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As the Appellant Group 44, Inc. (hereinafter "Group 44") noted in its initial brief, Appellate Courts review findings of fact "under a substantial evidence standard." Pardee v. Jolly, 163 Wash.2d 558, 566, 182 P.3d 967 (2008). "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." Cingular Wireless, L.L.C. v. Thurston County, 131 Wash.App. 756, 768, 129 P.3d 300 (2006). In the end "[a] trial court's findings of fact must justify its conclusions of law." Hegwine v. Longview Fibre Co., 162 Wash.2d 340, 353, 172 P.3d 688 (2007).

Group 44 demonstrated in its brief that the Trial Court's Findings of Fact are not supported by substantial evidence, and indeed that not even the evidence most favorable to Respondent Ebony Keys, LLC (hereinafter "Ebony Keys") could support the Trial Court's Findings. In its response brief, Ebony Keys attempts to confuse the issues, but its own citations to the record only serve to illustrate further that the Trial Court's findings are not supported by substantial evidence that would persuade a fair-minded person of the truth of the statement asserted.

A. The Evidence Clearly Showed That Ebony Keys Was Aware Of The Actual Lease Rate Prior To Taking Possession Of The Premises.

In its brief, Ebony Keys acknowledges that prior to closing on its purchase of the business from Out Loud Entertainment Group, Inc. (hereinafter "Outloud"), Ebony Keys was given a 2010 preliminary profit and loss statement that reflected the actual rent rather than the rent that would have been due under the 2005 lease. Ebony Keys attempts to minimize the significance of this fact by asserting, as its witnesses did at trial, that "Mr. Hasenhorl said he never paid attention to the rent numbers in the business plan." And while Ebony Keys acknowledges that Mr. Hasenhorl incorporated the rent figures from the 2010 profit and loss statement into Ebony Keys' business plan, it claims that he simply "rounded off the rent figures" and then "forgot about the business plan shortly after he finished it." (Response Brief, page 4)

But the evidence at trial clearly established that Mr. Hasenhorl not only incorporated the actual rent figures into its business plan, but Ebony Keys' realtor then gave that business plan to Group 44 to support its request that Group 44 approve Ebony Keys' assumption of the lease. (RP 163) It also provided the business plan to its bank to support its request for an SBA loan,

knowing that the bank would rely on it. (RP 117) Mr. Hasenhorl's preparation of the business plan was thus not an idle exercise signifying nothing. Instead, the evidence clearly showed that it was an extremely important document that Ebony Keys provided to both its lender and prospective landlord in order to obtain the loan needed to fund its purchase and the landlord's approval of its assumption of Outloud's position under the lease.

Moreover, Mr. Hasenhorl did not simply "round off the rent figures". Instead, he used the rent figures shown in the 2010 profit and loss statement to prepare two different revenue and expense projections contained in the business plan. The first was a yearly projection, in which he calculated and inserted the rent Ebony Keys would pay under the 2010 lease, not the 2005 lease he claimed at trial to have believed to be operative. (Page 14 of Ex. 16.) He then prepared a monthly projection, in which he inserted monthly rent of \$8,692.00, representing the base rent and additional triple net charges due under the 2010 lease, not the 2005 lease. (Page 15 of Ex. 16.)

As shown in Mr. Hasenhorl's projections, rent was Ebony Keys' largest projected monthly expense. It was thus a very important component of Ebony Keys' business plan. Had Mr.

Hasenhorl truly believed that the 2005 lease was operative and that Ebony Keys would only have to pay \$7,187.50 per month in rent, he would not have prepared a business plan explicitly projecting monthly rent of \$8,692.00.

The Trial Court also found that Ebony Keys was not aware that the closing disbursement included a rent payment to Group 44 based on the 2010 lease. Ebony Keys asserts in its brief that this finding is supported by ample evidence because Mr. Hasenhorl testified that he did not look closely at the closing statement, which he deemed "preliminary". (Response Brief at page 10) But Mr. Hasenhorl approved of the preliminary closing statement, as evidenced by his signature on April 5, 2011, thereby directing the closing agent to use those figures in making the final disbursements at closing.

While Ebony Keys repeatedly attempts to portray Mr. Hasenhorl as some sort of novice or bumpkin that did not bother to read what he signed, the evidence clearly showed that he was a sophisticated business person with extensive experience running a business. He testified that he has owned and operated a similar business in Utah for five years. (RP 79). Mr. Hasenhorl was also able to prepare a sophisticated business plan to support Ebony

Keys' SBA loan request. (Ex. 16) He thus clearly knew the importance of the preliminary closing statement and each of the line items contained in that statement.

