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IN THE SUPREME COURT OF IOWA
No. 15-1348
(Johnson County District Court No. CVCV076909)

JOAN WALTON,

Plaintiff-Appellee,

vs.

MARTIN GAFFEY,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF JOHNSON COUNTY
The Honorable Patrick R. Grady

Defendant-Appellant's Final Reply Brief

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Argument

Again, recognizing the weight of this Court's docket and the similarity of a number of issues, Gaffey respectfully incorporates the arguments set forth in Appellant's Reply Brief in *Kline, et al. v. Southgate Property Management, LLC*, No. 15-1530, filed February 15, 2016, as regards the Iowa Court of Appeals's unpublished opinion in *Staley v. Barkalow*, No. 12-1031, 2013 WL 2368825 (Iowa App.), the lack of injury to Walton in this case, the lack of enforcement of any allegedly prohibited or unenforceable provisions against Walton, and the lack of prohibited provisions in Gaffey's lease. Gaffey writes separately to address several issues specific to this case.

I. Walton's discussion of *Gaffey v. Sigg* is irrelevant to this appeal, and serves only to confuse the issues properly before this Court.

Walton devotes several pages of her Brief, as well as her designation of the appendix, to the decision and transcript in *Gaffey v. Sigg*, SCSC81780 (6th Dist. Small Claims, May 29, 2012). At the outset, Walton claims this decision is included to show this Court "as confirmation of the wisdom of *Staley* and the IURLTA." As Walton admits, however, the decision in that case was not binding—not

on the district court in this case, and certainly not on this Court. The issue of whether Gaffey used provisions he knew to be prohibited is not before this Court, making its inclusion irrelevant; this appeal address whether the District Court erred in granting Walton's motions for summary and declaratory judgment and class certification, not the ultimate issue of Gaffey's knowledge of prohibited provisions.

Further, as throughout this matter and the related landlord-tenant cases currently in various phases of litigation and originating in Johnson County, Walton purposefully obscures the careful distinction put in place by the Iowa legislature in the Iowa Uniform Residential Landlord Tenant Act: she refers to the late fees included as part of Gaffey's lease in *Gaffey v. Sigg* as "illegal", rather than clarifying whether she believes those fees were specifically prohibited under Iowa Code § 562A.11, or merely unenforceable. This blurring of important statutory lines allows Walton to suggest Gaffey admitted to knowingly including *prohibited* provisions in his lease, when that was not the actual topic.

While Walton frames this inclusion of *Gaffey v. Sigg* and discussion therefrom as a policy argument, rather than a strictly legal one, it relies on a subtle misapplication of Iowa law into which the district court has fallen several times, as shown in the related appeals now under consideration. This underscores the necessity of this Court overruling *Staley* and clarifying the underlying law.

II. Class certification was inappropriate, and the district court abused its discretion in certifying a class without making the required findings

a. Gaffey preserved error on the issue of form of the class certification order.

Walton argues Gaffey failed to preserve error regarding the district court's certification of the putative class, but agrees error was preserved on the issues of class certification relative to questions of enforcement and lease provisions. Walton's Brief at 65.

Walton's suggestion the district court's failure to consider the requirements of certification, explain its decision, and adequately describe the class should be allowed to stand simply because Gaffey did not file a motion under Rule 1.904(2) or other means seeking to modify the district court's order would burden Gaffey in a way this Court has declined to do.

The district court heard no testimony below, and its ruling makes no specific findings of fact, instead reciting only the background facts of the case and relating its conclusions of law. *See* Ruling at 1-3, app. 127-29. While this was proper for the district court, it means Gaffey's decision to seek interlocutory review rather than filing a motion to enlarge or amend did not waive his ability to raise the issues now on review. As this Court noted in *Meier v. Senecaut*:

> [A] rule 179(b) [now Rule 1.904(2)] motion is available only to address " 'a ruling made upon [the] trial of an issue of fact without a jury.' " *Bellach v. IMT Ins. Co.*, 573 N.W.2d 903, 904 (Iowa 1998) (quoting *Kunau v. Miller*, 328 N.W.2d 529, 530 (Iowa 1983)). This does not mean a rule 179(b) motion is not available to challenge an issue of law, but the legal issue must have been addressed by the court in the context of an issue of fact tried by the court without a jury.

641 N.W.2d 532, 538 (Iowa 2002). Rule 1.904 explicitly explains a party, "on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by such motion or otherwise." Iowa R. Civ. P. 1.904(2).

The district court's grant of class certification likewise implicitly considered the issues now raised by Gaffey, suggesting it believed the requirements for certification had been met. "If the

court's ruling indicates that the court considered the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) (citing *Meier*, 641 N.W.2d at 540; *Jensen v. Sattler*, 696 N.W.2d 582, 585 (Iowa 2005)).

Because the issues Gaffey now challenges on appeal did not come into play until the district court had issued its ruling granting class certification, Gaffey's pursuit of an interlocutory appeal from the ruling properly preserved error on these issues.

b. The district court failed to adequately consider the requirements of certification, explain its decision, or describe the class or subclasses it certified

As Gaffey initially pointed out in this appeal, the district court certified—at best—a class of plaintiffs with "the same lease and the same injury and the knowing and willful inclusion of prohibited clauses." Plaintiff's Motions at 12, app. 15. Walton now suggests "all tenants with Landlord's illegal lease were appropriately made class members." Walton's Brief at 72. Again, however, this fails to answer the question of what lease is being discussed: all tenants from 2014? All tenants from earlier years as well, when the district court failed

to examine whether Gaffey used a separate lease in earlier years? What if some leases contain slight variations? Even if some clauses were allegedly prohibited throughout all of Gaffey's leases, what if some class members never had any enforcement of the allegedly unenforceable clauses—should there be a separate subclass for these claims, versus those who did experience enforcement?

Walton can make suggestions as to what the proper class should be, but cannot perform the district court's duty after the fact. The district court's failure to offer any guidance as to the requirements of class certification or the class's scope constitute an abuse of discretion in certifying the class, and the certification should be overruled and the case remanded for further consideration of the issue.

CONCLUSION

The District Court erred in granting portions of Plaintiff-Appellee Joan Walton's First Motion for Partial Summary and Declaratory Judgment, as she has not suffered an injury giving rise to ripeness under Iowa law. Further, the District Court abused its discretion when it certified the putative class in this case, as it failed

to comply with the requirements of Iowa law. For these reasons, Defendant-Appellant Martin Gaffey respectfully requests the Court overrule the District Court's July 12, 2015 Ruling and remand the case for further proceedings in accordance with its opinion.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 1,262 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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/s/ Nicholas J. Kilburg	April 7, 2016
Signature	Date

CERTIFICATE OF FILING AND SERVICE

I certify the preceding Appellant's Proof Brief was filed with the Supreme Court of Iowa and served on by electronically filing this document in accordance with the Chapter 16 Rules, which will provide notice and a copy to the following:

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