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IN THE SUPREME COURT OF IOWA
Supreme Court No. 14-1783
Johnson County No. SCSC081696

LENORA CARUSO,

Plaintiff-Appellee

vs.

APTS. DOWNTOWN, INC.

Defendant-Appellant

Appeal from the Iowa District Court in and for Johnson County
The Honorable Douglas S. Russell, Judge

Defendant-Appellant's Reply Brief

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INTRODUCTION

In her sixty-plus page brief, Plaintiff-Appellee, Lenora Caruso, cites purported "evidence" that is not contained in the record, alleges concessions by Defendant-Appellant, Apts. Downtown, Inc., that were not made, and ascribes motives to Apts. Downtown without citation to the record. When she does grapple with the legal issues actually at issue in the appeal, Caruso fails to provide a legal or factual basis that supports the jurisdiction of the small claims court or the rulings of the district court challenged on appeal. Because the small claims court acted in excess of its jurisdiction, this case should be vacated. In the alternative, the court should reverse for lack of evidence and legal authority to support the district court's other rulings challenged on appeal. In her purported cross-appeal, Caruso does not provide any legal or factual basis for an award of attorney's fees in excess of the maximum jurisdictional amount in small claims court, and thus her cross-appeal should be rejected.

APPEAL ARGUMENT

I. CARUSO FAILED TO SHOW AUTHORITY FOR SMALL CLAIMS COURT JURISDICTION TO AWARD ATTORNEY'S FEES ($3,600) AND DAMAGES ($3,874.33) THAT COMBINED EXCEED THE MAXIMUM "AMOUNT IN CONTROVERSY" UNDER IOWA CODE § 631.1(1).

Beginning on page 51 of her brief, Caruso addresses the first issue on appeal, namely, whether the small claims court had jurisdiction to award damages and attorney's fees in excess of $5,000 – the maximum jurisdictional amount for small claims court. Iowa Code § 631.1(1). In an effort to malign Apts. Downtown, Caruso argues that this issue is "very attractive to Landlord," that it is "its leading argument," and that it is seeking "a clever 'knock out' blow." (Caruso Br. at 51). With all due respect, Iowa courts have been clear that the first issue that should be resolved is the court's jurisdiction. As Apts. Downtown stated in its initial brief, "[i]t is the duty of the court to determine whether the courts have jurisdiction, and such a determination should be made 'before the court looks at other matters involved in the case.'" (Apts. Downtown Initial Br. at 12-13, citing Tigges v. City of Ames, 356 N.W.2d 503, 511 (Iowa 1984)). Thus, Apts. Downtown (unlike Caruso) addressed the jurisdictional issue first.

Caruso also suggests that Apts. Downtown did something nefarious because it did not re-assert arguments it made to the district court about the

timeliness of Caruso's claim for attorney's fees. (Caruso Br. at 57-58). Specifically, Caruso argues that Apts. Downtown did not raise arguments about the timeliness and the adequacy of proof of attorney's fees, as it did in small claims court, "in hopes of snatching victory from the jaws of defeat with a complete dismissal." (Id.). Again, Caruso's rhetoric is misplaced. Apts. Downtown sought discretionary review, in part, on the jurisdiction of the small claims court, not the timeliness or sufficiency of proof of her claim for attorney's fees. (Application for Discretionary Review, filed Oct. 22, 2014, ¶¶ 1, 2, 6). Having limited its application for discretionary review, Apts. Downtown also limited its argument on appeal because the other issues (although meritorious) did not warrant review by this court.

On the merits, Caruso argues that statutory attorney's fees may be awarded by the court as costs. (Caruso Br. at 54-57). Further, Caruso argues that "Iowa Code § 562A.12(8) specifically provides for attorney fees." (Caruso Br. at 56). That is true, but § 562A.12(8) does not designate attorney's fees as "costs," and more importantly, it does not state that they are "costs" excluded from the jurisdictional limit of small claims court within the meaning of Iowa Code § 631.1(1). To the contrary, the fact that the IURLTA expressly authorizes recovery of "reasonable attorney fees," § 562A.12(8), is further evidence that if the Legislature wanted to exclude

"attorney's fees" from the maximum jurisdictional limit of small claims court, it would have expressly said so.

