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Division II
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No. 51841-4-II

Court of Appeals, Div. II, of the State of Washington

Patricia Landes,

Respondent,

v.

Patrick Cuzdey,

Appellant.

Brief of Appellant

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1. Assignments of Error

Assignments of Error

1. The trial court erred in granting Landes' motion for summary judgment.
2. The trial court erred in entering judgment and order for writ of restitution without a trial.
3. The trial court erred in entering that portion of finding of fact 2.2 that reads, "… Plaintiff paid rent in January and February of 2016… There remains due total rent arrearages of $34,500.00."
4. The trial court erred in entering that portion of finding of fact 2.3 that reads, "… defendant … is now unlawfully detaining the premises."
5. The trial court erred in entering finding of fact 2.5: "Plaintiff(s) costs and fees for this action are set forth in the Cost Bill filed herein, for the following amounts: Costs - $427.00, Attorney Fees - $8,234.00."
6. The trial court erred in entering that portion of finding of fact 2.8 that reads, "… even though Mr. Cuzdey's attorney in the quiet title action previously stated Mr. Cuzdey's circumstance was governed by the landlord tenant act."
7. The trial court erred in entering finding of fact 2.9: "Mr. Cuzdey was represented by counsel when his attorney stated Mr. Cuzdey's circumstance was governed by landlord tenant act. Based on transcripts and filings submitted in this action, Mr. Cuzdey's attorney and Mr. Cuzdey understood paying rent in January of 2016 would cause Mr. Cuzdey to enter into a contract governed by the landlord tenant act."

8. The trial court erred in entering finding of fact 2.10: "The Court has proper subject matter jurisdiction over this action based on Mr. Cuzdey entering into an enforceable contract in January of 2016."

9. The trial court erred in entering conclusions of law 3.2 through 3.5.

10. The trial court erred in awarding $34,500 in unpaid rent.

11. The trial court erred in awarding $8,234.00 in attorney's fees.

Issues Pertaining to Assignments of Error

1. A trial court cannot hear an unlawful detainer case unless the jurisdictional requirements of the relevant statutes are met. For multiple factual reasons, neither Chapter 59.18 RCW nor Chapter 59.12 RCW applies. Did the trial court err in not dismissing the case? (assignments of error 1-11)

2. Even if some unlawful detainer situation applies, where Chapter 59.18 RCW does not apply, there is no statutory authorization for an award of attorney's fees. Did the trial court err in awarding attorney's fees? (assignments of error 2, 5, 9, 11)

3. In an unlawful detainer action, whenever there are disputed facts, a trial is required. Cuzdey disputed multiple material facts in his answer and in response to Landes' summary judgment motion. Did the trial court err in deciding the case without a trial? (assignments of error 2-11)

2. Statement of the Case

2.1 Cuzdey lived on the property for over 30 years as if it were his own, believing he had purchased it, without any obligation to pay rent.

In 1983, Benny and Patrica Landes purchased the real property that is the subject of this case. CP 37. Cuzdey was married to Landes' daughter, Karla, at the time. CP 37. Cuzdey and his wife moved onto the real property in 1984, upgrading to a NOVA double-wide mobile home in 1985. CP 37. Cuzdeys had exclusive possession of the real property from 1984 to 1997. CP 11[1]; *see* CP 37-38.

Cuzdeys never paid rent. CP 38. The parties never considered Cuzdeys tenants. CP 38. There was no rental agreement. CP 38. Cuzdeys made payments on the NOVA, eventually paying it in full. CP 38. Cuzdeys also made payments to Landes for the land, believing that Cuzdeys were purchasing it. CP 38.

In 1997, Landes placed a second mobile home on the property and moved into it themselves. CP 38. Cuzdey understood this as an arrangement of convenience, as Cuzdeys agreed to care for Landes as they advanced in age. CP 38.

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[1] CP 10-21 contain this Court's unpublished opinion in *Cuzdey v. Landes*, No. 75632-0-I (Apr. 3, 2017), which was provided to the trial court in Landes' Complaint in Unlawful Detainer.

Cuzdeys and Landes continued to live on the property this way until 2014. *See* CP 11-12. Benny Landes passed away in 2001. CP 12.

2.2 After Cuzdey's divorce from Landes' daughter, Landes sought to evict Cuzdey from the property, leading to years of bitter litigation over ownership and possession of the property.

In May 2014, Karla divorced Patrick. CP 12. In June, Landes served Cuzdey with a notice to terminate tenancy on the real property. CP 12. In July, Cuzdey sought to protect his rights by suing Landes to quiet title to the property, believing he had purchased it long ago. CP 12.

After multiple iterations of a motion for summary judgment, the trial court dismissed Cuzdey's claims and quieted title to the land and the mobile home to Landes. Cuzdey appealed the decision.

2.3 After the trial court dismissed Cuzdey's quiet title claims, Landes sought to unilaterally create a tenancy via a "Notice to Begin Rental," solely to terminate it and evict Cuzdey.

Cuzdey sought a stay of the trial court's decision, in order to allow him to remain on the property pending appeal. On August 15, the trial court granted a temporary stay conditioned on Cuzdey's payment of $1,500 per month in place of rent, in order to give Cuzdey time to obtain an appeal bond. CP 38, 40-41.

In November 2015, Landes served Cuzdey with a "Notice to Begin Rental Pursuant to Chapter 59.18 RCW." The notice stated,

> YOU ARE HEREBY NOTIFIED that the terms of your non-exclusive possession and occupancy of 5145 124th Way SW, Olympia, WA 98512 are hereby changed as of and after January 1, 2016, as follows:
>
> 1. On or after January 1, 2016, your non-exclusive possession and occupancy of the subject premises will be considered a month-to-month tenancy subject to the provisions of the Residential Landlord-Tenant Act, RCW 59.18.
>
> 2. Rent will be charged for your possession and occupancy of the subject premises, at the rate of $1,500.00 per month, payable in advance on or before the first day of each month, beginning January 1, 2016.

CP 23.

Cuzdey did not pay Landes' demanded rent on January 1. *See* CP 42. Landes served Cuzdey with a 3-day notice to pay or vacate on January 14. *See* CP 42.

