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Court of Appeals No. 52917-3-II
Trial court No. 18-2-01102-18

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

AHMET CHABUK,

Petitioner,

v.

FRANCES MILLER AND ALL OTHER OCCUPANTS,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Chabuk, who has acknowledged both an attorney-client relationship and a former close friendship with Miller, brought action to evict her based on nonpayment of rent. The court below found that rent was not required of Miller and therefore an unlawful detainer action could not prevail. Chabuk appeals that finding and the award of attorneys' fees.

II. STATEMENT OF CASE:

A. Chabuk brought an unlawful detainer case, which was set for a full hearing

Ahmet Chabuk [Chabuk], representing himself but also a practicing attorney, brought an unlawful detainer action against Frances Miller [Miller] [CP 2]. Miller, at the time unrepresented by counsel, submitted her objections in writing to Chabuk. Chabuk redacted the entirety of this document and submitted it to the court. [CP 15] Miller also retained counsel who filed an answer with the court. [CP 13]

At the show cause hearing on May 11, 2018, Chabuk appeared and counsel for Miller appeared. The court had before it the pleadings of the parties, declarations by Chabuk [CP 16, 20], and Chabuk's personal testimony in court. The court found the matter contested and set it for trial. [CP 21]

B. The court approved discovery on matters relevant to the unlawful detainer question.

Chabuk filed two motions for reconsideration of the setting of trial date [CP 22, 24], which ultimately led to an appeal before this court. [Court of Appeals No. 52417-1-II]

Miller sent discovery requests out immediately after the trial date was set. [CP 30] When Chabuk failed to respond to requests to discuss discovery, Miller moved to either adjust the full hearing date or set an earlier discovery date. [CP 30] On hearing June 1, 2018, the court found that the hearing date needed to be moved because of court scheduling concerns. [CP 35] As this placed the trial after the standard discovery deadline, Miller's motion was not ruled upon.

Chabuk then moved for a protective order so that he would not need to respond to discovery requests. [CP 37] The court issued an oral ruling on June 15, 2018 that discovery would be granted. [CP 40] It issued a written ruling on July 6, 2018 finding that the discovery requests were relevant and appropriate and ordering fees from Chabuk for the protective order. [CP 42]

C. The court found Miller had not committed an unlawful detainer and awarded fees against Chabuk

At trial, which was held in July of 2018, both parties had the opportunity to present oral and documentary evidence. Trial lasted for two

days. The court's written ruling, issued September 17, 2018 [CP 53], found that Miller had not violated any covenant she had made under the lease and therefore she was not guilty of an unlawful detainer. The court also awarded attorney's fees under RCW 59.18.290[2].

Chabuk filed for reconsideration of this ruling, which was also denied by the court. [CP 62]

III. ISSUES ON APPEAL

1. Did the trial court commit reversible error in setting the matter for trial?

2. Did the trial court commit reversible error in permitting discovery?

3. Did the trial court commit reversible error in resetting the trial date based on calendar considerations?

4. Did the trial court commit reversible error in considering the circumstances surrounding the contract, the subsequent conduct of the parties to the contract, the reasonableness of the parties' respective interpretations, and the course of dealing between the parties?

5. Did the trial court commit reversible error in concluding that Chabuk did not fulfill his obligations as a landlord or attorney and that all clauses of the rental contract should be strictly construed against him?

6. Did the trial court have sufficient factual basis for finding that Miller had not paid rent for several years prior to bringing of the unlawful detainer action?

