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No. 38967-7-III

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

BOLIVAR REAL ESTATE, LLC, a Washington Limited Liability and JAMISON EASTBURG, an individual,

Respondents

v.

ROCHELLE PRATT, an individual, and DIANA PRATT, an individual,

Petitioners.

Petition for Review

ROCHELLE PRATT, PRO SE
DIANA PRATT, PRO SE
PO BOX 15124
SPOKANE VALLEY, WA
99215-5124

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A. IDENTITY OF PETITIONERS

Petitioners Rochelle Pratt and Diana Pratt, appellants, seek review from the Supreme Court of Washington State.

B. COURT OF APPEALS DECISION

The petitioners seek review of the Court of Appeals, Division III, unpublished opinion on September 28, 2023 and its denied reconsideration on December 5, 2023. Appendix attached and numbered A-21 for the opinion and A-22 for reconsideration.

C. ISSUES PRESENTED FOR REVIEW

Court of Appeals erred in affirming the summary judgment for the following reason below:

1. The Pratts presented exhibits to the trial court that needed to be factored in. There was no way the court could fit in a summary judgment trial the importance of all the exhibits

that were submitted to the trial court and later the Court of Appeals, Division III. Rule C56 was never upheld. The trial court weighed the evidence. The trial court had before it many genuine issues of material facts.

2. Bolivar Real Estate LLC, (Doug and Dawn Burpee as they were known to the petitioners the entire time of their tenancy) and Jamison Eastburg made this a very convoluted case with legal counsel however in this case it is easy to see that the CR 2A prepared for by the Burpees and Jamison Eastburg's counsel, was one-sided and demonstratively harsh.

3. Beginning with the start of the threat of an illegal eviction, posted on the Pratts' front door and served by mail, that necessitated the Burpees and Jamison Eastburg needing a contract to cover all their illegal actions, they further withheld pertinent information, misleading the Pratts on the CR 2A and that they did all business handling in bad faith.

4. The CR 2A and Second Contingent Agreement were consciously harsh because of the withheld information, and

misuse again of the RCW 59.18.650(2)(e) the same code that was used to threaten an illegal eviction and bypass the RCW 59.18.650.

D. STATEMENT OF THE CASE

Division III completely disregarded contract law in Washington State and went against cases that were held in Supreme Court. Doug and Dawn Burpee purchased the property with two homes for the purpose of renting out the larger home to their son, Jamison Eastburg, and had him become their landlord agent for the second home, a cottage on the same parcel lot. This was never a sublease. And both Doug and Dawn Burpee were very involved in the landlord duties up until they were emailed about the injury. The Pratts became the tenants in the cottage. Jamison Eastburg had a history of anger problems, with two restraining orders, the second expiring the day the Burpees purchased these two homes. CP 258, 341, 514. RP 18.

The Burpees had to step in and handle the repairs and also handle their son's anger problems because he couldn't stand to be told about any needed repairs. An injury occurred to one of the tenants, Rochelle Pratt, because Jamison Eastburg, who is in the landscaping business as a trade, refused to finish the backyard and left it in disarray after he became enraged with the tenants' need of water after he caused a pipe to break and left the tenants without running water for eight days during the pandemic. The broken pipe occurred in September, 2020 and Jamison Eastburg moving forward was awful to engage with as a landlord agent as he would berate the tenants, in emails and texts for repairs. Once being informed of the injury on the property and asking for his professionalism in being a landlord agent, Jamison Eastburg, ramped up his abusive behaviors. On one occasion, after asking, Jamison Eastburg, in email to never harm their physical property again, after he used his landscaping equipment, a diesel air compressor, against their property, a vehicle and their personal belongings inside their

garage, and against the cottage itself, Jamison Eastburg fired himself in email and told the tenants, the Pratts, to never contact him again. He stated in that email that they were to go to his parents for any tenant needs. CP 460-462. Soon after, his parents, Doug and Dawn Burpee, and himself began an attempt at an illegal eviction, and posted a notice of termination. This is an extremely important point that Jamison Eastburg fired himself that the Court of Appeals, Division III disregards. Because the Burpees and Jamison Eastburg started the illegal eviction using RCW 59.18.650(2)(e) as their reason for ending the lease period, notarizing documents that the Pratts had only one lease period and were a month-to-month, completely deleting their first lease period, when in fact the Pratts were in their third lease period and had in-text the terms of the third lease renewal that had started two months before the end of their second lease. RCW 59.18.650(2)(e) states to "list the single-family dwelling unit for sale at a reasonable price with a realty agency or advertise it for sale at a reasonable price by

listing it on the real estate multiple listing service". This is the RCW the Burpees and Jamison Eastburg choose to use as the reason for illegally ending the Pratts' tenancy. After much back and forth between the Pratts and the Burpees and Mr. Eastburg's counsels, the CR 2A was produced by counsel for the Burpees and Mr. Eastburg. Again the Burpees and Mr. Eastburg, through their attorney, used the RCW 59.18.650(2)(e) when they had already begun the sale to their son, on December 2, 2021 who always lived on the property from the time the Pratts lived there as the very first tenants to the cottage on November 9, 2019. The Pratts relied on the CR 2A that all parties signed that if the Burpees did indeed sell, it would be to someone else. When Jamison Eastburg fired himself, after his anger problems with his parents' tenants, the Pratts, quickly informed his parents, of all the bad behaviors against them and that Jamison Eastburg had fired himself, in an email on August 15, 2021 before the Pratts were even aware that the Burpees and Mr. Eastburg were trying to begin an wrongful eviction. CP 464. This was not the

first time Dawn Burpee had been informed of her son's anger problems with the tenants. The year before she had stated to Rochelle Pratt that the Pratts should pick and "to make sure that we pick and choose the time to approach him for landlord-repairs, making sure that he'd had his dinner, rested and to give him his space when he was in a bad mood." She also stated that she "knew her son and he would get over it and he would have to handle it." CP 329-330, 370, 467. Division III, Court of Appeals refuses to see the importance of how this makes the CR 2A for the Pratts substantively unconscionable. The Burpees effectively left the Pratts without a landlord and without informing the Pratts that this would be the Pratts' outcome if they should sign the CR 2A. The Burpees were no longer being buffers for their son's bad behavior and had removed themselves from that role that they had put themselves in because they knew by previous behaviors that Jamison Eastburg had had these issues in the very recent past. The Pratts could not actively rely on the CR 2A as they should have been

