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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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GEORGIY BULKHAK,  
Respondent,

v.

JOHN SCANNELL,  
Appellant.

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RESPONSE BRIEF OF GEORGIY BULKHAK

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Appeal from the Superior Court of Kitsap County,  
Cause No. 17-2-00146-7  
The Honorable Judge Melissa Hemstreet, Presiding Judge

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## **I. INTRODUCTION**

Following receipt of a tax deed, Mr. Bulkhak sought to evict Mr. Scannell. Judge Hemstreet properly granted a writ of restitution to Mr. Bulkhak, who requests this Court to affirm Judge Hemstreet's orders identified for review.

## **II. ASSIGNMENTS OF ERROR**

Mr. Bulkhak assigns no errors to the trial court's decisions.

## **III. RESTATEMENT OF THE CASE**

On December 28, 1999, Mr. Scannell signed as "Tenant" a 10-year Lease "of the property located at 543 6<sup>th</sup> St., Bremerton, Washington."<sup>1</sup> The Lease is also signed by Paul King, named therein as "Landlord." The lease was renewable at the option of Mr. Scannell "for two subsequent terms of 10 years at the end of the initial term at the same terms as the original term."<sup>2</sup> The Lease included the following provision:

The parties hereto covenant and agree that John Scannell shall have an exclusive right to exercise an Option to Purchase the unit for \$27,500, plus 7 percent interest upon written notice of the exercise thereof to Paul King at any time prior to the expiration of the Lease terms.<sup>3</sup>

This lease was recorded on June 16, 2003.<sup>4</sup>

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<sup>1</sup> CP 40.

<sup>2</sup> CP 40.

<sup>3</sup> CP 41.

<sup>4</sup> CP 40-41.

Mr. Scannell never exercised the Option to Purchase.

On January 30, 2015, the Kitsap County Superior Court entered a real property tax judgment and issued an order of sale in tax lien foreclosure proceedings brought by Kitsap County regarding the property on which Mr. Scannell was a “tenant.”<sup>5</sup> On March 2, 2015, Kitsap County held a public sale, in which Respondent Bulkhak “duly purchased in compliance with the laws of the State of Washington” the real property described as follows: “Lot 35, Block 16, Town of Bremerton, according to Plat recorded in Volume 2 of Plats, page 30, in Kitsap County, Washington.”<sup>6</sup>

On March 30, 2015, the Treasurer of Kitsap County granted and conveyed the subject real property to Mr. Bulkhak by Tax Deed number 2316.<sup>7</sup>

On April 4, 2015, Mr. Bulkhak posted a Notice to Vacate the premises by April 25, 2015 on the door of the premises, and sent copies of the Notice by certified mail to “Occupants” at 543 - 545 6<sup>th</sup> Street in Bremerton.<sup>8</sup> The persons living in the premises continued to occupy the premises without Mr. Bulkhak’s consent, failing to comply with notices

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<sup>5</sup> CP 8.

<sup>6</sup> *Id.* As Mr. Scannell stated in his February 15, 2017 Declaration, the real property purchased by Mr. Bulkhak has two separate addresses, “543 6<sup>th</sup> Street and 545 6<sup>th</sup> Street Bremerton, Wa.” CP 37.

<sup>7</sup> *Id.*

and requests to vacate the premises.<sup>9</sup> A 20-day Notice to Terminate Tenancy was sent to Mr. Scannell on November 28, 2016 by regular and certified mail and was posted on the door of the premises.<sup>10</sup>

On January 25, 2017, Mr. Bulkhak filed an Eviction Summons and Complaint for Unlawful Detainer against Mr. Scannell,<sup>11</sup> alleging that Mr. Scannell was “unlawfully holding over,”<sup>12</sup> seeking a writ of restitution and payment of rent from April 2015 through the “present day.”<sup>13</sup>

On February 8, 2017, Mr. Bulkhak filed a Motion for Order to Show Cause why “a Judgment should not be entered against the Defendant, and why a Writ of Restitution should not be issued returning possession to the Plaintiff.”<sup>14</sup>

On February 17, 2017, the trial court denied Mr. Bulhak’s Motion because the posting of the Summons, Complaint, and Order to Show Cause<sup>15</sup> occurred eight days before the hearing on the Motion instead of nine days as required by RCW 59.18.055.<sup>16</sup>

On March 3, 2017, Mr. Bulkhak mailed by regular and certified

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<sup>8</sup> CP 10.

