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Caldwell Land and Cattle, LLC v. Johnson Thermal Systems, Inc. Appellant's Reply Brief Dckt. 46056

IN THE SUPREME COURT OF THE STATE OF IDAHO

CALDWELL LAND & CATTLE, LLC, an Idaho limited liability company a/k/a CALDWELL LAND & CATTLE COMPANY, LLC, Respondent/Appellee, vs. JOHNSON THERMAL SYSTEMS, INC., an Idaho corporation, Defendant/Appellant.	Supreme Court Docket No. 46056-2018 Canyon County Case No. CV-2015-587

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the
Third Judicial District for Canyon County

Honorable Christopher S. Nye, District Judge, Presiding

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I. INTRODUCTION

Appellant Johnson Thermal Systems, Inc. ("JTS") respectfully submits its *Appellant's Reply Brief*. In its *Respondent's Brief*, Respondent Caldwell Land & Cattle, LLC ("CLC") attempts to: (1) broaden the permissible scope of a court's jurisdiction when considering an unlawful detainer claim; (2) avoid the plain language of the parties' "Lease" (as that term is defined in JTS's opening *Appellant's Brief*); and (3) gloss over the fact CLC itself required JTS to remove the Transformer. For the reasons stated below, CLC's attempts should be rejected by the Court.

II. ARGUMENT

A. The District Court Improperly Considered Issues Outside CLC's Unlawful Detainer Claim.

1. Idaho law is clear that the only issue to be heard in an action brought by a landlord for unlawful detainer is whether the tenant unlawfully detained.

This Court has consistently held for over 100 years that when a landlord chooses to proceed by bringing a statutory claim for unlawful detainer, no other issues outside the unlawful detainer claim may be heard by the court. *See, e.g.*, *Hunter v. Porter*, 10 Idaho 72, 81, 77 P. 434, 437 (1904) ("To allow the issue of unliquidated damages growing out of an independent covenant contained in the lease . . . would frustrate the purposes and object of the statute[.]"); *Richardson v. King*, 51 Idaho 762, 10 P.2d 323, 324 (1932) (holding that an unlawful detainer action is "limited in its scope and purpose" to "the proceeding itself"); *Texaco, Inc. v. Johnson*, 96 Idaho 935, 938, 539 P.2d 288, 291 (1975) (holding that in an unlawful detainer action "[n]o other extraneous issues are to be injected by either party to cloud the proceedings for to allow either party to interpose questions unrelated to the issue of possession [i.e., unlawful detainer]

would frustrate the purpose and objective of the unlawful detainer provisions."); *Carter v. Zollinger*, 146 Idaho 842, 845, 203 P.3d 1241, 1244 (2009) (holding that "no other issues may be injected" into an unlawful detainer action (citing *Richardson*, 51 Idaho at 766–67, 10 P.2d at 324–25 (1932)). Despite CLC's hope otherwise, this Court's holding in *Nicholson v. Coeur d'Alene Placer Mining Corp.*, 161 Idaho 877, 392 P.3d 128 (2017), did not change this 100-plus year precedent.

To be clear, JTS is not arguing that CLC cannot seek damages in connection with its unlawful detainer claim. Certainly, it can. That, too, is a 100-plus year precedent. *See Hunter*, 10 Idaho at 82, 77 P. at 437 (quoting with approval a Washington case wherein it was said that a landlord who proves unlawful detainer is entitled to "restitution of the premises . . . together with damages and rent found due"); *Texaco, Inc. v. Johnson*, 96 Idaho 935, 940, 539 P.2d 288, 293 (1975) ("I.C. § 6-316 allows a landlord in an unlawful detainer action to recover, in addition to possession of his property, damages and rent found due."); *see also* I.C. § 6-316 ("The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer . . . .").

What JTS is arguing, is that while the district court was free to assess damages for the unlawful detainer claim, it was <u>not</u> free to consider, let alone assess damages for, CLC's breach of contract claims (including CLC's claim for breach of the covenant of good faith and fair dealing).[1] The reason this is true lies not (as CLC attempts to posit) in the now repealed pleading statutes citied in *Coe v. Bennet*, 39 Idaho 176, 226 P. 736, 736 (1924), nor in the now

[1] As noted by the district court, breach of the covenant of good faith and fair dealing is a breach of contract. R. 965 n.2 (citing *Drug Testing Compliance Grp., LLC v. DOT Compliance Serv.*, 161 Idaho 93, 103, 383 P.3d 1263, 1273 (2016)).

rescinded Idaho Rule of Civil Procedure 81(a) that governed the practice of "special proceedings." *See* Resp't Br. 13 n.5. Rather, the reason why no other "extraneous issues are to be injected by either party" in an unlawful detainer action is found in the unlawful detainer statutes themselves. *Hunter*, 10 Idaho at 81, 77 P. at 437 (holding, after reviewing the unlawful detainer statutes, that the statutes themselves makes clear that the purpose of the statutes is to provide a summary proceeding and injecting other matters would frustrate the purpose of the unlawful detainer statutes); *Texaco*, 6 Idaho 935, 938, 539 P.2d 288, 291 (1975) (same).

The reasoning behind this rule was explained by this Court in *Hunter*. In that case, the landlord brought an unlawful detainer action against the tenant for failure to pay rent. 10 Idaho at 77, 77 P. at 435. The tenant counterclaimed and brought various claims for breach of contract, alleging that the landlord had violated certain covenants of the parties' lease. *Id.* Neither party objected to the injection of the breach of contract claims in front of the lower court. *Id.* at 80, 77 P. at 436. The lower court entered judgment in favor of the landlord on all claims, including the tenant's breach of contract claims. *Id.* However, on appeal, the landlord argued that the Court need not consider whether error was committed in granting the landlord judgment on the tenant's breach of contract claims because the tenant should not have been allowed to bring the breach of contract claims in the first place. *Id.*

In considering whether the tenant should be allowed to bring his breach of contract/lease claims, the Court looked at the provisions of the unlawful detainer statutes and determined that the purpose of the Legislature in enacting the unlawful detainer statutes was to "provide a summary method whereby a landlord might collect his rent, or, in default thereof, obtain possession of his property." *Id.* at 81, 77 P. at 437. The Court specifically looked to the section

of the unlawful detainer statutes that dealt with the "character of judgment that may be entered" and concluded that "every provision of that section looks to the trial of only one issue, namely, whether the defendant is either a forcible or unlawful detainer of the premises." *Id.* The Court then held that "*To allow the issue of unliquidated damages growing out of an independent covenant contained in the lease*, and made by the lessor, to be set up either by way of cross-complaint or counterclaim in such an action, *would frustrate the purposes and object of the statute*[.]" *Id.* (emphasis added).