7. Did the court have sufficient legal basis for finding that Miller did not commit an unlawful detainer?

8. Did the trial court commit reversible error in awarding attorneys' fees under RCW 59.18?

9. Did the trial court commit reversible error in not awarding CR 11 sanctions against the prevailing party's attorney?

IV. ARGUMENT

A. Standard of Review

Questions of law are reviewed de novo. Challenges to findings of fact are reviewed for sufficiency of the evidence, i.e., whether the record contains sufficient evidence to persuade a rational, fair-minded person of the truth of the premise in question. *Josephinium Assocs. v. Kahli*, 111 Wn. App. 617, 621, 45 P.3d 627, 630 (2002) Other than the legal question of whether there is a basis for an award of attorneys' fees, the award of attorneys' fees is to be reviewed for abuse of discretion. *Gander v. Yeager*, 167 Wn. App. 638, 647, 282 P.3d 1100, 1104 (2012)

B. The "Narrative Report of Proceedings" is not an appropriate document to challenge the trial court's ruling

Rather than preparing a verbatim report of proceedings to provide the basis for this appeal, Chabuk has determined to rely on his own "narrative report of proceedings" which he filed with the trial court. Even a "narrative report of proceedings" under RAP 9.3 must comply with the format requirements of RAP 9.2(e) and (f), which indicate that they are to be prepared by a "court reporter or other authorized transcriptionist."

Chabuk's "transcript" (hereinafter Transcript) from the trial level [CP 57], which he relies upon to bring evidence to attack the court's ruling on appeal is not a verbatim transcript, nor is it an appropriate "narrative report of proceedings" under RAP 9.3. There was no basis for such a narrative report being used at the trial level and it was not prepared for the appeal nor offered under RAP 9.3.

Under GR 35, an "authorized transcriptionist" is "a person approved by a Superior Court to prepare an official verbatim report of proceedings of an electronically recorded court proceeding in that court." The Transcript was prepared by Chabuk himself, not a court reporter or other authorized transcriptionist. Miller objected to the use of the Transcript at the trial level as being wholly inappropriate [CP 60, p. 210] and reiterates that objection here.

Further, the Transcript is not a "a fair and accurate statement of the occurrences in and evidence introduced in the trial court material to the issues on review" as required by RAP 9.3. It is full of ellipses and sentence fragments calculated to skew the evidence that was actually submitted in trial, to maximize Chabuk's own self-serving statements and to minimize anything presented for Miller.

To the extent Chabuk's argument relies on quotation from this inappropriate Transcript, those quotations should be disregarded.

C. The trial court had sufficient basis for setting the matter for full hearing based on the pleadings.

Contrary to Chabuk's position, the law is clear that while evidence, if offered, must be taken at a show cause hearing prior to issuing a writ, the pleadings alone provide sufficient basis to permit and indeed require the setting of trial. "If the pleadings in an unlawful detainer action disclose a material issue of fact, the issue must be resolved at trial." *Housing Authority of City of Pasco and Frank1in County v. Pleasant*, 126 Wn.App. 382, 392, 109 P.3d 422, (Div. 3 2005), citing RCW 59.12.130, *Meadow Park Garden Assocs. v. Canley*, 54 Wn.App. 371, 372, 773 P.2d 875 (1989).

It is not an error in the trial court not to hold an extensive show cause hearing when it is setting the matter for trial, at which all evidence

can be heard in full. The court had the opportunity to examine Chabuk orally at the hearing as well as review Chabuk's sworn statements and actions in filing the redacted response of Miller. The court could review the pleadings of both parties as required by the statute. Miller, although not personally present at the show cause hearing, appeared through counsel. The court had substantial basis for finding that Chabuk should not be restored to possession of the property without a trial.

Cases on the necessity of the court hearing evidence at the show cause hearing, such as *Leda v. Whisnand,* 150 Wn.App. 69, 207 P.3d 468 (2009), are referring to the court's obligation to consider evidence if offered prior to issuing a writ, not prior to setting the matter for a trial at which all evidence can be heard. No due process rights are threatened by a set for trial, only by a summary grant of a writ without evidence.

Therefore, both the court's initial ruling setting the matter for trial and denying the motion for reconsideration were appropriate.

