Supreme Court No. 101594-1
Court of Appeals No. 84119-0-1

SUPREME COURT OF THE STATE OF WASHINGTON

SHERWOOD AUBURN, LLC,

Petitioner,

v.

JOEL PINZON AND ROSA MENDEZ,

Respondents.

PETITION FOR REVIEW

By:

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1. IDENTITY OF THE PETITIONER

Petitioner SHERWOOD AUBURN, LLC, ("Plaintiff") asks this Court to review the decision of the Court of Appeals referred to in Section 2.

2. COURT OF APPEALS DECISION

King County Superior Court found that Plaintiff's properly served pre-eviction notice on Defendants and ordered a writ of restitution and judgment against Defendants.

Division One of the Court of Appeals, on December 5, 2022, ruled in a published decision that this was error, reversing the trial court.

3. ISSUES PRESENTED

3.1. Whether a first ever court of appeals decision in the entire nation that impacts every failure to pay eviction case in this State with a connection to a federal loan, subsidy, or program presents issues of substantial public importance under RAP 13.4(b)(4)? Yes.

3.2. Whether, under RAP 13.4(b)(1), (2), and/or (4), this Court should take review of Division One's decision, *reversing the trial court* and holding, that the CARES Act created a brand new, permanent, 30 day *pay or* vacate notice applicable to all 50 states—*when no such argument was ever presented to the trial*

court to consider; in other words, where no authority exists for a court of appeals to reverse a trial court for not making a sua sponte ruling, and *Division One ruled it was reversible error to not make a sua sponte ruling*, should this Court take review? Yes.

3.3. Whether under RAP 13.4(b)(1), (2), and/or (4), this Court should take review of Division One's decision, contrary to decisions of this Court and courts of appeal, that did not provide a proper statutory analysis by failing to consider the express written intent and purpose of Congress, by failing to consider applicable provisions of the CARES Act and federal pre-eviction notice statutes as a whole, and by adding words not written in applicable provisions of the CARES Act into the CARES Act? Yes.

3.4. Whether under RAP 13.4(b)(1), (2), and/or (4), this Court should take review of Division One's decision, contrary to the plain language of many pre-eviction notice statutes and the first such holding by any court of appeal, that all pre-eviction notices must contain and provide tenants a cure or comply period for which the tenant has an opportunity to correct their conduct? Yes.

3.5. Whether under RAP 13.4(b)(1), (2), and/or (4), this Court should take review of Division One's decision, contrary to decisions of this Court and courts of appeal that state no such thing and allow plaintiffs to plead cases in the alternative, that a landlord serving multiple pre-eviction notices is "misleading", "confusing", and/or "deceitful" to tenants? Yes.

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4. STATEMENT OF THE CASE

4.1. Defendants rented from Plaintiff in 2019 and owe over $40,000.00 in rent and utilities. (CP at 2-6, 20-32; RP at 14-17). Payment plan offers and dispute resolution attempts have all been refused. (CP at 20, 56-59; RP at 20, 32-33).

4.2. A mandatory state law 14 day pay or vacate notice and another notice regarding the CARES Act, stating Defendants could not be required to vacate for 30 days, were served. (CP 7-11, 18-26, 56-59; RP at 17-19).

4.3. More than 30 days after service of notices, Plaintiff filed this action. (CP 7-11). At the show cause hearing, Defendants submitted briefing arguing: (1) the CARES Act temporary and emergency legislation was permanent, (2) a plaintiff may not commence an unlawful detainer action until a "30 day CARES Act notice" has been served and runs, and (3) serving a 14 day state notice and a "contradictory" 30 day CARES Act notice was "confusing", failing to comply with federal law. (CP 60-78; RP at 10, 29-30).

4.4. Defendants did not argue that the CARES Act created 30 Day *pay or* vacate notice, as no language in the CARES Act suggests any cure period.

4.5. Plaintiff argued that the CARES Act stated purpose and intention was "temporary" and "emergency" relief from COVID. (RP at 10). Further, when reading it as a whole and in conjunction § 9058(b), the plain language of § 9058(c) required 30 days to pass before removal of the tenant could take place. (RP at 10-12). Nothing in § 9058(c) prohibited an unlawful detainer action from being filed within the 30 day period, unlike § 9058(b). (RP at 10-12) (stating "Unlike during the 120-day moratorium where [landlords] could not initiate an action [under § 9058](b)], the language used in subsection [§ 9058](c) simply said 'vacate,' not 'initiate,' [as in § 9058](b)] and, therefore, our notice is in compliance with federal law and state law.").

4.6. At the show cause hearing, Defendants again never argued to the trial court that the CARES Act created a 30 Day *Pay or* Vacate Notice. They said the way to "reconcile" state and

federal law under the CARES Act was for Plaintiff to have issued a "14 day to comply or 30 days to vacate" notice. (RP at 9).

4.7. The commissioner ruled that "plaintiff has satisfied both the CARES Act and the State Act." (RP at 12, 34). It reasoned that "This 30-day CARES Act notice was provided . . . almost four months ago" (RP at 12, 34) and that "[t]o date, there is still no court-ordered requirement that the defendant vacate." (RP at 12-13, 34, 39-41).

4.8. Defendants moved to revise, and the trial court judge denied Defendants' motion to revise. (CP at 45-46, 82-94).

4.9. On appeal, Defendants argued for the first time that the CARES Act created a 30 Day Notice to "*pay or* vacate" that must be served and run prior to filing any action. (Brief of Appellant at 25) (emphasis added).

4.10. Plaintiffs argued on appeal:

- The express intent and purpose of the CARES Act was "temporary" and "emergency assistance" for tenants.
- In two short sentences—which resemble no other federal notice statute ever drafted before—Congress

did not intend to create a brand-new, permanent, federal notice to vacate that applied to all 50 states. That would be an absurd result.

- The fact that the CARES Act lacked any language governing the form, substance, or even service requirements of a notice further demonstrated Congress did not intend to create a brand-new, permanent, federal notice. The vague word "provided" was selected to keep the provision in harmony with varying state law service requirements of notices.

- The CARES Act's nowhere includes any "cure" or "comply" period regarding any notice.

- Different words chosen in § 9058(c) as compared to § 9058(b) clearly demonstrated that the latter prohibited eviction filings for 120 days. After that moratorium period elapsed, the former imposed a 30 day delay, from date of service of "a notice to vacate", on court eviction orders requested by a lessor that "required the tenant to vacate the covered dwelling unit."

- There was no conflict between state law and the CARES Act. The latter was written to be in harmony with, and utilize, state law. The provision prevented the lessor from obtaining evictions orders or delivering a writ of restitution to the sheriff for execution for 30 days; it did not create a new federal notice.