Thus, *Hunter* stands for the proposition that when a landlord brings a complaint alleging unlawful detainer, the **sole** question to be considered is whether the defendant is an "unlawful detainer of the premises." *Id.* If the defendant is found to be an "unlawful detainer," then, as provided for in the section dealing with the "character of judgment that may be entered," the court may enter judgment restoring the premises to the landlord, and "assess the damages occasioned to the plaintiff . . . by any forcible or unlawful detainer . . . and find any amount of rent due[.]" I.C. § 6-316. Notably missing from the judgment provision is any reference to entering judgment on breach of the lease claims or granting damages for breach of the lease. *Id.* That is, while the statute allows for the entry of damages caused by the tenant's unlawful detainer, it does not allow for the entry of damages caused by a breach of the underlying lease. By failing to mention breach of the lease or damages for breach of the lease in the list of items that the court may enter judgment on, it was reasonable for the Court in *Hunter* to conclude that claims for breach of contract cannot be injected into a proceeding for unlawful detainer. *See Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 639, 586 P.2d

1346, 1355 (1978) (where a statute specifies certain things, the designation of such things excludes all others).

The reasoning in *Hunter* was affirmed approximately 25 years later in *Richardson v. King*. There, like in *Hunter*, the parties injected various claims beyond the unlawful detainer claim, and the lower court considered those claims and entered judgment upon them. 51 Idaho 762, 764-65, 10 P.2d 323, 323-24 (1932). In review of the lower court's actions, the Court reiterated the rule that "in an action for unlawful detainer, the sole question is right of possession [i.e., did the tenant unlawfully detain the premises] and no other issues may be injected." *Id.* at 766, 10 P.2d at 324. Approximately 40 years after *Richardson*, the Court again reaffirmed the reasoning in *Hunter* in *Texaco v. Johnson*, when the Court again noted that the purpose of the unlawful detainer statutes was to provide a "summary process whereby he [the landlord] could regain possession of real property from a tenant or lessee who was unlawfully holding over and therefore no longer in rightful possession." 96 Idaho 935, 938, 539 P.2d 288, 291 (1975). And then, just as in *Hunter* (and relying on the purpose of the unlawful detainer statutes and not the now repealed statutes in *Coe* or the rescinded Rule 81(a)) the Court held:

> No other extraneous issues are to be injected by either party to cloud the proceeding for to allow either party to interpose questions unrelated to the issue of possession [i.e., whether tenant unlawfully detained] would *frustrate the purpose and objective of the unlawful detainer provisions*.

Id. (emphasis added).

Finally, approximately 35 years after *Texaco*, the Court, returning to its statements in *Richardson*, once again re-affirmed the principal first set out in *Hunter*, stating in *Carter v. Zollinger* that "in an action for unlawful detainer, the sole question involved is right of

possession [i.e., did the tenant unlawfully detain the premises], and no other issues may be injected." 146 Idaho 842, 845, 203 P.3d 1241, 1244 (2009) (quoting *Richardson*, 51 Idaho at 766, 10 P.2d at 324) .

The reason why the Court has maintained this precedent for so long is because the statute relied upon by the Court in *Hunter* to determine that the purpose of the unlawful detainer statutes would be frustrated by allowing extraneous matters to enter the proceedings is essentially the same today as it was in 1904. The statute referenced in *Hunter* was § 5106, Chapter 4, Title 3, Revised Statutes of 1887, which read, in relevant part:

> If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due.

REV. STAT. § 5106 (1887).

Today, that same statute is codified at Idaho Code Section 6-316 and, with the exception of some added language dealing with using the property at issue for the distribution of controlled substances, it is essentially unchanged from when the statute was relied upon by the Court in *Hunter*:

> If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent . . . [controlled substance language] . . . the judgment shall also declare the forfeiture of such lease or agreement. The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent or, after default . . . [controlled substance language] . . . and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the amount of the damages thus assessed, and of the rent found due.

I.C. § 6-316.

Thus, for over a hundred years the law has been clear. When a landlord chooses to avail himself of the unlawful detainer statutes, the only question properly before the court is whether the defendant unlawfully detained the premises and, if so, what damages were proximately caused by the unlawful detention (as opposed to any breach of the underlying lease) and what amount of rent, if any, is due. If it were not so, as this Court stated in *Hunter* and in *Texaco*, the purpose of the unlawful detainer statutes would be frustrated by clouding the proceedings with questions related to unliquidated damages in the form of claims for breach of the lease. *See Hunter*, 10 Idaho at 81, 77 P. at 437 ("To allow the issue of unliquidated damages growing out of an independent covenant contained in the lease . . . would frustrate the purposes and object of the statute[.]"); *Texaco*, 96 Idaho at 938, 539 P.2d at 291 ("Unlawful detainer statutes were enacted for the purpose of providing a landlord or lessor with the benefit of a special summary process . . . No other extraneous issues are to be injected by *either party* to cloud the proceedings

for to allow *either party* to interpose questions unrelated to the issue of possession [i.e., unlawful detainer] would frustrate the purpose and objective of the unlawful detainer provisions." (emphasis added)).

CLC attempts to escape this clear rule of law by relying on *Nicholson v. Coeur d'Alene Placer Mining Corp.*, 161 Idaho 877, 392 P.3d 128 (2017). However, *Nicholson* is factually and legally distinguishable from not only the current case but also the Court's prior cases dealing with unlawful detainer and, therefore, CLC's reliance on *Nicholson* is misplaced.

First, unlike the present case, *Hunter*, *Richardson*, *Texaco* or *Zollinger*, *Nicholson* did not involve a plaintiff landlord bringing an action for unlawful detainer. Indeed, *Nicholson* was initiated by the tenant who was claiming breach of contract, promissory estoppel, and unjust enrichment against the landlord. 161 Idaho at 880, 392 P.3d at 1221. The landlord then counter-claimed for unlawful detainer, seeking possession of the property and damages in an amount "not less than the monthly rental value of the property." *Id.* at 886, 392 P.3d at 1227. Notably, the landlord was not seeking damages related to an alleged breach of the underlying lease (as CLC is attempting to do here). Rather, the landlord was specifically seeking damages related to the tenant's unlawful detainer in the form of rent. *Id.* Moreover, the Court was never asked to determine, as a threshold matter, whether the landlord's unlawful detainer counterclaim was properly brought or allowed in connection with the tenant's breach of contract and other claims. *Id.* at 886-87, 392 P.3d at 1227-28. Both sides apparently simply assumed it was and did not raise that issue on appeal. *See id.* (lacking any discussion about whether the counterclaim was properly raised). Rather, the Court was only asked whether an unlawful detainer claim can include a claim for damages based on the value of unpaid rent. *Id.* That question, the Court

answered, as it must, based on prior precedent and the repeal of certain statutes, in the affirmative, and in doing so dispelled any question about whether an unlawful detainer claim may support a claim for damages related to the same. *Id.*

Specifically, the tenant in *Nicholson* had relied on *Coe v. Bennett*, 39 Idaho 176, 226 P. 736 (1924), for the proposition that an unlawful detainer claim cannot support a claim for damages at all. *Id.* at 886, 392 P.3d at 1228. Reliance on *Coe* for this argument was misplaced for multiple reasons. First, as the Court had already made clear 20 years prior to *Coe*, an unlawful detainer claim allows for the "restitution of the premises . . . together with damages and rent found due." *Hunter*, 10 Idaho at 82, 77 P. at 437. Second, and the reason upon which the Court in *Nicholson* based its decision, at the time *Coe* was decided there was a statute that stated that causes of action could only be joined if the causes of action belonged to one of six classes of cases and there was another statute that stated that one of the grounds for demurrer was that different causes of action had been improperly united. *Nicholson*, 161 Idaho at 886, 392 P.3d at 1227. The causes of action brought in *Coe* were from different classes of cases and therefore the *Coe* court held that they were improperly joined. *Id.*; *Coe*, 39 Idaho at 181, 226 P. at 737. As the *Nicholson* Court pointed out, both of the statutes relied on by *Coe* were repealed in 1975. *Nicholson*, 161 Idaho at 887, 392 P.3d at 1228. Thus, the tenant's reliance on *Coe* for the proposition that a claim for unlawful detainer cannot support a claim for damages was clearly misplaced.

