

64931-1

64931-1

NO. 64931-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

REC'D
JUN 30 2010
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW VOGT,

Appellant.

8
JUN 30 2010 3:49
COURT OF APPEALS
DIVISION ONE

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Michael C. Hayden. Judge

BRIEF OF APPELLANT

JENNIFER M. WINKLER
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ASSIGNMENT OF ERROR

The court erred in ordering the appellant to pay a restitution amount based on speculation.

Issues Pertaining to Assignment of Error

1. The appellant pled guilty to five counts of forgery related to his application to lease a house. The court found a sufficient causal connection between the forgeries and damage to the home occurring during the appellant's tenancy. In a civil suit resolved before the State filed criminal charges, the appellant agreed to forfeit his \$4,500 security deposit to the homeowner. Did the trial court abuse its discretion when it ordered the appellant to pay the homeowner more than \$10,000 for damages to the home when it failed to consider whether any losses were covered by the security deposit?

2. Should this Court reverse the superior court's restitution order and remand so that the amount may be reduced by the full amount of the security deposit?

3. Alternatively, should this Court remand for a determination of what portion of the \$4,500 deposit should be deducted from the court's restitution award?

B. STATEMENT OF THE CASE¹

The King County prosecutor charged Matthew Vogt with six counts of forgery, first degree theft, identity theft, unlawful issuance of bank checks, and other counts. CP 15-21. Many of the charges stemmed from the alteration of documents presented to a property management company as part of Vogt's 2007 application to rent a home. CP 6. Vogt and his wife eventually leased the home, but disputes arose between the Vogts, the owners, and agent who arranged the rental. CP 8-13.

The homeowner brought two suits to evict the Vogts in September and November 2007. In each case, the Vogts were permitted to remain in the home after agreeing to pay rent and attorney's fees. Supp. CP ___ (sub no. 100, Response to Defendant's Responsive Documents).

The homeowner filed a third unlawful detainer action in December 2007, seeking eviction and damages including \$4,500 in monthly rent plus all attorney fees if the Vogts contested the suit, as well as other relief. The homeowner also claimed the Vogts damaged or altered the home in violation of the lease terms. Supp. CP ___ (sub no. ___, filed June 30,

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – 1/29/09; 2RP – 4/14/09; 3RP – 9/30/09; 4RP – 1/27 and 3/3/10; 5RP – 2/9/10; and 6RP – 2/11/10.

2010, Defendant's Responsive Documents for Restitution Hearing) (attached as an Appendix).

In February 2008, the homeowner and the Vogts entered a stipulation and order agreeing to dismiss the suit with prejudice in exchange for (1) the homeowner retaining the Vogt's \$4,500 damage deposit and (2) termination of the lease. Id.

In January 2009, Vogt pleaded guilty² to five counts of forgery, one count of unlawful issuance of bank checks, and two gross misdemeanors not pertinent to this appeal. 1RP 1-12; CP 22-55 (Statement of Defendant on Plea of Guilty to Felonies); Supp. CP ___ (sub no. 56, non-felony Statement of Defendant on Plea of Guilty). The court dismissed the other charges. CP 68. On the felony charges the court sentenced Vogt to a first time offender waiver. CP 67-78; 2RP 60-61; former RCW 9.94A.650 (2007).

Five months later, the State sought restitution totaling more than \$96,000, including \$10,859.14 for repairs to the home; \$13,500 for unpaid rent and the rental agent's commission; and more than \$70,000 in

² Vogt filed a notice of appeal following the superior court's denial of his motion to withdraw his plea. CP 56-65, 95-27, 130-34; 2RP 6-7, 59-60; 6RP 145-64. This Court consolidated that appeal and Vogt's appeal from the restitution order. This brief raises no issues related to the motion to withdraw the plea.

attorney's fees. Supp. CP ____ (sub no. 103, State's Restitution Brief Re: Causation).