Cuzdey sent Landes a letter on January 19, 2016, with which he enclosed money orders totaling $1,500. CP 38, 42-43. The letter stated,

> I have appealed the judgment quieting title and do not admit to being a tenant of Landes. I am paying under protest and under order of the superior court and reserve all of my rights, claims and arguments for purposes of the appeal and remand of the case.

> I further reserve the right to seek reimbursement of the payment if/when I prevail on appeal.
>
> Attached is a money order satisfying your demand for rent in the amount of $1,500.00 payable to Patricia Landes.

CP 42.

Cuzdey sent Landes another money order for $1,500 on February 3, 2016. CP 38-39, 44. Cuzdey wrote on and above the memo line, "#14-2-01483-7 – 'rent' for Feb. 2016." CP 44. Cuzdey asserts that he made these payments under the superior court's order for a stay pending appeal. CP 38.

2.4 After remand of the appeal in the quiet title action, Landes initiated this separate unlawful detainer action based on the "Notice to Begin Rental."

The appeal was transferred to Division I of this Court, which reversed the trial court as to ownership of the mobile home and remanded for further proceedings on that issue. CP 18-19. The court reversed the money judgment, CP 19-20, but affirmed Landes' ownership of the real property, CP 21.

Despite the fact that supersedeas funds were available to cover Landes' loss of use damages during the appeal, *see* CP 425, Landes chose not to seek any recovery on remand. Instead, she initiated this separate unlawful detainer action based on the 2015 "Notice to Begin Rental." *See* CP 3-4. In addition to seeking

a writ of restitution to evict Cuzdey, Landes also sought $34,500 "for unpaid rent and associated charges." CP 5.

Cuzdey answered and raised affirmative defenses. CP 258-62. Cuzdey denied that any unpaid rent was due. CP 259. Cuzdey alleged that the unlawful detainer action was improper because there was no landlord-tenant relationship between the parties. CP 260. He alleged that the proper forum for Landes to seek relief was through an ejectment claim in the original action on remand. CP 260. He alleged that he had built several significant structures on the real property, giving rise to an unjust enrichment claim against Landes. CP 261.

Landes brought a motion for summary judgment. *See* CP 263-83. Landes argued that judicial estoppel required the court to find that the situation was governed by the Residential Landlord Tenant Act, based on an answer Cuzdey's counsel gave to a tangential, hypothetical question posed by the court in a hearing on December 11, 2015. CP 271-73. She argued that equitable estoppel also required the court to find that the RLTA applied, based on Cuzdey's payments in January and February of 2016. CP 273-74. She argued that Cuzdey was bound by the terms of the "Notice to Begin Rental" because Cuzdey paid the requested amount of money. CP 275-76. She also argued that the "Notice to Begin Rental" unilaterally converted Cuzdey's occupancy to a tenancy under the RLTA. CP 276-80.

Cuzdey responded to the motion, asking the court to dismiss the case. CP 46-55. Cuzdey argued that the court did not have jurisdiction to hear the case under the unlawful detainer statute; the proper forum for Landes would be in the quiet title case on remand by making a claim for ejectment. CP 47-50, 53-54. Cuzdey argued that he was not a tenant under the RLTA because there was never a rental agreement. CP 50, 52-53. He argued that Landes could not unilaterally create a tenancy through the "Notice to Begin Rental." CP 50-53. He argued that the RLTA could not apply because Landes did not own the mobile home that she was purporting to rent to him. CP 51; RP, Jan. 12, 2018, at 16-17.

2.5 In the unlawful detainer action, the trial court granted Landes' motion for summary judgment and entered final judgment and order for writ of restitution against Cuzdey.

The trial court entered a judgment and order for writ of restitution in favor of Landes. CP 160-66. The trial court denied Landes' judicial estoppel argument but nevertheless found that Cuzdey entered into a rental agreement with Landes when he paid rent in January 2016. CP 162-63; RP, Jan. 12, 2018, at 28. The trial court entered judgment for $34,500 in unpaid rent. CP 164-65. The trial court awarded Landes costs and attorney's fees. CP 164-65.

Cuzdey moved for reconsideration. CP 169-73, 183-92. Cuzdey argued again that the proper forum for Landes was on remand in the quiet title action. CP 186. He argued again that his payment under protest did not create a rental agreement. CP 187-88. He argued again, in the alternative, that even if there was a rental agreement in 2016 after the trial court had ruled that Landes owned the land and the mobile home, such agreement became void and not subject to the RLTA when this Court reversed as to the mobile home. CP 170-71, 188-89. He argued that the judgment should be reduced because the rental value of the land alone was only $811.95 per month, not $1,500. CP 190-91. He argued that summary judgment was improper because the formation and terms of the alleged rental agreement were in dispute. CP 170. Finally, he argued that the attorney fee award should be vacated because there was no lodestar analysis. CP 191.

Landes responded. CP 195-208. While responding to Cuzdey's arguments, Landes argued that the "Notice to Begin Rental" related only to the real property, not to the mobile home. CP 202-03, 206. The trial court denied Cuzdey's motion. CP 482-83.

Landes sought a writ of restitution. CP 484. Cuzdey objected, again arguing that the court lacked jurisdiction. CP 497-502. The trial court granted the order. CP 515-16. The

writ was issued on March 16, 2018. CP 513-14. The sheriff's deputy reported that the writ was served on Cuzdey on March 19 and that when the deputy returned on March 22, Cuzdey had vacated the premises. CP 518. The sheriff's return attached expired writs issued in January, not the March 16 writ. CP 520-23.

3. Argument

The trial court erred in failing to dismiss this unlawful detainer action for lack of jurisdiction. Even if the trial court had jurisdiction under the unlawful detainer statutes, there were material facts in dispute, requiring a trial. The trial court erred in proceeding to final judgment without a trial. This Court should reverse the trial court's decisions, dismiss the unlawful detainer action, vacate the writ of restitution, and order that Cuzdey may return to the property.

An unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of property. *Faciszewski v. Brown*, 187 Wn.2d 308, 314, 386 P.3d 711 (2016). Although a superior court is normally a court of general jurisdiction and may resolve most civil claims, when the superior court hears an unlawful detainer action, it sits in a statutorily limited capacity and lacks authority to resolve issues outside the scope of the unlawful

detainer statute. *Angelo Property Co., LP v. Hafiz*, 167 Wn. App. 789, 809, 274 P.3d 1075 (2012).

At a summary judgment or show cause hearing in an unlawful detainer case, if there are material facts in dispute, the trial court must order a trial. CR 56(c) (summary judgment is only proper when "there is no genuine issue as to any material fact"); RCW 59.12.130 ("Whenever an issue of fact is presented by the pleadings it must be tried to a jury…"); RCW 59.18.380 (at the show cause hearing, "if … there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer," the court must deny relief and "enter an order directing the parties to proceed to trial").

The trial court's primary error in this case was in failing to recognize that it lacked jurisdiction to hear this unlawful detainer case. The trial court did not have jurisdiction for the action under the Residential Landlord-Tenant Act, Chapter 59.18 RCW because the RLTA does not apply to the rental of land for the placement of a mobile home. The trial court did not have unlawful detainer jurisdiction because the parties never had a rental agreement. The trial court did not have jurisdiction under Chapter 59.12 RCW because none of the situations defined in that statute apply here. Even if the trial court had jurisdiction to hear the unlawful detainer case, it had no statutory authority to award attorney's fees to Landes.

Assuming, for the sake of argument, that the trial court did have jurisdiction to hear the unlawful detainer case, the trial court erred in entering final judgment and order for writ of restitution without first ordering a trial to resolve disputed material facts. The formation and terms of the alleged rental agreement were facts in dispute. Ownership of the mobile home was a fact in dispute, to the extent Landes may have still been attempting to claim it. The amount of unpaid rent, if any, was a fact in dispute.

Landes made a number of alternative arguments in her motion for summary judgment, which the trial court either denied or did not address. Each of these alternative arguments fails on its merits. Judicial estoppel does not apply. Equitable estoppel does not apply. A landlord cannot convert a tenancy at will into a tenancy under the RLTA simply by posting notice.

The trial court lacked jurisdiction under the unlawful detainer statutes. This Court should reverse the trial court's decisions and dismiss the case. If this Court finds that the trial court had jurisdiction, nevertheless a trial was required. This Court should reverse the trial court's decisions and remand for a trial.

3.1 The trial court erred in not dismissing this case for lack of jurisdiction.

Whether a trial court had subject matter jurisdiction over a controversy is a question of law reviewed de novo. *Angelo Property Co., LP v. Hafiz*, 167 Wn. App. 789, 808, 274 P.3d 1075 (2012). Parties cannot confer subject matter jurisdiction on the court by agreement between themselves; a court either has subject matter jurisdiction or it does not. *Id.* Lack of subject matter jurisdiction renders a trial court powerless to decide the merits of the case. *Id.* (citing *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998)).

When the superior court hears an unlawful detainer action, it sits in a statutorily limited capacity and lacks authority to resolve issues outside the scope of the unlawful detainer statutes. *Angelo*, 167 Wn. App. at 809. This case, itself, was outside the scope of the unlawful detainer statutes and should have been dismissed.

First, the trial court did not have jurisdiction for the action under the Residential Landlord-Tenant Act, Chapter 59.18 RCW because the RLTA does not apply to the rental of land for the placement of a mobile home. Second, the trial court did not have unlawful detainer jurisdiction because the parties never had a rental agreement. Third, the trial court did not have

jurisdiction under Chapter 59.12 RCW because none of the situations defined in that statute apply here. Fourth, even if the trial court had jurisdiction to hear the unlawful detainer case, it had no statutory authority to award attorney's fees to Landes because the RLTA did not apply.

3.1.1 The trial court lacked jurisdiction to hear this unlawful detainer case under Chapter 59.18 RCW because the alleged rental agreement did not include the mobile home.

In a recent unpublished opinion, this Court held that the RLTA does not apply to rental of land for placement of a mobile home. *Parsons v. Mierz*, No. 49324-1-II, (Wn. Ct. App., Apr. 10, 2018).[2] This Court reasoned that because the mobile home was owned by Mierz, Parsons could not have been renting Mierz a "dwelling unit" as defined in the RLTA. Slip Op. at 4-5. Because the RLTA definitions of "landlord," "tenant," and "rental agreement" all refer to the rental of a "dwelling unit," none of those definitions applied to Parsons, Mierz, or their agreement. Slip Op. at 5-7. As a result, the RLTA did not apply. Slip Op. at 7. The same analysis applies here.

By its own terms, the RLTA applies only to the rental of a "dwelling unit." Landes argued to the trial court that the Nova mobile home in which Cuzdey has resided for over 30 years was

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[2] This case is cited as persuasive authority under GR 14.1.

not part of the alleged rental agreement. *E.g.,* CP 202-03, 206. Without the mobile home, the alleged agreement did not relate to any "dwelling unit," and the RLTA could not apply. Because the RLTA did not apply, the trial court did not have jurisdiction to hear Landes' unlawful detainer action. The action should have been dismissed.

The RLTA grants the district or superior courts "jurisdiction over any **landlord** or **tenant** with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter." RCW 59.18.050 (emphasis added). The RLTA defines a "tenant" as "any person who is entitled to occupy a **dwelling unit** primarily for living or dwelling purposes under a rental agreement." RCW 59.18.030(27) (emphasis added). It defines a "landlord" as "the owner, lessor, or sublessor of **the dwelling unit** or the property of which it is a part." RCW 59.18.030(14) (emphasis added). The transactions to which the RLTA applies are "rental agreements," defined to include "all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy **of a dwelling unit.**" RCW 59.18.030(25) (emphasis added). Thus, a trial court only has unlawful detainer jurisdiction under the RLTA over parties who are landlord or

tenant with respect to **a dwelling unit.** *See Parsons*, Slip Op. at 4-5.

