

No. 46964-2-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

NEAL and MARILYN McINTOSH, husband and wife, et al.,

Respondents,

v.

AZALEA GARDENS LLC, dba Azalea Gardens Mobile Home Park,

Appellant.

REPLY BRIEF OF APPELLANT AZALEA GARDENS LLC

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A. INTRODUCTION

Azalea Gardens, LLC has requested narrow relief in this appeal: reversal of one conclusion of law that has no basis in the evidence and expressly contradicts numerous other findings and conclusions in the same order. The order finds that the term “capital improvement” only means “new construction,” as opposed to substantial improvements to, or replacement of, existing assets. Neither party advanced evidence of such an interpretation at trial.

Neal McIntosh and the other tenants at Azalea (“tenants”) respond that the trial court’s ruling is “reasonable” and will prevent Azalea from “deriving undue benefit” from the lease. They do not cite any evidence to support the trial court’s erroneous conclusion.

Courts are not empowered to rewrite contracts based on vague notions of justice. If a contract term is ambiguous, the court must seek out evidence regarding the parties’ respective interpretations of that term, and enter findings and conclusions that are both internally consistent and consistent with the evidence.

B. REPLY ON STATEMENT OF THE CASE

Azalea stated the case in its opening brief and the tenants responded. Much of the tenants’ counterstatement accurately states the

underlying facts, although some of their recitation is irrelevant to the narrow issues on appeal. However, several points require reply.

The tenants point out that advertising materials for the park stated that Azalea would pay for maintaining the roads in the park. Br. of Resp'ts at 6. This is irrelevant to the issues on appeal twice over: (1) Azalea has never disputed that it was responsible for paying for road maintenance,¹ and (2) advertising materials are not contracts and are irrelevant to the trial court's interpretation of the lease at issue.²

The tenants claim there is "no evidence that the park ever charged below-market rent." Br. of Resp'ts at 7. Apparently they are asserting that there is no evidence Azalea was a less expensive choice than other comparable communities. This assertion, in addition to being irrelevant to the meaning of the term "capital improvement" as used in the lease, is inaccurate. Tenant Neal McIntosh testified that he chose Azalea over other communities because "rent was an issue, cost." RP 10/21/14 at 29. Also, with rent increases tied to the consumer price index by the terms of

¹ Azalea's position at trial was that sealcoating the roads substantially improved their useful life as capital assets, and thus constituted a capital improvement, not a repair. CP 303-04; RP 45. Azalea never invoked the capital improvement provision in connection with routine maintenance matters. CP 102-06.

² See *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC*, 146 Wn. App. 546, 561, 192 P.3d 378 (2008), *reversed on other grounds*, 169 Wn.2d 265, 236 P.3d 193 (2010). See also, *Seashore Villa Ass'n v. Hugglund Family Ltd. P'ship*, 163 Wn. App. 531, 545, 260 P.3d 906, 914 (2011) (citing David K. DeWolf & Keller W. Allen, *25 Washington Practice: Contract Law and Practice*, § 2:12 at 50 (2d ed. 2007)).

Azalea's 20-year lease, McIntosh conceded that he was protected from the fact that Washington law has no rent control provisions. *Id.*

The tenants claim that when Azalea paid for sealcoating work in 2006, "it did not label that work as a 'capital improvement,'" citing as evidence RP 10/21/14 at 46.³ Br. of Resp'ts at 7. Apparently the tenants want this Court to believe that Azalea's position at trial regarding the sealcoating project was disingenuous.⁴

The tenants misrepresent the record. John Harer of Azalea testified that the previous road repairs "were still what I would call capital improvements.... And since we weren't full yet, I didn't think it was fair to go ahead and charge everybody for doing the capital improvement at that time." RP 10/21/14 at 45-46.

In another portion of the tenants' fact recitation that is irrelevant to the issues on appeal, the tenants claim that Azalea "sidestepped the lease language" regarding the calculation of the capital improvements provision of the lease, citing CP 320. Br. of Resp'ts at 9.

