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COURT OF APPEALS
STATE OF WASHINGTON

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NO. 63212-4-I

COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION I

LYDIA DAVIS, respondents,

vs.

DWAYNE DES LONGCHAMPS, appellants.

BRIEF OF RESPONDANT

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C. INTRODUCTION

This matter is an unlawful detainer brought by a landlord due to a tenant’s failure to pay rent and the failure to vacate after termination of the tenancy. The parties entered into a stipulation for settlement wherein the tenant received free rent for six months in exchange for vacating the premises by a date certain. The tenant admittedly did not vacate as required by the agreement. Pursuant to the express terms of the stipulation for settlement, the court granted the landlord’s *ex parte* motion for issuance of a writ of restitution and a judgment for all unpaid rent and attorney’s fees.

The tenant filed a motion for reconsideration claiming that he was entitled to additional notice than what was agreed upon in the stipulation for settlement. The motion for reconsideration was denied. The tenant now appeals requesting that this Court find it was error to follow the terms of the stipulation for settlement. The tenant further requests that this Court add terms to the agreement that were not bargained for, agreed upon, and do not appear in the stipulation.

D. STATEMENT OF CASE

Lydia Davis, the respondent, is an elderly woman in her eighties renting property in Woodinville, Washington. Ms. Davis sublet rooms in the rented premises to other parties including the appellant, Mr. des Longchamps. Mr. des Longchamps occupied a trailer in the driveway of the premises and had access to the house in order to use the bathroom. Mr. des Longchamps' tenancy was month-to-month and his rent was \$240.00 a month. Ms. Davis and Mr. des Longchamps had a separate verbal agreement that she would allow him to use her telephone service.

The relationship between Ms. Davis and Mr. des Longchamps broke down. Mr. des Longchamps verbally and physically assaulted residents of the premises, refused to pay rent, and harassed Ms. Davis. CP 48-59. Ms. Davis requested that Mr. des Longchamps vacate the premises and terminated their agreement concerning use of the telephone. In

August 2008, Mr. des Longchamps sued Ms. Davis in small claims court for his seeking damages for “recovery of prepaid cell phone expenses caused by the retaliatory action of terminating landline phone services to my rented RV space.” CP 46. The small claims matter was dismissed after a hearing on September 25, 2008 and never appealed. CP 47.

On August 20, 2008 the plaintiff served Mr. des Longchamps with a three-day notice to pay rent or vacate and a notice of termination of tenancy. The notice of termination of tenancy required the defendant to vacate the premises by September 30, 2008. CP 22. The notice to pay rent or vacate required the tenant to pay back rent for July and August within three days or vacate the premises. CP 6. When the defendant failed to comply with the notice to pay or vacate, the plaintiff brought this unlawful detainer action on September 2, 2008.

The case was set for trial after a show cause hearing on September 23. The court required Mr. des Longchamps to pay rent for July, August and September rent into the court registry and to continue to keep rent current pending trial. CP 9-10. On October 20, 2008, the court granted Ms. Davis’ motion to amend the complaint for unlawful detainer to add Mr. des Longchamps’ failure to vacate after termination of his tenancy as a cause of action. CP 18-22.

On the day of trial, the parties entered into a stipulation for settlement. CP 64-66. The sum and substance of the stipulation for settlement was that Mr. des Longchamps agreed he would entirely vacate the premises, including removing his trailer, by 11:30 p.m. on December 31, 2008. *Id.* In exchange, Mr. des Longchamps received free rent for six months and all funds he paid into the court registry were disbursed to him. *Id.* It was stipulated that if Mr. des Longchamps complied, Ms. Davis would dismiss the action with prejudice and without costs. If Mr. des Longchamps failed to comply Ms. Davis would be entitled to immediate issuance of a writ of restitution upon 24 hours' faxed notice to Mr. des Longchamps' counsel. CP 119-121. The trial court, Judge Douglas McBroom, reviewed, approved of, and signed the stipulation after querying Mr. des Longchamps and counsel concerning its terms and conditions. CP 114.