- A state law 14 day pay or vacate notice did not require a tenant to vacate as the notice itself was statutorily defined, by RCW 59.18.057(1), as an "alleg[ation]" that the tenant did not pay rent. An allegation is not a requirement to vacate from a lessor.

- Self-help evictions are unlawful, and lessors could not require tenants to vacate without a lawful court order requested and obtained after meaningful opportunity to be heard at a show cause hearing; the only time lessors could require a tenant to vacate was by providing, or having provided, a properly obtained writ of restitution to the sheriff to execute.

4.11. Division One issued its published Decision, holding:

- The Temporary and emergency legislation known as the CARES Act created a brand new permanent, federal, 30 day notice to *pay or* vacate that applies to all 50 states.

- Despite the CARES Act having no language mentioning any "pay", "cure", or "comply" period, the "plain language" of the applicable provision's two short sentences created a brand-new, permanent, federal notice to *pay or* vacate governing all 50 states. Any other interpretation would render this provision in the CARES Act "meaningless."

- It was "confusing" to the degree of being "mislead[ing]" and "contradictory" and/or "decei[tful]" to provide tenants a state law mandated 14 pay or vacate notice while at the same time informing them that under federal law they could not be required to vacate for 30 days.

- The "require[ment]" of all notices in Washington state is to provide a "cure period", and tenants cannot "be in the status" of "unlawful[ly] detain[ing]" a premises

until the "expiration" of a "requisite period to cure."

- Plaintiff argued there was a conflict between state law and the CARES Act.[1]

- Plaintiff "clarified its interpretation of the CARES Act notice provision at oral argument" and according to Plaintiff the "proper interpretation of the provision would replace the word 'lessor' with the words 'superior court'."[2]

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[1] Plaintiff argued the opposite that there was no conflict. (Brief of Respondent at 29-35). Defendants argued there was a conflict. (Brief of Appellant at 31).

[2] Plaintiff did not "clarify[y]" any such position at oral argument and has never taken such position in briefing or otherwise. During an uninterrupted several minutes long string of questions/statements posed at oral argument by Judge Dwyer, the judge surmised that this must be Plaintiff's position based on his reading of Plaintiff's Brief of Respondent. Plaintiff's Brief of Respondent made no such argument and Plaintiff disagreed with Judge Dwyer at oral argument on essentially all points of law. A failure to pay notice is nothing more than an "alleg[ation]", as defined by statute RCW 59.18.057(1), that the tenant has not paid rent. The only time a lessor can be said to have "required" a tenant to vacate is when the lessor delivers, or has delivered, evictions orders and writ a restitution to the sheriff to execute.

5. WHY REVIEW SHOULD BE ACCEPTED

5.1. This Case Presents Issues of Substantial Public Importance Under RAP 13.4(b)(4) as it Impacts Every Failure to Pay Eviction Case in this State with a Connection to a Federal Subsidy, Loan, or Program.

The CARES Act applies to "covered properties." 15 U.S.C. § 9058(a)(2). Covered properties are those with a federally backed mortgage, where the owner participates in a federal housing program, or the tenant provides a rural housing voucher. *Id.* In Washington alone, the number of "covered properties" is staggering, especially since Washington law does not allow landlords to refuse government funds as a source of income from tenants.[3]

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[3] Division One's decision opens, "When a landlord has accepted the financial benefits of certain federal programs, Congress is authorized . . . to impose on that landlord rules, regulations, or restrictions premised on the landlord's participation. . . ." Many times landlords have no choice in "participation" by accepting federal money from tenants because not doing so would be income-based discrimination. *Essentially being forced to take federal money and therefore forced to abide by federal regulations is surely much different than voluntarily accepting federal money and accompanying regulations*. Landlords, in many cases, would not do so if not forced by law.

Here, Defendants owe Plaintiff tens of thousands of dollars. All reasonable payment plans and requests to work with Plaintiff refused. *Plaintiff has paid its mortgage, not been paid rent, and paid Defendants' utilities for years*. The notion that Defendants would have paid rent between the 14th and 30th day—after notice was served—is absurd.

Regardless, Plaintiff did not file for eviction until well past 30 days after service of vacate notices. Plaintiff did not prevail on appeal, as it did before the trial court, solely because Division One added words to the CARES Act not there, *i.e.*, "*pay or* vacate", and held serving a mandatory 14-day notice and a notice informing Defendants of the CARES Act was "misleading." Additionally, the decision has caused landlords to erroneously believe they must now add "comply" and "cure" periods to pre-eviction notices that statutorily do not require them.

Landlords unable to obtain rent for months and years and paying utilities for tenants is anything but just, equitable, or uncommon in Washington State coming out of COVID; it is

extremely common. Division's 1 ruling, the first of its kind from an appellate court, is causing landlords to begin the process of serving notices and filing cases all over again. The hardship on landlords is extreme, especially considering Division One added permanent words to, and requirements of the CARES act, not written there nor intended by Congress in "temporary" and "emergency" legislation. The erroneous decision duplicates/wastes ERPP dispute resolution efforts and is judicially inefficient.

The practical outcome of Division One's decision is that many thousands of delinquent tenants have obtained many more months of living on landlords' properties at great cost. Landlords are going out of business. Far less housing is available for everyone. Sixty percent of undersigned counsels' calls from mom-and-pop/smaller landlords (the majority of landlords) are how to leave the business entirely. When vast numbers of tenants do not pay rent for prolonged periods, rent for everyone rises. These are issues of substantial public importance directly

impacted by this case that should be decided by this Court.

This Court is called upon under RAP 13.4(b)(4) to grant Plaintiff's Petition. Not doing so would be an inequitable injustice that causes substantial issues of public importance—such as lessening housing availability and increasing rental rates—to greatly worsen.

5.2. Division One's Holding that the CARES Act Created a 30 Day *Pay or* Vacate Notice Was Never Argued Before the Trial Court. The Decision is Contrary to Court Decisions Prohibiting the Reversal of Trial Courts on Alternative Grounds Not Argued or Considered Below.

No authority in Washington State exists for reversing a trial court on alternative grounds not argued to the trial court nor considered by it. *E.g.*, *State v. Sondergaard*, 86 Wn. App. 656, 657–58, 938 P.2d 351, 352 (1997), *review denied*, 133 Wash.2d 1030, 950 P.2d 477 (1998) (holding argument on appeal not justified where party did not present such argument to trial court for consideration); *see also State v. Hudson*, 79 Wash.App. 193, 194 n. 1, 900 P.2d 1130 (1995) (holding court of

appeals can affirm decision of trial court on an alternate theory which was argued to trial court) (citing *Tropiano v. City of Tacoma*, 105 Wash.2d 873, 876, 718 P.2d 801 (1986), *aff'd*, 130 Wash.2d 48, 921 P.2d 538 (1996).