However, while the Court clearly rejected the notion that an unlawful detainer claim cannot support a claim for damages based on the monthly rental value of the property, it did not hold that issues or matters beyond the question of whether the tenant unlawfully detained may be

injected when the landlord brings a claim for unlawful detainer. *Id.* To be clear, *Nicholson* simply reaffirmed the fact that an unlawful detainer claim may include a claim for damages related to the unlawful detainer. *Id.* Contrary to CLC's assertions, *Nicholson* does not even mention, let alone abrogate, the Court's longstanding precedent established in *Hunter* that issues or matters unrelated to the question of unlawful detainer are improper in such a proceeding. *Id.* Indeed, had the Court wanted to abrogate *Hunter* and its prodigy, it certainly could have, especially considering that *Coe* itself expressly reaffirmed the Court's holding in *Hunter*. *See Coe*, 39 Idaho at 184, 226 P. at 738 ("This is not in conflict with the doctrine announced in *Hunter v. Porter*[.]"). However, the Court did **not** take the opportunity to do so. Instead, in one short paragraph, the Court simply and directly addressed the question it was asked and held (as it always has) that a claim for unlawful detainer may support a claim for damages that stem from the unlawful detainer. *Nicholson*, 161 Idaho at 886-87, 392 P.3d at 1227-28.

Accordingly, because *Nicholson* did not even mention, let alone abrogate *Hunter*, *Richardson*, *Texaco*, or *Carter* (or even disavow *Coe*'s reliance on *Hunter*) those cases are still good law. And for good reason. The same rationale that the Court relied on in *Hunter* is still present today. That is, if parties were allowed to inject matters outside of the issue of whether the tenant unlawfully detained, it would unnecessarily cloud and delay the proceedings, thereby frustrating the purpose of the unlawful detainer statutes.[2] *See Hunter*, 10 Idaho at 81, 77 P. at 437; *Texaco*, 96 Idaho at 938, 539 P.2d at 291.

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[2] Moreover, as noted earlier, the unlawful detainer statutes, and particularly the judgment statute relied on in *Hunter* to support its ruling, has remained essentially unchanged, despite the fact that it has been amended various times throughout the years. As such, the Court's interpretation remains in force. *See Burns Holdings, LLC v. Madison Cnty. Bd. of Cnty. Comm'rs*, 147 Idaho 660, 666, 214 P.3d 646, 652 (2009) (noting that the legislature is presumed to have full

CLC makes a final attempt to get around this sound reasoning by arguing that because CLC's breach of contract claims are related to the landlord-tenant relationship those claims were properly considered along with CLC's unlawful detainer claim. This argument was expressly rejected by this Court in *Hunter*. As noted above, in *Hunter*, the tenant brought breach of contract claims based on alleged breaches of the covenants contained in the parties' underlying lease. 10 Idaho at 77, 77 P. at 435. The tenant then argued that not only was it his legal right to bring such claims in the unlawful detainer action, he was compelled to do so because they related to or arose out of the transaction underlying the complaint for unlawful detainer. *Id.* at 83, 77 P. at 438. The Court disagreed, noting that breaches of the underlying lease are **not** related to an unlawful detainer action because "[a] tenant does not become primarily an unlawful detainer upon breach of [a] covenant in the lease . . . but, rather, upon failure to [vacate] after demand by a legal notice in the statutory time." *Id.* at 84, 77 P. at 438. That is, although a tenant may be a holdover tenant and may be in breach of the lease by improperly holding over, "but for service of the notice" under the unlawful detainer statutes, the tenant would never become an "unlawful detainer." *Id.* In short, the Court held that breaches of the covenants of the underlying lease are not "connected with, a failure to [vacate] after service of notice" under the unlawful detainer statutes. *Id.* Importantly, as the Court points out in *Hunter*, the landlord is free to forego the remedies offered under the unlawful detainer statutes "and maintain his action on the contract[.]" *Id.* However, if the landlord elects to seek his remedies under the unlawful detainer statute, "the sole question involved is right of possession, and no other issues may be injected." *Carter*, 146

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knowledge of the Court's interpretation of statutes and a failure to overturn the Court's interpretation while amending the statute at issue functions as a presumption that the "Legislature was content with such holdings").

Idaho at 845, 203 P.3d at 1244 (quoting *Richardson*, 51 Idaho at 766, 10 P.2d at 324 (citing *Hunter*, 10 Idaho 72, 77 P. 434)).

Because CLC elected to proceed under the unlawful detainer statutes, the district court was constrained to only consider whether JTS had unlawfully detained the premises and, if so, what damages and rent, if any, were proximately caused by the *unlawful detainer*. *Texaco*, 96 Idaho at 940, 539 P.2d at 293 (noting that a landlord may seek damages that are "the proximate or *direct result of the unlawful detention.*" (emphasis added)). I.C. § 6-316 (allowing entry of judgment for "damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer. . ."). The district court was not allowed to extend judgment to include the parties' breach of contract claims and award CLC damages caused by JTS's alleged breach of the underlying lease (as opposed to damages related to the unlawful detainer). *Carter*, 146 Idaho at 845, 203 P.3d at 1244 (quoting *Richardson*, 51 Idaho at 766, 10 P.2d at 324 ("Being thus limited in its scope and purpose, a judgment rendered in such an action (unlawful detainer) can have no broader application than the proceeding itself, and, the latter being confined to the one issue of possession, judgments rendered therein cannot be extended to include other matters."). Doing so frustrated the purpose of the unlawful detainer statutes. *See Hunter*, 10 Idaho at 81, 77 P. at 437 ("To allow the issue of unliquidated damages growing out of an independent covenant contained in the lease . . . would frustrate the purposes and object of the statute[.]"); *Texaco*, 96 Idaho at 938, 539 P.2d at 291 ("Unlawful detainer statutes were enacted for the purpose of providing a landlord or lessor with the benefit of a special summary process . . . . No other extraneous issues are to be injected by *either party* to cloud the proceedings for to allow *either*

party to interpose questions unrelated to the issue of possession [i.e., unlawful detainer] would frustrate the purpose and objective of the unlawful detainer provisions." (emphasis added)).