The statute being interpreted in this case is § 631.1(1), not § 562A.12(8). Section 631.1(1) provides:

> 1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:
>
> A civil action for a money judgment where the amount in controversy is . . . five thousand dollars or less for actions commenced on or after July 1, 2002, exclusive of interest and costs.

Iowa Code § 631.1(1). The term "costs" in § 631.1(1) does not include "attorney fees." Roeder v. Nolan, 321 N.W.2d 1, 4 (Iowa 1982); see also Weaver Constr. Co. v. Heitland, 348 N.W.2d 230, 233 (Iowa 1984) (construing Iowa Code § 677.10); Turner v. Zip Motors, 245 Iowa 1091, 65 N.W.2d 427, 432 (1954) (general rule). Thus, while "interest and costs" are excluded from the maximum jurisdictional amount, attorney's fees are not excluded from the maximum jurisdictional value of small claims. Any claim for or award of statutory attorney's fees in small claims court must fall within the $5,000 maximum jurisdictional amount.

Caruso argues, however, that she needs to be able to recover attorney's fees because of the "tremendous financial resources" of Apts. Downtown compared to the "twenty year old proceeding in forma pauperis."

(Caruso Br. at 52). Caruso actually asserts that Apts. Downtown has a "multi-millionaire owner." (Caruso Br. at 59). However, Caruso cites no evidence in the record regarding Apts. Downtown's purported "tremendous financial resources" or its "multi-millionaire owner." Elsewhere, Caruso cites to press reports about Apts. Downtown that are not contained in the record and should be stricken from her brief. (Caruso Br. at 37 & n.17). Moreover, Caruso's counsel told the small claims court he was representing Caruso pro bono. (Tr. 225 (Mr. Warnock), App. 113). This belies the claimed need to be able to recover attorney's fees.

More important, any limitation on recovery of attorney's fees in small claims court was caused by the decision of Caruso's counsel to file in small claims court, subject to the $5,000 maximum jurisdictional limit, rather than in district court where a claim for attorney's fees would not be limited. Caruso's counsel knew that an action in small claims court is intended to be "simple and informal" and "diminish the role of lawyers." Iowa Nat'l Mut. Ins. Co. v. Mitchell, 305 N.W.2d 724, 726 (Iowa 1981) (litigants have no constitutional or statutory right to jury trial for small claims under $1,000). Contrary to Caruso's argument, (Caruso Br. at 52), a decision to enforce the maximum jurisdictional amount of small claims court would not "restric[t] the ability of the trial court to award statutory attorney fees" or constitute a

"hollow victory" because a small claims court, facing a claim for damages and attorney's fees in excess of $5,000, can simply transfer the case to district court "to be tried by regular procedure." Iowa Code § 631.8(2)(b). What is not allowed is for the small claims court to ignore its jurisdictional limits and award more than $5,000 in damages and attorney's fees.

Finally, Caruso argues that if IURLTA attorney fees are not excluded from the small claims court maximum jurisdictional limit, then this court should favor "the district court's fee reduction or a vacation of the fee award" over the "draconian remedy of total dismissal." (Caruso Br. at 58). This, however, would contradict the authority cited by Apts. Downtown in its initial brief that states, "No jurisdiction can be conferred by abandoning a part of the claim in the appellate court by a remittitur or an amendment reducing the amount claimed." (Apts. Downtown Initial Br. at 16, citing 51 C.J.S., Justices of the Peace, §306 (2013)). Similarly, Iowa law is clear that once jurisdiction is lost, a court cannot reinstate a case, even with the agreement of the parties. See Duder v. Shanks, 689 N.W.2d 214, 219 (Iowa 2004) ("parties' agreement to remove the case from the clerk's list did not prevent its dismissal"); Greif v. K-Mart Corp., 404 N.W.2d 151, 155 (Iowa 1987) (case dismissed could not be reinstated without following statutory procedure for reinstatement, even though both parties were "oblivious to the

fact that jurisdiction over the case had been lost"). The only statutory procedure for the small claims court to follow was to transfer the case to district court to be tried by regular procedure once Caruso's claim for damages and attorney's fees exceeded the maximum jurisdictional amount.