Here, the CARES Act mentions no "comply" or "cure" period at all. Defendants did not argue to the trial court that the CARES Act created a 30 Day *Pay or* Vacate Notice. (RP at 9). They argued to the trial court that Plaintiff was required to serve a "14 day to comply or 30 days to vacate" notice. (RP at 9). This, of course, is essentially what Plaintiff's notices given to Defendants did.

Division One held, however, that the trial court committed reversable error by not (sua sponte) recognizing that the CARES Act created a brand new, permanent, 30 Day *pay or* vacate notice, invalidating state law notices. This is contrary to decisions of this Court and courts of appeal that hold a trial court cannot be reversed on alternative (non-constitutional) grounds not raised, nor argued, before it.

This Court is called upon under RAP 13.4(b)(1), (2), and/or (4) to grant Plaintiff's Petition. Well-established law requires parties to present and make their arguments to a trial court for consideration. Courts of appeal are subsequently prohibited from reversing trial courts on grounds not raised before the trial court.

5.3. Division One's Holding Adds Words to the Applicable CARES Act Provision and is Plainly Contrary to Plain Language of Statute as Written. The Decision Fails to Engage in Proper Statutory Analysis or to Read the Statute as a Whole. It Fails to Follow Congress's Expressly Written Intent and Purpose of Only Providing Emergency and Temporary Relief from COVID. The Decision Creates a Brand New, Permanent, 30 Day *Pay or* Vacate Notice, Applicable to All 50 States, Out of Thin Air.

Courts of appeal review de novo the meaning of a statute with the principal objective of effectuating the legislature's intent. *Christensen v. Ellsworth*, 162 Wn.2d 365, 372-73, 173 P.3d 228 (2007); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002); *In re Estate of Garwood*, 109 Wn. App. 811, 814, 38 P.3d 362, 364 (2002). "In assessing

legislative intent", courts of appeal "first to the language of the statute." *Garwood*, 109 Wn. App. at 814.

"Plain meaning is discerned from the ordinary meaning of the language at issue, *the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole*." *Christensen*, 162 Wn.2d at 372-73 (emphasis added). "The language at issue *must be evaluated in the context of the entire statute*." *Garwood*, 109 Wn. App. at 814 (emphasis added).

Statutory language is ambiguous when it is susceptible to more than one reasonable interpretation. *Id*. Courts avoid "unlikely, strained, or absurd consequences which can result from a literal reading." *Id.* at 814–15.

The intent and purpose of the CARES Act was "temporary" "emergency assistance." (Appendix 1, H.R. 748 (stating, "*Purpose: Providing emergency assistance* and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic.") (emphasis added)). Under 15

U.S.C. § 9057(d), Congress provided *temporary* relief from evictions in the context of foreclosures. Likewise, § 9058 is titled "*Temporary* moratorium on eviction filings" as the relief provided was not intended as permanent. (emphasis added).

Here, Division One's paramount job was to follow the intent and purpose of Congress, which was clearly stated as "temporary" and "emergency" in nature. Further, *Division One was to evaluate the language of § 9058, plain or not, in the context of the entire CARES Act, its appliable provisions, and as compared to federal eviction statutory schemes as a whole*. Different words chosen by Congress in different provisions indicated different purposes for those provisions.

These were exactly what Plaintiff's arguments to the trial court were and what the trial based its ruling on:

> Now when we interpret statutes, we avoid absurdities. Having a temporary moratorium on eviction filings last permanently for all 50 states does lead to a very clear absurdity.
>
> Defendant's primary argument is that we cannot commence or initiate an unlawful detainer action

> until after . . . 30 days have passed.
>
> We can find clarity in looking at the actual statute on Sections (b) and (c). There is a very distinct difference between the term "initiate an action" and "vacate the property."
>
> So under Section (b), it states during the 120-day period, the landlord may not make cause or make any filing of any court of jurisdiction to initiate an action. But after that 120-day period has passed, and I think it's clear that 120 days has passed, Section (c) does not have that requirement to not initiate an action. It just uses the term "vacate." It uses a very different word, which has a very different meaning. It says "vacate." It does not say "initiate an action."
>
> And considering that there are 50 different states with 50 different laws, the term "vacate" has to be read in its original meaning here, and that means it cannot be required to be removed from the property, whether that's by the sheriff, within 30 days.

(RP at 10-11).

In response on appeal, Plaintiff made the same arguments: "The intent and purpose of the CARES Act was 'temporary' and 'emergency assistance' for tenants under 15 U.S.C. § 9058." (Brief of Respondent at 1, 15).

"After the 120 day moratorium period, 'the lessor of a

covered dwelling unit . . . may not require the tenant to vacate . . . before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." (Brief of Respondent at 16). "This language does not refer to any particular notice to vacate. . . . Nor does it create a new federal termination notice to pay or vacate. . . . Rather, this language refers to, in a general way, the numerous state law notices to terminate and vacate, based on failure to pay, that lessors already provide to tenants pursuant to existing state laws." (Brief of Respondent at 17).

"[D]ifferent words chosen in § 9058(c) as compared to § 9058(b) clearly demonstrate that the latter prohibited eviction filings for 120 days." (Brief of Respondent at 2). "After that moratorium period elapsed, the former merely imposed a 30 day delay, from date of service of 'a [state law] notice to vacate' on court eviction orders that "required the tenant to vacate the covered dwelling unit." (Brief of Respondent at 2).

"The fact that § 9058 contains no provisions governing the form, substance, or service requirements of any new federal

notice exist further demonstrates Congress did not create a new notice." (Brief of Respondent at 1-2, 18).

"The vague word 'provided' was selected to keep the provision in harmony with varying state law service requirements of notices." (Brief of Respondent at 2, 18).

Additionally, § 9058(c) resembles no other federal pre-eviction notice provision. *Compare* 15 U.S.C. § 9058(c) *with* 42 U.S.C. § 12755(b) *and* 24 C.F.R. § 92.253(c) *and* 24 CFR § 880.607(c).

Division One (extraordinarily) did not address these arguments, *e.g.*, the basis of the trial court's decision and Plaintiff's responsive arguments on appeal. Rather, it read one sentence in isolation, judicially added the words "pay or" (vacate) to that single sentence, and created a brand new, permanent, federal notice that Congress never intended. In doing so, it failed to read the CARES Act and § 9058 as a whole, failed to review federal eviction statutory schemes, and failed to conduct a proper statutory analysis as dictated by this and many

other courts.

Furthermore, the holding that Plaintiff's "interpretation of the CARES Act notice provision would render that provision meaningless" contradicts caselaw where this rule of statutory construction is used. *See e.g.*, *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn.2d 363, 382, 374 P.3d 63, 71–72 (2016) (holding reading the statute as a whole and following the legislature's stated intent and purpose were paramount to "striv[ing] to avoid a construction that would render a portion of the statute meaningless").

