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SUPREME COURT
STATE OF WASHINGTON
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NO. 97339-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 78323-8-1)

ISAAC M. NSEJJERE, aka ISAAC MAYANJA, and
JANE DOE NSEJJERE aka JANE DOE MAYANJA,
husband and wife, and the marital community comprised thereof;
Petitioners

v.

REUBEN SMITH and ADEN SMITH,
Respondents

PETITION FOR REVIEW

Isaac M. Nsejjere. *Petitioner,* ***Pro se.***
8524 NE Bothell Way. Bothell, WA 98011.
(425)583-6609/ (425)750-8008.

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INTRODUCTION

Petitioner Isaac Nsejjere (hereinafter, "Nsejjere") entered a bailment agreement with respondent Smith (hereinafter, "Smith") in late 2015. From time to time, Nsejjere asked Smith for permission and–always with Smith's permission-Nsejjere visited Smith's property to inspect the bailed goods. After Nsejjere complained to Smith about damaged goods and negligence, Smith unilaterally converted the relationship to tenant/ landlord in March 2016 as expressly evidenced by – among other things, by his own Trial brief (CP 152 at 23).

Smith sued Nsejjere for breach of tenant agreement and unlawful detainer. Nsejjere answered Smith's complaint with Affirmative defense premised on the fact that the relationship was that of Bailor/ Bailee. Nsejjere also filed a counterclaim for breach of bailment agreement and intentional negligence.(CP 287). In support of Nsejjere's affirmative defense, Nsejjere properly and lawfully propounded Request for Admission on Smith. **Smith did not answer the request for admission.** The Superior Court sustained Smith's complaint for unlawful detainer and issued the subsequent judgment. Notably, even absent an answer and/ or motion from Smith, the court DENIED DEEMING REQUEST FOR ADMISSION "ADMITTED" – as such, no RFA was considered for purposes of the trial. Appeals court affirmed (APP. 1-9).

The decision of the Court of Appeals affirming superior court's decision is directly contrary to this Court's decision in *Nelson*, which held that courts MUST construe a party's failure to Answer Request for Admission as evidentiary effect tantamount to sworn testimony admitting to the material allegations of fact. *Nelson v. Nelson* - 260 P.2d 886, 43 Wash. 2d 278.

The long-settled practice of Washington Courts under CR 36 (a) is consistent with federal courts ruling on similar issues under Fed. Fed. R. Civ. P. 36. *Vistad v. Lukeda*, 46 Wn.2d 213. ("When the language of a Washington rule and its federal counterpart are the same, courts look to decisions interpreting the federal rule for guidance."). Pursuant to CR 36(a), "[t]he trial court has no discretion whether to deem the matters admitted." Court abuses its discretion whenever it makes an error of law, Koon v. United States, 518 U.S. 81, 100 (1996). Trial court clearly abused its discretion, raising a signifant question of law that warrants review RAP13.4 (1).

Moreover, an ill-gotten judgment must be reviewed and corrected to avoid judicial decay and in this case, an officer of the court (Smith's own attorney) suborned perjury (CP 71). This perjury constitutes fraud on the court because it "involves and is suborned by, an officer of the court, 12 J.W. MOORE, MOORE'S FEDERAL PRACTICE§ 60.21[4][c]; see In re

Intermagnetics Am., Inc., 926 F.2d 912, 917 (9th Cir. 1991), one more reason to grant review.

Given the importance of CR 36 (a) respective to trial court's abuse of discretion and the need to mitigate judicial decay incubated by fraud on the court (Rule 60(d)(3)), this court should grant review.

IDENTITY OF THE PETITIONER

The petitioner is Defendant and Cross Complainant Isaac Nsejjere.

COURT OF APPEALS DECISION

On April 22nd, 2019, the Court of Appeals, Division I, issued a decision affirming the Trial court's decision (App. 1-19)

ISSUES PRESENTED FOR REVIEW

I. Whether CR 36 (a) mandates that absent an answer and/ or a motion, trial court automatically deems Request for Admission "admitted" and objections waived after 30 days.

II. Whether perjury suborned by an Officer of the court constitutes fraud on the court and warrants reversal of a judgment under Rule 60(d)(3).

III. Whether non-consitutional factual errors should be considered by Court if they constitute a fundamental defect which inherently results in a complete miscarriage of justice.

