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Court of Appeals
Division III
State of Washington

No. 34747-8-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

RONALD TRAVIS ROTH,

Respondent,

v.

HEMPZEN ENTERPRISES, LTD.,
a Washington corporation,

Appellant.

BRIEF OF APPELLANT

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A. INTRODUCTION

Hempzen Enterprises Ltd. ("Hempzen") leased certain premises from Ronald Roth for the growing of marijuana. Roth claimed Hempzen breached the lease because a Hempzen contractor filed a baseless lien against the premises. Despite being fully aware that Hempzen was doing everything possible to resolve the lien and a compromise resolution of the lien was imminent, Roth filed an action for a writ of restitution, breaching the implied covenant of good faith attendant upon the enforcement of the terms of a commercial lease.

Despite the subsequent actual execution of a settlement of the lien claim, the trial court granted a writ of restitution. The lien issue was cured, whether under RCW 59.12.030(4) or RCW 59.12.190. The granting of the writ was error.

The trial court further erred in refusing to allow Hempzen a bond to which it was entitled under RCW 59.12.110 during the pendency of the proceeding to obtain a writ of restitution, forcing Hempzen to obtain a supersedeas bond.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its supplemental judgment and order denying defendant's motion for revision on September 2, 2016.

2. The trial court erred in entering its supplemental judgment and order denying defendant's motion for bond on September 9, 2016.

(2) Issues Pertaining to Assignments of Error

1. Where a lien is filed by a contractor performing work on a leasehold and the lien was resolved, did the landlord breach the implied covenant of good faith attendant upon the lease and did the trial court err in entering the writ of restitution despite the fact that any alleged breach in the lease was cured? (Assignment of Error Number 2).

2. Where a tenant in an unlawful detainer action seeks the entry of an order setting a bond pursuant to RCW 59.12.100 to stay issuance of a unit of restitution, did the trial court err in denying Hempzen a bond? (Assignment of Error Number 1).

3. Did the trial court err in awarding Roth fees at trial when Hempzen was entitled under the lease to recover fees at trial and on appeal? (Assignments of Error Numbers 1 and 2).

C. STATEMENT OF THE CASE

The parties entered into a 24-month commercial lease beginning May 1, 2015, and ending April 30, 2017. CP 8-18. Pursuant to the terms of the lease, Hempzen was required to keep the leased premises and the property in which the leased premises are situated, free from liens arising out of any work performed, materials furnished, or obligations incurred by Hempzen. CP 10.

The lease also required Hempzen to make monthly payments in the amount of $3,000 per month. CP 8-9. At all times during the lease's existence, Hempzen has complied with all lease terms, making all monthly

lease payments when due. CP 40, 93-94.

After entering into the lease, Hempzen contracted with Mr. Electric for the installation of an electrical and surveillance system on the property; Mr. Electric was supposed to install a security system on the leased premises. CP 31. It represented that it had the expertise to do so. *Id.* It did not. CP 34, 36. Mr. Electric failed to properly perform the necessary work on a timely basis. CP 31-33. It even left the jobsite at one point without finishing the work, leaving a mess. CP 32. Ultimately, Mr. Electric failed to perform as promised, but it demanded to be paid. CP 35-37. On or about December 7, 2015, Mr. Electric filed a lien against the property subject to the lease alleging that Hempzen failed to make payment for services provided. CP 19-20.

Mr. Electric subsequently filed a civil lawsuit in the King County Superior Court under Case No. 16-2-01471-2 SEA. CP 37. Hempzen filed an answer and counterclaim against Mr. Electric asserting that Mr. Electric failed to properly install an electrical system and security system, pursuant to the contract, alleging breach of contract, negligent misrepresentation, and violation of the Consumer Protection Act. CP 68-74. Hempzen contended that any lien was entirely frivolous due to Mr. Electric's failure to satisfy its contractual obligations regarding installation of the security system. CP 38. Negotiations then ensued between

Hempzen and Mr. Electric. CP 38.

