SUPREME COURT NO. 101329-9
COURT OF APPEALS NOS. 55641-3-II, 56315-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

(Pierce County Superior
Court No. 18-2-10533-7)

CARL AND SUZAN LEWIS,
Petitioners (Defendants)

v.

LACY K. RIDGWAY formerly LACY CALDWELL
and MATTHEW RIDGWAY,
Respondents (Defendants)

and

CROSSROADS MANAGEMENT LLC
(Underlying Plaintiff)

PETITIONERS CARL AND SUZAN LEWIS' PETITION FOR DISCRETIONARY REVIEW BY SUPREME COURT

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APPENDIX:

Court of Appeals, Division II - Unpublished Opinion No. 55641-3-II (consolidated with No. 556315-1-II) **9/7/2022** - Crossroads Management LLC (Plaintiff) v Ridgway (Respondent/Cross-Appellant) and Lewis (Appellant/Cross-Respondent)

TABLE OF AUTHORITIES

1. Identity of Petitioner

Carl and Suzan Lewis, Petitioners, ask the Court to accept review of the decision designated in Part 2 of this motion.

2. Decision

On September 7, 2022, the Court of Appeals, Div. II, issued an unpublished decision, under case number 53457-6-II, reversing a Superior Court decision allowing a Superior Court Arbitration case to proceed to a trial de novo on a request for trial de novo submitted by the Lewises through the Superior Courts electronic filing portal. This decision resulted in a termination of the case, including terminating and denying review of an order granting Ms. Ridgway Partial Summary Judgment prior to the arbitration, which excluded claims and damages from the arbitration. At a minimum, the striking of the Request for Trial de Novo should have preserved review of the claims not submitted to or decided in Superior Court Arbitration.

3. Issues Presented for Review

3.1. Whether the Superior Court had the power to modify the Trial de Novo procedure to a contactless system and

to waive steps that would generally require in-person contact under the tight timeframe imposed by the process during the period when social distancing rules were in place as a response to COVID.

3.2 Whether an order granting partial summary judgment prior to a Superior Court arbitration, removing claims and damages from the arbitration, is appealable under circumstances where the arbitration result is not.

3.3 Whether a failed Request for Trial de Novo results in a loss of appeal rights on issues outside the arbitration, such as a prior order granting partial summary judgment before the arbitration.

3.4 Whether RCW 59.18.280 involves substantive, performative duties beyond mere communication to the tenant by the landlord when it requires that the landlord provide the tenant with a "statement [of charges] together with any refund due…"

3.5 Whether the remedies, duties and process in RCW 59.18.280 are to be interpreted as part of the larger process and

requirements for the landlord's withholding of a security deposit, including the move-in inspection and checklist requirement in RCW 59.18.260, such that a tenant is entitled to a refund of the security deposit if the move-out inspection notes that there was "no change" on all items included and identified in the move-in inspection.

3.6 Whether RCW 59.18.280 involves factual issues of intent when it provides a special remedy for "intentional refusal of the landlord to give the statement or refund due."

4. Statement of the Case

Although the Lewises substantively prevailed at the arbitration and received an award of 100% of the principal damages they were allowed to pursue in arbitration, Ms. Ridgway asked for and received a substantial attorney's fee award. The Lewises sought a trial de novo to challenge this fee award. The request was made at the height of social distancing during Covid and the Superior Court had directed attorneys to use its electronic filing system rather than other filing methods.

Unfortunately, the Court's electronic filing system did not comply with the procedural requirements of RCW 7.06.050(1) and SCCAR 7.1, as recently amended. The e-filing for the Request for Trial de Novo was set up to add the signature of the requesting attorney only, does not provide a process or place for the parties to sign, and submits the document based on the completion of the fields in the form automatically upon completion. This resulted in the Request for Trial de Novo lacking party signatures – but no Request for Trial de Novo submitted through the Superior Court's e-filing system, which the Superior Court had directed attorneys to use to reduce the possible exposure of Court and Clerk staff to Covid through in-person filing interactions, could have had such signatures. CP 649-662.

The Superior Court, recognizing the importance of its e-filing process to protect staff during Covid, denied a Motion to Strike the Request for Trial de Novo. The Court of Appeals reversed this decision, struck the Trial de Novo, and further ruled that the effect of that striking was to terminate the case

despite the appeal of a dismissal of a statutory claim prior to the arbitration, which removed it from the arbitration process. As a result, the Lewises were denied full Due Process.

The underlying case also presents issues that have long evaded precedent-setting review on critical issues of statutory interpretation of statewide importance. The Lewises were tenants who were entitled to a full damages deposit refund. (The walkthrough inspections and the affirmative promises made the property manager establish the right to a full refund. (CP 144-198, esp. CP 144, 146, and 161-62; CP 395, CP 434.)) Despite this, Ms. Ridgway refused to provide the refund. (CP 144-198, esp. CP 145-148). The Lewises sued for statutory damages under RCW 59.18.280 and refused settlement offers that failed to include statutory damages.

After receiving a refusal of her settlement offers, Ms. Ridgway filed a Motion for Partial Summary Judgment, seeking to limit the Lewis' cross-claim to the amount of the damage deposit. The Court granted this motion. (RP 4/12/19, p.17, ll. 14-17; p. 18, ll. 1-12; CP 213-15.) The only remaining

issue in the case after this ruling is the extent to which a damage deposit should be refunded. The Lewises prevailed on this argument, both at arbitration and at a trial-de-novo, and were awarded a full refund in both proceedings.

5. Argument

This case presents novel and important issues of statewide importance, both with regard to the procedure for claim subject to Superior Court Arbitration and with regard to residential tenant deposits and landlord refunds of those deposits. The Appellate Court decision erroneously lacked nuance, resulting in the important underlying tenant claims evading both a hearing on the merits or appellate review. This conflicts with fundamental rule that a trial de novo is required for review only of claims and issues that were subjected to arbitration, not excluded from arbitration. Further, the decision undermines the inherent powers of the Superior Courts to implement procedures and procedural exceptions in cases of public emergency, such as the Covid pandemic, for the protection of the public and staff. Finally, the Court of Appeals decision creates a Due Process

problem and trap in Superior Court Arbitration in that it places claims and theories dismissed prior to arbitration beyond the reach of a hearing on the merits in circumstances that impair or prevent effective appellate review.

