Contract, the Suburban was lawfully repossessed when the plaintiff defaulted on the contract." The defendant's argument to the lower court (CP at 102, was: "At no time did the terms of the agreement ever change." This was a distortion which belies the fact that the entire sale transaction was conditioned upon the approval of plaintiff's credit application and payment of \$1,000 down.

Moreover, the retail installment sale contract made no reference to the plaintiff's Suburban whatsoever, nor is the agreement to collateralize the Suburban mentioned in any other documents signed by plaintiff except in the above referenced Certificate of Fact. So that even if the plaintiff's failure to complete the down payment under the retail installment contract is considered a default, there was no provision in the contract or any of the other documents that defendant was permitted to transfer ownership of

the Suburban and to withhold possession from the plaintiff (or to 'repossess' the Suburban, as defendant has characterized the transaction).

H) This was the rationale for the trial court's decision on February 10, 2012, where at page three (CP 483) the trial court concluded as follows:

"Well, the logical conclusion that this Court reaches on that is, absolutely, the vehicle that you can take is the vehicle on the front side of the paper that is referred to as a GMC Sonoma, 2003, in which in this document (referring to the retail installment sale contract), you have a security interest. You can't now say well, this allows us to take some other vehicle from you that isn't even referenced in that document. This makes no sense to me, and I think is a violation of the Retail Installment Sales Act."

The lower court's further conclusion was that the Retail Installment Sales Act required any security agreement [or collateralization for a contract of sale) to be at least referenced in the contract. (CP 484) This court's conclusion is based on the provisions of RCW 63.14.020 - Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction. (Emphasis added by counsel).

I) In conclusion, plaintiff urges that the lower court was entirely correct in concluding that the defendant's failure to show approval of the plaintiff's credit application voided the transaction; and that failure to include any provision for a security agreement in the retail installment contract is a violation of the Retail Installment Sale Act, RCW 63.14.020; and that that repossession of the plaintiff's Suburban was wrongful conversion of the plaintiff's vehicle.

### III

#### THE TRIAL COURT'S DECISION FINDING DEFENDANT VIOLATED THE CONSUMER PROTECTION ACT IS CORRECT

After the lower court announced an oral decision on February 10, 2012, (CP 481-489), both parties moved for reconsideration. The plaintiff's motion (CP 267-272) was filed February 13, 2012, and defendant's motion (CP 279-282) was filed February 21, 2012. Both motions addressed whether defendant's act of removing plaintiff's Suburban on May 31, 2011, was wrongful and without legal justification i.e. a conversion. The lower court denied defendant's motion and granted plaintiff's motion and ordered the defendant to restore to plaintiff the Suburban vehicle.(CP 481-489, and CP 302-303)

The pleadings submitted to the court on the motions filed for reconsideration are identified as follows.

- 1 Plaintiff's motion to reconsider, CP 267.
- 2 Defendant's motion to reconsider, CP 279.
- 3 Defendant's response to plaintiff's motion, CP 283.
- 4 Plaintiff's rebuttal to the defendant's response, CP 290.
- 5 Defendant's reply in support of motion for reconsideration, (CP 298)

In summary, plaintiff's motion for reconsideration accepted the lower court's conclusion that no violation of RCW 46.70.180 (1) was proven, despite what plaintiff showed were misleading statements by defendant. Plaintiff moved for reconsideration based on the decision of the Court of Appeals, Div I, in *Sherwood v. Bellevue Dodge*, 35 Wn. App. 741, 746, 669 P.2d 1258 (1983). In this case the court held that when the automobile dealer ordered repossession of plaintiff's car, the dealer held neither a legal interest or a security interest. Further, because the act of repossession was unlawful and the Legislature enacted RCW 46.70.005 to declare motor vehicle business practices to be a "specific legislatively declared area of public interest", the unlawful conversion of a vehicle is a per se violation of the Consumer Protection Act, RCW Chapter 19.86.

The plaintiff's motion for reconsideration also pointed to the fact that three years after the decision was announced in *Sherwood v. Bellevue Dodge, supra*, the Legislature enacted RCW 46.70.310 to declare "Any violation of this chapter is deemed to affect the public interest and constitutes a violation of RCW 19.86. Laws 1986, Chapter 241, §23.

The defendant responded to plaintiff's motion (CP 279) by arguing that defendant was named as the legal owner of the

collateralized Suburban vehicle, and therefore the repossession of the collateralized vehicle was lawful.