Subsequently, on May 18, 2016, Roth served Hempzen with a 10-day notice to comply with the terms of the lease. CP 21-22. In that notice, Roth alleged that Hempzen violated the lease because it failed to pay Mr. Electric for improvements and failed to keep the property free from liens. CP 21. The notice stated that Hempzen could cure the alleged breach by settling its dispute with Mr. Electric and causing the lien to be released. *Id.*

After receiving the 10-day notice, Hempzen continued to negotiate a resolution with Mr. Electric with regard to the lien. CP 39. Despite knowing from Hempzen's counsel that such negotiations were proceeding, CP 39, Roth nevertheless filed a complaint for unlawful detainer in the Chelan County Superior Court on June 30, 2016, alleging a breach of the lease because of the lien. CP 1-22. In that complaint, like the 10-day notice (CP 21), the sole basis for the unlawful detainer claim was the presence of the Mr. Electric lien. CP 5. However, Roth did assert that he was also entitled to damages from Hempzen. CP 6 ("Defendant may have committed waste and damage to the property beyond reasonable wear and tear in an amount to be proven at the time of trial.").

Roth then filed a motion for an order to show cause why a writ of restitution should not issue, and a judgment be entered against Hempzen.

CP 23. An order to show cause was entered, CP 24, and Hempzen responded to the motion, reaffirming that Mr. Electric's lien was frivolous. CP 27. On July 15, 2016, Mr. Electric and Hempzen entered into a CR 2A agreement which provided that Hempzen would pay Mr. Electric a sum certain and that upon payment Mr. Electric would release its lien against the property at issue and the King County lawsuit would be dismissed with prejudice. CP 75-76, 98.[1] Hempzen's counsel advised Roth's counsel on July 19, three days before the scheduled unlawful detainer hearing, that a settlement had been reached. CP 39-40, 77-82. Nevertheless, on July 22, 2016, Roth insisted that a hearing before the Chelan County Court Commissioner on his unlawful detainer action proceed. Roth's counsel contended at the hearing that the alterations/improvements provision in the lease was violated. CP 89. The Court Commissioner, the Honorable Ernest Radillo, found that Hempzen was in violation of the lease's lien term and authorized the issuance of a writ of restitution, conditioned on Roth filing a $25,000 bond. CP 83-84.[2] The Commissioner entered a judgment for fees and costs, and authorized Roth to seek a "supplemental

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[1] Settlement funds were delivered to Mr. Electric and a lien release was filed on July 27, 2016. CP 99-100. A stipulation and order of dismissal was entered in the King County action on August 1, 2016. CP 136-38.

[2] At that hearing, the Commissioner commented that had the settlement with Mr. Electric occurred on or before July 22, 2016, that the court may not have found Hempzen guilty of unlawful detainer. CP 93. Of course, it had, given the July 15 CR 2A agreement.

judgment" for additional damages. CP 86-88.

Hempzen then filed a motion to revise the Commissioner's ruling pursuant to RCW 2.24.050, supported by the declarations of Scott Sotebeer and Robert Sealby. CP 90-100. The declarations confirmed that Hempzen had settled the Mr. Electric lien action and the lien had been released. *Id.* Roth responded to the motion, CP 101-05, and submitted his declaration alleging that Hempzen "trashed the property." CP 107. Scott Sotebeer responded to that baseless allegation with a further supplemental declaration, documenting precisely how the property was appropriately maintained. CP 114-38. A hearing was conducted on the motion to revise on September 2, 2016. CP 140-41. The trial court, the Honorable Alicia Nakata, relying on *Daniels v. Ward,* 35 Wn. App. 697, 669 P.2d 495 (1983), denied the motion, awarding Roth $1,000 in fees. *Id.*; CP 164-65.[3] The court also struck all supplemental declarations. CP 140-41.

During that September 2, 2016 hearing, Hempzen's counsel requested that the court set a bond amount for Hempzen pursuant to RCW 59.12.100. CP 141. The court set a hearing for September 9, 2016 to discuss the RCW 59.12.100 bond. *Id.* Hempzen thereafter formally moved for an RCW 59.12.100 bond. CP 160-63. The court denied

[3] The trial court modified the Commissioner's findings to reflect the release of the Mr. Electric lien on August 1. CP 165.

