99438-2

Court of Appeal Cause No. 79700-0-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Seattle Housing And Resource Effort,
Respondent

v.

Dameas Duranzan,
Appellant

PETITION FOR REVIEW

Dameas Duranzan
5043 15th Ave NE #2
Seattle, WA 98105
(253) 754-2047

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. IDENTITY OF PETITIONER

Dameas Duranzan, Plaintiff in the underlying case, asks this court to accept review of the Court of Appeals decision terminating review designated in Part II of this petition.

II. COURT OF APPEALS DECISION

On November 9, 2020, the Court of Appeals Division I, issued a decision affirming the trial court's decision that Mr. Duranzan was a tenant-at-will. (App. 1-7) On December 16, 2020, the Court of Appeals Division I, denied Mr. Duranzan's request for consideration. (App. 8)

III. ISSUES PRESENTED FOR REVIEW

Whether, in affirming the trial court's determination that Plaintiffs are tenants-at-will, Division 1 determined RCW 59.18.040(8) and SMC 22.206.160 (C)(1)(g) are meaningless and/or superfluous.

Secondly, whether, in affirming the trial court's determination, Division 1 determined the restrictive covenants and definitions outlined in the Seattle Levy Agreement are unenforceable or irrelevant at summary judgment.

IV. STATEMENT OF CASE

A. Duranzan's tenancy at the Bunkhouse, while working at Safe Haven and Storage Lockers for "rent"

Mr. Duranzan was a participant in SHARE's homeless shelter program before residing at Bunkhouse SHARE 2 located at 3516 S Juneau St, Seattle, WA 98118. His agreement with SHARE provided that he would work for SHARE 2 at Safe Haven in lieu of paying cash rent to SHARE. He was charged and paid a utility co-pay to SHARE. (CP 325) His wages were withheld by SHARE, "in lieu of rent." (CP 373)

Mr. Duranzan was assigned to work at Safe Haven, located at 2407 1st Ave, Seattle, WA 98121 but was subsequently reassigned to Storage Lockers located at 963 Mercer Street, Seattle, WA 98109, starting March 20, 2018. (CP 17)

B. Mr. Duranzan and other Plaintiff initiate Macias Et Al suit

Mr. Duranzan and the other plaintiffs filed suit on August 6, 2018 alleging violations of Federal, State, and City housing ordinances, as well as discrimination and retaliation. A temporary restraining order was entered that day in ex parte protecting Plaintiffs from SHARE's efforts to engage in a self help eviction.

C. SHARE's multiple summary judgment motions

Cross-motions for SHARE's second summary judgment were heard January 4, 2019, resulting in a ruling January 28, 2019, that Plaintiffs are tenants-at-will.

On March 4, 2019, on SHARE'S third summary judgment motion, the trial court granted SHARE the right to eject Plaintiffs from BHS2.

Mr. Duranzan Notice of Appeal was filed March 15, 2019.

D. SHARE settles Labor and Industry Wage Claim

One of issues of disputed facts that had arisen regarding competing claims of unjust enrichment. (RP 7:19)

Final determinations were made by L&I and while SHARE initially sought an administrative hearing on the matter, SHARE ultimately settled for the full amount as determined by L&I on October 27, 2020. (App. 9-12)

E. Court of Appeals Decision

The Court of Appeals' Decision came 13 days after SHARE had settled the L&I case. Division I's decision relied heavily on the definition of rent. Division I also relied extensively on cases that were not similarly situated and predate the RLTA/SJCEO. This case was and still is one of first impression that has no parallel.

Mr. Duranzan sought to bring these developments to the court's attention when he filed a motion to reconsider on November 30, 2020. Reconsideration was denied without explanation December 16, 2020.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case presented issues of first impression. Unlike the cases cited by Division 1, this case presents different issues from *Turner v White* or *Najewitz v Seattle*. Unlike Turner or Najewitz Plaintiffs did not live in, about or on the premise of where they worked. Turner, a farmhand living on White's farm, was the prevailing party when White sought damages including rent. Najewitz lived as a Caretaker/Security Guard at a city owned gravel pit, and sought damages for improvements he made on the property during his tenure and was unsuccessful.

These two cases predate the Residential Landlord Tenant Act and the Seattle Just Cause Eviction Ordinance enacted in 1973 and 1980 respectively. The RLTA and SJCEO have continued to evolve; the RLTA was amended in 2019 to expand the definition of rent.

