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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' OPENING BRIEF**

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**A. INTRODUCTION**

This is a landlord-tenant matter, governed by the Residential Landlord-Tenant Act of 1973 (Chapter 59.18 RCW). The trial court case which this pending appeal relates to, involves an issue of breach of contract and subsequent unlawful detainer by tenant Bonita I. Young (respondent),

who was occupying a rental house in Yakima in late-2011, that was owned by landlord Mr. & Mrs. W. L. "Lee" Barr (appellants).

Ms. Young and various guests and visitors at her rental house, committed numerous and repeated violations of the lease contract continually for weeks after her tenancy began on the Barrs' rental premises. The Barrs were then forced to serve a written Notice on Ms. Young, that required her to cure all lease violations within a specified period of time, or vacate the premises immediately thereafter. Ms. Young failed to perform and comply, and refused to vacate as required. The Barrs were then forced to hire an attorney, who filed an eviction lawsuit on their behalf against Ms. Young in the trial court for unlawful detainer, under Chapter 59.12 RCW, seeking a Writ of Restitution to compel her eviction and regain possession of their rental property.

Ms. Young then hired an attorney who filed an illegitimate counterclaim against the Barrs in their eviction lawsuit. Many months later, Ms. Young's attorney acted to arbitrarily and illegally have Ms. Young's illegitimate counterclaim transferred to mandatory arbitration in the eviction lawsuit, under the Mandatory Arbitration Act (Chapter 7.06 RCW), **although governing law (Chapter 59.18 RCW) provides that the Uniform Arbitration Act (Chapter 7.04A RCW) applies and governs in all residential landlord-tenant transactions in Washington state.**

Basically, Chapter 7.06 RCW provides for **mandatory** (i.e., **involuntary**) arbitration **only**; whereas Chapter 7.04A RCW provides for **voluntary** arbitration by **agreement of the parties only**. An arbitrator was later appointed illegally by the trial court, under Chapter 7.06 RCW; an arbitration hearing was later held illegally by the court-appointed arbitrator, under Chapter 7.06 RCW; the court-appointed arbitrator later gave Ms. Young an arbitration award for damages against the Barrs illegally, under Chapter 7.06 RCW; and the arbitration award was then converted to a money judgment against the Barrs illegally by the trial court.

The Barrs had no legal representation after December 2011; they then lived nearly 2,000 miles away from Yakima near the U.S. - Mexico border; Mr. Barr was then in poor and failing health; and they had no income or other liquid assets available beyond their own basic subsistence needs and other essential obligations, to use in defending the matter in court. The Barrs were thus entirely unable to respond and defend effectively in the Yakima trial court against this series of entirely unexpected, arbitrary and illegal actions taken against them by Ms. Young's attorney - for reasons of time, distance, weather, travel, health, and finances primarily. And the Barrs had no knowledge that some of these legal actions had occurred until after the fact, for the same reasons.

## **B. ASSIGNMENTS OF ERROR**

### **Assignments of Error**

1. The trial court erred in transferring Ms. Young's counterclaim against the Barrs, filed in the pending eviction lawsuit, to mandatory arbitration under the Mandatory Arbitration Act (Chapter 7.06 RCW), on August 14, 2012.

2. The trial court erred in appointing an arbitrator in the pending eviction lawsuit, under the Mandatory Arbitration Act (Chapter 7.06 RCW), to adjudicate Ms. Young's counterclaim against the Barrs, on September 20, 2012.

3. The trial court erred in converting an arbitration award given to Ms. Young by the court-appointed arbitrator in the pending eviction lawsuit, under the Mandatory Arbitration Act (Chapter 7.06 RCW), to a money judgment against the Barrs, on February 7, 2014.

4. The trial court erred in refusing to grant the Barrs' Motion for Reconsideration and Dismissal of Action re: the trial court's money judgment issued against the Barrs in the pending eviction lawsuit, on March 6, 2014.

5. The trial court erred in refusing to grant the Barrs' Motion for Reconsideration and Dismissal of Action re: dismissal of the Barrs' pending eviction lawsuit, on March 6, 2014.