Congresses' clearly stated *emergency and temporary purpose* was to prevent tenants from being required to vacate for 30 days, not to create a brand new, permanent, notice, let alone a *pay or* vacate notice. Moreover, the only time a lessor can be said to have "required" a tenant to vacate is when the lessor delivers, or effectuates delivery of, evictions orders and writ a restitution to the sheriff to execute. Serving a (unilateral) failure to pay notice is nothing more than an allegation, as defined by statute

(RCW 59.18.057(1)), that the tenant has not paid rent. The tenant is not required to vacate upon receipt of an allegation. If an unlawful detainer action is filed, the tenant is required to do nothing more than respond to the allegation and argue his or her case.

Division One's reasoning that Plaintiff's interpretation of the CARES Act renders it "meaningless"—borders on the absurd. Self-help evictions are unlawful. A unilateral notice is not a requirement to vacate. It is an allegation. A tenant can only be "required" to vacate by a lessor after meaningful due process, such as after a contested show cause hearing, after proper orders are entered, and then only after the landlord takes steps to have a writ of restitution delivered to the sheriff to be executed on.

This Court is called upon RAP 13.4(b)(1), (2), and/or (4) to grant review and provide a proper statutory analysis to ensure courts of appeal follow this Court's well-established precedent when reviewing statutes de novo and analyzing these types of important cases.

5.4. Division One's Holding that All Pre-Eviction Notices Must Contain a Cure or Comply Period is Contrary to Statutes and Caselaw regarding Lawful Pre-Eviction Notices that Provide No Opportunity to Cure or Comply.

Under Chapter 59.12, RCW, certain unlawful detainer pre-eviction notices espousing allegations of breach of contract, torts, or the like, lawfully contain no opportunity to cure or comply. RCW §§ 59.12.030 (5), (6). This is likewise, under Chapter 59.18, RCW. RCW §§ 59.18.650(2)(c), (l), (p).

Here, Division One held "only after the proper notice is provided and the cure period has expired can the tenant be said to be unlawfully detaining the premises." *Sherwood Auburn LLC v. Pinzon*, 84119-0-I, 2022 WL 17413062, at *4 (2022). The way the published decision is written mandates that all pre-eviction notices contain comply and cure periods. This is not the law. Not only does the CARES Act not contain any cure or comply period—but many notices under Washington law do not contain cure or comply periods either.

This Court is called upon RAP 13.4(b)(1), (2), and/or (4)

to grant review and provide a proper statutory analysis to ensure there is no confusion as to when cure and comply periods are necessary in notices or not.

5.5. Division One's Holding that Multiple Pre-Eviction Notices are "misleading", "confusing", and/or "deceitful" is Contrary to Court Decisions Allowing Landlords to Issue Multiple Pre-Eviction Notices and Plead Cases in the Alternative.

Under CR 8(e)(2), a plaintiff may plead his or her case in the alternative or even hypothetically. *See also Port of Seattle v. Lexington Ins. Co.*, 111 Wn. App. 901, 919, 48 P.3d 334, 343 (2002). "As to the form and contents of [an unlawful detainer] notice or demand . . . substantial compliance with the statute is sufficient." *Provident Mut. Life Ins. Co. of Philadelphia v. Thrower*, 155 Wash. 613, 617, 285 P. 654, 655 (1930). "It is only necessary that the description should be sufficient to identify the premises." *Id.* Where "the notice to vacate" is "legally sufficient in the description of the premises and signature by the agent of the owner. . . all other matter[s are] unimportant." *Id.*

In *IBF,* the court held that the parties' rental agreement

contractually extended a statutory 3-day notice into a 10-day notice. *IBF, LLC, v. Heuft*, 141 Wn. App. 624, 632–33, 174 P.3d 95, 99–100 (2007). The landlord served a summons prior to the expiration of 10 days. *Id.* The court held the notice invalid as a result. *Id.*

Here, there was no contract or agreement extending any notice period. There was an overlap of applicable federal and state law that Plaintiff had no control over but informed Defendants. Plaintiffs in eviction matters are entitled to serve more than one, and different notices on tenants, and then later plead an unlawful detainer complaint in the alternative. Neither this Court nor any court of appeals, until now, has held such practice misleading, confusing, nor deceitful.

Division One's holding that it was misleading and deceiving for Plaintiff to serve a mandatory 14 day notice as well as a notice informing Defendants of the applicable provision under the CARES Act is not in line with this Court's or other courts of appeal's precedent regarding landlords serving more

than one notice on tenants and later pleading cases in the alternative. *IBF, LLC,* cited by Division One was inapplicable and readily distinguishable.

Stated simply, no language in 15 U.S.C. § 9058(c) makes unlawful state law pre-eviction notices. The CARES Act plainly *utilizes* existing "notice[s] to vacate." When a (state law) notice to vacate is "provided," the 30-day clock for when the tenant may be "required to vacate" begins to tick. The trial court correctly ruled at the show cause hearing that it had been months since Defendants were served notice to vacate and that more than 30 days elapsed. Thus, there was no prohibition under the CARES Act for Plaintiff to seek eviction orders or have a writ of restitution delivered to the sheriff.

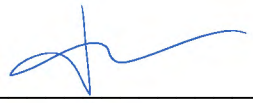
This Court is called upon RAP 13.4(b)(1), (2), and/or (4) review Division One's decision that holds as misleading and deceitful the never before questioned practice of landlords serving more than one pre-eviction notice on a tenant and then pleading his or her case in the alternative.

6. CONCLUSION

Pursuant to RAP 13.4(b)(1), (2), and (4) Plaintiff respectfully requests this Court grant review, for the reasons stated herein.

Respectfully submitted this 3rd day of January, 2023.

HARBOR APPEALS AND LAW, PLLC



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HARBOR APPEALS AND LAW, PLLC

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ATTACHMENT 1

FILED
12/5/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHERWOOD AUBURN LLC, Respondent, v. JOEL PINZON and ROSA MENDEZ, Appellants.	DIVISION ONE No. 84119-0-I PUBLISHED OPINION

DWYER, J. — When a landlord has accepted the financial benefits of certain federal programs, Congress is authorized pursuant to the Constitution's Spending Clause[1] to impose on that landlord rules, regulations, or restrictions premised on the landlord's participation in such a program. The Supremacy Clause[2] of the Constitution makes such laws paramount to those enacted by state legislatures. In the federal CARES Act,[3] Congress mandated that landlords who have accepted certain federal financial benefits must provide to tenants living in covered housing units a 30-day notice to cure the rental payment deficiency or vacate the premises before the landlord may commence an eviction action.