D. The trial court appropriately permitted discovery under CR 33 and 34.

Chabuk contends that it is inappropriate to permit discovery in a residential landlord-tenant case because the timelines of CR 33 and CR 34 permit a standard 30-day response time, and the requirements of RCW 59.18.380 provide for a trial date within 30 days. However, there is

nothing inherently contradictory in these two timelines. A party can prepare for trial and provide discovery simultaneously. Chabuk argues no basis for extending the finding of *Christensen v. Ellsworth*, 162 Wn. 2d 365, 374, 173 P.3d 228, 232 (2007) that the three-day notice of the unlawful detainer statute was not extended by the civil rules to a finding that the discovery of the civil rules is not allowed under the unlawful detainer statute.

Indeed, looking at other statutory areas, the legislature has made specific provisions for limiting discovery when it does not wish discovery to be the default. For instance, discovery is not permitted under the TEDRA statute unless specifically ordered by the court on a showing of good cause. RCW 11.96A.115. By contrast, RCW 59.12 and 59.18 contain no such provision.

Absent such a specific statutory rule, there is no need to make a prima facie case for discovery; discovery is appropriate in civil cases "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." CR 26(b)(1). The discovery requests consisted of five interrogatories and six requests for production on the topics of the relationship of the parties and any documents related to the lease contract and records of lease payments since the execution of the contract, including through the rental income portion of his tax forms.

[CP 26] The court quite reasonably found that these were all relevant and not burdensome. [CP 42]

E. The trial court's adjustment of trial date based on calendar considerations is not properly before this court.

Chabuk assigns as error that the trial court "granted Miller's motion to continue the trial date in order to provide time for Miller's interrogatories and requests for production." [Appellant's Brief, p. 42] However, this inaccurately reflects the record before the court. According to the "Assignment of Trial Date Reset" [CP 36], the court moved the date for trial because there were "no available judges for June 11 trial." As the basis for continuance was the lack of available judges, and Chabuk has brought no argument on why this was an improper basis, this matter is not properly before the court.

F. The court's use of extrinsic evidence in interpreting the contract was appropriate

In discerning the meaning of a contract, the court may consider extrinsic evidence for the following purposes:

> (1) the subject matter and objective of the contract, (2) the circumstances surrounding the making of the contract, (3) the subsequent conduct of the parties to the contract, (4) the reasonableness of the parties' respective interpretations, (5)

statements made by the parties in preliminary negotiations, (6) usages of trade, and (7) the course of dealing between the parties. *Spectrum Glass Co. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 129 Wn.App. 303, 311, 119 P.3d 854, 858 (2005)

Further, it is also appropriate to consider parol evidence that a statement in a contract is in fact false. "A party to a contract is not bound by a false recital of fact, and parol evidence is admissible to show the true state of affairs." *Black v. Evergreen Land Developers, Inc.*, 75 Wn. 2d 241, 250, 450 P.2d 470, 476 (1969)

Under these rules, it was entirely appropriate for the court to take evidence showing that Miller did not make payments under the contract as that was a question of the parties' subsequent conduct. Similarly, it was appropriate for the court to consider the evidence that Miller and Chabuk had both a prior attorney-client relationship and a close personal relationship prior to signing the lease. It was appropriate to consider whether the lease agreement bore all the appropriate marks and formalities required of a Section 8 landlord. It was also appropriate, under *Black,* to consider parol evidence to establish that the recital of the amount of rent was false. [CP 53, pp. 156-157]

All of these evidentiary questions went to the circumstances surrounding the contract, the course of dealings between the parties and

whether the contract reflected the true state of affairs. Therefore, they were appropriately before the court and their consideration did not violate the parol evidence rule.

