No. 102297-2

SUPREME COURT
OF THE STATE OF WASHINGTON

LANDMARK PROPERTIES, INC.,

Respondent,

v.

KEITH L. ARNOLD,

Petitioner.

RESPONSE TO PETITIONER'S PETITION FOR REVIEW

By:

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1. IDENTITY OF RESPONDENT

Landmark Properties, Inc., is the Respondent in this appeal and to this petition for review.

2. ANSWER TO RESTATED ISSUES PRESENTED TO REVIEW

2.1. Whether the Petition for review that fails to cite or argue any provision of RAP 13.4 should be denied? Yes.

2.2. Whether the Petition for review that makes arguments never presented to the trial court and some not presented to the court of appeals should be denied? Yes.

2.3. Whether the Petition for review that contains no meritorious arguments and cites no conflicting nor supporting caselaw for those non-meritorious arguments should be denied? Yes.

3. RESTATEMENT OF THE CASE

3.1. At the end of May of 2022, Petitioner was served a 120 day notice to terminate his tenancy based on the dwelling needing extensive remodeling and modification. (CP at 3-4, 12).

3.2. In November of 2022, Respondent commenced the unlawful detainer action as "no file" eviction action. (CP at 1-4). Initial pleadings were served on Petitioner on October 16, 2022. (CP at 9). The complaint alleged that Respondent served written notice on May 31, 2022, for Petitioner to vacate on or before September 30, 2022. The notice attached to the complaint went into detail that the dwelling unit needed extensive repairs and renovation because the tenant had extensively damaged the dwelling during his 18 year occupancy. (CP at 3).

3.3. The summons required an answer to the complaint on or before October 25, 2022. (CP at 7). Notably, the summons stated in large bold letters, pursuant to statute, to "GET HELP: If you do not respond by the deadline above, you will lose your right to defend yourself . . . and could be evicted." (CP at 7). It also provided phone numbers for free legal assistance. (CP at 7). Petitioner ignored and failed to answer the complaint. (CP at 21-22).

3.4. On November 4, 2022, Respondent filed the action

in court and moved for default orders, including an order for a writ of restitution. (CP at 21-22). A cost bill was provided to the trial court. (CP at 24-26).

3.5. On the same day, the trial court issued its findings, conclusions, and order for default and writ of restitution. (CP at 28-31). Costs were awarded but attorney fees and back owed rent/damages were "reserved." (CP at 28-31). Petitioner appealed on December 5, 2022. (CP at 33-37). Petitioner vacated the property on or before December 13, 2022. (CP at 39).

3.6. On appeal, Petitioner argued in pertinent part that the trial court erred by issuing default orders and a writ of restitution for various reasons: First, the "superior court erred in accepting [Respondent]'s notice to terminate tenancy as a good faith justification for the default. . . ." (Brief of Appellant at 2). Second, Respondent's summons was defective because at the time of service it was not filed with the trial court. (Brief of Appellant at 2-3). Third, Petitioner provided factual statements and/or arguments never presented to the trial court.

3.7. Division One in an unpublished decision affirmed. (Unpublished Decision). Citing long established caselaw, it reasoned that "A default judgment constitutes an admission of all factual allegations necessary to establish the plaintiff's claim for relief." *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 333, 54 P.3d 665 (2002). Respondent's factual allegations within its termination notice and complaint, Division One held, were sufficient to terminate the tenancy:

> the notice provided to [Petitioner] explained that the building manager had found extensive damage to the bathroom walls and tub. The notice also explained that the "unit needs extensive modifications and remodeling" and it is "not healthy for [Petitioner] to be in there.

(Unpublished Decision at 3). As to the sufficiency of the summons substance, Division One held that it complied with RCW 59.12.080, and that it contained the names of the parties, notified Petitioner of the superior court action, stated the relief sought, and that if Petitioner did not respond he would "lose his right to defend [him]self. . . ." (Unpublished Decision at 4). The

service of the summons also complied with RCW 59.12.070 as the timing of its service gave Petitioner nine days to respond to the complaint. (Unpublished Decision at 4). Last, Division One held that the trial court did not abuse its discretion in entering the default judgment because Petitioner failed to respond and that RCW 59.12.120 provides "If on the date appointed in the summons the defendant does not appear or answer, the court shall render judgment in favor of the plaintiff as prayed for in the complaint." (Unpublished Decision at 5).

3.8. In his Petition for Review, Petitioner claims Division One erred because Respondent did not act in good faith in violation of RCW 59.18.020, because the superior court erred in accepting the 120 day notice as a basis to enter a default judgment, and because the superior court erred in accepting the summons as sufficient. (Petition for Review at 3-4). Petitioner additionally argues that Respondent retaliated against him by not agreeing to move him into another unit.

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4. ARGUMENT IN RESPONSE TO PETITION FOR REVIEW

4.1. Petitioner Fails to Cite Any Basis for Review Under RAP 13.4 and Provides No Reason to Grant His Petition.

A petition for review will be accepted by the Supreme Court:

> *only*:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4 (emphasis added); *see also In re Coats*, 173 Wn.2d 123, 132, 267 P.3d 324, 329 (2011); *State v. Korum*, 157 Wn.2d 614, 625, 141 P.3d 13, 19 (2006).