#### **Issues Pertaining to Assignments of Error**

1. Did the trial court err in transferring Ms. Young's counterclaim against the Barrs, filed in the pending eviction lawsuit, to mandatory arbitration under the Mandatory Arbitration Act (Chapter 7.06 RCW), on August 14, 2012? (Assignment of Error 1.)

2. Did the trial court err in appointing an arbitrator in the pending eviction lawsuit, under the Mandatory Arbitration Act (Chapter 7.06 RCW), to adjudicate Ms. Young's counterclaim against the Barrs, on September 20, 2012? (Assignment of Error 2.)

3. Did the trial court err in converting an arbitration award given to Ms. Young by the court-appointed arbitrator, in the eviction lawsuit, under the Mandatory Arbitration Act (Chapter 7.06 RCW), to a money judgment against the Barrs, on February 7, 2014? (Assignment of Error 3.)

4. Did the trial court err in refusing to grant the Barrs' Motion for Reconsideration and Dismissal of Action, re: the trial court's money

judgment issued against the Barrs in the pending eviction lawsuit, on March 6, 2014? (Assignment of Error 4.)

5. Did the trial court err in refusing to grant the Barrs' Motion For Reconsideration and Dismissal of Action, re: dismissal of the Barrs' pending eviction lawsuit, on March 6, 2014? (Assignment of Error 5.)

### **C. STATEMENT OF THE CASE**

Bonita I. Young and Mr. & Mrs. W. L. "Lee" Barr signed a 1-year written lease contract on August 1, 2011, in which the Barrs agreed to rent to Ms. Young a small rental house located on their own home property in Yakima, under terms and conditions contained in the lease contract.

Ms. Young and her various guests and visitors committed numerous and repeated violations of the lease contract continually for several weeks after her tenancy began on the Barrs' rental premises. The Barrs were then forced to serve a "10-Day Notice to Comply or Quit Premises" on Ms. Young, pursuant to RCW 59.12.030(4) (see CP18, pgs. 17-33). The Notice served on Ms. Young required her to cure all lease violations within (10) days, or vacate the rental premises immediately thereafter as required by law. Ms. Young failed to perform and comply, and refused to vacate the rental premises as required. The Barrs were then

forced to have their attorney file an eviction lawsuit against Ms. Young in the trial court, under Chapter 59.12 RCW, on October 14, 2011, seeking a Writ of Restitution to compel her eviction and regain possession of their rental property forthwith (see CP1-3, pgs. 1-8).

Ms. Young's attorney subsequently filed an illegitimate counterclaim against the Barrs in the eviction lawsuit, on October 20, 2011, alleging the Barrs' eviction lawsuit was a "retaliatory action" against Ms. Young done in violation of governing law. On 10/24/11, Ms. Young's attorney proposed an offer of voluntary settlement of the eviction lawsuit; in which Ms. Young would vacate the Barrs' rental premises by no later than December 31, 2011, in exchange for certain rewards and concessions by the Barrs. The Young proposal was irrational and unreasonable, and the Barrs could not accept it. The Barrs then drafted their own comprehensive offer of voluntary settlement of the matter, which was fair and reasonable and even generous (under the circumstances then existing in the matter, particularly), and their attorney presented it to Ms. Young's attorney, on 10/31/11. Ms. Young and/or her attorney rejected it (see CP30, pgs. 92-96). Ms. Young then began seeking other rental housing elsewhere. And the Barrs also spent considerable time and effort of their own, for nearly (2) weeks during November 2011, to help Ms. Young acquire other quality replacement housing for herself.

Under pressure from the pending legal action against her, Ms. Young voluntarily vacated the Barrs' rental premises, on December 1, 2011. Thus, no actual hearing or trial on any pending issue in the eviction lawsuit was held. The Barrs' attorney withdrew immediately after their objectives in the matter were accomplished, and neither side took any subsequent action to have the eviction lawsuit formally dismissed.