STATEMENT OF THE CASE

A. Petitioner and Respondent entered a bailment agreement in late 2015. At the time the bailed goods were received by respondent, all elements of a bailment agreement were realized with the exception the fulfilled purpose that is always realized in a certain future time, which was subsequently fulfilled on April, 7th, 2017 (CP 286, 295). With Smith's permission, Nsejjere inspected the bailed goods from time to time and he complained to Smith about the damaged bailed goods under his custody.

B. Smith unilaterally converted the bailment agreement to tenant/ landlord agreement in March 2016 (CP 152 at 23). Smith continued demanding payments under his unilaterally converted agreement, eventually suing Nsejjere for unlawful detainer premised on allegations that the relationship was landlord/ tenant, not bailee/ bailor.

C. Nsejjere answered Smith's complaint and along with the answer, propounded Smith request for admission in support of Nsejjere's affirmative defense and cross complaint. **Smith did not answer the requests for admission.**

D. At the sua sponte trial, Nsejjere vehemently pled that trial court deem request for admission "admitted" (RT. 70 at 20-25) but trial court EXPRESSLY DENIED and as such, requests were never considered for purposes of the trial, prejudicing Nsejjere in supporting his affirmative

defense. Smith's complaint was sustained. Nsejjere's timely motion for reconsideration was denied.

E. The Court of Appeals acknowledged that Smith did not respond to discovery (App. 3), and trial court did not deem request for admission "admitted" after 30 days, let alone 120 days. In affirming trial court's decision, the Court of Appeals erred, creating a conflict with multiple jurisdictions and established a precedent likely to lead to erroneous resolutions on violations of CR 36 (a).

ARGUMENT

A. The decision of the Court of Appeals conflicts with the decisions of this Court, of other Courts of Appeal, and of the United States Supreme Court.

Pursuant to CR 36 (a), trial court's denial to deem Nsejjere's request for admission "admitted" after 30 days from service and absent an answer and/ or motion **constituted abuse of discretion**. *Koon v. United States*, 518 U.S. 81, 100 (1996). RAP 13.4 (b)(1).

Likewise, in other cases the Court of Appeals has repeatedly applied the same rule, which is consistent with that applied by federal courts. Fed. R. Civ. P. 36. *See, e.g., Cf. Overstreet v. Home Indemnity* Co., 669 S.W.2d 825, 828 (Tex.App. – Dallas) *rev'd on other grounds*, 678 S.W.2d 916 (Tex. 1984). ("trial court has no discretion to deem or refuse to deem, the admissions admitted".) *See* also American Tech. Corp. v. Mah (D.Nev.

1997), 174 F.R.D 687, 689 (citing Charles A. Wreight et al., Federal Practice and Procedure § 2259, AT 549-50 (2d ed. 1994)). *Packer v. First Texas Savings Ass'n of Dallas*, 567 S.W.2d 574, 575 (Tex.Civ.App. (in the absence of a motion to extend time for filing a response to the requests for admission, the matters were admitted by default). Ag sales v. Klose (1982), 199 Mont. 400, 404-05, 649 P.3d 477, 499. This warrants review under (RAP 13.4 (b)(2)).

In this case however, the Court of Appeals created a conflict with all of those decisions. In affirming the trial court's decision, the conflict created by the Court of Appeals in itself is sufficient to make its decision worthy of review under RAP 13.4(b)(1) and (2). But the case also warrants review because ensuring the proper standard for (Rule 60(d)(3) "fraud on the court") is a matter of substantial public interest. RAP 13.4(b)(4).

Notably, Civ.R. 36(a) is "self-executing and the matters set forth in the requests for admissions are automatically deemed admitted if they are not answered by the rule's deadline. *Bronski v. Rite Aid Corp.*, 4th Dist. Washington No. 88CA21, 1989 WL 11910, *2 (Feb. 16. 1989). Accordingly, Nsejjere's affirmative defense would have **excused** alleged breach that gave rise to the unlawful detainer proceeding, and thus proper to consider his Cross Complaint under the same proceeding 59.12 RCW.

Proceeding. ***Munden* at 45.** Trial court's denial was abuse of discretion and warrants review.

