

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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No. 45616-8-II

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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PATRICE CLINTON and RICHARD SORRELS,

Appellants,

v.

CHRISTOPHER HONSE and SALLY HONSE,

Respondent.

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*AMENDED* BRIEF OF APPELLANT

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November 3, 2014

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COMES NOW the Appellants, Patrice Clinton and Richard Sorrels, pro se, and submits their Brief of Appellant to the Court of Appeals as follows:

**I. ASSIGNMENT OF ERRORS**

**Error No. 1:** The trial court erred in exercising jurisdiction and/or not simply dismissing this case as the Plaintiff/Respondent failed to establish strict compliance with RCW 61.12.032 and RCW 61.24.060 as Plaintiff/Respondent failed to provide the requisite 60 day notice to tenant to commence an unlawful detainer action.

**Error No. 2:** The trial court erred in issuing an order for writ of restitution when the Plaintiff/Respondent failed to establish strict compliance with RCW 61.24.040 as required by RCW 59.12.032 which was a prerequisite to bringing a unlawful detainer action after a nonjudicial deed of trust trustee sale.

**Error No.:3:** The trial court abused its discretion in refusing to grant the respondent a continuance when such continuance was promptly requested to obtain proof (or confirmation of the absence of proof) of evidence in the Plaintiff/Respondent's sole control and to allow the pro se Defendant/Appellant a chance to obtain legal counsel.

**Error No. 4:** The trial court abused its discretion in setting an appeal bond of \$295,000.00, a patently high and unreasonable amount, when the record is devoid that the use of the occupancy and court costs would come remotely near such bond amount. \_

**Error No. 5:** The trial court erred in ordering that the Plaintiff/Respondent did not have to store the Defendant/Appellant's property when a request to store form was timely served and when RCW 59.18.312(5) makes storage applicable to writs served under RCW 59.12.100.

**Error No. 6:** The trial court erred in order an extension of an expired writ particularly when it ordered that such writ would be automatically extended seemingly ad infinitum in 20 day increments when no such authority is allowed in RCW 59.12.

**Issues related to the Assignment of Errors**

**1. Issues pertaining to Error No. 1:** Did the trial court erred in issuing a writ of restitution due to the failure of Respondent to provide proper notice under RCW 59.12.032?

**2. Issues pertaining to Error #2:** Did the trial court erred in issuing a writ of restitution due to the failure of Respondent to comply with RCW 61.24.040.?

**3. Issues pertaining to Error #3:** The trial court abused its discretion in failing to grant a continuance of the summary judgment so as to allow Appellants to conduct discovery as to Respondent's compliance, or lack thereof, regarding issuing required notices?

**4. Issues pertaining to Error #4:** The trial court abused its discretion in requiring an unreasonable bond of Appellants?

5. **Issues pertaining to Error #5:** The trial court erred in not requiring the Respondent to store the Appellants' property as required by RCW 59.18.312(5)?

6. **Issues pertaining to Error #6:** Did the superior court err in extending a writ after expiration indefinitely and without notice to the Appellants?

## II. STATEMENT OF THE CASE

Appellant Patrice Clinton (Clinton) was grantor of a deed of trust for the subject real property (cp 1-2). Richard Sorrels (Sorrels) was a person with a leasehold interest in the real property subject to the deed of trust (cp 3, 882, and 894; and tp 5/2/2014, p.12-13). Respondents Christopher Honse and Sally Honse (Honse) were beneficiaries of the deed of trust and the purchasers of the subject real property that had been foreclosed (cp 1-2).

Honse filed Summons (cp 36) and Complaint for unlawful detainer (cp 1) on 9/24/2013. Service was made between 9/30/2013 and 10/6/2013. Declarations of service were filed on 10/3/2013 and 10/9/2013 (cp 42-45), citing service of various documents, but did not include service of Motion for Order to Show Cause (cp 39). Clinton and Sorrels filed response (cp 46-53), which included denial of Honse's ownership and other issues of fact.

Show cause hearing was held on 10/17/2013, with Findings of Fact and Conclusions of Law entered which reserved all issues related to title and damages for trial (cp 133-138), and Judgment and Order for Writ of

Restitution was entered which also reserved all issues related to title and damages for trial (cp139-141).

Clinton and Sorrels filed Motion to Reconsider on 10/28/2013 (cp 291-300 and 410-437), which was denied on 11/22/2013 (cp 489-491).

Honse filed Motion for Summary Judgment on 10/23/2013 concerning title issues (cp 144-174). Clinton filed declaration stating that she had not been served with a number of the foreclosure documents for the underlying non-judicial foreclosure, which failure would deny the court jurisdiction for the unlawful detainer action (cp 307-309).

Clinton and Sorrels served interrogatories and requests for production upon Honse in order to identify and obtain copies of required foreclosure documents (cp 307-309). Honse did not respond or provide documents (cp 694-696).

