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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DANIEL G. SZMANIA,
Defendant-Appellant,

v.

WELLS FARGO BANK, N.A.,
AS TRUSTEE FOR BEAR STERNS ARM TRUST 2007-3,
Plaintiff-Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This appeal arises from appellant Daniel Szmania's continuing attempts to unlawfully occupy real property that does not belong to him. Szmania now contends that the trial court erred by declining to put him in possession of real property that he does not own, and by declining to award him damages for being out of possession of real property that he does not own.

The trial court did not err. Szmania's motion to the trial court for possession and damages lacked any factual, legal, or equitable basis whatsoever upon which relief could have been granted. Nor is there any basis to overturn Wells Fargo's voluntary dismissal of this action under CR 41(a)(1)(B). The trial court's orders should be affirmed in all respects, and this matter be finally put to rest.

II. RESPONSE TO ASSIGNMENTS OF ERROR

A. *Response.*

The trial court correctly denied Szmania's Motion for Possession and Damages, and correctly granted Wells Fargo's oral motion for voluntary dismissal under CR 41(a)(1)(B).¹

¹ Szmania's Opening Brief purports to raise four individually-numbered assignments of error. *See* Opening Brief 6–9. However, each assignment boils down to a contention that the trial court should have awarded him possession and damages. *See id.*

B. *Issues Pertaining To Assignments Of Error.*

1. Washington’s landlord-tenant law contains provisions allowing a tenant to recover possession of real property or damages from a landlord. Do these provisions apply outside of the landlord-tenant context?

This issue presents a question of law, which is reviewed de novo. *See Dommavongsa v. Haskell*, 149 Wn.2d 288, 295 (2003) (noting that “legal questions . . . are reviewed de novo”).

2. This Court previously reversed the trial court’s denial of Szmania’s motion to dismiss in this unlawful detainer action, on the procedural ground that service was not properly completed. Did the reversal grant Szmania legal rights in Wells Fargo’s real property?

This issue presents a question of law, which is reviewed de novo. *See id.*

3. Wells Fargo made a motion to dismiss pursuant to CR 41(a)(1)(B), prior to resting at the conclusion of its opening case, and in the absence of any counterclaim. Did the trial court properly dismiss the action pursuant to Wells Fargo’s motion?

This issue presents a question of law, which is reviewed de novo. *See Bus. Servs of Am. II, Inc. v. WaferTech LLC*, 174 Wn.2d 304, 307 (2012) (noting that “[i]nterpretation of a court rule is a question of law we review de novo”).

III. STATEMENT OF THE CASE

This is the second time this case has come before this Court on appeal. *See* CP 5–14 (Unpublished Opinion filed January 3, 2019).² The matter began in June 2016, when Wells Fargo purchased real property in Brush Prairie, Washington at a trustee’s sale held pursuant to RCW 61.24. *See* CP 6. Szmania, the former owner of the property, failed to vacate the property after the sale. *See id.* In December, Wells Fargo filed an unlawful detainer complaint, to remove Szmania from the premises and secure possession of its property. *See id.*

Szmania moved to dismiss the unlawful detainer action. *See* CP 7. The trial court denied that motion, ordered that possession of the premises be restored in Wells Fargo, and Szmania then appealed. *See id.*

In the prior appeal, this Court ruled that Wells Fargo’s substituted service on Szmania had been defective because, while the summons and complaint had been posted in a conspicuous place on the premises unlawfully held and had been mailed by regular mail, they had not also been sent by certified mail. *See* CP 8–9. This Court thus reversed the denial of Szmania’s motion to dismiss, on the ground that service had not been properly completed. *See* CP 9. However, this Court rejected Szmania’s

² Wells Fargo here cites the Court’s summary of the facts in its earlier opinion for some of the factual background underlying the current appeal.

substantive arguments that the trial court lacked jurisdiction or that venue was inappropriate, and did not pass on the merits of his remaining contentions under CR 12(b)(6). *See* CP 10–14.

After the case was remanded to the trial court for further proceedings, Szmania submitted a motion styled “Motion for Possession and Damages.” *See* CP 49–67. Wells Fargo opposed the Motion for Possession and Damages. *See* CP 171–74. The matter came before the trial court for hearing on August 9, 2019, where Wells Fargo opposed the Motion for Possession and Damages and orally moved in open court for dismissal of the action under CR 41(a)(1)(B). The trial court entered two orders from the bench: one denying the Motion for Possession and Damages, CP 181; and another granting Wells Fargo’s oral motion to dismiss, CP 179–80.

Szmania then filed this appeal.

