IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SEATTLE IRON & METALS CORPORATION, a Washington corporation, Respondent, v. LIN XIE, individually and doing business as GIANT INTERNATIONAL METAL RESOURCES, and the marital community composed of LIN XIE and JANE DOE XIE; LH HIGHTECH CONSULTING LLC, a Washington limited liability corporation, Appellants.	)	NO. 66678-9-I DIVISION ONE UNPUBLISHED OPINION FILED: July 30, 2012

Lau, J. — This is Lin Xie's second appeal involving a breach of contract dispute with Seattle Iron & Metals Corporation (SIMC). Lin Xie appeals the trial court's (1) denial of his postmandate motion to file a third party complaint,[1] (2) grant of SIMC's motion to release funds from the court registry, and (3) imposition of a $500 sanction under RCW 4.84.185. Finding no error, we affirm and award sanctions in SIMC's favor

[1] The court's order refers to this motion as motion to "file and consolidate third party claims."

under RAP 18.9.

FACTS

The underlying facts of this case are fully discussed in Seattle Iron & Metals Corp. v. Lin Xie, noted at 155 Wn. App. 1049, 2010 WL 1875390 (SIMC I). We repeat only the facts necessary to resolve this second appeal.

On February 28, 2008, SIMC sued Lin Xie for breach of contract, unjust enrichment, fraud, and negligent misrepresentation. SIMC alleged that Lin Xie breached a purchase contract by failing to pay sums owed to SIMC for scrap metal sold to Lin Xie d/b/a Giant International Metal Resources.[2] SIMC moved for partial summary judgment on its breach of contract and unjust enrichment claims and to dismiss Lin Xie's affirmative defenses. The trial court granted summary judgment in SIMC's favor on the breach of contract claim but denied the motion in all other respects.

In December 2008, SIMC moved for voluntary dismissal of its remaining unjust enrichment, fraud, and negligent misrepresentation claims and requested that the trial court enter final judgment on its breach of contract claim. On December 9, the trial court granted SIMC's voluntary dismissal motion and entered judgment against Lin Xie for $139,269.10. In January 2009—after final judgment was entered—Lin Xie moved to file an amended answer and counterclaims. The trial court denied this motion.

[2] "Xie did business as 'Giant International Metal Resources,' but as of September 2008, there had never been an entity registered by that name with the Washington Secretary of State. Xie maintained in deposition testimony that Giant International was the trade name of LH Hightech Consulting, LLC, but that entity was not registered as a limited liability corporation until almost two years after the events leading to this dispute. Accordingly, we refer to Xie and Giant interchangeably." SIMC I, 2010 WL 1875390 at *1 n.1.

Lin Xie appealed and deposited $168,775.00 in cash into the superior court registry to stay execution of the judgment pending appeal. In May 2010, we affirmed the trial court in all respects. See SIMC I, 2010 WL 1875390. We denied Lin Xie's motion for reconsideration on June 18. The Supreme Court denied further review. Seattle Iron & Metals Corp. v. Lin Xie, 170 Wn.2d 1005, 243 P.3d 551 (2010). The mandate issued on December 10, 2010, terminated review.

Accordingly, on December 13, SIMC moved the trial court to release the court registry funds. On December 20, Lin Xie filed response to plaintiff's motion to release fund and motion for satisfaction of judgment and motion to file third party complaints in which he sought "leave of Court to file and consolidate new claims and to join new parties."[3] Lin Xie's response to SIMC's motion to release the funds argued that although the funds in the court registry did not fully satisfy the judgment then due,[4] the trial court should deem the judgment satisfied. He also reargued the underlying merits

[3] In its response to Lin Xie's motion to file third party claims, SIMC argued that the motion was frivolous, vindictive, and abusive, and it urged the court to sanction Lin Xie. SIMC had warned Lin Xie throughout the proceedings below that his filings were frivolous and might justify sanctions. See Clerk's Papers (CP) at 349 (SIMC's response to Lin Xie's supplemental motion and briefing regarding seasonable notification asserting that Lin Xie's motion was frivolous and that he should be ordered to pay SIMC its fees incurred in responding); CP at 542 (SIMC's reply in support of its motion for voluntary dismissal and entry of final judgment asserting that Lin Xie alleged ridiculous conspiracy theories and made other frivolous assertions); CP at 576-77 (SIMC's response to Lin Xie's motion to file an amended answer, asserting that no reasonable attorney would believe one could amend an answer to add a counterclaim after final judgment has been entered without a basis under CR 59 and requesting an imposition of sanctions).

