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DIVISION II

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STATE OF WASHINGTON

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No. 40194-1
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

CATHERINE HILL

Appellant,

v.

WINDSONG VILLAGE APARTMENTS, SONYA
RENA SHORTER, and N.R.B. PROPERTY
MANAGEMENT

Respondents.

BRIEF OF RESPONDENTS

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I. Introduction.

This case involves a tenant, who had lived in an apartment for eleven years, suing her landlord for a fall within her own apartment. Appellant's use of the apartment had caused a hole in the carpeting, which Appellant concedes she was aware of. Nonetheless, she claims that the landlord is liable for her injuries caused by tripping on her own carpet. The trial court found that a hole worn in the carpet was not the type of defect that gives rise to landlord tort liability, and granted Respondents' motion for summary judgment. The trial court's decision should be affirmed.

II. Response to Appellant's Assignments of Error and Issues Pertaining to Assignments of Error

A. Response to Assignment of Error

The trial court correctly granted summary judgment in favor of Respondents and denied Appellant's motion for reconsideration.

B. Issues Pertaining to Response to Assignment of Error

1. Did the trial court correctly dismiss the breach of contract claim based on the tort recovery sought by Appellant?

2. Did the trial court correctly find that the nature of the defect in the carpet did not cause the apartment to be unfit for habitation or not so unreasonably dangerous as to cause Respondents to be liable in tort?

3. Did the trial court correctly find that the Residential Landlord Tenant Act does not supply an independent cause of action in tort arising from a condition caused by normal wear and tear?

4. Did the trial court correctly find that the Appellant/tenant could not support the elements of a common law tort claim against the landlord given that the hole in the carpet was known to the Appellant, was caused by Appellant's own conduct, and was due to normal wear and tear?

III. Statement of the Case

A. Facts of the Case

This lawsuit arose out of an incident on or about September 21, 2007, in which Ms. Hill allegedly tripped on a hole in the carpet in the apartment she rented from Windsong Village Apartments. Respondent Shorter owns Windsong, and Respondent N.R.B. Property Management manages the

apartments. The Respondents are collectively referred to herein as “Windsong.”

Ms. Hill first negotiated a lease agreement with Windsong in 1996. Appellant’s Brief, p. 3. The latest version of the lease was entered into by the parties on October 1, 2005. CP 34-37. At the time of the incident, Mr. Hill had enjoyed sole exclusive possession of the interior of her apartment, where she fell, for eleven years.

There is no provision in the lease that gives Ms. Hill the right to personal injury or other monetary damages for its breach. *Id.* In fact, the lease specifically states that Ms. Hill indemnifies and holds Windsong harmless for any losses, claims, or injuries to any person, including herself, arising from her use of the apartment to the extent permitted by law. CP 37.

The lease does contain repair covenant that imposes upon the tenant the duty to “maintain the Premises in good clean, safe and sanitary condition and repair...”, and to repair any damage caused by her own “misuse, waste or neglect.” CP 35. The landlord agrees to use best efforts to repair any other “damage, defect or destruction” of the leasehold. *Id.*

Ms. Hill also entered into a Pet Agreement with Windsong, allowing her to keep a cat in her apartment. CP 89. In the Pet Agreement Ms. Hill agreed to “pay immediately for any damage done by said animal to any property or person.” CP 89. Ms. Hill also agreed to indemnify and hold Windsong harmless from any and all claims made against Windsong due to any damage caused by her cat. CP 89.

Ms. Hill claims that the “condition of the carpet deteriorated over the years” and that she requested that Windsong repair or replace the carpet. CP 5. For purposes of summary judgment, this allegation was not disputed.¹

B. Relevant Procedural History

Windsong filed and served a summary judgment motion to dismiss the case on November 6, 2009. CP 13-23. Windsong’s motion addressed the one cause of action Ms. Hill alleged in her complaint – breach of the lease agreement, premised upon an alleged violation of CFR § 982.401. That regulation requires landlords who rent under certain federal

¹ While Windsong would have contended at trial that Ms. Hill’s cat damaged the carpet, and that under the terms of the lease and under the Pet Agreement this damage was Appellant’s responsibility, for purposes of this appeal Respondents accept the Appellant’s allegation that the carpet “deteriorated over the years” due to normal wear and tear from Appellant’s own use. CP 5.

assistance programs to “make dwelling units structurally sound so as not to present a danger of tripping or falling.” Appellant’s Brief, p. 18; CP 13-23; CP 6. Ms. Hill alleged in the complaint that this federal regulation applied because she received federal assistance with her rent. CP 6.

