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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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PATRICIA CROGHAN,

Appellant,

vs.

COLUMBUS PARK,

Respondent.

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**REPLY OF APPELLANT CROGHAN**

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## TABLE OF CONTENTS

I.	INTRODUCTION . . . . .	3
II.	REPLY RE ASSIGNMENTS OF ERROR . . . . .	4
III.	REPLY RE COUNTERSTATEMENT OF THE CASE . . . . .	4
IV.	ARGUMENT . . . . .	7
V.	CONCLUSION . . . . .	12

## I. INTRODUCTION

In its response, Respondent Columbus Park reiterates its false claim that there is no evidence that Manager Lerud was aware that it was resident Patricia Croghan who made the government reports.

Documented in the case pleadings, trial exhibits, and trial testimony, there were four (4) instances **prior** to Manager Lerud's October 5, 2018, notice of termination of tenancy, when Lerud was informed of the resident's complaint and/or the identity of the resident. There is also a fifth instance of circumstantial evidence that suggests Ms. Lerud may have been advised of Croghan's identity by her Fish and Wildlife representative, whom contacted Croghan by phone to defend the project permitting process. These instances are discussed in Section IV.

Respondent's case rests upon a single exhibit attached to Manager Lerud's declaration, which stated that she did not know that it was Croghan who made the whistleblower report when Lerud served Croghan with the notice of termination of tenancy. This exhibit was demonstrated to have been altered in order to cover up another email from Ecology, stating that Lerud, the "project proponent" had been notified about the resident's complaint ten (10) days before posting her eviction notice.

A rebuttable presumption is "an assumption that is deemed fact unless rebutted by **reliable** conflicting evidence", or "a presumption which is presumed valid but subject to conflicting evidence which **effectively**

rebutts or overturns the presumption.<sup>1</sup> Respondent's flimsy single-document "evidence" is not reliable because it was altered. The false timeline and narrative offered in the exhibit are ineffective because we are asked to believe that Lerud's own project manager waited a full month after the project was halted, to inform Lerud of the resident's complaint.

Thus, Respondent Columbus Park did not overcome the rebuttable presumption of retaliation allowed in RCW 59.18.250 by this slim and inadequate offering of "evidence".

## **II. REPLY RE ASSIGNMENTS OF ERROR**

Respondent states that Croghan assigned no errors to the commissioner's decision to revise its earlier dismissal, and assigned no errors to setting the matter for trial due to material questions of fact.

Appellant Croghan submits that Respondent must have only performed a cursory review of her opening brief, else it would not have made these statements, and statements like it throughout its Response.

In fact, Croghan discussed the above and other errors of the commissioner over the course of six (6) pages of her brief. An additional twenty-one (21) pages discussed the errors of the second judge.

## **III. REPLY RE COUNTERSTATEMENT OF THE CASE**

Respondent's "counterstatement" of the case is a confusing mishmash underscoring again that Respondent did not fully review Croghan's brief. It would seem that Respondent's attorney did not

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<sup>1</sup> Black's Law Dictionary 2nd Ed., and TheLaw.com Law Dictionary

appreciate Croghan's format style in her brief, and needed to have the case restated in a format more familiar to him.

Respondent states that, "Croghan's statement of the case fails to provide the Court with an accurate procedural history of how her claims of retaliation were addressed by the trial court. It also fails to cite any references to the record ..."

It is absolutely true that Croghan did not provide a history of how her claims of retaliation were addressed by the trial court; rather, Croghan provided an accurate history of how the trial court deliberately *did not* address her claims of retaliation. Understandably, Respondent's new counsel seems to have missed that Respondent's previous attorney's motion in limine barred Croghan's claims and defenses, and that the scope of the trial was butchered down to "evidence of Ms. Croghan's claims and reports that she made to Columbus Park that form the basis for her retaliation claim". [RP 4/22/19, Page 21, Line 24 - Page 23. Line 1].

Respondent's claim is false that Croghan failed to cite "any" references to the record in her statement of the case. A quick count finds at least 28 citations to the record in Croghan's Statement of the Case.

