68753-1

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No. 68753-1

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

4105 1ST AVENUE S. INVESTMENTS, LLC,

Respondent,

v.

GREEN DEPOT WA PACIFIC COAST, LLC,

Appellant

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

In the action below, Plaintiff/Respondent sought to avail itself of the special rights and remedies afforded by Washington's unlawful-detainer statute, RCW 59.12, seeking a writ of restitution, a sizeable monetary judgment and an award of attorney fees and costs as would-be prevailing party. But Defendant Green Depot WA Pacific Coast, LLC ("Green Depot WA") successfully defended against Plaintiff's claims, Plaintiff received none of the relief sought, and Green Depot WA remained in possession of the premises for the entire lease term.

Plaintiff had waited to file this action until only two and a half months remained on the five-year lease and had then been rebuffed at the February 7, 2012 show-cause hearing when Green Depot WA pointed out that Plaintiff had failed to pay its registration fee with the Washington Secretary of State for ten months and was an "inactive" entity. At the subsequent February 24, 2012 show-cause hearing, following counsels' detailed oral argument, the Ex Parte Commissioner had concluded that she was not convinced that any rent was due and owing and had therefore denied Plaintiff's requests for a writ, for a monetary judgment and for a fee award. When Plaintiff had failed to receive a trial date until after the lease term was going to have ended, Plaintiff had agreed that the trial date

should be stricken and had then sought to dismiss the unlawful-detainer action.

Given Green Depot WA's successful defense against Plaintiff's efforts to evict Green Depot WA and obtain a monetary judgment, including attorney fees, against Green Depot WA, Green Depot WA respectfully appeals the trial court's unexplained denial of its motion for fees and costs as prevailing party under the same contractual provisions upon which Plaintiff based its claim for fees and costs.

II. ASSIGNMENT OF ERROR

After Green Depot WA successfully thwarted Plaintiff/Respondent's pursuit of a writ of restitution and an expedited judgment for monetary damages and attorney fees, and Green Depot WA remained in possession of the premises throughout the full lease term, the trial court erred in denying Green Depot WA's motion for fees and costs under the lease's provisions for a fee award to the prevailing party.

III. STATEMENT OF THE CASE

The Green Depot family of companies is the nation's leading supplier of environmentally friendly building products, services and solutions, offering, as of March 2012, 13 locations and 20 warehouses

nationwide.[1] Green Depot has been recognized for its environmental stewardship and received a 2010 EPA Environmental Quality Award from the U.S. Environmental Protection Agency.[2]

This matter arose out a lease for approximately 38,000 square feet of commercial space at 4121 1st Avenue South, here in Seattle, Washington, where Green Depot WA's Seattle store was located until March 22, 2012.[3] The lease was signed by Bit Holdings Sixty-One, Inc., as Landlord, and by Built-E, Inc., as Tenant.[4] Via an Assignment and Assumption of Lease with Consent of Landlord,[5] Defendant Green Depot subsequently acquired the tenant's rights under the lease,[6] and Plaintiff became the assignee of the original landlord.[7] It has always been undisputed that the lease terminated by its own terms on March 22, 2012.[8]

Even though less than two and a half months remained on the five-year lease, on January 9, 2012, Plaintiff commenced this action under Washington's unlawful-detainer statute, RCW 59.12.[9] In its Complaint,

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[1] CP 99
[2] CP 99-100
[3] CP 100
[4] Id.
[5] CP 45-48
[6] CP 100
[7] Id.
[8] CP 100, 105
[9] CP 1-3

Plaintiff sought restitution of the premises, double damages and judgment "for plaintiff's costs and disbursements herein, including reasonable attorneys' fees as authorized by the parties' written agreement and RCW 4.84.330. . . ."[10] After the initial January 18, 2012 show-cause hearing was canceled due to snow, Plaintiff waited almost a week and then filed its Amended Motion for Order to Show Cause on January 24, 2012.[11] Although Green Depot WA's counsel had filed its Notice of Appearance on January 17, 2012, and had exchanged several emails with Plaintiff's counsel, Plaintiff nonetheless failed to serve copies of its moving papers on Green Depot WA's counsel.[12] After Green Depot WA later learned of the second Order to Show Cause, counsel for both parties appeared at a Show-Cause Hearing on February 7, 2012.[13] In its proposed order provided to Green Depot WA at the hearing, Plaintiff sought a writ of restitution and a monetary judgment for more than $203,000.00, including an award of $3,627.00 in attorney fees and costs.[14] At that February 7 hearing, Commissioner Velategui struck the hearing due to Plaintiff's

