IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Morcos Bros, Inc., a Washington Corporation d/b/a Mr. Greek Mediterranean; NADER MORCOS and JANE DOE MORCOS; and NABIL MORCOS and JANE DOE MORCOS, Appellants, v. Meridian Place LLC, a Washington Limited Liability Company; Greg Stein, an individual, Respondents,	No. 39157-1-II UNPUBLISHED OPINION

Hunt, J. — Tenants Nabil and Nader Morcos and Morcos Bros., Inc. (collectively, Morcos Brothers) appeal the trial court's dismissal of their complaint against landlord Meridian Place, LLC and Greg Stein (collectively, Meridian), which alleged fraud, negligent representation, and breach of a commercial lease agreement for a restaurant space in the Meridian Place Shopping Center. Morcos Brothers also appeal the trial court's award of damages to Meridian on its counterclaim. They argue that the trial court erred in (1) failing to enter written findings of fact and conclusions of law; (2) denying their motions for a new trial and for reconsideration; (3)

misconstruing the Lease's delivery date; (4) finding that the "Landlord's Work" was "substantially complete" as of October 1, 2006, without substantial evidence in support, Br. of Appellant at 18; (5) failing to base its "informal [oral] findings" on substantial evidence, Br. of Appellant at 1; (6) failing to offset Meridian's damages award for unpaid rent by the amount that Meridian would have paid for tenant improvements under the Lease; (7) misconstruing Lease terms under which they contend that Meridian's breaches relieved them of the obligation to pay rent; and (8) dismissing their fraud claims. We affirm.

FACTS

I. Lease

On behalf of Morcos Brothers, Inc., Nabil and Nader Morcos negotiated a commercial agreement with Meridian Place, LLC representative Greg Stein to lease a 4,350-square-foot restaurant space in Puyallup's Meridian Place Shopping Center. Stein was a member of Meridian Place and the president of Meridian's "member manager," Western Front Development. Nabil[1] was president of Morcos Brothers, Inc.; Nader was vice president.

On July 29, 2006, the real estate broker delivered a draft copy of the lease to Nabil and Nader, who reviewed the draft lease, made handwritten revisions, and returned the revised document for the broker to relay to Stein. The following day, the broker notified Nabil and Nader that Stein had agreed to the revised lease agreement (Lease). Stein made multiple handwritten revisions to the Lease and arranged a meeting with Nabil and Nader.

[1] Where necessary for clarity, we refer to Nabil and Nader Morcos by their first names; we intend no disrespect.

On July 31, Nabil and Nader met with Stein to review and to execute the Lease. During this three-hour meeting, (1) Stein advised Nabil and Nader about the handwritten revisions he had made to the Lease, which they reviewed; (2) Nabil and Nader negotiated and made multiple additional handwritten revisions to the Lease, to which Stein agreed; (3) Nader asked Stein for a clean copy of the Lease incorporating Stein's and their handwritten edits, which Stein insisted was unnecessary; (4) Nabil, on behalf of "Morcos Brothers, Inc., d.b.a. Mr. Greek Mediterranean Grill" (Tenants), and Stein, on behalf of Meridian (Landlord), initialed each handwritten revision to the 44-page Lease, each of the 44 pages in the Lease, and each of the Lease's attached exhibits A through J, after which they signed and notarized the Lease; and (5) Nabil and Nader signed an addendum, Exhibit H, guaranteeing "payment and performance" of the Lease. Clerk's Papers (CP) at 90.

A. Terms

Lease Subsection 5.1 provided: "The *Initial Term* of this *Lease* shall be for a period of five (5) years"; and "the actual *Commencement Date* shall be determined in accordance with *Subsection 5.2*." CP at 32. Lease Subsection 5.2 provided that the Lease period "shall begin . . . ninety [ ] days after the delivery date," that the "[d]elivery date shall be on [October 1, 2006]," and:

> "*Delivery Date*" shall mean the date that the *Premises* will be delivered to *Tenant* in such condition as is reasonably required for the commencement of *Tenant's Work*, as determined by *Landlord's* architect, owner's representative, or contractor, and as such date is set forth in a notice from *Landlord* to *Tenant*. Notwithstanding the foregoing, however, if *Landlord* is unable for any reason to deliver possession of the *Premises* to *Tenant* prior to the estimated *Commencement Date* . . . , *Landlord* shall not be liable for any damages caused thereby, this *Lease* shall not thereby be or become void or voidable, but in such

> event, the *Commencement Date* shall be delayed for a like period of time, unless such inability of *Landlord* to deliver possession of the *Premises* was caused by [the] actions of *Tenant* or *Tenant's* agents. In such cases where *Tenant* or *Tenant's* actions caused *Landlord* to delay delivery of possession of the *Premises* to *Tenant*, such delays shall not otherwise change the *Commencement Date*.

CP at 32.

Lease Section 12 separately set forth the "*Landlord's Work*" and "*Tenant's Work*" provisions, CP at 36-37, and provided for "Notice of Substantial Completion" as follows:

> When *Landlord* has substantially completed *Landlord's Work* to such a condition as is reasonably required for the commencement of *Tenant's Work*, as determined by *Landlord's* architect, owners[sic] representative, or contractor (with the exception of any portion thereof which can only be completed after completion of all or a portion of *Tenant's Work*, as hereafter defined), *Landlord* shall notify *Tenant* in writing to the effect. This notice shall re-specify the *Delivery Date* as defined in <u>*Section 5.2*</u>.

CP at 37 (Lease Subsection 12.1(c)). Lease Section 12.2, "<u>*Tenant's Work*</u>," provided:

> *Tenant* agrees, prior to the *Commencement Date*, as calculated in <u>*Subsection 5.2*</u>, [] to perform all fixturing work and other work constituting *Tenant's Work*, subject to and in accordance with the terms and conditions of <u>*Exhibit D*</u>. . . . All *Tenant's Work* shall become part of the *Premises* and the property of *Landlord* upon completion.

CP at 37.

The Lease's attached Exhibit D outlined the parties' respective obligations for Landlord's Work and Tenant's Work. Landlord's Work required Meridian (1) to complete the building's structural and exterior renovations; and (2) to provide the storefront and storefront hardware, rear door access, concrete flooring, electrical service, heating, ventilation and air conditioning systems, utilities, and a fire sprinkler system. Tenant's Work required Morcos Brothers to provide interior partitions, electrical fixtures, electrical panel requirements, meter installation, and electrical

hardware, exterior and interior signs, grease interceptor devices (for food preparation), and "[a]ll other items of work which are not expressly made a part of *Landlord's Work*." CP at 80. Exhibit D also provided: (1) "*Tenant's Work* must comply with all applicable building codes and local ordinances, and *Tenant* shall be responsible for securing all required permits before commencing such work"; (2) "*Tenant* should make early arrangements with an insurance company to provide the coverages required," under the Lease; and (3) "*Tenant's* general contractor shall work in conjunction with *Landlord's* building contractor so that *Tenant's* contractor does not interfere [with] or delay . . . the progress of such work." CP at 81.

B. Dispute

Meridian began making its Landlord's Work improvements to the building. On September 8, 2006, Meridian's project manager notified Morcos Brothers in writing that the leased space would be ready for them to begin their Tenant's Work on October 1. At that time, Morcos Brothers did not complete preliminary work, such as obtaining construction permits to begin their tenant improvements. Nor did they begin their Tenant's Work when they received structural drawings from Meridian.

In an email Nabil asserted that the delay resulted from Meridian's not having substantially completed the Landlord's Work. On November 10, Meridian met with Nabil and Nader to walk through the space and to review the status of the work at the site. On November 16, Meridian sent Morcos Brothers a detailed letter, noting that only one item of Landlord's Work on the interior space remained and advising them that some of the work they had characterized as unfinished "Landlord's [W]ork" was actually Tenant's Work. 6 Verbatim Report of Proceedings

(VRP) (Feb. 10, 2009) at 792.