able to. As it was, the Pratts had to send Mr. Garvin a cease and desist letter to get his client, Mr. Eastburg to stop blocking the comings and goings of the Pratts from and to the property in March, 2022 with his sprinklers. Mr. Eastburg used his sprinklers he controlled to turn on all hours on his tenants. The Court of Appeals may not see how damaging this is to two disabled people who have documented health conditions that are affected by cold sprinklers, in cold weather that were calibrated to highest level by Mr. Eastburg with his landscaping knowledge and also using his air diesel compressor to blow out at high speed onto his tenants. In an email, the Pratts sent Mr. Garvin multiple timed and dated photos, videos to show that Jamison Eastburg did this to them from September 2021 until November and resumed in March 2022. RP 21. There was no one for the Pratts to go to when Jamison Eastburg came onto their side of the property and cut down Rochelle Pratt's tulips on Mother's Day, May 8, 2022, in front of their living room window while they watched just five days before this summary

judgment trial court date. RP 22. Diana Pratt brought proof of Jamison Eastburg doing this action at their property to the trial court.

Both the trial court and the court of appeals erroneously stated that the Pratts wanted but didn't get to dictate who the Burpees sold to. A 16,18. And repeatedly the Pratts have stated they never demanded who the Burpees got to sell to but did expect the Burpees to follow their very own CR 2A that they created through their attorney. In the CR 2A it stated:

"Tenants further agree that this Agreement constitutes written notice and acceptance of notice pursuant to RCW 59.18.650(5) that the tenancy is ending in order to sell the Premises pursuant to RCW 59.18.650(2)(e)." CP 9. A 4.

This would preclude the Burpees from selling to Jamison Eastburg as stated above that they would sell with a listing. The Burpees and Mr. Eastburg chose to use RCW 59.18.650(2)(e) to interrupt the third lease period and they continued to use it in their CR 2A they created.

Division III, Court of Appeals, misapprehended many points showing that this was never a summary judgment case. A 14, 16, 18. The Pratts bring this up in their reconsideration. They also did so at the trial court. The Court of Appeals found that some of the exhibits are confusing. That is because Mr. Eastburg did many things to the Pratts involving his many guests to block their mailboxes, for just one example, blocking the delivery of the Pratts' mail to their legal address for months on any given day even after receiving multiple notices from USPS to stop. CP 345, 557-558, 560, 564. This didn't deter him. Mr. Eastburg worked hard to think of new ways to try to constructively evict the Pratts right before and after the illegal eviction was served to the Pratts and continued until the day the Pratts moved out. Shortly after the eviction notice, the Burpees began helping Mr. Eastburg block the mail carriers delivery to the shared post for the two mailboxes. This added up to a lot of

exhibits. And this is just one of many examples that Mr. Eastburg did to the Pratts.

The court of appeals stated, "The impact of the text message lease renewal and any false statements by the Burpees regarding the beginning of the Pratts' lease period are not material to whether the CR 2A agreement is enforceable." A 14. The Burpees and Mr. Eastburg started an unnecessary lawsuit with their notice of their illegal eviction. The reason that this is an extremely important fact is because it shows that from the start, the beginning of an illegal eviction, to finish, the CR 2A and Second Contingent Agreement, the Burpees and Mr. Eastburg did not write their contract in good faith therefore making it unenforceable. The tenancy and the illegal eviction factor in because it's how this case went from the threat of an illegal eviction case to a contract case.

The three landlords in this contract, CR 2A demanded from the start of negotiations that certain rights be removed from the

Pratts, the tenants, in exchange for rescinding the illegal eviction notice to the Pratts. Those rights demanded by the landlords were to take: the right to sue for an wrongful eviction, the right to sue for any injuries, the right to sue for harassment and the fourth lease along with ending tenancy. The Pratts never strayed in their counter offers demanding that their third lease stay intact, that they rescind the threat of eviction and give the Pratts rights to sue for harassment as they felt it helped protect them from further harassment. The Burpees and Mr. Eastburg handed a third offer, the CR 2A, on December 8, 2021 and this was given to the Pratts on December 9, 2021. CP 28, 48, 51, 22 54, 314. Division III, Court of Appeals misapprehended another fact. It states that, “Rochelle was not physically able to visit a notary in January, so the Pratts did not sign the release agreement.” A 4. No, Rochelle Pratt and Diana Pratt did not sign the Second Contingent Document because Jamison Eastburg immediately caused injury to Rochelle Pratt and continuing and adding new harassment tactics the very next

day, December 14, 2021 after all parties signed the CR 2A on December 13, 2021. He started purposefully shining his spotlight into the walkway on the Pratts' side of the property for the very first time at night into their eyes and face as the Pratts would walk from their car to their house or to the house and car. Why this is so important is that the Pratts are disabled, Jamison Eastburg knew this, that they suffered from migraines as they had had to email him about migraines before. This caused Rochelle Pratt a horrible migraine problem. The walkway to the Pratts' house and car didn't have a sidewalk, just grass. After a snowfall, Jamison Eastburg shined his spotlight again into Rochelle Pratt's eyes and caused her to slip on the snow and ice. The jerking motion pushed out a rib after just having an adjustment the day before with her physical therapist to put her ribs back in alignment. Rochelle has a medical condition so sudden jerking motion causing her body to respond accordingly. These attacks caused Rochelle Pratt to have to go to urgent care and the hospital. The Burpees once again parked in front of the

Pratts' mailboxes on December 29, 2021. The Pratts had rightfully expected the Burpees and Jamison Eastburg to stop illegally harassing them after the signing of the CR 2A which specifically stated the Pratts would give up the rights to sue for an injury in exchange for a rescinding of an wrongful eviction. After all this the Pratts filed a complaint with the Human Rights Commision on December 29, 2021. He also caused her horrendous spinning vertigo January 20, 2022. The Burpees started the sale to their son December 2, 2021 and it closed on January 4, 2022. The Burpees made sure the sale went through before their counsel handed the Second Contingent Agreement over on January 4, 2022 to the Pratts' counsel. The Pratts received the Second Contingent Agreement on January 11, 2022. It was the Humans Rights Commision that informed the Pratts in January, 2022 that the Burpees had sold to Mr. Eastburg leaving them without a landlord, who had fired himself, and with the same person who did and was continuing to escalate his abuse. To say that the Pratts did not sign because

