

AFTER RECORDING RETURN TO:

1391881 04/04/2018 10:15 AM JUDGE
Page 1 of 11 R 84.00 Grant Co, WA
VANDER STOEP REMUND BLINKS & JONES

SCOTT E. BLINKS
Vander Stoep, Remund, Blinks & Jones
345 N.W. Pacific Avenue
P.O. Box 867
Chehalis, WA 98532



JUDGMENT

REFERENCE NUMBER(S) of related documents:

THURSTON COUNTY SUPERIOR COURT CAUSE NO. 15-2-01915-2

DEBTOR(S)/DEFENDANT(S): **JOHN THOMASON and "JANE DOE"**
THOMASON, husband and wife

CREDITOR/PLAINTIFF: **ADVANCED DRILLING, LLC, a Washington**
limited liability company

ABBREVIATED LEGAL DESCRIPTION:

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 MAR 30 AM 9:01

Linda Myhre Enlow
Thurston County Clerk

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
4 Date: _____
5 Time: _____
6 Judge: John Skinder

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF THURSTON

9 ADVANCED DRILLING, L.L.C., A
10 Washington Limited Liability Company,

11 Plaintiff,
12 v.

13 JOHN THOMASON and "JANE DOE"
14 THOMASON, husband and wife,

15 Defendants.

NO. 15-2-01915-2

JUDGMENT FOR PLAINTIFF
ON ARBITRATION AWARD

16 I. SUMMARY OF JUDGMENT

17 Pursuant to R.C.W. 4.64.030, the following information should be entered in the Clerk's
18 Execution Docket:

- 19 1. Judgment Creditor: ADVANCED DRILLING, L.L.C., A Washington Limited Liability Company.
- 20 2. Judgment Creditor's Attorney: Scott E. Blinks
- 21 3. Judgment Debtor: JOHN THOMASON and "JANE DOE" THOMASON, husband and wife.
- 22 4. Amount of Judgment: \$14,791.34
- 23 5. Amount of Interest Owed to Date of Judgment: 12% from December 16, 2016
- 24 6. Interest after entry of Judgment: 12% from date of Judgment
- 25 7. Total of Taxable Costs and Attorney Fees: Included in above number

Judgment for Plaintiff on



1 This matter was arbitrated by Ben Cushman on November 17, 2016. Plaintiff appeared
2 personally and through its attorney, Scott E. Blinks. Defendant John Thomason appeared
3 personally and through his attorney at the time, Drew Mazzeo.

4 The parties presented evidence and testimony to the arbitrator. The arbitrator filed his
5 Arbitration Award November 29, 2016, and copies were sent to both attorneys. A copy of the
6 Arbitration Award is attached hereto as Exhibit A. The arbitrator filed his Certificate of Service and
7 Mailing on the same date. Copies of that document were sent to both attorneys as well. The
8 arbitrator later filed his Supplemental Arbitration Award on or about December 20, 2016. A copy
9 of the Supplemental Arbitration Award is attached hereto as Exhibit B. The arbitrator filed his
10 Certificate of Service and Mailing on the same date. Copies of that document were sent to both
11 attorneys as well. Defendants initially requested a Trial de Novo, but they now wish to withdraw
12 that request.
13

14 Consistent with the arbitrator's supplemental award in this action the Court enters final
15 judgment in this matter as follows:
16

- 17 1. Plaintiff ADVANCED DRILLING, L.L.C., A Washington Limited Liability Company
18 is awarded judgment against defendants JOHN THOMASON and "JANE DOE"
19 THOMASON, husband and wife in the amount of \$14,791.34.