Ultimately, CLC chose to seek its remedies under the unlawful detainer statutes. Indeed, CLC's original complaint only sought relief under the unlawful detainer statutes. R. 23-31 (alleging one count of unlawful detainer). And, even though CLC amended its complaint *after* JTS had vacated the property (and therefore possession was clearly no longer an issue), *see* R. 50 (noting filing date of March 24, 2015, over a month after JTS had vacated on February 12, 2015), CLC, in an effort to take advantage of the streamlined remedies afforded under the unlawful detainer statutes, *as well as* seek damages under the Lease, chose to keep its unlawful detainer claim in place rather than to proceed only under the Lease. R. 50-70 (restating its unlawful detainer claim but adding breach of contract and malicious injury claims as well). As the Court recognized in *Hunter*, CLC could have chosen to "forgo" seeking remedy under the unlawful detainer statutes and maintained its "action on the contract." 10 Idaho at 84, 77 P. at 438. However, having chosen to proceed under the unlawful detainer statutes, CLC elected its remedy. As such, the only issue authorized to be heard was whether JTS unlawfully detained the Property, and the district court erred in allowing the parties to inject issues and matters outside of the issue of the unlawful detainer claim and in awarding CLC damages for its breach of contract claims. Therefore, consistent with the holdings in *Hunter*, *Richardson*, and their progeny, JTS respectfully requests that even if JTS unlawfully detained (it did not), the Court strike all findings, conclusions, and damages, related to CLC's breach of contract claims (as opposed to those related to its unlawful detainer claims).[3]

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[3] CLC briefly attempts to argue that because it did not conduct a "quick evict" under Idaho Code

2. Because the district court improperly considered and awarded damages on CLC's breach of contract claims, all damages related to CLC's breach of contract claims should be struck.

CLC attempts to save its improperly considered breach of contract claims and their resultant damages by arguing that because the district court awarded damages for CLC's unlawful detainer claims and contract claims any impropriety was cured as the damages for contract claims and unlawful detainer clams are the same. To be sure, the district court stated:

> Based on Defendant's unlawful detainer and breach of contract . . . Plaintiff may recover the following damages from Defendant: rent due under the Lease Agreement through April 15, 2015 ($7,603.12) (Ex. 22); damages and costs caused by Defendant's removal of the transformer ($7,929) (Exs. 22 and 26); Peterbilt's rent and triple-net for its old lease ($14,587.92) (Exs. 22-24); cost of Peterbilt's idle employee ($7,696.22) (Exs. 22 and 25); costs to repair the Property ($2,600.00) (Exs. 22, 27, and 28); and Peterbilt's lost profits ($45,973.00) (Exs. 22 and 29).

R. 624 (emphasis added).

However, to the extent that any damages awarded were based on CLC's breach of contract claims, as opposed to CLC's unlawful detainer claim, those damages stemming from the breach of contract claims must be struck. *See Richardson*, 51 Idaho at 766-67, 10 P.2d at 325-26 (striking parts of district court's order that related to matters outside the unlawful detainer action); *Carter v. Zollinger*, 146 Idaho 842, 845, 203 P.3d 1241, 1244 (2009) ("Being thus limited in its scope and purpose, a judgment rendered in such an action (unlawful detainer) can

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§ 6-310, it should be allowed to combine its breach of contract claims with its unlawful detainer claim. Resp't Br. 18-19. However, section 6-310 does not broaden the issues that may be considered in an unlawful detainer proceeding—it limits them. *See* I.C. § 6-311E ("[S]ection 6-310, Idaho Code, shall not be applicable when an action for damages is combined with an action for possession"). Moreover, *Hunter* and *Texaco* both discussed the availability of damages for unlawful detainer—as such it is clear that they were not dealing with the "quick evict" provision under section 6-310. Indeed, *Hunter* explicitly relied on what is now section 6-316, not 6-310.

have no broader application than the proceeding itself, and, the latter being confined solely to the one issue of possession, judgments rendered therein cannot be extended to include other matters." (quoting *Richardson*, 51 Idaho at 766, 10 P.2d at 325)). This would include all damages related to JTS's alleged "failure to vacate the Property after its term expired; remov[al] of the transformer after the term expired and without Plaintiff's permission; and fail[ure] to make repairs." R. 964. As the district court explicitly found that those offenses were breaches of the parties' lease or contract—not JTS's alleged unlawful detainer. R. 964 ("Defendant is liable for *breach of contract* because it . . . ." (emphasis added)). This conclusion is further buttressed by the fact that the district court cited to provisions of the Lease for support in finding JTS liable for the above-mentioned alleged breaches. R. 964 (citing the "Surrender of Premises"; "Time of Essence"; "Maintenance and Repair"; and "Improvements" provisions). The same is true of any damages related to JTS's alleged breach of the implied covenant of good faith and fair dealing, which include damages related to any failure "to timely give notice of when it [JTS] would vacate the Property, and fail[ure] to pay the higher rent amount for the month-to-month option." R. 964.

Rather, the only damages that the district court found proximately caused by JTS's alleged unlawful detainer are those related to JTS's alleged failure "to vacate the property within the timeframe set forth in the notice to vacate." R. 963 ("Defendant is liable **for unlawful detainer** because it failed to vacate the property within the timeframe set forth in the notice to vacate." (emphasis added)). It is undisputed that JTS vacated the property by February 12, 2015. Tr. Vol. III, p. 516, LL. 16-24; R. 145 ¶ 40 (admitting as much). Thus, the only damages that were a direct result of JTS's alleged unlawful detainer, as opposed to JTS's alleged breaches of

contract or breach of the covenant of good faith and fair dealing, are for the rent during which JTS allegedly unlawfully detained. *See* I.C. § 6-316 (allowing damages "occasioned . . . by . . . unlawful detainer"); *Texaco*, 96 Idaho at 940, 539 P.2d at 293 (noting that damages claimed under Idaho Code Section 6-316 must be from "the proximate or direct result of the **unlawful detention**" (emphasis added)); *cf. Nicholson*, 161 Idaho at 886, 392 P.3d at 1227 (affirming damages for unlawful detainer in an amount equal to the daily rent from the time set forth in the notice "until [tenants] vacate the Property.").

While it is true that the damages for unlawful detainer *may* be for more than just rent, I.C. § 6-316 (allowing in addition to rent damages *occasioned* by the unlawful detainer); *Texaco, Inc. v. Johnson*, 96 Idaho 935, 940, 539 P.2d 288, 293 (1975) (noting that damages that are the "proximate or direct result of the unlawful detention" are recoverable), there is no question that, as explained above, all other damages in *this* case (except rent for the 12-day holdover) were found by the district court to be a proximate or direct result of the alleged breaches of contract, not the alleged unlawful detention of the Property. R. 963 ("Defendant is liable for unlawful detainer because it failed to vacate the property . . . ."); R. 964 ("Defendant is liable for breach of contract because it . . . removed the transformer after the term had expired without permission; and failed to make repairs.").

As such, because all damages (except rent for the 12 days of unlawful detainer, which was paid by JTS (R. 145, ¶ 42 (admitting that CLC retained JTS's February rent))) were related to JTS's alleged breach of the Lease and the covenant of good faith and fair dealing, and **not** the alleged unlawful detainer, the district court exceeded its subject-matter jurisdiction in awarding

said damages and, consistent with the holding in *Richardson supra*, the Court should strike all other damages.