After two hearings, the superior court rejected Vogt's claim that restitution was barred by collateral estoppel, but held there was an insufficient nexus between the forgery charges and all but the homeowner's damage claim. 3RP 2-23; 4RP 12-38; see also CP 80-92 (Defendant's Memorandum on Restitution Causation). Based on the rental agent's sworn declaration, an itemized list of damages, and attached invoices, the court imposed restitution totaling \$10,859.14. 4RP 32-35; CP 93-94. Mr. Vogt now appeals.

C. ARGUMENT

THE COURT ERRONEOUSLY BASED THE RESTITUTION AMOUNT ON SPECULATION AS TO THE HOMEOWNER'S ACTUAL LOSSES.

A court may impose restitution only as authorized by statute. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999). RCW 9.94A.753(3) provides in pertinent part that restitution "shall be based on easily ascertainable damages for injury to or loss of property." While the claimed loss "need not be established with specific accuracy," it must be supported by "substantial credible evidence." State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008) (quoting State v. Fleming, 75 Wn. App. 270, 274-75, 877 P.2d 243 (1994)). Evidence supporting restitution is

sufficient if it provides a reasonable basis for estimating loss and does not require the court to base its award on speculation or conjecture. Id.; State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038, review denied, 121 Wn.2d 1023 (1993). If a defendant disputes the restitution amount, the State must prove the damages by a preponderance of the evidence. State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

A trial court's order of restitution will not be disturbed on appeal absent an abuse of discretion. Enstone, 137 Wn.2d at 679. Application of an incorrect legal analysis or other error of law constitutes abuse of discretion. Kinneman, 155 Wn.2d at 289. The court also abuses its discretion when a restitution order is manifestly unreasonable, or the court exercises its discretion on untenable grounds or for untenable reasons. State v. Ring, 134 Wn. App. 716, 719, 141 P.3d 669 (2006) (citing Enstone, 137 Wn.2d at 679-80).

Here, the court abused its discretion because in setting the amount of restitution the court was forced to speculate as to the victim's out-of-pocket losses. Vogt forfeited his security deposit of \$4,500 yet, two years later, the court also ordered him to pay more than \$10,000 in restitution for damage to the home.

Based on the evidence the State presented at the hearing, it is not clear which, if any, damages to the home were already covered by the

damage deposit. Thus the State did not establish with sufficient certainty the homeowner's actual losses. Griffith, 164 Wn.2d at 965; cf. State v. Christensen, 100 Wn. App. 534, 536, 997 P.2d 1010 (2000) (trial court deducted amount already recovered in civil suit from victim's restitution award). As such, the court's calculation of losses was speculative, and the order should be reversed. Kisor, 68 Wn. App. at 620.

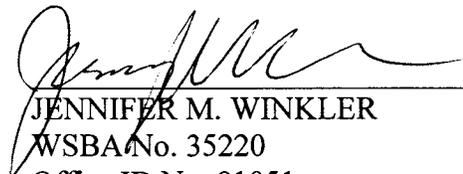
D. CONCLUSION

For the foregoing reasons, this Court should reverse the superior court's restitution order and remand so that the amount may be reduced by the full amount of the security deposit. In the alternative, the case should be remanded for a determination of what portion of the \$4,500 deposit should be deducted from the court's restitution award.

DATED this 30TH day of June, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER M. WINKLER
WSBA No. 35220
Office ID No. 91051

Attorneys for Appellant

APPENDIX

RECEIVED
SEP 28 2009

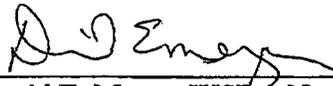
DANIEL T. SATTERBERG
PROSECUTING ATTORNEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,) CAUSE NO. 08-C-04949-0 SEA
)
Plaintiff,) DEFENDANT'S RESPONSIVE
) DOCUMENTS FOR RESTITUTION
v.) HEARING (September 30, 2009)
)
MATTHEW VOGT,)
)
Defendant)

The Defendant, by and through his attorney of record, David E. Meyer of Northwest Defenders Association, submits these records for the court's consideration in the State's Motion for Restitution to be heard on September 30, 2009 at 8:30.

