No. 97724-1

Supreme Court
of the State of Washington

Patricia Landes,

Petitioner,

v.

Patrick Cuzdey,

Respondent.

Answer to Petition for Review

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1. Identity of Respondent

Patrick Cuzdey, Respondent in the trial court and Appellant in the Court of Appeals, respectfully submits this Answer to Landes' Petition for Review. Cuzdey requests the Court deny the petition.

2. Counter-Statement of the Case

Landes' Statement of the Case materially misrepresents the facts and procedural history of this case. Far from being "a fair statement of the facts and procedure relevant to the issues presented for review, without argument," RAP 10.3(a)(5), Landes' statement is purely argumentative, repeatedly misrepresenting as fact the very conclusions she wants this Court to reach. Her argumentative statements are not supported by her citations to the record.

Landes presents her desired conclusions as resolved facts when they are not. For example, in paragraph 4.2, Landes argues that her "Notice to Begin Rental" was a "unilateral contractual promise" for a month-to-month rental, even though the language of the Notice itself does not indicate that it is an offer to form a contract. CP 23. The language of the Notice did not promise to do something if Cuzdey decided to remain on the property; rather, it purported to impose new terms upon Cuzdey's possession of the property, whether he liked it or not,

using terms such as "you are hereby notified," "the terms … are hereby changed," and "possession … will be considered a month-to-month tenancy." CP 23. The Notice did not expressly incorporate Chapter 59.18 RCW as supplying the missing terms for a proper rental agreement. CP 23.

Landes' statements are not supported by her citations. Her statements of "fact" relate to legal or factual issues that she wants this Court to resolve in her favor. They are not facts. Landes cites to the Court of Appeals opinion, but the Court of Appeals did not fully resolve these issues, instead remanding to the trial court for a jury trial on issues relating to formation of any contract. *Landes v. Cuzdey*, No. 51841-4-II, slip Op. at 1-2 (Aug 20, 2019).

This Court should not rely on Landes' statement of facts. The Court of Appeals Opinion itself—not Landes' interpretation of it—is a reasonable statement of the facts. Cuzdey's Statement of the Case in his Brief of Appellant, at 3-10, is another fair statement of the facts and procedure, without argument, upon which this Court may reasonably rely.

In short, Cuzdey had lived on the Landes property for over 30 years as if it were his own, believing he had purchased it, without any obligation to pay rent to Landes. Br. of App. at 3-4. The parties litigated ownership, and title to the real property was quieted to Landes. Br. of App. at 4.

Landes served Cuzdey with a "Notice to Begin Rental Pursuant to Chapter 59.18 RCW." The notice stated,

> YOU ARE HEREBY NOTIFIED that the terms of your non-exclusive possession and occupancy of 5145 124th Way SW, Olympia, WA 98512 are hereby changed as of and after January 1, 2016, as follows:
>
> 1. On or after January 1, 2016, your non-exclusive possession and occupancy of the subject premises will be considered a month-to-month tenancy subject to the provisions of the Residential Landlord-Tenant Act, RCW 59.18.
>
> 2. Rent will be charged for your possession and occupancy of the subject premises, at the rate of $1,500.00 per month, payable in advance on or before the first day of each month, beginning January 1, 2016.

CP 23.

Cuzdey sent Landes a letter on January 19, 2016, with which he enclosed money orders totaling $1,500. CP 38, 42-43. The letter stated,

> I have appealed the judgment quieting title and do not admit to being a tenant of Landes. I am paying under protest and under order of the superior court and reserve all of my rights, claims and arguments for purposes of the appeal and remand of the case.
>
> I further reserve the right to seek reimbursement of the payment if/when I prevail on appeal.
>
> Attached is a money order satisfying your demand for rent in the amount of $1,500.00 payable to Patricia Landes.

CP 42. Cuzdey sent Landes another money order for $1,500 on February 3, 2016. CP 38-39, 44. Cuzdey wrote on and above the memo line, "#14-2-01483-7 – 'rent' for Feb. 2016." CP 44.

Landes initiated this unlawful detainer action to evict Cuzdey based on the "Notice to Begin Rental." Br. of App. at 6-8. The major issue was whether the Notice had created a rental agreement subject to the unlawful detainer statute. Br. of App. at 7-8. The trial court entered a judgment and writ of restitution in favor of Landes and denied Cuzdey's motion for reconsideration. Br. of App. at 8-9.

