ZHANG v. HAWK CONSTRUCTIONS, LLC

YUAN ZHANG, a single person, Respondent,

v.

HAWK CONSTRUCTIONS, LLC, a Washington limited liability company, Defendant/Third Party Plaintiff, and

READY CONSTRUCTION, LLC, a Washington limited liability company, Third Party Defendant, and

CAPITOL SPECIALTY INSURANCE CORPORATION, Appellant.

No. 67036-1-I.

Court of Appeals of Washington, Division One.

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Elizabeth A. Eames, Gordon & Polscer LLC, 9755 Sw Barnes Rd Ste 650, Portland, OR, 97225-6657; **Gregory L. Baird**, Gordon Polscer, 9755 Sw Barnes Road, Suite 650, Portland, OR, 97225; **Brian C. Hickman**, Gordon Polscer, 9755 Sw Barnes Road, Suite 650, Portland, OR, 97225, Counsel for Appellants.
Todd K. Skoglund, Casey & Skoglund PLLC, 114 W. Mcgraw St, Seattle, WA, 98119-2646; **Adil A. Siddiki**, Casey & Skoglund PLLC, 114 W. Mcgraw St, Seattle, WA, 98119-2646, Counsel for Respondents.

UNPUBLISHED OPINION

APPELWICK, J.

Zhang sued her contractor, Hawk, and Hawk sued its subcontractor, Ready, for breach of contract for repair of a residential apartment complex. Zhang settled with Hawk, was assigned Hawk's claims against Ready, and then settled the assigned claims against Ready. Each settlement contained a covenant not to execute and an assignment of claims against Capitol, who insured both Hawk and Ready and objected to the settlements. Zhang sought a determination that the settlements were reasonable pursuant to RCW 4.22.060. Over Capitol's objection, the trial court determined that the settlements were reasonable. We reverse.

FACTS

In 2007, Yuan Zhang purchased a 39 unit apartment building in Lake City. She hired Jeff Samdal of Criterium-Pioli Engineers to conduct an inspection of the building. During the inspection, Samdal did not remove any siding to inspect the underlying wall components and therefore could not determine the condition of those components. But, he suggested, "an extensive invasive investigation of the balconies, adjacent areas of the siding to these balconies, one area of the EIFS [exterior insulation and finish system (also known as stucco)] siding, and multiple areas surrounding the windows." He noted that it was important to conduct the inspection prior to purchasing the building and that

"[t]here clearly will be a lot of rot that we cannot see." Samdal concluded that a complete renovation of the exterior balconies and resurfacing the roof would bring the building into good condition. Zhang then purchased the building without further investigation.

In October 2007, Zhang contracted with Hawk Construction LLC for Hawk to perform some of the repair work. Zhang did not show Samdal's inspection report to Hawk. But, prior to reaching the agreement, Hawk inspected the property with Ready Construction LLC, one of its subcontractors. The inspection was not thorough. Hawk just "peek[ed] outside for the — took a look at the outside." Hawk and Ready did not ask to take a closer look. The contract stated:

> 1. Hawk will remove all existing vinyl siding and damaged building components underneath it[;]
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> 2. Hawk will apply new hardiplank siding[;]
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> 3. Hawk will remove and replace all damaged decking materials[;]
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> 4. Hawk will apply new waterproof decking materials[;]
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> 5. Owner will pay all materials and dump fee[;]
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> 6. Hawk will be responsible for getting permits[;]
>
> 7. All work will be done to [W]ashington state building code[.]

Hawk had the responsibility to "supervise and direct the Work." It had responsibility and control "over construction means, methods, techniques, sequences and procedures, and for coordinating" the work Hawk was to be paid $59,300 for removing and replacing the siding, $1,800 for each of 21 decks, and $60 per hour for any extra work needed to remove damaged materials underneath the siding or to repair and resurface "concrete large decks." The total contract amount, not including any extra labor, was $97,100.[1] Hawk then subcontracted with Ready to replace existing siding and demo, repair, and paint the decks.