The underlying case also presents important issues in residential landlord tenant law that have long-evaded review and appellate statutory interpretation, leading to errors such as that made by the Superior Court in granting Ms. Ridgway's Motion for Partial Summary Judgment. Therefore, review is appropriate and should be accepted under RAP 13.4(b)(3), and (4).

5.1 The Issues Raised Regarding Superior Court Arbitration and Trial de Novo Process Present Important State-Wide Issues of Law.

The appropriateness and effect of the Trial de Novo on these facts turns on three questions: 1. Does the Trial Court have and retain equitable power to control its own processes to (a) respond to public emergencies such as COVID and (b) to ensure that the parties receive Due Process? 2. If so, did the Trial Court appropriately exercise such power here? 3. Finally, if either

answer to the first two questions is "no," does it matter for any issue appealed by Lewises? (It does not.)

While RCW 7.06.050(1) and SCCAR 7.1, as recently amended, require that a Request for Trial de Novo be signed by the party making the request. However, neither the statute nor the rules deprive the Superior Court of its power, arising both in equity and in its inherent power to control its own process, to make limited process exceptions in compelling cases, such as this one, which involved the Superior Court's own response to a public health crisis.

In this case, the Request for Trial de Novo here was filed through the process created by the Pierce County Superior Court, which the Pierce County Superior Court instructed attorneys to use if possible to minimize in-person contacts during Covid. Given the tight timeframe of the process, the Superior Court's process removed multiple points of probably in-person contact: (1) an in-person meeting for the signing of the documents by the clients and (2) the filing of paper documents with the Clerk. The Court of Appeals decision has the effect of

limiting the Superior Court's ability to protect its staff, the Clerk's staff, and the public from a pandemic.

For the Appellate Court decision to be correct, the signing process implemented by RCW 7.06.050(1) and SCCAR 7.1, as recently amended, must act to deprive the Superior Court of its equitable and administrative powers to control its cases in a manner that responds to health crisis conditions. Nothing in the statute or the court rule warrants that conclusion. On the contrary, the Superior Court must have the equitable power modify formal procedures in the face of public emergency.

The better rule would be to recognize a limited, case-specific exception, under the Superior Court's equitable and inherent administrative powers, to accept technically non-conforming Requests for Trial de Novo when circumstances require an exception be made for the proper and fair administration of justice or in the face of public emergency. Further, there is no risk that granting such an exception will undermine the general rule. Pierce County Superior Court has already modified its process to comport with the general rule.

The conditions of pandemic will either fade or become a feature of our world we will adapt to through implementation of new processes.

5.2 Non-Effect of Striking Trial de Novo on Issues on Appeal.

However, even if the Request for Trial de Novo is invalid due to non-conformity with the signature requirements, the Appellate Court should still have heard and decided the substantive issues on appeal by the Lewises.

The Court of Appeals correctly noted that "the sole way to appeal an erroneous ruling from mandatory arbitration is the trial de novo." *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 529, 79 P.3d 1154 (2003) and that "[a] judgment that is entered on a mandatory arbitration award is generally not subject to direct appellate review." *Dill v. Michelson Realty Co.*, 152 Wn. App. 815, 820, 219 P.3d 726 (2009). However, the Court of Appeals failed to recognize that the Lewises appeal was NOT an "erroneous ruling from mandatory arbitration" but an erroneous ruling from on a summary judgment prior to arbitration that

improperly removed ruling from the arbitration. Thus, the issues on appeal were categorically excluded from the set of *Malted Mouse* issued and should be the core of the defining set of issues suggested by the use of the word "generally" in *Dill.*

In reaching this result, the Court of Appeals expressly applied exhaustion of administrative remedies doctrine to the Superior Court Arbitration process (through the case *Clark County v. Growth Mgmt. Hr'gs Bd.*, 10 Wn. App. 2d 84, 96-98, 448 P.3d 81 (2019).) This is an erroneous conflation of distinct legal procedures. Superior Court Arbitration is not an administrative process by the Executive branch subject to the Administrative Procedures Act (RCW 34.04) and insulated by Separation of Powers concerns. Superior Court Arbitration is a judicial process in the judicial branch to which doctrines such as Exhaustion of Administrative Remedies does not apply. The application of the process for judicial review of administrative actions to judicial review of judicial actions undermines Due Process by insulating judicial process from judicial review.

Further, the process and rules created by the Court of Appeals creates a perverse incentive system within the Superior Court Arbitration process. The purpose of Superior Court arbitration is to preserve scarce judicial resources by providing an alternate track of decision, subsidized by the efforts of private counsel on a reduced fee basis, to lessen the workload of the Courts. The cases striking review from Superior Court arbitration are consistent with and arise from this purpose. For instance, *Cook v. Selland Const.,Inc.*, 81 Wn. App.98, 912 P.2d 1088 (1996) and *Dill v. Michelson Realty Co.*, 152 Wn. App. 815, 219 P.3d 726 (2009) involve prior rulings on pre-arbitration dispositive motions. However, both cases involve denials of pre-arbitration dispositive motions that sought either to dismiss or limit the claims or issues in the case. Therefore, the entire scope of the issues as stated in the pleadings were heard at the arbitration. The rulings then had the effect of preserving the scope of the case for a hearing on the merits and of not rewarding attorney's who divert cases from the Superior Court

arbitration process by engaging the scarce resources of the Superior Court to decide issues before the arbitration.