Far from "sidestepping" the provision, Azalea simply pointed out that the provision was ambiguous, and that the tenants' proposed

³ The tenants also cite to Finding of Fact 30, but that finding says nothing about whether Azalea considered the 2006 project a "capital improvement." CP 455.

⁴ Once again, the tenants' assertion is irrelevant. Although Azalea disagrees with the trial court's finding that the sealcoating was not a capital improvement, it is not challenging that ruling on appeal.

interpretation would actually *increase the tenants' payments to Azalea*. CP 320. Azalea noted that because the depreciation period for a road is 15 years, using the tenants' proposed interpretation would mean a total charge of \$36,747.52 to the tenants, rather than the \$20,415.29 Azalea sought to recover under its own interpretation. *Id.*

The tenants assert Azalea took the position at trial that the meaning of "capital improvements" in tax law was not controlling of the meaning of the term as used in the lease. Br. of Resp'ts at 10.

Again, the tenants do not tell the whole story. While Azalea did note that the tax law definition was not the end-all-be-all of the trial court's interpretation, CP 152, Azalea *also* argued in the alternative that the tax law definition actually *supported* Azalea's argument. CP 153. Azalea argued that if the trial court was going to consult tax law for interpretive guidance (as it ultimately did here) it should note that in tax law, improvements that enhance the value or prolong the useful life of existing property are considered "capital improvements." *Id.* at 153-54.

Most importantly, the tenants cite to no evidence in this record, because there is none, that either party interpreted the term "capital improvements" to mean *only* the construction of new assets.

C. ARGUMENT

(1) As the Tenants Tacitly Concede, There Is No Evidence that Either Party Thought the Term “Capital Improvement” Applied Only to New Construction and Not Existing Assets

Azalea argued in its opening brief that there is no evidentiary basis for the trial court’s Conclusion of Law 14 that either party meant the term “capital improvement” to mean only “new construction.” Br. of Appellant at 10-14. Both parties’ evidence at trial showed they believed a “capital improvement” could be made to an existing asset. *Id.* Azalea also argued that IRS regulations, which were extensively discussed at trial and incorporated into the trial court’s other findings of fact, expressly state that a capital improvement may be made to an existing asset.

(a) The Legal Authority the Tenants Cite Is Inapposite and Contradicts IRS Regulations Upon Which the Trial Court Relied In Its Findings and Conclusions

The tenants first respond that “legal authority” supports the trial court’s Conclusion of Law 14. Br. of Resp’ts at 24-26. In support they cite *Ocean Club Condo. Ass’n, Inc. v. Gardner*, 318 N.J. Super. 237, 239, 723 A.2d 623, 624 (App. Div. 1998).

The first flaw in this response is that, as the tenants concede, interpretation of the meaning of a contract term is first and foremost a question of fact, not law. The fact that a term meant something else in a different contract in *Ocean Club*, that had different text, was executed by

different parties, and was interpreted by a court on the other side of the country, has no bearing on the parties' intended meaning of the term here.

Second, the tenants misread *Ocean Club*. The *Ocean Club* contract specifically listed “replacement” of a capital asset as a separate activity from the activity of “capital improvement.” *Ocean Club*, 318 N.J. Super. at 238. Thus, the plain language of the contract made clear that the parties did not intend “capital improvement” in their contract to include the replacement of an existing asset.

Also, the court in *Ocean Club* cited to “persuasive testimony at trial” that the term “capital improvement,” in the context of condominium administration, referred to creation of a new facility or installation. *Id.* at 239. In fact, the court also noted that the defendant’s expert conceded the point. *Id.*

Unlike in *Ocean Club*, the term “capital improvement” here is not distinguished from the term “replacement” in the lease. This lease has different terms and is in a different context, thus, the factual determination in *Ocean Club* is inapplicable. When viewed as a stand-alone term, there is no authority for the proposition that “capital improvement” ever means solely “new construction.”

Azalea can also cite authority that explicitly distinguishes between new construction – called “capital construction” – and “capital

improvements,” which encompass precisely what the word suggests: “improvements” to existing property. *See, e.g., Gill v. Beaverton Sch. Dist.* 48, 14 Or. Tax 25, 30 (1996) (“[C]onstruction” usually refers to the process of making something.... The word “improve” means to enhance in value or quality...”).