After receiving the summary judgment motion Ms. Hill moved to amend her Complaint (and to shorten time) to add claims of (1) breach of covenant to repair, (2) breach of implied warranty of habitability, and (3) violation of the Washington Residential Landlord Tenant Act. CP 64-70; CP 46-51. The trial court granted Ms. Hill’s motion on November 25, 2009. CP 191-92. *However, Ms. Hill never filed or served her Amended Complaint.*² Under CR 15(a), “if a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties.” This was never done.

The Respondents did not answer the Amended Complaint. The pending motion for summary judgment went forward, and the trial court granted the motion for summary

² There is no declaration of service of the amended complaint in the court file, nor is there any evidence in the Clerk’s Papers of the amended complaint having been filed once the motion to amend was granted.

judgment. The trial court clearly intended to grant the motion for summary judgment as to all of the claims asserted in the Amended Complaint, but the Amended Complaint, never having been served or filed, is not properly a part of the record in this case on appeal. Nonetheless, Respondent addresses all of the claims asserted in the Amended Complaint should this Court decide to ignore the fact that the Amended Complaint was never filed.

The trial court dismissed Ms. Hill's claims on December 8, 2009. CP 201-02. Ms. Hill then filed a motion for reconsideration, which was denied on December 31, 2009. CP 238-39.

IV. Argument

A. Summary Judgment Standard

A summary judgment is properly granted if the pleadings, affidavits, depositions or admissions on file show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Capitol Hill Methodist Church of Seattle v. Seattle*, 52 Wn.2d 359, 364, 324 P.2d 1113 (1958); CR 56(c). In ruling upon a summary judgment motion, it is the duty of the trial court to

consider all evidence and all reasonable inferences therefrom most favorable to the nonmoving party. *Reed v. Davis*, 65 Wn.2d 700, 708, 399 P.2d 338 (1965).

If the moving party meets its initial burden, the nonmoving party in its response cannot rely on the allegations made in the pleadings. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). “The nonmoving party may not rely on speculation or argumentative assertions that unresolved factual issues remain.” *Marshall v. Bally’s Pacwest, Inc.*, 94 Wn. App. 372, 377, 972 P.2d 475 (1999). The nonmoving party may not rely on “having its affidavits considered at face value.” *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Bare allegation of fact by affidavit without any showing of evidence is insufficient to raise a genuine issue of fact for purposes of a motion for summary judgment. *Meissner v. Simpson Timber Co.*, 69 Wn.2d 949, 955-56, 421 P.2d 674 (1966). Conclusory statements in a plaintiff’s affidavit are insufficient; the plaintiff must demonstrate the basis for his or her assertions. *Doty-Fielding v. Town of South Prairie*, 143 Wn. App. 559, 566, 178 P.3d 1054 (2008).

A defendant who moves for summary judgment meets its initial burden by demonstrating that an essential element of the plaintiff's claim has not been established. *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991). The inquiry then shifts to the plaintiff, who has the burden of proof at trial. *Young*, 112 Wn.2d at 225. If at this point

the plaintiff 'fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,' then the trial court should grant the motion.

Id., quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

B. The Trial Court Correctly Dismissed Plaintiff's Contract Claim. Appellant did not Assign Error to the Dismissal of the Contract Claim and has not Appealed as to this Issue.

The trial court correctly stated that the economic loss rule was a "significant barrier" to Ms. Hill's contract claim. The economic loss rule does not allow for personal injury damages for claims based in contract, and Ms. Hill's breach of contract claim sought recovery of tort damages.