II. CARUSO DID NOT PRESENT ANY EVIDENCE THAT APTS. DOWNTOWN HAD "ACTUAL KNOWLEDGE" THAT ANY PROVISION IN THE LEASE ON WHICH IT RELIED WAS "PROHIBITED" BY THE IURLTA.

On pages 22 to 41 of her brief, Caruso concedes that she was required to show "actual knowledge," but then suggests that "circumstantial" evidence is enough to prove that Apts. Downtown had such actual knowledge. In her argument, however, Caruso fails to produce any evidence, circumstantial or otherwise, that Apts. Downtown had "actual knowledge" that the provisions were "prohibited" under the IURLTA.

Caruso concedes that "the proper standard for knowing use of an illegal lease provision is actual knowledge." (Caruso Br. at 23). Caruso then argues, however, that "notice" is all that is required. Specifically, Caruso suggests that "[s]ometimes there can be such opportunity to know that a person should be required to take notice." (Caruso Br. at 30, citing In re Marriage of Halvorsen, 521 N.W.2d 725, 728 (Iowa 1994)). One problem with this argument is that the sentence quoted by Caruso does not appear in the Halvorsen decision. Another problem is that "notice" under Iowa law is

distinct from "actual knowledge." In Raub v. General Income Sponsors, Inc., 176 N.W.2d 216, 220 (Iowa 1970), the court explained that "notice is either knowledge or having the means of knowledge, although such means may not be used." Id. (emphasis added) (quotation omitted). On the facts in Raub, the court reversed a finding that two banks were on notice of a third party's fraud, stating, "We have searched the record carefully and can find no evidence to charge defendants with such knowledge or to put them on notice to make inquiry." Id. As in Raub, there is no evidence in this record to find "actual knowledge" by Apts. Downtown that the challenged lease provisions were prohibited.

Caruso also relies heavily on the Court of Appeals' unpublished decision in Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa Ct. App. filed May 30, 2013). (Caruso Br. at 24-25, 27-30). That decision, obviously, is not binding on the parties or the court in this case. Moreover, in Staley, the court did not actually make any decisions on the merits, but remanded for class action proceedings. Id. at *13. To the extent that Staley suggested an objective standard of constructive knowledge – "should have known" – it did so only in a parenthetical comment. Id. (citing Summers v. Crestview Apartments, 236 P.3d 586, 593 (Mont. 2010)). As Caruso now

concedes, the proper standard is "actual knowledge," not "should have known." Staley and Summers do not support Caruso's position.

Caruso also suggests that somehow Apts. Downtown "thus accepts that circumstantial evidence as well as direct evidence is probative of actual knowledge." (Caruso Br. at 32). This is one of the many times in her brief that Caruso claims that Apts. Downtown accepted or conceded something that Apts. Downtown did not accept or concede. What Apts. Downtown argued in its initial brief was as follows:

> The only evidence related to knowledge was Joe Clark's testimony that he was familiar "for the most part" with the IURLTA and otherwise relied on Apts. Downtown's attorney, Joe Holland. (Tr. 56-57, 66-67 (Joe Clark), App. 75-76, 82-82). This evidence is insufficient to meet the requirement of actual, subjective knowledge that a provision was prohibited.

As this passage shows, Apts. Downtown did not accept "circumstantial evidence" as sufficient, but rather argued that the evidence in this case was "insufficient." In response, Caruso utterly fails to point to any evidence that could be sufficient to show that Apts. Downtown had actual knowledge that its lease provisions were prohibited.

