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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO** | DATE FILED: May 26, 2017 1:04 PM  FILING ID: DCE5EBE7714DA CASE NUMBER: 2015CV31709 |
| **Denver County District Court Denver City & County Bldg.**  **1437 Bannock Street, Room 256**  **Denver, Colorado 80202** | **▲COURT USE ONLY**▲ |
| **Defendants: ROBERT ABRAMS and ABRAMS &**  **ASSOCIATES, LLC, a Colorado limited liability**  **company** | **Case Number: 2015CV31709** |
|  | Ctrm.: 275 |
| **v.** |  |
| **Defendant: SHAWN BEESON** |  |
| Wadi Muhaisen, 34470 Amanda K. Becker, 45084 **Muhaisen & Muhaisen, LLC**  Address: 1435 Larimer Street Ste 203  Denver, Colorado 80202  Phone Number: 303-872-0084  Fax Number: 303-309-3995 [wadi@muhaisenlaw.com](mailto:wadi@muhaisenlaw.com) [amanda@muhaisenlaw.com](mailto:amanda@muhaisenlaw.com) |  |
| **DEFENDANT’S RESPONSE TO DEFENDANTS’ MOTION TO RECONSIDER COST APPORTIONMENT AND AMEND JUDGMENT** | |

COMES NOW, Defendant Shawn Beeson (“Defendant”), by and through counsel, Muhaisen & Muhaisen, LLC, and responds to Plaintiffs’ Motion to Reconsider Cost Apportionment and Amend Judgment (“Abrams Motion”). The Court should DENY the

Motion, and in support Defendant states as follows:

1. **INTRODUCTION**
2. Robert Abrams chose to illegally hold Shawn Beeson’s settlement funds.

Robert Abrams chose to initiate five years of litigation, instead of honoring the contract that he himself drafted. A Denver County jury ruled that Robert Abrams violated his contract with Defendant Shawn Beeson, who prevailed on July 27, 2016 by jury verdict on his Breach of Contract Claim. Rule 54(d) provides that “costs shall be allowed as of course to the prevailing party unless the court otherwise directs.” As the prevailing party on his claim for Breach of Contract, a significant issue in the litigation, Defendant is eligible for an award of costs under C.R.S. § 13-16-104, which is exactly why this Court correctly found Shawn Beeson to be the prevailing party, when it issued its Trial Minutes and Judgment dated May 5, 2017. The Court’s decision should stand.

1. **LEGAL ANALYSIS**
2. **The court correctly found Defendant to be prevailing party in this case**
3. “As a general rule, there can be only one prevailing party in an action.”

*Dennis I. Spencer Contractor, Inc. v. City of Aurora*, 884 P.2d 326, 330 (Colo. 1994).

1. Rule 54(d) provides that “costs shall be allowed as of course to the prevailing party unless the court otherwise directs.”
2. A prevailing party is one that has succeeded upon a significant issue presented by the litigation and has achieved some of the benefits sought in the lawsuit. *Overland Development Co. v. Marston Slopes Development Co*., 773 P.2d 1112 (Colo.

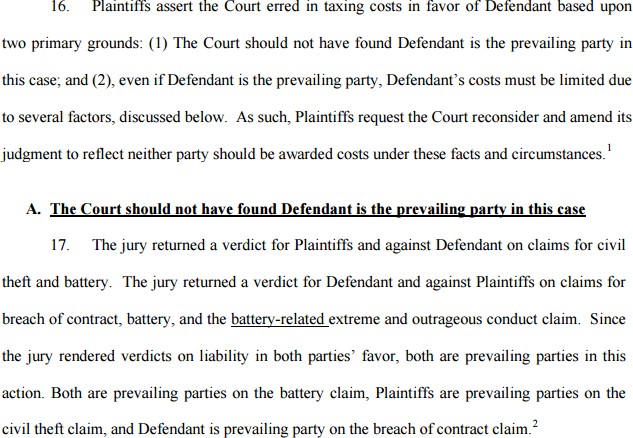
App. 1989).