20 The total Judgment amount is \$14,791.34, together with interest at 12% per annum from the
21 date of the supplemental arbitration award, and also from the date of entry of this Judgment until
22 paid.
23

24 Dated this 30th day of March, 2018.

25
26

JUDGE

Chris Lanese

LAW OFFICES

VANDER STOEP, REMUND, BLINKS & JONES

OFFICE: 345 N.W. Pacific

MAILING: P.O. Box 867

CHEHALIS, WASHINGTON 98532

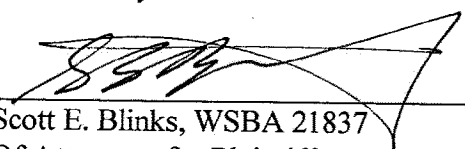
PHONE: (360) 748-9281

FAX: (360) 748-3184

Judgment for Plaintiff on
1391881 04/04/2018 10:15 AM JUDGE
Page 3 of 11 R 84.00 Grant Co, WA
VANDER STOEP REMUND BLINKS & JONES



1 Presented by:

2 
3
4 Scott E. Blinks, WSBA 21837
Of Attorneys for Plaintiff

5
6 Approved as to form:

7
8 Paul Brain, WSBA 13438
Of Attorneys for Defendant

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23 1391881 04/04/2018 10:15 AM JUDGE
Page 4 of 11 R 84.00 Grant Co, WA
VANDER STOEP REMUND BLINKS & JONES



24
25
26 Judgment for Plaintiff on
Arbitration Award - 3

LAW OFFICES
VANDER STOEP, REMUND, BLINKS & JONES
OFFICE: 345 N.W. Pacific
MAILING: P.O. Box 867
CHEHALIS, WASHINGTON 98532
PHONE: (360) 748-9281
FAX: (360) 748-3184

DECLARATION OF MAILING

The undersigned declares that on the 23 day of November 2016, she emailed and deposited in the mail of the United States of America a properly stamped and addressed envelope directed to attorneys/parties or record; containing a true and correct copy of the document on which this declaration appears.

Doreen Milwood

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

ADVANCED DRILLING LLC,

Plaintiff,

vs.

JOHN THOMASON,

Defendant.

Case No. 15-2-01915-2

**ARBITRATION AWARD
(ARBA)**

The issues in arbitration having been heard on November 17, 2016, I make the following award:

This case is essentially an either/or breach of contract case. The amount charged by Advanced Drilling was not challenged. Rather, Thomason asserted an offset claim for damages caused by the alleged mislocation of the well and delay. There was also no allegation or evidence that the well does not function or has any defect other than its location. Further, Advanced Drilling is not seeking any additional amounts (for extra work or unforeseen conditions) beyond the undisputed contract price. On these grounds, I rule in favor of Plaintiff Advanced Drilling and see no basis on which to award less than the full amount due under the contract – the unpaid interest price of \$2,373.80 plus interest. I will entertain further briefing on the amount of interest and the entitlement and amount of attorney’s fees, but I would also be willing to leave that award expressly open for court determination as part of the entry of judgment or trial de novo process.

ARBITRATION AWARD - Page 1 of 4

WASHINGTON STATE SUPERIOR COURT
THURSTON COUNTY
2000 Lakeridge Drive SW
Olympia, Washington 98502
(360) 786-5560 fax: (360) 754-4060



A-1

1 I find all testimony credible and do not discount any of it. My decision is based on a
2 reconciliation of the testimony.

3 The contract expressly indicates that the owner (Thomason) will mark the location of a
4 well with a stake labeled "well." It is undisputed that that was not done. Further,
5 communication about the well location appears to have broken down, leading to a
6 misunderstanding by Advanced Drilling about where the well should be. However, because the
7 duty to communicate was on Thomason, this fault for this failure of communication lies on him.
8 He bears the risk and the loss associated from any mislocation of the well that arose from his
9 failure to locate it in a clear manner.
10

11 The evidence is that Thomason did not locate the well himself. Rather, he relied on his
12 agent, Mr. Matti, to do so. Plaintiff testified that he and Mr. Matti discussed using the Arcadia
13 stake and flag to mark the location and that the flag was moved (by someone other than Plaintiff)
14 to the location where the well was drilled prior to the drilling. Plaintiff also testified that he
15 confirmed the general location (unusually near the road) with Mr. Matti prior to drilling. On
16 these facts, the well was drilled where marked by Defendant.
17

18 Mr. Matti denies that he confirmed the location on the phone with Plaintiff or that he
19 discussed using the Arcadia marker to mark the well location. However, he does not deny
20 moving the marker and provides no explanation for why he would have done so if it was not to
21 mark the new intended well location. He indicates that he was no longer working for Mr.
22 Thomason, due to health reasons, at the time of the drilling. However, no one testified that this
23 change in status was communicated to Plaintiff. Therefore, Mr. Matti had continuing apparent
24 authority, if not actual authority, to inform Plaintiff where to drill. Plaintiff was reasonably
25
26
27