Clinton and Sorrels filed Motion to Continue Honse's Motion for Summary Judgment in order to obtain answers and documents essential for a response to the summary judgment (cp 304-306, 307-308, and 694-696). The Court denied the Motion to Continue the summary judgment hearing (t.p. 11/22/2013, p.20), after the Court had already granted the motion for summary judgment (tp 11/22/2013, p.11). The Order Granting Summary Judgment was entered on 11/22/2013 (cp 495-497). Also entered on 11/22/2013 was an Order Clarifying Honse's Obligations on Execution of Writ, which ruled that the storage provisions under RCW 59.18.312 do not apply and that Honse was not obligated to store and/or preserve personal property left behind on the property, despite Clinton and Sorrels having

signed and served the document designated by RCW 59.12.312 (cp 492-494).

The Judgment entered on 10/17/2013 stated that Honse was not required to post the bond required by RCW 58.12.090 before a Writ of Restitution is issued (cp 139-141).

After the Writ was issued on 10/17/ 2013, Sorrels appeared before the ex parte commissioner on 10/22/2013, along with Honse's attorney to set bond amount and to stay the Writ, as per RCW 59.12.100. Sorrels' motion was denied (cp 142-143). Ex parte hearings do not have an electronic record.

On 11/25/2013, Clinton and Sorrels filed Notice of Appeal (cp 498-512) and filed Motion to Set Amount of Appeal Bond, as per RCW 59.12.200 (cp 716-717). The Court entered an order setting appeal bond at \$295,000 (cp 718-719).

On 12/13/2013, Sorrels filed Motion to Acknowledge Stay Under RCW 6.17.040 (cp 728-729), which the ex parte commissioner denied (cp 726-727). Ex parte hearings do not have an electronic record.

The Judgment entered on 10/17/2013 stated that the Writ was returnable within ten days, with an automatic extension for another ten days (cp 139-141). By its terms, the Writ would expire on 10/27/2013 (cp 140). On 10/30/2013, Honse filed a motion with electronic ex parte, without any notice to Clinton or Sorrels (cp 301). An Order was entered on 10/30/2013 which extended the Writ indefinitely (cp 302-303). The Sheriff received the Writ on 10/17/2013, and received the order extending the Writ on

10/31/2013, and ousted and ejected Clinton and Sorrels from the premises on 11/26/2013 (cp 720-725), which was 30 days after the Writ had expired (cp 140).

On 5/2/2014 an Order was entered clarifying obligations on execution of Writ (cp 911-921).

An additional Notice of Appeal was filed on 6/2/2014 which consolidated with the first appeal (cp 911-921).

### III. ARGUMENT

#### A. The trial court erred in issuing a writ of restitution due to the failure of Respondent to provide proper notice under RCW 59.12.032.

The complaint in this matter identified Richard Sorrels and Key Center Enterprises LLC as tenants. (CP 3, 882, and 894). RCW 61.24.060 requires that a successful buyer at a trustee sale provide a 60-day notice to the tenant or occupant:

#### **Rights and remedies of trustee's sale purchaser-- Written notice to occupants or tenants**

(1) The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants who are not tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

(2) If the trustee elected to foreclose the interest of any occupant or tenant, the purchaser of tenant-occupied property at the trustee's sale shall provide written notice

**to the occupants and tenants at the property purchased in substantially the following form:**

“NOTICE: The property located at ..... was purchased at a trustee's sale by ..... on .....(date).

1. If you are the previous owner or an occupant who is not a tenant of the property that was purchased, pursuant to RCW 61.24.060, the purchaser at the trustee's sale is entitled to possession of the property on .....(date), which is the twentieth day following the sale.

2. If you are a tenant or subtenant in possession of the property that was purchased, pursuant to RCW 61.24.146, **the purchaser at the trustee's sale may either give you a new rental agreement OR give you a written notice to vacate the property in sixty days or more before the end of the monthly rental period.**”

(3) The notice required in subsection (2) of this section must be given to the property's occupants and tenants by both first-class mail and either certified or registered mail, return receipt requested.

(bold and underline added) RCW 61.24.060.

As stated above, the record is devoid of a sixty day notice to the very tenants for which the underlying action identified and sought writs. Objection was made to the trial court. (CP 307-309, 882-884, and 894-898). However, as discussed herein, such matter is jurisdictional and could be raised at any time.

So, working backwards, it is clear in the record that there was no sixty day notice. Honse has never argued that they did provide such notice. It was error for the trial court to allow the eviction to proceed without such notice. The appellate courts of this state have not been vague on the point

that failure to provide the necessary notices under RCW 59.12.030, such as 3-day pay rent or vacate or 20 day termination notice, results in the inability of the superior court to obtain subject matter jurisdiction. “The unlawful detainer statute is strictly construed in favor of the tenant. *See [Housing Authority of City of Everett v.] Terry*, 114 Wash.2d at 563, 789 P.2d 745.” IBF, LLC v. Heuft, 141 Wash. App. 624, 632, 174 P.3d 95, 99 (2007). For example, RCW 59.12.030 as to the normal basis for eviction notices discusses how a tenant is in unlawful detainer when they remain in possession “after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in a manner RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it” or “when the landlord, more than twenty days prior to the end of such month or period, has served notice (in a manner RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period”. See RCW 59.12.030 (3) and (2), respectively.

