

**FILED**

SEP 24 2014

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

COA Case No. 324320

**COURT OF APPEALS, DIVISION III  
of  
THE STATE OF WASHINGTON**

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W. L. "LEE" BARR and SUSAN C. BARR,  
Husband and Wife, Appellants,

vs.

BONITA "NITA" I. YOUNG,  
Respondent.

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**APPELLANTS' REPLY BRIEF**

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**A. INTRODUCTION**

(Same as Appellant’s Opening Brief)

**B. ASSIGNMENTS OF ERROR**

(Same as Appellant’s Opening Brief)

**C. STATEMENT OF THE CASE**

(Same as Appellant’s Opening Brief)

**D. ARGUMENT ON ISSUES**

**Re: Appellants’ Assignments of Error 1., 2, 3. & 4.**

The Mandatory Arbitration Act, Chapter 7.06 RCW, applies only to tort civil actions in the superior courts of Washington state, in which the sole relief sought is a money judgment.

RCW 7.06.020 states -

“(1) All civil actions, . . . which are at issue in the superior court . . . , where the sole relief sought is a money judgment, . . . are subject to mandatory arbitration.” (emphasis added).

Ms. Young's attorney states at the beginning of the INTRODUCTION in the Brief of Respondent, that - "This case began as an unlawful detainer action . . .". Ms. Young's attorney further states and admits in his Initial Statement of Arbitrability (CP 15) that the case being litigated in this matter is an "unlawful detainer" action. Ms. Young's attorney also knows that an unlawful detainer action (or eviction lawsuit) is a Special Action or Proceeding under Title 7 RCW, along with a multitude of other varied subject matter - everything except common tort civil actions, in which the sole relief sought is a money judgment. And, Ms. Young's attorney also knows that the Barrs filed their unlawful detainer action in this case, under Chapter 59.12 RCW, for the sole purpose of forcibly evicting and removing Ms. Young from the rental premises owned by the Barrs, because of dire necessity and just cause, in order to regain possession and control of it. And, Ms. Young's attorney also knows that the sole relief sought by the Barrs in that action was a Writ of Restitution (CP 4), which had nothing whatsoever to do with any relief in the form of a money judgment for any tort claim against Ms. Young.

Nevertheless, Ms. Young's attorney deliberately lied to the trial court in his Initial Statement of Arbitrability (CP 15), when he stated- "**This case** is subject to [mandatory] arbitration because **the sole relief sought** [in this case] is a **money judgment** . . ." (emphasis added). Ms. Young's attorney had full knowledge that is exactly the opposite of the APPELLANTS' REPLY BRIEF -4-

truth, i.e. - that statement is a **bald-faced lie**. The Barrs initiated and established “this case” when they filed their unlawful detainer action against Ms. Young, and “this case” has always been a Special Action or Proceeding under Title 7 RCW, which has never had anything whatsoever to do with seeking a **money judgment** against Ms. Young (or anyone else), for anything. “This case” was never a tort civil action, in which a petitioner seeks a money judgment against a defendant. It was only Ms. Young’s entirely fraudulent and illegitimate counterclaim filed by her attorney in the Barrs’ unlawful detainer action later, that involved any relief sought in the form of a money judgment in “this case”.

But, that very obviously was not the “**sole relief**” sought in “**this case**”, as referenced in RCW 7.06.020.

The Barrs believe it is certain that the Washington state legislature had full knowledge that residential landlord-tenant business transactions are by nature entirely outside the realm of, and have nothing whatsoever to do with common tort civil actions in which petitioners seek monetary damages in a court of law, for alleged wrongs done or harm caused them by others. And the Barrs believe it is equally certain that the Washington state legislature was acutely aware of that fundamental reality when they drafted, and later amended, the Residential Landlord-Tenant Act of 1973 (Chapter 59.18 RCW). The legislature specifically mandated that the Uniform Arbitration Act (Chapter 7.04A RCW) shall (must) apply and

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govern in all arbitration-related issues that may arise in residential landlord-tenant business matters in Washington state, instead of the Mandatory Arbitration Act (Chapter 7.06 RCW). The legislature obviously knew that common routine landlord-tenant business matters have nothing whatsoever to do with common tort civil actions where relief in the form of money damages is sought in a court of law by a litigant party; and therefore, the Mandatory Arbitration Act (Chapter 7.06 RCW), **which applies solely to tort litigation cases filed in a trial court**, could not possibly apply in common routine landlord-tenant matters.

