

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MASCO PETROLEUM, INC., a Washington
Corporation,

Respondent,

v.

HARBOR CASCADE, INC., a Washington
Corporation, and JAS MEL SANGHA (aka
JAS SANGHA) and SUSHEEL SANGHA,
Husband and wife,

Appellants.

No. 41676-0-II

UNPUBLISHED OPINION

Van Deren, J. — Jasmel and Susheel Sangha appeal from the trial court’s award of attorney fees and costs to them, arguing that the award was too low and that the trial court abused its discretion by making this low fee and cost award. They argue that the trial court erred in ruling that (1) they were not entitled to attorney fees under RCW 4.84.330¹ because they were

¹ RCW 4.84.330 provides:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys’ fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys’ fees in addition to costs and necessary disbursements.

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As used in this section “prevailing party” means the party in whose favor final judgment is rendered.

not a party to the contract at issue; (2) they were not entitled to attorney fees under MAR 7.3² because Masco Petroleum Inc. improved its position after a trial de novo following arbitration; and (3) the Sanghas' award of fees and costs should be offset by the fees and costs incurred by them in defending their company, Harbor Cascade Inc., in the action. Because the record does not support the Sanghas' contentions and because they offer no other arguments, we hold that no abuse of discretion occurred and affirm the trial court's attorney fee award.³

FACTS

In September 2005, Masco Petroleum sued Harbor Cascade and the Sanghas. Masco Petroleum alleged that Harbor Cascade had entered into a fuel purchase contract with it, that the Sanghas had personally guaranteed the contract by Jasmel Sangha's signature on the contract as president of Harbor Cascade, and that Harbor Cascade and the Sanghas had breached the contract in the amount of \$6,815.77. The interest rate established in the contract was 18 percent per annum on the unpaid and overdue balance. The contract also contained a unilateral attorney fees provision providing, "Customer agrees to pay any and all expenses incurred by Masco

² MAR 7.3 provides:

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.

³ The Sanghas do not raise an issue on appeal about the trial court's analysis of the reasonableness of the requested fees and costs or the lack of findings and conclusions as required by *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632 (1998); thus, we do not address the failure of the trial court to abide by the requirements set forth therein.

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Petroleum (including fees for legal services of every kind) to collect, defend or assert the right of Masco Petroleum to obtain payment of expenses and indebtedness as relating to this account.” Clerk’s Papers at 159.

In answer to Masco Petroleum’s claim, the Sanghas admitted that a contract existed between Masco Petroleum and Harbor Cascade, but they denied the amount Harbor Cascade owed Masco Petroleum and denied that the Sanghas had personally guaranteed performance under the contract. An arbitrator found Harbor Cascade liable to Masco Petroleum for \$6,815.77, plus attorney fees of \$2,000.00, but also found the Sanghas had not personally guaranteed the contract and awarded them \$1,500.00 in attorney fees.

Both Masco Petroleum and Harbor Cascade requested a trial de novo. Masco Petroleum specifically requested a trial de novo on the arbitration award related to the Sanghas. At the trial court, Masco Petroleum successfully moved for summary judgment against the Sanghas on the issue of their personal guarantee of the contract, and the trial court awarded \$6,815.77, plus attorney fees and costs, to Masco Petroleum.

When the Sanghas appealed the summary judgment order, we held that a genuine issue of material fact existed about whether the Sanghas had personally guaranteed the contract, so we reversed the trial court’s order granting summary judgment in favor of Masco Petroleum and remanded for further proceedings. *Masco Petroleum, Inc. v. Harbor Cascade, Inc.*, noted at 149 Wn. App. 1067, 2009 WL 1124356, at *2-3. We stated, “Reasonable attorney fees and costs should be assessed by the trial court upon conclusion of this matter.” *Masco Petroleum*, 2009 WL 1124356, at *3.

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On remand, the jury returned a verdict in favor of the Sanghas on the personal guarantee. The Sanghas requested attorney fees and costs of \$16,731.85 under MAR 7.3 and RCW 4.84.330.