RCW 59.12.032 tied to RCW 61.24.060 sets up the same mandatory serving of a required notice as a requirement to commencing an unlawful detainer action (bold added):

59.12.032. Unlawful detainer action--**Compliance with RCW 61.24.040 and 61.24.060**

An unlawful detainer action, commenced as a result of a trustee's sale under chapter 61.24 RCW, **must comply with the requirements** of RCW 61.24.040 and **61.24.060**.

RCW 61.24.060, as set forth fully above requires a 60 day notice to vacate. This is mandatory as such statute says the purchaser at the trustee sale “shall provide” such notice. So we have a “must” in RCW 59.12.032 to a “shall” in RCW 61.24.060. This doubly denotes the mandatory nature of such requirement. The word “shall” has many time been interpreted as meaning mandatory, for example:

The statute plainly uses the term “shall.” RCW 69.50.430. The term “shall” in a statute “imposes a mandatory requirement unless a contrary legislative intent is apparent.” *[State v. ] Martin*, 137 Wash.2d [149] at 154, 969 P.2d 450 [1999]. Nothing in the language of RCW 69.50.430 indicates anything other than a mandatory intent.

State v. Mayer, 120 Wash. App. 720, 726, 86 P.3d 217, 220 (2004).

See also Kabbae v. Dep't of Social & Health Servs., 144 Wash. App. 432, 441, 192 P.3d 903 (2008).” Morris v. Palouse River & Coulee City R.R., Inc., 149 Wash. App. 366, 371, 203 P.3d 1069, 1072 (2009). Given that the courts have already held that the unlawful detainer statute are strictly construed against the landlord in favor of the tenant, a landlord would have a nearly impossible burden to try to show some contrary intent. Besides, RCW 59.12.032 is only one sentence and nothing in such few words

obviates the clear mandate. “Shall’ and “must” are obvious synonyms. See also Merriam-Webster on line thesaurus<sup>1</sup>.

Frankly, RCW 59.12.032 is more imperative in its drafting language than RCW 59.12.030 which does not use the term “must”. Even then, the courts have been clear that failure to give such required notices deprives a court of subject matter jurisdiction:

In this case, the action was brought because Mr. Terry allegedly breached a covenant in his lease. Therefore, he was entitled to a notice which would provide him with, and inform him of, a 10-day period during which he could comply with the requirements of his lease. The document he received did not contain the statutory notice of opportunity-to-correct. Because it gave deficient notice, the Housing Authority could not prove a cause of action for unlawful detainer. The Snohomish County Superior Court lacked jurisdiction to hear the case. The “jurisdictional condition precedent” of proper statutory notice was not met. Under Washington law, Mr. Terry's motion to quash the process should have been granted.

(footnotes omitted) Hous. Auth. of City of Everett v. Terry, 114 Wash. 2d 558, 564-65, 789 P.2d 745, 748-49 (1990). Such holding is not alone:

As a jurisdictional condition precedent, where a tenant is in default in the of rent, the statute requires (1) that the tenant be served with a written notice to pay the rent or, in the alternative, vacate the premises within three days from the date of service, RCW 59.12.030(3), and (2) that a summons and complaint be served upon the tenant which shall fix a date certain for appearance of not less than six nor more than

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<sup>1</sup> <http://www.merriam-webster.com/thesaurus/shall>

twelve days from the date of service. RCW 59.12.070 [cf. Rem.Rev.Stat. § 817].

In the instant case, the three-day notice and the service of the summons and complaint complied with the jurisdictional requirements of the statute, as they related to maintaining an unlawful detainer action based upon default in the payment of rent.

Sowers v. Lewis, 49 Wash. 2d 891, 894-95, 307 P.2d 1064, 1066 (1957).

Now, the issue of “jurisdiction” or lack thereof has become a bit clouded of late – but not the fact that proper notices still must be given. Division 1 somewhat abrogated the notion of lack of jurisdiction as held in Terry as it related to the ability to award attorney fees after it affirmed the dismissal of the eviction complaint for failure to give proper notice. Hous. Auth. of City of Seattle v. Bin, 163 Wash. App. 367, 372-73, 260 P.3d 900, 902-03 (2011). Division 2 reversed the Pierce County Superior Court and threw out an eviction action for improper notice stating: “The purpose of an unlawful detainer action is to resolve in a summary proceeding the right to possession of real property. *Christensen v. Ellsworth*, 162 Wash.2d 365, 370–71, 173 P.3d 228 (2007). A termination notice that fails to follow a lease's terms is ineffective to maintain an unlawful detainer action. *See Gray v. Gregory*, 36 Wash.2d 416, 418–19, 218 P.2d 307 (1950); *Republic Inv. Co. v. Naches Hotel Co.*, 190 Wash. 176, 180, 67 P.2d 858 (1937); *Comty. Invs., Ltd. v. Safeway Stores, Inc.*, 36 Wash.App. 34, 37–38, 671 P.2d 289 (1983).” Tacoma Rescue Mission v. Stewart, 155 Wash. App. 250, 255,

228 P.3d 1289, 1291 (2010), as corrected (Apr. 27, 2010). However, in such case there is footnote 9 which discusses jurisdiction that has a different take on jurisdiction, holding it has “jurisdiction to determine whether an unlawful detainer may go forward.” Still, it is sort of a distinction without a difference as even in the Sowers case the court arguably “exercised jurisdiction” in dismissing the case as opposed to simply ignoring the litigants. The point is that if a landlord does not give proper notice – the case should be thrown out.