B. As a Matter of Law, JTS Properly Exercised the Six-Month Renewal Under the Third Amendment.

JTS agrees with CLC that the language of the Third Amendment is clear and unambiguous. *See* Resp't Br. 22. Despite this agreement, CLC spends much of its brief arguing about the parties' intent in creating the Third Amendment and presenting extrinsic evidence that the district court allegedly relied on in interpreting the Lease and Third Amendment. *See* Resp't Br. 25-30. However, "So long as the language of the contract is unambiguous, extrinsic evidence is not admissible to prove the intent of the parties." *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Tr.*, 145 Idaho 208, 214, 177 P.3d 955, 961 (2008) (quoting *Johnson Cattle Co. v. Idaho First Nat'l Bank*, 110 Idaho 604, 607, 716 P.2d 1376, 1379 (Ct. App. 1986)). Further, "[u]nder the parol evidence rule, if the written agreement is complete on its face and unambiguous . . . extrinsic evidence of prior contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the written contract." *Wolford v. Montee*, 161 Idaho 432, 437–38, 387 P.3d 100, 105–06 (2016) (quoting *Lindberg v. Roseth*, 137 Idaho 222, 228, 46 P.3d 518, 524 (2002)). As such, because the Lease and Third Amendment are undisputedly unambiguous, the Court should disregard all of CLC's arguments regarding the intent of the parties and the district court's reliance on any extrinsic evidence in interpreting the same.

Rather, because the parties agree that the Third Amendment is unambiguous (and because the district court found as much, R. 961 ("The plain language of the Lease Agreement . . .")), the sole issue is whether JTS complied with the plain language of the Third

Amendment when it exercised its option to extend the Lease. That question is one of law over which the Court exercises free review. *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 526, 272 P.3d 491, 498 (2012) ("If the language of the [contract] is unambiguous, its interpretation is a matter of law over which this Court exercises free review.").

In its Respondent's Brief, CLC attempts to argue that even though the Third Amendment clearly amended the Lease and added a third option or way the Lease could be extended, JTS was still required to exercise the option to renew for six months in writing. *See* Resp't Br. 23-16. The entirety of CLC's argument in this regard relies on the inclusion of paragraph four in the Third Amendment. *Id.* at 22-23. That paragraph reads: "All other terms and conditions of the Lease Agreement, not specifically amended hereby, remain in full force and effect." R. 121, ¶ 4. CLC attempts to use this paragraph to bootstrap a writing requirement into the plain language of the Third Amendment by pointing to the Option to Renew provision in the Lease. *See id.* However, CLC's argument fails because, although paragraph four in the Third Amendment makes clear that the Option to Renew provision "remain[s] in full force and effect," that provision does not affect the plain language of the Third Amendment.

First, CLC only quotes part of the Option to Renew provision of the Lease. *See* Resp't Br. 23. In full, the provision reads:

> **OPTION TO RENEW:** Upon Lessor's receipt of written notice by the Lessee at least sixty (60) days prior to the expiration of this Lease Agreement, Lessor grants to Lessee an option to renew this Lease for an additional two (2) terms of one (1) year each commencing with the expiration for this Lease Agreement. Rent shall increase on a basis of three percent (3%) with the commencement of each new term. All other terms of the renewed Lease shall be negotiable.

R. 110. Notably, when read in full, it is clear that the Option to Renew provision grants a specific option to renew (hereinafter, "**Option to Renew**"). By its plain language, the Option to Renew only allows for renewal: (1) with written notice; and (2) for a one-year term at a three percent increase. This is a unique and confined option to renew with specific requirements and terms. There is no language in this provision indicating that *any* or *all* options to extend the Lease must be on the same terms or subject to the same written notice requirement as the Option to Renew. Rather, the requirement that the Lessee provide written notice is expressly limited to the provisions of the Option to Renew. Indeed, the written notice requirement is in the same sentence as the grant of the Option to Renew. Thus, if JTS wanted to exercise the Option to Renew and extend its term for one year at a three percent increase it would be required to provide written notice. R. 110.

Critically, however, the option to extend in the Third Amendment is not the same as the Option to Renew, rather, the Third Amendment provides:

> At the conclusion of this lease extension the Tenant shall have the option to extend the lease agreement for an additional period of either six (6) months or on a month to month basis at the following rates:
>
> a. Six Month Term: Base Rent = $6,000.00/mo
>
> b. Month to Month Term: Base Rent = $6,250.00/mo
>
> The Base Rent plus NNN expenses shall be paid monthly, in advance, in accordance with the terms of the Lease.

R. 121, ¶ 3 (hereinafter "**Option to Extend**"). JTS is **not** claiming that it exercised the Option to Renew. Nor could it. The Option to Renew only allows for a *one-year term at a three percent increase*. JTS extended the Lease using the Option to Extend under the Third Amendment for a

six-month extension at roughly a ten percent increase. *See* R. 121 (providing that the rent increased to $6,000 per month).[4] Thus, while the Third Amendment did not alter the Option to Renew and the Option to Renew remained "in full force and effect," it simply has no bearing on whether JTS complied with the clear and express terms of the Option to Extend found in the Third Amendment because the terms and requirements of the Option to Renew provision only apply to the Option to Renew, they cannot be carried over into the Option to Extend in the Third Amendment.

That this is legally correct is explicitly demonstrated in *Dante v. Golas*, 121 Idaho 149, 823 P.2d 183 (Ct. App. 1992). There, the parties' contract provided two separate methods by which an option could be exercised. *Id.* at 150, 823 P.2d at 184. One party attempted to argue that the notice requirements of the first option also applied to the second option. *Id.* The Court of Appeals explicitly rejected this argument. *Id.* The argument was rejected even though the second option to renew was actually a subparagraph of the first option. *See id.* (quoting the applicable provisions with the second option being numbered (1) under the first option).

Here, CLC is attempting to make the same argument that was rejected in *Dante*. That is, CLC is attempting to argue that the notice requirements in the Option to Renew, somehow apply to the separate and distinct Option to Extend found in the Third Amendment. As in *Dante*, such an argument should be rejected. This is particularly true because, unlike in *Dante*, the separate Option to Extend is not even in the same section as the Option to Renew—let alone a subparagraph of the Option to Renew. To hold otherwise would be to impermissibly rewrite the

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[4] Prior to that point, the rent was $5,428.97. *See* R. 109 (providing that original rent was $5,270.84, which after exercising the first Option to Renew would have increased by 3% to $5,428.97, which is what it was when the parties executed the Third Amendment and increased the rent by $571.03 (approximately 10% of then current rent of $5,428.97) to $6,000).

Third Amendment. *See, e.g., Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 362, 93 P.3d 685, 693 (2004) ("Courts do not possess the roving power to rewrite contracts[.]").

Thus, while it is true that the Option to Renew provision in the Lease remained in "full force and effect," that fact has no bearing whatsoever on the terms and requirements agreed to for the Option to Extend as set out in the Third Amendment. The plain language of the Third Amendment does not require a written notice or agreement and the Option to Renew provision does not contain any language indicating that its requirements extend beyond its own boundaries.

Ultimately, JTS does not dispute the fact that the Option to Renew provision remained in "full force and effect" after the Third Amendment was executed. That provision simply does not affect or alter the plain language of the Third Amendment. Thus, if JTS wanted to use the Option to Renew, it could have done so by providing written notice and renewing its term for one year at a three percent rent increase. *See* R. 110. However, JTS chose to exercise the Option to Extend in the Third Amendment, which did not require written notice and extended its term for six months at a ten percent rent increase. *See* R. 121. Instead, the plain language of the Third Amendment clearly provided that: (1) "At the conclusion of this lease extension"; (2) "the Tenant *shall* have the option to extend the lease agreement . . . at the following rate [ ] Six Month Term: Base Rent = $6,000.00/mo"; and (3) "[t]he Base Rent plus NNN expenses shall be paid monthly[.]" R. 121, ¶ 3. There is no mention anywhere in the plain language of the Third Amendment regarding a written notice or agreement requirement.

