

65 338-5

65338-5

No. 65338-5-I

COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

COLLEGE GEAR.COM INC., *Plaintiff,*

v.

GEAR ATHLETICS LLC (f/k/a ALKI SPORTS LLC), *Appellant, Cross-Respondent*

v.

ENGSTROM PROPERTIES, LLC, *Respondent, Cross-Appellant*

v.

CHAD BAERWALDT, *Appellant, Cross-Respondent*

REPLY BRIEF ON ENGSTROM PROPERTIES'
CROSS-APPEAL

REAUGH OETTINGER & LUPPERT, P.S.
Sylvia Luppert, WSBA 14802
Attorneys for Engstrom Properties LLC

1601 Fifth Avenue
Suite 2200
Seattle, WA 98101-1625
(206) 264-0665
(206) 264-0662, fax
sll@reaugh.com

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I. FACTS MATERIAL TO REPLY.

Gear Athletics (“Gear”) sued Engstrom Properties in May 2008. Finding 34, CP 435. Gear’s third party complaint neither demanded nor mentioned arbitration as a means of resolution of any aspect of its claims. CP 30-34. Gear stopped paying all rent and CAM charges in September 2008. Finding 12, CP 432. In November 2008, Engstrom supplemented its Answer by alleging a counterclaim for unpaid rent. CP 63-66. On December 11, 2008, a month after Engstrom’s counterclaim and almost eight months after suing Engstrom, Gear demanded an arbitration which, at best, could resolve only part of the dispute between the parties. CP 100. The Lease expired on December 31, 2008. Ex. 1. Since the time Engstrom completed repairs to the roof in January 2007, Gear had provided no notice under the Lease that Engstrom had failed in any of its obligations as Landlord. Finding 11, CP 432. See Appendix A¹.

On January 9, 2009, Judge Charles Mertel ordered arbitration between Gear and Engstrom, over Engstrom’s objection. CP 148-49. Appendix A. In April 2009, Gear and Engstrom arbitrated before a panel of three real estate appraisers. Findings 39, 40, CP 436, Appendix A. In May 2009, Gear

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The trial court’s Findings and Conclusions are sequenced with reference to claims. Because the sequence of events is important to this Reply, as an aid to the Court, Engstrom has included Appendix A to this Reply Brief which displays chronologically the events referenced in the Findings and Conclusions.

amended its third party complaint to add still more nonarbitrable claims. CP 177-182. In June 2008, Gear moved to confirm the appraisers' arbitration award. CP 213. On August 10, 2009, the trial court confirmed the appraisers' award and trial commenced. CP 362-63, 364-65.

II. ARBITRATION AWARD CONFIRMED IN ERROR.

Washington, indeed, has a strong policy favoring arbitration. The policy is not as boundless as Gear argues, however. Washington's Courts' fundamental goal of securing just, speedy, and inexpensive determinations of every action and the Courts' adherence to contract principles limit the policy favoring arbitration.

A. THE GOAL OF SECURING JUST DETERMINATIONS REQUIRES REVERSAL OF ARBITRATION AWARD.

Overriding every judicial proceeding is a policy more fundamental than the policy favoring arbitration. The courts' fundamental purpose of doing justice requires the construction of the civil rules to secure the just determination of every action. *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 583 (1979). CR 1 provides, "These rules . . . shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

Because the civil rules govern all civil suits, all procedural statutes implicitly adopt them. *In re Estate of Kordon*, 157 Wn.2d 206, 213 (2006).

The Washington Arbitration Act, Chapter 7.04A RCW is a procedural statute. Where a civil rule is inconsistent with a procedural statute, the Washington Supreme Court's power to establish the procedural rules for the courts is supreme. *Petrarca v. Halligan* 83 Wn.2d 773, 776 (1974). The fundamental requirement of securing justice makes CR 1 paramount to the policy favoring arbitration when they are inconsistent.