Morcos Brothers requested revising the Lease to delay the delivery date. Meridian agreed to delay the delivery date by one month and sent a formal addendum to the Lease, changing the delivery date, to Morcos Brothers. But the Morcos Brothers never signed the addendum, thus, the delivery date of October 1, 2006, and the commencement date of January 1, 2007, remained as provided in the Lease. Despite the passage of the delivery date, Morcos Brothers made no significant improvements to the premises.

II. Procedure

A. Complaint, Answer, and Counterclaim

On December 4, 2006, Morcos Brothers sued Meridian and Stein for breach of contract, fraud, and negligent misrepresentation. They sought a declaratory judgment to establish (1) "when the delivery date should accrue," CP at 8, for the purpose of determining whether "the leased premises [was] in such a condition as is reasonably required for the commencement of 'Tenant's Work,' as outlined in the [L]ease," CP at 7; and (2) whether Meridian "must perform certain work yet to be completed pursuant to the terms of the lease agreement." CP at 8. Alleging that Meridian had fraudulently misrepresented its "material alterations" to the Lease to induce their signature, Morcos Brothers asked the trial court to "void the [L]ease" or, in the alternative, to "asses[s] damages [for Morcos Brothers] in an amount to be proven at trial," CP at 8, plus reasonable attorney fees and "other and further relief as the Court deems just and equitable." CP at 9.

On January 19, 2007, Meridian filed an answer, which included affirmative defenses and a

counterclaim for damages, denying the allegations in Morcos Brothers' complaint, and asserting that Morcos Brothers' alleged damages "were proximately caused by [their] own negligence." CP at 16. In support of its counterclaim, Meridian alleged that (1) "[Morcos Brothers] agreed to each and every material term set forth in the Lease Agreement and no change was made to any provision of the Lease Agreement after the[y] reviewed all terms and changes, including handwritten changes, to the terms and signed the Lease," CP at 16; (2) Morcos Brothers "materially breached the Lease Agreement," CP at 18, by failing to provide Meridian with building permits, proof of insurance, name of contractors, complete construction plans, and first month's rent and security deposit payments; and (3) because Morcos Brothers' breach caused it financial loss and the attorney "fees and costs incurred in defending this action," the trial court should dismiss Morcos Brothers' complaint with prejudice and grant Meridian's counterclaim for damages. CP at 19.

B. Notice To Cure or To Vacate

As of February 1, 2007, Morcos Brothers had not paid Meridian $26,100 for the security deposit and prepaid minimum rent due when the parties had signed the [L]ease on August 1, 2006. Nor had Morcos Brothers paid the first month's rent, which, under the Lease, they had agreed to pay by January 1, 2007. Morcos Brothers had performed a minimal amount of construction activity without evidence of insurance, city permit, or the required Landlord approval.

On February 9, Meridian served Morcos Brothers with a notice to cure their past due rent payments or to vacate the premises. On March 15, Morcos Brothers vacated the property.

Morcos Brothers paid no rent to Meridian for a total of nine months—from the January 1, 2007 commencement date, through September 30 when Meridian found a substitute tenant.

C. Bench Trial

Former Pierce County Superior Court Judge Michael Hecht presided over the bench trial. Meridian's retail development expert testified that (1) the "tenant space in the Meridian Place Shopping Center was ready for the Morcos Brothers to begin . . . work on or about October 1, 2006," 4 VRP at 539; (2) "it's completely common" for landlord work and tenant work to proceed simultaneously, 4 VRP at 542; (3) during the October through September timeframe, Meridian was "finishing up the [building's] exterior details" with scaffolding, 4 VRP at 541; and (3) this exterior work "would not" have interfered with the Tenant's Work or any work on the building's interior. 4 VRP at 542.

Meridian's project manager testified that "substantial completion" "refers to the time in the contract . . . where the contractor has mostly finished his work and knows that there are a few touch-up items left to do but is ready for the final inspection of his work so that [he] can start wrapping up" the construction contract. 7 VRP at 826. Meridian had substantially completed its Landlord's Work as of November 8 or 9, 2006, if not earlier.