[1] U.S. CONST. art. I, § 8, cl. 1.
[2] U.S. CONST. art. VI, cl. 2.
[3] See Pub. L. No. 116-136, 134 Stat. 281 (2020); see also 15 U.S.C. § 9058.

Here, the notice provided to tenants Joel Pinzon and Rosa Mendez by landlord Sherwood Auburn LLC, did not comply with the federal CARES Act. The landlord nevertheless filed an unlawful detainer action against the tenants. Because Sherwood Auburn did not comply with the CARES Act notice requirement, the superior court was without the authority to issue a writ of restitution or enter judgment against Pinzon and Mendez. Accordingly, we reverse the superior court's order so doing.

I

Pinzon and Mendez began renting an apartment owned by Sherwood Auburn in May 2019. They lived in the apartment with their four young children. Pinzon has worked in construction his whole life. During the COVID-19 pandemic, his workplace closed and he was unable to find work. Pinzon and Mendez fell behind on their rent.

On December 21, 2021, Sherwood Auburn served on Pinzon and Mendez a "14-Day Notice to Pay Rent or Vacate the Premises." The notice provided:

> You must pay the total amount due to your landlord within fourteen (14) days after service of this notice or you must vacate the premises. Any payment you make to the landlord must first be applied to the total amount due as shown on this notice. *Any failure to comply with this notice within fourteen (14) days after service of this notice may result in a judicial proceeding that leads to your eviction from the premises.*

(Emphasis added.) On the same day, Sherwood Auburn, an entity with a federally backed mortgage loan, served the tenants with a document entitled "30-DAY NOTICE (CARES Act)." The document stated:

> YOU ARE HEREBY NOTIFIED, pursuant to the obligations of the CARES Act as passed by the United States Congress, that

> the Landlord has served a notice to vacate, or a notice to comply or vacate on you pursuant to the laws of the State of Washington, and in accordance with the requirements of emergency orders promulgated by Governor Jay Inslee, and that *if a court so orders in any unlawful detainer action, you may be required to vacate the residential unit in not less than 30 days from the date of this notice.*

(Emphasis added.)

On February 12, 2022, Sherwood Auburn served Pinzon and Mendez with an eviction summons and complaint for unlawful detainer. The landlord thereafter filed in the superior court a complaint for unlawful detainer and order to show cause. Pinzon and Mendez were ordered to appear at a hearing before the court on March 10, 2022, to show cause why the court should not issue a writ of restitution restoring to Sherwood Auburn possession of the apartment and enter judgment against the tenants.

Following the show cause hearing, a superior court commissioner issued a writ of restitution and entered judgment against Pinzon and Mendez. At the hearing, the commissioner "acknowledge[d] that the requirements of the federal law and the state law being different, certainly could be confusing," but determined that Mendez had not found the two notices to be confusing, "because he still hasn't vacated the premises." The commissioner thus found that, in issuing the two notices, Sherwood Auburn was "in compliance with the state statute and the federal statute."

Pinzon and Mendez thereafter filed a motion to revise the commissioner's order. On May 6, 2022, a superior court judge denied the motion, thus adopting the ruling of the commissioner. Pinzon and Mendez appeal.

II

Pinzon and Mendez assert that, pursuant to the federal CARES Act, Sherwood Auburn was required to provide a 30-day notice to pay rent or vacate the premises prior to commencing an unlawful detainer action. Indeed, the plain language of the CARES Act mandates that a landlord that has received certain federal financial benefits must provide such a notice to tenants residing in housing units covered by the Act. Sherwood Auburn nevertheless contends that the CARES Act simply precludes state trial courts from enforcing eviction actions on a timeline not in keeping with the CARES Act requirements. This interpretation is both contrary to the statute's plain language and inconsistent with the authority pursuant to which Congress enacted the statute. Accordingly, we agree with Pinzon and Mendez and hold that, pursuant to the CARES Act, Sherwood Auburn was required to provide a clear 30-day notice to pay rent or vacate the premises.

A

When a superior court rules on a motion for revision, "the appeal is from the superior court's decision, not the commissioner's." State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). Accordingly, we review the ruling of the superior court, not the ruling of the commissioner. Faciszewski v. Brown, 187 Wn.2d 308, 313 n.2, 386 P.3d 711 (2016). "'Under RCW 2.24.050, the findings and orders of a court commissioner not successfully revised become the orders and findings of the superior court.'" In re Det. of L.K., 14 Wn. App. 2d 542, 550,

471 P.3d 975 (2020) (quoting Maldonado v. Maldonado, 197 Wn. App. 779, 789, 391 P.3d 546 (2017)).

"The meaning of a statute is a question of law reviewed de novo." Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). In interpreting a federal statute, our objective is to ascertain Congress's intent. Kitsap County Consol. Hous. Auth. v. Henry-Levingston, 196 Wn. App. 688, 701, 385 P.3d 188 (2016). "[I]f the statute's meaning is plain on its face, then [we] must give effect to that plain meaning as an expression of legislative intent." Dep't of Ecology, 146 Wn.2d at 9-10.

B

1

Washington's Residential Landlord-Tenant Act of 1973 (RLTA), chapter 59.18 RCW, provides that a landlord may commence an unlawful detainer action if a tenant breaches a rental agreement by failing to make timely rental payments. RCW 59.18.130, .180(2). See Christensen v. Ellsworth, 162 Wn.2d 365, 370, 173 P.3d 228 (2007). "An unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of property." Christensen, 162 Wn.2d at 370-71. In so doing, it "relieves a landlord of having to file an expensive and lengthy common law action of ejectment." FPA Crescent Assocs. v. Jamie's LLC, 190 Wn. App. 666, 675, 360 P.3d 934 (2015). "However, in order to take advantage of [the unlawful detainer statute's] favorable provisions, a landlord must comply with the

requirements of the statute." Hous. Auth. of City of Everett v. Terry, 114 Wn.2d 558, 563-64, 789 P.2d 745 (1990).

In residential tenancies, a tenant is liable for unlawful detainer "[w]hen he or she continues in possession . . . after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises . . . [and the request] has remained uncomplied with . . . for the period of 14 days after service." RCW 59.12.030(3); see also RCW 59.18.650(2)(a). Thus, pursuant to Washington law, both notice of the tenant's default and the expiration of the requisite period to cure are required before a tenant can be in the status of unlawful detainer. RCW 59.12.030(3). "The purpose of the notice is to provide the tenant with '*at least* one opportunity to correct a breach before forfeiture of a lease under the accelerated restitution provisions of RCW 59.12.'" Christensen, 162 Wn.2d at 371 (quoting Terry, 114 Wn.2d at 569). Such "notice must . . . be sufficiently particular and certain so as not to deceive or mislead." IBC, LLC v. Heuft, 141 Wn. App. 624, 632, 174 P.3d 95 (2007).