Rochelle Pratt was unable to go and notarize the Second Contingent Agreement is absolutely false. Rochelle Pratt and Diana Pratt absolutely refused to sign because of the ongoing abuses and injuries and finding out that they had been misled on the CR 2A and effectively left with an abuser and without anyone to go to for landlord repairs or concerns of his anger and abuse. This was addressed in the Appellants' reply on page 15-17, after the Respondent's brief stated that Rochelle Pratt was ill by the Pratts' attorney. Counsel for the Burpees and Jamison Eastburg, Mr. Garvin, threatened the Pratts with a lawsuit on February 23, 2022 by email and told the Pratts in this email that he was aware that Rochelle Pratt was ill and that her counsel hadn't been able to get a return phone call from her. The Pratts responded to Mr. Garvin:

"You asked Adam Johnson in your February 7, 2022 11:12 AM email about Jamison Eastburg's harassment of us, so we are including in this email to you excerpts from my actual email correspondence from January 11, 2022 through February 7, 2022 for you to see what we were addressing with Adam Johnson on this issue during those dates and regarding the injuries and medical issues Jamison caused me during

December and January of 2022. You will also see that Rochelle requested from Adam Johnson for him and you to accommodate her injuries and medical crisis that Jamison Eastburg unnecessarily caused her in those months that are now causing her to live a nightmare that is ongoing that he had no right to impose on her because he loves to bully and abuse people. Your clients have robbed us of having a safe, peaceful and enjoyable living environment this whole 3rd lease period, first with Jamison Eastburg's gross negligence in June if 2021 and his big mess he left our backyard in for over a year after breaking our pipe in 2020, and then starting the extensive daily harassment of us including using their family and friends to also harass us from July of 2021 to current." CP 266.

Counsel for the Burpees and Mr. Eastburg stated in the Respondent's Brief that Rochelle Pratt was ill and that was the reason for not signing the Second Contingent Agreement even though he knew that this was not true and had been sent proof of the emails between the Pratt and their counsel. Division III, Court of Appeals took the Respondent's Brief as fact over the actual evidence, emails to Mr. Garvin. CP 200-201 321-322.

Further the Court of Appeals erroneously stated, "After Bolivar's attorney offered to arrange a notary to visit the Pratts' home, the Pratts informed their attorney that Mr. Eastburg was harassing them. The Pratts' attorney had completed the scope of his representation under RCW 59.18.640 and, after several attempts to have the Pratts sign the release agreement, withdrew from the case." A 5.

All of the above quoted from the court of appeals is wrong. The Pratts, as stated in the Appellants' Reply, in answer to Respondents' Brief, went over this thoroughly. Counsel for the Pratts did not exhaust the scope of his representation. Mr. Johnson did not let himself go but instead the Pratts had to file a grievance against him with NWJ because he absolutely refused to help the Pratts with their landlord's newly injuring Rochelle causing her new injuries and creating new ways to harass and abuse them or to ask their counsel to address his clients on the continued blocking the mail carriers delivery as well as the troubling new information they had received from the Human Rights Commision. They corrected the inaccurate statements that Mr. Johnson could not reach them. CP 321-322.The Pratts were always in contact with Mr. Johnson until they mailed and filed the grievance. CP 257. However in the Brief of Respondents, it is presented as fact that the Pratts were just

ignoring Mr. Johnson and refusing to communicate with him and that is not factual.

Normally, the sale of who a property would be sold to would not be the concern of any tenants. The Pratts recognize this and had the Burpees sold to a public market per the RCW 59.18.650(2)(e) they would not need to know who they sold to but the Burpees did not sell by listing and instead sold this to their son who couldn't maintain his anger with their tenants. The Burpees were fully aware of their son's anger problems which up until their knowledge of one of their tenant's being injured, had been shielding their tenants' from their son's anger by stepping in and being the landlords themselves. The emails before the court all prove this. CP 258, 460-462. But Division III, Court of Appeals, stated in the Opinion that the Pratts should have included in the CR 2A, which they didn't write, any anticipations of illegal acts against them and so therefore its the Pratts' fault and their responsibilities to police the Burpees and Mr. Eastburg. A 18. It absolutely is not their responsibility.

It is reasonable for the Pratts to expect the illegal and abusive mistreatment towards them by their three landlords to stop once a contract is signed so that they could have the benefits of the Pratts not suing them for it. Being injured and abused is not about being offended. A 19. The Pratts couldn't nor could anyone put in a contract unknown abuse that hadn't yet happened yet. The Pratts had a reasonable expectation that if their landlords were going to benefit from not being sued by their tenants for illegal behaviors towards them, all illegal behaviors would stop at the signing of CR 2A by all parties. Division III, Court of Appeals stated, "Similarly, a contract cannot be substantively unconscionable because it does not include a term the parties did not contemplate." A 17. The Pratts can't be expected to assume or guess that their landlords are going to do the opposite of the law they chose and not follow the law.

The Burpees and Mr. Eastburg breached the CR 2A. The one single benefit to stop the attempt of an illegal eviction on the

Pratts' record, was the third lease returned to the Pratts. However, the Burpees continued to park in front of the USPS mailboxes and Jamison Eastburg started a new way of harming the Pratts even knowing the Pratts had disabilities after the signing of the CR 2A on December 13, 2021 and before the Second Contingent Agreement was even produced to the Pratts. The Pratts had the right to their third lease period, of what was left of it at that point and the covenant of quiet enjoyment for the property that they had legally leased and were still dutifully paying on every single month. CP 262. After threatening the Pratts with the lawsuit on February 23, 2022, the Pratts addressed Mr. Garvin about the USPS being blocked on February 25, 2022. Even after the signing of the CR 2A, the mail being blocked continued until Mr. Garvin received the email and finally got his clients to stop. This demonstrates that the Burpees and Mr. Eastburg continued to breach their own CR 2A well after signing it.