Caruso quotes extensive questioning by her counsel where Joe Clark testified about his knowledge of or familiarity with the IURLTA "for the most part." (Caruso Br. at 33-35). Over objection, Clark was asked whether he thought an unrelated lease provision violated the IURLTA. (Id.). Clark

testified that he disagreed. (Id.). In response, Apts. Downtown's counsel started to ask Clark about the lease, eliciting Clark's testimony that he remembered being asked about it by Caruso's counsel, but then instead asked the court to take judicial notice of the law. (Tr. 67-68, App. 82-83). None of that shows, or could even support a finding, that Apts. Downtown knew at the time of the lease that a lease provision was prohibited by the IURLTA. Section 562A.11(2) requires a tenant to show that the landlord "willfully use[d] a rental agreement containing provisions known by the landlord to be prohibited." Iowa Code § 562A.11(2). Generalized knowledge of or familiarity with the IURLTA does not show knowledge that a specific lease provision was known to be prohibited under the IURLTA.

Caruso then attempts to inject facts about Apts. Downtown which are not in the record to suggest, somehow, that sophisticated defendants should be presumed to have actual knowledge of prohibited provisions. (Caruso Br. at 36-38 & nn. 17 & 18). Specifically, Caruso cites to a newspaper article and corporate documents not contained in the record. (Id.). Caruso then makes arguments based on these purported facts. Her references to the article and documents and arguments based on them should be stricken from the brief and disregarded on appeal. Moreover, her argument is not supported by Iowa law. "All persons are equal before the law, and

corporations, whether large or small, are entitled to the same fair and conscientious consideration" in court. Iowa Civil Jury Instruction No. 100.20. Caruso's argument is also not supported factually. Joe Clark testified that he "oversee[s] operations for the offices and help[s] with the collection of rent and rental of the units." (Tr. 42 (Joe Clark), App. 68). Bryan Clark, the field operations manager, testified that his job included:

> [O]rganizing things for all the various divisions of maintaining the building. So painting, drywall. The regular maintenance. Remodelling [sic], visual inspections around any of the buildings for, you know, improvements needed, needed maintenance. That kind of thing.

(Tr. 142 (Bryan Clark), App. 93). The fact that Joe Clark oversees operations and that Bryan Clark had been doing his job for up to twenty years do not show that Apts. Downtown was such a sophisticated landlord that actual knowledge of use of a specific lease provision known to be prohibited can be inferred.

On pages 38 to 43 of her brief, Caruso argues that "advice of counsel" should not be available as a defense in an action under the IURLTA. She concedes, however, that advice of counsel "is a factor that courts should take into consideration when determining actual knowledge of illegality." (Caruso Br. at 42). Clearly, reliance on advice of counsel can be relevant to show that a party lacked knowledge, willfulness, or bad faith. See Ferris v.

Employers Mut. Cas. Co., 255 Iowa 511, 518, 122 N.W.2d 263, 267 (1963) (no bad faith where insurer relied on experienced attorney); Shamrock Technologies, Inc. v. Medical Sterilization, Inc., 808 F. Supp. 932, 940 (E.D.N.Y. 1992) (no willful patent infringement where client relied on experienced attorney). This is exactly what Apts. Downtown was arguing in its initial brief when it cited, factually, that Apts. Downtown relied on its attorney, Joe Holland, to prepare the lease. (Tr. 67 (Joe Clark), App. 82). Further, Apts. Downtown argued:

> There was no evidence of any prior court decision ruling these provisions prohibited. There was no evidence that Apts. Downtown received a legal opinion that they were prohibited. To the contrary, its attorney drafted the lease and advised it that the provisions were proper. The evidence presented was thus insufficient for the court to infer that Apts. Downtown actually knew the provisions were prohibited and used them willfully notwithstanding that fact.