The defendant maintains that all of the restitution requests constituted issues that were or should have been litigated in *Mathur v Mathew and April Vogt*, King County Cause number 07-2-39869-4 SEA and have been discharged by the final Stipulation and Order of Dismissal in that case.



David E. Meyer, WSBA No. 14071
Attorney for the Defendant

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

SHARAD MATHUR,

Plaintiff,

vs

MATTHEW THAYER VOGT, APRIL
DAWN VOGT, & ALL OTHER
OCCUPANTS,
Husband & wife & the marital community

Defendants.

07-2-39869-4SEA
SUMMONS

**THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR WRITTEN
RESPONSE IS: 5:00 p.m., on December 27, 2007**

TO: MATTHEW THAYER VOGT, APRIL DAWN VOGT and all occupants of
property located at 2634 W. Lake Sammamish Parkway S.E., Bellevue, WA 98008 in
the County of King

This is notice of a lawsuit to evict you from the property which you are renting. The
landlord is asking the court to terminate your tenancy, direct the sheriff to remove you
and your belongings from the property, enter a money judgment against you for unpaid
rent and/or damages for your use of the property, and for court costs and attorneys'
fees.

SUMMONS
Page 1 of 3

CHRISTOPHER J. FOX, P.S.
50- 16th Avenue
Kirkland, WA 98033
425.827.8757

ORIGINAL

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer to your landlord's attorney (or the landlord if there is no attorney) by personal delivery, mailing, or facsimile to the address or facsimile number stated below **TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE**. Service by facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause **IN ADDITION** to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. THE LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

NOTICE

This unlawful detainer action is based (in part) upon nonpayment of rent in the amount alleged to be \$4,500 for December 2007 plus late fees and \$4,500 last month's rent.

The plaintiff is entitled to an order from the court directing the sheriff to evict you without a hearing unless you pay into the court registry the amount of delinquent rent alleged in the complaint and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending. If you deny that you owe the rent claimed to be due and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a written statement signed and sworn upon penalty of perjury setting forth why you do not owe the amount claimed in the complaint to be due. The sworn statement must be filed IN ADDITION TO your written answer to the complaint.

Payment or the sworn statement must be submitted to the clerk of the superior court within seven (7) days after you have been served with this summons or, if the summons has not been filed, within seven (7) days after service of written notice that the lawsuit has been filed.

This complaint has been filed.

This complaint has not been filed. The plaintiff must notify you in writing when it is filed.

IMPORTANT

If you intend to contest this action, you must also file a written answer as indicated above on this summons.

The notice of appearance or answer must be delivered to:

CHRISTOPHER J. FOX, P.S.
50 16th Avenue, Kirkland, WA 98033
PH 425.827.8757
FAX 425.822.3430

Dated: December 19, 2007.


CHRISTOPHER J. FOX
Attorney for Plaintiff
WSBA 7345

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

SHARAD MATHUR,

Plaintiff,

vs

MATTHEW THAYER VOGT, APRIL
DAWN VOGT, & ALL OTHER
OCCUPANTS,
Husband & wife & the marital community

Defendants.

NO. **07-2-39869-4SEA**

COMPLAINT FOR UNLAWFUL
DETAINER

Plaintiff alleges:

1. **JURISDICTION:** Plaintiff, through its authorized management agent MacPherson's Property Management, Inc., as landlord, rented to defendants property located at 2634 W. Lake Sammamish Parkway S.E., in the city of Bellevue, 98008, King County, Washington (hereinafter the "subject premises").