This is because no written notice or agreement was needed as the terms for the six-month extension were clearly laid out: i.e., if, "at the conclusion of the Lease extension" JTS paid $6,000 plus triple-net, then the term of the Lease would be extended by six months. If JTS paid

$6,250 plus triple-net, then the Lease would convert to a month-to-month term. Accordingly, ***as a matter of law***, once JTS complied with the plain language of the Third Amendment, i.e., once JTS: (1) at the conclusion of the lease extension; (2) paid a base rent of $6,000.00; and (3) paid the base rent plus NNN expenses monthly, the term of the Lease was extended for six months. The plain language of the Third Amendment does not require more. Thus, Gilbert, and subsequently CLC, was bound to the six-month extension. *See Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 309, 160 P.3d 743, 748 (2007) (noting that the obligation of the optionor is triggered when the optionee exercises "the option in the manner prescribed in the parties' contract"); *Dennett v. Kuenzli*, 130 Idaho 21, 28–29, 936 P.2d 219, 226–27 (Ct. App. 1997) (holding that an option was complete upon the fulfillment of the plain requirements of the contract); *Dante v. Golas*, 121 Idaho 149, 150–51, 823 P.2d 183, 184–85 (Ct. App. 1992) (holding that an option was exercised when the optionees complied with the plain language of the contract).

Therefore, the district court erred in disregarding the plain language of the Third Amendment by reading a "written requirement" into the Third Amendment where none was present, and further erred by considering extrinsic evidence in arriving at that conclusion. JTS, having complied with the plain language of the Third Amendment, successfully exercised its option to extend the Lease another six months and was entitled to remain on the Property until April 15, 2015. As such, JTS was not liable for unlawful detainer (or breach of contract or breach of the implied covenant of good faith and fair dealing) and the district court's rulings to the contrary should be overturned as well.

C. The District Court's Additional Findings that JTS Breached the Lease and the Covenant of Good Faith and Fair Dealing Are Not Supported by the Evidence.

Even if the district court did not err in considering CLC's breach of contract claims, including the breach of the covenant of good faith and fair dealing claims, in the same proceeding as CLC's claim for unlawful detainer (it did); and even if the district court did not err in reading a writing requirement into the Third Amendment (it did); the district court's findings that JTS breached the Lease by "removing the transformer after the term expired and without Plaintiff's permission" and breached the covenant of good faith and fair dealing by failing to "give timely notice of when it would vacate the Property, and failed to pay the higher rent amount for the month-to-month option," R. 623, were unsupported by the evidence and therefore should be reversed.

1. JTS did not breach the Lease by removing the transformer.

Initially, JTS notes that CLC does not dispute the fact that the transformer was a trade fixture rather than a permanent improvement. *See* Resp't Br. 36-41. Further, CLC does not dispute the fact that the Surrender of Premises provision of the Lease expressly authorized JTS to remove its trade fixtures from the Property. *Id.* Nor does CLC dispute the fact that the December 11, 2014, eviction letter ("Eviction Letter") sent at CLC's insistence (indeed, CLC/Peterbilt threatened to sue if the letter was not sent, Tr. Vol. II, p. 268 L. 2 – p. 270 L. 25), also expressly required JTS to remove its trade fixtures. *Id.* R. 87 (requiring JTS to remove all of its "trade fixtures, fencing, and personal property of any kind, and surrender [the Property] in the same condition, reasonable wear and tear excepted, as [the Property] were in at the beginning of the Lease."). Rather, CLC attempts to circumvent the plain language of the Surrender of Premises provision and the Eviction Letter (that it insisted was sent), by arguing that JTS

violated the Improvements provision of the Lease by removing the temporary 480V power ***without CLC's permission***. *Id.* at 39. CLC also makes a brief argument that JTS was also liable for damages related to the removal of the transformer under the Lease's Liability Insurance and Indemnification of Lessor provisions of the Lease. *See* Resp't Br. 38-39, 41. None of these provisions, however, provide a basis for sustaining the district court's findings that JTS breached the Lease by removing the transformer. Indeed, finding that JTS breached the Lease by removing the transformer was inconsistent with the Surrender of Premises provision of the Lease and the plain language of the Eviction Letter, which CLC demanded be sent.

a) JTS had permission to remove the transformer.

To begin, CLC's reliance on the Improvements provision is misplaced. By its plain language, as the heading suggests, that provision applies to improvements made by the tenant to the leased premises. R. 111 ("The Lessee shall not reconstruct, remodel, or change . . . ."). It does not say anything about the removal of trade fixtures previously installed by the tenant. Thus, by its plain language, the Improvements provision does not apply to the removal of the transformer. Next even if the Improvements provision could be read to include the removal of transformer, CLC does not dispute the fact that the transformer was a trade fixture. In fact, CLC does not even dispute the fact that JTS was entitled to remove the transformer. *Id.* at 36-41. Instead, CLC claims that the district court found that JTS breached the Lease not because JTS removed its trade fixture, i.e., the transformer, but because "JTS failed to get permission" to do so. *Id.* at 39. This argument overlooks the district court's finding. The district court expressly found that JTS was liable for breach of contract as a result of JTS removing the transformer *and* doing so without CLC's permission. R. 623 ("[JTS] is liable for breach of contract because it . . . removed the transformer

after the terms expired **and** without [CLC's] permission[.]" (emphasis added)). By failing to dispute the fact that the transformer was a trade fixture JTS was entitled to remove, CLC apparently concedes that the first part of the district court's finding related to the removal of the transformer was incorrect, and therefore JTS did **not** breach the Lease by removing the transformer. Rather, CLC maintains that JTS breached the Lease only in relation to the second part of the district court's finding, i.e., JTS breached the Lease not by removing the transformer, but by doing so without permission. Resp't Br. 39.

However, the Eviction Letter, which CLC threatened to sue Gilbert for if she did not send, clearly stated that JTS was required to remove its: "trade fixtures, fencing, and personal property of any kind, and surrender [the Property] in the same condition, reasonable wear and tear excepted, as [the Property] were in at the beginning of the Lease." R. 87. Moreover, the Lease itself expressly provided that JTS was to surrender the premises in the "same condition, reasonable wear and tear expected [sic], that the premises was in at the beginning of this Agreement" and that JTS was "entitled to remove its trade fixtures " R. 113, Surrender of Premises. This language in the Eviction Letter and the Lease clearly authorized, and indeed required, JTS to remove its trade fixtures. CLC does not dispute that the transformer was a trade fixture rather than a permanent improvement. Further, the Eviction Letter and Lease demanded that JTS return the Property to the "same condition" it was "in at the beginning of the Lease." R. 87, R. 113.

