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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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No. 49969-0-II

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

DEL RAY PROPERTIES, INC.,
dba DEL RAY MOBILE HOME PARK

Respondent

v

KIM ELLIOT

Appellant

BRIEF OF RESPONDENT

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360 578 2000

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The trial Court made no error. The trial Court properly ordered the amendment of its prior ruling.**
- B. The trial Court did not err by ordering and granting Judgment in favor of the Plaintiff because the Plaintiff did not act in bad faith with regard to the facts on which the Judgment was issued.**
- C. Del Ray should be awarded attorney's fees on this appeal.**

II. STATEMENT OF THE CASE

Respondent, Del Ray Properties, Inc. (hereinafter "Del Ray" or "landlord"), prevailed at trial with the trial Court entering a Judgment against Petitioner, Kim Elliot (hereinafter "Elliot" or "tenant"). The trial Court's various Orders and rulings in this cause are not specifically challenged other than the written Court's Supplemental Ruling dated May 20, 2016 (CP 99) and the Judgment of the trial Court dated January 13, 2016 (CP 111). The trial Court's ruling from March 22, 2016 included essentially five issues that are critical to this appeal (CP 91). Those issues are:

1. The storage credit of the landlord.
2. The rental expenses of the tenant.
3. Ownership of the subject mobile home.
4. The scope of the landlord's bad faith.
5. Prevailing party attorney's fees.

Each of these issues was subject to change. The parties were invited to brief the issue of the storage credit of the landlord for the purpose of the Court determining what the final numbers would be (CP 91, p 288). The parties were invited to provide documentation of rental expense for the

same purpose (CP 91, p 288). The ownership of the subject mobile home was purportedly determined by the Court's ruling along with a purchase price of sorts in the amount of \$12,000 (CP 91, p 288). The trial Court's conclusion regarding the landlord's bad faith is stated in general terms (CP 91, p 287). At the time of the ruling, the Court referred to the Defendant/tenant as the prevailing party, which reference is clearly based upon or dependent upon the outcome of the above referenced issues (CP 91, p 288). The trial Court referred to the monetary issues as "open" (RP 107, line 13). The trial Court then, after the anticipated changes to the March 22, 2016 ruling were made, opted to treat portions of the landlord's Response to Defendant's Proposed Judgment (CP 97) as a Motion for Reconsideration after Judgment had been entered (RP 108, line 6-13). This notion was referenced in the Court's supplemental ruling dated May 20, 2016 (CP 99, p 328, line 10-11). The lack of finality of the March 22, 2016 ruling is implicit within the May 20, 2016 supplemental ruling (CP 99, p 328, line 10-11).

In the Court's supplemental ruling dated May 20, 2016 the trial Court, having considered the issues that needed to be resolved after the

March 22, 2016 ruling, amended its ruling (CP 99). The trial Court resolved the five issues set forth above as follows:

1. The storage/rent credit of the landlord was determined to be \$10,935 as of the date of presentation (CP 99, p 326, line 21).
2. The rental expenses of the tenant were not relevant as the tenant owed rent.
3. Ownership of the subject mobile home was retained by the tenant (CP 99, p 328, line 1).
4. The scope of the landlord's bad faith was not clarified.
5. Prevailing party attorney's fees were denied to both parties (CP 99, p 328, line 3-7).

On January 13, 2017 the trial Court entered Findings of Fact and Conclusions of Law and a Judgment in conformity with the Court's Supplemental Ruling dated May 20, 2016 (CP 110, 111).

III. ARGUMENT

A. **The trial Court made no error. The trial Court properly ordered the amendment of its prior ruling.**

1. Reconsideration. Elliot argues that a Motion for Reconsideration was made by Del Ray and granted by the trial Court. No Motion for Reconsideration was made. Elliot cannot point to a clerk's papers number or cite a portion of the record that indicates that reconsideration was requested or granted. Elliot is left with the assertion that circumstances in this case lead to the conclusion that Del Ray moved to reconsider and/or the trial Court reconsidered its ruling. Neither conclusion is supported by the facts.