Respondent tries to mischaracterize Croghan as a whiner, arguing that Croghan stated her right to due process was violated "because she was not aware of how to properly present evidence or conduct cross examination during the trial." This is a gross misrepresentation. Croghan's assertions of violations of her right to due process are for

reasons of clear judicial impropriety only. If Croghan was of a victim mindset, she would not be here now; nor would she have made the report to the agencies, standing up for the right of the salmon stream to exist, *knowing full well* it meant Ms. Lerud would tear apart Croghan's entire life with an eviction. Proof that this is true can be found in Croghan's letter to Lerud in response to the eviction notice, where the second sentence reads: *"I have been eagerly awaiting your eviction letter!"*

Croghan wishes to correct Respondent's statement that, "On April 22, 2019, Croghan signed a stipulation for the return of exhibits". Clearly, counsel for Respondent missed the discussion and exhibits in her opening brief, explaining that the document was deceptive, and was really a stipulation for immediate destruction of Columbus Park's trial exhibits. Croghan's signature on that stipulation was forged (cut and pasted from an earlier pleading) by Chester Baldwin, Lerud's former attorney. Why would Croghan agree to the destruction of the Columbus Park trial exhibits, when she intended to appeal the ruling?

Respondent's counterstatement that the court admitted seven of Croghan's exhibits and only denied one is only half the truth. The other half is that the court would not allow Croghan to have her exhibits marked until the lunch break. Therefore, during the morning session when Croghan presented most of her important exhibits, both the court and attorney Baldwin remained silent, not pointing this simple protocol out to Croghan -- such a small professional courtesy withheld! In the afternoon

session after Croghan had marked her exhibits, she was prevented from speaking about them because the court stated that it "*would not allow any reference to the contents of exhibits which had not been admitted*". This charade did not come to an end until the trial court finally mentioned, "*No requests for admission of any documents have been made in this trial yet*", to which Croghan replied, "*I'm sorry. I did not know I needed to do that*". Thereafter, Croghan asked to have her exhibits admitted. Then it was that the court admitted seven rather unimportant exhibits [RP 4/21/19, Page 83, Line 15-20]. It is noteworthy that the court inadvertently recorded into the court record by its above statement, that it was *fully cognizant that there were exhibits presented earlier that the court had not admitted*.

Respondent's counterstatement that, "Croghan had attempted to use a Department of Ecology report to prove that the "project proponent" had been notified of the complaint by a third party, but the report did not show notice to Columbus Park", indicates that Respondent overlooked in its review of Croghan's brief, that the agencies' term for the owner of the land or initiator of the project is the "project proponent", or Columbus Park. That was the whole intent of Croghan's "revived" exhibit from Lerud's declaration -- that Columbus Park *did* receive notice of the resident's complaint on September 25th, ten (10) days prior to issuing the eviction notice.

Respondent also misqualified that, "Columbus Park noted a presentation hearing for June 14, 2019, but the note for hearing contained

a scrivener's error and Croghan did not appear for the June 14 hearing. CP 151." A "scrivener's error"? No, the truth of that matter is that *attorney Baldwin failed to serve Croghan with notice of that hearing, and the trial court failed to question Baldwin on his lack of service when Croghan did not appear for the hearing.* When Croghan provided proof of this lack of service, the trial court had no choice but to vacate the judgment it made in her absence.

#### IV. ARGUMENT

A. Respondent misconstrues that Croghan argued that because she was the tenant, she did not have any burden to prove the landlord knew about her governmental complaint. Correctly stated, Croghan was arguing that the rebuttable presumption clause of 59.18.250 placed the burden of proof upon the landlord to show there was *some other reason besides retaliation* for the eviction. Respondent presented not a single reason for the notice to terminate tenancy. In fact, in his opening statements, attorney Baldwin referred to the notice as a "*no-fault move out*".

Respondent is a bit sharp when stating that, "Appellant also mentions *pro se* litigants should be afforded special treatment and not held accountable to the same court rules as parties represented by counsel". Croghan never postured or asked to have "special treatment". In her brief, however, she does assert her right to a fair trial, and cites the Judicial

Codes, Canon 2, Rule 2.2. Impartiality and Fairness, Comment 4, wherein it states:

**[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.**

B. Respondent again claims that, "Landlord had no notice of governmental complaint prior to eviction action".

There were four (4) instances of notice to Lerud of the complaint and/or the identity of Croghan, **prior to the posting of the eviction notice.**

Instance 1) The first instance was by Lerud's dredging contractor. Mentioned In the pleadings several times and described in her trial testimony twice, Croghan provided an eye-witness account of Lerud's dredging contractor entering Lerud's office immediately after Croghan's confrontation with him at the waterfront construction site on September 20, 2018. A reasonable person would assume that most landlords in these circumstances would ask for a description of the self-described "resident". It would be odd, and completely out of her character if Lerud did not inquire which one of her tenants had reported on her devious construction project. Ms. Lerud was well aware at that time that Croghan is an environmental paralegal; she also was aware that Croghan visited the waterfront daily for walks or to swim, because the waterfront is visible from the Park Office back windows and open deck. The environmental stance of the resident, together with a physical description of Croghan

from the contractor, leaves not a shadow of a doubt in Croghan's mind that it was in that moment that Lerud first contemplated evicting Croghan in retaliation for interfering with her dredging project.

