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COURT OF APPEALS OF THE STATE OF  
WASHINGTON

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Dwayne Des Longchamps,

Appellant,

v.

Lydia Davis,

Respondent.

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FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
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REPLY BRIEF OF APPELLANT  
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## **I. INTRODUCTION**

The Tenant addresses seriatim the arguments raised in respondent Landlord's brief.

## **II. RESPONSE TO ARGUMENTS RAISED BY RESPONDENT**

### **A. Response to the Landlord's Statement of Case (RB 3-6).**

While the points addressed below should not affect the legal result in this case, the Tenant wants to avoid misunderstandings, so submits the following clarifications to the Landlord's statement of the case:

The Landlord is not "an elderly woman in her eighties" as claimed by the Landlord (RB 3). There is no citation to the record to support such statement, and the Tenant does not believe she is anywhere close to her eighties.

Tenant's counsel did not turn off his cell phone after speaking with the Landlord's counsel (RB 6). This statement is based on a reference to CP 117, ¶ 21 and CP 124, which is a declaration of Ivan Loeffler, the Landlord's counsel. The Tenant's counsel might not have heard a ring because he was otherwise engaged, but Tenant's counsel rarely turns off his cell phone (usually only in court, and sometimes not even then). But even if Tenant's

counsel had turned off his cell phone, the phone will still accept a message, and anyone calling can still leave a message which can be retrieved when the phone is turned back on. Landlord's counsel inexplicably fails to state why on Friday afternoon he did not just leave a voice mail on Tenant's counsel's telephone regarding the Monday morning hearing, if the former received no answer to the ring.

The Tenant's RV was not parked in the driveway of the premises (RB 3), but off the driveway adjacent to an outbuilding.

The Tenant did not "verbally and physically" assault residents of the premises and harass the Landlord (RB 3). The citation is to CP 48-59, part of which are police incident reports attached to the Landlord's trial brief (CP 37-59). The Tenant disputes the officers' recitations of the events described in the reports, and points out that he was never charged with any criminal offense relating to these reports. The matters contained in the incident reports were never proved, and were irrelevant to the issues raised in the Landlord's unlawful detainer action.

**B. The Standard of Review is De Novo, Not Abuse of Discretion (RB 7-9).**

The landlord claims that the standard of review in the present case is

abuse of discretion, “since the trial court enforced the stipulation’s terms,” citing *Morris v. Maks*, 69 Wn. App. 865, 868, 850 P.2d 1357 (1993). RB at 8. This argument is without merit.

First, *Morris* has little application to this case, as in *Morris* the parties disputed that a settlement contract had come into existence. The matter was brought before the trial court, with both sides presenting their respective interpretations, and the court of appeals held that the trial court’s decision enforcing a settlement agreement was reviewed under the abuse of discretion standard. 69 Wn. App. at 868.

In the present case, however, there is no dispute about whether a settlement agreement was reached. RB 10. Neither party argues that there was no settlement. The dispute in the present case is about whether the language *24 hours faxed prior notice* appearing after reference to the issuance of a writ of restitution and judgment required the Landlord to actually provide such 24 hours’ faxed prior notice before the Landlord could obtain the issuance of the writ and judgment.

Second, discretion involves a weighing of competing points of view. *John Doe v. Blood Center*, 117 Wn.2d 772, 780, 783, 819 P.2d 370 (1991) (exercise of discretion involves identifying and weighing “the respective

interests of the parties in litigation”); *State of Washington ex. rel. Clark v. Hogan*, 49 Wn.2d 457, 462, 303 P.2d 290 (1956) (“Although it cannot be defined by a hard and fast rule, [judicial discretion] means a sound judgment which is not exercised arbitrarily, but with regard to what is right and equitable under the circumstances and the law, and which is directed by the reasoning conscience of the judge to a just result.”)

The trial court exercised no discretion in this case, as the trial court had no competing point of view and had no basis to fully consider the circumstances affecting the equities of the case. The trial court had only the Landlord’s assertions to consider, because the Tenant was unaware of the hearing and not present to make the trial court aware of any of the Tenant’s concerns. Under such circumstances, the Landlord cannot claim that the trial court weighed anything. The trial court considered only the landlord’s arguments.