(Apts. Downtown Br. at 20). Caruso's legal arguments against a purported "advice of counsel" defense simply do not provide any evidence that could be sufficient to show that Apts. Downtown willfully used lease provisions it actually knew at that time to be prohibited.

Finally, in a footnote, Caruso suggests – without citation to any authority – factors that she believes should be relevant in determining "knowing use of a prohibited lease provision." (Caruso Br. at 31 n. 14). Whatever the value of these suggested factors in the abstract, however, they

are not evidence that Apts. Downtown had any "actual knowledge" at the time of the lease that it knew any of the provisions to be prohibited. In this case, all the evidence showed is that Apts. Downtown used a lease drafted by its attorney, Joe Holland, that the court later found to contain prohibited provisions. That is not sufficient to establish the required "actual knowledge" to subject Apts. Downtown to statutory punitive damages under Iowa Code § 562A.11(2).

III. CARUSO FAILED TO SHOW THAT THE DOOR REPAIR PROVISION WAS PROHIBITED.

Caruso argues that the door repair provision was prohibited because, she argues, "A landlord is not discharging its statutory obligation to repair if it merely picks up the phone and calls a contractor, but then sends the bill to the tenant." (Caruso Br. at 21). Caruso further suggests that distinguishing between making the repairs and paying for repairs is not allowed under Mastland v. Evans Furniture, 498 N.W.2d 682 (Iowa 1993). Caruso argues that the IURLTA makes the right to receive rent "inseparable" from the duty to maintain under Iowa Code § 562A.2(2)(c).

What Caruso's arguments overlook is that in this case, unlike Mastland, 498 N.W.2d at 686 (lease provided tenant financial responsibility only for deliberate, negligent, or knowing damage), the parties agreed in their lease to have Apts. Downtown perform the repairs and for Caruso and

her co-tenants to pay for them. Such an allocation of responsibility is not prohibited by the IURLTA. The parties' lease specifically deemed repair costs to become rent. The lease told the parties that "Iowa City Maintenance will do all repairs," that "[a] preventative maintenance crew will be entering apartments during the summer months to repair any damages caused by tenants throughout the leasing year," and that "[a]ll charges must be paid immediately or they are added to the account's rent due balance and accumulate late fees." (Lease Ex. A, ¶¶ 10(e), 33(c), 33(d), 33(f), App. 115-116; Lease Ex. B, ¶¶ 10(e), 33(c), 33(d), 33(f), App. 118-119; Tr. 31-33 (Caruso), App. 62-64). Caruso's argument that the duty to maintain is "inseparable" from the right to receipt rent under Iowa Code § 562A.2(2)(c) is misplaced because Apts. Downtown actually performed the maintenance and the charges became rent. Under the lease, Apts. Downtown had the right to receive payment from Caruso and her co-tenants for the door repair.

Caruso argues, however, that she and her co-tenants did not actually cause any damage to the door. (Caruso Br. at 18-19). The lease actually states that the preventative maintenance will be done to "repair any damages caused by tenants throughout the leasing year." (Lease Ex. A, ¶ 33(d), App. 116; Lease Ex. B, ¶ 33(d), App. 119). Thus, even if Caruso's argument is true, it is not the lease provision that is prohibited, but its incorrect

application in this case. Even if inapplicable or unconscionable under the facts of the case, that does not make the lease provision "prohibited" under Iowa Code § 562A.11. If not prohibited under § 562A.11, then the parties were free to agree to it. Iowa Code § 562A.9(1).

Moreover, the evidence was "overwhelming" that the door was damaged by Caruso, her co-tenants, or someone else with their permission to be in the apartment. Caruso argues that Apts. Downtown did not cite any evidence in support of that argument, (Caruso Br. at 18), but she overlooks the factual section of Apts. Downtown's brief in which Apts. Downtown cited the evidence in detail. (Apts. Downtown Initial Br. at 8-10). Specifically, Apts. Downtown cited the following evidence:

- Joe Clark testified the damage to the door was not "normal wear and tear" because the door was "coming apart almost halfway up the door," which would not show the door was defective or "not square." (Tr. 53, 59 (Joe Clark), App. 72, 78).
- Bryan Clark testified the damage "looks like the door was kicked." (Tr. 153 (Bryan Clark), App. 94).
- Tyler Burkett, who works in maintenance and actually replaced the door, testified the damage was below the latch, about "midway up," and it was split. (Tr. 171-172 (Burkett), App. 100-101).