COMPLAINT FOR UNLAWFUL DETAINER
Page 1 of 6

CHRISTOPHER J. FOX, P.S.
50-16th Avenue
Kirkland, WA 98033
425.827.8757

ORIGINAL

2 **LEASE:** The parties signed a lease dated August 22, 2007. The lease states in relevant part:

Paragraph 2: \$4,500 monthly rent to be received by landlord on or before the first day of each month.

Paragraph 6: \$4,500 advance payment due upon signing as credit toward last month's rent.

Paragraph 7: (A) CH. 59.18 (B) Tenant to comply with all terms and conditions of the lease agreement.

a. Tenant shall comply with applicable terms and provisions of the Washington Residential Landlord/Tenant Act, CH. 59.18 RCW.

b. To the extent not otherwise inconsistent with Washington law, Tenant shall comply with all terms and conditions of this Agreement and shall perform all obligations herein.

c. Tenant acknowledges receipt of an inspection form to be filled out at time of move-in and Tenant further agrees that throughout the term of this Agreement Tenant shall keep said premises in good order, condition and repair as on the date of commencement of this Agreement (normal wear and tear resulting from ordinary use of the premises excepted), to surrender the premises to Landlord in a neat, clean and orderly condition, make all late payment charges provided for in this Agreement, and to fully and timely pay all utility charges associated with the premises. Landlord may expend or withhold as much of the security/damage and cleaning deposit as necessary to repair or clean-up the premises and to pay said rent or charges.

Paragraph 9: \$5.00 per diem late fee if rental payments not paid within four days after due date.

Paragraph 14. TENANT'S OBLIGATIONS: Tenant will comply with the duties required pursuant to CH. 59.18 RCW. The following additional provisions shall apply to the extent not in conflict with said Tenant's statutory duties:

#14 (B) Alterations and repairs.

b. ALTERATIONS AND REPAIRS: Tenant shall not paint, alter, repair or perform other work on the premises unless specifically agreed in writing by Landlord, or allowed under the Washington Residential Landlord/ Tenant Act. If Tenant is authorized by Landlord to do such work, it shall be at the expense of Tenant and shall become part of the premises to be the Landlords property upon termination of the Agreement and tenancy.

f. DESTRUCTION: Tenant shall not perform or let be performed the destruction, defacement, damage, impairment or removal of any property belonging to the Owner or supplied by the Landlord on the premises.

i. MAINTENANCE: Tenant shall, at its sole expense, maintain the premises by watering, and keeping in good and attractive condition the lawn, shrubs, trees and landscaping of the premises. If Landlord determines in its reasonable discretion that the Tenant is not properly maintaining the premises, Landlord may notify tenant to comply within 10 days. If Tenant fails to comply with request, Landlord may arrange, at Tenants expense, to have the premises maintained. Tenant will be billed for this service and will pay within 10 days or receipt of the billing statement. Tenant shall protect the plumbing system from freezing and maintain the heating system. Tenant shall promptly replace any glass, which is broken. Tenant shall promptly notify Landlord in the event of any damage to the premises or appliance problem or malfunction so it can be determined what, if any, appropriate remedial action should be taken. If the Tenant is responsible for the damage, problem or malfunction, the Tenant shall pay for or reimburse the Landlord for the cost of remedial action.

Paragraph 22: Tenant not to unreasonably withhold consent to landlord to enter and inspect premises upon at least two day notice.

Paragraph 23. ITEMS ON PREMISES:

b. OWNER ITEMS: As noted below, the following room or area on the premises contains property owned by the Owner which is secured and shall not be used or accessed by the Tenant.

Paragraph 24: Lease contingent upon verification of information given by tenant with application.

3. **NOTICES:** On December 8, 2007, defendants were served with A Three Day Notice to Pay or Vacate (**EXHIBIT 1**) and A Ten Day Notice to Comply or Vacate (**EXHIBIT 2**).

4 **STATUS:** Defendants did not within the required period(s) pursuant to the Notices pay, comply or vacate the premises as required. Defendants continue to occupy the subject property.