Engstrom's brief on its cross appeal posed the inconsistency between securing justice and confirming the appraisers award, stating, at page 1, "There is an irreconcilable contradiction between the trial court's pretrial entry of an order confirming an arbitration award for rent abatement in Gear's favor and Conclusion 8, made after a full and fair trial, concluding that Gear has no right to rent abatement."² More specifically, Judge Bradshaw's Conclusion that Gear has no right to rent abatement is wholly inconsistent with his confirmation of the arbitration award of rent abatement.

The Findings and Conclusions make abundantly clear that Engstrom fully and faithfully performed every obligation of Landlord under the Lease and that Gear is not entitled to any rent abatement. The partial damages to the Premises, a leak in the roof, was promptly repaired as required by the

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Conclusion of Law 8 states, "Absent a substantial loss of use of the Premises caused by partial damage to the Premises, the Lease contains no right to rent abatement. Because no loss of use of the Premises occurred from any damage to the Premises, Gear Athletics is not entitled to any rent abatement for any portion of the lease term." CP 440.

Lease and resulted in no damage or loss of use to the Subtenant or to Gear. After the roof was repaired in January 2007, Gear made no complaint about Engstrom's performance of its obligations under the Lease.

Consequently, one must ask why an arbitration award against Engstrom for rent abatement to which Gear is not entitled should be confirmed. The only answer offered by Gear is simply because arbitration awards are sacrosanct, regardless of whether any basis for the award exists. Confirmation of the award, however, unjustly penalizes Engstrom who is completely without fault, and was dragged into the arbitration to which it had never agreed.

Gear argues that the time and expense of resolving the dispute would be increased if "the parties first file suit, litigate the issue of *liability* for rent abatement for months or years in court, and then, if liability were found, initiate a separate arbitration for yet another round of litigation on the issue of *damages*." Gear Response, page 5 (emphasis is Gear's). This argument ignores the real circumstances of this case. Gear, not Engstrom, initiated suit instead of demanding arbitration. Almost eight months later, Gear first demanded arbitration. See Appendix A. When Gear demanded arbitration, it was clear that a trial would also be required. Engstrom's counterclaim for rent, the other aspects of Gear's Third Party Complaint, and particularly as amended to include claims of fraud, could not be resolved by arbitration,

necessitating a trial regardless of whether an arbitration was held. In this case, Gear manipulated the proceedings to insure that there would be both an arbitration and a trial. Gear's actions alone increased the expense of resolution. Gear is not the victim of a "convoluted process," but instead the creator of it.³

Had the trial preceded the arbitration, as Engstrom argued it should, Conclusion 8 assures that there never would have been an arbitration. The arbitration was neither just nor inexpensive.

The more fundamental policy of securing a just determination of every action should override the policy favoring arbitration, even if this Court determines that the parties agreed to arbitrate.

B. CONTRACT CONSIDERATIONS REFLECT NO AGREEMENT TO ARBITRATE RENT ABATEMENT.

"While a strong public policy favoring arbitration is recognized under both federal and Washington law, 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 811 (2009), quoting *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (other citations omitted).

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To whatever extent Gear is making an open-the-floodgates argument, no resolution of the present case by this Court would do so given the unique factual circumstances present.

Engstrom Properties, LLC (“Engstrom”) and Gear Athletics LLC (“Gear”) agreed to arbitrate only a single issue before a panel of real estate appraisers: “the extent of rent abatement” for loss of use of the Premises. Lease, ¶ 16.12(b), Exhibit 1, Appendix B. The Tenant’s right to rent abatement arises in only two circumstances: First, when the Landlord fails to perform Landlord’s obligation of repair, and Tenant after giving written notice, makes repairs. Exhibit 1, Lease ¶ 7.3 (b). Second, “If the Premises are Partially Damaged, the rent payable while such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant’s reasonable use of the Premises is substantially impaired.” Exhibit 1, Lease, ¶ 9.5, Appendix B.