The trial court found that the parties intended the term “capital improvement” to be interpreted in a manner “in the sense or similar to usage in IRS regulations.... The distinction between the two concepts is frequently expressed in terms of whether the expenditure “keeps” or “puts” the asset into its ordinary operating condition.” CP 457. The court also found that the parties meant the term to encompass “betterments made to increase the value of property.” *Id.* The trial court also found that improvements to existing property, such as “enlargement of the clubhouse” would benefit the tenants. If merely enlarging an existing asset is a capital improvement, it is difficult to see how *completely replacing* the asset is not.

Thus, the trial court found that the term “capital improvement” was meant to apply to expenditures in the order of “betterments” to existing property, and which “put” *existing* assets in their ordinary operating condition. It is logically unsustainable for the trial court to have found

that the parties meant “capital improvement” to apply to existing assets, and then to conclude that they meant it never to apply to existing assets.

(b) The Tenants Do Not Cite a Single Piece of Evidence that Supports the “New Construction” Interpretation, or Explains How the Trial Court’s Order Is Internally Consistent

Azalea’s own interpretation of the provision at issue was that anything that extended the useful life of an existing asset was a capital improvement, and that the sealcoating project did that. CP 305, 310; RP 10/21/14 at 45. The tenants’ interpretation was that the term should be construed consistent with IRS regulations, and that under IRS regulations, a capital improvement “puts” an existing asset into its ordinary operating condition, and that the sealcoating project would be maintenance and not a capital improvement. CP 284-93; RP 10/21/14 at 68-69.

The tenants respond at length regarding the events at trial, but never cite to a single piece of testimony or other evidence to suggest the tenants interpreted “capital improvement” to mean only “new construction.” Br. of Resp’ts at 29-39. Instead, the tenants respond by arguing that their evidence and arguments did not advance the theory that

the term means the same in the lease as it means in IRS regulations. Br. of Resp'ts at 33-39.⁵

The tenants' present denial of their trial position and evidence regarding IRS regulations is inconsistent with the trial record. The tenants presented two witnesses at trial: tenant Neal McIntosh and Azalea's accountant, Mark Middlesworth. Neal McIntosh did not make any statement in his testimony about his interpretation of the term "capital improvement." RP 10/21/14 at 8-31. Mark Middlesworth testified regarding IRS regulations, and that under those regulations, a "capital improvement" would be the replacement of the road surface with new asphalt. RP 10/21/14 at 70.

While arguing for the admission of Mr. Middlesworth's testimony, the tenants' counsel expressly and repeatedly stated that the accountant's testimony was relevant to the trial court's decision because it was evidence of the parties' interpretation of the term "capital improvement" under the lease:

Mr. Young: In [Middlesworth's] opinion, laying asphalt involved a capital improvement. Then I asked him, well, what about seal coating, do you think seal coating would be a capital improvement and he said, no, because that did not improve the value or extend the life of the asset and

⁵ A number of the contentions in section B.4 of the tenants' brief again raise the irrelevant issue of maintenance. Br. of Resp'ts at 37-38.

therefore it would be maintenance and not a capital improvement.

The Court: How is that relevant to the decision I need to make?

Mr. Young: Well, it's relevant for a couple of reasons. One is it relates to what is a capital improvement. *That is a term used in the lease and that's a term the Court is going to have to interpret* to determine whether this project is a capital improvement or not....

His opinion was if he had been told what this work really was, he would have treated it as maintenance or repair under the IRS guidelines. I think that's a significant part of what a capital improvement is. *Because a capital improvement doesn't just exist out there apart from the Internal Revenue Service.*

...And our contention is that the IRS guidelines are highly relevant to interpreting the term "capital improvements."

RP 10/21/14 at 33-38 (emphasis added).

The tenants also respond that the trial court found the term as used in the contract was only meant to be "in the sense" or "similar" to the IRS regulations, and not a "wholesale" adoption of that meaning. Br. of Resp'ts at 24. Thus, the tenants conclude, the trial court was free to adopt a meaning that does not comport with the regulations.

