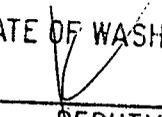


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STATE OF WASHINGTON

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No. 47830-7-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

Respondents.

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BRIEF OF APPELLANTS

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Patrice Clinton  
Appellant, Pro Se  
9013 Key Pen Hwy, Suite E-110  
Lakebay, WA 98349

Richard Sorrels  
Appellant, Pro Se  
9013 Key Pen Hwy, Suite E-110  
Lakebay, WA 98349

January 11, 2016

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

## I. ASSIGNMENTS OF ERROR

Error No. 1: The trial court erred when it failed to investigate or conduct a hearing regarding the Court's lack of jurisdiction cited in Defendant's responsive document to summary judgment motion.

Error No 2: The trial court erred when it failed to recognize that it was exceeding its limited jurisdiction allowed for an unlawful detainer action when it heard and ruled on a summary judgment motion for damages.

Error No. 3: The trial court erred when it failed to recognize that genuine issues of fact exist which precludes granting summary judgment.

## ISSUES RELATED TO ASSIGNMENTS OF ERROR

Issue pertaining to Error No 1: Did the trial court err when it granted summary judgment after question was raised concerning the Court's lack of jurisdiction in the matter?

Issue pertaining to Error No. 2: Did the trial court err when it granted summary judgment when the case had not yet been converted from an unlawful detainer action into an ordinary damage claim?

Issue pertaining to Error No 3: Did the trial court err when it granted summary judgment when genuine issue of fact remained?

## II. STATEMENT OF THE CASE

Appellant Patrice Clinton was grantor of a deed of trust for the subject real property (cp 1-2). Appellant Richard Sorrels was a person with a leasehold interest in a portion of the real property subject to the deed of trust (cp 3). Respondents Christopher Honse and Sally Honse (Honse) were beneficiaries of the deed of trust and the purchasers of the subject property that had been foreclosed (cp 1-2).

Honse filed summons and complaint for unlawful detainer on 9/24/13 (cp 1). Clinton

declared that she had not been served with required notices (cp 290-291). Judgment and Order for Writ of Restitution was entered on 10/17/13 (cp 142-144). Motion for Partial Summary Judgment filed on 10/23/13 (cp 147-177). Clinton served interrogatories and requests for production in order to discover details of notice failures, and a requested continuance (cp 305-307, 570-572), which was denied (cp 603-605). Order Granting Partial Summary Judgment entered 11/23/13 (cp 603-605). Notice of Appeal filed 11/25/13 (cp 606-620). Hearings were being held up until 11/25/13 (cp 890-891). Writ was executed on 11/26/13 (cp 627-632). Honse's attorney said personal property could be retrieved (cp 891). Then, on 11/26/13, Honse's attorney said nothing could be retrieved (cp 891). Honse filed Motion for Summary Judgment for Damages on 5/22/15 (cp 1091-1104). Response filed 6/16/15 (cp 1242-1247, 1250-1252). Reply filed 6/22/15 (cp 1257-1259). Order and Judgment entered 6/26/15 (cp 1557-1559, 1554-1556). Notice of Appeal filed 7/27/15. Decision on earlier appeal filed on 9/19/15.

### III. ARGUMENT

A. Did the trial court err when it granted summary judgment after question was raised concerning the Court's lack of jurisdiction in the matter?

This appeal concerns an order and judgment resulting from Plaintiff Honse's motion for a summary judgment for damages while the Court is acting in a limited capacity for an unlawful detainer matter.

One of Defendants' responsive pleadings was a "Declaration of Richard Sorrels in Opposition to Summary Judgment" (cp 1253-1256). Within that declaration, Sorrels makes the following factual statements re the Court's jurisdiction over this matter:

"2. As stated in the prior declaration, I did not have an ownership interest in the real property known as 8717 Key Pen Hwy. I was not named nor involved in the

foreclosure proceeding concerning this property.

3. As stated in the earlier declaration, I was involved in written leases regarding the subject property since 2009. The 2009 lease was even referenced on page 3 of the Complaint. The 2009 lease was discontinued after the vessel dealership license was not renewed in 2011.

4. The more recent lease was a residential lease dated April 13, 2012, a copy of which is attached hereto. This lease was in effect when Plaintiffs filed their Complaint in this matter for unlawful detainer.

