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No. 66226-1

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

RECREATIONAL EQUIPMENT, INC.,

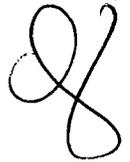
Appellant/Cross-Respondent,

v.

WORLD WRAPPS NORTHWEST, INC.,

Respondent/Cross-Appellant.

APPELLANT/CROSS-RESPONDENT
RECREATIONAL EQUIPMENT, INC.'S
REPLY BRIEF



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TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY OF REPLY ARGUMENT	1
II. REPLY ARGUMENT	3
A. Standard Of Review.....	3
B. World Wrapps Would Not Suffer An <u>Inequitable Forfeiture</u> If The Express Terms Of The Contract Were Enforced.	4
C. The Evidence Developed At Trial Does Not Support The Conclusion That World Wrapps’ Seven-Week Delay In Exercising The Option To Renew Should Be Excused.	8
III. SUMMARY OF RESPONSE TO CROSS-APPEAL	12
IV. STATEMENT OF CASE RELATED TO CROSS-APPEAL	12
A. Contractual Basis For Fee Award.....	12
B. Relevant Procedural Facts.....	12
V. CROSS-APPEAL RESPONSE ARGUMENT	14
A. The Trial Court Did Not Err In Finding That World Wrapps Failed To Establish Its Fees Were Reasonable Under The “Lodestar” Method.....	14
B. The Trial Court Did Not Err In Discounting Hours That World Wrapps Spent On Unsuccessful Claims.....	15
C. The Trial Court Did Not Err In Reducing World Wrapps’ Fees For Time Spent On The “Other Lawsuit.”	19
VI. CONCLUSION.....	19

TABLE OF AUTHORITIES

CASES	Page(s)
<u>Absher Const. Co. v. Kent School Dist. No. 415</u> , 79 Wn. App. 841, 917 P.2d 1086 (1995).....	14
<u>Bowers v. Transamerica Title Ins. Co.</u> , 100 Wn.2d 581, 675 P.2d 193 (1983).....	14, 15
<u>Cornish College of the Arts v. 1000 Virginia Limited Partnership</u> , 158 Wn. App. 203, 242 P.3d 1 (2010).....	1, 2, 5, 8
<u>Crest Inc. v. Costco Wholesale Corp. et. al</u> , 128 Wn. App. 760, 115 P.3d 349 (2005).....	16
<u>Heckman Motors, Inc. v. Gunn</u> , 73 Wn. App. 84, 867 P.2d 683 (1994).....	passim
<u>Loeffelholz v. Citizens for Leaders with Ethics and Accountability</u> <u>Now</u> , 119 Wn. App. 665, 82 P.3d 1199 (2004).....	15, 16
<u>Marassi v. Lau</u> , 71 Wn. App. 912, 859 P.2d 605 (1993), <u>overruled on other</u> <u>grounds</u> , <u>Wachovia SBA Lending, Inc. v. Kraft</u> , 165 Wn.2d 481, 200 P.3d 683 (2009).....	15, 16, 19
<u>Mellenbacher v. DeMont</u> , 103 Wn. App. 240, 11 P.3d 871 (2000).....	14, 15
<u>Mike’s Painting, Inc. v. Carter Welsh, Inc.</u>	16
<u>Pardee v. Jolly</u> , 163 Wn.2d 558, 182 P.3d 967 (2008).....	3, 4, 6, 7
<u>Riss v. Angel</u> , 131 Wn.2d 612, 934 P.2d 669 (1997).....	19
<u>Silverdale Hotel Assocs. v. Lomas & Nettleton Co.</u> , 36 Wn. App. 762, 677 P.2d 773 (1984).....	19

Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.,
122 Wn.2d 299, 858 P.2d 1054 (1993).....14, 16

Wharf Restaurant, Inc. v. Port of Seattle,
24 Wn. App. 601, 605 P.2d 34 (1979)..... passim

STATUTES

RCW 4.84.33012, 13

RCW 59.12.030(2).....13, 14

RCW 59.12.030(3).....13

I. SUMMARY OF REPLY ARGUMENT

The trial court improperly expanded Washington law when it granted World Wrapps an equitable grace period. World Wrapps did not establish at trial, and cannot establish on appeal, that it would suffer an inequitable forfeiture if the parties' lease agreement was strictly enforced.

