

IN THE KING COUNTY DISTRICT COURT - WEST DIVISION
STATE OF WASHINGTON - SEATTLE COURTHOUSE

GLENN HAGELE - "COUNCIL)
FOR REFRACTIVE SURGERY)
QUALITY ASSURANCE")
)
Plaintiff,)
)
v.)
)
BRENT HANSON)
)
Defendant)
_____)

SMALL CLAIM NO. 85-11924

DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE
GRANTED

DATE: February 12, 2009
TIME: 1:30 p.m.
ROOM: E-326

Defendant, Brent Hanson, moves to dismiss the Plaintiff's claim on the ground that it fails to state a claim upon which relief can be granted. The only stated basis for and measure of the Plaintiff's claim is for his costs associated with a prior arbitration proceeding in which no award for costs or fees was granted. Because this is not a claim that is recognized under Washington law, it should be dismissed.

In December 2007 and October 2008, the Plaintiff, Glenn Hagele, filed two Uniform Domain-name Resolution Policy (UDRP) proceedings with the National Arbitration Forum (NAF). All domain name registrants and registrars in the United States are required to consent to the UDRP arbitration procedure and associated rules. The UDRP provides a means for the owner of a trademark to recover a domain name or URL registered by another under certain proscribed circumstances. A UDRP proceeding must be submitted for arbitration to either the World Intellectual Property Organization (WIPO) or the NAF. Under UDRP rules, the arbitration panel can either deny the claim or order transfer/cancellation of the domain name. No

other remedy, such as damages, is available. In the arbitrations brought by the Glenn Hagele against Brent Hanson, the NAF ordered the domain names transferred. The UDRP does not allow an award of costs or attorney's fees to a prevailing party.

Congress has created a federal cause of action under the Anticybersquatting Act, 15 U.S.C. § 1125 (d), which provides an alternative means for recovering domain names and which allows, in certain circumstances, for the recovery of damages, costs, and/or attorney's fees. *See* 15 U.S.C. § 1117(a). The Plaintiff did not choose to use the federal courts and this federal law does not, in any event, deem a litigant's costs to be a measure of damages that could be recovered in such a case or in a separate action in state court.

United States and Washington courts generally follow the "American rule" in which litigants bear their own costs and fees. Moreover, Washington law does not recognize a litigant's costs or attorney's fees as an appropriate measure of damages, in the absence of a contract, statute, or recognized ground in equity. *Seattle School District No. 1 v. The State of Washington*, 90 Wn.2d 476, 540 (1978). Thus, a litigant, even if deemed the "prevailing party" in a case, cannot later sue in a separate action or forum solely for the recovery of his costs or fees which were not, or could not be awarded in the first action or forum. The same rule applies when the first action is an arbitration proceeding. *Dayton v. Farmers Insurance Group*, 124 Wn.2d 277 (1994). For a court to make an award of costs and fees not awarded in a prior arbitration proceeding or costs and fees for seeking an entry of the arbitration judgment is to exceed its authority under Washington law. *Id.* at 280.

Accordingly, this Court has no authority to grant an award of the Plaintiff's costs and fees from a prior arbitration proceeding in which the Plaintiff was not given such an award. Thus, the

Plaintiff has not stated a claim for which this Court can grant relief and the case must be dismissed.

Submitted this 1st day of February 2009.

Brent Hanson

Brent Hanson

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