Washington State law defines a material breach as:

"A 'material breach' is a breach that is serious enough to justify the other party in abandoning the contract. A 'material breach' is one that substantially defeats the purpose of the contract, or relates to an essential element of the contract, and deprives the injured party of a benefit that he or she reasonably expected." WPI 302.03

Division III, Court of Appeals, completely disregarded Washington State law. The Pratts were deprived of the benefit of the covenant of quiet enjoyment of their rental property.

This was never an appropriate case for summary judgment and should have been dismissed. The trial court is not to weigh the evidence in a summary judgment case. RP 16. Renz v. Spokane Eye Clinic, P.S., 114 Wash. App. at 623. The evidence was weighed in the trial court. RP 16.

Division III, Court of Appeals is supposed to review summary judgment cases de novo and all reasonable inferences must be made in favor of the non-moving party in summary judgment. Stout v. Warren, 176 14 Wn.2d 263, 268 (2012); Jones v.

Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). But this did not happen in the summary judgment trial nor did it happen at the Division III, Court of Appeals.

The trial court weighed the witness testimony and the evidence of the nonmoving party in the summary judgment when it is not supposed to do so in a summary judgment trial. RP 16. The trial court also found that the moving party's written and spoken words somehow outweighed actual evidence by the nonmoving party which at a minimum demonstrated to the trial court there was a dispute between the moving party and nonmoving party. RP 16-22. Division III, Court of Appeals wrongfully affirmed the trial court's decision. This evidence was before both courts.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case is extremely important for any pro se tenants whose landlords try to circumvent Washington State law and self-help, with counsel, to get rid of tenants because a situation arises they

don’t like. Landlords must be held accountable. Tenants in Washington State must feel safe that if their landlords do try and avoid tenant laws, Washington State will uphold the laws for tenants. Disabled and low-income tenants have the same rights and should be able to receive justice pro se if they are forced to go that route due to lack of funds to hire an attorney.

As the trial court stated:

> I think there are certain cases that judicial officers in particular find troubling, and I think this is one of them because it appears to be -- and I think the law recognizes that landlords have a position of -- a certain position of power over their tenants. TR 27 ll 7-12.

Next is the Supreme Court defining substantive unconscionability:

> “¶9 We have defined “‘substantive’ unconscionability” as an “unfairness of the terms or results. “¶9 We have defined “‘substantive’ unconscionability” as an “unfairness of the terms or results.” Torgerson v. One Lincoln Tower, LLC, 166 Wn.2d 510, 518, 210 P.3d 318 (2009). A contract term is substantively unconscionable where it is “‘one-sided or overly harsh,’” “‘[s]hocking to the 44 conscience,’” “‘monstrously harsh,’” or “‘exceedingly calloused.’” Gandee, 176 Wn.2d at 603 (alteration in original) (internal quotation marks omitted) (quoting Adler, 153 Wn.2d at 344-45).” Tadych v. Noble Ridge

Constr., Inc., 200 Wn.2d 635, 519 P.3d 199, (2022) Wash. LEXIS 545

This Unpublished Opinion is in direct contradiction with the Supreme Court case Tadych v. Noble Ridge Constr., Inc., 200 Wn.2d 635, 519 P.3d 199, (2022) Wash. LEXIS 545. The Pratts court case was a case that started out as an illegal eviction attempt by posting a 90 day termination; it turned into a contract case to supposedly resolve the threat of the illegal eviction. Landlords should be truthful and forthright with the information they put into their contract. After and especially when it is between landlords and tenants and is to resolve an attempt at an illegal eviction. This case is of extreme importance to the citizens of Washington State. There are many renters in our state and they have to know that the laws will be upheld for tenants and not just landlords.

F. CONCLUSION

The Pratts in the very least deserve the chance at a trial court and the very most, for the summary judgment to be dismissed and the contracts to be null and void and dismissal of the award of attorney's fees. They respectfully ask the Supreme Court to grant the petition for review and reverse the opinion from Division III, Court of Appeals.

Rochelle Pratt

Diana Pratt

We, Rochelle Pratt and Diana Pratt, certify that the number of words contained in this Petition for Review to the Supreme Court is 4540 words excluding the parts exempted from the word count by RAP 18.17. Dated 2-4-2024.

I, Rochelle Pratt, used the Court's Portal to upload this Petition for Review on 2-4-2024 which will email a copy to Bolivar Real Estate and Jamison Eastburg via their attorney's email: lgarvin@workwith.com.

APPENDIX

FILED
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

BOLIVAR REAL ESTATE, LLC, a Washington Limited Liability and JAMISON EASTBURG, an individual, Respondents, v. ROCHELLE PRATT, an individual, and DIANA PRATT, an individual, Appellants.	)	No. 38967-7-III UNPUBLISHED OPINION

LAWRENCE-BERREY, J. — Rochelle and Diana Pratt appeal the trial court's summary judgment order enforcing a settlement agreement and awarding reasonable attorney fees and costs in accordance with the agreement. The Pratts contend the trial court erred because genuine issues of material fact exist supporting their defenses of duress, breach of agreement, and unconscionability. We affirm the trial court and award the respondents their reasonable attorney fees and costs on appeal.

FACTS

We set forth the facts, below, in the light most favorable to the Pratts, the party resisting summary judgment below.

The Pratts' tenancy before the CR 2A agreement

Douglas and Dawn Burpee, through Bolivar Real Estate, LLC (Bolivar) owned a property in Spokane Valley that contained a main house and a smaller cottage. The Burpees leased the property to their son, Jamison Eastburg, who lived in the main house and, beginning in December 2019, he subleased the cottage to Rochelle and Diana Pratt.[1]

Throughout their tenancy, Mr. Eastburg and the Pratts had numerous disagreements. Rather than recount all of the various disagreements, it is sufficient to say that as the relationship deteriorated, Mr. Eastburg engaged in repeated acts of harassment and retaliation.

In June 2021, Rochelle injured her toe when a brick in a pile in the shared yard fell on her foot. Due to the injury, Rochelle needed to have her toenail removed, resulting in great pain when walking.