It is not enough for World Wrapps to allege – or even to prove – generalized harm to its business due to the loss of the option. The loss of the option to renew the lease, on its own, is also not enough. Washington law requires the tenant to prove “special circumstances”¹ before our courts will make an exception to the general rule that option provisions in commercial leases are to be strictly enforced.

Trial courts have the authority to grant an equitable grace period only when something more is proven – the loss of a substantial investment in the leased property.² In Cornish College of the Arts v. 1000 Virginia Limited Partnership, for example, the tenant stood to lose hundreds of thousands of dollars of improvements to property, which it expected to *own* as the result of an option to *purchase*.³ In Wharf Restaurant, Inc. v. Port of Seattle, the equitable grace period was justified because the tenant

¹ Wharf Restaurant, Inc. v. Port of Seattle, 24 Wn. App. 601, 610-11, 605 P.2d 34 (1979).

² Cornish College of the Arts v. 1000 Virginia Limited Partnership, 158 Wn. App. 203, 219, 242 P.3d 1 (2010).

³ Id.

made substantial improvements immediately before the option deadline.⁴ Without the intervention of equity, these tenants could not have recouped their investments in the subject property, and the landlords would have received undeserved windfalls.

World Wrapps offered no proof at trial that it did not have sufficient opportunity to recoup its investment or that REI stood to gain an undeserved windfall.⁵ World Wrapps' remodel occurred more than four years before the option deadline, during which time World Wrapps enjoyed the business benefits of the improvements *and* substantially reduced rent. As World Wrapps admitted, the improvements have been so well-used that they now have little, if any, residual value.⁶

World Wrapps instead argues that potential harm to the health of its overall business, if it was forced to move out of REI, justified a finding that it risked an inequitable forfeiture. No Washington court – not Cornish, Wharf or Heckman Motors, Inc. v. Gunn⁷ – has suggested that generalized, prospective harm to a business that neglects to timely exercise an option to renew its lease is a sufficiently “special circumstance” to justify the intervention of equity.

⁴ See Wharf Restaurant, Inc., 24 Wn. App. at 612.

⁵ See REI Opening Brief pp. 27-30.

⁶ RP 543:1-20.

⁷ Heckman Motors, Inc. v. Gunn, 73 Wn. App. 84, 867 P.2d 683 (1994).

The trial court's grant of an equitable grace period is also error for a second, separate reason. As stated in Wharf and Heckman, a two-month delay in giving notice is too long for the intervention of equity.⁸ The Wharf court allowed equity to intervene only because the landlord had *previously allowed late exercises of option rights*.⁹

World Wrapps did not allege that REI had previously tolerated late exercises of option rights. World Wrapps instead argues that a purported mistake by REI caused World Wrapps to miss the deadline. Even if that were true (its not), the alleged mistake concerns World Wrapps' claimed inadvertence in missing the deadline, not the *length of World Wrapps' delay* in giving notice. The only evidence that justified the length of delay in Wharf was the landlord's prior acceptance of prior tardy notices. No similar facts exist in this case. For this independent reason, the trial court erred in using its equitable powers to cure World Wrapps' tardy notice.

II. REPLY ARGUMENT

A. Standard Of Review.

Although the trial court has broad discretion to fashion equitable remedies, questions of law are reviewed de novo. Pardee v. Jolly,

⁸ Wharf, 24 Wn. App. at 613; Heckman, 73 Wn. App. at 88.

⁹ Wharf, 24 Wn. App. at 613.

163 Wn.2d 558, 566, 182 P.3d 967 (2008). Questions of fact are reviewed under the substantial evidence standard. Id.

B. World Wrapps Would Not Suffer An Inequitable Forfeiture If The Express Terms Of The Contract Were Enforced.

In its opening brief, World Wrapps failed to establish that the evidence presented at trial was sufficient to demonstrate the risk of an inequitable forfeiture:¹⁰

(1) World Wrapps offered no evidence that it could not, and did not, recoup its investment through four years' use of the improved premises.¹¹ Although World Wrapps claimed that it would "lose the value of its investment in upgrading the space in 2006 – approximately \$250,000," it did not support that statement with any factual citations.¹² No evidence was developed during the trial to support this self-serving, conclusory statement;

(2) World Wrapps did not present evidence that it could not, and did not, fully recoup the costs of improvements through four years of reduced rent (worth \$168,000) and four years of *net* income in excess of \$135,000 per year; (RP 494:18-495:21),¹³ and

¹⁰ See WW Opening Brief pp. 21-22.