Mr. des Longchamps took no action to remove his personal property or himself from the premises by December 31, 2008. Pursuant to the terms of the stipulation for settlement, counsel for Ms. Davis faxed notice to Mr. des Longchamps of the default on January 1, 2009. CP 122-123. Counsel for Mr. des Longchamps telephoned Ms. Davis' counsel and acknowledged Mr. des Longchamps was in default but insisted that because it had snowed on December 22 his client should have an an

indeterminate amount of additional time to comply with the stipulation for settlement. CP 115. In the alternative, counsel demanded a hearing so he could ask the court to add additional terms to the stipulation for settlement. CP 91-96, 116.

Ms. Davis presented the motion and order to the trial court instead of submitting the matter to the *ex parte* department. Attempts to give courtesy notice to Mr. des Longchamps' attorney were unsuccessful as counsel had turned off his telephone and did not receive voice mail. CP 117, 124. On January 5, 2009, after attempting unsuccessfully to reach counsel for Mr. des Longchamps, the court entered a judgment against Mr. des Longchamps finding him guilty of unlawful detainer and an order issuing a writ of restitution. CP 113-124. The King County Sheriff physically evicted Mr. des Longchamps from the premises on January 13, 2009. CP 99.

Mr. des Longchamps filed a motion for reconsideration on January 14, 2009, claiming that Ms. Davis did not give proper notice under the terms of the stipulation for settlement and that he should be excused from compliance because it had snowed during the month of December. CP 91. After a telephonic hearing and requesting a declaration from counsel for Ms. Davis solely on the issue of notice the court denied the motion. CP 125.

E. ARGUMENT

1. The standard of review is for abuse of discretion

This appeal concerns whether the trial court properly enforced the terms of a written settlement agreement. A trial court's decision to enforce a settlement agreement pursuant to CR 2A and RCW 2.44.010 is reviewed under the abuse of discretion standard. *Morris v. Maks*, 69 Wn. App. 865, 868, 850 P.2d 1357 (1993) (citing *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987)). "An abuse of discretion occurs when a decision of the trial court is manifestly unreasonable or based on untenable grounds or reasons." *Id.*

In the *Morris* case, the parties were partners in a limited partnership. *Id.* at 867. Morris sued Maks for breach of fiduciary duty and the parties' respective attorneys commenced settlement negotiations. *Id.* The attorneys exchanged letters confirming an agreement reached through their telephonic conferences. *Id.* Three weeks after the last letter, Maks informed Morris that there was no settlement, and the trial court entered an order enforcing the settlement agreement. *Id.* at 868. The Court of Appeals declined to disturb the trial court's ruling on the basis that the writings satisfied the requirements of a CR 2A settlement.

The present case implicates no constitutional issues. The issues revolve solely around the trial court's interpretation of a settlement

agreement executed by the parties and approved by the court. Mr. des Longchamps has not shown that the compromise in the stipulation for settlement — by its very definition suggesting a waiver of certain due process rights — implicates constitutional issues to justify *de novo* review. The trial court made a finding of fact that Mr. des Longchamps failed to comply with the stipulation for settlement and that Ms. Davis gave proper notice of such non-compliance. CP 74-75. This Court should confine its analysis to the interpretation of the settlement agreement. As such, the standard of review is for abuse of discretion since the trial court enforced the stipulation's terms. *Morris, supra*.

Mr. des Longchamps has assigned error to the trial court's findings of fact, not to its conclusions of law. An appellate court will uphold a trial court's finding of fact if the finding is supported by substantial evidence. *Pac. Indus., Inc. v. Singh*, 120 Wn. App. 1, 10, 86 P.3d 778 (2003). "In determining whether substantial evidence exists to support a court's finding of fact, the record is reviewed in the light most favorable to the party in whose favor the findings were entered." *Marriage of Gillespie*, 89 Wn. App. 390, 404, 948 P.2d 1338 (1997), (citing *DeBenedictis v. Hagen*, 77 Wn. App. 284, 291, 890 P.2d 529 (1995)). In the present case, Mr. des Longchamps assigns error to the trial court's finding that counsel for Ms. Davis gave faxed notice to counsel for Mr. des Longchamps of his client's

failure to comply with the terms of the stipulation. des Longchamps Brief at 1. CP 75. This finding is not subject to *de novo* review, but is subject to “substantial evidence” review in the light most favorable to Ms. Davis.