<sup>9</sup> CP 5.

<sup>10</sup> *Id.*

<sup>11</sup> CP 1-13.

<sup>12</sup> CP 5.

<sup>13</sup> CP 6.

<sup>14</sup> CP 31.

<sup>15</sup> CP 32-33

<sup>16</sup> CP 42.

mail a 60-Day Notice to Vacate at 543 6<sup>th</sup> Street, Bremerton, WA 98337.<sup>17</sup>

On May 23, 2017, Mr. Bulkhak obtained an Order to Post and Mail by regular and certified mail the Amended Summons and Amended Eviction Summons and other documents pursuant to RCW 59.18.055.<sup>18</sup> The Amended Eviction Summons, Amended Complaint for Unlawful Detainer and the Order to Post were so mailed to Mr. Scannell at 543 6<sup>th</sup> Street, Bremerton, WA 98337 on May 24, 2017.<sup>19</sup>

On June 16, 2017, Mr. Bulkhak mailed by regular and certified mail a copy of the Order to Show Cause “why a Judgment should not be entered against the Defendant, and why a Writ of Restitution should not be issued return to the Plaintiff possession of: 543 - 6<sup>th</sup> Street, Bremerton, WA 98337.”<sup>20</sup>

On July 7, 2017, the trial court held the show cause hearing, during which the court found that the County sold the subject property to Mr. Bulkhak “two years ago,” that the unlawful detainer proceeding was “appropriate,” and that the notices to Mr. Scannell were “sufficient.”<sup>21</sup> The Court entered an Order for Writ of Restitution of the premises described as

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<sup>17</sup> CP 71-72.

<sup>18</sup> CP 46.

<sup>19</sup> CP 66-67.

<sup>20</sup> CP 49-50.

<sup>21</sup> CP 75.

“543 6<sup>th</sup> Street (upstairs in back) Bremerton, WA 98336.”<sup>22</sup> The court entered the Writ of Restitution on that same date, commanding the Sheriff to “break and enter, if necessary, to deliver said Plaintiff possession of the said premises described in said Complaint . . . and to make return of this writ in ten (10 days from the date hereof[.]”<sup>23</sup>

On July 13, 2017, Mr. Scannell filed an “Emergency Motion and Declaration for Order Shortening Time, Motion for Injunction Pending Decision on Setting of Supersedeas Bond and Motion for Clarification, Motion Setting Aside Writ of Restitution for Failing to Comply with Court Order.”<sup>24</sup> On that same date, Mr. Scannell filed an “Emergency Motion and Declaration for Stay and Setting of Supersedeas Bond and Motion for Clarification.”<sup>25</sup> The Court entered an Order setting a hearing on the various Motions for July 18, 2017.<sup>26</sup>

On July 17, Mr. Scannell filed a Motion for Reconsideration, asserting that the court erred in finding that his option to purchase was extinguished “because of the tax sale,” arguing that “the lease survives for the same reason the option survives, because it would be inequitable for the lease holder to lose rights under his lease, as with the option, because

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<sup>22</sup> CP 78-79.

<sup>23</sup> CP 80.

<sup>24</sup> Dkt.No. 35.

<sup>25</sup> Dkt. No. 36.