As outlined above, Plaintiff's were tenants whose wages were withheld/deducted for rent at a property where they did not work. It is of importance to recognize the city in a levy agreement placed restrictive covenants and definitions for use of the property by Washington Housing

Equity Alliance. (CP 243) These definitions included rent, tenants and a plethora of tenancy related criteria. SHARE was aware of these covenants when they rented The Bunkhouse from Washington Housing Equity Alliance, as they had a copy available on site for tenants to review. The City of Seattle still provides funding under this levy agreement.

A. Appellate Court decision is in conflict with Supreme Court Decision(s) and of the Court of Appeals

It is well settled that statutes must not be construed in a manner that renders any portion thereof meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't,* 110 Wash.2d 806, 810, 756 P.2d 736 (1988). This notion was further affirmed and cited in *Cockle v. Dept. of Labor and Industries* 142 Wash.2d 801, 16 P.3d 583 (2001)

The Legislature decided that landlords who provide auxiliary employment must condition that auxiliary employment be in or about the premises to be exempt from the RLTA. The legislature recently considered removing the exception as a whole, in SB 5600, but has not reduced the exemption to be solely conditioned on employment. ESSB 5600 added definitions of rent to, "include any charges for utilities" as specified in the final report. (App. 13-18) The same is said of the SJCEO and its most recent amendment in Ordinance 123564.

Here, Division I renders portions of the RLTA and SJCEO meaningless and superfluous by ignoring clearly defined legislative intent and plain meaning. Plaintiffs never worked in, about or on the premise where they resided.

In *Shafer v. Board of Trustees*, 76 Wn.App. 267 (Div. 1 1994), Division 1 found that: 1) extrinsic evidence was always admissible to understand the context of a restrictive covenant, even if the language of the covenant was not ambiguous; and 2) unambiguous language in a restrictive covenant will be enforced as written, unless its terms are unclear or susceptible to more than one reasonable meaning. 76 Wn.App. at 275. Similarly in *Thorstad v. Federal Way Water & Sewer*, 73 Wn.App. 638 (Div. 1 1994) Division 1 accepted extrinsic evidence of the contracting parties' intent, both before and after the execution of their agreement.

The Seattle Levy agreement predicated that SHARE could only use the Bunkhouse for low-income housing.

The restrictive covenants found in the Seattle Levy Agreement lead to this conclusion. The Bunkhouse property was for use as low income housing for tenants. SHARE screens all SHARE 2 residents to meet these low income criteria to abide by the restrictive covenants. It is reasonable to conclude SHARE must abide by the definitions set out in the

levy agreement in their sublet tenancies and that residency at Bunkhouse was at minimum a month to month tenancy as required by the levy agreement. The extrinsic evidence in both SHARE's representation to L&I and the funding received by SHARE under the levy agreement lead to this same conclusion.

In Hall v. Custom Craft Fixtures, Inc., 87 Wn.App. 1 (Div. 2 1997), the former officer of a company sued his former employer for compensation and bonuses he contended were due under a written employment agreement. Adhering to the "four corners" of the written employment agreement which, in the trial court's words, contained "not even a hint" of any contrary intent, the trial court summarily dismissed the CEO's complaint against his former employer. The Court of Appeals, however, looked at correspondence exchanged by the parties, saw surrounding circumstances that suggested (objectively speaking) two competing but equally reasonable interpretations of their contract, and reversed the summary judgment.

The existence of restrictive covenants, the screening of SHARE 2 residents for compliance with the levy agreement requirements, mixed with any confusion of an employment contract leads to the conclusion summary judgment must be overturned or at the minimum remanded for further proceedings in light of the evidence available at the time of the

hearing. This conclusion is further enhanced by the new developments that have occurred since trial.

B. The case involves a substantial and compelling public interest.

The Courts will be facing an unprecedented number of evictions in the coming months. This case could set a precedent that would protect low-income tenants and unhoused persons from continued exploitation at the hands of agencies who seek to avoid the protections offered to tenants by claiming their tenants are "employees". The Trial Court in this case will rely on this decision in determining damages, including Respondent's recent threat on December 16, 2020 to seek damages for, "rent."

This case will have direct impact on the way evictions and ejectments are currently conducted by clarifying the rights of tenants, landlords, efforts to circumvent the RLTA/SJCEO, and the responsibilities of trial judges.

VI. CONCLUSION

For the above stated reasons, the petition for review should be granted.

Respectfully submitted this 15th day of January, 2021

Dameas Duranzan
Appellant Pro Se

APPENDIX

FILED
11/9/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DAMEAS DURANZAN,

Appellant,

v.