This case involves the reverse conclusion and justifies a different result in the analysis of the proper scope of review. Rather than allowing all issues and claims to proceed to arbitration, the Trial Court here granted partial summary judgment and dismissed the cross-claim, excluding it from a hearing on the merits at arbitration. This is a defect inherent in any judgment obtained, through application of the arbitration decision or any subsequent trial de novo, rather than an "erroneous ruling from mandatory arbitration."

The applicable rule is that "[d]irect appeals from the judgment on the arbitration award are not proper unless the appeal relates to a defect inherent in the judgment or the means by which the judgment was obtained." *Cook*, 81 Wn. App. at 102 (emphasis added). An error brought into arbitration results in a defect inherent in the judgment resulting from the arbitration, as no full and proper judgment could result. This is a "Garbage-in/Garbage-out" arbitration process that rises to the

level of a denial of the Due Process right of a hearing on the merits on meritorious claims.

Further, the judicial economy purpose of the process is undermined, not upheld, by the rules pronounced by the Court of Appeals. Judicial economy is best upheld by having as many cases and issues decided by the arbitration process rather than the Court. That, in turn, is best incentivized by a process that denies a party who circumvents resolution of an issue in arbitration the benefit of such a litigation tactic. That is, a party that tries to circumvent the process and fails should not be able to appeal the issues properly arbitrated. Similarly, a party who successfully circumvents the arbitration process by, as here, having issues erroneously removed from the arbitration prior to a hearing on the merits should not receive the additional benefit of having those issues evade all subsequent review.

The ruling of the Court of Appeals in fact encourages parties to arbitration to circumvent the arbitration process. This case presents a stark fact pattern in that regard. Here, the Lewises received results at arbitration and trial that were as good

as they possibly could have been after the summary judgment order dismissing statutory claims. Despite that, the Lewises are net debtors on the attorney fee award. Therefore, a defendant has a strong incentive to file pre-arbitration motions for summary judgment rather than submitting claims to arbitration, engaging judicial resources the process is meant to preserve.

Therefore, because the dismissal of the cross-claim on summary judgment is an error that results in a defect in any subsequent judgment, whether obtained on arbitration award or on trial de novo, that dismissal should have been appealable whether the trial de novo is allowed to stand or not.

5.3 The Issues Raised in the Underlying Case Present Important State-Wide Issues of Law.

More than 37% of Washington households live in rentals. The unlawful detainer calendar is always congested. Disputes involve residential rental security deposits under RCW 59.18.260 and RCW 59.18.280 are frequently matters of litigation and dispute. Despite the importance and prevalence of rental security deposits and the refund process, there have only

been three published cases and one Attorney General opinion involving RCW 59.18.260 or RCW 59.18.280 since they were enacted in 1973, and none of these have involved core issues of interpretation, the duties of landlords under the statute, or the operation of the refund process. (Black v. Charron, 22 Wn. App. 11, 587 P.2d 196 (1978) (ruling that a deposit requirement did not operate as an improper liquidated damages term); Sardam v. Morford, 51 Wn. App. 908, 756 P.2d 174 (addressing application of the attorney's fee provision in RCW 59.18.280 when each party partially prevails); Goodeill v. Madison Real Estate, 191 Wn. App. 88, 362 P.3d 302 (2015) (interpreting the "circumstances beyond the landlord's control" exception to timely compliance with the substantive refund and statement of charges obligations in RCW 59.18.280), and Op Atty Gen 1974 No. 11 (interpreting RCW 59.18.260 as allowing for pooling of multiple deposits in a single account rather than separation of each in its own account and addressing interest earned). Therefore, other than the timing requirements, no case addresses a landlord's actual duties or the process to fulfill those duties.

In relevant part, 59.18.280 provides:

> (1) Within twenty-one days after the termination of the rental agreement and vacation of the premises …, *the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due* the tenant under the terms and conditions of the rental agreement.
>
> (a) *No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.*
>
> (b) The landlord complies with this section *if the required statement or payment, or both*, are delivered to the tenant personally or deposited in the United States mail properly addressed to the tenant's last known address with first-class postage prepaid within the twenty-one days.
>
> (2) If the landlord fails to give such statement *together with any refund due* the tenant within the time limits specified above he or she shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the twenty-one days ... The court may in its discretion award up to two times the amount of the deposit for *the intentional refusal* of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorneys' fee.

RCW 59.18.280 (emphasis added).

The Residential Landlord/Tenant Act is a critically important statute that affects millions of Washington's most vulnerable citizens; yet it is under-analyzed, leading to erroneous trial court decisions that worsen the economic security of our least secure citizens. This court should take this opportunity to provide some guiding interpretation for the lower courts regarding claims under RCW 59.18.260 and RCW 59.18.280.

5.4 The Trial Court's Denial of Lewis' Right to Statutory Damages is Obvious Error.

The Trial Court ruled that RCW 59.18.280 imposes no particular or substantive duties on a landlord beyond a duty to communicate about the damage deposit within twenty-one days.

> It appears to me that what the Legislature is trying to do here is to require landlords to communicate and/or provide a refund within a finite period of time. …
>
> It's a matter of timing. The Legislature insists that tenants receive a statement, a specific statement, within this time frame or the refund due, and it's not a matter of exploring the accuracy of that refund, whether it's the full

> refund due. The point is that communication must occur within this time frame.
>
> I do not believe that the language here, "intentional refusal of the landlord" pertains to an intentional refusal to give the full amount of the refund due, but rather, the intentional refusal to provide the statement or the refund within the time frame.

RP 4/12/19, p.17, ll. 14-17; p. 18, ll. 1-12, at Appendix 12, pp. 172-173.

This is error. The statute requires that the landlord provide a *full and proper* statement of charges, not just a timely one. The statute also requires that the landlord provide "the refund due" and not merely "a refund." The Trial Court, by reading all substance out of the statute, vitiates these specific statutory terms.

