COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

47188-4-II

DANIEL and MAUREEN KRULL,

Plaintiff/Respondent

v.

AIKO LAWSON,

Defendant/Appellant

BRIEF OF APPELLANT(revised 3-16-2015)

Appeal from Judgment 14-2-03485-1
of the Superior Court of Clark County
dated December 26th, 2014
The Honorable Judge Gregerson

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I. Introduction

This appeal is from a final judgment for the landlords, Daniel and Maureen Krull, in an unlawful detainer action pertaining to a privately owned home. The tenant contends that the superior court lacked jurisdiction over the case due to improper service of the summons, that the amended lease that led to misunderstanding on what had been paid should have been rescinded and that the superior court erred in siding with the landlord without evidence supporting their motion.

II. Assignments of Error

1) The Superior Court erred in not dismissing the unlawful detainer action based on improper notice and service as stated under RCW 59.12.040, RCW 59.12.030 and RCW 4.28.080(15)(16).
2) The Trial Court erred in finding for the plaintiff based on verbal statement rather than on evidentiary documentation (failure to establish facts).
3) The Trial Court erred in not rescinding the addendum to lease agreement as there were obvious changes to the document from the time Ms. Lawson signed it and it was entered as evidence to the court.

4) The Trail Court erred in awarding rent, filing fees and attorney fees to Mr. Krull in Unlawful Detainer case based solely on the verbal testimony and gave no consideration or weight to the documentation/ bank records presented by Ms. Lawson supporting her assertion that she was not late on paying the rent (failure to establish facts).

Issues Pertaining to Assignments of Error

-Whether the trial court abused its discretion in retaining jurisdiction of the case even though it was noted and acknowledged by the plaintiff's attorney that the ten day notice had not expired when they filed an unlawful detainer action and both the three day and ten day notice contained 'notice' of the alleged default in rent?

-Whether the trial court abused its discretion by not holding the plaintiff to RCW 59.12.030 which states proper notice must be served and mature prior to an unlawful detainer being pursued even though the court and Mr. Krull's attorney noted such had occurred and the trial court proceeded with jurisdiction of the case?

-Whether the trial court abused its discretion in not holding the plaintiff to the proper service of the summons per RCW 4.28.080 (15)(16) and RCW 59.12.040 even though Ms. Lawson brought up the improper service in court and it was shown as improper by the Return of Service filed by the Plaintiff's attorney?

-Whether the trial court abused its discretion by not acknowledging that the addendum to the lease being presented

as a legally binding and notarized document should require it be held to the requirements of such per RCW 42.44 and WAC 308-30-155 regardless of whether it needed to be notarized?

-Whether the trial court abused its discretion by not rescinding this addendum regardless of the issue of notarization because there was prima facie evidence it had been altered between the time Ms. Lawson signed it and it was presented as evidence?

-Whether the trial court abused its discretion by taking Mr. Krull's word as 'proof' that Ms. Lawson was deficient in her payment toward the rent without considering the lack of receipts, bank statements, etc. being presented by Mr. Krull whereas Ms. Lawson had provided such in her filings?

- Whether the trial court abused its discretion by finding a judgment for deficient rent and attorney/filing fees in favor of Mr. Krull without supporting evidence to actually support his assertion that Ms. Lawson was deficient in payments toward her rent?

III. Statement of the Case

In March of 2014, Ms. Lawson met with and agreed to rent the Krull's home effective April 15th, 2014. RP page 9 lines 13-14. CP 9 first paragraph. Court Exhibit 1.

On April 15th, 2014, the Krull's still had significant amount of items in the garage, the back yard and storage area which did not enable Ms. Lawson to move in on that date. Although she asked, Mr. Krull refused to allow her a refund of any of her monies even though she asked to be refunded the rent from April 15th-April 18th since the Krull's inability to fully vacate the premises meant Ms. Lawson could not move in until April 19th, 2014. She paid the rent from April 15th, 2014 thru May 9th, 2014 along with $1,250 security deposit and $300 dog deposit. She later received a water bill for the time the Krull's still resided in the residence but Mr. Krull also refused to pay this. CP 29-38, Court Exhibit 4.