Under the RLTA, "'Dwelling unit' is a **structure** or that part of a structure which is **used as a home, residence, or sleeping place** by one person or by two or more persons maintaining a common household, including but not limited to … **mobile homes**." RCW 59.18.030(9) (emphasis added). The only structure that could fit the bill in this case is the Nova mobile home, which Landes has admitted she sold to Cuzdey decades ago. The alleged rental agreement, which Landes says does not include the mobile home, falls outside of the operation of the RLTA. By Landes' own argument, the alleged agreement does not concern "the use or occupancy of a dwelling unit." Without a "dwelling unit," the RLTA cannot apply.

Landes has attempted to shoehorn herself into the definition of a "landlord," but this effort necessarily fails. Landes argued she was not renting out a dwelling unit, but the "property of which it is a part." But the mobile home **is not a part** of Landes' real property. This Court resolved this question in the first appeal when it ruled that the mobile home was personal property—not part of the real property—and remanded for a separate determination of its ownership. CP 18-19. Landes cannot be renting out the property of which the dwelling unit is a part, because the only possible dwelling unit—the Nova mobile

home—is not a part of the real property. The alleged rental agreement does not concern a dwelling unit or real property of which a dwelling unit is a part. Without a "dwelling unit," Landes cannot be a "landlord" under the RLTA, and the alleged contract cannot be a "rental agreement" under the RLTA. *See Parsons*, Slip Op. at 5-6 and 6-7.

Landes has argued, incorrectly, that excluding Cuzdey's situation from the RLTA is an absurd result. In reality, **including** this situation under the RLTA would be an even more absurd result. The RLTA imposes numerous duties on a landlord relating to care and maintenance of the dwelling unit. *E.g.,* RCW 59.18.060. Where, as here, the dwelling unit is the separate personal property of the "tenant," the landlord should not—and cannot—be responsible for maintenance of the dwelling unit. It makes no sense for the RLTA to apply to the rental of land for placement of a mobile home that is not owned by the landlord. Far from absurd, this is the only reasonable result.

Landes might be tempted to reverse her position and argue that the alleged rental agreement actually did include both the land and the mobile home. After all, Cuzdey has argued previously that this is the only interpretation that would have made sense at the time of the "Notice to Begin Rental," when the law of the case was the trial court's decision quieting title of both

the land and the mobile home to Landes. At that time, an agreement to rent only land to Cuzdey would have left him with no right to occupy the mobile home. However, by the time Landes initiated this unlawful detainer action, this Court's decision in the first appeal made it clear that Landes **did not** own the mobile home, because she had admitted that she sold it to Cuzdey and Cuzdey had paid it off long ago. CP 18-19. She could not rent it to Cuzdey because she did not own it.

Whether by Landes' own arguments or by operation of this Court's decision in the first appeal, the alleged rental agreement did not include the mobile home. Because the agreement did not concern a "dwelling unit," it was not subject to the RLTA. The "Notice to Begin Rental" was not a "rental agreement," Cuzdey was not a "tenant," and Landes was not a "landlord." As a result, the trial court could not take unlawful detainer jurisdiction under the RLTA.

Because there was no rental agreement and the trial court also lacked jurisdiction under the unlawful detainer provisions in Chapter 59.12 RCW, it was powerless to hear or decide Landes' unlawful detainer action. Landes' proper remedy was a claim for ejectment in the quiet title action on remand. This Court should reverse the trial court decisions and dismiss the unlawful detainer action.

3.1.2 The trial court lacked jurisdiction to hear this unlawful detainer case because the parties never had a rental agreement.

The trial court erroneously found that Cuzdey's payment to Landes in January 2016 created a rental agreement governed by the RLTA per the terms of the "Notice to Begin Rental." CP 162-63 (Findings of Fact 2.8, 2.9, and 2.10). The findings are not supported by evidence and reflect an erroneous interpretation of contract law. Under basic contract principles of offer and acceptance, Cuzdey did not accept Landes' offer because his payment did not conform to the terms of the offer. Because Cuzdey proposed different terms, his tender of payment was a rejection and counter-offer. When Landes accepted the tender, she necessarily also accepted Cuzdey's terms, which created a stay of enforcement of the quiet title judgment, not a rental agreement. Without a rental agreement, the trial court lacked jurisdiction to hear Landes' unlawful detainer action.

Landes argued that her "Notice to Begin Rental," which included a demand for monthly rent of $1,500, was a "unilateral contract" that Cuzdey allegedly accepted by paying the demanded amount. But Landes—and the trial court—overlooked what every first-year law student knows: **If acceptance does not match the terms of the offer, there is no contract.** It is, instead, a counter-offer, with new terms that can be accepted or rejected by

the original offeror. *See, e.g., Kysar v. Lambert*, 76 Wn. App. 470, 477-78, 887 P.2d 431 (1995).

Thus, Cuzdey could only have formed a contract with Landes by paying the demanded rent without any conditions. **He did not do that.** Cuzdey accompanied his offered payment with a letter that unequivocally rejected the notion that his payment constituted rent under any sort of landlord-tenant agreement. Cuzdey's letter stated, "I have appealed the judgment quieting title and **do not admit to being a tenant of Landes.** I am paying under protest and under order of the superior court and reserve all of my rights, claims and arguments for purposes of the appeal and remand of the case. I further reserve the right to seek reimbursement of the payment if/when I prevail on appeal." CP 42 (emphasis added). In stating that he was paying under order of the superior court and reserving the right to seek reimbursement after the appeal, Cuzdey manifested his intention that the payment was to secure a stay of execution while he continued to seek a stay from the courts or to raise the money for supersedeas.

Cuzdey's letter and tendered payment were not an acceptance of Landes' demand for rent. By including additional terms in his response, Cuzdey rejected Landes' offered contract and proposed a counter-offer of his own, under which he was not a tenant, but was merely paying for a stay of the judgment for

purposes of the appeal. Landes accepted the payment. In doing so, she also accepted Cuzdey's additional terms. As a result, there was no rental agreement.