SEATTLE HOUSING and RESOURCE EFFORT, a Washington Corporation,

Respondent.

No. 79700-0-I

DIVISION ONE

UNPUBLISHED OPINION

LEACH, J. —Dameas Duranzan appeals a trial court order ejecting him from housing provided through a housing-for-work program. Finding no error in the trial court's conclusions that Duranzan was a tenant at will and not covered by the Seattle Just Cause Eviction Ordinance, we affirm.

BACKGROUND

Seattle Housing and Resource Effort (SHARE) is a non-profit homeless shelter and a housing-for-work program. Bunkhouse SHARE 2 (BHS2) is an 8-unit single family duplex that houses low-income and homeless tenants. Residents of BHS2 resided there in exchange for work performed with SHARE. Residents paid monthly utility co-payments.

Between July and August 2018, SHARE agents terminated Dameas Duranzan, Brett Gaspard, Emily Walker, and Joshua Dennard (residents) from employment and housing with SHARE. The residents refused to vacate and sued

for declarative and injunctive relief to prevent their eviction. The trial court consolidated their cases.

SHARE asked the court to dismiss the residents' claims on summary judgment. The trial court denied this request but stated SHARE could bring a later summary judgment on the issue of ejectment "as long as the legal basis is something other than one of the exemptions under RCW 59.18.040 that was argued" previously. SHARE later filed another summary judgment request. The trial court granted SHARE's request in part finding the residents were "tenants at will" and not periodic tenants, and the residents' housing with SHARE was not subject to Seattle's Just Cause Eviction Ordinance. It denied SHARE's request based on unjust enrichment and denied the residents' request for summary judgment.

SHARE made a third request for summary judgment. Before the court hearing on this request, Duranzan's court appointed counsel Paul Gill asked the court to let him withdraw as Duranzan's counsel. On March 4, 2019, the trial court granted SHARE's third summary judgment request and ordered entry of final judgment on the ejectment claim only. The trial court then allowed Gill to withdraw as counsel.

STANDARD OF REVIEW

Duranzan appeals the trial court's summary judgment decisions granting SHARE's requests and denying his own request. We review an order

granting summary judgment de novo.[1] Summary judgment is appropriate when "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law."[2] We view the evidence in the light most favorable to the nonmoving party.[3]

ANALYSIS

Residential Landlord-Tenant Act

Duranzan first challenges the trial court's conclusion that he was a tenant at will. The State of Washington's Residential Landlord-Tenant Act of 1973 (RLTA) outlines requirements and duties a landlord owes a residential tenant.[4] The duties owed depend on the tenant's classification.[5]

In Turner v. White, an employer allowed its employee to live rent free on employer owned property in exchange for his work.[6] The court there held the employee was a tenant at will where "the tenant had come upon the premises with the permission of the owner, the tenancy was terminable without notice and provided for no monthly or periodic payments."[7] Just as in Turner, the residents here had permission to be on the premises in exchange for services provided, the

[1] Loeffelholz v. University of Washington, 175 Wn.2d 264, 271, 285 P.3d 854 (2012).
[2] CR 56(c); Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).
[3] Loeffelholz, 175 Wn.2d at 271.
[4] RCW 59.18.020.
[5] Turner v. White, 20 Wn. App. 290, 292, 579 P.2d 410 (1978).
[6] Turner, 20 Wn. App. at 292.
[7] Turner, 20 Wn. App. at 292.

tenancy was terminable without notice, and the residents provided no periodic rent payments. So, the trial court correctly decided Duranzan was a tenant at will.

SHARE required Duranzan to pay a utility co-payment. Duranzan also asserts "[u]nder the RLTA utility payments are rent." But, the RLTA does not say this.

RCW 59.18.030(28) states," '[r]ent' or 'rental amount' means recurring and periodic charges identified in the rental agreement for the use and occupancy of the premises, which may include charges for utilities." This means rent may include utilities but does not mean a charge for only utilities is rent. Duranzan's assertion fails.

Seattle Just Cause Eviction Ordinance

Duranzan next claims his ejection violated the Seattle Just Cause Eviction Ordinance. In his complaint he alleges,

> 4.2 Respondent has intentionally or negligently failed to comply with landlord duties outlined in SMC 22.206.160. They have failed to remedy defective issues reported within 10 days as prescribed by law.
>
> 4.3 As a result of the violations of SMC 22.206, any notices and actions that Respondent has implemented or intends to implement since Ferbuary (sic), 2018 violate SMC22.206.180 and are unlawful.