Furthermore, the trial judge stated to Tenant’s counsel a few hours after the writ and judgment were entered that if the judge had known of the Tenant’s *force majeure* argument, he would not have entered the writ and judgment (CP 98). So clearly the trial court did not weigh or consider arguments the Tenant would have raised if Tenant’s counsel had been

properly notified of the date, time and place of the presentation of the writ and judgment.

Accordingly, as argued by the Tenant, the standard of review here is de novo. App. Br. 10.

**C. The Tenant Agrees That The Settlement Agreement Should Be Enforced (RB 9-11).**

The landlord suggests that the tenant wishes to set aside the stipulation or reinterpret it (RB at 11). The tenant makes no such argument. The tenant desires simply that the stipulation be enforced according to its terms, and that the tenant be provided the notice set force in the stipulation before judgment and a writ of restitution are entered against the tenant.

Future litigants will indeed have confidence in the integrity of settlements if they are enforced in accordance with their terms. And if settlements provide for a specified notice before entry of judgment, and a party obtains judgment without giving such specified notice, then certainly opposing parties will have no confidence that notice periods set forth in stipulations will have any meaning at all.

**D. Notice of the Hearing Was Not Properly Delivered Pursuant to the Terms of the Stipulation for Settlement (RB 11- 15).**

The Landlord argues that the Tenant had no right to a hearing under the stipulation (RB 11), and that the Tenant had “the right to notice of non-compliance and no more.” (RB 12). This argument is manifestly erroneous.

The language of the stipulation for settlement provided that the Landlord would be entitled to a writ of restitution and judgment upon “24 hours faxed prior notice to . . . defendant’s counsel.” (CP 86, ¶ 6.) This is the second mention in the stipulation of 24 hours’ faxed notice. The actual language of the stipulation for settlement reads as follows:

If defendants fail to comply with all requirements of this stipulation the plaintiffs will be entitled, upon the filing of a declaration certifying that the defendants are not in compliance, *and 24 hours faxed notice to counsel Dan Young* to the immediate issuance of a writ of restitution and a judgment for all unpaid rents, attorney’s fees and court costs. Said writ of restitution and judgment may issue *in ex parte* with *24 hours faxed* prior notice to the defendants or the defendant’s counsel.

(CP 86, ¶ 6)<sup>1</sup> (App. Br., Appendix A).

It is clear that 24 hours’ faxed notice is mentioned twice in paragraph

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<sup>1</sup>All italicized language, except “*ex parte*” was added in handwriting to the original stipulation. See App. Br. at 11, fn. 1.

6 of the stipulation for settlement. The first mention of 24 hours' faxed notice occurs just before language referring to the issuance of a writ of restitution and just after mention of a declaration certifying that the Tenant was not in compliance with the stipulation. It perhaps could be argued that the first reference to *24 hours faxed notice* refers to the declaration certifying non-compliance. In any event, the Landlord provided such notice. CP 122; App. Br. at 6.

However, the second mention of "24 hours faxed prior notice" (containing the additional word *prior*) immediately follows language referring to the issuance of the judgment and writ of restitution. That 24 hours' notice obviously refers to the proceeding or hearing at which such judgment and writ would be issued. The additional word *prior* unmistakably means *prior to the issuance of the writ and the judgment*. And the word *notice* in the second mention of *24 hours . . . notice* could not refer to the notice of non-compliance, as such notice was arguably at least provided for in the first mention of *24 hours notice*.

If this were not the meaning, then the second reference to "24 hours faxed prior notice" would simply be redundant. Under the "context rule" of contract interpretation, the parties' intent is determined by viewing the

contract as a whole, the objective of the contract, the contracting parties' conduct, and the reasonableness of the parties' respective interpretations. *King v. Rice*, 146 Wn. App. 662, 670, 191 P.3d 946, 951 (2008). An interpretation of a contract which gives effect to all the words in a contract provision is favored over one which renders some of the language meaningless or ineffective. *Seattle First v. Westlake Park*, 42 Wn. App. 269, 274, 711 P.2d 361 (1985); 25 DeWolf & Allen, *Washington Practice, Contract Law*, § 5.2 at 110 (1998) (“[T]here is a strong presumption that the parties to a contract intended for each part of the contract to have some meaning.”) The Landlord’s interpretation here concerning the language *24 hours faxed prior notice* immediately following mention of issuance of a judgment and writ deprives the italicized language of any meaning whatsoever. This is contrary to standard rules of construction and the obvious desire of a party to have notice before a judgment and writ were entered against him.