To the extent other reasons in support of the opinion would not be impugned by deeming request for admission "admitted", they are no constitutional errors that should be considered because they constitutes a fundamental defect which inherently results in a complete miscarriage of justice. *Pumphrey v. K.W. Thompson Tool Co.,* 62 F.3d 1128, 1131 (9th Cir. 1995) For example, in supporting its opinion, the court asserted:

"And Nsejjere provides no authority in support of his claim that Smith unilaterally converted the relationship into a bailment ... (App. 6)"

This, when the record shows that Nsejjere ARGUED THE ABSOLUTE OPPOSITE, i.e, Smith unilaterally converted the bailment relationship into landlord/ tenant. Like the 9th circuit, this court should review this **error central to the dispute** in order to avert complete miscarriage of justice.

Trial court made property access a "material" element in determining tenancy rights and ruled that Nsejjere was NEVER denied access and thus behaved as tenant. Likewise, Appeals Court asserted that:

"Additionally, Mr. Nsejjere behaved as a tenant by coming and going from the property at will ..." (App. 5).

Court then went on to conclude that such behavior rendered Nsejjere tenant.

Request for admission 4, 13, 14 would have impugned this position *ab initio*. Moreover, trial court's conclusion that Nsejjere was never denied property access was influenced by perjury suborned by Smith's own lawyer and thus constituting fraud of the court – yet another reason for granting review.

Specifically, Smith's own attorney vehemently asserted that Nsejjere would not have access to property until he withdrew his cross complaint. At the time, the same attorney effected Fraud on the court by asserting that Nsejjere – in fact – was never denied access to the property. The court took this material assertion as gospel and cited it as reason for tenancy. Had Smith's lawyer not effected this perjury, the court would have found that Nsejjere did not even possess the minimum rights of tenancy but all elements of a bailment agreement existed. [T]here is a powerful distinction between perjury to which an attorney is a party - as was the case here, and that with which no attorney is involved.

This perjury constitutes fraud on the court because it "involves and is suborned by, an officer of the court, i.e. Smith's own attorney"12 J.W. MOORE,MOORE'S FEDERAL PRACTICE§ 60.21[4][c]; see In re *Intermagnetics Am., Inc.*, 926 F.2d 912, 917 (9th Cir. 1991). Review is warranted.

B. Pursuant CR 36 (a), trial court abused its discretion when – absent answer and/ or motion, it denied deeming request for admission "admitted" after 30 days.

This Court has held that a party must answer a request for admission within thirty (30) days of service or the matter is deemed admitted. WASH. C. R. 36(a). *Weyerhaeuser Sales Co. v. Holden*, 32 Wn. 2d 714; *Vistad v. Lukeda*, 46 Wn.2d 213. Trial courts decision not to deem request for admission admitted and thus not considering the requests for purposes of the trial directly contravened this court and a multitude of well-settled state and federal precedence. This court has also consistently cited the identical federal rule of civil procedure 36 and federal case law.

Here, the admissions were automatically deemed admitted); *Packer v. First Texas Savings Ass'n of Dallas*, 567 S.W.2d 574, 575 (Tex.Civ.App. – Eastland 1978, writ ref'd n.r.e.) (in the absence of a motion to extend time for filing a response to the requests for admission, the matters were admitted by default). Trial court vehemently denied deeming Nsejjere's request for admission "admitted" – a clear ERROR OF THE LAW that warrants this court's review.[1]

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[1] The rule is explicit that a matter is admitted if a party fails to respond after 30 days. Trial court abused its discretion. Review is warranted (RAP 13.4(b)(1).

Court **abuses its discretion** whenever it makes an **error of law**, Koon v. United States, 518 U.S. 81, 100 (1996). Review is warranted (RAP 13.4 (b)(3).

C. Absent trial court's abuse of discretion – court of appeals' basis for its opinion would have been *impugned ab initio.*

Appeals court opined that: "Smith did not respond to the discovery requests" (App. 3). Notably, Smith did not answer request for admission. The Court further noted that "...over Smith's objections, the trial court permitted Nsejjere to read the requests for admission into evidence" (App. 7)

But the court did not point to any evidence of legally relevant precedence that merely presenting evidence to demonstrate properly and legally propounded RFA amounts to deeming request for admission "admitted", AND NONE EXISTS. In fact–following that demonstration-trial Court EXPRESSLY DENIED DEEMING RFA ADMITTED, and thus requests for admission were not considered for purposes of the trial.

Appeals court opined that: " .... And in any event, none of the admissions **"[w]ould have"** defeated an unlawful detainer action" (App. 7).