On May 15th, 2014, Ms. Lawson had still not received the funds she had expected to receive by that date. Contact with the party involved showed this had been mailed on the 15th and was

expected to be delivered in the mail any day. Ms. Lawson tried to work out with Mr. Krull paying the rent one or two days past the grace period but he engaged instead in multiple threats and obscenities. She tried to pay the rent on the 15th, which was the last day of her grace period (rent being due on 10th with five day grace period) by obtaining a payday loan while awaiting her funds but Mr. Krull refused to accept her rent unless she signed a new lease agreement. He repeatedly refused to accept her rent using obscenities and threats, stating he would reject it and start eviction proceedings unless she agreed to a new lease agreement that moved up the rent due date from the 10th of each month to the first of each month with significant additional late fees. Judge Gregerson's courtroom did accept partial transcripts of the threats and refusal to accept rent and obscenities presented by Mr. Krull. The threats included 'blacklisting her with every rental agency in Vancouver' and making sure 'her and her son were left homeless' unless she signed this addendum. Signing this addendum required that Ms. Lawson pay the June rent ten days early (one pay period) and since Ms. Lawson had not budgeted to come up with $800 ten days earlier than planned she had to take out a payday loan. She was now behind financially one pay period and told Mr. Krull she

would be late constantly if he forced her to change the lease terms. He refused to accept her rent, threatened her repeatedly to the point where she feared that her son and her would be homeless. She reluctantly agreed to sign this addendum. Mr. Krull's attorney's office then altered this addendum after Ms. Lawson had signed it by adding a paragraph and notary stamp to make it appear that this signature was notarized which it was not and that this document was a binding and notarized document. CP 29-38, Court Exhibit 4, CP 57 lines 24-25, CP 60 lines 12-28.

On December 4th, 2014, Mr. Krull posted a 3-day notice (stating December rent was overdue) and also a 10-day notice also stating rent was overdue (repeat of what was on 3-day notice) and also added that Ms. Lawson was also in violation of the lease due to extra dogs (two extra dogs the Appellant had temporarily on the premises when their owner had to suddenly leave the country for a family emergency). These two dogs were gone by December 6th, 2014 and Ms. Lawson contacted Mr. Krull and told him so. She also stated that she had gone back through her records of payments and felt she not only had paid through December but in fact had paid enough over each month to have paid through February 2015.

RP page 3 lines 4-7. Mr. Krull did not acknowledge this voice mail and subsequent text. On December 9th, 2014, Ms. Lawson's minor (17 years old) son was physically served with Eviction Summons packet in the driveway of their home as he was returning from High School. The individual serving these papers did not inquire as to my son's name or age. This packet was not posted on the premises nor mailed to Ms. Lawson. Ms. Lawson did not receive this packet from her son (he forgot) until late December 11th as she had been in the hospital due to her medical condition. CP 39-41and she responded on December 17th, 2014. CP 24 lines 14-15.

Ms. Lawson had been paying into the Plaintiffs' bank account over the amount of rent due and calculated that she had paid not only through December but also January's rent and had overpaid based on what the Plaintiff had told her was due versus what was actually due for the rent amount. He also refused to accept money orders, cashier checks or checks and said the deposits must be in cash but provided no receipts other than what the bank gave Ms. Lawson. CP 25 lines 22-28 and 26 line 1.

On December 19th, 2014, the parties went to court but Judge Gregerson set the case aside for trial on December 26th, 2014 due to Ms. Lawson's response that her rent had been paid and the addendum also was obtained under duress. RP page 3. It also was brought up by the court that a ten day notice was served on December 4th but the Attorney filed a Complaint for Unlawful Detainer on December 9th based on this ten day notice and served on a minor. The only response by the judge who had questioned the ten day notice being filed against at the end of four days not ten was 'okay' and when Ms. Lawson brought up the service being on a minor, the judge's response was 'all right'. RP page 5 lines 7-15 page 5 lines 18-19.

Ms. Lawson also brought up that during the time she felt she was forced via threats and obscenities to sign the Lease addendum she was going through medical issues and in a weakened state (she filed proof of this in her response also) and offered to get the text messages from the Respondent to her cell phone authenticated. Both the judge and the Respondent's attorney said this was not necessary and they would accept the transcripts of the texts sent by the Respondent to the Appellant regarding this addendum. She had her cell phones and memory cards ready to offer into evidence

if necessary to validate these texts. The judge said the texts would be admissible and he was giving Ms. Lawson the benefit of the doubt for the upcoming hearing. RP page 7 and 8 lines 1-4.