It is undisputed that the Property did not have 480V power at the beginning of the Lease. *See* Tr. Vol. II, p. 299, LL. 12-16 (Idaho Power testifying that JTS arraigned to have the 480V transformer added to the Property in February 2014); Tr. Vol. I, p. 108, LL. 9-13. Thus, the Eviction Letter and the Lease, by requiring the Property to be returned to the same condition it was

in at the beginning of the Lease, expressly authorized and even required JTS to remove the temporary 480V power. That CLC was unaware that returning the Property to the same condition it was in at the beginning of the Lease included the removal of the temporary 480V transformer, does not change the fact that Gilbert, and consequently CLC as successor in interest, expressly consented and indeed demanded that JTS return the property to the same condition it was in at the beginning of the Lease.

Furthermore, CLC's attempt to place the burden of notifying CLC of the temporary nature of the 480V power on JTS is contrary to Idaho's clear "buyer beware" law. *See, e.g., Barab v. Plumleigh*, 123 Idaho 890, 894, 853 P.2d 635, 639 (Ct. App. 1993) (noting the rule of *caveat emptor* and that "[t]he general rule is that the vendor of real property who parts with title, possession, and control of the property is permitted to shift all responsibility for the condition of the land to the purchaser."). If 480V power was a crucial condition of the Property, CLC, as part of its due diligence as the purchaser of the Property, should have verified that the 480V power was included in the sale of the Property. It did not. Tr. Vol. I, p. 187, L. 25 – p. 189, L. 8 (noting that CLC did not verify the status of the 480V power).

Accordingly, given the plain language of the Eviction Letter and the Surrender of Premises provision of the Lease, JTS **not only had permission but was required** to remove the temporary 480V transformer. Thus, CLC's arguments that JTS did not have permission or CLC's consent to remove the transformer fail. The Lease and the Eviction Letter, ***which CLC insisted be sent***, provided JTS with all the permission it needed. Moreover, despite CLC's insistence otherwise, even if CLC had done its due diligence regarding the transformer and contacted Idaho Power about leaving the transformer on the property, Idaho Power testified that while theoretically possible, it

was "out of our realm of how we [Idaho Power] do business," and that "[i]t's temporary so it's coming back out? / Yeah." Tr. Vol. II, p. 302, LL. 10-22. Thus, it is clear that the transformer was always going to be removed when JTS left the Property.

Therefore, because JTS was authorized by the Lease and Eviction Letter to remove its trade fixtures, i.e., the transformer, JTS did not violate the Improvements provision of the Lease by removing the transformer. Consequently, even if a written requirement is somehow blue-penciled into the Third Amendment and JTS is found liable for breach of contract, CLC should not be allowed to recover any damages related to the removal of the temporary 480V power, and thus any breach of contract damages should be limited to those directly related to JTS's alleged failure to timely vacate as described in JTS's Appellant's Brief. *See* Appellant's Br. 29-34.

b) The Liability Insurance and Indemnification of Lessor provisions of the Lease do not support the district court's finding of liability for damages.

CLC briefly argues that the Liability Insurance and Indemnification of Lessor provisions of the Lease provide a basis to award CLC damages related to the removal of the transformer. They do not.

The Indemnification provision, by its own express terms, only applies to "claims for damages and injuries . . . **during the term of the Lease**." R. 113 "Indemnification of Lessor." The court ruled that the Lease expired on October 15, 2014, and that JTS carried on as a month-to-month or at-will tenant after that date. R. 961. In December 2014, Gilbert sent JTS the Eviction Letter, thereby terminating the month-to-month or at-will tenancy as of January 31, 2015. *Id.* at 3. Thus, even if JTS failed to properly execute the option to renew under the Third Amendment, and even if the terms of the Lease carried over into the new month-to-month or at-will tenancy, the

Lease terminated no later than January 31, 2015. It is undisputed that CLC's damages, if any, all occurred after January 31, 2015. Therefore, CLC's damages did not arise or occur "during the term of the Lease." Consequently, the Indemnification provision cannot be a basis for awarding CLC any alleged damages.

Similarly, the Liability Insurance provision, by its express terms, only applies to damages "arising from the use *and* occupancy of the [Property] by Lessee[.]" R. 110 "Liability Insurance" (emphasis added). Thus, to apply, JTS must have still been in occupancy of the Property at the time of the alleged damage. It is undisputed that JTS vacated the Property on February 12, 2015. *See* R. 145, ¶ 40 (admitting that JTS vacated the Property on February 12, 2015). Accordingly, any damages that arose after that date are not covered by the Liability Insurance provision and, therefore, the Liability Insurance provision cannot be a basis for awarding any alleged damages beyond that date.

2. JTS did not breach the covenant of good faith and fair dealing.

Rather than attempt to explain how JTS could be liable for breaching the covenant of good faith and fair dealing by: (1) not paying rent under the Lease when the district court expressly found that JTS had failed to renew the Lease, *see* Appellant's Br. 27-28; or (2) by failing to give notice to vacate when the district court had already found that JTS was obligated to vacate by January 31, 2015, and did in fact provide notice of its intent to move out, *see* Appellant's Br. 28-29, CLC attempts to cast JTS as a bad actor who was trying to somehow play "both sides." Resp't Br. 35.

In doing so, CLC claims that JTS obfuscated or somehow equivocated about its intent to exercise the six-month extension or remain in the Property until April 2015 and that when the

"Property was listed and sold in November, JTS did not represented [sic] to CLC that it would remain through April 2015." Resp't Br. 33 n.23. CLC further claims that because **after** JTS was threatened with eviction JTS represented that it could feasibly be out of the Property earlier than April 2015, that, too, somehow shows bad faith. *Id.* 34. CLC then incredibly claims that "[b]y failing to vacate the Property *and* pay rent through April 2015, JTS damaged CLC." *Id.* (emphasis added). That is, CLC claims that JTS should have vacated the Property by January 31, 2015, *and* then continue to pay rent through April 2015. *Id.*; *see also* Tr. Vol. III, p. 528, L. 11 – p. 529, L. 14 (CLC's president acknowledging an email CLC sent to JTS after JTS had vacated the Property in February that stated "March rent is due on the 1st.").

However, despite CLC's insinuations to the contrary, JTS consistently and openly maintained that it had exercised the Option to Extend the term of the Lease by six months and intended to remain until April 2015. JTS was never specifically asked prior to December 2014, whether it had exercised the six-month Option to Extend. Tr. Vol. II, p. 255, LL. 9-25. Upon receiving notification that CLC planned on occupying the Property as soon as possible, JTS immediately responded that it had exercised the Option to Extend the Lease for an additional six months. Tr. Vol. I, p. 124, LL. 15-25. JTS never waivered from that position. Tr. Vol. I, p. 124, LL. 5-8. And consistent with that position, JTS paid the monthly amount associated with the six-month extension beginning November 1, 2014. R. 242, ¶ 2. Indeed, that JTS consistently maintained that it had exercised the Option to Extend for six months was even recognized by CLC's president. Tr. Vol. III, p. 529, LL. 2-4 ("**That was your position. That's been Johnson Thermal's position from day one**."). Further, although it is true that *after* JTS was served with the eviction notice it represented that, in an effort to compromise and avoid legal action, it could

possibly be out of the Property before April 15, 2015, such efforts can hardly be considered bad faith. R. 515 (subpages 25-26).