<sup>26</sup> Dkt. No. 37.

he had no duty to pay taxes.”<sup>27</sup>

On July 18, 2017, the hearing on Mr. Scannell’s motions was held. The court found that “the property was obtained at a tax foreclosure sale by the current owner,” and that “Mr. Scannell was under a contract with the previous owner.”<sup>28</sup> The court denied Mr. Scannell’s Motion to Set Aside the Order for Writ of Restitution, but granted his Motion for Stay of Writ of Restitution.<sup>29</sup>

On July 19, 2017, the court entered its Order on Reconsideration, denying the Motion for Reconsideration of the Order for Writ of Restitution because “the Motion states insufficient basis for reconsideration under CR 59.”<sup>30</sup>

On August 4, 2017, Mr. Scannell filed his Notice of Appeal, seeking review of the Order for Writ of Restitution and Writ of Restitution entered on July 7, 2017; the Order Denying Defendant’s Motion to Set Aside the Order for Writ of Restitution and Granting Stay of Writ of Restitution entered on July 18, 2017 Set Aside and order Granting Stay, and the Order Denying Motion for Reconsideration.

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<sup>27</sup> Dt. No. 38, page 1.

<sup>28</sup> Dkt. No. 40.

<sup>29</sup> Dkt. No. 39, pages 1-2.

<sup>30</sup> CP 41.

#### **IV. ARGUMENT**

Mr. Scannell argues that the tax sale of the property was invalid because, based solely on Mr. Scannell's own statement, neither he nor Mr. King received notice of the tax sale. Mr. Scannell further argues that because the tax sale was invalid, Mr. King is still the owner of the property, Mr. Scannell has a rental agreement with Mr. King, and no landlord-tenant relationship exists between Mr. Bulkhak and Mr. Scannell. Mr. Scannell argues that the trial court erred in issuing the writ of restitution because Mr. Bulkhak does not own the property and is not owed any rents by Mr. Scannell and, therefore, Mr. Bulkhak's unlawful detainer suit is frivolous and unsupported by the facts or the law.

Mr. Scannell's arguments fail because they lack support in the law and the facts of this case.

##### **A. Standard of review.**

While this case involves numerous ancillary issues, at its core, this case is an appeal of the trial court's ruling in an unlawful detainer action under 59.18 RCW.

In reviewing an unlawful detainer action, the Court of Appeals reviews findings of fact for substantial evidence and conclusions of law de

novo.<sup>31</sup> The reviewing court begins with a presumption in favor of the trial court's findings.<sup>32</sup> The appellant has the burden of demonstrating that findings of fact are not supported by substantial evidence.<sup>33</sup>

Unchallenged findings of fact are verities on appeal and unchallenged conclusions of law become the law of the case.<sup>34</sup>

**B. The trial court did not err in issuing a writ of restitution.**

1. Mr. Bulkhak possesses a valid title to the Premises obtained via a tax deed sale.

On March 30, 2015, the Kitsap County Treasurer granted Mr. Bulkhak a tax deed for the premises occupied by Mr. Scannell.<sup>35</sup> A tax deed is a new and independent title granted by the state and bars all inquiry as to objections to the title or encumbrances made or existing before the tax deed was issued.<sup>36</sup> A foreclosure of property under a tax lien “vests in a purchaser at a sale held under such foreclosure a new title independent of all previous titles or claims of title to the property (*Hanson v. Carr*, 66 Wn. 81, 118 Pac. 927). Manifestly, both record and possessory title are

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<sup>31</sup> *Pham v. Corbett*, 187 Wn. App. 816, 825, 351 P.3d 214 (2015) (citing *Hegwine v. Longview Fibre Co., Inc.*, 132 Wn. App. 546, 555–56, 132 P.3d 789 (2006)).

<sup>32</sup> *Id.* (citing *Green v. Normandy Park Riviera Section Comm. Club, Inc.*, 137 Wn. App. 665, 689, 151 P.3d 1038 (2007)).

<sup>33</sup> *Id.*

<sup>34</sup> *Rush v. Blackburn*, 190 Wn. App. 945, 956, 361 P.3d 217 (2015).

<sup>35</sup> CP 8.