On December 26th, 2014, the Appellant and her minor son were present in the court room and Ms. Lawson's son's testimony was refused by the judge and Respondent. The Respondents repeatedly stated that their bank statements showed that Ms. Lawson was deficient in her payment for December but refused to show either the judge or Ms. Lawson, any actual documentation or copies of these so called bank statements. The Respondent also denied ever threatening Ms. Lawson or using obscenities above an occasional minor epithet and also testified that never were any of these minor obscenities directed toward the Appellant. Ms. Lawson asked him if he had ever used the f word toward her and the Respondent denied doing this or threatening her in any manner even when she showed copies of his texts to her. The Respondent and his attorney tried now to prevent the introduction of the transcripts of these texts to be introduced into evidence even though a week prior they had deferred on getting these texts authenticated. The courts did allow copies of this partial transcript of the texts to be entered into

evidence. Ms. Lawson presented and filed with the court receipts showing she had paid over $2,800 in rent beyond that what was due after November. These receipts showed that she had paid through January 2015 and ten days into February 2015. Mr. Krull stated his bank statements did not agree with these receipts but did not present any receipts of his own or these bank statements. He also stated he had no proof the dogs were ever removed from the premises even though Ms. Lawson had left both voice mails and text messages with the Krulls stating the dogs had been removed immediately. Although the Respondents only had their word and the Respondent had proof (receipts), Judge Gregerson found for the Respondents, awarding judgment for the December rent along with filing and attorney fees and for a writ of restitution to be issued for eviction to proceed. RP page 32 lines 14-24, page 33 lines 1-10, page 51 lines 8-11, page 55 lines 13-18, page 59 line 24, page 60 lines 2-8 and page 73 lines 13-25, CP 57 lines 13-14.

IV. Argument and Authorities

A) **Standard of Review and Jurisdiction**.

Ms. Lawson contends the superior court erred by not dismissing the unlawful detainer action for lack of jurisdiction because the Respondents failed to comply with the service of process requirements. The judge questioned this and was given that there was improper service but did nothing about it. RP page 5 lines 7-15 and served on a minor RP page 5 line 18. The only individuals residing in the residence were Ms. Lawson and her minor son. CP page 8, Clause 3. Verification of improper service CP 50 (ten day notice which repeated what was on the three day notice and added violation because of extra dogs) dated December 4th, 2014, CP 53 lines 2-5 and CP 1 (Eviction Summons) dated December 9th, 2014. "Any party who has not received proper notice is "entitled as a matter of right" to have any resulting judgment vacated. " To obtain unlawful detainer jurisdiction, a plaintiff-landlord must prove that the defendant-tenant was properly served with a statutory unlawful detainer summons. " Markland v. Wheeldon, 29 Wash.App. 517, 522, 629 P.2d 921 (1981); Kelly v. Schorzman, 3 Wash.App. 908, 912-13, 478 P.2d 769 (1970).

Compliance is jurisdictional. Housing Resource Group v. Price, 92 Wash.App. 394, 401, 958 P.2d 327 (1998), review denied, 137 Wash.2d 1010, 978 P.2d 1099 (1999). *Canterwood Place, LP v. Thande,* 106 Wn. App.844;25P.3d 495 (2001) P. 24

B) Residential Unlawful Detainer Actions in Washington

1. Served on minor and did not follow RCW 4.28.080 (15) (16), 59.18.365, RCW 59.18.055 and RCW 59.12.040 and RCW 59.12.070. Was not mailed nor posted nor faxed or emailed. It also contained a ten day notice dated December 4th which specifically addressed the rent along with two extra dogs on the premises but which only allowed four days of notice prior to service, RCW 59.12.040, RP page 5 lines 7-15 and line 18 and CP 16, CP 50, CP 53. CP 53 lines 2-5 stated they served the Unlawful Detainer Papers on an individual whose name is 'Sam' and who said they were the Appellant's roommate. They put this as both the personal and substitute service. This individual was a minor, is not named Sam and is not the Appellant's roommate and was outside of the residence when served so no proof of residency obtained. As stated in the Lease agreement, the only occupants of the property were

Ms. Lawson and her minor son. RP page 5 line 18 and CP 8 Clause 3. "Service of process requirements are strictly construed and enforced to protect defendant's due process rights" *Hastings v. Grooters*, 144 Wn. App. 121, 131, 182, P.3d 447 (2008)

RCW 59.18.055 and RCW 4.28.080 (15) (16) states there are only four ways for an Unlawful detainer summons to be properly served and if it is not served to the Defendant directly then it needs to be also mailed in conjunction with service upon another individual living in the residence who is of legal age. This summons was not mailed nor otherwise served on the Defendant. CP 53 lines 2-5 and the only residents of the premises were Ms. Lawson and her minor son.

