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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 47188-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DANIEL KRULL and MAUREEN KRULL
husband and wife

Respondents,

v.

AIKO LAWSON

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Superior Court properly ruled that Appellant, Aiko Larson, was guilty of unlawful detainer. The lease that formerly permitted tenant's payment of rent by the 10th of each month, was amended by signed agreement, to require payment "on or before the first of each month".

Lawson's failure to heed the December 4, 2014 three day notice to pay December's rent or vacate the premises rendered her guilty of unlawful detainer. RCW 59.12.030(3). The Superior Court correctly found that tenant's December rent was due on December 1, 2014, pursuant to her Addendum to Residential Lease Agreement. The Court properly rejected Lawson's contention that the lease amendment was void because it was obtained by duress.

The Superior Court also properly ruled that service of the aforementioned three-day notice, as well as original process, was valid.

**II. STATEMENT OF FACTS
(COUNTERSTATEMENT OF THE CASE)**

Appellant, Aiko Lawson (as tenant) and respondents, Daniel and Maureen Krull (as landlord), entered into a one year residential lease commencing April 15, 2014, with rent in the sum of \$1250 payable in advance on the tenth day of each month. CP Exhibit No. 1. The landlord's mortgage must be paid by the 15th of each month. RP page 20, line 12-13. When Lawson fell behind in rent for May, 2014, the landlord sought to renegotiate the terms of the lease to reduce the risk of having his mortgage payments fall due before rent was received. RP page 18 lines 2-9.

In early June, the parties entered into the Addendum to Residential Lease Agreement, (CP Exhibit No. 2) the primary purpose of which was to move rent-due-date from the 10th to the 1st day of each month. RP page 20, line 12-23. Aiko Lawson signed on May 30, 2014 and Daniel Krull signed on June 2, 2014. The parties signed

separately and, although it's not required, both signed before notaries. CP Exhibit No. 2.

When Lawson failed to pay rent due December 1, 2014, her landlord issued a Three Day Notice to Pay Rent or Vacate. CP Exhibit 3. Service of the notice was completed on December 4, 2014 by posting a copy of the notice to the premises and mailing one via first class mail in compliance with RCW 59.12.040. RP page 27 lines 13-19. See also, Declaration of Posting and Mailing. CP 11.

On December 9, 2014, after Lawson's continued failure to tender rent, landlord Krull filed an unlawful detainer action in Clark County Superior Court based upon tenant's failure to comply with the three day notice. CP 3 Complaint. The Eviction Summons, Complaint for Unlawful Detainer, Payment Statement, Motion and Declaration for Order to Show Cause and Order to Show Cause were served on the young man who resided at the rental premises, who identified

himself as "Sam" and claimed to be appellant's roommate. See Return of Service, CP 13.¹

At the December 19, 2014 show cause hearing, Lawson contended that, if the parties relied on the terms of the original rental agreement, then she would be current in her rent. RP page 4, lines 3-6. Based on factual disputes between the parties, Judge Gregerson set the matter for trial on December 26, 2014. RP page 5, lines 23-25.

At the December 26 trial, Krull established that the tenant began to fall behind in her rent in May, 2014, the second month in which Lawson resided at the property. RP page 19, lines 10-15. After several days of waiting for rent, Daniel Krull addressed his desire to amend the monthly lease to protect his house from going into default under the mortgage, should Lawson continue to be late with her rent in the future. RP page 20, lines 12-16. Tenant Lawson's proposed solution to her delinquent payment was

¹ The appellate later confirmed that service was obtained on her seventeen-year-old son. Appellate Brief, pages 11-12.

to apply her security deposit to past-due rent. RP page 37 lines 9-10. Rather, the parties entered into the Addendum to Residential Lease Agreement based on terms that the parties had already discussed. CP page 23, lines 10-12.

Lawson complained about late charges suffered under the Addendum (payable after the 3rd of the month); late charges didn't begin to accrue until the 16th, under the pre-amendment lease. RP page 39, lines 21-25 and page 40, lines 3-6, lines 19-20.

Lawson argued to have the addendum rescinded because she signed it "based on coercion or threats". RP page 40, lines 14-16.