With regard to the statement of charges, by ruling that the statute requires that the Court merely look at the timing and possibly the form of the statement of charges, rather than the substance of the charges, the Trial Court has washed its hands of the very analysis the Legislature required – an analysis to ensure that landlords are not charging tenants for ordinary wear-and-tear or for pre-existing conditions (the purpose of the move-in

checklist). The statute is not merely one requiring that some communication occur in a particular form. It requires that the landlord only charge for proper damages caused by the tenant and that the landlord then refund any remaining balance of the damages deposit.

The error is even more glaring with regard to the refund. The statute requires that the landlord give the tenant "the refund due." The "refund due" is a specific and calculable amount – the amount of the deposit remaining after all *proper* charges are applied. That is, the Court is to look at the statement of damages to determine which, if any, of the charges are proper (which this Court did not do) and then require that the landlord has refunded the difference between the damage deposit and those *proper* charges. Rather, this Court interpreted the "refund due" as meaning "a refund" and as not meaning "the full refund due." This interpretation deletes the word "due" from the statute (and also probably changes the word "the" to "a"), changing its meaning and undermining its intent as a statute intended to protect tenants from improper charges by landlords.

This error was repeated and compounded in the Court's handling of the intent element of the statute. The court ruled,

> I do not believe that the language here, "intentional refusal of the landlord" pertains to an intentional refusal to give the full amount of the refund due, but rather, the intentional refusal to provide the statement or the refund within the time frame.
>
> RP 4/12/19, p. 18, ll. 7-12.

In making this ruling, the Court side-stepped and disregarded a critical disputed issue of material fact that should have both precluded summary judgment and delayed consideration of the summary judgment pending relevant discovery. As with all questions turning on subjective self-reporting, issues of intent and motivation involve the credibility of a self-reporting witness, and credibility is always a question of fact not suited for resolution on summary judgment. The trial court may not weigh evidence, resolve conflicts in the evidence, choose among competing inferences from the evidence, or make determinations of credibility on summary judgment. LaMon v. Butler, 112 Wn.2d 193 at 199 n.5, 770 P.2d 1027 (1989). Despite that, by misinterpreting the statute by removing all substantive

requirements from the refund process, the Trial Court ignored the core issue of disputed material fact in this case that should have been tried rather than dismissed on summary judgment.

This issue should have been decided and reversed on appeal as an issue arising prior to, and therefore not as a result of, the arbitration, restricting the scope of arbitration such that any resulting judgment would be defective and erroneous. The Supreme Court should take this case and remedy that error.

6. Conclusion

Cross-Defendant Ridgway sought and received a Partial Summary Judgment that dismissed the Lewis' cross-claim for statutory damages, available when a landlord "intentionally refused" to provide a tenant with the "refund due." To reach this result, the Court read the word "due" out of the statute and ignored substantial evidence produced by the Lewises in response to the Motion for Summary Judgment error.

The silver lining, such as there is one, is that this case gives this Court the opportunity to address a long-standing issue of critical statewide concern. Despite its being on the books for

nearly fifty years, large portions of Chapter 59.18 RCW (the Residential Landlord-Tenant Act) remain uninterpreted by the appellate courts of Washington. The section at issue here, RCW 59.18.260 and RCW 59.18.280, is relevant in that semantic desert. The result is widespread confusion and inconsistency in results in trial court cases under that statute, which largely persists due to the lack of access to justice by the affected population (tenants).

Despite that, the Court of Appeals, ruled that Lewises' attempt to have a trial de novo to address the attorney fee award deprived the Lewises of the right to review of the errors in the case made prior to the arbitration, rather than in the arbitration process. This wrongly insulated the Trial Court's obvious and serious error from review. Further, to reach this result, the Court of Appeals has muddled judicial review of judicial process with judicial review of administrative process and has created a perverse incentive system that will encourage arbitration defendants to engage court resources to circumvent the Superior Court arbitration process, undermining the purpose of Superior

Court arbitration. This Court should take this case up and provide needed clarity to these under-interpreted areas of law.

Pursuant to RAP 18.17(b), I certify that the text of this brief, not including appendices, signature block, or certificate of service, contains 4,200 words, and does not exceed the maximum of 5,000 words for Motions for Discretionary Review as required under RAP 18.17(c)(11).

DATED this 27th day of September, 2022.

DESCHUTES LAW GROUP, PLLC

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Attorney for Appellants Lewis

CERTIFICATE OF SERVICE

I certify that on the date signed below, I caused the foregoing document to be e-filed with the Appellate Court, and served upon the Parties through their attorneys of record by email.

DECLARED UNDER PENALTY OF PERJURY ACCORDING TO THE LAWS OF THE STATE OF WASHINGTON.

Dated this 28th day of September, 2022, in Olympia, Washington.

/s/ Doreen Milward
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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CROSSROADS MANAGEMENT, LLC, Plaintiff, v. LACY K. RIDGWAY (formerly LACY CALDWELL) and MATTHEW RIDGWAY, husband and wife, Respondent/Cross-Appellant, CARL and SUZAN LEWIS, husband and wife, Appellant/Cross-Respondent.	No. 55641-3-II (consolidated with No. 56315-1-II UNPUBLISHED OPINION

GLASGOW, C.J.—After tenants Carl and Suzan Lewis moved out of a rental property owned by Lacy and Matthew Ridgway, the parties disagreed about the amount of security deposit that should be returned to the Lewises. Because the Lewises demanded a full refund of their deposit and the Ridgways insisted that most of the deposit be put toward repairing damage to the property, the property management company, Crossroads Management LLC, filed an interpleader action and placed the $1,695 security deposit in the court's registry.

The Lewises filed a cross claim against the Ridgways, arguing in part that they were entitled to attorney fees and double damages under RCW 59.18.280(2) because the Ridgways intentionally withheld the full refund due in violation of RCW 59.18.280(1). The Ridgways filed a motion for partial summary judgment on this issue, arguing RCW 59.18.280(1) only requires the landlord to mail a statement of damages and/or a refund within 21 days and they complied with

this requirement. The trial court agreed that RCW 59.18.280 requires timely communication, not necessarily an accurate return of the deposit owed, and granted the partial summary judgment motion. We denied a motion for discretionary review of this decision.