The Court of Appeals reversed, holding, "the trial court erred in granting the writ of restitution and final judgment in this unlawful detainer action because Cuzdey presented issues of fact requiring trial regarding … whether an enforceable rental agreement was formed between the parties that created a tenancy under the unlawful detainer statute..." *Landes*, slip Op. at 1. The decision was based entirely on the unlawful detainer statute, chapter 59.12 RCW, *see Id.* at 10-11, and not the RLTA, *See Id.* at 24, 25 (declining to address whether the RLTA applied). "We conclude that the evidence creates a genuine issue of fact regarding mutual assent – whether Cuzdey performed on Landes's unilateral contract offer by paying the offered rent amounts while stating that he did not admit to being a tenant

and was paying under protest. Therefore, a jury trial is required on this issue under RCW 59.12.130." *Landes*, slip Op. at 17.

3. Argument

This Court should deny review. The decision of the Court of Appeals is not in conflict with any published decision of this Court or of the Court of Appeals. *See* RAP 13.4(b)(1), (2). No constitutional questions are involved. *See* RAP 13.4(b)(3). The petition does not involve an issue of substantial public interest. *See* RAP 13.4(b)(4).

Cuzdey will address Landes' arguments in the order in which she presented them. First, there is no substantial public interest in this Court extending the Residential Landlord Tenant Act beyond its statutory bounds in a manner that would create absurd results. Second, the Court of Appeals decision does not conflict with precedent regarding formation of unilateral contracts. Third, the Court of Appeals decision does not conflict with precedent regarding unlawful detainer procedures. This Court should deny review.

3.1 There is no substantial public interest in extending the RLTA beyond its statutory bounds.

Landes takes issue with the statutory scheme enacted by the legislature in chapters 59.12, 59.18, and 59.20 RCW and asks this Court to fill what she perceives as a hole in the

statutes. Her arguments focus not on the Court of Appeals decision in this case, but on her personal disagreement with a prior, unpublished decision of the Court of Appeals in *Parsons v. Mierz*, No. 49324-1-II (Wn. Ct. App., Apr. 10, 2018). This Court cannot provide the relief Landes seeks.

As a threshold matter, this Court should deny review because Landes is asking the Court to review a different case. This Court will only review a decision of the Court of Appeals if a party to that case brings a timely petition in that case showing the issues addressed by the Court of Appeals in that case meet the criteria of this Court for accepting review. *See* RAP 13.1, 13.3, 13.4. Landes cannot ask this Court to review *Parsons* one and a half years after the decision when she was not even a party to the case.

Landes has not demonstrated how the Court of Appeals decision in this case implicates any of the issues decided in *Parsons*. Here, the Court of Appeals did not decide whether the RLTA applies at all. *Landes*, slip Op. at 24, 25. The Court of Appeals did not interpret the RLTA or analyze the statute's language. Landes' arguments criticizing *Parsons* have no bearing on the Court of Appeals decision **in this case.** Landes has not demonstrated any substantial public interest in this Court reviewing this case.

In this case, the Court of Appeals correctly perceived that the dispositive issue on appeal was whether there was any rental agreement **at all,** regardless of whether any agreement would have been governed by the RLTA. The existence of a rental agreement between Cuzdey and Landes is a matter of contract law, not application of the RLTA. Landes' criticisms of *Parsons* have nothing to do with the Court of Appeals decision in this case and fail to demonstrate any reason for this Court to accept review.

Even her criticisms of *Parsons* are unfounded. *Parsons* did not create gaps in the statutory scheme. Because the landlord-tenant and unlawful detainer statutes are in derogation of the common law, they are strictly construed. *Randy Reynolds & Assocs., Inc. v. Harmon*, 193 Wn.2d 143, 156, 437 P.3d 677 (2019). The "gap" through which an owner of a mobile home placed upon land leased from another falls under the general unlawful detainer statute and not under either the RLTA or the Mobile Home Landlord Tenant Act is mandated by the plain language of the definitions in each statute.