First, by **"[w]ould have"**, Appeals Court directly reasserted that requests for admission were indeed not deemed "admitted". Accordingly, trial court's abuse of discretion is indisputable and warrants review. *See American Tech. Corp. v. Mah* (D.Nev. 1997), 174 F.R.D 687, 689 (citing Charles A. Wreight et al., Federal Practice and Procedure § 2259, AT 549-50 (2d ed. 1994)).

Second, Appeals Court asserted that:
"Nsejjere's requests for admission primarily sought to establish that Smith did not possess any written evidence of a lease ..." (App. 7)

This materially flawed assertion overlooks several requests for admission that PARTAIN TO VERBAL ADMISSIONS, mindful CR 36 (a)

mandate that matters admitted are "conclusively established and all objections waived unless the court on motion permits withdrawal or amendment." CR 36(a), Fed. R. Civ. P. 36(a)(3) (*emphasis added*).

RFA# 13 impugns Appeals Court opinion.

"Admit that Smith decided (**without Nsejjere's input**), where on Smith's property to store the goods under question."
This request pertains to either verbal and/ or written admission.

Importantly, this would summarily impugne the Court's assertion that: **"**Nsejjere rented a **defined amount of yard space from Smith** for the purpose of storing his equipment" (App. 5).

Surely *absent Nsejjere's input whatsoever*, there can be no rental agreement (verbal or otherwise). This also invalidates claims of possession and unlawful detainer.

RFA# 4: "Admit that Smith **never** effected any instrument of transfer of his/ her property in whole or in part to Nsejjere – permanently or temporarily."

This request pertains to either verbal and/ or written admission.

RFA#14. "Admit Smith NEVER endowed ***any*** of his property possession rights to Nsejjere."

This request pertains to either verbal and/ or written admission.[2]

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[2] The rule provides that Requests for admission are deemed "admitted" after 30 days. Fed.R.Civ.P. 36(a) (emphasis added).

Had it not been for trial court's abuse of discretion, request for admission 4, 13, and 14 **"[w]ould have"** impugned unlawful detainer claims.

Opinion states that: "This claim (bailor/ bailee relationship) is unsupported by the record." (App. 4).

Had trial court not abused its discretion, this too **"[w]ould have"** summarily impugned this assertion *ab initio*. Particulary: **RFA#8:** "Admit that Smith acknowledged payment from Nsejjere **IMMEDIATELY** upon Smith's receipt of the goods." Notably, **[timing]** of this payment is an essential element of the bailment agreement. Payment was not made 3 months later as Smith alleges in his attempt to align it with his unilaterally converted relationship form Bailment to Land lord. (CP 152 at 23)

RFA#9: Admit that Smith signed for delivery of the goods under question

RFA#10: "Admit that Smith acknowledged the goods under question."

RFA#11 "Admit that Smith handled the storing of the goods under question."

RFA#13 "Admit that Smith decided (**without Nsejjere's input**), where on Smith's property to store the goods under question."

Notably, On Friday April 7th, 2017 at 8:33PM, after countless verbal assertions for READINESS TO MOVE THE GOODS, Nsejjere wrote Smith that he was ready to move the goods to the Cleared site (fulfilled bailment purpose) the moment Smith fixes the damaged bailed goods (CP 86, 286 at 18).[3]

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[3] Had it not been for trial court's abuse of discretion, CR 36 (a) conclusive effect would have implied that **request for admission 8, 9, 10, 11, 13,** combined with the demonstrated **fulfilled bailment purpose** summarily and successfully support Nsejjere's affirmative defense of Bailor/ Bailee relationship. **Errors are Harmful and Reversible.**

D. The questions presented are important, and this case is an appropriate vehicle for considering them

Appeals court asserted that: "And Nsejjere provides no authority in support of his claim that Smith unilaterally converted the relationship into a bailment ..."