2

The federal CARES Act, enacted by Congress in response to the economic disruption resulting from the COVID-19 pandemic, provides protections for tenants living in housing units owned by landlords that have received the financial benefits of certain federal programs. 15 U.S.C. § 9058. The statute applies to tenants living in any "covered dwelling," which includes housing units on properties with "[f]ederally backed mortgage loan[s]." 15 U.S.C. § 9058(a)(1),

(2)(B)(i). In addition to imposing a 120-day moratorium on eviction actions for nonpayment of rent or other charges, 15 U.S.C. § 9058(b), the CARES Act established a 30-day notice requirement, which provides that "[t]he lessor of a covered dwelling unit . . . may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." 15 U.S.C. § 9058(c)(1).[4]

C

1

Pinzon and Mendez assert that the CARES Act notice provision requires that tenants residing in "covered dwellings" receive an unequivocal 30-day notice to pay rent or vacate the premises before the landlord may commence an unlawful detainer action. In contrast, Sherwood Auburn contends that the CARES Act simply prohibits state trial courts from evicting tenants during the 30-day period following service of a pay or vacate notice required by state law. Indeed, as Sherwood Auburn clarified at oral argument, its interpretation of the CARES Act notice provision would replace the word "lessor" with the words "superior court."[5] Thus, Sherwood Auburn's preferred interpretation of the notice

[4] The full text of this provision states:

> The lessor of a covered dwelling unit—
>
> (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
>
> (2) may not issue a notice to vacate under paragraph (1) until after expiration of the period described in subsection (b) [the 120-day eviction moratorium].

15 U.S.C. § 9058(c).

[5] Sherwood Auburn clarified its interpretation of the CARES Act notice provision at oral argument. According to Sherwood Auburn, the proper interpretation of the provision would replace the word "lessor" with the words "superior court." Thus, Sherwood Auburn asserts that the statute should be understood as providing that the superior court—not the lessor—"may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the

provision would merely preclude the superior court from enforcing a breach of a lease agreement during the 30-day notice period. It would not preclude the landlord from commencing an unlawful detainer action during that time.

The plain language of the statute, however, belies such an interpretation. The CARES Act notice provision clearly prohibits the lessor (the beneficiary of the federal financial assistance)—not a state trial court—from requiring a tenant to vacate a covered housing unit prior to expiration of the notice period. "*The lessor* of a covered dwelling unit," the statute plainly states, "may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." 15 U.S.C. § 9058(c)(1) (emphasis added). "An unambiguous statute is not subject to judicial construction," and we "must derive its meaning from the plain language" of the statute. Sprint Spectrum, LP/Sprint PCS v. City of Seattle, 131 Wn. App. 339, 346, 127 P.3d 755 (2006). Here, Congress unambiguously provided that "the lessor" may not require a tenant to vacate prior to providing a 30-day notice.[6]

2

Moreover, Sherwood Auburn's interpretation of the CARES Act notice provision would render that provision meaningless. See Ballard Square Condo.

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date on which the lessor provides the tenant with a notice to vacate." 15 U.S.C. § 9058(c). Those are not the words that Congress chose.

[6] Based on decisional authority holding that a landlord may not use "self-help methods to remove a tenant," Gray v. Pierce County Hous. Auth., 123 Wn. App. 744, 757, 97 P.3d 26 (2004), Sherwood Auburn concludes that it is not the landlord but, instead, the superior court that requires a tenant to vacate. However, the fact that a landlord must follow lawful methods in evicting a tenant—i.e., providing proper notice—does not mean that it is the superior court that does so.

Owners Ass'n v. Dynasty Constr. Co., 158 Wn.2d 603, 610, 146 P.3d 914 (2006) ("[A] court may not construe a statute in a way that renders statutory language meaningless or superfluous."). The purposes of the notice requirement in an unlawful detainer action are to both notify the tenant of the alleged default and allow for a period of time in which the tenant may cure the alleged breach or vacate the premises. See RCW 59.12.030(3); see also Christensen, 162 Wn.2d at 371 (noting that "[t]he purpose of the notice is to provide the tenant with 'at least one opportunity to correct a breach before forfeiture of a lease under the accelerated restitution provisions of RCW 59.12'" (quoting Terry, 114 Wn.2d at 569)). Indeed, only after the proper notice is provided and the cure period has expired can the tenant be said to be unlawfully detaining the premises. See Indigo Real Est. Servs., Inc. v. Wadsworth, 169 Wn. App. 412, 421, 280 P.3d 506 (2012) ("Once a tenant is in the status of unlawful detainer, the landlord may commence an unlawful detainer action by serving a summons and complaint."). Only then can the landlord avail itself of the superior court's authority to enforce the provisions of a lease agreement. Henry-Levingston, 196 Wn. App. at 699 (recognizing that "[a] trial court cannot grant relief in an unlawful detainer action when a landlord has failed to comply with the relevant [notice provisions]").

If the CARES Act provision simply prevented the eviction of tenants for 30 days following notice, without providing tenants the ability to cure the breach or vacate the premises during that period, the notice provision would be rendered meaningless. In Washington, where our state's unlawful detainer statute provides for a 14-day pay or vacate notice in residential tenancies, a landlord

subject to the CARES Act would nevertheless be permitted to commence an unlawful detainer action after 14 days. Thus, the CARES Act would provide no additional protection for tenants.

Sherwood Auburn disputes this conclusion, asserting that, if the landlord were permitted to commence an unlawful detainer action on the 14th day after providing notice, tenants would nevertheless benefit from being permitted to remain in the premises for an additional 16 days before being required to vacate. This assertion reflects a misunderstanding of unlawful detainer law. Indeed, service of the pay or vacate notice *is* the landlord requiring the tenant to quit the premises. Only when the tenant refuses the demand to vacate the premises (or to pay the rent deficiency) can the landlord commence an unlawful detainer action. In other words, it is the landlord—not the superior court—that requires the tenant to vacate the premises. The superior court simply enforces that requirement if the tenant refuses.

3

In addition, Sherwood Auburn's preferred interpretation of the statutory language disregards the source of Congress's authority to impose the CARES Act notice requirement. In enacting § 9058, Congress acted pursuant to its "broad power under the Spending Clause of the Constitution to set the terms on which it disburses federal funds." Cummings v. Premier Rehab Keller, PLLC, ___ U.S. ___, 142 S. Ct. 1562, 1568, 212 L. Ed. 2d 552 (2022).[7] "'When

[7] The Spending Clause of U.S. Constitution provides that "[t]he congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." U.S. CONST. art. I, § 8, cl. 1.