The plaintiff submits that the trial court's analysis of the defendant's conduct as unlawful conversion by ordering repossession of plaintiff's Suburban is correct. The plaintiff never disputed that the defendant had obtained the plaintiff's signature to the documents executed for purposes of collateral. In the plaintiff's request for admissions propounded to defendant, a copy of the release of interest to the Suburban signed by plaintiff on May 4, 2011 (five days before the retail installment sale contract) is shown (CP463) together with the power of attorney signed by both Lisa Saili and her husband, who was co-registered owner, granting defendant authority to release title to the Suburban (CP 464). The power of attorney was not notarized. Defendant transferred title to the Suburban and changed both registered and legal ownership on the certificate of title, (CP 465) to the defendant's name on May 26, 2011, five days before the Suburban was repossessed. So there was no issue regarding the defendant's ownership based on the title application defendant submitted to change the registered and legal owner.

The lower court looked at the transfer of ownership of the Suburban by defendant for what the purpose was. The lower court

reasoned as follows, (RP on 03-02-2012, at pg 1, oral decision of lower court):

“ So we have a condition of financing that says that if the purchaser is found – if their financing and credit worthiness is rejected, that the contract is void. If the contract was void, then how do you get to the idea that the 2002 Suburban is collateral for a loan? It’s collateral for a void contract and instead of the Parkland Auto Center being placed on the title as a lender in a collateral position, they had the title where they are both the registered and legal owner of the vehicle for a void contract. So under what circumstances, under what lawful authority did they change who the registered and legal owner were on the title to the Suburban that wasn’t the subject of the retail installment sale contract to begin with? “

Apparently the defendant’s answer to the lower court’s puzzling question is that since the defendant acquired legal ownership of the plaintiff’s vehicle, defendant could not be liable for a conversion of the vehicle. Defendant’s brief (page 12) states: “[T]he party to whom the title is transferred becomes the legal owner of the vehicle. If you have lawful title to a vehicle you can’t convert it.”

What defendant seemingly overlooks or chooses to ignore is that Lonni Ostrom, defendant’s witness, testified: “Ms. Saili understood this and agreed to use her 2002 Suburban as that additional collateral for the loan.” (CP 108, declaration at page one) This testimony clearly established the title to plaintiff’s vehicle was held by defendant as collateral only if the terms of the condition of

financing was met. According to the Condition of Financing, **IF THIS CONDITION IS NOT MET, THE CONTRACT IS VOID.** (CP 446, being Exhibit C to plaintiff's request for admissions which defendant admitted)

In the complaint, (CP 2) in article III, plaintiff made detailed allegations that showed plaintiff had signed release of title to the Suburban before she was informed her credit approval application was rejected, and that when her credit application was rejected the retail installment sale became void. Plaintiff alleged that defendant did not inform her that her credit application had been rejected, and that despite defendant's knowledge the defendant proceeded to transfer the ownership of the Suburban to defendant on May 26, 2011. Refer to the form Release of Interest (Exhibit P to plaintiff's request for admissions at CP 463 and refer to the copy of the certificate of title to the Suburban which defendant's representative signed May 26, 2011 (Exhibit R to plaintiff's request for admissions at CP 465).

The defendant was aware when the retail installment sale with plaintiff was negotiated that the Department of Licensing required "When collateral in addition to the vehicle is required, it must be listed on the security agreement containing the vehicle's description and not on a separate agreement. WAC 308-66-152 The

defendant was also aware that when application is made to change the certificate of title to a vehicle, the application must identify the name and address of the registered owner, and "*if the vehicle is subject to a security interest, the name and address of the secured party*". (The italicized words are quoted from RCW 46.12.530(1)(b)) In spite of this requirement, defendant elected to use the power of attorney signed by plaintiff to transfer title without showing plaintiff as registered owner.

In conclusion, because defendant failed to inform plaintiff that the retail installment sale was void, and because defendant transferred title and ownership of plaintiff's vehicle after the sale became void, and because defendant repossessed the plaintiff's vehicle when there was no security agreement, as required, the lower court's finding that defendant violated the Consumer Protection Act, RCW 19.86.020 should be sustained.

#### IV

#### THE COURT'S AWARD OF ATTORNEY FEES WAS PROPER

The pleadings and proceedings before the court hearing held on presentation of the order awarding plaintiff's attorney fees are as follows.