Nader testified that he had refused to sign the revised Lease because he wanted to sign a clean and complete formal document that incorporated the parties' handwritten revisions. But he had signed the "Guarantee of Payment and Performance of [the] Lease" attached as Exhibit H to the Lease. 1 VRP at 90. To support the misrepresentation claims, Nader testified that Stein had failed to explain in detail his (Stein's) handwritten revisions to the Lease; Nabil provided similar testimony. But Nabil and Nadir failed to explain how Stein had misrepresented the Lease or any of his handwritten revisions to the Lease document, all of which revisions Nabil had reviewed and

initialed before signing.

Morcos Brothers' expert construction consultant testified that in preparation for rendering his opinion on whether Meridian had substantially completed its Landlord's Work as of the October 1, 2006 delivery date, he had reviewed the parties' Lease, letter and email correspondences, and construction drawings and had visited the site. Based on a November 9, 2006 photograph of the commercial space's interior, he testified that Meridian's sheetrock heaters and paint lifts were still in the building, taking up the whole floor area and preventing Morcos Brothers from beginning their tenant improvements. He did not think that Morcos Brothers had made any tenant improvements to the Lease space as of November 9, 2006.

He also opined that it would not have been reasonable for Morcos Brothers "to begin its tenant improvement work on October 1, 2006," 5 VRP at 625, because Meridian's sheetrock, painting, and sprinkler system work "wasn't done until early December." 5 VRP at 626. He further testified that (1) Morcos Brothers' building permits were not approved until January 5, 2007; and (2) even if Morcos Brothers had submitted their building permit application earlier than November 7, 2006, "it still would have been into December" before they could have started tenant improvements because "they [were] still hampered by landlord's work and the approval of design by the building department for permitting." 5 VRP at 627.

On February 10, 2009, Meridian moved to dismiss Morcos Brothers' fraud claims, alleging that they had "failed to prove justifiable reliance on any alleged statement made by Mr. Stein at any point in time." II CP at 357. The trial court granted the motion, dismissed Morcos Brothers' fraud claims, and stated its findings in support on the record. The trial court found that

Morcos Brothers had failed to make a claim for fraudulent misrepresentation because they had failed to demonstrate that Stein had misrepresented any part of the Lease.

D. Trial Court's Oral Findings and Conclusions

On February 23, 2009, the trial court issued a detailed 30-page oral ruling in Meridian's favor setting forth factual findings and legal conclusions and their underlying rationales.[2] The trial court ruled that (1) the Lease terms "were fairly specific," VRP (Feb. 23, 2009) at 2, and "not ambiguous," VRP (Feb. 23, 2009) at 5; (2) the "delivery date, the rent, the commencement date, the landlord improvements, the tenant improvements, who's responsible for items not listed on the landlord's work, every term . . . was sufficiently clear," VRP (Feb. 23, 2009) at 5; (3) Lease "Section 5.1 clearly stated that the commencement date was on or about January 1, [2007]" that the commencement date would be 90 days after delivery, and that the delivery date was October 1, 2006, VRP (Feb. 23, 2009) at 2; (4) the broker's addendum to the Lease, strongly urging Morcos Brothers "to obtain counsel to review the [L]ease," demonstrates that they "were on notice" and "chose not to have the [L]ease reviewed [by an attorney] prior to signing," VRP (Feb. 23, 2009) at 5-6; (5) although Meridian drafted the Lease, "the multitude of initials and changes" to the Lease demonstrates "a bargain[ed] for exchange between both parties in their three-hour negotiation" and, therefore, neither party "was the sole drafter," VRP (Feb. 23, 2009) at 6; and (6) October 1, 2006, was the Lease's delivery date as a matter of law because on that date Morcos Brothers "had access to the space and the landlord improvement work was substantially

[2] The trial court did not, however, number its oral findings. Nor did it distinguish between its findings of fact and conclusions of law.

done" to reasonably allow Morcos Brothers to begin tenant improvements. VRP (Feb. 23, 2009) at 19.

The trial court found that Meridian's expert "was extremely thorough, knowledgeable, and credible." VRP (Feb. 23, 2009) at 9. In contrast, the trial court found that Morcos Brothers' expert's "testimony was not credible" because he "lacked the experience in restaurant tenant improvement coordination with landlord improvement," and he "was not thorough in his review and preparation for his opinion." VRP (Feb. 23, 2009) at 10.