Damages in contract actions differ significantly from damages in tort actions. *Alejandre v. Bull*, 159 Wn.2d 674, 682, 153 P.3d 864 (2007). Damages in contract actions are generally narrower than damages in tort actions in that contract damages are limited to compensation for economic harm or pecuniary loss. *Berschauer/Phillips Constr. Co v. Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 826-27, 881 P.2d 986 (1994). The court in *Berschauer/Phillips* noted the importance of distinguishing between contract and tort remedies: “If tort and contract remedies were allowed to overlap, certainty and predictability in allocating risk would decrease and impede future business activity.” *Id.* at 826.

On appeal, Appellant makes no argument in favor of her contract claim, relying instead solely on the negligence based tort claims alleged in only in her *Amended Complaint*, which was *never severed on the Respondents or filed with the trial court*. Since breach of contract was the only claim asserted by Ms. Hill in any pleading served or filed in this action, this issue is dispositive. The trial court order granting Respondents’ motion for summary judgment should be affirmed.

C. The Residential Landlord Tenant Act does not Provide Ms. Hill with a Cause of Action for Tort Damages.

The allegations in the unfiled Amended Complaint were properly dismissed based upon Windsong's motion for summary judgment. First, Ms. Hill cannot assert a personal injury tort claim based on the provisions of the RLTA. The RLTA expressly limits a tenant's remedies to the following:

- (1) the tenant's right to repair and deduct the cost from the rent;
- (2) a decrease in the rent based upon the diminished value of the premises;
- (3) payment of rent into a trust account; or
- (4) termination of the lease.

Howard v. Horn, 61 Wn. App. 520, 524-25, 810 P.2d 1387, (1991), *citing* RCW 59.18.110, .115, and .120. "Monetary damages are not available for a breach of a landlord's duties under the RLTA." *Dexheimer v. CDS, Inc.*, 104 Wn. App. 464, 472, 17 P.3d 641 (2001). In *Dexheimer*, the court found that the trial court erred by allowing the Dexheimers to recover money damages for violations of RCW 59.18.060. *Id.* Just as in the instant case, the plaintiff in *Dexheimer* participated in a federally funded rental assistance program. *Id.* at 468.

The RLTA and cases cited above such as *Howard* and *Dexheimer* expressly state that a residential tenant cannot be awarded monetary damages for the landlord's breach of the RLTA.³

D. Plaintiff did not Present Sufficient Evidence to Support a Tort Alleging Breach of an Agreement to Repair.

The trial court correctly found that plaintiff's evidence did not support the common law negligence claim asserted in the unfiled Amended Complaint. Plaintiff alleged a negligent failure to repair Ms. Hill's carpet, a carpet that wore out during her eleven year tenancy in the apartment.

1. A landlord is not liable under common law for a known defect.

Under Washington common law, a landlord is not liable to a tenant for a defect in the leasehold known to the tenant. As the court in *Dexheimer* summarized, "[a] tenant may recover from his or her landlord for injuries caused by a latent defect known to the landlord. The landlord's duty there is only to warn of the latent defect; there is no common law duty

³ As set forth at pp. 19-22, below, even if Appellant could assert a tort claim arising from RCW 59.18.060, the wear and tear to Appellant's carpet does not constitute a violation of that statute.

to repair.” *Dexheimer v. CDS, Inc.*, 104 Wn. App. 464, 475, 17 P.3d 641 (2001) (citations omitted). The court in *Coleman v. Hoffman*, 115 Wn. App. 853, 64 P.3d 65 (2003), a Division Two case, also found that a landlord is not liable for injuries caused by patent defects within the leasehold, noting the difference from the rule that applies to common areas:

The rule in Washington is that a landlord is not liable for injuries caused by patent defects. *Frobig v. Gordon*, 124 Wn.2d 732, 735, 881 P.2d 226 (1994). But this rule only applies where a tenant is injured on the demised premises. It does not apply to injuries that occur in a common area. As to common area injuries, a landlord is liable if his negligent maintenance or negligent act causes an injury.

Id. at 865 (footnote omitted).