[1] The plaintiff's trial memorandum (CP 308) which addressed the request for reasonable attorney's fees at page ten. Appended to plaintiff's trial memorandum is a copy of the plaintiff's attorney's billing statements beginning June 1, 2011, and thru July 30, 2012 (CP 316-324) The plaintiff's trial memorandum requested the court to set a lodestar rate of \$200 per hr.

[2] The plaintiff's supplemental statement in support of the plaintiff's request for attorney fees was submitted after trial and well in advance of the scheduled hearing for presentation of an order awarding attorney fees. (CP 332-338) The plaintiff included reference to three statutes authorizing the award of attorney's fees.

[3] The defendant's response to plaintiff's request for attorney fees The defendant did not oppose or object to a lodestar rate of \$200 per hr. Nor did the defendant make any objection to the plaintiff's request for attorney fees based on the lack of a sworn affidavit. The defendant did not object to the findings of fact

presented to the court after hearing both counsel before presentation of the order to award plaintiff's attorney fees. (CP 378-380)

Although undoubtedly the court in Collins v. Clark Co., Fire District No. 5, 155 Wn.App. 48, 231 P.3d 1211 (2010) considered affidavits of the legal counsel or staff in reaching decision, the court on appeal did not hold that failure to submit affidavits required reversal. What the court did state is:

“We review a trial court's attorney fee award for manifest abuse of discretion; we reverse an award only if the trial court exercised its discretion on untenable grounds or for untenable reasons. Chuong Van Pham v. City of Seattle, 159 Wn.2d 527, 538, 151 P.3d 976 (2007) Such is not the case here. “ At page 98

Pursuant to RAP 18.1(b), the plaintiff is requesting award of attorney's fee in responding to the defendant's appeal. The three statutes which are cited in plaintiff's statement to support the request for award of attorney fees are listed as follows.

[1] RCW 19.86.090

[2] RCW 4.84.330

[3] RCW 46.70.190

Since the defendant has not disputed that plaintiff is entitled to

recover reasonable attorney fees if plaintiff prevails in this lawsuit  
the plaintiff will not further argue for recovery of attorney fees in this  
brief.

In conclusion plaintiff urges that the court sustain the lower court's  
order awarding plaintiff reasonable attorney fees and to further  
request additional reasonable fees if plaintiff prevails on the appeal  
by defendant.

V.

#### CERTIFICATE OF SERVICE

To further certify that this 12<sup>th</sup> day of April, 2013, I have served a  
true copy of the respondent's brief corrected to the attorney for the  
appellant, namely, Frederick H. Ockerman, Attorney at Law, by  
delivery to the U.S. Post Office in envelope on which first-class  
postage was prepaid addressed to 9757 NE Juanita Dr. #100,  
Kirkland, WA., 98034.

Date: April 13, 2013 s/. Signed by Alan Rasmussen, WSB 2545  
Attorney for the Plaintiff / Respondent

## VI

### APPENDIX

#### **RCW 63.14.020 – Retail Installment Contracts**

Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: PROVIDED, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: PROVIDED FURTHER, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: AND PROVIDED FURTHER, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type.

[1967 c 234 § 1; 1963 c 236 § 2.]

#### **RCW 63.14.151**

##### **Retail installment contracts –**

##### **Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.13 RCW**

Any retail installment contract, retail charge agreement, or lender credit card agreement that complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which said retail installment contract, revolving charge agreement, or lender credit card agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW.

1984 c 280 § 8; 1981 c 77 § 9.]

# ALAN RASMUSSEN

**April 12, 2013 - 4:30 PM**

## Transmittal Letter

Document Uploaded: 442094-Respondent's Brief~3.pdf

Case Name: FA ALA A. SAILI AND LISA A SAILI V. PARKLAND AUTO CENTER INC

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

# ALAN RASMUSSEN

**April 12, 2013 - 4:32 PM**

## Transmittal Letter

Document Uploaded: 442094-Respondent's Brief~4.pdf

Case Name: FA ALA A. SAILI AND LISA A SAILI V. PARKLAND AUTO CENTER INC

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

Jan-Marie Glaze, RPR  
 Pierce County Superior Court, Dept. 12  
 930 Tacoma Avenue, Rm. 334  
 Tacoma, WA 98402  
 (253)798-6584

# Invoice

DATE	INVOICE #
3/30/2012	12897

<b>BILL TO</b>
Rasmussen, Alan

Payment due upon receipt of  
 ce.  
 balance over 30  
 date shall bear  
 per month.