2. Settlement agreements are to be enforced to encourage settlement

The Court should uphold the stipulation for settlement as a matter of policy. Settlements in litigation are encouraged, and may be especially advantageous to a tenant in an unlawful detainer case if that tenant can avoid having an eviction on his or her record.

The purpose of CR 2A is not to impede without reason the enforcement of agreements intended to settle or narrow a cause of action; indeed, the compromise of litigation is to be encouraged. In order for CR 2A to apply and to bar evidence of a non-complying settlement agreement, the “purport” of the agreement must be disputed. This means that there must be a dispute regarding the existence or material terms of the agreement. *A litigant's remorse or second thoughts about an agreement is not sufficient.*

Lavigne v. Green, 106 Wn. App. 12, 19, 23 P.3d 515 (2001) (emphasis added, internal citations omitted). Such is particularly the case when, as here, a party enters into such an agreement on the advice of counsel and with the approval of the court. In *Lavigne*, the parties attempted to mediate their respective claims for fire damage. *Id.* at 14. Although the parties reached a settlement in principle, Mr. Lavigne ultimately refused to sign a written settlement agreement. *Id.* He later stated on the record that

he was unhappy with the dollar amount of the settlement. *Id.* at 19. “After agreeing to settle the case for \$100,000, Mr. Lavigne decided that the settlement proceeds would be insufficient to meet the personal obligations associated with the lawsuit.” *Id.* The court held that Mr. Lavigne's second thoughts about the amount of the settlement and his desire not to abide by it did not make the agreement disputed within the meaning of CR 2A. *Id.* at 19.

The *Lavigne* court ultimately found there were material issues of fact with regard to material provisions of the agreement omitted in the existing agreement and therefore remanded the matter for an evidentiary hearing. *Id.* at 21. This result from *Lavigne* is distinguishable from the present case. The record in the case at bar contains a written stipulation for settlement signed by all parties, their counsel, and the court. CP 64-66. The parties and the court agreed that the agreement was complete in its form. In *Lavigne*, the issue centered upon whether an enforceable settlement agreement even existed due to missing terms. Here, the parties agree that an agreement existed, but disagree over the interpretation of the notice provision.

If the court were to set aside the present stipulation for settlement, future litigants will have very little faith in the integrity of settlement agreements. Parties will be disinclined to settle if one party can fully

perform under the agreement and the other party opts out. This is what happened here. Mr. des Longchamps received the benefit of the bargain in the stipulation: he received free rent for six months and the rent he paid into the court registry was returned to him. CP 44, 64-68. He had approximately two months to move his trailer, as opposed to the week he would have had if he had been evicted following trial.¹ Mr. des Longchamps failed to vacate the premises by the required date. CP 74, 110. Mr. des Longchamps made no attempts to seek additional time prior to the deadline to vacate the premises. His apparent remorse over the terms of the stipulation after his failure to comply does not justify a reinterpretation of the stipulation. The court should uphold the stipulation for settlement as a matter of policy to ensure that future litigants will have confidence in the integrity of their settlement agreements.

3. Notice of violation was properly delivered pursuant to the terms of the stipulation for settlement

Mr. des Longchamps had no right to a hearing under the stipulation. His assertions to the contrary are incorrect and inconsistent with the express terms of the stipulation for settlement. The plain language of Paragraph 6 of the stipulation reads:

If defendants fail to comply with all requirements of this stipulation the plaintiffs will be entitled, upon the filing of a

¹ In this case a writ of restitution was issued on January 5, 2009, and the King County Sheriff physically evicted Mr. des Longchamps on January 13, 2009.

declaration certifying that the defendants are not in compliance and 24 hours faxed notice to counsel Dan Young, to the immediate issuance of a writ of restitution and a judgment for all unpaid rents, attorney's fees and court costs. Said writ of restitution and judgment may issue in *ex parte* with 24 hours faxed prior notice to the defendants or the defendant's counsel.

CP 65. Ms Davis had the right to obtain judgment and a writ of restitution *ex parte* after notifying Mr. des Longchamps of his failure to comply.

Black's [Law Dictionary] defines "*ex parte*" as something being made by one party: "Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other.

State v. Watson, 155 Wn.2d 574, 579, 122 P.3d 903 (2005). The stipulation's notice provision gives Mr. des Longchamps the right to notice of non-compliance and no more. It does not give him the right to an additional evidentiary hearing or an opportunity to raise additional defenses. CP 65.