5. I have reviewed the mortgage documents for the loan foreclosed by Honse. The loan was a residential loan, it was NOT a commercial loan. I have personal knowledge that Patrice Clinton lived on the subject property from 2006 until she was forced to leave based upon this case.

6. I continue to challenge if this matter is properly before this court. I have never received the 60-day notice required under RCW 59.12.032 and RCW 61.24.060 which Honse now admits was never given (Respondents COA Brief, p.37).

7. Honse further admits that the required notice requirements are a "jurisdictional prerequisite to commencing suit under the statute". Respondents COA Brief, p.17).

8. The recent admissions by Honse are important.

9. Honse foreclosed against Patrice Clinton. In declarations filed in this matter, Clinton swore that she had not received a number of the notices required under RCW 59.12.032 and RCW 61.24.040.

10. The Court should appreciate that it is very difficult to prove something that did not happen. To overcome this, early on, shortly after this matter was initiated, I prepared and served upon Honse interrogatories and requests for production regarding the numerous required notices. Honse never responded, and the Court did not allow a continuance so that essential evidence could be obtained. The recent admissions by Honse can now be brought before the Court."

This declaration was before the judge at the June 26, 2015 hearing on the summary judgment motion.

RCW 61.24.060(2) requires that a purchaser at a Trustee's Sale **shall provide** "a written notice to vacate the premises in sixty days."

RCW 59.12.032 requires that "an unlawful detainer action, commencing 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."

"When a party's authority to act is prescribed by a statute and the statute includes time limits, as under RCW 61.24.040(2), failure to act within that time violates the statute and divests the party of statutory authority. Without statutory authority, any

action taken is invalid.” (Albice v. Premier, 174 Wn 2d 560, 276 P3d 1279 (2012)).

The 60-day notice requirement is mandatory and strict compliance. It is also a prerequisite for establishing a Court’s jurisdiction over the matter.

A lack of jurisdiction prevents the Court from performing any act besides dismissal of the matter.

The Court erred in not hearing argument or setting a hearing date on the issue of jurisdiction. To date, there has still been no hearing on the issue of the Court’s jurisdiction in this matter.

In addition, the Court also erred in granting summary judgment when this issue also created an unresolved genuine issue of fact which would preclude the granting of summary judgment under CR 56(c).

“The motion is not appropriate when a genuine issue of material fact exists or the moving party cannot demonstrate that he is entitled to judgment as a matter of law and the motion may not be used as a substitute for trial on disputed issues of fact.” (Green v. P.R.C., 136 Wn 2d 87, 960 P2d 912 (1998); Tran v. State Farm, 136 Wn 2d 214, 961 P2d 358 (1998); Barovic v. Cochran, 11 Wn App 563, 524 P2d 261 (1974)).

B. Did the trial court err when it granted summary judgment when the case had not yet been converted from an unlawful detainer action into an ordinary damage claim?

Plaintiff Honse sought summary judgment for damages following the execution of a Writ of Restitution in an unlawful detainer action. Such an action is outside of the scope of the unlawful detainer statutes and the matter before the Court. The trial Court lacks subject matter jurisdiction.

“In an unlawful detainer action, the court sits as a special tribunal to summarily decide the issues authorized by statute and **not** as a court of general jurisdiction with the power to hear and determine other issues.” (Grant v. Keasler, 99 Wn 2d 564, 571, 663 P2d 830 (1983)).

“This, an unlawful detainer action is a narrow one, limited to the question of

possession and related issues such as restitution of the premises and rent.” (Munden v. Hazelrigg, 105 Wn 2d 39, 45, 711 P2d 295 (1985), as cited by Angelo v. Hafiz, 167 Wn App 789, 808-809, 274 P3d 1075 (2012)).

“If, however, an issue is not incident to the risk of possession, the trial court **must** hear the issue in a general civil action. (Angelo, at 809, citing Kessler v. Nielsen, 3 Wn App 120, 123-124, 472 P2d 616 (1970)). In other words, although a superior court is normally a court of general jurisdiction and it may resolve most civil claims, when the superior court hears an unlawful detainer action under RCW 59.12.030, it sits in a statutorily limited capacity and lacks authority to resolve issues outside the scope of the unlawful detainer statute.” (Angelo, at 809, citing Sprincin v. Sound, 84 Wn App 56, 66-68, 925 P2d 217 (1996); First Union v. Slack, 36 Wn App 849, 853-55, 679 P2d 936 (1984)).