[4] Interest accrued during the first appeal, when added to the judgment amount, exceeded Lin Xie's total cash deposit in the trial court registry.

of the case and realleged that SIMC was liable for breach of contract and unjust enrichment. In his motion to file third party complaints, Lin Xie sought permission to file a third party complaint against SIMC's president Alan Sidell and SIMC's counsel Todd Wyatt, among others.

On December 23, the trial court granted SIMC's motion to release the funds in the court registry. In January 2011, the court denied Lin Xie's motion to file a third party complaint and imposed sanctions of $500 for postmandate frivolous filings under RCW 4.84.185. Lin Xie then filed a motion to reassign case for efficient administration of justice" in which he attempted to have the case reassigned to a judge in the Kent case assignment area because, among other reasons, the trial judge was assigned to juvenile court at the time.[5] The same day, he filed his second notice of appeal challenging the trial court orders denying his motion to file a third party complaint, granting SIMC's motion to release the funds, and awarding monetary sanctions for frivolous postmandate filings.[6]

[5] Lin Xie argues throughout his brief that the trial judge improperly decided his case on remand because he was assigned to juvenile court. Lin Xie points to nothing in the record supporting this assertion, and we decline to review it. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (declining to consider arguments unsupported by reference to the record or citation to authority).

[6] After Lin Xie filed his opening brief in this appeal, SIMC filed a motion on the merits, arguing that Lin Xie's appeal was frivolous and requesting an award of sanctions. The court commissioner entered a ruling stating that the court was not currently setting or ruling on motions on the merits and referring the sanctions issue to the panel when considering the merits of the appeal.

ANALYSIS

Merits of Underlying Case

Lin Xie's arguments are mainly devoted to issues decided in SIMC I.[7] Lin Xie argues we should reconsider the merits (1) under RAP 2.5(c)(2), or (2) because the trial court failed to follow our mandate below.

"Where there has been a determination of the applicable law in a prior appeal, the law of the case doctrine ordinarily precludes redeciding the same legal issues in a subsequent appeal." Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988). Appellate courts have discretion to apply the law of the case doctrine, and RAP 2.5(c)(2) provides two exceptions to its application: (1) where the appellate court's earlier decision is clearly erroneous and the erroneous decision would work a manifest injustice to one party or (2) there has been an intervening change in the controlling precedent between the initial and later appeals. RAP 2.5(c)(2); Roberson v. Perez, 156 Wn.2d 33, 42, 123 P.3d 844 (2005).

In SIMC I, we affirmed (1) the trial court's grant of summary judgment in SIMC's favor on its breach of contract claim, (2) the trial court's grant of SIMC's motion to voluntarily dismiss its remaining claims and for entry of final judgment, (3) the trial court's order denying Lin Xie's motion regarding seasonable notification and imposing terms, and (4) the judgment against Lin Xie. SIMC I, 2010 WL 1875390. The Supreme

[7] Specifically, Lin Xie alleges continuing breach of contract and various other acts of misconduct by SIMC. Lin Xie also argues throughout his brief that SIMC failed to provide certain required documents. He cites to nothing in the record supporting this statement, and we decline to review it. RAP 10.3(a)(6); Cowiche, 118 Wn.2d at 809; Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

Court denied further review and the mandate issued.

Despite having exhausted his direct appeal, Lin Xie cites RAP 2.5(c)(2) to argue the law of the case doctrine should not apply because a change in the law occurred since we decided his first appeal and our opinion in that appeal conflicts with the newly established precedent. He claims that Alhadeff v. Meridian on Bainbridge Island, LLC, 167 Wn.2d 601, 220 P.3d 1214 (2009) constitutes an intervening change in the law that justifies further review under RAP 2.5(c)(2).[8] But we expressly considered and applied Alhadeff in reaching our decision in SIMC I.[9] Lin Xie establishes no intervening change in the law. He argues in the alternative that SIMC I failed to follow Alhadeff and is clearly erroneous. But in SIMC I he raised the Alhadeff argument in his motion for reconsideration. We denied that motion and the Supreme Court denied further

[8] Lin Xie claims that under Alhadeff, "[t]he Supreme Court's controlling decision clearly states that the common law claim for the underlying contract has been displaced by the Article 5 claims" and, thus, RCW 62A.5-115's one-year statute of limitation applies to the contract claims, barring SIMC's action. Appellant's Br. at 23. We declined to address Lin Xie's RCW 62A.5-115 argument in his first appeal because he failed to raise it in the trial court. SIMC I, 2010 WL 1875390 at *7.