The trial court also found that Meridian had "worked in good faith to keep the tenant on track," VRP (Feb. 23, 2009) at 10, and that "[t]he delays in completing the tenant improvement was[sic] caused by [Morcos Brothers]," VRP (Feb. 23, 2009) at 19, who "did not work on or proceed on the space in a timely manner." VRP (Feb. 23, 2009) at 13. When Meridian served Morcos Brothers with a "cure or vacate" on February 9, 2007, they "could have paid $51,161.73" and "could have accepted the loan from Harbor Financial Services and gone ahead with completing the project"; instead, they waited until March 15 to vacate the premises. VRP (Feb. 23, 2009) at 15.

The trial court ruled that under the Lease addendum for guarantee of payment, Nadir and Nabil are personally liable for Meridian's damages. The trial court further found that (1) Meridian had incurred damages, including nonpayment of rent from January 1, 2007, through September 30, 2007, for a total of $117,450; (2) Morcos Brothers owed $18,243.45 for common area maintenance charges,[3] plus one percent per month interest, for a total of $37,031 owed; and (3)

[3] *See* Lease, "*Tenant's* Share of *Common Costs*." CP at 44.

the Lease provided a $250 late fee plus five percent of the monthly rent amount ($13,050) for each unpaid month, which the trial court calculated to be $8,122.50 for the nine months of unpaid rent. *See* VRP (Feb.23, 2009) at 20-22. Under the Lease's attorney fee provision, the trial court awarded reasonable attorney and expert witness fees and costs to Meridian, noting, "I will be awarding attorney fees through September as was presented in the damages of $104,432.85." VRP (Feb. 23, 2009) at 24.

Morcos Brothers' claimed that Meridian's damages should be offset by the $87,000 Meridian had saved because it did not need to reimburse Morcos Brothers for completing the Tenants' Work improvements, as set forth in the Lease. The trial court commented, "[I]t's unjust for [Morcos Brothers] to get a benefit of $87,000 when the landlord never got to that point of having to provide it," VRP (Feb. 23, 2009) at 28; and

> [Morcos Brothers] put very little money into this $600,000 project. They did not go forward with the loan, they did not take the money, they did not do anything, they negotiated with people, they didn't hire people, they didn't get all of their ducks in a row, they didn't get a permit until late.

VRP (Feb. 23, 2009) at 28. But the trial court requested additional briefing from both counsel on the issue before ruling.

E. Entry of Judgment

Meridian moved for entry of judgment and a supplemental award of attorney's fees and costs and asked the trial court to reject Morcos Brothers' request for an $87,000 offset for "tenant improvement work." Morcos Brothers responded with a "memorandum in opposition to entry of judgment" objecting to the trial court's failure to enter written findings of fact and

conclusions of law and objecting to the trial court's oral findings and conclusions regarding Meridian's damages. II CP at 207.

At the March 6 judgment presentment hearing, the trial court ruled that because Morcos Brothers had presented no evidence about "whether the $87,000 was any consideration in the amount of rent," it would not consider their offset argument. VRP (March 6, 2009) at 17. In its written order, the trial court awarded Meridian $377,657, plus 12 percent interest per annum on the unpaid balance, for nine months of unpaid rent, CAM charges, late fees, and costs. The trial court awarded Meridian $102,295 for attorney and expert witness fees and costs.

Morcos Brothers asserted that "written Findings and Conclusions need to be presented and entered by the Court," contending that "CR 52 and related case law requires[sic] the entry of written Findings and Conclusions so there's something for [the] Court of Appeals to review." VRP (March 6, 2009) at 5. The trial court replied that it did not see a CR 52 requirement that such findings and conclusions must be in writing; rather, CR 52(4) requires written findings and conclusions only "if a written opinion was given." VRP (March 6, 2009) at 6. Morcos Brothers countered that case law applying CR 52 supports that "written findings and conclusions need to be entered." VRP (March 6, 2009) at 7. Nevertheless, the trial court entered judgment that day and advised Meridian:

> You're going to order the transcript, at least as to the Findings of Fact and Conclusions of Law. Then I guess you can submit that to the Court and ask me to affirm that that is my Findings of Fact and Conclusions of Law. I guess I can sign on and say this is my Findings of Fact and Conclusions of Law, as long as it's true and correct.