¹¹ REI Opening Brief pp. 27-30.

¹² WW Opening Brief p. 22.

¹³ See also REI Opening Brief pp. 29-31.

(3) World Wrapps did not contest that it received the additional benefit of the improvements *REI paid for* to assist World Wrapps in reducing, not increasing, the square footage of the premises that World Wrapps was obligated to pay for under the lease.¹⁴

World Wrapps instead continues to argue that general prejudice to its business was sufficient to justify an equitable grace period.¹⁵ But, as explained in REI's opening brief, the loss of the option itself – and resulting general harm or prejudice to a business – is not a “special circumstance” under Washington law. See Wharf, 24 Wn. App. at 612-13; Heckman, 73 Wn. App. at 87-88; Cornish, 158 Wn. App. at 218. If general prejudice was enough, virtually every missed option deadline could result in an inequitable forfeiture. The rule that an option is ordinarily strictly enforced would be turned on its head. See, e.g., Heckman, 73 Wn. App. at 88 (“The general rule is that an option must be exercised timely exercised or it is lost.”).

Nor can it be, as World Wrapps argues, that any time a tenant makes improvements, it is thereby entitled to an equitable grace period if it later mistakenly fails to timely exercise an option.¹⁶ The tenant must be

¹⁴ Id. at 32-33.

¹⁵ WW Opening Brief p. 22.

¹⁶ WW Opening Brief p. 23.

in a position to lose its investment in the premises for there to be an inequitable forfeiture. E.g., Heckman, 73 Wn. App. at 87-88.

The evidence developed at trial establishes that World Wrapps did recoup the entire value of its investment in the four years after the 2006 remodel.¹⁷ World Wrapps reluctantly admits that, at most, it invested \$82,000 in the remodel.¹⁸ After the remodel, World Wrapps grossed \$750,000 to \$1 million *each year*, with net profits of approximately \$135,000 per year. (RP 494:18-495:21)¹⁹ World Wrapps thus netted approximately \$540,000 in profits over four years on an \$82,000 investment – the same investment which World Wrapps now claims carries little, if any, residual value. (RP 543:1-20.) World Wrapps was not in a position to have lost the value of its initial investment if it was made to vacate the premises on May 25, 2010, as required under the parties' lease agreement.

Unable to show the risk of investment loss, World Wrapps suggests an equitable grace period was proper simply because it made *some* initial investment, regardless of whether or not that investment was recouped. See WW Opening Brief p. 23, relying on Pardee v. Jolly,

¹⁷ REI Opening Brief pp. 27-32.

¹⁸ World Wrapps claims to have invested \$250,000, but admits that it received \$168,000 in rent reduction in the four years after the remodel. (WW Opening Brief p. 22-23.)

¹⁹ See also REI Opening Brief pp. 29-31.

163 Wn.2d 558, 182 P.3d 967 (2008) (tenant spent \$20,669 and 2,500 hours in repair work). The Pardee Court did *not*, however, find that an equitable grace period was warranted in that case merely because some investment was made. Id. at 576. The case was remanded to the trial court to develop the factual record and determine “whether equity demands that a grace period be extended.” Id.

More importantly, the Court’s dicta that \$20,669 and 2,500 hours “involve[d] a substantial forfeiture” is distinguishable on its facts. Id. In Pardee, the plaintiff was a prospective purchaser who sought specific performance of an option to *purchase* the property. Id. at 562. The plaintiff optionee had made extensive repairs to the property with the intent to *own* and use the property as collateral for a mortgage. Id. at 563-64, 576. Without the option, the plaintiff would presumably not have had the opportunity to recoup the investment in the property by owning it, as he had intended. And, unlike the facts of this case, the improvements made by the optionee could have been considered a windfall to the property owner. See id.

No evidence here indicates that REI would be in a position to receive a benefit, much less a windfall, from the improvements World Wrapps made to the premises over four years ago. Among other reasons, the evidence showed that the improvements were completed in order to

make the space more functional as a *smaller* World Wrapps restaurant, and that REI paid for a significant portion of the renovation.²⁰ Compare Cornish, 242 P.3d at 9-10 (as a consequence of missed option to purchase, landlord stood to receive a newly-renovated building).