Neither circumstance occurred. After Engstrom timely repaired the roof in January 2007, neither Gear nor its Subtenant gave Engstrom notice of any further water intrusion, or for that matter, Gear never gave Engstrom any written notice that Engstrom had failed to perform any of Landlord’s obligations under the Lease. Findings 11, 23, CP 432, 434. More important, “There was insufficient evidence presented that the water intrusion in November and December 2006 actually disrupted Feelgood’s – or Gear Athletics – use of the Premises.” Finding 22, CP 434. In addition, “Feelgood’s use of the Premises between September 2006 and March 31, 2008, when it voluntarily vacated was not impaired by any substantial

damage to the Premises.” Finding 28, CP 434. Gear challenges neither Finding.

If there is no loss of use of the Premises, there is no right to rent abatement. If there is no right to rent abatement, the Lease does not provide any basis for arbitration.

Contrary to Gear’s argument that the Lease provides for arbitration of “any dispute,” the Lease’s arbitration provision is narrow: “If any dispute arises between Landlord and Tenant *regarding the extent of rent abatement under Section 9*” Ex. 1, Appendix B. By referring back to Section 9, the arbitration provision incorporates section 9.5. Section 9.5 sets as a condition of the right to rent abatement, some loss of use of the premises.

Gear is, of course, correct that when construing an arbitration agreement, courts must construe it as a whole. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 351-52 (2004). Gear’s alteration of the arbitration provision from “any dispute arises . . . regarding the extent of rent abatement under Section 9,” to “any dispute,” is contrary to the principle it states. Equally contrary is Gear’s omission of the requirement for rent abatement in Section 9, that the tenant has lost the substantial use of the Premises. Reading the Lease as a whole requires recognition that arbitration is limited to the extent of rent abatement under Section 9, and that rent abatement under Section 9 is limited to loss of use.

The primary goal in interpreting a contract is to ascertain the parties' intent. *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990). Intent is determined by “viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and the conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.” *Scott Galvanizing, Inc. v. Northwest EnviroServices, Inc.*, 120 Wn.2d 573, 580 (1993), quoting *Berg*, at 667.

The parties' intent reflects the usual circumstances when leased premises have been damaged. In the usual circumstances, when a tenant has actually lost some use of the premises, both the tenant and the landlord know it, and the only dispute is the amount of the loss. Here, Engstrom knew that the Subtenant had *not* lost any use of the premises, and Gear apparently had no knowledge at all. Brad Olson, the property manager who visited the building regularly during the Subtenant's occupancy, saw no difference in the Subtenant's usage of the Premises. RP 221-222. Chad Baerwaldt, the owner of Gear, had no knowledge of whether the Subtenant's usage of the basement had changed. RP 438-39. Here, neither the tenant nor the landlord knew of any loss of use of the Premises. They could not know it because no loss of use occurred. Without a loss of use there was neither a right to rent abatement nor a right to arbitrate the extent of rent abatement.

The Lease's requirement that the arbitration be before three real estate appraisers also reflects the usual circumstance where both the Tenant and Landlord know there has been a loss of use, and are merely disputing the rental value of the loss. Real estate appraisers' expertise is determining value, not contract construction.

C. ARBITRATORS EXCEEDED THEIR AUTHORITY

The real estate appraisers' award, on its face, shows that the appraisers exceeded their authority in two different ways.⁴

The appraisers awarded \$50,000 to Gear and 79.36 percent of the expenses of arbitration. Ex 18. The strange percentage of 79.36 exactly coincides with the ratio of 50 to 63, or the appraisers' award of \$50,000 and Judge Carroll's award of \$63,000. The strange percentage of their award of expenses demonstrates that the appraisers accepted Judge Carroll's award as the entire basis for their award. They did not themselves determine the extent of rent abatement based upon loss of use, which is the only basis to which their authority extends.

The appraisers' giving Judge Carroll's award res judicata effect is

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Gear incorrectly states the holding of *Broom v. Morgan Stanley DW Inc.*, 169 Wn.2d 231 (2010). The Court's actual holding is, "We hold that facial legal error falls within former RCW 7.04.160(4) as *one* instance in which arbitrators exceed their powers and that it is a valid ground to vacate an arbitration award." (Emphasis added.) Gear argues that facial legal error is the only grounds for showing that the arbitrators exceeded their authority.

error of law on the face of the award. To establish res judicata requires the identity of four elements: (1) cause of action; (2) subject matter; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made. *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 858, 860, 726 P2d 1 (1986). As Engstrom argues in its Response Brief, pp 27-28, there can be no identity of these issues, particularly absent Engstrom's participation as a party or through witnesses in the arbitration before Judge Carroll. Whether the appraisers could understand the principles of res judicata, as Gear argues, the result is the same: the appraisers gave res judicata effect to Judge Carroll's award, demonstrating a legal error on the face of the appraisers' award.