Defining "capital improvements" as only "new construction" is not "in the sense" or "similar" IRS regulations. In fact, it expressly contradicts them. *Jenkins v. C.I.R.*, 44 T.C.M. (CCH) 510 (T.C. 1982). To the extent that the trial court decided the lease language was meant to

depart from IRS regulations, that departure should have been supported by some evidence. The record shows that the only evidence of the meaning of the term did *not* support a finding that it only applied to new construction.

The trial court was obliged to interpret the lease agreement based on some evidence at trial. Conclusion of Law 14 does not meet this test. The “new construction” finding is unsupported and contradicts the rest of the trial court’s findings and conclusions. It should be reversed.

(2) Even an Ambiguous Contract Term Must Be Interpreted Based upon the Evidence; an Interpretation May Not Be Invented to Punish a Contracting Party for the Ambiguity

The tenants next argue that the lease provision is ambiguous and should be construed against Azalea. Br. of Resp’ts at 26-29. They suggest that the “new construction” interpretation the trial court imposed is proper to prevent Azalea from “profit[ing] by using an ambiguous term in its lease....” Br. of Resp’ts at 28. They cast Azalea as a wrongdoer that purposefully drafted an ambiguous contract.

As a threshold matter, all of the evidence cuts against the notion that Azalea somehow purposefully drafted this Agreement ambiguously in order to take advantage of the ambiguity. Many of the 20-year leases in question took effect in 2004 or earlier. CP 69. Azalea first invoked this provision in 2011, despite believing other prior projects might be subject

to its terms. CP 76; RP 10/21/14 at 46. And when it invoked the provision, it interpreted the language in way that resulted in *less money* being paid in increased rent, not more. CP 320.⁶ Despite the tenants' suggestion that this was a purposefully ambiguous lease drafted in nefarious plan to gouge tenants, the evidence proves precisely the contrary.

Also, if Azalea wanted to freely charge tenants for any and all maintenance, repairs, improvements, or any other costs of doing business, there was a much simpler way to do that. They could have declined to offer a 20-year lease with rent control tied to the Consumer Price Index. As the tenants acknowledge, Azalea does not have any legal obligation to offer rent control, or to be transparent about charging tenants for the costs of operating the park.⁷ The capital improvements provision accounted for those circumstances where a major project intended to improve or refurbish the park's capital assets, combined with a rent control provision

⁶ Again, as Azalea explained below, Azalea sought reimbursement of some of the principal it expended on the roads, \$20,415.59. CP 350. Assuming all of the tenants paid in installments over one year at the 12% interest rate Azalea charged, the total funds to Azalea would be \$22,865.12. The trial court concluded that, if the project here had been a capital improvement, Azalea should be reimbursed \$2,449.87 annually over the period of depreciation, which is 15 years. CP 320. \$2,449.87 times 15 years is \$36,748.05. Thus, the trial court's calculation results in a \$16,000 *increase* of money paid by the tenants. *Id.*

⁷ There is no doubt that Azalea wanted to fill the park, and had a business interest in offering these highly attractive lease terms to achieve that goal. However, in the absence of the ability to raise rents freely, they also needed some way of ensuring that the cost of major projects would not sink the park financially.

that would not allow for increases, might send the park into the red and force its closure.

In addition to improperly casting Azalea as a bad actor based on no evidence, the tenants' appeal to punishment is improper in the context of contract interpretation. Courts do not have the power, under the guise of interpretation, to rewrite contracts the parties have deliberately made for themselves. *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955). Courts may not interfere with the freedom of contract or substitute their judgment for that of the parties to rewrite the contract. *McCormick v. Dunn & Black, P.S.*, 140 Wn. App. 873, 891-92, 167 P.3d 610 (2007). As this Court itself has noted, echoing our Supreme Court: We “cannot, based upon general considerations of abstract justice, make a contract for parties that they did not make themselves.” *Wagner v. Wagner*, 95 Wn.2d 94, 104, 621 P.2d 1279 (1980); *McCormick*, 140 Wn. App. at 892.