The MHLTA applies only to "mobile home parks" with space for "two or more mobile homes" where a tenant rents a "mobile home lot." RCW 59.20.030(6), (12), (13), (14), (24); RCW 59.20.040. The RLTA applies only to "rental agreements" that entitle a "tenant" to use and occupy a "dwelling unit" owned by a

"landlord." RCW 59.18.030(10), (15), (29), (32).[1] Neither set of definitions encompasses the fact pattern in *Parsons* or here.

There is no evidence that the legislature intended to fill this gap, particularly where the MHLTA specifically excludes property leased for placement of only one mobile home, by way of the "two or more" requirement in multiple definitions. No matter what the public policy reasons might be for extending similar tenant protections to the *Parsons* fact pattern, this Court cannot write such protections into the statute when the legislature chose not to do so. *Randy Reynolds*, 193 Wn.2d at 155 ("we must not add words where the legislature has chosen not to include them").

Landes fails to demonstrate how any of these RLTA issues have anything to do with the Court of Appeals decision in this case. The Court of Appeals declined to address the RLTA and correctly decided the case on the basis of contract law. There is no substantial public interest in expanding the RLTA beyond its statutory language. Even if it were desirable to do so, it is a task

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[1] Landes incorrectly argues that *Parsons* misinterpreted the word "property." The *Parsons* court correctly applied the RLTA's definition of "property" to interpret the meaning of that term in the RLTA's definition of "landlord." In any event, the court had already correctly determined that there was no "dwelling unit," "rental agreement," or "tenant" under the RLTA. Even without addressing "landlord," the RLTA could not apply. "Property" was not central to the decision.

that must be left to the legislature. This Court cannot provide the relief Landes seeks. This Court should deny review.

3.2 The Court of Appeals decision does not conflict with precedent regarding formation of unilateral contracts.

Landes fails to demonstrate any conflict between the Court of Appeals opinion and precedent regarding formation of unilateral contracts. The Court of Appeals correctly held that unilateral contracts require mutual assent, demonstrated by a tender of performance that matches the terms of the offer. The Court of Appeals correctly perceived a material factual dispute over whether Cuzdey's tender of performance matched the terms of Landes' offer.

To the extent Landes' "Notice to Begin Rental" can even be considered an offer, it offered to make Cuzdey a month-to-month tenant under the RLTA. Cuzdey's response consisted of money orders **and a letter** explaining the tender, rejecting Landes' offer of a month-to-month tenancy under the RLTA by stating that Cuzdey was not a tenant and was paying $1,500 under protest and "under order of the superior court," reserving his rights for purposes of appeal and remand. CP 42. Other evidence demonstrated that Cuzdey's reference to the order of the superior court meant that Cuzdey was paying to obtain a

temporary stay for purposes of appeal, not to obtain a rental agreement. *See* CP 38-41.

Unilateral contracts are subject to traditional contract concepts of offer, acceptance, and consideration. *Storti v. Univ. of Wash.*, 181 Wn.2d 28, 36, 330 P.3d 159 (2014). An offer must evidence an intent to be bound by the terms of a proposal. *Id.* If acceptance does not match the terms of the offer, there is no contract. It is, instead, a rejection and counter-offer, with new terms that can be accepted or rejected by the original offeror. *See, e.g., Kysar v. Lambert*, 76 Wn. App. 470, 477-78, 887 P.2d 431 (1995). Landes agrees that this requires a "meeting of the minds," demonstrated by comparing the offer with the performance. *See* Pet. for Rev. at 13.

Landes goes wrong in misinterpreting both *Higgins v. Egbert*, 28 Wn.2d 313, 182 P.2d 58 (1947), and *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 115 P.3d 262 (2005). The Court of Appeals decision in this case does not conflict with either of these precedents.

Landes erroneously insists that Cuzdey's letter was inadmissible under *Hearst*. Washington follows the "objective manifestation theory" of contracts. *Hearst*, 154 Wn.2d at 503. Under this theory, the courts determine the parties' intent by focusing on the objective manifestations of the parties, particularly in writing, "rather than on the **unexpressed**

subjective intent of the parties." *Id.* (emphasis added). **Unexpressed** intent is "generally irrelevant if the intent can be determined from the actual words used." *Id.* at 503-04. The courts enforce what was actually written, not what was intended to be written. *Id.* at 504.