This was the principle at play in *Higgins v. Egbert*, 28 Wn.2d 313, 182 P.2d 58 (1947). In *Higgins*, Ms. Egbert engaged Mr. Higgins as a broker to sell a piece of property she owned. *Higgins*, 28 Wn.2d at 314. The two entered into a verbal agreement, which was memorialized in writing by Higgins. *Id.* Higgins sent his writing, dated February 18 with a term of 60 days, to Egbert. *Id.* Egbert made numerous alterations and signed the altered copy on February 27. *Id.* at 315. She changed the term to 30 days, but left the start date of Feb. 18 intact. *Id.* When he received the writing, Higgins altered the start date to Feb. 27 but did not communicate the change to Egbert. *Id.*

The court interpreted this exchange as a unilateral contract—that is, one in which the offeror promises to do something if the offeree accepts by performing according to the terms of the offer. *Higgins*, 28 Wn.2d at 317-18. Egbert had offered to pay Higgins a commission if Higgins could successfully sell the property within 30 days of Feb. 18. *Id.* at 318. When Higgins received that offer, he had three options: accept by performing according to the terms of the offer; reject by opting not to perform; or attempt to negotiate new terms—that is, make a counter-offer. *Id.*

Cuzdey did not perform according to the terms of Landes' offer. Cuzdey made a counter-offer by adding terms of his own and communicating those terms to Landes in conjunction with his tender of payment. The tender, because it was accompanied by new terms, was not performance of the offer. It was a counter-offer.

Higgins was able to make a sale two days after the listing agreement expired. *Higgins*, 28 Wn.2d at 316. He sent the buyer's earnest money check to Egbert. *Id.* Egbert rejected the check, refused to sell to Higgins' buyer, and refused to pay Higgins any commission. *Id.* The court held that Egbert was well within her rights to reject Higgins' noncompliant performance. *Id.* at 318-19.

Landes, unlike Egbert, did not reject Cuzdey's noncompliant performance. She did not reject Cuzdey's checks. She cashed them. In doing so, she accepted Cuzdey's tender of payment **and the additional terms that went with it**. Under those terms, Cuzdey was not paying rent as a tenant. He was paying for a stay of Landes' attempts to evict him. The result is that there was no rental agreement and the trial court did not have jurisdiction to hear Landes' unlawful detainer action.

Landes cannot get past Cuzdey's additional terms by arguing that they were only his subjective intent. Washington follows the "objective manifestation theory" of contracts. *Hearst*

Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Under this theory, the courts determine the parties' intent by focusing on the objective manifestations of the parties, particularly in writing, "rather than on the **unexpressed** subjective intent of the parties." *Id.* (emphasis added). This unexpressed intent is "generally irrelevant if the intent can be determined from the actual words used." *Id.* at 503-04. The courts enforce what was actually written, not what was intended to be written. *Id.* at 504.

Cuzdey's letter, which accompanied and set the terms for his tender of payment, was an objective manifestation of the terms of his counter-offer. It was not an "unexpressed subjective intent." It was expressed, in writing, in words that Landes could read and understand in accordance with their ordinary meaning and the context in which they were written. Evidence of the context surrounding the making of a contract is admissible to determine the meaning of the words used, but not to show an unexpressed intention independent of the writing. *Hearst*, 154 Wn.2d at 503. Cuzdey's words can be interpreted in context to show that he was not paying rent as a tenant, but was offering to pay Landes for a stay of her eviction efforts until he could post an appropriate bond for the appeal.

The trial court erred in interpreting Cuzdey's tender and letter as acceptance of Landes' offer. There was no rental

agreement. Cuzdey remained a tenant at will, not subject to unlawful detainer proceedings. Landes' proper remedy was a claim for ejectment in the quiet title action on remand. This Court should reverse the trial court decisions and dismiss the unlawful detainer action.

3.1.3 The trial court lacked jurisdiction to hear this unlawful detainer case under Chapter 59.12 RCW because none of the factual situations in that statute applies.

Chapter 59.12 RCW contains other provisions under which a court may take unlawful detainer jurisdiction. The statute is specific in defining the situations in which it governs. A plaintiff may only use Chapter 59.12 RCW to remove a defendant from the premises if one of the definitions found within that Chapter applies.

There are seven situations that define an unlawful detainer. RCW 59.12.030. If none of these applies, the trial court could not hear Landes' unlawful detainer action. As will be shown below, not one of the statutory situations is applicable to Cuzdey.

First of all, each of the definitions is prefaced by the statutory language, "A tenant of real property for a term less than life is guilty of unlawful detainer…" RCW 59.12.030. This alone is enough to demonstrate that the statute does not apply

to Cuzdey. Cuzdey was never a tenant for any term. He lived on the property as if it were his own, with no time limit and no obligation to pay rent. He could not be in unlawful detainer under the statute.

The first statutory situation holds a person in unlawful detainer, "When he/she holds over or continues in possession ... of the property or any part thereof after the expiration of the term for which it is let to him or her." RCW 59.12.030(1). Again, there was no term. Cuzdey did not hold over. He was not in unlawful detainer under this definition.

The second situation is, "When he/she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof ... after the end of any such month or period, when the landlord, more than twenty (20) days prior to the end of such month or period, has served notice .... requiring him/her to quit the premises at the expiration of such month or period." RCW 59.12.030(2). There was never any rent due, monthly or by any other period. Cuzdey was not in unlawful detainer under this definition.

The third situation is, "When he/she continues in possession ... after a default in the payment of rent, and after notice in writing requiring ... payment of the rent or the surrender of the detained premises, served ... in behalf of the person entitled to the rent upon the person owing it, has

remained uncomplied with for the period of three (3) days after service thereof…" RCW 59.12.030(3). Again, there was no agreement to pay rent. Cuzdey was not in unlawful detainer under this definition.

The fourth situation is, "When he/she continues in possession ... after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held … and after notice in writing requiring in the alternative the performance ... or the surrender of the property ... served upon him/her ... shall remain uncomplied with for ten (10) days after service thereof…" RCW 59.12.030(4). Cuzdey did not neglect any condition, because there were none. Landes did not serve any such notice. Cuzdey was not in unlawful detainer under this definition.

The fifth situation is, "When he/she commits or permits waste upon the demised premises, or when he/she sets up or carries on thereon any unlawful business, or when he/she erects, suffers, permits, or maintains ... nuisance, and remains in possession after the service upon him/her of three (3) days' notice to quit." RCW 59.12.030(5). Cuzdey has not committed waste or nuisance. Landes did not serve notice of such. Cuzdey was not in unlawful detainer under this definition.