The Landlord claims that the stipulation for settlement did not give the Tenant a right to an “evidentiary hearing or an opportunity to raise additional defenses” (RB 12, 13). She further claims that the stipulation “contained no provision allowing [the Tenant] the right . . . to attend the

presentment of the ex parte motion for non-compliance” (RB 13). However, the stipulation does not expressly state that there would be no hearing or that the Tenant could not attend the presentment. After all, matters done in open court are typically open to the public. Anyone can attend.

Furthermore, court rules do not preclude the Tenant’s counsel from making arguments when a case is called in ex parte and the Landlord is submitting a writ and judgment for the commissioner’s signature. And, of course, if Tenant’s counsel could not attend the hearing or make any arguments, why was the language added about providing “24 hours faxed prior notice” to Tenant’s counsel before the issuance of the writ of restitution and judgment? Such 24 hours’ prior notice makes sense only in the context that Tenant’s counsel could attend the hearing and make whatever objections or arguments were available. And this is why the Tenant’s counsel objected to the original language of the stipulation which provided for no notice (App. Br. 11-12). See, *Martinez v. Miller Industries, Inc.*, 94 Wn. App. 935, 945-46, 974 P.2d 1261 (1999) (party refusing to sign original language and asking for change in wording evidence of intent not to be bound by original language).

Nor can the Landlord argue that the trial court rejected this

interpretation of the stipulation for settlement (RB 14). The trial court never had the opportunity to hear the Tenant's interpretation of the stipulation. The trial court cannot reject something that was never presented to it.

The Landlord argues that "despite the best efforts of Ms. Davis and the trial court, no one was able to contact Mr. des Longchamps' counsel prior to the order entering judgment and issuing a writ of restitution" (RB 15). This argument is completely specious. The stipulation required *24 hours faxed* prior notice to defendant's counsel before issuance of the writ of restitution and judgment. There is no evidence in the record that any such notice was faxed to Tenant's counsel. There is no evidence that Tenant's counsel's fax machine was not working, or that the Landlord did not know the fax number. The fact that the trial court unsuccessfully attempted to call Tenant's counsel at 8:30 a.m. on Monday morning when the Landlord's counsel was standing in the trial court's chambers, unbeknownst to Tenant's counsel, does not even come close to compliance with the language requiring *24 hours faxed* prior notice to defendant's counsel before issuance of the writ of restitution and judgment. Five minutes' notice by telephone is clearly not equivalent to 24 hours' faxed prior notice.

Finally, the Landlord is mistaken about the force of its argument on

the basis of *expressio unius est exclusio alterius* (RB 12). The stipulation did not specify whether a hearing would be required or not. There is therefore no expression of anything which precludes anything else. In *Western Telepage v. City of Tacoma*, 140 Wn.2d 599, 611, 998 P.2d 884 (2000), the court stated as follows:

“As we have noted, the mention of one thing implies the exclusion of others, under the maxim "expressio unius est exclusio alterius." *State ex rel. Port of Seattle v. Department of Pub. Serv.*, 1 Wn.2d 102, 95 R2d 1007 (1939). Thus, where the Legislature did not expressly exclude paging services from the broad definition of network telephone services in RCW 82.04.065(4), it must be assumed the Legislature did so intentionally.”

Similarly, here where the parties did not expressly exclude a hearing prior to the entry of a writ of restitution and judgment, it must be assumed that the parties did so intentionally. Accordingly, the *expressio unius* canon of construction does not support the Landlord’s argument.

**E. The Judgment and Writ of Restitution Were Not Properly Obtained Ex Parte (RB 15-16).**

The Landlord claims that according to the terms of the stipulation for settlement, if the Tenant did not comply with the terms of the agreement, the Landlord “may obtain a writ of restitution and judgment *ex parte*” (RB 15). However, the express wording of the stipulation contradicts this assertion.

The stipulation specifies that “[s]aid writ of restitution and judgment may issue in ex parte with 24 hours faxed prior notice to the defendants or the defendant’s counsel” (emphasis added) (CP 86, ¶ 6).