In any event, under Washington law parties have a duty to read any contract they sign, and a party who voluntarily signs a contract may not later attempt to avoid that contract on the basis that he or she was ignorant of its contents. Skagit State Bank v. Rasmussen, 109 Wn.2d 377, 381, 745 P.2d 37 (1987) (quoting Nat'l Bank of Wash. v. Equity Investors, 81 Wn.2d 886, 912-13, 506 P.2d 20 (1973)). Even if Mr. Hasenhorl chose not to pay attention to the figures he was given prior to closing, he had clearly been given those figures prior to closing and had signed a closing statement reflecting those figures and instructing the closing agent to make disbursements based on those figures.

Ebony Keys thus had full knowledge of the actual rent due under the lease for the premises it was taking possession of as part of its purchase of Outloud's business prior to taking possession of those premises. It then proceeded to take possession of the premises and keep possession of the premises for over a year. Under the doctrine of quantum meruit, it is therefore liable for the rent that accrued under the existing lease for those premises.

Ebony Keys next asserts that Group 44 has argued that Ebony Keys waived its right to avoid the terms of the 2010 lease by remaining in possession of the premises. While Group 44's initial intervention complaint indeed sought to hold Ebony Keys responsible for all sums accruing under the 2010 lease, that claim is not part of this appeal. Instead, Group 44 asserts only that Ebony Keys was responsible for the actual rent accruing for those months it chose to remain in possession of the premises.

Even if Ebony Keys had only learned the true rental amount after taking possession of the premises, Ebony Keys did not assert a claim against Outloud or seek to rescind its purchase of the business, or even stop making payments on its promissory note to Outloud. (RP 120-121) Instead, it chose to remain in possession of the Premises, accepting the benefit of its purchase and Group 44's approval of its assumption of the lease, while at the same time refusing to pay the full amount of the rent due.

Group 44 was finally forced to file an unlawful detainer action against Ebony Keys. Only after Group 44 filed an unlawful detainer action did Ebony Keys belatedly decide to assert a claim against Outloud, though even then it chose to remain in possession of the

premises for additional months knowing that Group 44 would seek to hold it responsible for the rent actually accruing.

The elements of a quantum meruit claim are: (1) valuable services rendered; (2) to persons from whom payment was sought; (3) which were accepted and enjoyed by the persons; and (4) under circumstances that reasonably notified them that the plaintiff expected to be paid. Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc., 61 Wn.App. 151, 159, 810 P.2d 12, 814 P.2d 699, (1991). Here, there is no dispute that Group 44 provided valuable commercial premises to Ebony Keys.

The Trial Court's findings that Ebony Keys did not know the amount of the actual rent due prior to taking possession of the premises are not supported by substantial evidence. Ebony Keys clearly knew prior to taking possession of the premises the actual rent due for those premises. Even if it had not known prior to taking possession of the premises, it acknowledges it was aware of the actual rent shortly thereafter. It nonetheless chose to retain the premises for over a year, even after an unlawful detainer action was started against it. The Trial Court thus clearly erred in failing to find that Ebony Keys is liable to Group 44 for the actual rent that

accrued during its tenancy of the Premises pursuant to the doctrine of quantum meruit

Ebony Keys asserts in its brief that the Trial Court found that the monthly rental rate due under the 2005 lease was reasonable rent under the theory of quantum meruit. But the Trial Court made no such finding, having previously, and erroneously, found that Ebony Keys was not aware of the actual lease rate.

Nor would the rent due under the 2005 lease have in any way been relevant to what would be a fair rental rate in 2011 and 2012. While Outloud and Group 44 had in 2005 agreed on a rental rate for the premises, it is undisputed that in 2010 those parties entered into a new lease with a higher rental rate that included triple net charges. The only evidence before the Trial Court as to the fair value of the premises in 2011 and 2012 was thus the amount of rent agreed to by Outloud under the operative 2010 lease.

Finally, Ebony Keys asserts that Group 44 has received the full benefit of the value of the premises it provided because it has obtained a judgment against Outloud, a defunct corporation that did not participate in either the trial or this appeal. There is no evidence that Group 44 will ever be able to collect any portion of

that judgment, so there is no evidence that Group 44 has received any compensation for Ebony Keys' failure to pay the fair value of the premises Ebony Keys used and retained for over a year.

B. The Trial Court Erred In Concluding That Outloud Owned The Business Property It Conveyed To Ebony Keys.

Ebony Keys asserts that it received a bill of sale from Outloud for the property that Group 44 claims to own, and that the bill of sale is prima facie evidence of ownership. While those statements are true, they are also irrelevant because Group 44 clearly rebutted that evidence at trial. See Hall v. American Friends Service Commission, Inc., 79 Wn.2d 230, 484 P.2d 376 (1971).