In December 2007, apparently after they had already started work on the project, Hawk and Ready submitted insurance applications to Capitol. Capitol issued policies to both companies.[2]

Phase 1 of the project lasted from October 2007 to March 2008. Most of the work in Phase 1 was performed by Ready. Hawk provided only two employees at Ready's request. Ready removed the siding, but did not immediately install new siding or protect the building. As a result, water got into the building. Further, Ready took off only the outer layer of siding and replaced it. It did not remove the layers under the siding or repair any damage as contemplated by the contract. Although a mildew problem was recognized at that time, the problem was covered instead of fixed. And, Ready used nails that were too short to penetrate the insulation and did not adequately attach the siding to the building.

Zhang paid for another inspection that confirmed that the siding and deck work were done incorrectly. Capitol claims that Zhang hired construction professionals to review the defective work and supervise a new round of repairs. But, Hawk's principal stated in depositions that there were no other supervisors.

In Phase 2, which ran from March 2008 until October 2008, Hawk and Ready removed the incorrectly installed siding and began the repairs anew. The repair work was abandoned in October 2008 without being completed. Specifically, the siding and deck work was incomplete, conducted improperly, and did not meet code.

Zhang filed a lawsuit against Hawk for breach of contract. After Capitol retained defense counsel on Hawk's behalf, Hawk filed a third party complaint against Ready

alleging that Ready was liable to Hawk to the extent that Hawk was liable to Zhang. Capitol then retained defense counsel on Ready's behalf.

The trial court entered an order granting partial summary judgment for Zhang finding that Hawk breached its contract, but left the issue of damages for trial. On November 15, 2010, Zhang requested damages in the amount of $2,128,606.72 in her trial brief. The demand included $1,314,472 in repair costs and lost rent in the amount of $250,680. The remaining amount was attributed to costs and fees.

On November 19, Hawk settled with Zhang directly. The settlement stated:

> The Lake City Project has sustained severe damage from faulty and/or defective construction. In order to correct all the defective construction and resulting property damage to the Project, Zhang will incur construction and repair costs of $1,224,471 and the Project shall lose $250,680 in lost rents. In prosecuting the claims against Hawk in the Action, Zhang has incurred costs in the amount of $43,537 and attorney fees of $546,727. The parties therefore agree that there is always some risk in a trial setting and therefore agree to settle all claims of Zhang against Hawk for the sum of $1,858,873 payable in accordance with the terms and conditions of this Agreement.
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> . . . .
>
> Hawk will assign Zhang all the claims it possesses against Ready, who performed services or provided products to the Project.

With regard to the assignment of claims, the agreement further stated:

> Hawk hereby assigns to Zhang all of its right, title and interest in any cause of action, claim or demand of any nature whatsoever, whether known or unknown, against Ready and any other contractor or supplier arising out of the Project, including, but not limited to, all subcontractors and suppliers identified in this Agreement. This assignment shall include the right to collect and/or pursue all costs and attorney fees paid by Hawk or its insurance companies defending against the Zhang's claims and pursuing claims against Ready. Hawk hereby warrants to Zhang that it has not transferred or assigned to any person or entity, compromised or settled with any person or entity, or otherwise taken any action to impair or adversely affect any rights against Ready.

Zhang also obtained Hawk's claims against Capitol and agreed to a covenant not to execute on any judgment against Hawk or its members.

Zhang then settled the assigned claims with Ready. The settlement is not dated, but Capitol claims it was signed two days after the Hawk settlement. Zhang does not offer an alternative date, stating merely that it was reached "[s]hortly after" the Hawk settlement. Ready's confession of judgment was signed January 5, 2011. The Ready settlement provided:

> The Lake City Project sustained severe property damage which arose from activities performed by Hawk and Ready. Due to the property damage and claims made by Zhang, Hawk incurred $380,546 in costs related to property damage and related repairs, and $142,354 in attorney fees and costs. Therefore, the parties agree to settle all claims of Zhang against Ready for the sum of $522,900 payable in accordance with the terms and conditions of this Agreement.