Settlement agreements are governed by general principles of contract law. *Morris v. Maks*, 69 Wn. App. 865, 868 (1993). "Under the principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another), [a] list of particulars is treated as exhaustive." *Aspon v. Loomis*, 62 Wn. App. 818, 826, 816 P.2d 751 (1991) (*citing* S. BURNHAM, DRAFTING CONTRACTS 83 (1987)). In *Aspon*,

the court declined to extend a landlord's duty to maintain the premises beyond what the legislature had imposed, finding that the scope of the statute was limited to what was explicitly expressed:

[T]he Legislature specifically provided that a landlord must keep structural aspects of buildings in good repair (RCW 59.18.060(2)) and keep common areas reasonably clean, sanitary, and safe from defects (RCW 59.18.060(3)), but did not provide that landlords must keep non-common areas safe from defects.

Id. In the present case, the stipulation for settlement gave Mr. des Longchamps the right to notice of non-compliance, but did not give him the right to a hearing. Mr. des Longchamps is correct in asserting that the stipulation's handwritten "change in language is highly significant." des Longchamps Brief 11. The parties negotiated and modified the stipulation for settlement before signing, adding certain language and omitting certain language. The stipulation's final version contained no provision allowing Mr. des Longchamps the right to a hearing or the right to attend the presentment of the *ex parte* motion for non-compliance.

Mr. des Longchamps asserts that the purpose of the notice requirement was to:

provide the Tenant with some opportunity—albeit somewhat limited—to contest the propriety of the amount sought in the judgment and to contest, perhaps on equitable grounds, the issuance of a writ of restitution.

des Longchamps Brief 13. That interpretation was rejected by the trial court. CP 125. Upon notice, Mr. des Longchamps had the opportunity to either vacate the premises as he was supposed to, or present evidence that he had, in fact, already vacated. He did neither. Instead, he contacted Ms. Davis verbally and insisted he was entitled to an indeterminate amount of additional time. CP 97-98.

Under the doctrine of *expressio unius est exclusio alterius*, the inclusion of a 24-hour notice provision and the exclusion of any right to a hearing evidences the intent of the parties to give Ms. Davis an immediate remedy when Mr. des Longchamps failed to perform. Ms. Davis satisfied the notice provision by delivering 24 hours' faxed notice of non-compliance. Mr. des Longchamps was not entitled to an additional hearing.

Mr. des Longchamps asserts that he did not receive 24 hours' notice of non-compliance prior to January 5, the day the court entered judgment against him. des Longchamps Brief 15. The record shows that counsel for Ms. Davis faxed the notice of non-compliance on January 1, 2009. CP 88-89. As evidenced by the declaration of Mr. des Longchamps' attorney, counsel for the parties held a telephonic conference regarding the violation of the stipulation for settlement on

January 2. CP 97. This is sufficient evidence by any standard there was proper notice.

The evidence on the record shows that Ms. Davis attempted, as a professional courtesy, to inform Mr. des Longchamps of when a judgment and writ of restitution would be sought. CP 116-118. Even the trial court attempted to contact counsel for Mr. des Longchamps. *Id.* The record shows that despite the best efforts of Ms. Davis and the trial court, no one was able to contact Mr. des Longchamps' counsel prior to the order entering judgment and issuing a writ of restitution. *Id.*

Ms. Davis satisfied the notice provision of the stipulation for settlement by faxing notice of non-compliance and waiting over 24 hours to seek a judgment and writ of restitution. The plain language of the stipulation allows Ms. Davis to seek such relief *ex parte* and does not give Mr. des Longchamps the right to a hearing.

4. The judgment and the writ of restitution were properly sought *ex parte*

The stipulation for settlement states that in the event of Mr. des Longchamp's failure to comply, Ms. Davis may obtain a writ of restitution and judgment *ex parte*. CP 64-66. The recognized definition of *ex parte* in Washington is relief sought "at the instance and for the benefit of one party only, and *without notice to, or argument by, any person adversely*

interested; of or relating to court action taken by one party without notice to the other.” *State v. Watson*, 155 Wn.2d at 579 (2005) (emphasis added). The stipulation states that Ms. Davis “may,” but need not present her motion and order for judgment and writ of restitution to the *ex parte* department.² CP 65. In the present case, Ms. Davis presented her *ex parte* motion to the trial judge instead of to the *ex parte* department. This was at Ms. Davis’ option and agreed to by the court and counsel. Absent this language, the trial court would have retained exclusive jurisdiction over the matter. The trial court acted properly in entering judgment and ordering a writ of restitution without notice of presentment to Mr. des Longchamps.