There is a difference between evaluating competing extrinsic evidence regarding the meaning of a contract term and inventing one out of whole cloth as a punishment for the perceived bad behavior of one party. As the record shows, Azalea acted in good faith and with no malice, and its position in this appeal – largely accepting the trial court's decision but challenging one incongruous provision – demonstrates that Azalea is continuing that practice.

The trial court's conclusion that the term "capital improvement" meant only new construction is unsustainable on this record and in the context of the trial court's other findings.

(3) The Fact That the Trial Court Chose to Exempt Capital Improvements Mandated by a Government Agency from Its "New Construction" Finding Demonstrates that the Trial Court Was Rewriting the Lease Rather than Interpreting It

Azalea argued in its opening brief that the trial court revealed itself to be acting arbitrarily and without evidentiary basis when it decided that Azalea would not be bound by the "new construction" interpretation with respect to capital improvements mandated by a government agency. Br. of Appellant at 15. Azalea noted that the plain language of the lease agreement makes absolutely no distinction between government mandated "capital improvements" and those chosen by Azalea. *Id.* Thus, the trial court appears to have rewritten the lease, rather than interpreting it.

The tenants respond that applying a different meaning of "capital improvement" with respect to work mandated by the government is acceptable because such work "could not be the result of a financial incentive on the part of Azalea." Br. of Resp'ts at 40. They also claim that "it seems more fair" to require the tenants to pay for improvements mandated by a government agency, even if those improvements are not

new construction. *Id.* They cite no evidentiary basis for the trial court's arbitrary distinction.

The tenants' response proves Azalea's point: the trial court was, at the behest of the tenants, rewriting the contract to punish Azalea or prevent some alleged future wrongdoing, rather than interpreting it based on the evidence.

Again, courts are not empowered to rewrite contracts, in the guise of interpretation, to achieve an abstract or punitive goal. We "cannot, based upon general considerations of abstract justice, make a contract for parties that they did not make themselves." *Wagner*, 95 Wn.2d at 104; *McCormick*, 140 Wn. App. at 892.

The tenants' admission that the trial court acted based on abstract goals, rather than evidence, demonstrates that the trial court's Conclusion of Law 14 should be reversed.

(4) Azalea Has Not Challenged the Trial Court's Finding that the Sealcoating Was Maintenance, and Has Never Contended that Routine Maintenance Is a Capital Improvement; the Tenants Arguments in this Respect Are Unnecessary Attacks

The tenants spend several pages arguing that the trial court correctly concluded that the sealcoating project was maintenance, and that maintenance is not a "capital improvement." Br. of Resp'ts at § B.3, pp.

29-31. They suggest that Azalea has sought or will seek to charge tenants for simple repairs. *Id.*

The tenants' arguments are gratuitous and inflammatory. Azalea has not challenged the trial court's findings on appeal regarding the sealcoating project or the distinction between "maintenance" and "capital improvements." Azalea will not attempt to provide a point-by-point refutation to the tenants' accusations, except to note that in the more than 10 years that these agreements have been in place, Azalea has never invoked the capital improvements provision for repairing roofs, fences, or gates. Br. of Resp'ts at 30. These assertions are unsupported by the record, appear to be introduced for an inflammatory purpose, and are inappropriate.⁸

(5) The Trial Court's Declaratory Judgment Affects the Parties Going Forward; the Tenants Acknowledge the Issue Is Not Moot

In its opening brief, Azalea explained that, despite declining to challenge the finding that the sealcoating project was not a capital improvement under the lease, its appeal is not moot because the trial court entered declaratory judgment regarding the meaning of the lease. Br. of Appellant at 15-16. They also noted that the appeal is not moot because,

⁸ In Azalea's view, section B.3 is intended to impugn Azalea's motives and to detract from the legal arguments on appeal, rather than assist this Court.

should Azalea seek to invoke the lease provision regarding a future project, the tenants would present the trial court's order here and argue that Azalea is collaterally estopped from challenging the "new construction" finding. *Id.*

The tenants do not really address the issue of mootness, but argue that "it cannot be determined whether the doctrine of collateral estoppel would apply or not...." Br. of Resp'ts at 45. They claim that because this Court cannot decide now whether application of the doctrine would "work an injustice" in the future, Azalea's concern about Conclusion of Law 14 is "misplaced." *Id.* at 44.