World Wrapps failed to meet its burden of showing that it would suffer an inequitable forfeiture if the terms of the written contract were enforced. The trial court's grant of an equitable grace period should, therefore, be reversed.

C. The Evidence Developed At Trial Does Not Support The Conclusion That World Wrapps' Seven-Week Delay In Exercising The Option To Renew Should Be Excused.

World Wrapps gave notice of its intent to renew the lease more than seven weeks past the deadline. (Ex. 87.)²¹ As stated in both Heckman and Wharf, a delay of that many weeks should proscribe the intervention of equity. Wharf, 24 Wn. App. at 613; Heckman, 73 Wn. App. at 88.

In Wharf, the court excused the tenant's delay only because the landlord had "substantially contributed to cause the delay" by "previously accept[ing] even later exercises of lease options ... without comment."

²⁰ World Wrapps also testified that there was little residual value to the improvements because they had been so heavily used during the four-year period. (REI Opening Brief pp. 27-28, 30-32.)

²¹ The 180-day notice period for the Third Renewal Option expired on November 27, 2009. (See Ex. 5, § 2.)

Wharf, 24 Wn. App. at 613. No similar facts are alleged, or exist, in the case between REI and World Wrapps.

In the absence of such evidence, World Wrapps suggests that its delay is justified because of an alleged drafting mistake made by REI.²² World Wrapps also alleges, *for the first time*, in its Opening Brief that REI knew of the mistake at the time the option expired, but did not tell World Wrapps about it.²³ The trial court made no findings and conclusions regarding REI's knowledge of the alleged mistake. (See CP 334-342.) Even if these allegations were supported by substantial evidence (they are not),²⁴ the mistake would be relevant only to the issue of World Wrapps' negligence in missing the deadline, *not the length of delay*, which is a separate factor. Wharf, 24 Wn. App. at 612-13.

Even so, REI respectfully requests that this Court disregard World Wrapps' allegation that REI "knew" the Third Amendment's termination date was erroneous and chose not to tell World Wrapps about it.²⁵ The documents relied upon by World Wrapps do not support these

²² WW Opening Brief p. 25 ("REI's Conduct Contributed to the Delay").

²³ Id. (claiming "REI knew about the mistake").

²⁴ See, e.g., REI Opening Brief pp. 40-43.

²⁵ WW Opening Brief pp. 14, 15 ("The letter did not admit or even mention the lawyer's mistake."), 25 ("REI knew about the mistake."). World Wrapps specifically claims that the REI lawyer who drafted the Third Amendment "knew" that the May 25, 2010 date was a mistake at the time of renewal. Id.

statements.²⁶ (See Exs. 84, 86) (correspondence from REI's asset manager to World Wrapps regarding its failure to timely exercise the option). Nor does *any* testimony from the REI lawyer, or any other witness. Nothing in the record supports these allegations.

To the contrary, REI's in-house counsel testified that she intended to use May 25, 2010 as the termination date. (RP 268:4-9.) The parties reviewed the draft amendment at least three times, including review by three executives from World Wrapps. (RP 441:14-442:4, 520:18-21.) Not one of those World Wrapps executives corrected the allegedly erroneous date, which was conspicuously highlighted. (*Id.*) World Wrapps did not even tell REI it thought the date was a mistake when REI informed World Wrapps that it missed the renewal deadline. (Ex. 87; RP 59:17-521:6, 525:18-526:19.)

In fact, both parties considered May 25, 2010, to be a correct date well into the present litigation. World Wrapps first alleged mutual mistake in its Amended Complaint.²⁷ World Wrapps' subjective claims

²⁶ Pointing only to two documentary exhibits, World Wrapps stated: "The lawyer who drafted the amendment (who knew the underlying circumstances, including her mistake) was a part of the team handling the matter. The record does not disclose whether she explained her error, and its impact on the exercise date, to the team." (WW Opening Brief p. 14.)

²⁷ See REI Opening Brief p. 19.

regarding REI's purported knowledge of the allegedly mistaken termination date are wholly unsupported and should be stricken.