The Washington Supreme Court established this rule in *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994). The *Frobig* court applied a four-part test to determine whether a landlord is liable to a tenant under the common law for harm occurring in the leasehold:

Washington common law provides that a landlord will be liable to a tenant for harm caused by

- (1) latent or hidden defects in the leasehold
- (2) that existed at the commencement of the leasehold
- (3) of which the landlord had actual knowledge

(4) and of which the landlord failed to inform the tenant.

Frobigo, 124 Wn.2d at 735. Because the defect in the instant case was patent, was known to the tenant, and arose during the tenancy from the tenants own use of the apartment, the elements in *Frobigo* are not met, and Ms. Hill does not have a common law negligence claim.

2. A landlord is not liable in tort to a tenant for a condition that is not unreasonably dangerous.

To avoid the patent defect rule established in *Frobigo*, Ms. Hill argues that she falls within a narrow exception to the landlord's non-liability for patent defects set forth in *Teglo v. Porter*, 65 Wn.2d 772, 399 P.2d 519 (1965), a case decided before the enactment of the RLTA. In that case, the court stated that:

where there is a covenant or agreement entered into, contemporaneously with commencement of the tenancy, whereby the landlord is to keep and maintain the premises in repair and the landlord acquires knowledge or notice of a condition, existing either before or arising during the tenancy, rendering the premises unsafe, and the tenant, a member of his family, or a guest, suffer personal injury therefrom, after a reasonable time for making the premises safe has elapsed from the time of the landlord's notice, then the landlord is liable in tort for the injuries sustained, absent contributory negligence.

65 Wn.2d at 774.

The difficulty with applying *Teglo* to the facts of this case, however, is that the cases analyzing *Teglo*, and *Teglo* itself, all require that the defect at issue be a dangerous condition far beyond the worn carpet at issue in this case. *Teglo* carefully limits a landlord's tort liability to a tenant. *Teglo* states that even where there is a breach of a contractual duty to repair, tort liability follows only if the condition in need of repair is "unsafe." The trial court properly found that *Teglo* did not, under these facts, provide Ms. Hill with a cause of action.

Ms. Hill would read *Teglo* to impose liability for any condition known to the landlord which results in an injury to the tenant. She argues that "dangerousness" is a question of fact, citing to *Davis v. State*, 102 Wn. App. 177, 193, 6 P.3d 1191 (2000), *aff'd* 144 Wn.2d 612, 30 P.3d 460 (2001). Appellant's Brief, p. 16. That case says nothing of the sort. Rather, the portion of *Davis* cited by Appellant dealt with whether a condition faced by a driver was latent or patent, and stated in dictum that this question might well be a question of fact, but affirmed summary judgment in favor of the defendant

on other grounds. In short, Ms. Hill has no case authority to support her contention that the question of whether a hole worn into a carpet is sufficiently dangerous to create tort liability for a landlord.⁴

Ms. Hill fails to recognize that the courts have limited *Teglo* such that landlords only face tort liability for the failure to repair a defect within the rented premises if the plaintiff presents evidence that the defect at issue creates “an unreasonable risk of harm” to the tenant, akin to a breach of the warranty of habitability.

Under the common law, a landlord generally is not liable to a tenant for personal injuries caused by a defective condition in the premises. *Teglo v. Porter*, 65 Wash.2d 772, 773, 399 P.2d 519 (1965); *Sample v. Chapman*, 7 Wash.App. 129, 132, 497 P.2d 1334 (1972). One exception to this rule imposes tort

⁴ Ms. Hill argues in connection with her analysis of the Restatement test, addressed below, that under the analysis set forth in *Pickney v. Smith*, 484 F.Supp 1177 (W.D.Wa. 2007), the issue of dangerousness presents a question of fact. Appellant’s brief, pp. 19-20. *Pickney* deals only with the Restatement test, not *Teglo*. However, the court in *Pickney* actually undertook a deeper analysis of dangerousness, one that Ms. Hill’s evidence will not stand up to. Like all of the other cases addressing landlord liability, the *Pickney* court recognized that simply claiming that a condition is dangerous will not allow a tenant to survive summary judgment. The *Pickney* court noted that, under Washington law, for a landlord to face liability in tort based on the Restatement test “a condition must be more than simply dangerous” and that the plaintiff must present evidence that the condition “substantially endangered or impaired her health or safety to establish a violation of the warranty of habitability.” *Id.* at 1184. Here, unlike the facts in *Pickney*, no such evidence was presented.