Hempzen a bond and awarded additional fees of $1,100 to Roth. CP 166-68. Hempzen timely filed its notice of appeal. CP 176-82.[4]

D. SUMMARY OF ARGUMENT

In this unlawful detainer action, the trial court erred in determining that Roth was entitled to possession of the leased premises before the expiration of the term of the lease because RCW 59.12.030(4) was not satisfied. Hempzen was not in breach of the lease provision forbidding liens on the property where a contractor that had performed untimely, unsatisfactory services filed a baseless lien against the premises; Hempzen continued to pay the rent and live up to all of the terms of the lease, including making expensive permanent improvements to the leasehold. Hempzen legitimately resisted the baseless lien claim and made appropriate progress to resolve the lien claim. Rather than respect Hempzen's actions or to allow it to cure the alleged lease breach, Roth used the bogus lien claim as a bad faith justification to squeeze Hempzen for additional financial concessions and to terminate the lease when he did not secure such concessions.

Moreover, in filing a motion for revision of the Commissioner's

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[4] During this entire period, Hempzen complied with every single term of the lease. Roth never provided evidence of any alleged damages caused to him by the dispute between Hempzen and Mr. Electric. During the term of the lease, Hempzen paid monthly rent totaling $45,000 and continued to pay rent during its dispute with Mr. Electric, and since the entry of the trial court orders. CP 93-94.

decision, Hempzen effectively invoked RCW 59.12.190 pursuant to which it was entitled to cure any lease defect. By settling the lien claim within that statute's 30-day time frame, despite that claim being baseless, Hempzen cured any breach in the lease.

Hempzen was entitled pursuant to RCW 59.12.100 to a bond staying the issuance of a writ of restitution. The trial court erred in refusing to allow such a bond.

The trial court should not have granted the writ of restitution, nor should it have awarded fees to Roth at trial. Instead, Hempzen is entitled to its fees at trial and on appeal.

E. ARGUMENT

(1) Unlawful Detainer in Washington

An unlawful detainer action was unknown at common law and is a creature of statute. It substitutes for the common law right of a landlord's personal re-entry for breach of the lease, *Christensen v. Ellsworth*, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007); *Woodward v. Blanchett*, 36 Wn.2d 27, 32, 216 P.2d 228 (1950), allowing a landlord to avoid a lengthy, expensive common law ejectment action. *Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 745 (1990); *Wilson v. Daniels*, 31 Wn.2d 633, 643-44, 198 P.2d 496 (1948); *Angelo Prop. Co. v. Haftz*, 167 Wn. App. 789, 808, 274 P.3d 1075, *review denied,* 175 Wn.2d

1012 (2012). To take advantage of the unlawful statute, our courts hold landlords to *strict compliance* with its terms. *FPA Crescent Assoc. LLC v. Jamie's LLC*, 190 Wn. App. 666, 675, 360 P.3d 934 (2015). Because it is in derogation of the common law, any ambiguities in RCW 59.12 must be strictly construed in the tenant's favor. *Id.*; *Burgess v. Crossan*, 189 Wn. App. 97, 102, 358 P.3d 416 (2015).

(2) The Trial Court Erred in Refusing to Afford Hempzen a Meaningful Opportunity to Cure Any Lease Issue

The trial court here, citing a Division I case, CP 141,[5] misperceived Hempzen's argument below as asking for an equitable exception to RCW 59.12. Although the issuance of a writ of restitution here is plainly inequitable, it was not Hempzen's argument that an equitable exception should be engrafted onto the statute. Rather, the statutory opportunity to cure, sought by Hempzen, must be meaningful, and Roth should have been held strictly accountable to meet the cure provisions of RCW 59.12.