As with the Hawk settlement, Zhang obtained Ready's claims against Capitol and entered a covenant not to execute on any judgment against Ready or its members.

Zhang filed motions with respect to both settlements asking the court to find the settlements reasonable. With regard to the Hawk settlement, she argued that the cost of repairs was supported by an estimate prepared on her behalf. She explained that the amount of damages was reduced by 10 percent to acknowledge the inherent risk of proceeding to trial. She documented attorney fees in the amount of $306,854 on an hourly fee basis, and marked the fees up to $495,320 to reflect her 36 percent contingency rate agreement with her attorneys.[3] Finally, Zhang conceded that her lost rent damages could be reduced from $250,680 to $107,880.

With regard to the Ready settlement, Zhang asserted the settlement figure was "calculated by adding the cost of Phase 1 repairs to the attorney fees and costs incurred by Hawk in this action" and claimed that "Zhang paid $380,000 to Ready[4] for the work it performed in Phase 1."

Capitol was allowed to intervene. In support of its objection to the reasonableness motions, Capitol submitted a declaration prepared by construction expert Mark Lawless. Lawless asserted that the estimate used to establish the cost of repairs for the Hawk settlement included various unrecoverable costs, including costs that were always Zhang's responsibility, upgrades, and work that was outside the scope of the original contract.

The trial court determined that, after adjusting Zhang's lost rent damages, the Hawk settlement was reasonable to the amount of $1,684,087 and the Ready settlement was reasonable to the full amount of $522,902. It did not enter any findings.

DISCUSSION

I. Application of RCW 4.22.060

The underlying claims in this case are for breach of contract. No tort claims were asserted or settled. The reasonableness hearing process utilized by Zhang is based on chapter 4.22 RCW, which is applicable to fault based tort claims. When an insurer refuses to settle a tort claim, the insured may negotiate a settlement on its own and then seek reimbursement from the insurer. Chaussee v. Md. Cas. Co., 60 Wn.App. 504, 509-10, 803 P.2d 1339, 812 P.2d 487 (1991). The insurer is only liable for the amount of the settlement that is reasonable and paid in good faith. Id. at 510. RCW 4.22.060 provides a mechanism for the trial court to determine whether a settlement, including the amount to be paid, is reasonable. The party requesting the settlement bears the burden of establishing that the settlement is reasonable. RCW 4.22.060.

But, the parties have not articulated why the statute should apply at all to a contract case that does not involve any tort claims, other than citing to Heights at Issaquah Ridge Owners Ass'n v. Derus Wakefield I, LLC, 145 Wn.App. 698, 704, 187 P.3d 306 (2008). In Heights, we were not asked whether the statute applied to contract claims. A reasonableness motion had been filed without objection and the trial court rendered a decision finding the settlement reasonable. Id. at 702. The parties did not argue on appeal that RCW 4.22.060 was inapplicable. Consequently, we addressed the issue before us, which was only whether a determination of reasonableness was correctly made. We did not consider whether such a determination was entitled to any legal status under RCW 4.22.060. We recognized that comparative fault has no role in construction defect cases that involve contractual obligations to indemnify, and that the primary concern is protecting the insurer from excessive judgments that are the product of collusion or fraud between the claimant and the insured. Id. at 704-05. Thus, we determined that the insurer's interest relates only to the existence of bad faith, collusion, or fraud in the settlement. Id. at 705.