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[10] CP 2
[11] CP 8-9, 112
[12] CP 112
[13] CP 112-113
[14] CP 113

failure to renew its corporate license with the Washington Secretary of State and its resulting "inactive" status here in Washington.[15]

After waiting eight more days, Plaintiff tried a third time, filing its Second Amended Motion for Order to Show Cause on February 15, 2012, resulting in a third Order to Show Cause.[16] With less than one month remaining on the five-year lease, counsel for both parties appeared before Commissioner Bradburn-Johnson at the February 24, 2012 hearing and presented relatively lengthy oral argument.[17] Commissioner Bradburn-Johnson not only declined to grant Plaintiff the monetary judgment it sought for more than $203,000.00, but also concluded that she was not even convinced that any amount was due and owing from Green Depot WA to Plaintiff and thus declined to issue the writ of restitution Plaintiff sought.[18] Specifically, the Commissioner stated:

> ". . . I'm concerned, I'm a little concerned about giving an immediate writ. I'm not entirely clear what the implications of that would be, given I'm not entirely sure that there is money owing, which -- which is a factual determination based on some legal principles that have been discussed today. So, I think the best I can do for you is -- is to certify it for trial and hope that you two can work out an agreement."[19]

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[15] CP 113, 119

[16] CP 12-15, 114

[17] CP 114; See VRP 5-22

[18] CP 114; VRP 28

[19] VRP 28 (Emphasis added.)

After rejecting Plaintiff's requests for relief, Commissioner Bradburn-Johnson certified the matter for trial.[20]

Because Plaintiff had waited until so late in the lease to commence the unlawful-detainer action, however, trial was set for a date, March 26, 2012, after the lease was going to terminate by its own terms and after Green Depot WA was going to have moved out.[21] Because by March 26 rights to possession of the premises were going to be determined, the parties' respective counsel agreed on February 24, 2012, that the March 26 trial date would need to be stricken.[22] Plaintiff later confirmed and reiterated, by email and by a separate written agreement, that the March 26 trial was to be stricken.[23] Through its own last-minute case filing, lack of urgency and other missteps, Plaintiff had run out of time and accomplished nothing in the unlawful-detainer action, except costing Green Depot WA the fees and costs incurred in its successful defense.

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[20] CP 16-17, 114; VRP 28, 29. Because there had never been any dispute as to the landlord's right to possession once the lease ended, the parties agreed that, if Green Depot WA should unexpectedly overstay its tenancy, the landlord would, of course, be entitled to a writ of restitution. CP 18, 114. The Ex Parte Department's Certification for Trial reflected this undisputed fact. CP 18. Because Green Depot WA moved out on time as planned, no writ was called for. CP 114.

[21] CP 19-20, 114-115

[22] CP 115

[23] CP 115, 123. When the trial court's bailiff, Ms. Whittle, emailed the parties on March 14 to ask whether trial was going forward, Plaintiff's counsel Matt Green surprisingly denied that the trial should be stricken. CP 115. Mr. Green later came around and by March 20 admitted to Ms. Whittle, "Trial will not be going forward." *Id.*

Recognizing the inutility of its action, Plaintiff then "proposed the matter be dismissed."[24]

Specifically, Plaintiff proposed the parties stipulate to dismissal without an award of fees or costs. Aware that the lease and Washington case law supported a fee award for its successful defense, Green Depot WA instead filed its Motion for Fees as Prevailing Party.[25]

In its Response to Green Depot WA's motion for fees, Plaintiff did not dispute the availability of fees under the relevant lease to the prevailing party in this action.[26] Given the language of the lease and Plaintiff's own request in its Complaint for fees under the lease, Plaintiff's decision not to challenge the availability of fees to the prevailing party was understandable. Also in its Response, Plaintiff did not challenge the amount of fees incurred by Green Depot WA or the reasonableness of the fees.[27] The undisputed evidence established that Green Depot WA incurred the requested fees and costs in its successful effort to maintain possession of its 38,000-square-foot retail space through the entire lease

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[24] CP 136

[25] See CP 87-98

[26] See, generally, CP 131-137

[27] Id.

term and to thwart Plaintiff's pursuit of eviction and of an expedited judgment for more than $203,000.00.[28]

The only two arguments Plaintiff did advance in its Response were counterlegal claims that Green Depot WA was not the prevailing party and that the trial court lacked jurisdiction to decide a fee motion.[29] As discussed in detail below, neither argument was correct.