RCW 59.12.030 establishes the circumstances under which an unlawful detainer action may be filed. Roth invoked RCW 59.12.030(4)

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[5] In *Daniels*, Division I determined that an unlawful detainer determination was appropriate in a case where a tenant allowed liens to be filed on the leased premises in violation of the lease, and the tenant closed the restaurant on the premises in violation of the lease requirement that the premises be occupied. The court concluded that liens, even if invalid, must be discharged within 10 days. 35 Wn. App. at 704. That interpretation of RCW 59.12.030(4), as noted *infra*, is an entirely unreasonable one. *Daniels*, however, does not address cure under RCW 59.12.030(4) or RCW 59.12.190.

claiming Hempzen was in breach of a lease term. CP 5, 21. It is critical here to note, however, that the trial court should have started from the presumption that Hempzen was lawfully in possession of the premises, until the contrary appeared to be true, *Duprey v. Donahoe*, 52 Wn.2d 129, 135, 323 P.2d 903 (1958), and the burden was *on Roth* to show that he had the right to possession, strictly complying with the statutory requirements as this Court held in *FPA Crescent Assoc.*, 190 Wn. App. at 675.

Part of those statutory requirements are the tenant's cure opportunities under RCW 59.12.030(4) and RCW 59.12.190. *Sowers v. Lewis*, 49 Wn.2d 891, 894, 307 P.2d 1064 (1957) (compliance with RCW 59.12.030 is jurisdictional); *Hous. Auth. of City of Everett*, 114 Wn.2d at 564; *Kitsap Consol. Hous. Auth. v. Levingston*, ___ Wn. App. ___, 385 P.3d 188, 193 (2016). In *Sullivan v. Purvis*, 90 Wn. App. 456, 459-60, 966 P.3d 912 (1998), this Court reaffirmed that the 10-day statutory cure requirement is "a jurisdictional precedent to an unlawful detainer action." Roth could not regain possession of the premises before the expiration of the full term of the lease until Hempzen had a meaningful opportunity to cure the lease violations as permitted by RCW 59.12.030(4) and RCW 59.12.190.

The parties' lease required that the premises be kept free of liens in a paragraph entitled "Liens and Insolvency" that states:

> Lessee shall keep the leased Premises and the property in which the leased Premises are situated, free from any liens arising out of work performed, materials furnished or obligations incurred by Lessee. In the event Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for the business of the Lessee, then the Lessor may cancel this lease at Lessor's option.

CP 10.

In Washington, for all contracts, there is an implied covenant of good faith attendant upon all such contracts, including commercial leases; that covenants compel a party to the contract to treat the contract with a faithfulness to the agreement's common purpose and to act consistently with the justified expectations of the other party. *Edmonson v. Popchoi*, 172 Wn.2d 272, 280, 256 P.3d 1223 (2011). In other words, the parties had an obligation to enforce the lease agreement here in good faith. Roth knew full well the lien was baseless. He also knew Hempzen was exerting every effort to remove the lease, and knew specifically that Hempzen settled with Mr. Electric. Nevertheless, he pressed the unlawful detainer hearing on July 22, 2016.

In Washington, commercial tenants like Hempzen have two distinct opportunities for cure. The trial court failed to allow cure here.

(a) <u>RCW 59.12.030(4) Cure</u>

RCW 59.12.030(4) provides that a tenant has 10 days to cure any

lease-related defect. When Roth received notice of the claim of lien, CP 17-18, he gave Hempzen a 10-day notice to resolve the lien issue, CP 21, and then instituted this writ of restitution proceeding, CP 1-22, although he was *fully aware* that Hempzen, exerting all efforts to resolve what was an illegitimate lien claim, CP 39, had entered into a settlement of the lien claim at the time of the July 22, 2016 show cause hearing before Commissioner Radillo. CP 107.[6] Instead, Roth also manufactured a bogus claim that Hempzen had "trashed" the leased premises. *Id.*

Hempzen acted in good faith. As soon as Mr. Electric made its lien claim, it endeavored to resolve it, even though the claim was baseless. By contrast, Roth seized upon this bogus lien claim to give him a justification to squeeze Hempzen for additional financial concessions or oust it.