liability if the landlord covenants to maintain the premises in good repair, but fails to do so. *Teglo*, 65 Wn.2d at 774, 399 P.2d 519; *McCourtie v. Bayton*, 159 Wash. 418, 423, 294 P. 238 (1930); *Mesher v. Osborne*, 75 Wash. 439, 446, 134 P. 1092 (1913). The tenant may recover for personal injuries caused by the landlord's breach of a repair covenant *only if the unrepaired defect created an unreasonable risk of harm to the tenant*. 17 William B. Stoebuck, Washington Practice-Real Estate: Property Law § 6.38, at 345-46 (1995).

Brown v. Hauge, 105 Wn. App. 800, 804, 21 P.3d 716, 718 (2001)(italics added).

In *Brown*, the court affirmed a summary judgment order dismissing plaintiff's claims. Plaintiff claimed that a doorway threshold which rose three inches above the level of the floor created a trip hazard. Plaintiff claimed that this trip hazard was sufficiently unsafe to impose tort liability on the landlord. The court held as a matter of law that this condition was not sufficiently dangerous to impose tort liability on the landlord. *Id.* at 805.

Brown is directly analogous. The worn carpet at issue in this case was no more of a trip hazard than the threshold in *Brown*, nor was it any more of a hazard than any other stair-step, furniture, piece of clothing, or other obstruction routinely encountered in daily living. It simply was not the kind of

“dangerous” condition that a landlord must fix or face tort liability to the tenant.⁵ The tenant may have contract rights arising from the condition, but it is not the sort of dangerous defect that gives rise to tort liability.

3. The Restatement of Property, § 17.6, does not provide Ms. Hill with a tort remedy.

In attempting to avoid this limitation on *Teglo*, Ms. Hill contends that whether the defect complained about is sufficiently dangerous to provide a tort remedy against the landlord turns on the application of the test articulated in the Restatement (Second) of Property, § 17.6. Appellant’s Brief, pp. 17-20. That section of the Restatement does articulate a standard of liability for a landlord who fails to repair a dangerous condition. While courts in Washington are split on the applicability of this Restatement section in this state,⁶ even

⁵ Every case finding potential tort liability for the violation of a repair covenant has involved an inherently dangerous condition where the defect is a significant structural or other dangerous condition on the land. See, for example, *Tucker v. Hayford*, 118 Wn. App. 246, 75 P.3d 980 (2003)(contaminated well water); and *Lian v. Stalick*, 106 Wn. App. 590, 62 P.3d 933 (2003)(*Lian I*)(rotten steps found to be a dangerous structural defect).

⁶ Compare the Division 3 case of *Lian v. Stalick*, 115 Wn. App. 590, 62 P.3d 933 (2003)(*Lian II*), which adopted the Restatement section, with the two cases from Division 2 declining to adopt § 17.6; *Pruitt v. Savage*, 128 Wn. App. 327, 332, 115 P.3d 1000 (2005) (“Michael relies on Restatement (Second) of Property: Landlord & Tenant § 17.6 (1977).... Although this section recommends extending the warranty to third persons other than the

if that test does apply, the trial court correctly found that Ms. Hill's evidence fails to satisfy that test for landlord liability.

The Restatement test articulates the following standard for landlord liability:

A landlord is subject to liability for physical harm caused to the tenant ... by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of:

- (1) an implied warranty of habitability; or
- (2) a duty created by statute or administrative regulation.

Lian v. Stalick, 115 Wn.App. 590, 594, 62 P.3d 933, 935

(2003)(*Lian II*). *Lian II* adopted the warranty of habitability

standard set forth in the RLTA at RCW 59.18.060 as the test for

a landlord's duty to repair under the Restatement. 115

Wn.App. at 597-98. Also see *Lian v. Stalik*, 106, Wn. App. 811,

821-23, 25 P.3d 467, 474 (2001)(*Lian I*). The applicable

portions of that statute provide as follows:

tenant, it has not been adopted in this state."); and *Sjogren v. Properties of Pacific Northwest, LLC*, 118 Wn. App. 144, 151, 75 P.3d 592 (2003) ("Sjogren urges us to adopt section 17.6 also. We decline to do so for several reasons.").