Nearly one (1) year later, on August 14, 2012, Ms. Young's attorney acted to have her illegitimate counterclaim transferred to mandatory arbitration in the Barrs' eviction lawsuit, which was still legally pending (see CP15, pgs. 9-10). Soon afterward, on September 20, 2012, an arbitrator was appointed by the trial court to adjudicate Ms. Young's illegitimate counterclaim against the Barrs (see CP17, Pg. 11). Several days later, on October 1, 2012, the Barrs filed an Objection to Transfer of Case to Arbitration in the trial court, which consisted of a 4-page objection, plus (10) attached exhibits totaling (33) additional pages (see CP18, pgs. 12-49). The trial court ignored the Barrs lengthy and comprehensive objection entirely, and gave no explanation or justification for doing so whatsoever.

On December 19, 2012, the court-appointed arbitrator held an arbitration hearing and awarded Ms. Young \$4,463.67 in monetary damages against the Barrs. The Barrs were entirely unable to appear at the arbitration hearing or defend the matter otherwise, at that time, for the APPELLANTS' OPENING BRIEF -9-

reasons described previously herein [see A. INTRODUCTION (pg. 2, par. 4)]. On January 2, 2013, the Barrs filed a Notice of Appeal of the arbitration award in the trial court, but they were unable to pursue that appeal any further afterward (see CP23, pg. 54). On February 7, 2014, Ms. Young's attorney acted to have the trial court convert the arbitration award to a money judgment against the Barrs (see CP29, pgs. 55-56). The Barrs filed a Motion For Reconsideration and Dismissal of Action in the trial court, on March 6, 2014, seeking to have the money judgment against them vacated immediately, with prejudice; and their unlawful detainer action against Ms. Young summarily dismissed immediately, with prejudice. The Barrs' Motion For Reconsideration and Dismissal of Action consisted of a 13-page motion, plus (5) attached exhibits totaling (40) additional pages (see CP30, pgs. 57-110).

On March 19, 2014, the trial court issued a 1-page ruling on the Barrs' Motion. The trial court once more ignored the Barrs very lengthy and comprehensive Motion entirely, by issuing a **one-word court order** that simply said "**denied**". The trial court once more gave no explanation or justification for its decision, whatsoever (see CP34, pg. 114).

The Barrs then filed a Notice of Appeal of the matter to this appellate court, on April 17, 2014 (see CP34, pg. 113).

## D. SUMMARY ARGUMENT ON ISSUES

### Re: Assignments of Error 1., 2., 3. & 4.

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 to 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 any arbitration at all** (as in this instance).

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, **at anytime**; and therefore, the arbitration award and subsequent conversion of that award to a money judgment against the Barrs are entirely illegal, and the money judgment should be vacated immediately .

**Re: Assignment of Error 5.**

The Barrs filed their unlawful detainer action (eviction lawsuit) in the trial court, on October 14, 2011, nearly (3) years ago. They filed this legal action for the sole purpose of forcibly evicting their tenant at that time

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(Ms. Young) from their rental premises, because of dire need and for just cause, to recover possession of it. As a result of that action, Ms. Young voluntarily vacated the Barrs' rental premises several weeks later, on December 1, 2011.

The Barrs have had no further need for court intervention and enforcement of their legal rights in the matter since December 1, 2011. Consequently, that legal action has been entirely moot for over 2-1/2 years now, and should be dismissed immediately with prejudice.

## **E. MAIN ARGUMENT ON ISSUES**

### **Re: Assignment of Error 1., 2., 3. & 4.**

Nearly one (1) year after plaintiffs' unlawful detainer action was filed in the trial court to forcibly evict Ms. Young (and many months after Ms. Young had already vacated the Barrs' rental premises), Ms. Young's attorney acted to have her illegitimate counterclaim transferred to mandatory arbitration in the eviction lawsuit, under the **Mandatory Arbitration Act (Chapter 7.06 RCW)**. However, that action was patently illegal because governing law, the **Washington State Residential Landlord-Tenant Act of 1973 (Chapter 59.18 RCW)**, 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**; and **both** parties **must agree** to the arbitrator selected, **at the time the dispute arises**; and the arbitration **must** be done in strict accordance with the **Uniform Arbitration Act (Chapter 7.04A RCW), only**.