[9] We also cited Division Two's opinion in Alhadeff v. Meridian on Bainbridge Island, LLC, 144 Wn. App. 928, 185 P.3d 1197 (2008), and noted that our Supreme Court reversed it on other grounds in Alhadeff, 167 Wn.2d 601. See SIMC I, 2010 WL 1875390 at *4.

[10] We further note that Lin Xie misinterprets Alhadeff, which addressed parties lacking an underlying contract. Alhadeff held that "where there is no underlying contract between the applicant and the beneficiary, there can be no breach of contract to give the applicant a claim under Article 2 or the common law." Alhadeff, 167 Wn.2d at 617 (emphasis added). The court noted, "Without a separate contractual claim, Alhadeff's breach of contract actions are wholly displaced by the Article 5 warranty and as a result are barred by the one-year statute of limitations." Alhadeff, 167 Wn.2d at 617. Contrary to Lin Xie's contention, Alhadeff did not hold that Article 5 displaces all common law breach of contract claims. And Lin Xie's case is distinguishable—we

review.[10] We decline to further address this issue. Lin Xie has not established that an exception to the law of the case doctrine applies.[11] In addition, Lin Xie previously raised the same Alhadeff argument in his motion to recall the mandate. We denied the recall motion.

Lin Xie's mandate argument also lacks merit. He first claims that in SIMC I, we ruled "'defendants may have a claim for damages related to the allegedly wrongful failure to present the documents.'" Appellant's Br. at 25 (quoting SIMC I, 2010 WL 1875390 at *5). Lin Xie distorts the opinion's discussion. The language Lin Xie selectively relies on is part of a block quote from a different case. We discussed that case in explaining the circumstances under which a party may maintain a breach of contract claim. SIMC I, 2010 WL 1875390 at *4-5 (citing Samsung Am., Inc. v. Yugoslav-Korean Consulting & Trading Co., 248 A.D.2d 290, 291, 670 N.Y.S.2d 466 (N.Y. 1998)). We then concluded that Lin Xie presented no evidence raising a genuine issue of material fact regarding whether SIMC breached the contract. SIMC I, 2010 WL 1875390 at *5-6. Lin Xie also argues that we "mentioned that [Lin Xie] should raise

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concluded in the first appeal that SIMC had a breach of contract claim based on its underlying contract with Lin Xie and that claim was independent of its rights as a letter of credit beneficiary. SIMC I, 2010 WL 1875390 at *1.

[11] Given our decision, we need not address Lin Xie's claim that the trial court's judgment "was wrong in light of the Supreme Court decision" and thus "prejudicially affected the post-judgment order and the order for sanction." Appellant's Br. at 36. Lin Xie also argues the trial court "did not follow CR 56(c) including the 28 day notice" when granting SIMC's summary judgment motion. Appellant's Reply Br. at 8. The trial court's order granting summary judgment is not properly before us on appeal, and we therefore decline to consider this argument.

issues to the trial court" after our ruling. Appellant's Br. at 25. He again misconstrues the decision in SIMC I. There, Lin Xie raised a number of issues that he failed to raise in the trial court. We held that he waived those issues by failing to raise them below. SIMC I, 2010 WL 1875390 at *3 n.11, 7. Lin Xie's claims are entirely meritless.

Motion to File Third Party Complaint

Lin Xie assigns error to the trial court's denial of his motion to file a third party complaint. He claims the motion is permitted under CR 15's liberal amendment and supplemental pleading rules, particularly CR 15(b).[12] We review a trial court's denial of a motion to amend for abuse of discretion. Kirkham v. Smith, 106 Wn. App. 177, 181, 23 P.3d 10 (2001). A trial court abuses its discretion when its decision is based upon untenable grounds or reasons. Stansfield v. Douglas County, 107 Wn. App. 20, 29, 26 P.3d 935 (2001).