*Alan Rasmussen*

ME

Saili vs. Parkland Auto

DATE	PROCEEDING	DESCRIPTION	AMOUNT
3/2/2012	Court's Oral Ruling	Transcript	30.00

- Track Your Expenses
- Auto/Travel
  - Business
  - Charities
  - Clothing
  - Dependent Care
  - Education
  - Entertainment
  - Food
  - Home
  - Insurance
  - Medical/Dental
  - Savings
  - Taxes
  - Utilities
  - Other

*Jan-Marie Glaze*  
*Thirty Dollars No/00*

For enhanced security your account  
 number has been blocked out on this copy

TAX DEDUCTIBLE ITEM

BAL. FOR'D	
ITEM AMOUNT	30.00
BALANCE	
DEPOSIT	
FOR'D	

5412  
 30  
 DOLLARS

\$30.00

NOT NEGOTIABLE

Memo



# ALAN RASMUSSEN

**April 09, 2013 - 6:49 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION, EXHIBIT 1.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 1 TO THE APPENDIX TO MOTION

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

CASE #44209-4-II

APPENDIX TO MOTION

1. EXHIBIT 1 – Receipt for payment for verbatim report of oral decision.
2. EXHIBIT 2 – Verbatim report of court’s oral decision on March 2, 2012.
3. EXHIBIT 3 - Plaintiff’s designation of clerk’s papers.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

Fa Ala A Saili,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 11-2-10139-3
	)	
Parkland Auto Center, Inc.,	)	
	)	
Defendant.	)	

**Court's Oral Ruling  
Verbatim Report of Proceedings**

**Appearances:**

Alan Rasmussen, Attorney at Law, appeared on behalf of the Plaintiff.

Frederick Ockerman, Attorney at Law, appeared on behalf of the Defendant.

BE IT REMEMBERED that on **March 2, 2012**, the above-captioned cause came on for hearing before the **Honorable Stephanie A. Arend**, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

Jan-Marie Glaze, CCR, RPR, CPR	Official Court Reporter
930 Tacoma Avenue South	Dept. 12, Superior Court
Tacoma, Washington 98402	(253) 798-6584

COURT'S ORAL DECISION MARCH 2ND, 2012

EXHIBIT 2 TO MOTION

# ALAN RASMUSSEN

**April 09, 2013 - 6:50 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION, EX. 2 - 1.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 2 TO APPENDIX TO MOTION, PAGE 1

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

Friday, March 2, 2012

Morning Session

\* \* \*

THE COURT: Thank you. Okay. I'm going to start on the defendant's motion for reconsideration with the idea that, Well, they didn't repossess the car because they had a lawful right to it.

Okay. So we have a condition of financing that says that if the purchaser is found -- if their financing and credit worthiness is rejected, that the contract was void. If the contract was void, then how do you get to the idea that the 2002 Suburban is collateral for a loan? It's collateral for a void contract and instead of the Parkland Auto Center being placed on the title as a lender in a collateral position, they had the title where they are both the registered and legal owner of the vehicle for a void contract. So under what circumstances, under what lawful authority did they change who the registered and legal owner were on the title to the Suburban that wasn't the subject of the retail installment sales contract to begin with?

Assuming that the Suburban was lawful collateral in the first place for the loan, which it wasn't listed on there, so when you argued that, Well, on the back side of the contract it says if you don't make your payments

# ALAN RASMUSSEN

**April 09, 2013 - 6:51 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION EX. 2-2.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 2 TO APPENDIX TO MOTION, PAGE 2

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

1 on time we can repossess the vehicle, that was a  
2 Sonoma, and you took back that Sonoma and that was the  
3 purchase. So the Suburban had to have been listed on  
4 that document in order for it to be lawfully part of  
5 the contract but, in any event, once the contract was  
6 determined to be void, the whole thing falls apart and  
7 you had to start over again.

8 I'm denying the defendant's motion for  
9 reconsideration.

10 With respect to Plaintiff's motion for  
11 reconsideration on the CPA claim, he did argue the CPA  
12 claim. It was raised in his motion. I think the  
13 difference is he cited me this time to 46.73.10 which  
14 says any violation of this chapter is deemed to affect  
15 the public interest and constitutes a violation of  
16 19.86 RCW.