This – as reason to rule against Nsejjere is complete miscarriage of justice because Nsejjere NEVER claimed that Smith unilaterally converted the relationship into a bailment. In fact – The record clearly reflects the EXACT OPPOSITE (CP 281, 287). Nsejjere consistently CLAIMED THAT Smith unilaterally converted relationship from Bailment to Landlord/ tenant as evidenced - among other things - by Smith's own trial brief (CP 152 at 23). Court of appeals material error depicts the EXACT OPPOSITE of Nsejjere's pleading and constitutes complete miscarriage of justice. As the the Ninth Circuit has explained, court should consider non-constitutional error when the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice. 152 Wn.2d 647 .101 P. 3d 1. *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995). [4]

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[4] Because the parties' core dispute is premised on whether the relationship was Bailment or tenancy, this non-constitutional **error is central to the dispute** and warrants consideration. *Havens v. C D Plastics*, 124 Wn.2d 158. 876 P 2.d 435; *Puckett v. United States*, 556 U.S. 129, 135 (2009)

E. Perjury constituted fraud on the court because it [involved and was suborned] by an officer of the Court, leading to complete miscarriage of justice.

Appeals court opined that "While Nsejjere's claim that Smith barred him from the property would arguably be relevant to a defense of constructive eviction, Nsejjere did not raise this defense." (App. 9).

Contrary to the opinion, Nsejjere indeed presented denial of property access as prima facie evidence of lack of tenancy rights, rightfully so because the relationship was bailor/ bailee and Nsejjere NEVER has a smidgen of property rights whatsoever (CP 71, 281). Notably, Smith's assertion that Nsejjere was NEVER denied property access was a foundational element for BOTH Trial Court and Appeals Court ruling that Nsejjere was tenant.

While Smith and his attorney vehemently asserted that Nsejjere was never denied access, Smith's attorney separately continued to demand that in order for Nsejjere to gain access, he had to first dismiss his cross complaint (CP 71). This perjury constituted fraud on the court because it "involved and is suborned by an officer of the court, i.e. Smith's own attorney"12 J.W. MOORE, MOORE'S FEDERAL PRACTICE§ 60.21[4][c]; see In re *Intermagnetics Am., Inc.*, 926 F.2d 912, 917 (9th Cir. 1991). Multiple jurisdictions, the least of which are the 9th Circut and the United States Supreme Court have consistently applied this standard for fraud on the court even in cases involving government attorneys. *United*

States v. Beggerly, 524 U.S. 38, 47 (1998). Beggerly, 524 U.S. at 47; Pizzuto, 783 F.3d at 1181; *Estate of Stonehill,*660 F.3d at 449. Here, an officer of the court suborned perjury (CP 71); (RT. 83-84) that constituted fraud on the court and leading to complete miscarriage of justice." Fraud 'harmed the integrity of the judicial process.'" *Estate of Stonehill,* 660 F.3d at 444 (internal alterations omitted) (quoting *Alexander v. Robertson,* 882 F.2d 421, 424 (9th Cir. 1989)). See also *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995) (quoting Abatti v. Commissioner, 859 F.2d 115, 118 (9th Cir. 1988)).

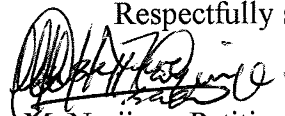
Moreover, the relevant misrepresentations directly went to **"to the central issue in the case."** Estate of Stonehill, 660 F.3d at 452. Here, the central issue of the case was whether Nsejjere was a tenant and justification of that was the Rights allegedly bestowed on Nsejjere, the fraudulently alleged indispensable right being property access. Instances rise to the level of fraud on the court under Fed. R. Civ. P. 60(d)(3).

CONCLUSION

The petition for review should be granted.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.
DATED: June 18, 2019

Respectfully submitted,



Isaac M. Nsejjere. Petitioner, *pro se*.
8524 NE Bothell Way. Bothell, WA 98011. 425.583-6609. 425.750-8008.

DECLARATION OF SERVICE

On said day below, I mailed via United States Postal Service certified mail with return receipt a true and accurate copy of the foregoing documents to the following:

Synthia A. Melton
130 Andover Park East, Suite 300
Tukwila, WA 98188
(206)973-3500.
Attorne for Respondents.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

DATED: June 18, 2019, at Bothell, Washington

Isaac M. Nsejjere. Petitioner, pro se.

NO.

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 78323-8-1)

ISAAC M. NSEJJERE, aka ISAAC MAYANJA, and
JANE DOE NSEJJERE aka JANE DOE MAYANJA,
husband and wife, and the marital community comprised thereof;
Petitioners

v.