G. The trial court appropriately construed any ambiguity in the contract against Chabuk .

Under standard rules of contract interpretation, any ambiguities of the contract must be resolved against the drafting party. *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116, 120 (2014). There was no dispute that Chabuk was the drafter of the agreement. Further, the court found [CP 53, FOF #13 and 14], and Chabuk acknowledges even on appeal, that an attorney-client relationship had existed between the parties. [Appellant's Brief, p. 7] The existence of an attorney-client relationship invokes the application of RPC 1.8 to the transaction:

> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
>
> > (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of an independent lawyer on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

The court found [CP 53, COL # 3], and Chabuk does not meaningfully dispute on appeal, that these steps were not taken in the transaction. Where a contract with a client does not satisfy the requirements of RPC 1.8(a), the court may not enforce it unless it can be shown that notwithstanding the violation, the resulting contract does not violate the underlying public policy. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn. 2d 48, 90, 331 P.3d 1147, 1165 (2014)

Rather than voiding the contract entirely, the trial court found a way to satisfy the underlying public policy by construing in Miller's favor the ambiguity in the following clauses of the contract:

1. Length of tenancy: Six months from May 1, 2010 through October 31, 2010.

2. At the end of the term of this lease, the lease shall be deemed automatically renewed for one month under the same

conditions and terms and thereafter from month to month unless either party notifies the other, in writing, of his/her intentions to vacate, at least twenty (20) days prior to vacating. The tenants may move out only at the end of the month (that is to say the tenants must pay rent for the whole for the last month).

3. Rent amount due on the first of each month in advance: $1250.00

4. The total amount of rent for the total length of the lease: $7500.00

[CP 5, p. 8]

The question before the court was whether the automatic renewal of the contract terms included a renewal of the obligation to pay rent, or whether the sum of the total amount of rent due indicated that all rent due was summed up in the $7500 described as "the total amount of rent for the total length of the lease." The court held that, given the circumstances, construing any ambiguity in the clause against Chabuk, there was no ongoing obligation to pay rent once the initial six-month period and one-month renewal had expired. [CP 53, p. 158] The term "total amount of rent" was construed to truly be the total amount of rent, and the lease thereafter continued indefinitely without obligation to pay rent. Although in a standard arms-length transaction this would be an unusual

circumstance, given the close relationship between the parties, the rules of construction, and the actual conduct of the parties subsequent to the signing of the rental contract, it was substantially supported by the evidence and law.

Further, the court found that the term "vacate" in the contract was ambiguous and should be construed in favor of the tenant. Chabuk reinforces this point in raising the two possible definitions of the term vacate: 1. To nullify or cancel; make void; invalidate. Or 2. To surrender occupancy or possession; to move out or leave. *Black's Law Dictionary (9th Ed.) at 1688,* cited in Appellant's Brief, p. 27.

With two possible interpretations of the term, and contract rules dictating that these be construed against Chabuk, the court reasonably found that the second term of "vacate" was intended. The court also found this was consistent with the expectations of the parties at the time of entering into the contract, given their close personal relationship, that Miller would be permitted to reside in the house as long as she wished.

The alternative to the court's construction of the contract would have been to find that Chabuk as an attorney entered into a contract with his client for a monthly rent in excess of her monthly income, an action which would have clearly violated the purpose of RPC 1.8(a) and rendered the entire contract unenforceable. As these findings were made at the trial

court level, it would also be appropriate, in the alternative, for this court to find the contract void based on its violation of RPC 1.8(a), which would render the same result of finding that Miller was not in unlawful detainer as she had no obligation to pay rent.

H. The trial court had substantial basis for finding that Miller had not paid rent for several years prior to the bringing of the unlawful detainer action.

Appellant assigns multiple errors to the trial court's findings and conclusions supporting its ultimate finding that Miller had not breached the lease contract and therefore was not subject to an unlawful detainer on that basis. If any appropriate basis, in factual findings and law, was sufficient to provide the basis for the ruling that no unlawful detainer was committed, then the trial court's ruling should stand.