Plaintiffs formally objected, repeatedly, to the illegal transfer of their unlawful detainer action to mandatory arbitration under Chapter 7.06 RCW, but all of their objections were ignored entirely. An arbitrator was then appointed by the trial court **without agreement** of the parties; an arbitration hearing was then held by the court-appointed arbitrator; and an arbitration award was granted to defendant, **all illegally**, under the Mandatory Arbitration Act (Chapter 7.06 RCW).

Governing law in this matter, **RCW 59.18.320**, states -

*“(1) The landlord **may** agree, in writing . . . to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, **except the following**: . . . . .*

*(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, **including** but not limited to:  
. . . . .*

(ii) Any unlawful detainer action filed by landlord pursuant to Chapter 59.12 RCW . . . . .

(3) Except as otherwise provided in this section, the arbitration process shall [must] be administered by any arbitrator agreed upon by the parties at the time the dispute arises; **PROVIDED**, that the procedures shall [must] comply with the requirements of chapter 7.04A RCW and of this chapter.” (emphasis added).

RCW 7.04A.230 further states -

“(1) Upon motion of a party to the arbitration proceeding, the court shall [must] vacate an award if:

(a) The award was procured by corruption, fraud, or other undue means:

(b) There was:

(i) Evident partiality by an arbitrator appointed as a neutral;

(ii) Corruption by an arbitrator; or

(iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.

(c) An arbitrator . . . refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice the rights of a party to the arbitration

*proceeding; . . . . .*

(e) *There was no agreement to arbitrate . . .*” (emphasis added)

All of these prohibited acts, activities or events occurred in this matter. The record in this matter shows clearly that the court-appointed arbitrator who issued the unjust and illegal arbitration award to Ms. Young was in fact entirely partial **for** her and biased **against** the Barrs; refused to consider **any** of the voluminous 35 pages of facts, evidence and argument presented by the Barrs in opposition to Ms. Young’s illegitimate counterclaim against them; **did not** conduct the arbitration hearing held as required by **RCW 7.04A.150**; the award **was** procured by corruption, fraud, or other undue means; and the serious misconduct of the arbitrator **did** in fact **totally** prejudice the rights of plaintiffs in this matter - i.e., the arbitration award was made, when it should never have been made at all.

In the state of Washington, landlords and tenants can **never** be compelled to submit any controversy or dispute between the parties to arbitration; but, in fact, governing law specifically **prohibits** arbitration of controversies or disputes arising between the parties, under certain circumstances (as in this instance).

**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 money judgment should be vacated immediately.**

**Re: Assignment of Error 5.**

This unlawful detainer action (eviction lawsuit) was filed in the trial court by the Barrs 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.

Unlawful detainer lawsuits are special actions; counterclaims are not normally allowed in unlawful detainer actions. Any defendant tenant who believes he/she has a valid cause of action against a plaintiff landlord and wishes to seek damages, must file and prosecute a separate civil action in the trial court (see the Barrs' Answer to Defendant's Counterclaim, filed in the trial court case file No. 11-2-03689-7, on January 13, 2012).

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

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on December 1, 2011. This legal action should have been dismissed many months ago, but was not. It most certainly should be summarily dismissed immediately with prejudice, under these circumstances.

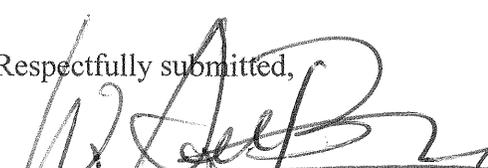
## **F. CONCLUSION**

Appellants pray that the money judgment issued against them by the trial court, on February 7, 2014, be vacated immediately with prejudice, as previously requested in the Barrs' Motion For Reconsideration and Dismissal of Action filed in the trial court, on March 6, 2014.

And appellants pray further that the eviction lawsuit they filed against Ms. Young in the trial court on October 14, 2011, be dismissed immediately with prejudice, as previously requested in the Barrs' Motion For Reconsideration and Dismissal of Action filed in the trial court, on March 6, 2014.

**DATED:** July 10, 2014

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