Since the trial court ruling on Green Depot WA's fee motion, the landlord has opted not to follow through on its earlier proposal to dismiss its unlawful-detainer action, presumably out of some hope to avoid the fee consequences of dismissal. After waiting in vain for the landlord to dismiss its now-pointless action, Green Depot WA moved the trial court on December 14, 2012, for an order of dismissal, which is set for hearing on January 11, 2013.

IV. ARGUMENT

A. The Trial Court's Unexplained Denial of Fees Should Be Reviewed for Abuse of Discretion.

The trial court's denial of Green Depot WA's Motion for Fees is reviewed in Washington for abuse of discretion. *Nakata v. Blue Bird, Inc.*, 146 Wn.App. 267, 276, 191 P.3d 900 (2008), quoting *Emmerson v. Weilip*, 126 Wn.App. 930, 940 110 P.3d 214 (2005). "A trial court abuses

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[28] CP 115-116, 124-130

its discretion when it bases its denial on untenable grounds or reasons." *Nakata*, 146 Wn.App. at 276, quoting *Emmerson*, 126 Wn.App. at 940. Unfortunately, in denying Green Depot WA's request for fees, the trial court provided no explanation or justification for its denial. As discussed below, the trial court erred in its denial, justifying reversal by this Court.

B. The Trial Court Had Jurisdiction to Award Fees and Costs to the Prevailing Party.

There can be no reasonable debate that the trial court had jurisdiction to decide Green Depot WA's Motion for Fees. As recently as the September 2011 decision in *Housing Authority of Seattle v. Bin*, 163 Wn.App. 367, 260 P.3d 900 (2011), Division 1 of the Court of Appeals discussed the issue at length and reaffirmed the Superior Court's specific authority to award fees in an unlawful-detainer action, even if the Superior Court lacks subject matter jurisdiction.

> [A] tenant may receive an award of attorney fees as the prevailing party where there is a statute or other authority for such an award, even if the court lacks subject matter jurisdiction in the underlying action. [Citations omitted.] Here, the award of attorney fees was authorized by the lease.

Id., 163 Wn.App. at 373. In that case, the Court of Appeals chided those who seek to treat the Superior Court's jurisdiction as "a fleeting and fragile attribute," because such treatment "diminishes the authority of the Court ... and prevents worthy cases from being heard on the merits...."

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[29] CP 133-136

Id., 163 Wn.App. at 376. See also *Hawk v. Branjes*, 97 Wn.App. 776, 782-3, 986 P.2d 841 (1999) (in which Division 1 held that a trial court retains jurisdiction to decide a defendant's motion for fees after a voluntary dismissal, noting that "any other result would permit a party to voluntarily dismiss an action to evade an award of fees ... and would unnecessarily subject the courts to separate actions to recover fees readily ascertainable upon dismissal of the underlying claim.")

In its Response to Green Depot WA's Motion for Fees in the trial court below, one of only two arguments the landlord raised was the trial court's supposed lack of jurisdiction.[30] In so doing, the landlord cited no case law in support of its position and ignored the on-point decisions cited above that confirm the trial court's jurisdiction. The landlord's unfounded and unpersuasive challenge to the trial court's jurisdiction below appears to have been but a thin ruse to try to evade the award of fees and costs deserved by Green Depot WA.

C. Under the Lease, the Prevailing Party is Entitled to an Award of Fees and Costs.

The relevant lease makes the availability of fees and costs to the prevailing party clear. Specifically, Section 24.11 provides:

> **Attorney's fees.** If either party brings an action regarding terms or rights under this Lease, the prevailing party in any

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[30] CP 136

> action, on trial or appeal, is entitled to reasonable attorneys' fees as fixed by the court to be paid by the losing party. The term "attorney's fees" shall include, but is not limited to, reasonable attorneys' fees incurred in any and all judicial,...administrative and other proceedings, including appellate proceedings, whether the proceedings arise before or after entry of a final judgment, and all costs and disbursements in connection with the matter.[31]

Although, at the trial court level, the landlord did not challenge the availability of fees and costs to the prevailing party,[32] landlord's Answer to Motion for Discretionary Review before this Court suggests a more adversarial, less-reasoned tack on appeal. Focusing narrowly on a portion of the lease's Section 24.11 regarding "any action, on trial or appeal," Respondent has argued that a trial must occur in the court below in order for there to be a prevailing party. "Thus, for purposes of a fee award from the trial court, there cannot *be* a prevailing party unless there has been a trial...."[33] Advancing this strained argument, Respondent has even suggested that "Green Depot seems not to have read the lease."[34] Respondent is living in a glass house throwing stones.