World Wrapps also claims that, because REI's lawyer drafted the Third Amendment, REI is solely responsible for the allegedly mistaken termination date.²⁸ As explained in REI's opening brief, and above, the parties bargained for the terms in the Third Amendment, including through the exchange of several written drafts.²⁹ Three World Wrapps executives reviewed the conspicuously highlighted termination date and failed to change it before executing the agreement. (E.g., RP 441:14-442:4, 520:18-21.) The mistake, if any, was on World Wrapps' part – not REI's.

The trial court's own oral ruling contradicts the proposed Findings of Facts and Conclusions of Law that World Wrapps submitted and the trial court approved with few alterations. (See RP 623:5-14 (explaining that the court was "not criticizing REI" for not "notify[ing] [World Wrapps] that they had missed the date"), RP 621:12-16 (noting it was "okay for REI to play hardball on not reading into the lease that the duty of good faith means that you're supposed to tell somebody when they have

²⁸ WW Opening Brief p. 25

²⁹ REI Opening Brief pp. 13-15.

to exercise their options’’)). Conclusion of Law 7 is unsupported by the record and should be reversed.

III. SUMMARY OF RESPONSE TO CROSS-APPEAL

World Wrapps is not entitled to a reversal of the trial court’s decision to limit the award of attorneys’ fees. The trial court appropriately applied the correct lodestar method to limit fees where (1) World Wrapps did not prevail on four out of the five claims it pursued; and (2) World Wrapps did not prevail on the claim to which the majority of the resources were dedicated, both in discovery and at trial.

IV. STATEMENT OF CASE RELATED TO CROSS-APPEAL

A. Contractual Basis For Fee Award.

The May 25, 1995 Lease between REI and World Wrapps’ predecessor contains an attorney fee provision. (Ex. 1, § 25.) Although the provision is “one way” – only entitling the landlord to fees if it prevails in a dispute over the lease – Washington law deems the provision mutual. *See* RCW 4.84.330.

B. Relevant Procedural Facts.

On March 16, 2010, World Wrapps commenced suit against REI in King County Superior Court, alleging entitlement to an equitable grace period to timely renew the lease. (Cause No. 10-2-10432-1 SEA, Dkt. 1.) World Wrapps also claimed that REI did not give World Wrapps a 10-day

notice and opportunity to cure its untimely notice. (Id.) On or around May 25, 2010, World Wrapps amended its complaint to add a cause of action for scrivener's error/mutual mistake. (Id. at Dkt. 11-12.) World Wrapps' lawsuit was recently dismissed by stipulation.

After World Wrapps failed to vacate the premises at the expiration of the Lease, REI initiated the underlying unlawful detainer action by filing and serving its Summons and Complaint on or around July 1, 2010. (CP 1-6.) REI's Complaint contains only two causes of action: (1) Unlawful Detainer for Failure To Pay or Vacate (RCW 59.12.030(3)); and (2) Unlawful Detainer for Failure to Vacate Premises (RCW 59.12.030(2)). (Id. at 5-6.)

World Wrapps filed its Answer and Counterclaims on or around July 14, 2010. (CP 8-14.) World Wrapps included two affirmative defenses – (1) estoppel; and (2) reformation of the lease. (Id.) World Wrapps brought four counterclaims against REI: (1) breach of contract; (2) reformation; (3) equitable grace period and/or estoppel; and (4) declaratory relief. In its' trial brief, World Wrapps alleged a new claim for breach of the duty of good faith and fair dealing. (Id.)

The parties spent two and a half days trying the case. On Wednesday, September 15, 2010, the court issued its ruling from the bench. (RP 609-628.) The Court found that World Wrapps had satisfied

its burden under Washington law for an equitable grace period. (RP 620:8-10; CP 334-342.) The Court ruled against World Wrapps on each of its remaining counterclaims, including mutual mistake (reformation of the lease). (CP 341.) Because World Wrapps was entitled to an equitable grace period, REI's unlawful detainer claims were dismissed. (Id.)