It is also evident from the face of the appraisers' award, that the award is not based rent abatement for loss of use. Gear's Third Party Complaint correctly states that building consists of "approximately 35,780 rentable square feet of area on the first, second, third, fourth, fifth, mezzanine and lower level floors of the Leased Premises." CP 31. Any loss of use was confined to the basement for, at most, a period of less than two months. Rent for the entire building for two months is less than \$35,000. The amount of rent abatement for two months for one floor could not exceed the amount of rent for the entire building.

Last, the Lease does not provide for arbitration of anything other than

rent abatement in proportion to loss of use. The appraisers exceeded their authority under the Lease.

D. Award Procured by Undue Means.

Engstrom acknowledges that vacation of an arbitration award on the grounds that it was procured through fraud or undue means is exceedingly rare. Nonetheless, the first basis stated in RCW 7.04A.230 as grounds for vacation is “(1) Upon motion of a party to the arbitration proceeding, the court shall vacate an award if: (a) The award was procured by corruption, fraud, or other undue means.” In addition, *Seattle Packaging Corp. v. Barnard*, 94 Wn.App. 481, 487 (1999), recognizes this basis, holding, “We agree, and hold that an arbitration award procured by perjured testimony as to a material fact of consequence in the arbitration proceedings constitutes fraud within the meaning of RCW 7.04.160(1).” Rarity is not a good reason to disregard fraud or undue means as a basis for vacating an award when both statute and case law authorize it.

In addition to Gear’s attorney falsely telling the legally unsophisticated appraisers that Judge Mertel agreed with Judge Carroll, and his knowingly improper representations of what various persons said and saw when those persons were not witness, he told the appraisers that he had photographs of a flooded basement. He made a show before the appraisers of telephoning his office and directing someone to bring the photographs

over. They did not arrive, because these photographs do not exist. While Gear's attorney was not under oath, he made deliberate misrepresentations to the appraisers inconsistent with the standards for officers of the court. He has never denied Engstrom's attorney's allegations about his conduct. Instead, Gear's brief brushes this misconduct off as "sloppy or overzealous lawyering." Response, page 12.

Gear is also wrong in asserting that a court may never examine the evidence in an arbitration. *Seattle Packaging Corp.*, at 487-88, states that generally courts do not examine evidence presented in an arbitration, but an exception, applicable here, may be made.

In cases where the claimant contends that an arbitration award was procured by fraud, including perjury, courts must necessarily review enough of the evidence submitted to the arbitrators to determine whether clear and convincing evidence exists that perjury was committed with respect to a material issue of consequence in the proceedings and that substantial rights of a party have been prejudiced thereby.

There was no evidence of any loss of use during the arbitration before the appraisers. Chad Baerwaldt, the owner of Gear Athletics admitted at trial that he had no knowledge of any loss of use by the Subtenant. RP 438-39. His father, Mark Baerwaldt, testified that the only witnesses at the arbitration were himself, his son Chad, Steve Engstrom, and Brad Olson. RP 90. (In the same colloquy, he understandably expressed his belief that the attorneys also testified.) Steve Engstrom and Brad Olson testified that there was no loss of

use. So the answer to the question of how the arbitrators could have determined their award must be that they were persuaded by fraudulent or undue means.

There was no loss of use of the premises, there was never any evidence of loss of use of the premises at either the trial or the arbitration, so there is no basis for any award of rent abatement. Given all that, confirmation of the award of rent abatement was error and unjust.