Lin Xie's argument fails for several reasons. First, he cites no controlling or persuasive authority allowing an appellant to file a third party complaint alleging new claims and parties arising from the same transaction after an unsuccessful appeal under the circumstances here. Second, his motion below provided no legal basis for

[12] CR 15(b) provides, "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment . . . ."; see also Harding v. Will, 81 Wn.2d 132, 136, 500 P.2d 91 (1972). But amendment under CR 15(b) is improper "if actual notice of the unpleaded issue is not given, if there is no adequate opportunity to cure surprise that might result from the change in the pleadings, or if the issues have not in fact been litigated with the consent of the parties." Harding, 81 Wn.2d at 137.

his third party complaint. His sole basis for the amendment stated, "Fundamental justice and to avoid multiple law [suits] for the same business transaction demand that all claims be consolidated here." Third, he failed to cite CR 15 or discuss its requirements. In view of his inadequate briefing, lack of reasoned argument, failure to cite any authority, and failure to argue CR 15 below, we decline to consider his CR 15 argument on appeal. RAP 2.5(a); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); Robinson, 156 Wn.2d at 39.

Even if we address Lin Xie's argument under CR 15, he establishes no grounds for relief on appeal. Lin Xie makes no showing that any issues were "tried by express or implied consent of the parties" in the proceedings below. CR 15(b). No trial or fact-finding hearing ever occurred here. He thus fails to demonstrate how the proposed amendment "conform[s] to the evidence" as required by CR 15(b).[13] Lin Xie also provides no citation to authority or the record to support his argument that "[m]any claims will relation [sic] back."[14] Appellant's Br. at 35. We thus decline to consider this

[13] Lin Xie also admits that "Issues of claim against Shanghai Qiangsheng (the applicant), real party of interest affect trial court's jurisdiction and Plaintiff consul's [sic] misrepresentation . . . were not adjudicated before." Appellant's Reply Br. at 22. Thus, those issues do not "conform to the evidence" under CR 15(b).

[14] We assume Lin Xie refers to CR 15(c), which provides: "Whenever a claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."

CR 15(c) provides a more stringent standard for changing a party: "An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake

argument. RAP 10.3(a)(6); Cowiche, 118 Wn.2d at 809.

We conclude the trial court did not abuse its discretion in denying Lin Xie's motion. The undisputed record shows the following: Lin Xie's original answer, prepared by his then-attorney, alleged affirmative defenses but no counterclaims. Later, the court granted his first motion to amend the answer. He again alleged no counterclaims. His affirmative defenses included a claim that "[SIMC's] damages, if any, were caused by acts or omissions of [SIMC] or of third parties over which Defendants had no control." The trial court considered those defenses in granting partial summary judgment in favor of SIMC and granting SIMC's motion to voluntarily dismiss its remaining claims against Lin Xie and enter final judgment. See CP at 265 ("the Court having heard the arguments of counsel, having reviewed the pleadings on file and the written submissions of the parties . . . .") (emphasis added); CP at 554 ("The Court, having considered this motion, Defendants' response papers, and Plaintiff's reply, as well as the papers and pleadings on file with the court . . . .") (emphasis added). We affirmed both trial court orders.

On January 20, 2009, Lin Xie moved pro se to amend his answer after the trial court entered final judgment. He alleged for the first time counterclaims, including

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concerning the identity of the proper party, the action would have been brought against him." See also Foothills Dev. Co. v. Clark County Bd. Of County Comm'rs, 46 Wn. App. 369, 375, 730 P.2d 1369 (1986) ("The burden of proof is on the party seeking the relation back of an amendment to prove the conditions precedent under CR 15(c). The moving party also has the burden of proving that the mistake in failing to amend in a timely fashion was excusable.") (citation omitted).

breach of contract, negligent misrepresentation, and other alleged wrongdoings by SIMC. He explained that the court "requested the Defendant for counter-claims during the proceeding of the hearing on the Plaintiff's motion for partial summary judgment." To support this claim, he pointed to the trial court's passing comment during the summary judgment hearing that "[i]f there is anything that Mr. Xie is claiming that [SIMC] cause[d] by their actions, that has prejudiced him, I will allow that to go forward, if it can be shown." RP (Sept. 26, 2008) at 36. The trial court denied Lin Xie's motion to amend, and he did not appeal that order.[15] "A final order from which no appeal is taken becomes the law of the case." Tornetta v. Allstate Ins. Co., 94 Wn. App. 803, 809, 973 P.2d 8 (1999).