First, Respondent's argument ignores the language later in Section 24.11 establishing that awardable fees include "reasonable attorneys' fees incurred in any judicial...and other proceedings,...whether the proceedings

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[31] CP 107-108

[32] CP 131-137

[33] See Respondent's Answer to Motion for Discretionary Review, previously filed herein, at 5-6 (emphasis original)

arise before or after entry of a final judgment...." Green Depot WA's requested fees were incurred in a judicial proceeding before entry of a final judgment and are thus expressly covered by Section 24.11's language. Second, Respondent's narrow analysis blatantly ignores the Assignment and Assumption of Lease with Consent of Landlord[35] by which Respondent took assignment of and Green Depot WA assumed the pre-existing lease. Paragraph 4 of the Agreement portion of the Assignment and Assumption provides:

> 4. Attorney's fees. If any party commences an action against any of the parties arising out of or in connection with the Lease or this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties reasonable attorney's fees and all costs of suit, **whether or not the action is filed or prosecuted to judgment.**[36]

As anyone who reads the lease can see, fees and costs are awardable to the prevailing party despite the fact that this dispute never went to trial.

Prior to this appeal, the landlord's own arguments in the trial court betray the landlord's newly conceived argument that a fee award supposedly requires a trial. In its Complaint, the landlord prayed for judgment "for plaintiff's costs and disbursements herein, including reasonable attorneys' fees as authorized by the parties' written agreement

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[34] *Id.* at 5

[35] CP 45-48

and RCW 4.84.330. . . ."[37] Similarly, at the show-cause hearings below, the landlord requested an award of fees and did not then seem to think that a trial was a precondition for a fee award. Given that the landlord itself sought fees shy of trial in the court below, Respondent's new-found interpretation of the lease is unconvincing.

D. Green Depot WA Prevailed in This Unlawful-Detainer Action.

1. Green Depot WA retained possession of the premises, thereby prevailing on the central issue in the unlawful-detainer action.

Respondent has correctly acknowledged that the right to possession is the focus of all unlawful-detainer cases.[38] See *Granat v. Keasler*, 99 Wn.2d 564, 571, 663 P.2d 830, *cert. denied*, 464 U.S. 1018, 104 S.Ct. 549, 78 L.Ed.2d 723 (1983) (confirming the legislature's intent in an unlawful-detainer action to "limit the issue to the landlord's right of possession"). The central question in the action below was thus who prevailed on the right to possession. Since Plaintiff failed in its effort to evict, and Green Depot WA remained in possession for the entire term of the lease, to say that Green Depot WA prevailed on the right to possession is simply to state the obvious.

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[36] CP 45-46 (emphasis added)
[37] CP 2
[38] CP 132

2. Green Depot WA's successfully defending against Respondent's unlawful-detainer action constitutes prevailing in that action.

Where, as here, the relevant lease provides that the prevailing party is entitled to an award of fees and costs, Washington case law confirms the appropriateness of such an award to a successful tenant in an unlawful-detainer action. In *Walji v. Candyco, Inc.*, 57 Wn.App. 284, 288, 787 P.2d 946 (1990), Division 1 of the Court of Appeals considered a landlord's effort to enforce the terms of a commercial lease against its tenant. *Id.*, 57 Wn.App. at 286. At trial de novo following mandatory arbitration, the landlord had taken a voluntary dismissal without prejudice. *Id.* Like Respondent here, the landlord in *Walji* asserted that the tenant could not be the prevailing party absent a final judgment. *Id.* at 288. The Court of Appeals disagreed, noting that "a defendant who 'prevails' is ordinarily one against whom no affirmative judgment is entered." *Id.*, quoting *Andersen v. Gold Seal Vineyards, Inc.,* 81 Wn.App. 863, 868, 505 P.2d 790 (1973). Accord *Hawk v. Branjes*, 97 Wn.App. at 782 (ruling in a commercial unlawful-detainer action that "[a]t the time of a voluntary dismissal, the defendant has 'prevailed' in the commonsense meaning of the word.") The *Walji* Court went on to describe the necessity of awarding fees under the lease upon conclusion of the case, even if related litigation may later continue elsewhere.