The sixth situation is, "A person who, without the permission of the owner and without having color of title

thereto, enters upon land of another and who fails or refuses to remove therefrom after three (3) days' notice in writing…" RCW 59.12.030(6). Cuzdey's original entry upon the land was with the permission of the owner. Cuzdey was not in unlawful detainer under this definition.

The seventh situation is, "When he/she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130." RCW 59.12.030(7). Cuzdey has not permitted any gang-related activity. Cuzdey was not in unlawful detainer under this definition.

An unlawful detainer action is also authorized to remove occupants, whether former owners or tenants, following a trustee's sale, RCW 59.12.032, but there was no trustee's sale in this case.

Chapter 59.12 RCW also allows for writ of restitution if the situation can be defined as forcible entry or forcible detainer, although neither apply to Cuzdey. "Every person is guilty of a forcible entry who either: (1) by breaking open windows, doors .... or by fraud, intimidation or stealth ... violence ... terror, enters upon or into any real property; or - (2) who, after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession." RCW 59.12.010. Cuzdey did not commit forcible entry.

"Every person is guilty of a forcible detainer who either - (1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or - (2) Who in the nighttime, or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three (3) days to surrender the same to such former occupant." RCW 59.12.020. Cuzdey did not hold the property in forcible detainer.

Because none of the statutory definitions for unlawful detainer, forcible entry, or forcible detainer apply to Cuzdey, the trial court lacked jurisdiction to hear Landes' unlawful detainer action. Landes' proper remedy was a claim for ejectment in the quiet title action on remand. This Court should reverse the trial court decisions and dismiss the unlawful detainer action.

3.1.4 Even if the trial court had jurisdiction, because Chapter 59.18 RCW does not apply, there was no statutory authority to support an award of attorney's fees.

In *Parsons v. Mierz*, this Court held that it was reversible error to award attorney's fees to the landlord in an unlawful detainer eviction that was not governed by the RLTA. *Parsons*, Slip Op. at 7. This result follows naturally from the statutory language of the RLTA and Chapter 59.12 RCW.

The RLTA provides that in an unlawful detainer action under that Chapter and regarding an alleged holdover tenant, "the prevailing party may recover his or her costs of suit or arbitration and reasonable attorney's fees." RCW 59.18.290(2). Chapter 59.12 RCW, by contrast, contains no attorney fee provision.

As demonstrated in Part 3.1.1, above, the "Notice to Begin Rental" was not a "rental agreement" under the RLTA because it did not concern a "dwelling unit" as defined in that statute. Therefore, even if the trial court had unlawful detainer jurisdiction under Chapter 59.12 RCW, Landes would not be entitled to recover attorney's fees under the RLTA. In other words, if jurisdiction was under Chapter 59.12 RCW and not the RLTA, then under the trial court's decision Landes would have been a prevailing party under Chapter 59.12 RCW, not under the RLTA, and Chapter 59.12 RCW does not provide for an award of attorney's fees. *See Federal National Mortgage Ass'n v. Steinmann*, 181 Wn.2d 753, 755-56, 336 P.3d 614 (2014) (reversing an award of prevailing party fees where the "tenants" were holdovers from a trustee's sale, not from an agreement under the RLTA).

Even if the trial court had unlawful detainer jurisdiction to evict Cuzdey, it did not have statutory authority to award

attorney's fees. This Court should reverse the award of attorney's fees.

3.2 Because material facts were in dispute, the trial court erred in granting summary judgment and entering final judgment and order for writ of restitution without a trial.

Even if the trial court had jurisdiction to hear and decide this unlawful detainer case, the trial court erred in deciding the case without a trial when material facts were in dispute.

At a summary judgment or show cause hearing in an unlawful detainer case, if there are material facts in dispute, the trial court must order a trial. CR 56(c) (summary judgment is only proper when "there is no genuine issue as to any material fact"); RCW 59.12.130 ("Whenever an issue of fact is presented by the pleadings it must be tried to a jury…"); RCW 59.18.380 (at the show cause hearing, "if … there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer," the court must deny relief and "enter an order directing the parties to proceed to trial").

This statutory requirement is in the nature of a summary judgment. *Faciszewski v. Brown*, 187 Wn.2d 308, 315 n.4, 386 P.3d 711 (2016). Summary judgment decisions are reviewed de novo. *Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 649, 336 P.3d 1112 (2014). The same standard should apply to this Court's review of the trial court's determination under the unlawful

detainer statute of whether there was a substantial issue of material fact requiring a trial.

The trial court erred in entering final judgment and order for writ of restitution without first ordering a trial because there were material facts in dispute. First, the facts surrounding the formation and terms of the alleged rental agreement were in dispute. Second, ownership of the mobile home was in dispute, to the extent Landes may still have been attempting to claim it. Third, the amount of past due rent, if any, was in dispute. This Court should reverse the trial court's judgment and orders and remand for trial.

3.2.1 The facts surrounding the formation and terms of the alleged rental agreement were in dispute.

As discussed in Part 3.1.2, above, Cuzdey responded to Landes' "Notice to Begin Rental" by tendering payment accompanied by a letter that stated that his payment was not rent, but was for purposes of staying execution of the trial court judgment, which he had appealed. The letter was an objective manifestation of the terms of his counter-offer. Under the "objective manifestation theory" of contracts, the letter was admissible evidence of the formation and terms of any agreement reached by Landes and Cuzdey. *See Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503-04,

115 P.3d 262 (2005). The greater context surrounding the making of a contract is also admissible to determine the meaning of the words used. *Id.*

Cuzdey presented contextual evidence that demonstrated that, through the letter, he was not accepting Landes' offer of a rental agreement but was making a counter-offer of money in exchange for a temporary stay of enforcement of the trial court's quiet title decision. Because the trial court was making a summary judgment decision, it was not permitted to weigh the evidence. All that matters is that Cuzdey's evidence conflicted with Landes' evidence. The facts surrounding the formation and terms of the contract upon which Landes' action depended were in dispute.