2. Ms. Lawson also had informed the Krulls that the dogs in question had been removed within two days and there was no damage from the dogs. These dogs were in her temporary care when their owner had to leave the country for a family emergency. RCW 59.12.030. CP 7 and 8. Per RCW

59.12.030 (4), the opportunity to cure a violation must be given. The dogs were removed within two days and a text was sent with read/receipt attached showing it had been opened at least three times by Daniel Krull. A phone message was also left. However, in court Daniel Krull stated he had no knowledge if the dogs had been removed or not and also stated they were two big dogs. One dog weighed less than twenty pounds, the other less than fifty. Neither would be considered as large or big dogs. RP page 26 lines 20. They also were not visible from the street which meant Daniel Krull had to have gone along the side of the house to the backyard in order to see the dogs.

3. Daniel Krull put in his Lease Agreement that he would only accept payments directly given to him in person or directly into his bank account at Bank of America, 4th Plain Location CP 3 Exhibit A. Several times due to Ms. Lawson's health, she asked if she could mail it to Mr. Krull. He stated she either had to drive it to his location or to his bank and would not accept it otherwise. At no time did she ever receive a receipt from Mr. Krull per RCW 59.18.063 though she did file with the court receipts for the bank deposits that she had

made; CP 10 attachment. At no time did the Krulls produce any bank statements or receipts to refute Ms. Lawson's argument that she was not current in her rent. RP page 32 lines 14-24, page 33 lines 1-10 and page 51 lines 8-11 page 55 lines 13-18 page 59 line 24 and page 60 lines 2-8. Mr. Krull stated he had in the court room his bank statements from July and August 2014 showing the payments Ms. Lawson had made RP 32 lines 22-23. Based on his testimony, RP 24 lines 20-22, he stated he did not collect any late fees those months but said she was late. Mr. Krull stated he only charged her a late fee starting in September, RP 24 lines 20-24, RP 32 lines 22-23. Yet, he stated that these late fees (only charged for two months) totaled $1,395, which based on the addendum equates to being late each of those two months for a total of 32 days late each month which is not possible as each month had less than 31 days each. RP 60 lines 7-8. At no point did he ever introduce into evidence any bank statements or receipts though he repeatedly referred to such. RP page 32 lines 18-24 and page 51 lines 8-11, RP page 59 line 24, 60 lines 2-8 and CP 44-47.

He also went on the stand and said statements that Ms. Lawson had lied repeatedly and been repeatedly late on her rent. RP Pages 24-25 but his attorney himself said there had never been any issues with the payment of the rent other than the dispute over rent being paid in May (leading to the addendum) and December and in fact stated that the parties had been operating in accord with the addendum. RP page 10 lines 6-9. "The burden is upon the plaintiff in an unlawful detainer action to prove, by a preponderance of the evidence, the right to possession." *Duprey v. Donahoe* , 52 Wn.2d 129 , 135, 323 P.2d 903 (1958). RP page 32 line 24, 33 lines 2-10.

Legality of Agreements.

1. Ms. Lawson contends the superior court erred by not rescinding the addendum to the lease agreement. The superior court ruled that Ms. Lawson signing the addendum did not fit the legal definition of duress. It fits not only the criteria of duress but also the criteria for coercion. RCW 9A.04.110 states that coercion is any type of threats, intended harm or stress put upon a person in order to get them to perform an act they would not normally perform would be

considered duress. The actions of the respondent also coincide with the legal definition of harassment under RCW 9A.46.020 where a person is guilty of harassment if the person knowingly threatens to maliciously to do any act which is intended to substantially harm the person threatened or another with respect to her physical or mental health or safety and the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication (RCW 9A.46.020 section1 subsections a, iii, iv, and b). Having just got out of an abusive relationship, Ms. Lawson feared for herself and her son. Mr. Krull denied using obscenities toward Ms. Lawson or threatening her in any way. RP 34 -35 and CP 7 page 1 lines 19,20 and Attachment C, 8 page 1 lines 10,11. A contract is not validly signed unless it is signed by each participant's own accord and own free will. Duress is also proven by the threats, actions and obscenities used by Mr. Krull in order to obtain Ms. Lawson's signature. Ms. Lawson feared having an unlawful detainer on her record (outside of

her abusive relationship), did not have the funds to obtain another residence (no funds for another deposit) and feared Mr. Krull and his threats would become a reality as neighbors have warned her after she moved in about his temper and motorcycle gang affiliation.