5. **BREACHES OF LEASE.**

5.1 Defendants have materially breached the lease in the following regard:

5.1.1. As stated within the Ten Day Notice to Comply or Vacate, which is incorporated herein as if fully set forth.

5.1.2. Prior to signing the lease defendants gave to plaintiff's management agent a document purporting to be a personal paystub for defendant Matthew Vogt. **EXHIBIT 3- Sealed Source Document** Defendants intended this document to be an inducement to plaintiff to accept defendants as tenants. Plaintiff relied upon the paystub as a true and correct statement of defendant Matthew Vogt's employment and income. To the best of plaintiff's present knowledge, said documentation is not genuine. **EXHIBIT 4 – Sealed Source Document**

5.2 Prior to signing the lease defendants gave to plaintiff's management agent a document purporting to be Years 2005 and 2006 W-2's for defendant Matthew Vogt. **EXHIBIT 5 – Sealed Source Document** Defendants

intended these document to be an inducement to plaintiff to accept defendants as tenants. Plaintiff relied upon the W-2's as a true and correct statements of defendant Matthew Vogt's prior year employment and income. To the best of plaintiff's present knowledge, said documentation is not genuine. **EXHIBIT 6 – Sealed Source Document.**

6. Plaintiff prays for judgment as follows:

6.1. For restitution of the subject premises;

6.2 For forfeiture and/or termination of each defendant's tenancy,

6.3 For judgment against defendants for unlawful detainer for all amounts due damages, fees and costs, to wit: \$4,500 current month plus per diem of \$150 after December 2007 if applicable, \$5 late fee from December 6, 2007, \$2000 attorney fee (if uncontested, all plaintiff's fees if contested), filing fees, process fees, and sheriff fees.

6.4 For such other and further relief as the court may deem just and proper.

Dated: December 18, 2007.


CHRISTOPHER J. FOX
Attorney for Plaintiff
WSBA 7345

VERIFICATION

STEVE HENKES declares that:

I am an authorized representative of MacPherson's Property Management, Inc., agent of Owner. I have read the foregoing complaint, know the contents thereof, and believe the same to be true to the best of my present knowledge of facts and circumstances known at this time.

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

Signed at Kirkland, Washington on this the 18th day of December, 2007.



STEVE HENKES

EXHIBIT 1

THREE DAY NOTICE TO PAY RENT OR VACATE

**TO: MATTHEW AND APRIL VOGT and all other occupants
2634 W. Lake Sammamish Parkway S.E.
Bellevue, WA**

You are hereby notified that the rent for the month ending December 2007 for the premises hereinafter described which you hold as a Tenant under a Lease or Rental Agreement is now due and payable in the sum of \$4,500.

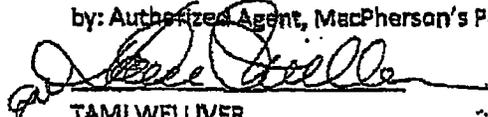
You are further notified and required to pay the sum of \$4,500 unto the undersigned (SAID PAYMENT TO BE PAID TO AND RECEIVED BY MACPHERSON'S PROPERTY MANAGEMENT, 18551 Aurora Avenue North, Suite 201, Shoreline, WA 98133) within three (3) days of the date of service of this Notice upon you, or, in the alternative, to vacate and surrender said premises.

Said premises which you occupy as Tenant are described as follows: 2634 W. Lake Sammamish Parkway S.E., Bellevue, County of King, State of Washington.

Dated this the 3rd day of December, 2007 at 15831 NE 8th Street, Suite 200, Bellevue, Washington 98008

Sharad Mathur, Owner

by: Authorized Agent, MacPherson's Property Management, Inc.