The same is true here. Zhang submitted two reasonableness motions below, the trial court determined that the settlements were reasonable, and neither party argues that the trial court did not have authority to do so. Accordingly, we have no occasion to decide whether RCW 4.22.060 applies to these settlements arising solely from contract claims. We follow the rule set forth in Heights, and consider Capitol's arguments only to the extent that they inform the questions of bad faith, collusion, and fraud.[5]

II. Standard of Review

A trial court's reasonableness determination is normally reviewed for an abuse of discretion. Werlinger v. Warner, 126 Wn.App. 342, 349, 109 P.3d 22 (2005). An abuse of discretion occurs when a decision rests on untenable grounds or is manifestly unreasonable. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006). And,

a reasonableness motion "necessarily involves factual findings" that are reviewed to determine if they are supported by substantial evidence. Water's Edge Homeowner's Ass'n v. Water's Edge Assocs., 152 Wn.App. 572, 584, 216 P.3d 1110 (2009), review denied, 168 Wn.2d 1019, 228 P.3d 17 (2010).

But, the trial made no analysis and entered no findings whatsoever in this case. Thus, we are unable to review the trial court's findings for substantial evidence and have no basis to determine whether the trial court committed an abuse of discretion. Further, the trial court's determination was based solely on written submissions; it did not make any credibility determinations based on live testimony. Under these circumstances, we generally review both facts and law de novo. See, e.g., Gronquist v. Dep't of Corr., 159 Wn.App. 576, 590, 247 P.3d 436m review denied, 171 Wn.2d 1023, 257 P.3d 662 (2011); In re Estate of Bowers, 132 Wn.App. 334, 339, 131 P.3d 916 (2006).

Zhang contends this argument was dealt with in Water's Edge. In that case, the homeowner's association acknowledged that the abuse of discretion standard applied, but nevertheless asserted that there were no disputed issues of fact and all that remained were questions of law that should be reviewed de novo. Water's Edge, 152 Wn. App. at 584. This court rejected that argument. Id. In particular, it noted that the homeowners association's claim rang hollow in light of its frequent arguments that the trial court improperly weighed the evidence. Id. at 584-85. This case presents a different issue, because there are no findings at all.

We are left to either review the reasonableness motions de novo, or remand for the trial court to enter appropriate findings. Neither party has requested that we remand for findings. Accordingly, we conduct de novo review.

III. Ready Settlement

Bad faith or collusion may exist when the evidence indicates a joint effort to create, in a non-adversarial atmosphere, a resolution beneficial to both parties, yet highly prejudicial to the insurer as intervener. Id. at 595. The Ready settlement reflects such a compromise that is highly beneficial to Zhang and Ready, but highly prejudicial to Capitol.

At the time of settlement, Ready was inactive. There is no evidence regarding its assets, but its legal costs were being paid by Capitol. Thus, the entity itself had little to lose by proceeding to trial. "[T]he reasonableness of a settlement with an insured who is not personally liable for a settlement is open to question because the insured will have no incentive to minimize the amount." Werlinger, 126 Wn. App. at 351. Zhang argues she could have sought to hold Ready's principal personally liable and thus Ready did have something to lose. But, the complaint against Ready did not seek to hold Ready's principal personally liable. Regardless, such a possibility would merely raise Ready's incentive to obtain a covenant not to execute. Ready had no incentive for Ready to minimize the amount of settlement when a covenant not to execute was available. For just this reason, a covenant not to execute raises the specter of collusive or fraudulent settlements. Heights, 145 Wn. App. at 704. That possibility of collusion, fraud, or bad faith was realized here.

A. Measure of Damages

The parties dispute whether Zhang's out-of-pocket expenses were an appropriate measure of damages for the Ready settlement. Capitol argues that Zhang stood in Hawk's shoes, could only recover damages that were recoverable by Hawk, and could not use the "total amount Ms. Zhang paid" to establish damages. Hawk's potential damages against Ready included, however, reimbursement for amounts it had to pay Zhang as a result of Ready's work, any damage Ready caused Hawk that did not flow to Zhang, and recovery of fees paid in pursuit of claims against Ready. The Hawk settlement stated only that damages were based on the cost of repairs. Those damages

could have included Zhang's expenses, which Hawk would then be entitled to collect from Ready. Regardless, there are other problems with the measure of damages.

First, the settlement acknowledged that it was reached in recognition of the inherent risks of trial, but did not state any reduction in damages whatsoever. The parties merely agreed on a full measure of damages, and settled for that amount.

