

# WASHINGTON CASE UPDATE

## Contract Provision May Entitle Prevailing Party to Attorneys' Fees

**From the desk of Kyle Riley:** Washington law requires trial courts to award attorneys' fees to the prevailing party when the action is based on a contract that specifically provides for an award of attorneys' fees to the prevailing party. However, when there are multiple causes of action brought in a single lawsuit, some of which are not based in contract, how do the courts approach an attorneys' fee award? Read on to find out.

**Claims Pointer:** In this case arising out of an employment dispute, the Court of Appeals held that because the trial court carefully considered the request for attorneys' fees and found that the hours spent on the case were reasonable, the trial court did not abuse its discretion in awarding a significant amount in attorneys' fees. The case serves as an important reminder to review contracts carefully to identify attorneys' fee provisions that may result in large attorneys' fee awards.

Great Floors, LLC, v. Wholesale Floors, LLC, No. 75244-8-1, Washington Court of Appeals (July 31, 2017) (unpublished)

Great Floors, LLC ("Great Floors"), an Idaho-based specialty floor covering business, does business in both Washington and Idaho. Two of its long-term employees, Vice President of Commercial Sales Ian Martin ("Martin") and Spokane Commercial Sales Division Manager Dan Gamble ("Gamble"), signed employment contracts containing nondisclosure agreements and agreements not to compete with Great Floors for one year after the termination of their employment. In January 2014, Martin and Gamble informed Great Floors that they were leaving the company and gave their two weeks' notice. They took positions as Operations Consultants with Wholesale Floors, LLC ("Wholesale Floors").

Both Martin and Gamble continued to have social contact with Great Floors' customers and assisted Wholesale Floors with its preparations to open a new store in Spokane, which it did in January 2015. That same month, one of Great Floors' corporate customers awarded Wholesale Floors a contract on which Great Floors bid in the fall of 2014. In February 2015, Great Floors sued Martin, Gamble, and Wholesale Floors (collectively "Wholesale") under several theories of liability, including breach of contract, breach of fiduciary duties, breach of covenant of good faith and fair dealing, misappropriation, tortious interference with contract, unfair competition, and fraud.

Wholesale moved for summary judgment on all claims, and the trial court granted the motion. The trial court also awarded Wholesale \$63,270.50 in attorneys' fees and costs, including \$28,000 to prepare and argue its motion for summary judgment. Great Floors appealed.

In Washington, a trial court must award attorneys' fees to the prevailing party when the action is based on a contract that specifically provides for an award of attorneys' fees to the prevailing party. RCW 4.84.330. The award of fees is mandatory, but the trial court has discretion over the amount of fees. Where attorneys' fees are recoverable for only some of a party's claims, the award must properly reflect a segregation of the time spent on issues for which attorneys' fees are authorized from time spent on other issues. However, the trial court need not segregate the time if it determines that the various claims are sufficiently related that no reasonable segregation of successful and unsuccessful claims can be made.

Great Floors signed employment agreements with both Martin and Gamble that provided for attorneys' fees and costs to the prevailing party for "any action" filed in relation to the agreement. The trial court determined that Wholesale was the prevailing party because it dismissed all of Great Floors' claims against Wholesale on summary judgment. Great Floors argued that this award was an abuse of discretion and that the trial court should not have awarded such a large amount of attorneys' fees.

case in point...

Contact: Kyle Riley | [www.smithfreed.com](http://www.smithfreed.com) | email: [kdr@smithfreed.com](mailto:kdr@smithfreed.com)

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

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The Court of Appeals examined the trial court's ruling and found that the trial court had carefully considered Wholesale's motion and Great Floors' objections. Wholesale supported its motion for attorneys' fees with detailed billing statements, and the trial court had difficulty reviewing Great Floors' challenge to the reasonableness of the time spent because Great Floors did not challenge any specific time entries as excessive or unreasonable. The trial court also denied all attorneys' fees related to Wholesale's unsuccessful motion to disqualify Great Floors' attorney and granted attorneys' fees for time spent on a motion to compel evidence after deducting the value of a sanction against Great Floors' that Wholesale was awarded.

Great Floors asserted that the employment contract provided for attorneys' fees only for breach of contract claims, and that the trial court should have required Wholesale to segregate its attorneys' fees. Wholesale argued that all of the causes of action arose out of and were inextricably connected to the employment agreements at issue. For example, Great Floors claimed that Martin and Gamble breached their fiduciary duties to Great Floors and their duties of good faith and fair dealing, all of which stemmed from their employment agreements. The Court of Appeals noted that Great Floors made no effort to explain why its other causes of action did not relate to the employment agreement. For the court, such passing treatment of an issue was insufficient to merit judicial consideration. Because Great Floors' objections did not provide a reason to disturb the trial court's carefully reasoned award of attorneys' fees, the Court of Appeals concluded that the trial court did not abuse its discretion and affirmed the trial court's award of attorneys' fees. Moreover, because Wholesale was the prevailing party on appeal, the Court of Appeals determined that it was entitled to reasonable attorneys' fees for the appeal based on the same attorneys' fee provision in Martin's and Gamble's employment agreements.

**NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.**

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/752448.PDF>

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Contact: Kyle Riley | [www.smithfreed.com](http://www.smithfreed.com) | email: [kdr@smithfreed.com](mailto:kdr@smithfreed.com)

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