The legislature obviously knew also, that either a landlord or tenant who has any grievance that cannot be resolved voluntarily out-of-court, always has a legal right to file a separate tort civil action to obtain redress and money damages for any wrongs done or injuries sustained. That would then automatically invoke the Mandatory Arbitration Act (Chapter 7.06 RCW), and require the parties to submit the controversy or issues in dispute to mandatory arbitration. **That is what Ms. Young's attorney was clearly required to do in this case, but failed or refused to do.**

And, the Barrs further believe the legislature must have recognized that it is much better public law policy to give citizens the freedom to choose and decide for themselves, by voluntary agreement between the parties directly involved in and affected by a controversy, whether or not

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they wish to have that matter arbitrated - instead of requiring and compelling them to do so, in all issues and controversies, by force of law.

The following is a brief re-cap of Appellants' principal argument contained in the Appellants' Opening Brief -

The Residential Landlord-Tenant Act of 1973 (Chapter 59.18 RCW) governing this entire matter, specifically **requires** that any controversy between a landlord and tenant that will be submitted to arbitration **must** be done **voluntarily, by written agreement of both parties, only; both parties must agree** to the arbitrator selected, **at the time the dispute arises; and the arbitration must be done** in accordance with the **Uniform Arbitration Act (Chapter 7.04A RCW), only [not** in accordance with the Mandatory Arbitration Act (Chapter 7.06 RCW)]. RCW 59.18.320.

Furthermore, governing law in this matter (Chapter 59.18 RCW), specifically provides that a landlord **may agree** in writing to submit to arbitration any controversy arising under Chapter 59.18 RCW, **except** any situation where court action has already been started by either the landlord or tenant to enforce rights under that Chapter, when the court action substantially affects the controversy - **which includes any unlawful detainer action filed by a landlord** pursuant to Chapter 59.12 RCW (as in this instance). RCW 59.18.320.

In this case, the issue in dispute **was not** submitted to arbitration **voluntarily by written agreement of both parties only**, as required by law. **Both parties did not** agree to select an arbitrator **at the time the dispute arose**, as required by law. The arbitration **was not** done in accordance with **the Uniform Arbitration Act (Chapter 7.04 RCW)**, as required by law. And, governing law (Chapter 59.18 RCW) specifically **prohibits** any action filed by a landlord pursuant to Chapter 59.12 RCW from being submitted to arbitration **at all**. RCW 59.18.320.

Furthermore, governing law in all landlord-tenant controversies or disputes in which arbitration issues arise, specifically **requires** the courts to **vacate** any arbitration award made to either party, **if there was no agreement to arbitrate** (as in this instance). RCW 7.04A.230.

There was **never** any **agreement** to arbitrate **anything** in this matter; therefore, the arbitration award and subsequent conversion of that award to a money judgment against the Barrs are entirely illegal.

In the state of Washington, landlords and tenants can **never** be compelled to submit any controversy or dispute between the parties to arbitration, because governing law [the Residential Landlord-Tenant Act of 1973 (Chapter 59.18 RCW)] requires that any arbitration employed to adjudicate disputed issues must be **voluntary**, and done in accordance

with the Uniform Arbitration Act (Chapter 7.04A RCW), **only**. This same governing law does, in fact, specifically **prohibit** arbitration of controversies or disputes arising between the parties, under certain circumstances (as in this instance). RCW 59.18.320.

**The arbitration award, and the subsequent conversion of that award to a money judgment against the Barrs, are both patently illegal on their face, and the arbitration award should be voided and the money judgment vacated immediately.**

**Re: Appellants' Assignment of Error 5.**

The Barrs filed this unlawful detainer action (eviction lawsuit) in the trial court against Ms. Young, on October 14, 2011. This legal action was filed for the sole purpose of forcibly evicting Ms. Young from the Barrs' rental premises, because of dire necessity and for just cause, and recovering possession of the Barrs' valuable rental premises.