In August 2021, Mr. Eastburg and Bolivar served separate 90-day notices of termination on the Pratts, informing them that Bolivar was selling the property and the Pratts' tenancy would terminate on November 30, 2021.

[1] Because the Pratts share the same last name, we shall refer to them by their first names. We mean no disrespect.

In October 2021, the Pratts researched Mr. Eastburg and discovered he had a previous restraining order against him.

In early November, Mr. Eastburg used his air compressor to blow the water out of the sprinkler system, hitting Diana with the water, hurting her skin, startling her, and causing her to jump up and hurt her knees, which had a history of injury. Diana had to go to urgent care for her knee pain and reported the incident to the police nonemergency line.

Negotiation of the CR 2A agreement

The parties disputed the Pratts' existing lease status. Bolivar and Mr. Eastburg[2] took the position that the Pratts were on a month-to-month lease since their written one-year lease had expired on May 31, 2021. The Pratts took the position that they had renewed the lease, over text message, for an additional one-year term, until May 31, 2022, and thus the notice of termination was ineffective.

Both sides negotiated through counsel beginning in early November 2021. The Pratts repeatedly rejected Bolivar's proposals. On November 27, counsel for the Pratts wrote to counsel for Bolivar that Rochelle was

> willing to waive any tort claims against your client for her injured foot, and would agree to end her tenancy May 31, 2022, if your client will rescind the 90[-]day notice. Your clients would of course be free to sell the home prior to May 31, subject to the tenancy.

[2] For brevity, we will now refer to both collectively as "Bolivar."

Clerk's Papers (CP) at 208. After proposing a counteroffer, which the Pratts again rejected, Bolivar accepted the Pratts' offer on December 8, 2021.

The parties executed a CR 2A agreement, which provided that it "constitute[d] the entire agreement between the Parties." CP at 216. The agreement further provided:

> 1. Tenants agree that the tenancy for the Premises shall terminate on May 31, 2022 as a matter of law and that this Agreement constitutes notice of termination of the tenancy for the Premises pursuant to RCW 59.18.650.
> 2. Tenants specifically waive any and all claims or causes of action under the residential landlord tenants statute related to termination of a periodic and/or year tenancy. Tenants further agree that this Agreement constitutes written notice and acceptance of notice pursuant to RCW 59.18.650(5) that the tenancy is ending in order to sell the Premises pursuant to RCW 59.18.650(2)(e).
> 3. Tenants shall continue to pay rent and meet all other obligations imposed by the residential lease agreement until termination of the tenancy as set forth in paragraph 1.
> 4. Owner agrees to withdraw the previously issued 90[-]day notice of sale provided to the tenant to terminate the tenancy November 30, 2021. Owner may immediately sell the Premises. Tenants agree to allow Owner reasonable access for an appraisal, to remove the air conditioning unit, and other access to the Premises as provided in RCW Chapter 59.18 upon written notice from the Owner and/or Landlord as also provided in RCW Chapter 59.18.
> 5. This Agreement does not waive any remedies available to the Owner and/or Landlord related to eviction for cause as set forth in RCW 59.18.650(2)(a), (b), (c), (h), (1), (m), (n), (o), (p).
> 6. Tenants shall sign a separate settlement agreement releasing any claim for wrongful eviction under RCW Chapter 59.12 an RCW Chapter 59.18, any claim for tort liability for injuries allegedly sustained on the Premises, and an agreement which incorporates the provisions of this Agreement. The prevailing party in any legal proceedings to enforce the

> terms of this Agreement and/or the executed settlement agreement shall be entitled to payment of all attorney fees and costs incurred.

CP at 216-17. All parties signed the CR 2A agreement on December 13, 2021. Shortly after, Bolivar Real Estate, LLC, sold the property to Mr. Eastburg.

After various minor delays, on January 11, 2022, the Pratts' attorney sent his clients a copy of the proposed release agreement. The Pratts expressed concern that the property had actually been sold on December 2, 2021, which was before the CR 2A agreement was signed. It emerged that although the real estate excise tax affidavit was dated either December 2 or 3, 2021, it was signed by the grantor on December 29, 2021 and the grantee on January 3, 2022. Although dated December 2, 2021, the deed was signed and notarized on December 29 and recorded on January 4, 2022. According to the title company, the documents had originally been prepared in early December, but the sale had been put on hold because of ongoing negotiations between the parties.

Rochelle was not physically able to visit a notary in January, so the Pratts did not sign the release agreement. After Bolivar's attorney offered to arrange a notary to visit the Pratts' home, the Pratts informed their attorney that Mr. Eastburg was harassing them. The Pratts' attorney had completed the scope of his representation under RCW 59.18.640 and, after several attempts to have the Pratts sign the release agreement, withdrew from the case.

On February 25, in response to an e-mail from Bolivar's attorney, Diana indicated that the release agreement was a "problematic document." CP at 260. She indicated Rochelle had exhausted her means to have the attorney "get your clients to stop harassing, abusing, injuring us and harming our disabilities, and to also stop blocking our USPS[3] mailbox." CP at 260. She further indicated they had filed a grievance against their former counsel because he would not help them resolve the issues with the harassment. Diana wrote that Rochelle had tried to raise issues about Mr. Eastburg

> causing Rochelle Pratt numerous new injuries that harmed her disabilities starting on December 14, 2021 that he continued to cause her intermittently up to January 15, 2022, and then regarding yet another new harassment and abuse tactic he began on January 21, 2022 that also injured her harming her disabilities and creating new ones, that [Mr. Eastburg] kept doing to us throughout the negotiating process . . . .

CP at 260.

She indicated that she and Rochelle were unaware the property would be sold to Mr. Eastburg, and wrote:

> It [is] reasonable that [the Burpees] would know that we would want and need to know that Jamison Eastburg, our abuser and tormentor, would soon be the sole owner of our rental so we could make an informed decision on 12-09-2021 as to whether or not we wanted to sign their settlement offer and willingly place ourselves in the control of Jamison Eastburg and his harassment of us, which of course we would not have wanted to do. We

[3] United States Postal Service.

> had the right to make that informed decision and your clients robbed us of that option.

CP at 258.