- Tyler Burkett testified it appeared as if "a force from the outside came into it." (Tr. 172 (Burkett), App. 101).
- Tyler Burkett testified "normal tear wouldn't do this to a door. . . . I have never seen a door just come apart on its own." (Tr. 179 (Burkett), App. 104)
- When asked if the door could have been repaired, Tyler Burkett testified if not replaced, "You'll never stop it from being damaged more. . . . [Repair] would never work. It would just keep getting worse. You can't repair it." (Tr. 181 (Burkett), App. 105).
- Apts. Downtown determined Caruso and her co-tenants were responsible because the door was "not anywhere that anyone else would have had access to." (Tr. 54 (Joe Clark), App. 73).
- For her part, Caruso admitted the door was in good condition when they moved into the apartment, and admitted that the door in the photograph (Exhibit R) appeared "pulled away," but she denied its condition was that bad before it was removed. (Tr. 19-20 (Caruso), App. 56-57; Exh. R, App. 129).

Even if the magistrate could reject this evidence of damages caused to the door while under control of Caruso and her co-tenants, it does not make the lease provisions "prohibited." The district court acknowledged as much by

stating only "in this case" was the provision "illegal." (Dist. Ct. Ruling, at 12, App. 43). For these reasons, and the reasons given in Apts. Downtown's initial brief, the district court's ruling that the repair provision was "prohibited" should be reversed.

IV. CARUSO FAILED TO SHOW THAT THE CARPET CLEANING PROVISION WAS PROHIBITED.

Caruso begins her brief with her argument that the carpet cleaning provision was prohibited. (Caruso Br. at 6-16). Although not contained in the record, she acknowledges that comparable carpet cleaning provisions are used by landlords throughout the state. (Caruso Br. at 6). The reason for that is obvious: it makes economic sense to tell tenants they will have their apartment professionally cleaned to return the apartment to its condition at the start of the tenancy, because landlords can arrange professional carpet cleaning at a lower cost to keep costs and rents down. In this case, Caruso does not dispute that Apts. Downtown actually hired a company to professionally clean the carpets. (Tr. 45-47 (Joe Clark), App. 69-71). Nor does she dispute Apts. Downtown's evidence that its contractor performed the cleaning at a lower cost than it would have cost to hire an independent contractor. (Tr. 66 (Joe Clark), App. 81). Nor does she dispute the fact that she agreed to two leases with the carpet cleaning provision. (Lease, Ex. A, ¶ 37(e), App. 116; Lease, Ex. B, ¶ 37(e), App. 119).

Instead, Caruso focuses on two arguments, neither of which shows that the carpet cleaning provision is prohibited. Legally, she claims that dirt is ordinary wear and tear under Iowa Code § 562A.12(3)(b). (Caruso Br. at 13-16). She claims that other jurisdictions disagree with the Indiana authorities cited by Apts. Downtown, but she fails to address the plain language argument that "wear" and "tear" means "to cause to deteriorate, diminish, or waste by some constant or repetitive action" and "to pull apart and in pieces, by force." (Apts. Downtown Br. at 28, citing Webster's Collegiate Dictionary 1342, 1479 (Random House ed. 2000)). Moreover, if "wear and tear" includes dirt, it would diminish the requirement to restore property at the end of a tenancy, and ultimately result in dirtier rental property. The IURLTA puts the burden on the landlord to keep "common areas" in a "clean" condition, Iowa Code § 562A.15(1)(c), but the IURLTA does not speak to any duty of the landlord to keep private apartment units clean. Parties to rental agreements are – and should be – free to agree to carpet cleaning requirements at the end of a tenancy.