The key factual finding supporting the lack of obligation to pay rent was the absence of payment of rent for several years prior to the unlawful detainer action. This was supported by the court's hearing of the evidence at trial and the documentary evidence, particularly exhibit 13 [CP pp. 273-274]

In rebuttal of this finding, Chabuk offers excerpts from his Transcript. [Appelant's Brief, pp. 24-25] The issues with Chabuk's Transcript are addressed *supra*. Even if the Transcript testimony offered by Chabuk was accepted, it does not undermine the substantial basis for

the findings of the court. The purported quotation from Miller states her response to "At some point prior, you were giving him money if he asked you for it?" as "Yes." [Appellant's Brief, p. 25]

However, it was the court's explicit finding that there was a close personal relationship between the parties. [CP 53, p.156, FOF #15] Chabuk's brief does not meaningfully dispute this factual finding. This testimony, if an accurate transcription, could equally be interpreted as gifts made pursuant to that close personal relationship rather than as rent. The court also had the sworn statement of Chabuk that he had received no rent from Miller for eight years. [CP, p. 273-274] Therefore, there was substantial basis for the court's finding that "Chabuk showed no documented payments of rent from Miller and acknowledged multiple years had gone by without the payment of rent." [CP 53, p. 157, FOF #20]

I. The trial court had multiple appropriate legal bases for finding that Miller was not in unlawful detainer of the premises.

This case was brought as an unlawful detainer action based on failure to respond to a pay rent or vacate notice. [CP 2] If there was any appropriate legal basis for finding that Miller was not, in fact, under an obligation to pay rent under RCW 59.12.030(3), then Chabuk cannot prevail in an unlawful detainer action for her failure to pay rent.

1. Miller was not in unlawful detainer of the premises because the contract did not require her to pay rent.

As discussed above in Section IV (G), a reasonable construction of the rental contract between the parties, construing any ambiguities against Chabuk both as drafter of the agreement and in consideration of the need to find the contract not in violation of the public policies of RCP 1.8(a), would be to find that Miller had no ongoing obligation to pay a monthly rental amount under the agreement. If there was no obligation to pay rent under the contract, then Miller did not violate that obligation and no unlawful detainer can stand. This was the basis for the trial court's Conclusion of Law #6.

Chabuk devotes considerable time to disputing the trial court's reference to *Tischner v. Rutledge*, 35 Wn. 285, 286, 77 P. 388, 388 (1904). However, the court in this case was not conducting a quiet title action, which would have been beyond the scope of an unlawful detainer, but only construing the lease and describing its possible effects.

The court's finding was that "the lease gives a clear and unequivocal grant of a lease with perpetual renewal." [CP 53, p. 158, COL #7] This was based on the contract language, and the relationship and conduct of the parties, which was a very different situation from the commercial lease situation and language found insufficient for perpetual

renewal in *Tischner.* Thus, the court's ruling rested on distinguishing the situation in *Tischner*.

Further, even if the language in the lease did not go far enough to create a right of perpetual renewal, the court's finding that rent was not required and that Miller had not acted to terminate the lease were well grounded in law and fact and sufficient to support that there was no unlawful detainer. The question of whether the landlord could, in theory, terminate the lease was not in fact before the court as the action was brought on a three-day pay rent or vacate notice. Any rulings beyond that, such as COL #11, were not necessary to the finding of the court.

2. Miller was under no obligation to pay rent because Chabuk waived the right to receive rent under the contract.

In the alternative to the ruling that the contract never had contemplated Miller having an ongoing obligation to pay rent, the court found that Chabuk waived any right to collect rent by failing to collect it for several years. [CP 53, p. 158, COL #8]. Chabuk contends that this was an affirmative defense that was not appropriately considered unless affirmatively pled. [Appellant's Brief, p. 29] However, it is appropriate under the Civil Rules for any issues not raised by the parties to be tried by express or implicit consent. CR 15(b).

The purpose of CR 15(b) is to avoid unnecessary duplication of litigation. CR 15(b) cannot be raised if actual notice of the unpleaded issue was not given, if there was no adequate opportunity to cure surprise, or if the parties have not in fact litigated the issue. *Harding v. Will*, 81 Wn. 2d 132, 137, 500 P.2d 91, 96 (1972).

