



**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A10-1041**

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**Tim Collins,**

**Appellant,**

**vs.**

**Waconia Dodge, Inc.,**

**Respondent.**

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**APPELLANT'S BRIEF AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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**TABLE OF AUTHORITIES**

Empire Fire and Marine Insurance Co. v. Carlson, 476 N.W.2d 666

Uselman v. Uselman, 464 N.W.2d 130 (Minn. 1990)

## STATEMENT OF THE ISSUES

I. Did the district court err by awarding sanctions against Appellant after he survived summary judgment on his primary claims.

Most Apposite Cases:

Uselman v. Uselman, 464 N.W.2d 130 (Minn. 1990)

Empire Fire and Marine Insurance Co. v. Carlson, 476 N.W.2d 666 (Minn. App. 1991)

### **STATEMENT OF THE CASE**

This is an appeal of the order of the Honorable Phillip T. Kanning of Dakota County District Court awarding sanctions against Appellant after trial on the merits of his case. The district court awarded sanction despite the fact that Appellant survived summary judgment. Under Minnesota law, this was error.

### **STATEMENT OF THE FACTS**

In February 2008 Appellant initiated a lawsuit against Respondent alleging that Respondent failed to pay Appellant for work performed. (See Complaint) Attached to Appellant's Complaint was an invoice setting forth the work performed and his agreed upon rate of pay. Plaintiff alleged breach of contract and violation of Minn. Stat. Section 181.13 (failure to pay wages upon demand).

On July 17, 2008 defendant moved for summary judgment. By Order dated July 24, 2008 the district court denied Respondents motion. (A.1-A.9) A trial on the merits was held on February 23, 2009 and April 29, 2009. After trial, the district court dismissed plaintiff's claims and granted Respondent's motion for sanctions. The district court ultimately sanctioned Appellant \$15,000 and this appeal followed.

### **ARGUMENT**

In Uselman v. Uselman, 464 N.W.2d 130 (Minn. 1990) the Minnesota Supreme Court held that "[a] party who survives these motions [for summary judgment] with the major claims intact should not be subject to sanctions after trial predicated on these

surviving claims. Id. at 144. In Empire Fire and Marine Insurance Co., 476 N.W.2d 666

(Minn. App. 1991), the court cited Uselman and held:

Furthermore, in a pretrial order, the trial court determined that there was an issue for jury determination. A party who survives summary judgment should not be subject to sanctions after trial on the surviving claims. Uselman, 464 N.W.2d at 144.

Id. at 670.

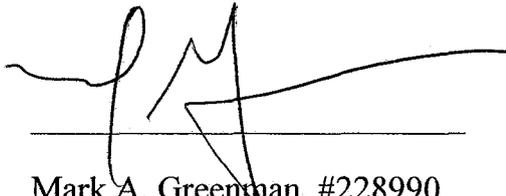
Based on the precedent of the Minnesota Supreme Court, the district court erred in imposing sanctions against Appellant because he previously survived Respondent's motion for summary judgment and the award of sanctions should be reversed.

### CONCLUSION

Based on the authority cited and the arguments presented herein, Appellant respectfully requests that the Order of the district court awarding sanctions be reversed.

Dated: July 12, 2010

LAW OFFICE OF MARK A. GREENMAN

A handwritten signature in black ink, appearing to be 'MAG', written over a horizontal line.

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**CERTIFICATE OF COMPLIANCE WITH WORD COUNT  
REQUIREMENTS**

1. This brief complies with the type-volume limitations of Minn. R. App. P. 132.01, subd. 3 because it contains 470 words; and
2. This brief complies with the typeface requirements and the type style requirements of Minn. R. App. 132.01, subd. 1 because this brief has been prepared in proportionally spaced typeface using Microsoft Word version 2003 in a size 13 Times New Roman style font.

Dated: July 12, 2010

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Mark A. Greenman