2. CR 52. CR 52 may be applicable in the resolution of this matter. To the extent that the Court's ruling of March 22, 2016 can be taken as written Findings and Conclusions under CR 52 (a) (4), such Findings and Conclusions may be amended pursuant to CR 52 (b).

CR 52 (b) Amendment of Findings. Upon Motion of a party filed not later than 10 days after entry of Judgment the Court may amend its Findings or make additional Findings and may amend the Judgment accordingly. The Motion may be made with a Motion for new trial pursuant to rule 59. When Findings of Fact are made and actions tried by the Court without a jury, the question of the sufficiency of the evidence to

support the Findings may thereafter be raised whether or not the party raising the question has made in the Court and objection to such Findings or has made a Motion to amend them or a Motion for Judgment.

The trial Court invited not only additional briefing and information regarding the Court's ruling of March 22, 2016, but also concluded in the Court's Supplemental Ruling of May 20, 2016 that amendment was appropriate (CP 99, p 327).

3. CR 59. CR 59 relates to Motions for Reconsideration. No Motions for Reconsideration were filed by the landlord in this matter. The trial Court indicated that part of the landlord's Response to Defendant's Proposed Judgment amounted to a Motion for Reconsideration that the Court would consider after entry of Judgment. No Order on Reconsideration was entered regarding the issues presented in the landlord's Response to Defendant's Proposed Judgment.

4. CR 60. CR 60 may be applicable in the resolution of this matter. Pursuant to CR 60 (b), Del Ray, the landlord, would have the right to request the reopening of the Judgment so that the Court can consider all of the facts and arguments. Such a Motion must be made within a reasonable time and not more than a year after the Judgment for certain reasons. Del Ray's right to bring a CR 60 (b) Motion renders the

appeal of Elliot moot. The trial Court retains the authority to vacate any portion of the Judgment that it determines to be appropriate.

5. Trial Court right to alter, amend, or reverse. The trial Court retains the right to change its decision. “A trial Court may alter, amend, or reverse its rulings at any point before it enters a final judgment.” Hubbard v. Scroggin, 68 Wn.App. 883, 887 (1993); citing In re Marriage of Harshman, 18 Wn.App. 116, 120 (1977). Additionally, in Ullom v. City of Renton, 5 Wn.2d 319 (1940) the Court concluded that a Memorandum decision is not an Order of the Court. The trial Court decided to amend its ruling in this case. A more detailed discussion of why a court retains the ability to amend its rulings can be found in State v. Collins, 112 Wn.2d 303 (1989). In Collins, the Court analyzes State v. Dowling, 98 Wn.2d 542 (1983) and State v. Mallory, 69 Wn.2d 532 (1966). The Dowling Court supported the notion that a ruling by a trial Court that is neither tentative nor made with reservation or advisement nor subject to further consideration or proceedings will support a judgment. Dowling at 547. The Collins Court overruled this approach. Collins at 305. The Collins court followed the Mallory decision and quoted:

A trial Court’s oral or Memorandum opinion is no more than an expression of its informal opinion at the

time it is rendered. It has no final or binding effect unless formally incorporated into the Findings, Conclusions, and Judgment.

Collins at 306, citing Mallory at 533–534.

The Collins Court went on to say “It is only proper that this thinking process not have final or binding effect until formally incorporated into the Findings, Conclusions, and Judgment.” Collins at 308. The trial Court in this case rendered a tentative ruling on March 22, 2016 that was subject to change based upon additional information. When the trial Court amended its ruling on May 20, 2016, it did so in a manner that is consistent with the Collins decision.