> [I]t is essential to apply the attorney fee provision of the lease at the time of dismissal to effectuate the intent of the parties. If the litigation is renewed, the attorney fee provision might once more come into play and be applied to the plaintiff's benefit. There would be no inconsistency in such a result. This interpretation will inhibit frivolous or badly prepared lawsuits and will protect parties from the expense of defending claims which do not result in liability.

Walji, 57 Wn.App. at 288-289.

In *Council House, Inc. v. Hawk*, 136 Wn.App. 153, 147 P.3d 1305 (2006), prior to trail in a residential unlawful-detainer action, the landlord had sought and obtained a voluntary dismissal without prejudice and without an award of fees. *Id.,* 136 Wn.App. at 156-157, 161. Defendant Hawk appealed the trial court's denial of her fees and costs as the prevailing party for successfully defending against Council House's unlawful-detainer action. *Id.* at 157. The Court of Appeals, Division 1, reversed the trial court's denial of fees, holding: "Hawk is the prevailing party, because when a plaintiff takes a voluntary dismissal, the defendant has prevailed for purposes of fees." *Id.* at 159-160; citing *Hawk v. Branjes*, 97 Wn.App. at 782, and *Walji,* 57 Wn.App. at 288.

There can be little doubt that Green Depot WA prevailed over Plaintiff in the unlawful-detainer action. Plaintiff sought a writ of restitution to evict Green Depot WA from the relevant premises prior to the end of the lease, but Plaintiff received no such writ and Green Depot

WA stayed in the premises though the full lease term. Plaintiff sought a monetary judgment against Green Depot WA for more than $203,000.00, including fees, yet received no monetary judgment. After the parties agreed the trial should be stricken, Plaintiff understandably proposed to dismiss the unlawful-detainer action.[39] Simply put, Plaintiff failed and Green Depot WA successfully defended every aspect of the action below.

If Respondent's contention that Green Depot WA did not prevail under the facts of this case were correct, landlords would be effectively immune from fee awards in unlawful detainers filed late in a lease term. Under Respondent's view, a landlord could file an unlawful-detainer action late in a lease and, if successful, recover fees and costs (assuming the lease, as here, allowed such an award). If, on the other hand, the landlord, as here, were unsuccessful and accomplished nothing in its last-minute unlawful-detainer action, and the tenant, as here, remained in possession throughout the lease term and moved out only when the lease ended, according to Respondent's way of thinking, the tenant would not be entitled to prevailing-party fees for its successful defense. Respondent's view would thus rewrite bilateral fee provisions into one-way fee provisions in any comparable unlawful-detainer actions. There is

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[39] CP 123

nothing in Washington law, the relevant lease or common sense that supports Respondent's tardy-landlord-immunity theory.

The fact that Plaintiff failed to bring the unlawful-detainer action to trial prior to the end of the lease term does not alter Plaintiff's liability for fees. Plaintiff was solely responsible for its tardiness and bumblings in bringing this action. Plaintiff did not file this action until only two months before the end of the five-year lease. After the January snow delay, Plaintiff waited another week to re-file its Motion to Show Cause, only to be rejected at the February 7 show-cause hearing because it had carelessly failed to remain active with the Secretary of State. After that setback, Plaintiff inexplicably waited another eight days before filing its third Motion to Show Cause. Thus, when Plaintiff failed to convince the Court at the February 24 show-cause hearing that any money was due and the expedited trial date was set for March 26, 2012 (after the lease was going to end on March 22 and after Green Depot WA was going to have voluntarily left), Plaintiff had no one but itself to blame for the complete failure of its unlawful-detainer action.

3. Green Depot WA's departure at the end of the lease term does not diminish Green Depot WA's status as prevailing party.

When Green Depot WA's lease ended on March 22, 2012, Green Depot WA did what tenants the world over do when their leases end.

Green Depot WA moved out. Apparently grasping at straws, and straining to employ a metaphor from Revolutionary War history, Respondent has portrayed Green Depot WA's departure when the lease was over as a retreat that disqualifies Green Depot WA from prevailing-party status.[40] Fortunately, Respondent is writing neither our state common law nor our history texts.

According to Respondent's illogic, any tenant that successfully fends off an unlawful-detainer eviction effort, remains in possession throughout the entire lease term and then vacates the leased premises when the lease ends would be ineligible to be prevailing party in the unlawful-detainer action. Both established Washington case law, cited above, and good sense assure us that Respondent's perspective is mistaken.