TAMI WELLIVER

15821 NE 8th Street, Suite 200
Bellevue, WA 98008

EXHIBIT 2

TEN DAY NOTICE TO COMPLY OR QUIT PREMISES

TO: MATTHEW AND APRIL VOG and all other occupants
2634 W. Lake Sammamish Parkway S.E.
Bellevue, WA

You are hereby notified to perform and comply with the conditions and covenants of your lease within ten (10) days from date of this notice, in the following particulars:

Lease Provision # 6. Advance payment required at time of signing for last month rent in amount of \$4,500.

1. Last month rent not paid.

Lease Provision #7 (A) CH. 59.18 (B) Tenant to comply with all terms and conditions of the lease agreement.

a. Tenant shall comply with applicable terms and provisions of the Washington Residential Landlord/Tenant Act, CH. 59.18 RCW.

b. To the extent not otherwise inconsistent with Washington law, Tenant shall comply with all terms and conditions of this Agreement and shall perform all obligations herein.

1. The tenant has consistently not paid rent in a timely manner or per the terms of the agreement.

c. Tenant acknowledges receipt of an inspection form to be filled out at time of move-in and Tenant further agrees that throughout the term of this Agreement Tenant shall keep said premises in good order, condition and repair as on the date of commencement of this Agreement (normal wear and tear resulting from ordinary use of the premises excepted), to surrender the premises to Landlord in a neat, clean and orderly condition, make all late payment charges provided for in this Agreement, and to fully and timely pay all utility charges associated with the premises. Landlord may expend or withhold as much of the security/damage and cleaning deposit as necessary to repair or clean-up the premises and to pay said rent or charges.

1. (see alterations)

Lease Provision #14. TENANT'S OBLIGATIONS: Tenant will comply with the duties required pursuant to CH. 59.18 RCW. The following additional provisions shall apply to the extent not in conflict with said Tenant's statutory duties:

#14 (B) Alterations and repairs.

b. **ALTERATIONS AND REPAIRS:** Tenant shall not paint, alter, repair or perform other work on the premises unless specifically agreed in writing by Landlord, or allowed under the Washington Residential Landlord/ Tenant Act. If Tenant is authorized by Landlord to do such work, it shall be at the expense of Tenant and shall become part of the premises to be the Landlords property upon termination of the Agreement and tenancy.

1. Tenant has removed the owner's carpet on stairwell.
2. Tenant has removed the owner's draperies in several rooms.
3. Tenant has removed some components of the TV system in the media room.
4. Tenant has altered the refrigerator door.
5. Tenant has changed the door knobs to the storage cabinets in the garage.
6. Tenant has removed molding in the lower bedroom with the built-in furniture and cabinets.
7. Tenants have removed planting and electrical wiring in the yard and have not maintained the yard in its original condition at move-in.
8. Tenant has altered the downstairs fireplace brick by spraying "silly putty" or (?) on the brick.

f. **DESTRUCTION:** Tenant shall not perform or let be performed the destruction, defacement, damage, impairment or removal of any property belonging to the Owner or supplied by the Landlord on the premises.

1. Tenant has removed the owner's carpet on stairwell.
2. Tenant has removed the owner's draperies in several rooms.
3. Tenant has removed some components of the TV system in the media room.
4. Tenant has altered the refrigerator door.
5. Tenant has changed the door knobs to the storage cabinets in the garage.
6. Tenant has removed molding in the lower bedroom with the built-in furniture and cabinets. Tenant has refused vendor entry to repair the water damage by the skylight in the kitchen area.
7. Tenant states "he has taken care of all maintenance issues at his expense".

i. **MAINTENANCE:** Tenant shall, at its sole expense, maintain the premises by watering, and keeping in good and attractive condition the lawn, shrubs, trees and landscaping of the premises. If Landlord determines in its reasonable discretion that the Tenant is not properly maintaining the premises, Landlord may notify tenant to comply within 10 days. If Tenant fails to comply with request, Landlord may arrange, at Tenants expense, to have the premises

maintained. Tenant will be billed for this service and will pay within 10 days or receipt of the billing statement. Tenant shall protect the plumbing system from freezing and maintain the heating system. Tenant shall promptly replace any glass, which is broken. Tenant shall promptly notify Landlord in the event of any damage to the premises or appliance problem or malfunction so it can be determined what, if any, appropriate remedial action should be taken. If the Tenant is responsible for the damage, problem or malfunction, the Tenant shall pay for or reimburse the Landlord for the cost of remedial action.