17 So while Mr. Rasmussen probably should have provided  
18 the Court with that lawful authority -- and he  
19 didn't -- I'm not going to deny his client the right to  
20 proceed on the CPA claim. I am going to grant the  
21 motion to reconsider and set that motion -- or that  
22 issue for trial as to a measure of damages.

23 With respect to the order to return the vehicle,  
24 honestly, I thought that was part of the deal; that if  
25 you still had the vehicle, that I determined that your

# ALAN RASMUSSEN

**April 09, 2013 - 6:52 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION, EX. 2-3.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 2-3 TO APPENDIX TO MOTION

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

1 client had wrongfully converted that, of course, it  
2 would be returned. If that needs to be the subject of  
3 a subsequent hearing, fine. Then the order today needs  
4 to say that your client is to hold, possess, retain,  
5 that Suburban in such -- either give it back to  
6 Mr. Rasmussen's client or hold and maintain it in a  
7 safe way such that it can be returned in as close a  
8 condition as it was when they wrongfully took it to  
9 begin with. I think he's also claiming that there was  
10 a lot of personal property inside of the Suburban when  
11 they took that.

12 MR. OCKERMAN: Which we've always said come  
13 get it, and we said it's in a bag and said, please,  
14 come get it.

15 MR. RASMUSSEN: Give me a date and time and  
16 I'll be there. Give the Court a date and time today  
17 for her to pick up her personal effects. I will be  
18 there.

19 MR. OCKERMAN: This afternoon at 3:00.

20 MR. RASMUSSEN: I will be there.

21 THE COURT: Great. So if you guys could  
22 prepare an order, I can move on.

23 MR. RASMUSSEN: I have one prepared and I  
24 will submit it to counsel. I already provided it by  
25 e-mail.

# ALAN RASMUSSEN

**April 09, 2013 - 6:54 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION, EX. 2-4.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 2-4 TO APPENDIX TO MOTION

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)



# ALAN RASMUSSEN

**April 09, 2013 - 6:55 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION, EX. 2-5.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 2-5 TO THE APPENDIX TO MOTION

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

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SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF PIERCE

FA ALA A SAILI and LISA A SAILI, )  
Husband and wife, Plaintiffs, ) NO. 11-2-10139-3  
 ) PLAINTIFFS' DESIGNATION OF  
vs. ) CLERK'S PAPERS  
 )  
PARKLAND AUTO CENTER, INC., )  
Defendant. )  
 )

COMES NOW, the plaintiffs' legal counsel, and designates  
the following pleading to be reproduced for the pending appeal,  
namely:

[1] Filed on Dec. 20, 2011, the Plaintiffs' request for  
defendant to admit certain facts and to admit genuineness of  
certain documents, pgs 1-15; and together with

[2] Responses to Plaintiffs' Requests for Admission pgs 1-  
5; and together with

[3] Attached to Plaintiffs' requests and defendant's  
responses Exhibits A, thru X.

Date Jan. 11, 2013 s/. Signed by Alan Rasmussen  
Attorney for the Plaintiffs

PLAINTIFF'S DESIGNATION OF CLERK PAPERS

ALAN RASMUSSEN, Attorney  
P.O. BOX 118 - 144 S. 161<sup>st</sup>  
SPANAWAY, WA. 98387-0118  
(252) 537 - 0504

FILED TO THE SUPERIOR CRT CLERK ON THURS., 01-11-2013

EXHIBIT 3

# ALAN RASMUSSEN

**April 09, 2013 - 6:56 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION, EXHIBIT 3.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: EXHIBIT 3 TO THE APPENDIX TO MOTION

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)

# ALAN RASMUSSEN

**April 09, 2013 - 6:47 PM**

## Transmittal Letter

Document Uploaded: 442094-APPENDIX TO MOTION WITH EXHIBITS 1-3.pdf

Case Name: Fa Ala A. Saili and Lisa Saili vs. Parkland Auto Center

Court of Appeals Case Number: 44209-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: APPENDIX AND EXHIBITS TO MOTION

### Comments:

No Comments were entered.

Sender Name: Twila Rasmussen - Email: [alanrasmussen@comcast.net](mailto:alanrasmussen@comcast.net)