Instance 2) As stated in Croghan's pleadings, Brandon Clinton (ACOE) advised Croghan on September 24th that he left a message at the Park Office for Lerud regarding Croghan's report and the lack of a permit.

Lerud was working directly with two women on her construction project whom were both informed within days of Croghan's report: Instance 3) Lerud's project manager, Kim Pawlawski, was directly contacted by Brandon Clinton (ACOE) on September 24th regarding the resident's report of dredging, with a demand to stop the project for lack of a permit; and Instance 4) Lerud's Fish and Wildlife rep, Teresa Nation, whom had obtained the hydraulic permit, received a full copy via email of Croghan's report from Dept. of Ecology with Croghan's name, signature, and phone number. It is impossible for a reasonable person to believe that when the project was suddenly halted by the ACOE, that these legally responsible parties did not discuss the complaint in detail with their client. Specifically, the applications filed with the County did not mention or authorize dredging, yet they were about to dredge the site in preparation for placing extremely heavy 3' x 3' concrete blocks on the lakebed just feet away from the mouth of the salmon stream. Columbus Park was "caught in the act" of illegal dredging outside the granted environmental permit.

Instance 5) A fifth source of Croghan's identity prior to the eviction notice, came most probably from the aforementioned Fish and Wildlife rep, Teresa Nation. On Lerud's own (altered) exhibit to her declaration discussed above, Ms. Nation is listed as one of the cc's of the Ecology email which contained the original report of Croghan, and her contact info. **Ms. Nation had contacted Croghan by phone on September 24th** to defend the project, stating that it was she who had obtained the hydraulic permit, and the project had all the necessary permits. It was from Ms. Nation that Croghan first learned that the salmon stream in question is the last known salmon spawning site in Fish and Wildlife records for Black Lake.

Heretofore, Croghan had not thought this phone call relevant to this case, but Croghan now realizes the important implication of that call she received from Teresa Nation. **As a matter of agency procedure and simple respect, Ms. Nation would have reported back to her client, project proponent Lerud, that she had contacted the Park resident, Patricia Croghan.** The record of this phone call from Nation to Croghan would probably be available through a Freedom of Information request to Fish and Wildlife.

Respondent Columbus Park's many assertions of its "substantial evidence" and long list of citations thereto, are absurd in light of the flimsiness of its single document of "evidence" that has been proven to be deliberately altered. Even if the poorly-disguised alteration had not been

caught, the whole premise of the false narrative is that Lerud's project manager (termed "agent" by the agencies) waited for an entire month before notifying Lerud of the complaint which shut down the project. This scenario is not credible for a professional business which is legally liable for the quality of its work and the conduct of its employees.

It was exactly this (altered) "evidence" of Lerud's declaration and email thread exhibit that turned out to be the "issue of material fact" that precipitated in the staging of that mockery of a trial.

Respondent states that: the "definition of the term 'premises' did not have an effect on the trial court's decision, and any error (there was none) would have been harmless". Croghan directs the Respondent to the trial court's findings (which were read verbatim from attorney Baldwin's findings), wherein Respondent will find the *deliberately and fraudulently limited term* "premises" is indeed a part of the trial court's decision.

Finally, Croghan contests Respondent's statement that "nothing in the record suggests the trial court based its decision on untenable grounds or untenable reasons". On the contrary, Croghan's brief contains twenty-seven (27) pages discussing the errors of the commissioner and the trial court.

## V. CONCLUSION

Respondent Columbus Park failed to overcome or overturn the rebuttable presumption provided in RCW 59.18.250 that Lerud acted out of reprisal and retaliation in her eviction of Croghan. The Respondent's

proffered evidence was woefully insufficient, fraudulently altered, and ineffective in its intent. Respondent has failed to offer any other reason for the eviction. It is clear from the abundance of both actual and circumstantial evidence, that **Lerud knew before she issued the eviction notice that it was Croghan who made the whistleblower report.**

In light of the straightforward evidence in support of the presumption allowed by 59.18.250 that Lerud evicted Croghan in retaliation, the decision of the trial court should be reversed, and damages awarded to Croghan in mitigation for the extensive harm Lerud has caused to Croghan's personal and professional life. Sanctions should be awarded against Respondent for her spiteful, frivolous lawsuit whereby she meant to harm Croghan.

**DATED** this 17th day of May, 2020.

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**CERTIFICATE OF SERVICE**

I, Patricia Croghan, hereby certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record, as follows:

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

**DATED** this 17th day of May, 2020.

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**Comments:**

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