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;...

(5) *Except where the condition is attributable to normal wear and tear*, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;...

No duty shall devolve upon the landlord to repair a defective condition under this section...where the defective condition complained of was caused by the conduct of such tenant....

Italics and bold added. The last clause quoted above applies to the entire section, such that any defective condition caused by the tenant does not create a duty on the part of the landlord.

Therefore, regardless of whether the Restatement test applies in Washington or not, if the RLTA provisions regarding habitability set the standard for the landlords' tort liability for breach of a repair covenant, as Ms. Hill argues (Appellant's Brief, p. 21), then her claim fails. It is undisputed that either

the carpet was worn due to wear and tear, or it was damaged by her cat. Taking the facts in the light most favorable to Ms. Hill, the trial court based its analysis on the assumption that wear and tear caused the defect, because if it had been damaged by the cat, then the Pet Agreement would insulate the landlord from any liability. CP 89. Since the RLTA's repair duty regarding habitability excludes defects caused by wear and tear from the coverage of the warranty, RCW 59.18.060(5), taking the facts of this case in the light most favorable to the tenant, there is no repair duty imposed by the RLTA. The defect complained about by the Appellant simply was not a defect covered by the RLTA's warranty of habitability.⁷

Appellant similarly argues that the worn carpet constituted a violation of CFR § 982.401(g)(2)(iv), thereby bringing this case within the Restatement test regarding

⁷ Ms. Hill complains that the trial court "determination that the damage to the carpet was caused by normal wear and tear was just an assumption, ... and effectively took the issue out of the RLTA" She then claims that she "disputes that assumption as to the cause of the damage to the carpet." Appellant's Brief, p. 21. However, her own complaint alleges that "the condition of the carpet deteriorated over the years..." CP 5, Complaint ¶ 12. Ms. Hill cannot complain that the trial court took her own allegation at face value, nor did Ms. Hill provide any other explanation for how the carpet deteriorated during her eleven year tenancy.

compliance with a code provision.⁸ RCW 59.18.060(1).

However, the language of the regulation ends that argument.

The regulation provides that landlords are required to “make the dwelling units *structurally sound* so as to not present a danger of tripping or falling.” (Italics added) Here there is no issue of structural soundness; Ms. Hill obviously presented no evidence that a carpet is part of structural integrity. The trial court correctly found that it could not use this regulation to impose tort liability on the landlord for a worn out carpet, where the wear and tear was known to the tenant, and was caused by her own use of the area under her control during her eleven years of living in the apartment.

V. Conclusion

The trial court order dismissing plaintiff’s claims on summary judgment should be affirmed.

⁸ In *Pickney v. Smith*, 484 F.Supp. 1177 (2007), Judge Pechman correctly noted that the portion of the Restatement test that refers to “violation of an administrative code or statute” is not applicable in Washington because that test only applies in jurisdictions that apply a “negligence per se” test to such violations. *Id.* at 1181 (“with the abolition of the negligence per se doctrine in Washington, evidence of a statutory violation is insufficient to satisfy the final element of the restatement rule.”) Therefore, Appellant’s reliance on *Pickney* at page 20 of her brief for her arguments regarding the violation of a statute or regulation is misplaced.

DATED: September 8, 2010

Respectfully submitted,

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DEPUTY

CERTIFICATE OF SERVICE

I, KYNA GONZALEZ, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.

2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman, LLP, 1001 4th Avenue, Suite 4200, Seattle, WA 98154.

3. In the appellate matter of Hill v. Windsong Village Apartments, et al., I did on the date listed below, (1) cause to be filed with this Court a Brief of Respondents; and (2) to be delivered via messenger to D. Michael Tomkins, 8420 Dayton Avenue N, Seattle, WA 98103, and to Jeffrey Coats, 15500 SE 30th Place, Suite 201, Bellevue, WA 98007.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: September 8, 2010


KYNA GONZALEZ