There is a big difference between the issuance of a judgment and writ in ex parte and the issuance of a judgment and writ *ex parte*. The meaning of “in ex parte” is obviously a place, i.e., the ex parte department of the King County Superior Court. The issuance of a judgment and writ *ex parte* might imply that the issuance would occur without notice. However, as noted earlier, the stipulation for settlement expressly provided for 24 hours’ faxed prior notice to Tenant’s counsel before issuance of the writ of restitution and judgment in ex parte. Many contested hearings, including the taking of testimony, obviously occur in ex parte. See, e.g., *Leda v. Whisnand*, 150 Wn. App. 69, 79, 207 P.3d 468 (2009). Accordingly, the Landlord cannot make any convincing argument that she was entitled to the issuance of a judgment and writ of restitution without any prior notice to Tenant’s counsel.

Furthermore, applying the *expressio unius* principle, the mention of the Landlord’s obtaining a judgment and writ in ex parte would exclude obtaining the writ anywhere else. Merely because court rules were changed on January 1, 2009, requiring the payment of \$30 fee and waiting a few days

would not preclude the Landlord from obtaining any judgment and writ in ex parte, as specified in the stipulation for settlement. Accordingly, the Landlord did even use the procedure set forth in the stipulation for settlement when she unilaterally and without notice obtained a judgment and writ of restitution.

**F. A Violation of Due Process Occurred, Precisely Because the Tenant Never Agreed to Entry of Judgment Without a Hearing and Without Notice (RB 16-18).**

The Landlord argues that the “terms of the stipulation for settlement agree to limit [the Tenant’s] right to a hearing” (RB 16). The Landlord, however, points to no language in the stipulation which so provides. The stipulation is completely silent as to whether any hearing would take place or not. It therefore cannot be assumed that the Tenant gave up such a right, especially where the Tenant was supposed to be provided 24 hours’ faxed prior notice of the hearing. The sole purpose of the 24 hours’ notice requirement was to provide the Tenant an opportunity to contest the issuance of the writ of restitution and the propriety and amount of any judgment, should the circumstances warrant.

Moreover, unless the parties proceed directly to trial or file for summary judgment, hearings in residential unlawful detainer cases are

required by statute as part of the eviction process. RCW 59.18.370; RCW 59.18.380. Accordingly, the Tenant need not request a hearing or take any affirmative act to obtain a hearing before issuance of a writ of restitution.

The Landlord suggests that the Tenant waived the right to a hearing (RB 17). However, the Landlord specifies no language in the stipulation which would arguably constitute a waiver, and points to no specific conduct on the part of the Tenant which would constitute a waiver. Her waiver argument is therefore completely unsupported.

“A party to a contract may waive a contract provision, which is meant for its benefit, and may imply waiver through its conduct. *Reynolds Metals Co. v. Elec. Smith Constr. & Equip. Co.*, 4 Wn. App. 695, 700, 483 P.2d 880 (1971). Waiver by conduct, however, ‘requires unequivocal acts of conduct evidencing an intent to waiver.’ *Absher [Construction v. Kent School District, 77 Wn.App. 137,] at 143 [ , 890 P.2d 1071 (1995)]* (citing *Birkeland v. Corbett*, 51 Wn.2d 554, 565, 320 P.2d 635 (1958)).” *Mike M. Johnson, Inc. v. Spokane County*, 150 Wn.2d 375, 386, 78 P.3d 161 (2003) (Court finding that county by requesting change order did not waive compliance with claim and protest provisions of written construction contract).

Furthermore, waiver does not result from “negligence, oversight or

thoughtlessness.” *Dombrowsky v. Farmer’s Insurance Co.*, 84 Wn. App. 245, 255, 928 P.2d 1127 (1996).

Here, there is no evidence that the Tenant waived anything, much less committed any unequivocal acts implying waiver, other than waiving a notice period longer than 24 hours, as set forth in the stipulation for settlement. The Landlord is trying to bootstrap a waiver of seven or ten days’ time to argue that the Tenant completely waived all notice. Such argument is inconsistent with the express language in the stipulation for settlement specifically requiring “24 hours faxed prior notice” before issuance of a writ and judgment, is inconsistent with the motivation for the handwritten language modifying the original language of the stipulation not providing any notice, and inconsistent with any reasonable interpretation of the stipulation.

**G. The Tenant Is Not Precluded From Raising Equitable Defenses (RB 18-19).**

The Landlord argues that the Tenant is estopped from presenting equitable defenses, because he did not comply with the stipulation for settlement, and in addition, he has unclean hands, citing *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982). These arguments are without merit.