<sup>36</sup> *Wilson v. Korte*, 91 Wn. 30, 33, 157 P. 47 (1916).

equally absolutely destroyed by such a foreclosure.”<sup>37</sup>

Under RCW 84.64.180, a tax deed executed by the county treasurer is

prima facie evidence in all controversies and suits in relation to the right of the purchaser...to the real property thereby conveyed of the following facts: First, that the real property conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; second, that the taxes were not paid at any time before the issuance of deed; third, that the real property conveyed had not been redeemed from the sale at the date of the deed; fourth, that the real property was sold for taxes, interest, and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; sixth, **that the sale was conducted in the manner required by law.**

Emphasis added.

Mr. Scannell argues that he and Mr. King have superior title to Mr. Bulkhak because “the county sold without notice to them and without a public posting as required by statute and caselaw.”<sup>38</sup> However, Mr. Scannell fails to address the fact that under RCW 84.64.180, the issuance of the tax deed is prima facie evidence that the sale of the property was conducted in the manner required by law, including that the required notice was given to all necessary parties. Further, Mr. Scannell fails to cite *any* evidence to rebut the statutory presumption that the notice given

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<sup>37</sup> *Wilson v. Korte*, 91 Wn. 30, 33, 157 P. 47, 49 (1916).

<sup>38</sup> Appellant’s Opening Brief, p. 10.

prior to the tax sale was sufficient.

Any title to the property possessed by Mr. Scannell or Mr. King was destroyed by the tax foreclosure. As the purchaser of the property at a lawful tax sale, Mr. Bulkhak possesses valid title to the property that is superior to any other claims to title for the property.

2. Mr. Bulkhak may pursue an unlawful detainer action against Mr. Scannell because Mr. Bulkhak created a landlord-tenant relationship between them by demanding rent.

Because Mr. Bulkhak purchased the property at a tax sale, initially, he owned the property free of any prior encumbrances, including any prior leases of the property:

**In short, the tax lien is paramount to all other liens or claims. When foreclosure of such lien is made and real estate is sold thereunder, the fee passes to the purchaser, and all grants made by the owner of the fee must, of course, fall with the foreclosure. In *Carlson v. Curran*, 42 Wn. 647, 85 Pac. 627, 6 L. R. A. (N. S.) 260, where it was sought to establish the relation of landlord and tenant after a tax foreclosure, we said: 'The relation of landlord and tenant does not arise by reason of the tax sales, as the appellants acquired their title, if any, from an independent source, and took the property free from any contracts or obligations of the former owners.' This must be the rule. Otherwise the owner of real estate may grant an easement or leasehold and surrender possession of the real estate to such grantee, and, upon foreclosure of the tax lien by the state, the purchaser would acquire only the fee, subject to the easement of lease, which would destroy the priority of the tax lien. The tax foreclosure being regular against the land and not attacked, a deed issued thereunder vested the title in fee with the right to**

**possession in the purchaser at the foreclosure sale, and divested the owner and all claiming under him of all right to the land.**<sup>39</sup>

Thus, initially, Mr. Bulkhak took title to the property free from the lease between Mr. Scannell and Mr. King. However, as will be discussed below, by demanding rent in the January 25, 2017<sup>40</sup> complaint for unlawful detainer and again in the June 15, 2017<sup>41</sup> amended complaint for unlawful detainer, Mr. Bulkhak created a tenancy by sufferance between himself and Mr. Scannell by demanding rent from Mr. Scannell.

Where an individual possesses a piece of property without the consent of the property owner but the property owner then demands rent, Washington law recognizes an “implied tenancy by sufferance.”<sup>42</sup> This principle has been codified by the Legislature at RCW 59.04.050:

Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he or she shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he or she occupied the premises, and shall forthwith on demand surrender his or her said possession to the owner or person who had the right of possession before said entry, and all his or her right to possession of said premises shall terminate immediately upon said demand.

This implied landlord-tenant relationship is sufficient to support an

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<sup>39</sup> *Hanson v. Carr*, 66 Wn. 81, 83–84, 118 P. 927, 928 (1911) (emphasis added).

<sup>40</sup> CP 4-5.