IV. ARGUMENT

The trial court correctly denied Szmania’s Motion for Possession and Damages, and correctly granted Wells Fargo’s oral motion to dismiss the action. Szmania’s requests for possession or damages lacked any proper legal basis, and appear to have been founded on a fundamental misconception of Washington landlord-tenant law. Moreover, Wells Fargo had an absolute right under CR 41(a)(1)(B) to dismiss the action.

A. *Washington’s landlord-tenant act is not germane and cannot support Szmania’s motion for possession and damages.*

Szmania based his request for damages below primarily upon RCW 59.18.290, which is part of Washington’s Residential Landlord Tenant Act. *See, e.g.*, CP 49 (citing RCW 59.18.290(1) as basis for Motion for Possession and Damages). But by the statute’s express terms, only a “tenant” can be entitled to any relief under RCW 59.18.290(1). The term “tenant” is in turn defined 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).

Here, Szmania was not a tenant of Wells Fargo, was not entitled to occupy the real property in question at any pertinent time, and is unable to point to any rental agreement with Wells Fargo. The trial court correctly rejected Szmania’s Motion for Possession and Damages, which was improperly based upon this inapplicable statute.³

³ Nor did Szmania cite any other potentially-applicable authorities. Szmania’s Motion for Possession and Damages referred to CR 7(b), but this rule simply provides certain standards for written motions in Washington courts and does not provide a basis for any substantive relief whatsoever. Szmania further referred to RAP 12.8, which refers to restoration of property taken from a party as a result of a trial court decision modified on appeal. But Szmania had no property interest or any other right to occupy the real property at issue at the time the case was filed or at any time thereafter.

B. *This Court's prior reversal of the denial of Szmania's motion to dismiss provided no basis for his motion for possession and damages.*

In Szmania's prior appeal, this Court rejected his substantive arguments that the trial court had lacked subject matter jurisdiction or that venue was improper.⁴ *See* CP 10–14. Instead, the Court ruled only that service had not been properly completed, and reversed the denial of Szmania's motion to dismiss on that ground alone.⁵ *See* CP 8–9. Szmania now incorrectly appears to assume that the reversal of the trial court on narrow procedural grounds meant he had a right to continue to unlawfully hold real property he does not own. But in fact, this Court simply reversed the denial of the motion to dismiss (without instructing that the motion necessarily be granted, let alone granted with prejudice), and left further proceedings to the trial court. *See* CP 9 (“we reverse the superior court’s denial of Szmania’s motion to dismiss.”); *see also* CP 3 (Mandate stating, “this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the . . . opinion.”). Nor did

⁴ Note in this regard that Mr. Szmania has a long history of serial frivolous litigation with respect to this property. *See* CP 125–170 (Declaration of Nellie Q. Barnard, attaching various court decisions relating to Szmania and the real property). No state or federal court has ever found that any of Szmania's claims have any legitimacy, and one has found his litigation to be in bad faith. *See, e.g.*, CP 169 (2013 decision of the Western District of Washington in Case No. 13-CV-5090-RBL, noting that “[Szmania’s] suit is in bad faith and is dismissed.”).

⁵ Nor is there any question that Szmania had actual notice of the unlawful detainer complaint filed against him, and appeared to attempt to defend on the merits.

this Court's prior opinion find or suggest that Szmania had any rights in the real property—rather, the opinion at most would have simply required that a copy of the summons and complaint be sent by certified mail before the case continued further.

In conducting further proceedings following remand, the trial court thus correctly denied Szmania's Motion for Possession and Damages, which lacked any legal basis upon which the trial court could have granted any relief. *See supra*, p. 5.

C. *The trial court properly dismissed the action pursuant to Wells Fargo's motion.*

The trial court further properly granted Wells Fargo's oral motion to dismiss under CR 41(a)(1)(B). The rule provides the plaintiff in a Washington action with an absolute right to dismiss the action before resting at the close of its case in chief. *See Goin v. Goin*, 8 Wn. App. 801, 802 (1973) (noting that plaintiff's right to voluntarily dismiss action under CR 41 is absolute and involves no element of discretion on the part of the trial court unless a counterclaim has been pleaded). The trial court correctly resolved Wells Fargo's motion, and properly dismissed the case.

V. CONCLUSION

The trial court correctly disposed of this action below. Szmania is not entitled to possession of property he does not own, nor to any damages

for being out of its possession. Wells Fargo properly dismissed this action under CR 41(a)(1)(B). The trial court should be affirmed in all respects.

Respectfully submitted this 20th day of December, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 20th day of December, 2019.

s/ Garrett S. Garfield _____

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