Respondent in the Unlawful Detainer under oath stated he had never threatened nor used obscenities toward the Appellant but transcripts were accepted by the judge as true copies of the texts sent by the Appellant showing Respondent did indeed commit such acts RP page 48 lines 6-8 and page 50 lines 5-7, Court Evidence 4 and CP 29-38. These actions by the respondent occurred during the terms of their lease agreement (grace period) but due to his actions, resulted in continuing past this grace period (refusal to accept rent payment and continuing threats and obscenities). The Trial Court Judge stated Respondent had the right to ensure payment of the rent in May RP page 71 lines 6-9 and lines 13-17. There was however no negotiation on the part of Mr. Krull . Appellant had offered to pay the rent in May during the grace period RP page 49 lines 19-22 and CP 29-38. Mr.

Krull was not in danger of not getting the rent and yet he refused to accept the rent and used threats and obscenities to intimidate unless she signed this addendum. RP page 36 lines 22-24 and page 37 lines 1-4 and CP 29-38, Court Evidence 4. The Respondent answered under oath that he had never threatened or used the 'f' word toward the Appellant. However, the Judge took as evidence and truth, the transcripts of the partial texts between the Respondent and Appellant showing that the Respondent did indeed threaten the Appellant's mental well-being as well as used profanities numerous times including several times using the 'f' word. The Judge himself stated he found the texts to be disgusting. RP page 70 lines 14-21.

2. If a business affixes notarized stamps to a document then it is to be assumed that for all intents and purposes the business is presenting this document as a notarized and legally binding document falling under the statutes for the notarization under RCW 42.44 and WAC 308-30-155. If a company has a document which requires signatures from several different individuals there should be no change to the document

between the time of the signatures. Any deviation or violation of the statutes regarding such notarization deems the document as invalid and not legally binding. *Wilson Court Limited Partnership v. Tony Maroni's , Inc.* 64766-6 March 14, 1998 decision. Ms. Lawson signed this addendum under duress and coercion based on the threats by Mr. Krull. After she signed it she asked for a copy. The copy signed and notarized later by the Attorney's office had additional wording placed on page 1 of the addendum which was not present on the copy Ms. Lawson received after signing it (prior to Mr. Krull signing it and the notary stamps being affixed). *" NOW, THREFORE(sic) for and in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agrees as follows, intending their agreement to be made under seal:".* At no time did the person in the office with Ms. Lawson ask for any identification, tell Ms. Lawson the document was being notarized, nor did Ms. Lawson know this individual or was Mr. Krull present at the time to attest to her identity. She never received a copy of the addendum

signed by both parties herself until she asked Mr. Krull later for a copy months later. Later when reviewing this addendum after the unlawful detainer action had commenced, Ms. Lawson noted this additional paragraph which had been added along with the fact that the attorney's office had affixed a notary seal to the addendum after the fact (after the Respondent signed the addendum two days after the Appellant) even though Ms. Lawson never signed this document under notarization and definitely not under her free will. The Statutes behind Notarizing a signature state that in order for a signature to be notorized several criteria needs to be met; either the individual is personally known to the notary or provides proper identification or an individual is present at the time of the signing who will attest to the signer's identity. The individual whose signature is being notarized also must be aware that this is occurring. The notary whose stamp was affixed (Joyce Gentry) to the amended lease agreement affixed this stamp two days after the signature, did not know the Appellant at that time, did not place this stamp until two days after the signing and did not inform the Appellant that her signature was being notarized