Tying this back to the case at bar, there is zero evidence in the record of the 60 day notice. It is anticipated that Honse will argue that it has a trustee’s deed that recites compliance with RCW 61.24 and thus the trustee sale is presumptively proper under RCW 61.24.040(7). While such proposition has taken a beating in Albice v. Premier Mortgage Servs. of Washington, Inc., 174 Wash. 2d 560, 572-73, 276 P.3d 1277, 1284 (2012), such argument would be irrelevant as the question before this court as to this question is not whether or not the trustee sale is proper – it is whether the purchaser at the trustee sale, Honse, gave the proper notice so as to base an eviction after the sale. This is pointed out as past arguments before the superior court have seemingly conflated such issues.

Concluding this portion of the argument, it should be noted that there is no relevant case law specifically to the RCW 61.24.060 notice requirements as tied to RCW 59.12.032. However, it is obvious that RCW 59.12.032 simply adds another basis to hold a tenant in unlawful detainer. RCW 59.12.030 has been amended from time to time to add additional grounds for asserting unlawful detainer such as gang related activity. RCW 59.12.030(7). It would almost seem that RCW 59.12.032 could have simply been added as a new subsection (8) to RCW 59.12.030. But it was not and the only notable difference in the language is the very imperative “must” terminology which can only be read as the legislature emphasizing such requirement. Given that the unlawful detainer statute is construed in favor of tenants – this is the only reasonable interpretation available. The superior court simply erred in not dismissing for failure to prove compliance with RCW 59.12.032 and RCW 61.24.060. If this court agrees, the remaining issues become moot as the case must be reversed and dismissed.

**B. The trial court erred in issuing a writ of restitution due to the failure of Respondent to comply with RCW 61.24.040.**

Having extensively discussed the linking of RCW 59.12.032 to RCW 61.24.060 above, and given the same arguments as to strict compliance and absolute requirements (whether it be termed jurisdictional or not) of adherence to the statute would similarly apply to the linking to

RCW 61.24.040, such authority will not be rehashed but is incorporated herein by reference.

Still, this section differs a bit from the RCW 61.24.060 requirements as such section focuses on the actions of the purchaser wherein RCW 61.24.040 examines whether the trustee satisfied the requirements to conduct the sale. RCW 61.24.040 is a lengthy statute and will not be fully set forth in this brief. However, it sets forth the requirements of notice of the trustee sale. Now, this might be when Honse argues that the sale is conclusively deemed valid under RCW 61.24.040(7) as the trustee recited compliance. This is wrong for two reasons: First, RCW 59.12.032 requires the unlawful detainer court examine compliance with RCW 61.24.040. It does not require the unlawful detainer court to simply determine that there is a trustee's deed issued under RCW 61.24.050. Had the legislature intended the RCW 61.24.040(7) presumptions to an RCW 61.24.050 trustee's deed it enacted to apply to an RCW 61.24.050 trustee's deed in an eviction, it simply could have required such a deed. RCW 61.24.050 has existed since 1965 in one form or another. Its most recent amendment in 2012 added the 11 day ability to rescind the deed for reasons inapplicable to this case. The only other amendment was in 1998. RCW 61.24.040 similarly has been in place since 1965 and been repeatedly amended, but the last two amendments in 2009 and 2012 dealt primarily with the

Foreclosure Fairness Act disclosures<sup>2</sup>. However, RCW 59.12.032 was enacted in 2009. Given that the “The legislature is presumed to know the law in the area in which it is legislating”<sup>3</sup> it easily could have simply required a trustee’s deed and the RCW 61.24.060 notice. But it did not. It requires that RCW 61.24.040 “must” have been complied with.

The second reason the whole “conclusiveness” of the trustee’s deed argument fails is because the Supreme Court refused to ignore obvious problems with a trustee deed and simply hide behind such presumption in Albice v. Premier Mortgage Servs. of Washington, Inc., 174 Wash. 2d 560, 572-4, 276 P.3d 1277, 1284 (2012) wherein the court examined the surrounding events and knowledge of the buyer which in that case was a third party who the court charged with knowledge of title issues given such parties experience with real estate. In this case, we do not have a third party

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<sup>2</sup> Interestingly, though, the 2009 amendment added the language to the “Notice to Occupants or Tenants” section of the Notice of Trustee sale providing “For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060....” This was done at the same time RCW 59.12.032 was added and thus is further indication the legislature was aware that it was requiring actual mandatory compliance to invoke the eviction statute as opposed to simply applying a presumption.