1. Tenant has removed plantings and damaged the yard and removed electrical wires to the exterior fountain and lighting.

Lease Provision #22. ACCESS TO PREMISES: Pursuant to RCW 59.18.150, Tenant shall not unreasonably withhold consent to the Landlord to enter the premises in order to inspect the premises, make necessary or agreed repairs, alterations or improvements, supply necessary or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workers, or contractors. Landlord will give Tenant at least two days' notice of intent to enter and will enter at reasonable times except in the case of an emergency or abandonment, or if impractical to give such notice. Tenant shall not unreasonably withhold consent to enter the premises at a specified time where Landlord has given at least one day's notice of intent to enter for the purposes of exhibiting the premises to prospective or actual purchasers or tenants. Landlord may place a key box and sign on the premises. Violation of RCW 59.18.150 may create liability up to \$100.00 for each violation

1. Tenant has refused the owner rights to have vendors enter the premise for repairs, maintenance and inspections:
 - a. the installation of a locking hot tub cover
 - b. hanging of a light fixture in the kitchen
 - c. inspection of the hot water tank
 - d. Tenant has not provided a valid land line that is located on the premise for the Security, fire alarm system.
 - e. Tenant has refused periodic inspections of the property by the owner's representative or other vendors.

Lease Provision # 23. ITEMS ON PREMISES:

b. **OWNER ITEMS:** As noted below, the following room or area on the premises contains property owned by the Owner which is secured and shall not be used or accessed by the Tenant.

1. Tenant has entered and changed the locking door knob on the owner's locked storage unit with a non-locking door knob and has violated and used the owner's personal information for illegal purposes and removed the owners property and personal papers from the premise by mailing to the FBI.

Attached to this Notice is:

Attached to this Notice is:

1. Declaration of Heather Connors regarding false representation of AngloScore income and employment.
2. Verification of Biogen Custodian with attached 2005 and 2006 W'2's.

You are also notified to provide to MacPherson's within 10 days of receipt of this Notice irrevocable and indisputable documentary proof evidencing as of September 1, 2007 monthly income 2.5 to 3.0 times monthly rent as required by Application for Tenancy. (Policy 1(A), doc attached)

This notice is given pursuant to the provisions of the Washington Revised Code.

Dated this the 3rd day of December, 2007 at 15831 NE 8th Street, Suite 200, Bellevue, Washington 98

Sharad Mathur, Owner

by: Authorized Agent, MacPherson's Property Management, Inc.



TAMI WELLIVER

FILED
2008 FEB -1 PM 3:51
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

EXPO1

**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

SHARAD MATHUR,

Plaintiff.

vs

MATTHEW THAYER VOGT, APRIL
DAWN VOGT, & ALL OTHER
OCCUPANTS,

husband & wife & the marital
community

Defendant(s)

NO. 07-2-39869-4 SEA

STIPULATION AND ORDER
OF DISMISSAL

Clerk's Action Required

STIPULATION

The undersigned parties, through counsel, stipulate and agree that the August 22, 2007 lease between Matthew Thayer Vogt and April Dawn Vogt and MacPherson's Property Management, Inc., agent for Sharad Mathur and Sunita Shrivastava, ("the lease") should be terminated and that defendants shall have no right to enter upon the property other than to remove two gazebos at the time designated below; that defendants relinquish all claims to the \$4,500 security deposit paid under that lease;

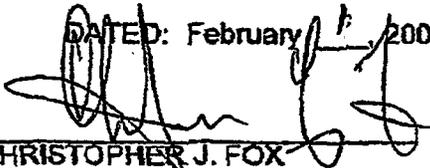
STIPULATION AND ORDER
OF DISMISSAL
Page 1 of 3