Rather, prior to CLC's insistence that JTS move out by CLC's closing date with Gilbert, there was no disagreement between JTS and Gilbert regarding the Lease. Indeed, Gilbert stated on multiple occasions that she wanted to be fair to JTS. Tr. Vol. I, p. 123, LL. 6-8; Tr. Vol. II, p. 259, LL. 4-17, p. 260, LL. 12-17. CLC now claims that it did not know that JTS was a tenant in the building when it entered the purchase agreement, but it is clear that is not the case. Tr. Vol. III, p. 373, LL. 7-13 (CLC's president stating that at the time CLC entered the purchase agreement with Gilbert CLC knew that JTS occupied the property as a tenant). Further, even if CLC did not know that JTS was a tenant, it is undisputed that during the due diligence period, if CLC was dissatisfied with Gilbert and JTS's lease agreement, it could have simply walked away. Tr. Vol. II, p. 252, L. 16 – p. 254, L. 17 (Collier agent testifying that CLC had the opportunity to look over the tenancy arrangements between Gilbert and JTS during the due diligence period and could have walked away without losing any money if it was dissatisfied). Instead, CLC insisted on Gilbert evicting JTS. Tr. Vol. III, p. 464, LL. 3-9 ("I don't want to be unkind – **but we don't care about their [JTS and Gilbert's] agreement**. We close on Dec 31. We are taking possession of the building.").[5]

Thus, CLC's insinuations that JTS was playing games or somehow deceitful in its representations regarding its intention to exercise the six-month Lease are not supported in the

[5] CLC also attempts to assign ill motive to JTS sending payments directly to Gilbert instead to Gilbert's real estate agent, Colliers, was somehow misleading or disingenuous. Resp't Br. 10. However, JTS had always sent its payments directly to Gilbert. Tr. Vol. I, p. 41, LL. 14-15 (noting that Gilbert came into the office at JTS the same day she received the check JTS had sent). There is nothing in the record to suggest that this practice was incorrect. Colliers was Gilbert's real estate agent, not her property manager.

evidence and therefore cannot support a finding of the breach of the covenant of good faith and fair dealing. First, CLC's insinuations are purely speculative in nature, and second, and most importantly, while CLC may have argued as much to the district court, the district court never found as much in its decision. *See* R. 955-66 (noting the lack of any finding that JTS equivocated or was playing games regarding its position that it had exercised the six-month extension under the Third Amendment). Indeed, the district court expressly found a lack of malice or wantonness on behalf of JTS when it denied CLC's request for treble damages. R. 965.

Accordingly, for the reasons stated in its Appellant's Brief, JTS maintains that the district court's findings of breach of covenant of good faith and fair dealing were not supported by the evidence and should be reversed. *See* Appellant's Br. 27-29.

D. Remaining Issues Related to Breach of the Lease and Damages, JTS's Counterclaims, and JTS's Combined Motion for Reconsideration.

The remaining issues raised by CLC in its Respondent's Brief related to breach of the Lease and damages, JTS's Counterclaims, and JTS's Combined Motion for Reconsideration are amply addressed in JTS's Appellant's Brief and JTS will not needlessly restate its position on the same, but is content to rest on its briefing in its opening brief. *See* Appellant's Br. 30-35.

E. Attorney Fees in the District Court.

JTS reiterates its arguments made in its Appellant's Brief regarding the impropriety of the district court's award of attorney fees. *See* Appellant's Br. 35-40. JTS makes only two brief, additional observations. First, JTS notes that CLC attempts to proffer Idaho Code Section 12-120 (3) as a basis for supporting the district court's award of attorney fees. Resp't Br. 48. The Court may disregard this argument, as **CLC never asked the district court to award fees**

under Idaho Code Section 12-120(3) and the district court did not, in fact, grant any fees under Idaho Code Section 12-120(3). *See State v. Haynes*, 159 Idaho 36, 41, 355 P.3d 1266, 1271 (2015) ("It is well settled that an issue not raised before the trial court cannot be raised for the first time on appeal.").

Second, CLC argues that it is entitled to attorney fees under the Lease because the Lease terms, including the attorney fee provisions, carried over into the holdover tenancy. Resp't Br. 48-49. While JTS does not dispute that the provisions of the Lease carried over into the tenancy at-will that the district court found arose after October 2014, those provisions did not carry over once CLC, via Gilbert, elected to **terminate** JTS's tenancy via the Eviction Letter. Thus, because CLC elected to terminate JTS's tenancy, it cannot now assert the attorney fee clause in the Lease. *See Ellis v. Butterfield*, 98 Idaho 644, 650, 570 P.2d 1334, 1340 (1977) ("[H]aving *terminated* the contract, they cannot later assert the attorney fee clause in it[.]" (emphasis added)). CLC's reliance on *Garner v. Bartchi*, 139 Idaho 430, 80 P.3d 1031 (2003), is misplaced in this regard because *Garner* dealt with an unenforceable or invalid contract—not a contract that was expressly terminated by the party now trying to claim attorney fees under the contract it terminated.

F. Attorney Fees on Appeal.

JTS maintains its request for fees on appeal under Idaho Code Section 6-324 and the Lease (*see* R. 37 "Enforcement Expenses") as argued in its Appellant's Brief. *See* Appellant's Br. 40. CLC argues that it is inconsistent for JTS to argue for fees under the Lease on appeal but then argue that CLC is not entitled to fees under the Lease because the Lease was no longer enforceable. Resp't Br. 49. There is nothing inconsistent about this position, of course JTS

seeks attorney fees under the Lease, it is JTS's position that the Lease was still in force at the time of the wrongful eviction. If JTS prevails, the Lease would have still been in effect and JTS's eviction would have been a breach of the Lease. Conversely, CLC insisted that the Lease be, and was, terminated on January 31, 2015. Having insisted as much, it cannot claim that the Lease was still in effect to claim the benefit of the attorney fees provision.

Further, because JTS should prevail on appeal, CLC is not entitled to fees on appeal. Even in the event CLC prevails on appeal, for the same reasons CLC's fees should have been limited in the district court, *see* Appellant's Br. 35-40, CLC's attorney fees on appeal should be limited to those expressly related to its unlawful detainer claim.

III. CONCLUSION

CLC elected to bring an unlawful detainer claim nine days before the notice required under the unlawful detainer statutes had run. It made the same election when it amended its complaint more than a month **after** JTS vacated the premises and possession was no longer at issue. Having elected to proceed under the unlawful detainer statutes rather than solely under the parties' contract, the only matter properly before the district court was the question of unlawful detainer and all other matters, including CLC's breach of contract claims and any damages related to the same, should be struck. Further, under the plain language of the Third Amendment, JTS was **not** required to exercise the Option to Extend in writing. The district court erred in concluding otherwise. Because JTS properly extended the Lease for an additional six months, the district court's rulings regarding breach of Lease and JTS's counterclaims was also in error.

At a minimum, it is clear that JTS did not breach the Lease when it removed the transformer in accordance with the provisions of the Lease and the Eviction Letter drafted and sent at CLC's bequest.

Accordingly, for the reasons stated in this brief and in JTS's Appellant's Brief, JTS respectfully requests that the Court reverse the decision of the district court and grant JTS its attorney fees and costs on appeal.

DATED: March 1st, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2019, I caused to be served a true copy of the foregoing APPELLANT'S REPLY BRIEF by the method indicated below, and addressed to each of the following:

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