<sup>3</sup> Wynn v. Earin, 163 Wash. 2d 361, 371, 181 P.3d 806, 811 (2008).

type bona-fide purchaser – the property simply reverted to the lender Honse. Given the fact Honse was the lender, they would be on notice of knowledge of errors in the amounts in the notice of trustee sale and notice of foreclosure as discussed below. So the entire notion of some bona fide third party purchaser is lacking in this case to even have any sort of presumption.

There are two main problems with this sale vis-a-vis RCW 61.24.040. Taking an obvious one, the Notice of Trustee Sale has the signature of James Tomlinson but the notary is of Brian King. (CP 433, 648, and 662). RCW 61.24.040(f)(1) requires acknowledgement. Presumptively, that would require a valid acknowledgement as the Washington Supreme Court last year in Klem v. Washington Mut. Bank, 176 Wash. 2d 771, 792, 295 P.3d 1179 (2013) stressed related to a notice of trustee sale that “This no-harm, no-foul argument again reveals a misunderstanding of Washington law and the purpose and importance of the notary's acknowledgment under the law. A signed notarization is the ultimate assurance upon which the whole world is entitled to rely that the proper person signed a document on the stated day and place...This court does not take lightly the importance of a notary's obligation to verify the signor's identity and the date of signing by having the signature performed in the notary's presence.”

So right from the start, there is a defective notice of trustee sale.

Next, as set forth before the superior court, the figures in the notice of trustee sale did not match the number in the notice of foreclosure which is required under RCW 61.24.040(f)(2). The Notice of Trustee's Sale cited \$175,053.40 as the principal balance (CP 431), while the Notice of Foreclosure cited \$263,901.64 as the principal balance (CP 425). This is almost a \$100,000 discrepancy (CP 413). Given that the entire thrust of RCW 61.24.040 is to give notice to the owner and interested property of the breach, the sale and how to cure – it necessarily implies correct information is given.

Tying this back to the subject of this case – we are dealing with an unlawful detainer. This court is not deciding if the trustee sale is valid or not. It is deciding if the eviction should have been allowed to go forward. Unlike presumptions as to the ownership conveyed with a trustee deed in a quiet title action where the statutes and the courts, up to Albice, were deferential to the trustees – landlords in evictions are provided no such treatment. They have to strictly comply. The statutes are construed against them. This is important as it is expected that Honse will say that RCW 59.12.032 relates only to the notice provisions in RCW 61.24.040. But that is not what RCW 59.12.032 says. It says the entirety of RCW 61.24.040 must be complied with which would include the content and the process. To construe RCW 59.12.032 otherwise would be to inappropriately

construe the statute in the landlord's favor and against the clear language of what the statute says. It would be an effort for a court to try to say "this is what the legislature intended" and then qualify the statute by limiting to the procedure. But courts are prohibited from doing that:

Where "a statute is clear on its face, its meaning [should] be derived from the language of the statute alone." *Kilian v. Atkinson*, 147 Wash.2d 16, 20, 50 P.3d 638 (2002) (citing *State v. Keller*, 143 Wash.2d 267, 276, 19 P.3d 1030 (2001)); see also *BedRoc Ltd. v. United States*, 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004). **"Courts should assume the Legislature means exactly what it says" in a statute and apply it as written.** *Keller*, 143 Wash.2d at 276, 19 P.3d 1030; see also *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992); *State v. Roggenkamp*, 153 Wash.2d 614, 625, 106 P.3d 196 (2005). **Statutory construction cannot be used to read additional words into the statute.** *State v. Chester*, 133 Wash.2d 15, 21, 940 P.2d 1374 (1997).

(bold added) *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885, 889 (2007).

The statute says what it says. RCW 61.24.040 "must" be complied with. It wasn't. Honse will probably argue that it would be harmless but that ignores the requirement of "strict compliance". Honse might argue that such errors were the trustee's mistakes. That is irrelevant as RCW 59.12.032 refers to RCW 61.24.040 which by its term is the list of requirements that "the trustee shall" comply with. RCW 61.24.040(1). If

the legislature wanted a court to examine only the purchaser's action it would have tied RCW 59.12.032 only to RCW 61.24.060.

**C. The trial court abused its discretion in failing to grant a continuance of the summary judgment so as to allow Appellant to conduct discovery as to Respondent's compliance, or lack thereof, regarding issuing required notices.**

As set forth in the fact section, prior to the trial court granting summary judgment in favor of the Respondent. The case was not filed until September 24, 2013 (CP 1 and 36) with service on September 30 and October 6, 2013.( CP 42-45). Respondent promptly propounded discovery as set forth in their motion to continue. One of the issues as demonstrated above is the failure to provide necessary notices. Appellant was claiming never to have been served a 60 day notice under RCW 61.24.060. The Appellant twice moved to continue the summary judgment, once on November 12, 2013 and next on November 21, 2013. (CP 304-306 and 694-696). The issue identified is essentially the same as in this appeal – the invalid notary, the discrepancies in the numbers and failure to give statutory notices.