Action to enforce the CR 2A agreement

On February 28, Bolivar filed a complaint against the Pratts requesting specific performance of the CR 2A agreement, including, but not limited to, execution of the release agreement as outlined in the CR 2A agreement. Bolivar also sought attorney fees, as provided for in the CR 2A agreement. On April 13, 2022, Bolivar moved for summary judgment on the basis that the CR 2A agreement was valid and enforceable.

Acting pro se, the Pratts responded that Bolivar materially breached the CR 2A agreement, that Bolivar offered the CR 2A agreement to the Pratts in bad faith and signed it in bad faith, and that the agreement was unconscionable. The Pratts argued that Mr. Eastburg had begun harassing them in an attempt to constructively evict them beginning the day after they had signed the CR 2A agreement. On December 14, 2021, he began flashing a security camera spotlight into their faces and eyes as they walked outside on their side of the property, "immediately causing [Rochelle] eye strain and an aura migraine, and also causing her to slip on the ice and snow[,] jerking herself to keep from

falling[,] which caused her to pull her ribs out that her PT[4] had just put back in place for her the day before." CP at 309. Rochelle had to visit urgent care for her injuries. On January 15, Rochelle was carrying a gallon of milk toward the front porch when Mr. Eastburg flashed the light for the first time in two weeks, causing Rochelle to visit the hospital.

On January 21, 2022, Mr. Eastburg flashed the light through their bathroom window at night, startling Rochelle and causing her to slip off a step and wrench her neck. This caused Rochelle to experience vertigo, keeping her awake all night and requiring intervention from her physical therapists. The Pratts had to install a blackout curtain to block the light from coming in their bathroom window, which they had to leave closed at all hours because the light exacerbated the women's medical conditions.

After the parties signed the CR 2A agreement, the Burpees, Mr. Eastburg, and their friends and family continued to harass the Pratts by obstructing the Pratts' mail receptacle, preventing the mail carrier from delivering mail.[5] The post office sent a warning to the Pratts and Mr. Eastburg on December 10, 2021. The last time the Burpees,

[4] Physical therapist.

[5] It is unclear when or if the Pratts resumed having mail delivered to their house instead of having it held at the post office. In their briefing, they indicate they did not have their mail delivered to their house for the remainder of their tenancy.

Mr. Eastburg, or their friends and family purposely blocked the mailbox was on February 23, 2022.

On March 29, 2022, Mr. Eastburg turned on the automatic sprinkler system twice in one morning. The second time he activated the sprinklers, they covered Diana's path into the home after she returned from a walk. Because she was in too much pain to wait 30 minutes for the sprinklers to turn off, she was forced to walk through the sprinklers. The Pratts sent a cease and desist letter to Mr. Eastburg's attorney on April 4, after which Mr. Eastburg did not turn the sprinklers on after 6 a.m.

The Pratts argued it was unconscionable that their landlords asked them to sign a contract "where we were to give up our rights to sue . . . for wrongful eviction and injuring us while they continued to harass and constructively evict us." CP at 311. They believed the CR 2A agreement had been offered in bad faith and that Bolivar had failed to honor the implied covenant of good faith and fair dealing because it did not "voluntarily choos[e] to no longer harass us, injure us or expose us to injury, or keep trying to constructively evict us." CP at 313. The Pratts contended Bolivar thus breached the CR 2A agreement.

Further, the Pratts contended that Bolivar had a duty to disclose its intention to convey the property to Mr. Eastburg because Bolivar reasonably knew the Pratts would be

"alarmed and scared for [their] safety being abandoned to the control of [the Burpees'] son." CP at 314. When the Pratts signed the CR 2A agreement, they believed the property would be sold on the open market, not to Mr. Eastburg. They argued it was unconscionable to place them in danger by selling the property to Mr. Eastburg.

The Pratts indicated the CR 2A agreement was further unconscionable because it empowered Bolivar to threaten eviction and only rescind the threat if the Pratts agreed to give up their rights to sue for wrongful eviction and other injuries. They signed under unfair duress because they were being "abused, mistreated, harassed, and injured or harmed medically." CP at 316. After signing the CR 2A agreement, they had filed complaints with the Human Rights Commission and the Department of Justice.

The Pratts summarized the genuine issues of material fact that precluded summary judgment:

> [T]he Plaintiffs showing bad faith in offering and the signing of the CR[ ]2A [agreement] and by withholding information from us they knew we needed and deserved to know[;] breaching the CR[ ]2A contract with their continued harassment of us and robbing us of having our mail delivered to our legal address and of peace, safety, and enjoyment of our home; and because the Plaintiffs offered an unconscionable contract to us, the Defendants, after one of their tenants was injured on their property using the threat of an eviction in order to protect themselves from being held accountable for their illegal actions against their tenants that they did to them when retaliating against them for being injured.

CP at 325.

Summary judgment hearing

At the hearing, Bolivar argued the only issues before the court were whether the CR 2A agreement was enforceable, whether that agreement required the Pratts to sign the release agreement, and whether they were entitled to specific performance and attorney fees. The Pratts did not dispute that the CR 2A agreement existed, that they proposed the relevant terms, that everybody understood and signed it, and that their attorneys agreed to it. The Pratts admitted the property was not actually sold to Mr. Eastburg until after the CR 2A agreement was signed.

Bolivar argued the agreement was neither procedurally nor substantively unconscionable because the Pratts were represented by counsel and proposed the terms of the agreement themselves. The agreement was not signed under duress because the Pratts did not show conditions deprived them of their free will. There was no bad faith by Bolivar regarding selling to Mr. Eastburg because the CR 2A agreement did not restrict Bolivar's choice of buyer for the property. The Pratts' constructive eviction claim failed because they never vacated the premises, a necessary requirement of constructive eviction. Even if the Pratts had vacated, the issues with the lights, mailbox, and sprinkler use did not warrant a finding of constructive eviction.

Diana appeared on behalf of herself and her daughter and detailed the Pratts' conflict with Mr. Eastburg beginning in the summer of 2021. The court noted that after all those things occurred, the Pratts nonetheless signed the CR 2A agreement. Diana explained they did so "[b]ecause we believed that the harassment would stop. We believed that if they were going to ask us to give up the benefit of suing them for wrongful eviction or injuring us that they would no longer harass us." Rep. of Proc. (RP) at 17. They would not have signed the CR 2A agreement if they knew Bolivar had begun paperwork to convey the property to Mr. Eastburg. Diana argued the Burpees "should have communicated that to us so we could make an informed decision." RP at 20.