In his declaration of opposing summary judgment he states SHARE told him he was terminated because he interfered with its daily operations. He contends his termination was a retaliation for his earlier complaints about facilities and program participants.

MC 22.206.160(C)(1)(g) provides:

> The reasons for termination of tenancy listed below, and no others, shall constitute just cause under this Section 22.206.160:
>
> (g) The tenant's occupancy is conditioned upon employment on the property and the employment relationship is terminated ….

SHARE presented unchallenged evidence that Duranzan's occupancy of its property was conditioned on his employment by SHARE and that this occupancy right terminated upon the termination of his employment. In his complaint, Duranzan admitted that previously SHARE employed him, terminated him on July 13, 2018, and required him to vacate its property. So, SHARE presented unchallenged evidence satisfing the requirements of SMC 22.206.160(C)(1)(g) as just cause for terminating a tenancy. Not stated in Duranzan's appellate briefing, but implicit in his trial court pleadings, is a claim that the termination of his employment does not provide just cause to terminate until any claim that he was wrongfully terminated is resolved. Duranzan points to nothing in the Seattle Just Cause Eviction Ordinance that supports this claim. Without any persuasive reason for delaying an eviction to allow resolution of wrongful employment termination claims, for which the law provides other remedies, we reject Duranzan's claim.

Ineffective Assistance of Counsel

Duranzan next claims he received ineffective assistance of counsel because his attorney failed to respond to SHARE's third summary judgment

motion. He makes this claim in the context of an accommodation provided to him by the trial court appointed counsel at public expense.

We do not need to decide whether this claim is available to Duranzan in an ejectment proceeding or the correct test to apply. Duranzan cannot satisfy the most stringent test that could apply, the standard courts use in criminal cases. To establish an ineffective assistance of counsel in a criminal case, a defendant must show (1) counsel's conduct fell below an objective standard of reasonableness, and (2) that a reasonable possibility exists that, but for counsel's deficient performance, the outcome of his trial would have been different.[8] Our scrutiny of counsel's performance is highly deferential, and we employ a strong presumption of reasonableness.[9] Failure to satisfy either prong of the test defeats an ineffective assistance of counsel claim.[10]

Duranzan complains his counsel did not file a response to the third summary judgment request. But, the trial court received written responses to this request from counsel for other residents. Duranzan does not question the adequacy of this briefing. He does not explain how the outcome would have been any different had his counsel also responded to the third summary judgment request. He simply states the case was “fatally compromised” by his counsel’s inaction. He does not show that any response from his counsel would have changed the outcome.

---

[8] State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004) (citing State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)).

[9] Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 205, 280 L. Ed. 2d 674 (1984); State v. McFarland, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995).

[10] Strickland, 466 U.S. at 697.

Duranzan also claims the trial court abused its discretion by failing to inquire why his counsel did not respond to the third summary judgment request. Because Duranzan fails to show how the lack of response prejudiced him, he also fails to show how any inquiry by the court would have changed the result.[11]

Finally, Duranzan claims the trial court should have allowed him to speak at the hearing on the third request. But, because Duranzan's counsel was present until after the third summary judgment request, and the trial court clarified this was why he could not speak, Duranzan's claim fails.

CONCLUSION

We affirm. Duranzan fails to show the trial court erred when it found he and other residents were tenants at will, and because the Seattle Just Cause Eviction Ordinance does not apply to the residents housed by SHARE.

Leach, J.

WE CONCUR:

Andrus, A.C.J.

Mann, C.J.

[11] RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

DAMEAS DURANZAN

January 15, 2021 - 5:00 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	79700-0
Appellate Court Case Title:	Dameas Duranzan, Appellant v. Seattle Housing and Resource Effort, Respondent

The following documents have been uploaded:

- 797000_Petition_for_Review_20210115165753D1140184_8543.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review Washington Supreme Court.pdf

A copy of the uploaded files will be sent to:

- emwalkz@gmail.com
- jamie@phinneyestatelaw.com
- joshuataylordennard@gmail.com
- mr.b.gaspard@gmail.com
- weaver@carneylaw.com
- wmsonlaw@outlook.com

Comments:

Sender Name: Dameas Duranzan - Email: DameasSD@gmail.com
Address:
201 Yesler Way
Apt 104
Seattle, WA, 98104
Phone: (253) 754-2047

Note: The Filing Id is 20210115165753D1140184