VRP (March 6, 2009) at 19-20.

F. Motion for Reconsideration, Motion for New Trial, and Appeal

Morcos Brothers filed (1) a motion for reconsideration, asking the trial court to reconsider its dismissal of their claims for breach of contract and fraud and its award of damages to Meridian; and (2) a separate motion for new trial under CR 59, asserting that criminal charges pending against the trial judge "prevented [them] from having a fair trial." CP at 237. Morcos Brothers further noted, "Judgment was entered on March 6, 2009, but written findings and conclusions have not been entered as of the date of this motion [March 16, 2009]." II CP at 236.

The trial court denied Morcos Brothers' motion for reconsideration, concluding that it had already addressed and ruled on these arguments at the bench trial. The trial court arranged for a different judge to hear Morcos Brothers' motion for new trial because it raised issues about the trial judge's (former Judge Michael Hecht) judicial conduct and credibility. On April 17, a different judge (Judge Bryan E. Chushcoff) heard and denied Morcos Brothers' motion for a new trial, concluding that they had failed to show how the trial court's contemporaneous criminal proceedings affected the outcome of their case.

Morcos Brothers appeal.

ANALYSIS

I. Findings of Fact and Conclusions of Law

Morcos Brothers first argue that we must remand for the trial court to enter written findings and conclusions to comply with CR 52's requirement that "the court shall find the facts specially and state separately its conclusions of law." CR 52(a)(1); Reply Br. of Appellant at 10. Meridian counters that the trial court "entered written findings of fact by expressly adopting its

oral decision in its judgment." Br. of Resp't at 18. We hold that despite the failure to enter formal written findings of fact and conclusions of law, the trial court's detailed 30-page oral findings and conclusions are adequate for our review.

CR 41(b)(3) provides, "If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in rule 52(a)." CR 52(a)(1) provides in full:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Judgment shall be entered pursuant to rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law.

We have previously held that a trial court's failure to enter findings of fact and conclusions of law requires remand to the trial court for formal entry of written findings and conclusions unless the record is adequate for review. *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 416, 157 P.3d 431 (2007) (holding that "[a]bsent an adequate record" to review the attorney fee award, an appellate court "must remand for further proceedings"); *Shelden v. Dep't of Licensing*, 68 Wn. App. 681, 685, 845 P.2d 341 (1993) (citing *Peoples Nat'l Bank of Washington v. Birney's Enterprises. Inc.*, 54 Wn. App. 668, 775 P.2d 466 (1989)).[4]

Here, the trial court's 30-page oral decision contains explicit findings of fact, separately identifies and explains each Lease provision at issue, outlines the parties' opposing arguments, and sets forth its reasoning for each of its findings and legal rulings. This oral opinion, which the

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[4] In *Shelden*, we noted that, although the trial court "made oral findings," it "did not make written findings as required under CR 52(a)(1)." 68 Wn. App. 685. Nevertheless, we held that because the record, the trial court's oral opinion, and the statutory requirements "[we]re clear," we would "consider [the trial court's] oral findings rather than remand for the entry of formal findings." *Shelden*, 68 Wn. App. at 685. Similarly in *Peoples Nat'l Bank*, rather than remanding to the trial court for entry of written findings and conclusions, we denominated as "findings" the trial court's oral remarks and addressed the substantive issues in the case. 54 Wn. App. at 670.

trial court apparently spent considerable time preparing in advance of reading it into the record, is adequate for review. *See Just Dirt, Inc.*, 138 Wn. App. at 416; *see Shelden*, 68 Wn. App. at 685. We hold, therefore, that the trial court's failure to enter written findings of fact and conclusions of law does not require remand to the trial court for entry of formal written findings and conclusions.

