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**Court of Appeals**  
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**Division II**  
**State of Washington**  
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**COURT OF APPEALS  
OF THE STATE OF WASHINGTON, DIVISION TWO**

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**JOHN SCANNELL, Petitioner**

**VS.**

**GEORGIY BULKHAK, Respondent**

---

**ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT  
STATE OF WASHINGTON**

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**OPENING BRIEF**

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John Scannell  
543 6<sup>th</sup> St,  
Bremerton Wa., 98337

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**ASSIGNMENTS OF ERROR AND ISSUES PRESENTED FOR  
REVIEW**

A. Assignments of error.

1. The court erred in issuing a writ of restitution during an unlawful detainer proceeding, when the plaintiff was out of possession of the building and had not cleared title and had not established a landlord tenant relationship with the appellant defendant.

2. The court erred in not awarding attorneys fees and/or sanctions against the plaintiff for bringing a frivolous action.

B. Issues relating to the assignment of error.

1. Should the writ of restitution be set aside when the existence of a landlord tenant relationship is in dispute?

2. Can the court rule on which title is superior after a disputed tax sale when the county never notified the landlord-in possession nor the appellant-tenant of the impending tax sale?

3. Did the court abuse its discretion when it issued a show cause and eventually a writ of restitution when the same motion had been brought before another superior court judge and been rejected?

4. Is the defendant John Scannell, who is an attorney in the ninth circuit court of appeals entitled to attorney fees for this frivolous action?

## **STATEMENT OF THE CASE**

1. On December 28, 1999, a lease with option to purchase was signed with John Scannell (Scannell) grantee and Paul King (King) grantor for part of the property located at 543 6<sup>th</sup> St. This was recorded on June 16, 2003. (CP 96-98 )

2. Georgiy Bulkhak (Bulkhak) claims to have purchased the property at 543 6<sup>th</sup> St, Bremerton WA., property at a tax sale.(CP 8) However, both Scannell and King have contested this sale in this and in other actions, disputing the tax sale transferred ownership. (CP 96)

3. In Kitsap County case #15-2-00910-1, the plaintiff brought a motion for show cause that sought the same remedy he seeks here. That is, he attempted with an unlawful detainer, to evict Scannell. He was told by a superior court judge that unlawful detainer was not a remedy and that he needed to bring an ejectment action. (CP 95)

4. He subsequently brought an ejectment action in Case #15-2-01303-5 but never served it. Instead, he amended it by taking the owner out of the action.(CP 95)

5. On January 25, 2017, Bulkhak brought the case at bar, again trying to evict John Scannell using an unlawful detainer action.(CP 1-13)

6. There is nothing in the record that demonstrates that Bulkhak notified the court that he had brought the same motion for order to show cause to the attention of the court. (CP 14-15, 18-19)

7. John Scannell filed a notice of appearance on 2-6-2017. (CP 21-22).

8. Bulkhak's counsel brought a motion for order to show cause on 2-8-2017. There is no record that he notified Scannell he was seeking an order nor did he notify the court he had already been denied a show cause order by a different judge. (CP 31-33)

9. Scannell filed his answer 2-15-2017. (CP 34-36)

10. The court denied the writ on 2-17-2017 for failure to serve a timely show cause order. (CP 42).

11. On May 23, 2017, Bulkhak again moved for a show cause order, again neglecting to notify the court he had already been denied the remedy he was seeking or notifying Scannell.. (CP 43-45,47)

12. Scannell filed an amended answer on 7-5-2017, and a response on 7-5-2017, giving his substantive response as well as an objection that he had not been given notice of the show cause order.(CP 68-70, 91-97)

13. The court issued a writ of restitution turning the building over to Bulkhak (CP 78-81)

## **ARGUMENT**

### 1. Introduction

This is continuation of a frivolous action that continues to be brought without authority of law. The plaintiff had brought this identical motion before a different judge, who ruled that there is no basis for bringing an unlawful detainer when an alleged owner is not in possession.

The plaintiff and a previous counsel have already admitted to the defendant that in a previous action, Kitsap County case #15-2-00910-1, he brought this same ex parte motion and was told by a superior court judge that he could not bring an unlawful detainer for an eviction because he had to clear title first with an ejection action. He subsequently brought an ejection action in Kitsap County case #15-2-01303-5, but never served it properly. Instead, he amended it by taking the owner out of the action, so the court could not get jurisdiction to clear title because he failed to include a necessary party.

The plaintiff is bringing this suit using a different attorney under some kind of fiction that the plaintiff and other occupants are somehow tenants or guests of an inanimate object, namely the real property in question. The plaintiff has never been able to cite to any authority nor can he, that somehow an inanimate object can be a landlord, or somehow confer a guest status on anyone. The owner has never denied

Scannell's contention that he was never in possession, relying entirely on the notion that his tax title was superior to Scannell's lease.