<sup>41</sup> CP 54-55.

action for unlawful detainer by the property owner against the individual in possession of the premises.<sup>43</sup>

On April 4, 2015, and November 28, 2016, Mr. Bulkhak ordered Mr. Scannell to vacate the premises.<sup>44</sup> Thus, as soon as a week after title in the property vested in Mr. Bulkhak, but no later than November 28, 2016, Mr. Scannell was given notice that he was occupying the property without Mr. Bulkhak's consent. On January 25, 2017, Mr. Bulkhak filed a Complaint for Unlawful Detainer in which he asserted that Mr. Scannell was unlawfully holding over, trespassing, and owed reasonable rent for the months of April 2015 through January 2017.<sup>45</sup>

Mr. Bulkhak's demand that Mr. Scannell pay rent in the January 2017 complaint created an implied tenancy of sufferance under RCW 59.04.050. Accordingly, no later than January 25, 2017, Mr. Scannell became liable for rental payment to Mr. Bulkhak and was required by RCW 59.04.050 to surrender possession of the property to Mr. Bulkhak upon Mr. Bulkhak's demand.

3. Mr. Bulkhak gave sufficient notice to Mr. Scannell to support an unlawful detainer action.

Mr. Scannell argues that Mr. Bulkhak gave insufficient notice for

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<sup>42</sup> *Williamson v. Hallett*, 108 Wn. 176, 178–79, 182 P. 940 (1919).

<sup>43</sup> *See Williamson v. Hallett*, 108 Wn. 176, 182 P. 940 (1919).

<sup>44</sup> CP 10.

Mr. Scannell to be required to vacate the property because “there are several tenants and/or guests that occupy the building” but Mr. Bulkhak is attempting to “evict them all without giving any except John Scannell any kind of notice.”<sup>46</sup> Mr. Scannell further argues that the notice given by Mr. Bulkhak was insufficient because “any notices he has posted list only 543 6<sup>th</sup> St.” and “ignor[es] the fact that the building has two addresses, 543 and 545,” “much of 543 is not under the control of John Scannell,” and “[t]here are at least two other occupants that are in the section of the building that are not part of [Mr. Scannell’s] tenancy.”<sup>47</sup>

Chapter 59.12 RCW governs unlawful detainer actions. RCW 59.12.040 provides, in pertinent part,

Any notice provided for in this chapter shall be served...if the person to be notified be a tenant, or an unlawful holder of premises, and...if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated.

First, Mr. Scannell has no standing to assert any rights to notification held by others, be it Mr. King or other “tenants.” Mr. Scannell is appearing pro se in this appeal.

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<sup>45</sup> CP 5.

<sup>46</sup> Appellant’s Opening Brief, p. 11.

Second, there is ample evidence in the record to support the trial court's finding that Mr. Scannell received sufficient notice.

On June 15, 2017, Mr. Bulkhak filed an Amended Complaint for Unlawful Detainer.<sup>48</sup> It was this complaint that resulted in a ruling in favor of Mr. Bulkhak and Mr. Scannell appealing this matter to this court.

Attached to this complaint was the April 4, 2015 notice to vacate and certified mail receipt documenting that the April 4, 2015 notice was mailed to 543-545 6<sup>th</sup> St., Bremerton, WA 98337.<sup>49</sup> Mr. Bulkhak had previously attempted to serve the June 15, 2017 amended complaint on Mr. Scannell personally at 543 6<sup>th</sup> Street at least four times unsuccessfully.<sup>50</sup> Finally, the trial court granted Mr. Bulkhak's motion to be permitted to serve the amended complaint on Mr. Scannell by posting it in a conspicuous place on the premises and mailing copies to Mr. Scannell as required by RCW 59.18.055.<sup>51</sup> The complaint was posted by knocking on the upstairs rear door of 543 6<sup>th</sup> St. and posting a copy of the amended summons and complaint on the window of the door.<sup>52</sup>

Mr. Scannell admitted in pleadings filed in the trial court that while he lived in the building he worked for Mr. King as the property manager of

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<sup>47</sup> Appellant's Opening Brief, p. 11.

<sup>48</sup> CP 54-65.

<sup>49</sup> CP 60-61.

<sup>50</sup> CP 45.