III. ATTORNEYS FEES

Gear does not respond to the issue raised by Engstrom on cross appeal that it should not have been given any award or offset for its legal expenses because it was not the prevailing party. Instead, Gear claims, at page 36, “All Engstrom says is that, given the existing judgement, the trial court properly deem it the prevailing party – a proposition that Gear Athletics did not dispute.” Although Gear seemed to dispute this at the trial court level, CP 444-455, Engstrom asks the Court to accept Gear’s concession now that it was not a prevailing party.

Very recently, *Cornish College of the Arts v. 1000 Virginia Limited Partnership*, 2010 WL 4159298, 12 (Wn.App. Div. 1, October 25, 2010), followed the “proportionality rule” described in *Marassi v. Lau*, 71 Wn.App.

912 (1993).⁵ *Cornish College* states, “As a general rule, a prevailing party is one who receives an affirmative judgment in its favor. *Id.* The Court continued, at 13, “When a contract includes a bilateral fees provision, we generally look to the parties’ language to determine which party, if any, is entitled to an award of fees.”

Here, the Lease contains a bilateral fee provision, stating in Paragraph 16.13: “If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial and/or appeal, shall be entitled to its reasonable attorneys’ fees to be paid by the nonprevailing party as fixed by the court or adjudicating authority.”

Looking to the language of the Lease and the net outcome, Engstrom is the prevailing party, and Gear is the “nonprevailing party.” Consequently, under the terms of the Lease, Engstrom, but not Gear, is entitled to fees.

Further, the Lease leaves the award of fees to the court’s discretion. The standard of review of the reasonableness of a trial court’s award of attorney fees is abuse of discretion. *Mahler v. Szucs*, 135 Wn.2d 398, 435 (1998). An abuse of discretion occurs when the court’s decision is manifestly unreasonable or based on untenable grounds. *Mayer v. Sto Indus., Inc.*, 156

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Gear misapprehends the reason for the absence of any mention of in Engstrom’s brief of *Marassi v. Lau*. The case was abrogated by *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 490 (2009) for its method of reasoning whether a party is a prevailing party.

Wn.2d 677, 684 (2006). Given that Judge Bradshaw concluded that Gear was not entitled to the rent abatement awarded by the appraisers, he was reasonable in concluding that the award to Gear and the other fee offsets were sufficient, but unreasonable in giving any fees or costs to Gear. The Lease contemplates one prevailing party. That party is Engstrom.

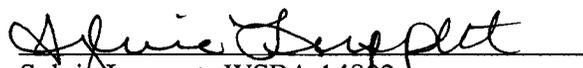
If this Court does anything other than affirm Judge Bradshaw, an award of attorneys fees and costs will probably require recalculation. Engstrom is the only prevailing party as matters now stand. Gear was not entitled to any offsets for attorneys fees, and Engstrom asks the Court to affirm all but the confirmation of the arbitration award and offset to Gear for its attorneys fees.

IV. CONCLUSION.

Engstrom Properties respectfully requests the Court to reverse the trial court's confirmation and judgment on the arbitration award. Engstrom also requests the Court to deduct the attorneys fee offset to Gear and instead restore Engstrom's. Engstrom asks the Court to affirm the trial court in all other respects. Finally, Engstrom again requests its fees and costs on appeal pursuant to RAP 18.1.

Respectfully submitted this 6th day of December, 2010

REAUGH OETTINGER & LUPPERT, P.S.

A handwritten signature in cursive script, appearing to read "Sylvia Luppert", written over a horizontal line.

