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U.S. STATE COURT OF OREGON, CURRY COUNTY

Cheryl Kelmar

Plaintiff

vs.

Tiffany Berg, Robert Berg, Trenton
Berg, Mr. Berg, Michael and Cynthia
Thomas, City of Brookings, Colin
Blakesley, and Something Different
Design

Defendants

Case No. 24CV30895

OPPOSITION TO DEFENANT
SOMETHING DIFFERENT DESIGN'S
PETITION TO COSTS AND
DISBERSEMENTS

Request Oral Argument

Plaintiff Cheryl Kelmar ("Cheryl") respectfully opposes Defendant Something Different Design's ("SDD") request for costs and attorney fees. SDD's request is based on the unsupported assertion that Cheryl's filings significantly increased their litigation costs, when in fact, none of Cheryl's pleadings involved SDD until March 2025, and even then, no substantive litigation occurred.

I. No Litigation Involving SDD Until March 2025

SDD falsely claims that Cheryl filed 25 pleadings against them. This is patently incorrect. Cheryl's litigation prior to March 2025 involved binding arbitration with the sellers and realtors, and separate discovery issues with the Bergs and their entity, Berg's Light—not with SDD. Judge Stone is well aware of this procedural history.

Cheryl did not name or serve SDD until March 2025, See [Exhibit A](#), after her motion for leave to amend was granted. From that point forward, Cheryl filed no motions for discovery, no depositions, and no substantive pleadings against SDD—only a motion to dismiss without

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2 prejudice to transfer the matter to small claims court, in recognition that the original damages
3 sought were \$3,500. SDD provides false testimony that they were served in June.

4 SDD's claim that it incurred significant litigation costs due to Cheryl's actions is therefore
5 unfounded. To the extent any fees were incurred, they were minimal and not the result of
6 protracted litigation. SDD's assertion is both misleading and unsupported by the record. Cheryl
7 respectfully requests sanctions against SDD for submitting false representations to the Court.

8 **II. ORS 20.115 Does Not Apply**

9 ORS 20.115 is inapplicable here. That statute allows a prevailing party to recover attorney
10 fees *after* a case is voluntarily dismissed without prejudice **only** when the plaintiff later refiles
11 the same claim, and only where it appears the dismissal and refiling were for purposes of delay
or harassment.

12 This case does **not** fit that fact pattern. Cheryl has never refiled her claims against SDD. She
13 filed and served her amended complaint naming SDD once in March 2025. The only action she
14 took afterward was to dismiss the case without prejudice to refile in small claims court—**not** as
15 a tactic of delay, but to correct a procedural misstep in the appropriate forum given the amount
in controversy.

16 Thus, ORS 20.115 cannot be the basis for awarding attorney fees.

17 **III. ORCP 54 Does Not Provide an Independent Basis for Fees**

18 ORCP 54 A(3) permits recovery of attorney fees **only if** such fees are authorized by:

19 Statute (such as ORS 20.115, which does not apply here);

20 Contract (SDD has not presented any contract containing a fee-shifting clause); or

21 Other applicable rule or law (none has been cited by SDD).

22 SDD has failed to meet its burden to identify a valid legal basis for attorney fees.
23 Furthermore, Cheryl has previously argued—and maintains—that SDD was not authorized to
24 provide architectural services in Oregon, making any contractual relationship with SDD
25 potentially void or unenforceable. SDD's fee request relies on improper assumptions and fails to
meet the threshold under ORCP 54.

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3 **IV. ORCP 68 Does Not Support SDD's Request**

4 ORCP 68 defines "attorney fees" as the reasonable value of legal services in the prosecution
5 or defense of an action. However, SDD cannot claim reasonable legal fees for litigation that did
6 not occur. SDD filed a standard boilerplate Answer and later a motion for summary judgment.
Cheryl responded with a motion to dismiss without prejudice.

7 This minimal exchange does not justify an award of \$5,000 in attorney fees. Any such
8 amount is excessive and unsupported. SDD's summary judgment motion could have been
9 prepared in under two hours by a competent attorney. Additionally, Cheryl notes that the
10 individual who filed the Answer on behalf of SDD is the same person who performed the
unlicensed work on her property.

11 **V. Conclusion**

12 SDD's request for attorney fees is without merit and is based on false factual representations.
13 Cheryl did **not** litigate against SDD until March 2025, and even then, her only filing was a
14 motion to dismiss without prejudice.

15 There is no basis for attorney fees under ORS 20.115, ORCP 54, ORCP 68, or any
16 applicable contract. Cheryl acted in good faith throughout, and her attempt to transfer the matter
17 to small claims was made out of a desire to pursue her modest claim in the correct forum—not
to harass SDD.

18 If the Court nevertheless awards fees based on these misrepresentations, Cheryl reserves the
19 right to appeal and/or refile an action against SDD, including claims for negligence and damages
20 related to unauthorized work performed in Oregon.

21 **For the foregoing reasons, Cheryl respectfully requests that the Court deny SDD's request**
22 **for attorney fees and costs in its entirety.**

23 Dated: ,September 2, 2025

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25 Signature: cheryl kelmar
26 Plaintiff, Cheryl Kelmar

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Exhibit A
THE ONLY SERVICE TO SDD

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR CURRY COUNTY

Cheryl Kelmar

Plaintiff/Petitioner

Cause No.: **24CV30895**

Hearing Date:

vs.

Something Different Design; ET AL

Defendant/Respondent

DECLARATION OF SERVICE OF

SUMMONS; 4TH AMENDED COMPLAINT; Standing Order

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a resident of the State of Arizona, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the **3rd day of April, 2025 at 12:43 PM** at the address of **5749 E Burris Ln, Flagstaff, Coconino, AZ 86004**; this declarant served the above described documents upon **Something Different Design**, by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with **Deanna Toenjes**, I **delivered the documents to Deanna Toenjes who identified themselves as the person authorized to accept with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a gray-haired white female contact 55-65 years of age, 5'6"-5'8" tall and weighing 120-140 lbs with glasses.**

No information was provided or discovered that indicates that the subjects served are members of the U.S. military.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Service Fee Total: **\$85.00**

Date: 04/03/2025



**Eugene Bernhard, Reg. # CN-2022-00003, Arizona Superior Court
2532 N. 4th Street Suite 123, Flagstaff, AZ 86004 661-259-5252**

ORIGINAL DECLARATION
OF SERVICE

Tracking #: **0164369575** PDX FIL

REF: **24CV30895**