Second, the Ready settlement states that "Hawk incurred $380,546 in costs related to property damage and related repairs." In her reasonableness motion, Zhang justified that measure of damages by claiming it was the amount Zhang spent during Phase 1, and specifically the amount she paid "to Ready for the work it performed in Phase 1." But, the evidence she provided did not match that characterization. She included at least 47 invoices that were not dated within the Phase 1 time period. And, none of the invoices reflect payments to Ready. Rather, the invoices are primarily billed to Zhang from Hawk or third parties.

Third, the damages include at least $30,000 that is plainly duplicative. One Hawk invoice, which is not marked as paid, has a charge for $30,000 to "Remove Drywall, Repair damaged OSB [oriented strand board] & Structure Boards on South & North side of Building." The very next Hawk invoice, marked as paid, includes an $18,000 charge to "Remove Drywall, Repair damaged OSB & Structure Boards" on the "North side of B[uilding]" and a $12,000 charge to "Remove Drywall, Repair damaged OSB & Structure Boards" on the "South side of B[uilding]." These separate invoices describe the same work, but were both included in the measure of damages.

Fourth, Zhang's tally includes four Home Depot charges that come from a document titled "Purged Customer Order Report." (Some capitalization omitted.) The document lists payments of $23,392.80 and $19,873.11. It also lists credits of $3,434, $19,873, and $86. In her calculations, Zhang used the report to enter payments of $23,393, $3,434, $19,873, and $86. Thus, she included two amounts, $3,434 and $86, that were not payments at all and included a payment of $19,873 even though it was canceled out by a $19,873 credit.

Zhang's measure of damages demonstrates that Ready made no attempt to minimize the amount of settlement.

B. Attorney Fees

In the Hawk settlement, Zhang obtained the right to collect attorney fees incurred by Hawk in pursuit of its claims against Ready. The Ready settlement then included nearly $100,000 in fees and costs allegedly incurred by Hawk. But, Hawk had not actually paid any fees. Its attorneys were paid by Capitol. Zhang claims Capitol could have pursued reimbursement from Hawk in its declaratory action. However, there is no evidence that the declaratory action had been filed at the time of settlement. Any belief that Capitol would seek reimbursement was speculative at best. Further, Hawk had no assets at the time of settlement so the possibility that Capitol would seek reimbursement was remote. Despite the fact that there was no basis to believe Capitol would seek reimbursement, the settlement did not discount the fee award to account for its speculative nature.

The Ready settlement also included over $45,000 in attorney fees and costs incurred by Zhang in pursuit of the assigned claims against Ready. Because of the short time between the two settlements, such an expenditure by Zhang is highly suspect. Capitol claims that those fees include fees for tasks that were unrelated to Hawk's claims against Ready. In particular, it claims Zhang included, without explanation, fees that were incurred after the date of the Ready settlement.

The trial court did not enter any findings determining that the award was reasonable. The failure to enter such findings compels reversal of the fee award,

because we are left without a record to review the trial court's determination. See, e.g., Brand v. Dep't of Labor & Indus.,139 Wn.2d 659, 675, 989 P.2d 1111 (1999).

IV. Hawk Settlement

As with Ready, Hawk was inactive and had minimal assets at the time of settlement. Zhang again argues that she could have held Hawk's members personally liable. But, Zhang's complaint against Hawk did not seek personal liability against Hawk's members. Hawk may have had an incentive to obtain a covenant not to execute, but not to minimize the amount of settlement. Hawk did in fact obtain a covenant not to execute, and the settlement does not evidence any attempt to minimize the damages. To the contrary, the settlement provides significant evidence of collusion, fraud, or bad faith.