The failure to allow a continuance to ensure that statutorily required notices were given is particularly egregious as such documents would solely be in the landlord or the landlord's agent's possession, as these documents are not filed with the courts. CR56(f) anticipates this providing "Should it

appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.” RCW 59.12.180 specifically provides the “civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter....” Yet, in this case, despite having a very good reason for wanting discovery: To establish a jurisdictional deficiency in the landlord’s case – the trial court just brushed this aside. This was error.

“The ruling on the motions for a continuance and for reconsideration is within the discretion of the trial court and is reversible by an appellate court only for a manifest abuse of discretion. *Turner v. Kohler*, 54 Wash.App. 688, 693, 775 P.2d 474 (1989); *Perry v. Hamilton*, 51 Wash.App. 936, 938, 756 P.2d 150 (1988).” *Cogle v. Snow*, 56 Wash. App. 499, 504, 784 P.2d 554, 557-58 (1990). In the Appellant’s motion to continue it not only mentioned the desire to do discovery on statutory notices, it also was to seek counsel. (CP 304-306, 307-309, and 694-696). This is very similar to the situation in *Cogle v. Snow*, 56 Wash. App. 499, 507-08, 784 P.2d 554, 559-60 (1990):

Where a party knows of the existence of a material witness and shows good reason why the witness' affidavit cannot be obtained in time for the summary judgment proceeding, the court has a duty to give the party a reasonable opportunity to complete the record before ruling on the case. However, the trial court may deny a motion for a continuance when 1) the moving party does not offer a good reason for the delay in obtaining the evidence; 2) the moving party does not state what evidence would be established through the additional discovery; or 3) the evidence sought will not raise a genuine issue of fact. *Turner v. Kohler*, supra 54 Wash.App. at 693, 775 P.2d 474. In considering the application of CR 56(f), we note that the trend of modern law is to interpret court rules and statutes to allow decision on the merits of the case. *Weeks v. Chief of Washington State Patrol*, 96 Wash.2d 893, 895–96, 639 P.2d 732 (1982). In addition, the superior court rules are to be construed to secure the just, speedy, and inexpensive determination of every action. CR 1.

The record reveals the reason for Coggle's inability to produce the declarations in time for the summary judgment hearing. Coggle's new counsel filed the notice of association of counsel one week after Snow filed the motion for summary judgment. He had not had time to follow through on work begun by previous counsel. Coggle fulfilled the other criteria for a continuance by identifying the evidence he sought and explaining that the declarations would rebut the defense expert testimony. *Turner* 54 Wash.App. at 693, 775 P.2d 474.

The primary consideration in the trial court's decision on the motion for a continuance should have been justice. The client, Coggle, after obtaining new counsel, should not be penalized for the apparently dilatory conduct of his first attorney. See *Simonson v. Fendell*, 34 Wash.App. 324, 330–32, 662 P.2d 54 (1983), *reversed on other grounds*, 101 Wash.2d 88, 675 P.2d 1218 (1984). The court should have viewed the motions in the context of the new legal representation. We fail to see how justice is served by a draconian application of time limitations here. The case had been filed two years earlier. Little discovery had been

pursued. The process could have been speeded by the court after a short continuance and the consideration of Coggle's materials in response to the motion for summary judgment. Snow has not argued that he would have suffered prejudice if the court had granted a continuance, nor do we perceive any prejudice. We cannot discern a tenable ground or reason for the trial court's decision. We hold that the trial court improperly exercised its discretion in denying the motion for a continuance.

This pro se defendant acted quickly. He responded timely. He propounded discovery timely. He identified extremely relevant issues including statutory notices that the proof of would only be in the landlord's possession. The court just ignored such valid requests and denied the motion. This is similar to the activity of the Superior Court before the Commissioner and the Department judge where clear law was ignored on bonding issues and on storage issues. The court showed a clear disdain for the tenant and simply ignored the law and despite valid issues – justice was not done. Failing to grant the continuance was on its own an abuse of discretion and was indicative of the bias against this defendant.

**D. The trial court abused its discretion in requiring an unreasonable bond of Appellant.**

Yet again, on a clear legal matter the court ignored clear law when it refused to set a bond for the landlord to post and when it set a manifestly untenable and unreasonable appeal bond. This was an eviction under 59.12. The appeal bond requirement is not vague:

If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

RCW 59.12.220. The other bond “as provided in this chapter” is the bond under RCW 59.12.100 which provides (bold added):