Sylvia Luppert, WSBA 14802

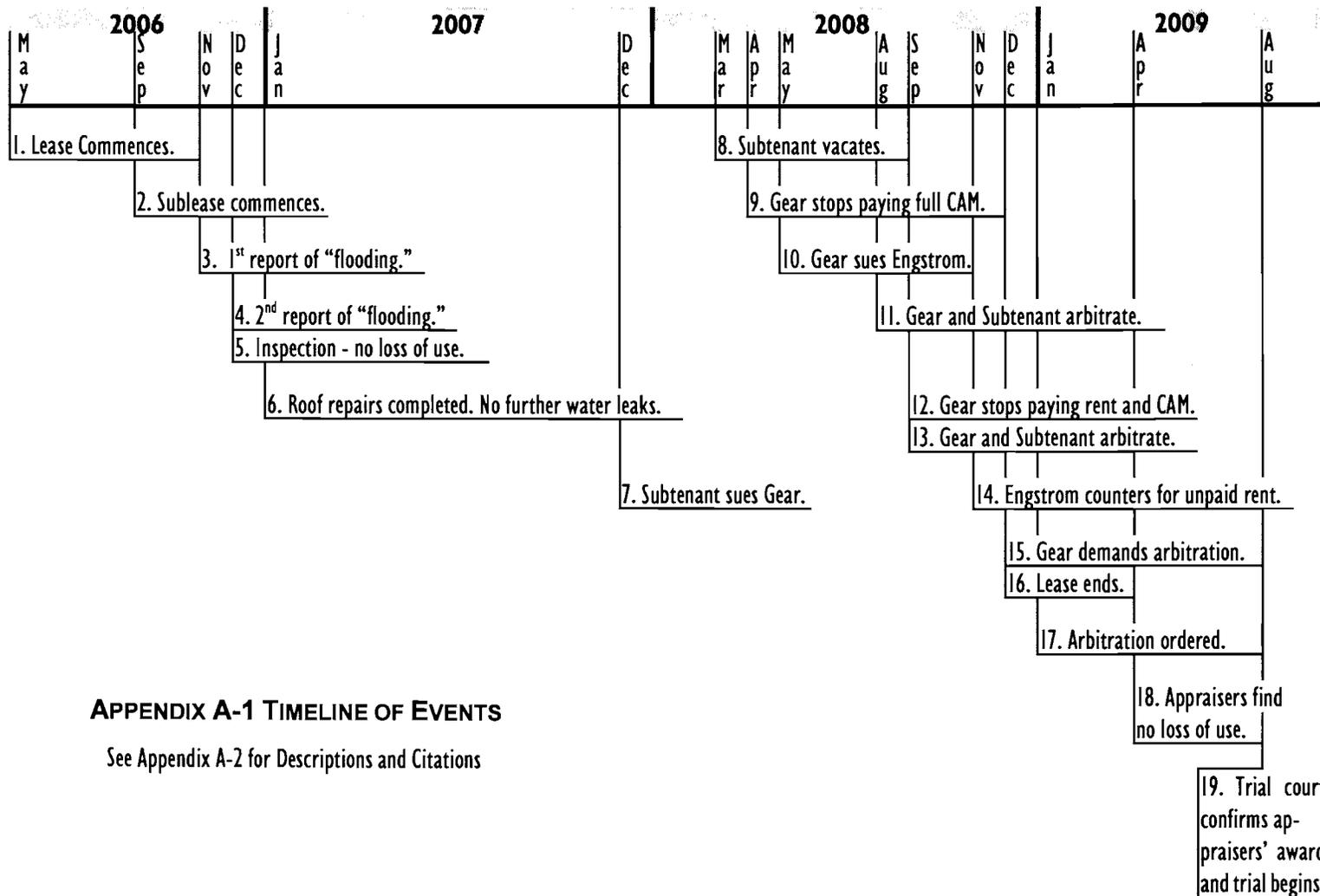
1601 Fifth Avenue, Suite 2200

Seattle, WA 98101-1625

(206) 264-0665

(206) 264-0662, fax

sll@reaugh.com



APPENDIX A-1 TIMELINE OF EVENTS

See Appendix A-2 for Descriptions and Citations

A-2 CHRONOLOGY OF EVENTS

EVENT	DATE	DESCRIPTION	FINDING
1	05/01/06	Commencement of Lease through 12/31/08	1, 3
2	09/06/06	Gear subleases to Feelgood Networks, Inc. ("Subtenant") through 12/31/08	6, 9, 15, 22
3	11/13/06	Subtenant first reports basement "flooding." Steve Engstrom immediately goes to building, wipes up puddle and starts process to repair leak . Leak causes no loss of use,	16, 17, 21
4	12/14/06	Subtenant again reports "flooding."	18
5	12/15/06	Olson finds 1 x 1 puddle and one damp t-shirt among dry t-shirts. Leak causes no loss of use.	16, 21, 22
6	01/07	Roof repair complete. No further notice of any water intrusion.	23
7	12/19/07	Subtenant sues Gear	34
8	3/31/08	Subtenant vacates and ceases payment of rent and CAM	10, 12, 22, 28
9	4/08	Gear stops paying full CAM.	55
10	5/08	Gear sues Engstrom	34
11	8/29/08	Gear and Subtenant arbitrate before Judge Carroll.	33, 36
12	09/01/08	Gear ceases paying all rent and CAM.	12
13	09/03/08	Judge Carroll does not find any loss of use.	38
14	11/06/08	Engstrom counterclaims for unpaid rent	CP 213
15	12/11/08	Gear demands arbitration	CP 100
16	12/31/08	End of lease term. No notice that Landlord failed to perform any Lease obligation	11
17	01/09/09	Judge Charles Mertel orders arbitration between Gear and Engstrom.	39 (CP 148-49)
18	04/09/09	Gear and Engstrom arbitrate before real estate appraisers. Appraisers do not find loss of use	39, 40
19	08/10/09	Trial court confirms the appraisers' award and trial commences.	CP 362- 65

APPENDIX B
EXCERPTS FROM LEASE, EXHIBIT 1

7.3 Landlord's Obligation. . . .

(b) If Landlord fails to perform Landlord's obligations under Section 7.1 or elsewhere in this Agreement, Tenant may, at Tenant's option and after reasonable prior written notice to Landlord (which shall not be required to be more than ten (10) days in any event), make any such required repairs, alterations or improvements, and the cost thereof, together with interest thereon at the lesser of eight percent (8%) per annum or the highest amount permitted by law, shall be allowed as an abatement of rent payable to Landlord or, at Tenant's option, shall be paid by Landlord to Tenant upon demand and proof of such expenditures.