Factually, Caruso claims that she and her co-tenants did such a thorough job of cleaning the carpet that the carpets were clean, even pristine. (Caruso Br. at 9, 12). Even if true, that does not make the carpet cleaning provision "prohibited" under Iowa Code § 562A.11; at most, it renders that

provision inapplicable or unconscionable under the facts of the case. Moreover, the purported finding of "pristine" condition is belied by the fact that Apts. Downtown actually paid to have the carpets professionally cleaned. (Tr. 45-47 (Joe Clark), App. 69-71). It is also belied by the fact that Caruso's co-tenant, Isenhour, admitted there were carpet "stains that would not come out." (Tr. 128 (Isenhour), App. 89). Caruso's claim that Apts. Downtown did not give the required statutory notice, (Caruso Br. at 9), also fails because it overlooks the fact that Apts. Downtown notified Caruso and her co-tenants that $134 was being withheld from the security deposit because the carpets were "dirty, stained, unvacuumed." (Exh. K, App. 128).

Caruso's cleaning was also deficient for the additional reason that it did not – and could not – satisfy her obligation under the lease for professional cleaning to restore the apartment to its condition at the start of the tenancy. Iowa Code § 562A.12(3)(b). Nothing in the IURLTA says the parties cannot agree to a state of cleanliness to which the apartment unit should be restored. Id. While Caruso claims that D.R. Mobile Home Rentals v. Frost, 545 N.W.2d 302 (Iowa 1996), held that the IURLTA requires a showing of "actual damages" by the landlord, that case did not involve Iowa Code § 562A.12. Instead, it interpreted Iowa Code § 562A.32, which provides for a landlord's remedy of "actual damages" after a tenant

breaches. Frost, 545 N.W.2d at 306. In Frost, the landlord did not even file a brief to contest the tenant's appeal. Id. at 304. Nothing in Frost says that parties to a lease agreement cannot agree to restore the apartment to its condition at the start of the tenancy by professionally cleaning the carpets. That makes sense because such a provision is for the benefit of all tenants, both the current tenants and future tenants. The district court erred by holding that the carpet cleaning provision was prohibited.

V. CARUSO MISREPRESENTED APTS. DOWNTOWN'S POSITION ON "BAD FAITH" RETENTION OF A DEPOSIT.

Apts. Downtown did not seek discretionary review on the issue of the $200 penalty for the finding of bad faith under the specific facts and circumstances of this case because that finding was limited to the facts of this case and did not set any precedent that threatened to constrain Apts. Downtown's freedom to contract in the future. Yet, if the court reverses (as it should) on the issues in sections III and IV, supra, there would be no remaining factual or legal basis for a finding of "bad faith." Thus, Apts. Downtown asserted a one-sentence appeal of the finding of "bad faith."

Instead of a one-sentence argument in response, Caruso devotes nearly nine pages of her brief to this issue seeking the court's ruling on a "significant question of first impression." (Caruso Br. at 43-51). In her argument, she claims that "Landlord essentially has conceded that the

district court was correct in holding that security deposit deductions based on its prohibited lease provisions constitute bad faith withholding." (Caruso Br. at 43). That is simply not true. The only issue raised by the appeal is whether the bad faith ruling should be reversed if the underlying holdings are reversed. The answer is, of course it should, which is why Apts. Downtown raised that issue and only that issue on appeal. That does not constitute a concession or any other admission that the "bad faith" ruling was correct in any way. Nor does it require this court to address any "significant question of first impression" which is not in front of the court.

CROSS-APPEAL ARGUMENT

VI. CARUSO SHOWED NO LEGAL OR FACTUAL BASIS FOR AN AWARD OF ATTORNEY'S FEES IN EXCESS OF THE MAXIMUM JURISDICTIONAL AMOUNT.