Even the Dowling case acknowledged that there is room for change in a trial Court’s ruling when the ruling is tentative, made with reservation or advisement or subject to further consideration or proceedings. Dowling at 547. In the present case, the trial Court acknowledged leaving the issue of storage rent open (RP p 98 ln 18-19). Further discussion is had with the Court regarding the openness of issues in the March 22, 2016 ruling (RP p 106 ln 12-15). The trial Court explains that it is working within the open parameters of his prior ruling and then refers to reconsideration as a matter of response to how the adjusted issues are handled (RP 107). It is clear that

the March 22, 2016 ruling was made with reservation and subject to further consideration or proceedings. This should lead to the conclusion that the trial Court had the authority to alter, amend or reverse its March 22, 2016 ruling. Specifically, with regard to the issue of rent/storage and attorney's fees, the trial Court left matters open, such that storage charges and rent change the prevailing party analysis.

6. Jurisdiction over ownership issue. The trial Court exceeded its jurisdictional authority by ruling that the landlord was required to pay \$12,000 to the tenant for ownership of the subject mobile home. In Sowers v. Lewis, 49 Wn.2d 891, 895 (1957), the Court concludes: "Finally, the appellant contends that the title to personal property cannot be determined in an unlawful detainer action. We are in accord with this contention." The trial Court in the present case initially ruled that the landlord would take title to the tenant's mobile home and the landlord would pay \$12,000 as the fair market value for said mobile home. Upon review of the Sowers case, the Court determined that it lacked jurisdiction to determine title issues relating to the mobile home (RP p 96 ln 12-13).

Jurisdictional issues may be raised at any time. Ullom, supra.; Spokane v. Department of Labor and Industries, 94 Wn.2d 889, 893

(1980); RAP 2.5 (a) (1). With regard to the trial Court's amendment of its March 22, 2016 ruling as it relates to the transfer of the mobile home and payment therefor, there is no time limitation on raising this issue.

Accordingly, the assertion that a motion for reconsideration was brought in an untimely fashion is unfounded.

B. The trial Court did not err by ordering and granting Judgment in favor of the Plaintiff because the Plaintiff did not act in bad faith with regard to the facts on which the Judgment was issued.

1. Implications of bad faith. The landlord was found to have charged amounts for which no basis was provided. The trial Court found that this amounted to a lack of good faith (CP 110, p380). The trial Court also concluded that certain amounts of rent and charges were not paid by the tenant. The trial Court did not improperly apply its finding of bad faith. To the extent that the landlord acted in bad faith with regard to certain fees and costs, the trial court disallowed them.

RCW 59.20 .020 rights and remedies – obligation of good faith required. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

This statute does not say that if bad faith is found, then the party acting in bad faith has no remedies. It can only mean that a party acting in bad faith may not receive relief for claims that are based on a party not acting in good faith with regard to statutory duties. Del Ray requested more in rent and charges than the trial Court believed were owing. The trial Court also found a substantial amount of rent and charges that were proper and owing.

2. Absence of duty. Looking closer at RCW 59.20.020 reveals a focus on specific duties and acts that must be performed in good faith. The duties, both affirmative and negative, of a mobile home park landlord can be found at RCW 59.20.060, RCW 59.20.070 and RCW 59.20.130. Nothing in RCW 59.20 et seq. imposes an affirmative duty regarding the amount of rent requested that is relevant to this case. More plainly stated, there is no stated duty in the Mobile Home Landlord Tenant Act to charge a certain amount of rent or other charges. Since there is no specific duty, there is nothing that must be performed in good faith.

Johnson v. Yousoofian, 84 Wn.App. 755, 760 - 62 (1996).

C. Del Ray should be awarded attorney's fees on this appeal RAP 18.1 and RCW 59.20.110. Based on the arguments set forth above

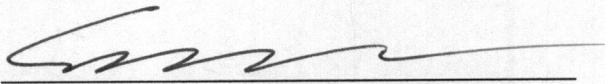
and the substance of this case, Del Ray requests that the Court award attorney fees for this appeal.