nor ask for any identification. There were two days between the time Ms. Lawson signed the amendment and then Daniel Krull at which time both notary stamps were placed (though the stamp asserting notarization of Ms. Lawson's signature was back-dated even though stamped two days later). Although the judge stated that an amendment to a lease did not need to be notarized, the fact is that it was done with obvious clear intent to make it appear legally notarized/binding. It is also believed by the Appellant that this addition of the above paragraph and notary stamp were done to make it appear that the document was signed by mutual agreement between the parties with no undue influence or coercion which per CP 29-38 it was only signed because of threats. As the obvious intent was to show it as legally notarized/binding and it did not fit the criteria necessary for a notarized document, it must per law be considered invalid especially as it was altered AFTER Ms. Lawson had signed it but before presenting as evidence to the court. RP page 50 lines 9-25 and page 51 lines 2-6 CP 56-61 and Court Exhibit 4. RCW 42.44 and WAC 308-30-155. The judge also stated Mr. Krull was within his legal rights to

obtain the rent within the lease agreement terms, RP 71 lines 12-13 however, Ms. Lawson per her testimony and filings was willing to pay Mr. Krull within the grace period of their original lease agreement and he refused to accept the payment unless she signed an addendum. "Rejection of rent tender does not constitute being deficient in payment of the rent " *Housing Authority of Grant County, Appellant, v. Lynn NEWBIGGING*, Respondent 19175-3-III (2001).

Washington laws for notaries may be vague in regards to some of the duties other than affirming identification (which in the case of the addendum was not done). However, the American Society of Notaries, which is the benchmark association for notaries, considers what has been addressed as 'prohibited' notarial acts: 1) A notary cannot officiate if the document contains missing pages or blanks that should be complete at the time of notarization. 2) A notary cannot proceed with notarization if the signer cannot be positively identified through personal knowledge or satisfactory evidence of identification.3) A notary cannot post-date a notarial certificate 4) A notary cannot proceed if the required

notarial act is not indicated by the document, the signer or someone connected to the document (this added paragraph made it appear that Ms. Lawson was aware the document would be notarized but this paragraph was not present when she signed the document. The copy she received after signing it, the number written in for the date (the 30th) is slightly different and there is the added paragraph and notarization that are not present on her copy. This is different then what was presented to the court as a true and accurate copy of the one she signed. 5) A notary cannot officiate if the document contains missing pages or blanks that should be complete at the time of notarization. (this is to prevent the addition of words that may not have been present when the document is signed such as occurred in this instance). 6) A notary may not alter a notarial certificate after the notarial act is complete. 'Notarized agreements are legally binding when they have been properly executed and have supporting evidence as to the intent and nature of the matter without any changes to the document between the time it is signed and it is notarized. The notarization should occur immediately after

it is signed.' Reference: www.asnnotary.org/?form-prohibitedacts

C) Rulings should be based on Evidence not Speculation or Heresay

The Court is mandated by law to consider the evidence presented in a trial. The Judgment was made solely based on the verbal account/word of the Respondent and the filings/evidence presented by Appellant was disregarded. The only documents entered into the court as evidence were the Unlawful Detainer papers, the lease and addendum to the lease, Court Exhibits 1-3. Although the respondent per his testimony, supposedly had gone over his bank statements in great detail, he did not present any of these bank statements to the court either in filed form or as evidence even though he had an extra week to produce these records after Ms. Lawson filed her paperwork showing she disputed what was owed. He also referenced that he had some of the bank statements there in court with him but did not admit them into evidence though Ms. Lawson repeatedly asked for such to be produced. RP page 32 lines 18-24 and page 51 lines 8-11, RP page 59 line 24, 60 lines 2-8 and CP 44-47.

Washington Imaging Services, LLC v Washington State Dept. of Revenue; Univ. of Wash. Med. Ctr v. Wash. Department of Health; Progressive Animal Welfare Soc. V. Univ of Wash; Biggs v. Vail; Truly v. Hueft; Hartson v. Goodwin ("Unlawful detainer statutes are in derogation of the common law, and we strictly construe them in favor of the tenant."). RCW 59.18.380 states "If it appears to the court that there is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper." If a writ of restitution is issued on insufficient and incompetent evidence (or no evidence only speculation or heresay)...the court reverse the writ... *Hous. Auth.of City of Pasco v. Pleas*ant 385 126 Wn. App. 382. .The only items presented as evidence to the court by Mr. Krull to support his unlawful detainer action were the lease agreement, the addendum to the lease agreement and the notices (3 day and 10 day) which were introduced into the court as Exhibits 1-3.

There were no items presented as evidence or filed that showed any receipts or bank statements to support Mr. Krull's allegation that Ms. Lawson had not paid December 2014's rent. Ms. Lawson however, did file as evidence with the court her bank receipts as CP 45-47 and Court Exhibit 4.