In *Retail Clerks*, the supreme court held that since laches was an

equitable defense, it could not successfully be urged by those who withheld information which would have prompted action at an earlier time. 96 Wn. at 949. No defense of laches was raised in the present case.

The Landlord makes a number of assertions in an attempt to establish the Tenant's inequitable conduct. Many of these assertions are clearly erroneous or do not tell the full story. For example, the Landlord claims that the Tenant "accepted six months of free rent and took no action to vacate the premises" (RB 19). While the Tenant did accept a refund of six months' rent he had paid, he was also deprived of the telephone service, a significant aspect of the rental (CP 91). The Landlord also changed the locks on the door of the house so the Tenant could not use the bathroom (CP 92). In early September, 2008 King County red tagged the RV because the Landlord's RV pad did not meet code (CP 92). So from September through December—a period of four months—the Tenant was unable to live in the RV for which he was depositing monthly rent into the court registry. Receiving a refund of rent for a period when unable to occupy the subject of the rental is not exactly "free" rent.

And contrary to the Landlord's assertion, the Tenant did take action to vacate the premises. During the week of December 15-19, 2008, he asked

William Simpson, who had a tow truck, to assist in moving the RV (CP 109). The Tenant stated that he attempted on December 16<sup>th</sup> and December 28<sup>th</sup> to reach the RV for removal, but snow conditions prevented removal (CP 110). This is clearly taking action.

The Landlord claims that the Tenant did not seek an extension of time until the deadline had come and gone (RB 19). However, the Tenant's attorney did call the Landlord's attorney on Friday, January 2, 2009, to ask for an extension of time (CP 97). The Landlord's attorney said he might consider it (CP 97), yet on Monday, January 5<sup>th</sup>, without notice to the Tenant's attorney, the Landlord's attorney obtained a writ of restitution and judgment. Based on the Landlord's conduct, clearly any request for an extension of time, no matter when raised, would have been denied.

Finally, the Landlord argues that the declarations of Mr. Simpson and the Tenant do not meet the requirements of GR 13 in that they do not state the place where signed (RB 19 fn 3). However, Mr. Simpson placed an address under his signature, so it is a reasonable inference that he signed the declaration at that address, since he probably prepared it there also. And the Tenant had no address, since he was rendered homeless by the inability to live in his RV. Accordingly, the requirements of GR 13 were substantially

complied with. But even if there were technical deficiencies in the declarations, the Landlord never raised these deficiencies in the trial court, so as to allow the Tenant an opportunity to modify the declarations. Under such circumstances, the Landlord has waived any technical deficiency in the form of the declarations. See, *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995); RAP 2.5(a).

**H. The Trial Court Was Not Precluded From Applying a Force Majeure Clause (RB 20-21).**

The Landlord cites three cases for the proposition that Washington law “does not recognize the force majeure doctrine as an implied-in-law provision to contracts” (RB 20): *Hearst Communications, Inc. v. Seattle, Times*, 154 Wn.2d 493, 115 P.3d 262 (2005); *TransAlta v. Sickelsteel Cranes*, 134 Wn. App. 819, 142 P.3d 209 (2006); and *Citoli v. City of Seattle*, 115 Wn. App. 459, 61 P.3d 1165 (2002). However, none of these cases comes close to holding or stating any such legal principle.

In *Hearst*, 154 Wn.2d 493, 498, the joint operating agreement between the Seattle Times and Seattle P.I. contained an express *force majeure* clause, which provided that “neither party shall be liable to the other for any failure of performance resulting from force majeure events, such as acts of war or labor strikes.” 154 Wn.2d at 498. The court’s opinion

contains no language suggesting that where a contract contains no express *force majeure* provision, a court of equity may not grant an extension of time for performance due to a *force majeure* event. *Hearst* therefore does not support the Landlord's argument.

In *TransAlta*, 134 Wn. App. 819, the parties' contract also contained an express force majeure provision providing that performance under the contract could be suspended during a force majeure event, or an event outside the parties' control. 134 Wn. App. at 823. The court of appeals held that reasonable minds could differ as to the interpretation of the force majeure clause, and therefore reversed the trial court's entry of summary judgment on that issue. 134 Wn. App. at 827. The court made no statement about whether Washington recognizes the *force majeure* doctrine as an implied-in-law provision to contracts.