IV. CONCLUSION

Based on the foregoing facts and authorities, Del Ray respectfully urges this Court to affirm the trial Court.

Dated this 9th day of October, 2017.

Respectfully submitted,



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V. APPENDIX

CR 52

DECISIONS, FINDINGS AND CONCLUSIONS

Superior Court Civil Rules RULE CR 52 DECISIONS, FINDINGS AND CONCLUSIONS (a) Requirements. (1) Generally. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Judgment shall be entered pursuant to rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law. (2) Specifically Required. Without in any way limiting the requirements of subsection (1), findings and conclusions are required: (A) Temporary injunctions. In granting or refusing temporary injunctions. (B) Domestic relations. In connection with all final decisions in adoption, custody, and divorce proceedings, whether heard ex parte or not. In all cases in which the court makes specific findings of physical or sexual abuse or exploitation of a child the court shall direct the court clerk to notify the state patrol of the findings pursuant to RCW 43.43.840. (C) Other. In connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court. (3) Proposed. Requests for proposed findings of fact are not necessary for review. (4) Form. If a written opinion or memorandum of decision is filed, it will be sufficient if formal findings of fact and conclusions of law are included. (5) When Unnecessary. Findings of fact and conclusions of law are not necessary: (A) Stipulation. Where all parties stipulate in writing that there will be no appeal. (B) Decision on motions. On decisions of motions under rules 12 or 56 or any other motion, except as provided in rules 41(b)(3) and 55(b)(2). (C) Temporary restraining orders. On the issuance of temporary restraining orders issued ex parte. (b) Amendment of Findings. Upon motion of a party filed not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Presentation. Unless an emergency is shown to exist, or a party has failed to appear at a hearing or trial, the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions. Persons who have failed to appear at a hearing or trial after notice, may, in the discretion of the trial court, be deemed to have waived their right to notice of presentation or previous review of the proposed findings and conclusions.

(d) Judgment Without Findings, etc. A judgment entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal. After vacation, the judgment shall not be reentered until findings are entered pursuant to this rule.

(e) Time Limit for Decision. (Reserved. See RCW 2.08.240.)

CR 59

NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from the juror's own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

(b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise. A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it is to be heard may on the judge's own motion or on application determine:

(1) Time of Hearing. Whether the motion shall be heard before the entry of judgment;

(2) Consolidation of Hearings. Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and/or

(3) Nature of Hearing. Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record that cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law

or make new findings and conclusions, and direct the entry of a new judgment.

(h) Motion To Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

(i) Alternative Motions, etc. Alternative motions for judgment as a matter of law and for a new trial may be made in accordance with rule 50(c).

(j) Limit on Motions. If a motion for reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made without leave of the court first obtained for good cause shown: (1) for a new trial, (2) pursuant to sections (g), (h), and (i) of this rule, or (3) under rule 52(b).

CR 60 RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant's attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

RCW 59.20.020
RIGHTS AND REMEDIES – OBLIGATION OF GOOD FAITH
REQUIRED

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

RCW 59.20.06
RENTAL AGREEMENTS – REQUIRED CONTENTS –
PROHIBITED PROVISIONS

(1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) The name and address of any party who has a secured interest in the mobile home, manufactured home, or park model;

(f) A forwarding address of the tenant or the name and address of a person who would likely know the whereabouts of the tenant in the event of an emergency or an abandonment of the mobile home, manufactured home, or park model;

(g)(i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that: "The park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice." The covenant or statement required by this subsection must: (A) Appear in print that is in bold face and is larger than the other text of the rental agreement; (B) be set off by means of a box, blank space, or comparable visual device; and (C) be located directly above the tenant's signature on the rental agreement.