8.5 Indemnity. Except to the extent responsibility therefor is waived pursuant to Section 8.4 above, Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business in or about the Premises, and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any of Tenant's obligations under the terms of this Lease or arising from any act of Tenant, or any of Tenant's agents, employees or invitees, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or action or proceeding brought thereon. Except to the extent responsibility therefor is waived pursuant to Section 8.4 above, Landlord shall indemnify and hold harmless Tenant from and against any and all claims arising from any breach or default in the performance of any of Landlord's obligations under the terms of this Lease or arising from any act of Landlord, or any of Landlord's agents or employees, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

9.5. Abatement of Rent. If the Premises are Partially Damaged, the rent payable while such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's reasonable use of the Premises is substantially impaired. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration except to the extent such damage resulted because of Landlord's failure to carry out its

obligations under Article 7.3(a).

9.6. Definitions. For the purposes of this Lease, the term “Partially Damaged” shall be deemed to mean damage to the Premises (excluding any damage to Tenant-owned property or alterations) which is reasonably estimated to cost to repair less than fifty percent (50%), . . . of the reasonable fair market value of the improvements constituting the Premises
...

16.12 Binding Effect; Choice of Law; Arbitration.

(b) If any dispute arises between Landlord and Tenant regarding the extent of rent abatement under Section 9 or Section 14 and such dispute is not resolved within (20) days after notice by either party to the other of such disagreement, either party may request arbitration and each party shall appoint as its arbitrator an appraiser who has been a member of the American Institute of Real Estate Appraisers for not less than 10 years.
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COURT OF APPEALS, DIVISION I
OF WASHINGTON STATE

224 WESTLAKE, LLC,

Plaintiff,

v.

ENGSTROM PROPERTIES, LLC,

Defendant.

No. 65338-5-I

DECLARATION OF SERVICE

I Sylvia Luppert, attorney for Engstrom Properties, LLC declare that on December 6, 2010, I caused to be served by email to Michael Fleming and Ryan McBride, at the addresses FlemingM@LanePowell.com and McBrideR@LanePowell Engstrom Properties' Reply Brief of Respondent, Cross-Appellant.


Sylvia Luppert, WSBA 14802