The Ridgways made multiple settlement offers, including one that exceeded the amount of the full security deposit by over $1,000. The Lewises refused all offers of settlement, and the parties proceeded to mandatory arbitration under chapter 7.06 RCW. The arbitrator awarded the Lewises their full $1,695 security deposit but awarded the Ridgways $14,386 in attorney fees under chapter 4.84 RCW, which establishes a risk-shifting mechanism for cases with under $10,000 in controversy where the defendant offered more to settle the case than the plaintiff ultimately recovered.

The Lewises then filed a request for trial de novo. The Ridgways moved to strike the request because it was not signed by the Lewises themselves, as required by RCW 7.60.050(1) and SCCAR 7.1(b). The trial court found that the Lewises had substantially complied with statutory and court rule requirements and denied the Ridgways' motion, as well as a motion for reconsideration.

At the trial de novo, a jury determined that the Lewises were entitled to a full refund of their security deposit. But the trial court maintained the $14,386 attorney fee award from the arbitrator and awarded the Ridgways an additional approximately $13,000 in attorney fees based on the Lewises' failure to improve their position on the trial de novo.

The Lewises appeal the trial court's order granting the Ridgways' motion for partial summary judgment and the attorney fee awards. They also appeal an order disbursing the funds

held in the court registry to the Ridgways. The Ridgways appeal the trial court order denying their motion to strike the trial de novo request and the order denying their motion for reconsideration.

We hold the trial court erred when it found that the Lewises substantially complied with the requirements for requesting trial de novo and denied the Ridgways' motions to strike and for reconsideration. Following Division One, we conclude the plain language of both RCW 7.60.050(1) and SCCAR 7.1(b) required the aggrieved party's signature on the request for trial de novo. The Lewises failed to meet this requirement.

We therefore reverse the trial court's order denying the Ridgways' motion to strike the Lewises' trial de novo request, affirm the amended arbitration award, and remand for further proceedings consistent with this opinion. Because review of adverse rulings in mandatory arbitration proceedings must occur by trial de novo, the failure to properly seek trial de novo should have ended the proceeding, and we do not review the merits of the Lewises' claims on appeal. On remand, the trial court must determine the proper amount of attorney fees to be awarded to the Ridgways for proceedings in the trial court in light of this opinion. We award the Ridgways reasonable attorney fees on appeal in an amount to be determined by a commissioner of this court.

FACTS

I. BACKGROUND

The Lewises moved into a single family home owned by the Ridgways in May 2015. They paid a refundable security deposit of $1,695 and completed a checklist noting the condition of the property when they moved in. The lease stated that after "deductions for cleaning and repairs necessary to restore the premises to its original condition (less allowance for reasonable wear and tear), . . . the balance of the security fee shall be refunded," provided there is no evidence of

unapproved pets or unauthorized smoking and "all grounds are cleared." Clerk's Papers (CP) at 16. The Lewises were permitted to have pets.

Crossroads managed the Ridgways' rental property. As part of its responsibilities, Crossroads was required to manage security deposits. It held the Lewises' $1,695 deposit in a trust account.

On May 22, 2018, the Lewises moved out. Carl Lewis did a final walk-through of the property with a representative from Crossroads, Calvin Smith, who remarked that the condition of the property was the same as when the Lewises moved in, except for one issue with light fixtures. Smith noted this on a copy of the move-in checklist, and both he and Carl Lewis signed the checklist. The carpets had just been cleaned, and there were no odors of smoke or stains. Suzan Lewis took pictures upon moving out of the home, which are in our record and which show newly cleaned carpets. The Lewises handed over their keys, and Smith told them their full security deposit would be returned. He classified any issues with the wall paint as "normal wear-and-tear." CP at 240.

A few days later, on May 26, the Ridgways visited the property and alleged that they discovered "a heavy lingering smell of cigarette smoke," "a few cigarette butts . . . inside on the floor," "smoke stains on the walls and animal urine stains on the carpets, which did not appear to have been cleaned." CP at 66. Lacy Ridgway said the Lewises were "openly admitted smokers" and had two dogs. CP at 279. Ridgway also complained that the Lewises tore a toilet paper holder from the wall, installed satellite dishes and failed to remove them, and left the yard overgrown and with garbage in it. And "the move-out checklist did not reflect any of these issues." *Id.*

The Ridgways also took pictures, which are in our record. Their pictures show damage to a baseboard and a carpet stain, damage to a toilet paper holder, and pictures of the condition of the yard. On June 10, the Ridgways sent Crossroads detailed accounts of these damages and others, reported that the repairs would cost $1,536.01 (including repainting and yard work), and asked Crossroads to promptly inform the Lewises that most of their deposit was being withheld to cover these costs.

In response, Crossroads asked the Ridgways whether anybody else could have been in the home after the Lewises moved out. Smith insisted, "During the walk-through, there were no cigarette butts and no cigarette odor. We are quite sensitive to odors from smokers, and there were *no odors* upon the walk-through on the 22nd, when keys were handed over to us." CP at 32. However, Smith did notice the smell when he returned to show the house to new tenants.

As for the carpet stains, Smith stated that the carpets were "cleaned when the tenants left" but acknowledged that they "were very dirty the next time [he] came to the house." *Id.* Lacy Ridgway said "a dog was in the house that soiled a few spots on the floor," which Smith thought happened after the Lewises moved out. *Id.* According to Smith, the pictures of the damages from the Ridgways did not match the condition of the home when the Lewises moved out. He advised the Ridgways to return the full security deposit and told them, "Just a warning: if you believe the past tenants should be charged for somebody else's carelessness, you could be in for a lawsuit from the past tenant." CP at 33.

Nevertheless, Crossroads complied with the Ridgways' request and issued a check for $158.99 to Carl Lewis on June 12, along with the summary of damages and itemization of the cost of repairs provided by the Ridgways.