The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and **the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that he or she will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action.** The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he or she shall be

unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

So the court should have placed a bond for the use of the property for the year or so the appeal takes, damages potentially that could be incurred but were not identified in the record below, and for costs of the action. Assuming, for a moment that rent of \$1500.00 was applicable and there might be a \$1000.00 in cost – a bond around \$20,000 might make sense. But what did the commissioner set for the bond? \$295,000. (CP 718-719). The setting of a bond is within the discretion of the trial court and is reviewed for abuse of discretion. Under RCW 4.44.470, the setting of the bond is a matter solely within the trial court's discretion. Jensen v. Torr, 44 Wash. App. 207, 211-12, 721 P.2d 992, 994-95 (1986). A “trial court abuses its discretion only when its decision is manifestly unreasonable, or when its discretion is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).” TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc., 140 Wash. App. 191, 214, 165 P.3d 1271, 1284 (2007). In this case, the court’s order sets forth no grounds. Using any sort of reasonable figure the reasonable value of use of a residential property out in rural Key Peninsula and you get absolutely nowhere near \$295,000. It is nearly 15 times above any reasonable amount. It is clearly punitive and entered so as

to prohibit the exercise of the right by the tenant. The bond bears no resemblance under any set of imagined facts with the statutorily mandated consideration. Again, this showed abject bias of the trial court against the Respondent and this court should not condone such a flagrant abuse of discretion.

**E. The trial court erred in not requiring the Respondent to store the Appellants property as required by RCW 59.18.312(5)**

One of the more amazing things in this action, where the trial court just gave the landlord whatever it wanted, was the explicit waiver of a statutory requirement for the landlord to store the tenant's possession. It is undisputed that the Respondent requested Honse to store the Respondent's personal property, using the form set forth in RCW 59.18.312, and provided to the defendants by the Sheriff.(CP 720-725). Honse, through counsel, moved the superior court to get permission to essentially ignore the "Request for Storage of Personal Property." See "Plaintiff Honse's Motion for Clarification of Plaintiffs' Obligation on Execution of Writ" filed on November 13, 201. (CP 310-314). The motion essentially argues that the action was under RCW 59.12 and thus the RCW 59.18 obligations to store personal property did not apply – and the trial court went along with this. However, the court ignored the fact that the very statute requiring storage

of personal property – RCW 59.18.312(5) – provides in pertinent part (bold added):

**When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant that: (a) Upon execution of the writ, the landlord must store the tenant's property only if the tenant serves a written request on the landlord to do so no later than three days after service of the writ; (b) the notice to the landlord requesting storage may be served by personally delivering or mailing a copy of the request to the landlord at the address identified in, or by facsimile to the facsimile number listed on, the form described under subsection (6) of this section; (c) if the tenant has not made such a written request to the landlord, the landlord may elect to either store the tenant's property or place the tenant's property on the nearest public property unless the tenant objects; (d) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less, within thirty days; (e) if the tenant or the tenant's representative objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (f) the landlord may sell or otherwise dispose of the property as provided in subsection (3) of this section if the landlord provides written notice to the tenant first.**

So the entire notion that the storage requirements do not apply to RCW 59.12 writs is completely false. Yet the trial court simply went along with whatever the landlord wanted. And it is not as if the court was unaware of the statute – it cited to RCW 61.24.060. It simply ignored the RCW 59.12.100 writ component of the statute. RCW 59.12.100 is the only section of RCW 59.12 that deals with the service of the writ. The Plaintiff and the trial court simply ran roughshod over the Respondent who was requesting a

continuance to get counsel and have discovery. The plaintiff represented that writs served under RCW 59.12 were not subject to RCW 59.18.312 – but cited only a portion of the statute and the court simply accepted it as true over the objection of tenant twice asking for time to get an attorney. The storage requirements do not arise out of how an owner gets the property nor do they arise based on the nature of the occupancy. The storage requirements arise based upon service of a writ under either RCW 59.12 or 59.18. The language is clear – and it was ignored. This was error.

A practical problem arises given that the failure to require storage and the failure to set a reasonable bond essentially gave a license to the landlord to throw the tenant’s property out. Still, the courts have said that such events would not render an appeal moot:

A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief.” *Josephinium Assocs. v. Kahli*, 111 Wash.App. 617, 622, 45 P.3d 627 (2002) (quoting *Snohomish County v. State*, 69 Wash.App. 655, 660, 850 P.2d 546 (1993)). But an unlawful detainer action is not moot simply because the tenant no longer has possession of the premises. *Housing Auth. v. Pleasant*, 126 Wash.App. 382, 388, 109 P.3d 422 (2005) (citing *Lochridge v. Natsuhara*, 114 Wash. 326, 330, 194 P. 974 (1921)). If the tenant does not concede the right of possession, she has the right to have the issue determined. *Id.* at 389, 109 P.3d 422. Further, if a tenant has a monetary stake in the outcome of the case, such as payment of rent and attorney fees, our Supreme Court has held that “[o]bviously, [such a] case is not moot.” *McGary v. Westlake Investors*, 99 Wash.2d 280, 284, 661 P.2d 971 (1983).

IBF, LLC v. Heuft, 141 Wash. App. 624, 630-31, 174 P.3d 95, 98 (2007).