Non-payment of December's rent was the default upon which this unlawful detainer was based.² Even after the show cause hearing and the subsequent trial Lawson still hadn't paid her

² A Ten Day Notice to Comply With Lease or Quit Premises, regarding unpaid late fees and unauthorized pets was also served on December 4, 2014. The Ten Day Notice ripened during the pendency of the lawsuit, but was not considered by the court.

rent into the court registry. CP page 56, lines 10-13.

The trial judge found that the rude treatment, of which Lawson complained, did not rise to the level of "duress" in the legal sense. CP page 70, lines 4-24. The court saw landlord's desire to protect his interest, by way of negotiated lease amendment, as a viable option to going forward with legal remedies. CP page 71, lines 6-9. Notwithstanding Lawson's protest, the court found this tenant was guilty of unlawful detainer and granted judgment for rental damages in the reduced amount of \$1,250.00. CP page 74, lines 20-22.

Regarding service of eviction notice and summons, the court made the following Findings of Fact and Conclusion of Law:

4. Notice. On December 4, 2014, a Three Day Notice to Pay Rent or Vacate was served on defendant in accordance with RCW 59.12.040. Defendant has failed to correct said default, has paid nothing to plaintiff subsequent to the service of said

notice, are still in default, and / or have not vacated the premises.

7. Summons. On Tuesday, December 9, 2014, defendant(s) was (were) served with the statutory summons allowing an Immediate Writ of Restitution without bond and defendant(s) has filed a written response to the Complaint.

Findings of Fact and Conclusions of Law, No. 4 & 7 (CP 25).

III. ARGUMENT

1. STANDARD OF REVIEW.

The trial court's findings are reviewed for substantial evidence, i.e., evidence of sufficient quantum to persuade a fair-minded person of the truth of the finding. *Harris v. Urell*, 133 Wn. App. 130, 137, 135 P. 3d 530 (2006). If the trial court's findings are supported by substantial evidence, the court inquires whether the findings support the trial court's conclusions of law and judgment. *Ibid.*

Questions of law and conclusions of law are reviewed de novo. *Cogdell v. 1999 O'Ravez Family LLC*, 153 Wn. App. 384, 390, 220 P.3d 1259, 1262 (2009).

The trial court's decision to award or deny attorney fees is reviewed for abuse of discretion. *Humphrey Industries, Ltd v. Clay Street Associates, LLC*, 170 Wn. 2d 495, 506, 242 P.3d 846 (2010). The trial court's decision is reviewed if it is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons, with the last category including errors of law. *Ibid.*

2. THE TRIAL COURT PROPERLY CONCLUDED THE TENANT WAS GUILTY OF UNLAWFUL DETAINER.

Under the parties' lease, as amended, \$1250 rent was due for the month of December, 2014 "on or before the first day of the month." CP, Exhibit 2. Lawson did not pay December's rent. Therefore, on December 4 her landlord served a Three Day Notice to Pay Rent or Vacate. CP,

Exhibit 3. The tenant failed to correct her default, and paid nothing to her landlord subsequent to service of the notice.³ Nor did she surrender possession of the rental premises.

RCW 59.12.030 provides in pertinent part as follows:

**RCW 59.12.030
Unlawful detainer defined.**

A tenant of real property for a term less than life is guilty of unlawful detainer:

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained

³ Nor did Lawson pay money into the court registry by December 17, 2014 as required by RCW 59.18.375. See Payment or Sworn Statement Requirement. CP 4.

Judge: . . .Number one, did you pay rent into the court registry after service of the Summons and Complaint upon you?
AL: No sir.

PR Page 56, Line 10-13.

uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

A tenant who fails to pay rent within three days after service of a notice in writing declaring a default in payment of rent is in unlawful detainer. *Young v. Riley*, 59 Wn.2d 50, 365 P.2d 769 (1961).

3. THE TRIAL COURT PROPERLY REJECTED TENANT'S CLAIM THAT THE ADDENDUM TO RESIDENTIAL LEASE AGREEMENT WAS VOID FOR HAVING BEEN SIGNED UNDER DURESS.

Duress, in the context of contract law is a common law defense, and if one is successful in proving that the contract is vitiated by duress, the contract may be rescinded, since it is then voidable.

Duress has been defined as a "threat of harm made to compel a person to do something against his or her will or judgment; esp., a wrongful threat made by one person to compel a manifestation of seeming assent by another person

to a transaction without real volition". -Black's Law Dictionary (8th ed. 2004).