Similarly, in *Citoli*, 115 Wn. App. 459, a tenant filed suit against the City of Seattle and others seeking damages for his economic losses and emotional injuries arising from the termination of utilities to his business and the failure to restore them while protestors during the WTO conference occupied and remained in his building, and from the failure of police to forcibly evict the protestors. 115 Wn. App. at 466. An applicable tariff

essentially contained a force majeure clause, and one of Citoli's claims related to breach of the tariff. 115 Wn. App. at 481-82. Holding that a filed tariff has the force and effect of law and that standard principles of statutory construction apply to the interpretation of the tariff, this Court ruled that where an emergency required an immediate shutdown of utilities without notice, there was no liability for failing to give the notice. 115 Wn. App. at 483-84. The court made no ruling about any implied force *majeure clause*, as there was an express *force majeure* clause in the tariff before the court.

Moreover, the Landlord again tries to argue that the canon of *expressio unius* prevents application of a force majeure concept, because no such clause is contained in the settlement agreement (RB 20). However, the Tenant has cited a number of legal doctrines, e.g., impracticability, supervening frustration, avoidance of a forfeiture, impossibility, hindrance of performance, and Act of God, together with supporting case law, which could have been applied in the present case, if the Tenant had received notice of the date and time of the hearing regarding the issuance of the writ of restitution and judgment (AB 19-22). The application of these doctrines is not dependent upon any express contractual language. Rather, these doctrines are applied in furtherance of the court's equitable powers where deemed

appropriate. The Landlord's conduct in not providing the notice required in the stipulation for settlement deprived the Tenant of the opportunity for presenting any of these equitable arguments. The Landlord cites no case holding that none of these doctrines is applicable in the absence of an express contractual provision.

**I. It Is Inappropriate to Award Attorney's Fees to the Landlord (RB 21-22).**

The Landlord claims that the judgment of attorney's fees should not be disturbed, since the trial court was merely exercising its discretion (RB21-22). However, as noted earlier, the trial court really did not exercise any discretion, since it did not have any arguments or information available to it, other than the Landlord's unilateral request for attorney's fees. The trial court may well have modified the attorney fee award, if it had heard arguments opposing specific fees.

The Landlord also claims that she is entitled to "all unpaid rents, attorney's fees and court costs" under the stipulation (CR 65). It is not clear that the word "all" applies to attorney's fees and court costs, as well as unpaid rents, regardless of the amount. The word "all" appears only in front of "unpaid rents." It does not necessarily apply to attorney's fees and court costs. But this Court need not resolve that issue at this stage of the

proceedings, because the judgment for attorney's fees entered without notice is void. App. Br. 17-18.

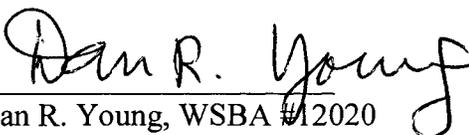
Furthermore, a court will normally not award unreasonable attorney's fees, and the word "reasonable" would be implied before the words "attorney's fees." No sound social or ethical policies would be served by the award of attorney's fees in an unreasonable amount, even if the party actually incurred and paid the fees.

### III. CONCLUSION

The Landlord makes a valiant—but unsuccessful--attempt to legitimize and rationalize conduct which is manifestly unreasonable. Accordingly, for the reasons set forth above, the court should allow the relief requested in the Tenant's opening brief.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of August, 2009.

Law Offices of Dan R. Young

By   
Dan R. Young, WSBA #12020  
Attorney for Appellant  
Dwayne Des Longchamps

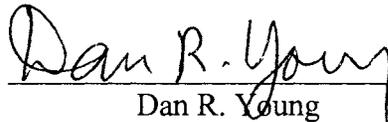
DECLARATION OF SERVICE

I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am an attorney representing the appellant Dwayne DesLongchamps in this action.
2. On August 19, 2009, I delivered, a copy of the foregoing Reply Brief of Appellant to the office of the following:

Evan Loeffler, Esq.  
2033 Sixth Avenue, Suite 1040  
Seattle, WA 98121-2527

Dated: August 19, 2009, at Seattle, Washington.

  
Dan R. Young

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STATE OF WASHINGTON  