The court questioned whether the Pratts had a right to sue Mr. Eastburg for harassment occurring after the CR 2A agreement had been signed and Bolivar's attorney agreed the Pratts could, because the parties had agreed to release tort claims that accrued only prior to the agreement. The court ultimately ruled:

> The parties each had counsel. And if the Pratt's [sic] counsel failed to give appropriate legal advice by their evaluation, they have a beef with their counsel. I have nothing before me that would indicate that the CR[ ]2A [agreement] was contingent on the Pratts getting to approve to whom Bolivar Real Estate, LLC, sold this property.
>
> Likewise, I have nothing before me that would indicate the CR[ ]2A [agreement] is not effective. . . . I find it to be enforceable. I find that the terms are clear . . . .

> . . . .
> . . . I do find from the facts before me that the failure to sign a release pursuant to the CR[ ]2A [agreement] is a violation of the CR[ ]2A [agreement,] which is an enforceable contract. So I do believe that Plaintiff is entitled to enforcement of the CR[ ]2A [agreement] as a contract . . . . I don't find any unconscionable or violations of the good faith and fair dealing at the time of the signing of the contract, the CR[ ]2A [agreement]. I also don't find that there's anything in the CR[ ]2A [agreement] that prohibits the Pratts from bringing, if they choose to, a—any appropriate cause of action post-signing of the CR[ ]2A [agreement] if there's some further . . . allegations of trespass[,] of intimidation, of such behavior in violation of their rights as against Jamison Eastburg as have been alleged here.
> . . . .
> So for that reason, I'm going to grant the Plaintiff's [sic] Motion for Summary Judgment.

RP at 27-29.

The Pratts appealed.

ANALYSIS

ENFORCEABILITY OF THE CR 2A AGREEMENT

The Pratts contend there were genuine issues of material fact precluding summary judgment below. We disagree.

We review a summary judgment de novo, "engag[ing] in the same inquiry as the trial court." *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993). A party moving for summary judgment must show there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. CR 56(c). A

material fact is one on which the outcome of the litigation depends. *Clements*, 121 Wn.2d at 249. The party opposing summary judgment "may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in [CR 56], must set forth specific facts showing that there is a genuine issue for trial." CR 56(e). In deciding a motion for summary judgment, the court views all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. *Clements*, 121 Wn.2d at 249.

The Pratts present, at length, a number of disputed facts concerning their relationship with their landlords.[6] None are material to the issue before us, however, which is whether the CR 2A agreement is enforceable.[7]

[6] We note that none of the Pratts' exhibits in the trial court are sworn or certified in accordance with CR 56(e), and many are not identified with sufficient particularity for the court to discern their significance. Because Bolivar does not object to consideration of the exhibits and because, even taking their evidence as true, the Pratts do not raise any genuine issues of material fact, we will assume that the Pratts' exhibits are true and correct copies of what they purport to be, to the extent we can sufficiently identify them.

[7] The Pratts place great weight on the impact of their third lease renewal over text message and on alleged perjury (misstating the date of the beginning of the Pratts' first lease) in an affidavit signed by Dawn Burpee that appears to have been connected to the 90-day notice of termination. Those issues were resolved by the CR 2A agreement, which withdrew the notice of termination and provided the Pratts could stay through their claimed third lease period. The impact of the text message lease renewal and any false statements by the Burpees regarding the beginning of the Pratts' lease period are not material to whether the CR 2A agreement is enforceable.

"Normal contract principles apply" to CR 2A agreements. *In re Marriage of Pascale*, 173 Wn. App. 836, 841, 295 P.3d 805 (2013). The party seeking enforcement of a contract "need only prove the existence of the contract and the other party's objective manifestation of intent to be bound thereby." *Retail Clerks Health & Welfare Tr. Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944, 640 P.2d 1051 (1982). A person's signature on the contract is an objective manifestation of an intent to be bound. *Id.* After that, "the burden shifts to the party seeking to avoid the contract to prove a defense to the contract's enforcement." *Id.*

From their briefing below and on appeal, we discern the following defenses to enforcement as being raised by the Pratts: the Pratts signed the agreement under duress, the agreement was unconscionable, Bolivar materially breached the agreement, and Bolivar acted in bad faith. We discuss these defenses in turn.

Duress

The Pratts contend they signed the CR 2A agreement under duress due to ongoing harassment by the Burpees and Mr. Eastburg. We conclude that they fail to show their decision to sign the agreement was involuntary.

"Generally, circumstances must demonstrate a person was deprived of his free will at the time he entered into the challenged agreement in order to sustain a claim of duress."

Retail Clerks, 96 Wn.2d at 944-45. Duress must result "from the other's wrongful or oppressive conduct." *Id.* at 944. The fact a person entered a contract under stress or out of financial necessity is not sufficient. *Id.* Further, "a mere threat to exercise a legal right made in good faith" does not constitute duress. *Pleuss v. City of Seattle*, 8 Wn. App. 133, 137, 504 P.2d 1191 (1972).

The harassment identified by the Pratts does not rise to the level of duress overcoming their free will. The Pratts remained in their rented cottage despite the harassment. When served the 90-day notice, the Pratts hired an attorney, defended against the notice, refused Bolivar's offers, and, eventually, dictated the terms of the CR 2A agreement. If anything, the evidence indicates the Pratts brought their will to fruition, rather than being deprived of it. *See Culinary Workers & Bartenders Union, Local No. 596, Health & Welfare Tr. v. Gateway Cafe, Inc.*, 91 Wn.2d 353, 363, 588 P.2d 1334 (1979) ("[A]ppellants had counsel and through counsel proposed the challenged agreement. In light of this, their claim of duress lacks merit.").

Unconscionability

The Pratts argue the CR 2A agreement is unconscionable because it allowed Mr. Eastburg to become the sole owner of the property—information that Bolivar withheld from the Pratts. We disagree.