On June 26, the Lewises returned this check and demanded a full refund of their deposit, noting that they did not timely receive the full breakdown of the alleged damages and that during the final walk-through, Smith "stated that everything was good and that [the Lewises] would get [their] deposit back." CP at 40.

Crossroads filed a complaint in interpleader, depositing the $1,695 from its trust account into the court's registry and asking the court to determine who was entitled to it.

II. CROSS CLAIM AND PARTIAL SUMMARY JUDGMENT

The Lewises filed a cross claim against the Ridgways, alleging that the damages listed were "either cleared on final inspection or not addressed in the initial inspection and therefore not a proper basis for charge." CP at 45. The Lewises asserted they were entitled to the full amount of the security deposit, as well as attorney fees and double damages, because the Ridgways intentionally and wrongfully withheld the deposit that was due to them under RCW 59.18.280.

In early November 2018, the Ridgways sent a letter to counsel for the Lewises, stating they were advised by an attorney to pay the Lewises the full security deposit and move to dismiss the case with prejudice. They never received a response.

In late November, the Ridgways' attorney sent a formal offer to settle the case for $1,800. The Lewises rejected this offer, declined to make a counteroffer, and advised they would entertain a "reasonable settlement offer" that included the full deposit *and* reimbursement of attorney fees. CP at 425.[1] A subsequent offer of $2,800, including $1,000 specifically to address costs and fees, was also rejected.

[1] The Lewises also asserted that the Ridgways' offer failed to comply with the timeline requirements of CR 68 because they were given 3 days to respond instead of 10. CR 68 addresses

In March 2019, the Ridgways moved for partial summary judgment, arguing they did not violate RCW 59.18.280, so the Lewises' damages should be capped at the amount of the security deposit. The trial court granted the Ridgways' motion for partial summary judgment, holding they had complied with the timing requirements of RCW 59.18.280. Accordingly, there would be no basis, as a matter of law, for awarding the Lewises damages in an amount up to double the amount of their security deposit. The trial court capped the available damages at the amount of the deposit, $1,695.

The Lewises sought discretionary review of this ruling, which this court denied. The Lewises then filed a motion for summary judgment, arguing that based on undisputed facts, they were entitled to a refund of the full security deposit. The trial court denied the motion.

III. ARBITRATION AND TRIAL DE NOVO

Because the Lewises sought a money judgment for less than $100,000, they filed a statement of arbitrability. *See* RCW 7.06.020(1) ("All civil actions, . . . where the sole relief sought is a money judgment, and where no party asserts a claim in excess of . . . up to one hundred thousand dollars, exclusive of interest and costs, are subject to civil arbitration."). After a hearing, the arbitrator entered an award of $1,695 for the Lewises, which represented the full amount of their security deposit.

The Ridgways then filed a motion for attorney fees under chapter 4.84 RCW, asserting they were the prevailing party based on the statutory risk-shifting scheme for small claims. "The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of

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offers of judgment, but the Ridgways were not making an offer of judgment. *See* CP at 422 (offering "to settle this matter pursuant to RCW 4.84.280").

RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages [amounting to $10,000 or less], recovers . . . the same or less than the amount offered in settlement by the defendant." RCW 4.84.270. The Ridgways notified the arbitrator that the Lewises failed to recover more than what the Ridgways offered to settle the case—$2,800—making the Ridgways the prevailing party under chapter 4.84 RCW. The Lewises did not file a motion for fees or costs, insisting the case was not yet over. The arbitrator entered an amended arbitration award, maintaining the award of $1,695 for the Lewises but awarding $14,386 in attorney fees for the Ridgways.

The Lewises wanted to appeal this fee award and the trial court's partial summary judgment ruling. On August 13, 2020, they filed a trial de novo request, believing they could not appeal to this court without first pursuing trial de novo. They also told the Ridgways that they would settle if the Ridgways paid them $8,885.

The Ridgways moved to strike the trial de novo request because it was signed only by the Lewises' counsel, not the Lewises themselves, as required by statute and court rule. *See* RCW 7.06.050(1) ("The notice *must* be signed by the party." (emphasis added)); SCCAR 7.1(b) (same); Suppl. Clerk's Papers (SCP) at 600 (trial de novo request signed only by the Lewises' counsel). In response, Carl Lewis submitted a declaration asserting, "We told our attorney to ask for a trial de novo." SCP at 648. A paralegal from counsel's law firm also submitted a declaration, explaining that they had downloaded the trial de novo request form from the Pierce County Superior Court LINX[2] website. "Notably, the Court's e-form [for direct filing] contains no signature blocks for

[2] LINX is the Legal Information Network Exchange.

the Lewises." SCP at 650. The court's Adobe version of the form, which the paralegal decided to use, included a single signature block that "requires the Washington State Bar Association number of the person signing it, which indicate[d to the paralegal] that the person signing it needs to be an attorney." SCP at 651.

The Ridgways acknowledged that Pierce County's form appeared to be "outdated" but argued this did not "justify a party's failure to comply with statute and court rules." SCP at 666 n.1. LINX gives parties the option to upload their own form, and that option allows the party to be "in control of [the form's] contents." SCP at 669.

The trial court denied the motion to strike the trial de novo request, noting "a problem with the LINX system," and concluded that the Lewises had "made timely effort[s]" and acted "in good faith" when filing their request. SCP at 674.

The Ridgways moved for clarification. In response, the Lewises proposed certifying the issue of interpreting RCW 7.06.050(1) and SCCAR 7.1(b) to this court, along with the issue of interpreting RCW 59.18.280(2)'s double damages provision. The trial court explained that it had found "substantial compliance" with the trial de novo statute and court rule, as well as "good faith," because the county's failure to update its online form resulted in the parties having "no ability to comply" fully with the requirements for submission. Verbatim Report of Proceedings (Sept. 25, 2020) at 4. The trial court declined to certify any issues for interlocutory appeal.