Here, Petitioner fails to cite RAP 13.4 at all, let alone provide support or argument for any basis for review under this

mandatory rule governing acceptance of petitions for review. In other words, "A petition for review will be accepted by the Supreme Court *only*. . . ." *if* the petitioner provides a basis and argument under this rule. Thus, this Petition should be denied on this basis alone. Respondent respectfully requests this Court do so.

4.2. Arguments Not Made to the Trial Court are Not Heard on Appeal Let Alone on Discretionary Review.

An "appellate court may refuse to review any *claim of error which was not raised to the trial court*." RAP 2.5(a) (emphasis added); *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 615, n. 1, 160 P.3d 31, 33 (2007); *In re Marriage of Choate*, 143 Wn. App. 235, 245, 177 P.3d 175, 179 (2008). A party fails to preserve and waives alleged errors by failing to object, or by failing to claim error, at the time the error is allegedly made. *In re Det. of Audett*, 158 Wn.2d 712, 724, 147 P.3d 982, 987 (2006) (citing *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985) (holding "a litigant cannot remain silent as to claimed

error during trial and later, for the first time, urge objections thereto on appeal."); *Marriage of Vanwey*, 82063-0-I, 2021 WL 960820, at *4.

Here, no arguments made in this appeal or in the petition for review were ever raised to the trial court, some not even raised to the court of appeals. Petitioner did not respond to the complaint at all. He made no filings before the trial court entered the order of default. Petitioner never attempted to vacate the default order on any grounds, under any authority, instead deciding to directly appeal the decision to issue a default order made by the trial court.

Respondent is not required to spend money responding to any arguments other than those directly related to whether the trial abused its discretion in issuing the default order or whether the court of appeals erred in affirming. More to the point, this Court has no reason to consider arguments not raised to the trial court. Respondent requests that it does not and deny this Petition.

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4.3. The Trial Court Did Not Abuse Its Discretion by Issuing the Default Judgment and Division One Did Not Err by Affirming.

The granting of or refusal to grant a motion for default rests within the sound discretion of the trial court. *Morin v. Burris*, 160 Wn.2d 745, 753, 161 P.3d 956, 960 (2007). Discretion is abused if it is exercised on untenable grounds or for untenable reasons. *Id.* An action is commenced by serving a summons and complaint on a party. CR 3(a).

Parties served by a summons and complaint must respond to the summons and complaint or suffer the consequences of a default judgment. *Morin*, 160 Wn.2d at 754. A "default [judgment] is just as good as any other judgment." *Puett v. Bernhard*, 191 Wash. 557, 561, 71 P.2d 406, 407 (1937).

"A default judgment constitutes an admission of all factual allegations necessary to establish the Respondent's claim for relief." *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 333, 54 P.3d 665, 680 (2002). "[F]ollowing default, the trial court must conduct a reasonable inquiry to determine the amount of

damages." *Id.*

Under RCW 59.18.200(2)(c)(i), a landlord may provide 120 days of notice to terminate a tenancy when they "plan to . . . substantially rehabilitate" the premises. This is mirrored by the city of Auburn's just cause ordinance, Auburn City Code 5.23.070(A)(8). Should a tenant not vacate he or she can be liable for unlawful detainer. RCW 59.12.030.

Here, as both the complaint and accompanying declaration of service provided, Respondent gave Petitioner over 120 days of notice to terminate his tenancy based on rehabilitating and substantially renovating the property. (CP at 3-4, 12). The properly served notice detailed the remodeling of the property. (CP at 3). These factual allegations were supported by declarations, and by not answering the complaint Petitioner admitted them as true. The trial court in no way committed an abuse of discretion by ordering a writ of restitution. The same is true regarding the monetary judgement for costs; the amount of costs was detailed in a declaration and that amount was admitted

as true because Appellant did not answer the complaint. The trial court did not abuse its discretion, Division One correctly affirmed, and this Court should deny the petition for review.

5. ATTORNEY FEES AND COSTS

Pursuant to RAP 18.1(j), this Court may award costs and attorney fees if applicable law grants a party the right to recover fees and cost on appeal and the party was awarded such fees by the Court of Appeals. Additionally, under RAP 18.9(a), a party may be sanctioned and the responding party awarded attorney fees and costs for having to answer a frivolous filing.

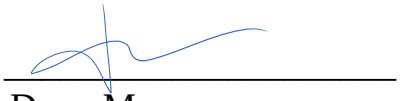
Here, Respondent was awarded attorney fees and costs on appeal by Division One. (Unpublished Decision). Additionally, based on RAP 18.1(j), RCW 59.18.410(1), and RCW 59.18.290(3), Respondent may recover attorney fees and costs for having to respond to this Petition. *See Tedford v. Guy*, 13 Wn. App. 2d 1, 17, 462 P.3d 869, 878 (2020). Therefore, Respondent respectfully requests fee and costs because this Petition should be denied and because it is without merit.

Last, the Petition failing to even cite RAP 13.4 let alone argue any provision of it is frivolous and sanctionable. Respondent requests fees and costs and sanctions under RAP 18.9(a).

6. CONCLUSION

Pursuant to RAP 13.4, Respondent respectfully requests this Court deny review for the reasons stated herein. It requests attorney fees and costs for having to respond to this Petition.

Respectfully submitted this 21st day of September, 2023,



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