When a person is forced to do something against his or her will, that person is said to have been the victim of duress-compulsion. There are two types of duress: physical duress and duress by improper threat.

Physical Duress. If a person is forced into entering a contract on threat of physical bodily harm, he or she is the victim of physical duress. It is defined by the Restatement (Second) of Contracts in Section 174: "If conduct that appears to be a manifestation of assent by a party who does not intend to engage in that conduct is physically compelled by duress, the conduct is not effective as a manifestation of assent." A contract induced by physical violence is void.

Duress by Threat. The second kind of duress is duress by threat; it is more common than physical duress. Here the perpetrator improperly

threatens the victim, who has no reasonable alternative but to assent to the contract. Restatement (Second) of Contracts, Sec 175 (1981).

Here, at the time the parties negotiated the Lease Addendum, the tenant was in default on May's rent. Apparently she was unable to bring her account current, as she proposed curing her default with her damage deposit. RP page 37, lines 9-10. Tenant's agreement to move up her rent-due-date in future months, in consideration of Landlords' forbearance to press his legal remedies presently, was not unreasonable.

Q: Okay. What did she say to that?

A: She - she wasn't happy with changing the date. She - she didn't like the fact that I wanted to move it back to the 1st. But I just felt it was absolutely necessary to protect my interest in our home.

RP page 21, lines 4-8.

The notion of contractual duress is frequently misunderstood by non-lawyers. Lawson's primary objection was that, allegedly,

her landlord laced his negotiation with profanities and invectives. He was rude.

The trial court's assessment of Lawson's claim of duress was spot-on:

The notion of duress in a court of law is not whether the transaction was pleasant, not whether it was voluntary - meaning both sides were happy to enter into it.

But really whether somebody's free will was taken away either through threat of physical force or something else that was so improper that it would shock the conscience of the court and really it was not a person's free will.

The court considers the evidence, the testimony and the exhibits and certainly from Ms. Lawson's standpoint looking at the text message exchange there this court can in no way endorse or find savory the - the language and modes of communication.

In fact it's - I'll go so far as to call it somewhat disgusting as somebody who used to work in the landlord industry. It is not appropriate.

The question is whether legally it rises to the level of duress. This court cannot find that it does rise to the level of duress.

In essence what we have is a situation where a tenant was already in

breach of the agreement and as unpleasant as the negotiation process appears to have been Mr. Krull gave up and relied upon remedies that he might have been able to avail himself of because of the non-payment or late payment of rent.

He basically negotiated and said I'm not putting up with this - you have to sign this to turn back the due date for the rental or else I'm going to go forward with my legal remedies.

That was not a threat in the sense of physical harm or wrongful conduct. It was simply a - a threat to carry out what he believed his legal rights to be under Washington Landlord/Tenant law.

RP page 70, lines 5-25; RP page 71, lines 1-13.

4. THE TRIAL COURT CORRECTLY FOUND THAT THE EVICTION NOTICE WAS LEGALLY SERVED.

Service of any of the required eviction notices must be served either by (1) personally serving a copy on the person in unlawful detainer; or by (2) leaving a copy with a person of suitable age and discretion and sending a copy through the mail addressed to the person in unlawful detainer; or by (3) affixing a copy of the notice in a conspicuous place on the premises

and either delivering a copy to a person there residing and by sending a copy through the mail addressed to the person in unlawful detainer. RCW 59.12.040.

In the instant case, the three-day notice was posted and mailed by Daniel Krull (landlord) on December 4, 2014. See Declaration of Posting and Mailing, CP 11, 12. The trial court held that said service complied with RCW 59.12.040.

4. Notice. On December 4, 2014, a Three Day Notice of Pay Rent or Vacate was served on defendant in accordance with RCW 59.12.040.

Findings of Fact and Conclusion of Law, No. 4 CP 25.

5. THE TRIAL COURT CORRECTLY FOUND THAT ORIGINAL PROCESS WAS LEGALLY SERVED.

The Unlawful Detainer Act, Chapter 59.12 RCW, directs that, "(t)he summons must be served and returned in the same manner as summons in other actions is served and returned." - RCW 59.12.080. The rule for service of civil summons provides in pertinent part as follows:

RCW 4.28.080

Summons, how served.

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

In the instant case, the Superior Court found that service by leaving a copy of summons with Lawson's 17-year-old son satisfied the aforementioned statute's requirements.