This Respondent has been subjected to eviction and loss of property based upon a systematically abusive and legally deficient eviction. Statutes were continuously ignored or abused. Jurisdictional notice requirements were ignored. Unlawful detainer actions are statutory in nature. The superior court sits in limited jurisdiction and not a court of general jurisdiction. Angelo Prop. Co., LP v. Hafiz, 167 Wash. App. 789, 808, 274 P.3d 1075, 1085 review denied sub nom. Angelo Prop. Co., LP v. Hafiz, 175 Wash. 2d 1012, 287 P.3d 594 (2012). Instead of ensuring the narrow statutory requirements were met and that the law was strictly construed, the superior court simply acted in a manner it presumably thought was fair. But it is not the court's role to exercise equity in such matters. In not requiring the statutes be strictly complied with, the trial court violated its limited role. This court should correct the obvious errors which occurred below.

**F. Did the superior court err in extending a writ after expiration indefinitely and without notice to the Appellants.**

The record is clear that on October 17, 2013 Honse got a Judgment that ordered issuance of a writ of restitution returnable in 10 days with an automatic extension for 10 days.. Then on November 30, 2013 Honse ex parte (as shown by ex parte filing fee) moved to extend the writ in a one paragraph motion and submitted an order which the Superior Court

Commissioner signed without any notice to the Respondent. The signed order extending the writ provided that it was “extended by the above-entitled court forthwith in increments of twenty days until possession in the manner provided by law.”

Nothing in RCW 59.12 allows for writs to be extended without notice. Rather, RCW 59.12.180 requires that the civil rules apply. CR 5 requires notice to the opposing party of any motions. This would have made sense in the present case as the Respondent could have pointed out that there was no writ to extend – it had already expired on its own term. This is, sadly, again demonstrative of the Plaintiff and the Superior Court simply ignoring very basic rules in pummeling an unrepresented and seemingly disfavored litigant. However, the civil rules seem to apply to all parties and not just litigants that please the court.

From a substantive standpoint, this court is reminded that the unlawful detainer statute is to be strictly construed against the landlord, supra. In a contested eviction, where does the statute simply allow a landlord to unilaterally and without notice obtain new writs under the guise of “extension” after they are expired? There is no such statutory authority. Note the Honse motion in such regards is devoid of any authority. The statute only allows for the writ to “be returnable in twenty days”. RCW

59.12.090. There is nothing in the service of the writ statute that allows extension. RCW 59.12.100. Obviously, with proper notice, a motion for a new writ could have been considered. But that did not happen.

Looking at the facts of this case, the situation is very muddled as there was originally service of the original writ on October 17, 2013. However, it is obvious that the writ went unexecuted as Honse had to sneak in a motion to extend after the writ expired. However, what is interesting is that the Sheriff's Return on the Writ of Restitution shows the Sheriff "ousted and ejected" the respondents on November 26, 2013 – and such Return shows the Sheriff received the order extending the writ on October 31, 2013. Given there is no statutory authority to (1) extend a previously issued writ and (2) there is no statutory authority to extend a writ ad infinitum in twenty day increments as opposed to getting a new writ – the November 26, 2013 ousting was beyond any time limit of an issued writ. It simply shows that the landlord and Superior Court was going to shove this eviction through as quickly as possible even if it meant disregarding the procedural rules, basic notions of notice, the substantive law and the ability of a defendant to get counsel and seek reasonable discovery.

The court erred in issuing what was tantamount to an infinite order for a writ. The court erred in not requiring the landlord to give notice to the

Respondent. This was an invalid eviction that was incorrectly executed. Nothing about this case was done right.

#### IV. CONCLUSION

We just end up at the same spot: This eviction was fatally defective from the start and the superior court should never have allowed it to proceed. Instead of finding ways to get around statutory requirements to hammer a defendant the superior showed a clear distain for, the superior court should have simply applied the statute and precedent in a unbiased manner. However, the superior court ignored requirement after requirement and exercised its discretion in an improper manner. If it had simply applied the law to the clear facts the case would never have been allowed to proceed. Taking a step back and looking at how at every turn, the superior ignored the law to reach a predetermined end against a correct, yet a deemed unsympathetic, defendant, it obvious that error occurred. This Appellate Court should uphold the notion that all defendants are entitled to the full and equal protection of the law and reverse as this eviction should never have proceeded in the first place.

RESPECTFULLY SUBMITTED this 3rd day of November, 2014.

  
Patrice Clinton  
Appellant, Pro Se

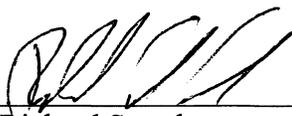
  
Richard Sorrels  
Appellant, Pro Se

CERTIFICATE OF SERVICE

I certify that on the 6<sup>th</sup> day of November, 2014, I caused a true and correct copy of this <sup>AMENDED</sup> Brief of Appellant to be served on the following:

Margaret Yvonne Archer    **via US Mail**  
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DATED this 6<sup>th</sup> day of November, 2014, at Tacoma,  
Washington.

By   
Richard Sorrels

2014 NOV -6 PM 3:45  
STATE OF WASHINGTON  
BY   
DEPUTY