The Ridgways then filed a motion for reconsideration of the trial court's order denying their motion to strike the trial de novo request, arguing in part that other judges in Pierce County, Snohomish County, and Thurston County had been presented with the same issue and struck

requests for trial de novo that were not signed by the aggrieved parties. The trial court denied the motion for reconsideration.

After a trial de novo, a jury found the Lewises were entitled to a return of their full security deposit. The issue of attorney fees was not before the jury.

The trial court entered a judgment awarding the Lewises the $1,695 deposit, plus $200 in attorney fees and approximately $510 in costs. It preserved the arbitrator's fee award of $14,386 in attorney fees for the Ridgways, and it added an additional approximately $13,000 in fees for the Ridgways from the trial de novo based on the Lewises' failure to improve their position from arbitration. In total, it awarded the Ridgways over $27,000 in attorney fees and costs under RCW 4.84.250 and 7.06.060.

The Ridgways then moved to disburse the $1,695 from the court's registry in partial satisfaction of this judgment. The Lewises opposed the motion, arguing that this was an improper process for obtaining payment on the judgment because the Ridgways did not prevail on the merits of the security deposit claim. The trial court granted the Ridgways' motion.

The Lewises appeal the partial summary judgment ruling, order awarding the Ridgways reasonable costs and attorney fees, and order to disburse funds from the court registry to the Ridgways in partial satisfaction of judgment. The Ridgways cross appeal the trial court's order denying their motion to strike the request for trial de novo and order denying their motion for reconsideration.

ANALYSIS

TRIAL DE NOVO REQUEST

Because it is dispositive, we begin with the Ridgways' cross appeal of the trial court's order denying their motion to strike the Lewises' trial de novo request. The applicable statute and court rule required a signature from the Lewises themselves, but the Lewises' request was signed only by their attorney. The Ridgways therefore prevail on their cross appeal.

A. Party Signature Requirement

We review a trial court's interpretation of statutes and court rules de novo. *Mangan v. Lamar*, 18 Wn. App. 2d 93, 96, 496 P.3d 1213 (2021). We interpret both statutes and court rules by looking first to the plain meaning as an expression of intent. *Hanson v. Luna-Ramirez*, 19 Wn. App. 2d 459, 461, 496 P.3d 314 (2021). If the language is "plain and unambiguous, our inquiry ends." *West v. Dep't of Fish & Wildlife*, 21 Wn. App. 2d 435, 441, 506 P.3d 722 (2022).

A civil damages action seeking a money judgment of $100,000 or less is subject to mandatory arbitration in some counties. *See* RCW 7.06.020(1). After an arbitration hearing, the arbitrator files their decision with the court clerk. RCW 7.06.050(1). "Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. *The notice must be signed by the party*." *Id.* (emphasis added). The legislature added the express requirement that the notice be signed by the aggrieved party in 2018. *See* ENGROSSED H.B. 1128, 65th Leg., Reg. Sess., § 6 (Wash. 2018). Its use of the word "must" plainly indicates that the legislature intended for this requirement to be mandatory.

The Washington Supreme Court adopted a similar change to the related Superior Court Civil Arbitration Rule that became effective in December 2019. *See Hanson*, 19 Wn. App. 2d at 462. SCCAR 7.1(b), available on the Washington Courts website, provides a sample trial de novo request form, which includes a separate signature line specifically for the "aggrieved party." It requires the trial de novo request to be "substantially in the form set forth" by the rule. SCCAR 7.1(b). And like the corresponding statute, SCCAR 7.1(b) states expressly that the request "*must* be signed by the party." (Emphasis added.) Division One recently recognized that this amendment to the court rule reflected the new statutory requirement of an aggrieved party's signature—the "signature of that party's attorney alone is not sufficient." *Hanson*, 19 Wn. App. 2d at 462.

Here, it is undisputed that the Lewises did not sign the trial de novo request form. Their request was filed in August 2020, well after these amendments went into effect, and it was signed only by their attorney, which "alone is not sufficient." *Id.* The Lewises failed to comply with the express requirements of RCW 7.06.050(1) and SCCAR 7.1(b), although they could have done so by drafting and uploading their own request form. Given the plain mandate of the applicable statute and court rule, the trial court here did not have discretion to deny the Ridgways' motion to strike the trial de novo request. It also erred in denying their motion for reconsideration. Accordingly, we reverse the trial court's order denying the Ridgways' motion to strike the Lewises' trial de novo request.

B. Limitations on Appellate Review of Mandatory Arbitration Proceedings

The Supreme Court has held that "the sole way to appeal an erroneous ruling from mandatory arbitration is the trial de novo." *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 529, 79 P.3d 1154 (2003). "A judgment that is entered on a mandatory arbitration award is generally not subject to direct appellate review." *Dill v. Michelson Realty Co.*, 152 Wn. App. 815, 820, 219 P.3d 726 (2009).

In *Malted Mousse*, the party seeking trial de novo filed an "ineffective" request when they sought "relief outside the trial court's jurisdiction." 150 Wn.2d at 534-35. Specifically, the party attempted to obtain a partial trial de novo, challenging only the arbitrator's determination of attorney fees and not the underlying judgment. *Id.* at 534. But RCW 7.06.050(1) provides for trial de novo on "*all* issues of law and fact." (Emphasis added.) The trial de novo must be "conducted as if the parties had never proceeded to arbitration." *Malted Mousse*, 150 Wn.2d at 528.

Under *Malted Mousse*, if a party files an ineffective trial de novo request and fails to file a proper request within the 20-day window, they "can no longer seek review by trial de novo." *Id.* at 535. Because there is no other path to appellate review of an adverse decision under chapter 7.06 RCW, when a party fails to timely file a proper request and can no longer seek review by trial de novo, we must affirm the preexisting arbitration award. *See id.*; *cf. Clark County v. Growth Mgmt. Hr'gs Bd.*, 10 Wn. App. 2d 84, 96-98, 448 P.3d 81 (2019) (dismissing petitions for judicial review under the Administrative Procedure Act, chapter 34.05 RCW, where the parties' failures to comply with statutory requirements for service deprived this court of appellate jurisdiction).