Unlike the case relied upon by Chabuk (*Federal Signal Corp. v. Safety Factors, Inc.* 125 Wn.2d 413, 886 P. 2d 172 (1994)) the information about Chabuk's non-collection of rent over several years came from both parties. In addition to the oral testimony at trial, Chabuk acknowledged, in a sworn statement he provided in lieu of turning over his tax returns in discovery, that he had not received any payments from Miller from the years 2010 through 2017. [Trial Exhibit 13, CP pp. 273-274] By permitting the introduction of evidence on whether he had in fact been receiving rent, Chabuk implicitly consented to the trial of the issue of his waiver of any requirement of rent.

As to whether he could rescind his waiver, his attempt to rescind may be countered by the defense of equitable estoppel, which requires proof of, "(1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or

admission." *Cornerstone Equip. Leasing, Inc. v. MacLeod*, 159 Wn. App. 899, 907, 247 P.3d 790, 795 (2011). Although the trial court did not make specific findings on the question of equitable estoppel, it is clear from the scope of the findings of fact that the court gave due consideration to the equities of the situation and the relationship of the parties, and under those circumstances, did not find Chabuk to have effectively revoked his waiver by filing of the 3-day notice.

The court's specific finding of waiver along with the phrase "agreed to a modification of the contract" incorporates an intent to waive the non-waiver clause, to the extent that is necessary under Washington law. This was not a matter of a few months, but of several years in which Chabuk received no rent and took no action.

3. The findings of fact made by the trial court support a legal conclusion that the contract was not the true agreement of the parties and Miller was thus under no obligation to pay rent.

As Chabuk repeatedly mentions, Miller's initial answer pled that the rent contract itself did not reflect the true agreement of the parties and therefore was not enforceable to establish a rental obligation. Although not relied upon in the conclusions of law, this conclusion is amply supported by the trial court's findings of fact. [CP 53, FOF #15-20] It is an entirely reasonable deduction from these findings that Chabuk never expected

Miller to pay rent and only induced her to sign the contract so that he could obtain rental subsidy payments from the Housing Authority.

It is the first element to prove in contract that an enforceable contract existed. *Storti v. Univ. of Washington*, 181 Wn. 2d 28, 35, 330 P.3d 159, 163 (2014). As discussed above, parol evidence is admissible to show that something recited in the written contract is false. *Black v. Evergreen Land Developers, Inc.*, 75 Wn. 2d 241, 250, 450 P.2d 470, 476 (1969). By analogy, it may be shown by parol evidence that the entire written contract was not the true state of affairs. Here, there was ample evidence to find that the parties did not actually intend for Miller to make monthly rent payments. Absent an obligation to make monthly rent payments, Chabuk cannot prevail in an unlawful detainer action for failure to pay rent. *Turner v. White*, 20 Wn.App. 290, 579 P.2d 410, (Div. 3 1978)

4. The findings of fact made by the trial court support a legal conclusion that the contract was void due to its violation of RPC 1.8(a) and Miller was thus under no obligation to pay rent.

Alternatively, the findings of fact also support a finding that the contract was void because of its violation of RPC 1.8(a). The court specifically found that Chabuk did not fulfill his ethical obligations in entering into the contract. [COL #3]. If the contract is interpreted to require the lease amount on its face of $1250 monthly, a lease amount

known by Chabuk to be greater than Miller's monthly income [CP 53, FOF #18], it would clearly violate the public policy of RPC 1.8(a), which provides careful restrictions on when and how an attorney can enter into an agreement with his client for the protection of the client. This would render the contract unenforceable. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn. 2d 48, 90, 331 P.3d 1147, 1165 (2014). Again, Miller would have no obligation to pay rent and an unlawful detainer action for failure to pay rent could not prevail.