A. Preexisting Damage

The existence of water damage to the structure before Zhang contracted with Hawk is not disputed. All that is disputed is the percentage of water damage that was caused by Hawk and Ready. Lawless estimated that 80 percent of the damage and $147,879 of Zhang's repair estimate was attributable to preexisting water damage. Zhang claims that Lawless was not credible, and that at the time of the settlement the parties could not have accurately determined what amount of the repairs related to preexisting water damage. But, even Zhang's estimate acknowledged that it included costs for repairing preexisting damage. Zhang's argument presumes that not knowing the precise value of a deduction is a reasonable basis to include no deduction at all. We disagree.

Under the construction contract, Zhang was to pay Hawk $60 an hour to repair and replace preexisting water damaged areas. Zhang's estimate of the damages caused by Hawk explicitly included the cost of repairing those preexisting water damaged areas. Those costs should have been excluded. Or, if included, an offset for the hourly costs she would have paid to Hawk to complete them should have been made.

B. Costs that were Zhang's Responsibility

The settlement included costs attributable to architectural and engineering fees, temporary protection of the building, and sales tax. Under her contract with Hawk, Zhang was responsible for all three of these costs. Capitol claims that $147,563 of Zhang's bid is attributable to architectural and engineering fees and that $53,184 of the estimate is attributable to temporary protection of the building.

Zhang offers no specific argument in return, asserting only that "[i]t is not Ms. Zhang's responsibility to shoulder the cost of damage and any associated loss caused by Hawk[`s] and Ready's defective work." To the extent that those costs are limited to costs over and above those she retained responsibility for in the original contract, she is correct. But, in the original contract, those costs were always Zhang's costs to bear. She has not cited to any evidence to establish that those services were somehow necessitated by Hawk's or Ready's defective work, as opposed to the preexisting condition of the building. The costs attributable to Zhang in the original agreement should have been segregated and removed.

Likewise, it is apparent that the settlement included at least some sales tax, such as the amount attributable to repairing preexisting water damage, which was not recoverable.[6]

C. Expert Fees

The majority of the settlement's $43,357 allotment for costs is attributable to paying for Zhang's experts. Below, Zhang argued that if she was not entitled to recover costs for her experts, her total costs would only be $6,707.

Capitol contends that expert witness fees are not recoverable under chapter 4.84 RCW, and that a contract that allows attorney fees and costs should not override the fees and costs that are normally statutorily allowable. Jordan v. Berkey, 26 Wn.App. 242,

245, 611 P.2d 1382 (1980). Zhang responds that she was entitled to collect reasonable attorney fees, including fees for experts, not limited by the narrow definition of costs in chapter 4.84 RCW.Panorama Vill. Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co., 144 Wn.2d 130, 143-44, 26 P.3d 910 (2001). The reasoning in Panorama, however, was explicitly based on the recovery of reasonable attorney fees based on rules of equity, as opposed to a contract or statutory provision. Id. The point of such an equitable rule is to make the aggrieved party whole again, which requires paying all reasonable costs, including costs for experts. Id. The fees and costs in this case are not based on such equitable concerns. They are based solely on a contract provision, and Zhang was not entitled to recover the costs of her expert witnesses.

D. Attorney Fees

On an hourly fee basis, Zhang's attorneys billed four times as much as Capitol's attorneys. She then claimed fees under a 36 percent contingency fee agreement with her attorneys. This increased the attorney fees a further $188,466, or 61 percent. But, the existence of contingent representation is only a factor that the trial court may consider to increase a fee award. Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 598-99, 675 P.2d 193 (1983); see also 224 Westlake, LLC v. Engstrom Props., LLC, 169 Wn.App. 700, 735-36, 281 P.3d 693 (2012). As with the Ready settlement, the trial court did not enter any findings regarding the fee award. The failure to enter such findings compels reversal of the fee award. See, e.g., Brand, 139 Wn.2d at 675.