Congress acts pursuant to its spending power, it generates legislation much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions.'" S.S. v. Alexander, 143 Wn. App. 75, 94-95, 177 P.3d 724 (2008) (internal quotation marks omitted) (quoting Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 640, 119 S. Ct. 1661, 143 L. Ed. 2d 839 (1999)). Thus, "[u]nlike ordinary legislation, which 'imposes congressional policy' on regulated parties 'involuntarily,' Spending Clause legislation operates based on consent: 'in return for federal funds, the [recipients] agree to comply with federally imposed conditions.'" Cummings, 142 S. Ct. at 1570 (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981)). Thus, only landlords that have accepted certain federal financial benefits are subject to the mandates of § 9058. See 15 U.S.C. § 9058(a)(2) (defining "covered propert[ies]"). Although Sherwood Auburn would prefer that the CARES Act notice provision simply proscribed the superior court's authority to enforce a lease agreement, it is only those landlords that have accepted certain federal financial benefits on which Congress has the authority to impose restrictions.[8]

4

Sherwood Auburn further asserts that a conflict between § 9058(c) of the CARES Act and our state's 14-day notice requirement, RCW 59.12.030(3),

[8] Sherwood Auburn does not address the constitutionality of its preferred interpretation of the notice provision, which would have Congress imposing limitations on the authority of state courts. See U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."). We are nevertheless mindful of our duty "to construe a statute so as to uphold its constitutionality." Associated Gen. Contractors of Wash. v. State, ___ Wn.2d ___, 518 P.3d 639, 643 (2022).

precludes imposition of a 30-day notice requirement. However, the Supremacy Clause of our federal constitution[9] "creates a rule of decision: Courts 'shall' regard the 'Constitution,' and all laws 'made in Pursuance thereof,' as 'the supreme Law of the Land.'" Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 324, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015) (quoting U.S. CONST. art. VI, cl. 2). Thus, courts "must not give effect to state laws that conflict with federal laws." Armstrong, 575 U.S. at 324. Indeed, state courts are charged with a "coordinate responsibility" to enforce federal law, as "the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature." Howlett By & Through Howlett v. Rose, 496 U.S. 356, 367, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990). Accordingly, pursuant to the Supremacy Clause, state law is preempted by federal law "'if the state law conflicts with federal law due to impossibility of compliance with state and federal law or when state law acts as an obstacle to the accomplishment of the federal purpose.'" Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 265, 884 P.2d 592 (1994) (quoting Wash. State Physicians Ins. Exch. & Ass'n v. Fisons, 122 Wn.2d 299, 326, 858 P.2d 1054 (1993)).

Here, however, in enacting our state's notice requirements for residential evictions, our legislature wisely envisioned circumstances in which federal statutes would provide tenants with additional protections. Thus, the RLTA itself

[9] The Supremacy Clause provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

contemplates that federal notice requirements may supplant the 14-day notice to pay or vacate required by state law. See RCW 59.18.057(3) (providing that the form for compliance with RCW 59.12.030(3)'s 14-day notice requirement "does not abrogate any additional notice requirements to tenants as required by federal, state, or local law"). Because our state law explicitly provides for additional notice requirements imposed on landlords by federal mandate, Sherwood Auburn is incorrect that a conflict is created by the imposition of a 30-day notice requirement.

Indeed, we have previously held that, when a landlord accepts the financial benefits of a federal program, the federal protections provided to tenants therein "are properly considered as limitations to our state's unlawful detainer statute." Indigo, 169 Wn. App. at 423. There, federal law required the landlord, which had accepted the financial benefits of participation in the federal section 8 program, to prove good cause to terminate a tenancy. Indigo, 169 Wn. App. at 414. Notwithstanding that our state law did not require such proof, we held that the landlord was required to comply with the federal program's rules and regulations in the state unlawful detainer action. Indigo, 169 Wn. App. at 414. We reasoned that, until the landlord had proved good cause, the tenant could not be found to be unlawfully detaining the premises. Indigo, 169 Wn. App. at 414.

We explained:

> Just as the parties to a lease may contract to allow additional time for compliance before a tenant may be found to have unlawfully detained the premises, so may a lease require something more than an immaterial breach of a lease provision to support such a determination. Similarly, where a landlord has accepted the substantial financial benefits that accompany participation in the

> section 8 program, a higher bar to a finding of wrongful occupation is imposed.

Indigo, 169 Wn. App. at 423 (citation omitted).[10] Thus, we concluded that, "where a landlord has accepted the the substantial financial benefits" of a federal program, "the landlord must abide by the rules of that program in any unlawful detainer action." Indigo, 169 Wn. App. at 422.

Here, the plain language of the CARES Act notice provision requires that landlords subject to the act provide a 30-day notice to tenants prior to commencing an unlawful detainer action. Sherwood Auburn has availed itself of the "substantial financial benefits" of a federally backed mortgage loan, but does not wish to comply with the additional requirements imposed by Congress on landlords that have accepted such benefits. Our state's RLTA explicitly provides that federal law may require greater notice than that required by state law. RCW 59.18.057(3). Indeed, tenant protections provided by federal law, such as the CARES Act notice requirement, "are properly considered as limitations to our state's unlawful detainer statute." Indigo, 169 Wn. App. at 423. Thus, pursuant to the plain language of § 9058(c), landlords subject to the CARES Act by virtue of their acceptance of certain federal financial benefits must provide a 30-day notice to pay or vacate to tenants residing in "covered dwellings."

[10] Washington courts have repeatedly held that when a tenant is entitled to more notice than that provided by the unlawful detainer statute, a landlord can commence an unlawful detainer action only after affording the greater notice period. "When a tenant contracts with his landlord for a notice period longer than the statutory period, he is entitled to the full time stated just as he is under the statute." Cmty. Invs., Ltd. v. Safeway Stores, Inc., 36 Wn. App. 34, 38, 671 P.2d 289 (1983) (holding that unlawful detainer action could not be sustained when landlord filed the action 19 days after providing notice of default when the lease provided a 20-day opportunity to cure). See also Heuft, 141 Wn. App. at 629, 633 (vacating judgment against tenant when landlord provided less than the 10-day notice required by the lease).

III

Pinzon and Mendez further assert that the notices provided by Sherwood Auburn were misleading and contradictory and, thus, that the superior court was without authority to determine that they were unlawfully detaining the premises. We agree.

A

In Washington, when nonpayment of rent is alleged, a tenant is liable for unlawful detainer only after the landlord provides notice of the alleged default and the requisite period to cure that default has expired. RCW 59.12.030(3). The notice period provides a tenant "with an opportunity to correct a breach before the commencement of an unlawful detainer proceeding." Christensen, 162 Wn.2d at 377. "The provisions governing the time and manner of bringing an unlawful detainer action are to be strictly construed." Cmty. Invs., Ltd. v. Safeway Stores, Inc., 36 Wn. App. 34, 37-38, 671 P.2d 289 (1983). Moreover, the notice "must . . . be sufficiently particular and certain so as not to deceive or mislead." Heuft, 141 Wn. App. at 632.