ARBITRATION AWARD - Page 2 of 4

WASHINGTON STATE SUPERIOR COURT
THURSTON COUNTY
2000 Lakeridge Drive SW
Olympia, Washington 98502
(360) 786-5560 fax: (360) 754-4060

1391881 04/04/2018 10:15 AM JUDGE
Page 6 of 11 R 84.00 Grant Co., WA
VANDER STOEP REMUND BLINKS & JONES



- 2

1 entitled to rely on information from Mr. Matti in this regard. Therefore, if Mr. Matti confirmed
2 the "next to road" location in a phone call, the well was drilled in the general location indicated
3 by Defendant.

4 Both Mr. Matti and Mr. Thomason acknowledge that they did not meet with Plaintiff
5 onsite and indicate that the well was to be drilled in a different location than it was. Mr. Matti
6 indicated that he thought Plaintiff would recognize stakes placed by the water witcher as the
7 location. However, the water witcher placed multiple stakes in different places. Mr. Matti then
8 indicated that he flagged three stakes with ribbon, creating a triangle, where the well was to go.
9 However, none of these stakes were marked with the word "well" (as called for by the contract)
10 and neither Mr. Matti nor Mr. Thomason testified that they told Plaintiff that the well location
11 was so marked. On these facts, although the well was drilled in a location other than that
12 intended, the mislocation was the result of a failure of communication and the burden of
13 communication was on Defendant.

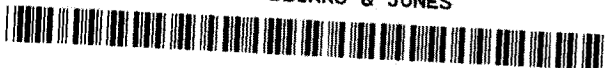
14 I do not see a third set of facts based on the testimony presented. Even taking the most
15 favorable set of facts for the Defendant (the third), the result here is a ruling in favor of Plaintiff
16 for the full amount sought. Defendant's counsel appeals to "common sense" that the well should
17 not be located where it was. However, common sense does not trump testimony, industry
18 standards, or contract terms, and common sense is often neither common nor sensical.

19 Defendant raises a late defense of accord and satisfaction. However, that defense is one
20 that must be specifically pled under CR 8. It was not, and the pleadings were not amended to
21 add it. I rule that it was not properly pled and do not address it. To the extent the defense is
22 meritorious, Defendant should seek redress from his original attorney for failing to raise it as
23 required by the civil rules.

24 ARBITRATION AWARD - Page 3 of 4

25 1391881 04/04/2018 10:15 AM JUDGE
26 Page 7 of 11 R 84.00 Grant Co, WA
27 VANDER STOEP REMUND BLINKS & JONES

WASHINGTON STATE SUPERIOR COURT
THURSTON COUNTY
2000 Lakeridge Drive SW
Olympia, Washington 98502
(360) 786-5560 fax: (360) 754-4060



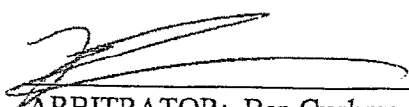
1 Defendant also seeks offset for unreasonable delay. I am concerned by the amount of
2 delay in this project and could be persuaded that it was unreasonable in duration. However, there
3 was little to no testimony on that point. To the extent there was such testimony, it was from
4 Defendant and his agent, and was based on well drilling in Eastern Washington, which is not the
5 relevant location for determining standards of performance for well drilling west of the
6 Cascades. Further, Defendant testified that he suffered no loss or damage from this delay, so
7 even if it were unreasonable and a breach, it would be a no-damages breach. In such case, the
8 amount of the offset would be \$0.
9

10
11
12 **Twenty days after the award has been filed with the clerk, if no party has sought a trial de**
13 **novi, the prevailing party, on notice to all parties, may present to the Assigned Judge a**
14 **judgment on the arbitration award for entry as final judgment in this case.**

15 Was any part of this award based on the failure of a party to participate? Yes No

16 If yes, please identify the party and explain:

17 Dated: November 21st, 2016

18 
19 ARBITRATOR: Ben Cushman
20 Cushman Law Offices, P.S.
21 924 Capitol Way S.
22 Olympia, WA 98501
23 360/534-9183