Washington Courts RAP Rule 9.11 Additional Evidence on Review states clearly that additional evidence on the merits of the case must meet six criteria before the trial court will order the taking of new evidence. This case was originally scheduled for December 19th, 2014 and rescheduled for December 26th, 2014 allowing over a week for the Plaintiffs/Respondents to prepare any rebuttal to the Defendant/Appellants filings. RAP 9.11 Criteria 3 states that in order to accept new evidence it must be equitable to excuse a party's failure to present the evidence at the trial court. There is no reasonable excuse for this evidence not to have been produced especially as Mr. Krull's testimony repeatedly referred to such 'proof' and the fact that he had reviewed all of his bank statements in coming up with his argument that Ms. Lawson was deficient in paying her rent. RP page 32 lines 18-24 and page 51 lines 8-11, RP page 59 line 24,

60 lines 2-8 and CP 44-47. The original judge ruled in its absence without requiring any additional evidence to be produced by the plaintiffs to support their motion. Thus it is in no way equitable to excuse.

E. **Judgments**

The court is mandated to examine the pleadings and the evidence before it to ascertain what material facts exist and which need to be examined further. At no point did the moving party actually bring any proof that the Defendant was deficient in her rent yet the court pronounced a judgment. RP page 32 lines 18-24 and page 51 lines 8-11, RP page 59 line 24, 60 lines 2-8 and CP 44-47. RP page 33 lines 2-9. "We consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party." Wood v. Battle Ground Sch. Dist., 107 Wash.App. 550, 557, 27 P.3d 1208 (2001). "The nonmoving party may not rely on speculation or argumentative assertions that unresolved factual issues remain." Retired Pub. Employees Council of Wash. v.

Charles, 148 Wash.2d 602, 612, 62 P.3d 470 (2003). "Judgment is not proper if reasonable minds could draw different conclusions

from undisputed facts or if all of the facts necessary to determine the issues are not present." Ward v. Coldwell Banker/San Juan Props., Inc., 74 Wash.App. 157, 161, 872 P.2d 69, review denied, 125 Wash.2d 1006, 886 P.2d (1994).Ms. Lawson repeatedly brought up her bank receipts from depositing her rent into Mr. Krull's account CP 44-47 and RP 51 lines 8-11 and these were admitted to the court as part of Exhibit 4. "Judgment cannot be made on testimony alone without evidence to support it" *Dunlap v. Wayne* , 105 Wn.2d 529 , 535, 716 P.2d 842 (1986) "Findings of fact should be reviewed for "substantial evidence"; *Ranier View Court Homeowners Ass'n Inc v. Zenker*, 157 Wn.App. 710,719, 238 P.3d 1217 (2010)

VI Conclusion

Ms. Lawson requests that the previous court case be reversed and the judgment voided. She requests reversal of all judgment costs. She asks that she be awarded all costs associated with having to move prior to her lease expiring as well as moving/storage fees and also all costs associated with the Appeal process.

Signed on March 16th, 2015 Aiko Lawson

Aiko Lawson Pro Se 360-448-9858

COURT OF APPEALS DISTRICT II COURT OF WASHINGTON

Aiko Lawson, Appellant (s), vs. Daniel and Maureen Krull, Respondent(s).	No. 47188-4-II CERTIFICATE OF SERVICE of Appellant's Brief (revised 3-16-2015)

CERTIFICATE OF SERVICE

I, Matthew Christy, certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

1. I am not a party to the above-entitled action or interested therein.
2. I am a resident of the State of Washington and over the age of 18 years, and I am otherwise competent in all ways to be a witness herein.
3. I served the following:
   a) Brief of Appellant (revised 3-16-2015)
4. The papers were served to the following individual at their workplace by leaving a copy directly with the receptionist:

   Attorney Robert E. L. Bennett 1614 Washington Vancouver, WA 98660.

5. The papers were also mailed to the court of Appeals by placing the original and a copy in a manila envelope, paying postage on such and leaving it at the post office on this date addressed to:

Case Manager: Cheryl
Washington State Court of Appeals Division II
950 Broadway, Suite 300
Tacoma, Washington 98402-4454

6. Completion of this service was as of end of the business day on March 19th, 2015.

DATED at Vancouver, Washington, this 19th day of March, 2015.