He attempted to bring this exact same motion, earlier in this case and was refused by a superior court judge because the motion was not served properly. He then sought to have the same exact remedy, apparently trying to get a different judge, because he did so without notifying the court or the defendant in violation of court rules, in another attempt at judge shopping. He then obtained another judge for the show cause hearing, without any opposition, because of his violation of KCLR 77(k)(10)(C)(2) by seeking an ex parte motion without notifying opposing counsel. He apparently did this so he could try to engage in judge shopping without giving opposing party a chance to object.

2. The court lacked subject matter jurisdiction as stated in the answer.

The motion is an attempt to bring a summary eviction under the unlawful detainer statute. Unlawful detainer statutes are in derogation of the common law and thus construed in favor of tenants. *Seattle Housing Authority v. Silva*, 94 Wn.App. 731, 952(1999). Unlawful detainer actions under RCW 59.18 are special statutory proceedings with the limited purpose of hastening recovery of possession of rental property. Unlawful detainer is limited to cases involving landlords and tenants when the only

questions are possession and rent. The superior court's jurisdiction in such actions is limited to the primary issue of possession and incidental issues such as restitution and rent, or damages. *Phillips v. Hardwick*, 29 Wash. App. 382, 386, 628 P.2d 506 (1981).

It is well settled that additional claims cannot be joined in an unlawful detainer action. *Honan v. Ristorante Italia, Inc.*, 66 Wash. App. 262, 269, 832 P.2d 89, review denied, 120 Wash. 2d 1009 (1992). Any issue not incident to the right of possession within the specific terms of RCW 59.18 must be raised in an ordinary civil action. *Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993).

Ejectment is the remedy for one who, claiming a paramount title, is out of possession. Ejectment is a mixed action, and damages for the ouster or wrong can be simultaneously recovered. 28 C.J.S. Ejectment § 1, at 848 (1941). *Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993). Where the form of the summons and complaint only invoked the unlawful detainer statute, the court cannot rule on the issue of title. *Proctor v. Forsythe* 4 Wn. App 238, 480 P.2d 511.

When the plaintiff contends that a landlord tenant relationship exists, then an admitted relationship of landlord and tenant is required. Summary possession only lies where there is or has been an admitted relationship of landlord and tenant. It does not lie where the relationship

of landlord and tenant is in dispute. CJS Landlord and Tenant §1361 at 122, citing *Kimball v. Lincoln*, 72 Haw. 117, 809 P.2d 1130 (1991).

The estoppel rule barring a tenant from denying the landlord's title is not applicable when there is no landlord-tenant relationship. *Lewis v. Pleasant Country, Ltd.*, 173 Ariz. 186, 840 P.2d 1051 (Ct. App. Div. 1 (1992)). Consequently, possession under a lease is essential to give rise to an estoppel of the lessee to deny the lessor's title in an action involving title or possession. *Stowers v. Huntington Development & Gas Co.*, 72 F.2d 969, 98 ALR 536 (C.C.A. 4<sup>th</sup> Cir. 1934); *Stratton v. Hanning*, 139 Cal. App. 2d 723, 294 P.2d66, 57 ALR 2d 344 (4<sup>th</sup> Dist. 1956).

From his pleadings, it is clear that Bulkhak is claiming superior title to both King and Scannell. Since this lease was filed, the plaintiffs have constructive notice of the lease. As a holder of a valid option to purchase, and lease, his option to purchase and lease survive any tax sale, because as a tenant and the holder of an option, he is not responsible for the taxes. *Coy v Raabe*, 69 Wash.2d 346, 418 P.2d 728 (9/22/1966) and *Graham v. Raabe*, 62 Wa.2d753, 384 P.2d 629(1963)

Both King and Scannell are claiming superior title because the county sold without notice to them and without a public posting as required by statute and caselaw. (See RCW 84.64.080, *Stritzel v. Smith*, 20

Wa.App.218, 579 P.2d 404(05/26/1978), the notice requirements of RCW 84.64.080 were held to be jurisdictional.

3. The defendant has posted invalid notices which do not list which tenants he is trying to evict from which part of the premises.

This building is an office and a duplex, with the duplex having two different addresses. There are several tenants and/or guests that occupy the building yet the landlord wants to evict them all without giving any except John Scannell any kind of notice. These other occupants are not under the control of John Scannell as they are located in parts of the building that are not included in his tenancy. The plaintiff has cited to no authority which allows him to evict various occupants without giving them notice or a description of which part of the premises he is trying to attempt an eviction. Any notices he has posted list only 543 6th St. Bremerton Washington, ignoring the fact that the building has two addresses, 543 and 545. In addition, much of 543 is not under the control of John Scannell, it is under the control of the owner. This includes an area of the premises that includes thousands of legal files from hundreds of clients from the offices of Paul H. King, all of whom belong to the clients. There are at least two other occupants that are in the section of the building that are not part of the defendant's tenancy.