The tenants' response is perplexing. They appear to concede that this order could apply to future disputes. They do not contest that the possibility of future application renders appeal of the current order ripe and not moot.

Because the tenants concede that the trial court's order here could be invoked in future disputes, and if erroneous must be corrected on appeal now, the issue is not moot.

(6) The Trial Court's Attorney Fee Award Is Improper; the Trial Court Did in Fact Enter Declaratory Judgment; The Tenants Admit that the Trial Court Failed to Enter Detailed Findings and Conclusions on Attorney Fees

In its opening brief, Azalea argued that the trial court abused its discretion in entering its award of attorney fees. First, Azalea noted that both parties prevailed on major issues – assuming this Court reverses the trial court's declaratory judgment in Conclusion of Law 14 – and thus no fees should be awarded. Br. of Appellant at 16-19. Azalea also argued that even if tenants prevailed, the trial court abused its discretion and failed in its duty to scrutinize the tenants' attorney fee request and enter detailed findings and conclusions. *Id.*

(a) The Trial Court Entered Declaratory Judgment; Azalea Was the Sole Party Requesting It

Regarding the prevailing party issue, the tenants claim that the trial court did not enter declaratory judgment regarding the meaning of the lease term at issue. Br. of Resp'ts at 42. The tenants claim that Azalea's counterclaim for declaratory judgment was dismissed, and that Azalea's counterclaim did not specifically request the declaratory relief Azalea seeks. *Id.*

The tenants' claim that the declaratory judgment counterclaim was dismissed is misleading. The tenants point this Court to the *judgment*, entered *after* the court's findings and conclusions, which included a pro

forma line about dismissing Azalea's counterclaims. CP 519. Azalea's trial brief specifically identified the declaratory relief it requested and ultimately received, which was "declaratory relief as to" the meaning of the capital improvements provision "so as to avoid piecemeal litigation each time Additional Rent is sought during the remaining term of plaintiff's leases." CP 303.

Azalea was the only party to request declaratory judgment. The tenants' complaint asked the trial court to rule that the sealcoating project constituted "maintenance," and therefore was an improper charge that breached the parties' lease. CP 6-8. They also made a Consumer Protection Act claim. *Id.* They did not ask the trial court to enter declaratory judgment that would govern the parties' contractual relationship into the future. *Id.* In its answer, Azalea requested declaratory judgment, seeking the trial court's interpretation of the lease that would govern the parties' future dealings, including with respect to

the allegations regarding the “capital improvements” provision in the lease. CP 15.⁹

Based on Azalea’s request, the trial court did award declaratory judgment. Indeed, the fact that the Court limited any future application of the “capital improvement” provision to future new construction, and any future charge to a “rate of return” on any new capital improvement, both confirm that the court awarded declaratory relief as Azalea requested in its counterclaim. Br. of Resp’ts at 1-2.

As the only party asking for declaratory judgment, Azalea received it. The face of the trial court’s order makes clear that the trial court ruled on Azalea’s declaratory judgment request by entering a conclusion of law that interpreted the lease agreement broadly and finally. The tenants do not dispute that Conclusion of Law 14 will apply to future disputes arising under the capital improvements provision.

Azalea received the declaratory relief it requested, to have the contract term interpreted and avoid piecemeal litigation. Particularly if this Court reverses the trial court’s erroneous Conclusion of Law 14, each

⁹ The tenants deny that Azalea’s answer asked for declaratory judgment regarding the meaning of the capital improvements provision in the lease. Br. of Resp’ts at 42. Azalea specifically requested precisely that: “Defendant is entitled to certainty and finality from a declaratory judgment pursuant to RCW 7.24 against the Plaintiffs as to the rights and obligations between the Plaintiffs and the Defendant arising under any rental agreement...including without limitation any right or obligation alleged in the Plaintiffs’ Complaint for Damages.” CP 15-16. The Complaint alleged violation of the capital improvements provision of the lease. CP 6-8.

party will have substantially prevailed, and no attorney fees should be awarded to either party.