These facts were material because, as demonstrated above, they control the outcome. If there was no rental agreement, Cuzdey was not in unlawful detainer, the trial court did not have jurisdiction, and this case should have been dismissed. Rather than weigh the evidence at summary judgment, the trial court was required to order a trial. This Court should reverse the trial court's judgment and orders and remand for a trial.

3.2.2 Ownership of the mobile home was in dispute, to the extent Landes may still have been attempting to claim to own it.

The purpose of remand from the first appeal was to determine ownership of the mobile home. This Court pointed out in its opinion that Landes admitted that Cuzdey had paid for it long ago, making the final outcome a foregone conclusion—Cuzdey was the true owner of the mobile home. Still, Landes argued at various times during the unlawful detainer action that ownership was still undetermined and she held title.

This Court's opinion stated, "In her answer to Cuzdey's amended complaint, Landes admitted that Cuzdey and Wallen paid off the loan for the Nova: '[D]efendant admits that the purchase of the 1982 Commodore [Nova] mobile home by their daughter and the plaintiff has been paid off. This defendant admits that there were cash payments and work performed by the plaintiff toward the purchase of the [Nova] mobile home, but denies that there were any cash payments toward purchase of the real property.' … there is at least a material question of fact over title to the Nova." CP at 18-19.

Landes has admitted that the mobile home belongs to Cuzdey. Cuzdey has testified the same. To the extent Landes holds on to the argument that ownership is still at issue, it is a material fact in dispute.

Ownership of the mobile home is material because, as shown in Part 3.1.1, above, if Landes does not own the mobile home, she cannot be a "landlord" under the RLTA and the "Notice to Begin Rental" cannot have created a "rental agreement" subject to the RLTA. Without a rental agreement, the trial court did not have jurisdiction to hear Landes' unlawful detainer action. To the extent Landes claims to own the mobile home, ownership is a material fact in dispute, requiring a trial. This Court should reverse the trial court's judgment and orders and remand for a trial.

3.2.3 The amount of past due rent, if any, was in dispute.

Landes' complaint alleged that the rent for the premises was $1,500 per month and that Cuzdey had failed to pay rent for January 2016 through November 2017, for a total of $34,500. CP 4 (paragraphs 3.2 and 3.4). Cuzdey's answer denied these allegations. CP 259 (paragraphs 1.7 and 1.8, denying the allegations in paragraph 3.2 of the complaint; paragraph 1.10, denying "each and every allegation contained in paragraph 3.4 of the complaint"). Landes' summary judgment motion did not raise the amount of rent as an issue. *See* CP 263-83.

Under the unlawful detainer statute, "Whenever an issue of fact is presented by the pleadings it must be tried to a jury…" RCW 59.12.130. At the time of the final summary judgment/

show cause hearing, the state of the pleadings relating to damages was that 1) Landes had claimed past due rent of $34,500; and 2) Cuzdey denied that any rent was due. Thus, the pleadings presented a disputed issue of material fact.[3] The trial court was not free to resolve the dispute. The trial court was required to order a trial. This Court should reverse the trial court's judgment and orders and remand for a trial.

3.3 Landes' alternative arguments for jurisdiction under Chapter 59.18 RCW all fail on their merits.

Landes made a number of alternative arguments in her motion for summary judgment, which the trial court either denied or did not address. While Cuzdey is not asking this Court to review the trial court's decisions (or non-decisions) as such, Landes may raise these arguments in her response brief as alternative grounds to affirm the trial court. Anticipating such arguments, Cuzdey addresses them here. Each of Landes' alternative arguments fails on its merits. First, judicial estoppel does not apply. Second, equitable estoppel does not apply. Third, a landlord cannot convert a tenancy at will into a tenancy under the RLTA simply by posting notice.

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[3] On reconsideration, Cuzdey, without conceding that any rent was due, presented additional evidence that the true rental value of the property was much less than $1,500 per month. CP 190-91, 445-46, 460-65. The amount of rent due, if any, was a material fact in dispute.

3.3.1 Judicial estoppel does not apply.

Landes has argued that the doctrine of judicial estoppel requires that Cuzdey be estopped from arguing that the RLTA does not apply. However, judicial estoppel cannot create subject matter jurisdiction where none exists. Jurisdiction is fixed by the applicable statutes, not by the conduct of the parties. *Rust v. Western Washington State College*, 11 Wn. App. 410, 419, 523 P.2d 204 (1974). Either the RLTA applies or it does not, by its own terms. If the RLTA does not apply, the trial court did not have jurisdiction. Landes cannot create unlawful detainer jurisdiction through alleged reliance on a prior statement by Cuzdey's attorney in response to a hypothetical question from the court.

The determination of whether to apply judicial estoppel focuses on three core factors: 1) whether a party's later position is clearly inconsistent with its earlier position; 2) whether judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and 3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *Miller v. Campbell*, 164 Wn.2d 529, 539, 192 P.3d 352 (2008). Landes alleged that Cuzdey's position that the RLTA

did not apply to create unlawful detainer jurisdiction in this case was inconsistent with a prior statement of Cuzdey's counsel.

Cuzdey's position is not inconsistent. The prior statement of Cuzdey's counsel was made in a December 11, 2015, hearing in the quiet title action, in which the trial court set the amount for a supersedeas bond. *See* CP 393, 396-97. At that hearing, the trial court asked Landes' attorney whether Landes would move forward with her unlawful detainer action if Cuzdey failed to post a bond, which the attorney answered in the affirmative. CP 409. The trial court asked, if an unlawful detainer was granted, would Cuzdey have a reasonable time to remove his personal property? CP 409-10. Landes' counsel answered that under the RLTA, Landes would have an obligation to store Cuzdey's property for a period of time specified in the statute. CP 410.

When asked by the trial court, Cuzdey's attorney agreed that the landlord tenant act would apply to the hypothetical storage question. CP 410-11. After hearing counsel's answer, the trial court clarified that it was not ruling on the question. CP 411. The trial court set the supersedeas amount at $75,000. CP 396-97.

Cuzdey's counsel did not state that the RLTA would govern the question of jurisdiction for an unlawful detainer action. He did not concede that such an action could move

forward. He merely agreed that the RLTA provisions regarding storage of property would apply. In *Excelsior Mortg. Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 341-42, 287 P.3d 21 (2012), the court affirmed application of storage provisions based on the RLTA to an eviction after trustee's sale. An argument that the RLTA's storage requirements should apply is not inconsistent with an argument that the RLTA does not govern an alleged rental agreement.