J. An award of attorneys' fees to the prevailing party was appropriate under RCW 59.18.290(2).

Chabuk brought an action seeking recovery of property from a person he alleged to be a residential tenant. Such an action was brought under RCW 59.12 and 59.18. Miller prevailed at trial. Thus, attorneys' fees were appropriate to award under RCW 59.18.290(2). It is irrelevant what Miller's specific defenses were; Chabuk in electing to bring action under RCW 59.18 placed himself subject to its provisions.

Chabuk's objections to the amount of fees fail to show the trial court abused its discretion. The matter below involved a two-day trial and numerous motions and hearing prior to trial. For such an amount of trial time and pleadings, 44.5 hours of work was a reasonable amount and Chabuk has brought no evidence that the figures of $260 for contingency

and $225 for awarded fees was not reasonably appropriate in the community. Although various legal theories were advanced and ultimately relied upon by the court in its findings, the underlying essential argument and facts in evidence remained the same—the disparity between the alleged contract and the actions of the parties. Where a party achieves "'substantial relief'" on the basis of a set of claims involving "'a common core of facts and related legal theories,'" it is not necessary to reduce the party's attorney fees simply because the court did not adopt each contention raised. *Hous. Auth. of City of Seattle v. Bin,* 163 Wn. App. 367, 378, 260 P.3d 900, 905 (2011).

The amount in controversy does not necessarily weigh into an award of attorneys' fees; the question is the purpose of the statute in awarding fees. *Target Nat. Bank v. Higgins*, 180 Wn. App. 165, 192, 321 P.3d 1215, 1228–29 (2014). The amount in controversy is not relevant to the award of attorneys' fees under the unlawful detainer statute, in which the dollar amount in controversy is usually only a month or two in rent, but the question of the tenant's right to occupancy is far more significant.

K. The trial court did not abuse its discretion in failing to award CR 11 sanctions against Miller's attorney.

The standard of appellate review for CR 11 sanctions is the abuse of discretion standard. *Biggs v. Vail*, 124 Wn. 2d 193, 197, 876 P.2d 448,

451 (1994). CR 11 sanctions must be based on a finding that pleadings are not well grounded in fact or law, nor interposed for an improper purpose. As the trial court found that Miller's defense was well-grounded in law and fact and in fact ruled in favor of Miller entirely, it could not have abused its discretion in failing to award CR 11 sanctions against Miller's attorney. Chabuk brings no evidence of the alleged CR 11 violations other than his own disagreement with Miller's position. While it is understandable that he differed from Miller, if every difference of opinion before the court gave rise to CR 11 sanctions, the concept of CR 11 sanctions would become meaningless. CR 11 is meant to sanction egregious conduct, not the variance of opinion that is the basis of the adversarial system.

V. ATTORNEYS' FEES ON APPEAL

Pursuant to RAP 18.1, Miller requests her attorneys' fees on appeal. Attorneys' fees are appropriate to the prevailing party under RCW 59.18.290(2). Attorneys' fees are also appropriately granted on appeal to the prevailing party. *Council House, Inc. v. Hawk,* 136 Wn. App. 153, 162, 147 P.3d 1305, 1309 (2006).

VI. CONCLUSION

The trial court's finding that Miller was not in unlawful detainer was well-supported by facts showing that Chabuk had not collected rent for several years and that the parties had both a pre-existing attorney-client relationship and a close personal relationship, leading to a legal conclusion either that the parties had not entered into an enforceable rental agreement, that no ongoing rent was required under the agreement, or that rent had been waived.

Under these circumstances, the trial court's ruling should be upheld, the award of fees was appropriate, and fees on appeal should also be awarded.

RESPECTFULLY SUBMITTED this 15th day of May, 2019.

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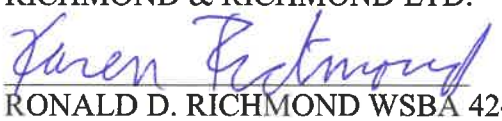

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