(h) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(i) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(j) A written description, picture, plan, or map of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces;

(k) A written description, picture, plan, or map of the location of the tenant's responsibility for utility hook-ups, consistent with RCW 59.20.130(6);

(l) A statement of the current zoning of the land on which the mobile home park is located; and

(m) A statement of the expiration date of any conditional use, temporary use, or other land use permit subject to a fixed expiration date that is necessary for the continued use of the land as a mobile home park.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of the vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee." However, an entrance fee may be charged as part of a continuing care contract as defined in RCW 70.38.025;

(f) Which allows the landlord to charge a fee for guests:
PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW . This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator.

(3) Any provision prohibited under this section that is included in a rental agreement is unenforceable.

RCW 59.20.070
PROHIBITED ACTS BY LANDLORD

A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park, or prohibit, in any manner, any tenant from posting on the tenant's manufactured/mobile home or park model, or on the rented mobile home lot, a commercially reasonable "for sale" sign or any similar sign designed to advertise the sale of the manufactured/mobile home or park model. In addition, a landlord shall not require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073. Nothing in this subsection prohibits a landlord from enforcing reasonable rules or restrictions

regarding the placement of "for sale" signs on the tenant's manufactured/mobile home or park model, or on the rented mobile home lot, if (a) the main purpose of the rules or restrictions is to protect the safety of park tenants or residents and (b) the rules or restrictions comply with RCW 59.20.045. The landlord may restrict the number of "for sale" signs on the lot to two and may restrict the size of the signs to conform to those in common use by home sale businesses;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home space: PROVIDED, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement. Door-to-door solicitation does not include public officials or candidates for public office meeting or distributing information to tenants in accordance with subsection (3) or (4) of this section;

(3) Prohibit the distribution of information or meetings by tenants of the mobile home park to discuss mobile home living and affairs, including political caucuses or forums for or speeches of public officials or candidates for public office, or meetings of organizations that represent the interest of tenants in the park, held in a tenant's home or any of the park community or recreation halls if these halls are open for the use of the tenants, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Prohibit a public official or candidate for public office from meeting with or distributing information to tenants in their individual mobile homes, manufactured homes, or park models, nor penalize any tenant for participating in these meetings or receiving this information;

(5) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any federal, state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

(6) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

(7) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

(8) Prevent the entry or require the removal of a mobile home, manufactured home, or park model for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home, manufactured home, or park model for any other reason, including but not limited to, failure to comply with fire, safety, and other provisions of local ordinances and state laws relating to mobile homes, manufactured homes, and park models, as long as the action conforms to this chapter or any other relevant statutory provision.

RCW 59.20.110
ATTORNEY'S FEES AND COSTS

In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs.

RCW 59.20.130
DUTIES OF LANDLORD

It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, and vacant mobile home lots, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home, manufactured home, or park model as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home, manufactured home, or park model in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home, manufactured home, or park model utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home, manufactured home, or park model without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home, manufactured home, or park model. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the

land upon which a mobile home, manufactured home, or park model is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment. The ownership or management shall make a reasonable effort to notify the tenant of their intention of entry upon the land which a mobile home, manufactured home, or park model is located prior to entry;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition;
and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair.

COURT OF APPEALS OF WASHINGTON, DIVISION II

DEL RAY PROPERTIES, INC., dba
Del Ray Mobile Home Park,

Respondent,

v.

KIM ELLIOT,

Appellant.

NO. 49969-0-II

AFFIRMATION OF SERVICE

The undersigned states the following under penalty of perjury under the laws of the State of Washington. On the date below, I personally e-filed or/or placed in the United States mail the Brief of Respondent with this Affirmation of Service attached with postage paid to the indicated parties:

John A. Hays
Attorney at Law
1402 Broadway Street
Longview, WA 98632

Del Ray Properties, Inc.
15123 21st Drive SE
Mill Creek, WA 98012

Dated this 9 day of October, 2017.

Barbara Reynolds
Barbara Reynolds

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DIVISION II
2017 OCT 12 AM 11:41
STATE OF WASHINGTON
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