

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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)	
JEFFREY MAIN and TODD PHELPS,)	
on behalf of themselves and)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	No. 16-2-29685-8 SEA
)	
QUICK & CLEAR, INC. D/b/a/ AA)	
WINDOW AND GUTTER CLEANING, a)	
Washington corporation, and)	
BRETT VANDENBRINK, and his)	
marital community,)	
)	
Defendants.)	
)	

HEARING

September 1, 2017

The Honorable John P. Erlick Presiding

Transcribed by: Shanna Barr, CET
 Reed Jackson Watkins
 206.624.3005

A P P E A R A N C E S

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3 On Behalf of Plaintiffs:

4 SCOTT C. G. BLANKENSHIP

5 The Blankenship Law Firm, P.S.

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7 Suite 3250

8 Seattle, Washington 98104

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10 On Behalf of Defendants:

11 ADAM G. CUFF

12 Patterson Buchanan Fobes & Leitch Inc. PS

13 2112 Third Avenue

14 Suite 500

15 Seattle, Washington 98121

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4 THE CLERK: Court is in back in session.

5 THE COURT: Please be seated.

6 MR. BLANKENSHIP: May we approach, Your Honor?

7 THE COURT: Yes, of course.

8 We're back on the record on Main and Phelps v. Quick &
9 Clear, King County Cause No. 16-2-29685-8. Seattle counsel
10 are present, Mr. Blankenship for plaintiff, Mr. Cuff for
11 defendant. I understand there is a question as to the
12 wording on the order.

13 MR. BLANKENSHIP: Yes, Your Honor. Since I'm presenting
14 the order, let me -- we have agreed to all issues with the
15 exception of two.

16 THE COURT: Okay.

17 MR. BLANKENSHIP: One is the way we heard what you said
18 was that the entitlement to the award of fees and costs is
19 established, just the amount is reserved until a later
20 determination, which is important. Under RCW 49.48, you get
21 one with the other, we just don't know how much. So
22 Counsel, on the other hand, is saying you reserved --

23 MR. CUFF: I can -- let me tell him.

24 MR. BLANKENSHIP: -- you reserved -- I'm just going to lay
25 the -- that you reserved in general on whether or not we

1 even get attorneys' fees.

2 THE COURT: All right. So with respect to the drive time
3 and the cleaning and maintaining equipment you get your
4 fees. With regard to the bonus, the nondiscretionary bonus
5 wages and the administrative compliance penalty policy, I
6 don't see how you don't get your fees.

7 MR. BLANKENSHIP: I don't either under the cases.

8 THE COURT: If you sued and then they paid, then there's a
9 question -- then what's reserved would be the amount of
10 fees. In other words, is there actually a cutoff on their
11 fees? But they're going to get some. They have to get some
12 fees on that if they sued and then it was paid.

13 MR. CUFF: The fees up to the point where it was paid?

14 THE COURT: Well, that's what's reserved. I don't know.
15 That's why it's reserved.

16 MR. BLANKENSHIP: So --

17 THE COURT: So fees are granted, the amount of fees is
18 reserved.

19 MR. BLANKENSHIP: Okay. On all of the claims?

20 THE COURT: Yes.

21 MR. BLANKENSHIP: And then costs as well, right? Because
22 it's fees and costs under the schedule.

23 THE COURT: Of course, of course.

24 MR. BLANKENSHIP: Okay.

25 THE COURT: Of course.

1 MR. BLANKENSHIP: Just being clear.

2 And then the last issue is Counsel wants to insert some
3 language that wasn't part of the order that relates to you
4 stipulating that this was -- this is an interlocutory
5 appeal, and we didn't hear that, nor do we agree to that.

6 THE COURT: No, I didn't.

7 MR. CUFF: No. We are not contending that it was stated
8 before. We are requesting it now.

9 THE COURT: Oh. You want a 54 --

10 MR. CUFF: 54(b), Your Honor.

11 THE COURT: -- (b) or something. I don't think it's an
12 appropriate case for 54(b). I don't know why 54(b). It's
13 not a unique issue of law. I do issue 54(b) rulings, but
14 let's see.

15 MR. CUFF: Just for an example, Your Honor, the award of
16 double damages is appealable. It's an issue of fact.

17 MR. BLANKENSHIP: Not according to Schilling that says
18 that there's sufficient evidence verbatim.

19 THE COURT: Well, Schilling does say it's an issue of
20 fact.

21 MR. BLANKENSHIP: But that the Court can determine that.

22 THE COURT: And says that the Court can make that
23 determination based upon the record. And I mean, it's
24 interlocutory in the sense that I can always change my mind.
25 That is interlocutory. In other words, it's never final

1 until I sign that judgment. So if you somehow persuade me
2 that I'm wrong and the issue of willfulness needs to go to
3 the trier of fact, then I'll reverse myself, but I'm not
4 going to 54(b) it. I mean, if you think I've made a legal
5 error, then I'll entertain that. I don't think I have, but
6 of course no judge ever thinks they do. That doesn't mean
7 we don't.