In December 2010—five months after SIMC I was decided and the Supreme Court denied further review and nearly two years after the trial court denied his second motion to amend—Lin Xie filed his motion to file a third party complaint. This motion sought to "consolidate new claims and to join new parties." To support the motion, he cited to the same portion of the summary judgment hearing transcript he referred to in his prior motion to amend. As discussed above, he cited no legal authority to support

[15] Lin Xie attempted to challenge the trial court's denial of his motion to amend during his first appeal. We noted that "the trial court denied Xie's motion on February 11, 2009, more than a week after we accepted review on February 3. And Lin Xie has not 'initiate[d] a separate review of the decision by timely filing a notice of appeal or notice for discretionary review.' RAP 5.1(f). Accordingly, the issue is not properly before us." SIMC I, 2010 WL 1875390 at *8 (alteration in original). We also noted that "Xie moved pro se to amend his answer after the trial court entered final judgment . . . . The trial court properly exercised its discretion by denying this motion." SIMC I, 2010 WL 1875390 at *8 n.22. Lin Xie never appealed the order denying his motion and does not designate that order in his current appeal.

his motion to file a third party complaint and the trial court properly denied it.

Lin Xie's proposed third party complaint—captioned "third party complaint of Defendant Giant International Metal Resources"—named LH Hightech Consulting, LLC as a third party plaintiff and named as third party defendants SIMC's president, Alan Sidell, and its attorney, Todd Wyatt. Lin Xie also filed a Washington State Bar Association complaint against Wyatt, making the same allegations of wrongdoing that he alleged in his third party complaint. He also named as third party defendants SIMC and its alleged successor, Qiangsheng Import & Export Corp., a foreign corporation. Lin Xie's third party complaint alleged nearly identical claims as in his unsuccessful January 20, 2009 motion to amend, which he failed to appeal as discussed above. Comparing Lin Xie's proposed January 20, 2009 amended answer and his proposed third party complaint demonstrates that he merely recast the affirmative defenses and counterclaims in the January 20, 2009 proposed amended answer and reasserted them in his proposed third party complaint as eight "causes of action" to avoid the order denying his motion to amend and failure to appeal it. We conclude that the trial court properly denied his motion to file a third party complaint.[16] Claims to the contrary are

[16] We also question LH Hightech Consulting, LLC's authority to initiate a third party complaint arising from this transaction in light of footnote 1 in SIMC I: "Xie did business as 'Giant International Metal Resources,' but as of September 2008, there had never been an entity registered by that name with the Washington Secretary of State. Xie maintained in deposition testimony that Giant International was the trade name of LH Hightech Consulting, LLC, but that entity was not registered as a limited liability corporation until almost two years after the events leading to this dispute. Accordingly, we refer to Xie and Giant interchangeably." SIMC I, 2010 WL 1875390 at *1 n.1 (emphasis added).

entirely meritless.

Motion to Release Funds

Lin Xie argues the trial court abused its discretion when it released the court registry funds to SIMC. He contends that SIMC "wait[ed] too long to ask the court to release the fund[s]," and that SIMC "should not profit from failure to mitigate damage." Appellant's Br. at 30. But because he raised neither argument in his response to SIMC's motion to release funds below, he waived this issue. RAP 2.5(a); Robinson, 156 Wn.2d at 39. And because Lin Xie cites no authority for these arguments on appeal, we decline to address them. Beal for Martinez v. City of Seattle, 134 Wn.2d 769, 777, 954 P.2d 237 (1998) ("The City cites no authority for this proposition and, thus, it is not properly before us.") (citing RAP 10.3(a)(5); Schmidt v. Cornerstone Invs., Inc., 115 Wn.2d 148, 166, 795 P.2d 1143 (1990)). Nevertheless, a review of the record shows that SIMC filed its motion to release funds on December 13, 2010, a mere three days after our mandate issued on December 10, 2010. CP 592, 614. This claim is entirely meritless.

Sanction Award

Lin Xie challenges the trial court's order imposing sanctions in the sum or $500 under RCW 4.84.185.[17] He makes myriad arguments

[17] RCW 4.84.185 provides, "In any civil action, the court having jurisdiction may, upon written findings by the judge that the action . . . was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action . . . . The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. . . ." Lin Xie argues that the trial court cited a nonexistent

[18] including:

(1) "The trial court abused its discretion in awarding CR 11 fee."
(2) "There is no finding of 'bad faith.'"
(3) "The plaintiff [SIMC] violated CR 11 by signing the motion for sanction without reasonable inquiry."
(4) "The code of judicial conduct requires disqualification of the trial judge."
(5) "The sanction violated the defendant's equal protection right to claim for damages caused by the plaintiff's negligence and contract violation."