V. CROSS-APPEAL RESPONSE ARGUMENT

A. **The Trial Court Did Not Err In Finding That World Wrapps Failed To Establish Its Fees Were Reasonable Under The “Lodestar” Method.**

Whether a requested attorney fee is reasonable is an independent determination to be made by the awarding court. E.g., Absher Const. Co. v. Kent School Dist. No. 415, 79 Wn. App. 841, 917 P.2d 1086 (1995). The “lodestar” method is the starting point for all attorney fee determinations. E.g., Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 675 P.2d 193 (1983). The lodestar method involves two steps: (1) determining the lodestar fee; and (2) adjusting the lodestar fee to reflect factors not already considered. E.g., Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 334, 858 P.2d 1054 (1993); Mellenbacher v. DeMont, 103 Wn. App. 240, 248, 11 P.3d 871 (2000). The reasonableness of an attorney fee request depends on the circumstances of each individual case. Absher, 79 Wn. App. at 847.

B. The Trial Court Did Not Err In Discounting Hours That World Wrapps Spent On Unsuccessful Claims.

The first step is to determine the lodestar fee by multiplying the hours reasonably expended in the litigation by each lawyer's reasonable hourly rate of compensation. Mellenbacher, 103 Wn. App. at 248.

World Wrapps' was not entitled to recover for every hour its attorneys spent working on this case. Courts must limit the lodestar fee to "hours reasonably expended, and should therefore discount hours spent on *unsuccessful claims*, duplicated effort, or otherwise unproductive time." Bowers, 100 Wn.2d at 597 (emphasis added).

Along these lines, Washington courts apply a "proportionality approach" to attorney fee awards involving contracts:

[W]hen the alleged contract breaches at issue consist of several distinct and severable claims, a proportionality approach is more appropriate. A proportionality approach awards the plaintiff attorney fees for the claims it prevails upon, and likewise awards fees to the defendant for the claims it has prevailed upon. The fee awards are then offset.

Marassi v. Lau, 71 Wn. App. 912, 917, 859 P.2d 605 (1993), overruled on other grounds, Wachovia SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 491, 200 P.3d 683 (2009). See also Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now, 119 Wn. App. 665, 82 P.3d 1199 (2004) (If "attorney fees are recoverable for only some of a party's claims,

the award must properly reflect a segregation of the time spent on issues for which fees are authorized from time spent on other issues ... *even if the claims overlap or are interrelated.*") (emphasis added).

A precise segregation of work allocated between the claims is not required, however, for the trial court to properly award attorneys' fees. The trial court was only required to outline a "rational basis" for determining "what represents a reasonable amount of attorney fees incurred" to prevail on the claim(s). *Id.* For example, in Mike's Painting, Inc. v. Carter Welsh, Inc., the arbitration panel "pro-rated the allowed legal fees and costs" on a claim by claim basis depending on which party prevailed. 95 Wn. App. 64, 534-35, 95 P.2d 532 (1999) (holding that the arbitrators did not abuse the "broad authority granted them by both the agreement of the parties and the statutes" when awarding attorneys' fees to the parties, relying upon Marassi).

Washington courts have also awarded fees "on the basis of time the parties spent on the various issues at trial." Crest Inc. v. Costco Wholesale Corp. et. al. 128 Wn. App. 760, 772-73, 115 P.3d 349 (2005). In Crest, Inc., because the court determined defendants prevailed upon an issue taking 90% of trial time, defendants were entitled to 90% of their attorneys' fees. *Id.* See also Fisons Corp., 122 Wn.2d at 1073 (hourly fee was multiplied by 50% of the hours expended in the entire case, the

amount the trial court decided was attributable to theories necessary to prove the Consumer Protection Act claim).

Here, the trial court rationally allocated fees to World Wrapps based on the proportion of time spent on the issues throughout the lawsuit and trial. (CP 343-44.)

The vast majority of the written discovery, document production, depositions, trial testimony, fact investigation, and legal analysis was dedicated to World Wrapps' claim that the expiration date contained in the Third Amendment was a "scrivener's error" or mutual mistake. (CP 326-27.) Argument by counsel and the testimony of witnesses during the trial was almost exclusively dedicated to fact issues relevant primarily to World Wrapps' mutual mistake and scrivener's error claim – *i.e.*, facts relating to the original lease term cycle, the negotiation of the Third Amendment, and drafting of the Third Amendment. (Id.)