REUBEN SMITH and ADEN SMITH,
Respondents

APPENDIX

Isaac M. Nsejjere. *Petitioner, **Pro se.***
8524 NE Bothell Way. Bothell, WA 98011.
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OPINION OF THE COURT OF APPEALS
(April 22, 2019).. 1

FILED
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Court of Appeals
Division I
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

REUBEN SMITH and ADEN SMITH, Respondents, v. ISAAC M. NSEJJERE, aka ISAAC MAYANJA, and JANE DOE NSEJJERE aka JANE DOE MAYANJA, husband and wife, and the marital community comprised thereof; Appellants, and NSEJJERE SPORTS, LLC, a Delaware limited liability company, Defendant.	No. 78323-8-I DIVISION ONE UNPUBLISHED OPINION FILED: April 22, 2019

SMITH, J. — Isaac Nsejjere appeals the judgment and writ of restitution in a commercial unlawful detainer action. Nsejjere contends that the case was improperly filed as an unlawful detainer action because he was a bailor, not a tenant. He additionally contends that the trial court erred in dismissing his counterclaims, failing to rule on discovery issues, and denying his CR 59 motion for reconsideration. We affirm.

FACTS

Reuben Smith owns a hydraulic equipment business in Woodinville. The business includes yard space that Smith periodically rents to tenants to store machinery and equipment.

In September 2015, Nsejjere approached Smith to rent storage space to park five container trucks beginning in "late October, early November." Nsejjere told Smith he planned to store the trucks in the yard "for two or three months and then drive them away." The two orally agreed on a rental payment of $800 per month for approximately 5,000 square feet of storage space.

Nsejjere did not bring the trucks to Smith's yard until December 2015. When he did, he paid Smith $2,400, representing rental payments for December through February.[1] Nsejjere told Smith "he had some issues with the Port, and they would not allow him to leave the material in the containers." Nsejjere asked if Smith could unload the containers so that he could return them.

The equipment in the containers, which Nsejjere planned to use for a residential development project, was very large and heavy. Smith also noted that the equipment was not protected by any packing materials and some of it had become damaged in transit. Smith told Nsejjere "it was going to cost him, and probably a lot more than he expected." Nsejjere agreed to pay Smith to unload the trucks and agreed that the additional costs could be charged as rent. Smith sent Nsejjere an invoice for $8,000 for the labor, equipment, and fuel used in unloading the equipment.[2]

---

[1] At trial, Smith testified that Nsejjere did not make the payment until February 2016. Nsejjere contended that he paid Smith in December 2015. Though the exact date Nsejjere made this payment is immaterial to the resolution of this appeal, an e-mail Smith sent Nsejjere in May 2017 supports Nsejjere's version of events.

[2] Nsejjere does not dispute this amount.

Nsejjere frequently came to the yard, sometimes twice a day, to look at the equipment. He repeatedly acknowledged that he owed Smith money. But he never removed the equipment from Smith's yard and never made any further rent payments. Nor did he ever pay Smith for the unloading costs. Nsejjere's equipment remains on Smith's property.

On April 24, 2017, Smith sent Nsejjere an e-mail stating that Smith would eliminate late fees if Nsejjere paid the accrued rent. On May 19, 2017, Smith sent Nsejjere another e-mail informing him that he could not come onto the property until he paid his rent. On July 12, 2017, Smith served Nsejjere with a three-day notice to pay or vacate.

On August 1, 2017, Smith filed an unlawful detainer action. Nsejjere filed an answer denying Smith's claims and asserting that "that the relationship between the parties is and has been that of a bailee and a bailor." Nsejjere also filed a counterclaim against Smith for negligence and breach of a bailment contract. In addition, Nsejjere served Smith with interrogatories, requests for admission and requests for production. Smith did not respond to the discovery requests.

A superior court commissioner set the matter for trial, finding that there were disputed issues of material fact because the parties did not have a written lease. On February 8, 2018, the trial court held a one-day bench trial at which it heard testimony from both Smith and Nsejjere. The trial court entered findings of fact and conclusions of law, and ordered that Smith was entitled to a writ of restitution and a judgment in the amount of $40,800. The trial court dismissed

Nsejjere's counterclaims, concluding that it did not have jurisdiction to address them. The trial denied Nsejjere's motion for reconsideration. Nsejjere appeals.

DISCUSSION

An unlawful detainer action brought under RCW 59.12.030 is a summary proceeding designed to enable the recovery of possession of leased property.[3] Munden v. Hazelrigg, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). "The action is a narrow one, limited to the question of possession and related issues such as restitution of the premises and rent." Munden, 105 Wn.2d at 45. "[T]he court sits as a special statutory tribunal to summarily decide the issues authorized by statute and not as a court of general jurisdiction with the power to hear and determine other issues." Granat v. Keasler, 99 Wn.2d 564, 571, 663 P.2d 830 (1983) (emphasis omitted).