<sup>51</sup> CP 45-46.

the building which he described as “a business office/duplex” with the addresses of 543 and 545 6<sup>th</sup> Street, Bremerton, WA 98058.<sup>53</sup> The lease recorded by Mr. Scannell indicates that he leases a portion of the property located at 543 6<sup>th</sup> St. to include the basement and numerous rooms adjacent to the portion of the building used as the law office.<sup>54</sup> In a declaration filed on February 15, 2017, Mr. Scannell described the portion of the property that he rented as the “back residential tenancy” or “back unit and basement.”<sup>55</sup> Mr. Scannell admitted that he did receive other notices delivered by Mr. Bulkhak to Mr. Scannell’s unit on the property.<sup>56</sup>

Mr. Bulkhak served Mr. Scannell notice of the unlawful detainer proceedings that complied with both RCW 59.12.040 as well as RCW 59.18.055. Not only was Mr. Scannell the property manager and, therefore, had access to all areas of the property where postal carrier or process server might deliver a letter or post a notice, the notice was posted on the door to the portion of the property identified by Mr. Scannell as his rented property. Mr. Scannell’s argument that he did not receive sufficient notice of the June 15, 2017 unlawful detainer action is specious and lacks

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<sup>52</sup> CP 48.

<sup>53</sup> Dkt. No. 35, p. 5. Respondent Bulkhak is submitting a supplemental designation of Clerk’s Papers simultaneous with this brief which designates Dkt. No. 35 to be transmitted to this court.

<sup>54</sup> CP 40.

<sup>55</sup> CP 37-38.

<sup>56</sup> CP 38.

factual support in the record. The trial court did not err in finding that the notice given to Mr. Scannell was sufficient and that Mr. Bulkhak was entitled to a writ of restitution.<sup>57</sup>

**C. Mr. Scannell’s option to purchase recorded in the lease grants him no rights as to Mr. Bulkhak or claim against Mr. Bulkhak’s title.**

Citing *Coy v. Raabe*, 69 Wn.2d 346, 418 P.2d 728 (1966) and *Graham v. Raabe*, 62 Wn.2d 753, 384 P.2d 629 (1963), Mr. Scannell argues that he holds a “valid option to purchase, and lease” and “his option to purchase and lease survive[d] any tax sale, because as a tenant and the holder of an option, he is not responsible for the taxes.”<sup>58</sup> Again, Mr. Scannell’s arguments fail.

As has been discussed above, it is the rule that the purchaser at a tax sale “[akes] the property free from any contracts or obligations of the former owners.”<sup>59</sup> Neither Mr. Scannell’s lease or option to purchase survived the tax sale.

**D. Mr. Bulkhak seeks an award of attorney’s fees and costs incurred in defending this frivolous appeal pursuant to RCW 4.84.185 and/or RAP 18.9(a).**

RCW 4.84.185 provides, in pertinent part,

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<sup>57</sup> CP 75, 78-79.

<sup>58</sup> CP 10.

<sup>59</sup> *Hanson*, 66 Wn. 81 at 83, 118 P. 927, quoting *Carlson v. Curran* 42 Wn. 647, 85 P. 627.

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense.

Under RCW 4.84.185, “[a]n appeal is frivolous when ‘there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of any merit that there was no reasonable possibility of reversal.’”<sup>60</sup> Compensatory damages may be awarded under RAP 18.9(a) if an appeal is frivolous. “An appeal is frivolous if, considering the whole record, the court is convinced there are no debatable issues on which reasonable minds may differ and it is totally devoid of merit.”<sup>61</sup>

Mr. Scannell asserts in this appeal that (1) the tax sale of the property was invalid because neither he nor Mr. King received notice of the tax sale; (2) Mr. King, who previously owned the subject premises, is still the owner of the property; (3) Mr. Scannell has no landlord-tenant relationship exists with Mr. Bulkhak; (4) Mr. Scannell has a rental agreement with Mr. King, and no landlord-tenant relationship exists

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<sup>60</sup> *Fernando v. Nieswandt*, 87 Wn. App. 103, 112, 940 P.2d 1380, 1385 (1997) (quoting *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987) (citing *Boyles v. Department of Retirement Sys.*, 105 Wn.2d 499, 509, 716 P.2d 869 (1986))).

between Mr. Bulkhak and Mr. Scannell; (5) Mr. Scannell argues that the trial court erred in issuing the writ of restitution because Mr. Bulkhak does not own the property and is not owed any rents by Mr. Scannell and, therefore, Mr. Bulkhak's unlawful detainer suit is frivolous and unsupported by the facts or the law.