24 File the Original of this form with the
25 ARBITRATION DEPARTMENT, Thurston County Superior Court
26 and serve copies on all parties to this action

27 1391881 04/04/2018 10:15 AM JUDGE
Page 8 of 11 R 84.00 Grant Co., WA
VANDER STOEP REMUND BLINKS & JONES



WASHINGTON STATE SUPERIOR COURT
THURSTON COUNTY
2000 Lakeridge Drive SW
Olympia, Washington 98502
(360) 786-5560 fax: (360) 754-4060

EXHIBIT A-4

DECLARATION OF MAILING

The undersigned declares that on the 19th day of December 2016, she emailed and deposited in the mail of the United States of America a properly stamped and addressed envelope directed to attorneys/parties or record; containing a true and correct copy of the document on which this declaration appears.

Doreen Milwood

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

ADVANCED DRILLING LLC,

Plaintiff,

vs.

JOHN THOMASON,

Defendant.

Case No. 15-2-01915-2

**SUPPLEMENTAL
ARBITRATION AWARD
(ARBA)**

I make the following supplemental award to Plaintiff for costs and attorneys' fees.

1. On November 28, 2016 an Arbitration Award was filed with this Court which awarded Plaintiff the principal amount of \$2,373.80.

2. On December 1, 2016 I received Plaintiff's Request for Costs and Fess Pursuant to MAR 6.4. Plaintiff requested:

\$11,417.84	Actual Attorney Fees & Costs
<u>999.70</u>	Statutory Costs and Fees
\$12,417.54	

3. By letter dated December 2, 2016 to both counsel, I invited Defendant to respond to identify if there is any opposition or any alternative Lodestar analysis.

4. After subsequent email exchanges with both Counsel, on December 5, 2016 I received, from Plaintiff, supplemental briefing on authorities for awarding fees, but received no



EXHIBIT B-1

1 response from Defendant to Plaintiff's Request for Fees. Instead, Defendant's attorney
2 indicated he would be filing for a trial de novo.

3 5. On December 16, 2016, I confirmed with both counsel, via email, that I would be
4 filing this Supplemental Arbitration Award on December 19, 2016, awarding the full fees and
5 costs as requested by Plaintiff.

6 6. The total Arbitration Award to Plaintiff is as follows:

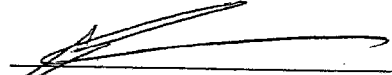
\$ 2,373.80	Principal (previously identified in the Award filed 11/28/16)
11,417.84	Actual Attorney Fees & Costs
<u>999.70</u>	Statutory Costs and Fees
\$14,791.34	

13 Twenty days after the award has been filed with the clerk, if no party has sought a trial de
14 novo, the prevailing party, on notice to all parties, may present to the Assigned Judge a
15 judgment on the arbitration award for entry as final judgment in this case.

16 Was any part of this award based on the failure of a party to participate? Yes No

17 If yes, please identify the party and explain:

18 Dated: December 16th, 2016


 ARBITRATOR: Ben Cushman
 Cushman Law Offices, P.S.
 924 Capitol Way S.
 Olympia, WA 98501
 360/534-9183

23 File the Original of this form with the
24 ARBITRATION DEPARTMENT, Thurston County Superior Court
25 and serve copies on all parties to this action

26 1391881 04/04/2018 10:15 AM JUDGE
Page 10 of 11 R 84.00 Grant Co, WA
VANDER STOEP REMUND BLINKS & JONES

27 WASHINGTON STATE SUPERIOR COURT
THURSTON COUNTY
2000 Lakeridge Drive SW
Olympia, Washington 98502
(360) 786-5560 fax: (360) 754-4060



B-2

1391881 04/04/2018 10:15 AM JUDGE
Page 11 of 11 R 84.00 Grant Co, WA
VANDER STOEP REMUND BLINKS & JONES



STATE OF WASHINGTON
County of Thurston

I, Linda Myhre Enlow, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County sitting in session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing NINE pages.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court.

DATED:

MARCH 30th, 2018

LINDA MYHRE ENLOW
County Clerk, Thurston County, State of Washington
[Signature] Deputy