A. Preservation Of Error. Apts. Downtown agrees that Caruso preserved error on this issue.

B. Standard Of Review. The legal authority of a court to award attorney's fees is reviewed for corrections of error. Security State Bank v. Ziegeldorf, 554 N.W.2d 884, 893 (Iowa 1996). If authority to award attorney's fees exists, the court then reviews whether attorney's fees should be awarded and the amount for an abuse of discretion. Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 181, 185 (Iowa 2007).

C. Argument. Caruso does not separately bring a "cross-appeal" on the award of attorney's fees, instead mixing her argument against Apts. Downtown's appeal with her purported cross appeal of the attorney's fees issue. (Caruso Br. at 51-58). Caruso's purported cross-appeal should be rejected for four independent reasons.

First, as discussed in section I of this reply brief, supra, and section I of Apts. Downtown's initial brief, (Apts. Downtown Initial Br. at 12-17), the small claims court lost jurisdiction when Caruso claimed damages and attorney's fees in excess of $5,000, and when the magistrate purported to award damages and attorney's fees in excess of $5,000. Regardless of the proper remedy for the loss of jurisdiction, in no case can the magistrate's original award be reinstated.

Second, if the court reverses on some or all of the grounds contained in sections II through V of this reply brief, supra, and sections II through V of Apts. Downtown's initial brief, Caruso would not necessarily qualify as a "prevailing party," under Iowa Code § 562A.12(8), and thus would not be entitled to attorney's fees.

Third, Caruso's counsel disclaimed any interest in attorney's fees during the original small claims court proceeding by stating: "So cause or not, it is almost like I am here on a cause. I am not getting paid anything. It

is completely pro bono because I believe in this. And so the bottom line is this, that the law needs to be obeyed, and that I'm really happy we have had this opportunity to take a look at this." (Tr. 225 (Mr. Warnock), App. 113). Because Caruso's counsel disclaimed any interest in attorney's fees, her claim for additional trial and appellate fees should be rejected.

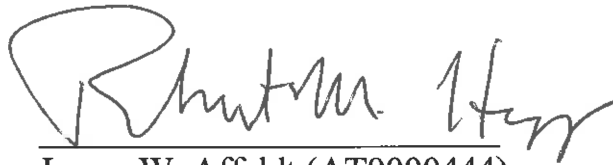
Fourth, the magistrate told the parties to submit all information by December 15, 2012. (Tr. 227, App. 114). However, Caruso's counsel did not submit their attorney fee affidavits until June 25 and June 27, 2013, respectively. (Warnock Attorney Fee Affidavit, App. 14-15; Boyer Attorney Fee Affidavit, App. 16-17). Thus, her claim for attorney's fees was untimely and unsupported by any evidence. Accordingly, Caruso's claim for additional trial and appellate fees should be denied.

For each of these reasons, Caruso's purported cross-appeal for additional trial and appellate attorney's fees should be rejected.

CONCLUSION

For these reasons, and the reasons given in Apts. Downtown's initial brief, this court should reverse the district court and vacate the award by the small claims court for lack of jurisdiction in small claims court. In the alternative, this court should reverse the district court's holding that Apts. Downtown willfully used provisions known to be prohibited, reverse the

district court's holding that the door repair provision was illegal or prohibited, and reverse the district court's holding that the carpet cleaning provision was illegal or prohibited. If this court reverses on the alternative grounds, the judgment should be reduced by $2,770 (willful use of a known prohibited provision), $625.33 (past due rent arising out of door replacement and other undisputed charges), $134 (carpet cleaning), and $200 (bad faith retention). Caruso's purported cross-appeal should be denied.



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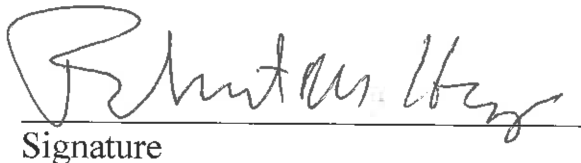

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