Additionally, at the time of counsel's statement, Landes was the adjudged owner of both the land and the mobile home. If the parties had a rental agreement, it would have been governed by the RLTA. If Cuzdey was subsequently evicted in an unlawful detainer action, it would have been under the RLTA. If that were true, the storage provisions of the RLTA would have applied. However, by the time of this unlawful detainer action, Landes was no longer the adjudged owner of the mobile home. Without the mobile home, the RLTA does not apply. Counsel's prior statement under a different set of facts is not inconsistent with Cuzdey's current position under the now-existing facts.

Acceptance of Cuzdey's current position does not create an impression that either the first court or the second has been deceived. The trial court in 2015 asked a hypothetical question that had no bearing on its decision as to the appropriate amount

of the supersedeas bond. That court expressly stated that it was not deciding any RLTA issues. The court was not deceived.

Finally, Cuzdey would not derive an unfair advantage. Cuzdey's answer to the trial court's 2015 hypothetical question did not result in any advantage in that proceeding. The parties' answers to the hypothetical question had no bearing on the trial court's decision on the amount of the bond.

3.3.2 Equitable estoppel does not apply.

Landes argued that Cuzdey is equitably estopped from arguing that he did not pay rent in acceptance of Landes' "Notice to Begin Rental." This argument fails.

The elements of estoppel are 1) a statement or act inconsistent with a claim afterward asserted, (2) reasonable reliance, and (3) injury to the party who relied on the statement or act. *State Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 20, 43 P.3d 4 (2002). Cuzdey did not make any inconsistent statement or act. Landes did not reasonably rely on anything Cuzdey said or did. Landes did not suffer any injury from her alleged reliance.

Cuzdey did not make any inconsistent statement or act. As explained in Parts 3.1.2 and 3.2.1, above, Cuzdey tendered payment to Landes with a letter that explained he was not

paying rent as a tenant. His position now is entirely consistent with his tender and letter.

Landes did not reasonably rely on anything Cuzdey said or did. To the extent Landes relied on Cuzdey's payment as showing he agreed to a rental agreement under the RLTA, her reliance was not reasonable because it ignored the terms set forth in Cuzdey's letter.

Landes did not suffer any injury. Landes still has a remedy for seeking to evict Cuzdey: a claim for ejectment in the quiet title action on remand. It is her proper remedy because the trial court does not have unlawful detainer jurisdiction.

3.3.3 Waiver does not apply.

Landes argued that Cuzdey had waived any right to claim a tenancy at will when he paid Landes in January and February of 2016. This argument fails for the same reason as Landes' estoppel argument: Cuzdey did not pay rent in acceptance of Landes' offer. Cuzdey was unequivocal in stating that he was not paying rent as a tenant under the RLTA. Cuzdey expressly reserved his rights and did not waive them. Waiver does not apply.

3.3.4 A landlord cannot unilaterally convert a tenancy at will into a tenancy under Chapter 59.18 RCW simply by posting notice.

Landes argued that her "Notice to Begin Rental" unilaterally converted Cuzdey's tenancy at will into a tenancy governed by the RLTA. She premised her faulty argument on a strained reading of RCW 59.18.140.

The statute provides,

> The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his or her dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his or her initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each affected tenant, a new rule of tenancy including a change in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.

RCW 59.18.140. Put more simply, a tenant under the RLTA has an obligation to comply with all reasonable rules of conduct established by the landlord so long as the tenant is notified of the rules at move-in. The landlord may change the rules of

tenancy with 30 days' written notice, effective upon completion of the rental term or sooner if the tenant consents.

Nothing in this statute permits a landlord to unilaterally convert a tenancy at will to a tenancy under the RLTA. Indeed, this statute—being itself part of the RLTA—cannot apply to a tenancy at will. Before any resort to this statute, there must first be a "rental agreement" subject to the RLTA.

The trial court did not have jurisdiction to hear Landes' unlawful detainer action. Landes' alternative arguments fail on their merits and cannot create jurisdiction where, by statute, none exists. This Court should reverse the trial court's judgment and orders and dismiss the unlawful detainer claim.

3.4 Cuzdey requests an award of attorney's fees on appeal.

The RLTA provides that in an unlawful detainer action under that Chapter and regarding an alleged holdover tenant, "the prevailing party may recover his or her costs of suit or arbitration and reasonable attorney's fees." RCW 59.18.290(2).

Landes brought this action under the RLTA. The alleged rental agreement upon which she based her claim—the "Notice to Begin Rental"—purported to be governed by the RLTA. Her arguments in the trial court all related to attempting to prove jurisdiction under the RLTA. There can be no question that this was an action under the RLTA.

If Cuzdey prevails on appeal because the trial court lacked jurisdiction, Cuzdey becomes the prevailing party in Landes' RLTA action. As such, he would be entitled to an award of his costs and reasonable attorney's fees, in the trial court and on appeal.

This analogous to the situation in *Herzog Aluminum, Inc. v. General American Window Corp.*, 39 Wn. App. 188, 692 P.2d 867 (1984). In that case, Herzog sued General American for breach of contract. General American prevailed by proving that there was no enforceable contract. Nevertheless, General American was entitled to an award of attorney's fees under the contract's prevailing party provision. Consistent with that result, Cuzdey should be entitled to an award of prevailing party attorney's fees under RCW 59.18.290(2) for proving that the unlawful detainer action was improper.

This Court should award Cuzdey his reasonable attorney's fees in the trial court and on appeal.

4. Conclusion

The trial court lacked jurisdiction under the unlawful detainer statutes. This Court should reverse the trial court's decisions and dismiss the case. If this Court finds that the trial court had jurisdiction, nevertheless a trial was required to

resolve disputed issues of material fact. This Court should reverse the trial court's decisions and remand for a trial.

Respectfully submitted this 27th day of June, 2018.

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I certify, under penalty of perjury under the laws of the State of Washington, that on June 27, 2018, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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