• *Notice of Foreclosure and Notice of the Tax Sale.* A county must initiate foreclosure proceedings when any property has been in tax delinquency for three years.<sup>62</sup> After receiving the order and judgment of the court on foreclosure, a county must immediately proceed to sell the property.<sup>63</sup> “[P]rior to the sale of the property, the treasurer must order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder’ and any liens on the property.”<sup>64</sup>

RCW 84.64.050(4) governs notice of foreclosure of tax liens against residential real property in the name of a county. In pertinent part, the statute states:

Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to

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<sup>61</sup> *Matter of Recall of Boldt*, 187 Wn.2d 542, 556, 386 P.3d 1104, 1112–13 (2017)

<sup>62</sup> RCW 84.64.050(1).

<sup>63</sup> RCW 84.64.050(4).

<sup>64</sup> *Jespersen v. Clark Cty.*, 199 Wn. App. 568, 579, 399 P.3d 1209, 1216 (2017) (quoting RCW 84.64.080(4)).

appear within thirty days after service of such notice and defend such action or pay the amount due.

Mr. Scannell was not entitled to notice of foreclosure on the subject property because he was not an “owner” of the property, nor did he have a “recorded interest in or lien of record upon the property.” Mr. Scannell’s lease, even if it was recorded, did not create an “interest . . . upon the property.” Under Title 84, “all leases of real property and leasehold interests therein for a term less than the life of the holder” constitute personal property only.<sup>65</sup>

There can be no question but that, under our statutes and decisions, a leasehold interest in real estate for a term less than life is personal property. [Citations omitted.] It is defined, for purposes of taxation, as personal property, in RCW 84.04.080, and excluded from the definition of real property in RCW 84.04.090.

The concept of leasehold estates as personal property, rather than real property, is generally accepted by the courts. In 51 C.J.S. Landord and Tenant s 26, we find this summation:

‘Except in so far as the common-law rules may have been modified by statute, terms for years, however long, are chattels real, falling within the classification of personal property. They are governed by the rules of law applicable to other kinds of personal property, and ordinarily are not embraced by the term ‘real property’ or ‘real estate’ as used generally or in statutes; and this is true although the lease gives the tenant an

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<sup>65</sup> RCW 84.04.080

option to purchase, or an option to purchase is conferred by statute after the expiration of a specified time, or although a written instrument whereby a leasehold interest is created is by statute deemed a 'conveyance' for the purpose of recordation.<sup>66</sup>

RCW 84.64.080(5) governs notice of the sale of property subject to a real property tax judgment:

The county treasurer must first give notice of the time and place where the sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which must be in the office of the treasurer.

The tax deed from Kitsap County to Mr. Bulkhak is prima facie evidence that, inter alia, "the sale was conducted in the manner required by law."<sup>67</sup> The tax deed issued by Kitsap County states that Mr. Bulkhak "duly purchased [the subject premises] in compliance with the laws of the State of Washington."<sup>68</sup> Mr. Scannell presented no evidence whatsoever that the County failed to comply with RCW 84.64.080(5). Mr. Scannell's assertion that the tax sale was "invalid" is factually and legally baseless.

• *Owner of the Subject Premises*

Mr. King is not the owner of the subject premises.

We have held...that a tax deed, under our statutes, institutes a new and complete title, subject to defeasance only, by a

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<sup>66</sup> *Andrews v. Cusin*, 65 Wn.2d 205, 207, 396 P.2d 155, 156 (1964)

<sup>67</sup> RCW 84.64.180.