Masco Petroleum argued that the Sanghas were not entitled to attorney fees and costs following the trial de novo because (1) they failed to request them under RAP 18.1 during their appeal in this court on the trial court's summary judgment order in favor of Masco Petroleum; (2) if the trial court accepted Masco Petroleum's new argument that the arbitrator erred in awarding to the Sanghas attorney fees and costs because they were not a party to the contract, then Masco Petroleum improved its position in the trial de novo and, thus, the Sanghas would not be entitled to fees and costs under MAR 7.3; and (3) the Sanghas, who were not a party to the contract, were not entitled to fees and costs under RCW 4.84.330. Masco Petroleum also argued that, even if the Sanghas were entitled to attorney fees and costs, the trial court should offset their fees and costs by the fees and costs the Sanghas incurred in Harbor Cascade's defense. The trial court ruled:

[W]hat's the principle amount of the judgment, \$6,000 or something like that, \$7,000?

....

... [I]t sounds like there was probably [\$]25[,000] or \$30,000 expended in attorney[] fees, by the time all the dust settled, and . . . attorney[] fees need to be reasonable, and taking into account the nature of the case and complexity of the issues . . . I don't think the issues in this case were complex, they may not have been something you deal with every day, but it was pretty basic contract law; it was primarily a factual dispute.

I think taking into account all of the factors that need to be considered in determining what amount of attorney fees would be fair and reasonable, I am going to award attorney fees to the Sanghas in the amount of \$5,000, plus their costs of \$640.[].

Report of Proceedings (RP) at 10-11.

At entry of the judgment, the Sanghas' counsel stated, "I tried to make the judgment as simple as I could, and . . . I tried to memorialize" Masco Petroleum's previous arguments as the basis of the trial court's decision to award only \$5,640 in fees and costs to the Sanghas. The trial court responded,

It certainly wasn't my intention to make rulings of the various findings that you have proposed here. My ruling then, and my ruling today, is that your client is entitled to attorney fees, and in a reasonable sum, considering all of the factors that I discussed; at the time I felt that amount was \$5,000.

RP at 13. The trial court also set interest on the judgment at the statutory rate of 12 percent, instead of the 18 percent contractual rate. The Sanghas appeal.

ANALYSIS

The Sanghas argue that the trial court abused its discretion by awarding them insufficient attorney fees based on its alleged rulings that (1) they were not entitled to attorney fees under RCW 4.84.330 because they were not a party to the contract, (2) they were not entitled to attorney fees under MAR 7.3 because Masco Petroleum improved its position after the trial de novo, and (3) the Sanghas' award of fees and costs should be offset by the fees and costs incurred by them in defending Harbor Cascade. We disagree.

We review a trial court's attorney fees award for abuse of discretion. *Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007). A trial court abuses its discretion if it awards fees "on untenable grounds or for untenable reasons." *Chuong Van Pham*, 159 Wn.2d at 538. "A discretionary decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the

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wrong legal standard.”” *McCoy v. Kent Nursery, Inc.*, 163 Wn. App. 744, 758, 260 P.3d 967 (2011) (internal quotation marks omitted) (quoting *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008)), *petition for review filed*, No. 86715-1 (Wash. Nov. 16, 2011).

Here, the Sanghas argue that the trial court based the fee award on the allegedly erroneous legal grounds argued below by Masco Petroleum. But the Sanghas misunderstand the basis of the trial court’s fee and cost award. The trial court expressly rejected their proposed findings and stated that it did not make the “rulings” or “various findings” proposed by the Sanghas and relied on by them here. The trial court’s “ruling [at the attorney fees hearing], and [its] ruling [at entry of judgment],” was that the Sanghas were entitled to a reasonable sum of attorney fees of \$5,000, based on “all of the factors that [the trial court] discussed,” including the differential between the judgment’s principal amount and the requested fees and the case’s simple nature. RP at 13.

Moreover, the Sanghas fail to provide any other arguments or citation to authority in their opening brief supporting their arguments that the trial court abused its discretion when it awarded them \$5,000 in attorney fees and \$640 in costs. RAP 10.3(a)(6). Accordingly, we hold that the trial court did not abuse its discretion in its attorney fee and cost award to the Sanghas

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and that the Sanghas' claims fail.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Armstrong, J.

Worswick, A.C.J.