A landlord that commences an unlawful detainer action after providing inadequately clear notice may not "avail itself of the superior court's jurisdiction." Hous. Auth. of City of Seattle v. Bin, 163 Wn. App. 367, 374, 260 P.3d 900 (2011). This is because, until the notice requirements are met, the tenant cannot be said to be unlawfully detaining the premises. RCW 59.12.030(3); see also Indigo, 169 Wn. App. at 421. Thus, when notice is deficient, the landlord cannot prove a cause of action for unlawful detainer. Terry, 114 Wn.2d at 563-64

("Because it gave deficient notice, the Housing Authority could not prove a cause of action for unlawful detainer."). Accordingly, "a trial court cannot grant relief in an unlawful detainer action when a landlord has failed to comply with the relevant [notice requirement]." Henry-Levingston, 196 Wn. App. at 699. When a landlord files an unlawful detainer action after providing inadequate notice, which includes failing to clearly set forth the requisite period to cure the alleged default, the action must be dismissed. See, e.g., Heuft, 141 Wn. App. at 633 (vacating the judgment entered in an unlawful detainer action because the landlord failed to provide the cure period provided by the lease); Cmty. Invs., Ltd., 36 Wn. App. at 37-38 (affirming the trial court's dismissal of an unlawful detainer action because the landlord did not provide the required 20 days to cure the default).

B

Here, Sherwood Auburn served Pinzon and Mendez with two notices—a 14-day pay or vacate notice pursuant to RCW 59.12.030(3), and an additional notice entitled "30-DAY NOTICE (CARES Act)" stating that, "if a court so order[ed]," Pinzon and Mendez could be "required to vacate the residential unit in not less than 30 days" from the date of the notice. These notices did not unequivocally inform Pinzon and Mendez that, pursuant to the CARES Act, they had 30 days from the date of notice to cure the alleged nonpayment of rent or to vacate the premises. Notice must be "sufficiently particular and certain so as not to deceive or mislead." Heuft, 141 Wn. App. at 632. Thus, when the notice provided does not accurately convey the correct time period to cure or vacate, the notice is not sufficient. Heuft, 141 Wn. App. at 633 (landlord provided a

three-day pay or vacate notice when lease provided for 10 days); Cmty. Invs., Ltd., 36 Wn. App. at 37-38 (landlord provided two conflicting notices, one providing for 10 days to pay or vacate, and the other providing for the 20 days required by the lease). Here, the conflicting notices provided by Sherwood Auburn were misleading and equivocal and failed to adequately, precisely, and correctly inform the tenants of the rights to which they were entitled.[11]

Because Pinzon and Mendez were not afforded clear and accurate notice, the superior court was without the authority to issue a writ of restitution or enter judgment against them.[12] Accordingly, we reverse the superior court's order and remand for dismissal of the unlawful detainer action.[13]

---

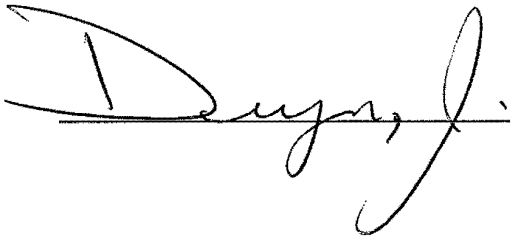
[11] Sherwood Auburn incorrectly asserts that it was not required to provide any notice pursuant to the CARES Act, but argues that it "should be praised" for nevertheless doing so. Br. of Resp't at 20. Indeed, Sherwood Auburn discloses in its briefing, "[l]andlords routinely provide superfluous notices and/or information to tenants in eviction notices, or otherwise, for no other reason than to keep eviction costs down." Br. of Resp't at 18. "Providing superfluous information and notices to tenants," the landlord tells us, "is just a commonsense practice of law." Br. of Resp't at 19. As we hold herein, this purportedly "commonsense practice" may undermine the landlord's attempt to comply with legal obligations.

[12] When notice is inadequate in an unlawful detainer action, Washington courts have at times referred to the superior court's lack of authority to enter judgment as an issue of "jurisdiction." See, e.g., Heuft, 141 Wn. App. at 633 ("Because compliance with service procedures is jurisdictional, we conclude that the trial court lacked jurisdiction."); Terry, 114 Wn.2d. at 560 ("We hold that . . . there is no jurisdiction without statutory notice."). Indeed, Pinzon and Mendez discuss this as a "jurisdictional" issue.

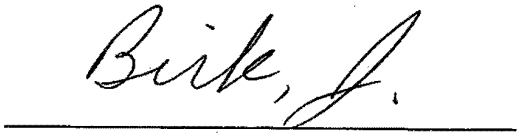
However, our "Supreme Court has noted that '[t]he term "subject matter jurisdiction" is often confused with a court's "authority" to rule in a particular manner,' leading to 'improvident and inconsistent use of the term.'" In re Marriage of McDermott, 175 Wn. App. 467, 480, 307 P.3d 717 (2013) (internal quotation marks omitted) (quoting Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). Indeed, the unlawful detainer statute itself provides that the superior court "of the county in which the property or some part of it is situated" has jurisdiction over unlawful detainer proceedings. RCW 59.12.050. Thus, "[t]he proper terminology is that a party who files an [unlawful detainer] action after improper notice may not maintain such action or avail itself of the superior court's jurisdiction." Bin, 163 Wn. App. at 374.

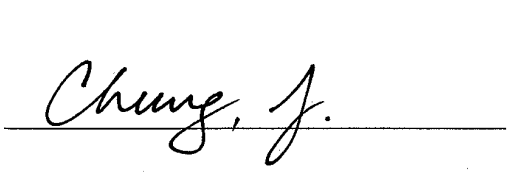
[13] Sherwood Auburn requests an award of attorneys' fees on appeal pursuant to RCW 59.18.410 and RCW 59.18.290. Because Sherwood Auburn is not the prevailing party, it is not entitled to such an award.

Reversed and remanded.



WE CONCUR:





ATTACHMENT 2

AMENDMENT NO._____ Calendar No._____

Purpose: Providing emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

H. R. 748

To amend the Internal Revenue Code of 1986 to repeal the excise tax on high cost employer-sponsored health coverage.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

HARBOR APPEALS AND LAW, PLLC

January 03, 2023 - 3:59 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	84119-0
Appellate Court Case Title:	Sherwood Auburn LLC, Respondent v. Joel Pinzon, et ano., Appellants

The following documents have been uploaded:

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