V. Assigned Claims

The overall structure of the settlements is highly probative of collusion, fraud, or bad faith. This case concerns only one loss: the damage stemming from Hawk's and Ready's defective work. As Zhang herself argues in her response brief, "[i]t was Hawk's job to supervise Ready and consequently, Hawk was liable to Ms. Zhang for any damage caused by Ready's work." Accordingly, the damages in the Hawk settlement included not only the damages caused by Hawk, but also any damages caused by Ready. Hawk's potential damages against Ready, therefore, included (1) indemnity for amounts Hawk owed Zhang as a result of Ready's defective work, and (2) any other damages that Hawk incurred as a result of Ready's action. There is no allegation that there were any damages of the second type.

Despite the fact that Zhang already recovered the total loss in the Hawk settlement, the parties agreed that Hawk would assign to Zhang all of Hawk's claims against Ready. It did so without providing that amounts recovered from Ready would offset the amount owed by Hawk. Thus, the settlement took Hawk's indemnity claim against Ready and turned it into an opportunity to collect a portion of the loss a second time from the insurer.

Likewise, the Hawk settlement granted Zhang the right to recover Hawk's attorney fees. As already discussed, Hawk had not actually incurred any attorney fees. Moreover, the settlement did not give Hawk any value for the right to recover those fees, nor provide that amounts recovered would be offset against the amount Hawk owed Zhang. Rather, the right to recover Hawk's fees merely setup a windfall recovery for Zhang.

The structure of the settlements is even more problematic in light of the fact that both Hawk and Ready were inactive and had no assets at the time of settlement. Zhang, Hawk, and Ready were all aware that the settlement amounts would be collected from Hawk's and Ready's insurer. If RCW 4.22.060 applies in a case without any tort claims, this is precisely the type of manipulation it is intended to preclude.

We reverse.

LEACH C.J., and LAU, J., concurs.

Footnotes

1. The contract does not explicitly state whether the contract was for labor only. However, invoices billed directly to Zhang by ABC Cleanup Services, Inc. and Home Depot suggest that it was. Zhang does not assert that the contract price included the cost of materials.
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2. In their applications, Hawk and Ready represented that they were not involved "in new residential construction, and/or development of, more than 10 single family dwellings, town home units[,] or condominium units, in one development, in any one year." Hawk further represented it did not engage in "projects involving the use of exterior insulation and finish systems (EIFS aka synthetic stucco)" and stated it engaged in "painting[,] carpentry[,] residential home only." Ready also stated it engaged in "painting[,] carpentry[,] residential only." Capitol has filed a declaratory action in federal court to determine its policy obligations to Hawk and Ready.

3. We acknowledge that the damages alleged in Zhang's trial brief are different from the damages alleged in the settlement agreement. Similarly, the settlement agreement stated that Zhang incurred approximately $546,727 in attorney fees. But, both parties assert the settlement was based on $495,320 in attorney fees. The parties offer no explanation for these discrepancies.

4. Presumably, the reference to Ready should be to Hawk. Zhang did not have a contract with Ready. There is no evidence of any payments that she or Hawk made to Ready. And, the invoices she submitted in support of her motion do not match her characterization. Rather, the majority of the invoices are for materials and clean-up services from third parties, not from Hawk for labor or reimbursement.

5. Washington courts have enunciated a total of nine factors that the trial court should consider when determining if a settlement is reasonable in a fault based tort claim pursuant to RCW 4.22.060: (1) the releasing person's damages; (2) the merits of the releasing person's liability theory; (3) the merits of the released person's defense theory; (4) the released person's relative faults; (5) the risks and expenses of continued litigation; (6) the released person's ability to pay; (7) any evidence of bad faith, collusion, or fraud; (8) the extent of the releasing person's investigation and preparation of the case; and (9) the interest of the parties not being released. Chausee, 60 Wn. App. at 512.

6. Capitol cites to a variety of other considerations that it claims make the measure of damages unreasonable. It claims that the settlement should have been based on diminution in value, as opposed to cost of repair, and that the estimate included upgrades and repairs that were not within the scope of the original contract. Capitol has not met its burden to show that those concerns serve as evidence of bad faith. For instance, Capitol has not explained how a $1,000 upgrade for a second layer of building paper in a settlement for over $1.5 million informs the question of bad faith.