Ms. Young voluntarily vacated the Barrs' rental premises, on December 1, 2011, so a hearing or trial on the eviction issue was never held because there was no reason or need to do so.

**This unlawful detainer action became entirely moot over 2-1/2 years ago, when Ms. Young voluntarily vacated the Barrs'**

**rental premises on December 1, 2011. This legal action should have been dismissed many months ago, but was not. It certainly should be summarily dismissed immediately with prejudice, for these reasons.**

The Barrs believe it is clear that the issues on appeal before this court in this case have relatively little, if anything, to do with the facts of the case [even though Appellants have filed over 50 pages of primarily factual evidence (Clerk's Papers)] describing the case background in great detail, for reference and to support this appeal generally.

The real question in this appeal, is: Was Ms. Young's action (through her attorney) to use the Barrs' unlawful detainer action as a vehicle to obtain an arbitration award against the Barrs, under mandatory arbitration law and rules, legal or illegal?

The Barrs believe they have proven **conclusively**, in this appeal, that those actions of Ms. Young (through her attorney) were **patently illegal**.

Ms. Young's attorney does not really challenge or dispute the Barrs' argument and proof presented that their actions were entirely illegal; and her attorney does not present any proof to the contrary either, that her actions were legal. Instead, her attorney gives two (2) principal bases for concluding that the trial court did not err in refusing to void the

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arbitration award and vacate the subsequent money judgment, etc.

First, Ms. Young's attorney **deliberately misinterpreted and misapplied** statute RCW 7.06.020, to **fraudulently** make it appear that "this case" is subject to mandatory arbitration because the "sole relief" sought in "this case" was a "money judgment". This attorney **had full knowledge** that the **sole relief** sought by the Barrs in "this case" when they filed their unlawful detainer action against Ms. Young, was a "**Writ of Restitution**" (CP 4), that had nothing at all to do with a money judgment.

**Additionally**, this attorney **had full knowledge** that governing law (Chapter 59.18 RCW) specifically **prohibits any** arbitration of **any** type (voluntary or involuntary) from being conducted **at all** in **any** unlawful detainer action filed by a landlord under Chapter 59.12 RCW. RCW 59.18.320.

Second - Ms. Young's attorney presents some case law and asserts that the trial court **did not** abuse its discretion by repeatedly refusing to correct the highly irresponsible actions of Ms. Young and her attorney, wherein they wilfully and deliberately obtained an arbitration award and subsequent money judgment against the Barrs, in direct violation of governing state law. One must then assume they would have complained

that the trial court did abuse its discretion, if it had voided the arbitration award and vacated the money judgment against the Barrs, as it was clearly required to do by the relevant facts and governing law in the matter. That would be the most insane concept of the proper administration of justice by a court of law imaginable! That would be just the same as saying that wrong is right, and right is wrong!

Most of the ARGUMENT section in the Brief of Respondent in this appeal is irrelevant, and merely rationalized and incomprehensible nonsense that proves nothing at all in relation to the real issues in this appeal. But appellants have no quarrel with the proposition asserted therein, that the standard for review of a motion for consideration is abuse of discretion (although, appellants have not verified that one way or the other).

However, the **conclusion** of Ms. Young's attorney that the trial court **did not** abuse its discretion in denying the Barrs' motion for reconsideration, **is totally false.**

Black's Law Dictionary, 6<sup>th</sup> ed., pgs. 10-11, defines "abuse of discretion", as follows -

*" 1) "Abuse of discretion" is synonymous with a failure to exercise a sound, reasonable, and legal discretion. It is a strict legal term*

*indicating that appellate court is of opinion that there was commission of an error of law by the trial court. It does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge but means the clearly erroneous conclusion and judgment - one that is clearly against logic and effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an improvident exercise of discretion; an error of law. 2) A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. Unreasonable departure from considered precedents and settled judicial custom, constituting error of law. 3) A judgment or decision by an administrative agency or judge which has no foundation in fact or in law. "Abuse of discretion" by trial court is any unreasonable, unconscionable and arbitrary action taken without proper consideration of facts and law pertaining to matter submitted."*

To briefly summarize, "abuse of discretion" by a trial court occurs when a judge makes a decision which has no foundation in fact or in law; or when a judge uses an improvident exercise of discretion; or when a judge takes any unreasonable, unconscionable and arbitrary action without proper consideration of facts and law pertaining to the matter submitted for decision; or when a judge makes an error of law.