CHRISTOPHER J. FOX, P.S.
50-16th Avenue
Kirkland, WA 98033
425.827.8757

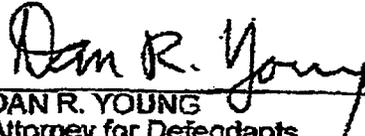
ORIGINAL

that plaintiff's \$20,000 cash deposit bond should be exonerated and immediately disbursed to plaintiff's counsel; and that this matter should be dismissed with prejudice, each party to bear its own costs.

DATED: February 1, 2008.



CHRISTOPHER J. FOX
Attorney for Plaintiff
WSBA 7345



DAN R. YOUNG
Attorney for Defendants
WSBA 12020

ORDER

Upon good cause shown and consistent with the parties' foregoing stipulation, it is hereby

ORDERED, ADJUDGED and DECREED:

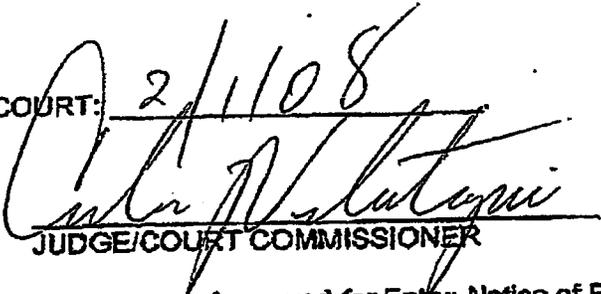
1. The August 22, 2007 lease between defendants Matthew Thayer Vogt and April Dawn Vogt and MacPherson's Property Management, Inc., agent for Sharad Mathur and Sunita Shrivastava, ("the lease") is hereby and immediately terminated. Defendants and any persons claiming by or through them shall have no further interest in or claim regarding the subject property located at 2634 West Lake Sammamish Parkway S.E., Bellevue, Washington, provided, however, that, between ^{10:00} ~~8~~ a.m. and ^{1:00} p.m. on THURS, February 1, 2008, defendants' agent(s) may enter on the property for the limited purpose of removing two gazebos that were left at the subject property following defendants' physical eviction on January 25, 2008. Said gazebos shall automatically become plaintiff's property if retrieval does not occur during the designated time. Except for the specific purpose of removing said gazebos during the time designated above, defendants shall not return to or enter upon the subject property under penalty of trespass.

STIPULATION AND ORDER
OF DISMISSAL
Page 2 of 3

CHRISTOPHER J. FOX, P.S.
50- 16th Avenue
Kirkland, WA 98033
425.827.8757

2. Defendants shall have no further right or claim to the \$4,500 security deposit paid at the inception of the lease and said \$4,500 deposit is now plaintiff's property;
3. Plaintiff's \$20,000 cash deposit bond into the King County Registry is exonerated and shall be immediately disbursed to him through plaintiff's counsel;
4. This proceeding is dismissed with prejudice, with each party to bear its own costs.
5. The Clerk is instructed to strike the scheduled February 11, 2008 trial date.

DONE IN OPEN COURT: 2/1/08

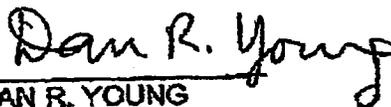

JUDGE/COURT COMMISSIONER

Presented by:



CHRISTOPHER J. FOX
Attorney for Plaintiff
WSBA 7345

Approved for Entry; Notice of Presentation
Waived; Copy Received:



DAN R. YOUNG
Attorney for Defendants
WSBA 12020

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 64931-1-I
)	
MATTHEW VOGT,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF JUNE, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MATTHEW VOGT
 23418 SOFIE ROAD
 MONROE, WA 98272

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF JUNE, 2010.

x Patrick Mayovsky