It is clear that this action is an abuse of process where the plaintiff seek an order to “restore” possession to him when he never had possession. Even if he could somehow evict John Scannell, he would not be entitled to possession because he has not cleared title with the owner, who is currently in possession. Neither the plaintiff nor his counsel have explained (nor can they explain) how they can take possession from the owners without any kind of notice or by making them part of the suit.

There is no authority in Washington for a person to seize possession from an owner in possession without first bringing a clear title or ejectment action. There is no authority in Washington, where an alleged owner can clear title and seek possession from the owner and all tenants/guests/occupants, by giving notice to only one tenant and listing unnamed “others” especially since they are aware of the name of one of the others, namely the owner. This is why this action is frivolous and should therefore be dismissed.

#### 4. Attorney Fees

In *Leen v. Demopolis*, 62 Wn. App. 473, 815 P.2d 269 (1991), review denied, 118 Wn.2d 1022 (1992), the Washington State Supreme Court considered whether an attorney appearing pro se could recover attorney fees in responding to an appeal. The court held that the pro se

attorney should recover attorney fees for his own time spent responding to the appeal. *Leen*, 62 Wn. App. at 487.

Scannell should be awarded attorney fees on the basis of the following.

Under *Housing Authority v. Terry* 114 Wn.2d 558, 789 P.2d 745 (1990) attorney fees are allowed under RCW 59.18.290(2) when tenants prove either that the lease was not terminated or that they held over under a valid court order. In this case the lease was never terminated by its own terms.

The court erred in denying fees for a frivolous action. Under RCW 4.84.185, In its relevant part, it provides:

In any civil action, the court . . . may, upon written findings . . . that the action . . . was frivolous and advanced without reasonable cause, require the non-prevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action.

This provision was "designed to discourage abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against meritless claims advanced for harassment, delay, nuisance, or spite." *Skimming v. Boxer*, 119 Wn. App. 748, 756, 82 P.3d 707 (2004).

An action is frivolous under RCW 4.84.185 if, when considering the action in its entirety, it "cannot be supported by any rational argument

on the law or facts.' *Skimming*, 119 Wn. App. at 756 (quoting *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn. App. 925, 938, 946 P.2d 1235 (1997)).

The court erred in denying CR 11 sanctions in the form of fees.<sup>1</sup>

Such sanctions, are appropriate when the following three criteria are met:

(1) The action was not well grounded in fact, (2) it was not warranted by existing law, and (3) the attorney signing the pleading has failed to conduct a reasonable inquiry into the factual or legal basis of the action. *Manteufel v. Safeco Ins. Co. of America*, 117 Wn. App. 168, 176, 68 P.3d 1093 (2003); *Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106, 110, 780 P.2d 853 (1989).

Here, the plaintiff has not supplied any legal authority as to how the court could obtain jurisdiction over this case without first clearing title with the owner.

RCW 4.84.030 allows the superior court to award costs to the prevailing party and, under RCW 4.84.080, those costs include a nominal statutory attorney fee award of \$200. *Ferencak v. Dep't of Labor & Indus.*, 142 Wn. App. 713, 729-30, 175 P.3d 1109 (2008).

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<sup>1</sup> CR 11 provides, in part:

[T]he court, upon motion or upon its own initiative, may impose . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal including a reasonable attorney fee.

RAP 18.1(a) permits this court to award fees and costs under any applicable law that grants the right to recover fees and expenses on review<sup>2</sup>. For the previous reasons given in this attorney fees section, incorporated by reference, the appellant is also entitled to attorney fees on appeal.

### CONCLUSION

For the reasons given in this brief, the petitioner respectfully requests that this court reverse the decision of the trial court to issue a writ of restitution in this case and award attorney fees to the petitioner.

Dated this 22 day of December, 2017,

*S/ John Scannell*  
John Scannell

### Declaration

Undersigned, on the basis of personal knowledge declares as follows:

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<sup>2</sup> RAP 18.1(a) provides, "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court."

I am the petitioner in this case and am currently licensed as an attorney for the Ninth Circuit court of Appeals where I maintain a regular full time practice.

I certify that I mailed a copy of this document to

Georgiy Bulkhak  
15415 46<sup>th</sup> Av. NE,  
Tacoma, WA, 98446

Postage Prepaid on 12-22-2017

I declare under the penalty of perjury of the State of Washington that the foregoing is true and correct.

Dated this 22 day of December, 2017 at Bremerton, WA.,

*S/ John Scannell*

\_\_\_\_\_  
John Scannell

**JOHN SCANNELL - FILING PRO SE**

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