In 1985, the Supreme Court created a new Rule which is collateral to the general Rule: Where **after** the right to possession ceases to be an issue, **then** the proceeding may be converted into an ordinary civil suit for damages (Munden v. Hazelrigg, 105 Wn 2d 39, 45-46, 711 P2d 295 (1985)).

In the Munden case, the unlawful detainer case was dismissed without prejudice, which is not appealable, so the issue of possession ceased to exist, so the matter was remanded for trial on the remaining unrelated issues.

In the Angelo case, the COA found that the trial court lacked subject matter jurisdiction under its statutory unlawful detainer authority to hear an ordinary damage claim because the trial court did not convert the case into an ordinary civil action and instead continued to preside over that case as an unlawful detainer. (Angelo, at 810).

In the Honse matter, the issue of possession was still at the COA, and a jurisdiction issue had been raised in Sorrels’ declaration. Both items would preclude the cessation of the right to possession issue.

Honse made no attempt to amend the complaint, or take any other action to convert the unlawful detainer action into an ordinary civil action, nor would Honse have been

able to, because the right to possession issue had not yet ceased to exist.

The trial court erred when it heard and ruled on a summary judgment damage issue when it did not have the subject matter jurisdiction to do so.

C. Did the trial court err when it granted summary judgment when genuine issues of fact remained?

The only case authority cited in Honse's motion for summary judgment is *Excelsior v. Schroeder*, 171 Wn App 333, 287 P3d 21 (2012).

In *Excelsior*, Schroeder's land was foreclosed non-judicially by Excelsior, who was also the purchaser at the Trustee's Sale. Schroeder and Excelsior entered into an agreement for Schroeder to remove his massive collection of personal property. Schroeder failed to do so. An unlawful detainer action was commenced, summary judgment obtained, and Writ of Restitution was executed. Additional agreements were made allowing Schroeder a total of 602 days to remove his possessions. Schroeder no longer lived on the property, he just failed to remove his possessions, as agreed. The right to possession had long been resolved, the Munden case was cited, and further court hearings were held (presumably with the case having been "converted"). An order was obtained re removal, with proceeds to go to Schroeder's benefit.

In the Honse case, the "right to possess" has not yet ceased to exist (see issues above), the case has not been converted from an unlawful detainer to an ordinary damage claim, and Honse has refused Defendants any access or ability to retrieve their property, despite pleas to do so, and Honse's attorney's assurances that Defendants would be able to retrieve their property (cp 1255). Honse even filed a declaration acknowledging that he is keeping Sorrels' classic Corvette and many other vehicles for his own personal use (cp 185), the value of which far exceeds what the Court had awarded Honse in the summary

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judgment.

Sorrels has disputed Honse's claims for damages (cp 1242-1247, 1250-1252). Genuine issues of fact remain as to the Court's jurisdiction to grant summary judgment for damages, whether the case had been converted from an unlawful detainer cause of action to an ordinary civil action, the lack of cited authority, the refusal of Honse to allow the return of Defendants' property, and the damages claimed. While issues of fact remain, the Court is unable to grant summary judgment (CR 56(c)). It was error for the trial Court to grant summary judgment.

D. CONCLUSION

For reasons stated above, the trial court's ruling on the summary judgment for damages that was appealed should be reversed and remanded for hearing on the jurisdictional issues addressed herein.

Respectfully submitted this 11<sup>th</sup> day of January 2016.



Patrice Clinton  
Appellant, Pro Se

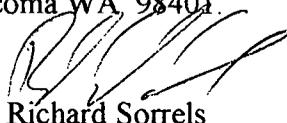


Richard Sorrels  
Appellant, Pro Se

CERTIFICATE OF SERVICE

Richard Sorrels certifies that on the 11<sup>th</sup> day of January 2016 he did mail the above to attorney Margaret Archer at PO Box 1157, Tacoma WA, 98401.

DATED: Jan 11, 2016.

  
Richard Sorrels