Procedural unconscionability arises from a party's lack of meaningful choice in entering a contract, considering all the circumstances surrounding it. *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 814, 225 P.3d 213 (2009). Considerations include the manner in which the contract was entered, whether each party had a reasonable opportunity to understand the terms of the contract, and whether important terms were buried within the contract. *Id.* Substantive unconscionability, by contrast, arises when a contract or provision is one-sided and overly harsh. *Id.* at 815. The Pratts fail to show that either form of unconscionability exists here.

As discussed above, the Pratts had a meaningful choice about whether to enter into the CR 2A agreement. They were represented by counsel, actively negotiated the terms of the agreement over several weeks, and proposed the key terms themselves. The Burpees did not indicate they would be selling the property to Mr. Eastburg, but there is no evidence the Pratts ever asked about the sale nor is there evidence the Burpees misled them as to their intentions. Failure to disclose a detail that was not raised as an issue for negotiation does not make a contract procedurally unconscionable.

Similarly, a contract cannot be substantively unconscionable because it does not include a term the parties did not contemplate. The CR 2A agreement, as proposed by the Pratts, did not limit Bolivar's right to sell the property to any buyer it wished. The Pratts

argue that Bolivar should have known the Pratts would find it untenable for Mr. Eastburg to remain their landlord. But absent a term in the CR 2A agreement to the contrary, Bolivar was not bound to select a buyer the Pratts found suitable.

Diana indicated at the summary judgment hearing that she believed Mr. Eastburg's harassment would end after they signed the CR 2A agreement. But again, the Pratts did not attempt to make Mr. Eastburg's behavior part of the CR 2A agreement.

The actual, objectively manifested terms of the agreement show that both the Pratts and Bolivar benefited. The Pratts benefited by remaining at the property until May 31, 2022, in accordance with their claimed third lease period. Bolivar benefited by being able to sell the property in accordance with its stated intentions in the 90-day notice, and by Rochelle waiving her claims for her toe injury. The agreement is not one-sided or harsh and is not substantively unconscionable.

Material breach of the CR 2A agreement

The Pratts contend that Mr. Eastburg materially breached the CR 2A agreement by attempting to constructively evict them after they signed the agreement. In this regard, their primary complaints concern automatic sprinklers getting them wet and a bright motion-activated security light shining in their eyes as they walked past at night or

shining through their windows. Mr. Eastburg had installed the security light several months before the settlement agreement.

The Pratts' "material breach" argument is a rehashing of their "substantive unconscionability" argument that we rejected above. Again, the Pratts did not include any term in the CR 2A agreement that required Mr. Eastburg to cease behaviors the Pratts found offensive. We agree with the trial court's conclusion—the Pratts' remedy is to bring a separate tort action against Mr. Eastburg rather than to avoid the terms of the agreement based on conduct the agreement did not prohibit.

Bad faith

The Pratts contend Bolivar presented the CR 2A agreement to them in bad faith and signed it in bad faith. While on appeal, their bad faith argument is subsumed within their material breach and unconscionability arguments; on summary judgment, they argued bad faith under the covenant of good faith and fair dealing. Because we engage in the same inquiry as the trial court when reviewing a summary judgment, we likewise address the Pratts' bad faith contention under the covenant of good faith and fair dealing.

In Washington, every contract contains an implied duty of good faith and fair dealing "that 'obligates the parties to cooperate with each other so that each may obtain the full benefit of performance.'" *Rekhter v. Dep't of Soc. & Health Servs.*, 180 Wn.2d

102, 112, 323 P.3d 1036 (2014) (quoting *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356 (1991)). The duty does not "add or contradict express contract terms and does not impose a free-floating obligation of good faith on the parties." *Id.* at 113. Instead, it arises in connection with terms agreed to by the parties, particularly when the contract gives one party discretion to determine a contract term. *Id.*

The Pratts identify as bad faith Mr. Eastburg's continued harassment and Bolivar's failure to inform them that Mr. Eastburg would be the new owner of the property. Neither allegation implicates the duty of good faith and fair dealing because neither touch on any term of the parties' CR 2A agreement. The agreement did not contemplate future harassment. The agreement did not restrict Bolivar's choice of buyers. The duty of good faith and fair dealing cannot add a term to the agreement nor does it impose a general duty of good faith. It only requires the parties to cooperate to fully perform the agreement—for example, where the CR 2A agreement provides that the Pratts shall sign a release agreement, the duty of good faith and fair dealing requires the parties to cooperate in achieving that aim.

We conclude that the Pratts have failed to establish a genuine issue of material fact with respect to the enforceability of the CR 2A agreement.

ATTORNEY FEES

Bolivar requests attorney fees on appeal pursuant to the CR 2A agreement. We grant their request.

A court may award attorney fees only when authorized by contract, statute, or a recognized ground in equity. *Conway Constr. Co. v. City of Puyallup*, 197 Wn.2d 825, 838, 490 P.3d 221 (2021). Here, the CR 2A agreement contained a provision authorizing recovery of fees and costs by "[t]he prevailing party in any legal proceedings to enforce the terms of this Agreement." CP at 217. Bolivar is the prevailing party in this legal proceeding to enforce the CR 2A agreement; therefore, it is entitled to its attorney fees and costs in connection with this appeal.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, J.

WE CONCUR:

Fearing, C.J.

Staab, J.

FILED
DECEMBER 5, 2023
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

BOLIVAR REAL ESTATE, LLC, a Washington Limited Liability and JAMISON EASTBURG, an individual,	)	**No. 38967-7-III**
Respondents,	)	**ORDER DENYING MOTION FOR RECONSIDERATION**
v.	)	
ROCHELLE PRATT, an individual, and DIANA PRATT, an individual,	)	
Appellants.	)	

The court has considered appellants' motion for reconsideration of this court's opinion dated September 28, 2023, and is of the opinion the motion should be denied.

THEREFORE, IT IS ORDERED that the motion for reconsideration is hereby denied.

PANEL: Judges Lawrence-Berrey, Fearing, and Staab

FOR THE COURT:

GEORGE FEARING
CHIEF JUDGE

DIANA PRATT - FILING PRO SE

February 04, 2024 - 10:45 PM

Filing Petition for Review

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