5. There is no violation of due process where a party expressly agrees to entry of a judgment without a hearing if he fails to comply with the terms of a stipulation for settlement

The terms of the stipulation for settlement agree to limit Mr. des Longchamps’ right to a hearing. Mr. des Longchamps’ attempt to raise issues relating to due process after negotiating them away via settlement are therefore without merit.

Settlement agreements are governed by general principles of contract law. *Morris v. Maks*, 69 Wn. App. 865, 868 (1993). A party may

² On January 1, 2009, King County Superior Court changed its procedures for presentment of *ex parte* motions. Walk-in presentment of *ex parte* motions was eliminated in the unlawful detainer context. This resulted in a delay of a matter of days from the time the motion would be filed to the time the order would be signed.

waive its right to notice of non-compliance in the same manner as it may waive any other contractual right. In fact, the very nature of a settlement involves the waiver of certain rights, and a party may waive its right to notice by agreement. *Zamora v. Mobil Oil Corp.*, 104 Wn.2d 211, 222, 704 P.2d 591 (1985). In *Zamora*, the court held that a party may waive its right to notice of a “reasonableness” hearing mandated by statute that required all parties be given notice of the hearing and have the opportunity to argue the matter. *Id.*

In the present case, the parties crafted a settlement where Mr. des Longchamps waived the right to a statutorily-required seven-to-thirty days’ notice of a show cause hearing for unlawful detainer. RCW 59.18.370. Furthermore, the parties stipulated that a judgment and writ of restitution could issue in the event Mr. des Longchamps failed to comply with the settlement agreement. CP 65. Mr. des Longchamps admits he failed to comply with the stipulation for settlement. des Longchamps Brief 6. His attempt to attack the reasonableness of the judgment finding he had violated the stipulation for settlement and was therefore guilty of unlawful detainer fails because he waived his right to a hearing on the matter. The trial court specifically found that Ms. Davis satisfied the 24-hour notice requirement to Mr. des Longchamps of his non-compliance with the stipulation for settlement. CP 75. Under the “abuse of

discretion” standard, Mr. des Longchamps has not shown that the court’s finding was manifestly unreasonable or based on untenable grounds or reasons. The trial court’s finding is amply supported by substantial evidence; it is stipulated by the parties that counsel for Ms. Davis delivered faxed notice of non-compliance on January 1, 2009, more than 24 hours before the judgment and writ of restitution were obtained on January 5.

6. Breach of contract prohibits a party from raising equitable defenses

Mr. des Longchamps is estopped from presenting equitable defenses due to his confessed failure to comply with the stipulation for settlement. Washington courts recognize the maxims regarding equity: “‘He who seeks equity must do equity,’ and ‘he who comes into equity must come with clean hands.’” *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982). In *Retail Clerks*, the respondents breached a collective bargaining agreement and withheld information which would have prompted action at an earlier date. *Id.* The respondents in *Retail Clerks* effectively hid the breach from the petitioners until an audit was performed and the breach was discovered. *Id.* The *Retail Clerks* court rejected the respondents’ equitable defense of laches because allowing that defense would have

been to reward them for their inequitable conduct. The respondents in *Retail Clerks* had come before the court with “unclean hands” because they were the party responsible for the original breach of contract. *Id.*

In the present case, Mr. des Longchamps accepted six months of free rent and took no action to vacate the premises. He did not remove *any* of his personal property. Nor did he seek an extension of time to move his trailer until the deadline to vacate the premises had come and gone, a writ of restitution and judgment had issued, and he had been physically evicted by having Ms. Davis arrange for the trailer to be removed. CP 97. Indeed, no specific time extension was ever requested; Mr. des Longchamps simply stated in mid-January that he could not have moved by December 31 because of bad weather. CP 110. He made no attempt to move other than to solicit a single unsworn declaration that he made two attempts to vacate in late December.³ CP 109-110. Under *Retail Clerks*, that inequitable conduct removes any basis for Mr. des Longchamps to make his case in equity. He comes to the court with unclean hands while seeking equitable relief following his failure to perform as agreed after accepting Ms. Davis’ full performance under the agreement.