7. Summons. On Tuesday, December 9, 2014, defendant(s) was (were) served with the statutory summons allowing an Immediate Writ of Restitution without bond and defendant(s) has filed a written a response to the Complaint.

Findings of Fact and Conclusions of Law, No. 7,
CP 25. Ordinarily unchallenged Findings of Fact

are treated as varities on appeal. *Harris v. Urell*, Wn. App. 130, 135 P.3d 530 (2006).

Apparently, Lawson argues her 17-year-old son is not of "suitable age and discretion". An older teenager is considered "of suitable age," as long as he does not have a mental impairment that would prevent him/her from understanding that the legal papers should be given to the other party. The phrase "suitable age and discretion" is not defined by the statute, so we look to judicial precedent to get an idea of who qualifies. In *Miebach v. Colasurdo*, 35 Wn App 803, 805, 808, 670 p 2d 276 (1983), rev'd on other grounds, 102 Wash. 2d 170, 685 P.2d 1074 (1984), it was held that a 15-year-old daughter was of suitable age to accept service. See also *Sheldon v. Fettig*, 613 Wn 2d 601, 919 P.2d 1209 (1996) (Held: Process left with defendant's 12-year-old brother at her parents' home in Seattle, satisfied RCW 4.28.080 (15)).

In the instant case, the trial court held that service of summons, properly supporting issuance of the Writ of Restitution, had been accomplished.

(P)ersonal jurisdiction may be acquired by serving a copy of notice and complaint on the defendant personally or by leaving the notice and complaint 'at the house of his usual abode with some person of suitable age and discretion then resident therein.' A facially correct return of service, present in this case, is presumed valid and, after judgment is entered, the burden is on the person attacking the service, Colasurdo here, to show by clear and convincing evidence that their service was irregular.

Miebach v. Colasurdo, 35 Wn App at 808.

6. REQUEST FOR AWARD OF RESPONDENTS' ATTORNEY'S FEES AND COSTS.

The parties lease (CP Exhibit 1) provides in pertinent part as follows:

Clause 19. Payment of Court Costs and Attorney Fees in a Lawsuit

In any action or legal proceeding to enforce any part of this Agreement, the prevailing party shall not/shall

recover reasonable attorney fees and court costs.

Krull was awarded contractual attorney's fees and costs by the trial court. CP 25.

RCW 4.84.330 provides as follows:

RCW 4.84.330

Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties - Prevailing party entitled to attorneys' fees - Waiver prohibited.

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void.

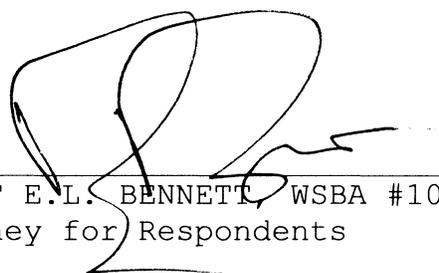
As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

Pursuant to RAP 18.1, Respondents request this court rule that Krull is the prevailing party and grant an award to recover their attorney fees and expenses incurred in this appeal as allowed by law.

IV. CONCLUSION

For the reasons stated above, the Krulls respectfully request that the Court of Appeals affirm the trial court's judgment and allow for an award of respondents' costs and attorney's fees on appeal.

RESPECTFULLY SUBMITTED this 15th day of April, 2015.



ROBERT E.L. BENNETT, WSBA #10827
Attorney for Respondents

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DIVISION II

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STATE OF WASHINGTON

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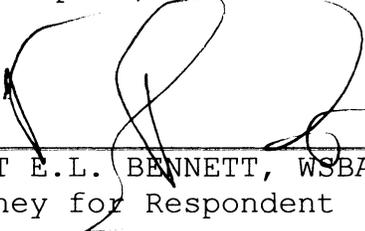
CERTIFICATE OF MAILING

I hereby certify that I served the forgoing BRIEF OF RESPONDENT on the following individual on April 15, 2015, by mailing to said individual a true copy contained in a sealed envelope, with postage prepaid, addressed to said individuals at her last known address, to wit:

Washington State Court of Appeals
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Aiko Lawson
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DATED this 15th day of April, 2015.



ROBERT E.L. BENNETT, WSBA #10827
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CERTIFICATE OF MAILING