Nsejjere claims that the trial court lacked jurisdiction to hear the case as an unlawful detainer proceeding because his relationship with Smith was that of a bailor and a bailee, not a tenant and a landlord. This claim is unsupported by the record.

A bailment is "[a] delivery of personal property by one person (the *bailor*) to another (the *bailee*) who holds the property for a certain purpose." BLACK'S LAW DICTIONARY 169 (10th ed. 2014). In contrast, a lease is "[a] contract by

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[3] A tenant has committed an unlawful detainer "[w]hen he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period." RCW 59.12.030(2).

which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration." BLACK'S, supra, at 1024.

Here, the trial court found Nsejjere's claim of a bailment relationship to be unavailing.

> Mr. Nsejjere had orally agreed to store five tractor trailer containers on plaintiff's property for two to three months. He instead caused that contract to be converted to one in which only the goods, not the containers, were left on the property. Whether the items were inside or outside of a container truck does not change the nature of the oral contract. Plaintiff only agreed to lease Mr. Nsejjere space for his property. The actions which caused Mr. Nsejjere to remove his property from the containers and leave the contents unprotected and in the elements for many months does not convert the parties' storage space agreement into a bailment. Additionally, Mr. Nsejjere behaved as a tenant by coming and going from the property at will from December, 2015 to May, 2017. Mr. Smith's statement that Mr. Nsejjere was disinvited from the property until he brought his rent current muddled the position of the parties. It did so because a landlord may not dispossess a tenant from property in that way. However, the court concludes that while Mr. Smith's ill-advised effort to get paid the rent he was due was communicated to Mr. Nsejjere, Mr. Nsejjere neither acted on it nor was influenced by it (except to the extent that he stopped visiting the materials). Within two months, Mr. Smith caused Mr. Nsejjere to be served with the three day notice to pay or vacate, the beginning of this enforceable unlawful detainer action.

(Footnote omitted.)

We agree with the trial court. Nsejjere did not merely leave the equipment for Smith to hold. Instead, the evidence shows that Nsejjere rented a defined amount of yard space from Smith for the purpose of storing his equipment.[4] The relationship between Nsejjere and Smith was that of a tenant and a landlord.[5]

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[4] Two of Smith's other tenants also testified at trial that they rented space from Smith by the square foot.

[5] Nsejjere cites to Smith's April 24, 2017, e-mail to him, which states, "*You are not a tenant*; rather you are renting space. As such, the condition of your

And Nsejjere provides no authority in support of his claim that Smith unilaterally converted the relationship into a bailment by telling Nsejjere he was prohibited from coming onto the property until he paid the rent. The matter was properly filed as an unlawful detainer action. See, e.g., Reeder v. Harmeling, 75 Wn.2d 499, 499-500, 451 P.2d 920 (1969) (a writ of restitution pursuant to RCW 59.12 is the proper remedy for removing another's property and regaining use of the premises).

Nsejjere contends that the trial court erred in dismissing his counterclaims. Due to the summary nature of an unlawful detainer action, counterclaims are generally disallowed. Munden, 105 Wn.2d at 45. The exception is when a counterclaim or affirmative defense is "'based on facts which excuse a tenant's breach.'" Munden, 105 Wn.2d at 45 (quoting First Union Mgmt., Inc. v. Slack, 36 Wn. App. 849, 854, 679 P.2d 936 (1984)). In the alternative, once "the right to possession ceases to be at issue . . . the proceeding may be converted into an ordinary civil suit for damages, and the parties may then properly assert any cross claims, counterclaims, and affirmative defenses." Munden, 105 Wn.2d at 45-46.