Like the unlawful detainer, breach of contract, good faith and fair dealing, and declaratory judgment claims, which had limited or no evidence presented, the equitable grace period was a minor portion of this case. Comparatively few of the exhibits and far less of the trial testimony related to the factors required for an equitable grace period – *i.e.*, negligence by World Wrapps, inequitable forfeiture (including value of

the remodel and amortization), and the length of the delay in exercising the option. (Id.)

If the case had focused exclusively on equitable tolling, REI would not have called REI witness Danette Capello at all (and therefore avoided significant expense related to additional depositions, document production, and briefing on the attorney-client privilege). (Id.) REI would likely not have called witnesses Bobby Mullins and Tom Foley, and the testimony of REI witnesses, Jerry Chevassus and Wendy Mackenzie, would have been limited. (Id.)

World Wrapps argues that because the trial court's order states that the issue of mutual mistake was "related to the ultimate outcome," the trial court erred reducing its hours for time spent on unsuccessful claims.³⁰ But the court clarified that it was reducing the award because World Wrapps "did not meet the burden of proof on 4 out of the 5 issues raised in defense and counterclaims." (CP 344.) She further eliminated hours because "some testimony and discovery was needed on issues of prior agreements, default and remodel, and formation of Third Amendment" for unsuccessful claims and it was "difficult to separate the work with precision." (Id.)

³⁰ WW Opening Brief pp. 27-28.

This case is thus distinguishable from those relied upon by World Wrapps because the factual issues were distinct and severable. See Riss v. Angel, 131 Wn.2d 612, 934 P.2d 669 (1997) (relied upon by World Wrapps); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn. App. 762, 677 P.2d 773 (1984) (same). The trial court properly applied Marassi in reducing hours World Wrapps spent on unsuccessful claims. REI requests that this ruling be affirmed.

C. The Trial Court Did Not Err In Reducing World Wrapps' Fees For Time Spent On The "Other Lawsuit."

Although the two lawsuits are related, involving the same issues, the trial court did not error in reducing World Wrapps' fees for time spent on that matter. Time spent drafting distinct pleadings and the expense of filing them, including the Complaint, is not recoverable here.

For all of these reasons, Cross-Respondent Recreational Equipment, Inc. asserts that the trial court did *not* err in reducing the fee award to Cross-Appellant World Wrapps. The trial court's award of attorneys' fees and costs should be affirmed

VI. CONCLUSION

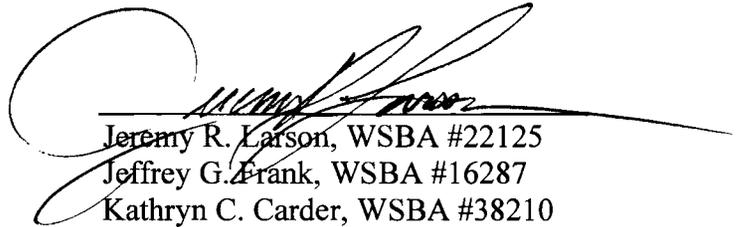
For the reasons stated here and in Appellant Recreational Equipment, Inc.'s Opening Brief, Appellant asks this Court to reverse, without remand, the trial court's grant of an equitable grace period to World Wrapps. World Wrapps' attempts to vilify REI are not sufficient to

justify the trial court's ruling. World Wrapps ultimately failed to meet its burden at trial to establish the inequitable forfeiture necessary to justify an equitable grace period.

REI respectfully requests that this Court enforce the written terms of the Third Amendment and order World Wrapps to vacate the premises. The award of attorneys' fees and costs to World Wrapps' should be reversed and an award made to REI as the prevailing party to include REI's claims for unpaid rent and attorneys fees.

RESPECTFULLY SUBMITTED this 31st day of March, 2011.

FOSTER PEPPER PLLC

A large, stylized handwritten signature in black ink, appearing to read 'Jeremy R. Larson', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the beginning and a long tail extending to the right.

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CERTIFICATE OF SERVICE

The undersigned declares that on Thursday, March 31, 2011, I caused to be served the following documents:

1. Appellant/Cross-Respondent Recreational Equipment, Inc.'s Reply Brief;
2. And this document to:

Mr. Paul R. Taylor, WSBA #14851
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- via hand delivery
- via first class mail, postage prepaid
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I declare under penalty of perjury under the laws of the State of Washington on Thursday, March 31, 2011, at Seattle, Washington.



Lisa Cachopo