The only thing the appellants can say with **absolute certainty**, is  
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that the trial court did in fact make a serious **error of law** in denying their motion for reconsideration. And, therefore, the trial court did commit **“abuse of discretion”**, as that term is legally defined.

The Barrs seek only justice, in this appeal. Black’s Law Dictionary states, that - “Justice” is “the constant and perpetual disposition to render every man his due”. Black’s Law Dictionary further states, that - “Due” means “just; proper; regular; sufficient; reasonable; lawful”.

The Barrs understand that the primary function and purpose of our court system is to administer justice to all citizens - fairly, justly, competently, and impartially. And, the Barrs further understand that the proper administration of justice by the courts requires that they not only obey the laws governing the courts themselves, but that the courts protect and enforce the legal rights of those who seek redress of their legitimate grievances in the courts. Most fundamental to that, is the requirement that anyone who has caused harm to another by violating the law and the legal rights of another, be compelled to cease doing so by a court of law enforcing the law against the transgressor party, for the benefit and protection of the aggrieved party.

The trial court failed to fulfill that most basic duty and responsibility previously, so the Barrs ask that this appellate court now do what the trial court failed to do.

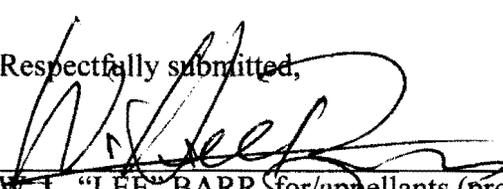
## F. CONCLUSION

The Barrs pray that the arbitration award issued against them be voided immediately, and the money judgment issued against them by the trial court, on February 7, 2014, be vacated immediately, with prejudice; and that the eviction lawsuit they filed against Ms. Young in the trial court on October 14, 2011, be dismissed immediately, with prejudice, also.

The Barrs only pray, **and plead**, for simple justice in this matter - in order to **finally** obtain **finality** to this endless, senseless, and needless controversy, which has been deliberately created and continued entirely by Ms. Young and her attorneys, solely for malicious personal reasons; and which has resulted in a **major** ordeal for the Barrs and caused them very **serious** harm and suffering in a number of different ways [as reflected in the lengthy factual record on file in this appeal (Clerk's Papers)], for over three (3) long years now.

**DATED:** September 22, 2014

Respectfully submitted,

  
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W. L. "LEE" BARR and SUSAN C. BARR,)  
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Respondent. )

Court of Appeals No. 324320

**AFFIDAVIT OF MAILING**

STATE OF ARIZONA)  
) ss.  
COUNTY OF PINAL )

The undersigned, being first duly sworn, deposes and says:

I am over the age of eighteen years, and on the 22<sup>nd</sup> day of SEPTEMBER, 2014, I mailed one copy of the following documents to be filed in this case, to the counsel of record for the Respondent herein:

**APPELLANTS' REPLY BRIEF**  
**AFFIDAVIT OF MAILING**

I put these items in a sealed envelope, and mailed it by USPS regular first-class mail, postage prepaid, by depositing it in an official depository under the exclusive care and control of the U.S. Postal Department, in the city of Florence, Arizona, addressed to the last known mailing address of Respondent/Defendant's counsel of record, as follows:

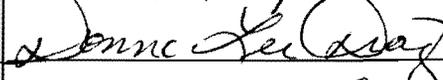
H. N. Schwartz  
413 N. 2<sup>nd</sup> Street  
Yakima, WA 98901

  
\_\_\_\_\_  
W. L. "LEE" BARR, affiant

Subscribed and sworn to before me this

NOTARY SEAL

22 day of September, 2014.

  
\_\_\_\_\_  
Notary Public, residing at Casa Shandy  
My commission expires Aug 10, 2017



DONNA LEE DIAZ  
Notary Public - State of Arizona  
PINAL COUNTY  
My Commission Expires  
August 10, 2017

AFFIDAVIT OF MAILING