II. CR 59 Motion for New Trial

Morcos Brothers next argue that the trial court improperly denied their CR 59(a) motion for a new trial because "[t]he very existence of criminal charges filed [against Judge Hecht just days after his] decision in this [trial], call[s] into question [the judge's] ability to act as a credible arbiter of justice," Br. of Appellant at 16, and creates "at least a reasonable doubt" about whether they received a fair trial. Br. of Appellant at 17. This argument also fails.

We review for abuse of discretion a trial court's decision to grant or to deny a CR 59 motion for a new trial or reconsideration. *Lian v. Stalick*, 106 Wn. App. 811, 824, 25 P.3d 467 (2001). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *Stalick*, 106 Wn. App. at 824 (quoting *Kohfeld v. United Pacific Ins. Co.*, 85 Wn. App. 34, 40, 931 P.2d 911 (1997)). We find no such abuse here.

Morcos Brothers speculate that "the significant distraction of a criminal investigation" and charges "affected Judge Hecht's ability to evaluate the testimony in a calm and dispassionate manner." Br. of Appellant at 17. But they fail to show, and the record fails to demonstrate, how Judge Hecht's criminal charges prejudiced them or affected the outcome of their case. Accordingly, we hold that the trial court did not abuse its discretion in denying their motion.

III. Delivery Date and Landlord Work

Morcos Brothers next argue that (1) the trial court erred in finding the Lease's delivery date was October 1, 2006; and (2) substantial evidence fails to support the trial court's finding that Meridian substantially completed its Landlord's Work as of that delivery date. We disagree.

A. Standard of Review

As "[t]he party claiming error," Morcos Brothers has "the burden of showing that a finding of fact is not supported by substantial evidence." *Fisher Properties, Inc v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990) (citing *Leppaluoto v. Eggelston*, 57 Wn.2d 393, 401, 357 P.2d 725 (1960)). Evidence is substantial when it "'would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.'" *Shelden*, 68 Wn. App. at 685 (quoting *Dravo Corp. v. L.W. Moses Co.*, 6 Wn. App. 74, 81, 492 P.2d 1058 (1971), *review denied*, 80 Wn.2d 1010 (1972)). If substantial evidence supports a trial court's findings of fact, we "must treat them as verities." *Ferree v. The Doric Co.*, 62 Wn.2d 561, 568, 383 P.2d 900 (1963); *see Miles v. Miles*, 128 Wn. App. 64, 69, 114 P.3d 671 (2005).

"[I]t is a firmly established rule" that when substantial evidence supports the trial court's findings, appellate courts "will not retry factual disputes [ ] on appeal." *Ferree*, 62 Wn.2d at 568. The trial court is in a better position to weigh the evidence and to assess witness credibility; thus, appellate courts "will not substitute their judgment for that of the trial court" on issues of weight and credibility.[5] *Fisher* 115 Wn.2d at 369-70 (citing *Davis v. Dep't of Labor & Indus*., 94 Wn.2d 119, 124, 615 P.2d 1279 (1980)).

[5] The trial court found that Morcos Brothers' expert "testimony was not credible" because he lacked experience in restaurant tenant improvement and coordination with the landlord, and "[h]e was not thorough in his review and preparation for his opinion." VRP (Feb. 23, 2009) at 10. In contrast, the trial court found that Meridian's expert "was extremely thorough, knowledgeable, and credible." VRP (Feb. 23, 2009) at 9.

B. Substantial Evidence Supports Finding

The record does not support Morcos Brothers' argument that it is unclear "how the trial judge interpreted the [Lease's] [ ] delivery date." Br. of Appellant at 18. On the contrary, the trial court's oral ruling identified the applicable Lease provisions by section and number and quoted them in its analysis. The record similarly does not support Morcos Brothers' argument that the trial court erred in concluding that "substantial completion of the landlord's work was not required for delivery to the tenant." Br. of Appellant at 18. Again, contrary to this argument, the trial court's oral decision contains its ruling that as of the October 1, 2006 delivery date, "the landlord improvement work was substantially done to reasonably allow [Morcos Brothers] to start [their] tenant improvements." VRP (Feb. 23, 2009) at 19. We hold that the record supports the trial court's oral findings of fact and that these findings of fact support its legal "findings" and rulings, which were, in essence, conclusions of law.