4. Respondent's failure to dismiss its now-pointless unlawful-detainer action below does not alter Green Depot WA's status as prevailing party.

The mere fact that Respondent's now-pointless unlawful-detainer action has not been dismissed should not affect recognition of Green Depot WA as the prevailing party. Respondent itself has taken the position that the absence of a formal dismissal makes no real difference.

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[40] Appellant notes that the world is replete with locations where successful defensive battles were fought and where, when the battle was over, the successful defenders moved on. Marathon, Little Round Top, the Ardennes, and the field at Agincourt come to mind. The fact that,

"No formal order of dismissal has been entered in this case..., but no claim defense, or other issue remains to be litigated in it....[T]here is nothing left to litigate or decide in the unlawful detainer action...."[41] And Respondent has pointed out that the trial court has been relieved of jurisdiction over the issues of possession and damages unsuccessfully pursued by Respondent. At this point, there is nothing the trial court could do to resurrect the landlord's ill-fated action or to improve the action's record of accomplishing nothing. Thus, besides retaining jurisdiction to decide Green Depot WA's motion for fees, all that the trial court could do is enter an order of dismissal clearing its docket of the landlord's now-pointless action. The difference between the unlawful-detainer action's current status of lingering without purpose and dismissal of the action is largely a matter of housekeeping.

Appellant notes that it would have been a simple matter for the landlord to voluntarily dismiss its action below. The landlord has chosen not to dismiss no doubt in some vain hope of differentiating its situation from the situation of the similarly unsuccessful landlords in *Walji*, *Hawk v. Branjes* and *Council House*, whose voluntary dismissals resulted in appropriate fee awards for the defendant-tenants. But this Court should

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once those battles had ended, the defenders departed hardly diminishes the defenders' success.

[41] Respondent's Answer to Motion for Discretionary Review, previously filed herein, at 4, 5

not conclude the lack of dismissal makes any difference, because to do so would reward the landlord for letting its unlawful-detainer action linger on the trial court's docket. If a landlord could escape liability for fees by declining to take a voluntary dismissal despite accomplishing nothing and contending there is nothing left for the trial court to do, landlords would have an incentive to leave unsuccessful unlawful-detainer actions lingering in limbo, serving no purpose but to clutter the court docket. Encouraging such docket-clogging would be ill-advised.

V. REQUEST FOR FEES AND COSTS ON APPEAL

Section 24.11 of the relevant lease and Paragraph 4 of the Assignment and Assumption of Lease make the availability of fees and costs clear for the prevailing party on appeal. Respondent is on record conceding the appropriateness of an award of fees and costs to the prevailing party on appeal.[42] Pursuant to the relevant contractual provisions, and to the terms of RAP 18.1, Appellant Green Depot WA respectfully requests an award of its fees and costs incurred in this appeal.

VI. CONCLUSION

If Plaintiff had never filed this action, Green Depot WA would have remained in its leased space for the full lease term and would have

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[42] See Respondent's Answer to Motion for Discretionary Review, previously filed herein, at 13.

moved out when the lease ended. Instead, after Plaintiff filed this action, Green Depot remained in its leased space for the full lease term and moved out when the lease ended. Plaintiff's unlawful-detainer action accomplished nothing. It's that simple.

There thus can be no real question that Green Depot WA prevailed in the unlawful-detainer action. Plaintiff sought to evict Green Depot WA but failed, and Green Depot WA remained in possession throughout the full term of the lease. Having failed, Plaintiff sought a dismissal of its case. Having succeeded in its defense, Green Depot WA respectfully requests that this Court reverse the trial court's denial of Green Depot WA's motion for fees below and award Green Depot WA its fees and costs incurred in this appeal as well.

RESPECTFULLY SUBMITTED this 28th day of December, 2012.

WALLACE CAMPBELL, PLLC

By: _____
Scott W. Campbell, WSBA # 18491
Counsel for Appellant Green Depot WA

DECLARATION OF SERVICE

I hereby certify that I am over the age of 18 years and not a party to the above action and that, on the date below, I served a true and correct copy of the foregoing **APPELLANT'S OPENING BRIEF** on the party listed below in the manner indicated:

Matthew D. Green	☒ via Messenger Service
Williams, Kastner & Gibbs PLLC	☐ via ECF
601 Union Street, Suite 4100	☐ via first class mail
Seattle, WA 98101	☐ via facsimile
Attorneys for Respondent	☒ via Email

DATED: December 28th, 2012.

Marcia Kording

Marcia Kording, Legal Assistant