<sup>68</sup> CP 8.

suit by the former owner which must be brought within three years. It is said in *Sparks v. Standard Lumber Co.*, 92 Wn. 584, 586, 159 P. 812, 814:

To this purpose the courts have given liberal response. So that, with the passing of the old rule, it may fairly be said that a tax title is no longer nullius filius, **but is equivalent to a decree quieting the title in the purchaser as a grant from the sovereign state.**<sup>69</sup>

Mr. Bulkhak received a tax deed to the subject property on March 30, 2015. As a matter of law, Mr. Bulkhak has been the owner of the property since that date. Mr. Scannell's assertion that Mr. King remains the owner of the property is contrary to law. Mr. Scannell's assertion that he still has a rental agreement with Mr. King is also contrary to law: when foreclosure of a tax lien is made and real estate is sold thereunder, "the fee passes to the purchaser, **and all grants made by the owner of the fee must, of course, fall with the foreclosure.**"<sup>70</sup>

• *Landlord/Tenant Relationship Between Mr. Bulkhak and Mr. Scannell*

As discussed above, a tenancy by sufferance was created when Mr. Bulkhak claimed that he was owed rent by Mr. Scannell, who was "holding over." Even though not memorialized in writing, there was a landlord/tenant relationship between Mr. Bulkhak and Mr. Scannell. As

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<sup>69</sup> *Eagles v. Gen. Elec. Co.*, 5 Wn.2d 20, 35, 104 P.2d 912, 918 (1940) (emphasis added).

the trial court correctly found, Mr. Bulkhak's unlawful detainer action was appropriate.<sup>71</sup>

- *The trial court did not err in issuing the writ of restitution*

Mr. Scannell asserted that the trial court erred in issuing the writ of restitution because Mr. Bulkhak does not own the property and is not owed any rents by Mr. Scannell. However, Mr. Bulkhak does own the property, and the trial court did not enter any money judgment for rent.<sup>72</sup> The trial court properly issued a writ of restitution requiring Mr. Scannell to turn over the subject property to Mr. Bulkhak.

- *Mr. Scannell's assertion that Mr. Bulkhak's unlawful detainer suit is "frivolous" is baseless*

Mr. Bulkhak purchased the subject property at a tax sale conducted by Kitsap County on March 30, 2015. The tax deed is prima facie evidence -- unrebutted by Mr. Scannell -- that the sale was conducted in compliance with Washington law. The court properly found that Mr. Bulkhak's unlawful detainer was appropriate and properly entered a writ of restitution requiring Mr. Scannell to (finally) vacate and turn over the property to its owner.

Because there are no debatable issues upon which reasonable

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<sup>70</sup> *Hanson v. Carr*, 66 Wn. 81, 83-84, 118 P.2d 927 (1911) (emphasis added).

<sup>71</sup> CP 31.

minds could differ and Mr. Scannell's appeal is so totally devoid of any merit that there is no reasonable possibility of reversal, this Court should rule that this appeal is frivolous and accordingly, award attorney's fees and costs incurred in defending this appeal as compensatory damages under RCW 4.84.185 and/or RAP 18.9(a).

**V. CONCLUSION**

For the reasons set out above, this court should rule this appeal is frivolous, affirm the trial court in all respects, and award Mr. Bulkhak reasonable attorney's fees and costs incurred in defending against this appeal.

Respectfully submitted this 14<sup>th</sup> day of February, 2018.



RICHARD PATRICK, WSBA No. 36770  
Counsel for Respondent Bulhak

**Certification**

I hereby certify that on February 14, 2018 I delivered via email to zamboni\_john@hotmail.com a true and correct copy of the document to which this certificate is attached for delivery to John Scannell.

  
\_\_\_\_\_  
Donna Melton

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<sup>72</sup> CP 31.

**RICHARD P. PATRICK, ATTORNEY AT LAW**

**February 14, 2018 - 11:19 AM**

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**Appellate Court Case Title:** John Scannell, Appellant v. Georgiy Bulkhak, Respondent  
**Superior Court Case Number:** 17-2-00146-7

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