Appellant's Br. at 21, 25, 27, 28, 29 (formatting omitted).

A trial court may award attorney's fees under RCW 4.84.185 when an action is not supported by any rational argument and is advanced without reasonable cause. Eller v. East Sprague Motors & R.V.'s, Inc, 159 Wn. App. 180, 192, 244 P.3d 447 (2010). A trial court is not required to find that an action is interposed for an improper purpose before awarding fees under RCW 4.84.185. Eller, 159 Wn. App. at 244; see also Highland Sch. Dist. No. 203 v. Racy, 149 Wn. App. 307, 311, 202 P.3d 1024 (2009). An award of attorney fees under RCW 4.84.185 "is left to the trial court's discretion and will not be disturbed 'in the absence of a clear showing of abuse . . . .'"

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statute. While the trial court's citation is incorrect, the order clearly shows the trial court's intent to sanction Lin Xie under RCW 4.84.185. The incorrect number cited in the order was a mere clerical error.

[18] Many of Lin Xie's assertions are incomprehensible and inadequately briefed. For example, he argues, "The trial court (Juvenile Court when the order was made) has no jurisdiction to make such ruling without obtaining leave from the Court of Appeal." Appellant's Br. at 24. See Open Door Baptist Church v. Clark County, 140 Wn.2d 143, 160 n.12, 161, 995 P.2d 33 (2000) (rejecting argument because court of appeals resolved issue and because "whatever argument is being made [in the petition for review] is incomprehensible"). Accordingly, we decline to address them. First American Title Ins. Co. v. Liberty Capital Starpoint Equity Fund, LLC, 161 Wn. App. 474, 486, 254 P.3d 385 (2011) (declining to consider an inadequately briefed argument).

Fluke Capital & Mgmt. Servs. Co. v. Richmond, 106 Wn.2d 614, 625, 724 P.2d 356 (1986) (quoting Marketing Unlimited, Inc. v. Jefferson Chem. Co., 90 Wn.2d 410, 412, 583 P.2d 630 (1978)).

In enacting the statute, the legislature expressed concern about the baseless claims and defenses confronting the courts. See Biggs v. Vail, 119 Wn. 2d 129, 134-37 (1992) (reviewing and interpreting the legislative history of Washington Revised Code, section 4.84.185 (1991)). It designed the statute to discourage frivolous lawsuits and to compensate victims forced to litigate meritless cases. Biggs, 119 Wn.2d at 137. The action must be frivolous in its entirety for the statute to apply. State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 903-04, 969 P.2d 64 (1998). If the issue in the case is "debatable" and there is a rational argument under the law and the facts to support it, fees must be denied. Bill of Rights Legal Found. V. Evergreen State Coll., 44 Wn. App. 690, 696-97, 723 P.2d 483 (1986). To merit statutory sanctions, the claim or defense must be "frivolous and advanced without reasonable cause." RCW 4.84.185.

Lin Xie argues that the trial judge should have recused himself from ruling on the sanctions issue "since the [judge had] a vested interest in shutting down the discussion." Appellant's Br. at 28. He relies on Jones v. Halvorson-Berg, 69 Wn. App. 117, 129, 847 P.2d 945 (1993). In Jones, defendant Flour City moved for a new trial, alleging that the trial judge made prejudicial comments and "laughed" at its witnesses during trial. Jones, 69 Wn. App. at 128. Flour City did not support its allegation by affidavit. Jones, 69 Wn. App. at 128. After a hearing on the motion, the trial court imposed CR 11 sanctions for the

unsupported allegation.[19] Jones, 69 Wn. App. at 128. Flour City appealed, arguing that the trial judge should have recused himself from the sanctions issue. Jones, 69 Wn. App. at 128-29.

Division Three of this court explained that judges are required to disqualify themselves when their "'impartiality might reasonably be questioned'" and held, "When the subject of [a] CR 11 hearing is the alleged inappropriate conduct of the trial judge, that judge should not rule on the truth or falsity of the accusations." Jones, 69 Wn. App. at 129 (quoting Canon 3(C)(1). On this basis, the Jones court concluded that the trial judge should have disqualified himself and submitted the CR 11 sanctions issue to another judge. Jones, 69 Wn. App. at 129. Jones is inapposite.