Cuzdey's letter, which accompanied and set the terms for his tender of payment, **was an objective manifestation** of the terms of his counter-offer. It was not an "unexpressed subjective intent." It was expressed, in writing, in words that Landes could read and understand in accordance with their ordinary meaning and the context in which they were written. Cuzdey's words can be interpreted in context to show that he was not paying rent as a tenant but was offering to pay Landes for a stay of her eviction efforts until he could post an appropriate bond for the appeal.

Far from being inadmissible, Cuzdey's letter was part and parcel with his tender. It was an objective manifestation that he rejected Landes' offer of month-to-month tenancy. Because Cuzdey's tender did not match the terms of the offer, no rental agreement was formed. Because the parties' competing evidence raises genuine issues of material fact as to whether a contract was formed, the Court of Appeals correctly remanded for trial.

Landes also misreads *Higgins*, 28 Wn.2d 313. The *Higgins* court did not prohibit an offeree from making a counter-offer. Indeed, the court's statement that Higgins could have attempted

to negotiate new terms means that he **did have** the power to make a counter-offer to try to change the terms of the deal. *See Higgins*, 28 Wn.2d at 318.

What Higgins could **not** do was make a noncompliant performance and then ask the court to enforce Egbert's promises. The court held that Egbert was within her rights to reject Higgins' noncompliant performance. *Id.* at 318-19. The principle that we must take from Higgins is that in order for an enforceable unilateral contract to be formed, the **performance must match the terms of the offer.** Egbert was not bound to perform her offer because Higgins' performance was noncompliant. He did the thing that she asked, but he did it too late. The result is the same here. Cuzdey did the thing that Landes asked—pay $1,500—but he did it with attached terms and conditions that did not comply with the offer. Landes was not bound to accept Cuzdey's noncompliant performance. There was no contract.

Landes' new argument that Cuzdey accepted by residing on property was raised for the first time on appeal and should be disregarded. *See* Reply Br. of App. at 2-4. The trial court decision was expressly based on Cuzdey's tender of payment, not on residing on the property. CP 161. Landes' new argument purports to create a binding contract by virtue of Cuzdey **doing nothing at all.** Cuzdey's presence on the land was the status quo

under his decades-old tenancy at will. It cannot serve as consideration for a new contract. *Cf. Labriola v. Pollard Group, Inc.*, 152 Wn.2d 828, 834, 100 P.3d 791 (2004) ("There is no consideration when one party is to perform some additional obligation while the other party is simply to perform that which he promised in the original contract").

The Court of Appeals concluded that Cuzdey performed at least in part by paying the amount of money demanded by Landes, but also made a counteroffer by introducing new terms that were not in the original offer. *Landes*, slip Op. at 17. The Court of Appeals correctly concluded that this evidence creates a genuine issue of material fact regarding mutual assent, requiring a jury trial. *See Id.* Nothing in this decision conflicts with either *Higgins* or *Hearst*. This Court should deny review.

3.3 The Court of Appeals decision does not conflict with precedent regarding unlawful detainer procedure.

Landes' argument that the Court of Appeals decision conflicts with precedent regarding unlawful detainer procedure is proven incorrect by her own citation to *Randy Reynolds & Assocs., Inc. v. Harmon*, 193 Wn.2d 143, 437 P.3d 677 (2019). In *Randy Reynolds*, this Court explained the purpose and procedure of show cause hearings in unlawful detainer actions. *Id.* at 156-58. A show cause hearing is not a replacement for

trial. Rather, it is required only if the landlord wishes to obtain a pre-judgment writ of restitution. *Id.* at 157. "Whether or not the court issues a writ of restitution at the show cause hearing, if material factual issues exist, the court is required to enter an order directing the parties to proceed to trial on the complaint and answer." *Id.*

The Court of Appeals correctly determined in this case that material factual issues exist, requiring a trial prior to final judgment. The trial court erred in entering final judgment, whether on the basis of a show cause hearing or under the summary judgment standard. The Court of Appeals correctly reversed. This Court should deny review.

4. Conclusion

Landes' petition does not meet any of the criteria in RAP 13.4(b). There is no substantial public interest in extending the RLTA beyond its statutory bounds, especially in a case that the Court of Appeals resolved without having to address the RLTA at all. The Court of Appeals decision does not conflict with precedent regarding unilateral contracts or unlawful detainer procedure. This Court should deny the petition.

Respectfully submitted this 21th day of October, 2019.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on October 21, 2019, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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