8 I think under T.F.A./Flowers [sic] and Schilling defense
9 counsel is correct. Typically, willfulness is an issue of
10 fact. But Flowers always stated that if it was
11 volitional -- let's see. The issue of whether an employer
12 has acted willfully and with intent is generally a question
13 of fact," citing Schilling. However, reasonable minds could
14 reach but one conclusion. You can determine as a matter of
15 law. We don't apply a particularly stringent test to
16 determine whether there was a willful failure to pay
17 damages. It means that the failure to pay was volitional or
18 that the employer knows what he is doing, intends to do what
19 he is doing, and is a free agent. I don't think this is an
20 oversight.

21 MR. CUFF: Your Honor.

22 THE COURT: That's non-willful.

23 MR. CUFF: There was a bona fide dispute, and the chart I
24 had up on Stevens shows you that there's a bona fide dispute
25 between the Stevens case and our case.

1 THE COURT: Well, that's not a bona fide dispute.
2 Bona fide dispute is usually a factual dispute, not a legal
3 dispute.

4 MR. CUFF: It can be a legal dispute, Your Honor.

5 MR. BLANKENSHIP: Not according to the --

6 THE COURT: I think the law is pretty clear.

7 MR. BLANKENSHIP: Yeah.

8 THE COURT: Okay. Well, regardless, if I believe I've
9 erred on that, that's why we have motions for
10 reconsideration. And also, we can decide this at any time
11 before trial, but for now I'm going to make a finding of
12 willfulness, and I'm not going to certify it under 54(b) or
13 under RAP 2.3.

14 MR. CUFF: Understood, Your Honor.

15 MR. BLANKENSHIP: So we need to change that language, and
16 then we can hand it up to the judge.

17 MR. CUFF: Yeah. We'll just need another few minutes, I
18 think, to --

19 THE COURT: Okay.

20 MR. CUFF: -- fix the language.

21 THE COURT: You can have it. We're going to start our
22 next matter very shortly.

23 MR. BLANKENSHIP: Well, why don't we just do it very
24 quickly, because it shouldn't take any time. Just cross out
25 the interlocutory, and then put the entitlement to

1 attorneys' fees is established, the issue of amount of fees
2 is reserved.

3 MR. CUFF: So...

4 MR. BLANKENSHIP: So in front of that.

5 MR. CUFF: How about right here, and I'll put amount,
6 attorneys' fees amount, okay?

7 MR. BLANKENSHIP: No. I'm not going to say the issue of
8 attorneys' fees and amount is reserved.

9 MR. CUFF: No. The issue of attorney -- well, I just
10 suggest it. "The issue of attorneys' fees amount reserved."

11 MR. BLANKENSHIP: No. The issue of -- the entitlement to
12 attorneys' fees is established.

13 MR. CUFF: Yeah, we've got that here. So we're going to
14 say (inaudible).

15 MR. BLANKENSHIP: Why don't we just write it in?

16 MR. CUFF: That's fine. I think that was "and an award of
17 attorneys' fees."

18 MR. BLANKENSHIP: "Is established."

19 MR. CUFF: How about I put it in here?

20 MR. BLANKENSHIP: Can you just do it here?

21 MR. CUFF: No. I'm trying to get away from this.

22 MR. BLANKENSHIP: No. You can -- "is established." One
23 word. You've got space, if you could do that, please.

24 MR. CUFF: Of course.

25 MR. BLANKENSHIP: Thank you. And then the issues of the

1 amount -- just put "amount" and a caret and we're there.

2 MR. CUFF: I shouldn't write in the margin, though.

3 MR. BLANKENSHIP: You can write in the margin.

4 MR. CUFF: Okay.

5 MR. BLANKENSHIP: All right. Shall we send it up to
6 the --

7 MR. CUFF: Yeah.

8 MR. BLANKENSHIP: Do you want to sign this, both of us?
9 (Inaudible) why don't you sign it?

10 MR. CUFF: Do you want to sign it first, sir?

11 THE COURT: You can sign it, Counsel. Thank you.

12 MR. BLANKENSHIP: We should put in "and costs" in there
13 just to be clear so we don't argue about this later.

14 FEMALE SPEAKER: What was that, Scott?

15 MR. BLANKENSHIP: I just want to make sure that "and
16 costs" is included and not just attorneys' fees. Okay. So
17 let's just add "and costs" here. "And costs."

18 MR. CUFF: Let me do it.

19 MR. BLANKENSHIP: There we go. Thank you.

20 THE COURT: Thanks, Eileen.

21 All right. So under C, the fact considered in the light
22 most favorable to the defendant established the company
23 vehicles are prescribed workplace in the MDA because the
24 company handbook provides that.

25 MR. BLANKENSHIP: And you had mentioned about (inaudible)

1 but we just didn't reference it specifically.

2 THE COURT: The order has been entered.

3 MR. BLANKENSHIP: Thank you, Your Honor.

4 THE COURT: Thank you both, Counsel.

5 FEMALE SPEAKER: Thank you.

6 (Conclusion of hearing)

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STATE OF WASHINGTON)
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COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of September, 2017.

Shanna Barr, CET