1. When the jury returned verdicts in favor of Defendant on both claims for Breach of Contract, Mr. Beeson succeeded in establishing the liability of Plaintiff Abrams and Associates, LLC, and achieved the primary benefit sought in the lawsuit. *See* C.R.S § 13-16-104 (where a Defendant “recovers any debt or damages ..., then the Defendant ... shall have judgment to recover against the defendant [her] costs to be taxed ...”); *Dennis I. Spencer Contractor, at* 332 (favorably discussing opinion from Alaska which held that the “contractor was the prevailing party since it received a judgment against the building owner on the claim for final payment due under the construction contract and for compensation for extra work even though a small offset was provided” for “defective and incomplete performance”), *citing, De Witt v. Liberty Leasing Co. of Alaska*, 499 P.2d 599, 601 (Ala. 1972); **W***allace Plumbing Co. v. Dillon*, 213 P. 130 (Colo. 1922) (holding that the successful Defendant is entitled to recover all costs).
2. The law is well settled in Colorado that the standard for whether an expense is recoverable is whether the expense was “reasonably necessary for the development of the case in light of the facts known to counsel at the time” the expense was incurred. *Cherry Creek School Dist. v. Voelker*, 859 P.2d 805, 813-14 (Colo. 1993). All the following costs submitted by Defendant meet this standard.
3. The awarding of costs lies within the sound discretion of the court. *Archer*

*v. Farmer Bros. Co*., 90 P.3d 228, 230 (Colo. 2004). *Archer* is a case that the Plaintiffs cite in their motion.

# The Court should deny the Abrams Motion because Plaintiffs fail to cite any authority supporting their interpretation

1. The Plaintiffs argue that the Court should not have found Defendant as prevailing party in this matter when he stated:



(Abrams Motion ¶¶ 16-17.)

1. Significantly, and fatal to Abrams’ argument, is that he cites no legal authority in support of the above claims, and zero relevant and on-point citations, therefore the Court should summarily deny Plaintiffs’ Motion.

# Despite Abrams’ failure to cite applicable authority, Defendant will establish why the Court issued the correct decision

1. Even though Plaintiffs cite no authority for its claim that a party cannot be the prevailing party if he doesn’t prevail on all its claim, Defendant will present why the Court correctly found him as the prevailing party in this matter.
2. The *Archer* opinion does not give a firm list of factors that a trial court must use in determining who the prevailing party is, and what costs and fees should be awarded. In fact, the Archer opinion states, “[a] "prevailing party" is one who prevails on a significant issue in the litigation and derives *some of the benefits sought* by the litigation. *Archer at 230* (emphasis added).
3. The number of claims upon which a party prevails or the amount awarded for those claims is not determinative.” Id at 230-231, *referencing Gynberg v. Agri Tech, Inc.*, 985 P.2d 231 (Colo.App. 1999), aff’d 10 P.3d 1267 (Colo.2004), and *Fort Morgan v. GASP*, 85 P.3d 536, 542 (Colo. 2004).
4. Abrams citing a case such as *Anderson v. Purcell,* 244 P.3d 1188 (Colo.

2010) for the proposition that “both parties “prevail[ed] on a significant issue in the litigation and derive[d] some benefit sought by the litigation” (Abrams Motion ¶ 21) is, as usual, a misrepresentation of the law and facts in that case. Abrams doesn’t even cite to a specific page in the *Anderson* decision, because that decision never said anything that the Court can extrapolate to support his contention that both parties in this litigation were prevailing parties. The *Anderson* case involved a Water Agreement, and the Court held that one party, Richard Pursell, was the prevailing party under the Parties’ water agreement. *Id.* at 1194 – 1995. The Court did award costs to another party, but only those incurred in pursuit of a certain Motion to Enforce. *Id.* at 1199. In fact, *Anderson* cites *Archer* which held that a party was a "prevailing party" under

C.R.C.P. 54(d) and entitled to costs even though there had been an adverse judgment against it. *Archer,* 90 P.3d at 232. Therefore, Abrams’ argument that a party cannot be

the prevailing party if it didn’t prevail on some claims in the litigation is demonstrably false and baseless under Colorado law.

# Defendant’s costs are reasonably incurred and should not be limited

1. Defendant is simultaneously filing his Bill of Costs, and as demonstrated there, his costs are reasonable and were necessarily incurred, and should be allowed in accordance with Rule 54(d), C.R.S. § 13-16-105, C.R.S. §13-16-122, and C.R.S. § 13-17- 202.
2. If the Plaintiffs had waited until receiving Defendant’s Bill of Costs before filing their baseless Motion, they would have noted that Mr. Beeson is not submitting costs incurred in association with medical treatment relating to the battery claim. Therefore, the argument in (Abrams’ Motion ¶ 25-26) is moot.
3. Additionally, Plaintiffs claim that after May 2016 “Plaintiffs did nothing to cause the incurrence of additional costs,” would only be surprising if it wasn’t being made by Plaintiffs in this case. (Abrams Motion ¶ 27.) Non-exhaustive examples of Plaintiffs’ activities in this case after May 2016, which increased litigation activity, and before the May 2017 trial, include the following.
   * Motion for Partial Summary Judgment which required Defendant’s response. [6/13/16].
   * Reply to Defendant’s Response. [7/13/16].
   * Motion to Quash [7/15/16].
   * Motion to Reconsider Pursuant to C.R.C.P. 60(B), Plaintiff's Motion For Partial Summary Judgment On The Issue Of Breach Of Contract Against Defendant Shawn Beeson, which required Defendant’s response. [8/3/16].
   * Plaintiffs Motion to Reconsider Trial Continuation Pursuant To C.R.C.P.