IV. "Offset" Damages

Morcos Brothers next argue that the trial court erred in declining to offset Meridian's damages for unpaid rent by the $87,000 sum that Meridian had agreed to pay, but did not have to spend, for tenant improvements under the Lease. Their argument fails.

"Contract damages are ordinarily based on the injured party's expectation interest and are intended to give that party the benefit of the bargain by awarding him or her a sum of money that will, to the extent possible, put the injured party in as good a position as that party would have been in had the contract been performed." *Mason v. Mortgage America*, *Inc.*, 114 Wn.2d 842, 849, 792 P.2d 142 (1990) (citing *Stevens v. Security Pacific Mortgage Corp*., 53 Wn. App. 507,

521-522, 768 P.2d 1007 (1989)). "The amount of damages is a matter to be fixed within the judgment of the fact finder." *Mason*, 114 Wn.2d at 850 (citing *Rasor v. Retail Credit Co.*, 87 Wn.2d 516, 554, P.2d 1041 (1976)). "A trier of fact has discretion to award damages which are within the range of relevant evidence." *Mason*, 114 Wn.2d at 850 (citing *Cultum v. Heritage House Realtors, Inc.*, 103 Wn.2d 623, 633, 694 P.2d 630 (1985)). "An appellate court will not disturb an award of damages made by the fact finder unless it is outside the range of substantial evidence in the record, or shocks the conscience, or appears to have been arrived at as the result of passion or prejudice." *Mason*, 114 Wn.2d at 850 (quoting *Rasor v.Retail Credit Co.*, 87 Wn.2d at 531). Such is not the case here.

The record supports the trial court's finding that Morcos Brothers presented no evidence about "whether the $87,000 was any consideration in the amount of rent." VRP (March 6, 2009) at 17. Notably, the $87,000 amount to which Morcos Brothers repeatedly refer in their appellate brief, but never explain, does not appear in the Lease. And the Lease provision on which they base this claim is a merely handwritten note to Exhibit D, which note provides only that "Landlord will pay tenant $20" per square foot "for carpet, more than one coat of paint, restrooms, suspended ceiling, extra elec[trical] panels, [and] standing lighting." CP at 77. Accordingly, we hold that the trial court did not abuse its discretion in rejecting Morcos Brothers' request to offset the money that Meridian did not spend for tenant improvements against its damages for Morcos Brothers' unpaid rent.

V. Fraud Claims

Finally, Morcos Brothers argue that the trial court improperly dismissed their fraud claims because "written findings and conclusions were not entered as required," and substantial evidence did not support "the findings stated on the record." Br. of Appellant at 29. This argument also fails.

More specifically, they argue, "The trial court's decision was inconsistent," and, "the court ignored the significance of th[e] fact" that "Stein misrepresented" that the final lease form differed from the one that Nabil and Stein had initialed and signed. Br. of Appellant at 30. But they do not explain how the lease forms differed, how this claimed difference affected the material terms of their Lease agreement with Meridian, or why the trial court's oral decision—which sets forth detailed findings in support of its order dismissing their claims—is inadequate for review. We hold, therefore, that Morcos Brothers fail to show that the trial court abused its discretion in dismissing their fraud claims.

VI. Attorney Fees

Both parties request attorney fees on appeal. We review a trial court's award of attorney fees for abuse of discretion. *Just Dirt, Inc.*, 138 Wn. App. at 415. Trial courts "must exercise their discretion on articulable grounds, making an adequate record so the appellate court can review a fee award." *Just Dirt, Inc.*, 138 Wn. App. at 415.

Meridian argues that we "should award Meridian and Stein their fees and costs on appeal," Br. of Resp't at 47, based on RAP 18.1 and the attorney-fees provision for "breach of any covenant or condition under th[e] *Lease*," which [provision] provides that the "prevailing

party [is] entitled to . . . fees and costs." CP at 65. We agree. Under RAP 18.1 and the Lease terms, we award attorney fees and costs to Meridian as the prevailing party in an amount that our court commissioner will later determine upon compliance with RAP 18.1.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, PJ.

Quinn-Brintnall, J.