Here, the only trial de novo request that was timely filed failed to comply with the plain requirements of the applicable statute and court rule. The trial court should have considered this

filing to be an ineffective request, and the trial de novo in this case should not have occurred. Therefore, we do not consider the merits of the Lewises' argument regarding the application of RCW 59.18.280 on appeal. We must affirm the amended arbitration award entered prior to the trial de novo and remand for further proceedings consistent with this opinion.[3]

ATTORNEY FEES

A. Attorney Fees Below

Because the trial de novo request was ineffective, the amended arbitration award is the final decision on the merits in this case. Accordingly, we affirm that award, including the costs and attorney fees awarded to the Ridgways for the arbitration proceedings. On remand, the trial court may also award additional fees for the trial de novo proceedings in its discretion.

In Washington, a party may recover reasonable attorney fees when provided by statute. *Bloor v. Fritz*, 143 Wn. App. 718, 746-47, 180 P.3d 805 (2008). A party's entitlement to such fees is "a question of law that we review de novo." *Id.* at 747. What award is reasonable is a matter of trial court discretion. *Id.*

If an aggrieved party appeals an arbitration award and fails to improve their position on a trial de novo, the court shall assess costs and reasonable attorney fees against them. RCW 7.06.060(1); SCCAR 7.3. This rule encompasses those who fail to improve their position because

[3] For the first time in their reply brief, the Lewises contend that they are entitled to review of the trial court's partial summary judgment ruling, regardless of whether they properly invoked trial de novo, because the partial summary judgment ruling resulted in a defect inherent in any subsequent judgment. We typically do not address arguments made for the first time in reply, in part because the other party has had no opportunity to respond. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Moreover, the Lewises did not appeal the subsequent arbitration award. *See* Notices of Appeal.

they failed to comply with the procedural requirements for proceeding to trial de novo. *Wiley v. Rehak*, 143 Wn.2d 339, 348, 20 P.3d 404 (2001).

When awarding attorney fees, the trial court should use its broad discretion to determine what award is truly reasonable under the specific circumstances of each case. "'Courts must take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel.'" *Singh v. Zurich Am. Ins. Co*., 5 Wn. App. 2d 739, 760-61, 428 P.3d 1237 (2018) (quoting *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998)). "The trial court must create an adequate record for review of fee award decisions, which means in part that the record must show a tenable basis for the award." *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 690, 82 P.3d 1199 (2004) (footnote omitted).

Here, the Lewises filed a request for trial de novo because they correctly believed that proceeding to trial de novo was the only remaining way to obtain review of the trial court's partial summary judgment order. The proceedings in the trial court resulted in significant additional legal fees for both parties. And because they failed to comply with the procedural prerequisites for requesting trial de novo, the Lewises fail to improve their position.

We therefore remand for the trial court to consider in its discretion what award is reasonable for costs and attorney fees the Ridgways incurred in the trial court under the circumstances of this case. The trial court must explain its decision on the record.

B. Disbursement of Funds from Court Registry

After this appeal was filed, the trial court issued an order disbursing the interpleaded funds to the Ridgways in partial satisfaction of the attorney fee award. The Lewises submitted a supplemental opening brief to this court, arguing that the interpleaded funds should have been disbursed to them because they succeeded on the merits of the security deposit claim and that the Ridgways were required to engage in a supplemental process to satisfy their judgment.

We recognize that a tenant's "security deposit is the tenant's personal property." *Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 549, 484 P.3d 1251 (2021). It does not become the landlord's property unless and until the tenant breaches the rental agreement. *Id.* However, we also recognize that when funds are deposited into the court's registry, the court obtains "the authority and the duty to distribute the funds to the party or parties who show themselves entitled thereto." *Pac. Nw. Life Ins. Co. v. Turnbull*, 51 Wn. App. 692, 699, 754 P.2d 1262 (1988). We have previously determined it is within the trial court's discretion to award attorney fees first and damages second. *See id.* at 698-700. The Lewises have not identified a new rule of law that persuades us doing so was an abuse of the trial court's discretion.

C. Attorney Fees on Appeal

The Lewises briefly request attorney fees on appeal under RCW 59.18.280 and RAP 18.1. RCW 59.18.280(2) provides for costs and reasonable attorney fees to the "prevailing party" in a tenant's action to recover a security deposit. Because we do not review the merits of their claim under RCW 59.18.280 on appeal, the Lewises cannot be a prevailing party under this statute.

The Ridgways request attorney fees on appeal under RCW 4.84.290, governing damages actions of $10,000 or less, and RCW 7.06.060 and SCCAR 7.3, governing fees for a trial de novo.

RCW 4.84.290 provides that "if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal." We may also award attorney fees on appeal where the opposing party fails to improve their position from the arbitration proceedings. *See Wiley*, 143 Wn.2d at 348 (citing RCW 7.06.060 and former MAR 7.3 (1993)).

The Ridgways have prevailed on their cross appeal of the trial court's order denying their motion to strike the Lewises' trial de novo request. And they were the prevailing party under RCW 4.84.250 because after arbitration, the Lewises had recovered "the same or less than the amount offered in settlement by" the Ridgways. RCW 4.84.270. Moreover, the Lewises failed to improve their position from arbitration. Accordingly, we award the Ridgways reasonable attorney fees on appeal in an amount to be determined by our commissioner.

CONCLUSION

We reverse the trial court's order denying the Ridgways' motion to strike the Lewises' trial de novo request, affirm the amended arbitration award, and remand for further proceedings consistent with this opinion. On remand, the trial court must determine the proper amount of costs and attorney fees to be awarded to the Ridgways for proceedings in the trial court in light of this opinion. We award the Ridgways reasonable attorney fees on appeal in an amount to be determined by a commissioner of this court.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, C.J.

We concur:

Cruser, J.

Price, J.

DESCHUTES LAW GROUP, PLLC

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