60(B), which required Defendant’s response.

* + Plaintiffs Response and Objection to Defendants Motion for Continuance of Trial Date, which required Defendant’s response. [9/26/16].
  + Based on Abrams’ Motion to Reconsider Trial Continuation, Judge Vallejos issued his Order Regarding Plaintiff’s Motion to Reconsider Granting of Continuance and for Further Limited Discovery and Order for Recusal and Order of Reassignment on 9/29/16. Judge Vallejos’s Order held that Robert Abrams’ recitation of the facts in his motion was inaccurate, that he “distorts the facts,” “impugns the integrity of the Court,” that his allegations were “not only supported, but also accuse [Judge Vallejos] of unethical behavior,” and of petulantly exaggerating and misrepresenting facts, and then unjustifiably accusing the court of unethical conduct.”
  + Plaintiffs’ Motion to Disqualify Defendant’s Counsel [11/22/16], which required a Response, and in-court evidentiary hearing [1/27/17.]
  + Plaintiffs filed this Motion.

1. Plaintiffs lost on virtually all-of-the above motions and issues. Some of the only costs related to this time-period include filing fees, and surely Defendant is entitled to his filing fee costs in responding to Abrams’s failed motions.
2. Finally, Plaintiffs argue the any costs associated with the protection order matter should not be awarded. (Abrams Motion ¶ 29.) Mr. Beeson did not cause the protection order process to commence, rather, Mr. Abrams filed his Verified Complaint and Motion for Protection Order on May 14, 2015. Mr. Abrams filed his motion in this case, 2015CV31709. He based his motion on allegations in this case. Mr. Abrams issued subpoenas. Mr. Abrams moved to continue protection order hearings, and he filed motions in limine. After the evidentiary hearing on Abrams’ protection order motion held on September 11, 2016, Mr. Abrams lost the hearing and a permanent protection

order was not issued. Abrams’s argument that Defendant should have submitted a bill of costs after that motion hearing is ludicrous, taken to its logical extreme: Mr. Beeson would have been required to request his costs after every motion. A party is not required to claim his costs after each motion that he prevails on under Colorado law.

Otherwise he would have had to file a Bill of Costs for every motion he prevailed on in the case, which were the clear majority of them. Since Mr. Abrams chose to file for a permanent protection order in this case, such motion is subject to the Bill of Costs in

this case.

# CONCLUSION

WHEREFORE, Defendant respectfully request the Court DENY Plaintiffs’ Motion. There can be only one prevailing party in an action, *Dennis I. Spencer Contractor, Inc.* at 1332*,* and the Court has properly found Defendant Mr. Beeson to be the prevailing party, since he is the one that has succeeded upon a significant issue presented by the litigation and has achieved some of the benefits sought in the lawsuit. *Overland Development Co.* at 1112. Nothing in the Abrams Motion has shown that the Court’s Order was incorrect, is yet another attempt to delay and obfuscate, and therefore the Court should grant Mr. Beeson all costs listed in the simultaneously filed Bill of Costs.

**DATED** this 26th day of May, 2016.

Respectfully Submitted, Muhaisen & Muhaisen, LLC

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\* *The "S/" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document pursuant to C.R.C.P. 121 lr 1-26(1)(f). A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures is maintained by the filing party and is available for inspection by other parties or the court upon request pursuant to C.R.C.P. 121 lr 1-26(7).*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a copy of the foregoing pleading entitled “ DEFENDANT’S RESPONSE TO DEFENDANTS’ MOTION TO RECONSIDER COST

APPORTIONMENT AND AMEND JUDGMENT” was [ ] hand delivered, or [X] E- Served by the Court-authorized E-System provider, or [ ] served by facsimile to [insert fax number of opposing party or their counsel], or [ ] sent by United States mail postage prepaid, to the following on this 26th day of May 2017:

Neil S. Sullenberger, Esq. Robert Abrams

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