Here, Lin Xie does not allege inappropriate conduct by the trial judge. Instead, he implies that the trial judge should have anticipated that his impartiality might reasonably be questioned solely because Lin Xie had appealed some of his earlier rulings. Lin Xie cites no authority, and none exists, requiring a trial judge to recuse under these circumstances. And we presume that judges perform their functions "regularly and properly and without bias or prejudice." Kay Corp. v. Anderson, 72 Wn.2d 879, 885, 436 P.2d 459 (1967). Lin Xie's claims are meritless.

We conclude Lin Xie's arguments are entirely meritless for several additional reasons. First, he mainly argues trial court error premised on CR 11 and the court's inherent authority to impose sanctions. But the sanctions order makes clear that the court ordered sanctions only under RCW 4.84.185.[20] Lin Xie's bad faith argument

[19] Jones did not address the statute at issue here—RCW 4.84.185.

noted above is inapplicable to the statute's requirement. As discussed above, RCW 4.84.185 does not require that the court find improper purpose or motive. Eller, 159 Wn. App. at 244; Highland Sch. Dist. No. 203, 149 Wn. App. at 311. The cases he relies on are not applicable here. [21]

The record here amply supports the trial court's written finding that Lin Xie's postmandate pleadings were "frivolous and/or advanced without reasonable cause within the meaning of RCW 4.84.[185]." The record also demonstrates that Lin Xie's postmandate motions were frivolous in their entirety as discussed above.[22] We find no clear abuse of discretion by the trial court in awarding sanctions under RCW 4.84.185 for frivolous postmandate motions advanced without reasonable cause.

RAP 18.9 Attorney Fees

SIMC requests attorney fees under RAP 18.9 for a frivolous appeal. RAP 18.9(a) allows the appellate court, on its own initiative or on motion of a party, to order a party or counsel who files a frivolous appeal "to pay terms or compensatory damages

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[20] The order states RCW 4.84.105 rather than .185. The obvious clerical error caused no prejudice to Lin Xie because he discussed this statute in his opening brief.

[21] For example, he cites In re Recall of Pearsall-Stipek, 136 Wn.2d 255, 961 P.2d 343 (1998). But Pearsall-Stipek merely held that the cost prohibition in RCW 29.82.023 trumps the court's general authority to award expenses under RCW 4.84.185: "the superior court may not award expenses and attorney fees under RCW 4.84.185 against a recall petitioner who brings a merely frivolous recall petition." Pearsall-Stipek, 136 Wn.2d at 266. The court then addressed attorney fees under CR 11 and inherent powers, neither of which apply here. Pearsall-Stipek is inapplicable.

[22] To the extent he attempts to rely on claims and issues decided before the mandate issued to argue his action was not entirely frivolous for purposes of the statute, we reject this contention. The mandate terminated review of his direct appeal.

to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007). "A frivolous action is one that cannot be supported by any rational argument on the law or facts." Rhinehart v. Seattle Times, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990). We resolve doubts in favor of the appellant. Lutz Tile, 136 Wn. App. at 906.

Even resolving all doubts in favor of Lin Xie and considering the record as a whole,[23] we conclude that this appeal raises no debatable issues on which reasonable minds could differ and the entire appeal, as discussed above, is totally devoid of merit with no possibility of reversal. Lin Xie raised not a single debatable issue in this appeal, forcing SIMC to expend attorney fees to defend this frivolous appeal. We grant SIMC's request for attorney fees under RAP 18.9(a). The amount of fees and costs shall be determined by a commissioner of this court at the direction of the court upon SIMC's submission of documentation supporting the reasonableness of the fees and costs requested.

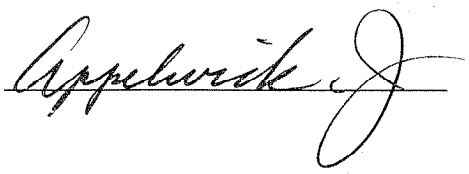
CONCLUSION

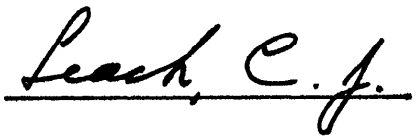
For the reasons discussed above, we affirm and award RAP 18.9(a) attorney fees and costs to SIMC in an amount to be

[23] We are guided by considerations discussed in Streater v. White, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980).

determined by this court.[24]

WE CONCUR:





[24] Given our decision, we need not address the trial court's denial of Lin Xie's motion for reconsideration. We deny Lin Xie's motion to strike portions of SIMC's brief as entirely meritless.