It is undisputed that when Group 44 leased the premises to Outloud Entertainment Group, Inc. ("Outloud") in 2005 it agreed that certain items of property it owned and that were identified in addendums to the lease would remain on the premises. (FF 1, EX 13A, RP 58-59) Ebony Keys devotes a substantial portion of its brief to noting that the addendums did not specifically state that Group 44 owned the property that was to stay at the premises. But Group 44's president, Tony Valenzuela, testified without contradiction that the property identified in the addendums was

property being provided by Group 44 (RP 158), and Outloud's Marc Drewry also testified that all of the property identified in Addendums A and B was property that the landlord was leaving at the site for the use of the tenant. (RP 58-59)

That property remained the property of Group 44, and Mr. Valenzuela further testified without contradiction that it was never transferred to Outloud. (RP 158) Ebony Keys produced no bill of sale from Group 44 to Outloud subsequently transferring any of that property to Outloud, nor was it able to point to any provision of either the 2005 lease or the 2010 lease whereby Outloud ever could have obtained ownership of any of the property.

While Ebony Keys assigns great significance to the inability of Group 44's president, Tony Valenzuela, to personally identify particular pieces of equipment that Group 44 owned, Addendums A and B both explicitly identified and described the personal property at issue. And one of Ebony Keys' owners, Jordan Stoneman, testified that most of the items identified in Addendums A and B were on site when Ebony Keys took possession of the premises. (RP 250-255) He further testified that even though Ebony Keys subsequently replaced some of the items, many were still in place

when Ebony Keys vacated the premises, taking the property with it. (RP 250-255).

The evidence at trial thus clearly showed that Group 44 was the original owner of all of the property identified in the lease addendums, and there was no evidence that ownership of any of that property had been transferred by Group 44 to Outloud. As a result, Outloud did not have the power to transfer the property to Ebony Keys, and its bill of sale purporting to do so was invalid.

Because Outloud could not transfer ownership to Ebony Keys of property that it did not own, the Trial Court erred in its findings and conclusions that Outloud had transferred ownership of the disputed property to Ebony Keys. Ebony Keys admitted at trial that it removed the personal property from the premises and that it remains in possession of that property. As the property belongs to Group 44, the Trial Court erred in not ordering Ebony Keys to return the property to Group 44.

CONCLUSION

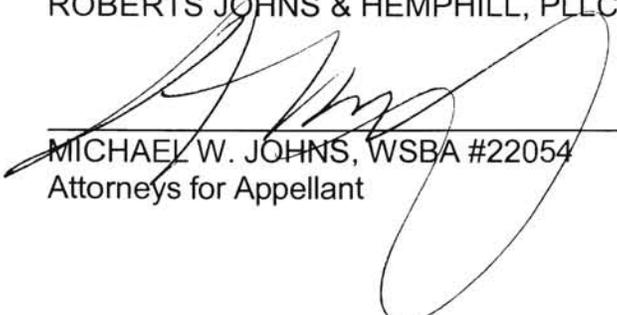
The Trial Court erred in finding that Ebony Keys did not have knowledge of the actual rent that was due for the Premises when it took possession of the Premises. Because Ebony Keys accepted

and retained the benefit of possession of the Premises with full knowledge of the rent due for the Premises, Ebony Keys should be liable for all the rent that accrued during its possession of the Premises under the doctrine of quantum meruit.

The Trial Court also erred in finding that the only fixtures and equipment that Outloud did not own or have the right to sell were the hood, stove and two microwave ovens. All of the personal property that was referenced in Ex 13A as belonging to Group 44 remained the property of Group 44 and was never transferred to Outloud. Ebony Keys thus should be ordered to return all of the personal property belonging to Group 44 to Group 44.

Respectfully submitted this 7th day of February, 2014.

ROBERTS JOHNS & HEMPHILL, PLLC



MICHAEL W. JOHNS, WSBA #22054
Attorneys for Appellant

2014 FEB -7 PM 1:32

CERTIFICATE OF SERVICE

STATE OF WASHINGTON

BY _____
DEPUTY

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing REPLY BRIEF OF APPELLANT on the following individuals in the manner indicated:

Douglas N. Kiger
Jonathan W. Blado
Blado Kiger Bolan, P.S.
4717 S. 19th St., Suite 109
Tacoma, WA 98405

(X) Via Hand Delivery

Outloud Entertainment Group, Inc.
c/o Marc Drewry
2641 – 39th Ave. W.
Seattle, WA 98199

(X) Via U.S. Mail

SIGNED this 7th day of February, 2014, at Gig Harbor,
Washington.


KRISTINE R. PYLE