Here, Nsejjere's counterclaims did not excuse his obligation to pay rent. And because Nsejjere's equipment was still on Smith's property at the time of

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materials remains you [sic] responsibility. This agreement is the same as renting a storage unit or even renting a space in a garage for a vehicle." (Emphasis added.) But Smith's inartful language is not conclusive of the parties' relationship.

trial, the right to possession remained at issue. The trial court was precluded from considering Nsejjere's counterclaims.[6]

Nsejjere argues that the trial court erred in failing to order that his requests for admission be deemed admitted. Requests for admissions are deemed admitted against a party who fails to serve responses or objections to the requests within 30 days, unless the court orders otherwise. CR 36(a), (b). But the record shows that over Smith's objections, the trial court permitted Nsejjere to read the requests for admission into evidence. And in any event, none of the admissions would have defeated an unlawful detainer action.[7]

Nsejjere next contends that Smith's refusal to respond to his other discovery requests violated due process. But Nsejjere's remedy was to file a motion to compel discovery in the trial court, or a motion to continue the trial until discovery could be obtained. Nsejjere did not do so, nor did he comply with the

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[6] In support of this claim, Nsejjere cites two cases in which courts have permitted counterclaims, Foisy v. Wyman, 83 Wn.2d 22, 515 P.2d 160 (1973), and Income Props. Inv. Corp. v. Trefethen, 155 Wash. 493, 284 P. 782 (1930). But these cases involved counterclaims for damages for breach of the implied warranty of habitability or covenant of quiet enjoyment, facts which excused the tenants' breaches because they were deprived of the beneficial use of the property.

[7] Nsejjere's requests for admission primarily sought to establish that Smith did not possess any written evidence of a lease, a fact that was undisputed by the parties. Only request for admission 8 has any bearing on an unlawful detainer action: "Admit that SMITH acknowledged payment from Nsejjere immediately upon SMITH'S RECEIPT of the goods." But even such an admission would not contradict Smith's claim that Nsejjere did not pay any rent after February 2016.

discovery conference requirements of CR 26(i).[8] Thus, Nsejjere has waived this claim.

Finally, Nsejjere contends that the trial court erred in denying his CR 59 motion for reconsideration. We review the denial of a CR 59 motion for reconsideration for an abuse of discretion. Millies v. LandAmerica Transnation, 185 Wn.2d 302, 316, 372 P.3d 111 (2016). A trial court abuses its discretion when its decision is manifestly unreasonable, or based on untenable grounds, or exercised for untenable reasons. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Citing CR 59(a)(7), CR 59(a)(8), and CR 59(a)(9), Nsejjere argues that he was entitled to reconsideration of the judgment because Smith committed perjury at trial.[9] He contends that Smith's testimony that he never prevented Nsejjere from coming onto the property was contradicted by Smith's May 19, 2017, e-mail.

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[8] CR 26(i) provides:

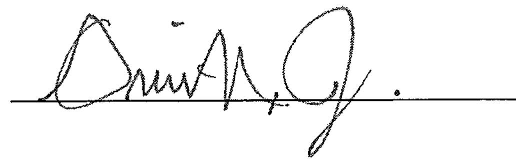
> The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions provided under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met.

[9] CR 59(a)(7) allows the trial court to order a new trial where "there is no evidence or reasonable inference from the evidence to justify the verdict." A motion for a new trial may be granted under CR 59(a)(8) if an error in law occurred at trial and was "objected to at the time by the party making the application." CR 59(a)(9) allows a trial court to grant a new trial when "substantial justice has not been done."

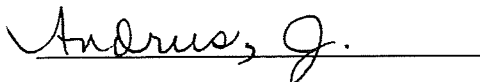
But the sole purpose of an unlawful detainer action is to determine the right of possession. First Union Mgmt., 36 Wn. App. at 854. While Nsejjere's claim that Smith barred him from the property would arguably be relevant to a defense of constructive eviction, Nsejjere did not raise this defense. Nsejjere does not demonstrate that the trial court abused its discretion in denying his motion for reconsideration.

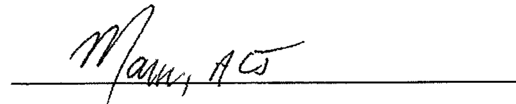
Smith requests attorney fees pursuant to RAP 18.9 on the grounds that Nsejjere's appeal is frivolous. An appeal is frivolous "if it raises no debatable issues on which reasonable minds might differ and it is so totally devoid of merit that no reasonable possibility of reversal exists." Protect the Peninsula's Future v. City of Port Angeles, 175 Wn. App. 201, 220, 304 P.3d 914 (2013). Here, although Nsejjere's claims lack merit, they are not frivolous. We deny Smith's request for attorney fees.

Affirmed.



WE CONCUR:





ISAAC NSEJJERE - FILING PRO SE

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