(b) The Tenants Concede that the Trial Court Failed in Its Duty to Scrutinize the Fee Request and Enter Detailed Findings and Conclusions

In response to Azalea's challenge to the trial court's failure to examine the tenants' fee request, the tenants concede the point. Br. of Resp'ts at 46. They claim that although the findings do not meet the *Berryman*¹⁰ test for detailed written findings and conclusions, this Court should affirm based upon the trial court's oral statements. *Id.* In support of this argument, they cite *Matter of Marriage of Booth*,¹¹ 114 Wn.2d 772, 777, 791 P.2d 519 (1990).

First, the rule the tenants cite from *Booth* – that oral rulings may be used to ascertain a trial court's finding on an issue – was not applied to inadequate findings and conclusions regarding attorney fees. In *Booth*, our Supreme Court looked to oral rulings to ascertain whether the trial court found an affidavit alleged adequate reasons to warrant deviation from a standard child support schedule. *Booth*, 114 Wn.2d at 777.

¹⁰ *Berryman v. Metcalf*, 177 Wn. App. 644, 657, 312 P.3d 745 (2013), review denied sub nom., *Berryman v. Farmers Ins. Co.*, 179 Wn.2d 1026, 320 P.3d 718 (2014).

¹¹ The tenants refer to the case as *Matter of Marriage of Griffin*, understandably, because that was the last name of the couples when they were married. Azalea points this out merely for clarification purposes.

Also, the trial court's sparse oral statements here are not sufficiently specific to supplement its inadequate findings and conclusions. Although the tenants tout the "lengthy hearing" on attorney fees (Br. of Resp'ts at 45) a review of the 18-page exchange reveals it is mostly taken up by the arguments of counsel, with occasional short comments by the judge. RP 11/26/14 at 3-21. Even when this Court finds it appropriate to consult transcripts to divine the meaning of a written fee award, it demands the same rigorous standards of detail and specificity that written findings must provide. *See Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 692, 82 P.3d 1199, 1213 (2004), *as amended on denial of reconsideration* (Mar. 2, 2004).

The well-established rule with respect to attorney fee awards is that detailed findings and conclusions must support the award. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632, *order corrected on denial of reconsideration*, 966 P.2d 305 (1998), *implied overruling on other grounds recognized in Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn.2d 643, 272 P.3d 802 (2012) ("Not only do we reaffirm the rule regarding an adequate record on review to support a fee award, we hold findings of fact and conclusions of law are required to establish such a record").

As the tenants acknowledge the findings here are inadequate and must be supplemented by the trial court's oral ruling, which also does not contain findings of fact and conclusions of law, reversal is warranted.

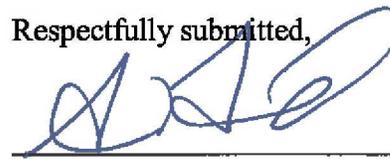
D. CONCLUSION

As the tenants' brief tacitly acknowledges, the trial court's declaratory judgment interpreting the parties' lease was based not on the evidence, but based on vague notions of punishing Azalea. There is absolutely no evidence in this record that either party thought the term "capital improvements" meant only new construction, and that conclusion also expressly contradicts the trial court's other findings and conclusions.

This Court should reverse the trial court's order and remand for entry of a new order consistent with the evidence and the other findings and conclusions.

DATED this 9th day of July, 2015.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below, I emailed and deposited with the U.S. Postal Service a true and accurate copy of the Reply Brief of Appellant Azalea Gardens LLC in Court of Appeals Cause No. 46964-2-II to the following parties:

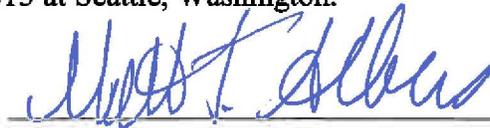
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: July ^{9th} 2015 at Seattle, Washington.



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TALMADGE FITZPATRICK LAW

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