³ The declarations of William H. Simpson and Dwayne des Longchamps do not comply with GR 13, in that they do not state the place where signed.

7. Force majeure may not be read into a contract

Mr. des Longchamps' argument that he would have presented a *force majeure* defense at a hearing on the stipulation violation is without merit. In the case at bar, the stipulation for settlement contained no *force majeure* clause. CP 64-66. While an express *force majeure* clause is enforceable, Washington law does not recognize the *force majeure* doctrine as an implied-in-law provision to contracts. *See, e.g., Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 115 P.3d 262 (2005); *TransAlta v. Sicklesteel Cranes*, 134 Wn. App. 819, 142 P.3d 209 (2006); *Citoli v. City of Seattle*, 115 Wn. App. 459, 61 P.3d 1165 (2002).

Mr. des Longchamps waived his right to such excuses to perform when he executed the stipulation for settlement. Under the *expressio unius est exclusio alterius* doctrine, discussed *supra*, the lack of a *force majeure* clause in the stipulation for settlement means that the parties did not intend to include such a clause in the agreement. It would therefore be inappropriate for this Court to impose terms into the contract where none existed. *Aspon v. Loomis*, 62 Wn. App. 818, 826 (1991). It would set a poor precedent if the Court were to presume a *force majeure* clause here. If such a clause were deemed to exist, the terms of the clause would have to be determined as well. Such terms would include how much additional time Mr. des Longchamps would have to move, how much rent or penalty

he would have to pay Ms. Davis for remaining on the premises past the deadline, and when such rent would be due to invoke the *force majeure* clause.

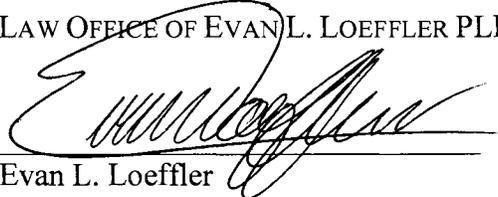
8. Ms. Davis was entitled to an award of her reasonable attorney's fees as the prevailing party, and is entitled to additional attorney's fees on appeal

A plaintiff who prevails in an action for unlawful detainer may be awarded statutory costs and reasonable attorney's fees. RCW 59.18.410. "The reasonableness of an award of attorney's fees is reviewed under the abuse of discretion standard." *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 666, 935 P.2d 555 (1997).

The stipulation for settlement specifically authorized Ms. Davis to obtain a judgment *ex parte* to include "all unpaid rents, attorney's fees and court costs." CP 65. The stipulation for settlement did not say Ms. Davis was entitled to an award of all taxable attorney's fees and costs, but *all* fees. Mr. des Longchamps was aware of the language when he and his attorney agreed to its terms. The award of attorney's fees and court costs was not manifestly unreasonable since the award was supported by proper evidence, including the declaration of counsel itemizing every entry. CP 79-84. Notwithstanding Mr. des Longchamps' editorial comments about the reasonableness of the fees and costs requested, this Court should not

Respectfully submitted this 20 day of July, 2009.

LAW OFFICE OF EVAN L. LOEFFLER PLLC

A handwritten signature in black ink, appearing to read "Evan L. Loeffler", written over a horizontal line.

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Attorney for Lydia Davis, respondent

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NO. 63212-4-I

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DECLARATION OF MAILING

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STATE OF WASHINGTON

Margaret I. Schmidt states as follows:

- 1) I work for the Law Office of Evan L. Loeffler PLLC, attorney for the respondents herein, am over the age of eighteen years, and make the following statement upon personal knowledge and belief.

- 2) On July 20, 2009, I deposited in the mail of the United States of America a properly stamped and addressed envelope, prepared for regular directed to Dan Young, attorney for respondents at the following address:

Dan Young, 1000 Second Avenue, Suite 3310, Seattle, Washington, 98104-1046

containing a copy of the following document(s):

1. Brief of Respondent.

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

DATED at Seattle, Washington, this ~~10~~¹⁰th day of July, 2009.


Margaret I. Schmidt