As this Court is well aware, no lien claim, even if it were legitimate, can be resolved necessarily in 10 days. That is even less likely if the lien claim is baseless. Rather, by forcing a tenant to resolve an illegitimate claim within 10 days, under penalty of losing the lease, the Court will only give bogus lien claimants a powerful weapon to extort settlement of baseless lien claims. Mr. Electric availed itself of that

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[6] Hempzen pleaded that the lien claim was frivolous, CP 27, and, as the testimony of Scott Sotebeer documents, the contractor's work was severely flawed and its conduct in seeking a lien was highly questionable. CP 31-37.

opportunity here. That is bad public policy. Nevertheless, Hempzen resolved the lien claim. Once the lien claim was settled on July 15, the trial court should not have issued the writ of restitution.

(b) RCW 59.12.190 Cure

In addition to the 10-day cure period of RCW 59.12.030(4), RCW 59.12.190 affords a tenant an opportunity to cure any alleged breach of the lease, where the application "for such relief is made within thirty days after the forfeiture is declared by the judgment of the court." The statute does not prescribe a particular form for such a request for cure other than it must be on petition and the application cannot be granted unless full payment of the rent due, or full performance of covenant conditions is made. In *Petsch v. Willman*, 29 Wn.2d 136, 185 P.2d 992 (1947), our Supreme Court noted that RCW 59.12.190 had a long history dating from the enactment of the unlawful detainer statute in the late 1800's as an alternative to a common law ejectment/quiet title action. Division I in *Shoemaker v. Schaug*, 5 Wn. App. 700, 490 P.2d 439 (1971) described the genesis of .190 as equitable in origin evidencing equity's abhorrence of a forfeiture. *Id.* at 441-42. In *Burgess*, *supra*, the court indicated that a tenant has a clear-cut statutory right to cure certain breaches of the lease and to avoid unlawful detainer; the presence of a lien – an alleged breach of a lease covenant – is one of those. 189 Wn. App. at 107-08.

Here, Hempzen acted in accordance with RCW 59.12.190 when it filed its motion for revision, supported by the supplemental Sotebeer and Sealby declarations. It acted within 30 days of the Commissioner's judgment. It affirmatively demonstrated that the Mr. Electric lien issue was resolved. Rather than accepting this cure, the trial court struck the supplemental declarations, and denied revision. The trial court erred in doing so.

In sum, Hempzen met the requirement for cure under RCW 59.12.030(4); RCW 59.12.190. The trial court erred in failing to hold Roth to *strict compliance* with Hempzen's distinct statutory cure; in failing to do so, the trial court should not have entered the writ of restitution. This Court should vacate the writ of restitution.

(3) The Trial Court Erred in Denying Hempzen a Bond to Stay Issuance of the Writ of Restitution Pursuant to RCW 59.12.100

The trial court also erred in refusing to fix the amount of Hempzen's bond to satisfy any damage Roth may incur as a result of Hempzen occupying or keeping possession of said premises while this action proceeds. RCW 59.12.110 authorized the court to fix a bond that would have allowed Hempzen to remain in occupation of the premises, prescribing the necessary amount of the bond. Once the tenant seeks a bond, the trial court must enter an order setting the bond amount.

In *Glover v. Fidelity & Deposit Co.*, 75 Wash. 606, 609-610, 135 Pac. 486 (1913), the court interpreted the predecessor statute to RCW 59.12.100, concluding that a tenant could stay ouster from the premises by posting a bond. There, our Supreme Court held that a tenant is entitled to post the bond after the writ of restitution has been served to allow it to retain possession of the premises, conditioned on the bond amount being sufficient to satisfy any damage the landlord may sustain by reason of the tenant continuing to occupy those premises.

The language of RCW 59.12.100 is not discretionary, but rather is mandatory using the term "shall" and not "may." *Erection Co. v. Dep't of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993) (use of "shall" means mandatory obligation). RCW 59.12.100 states "the plaintiff, his or her agents or attorneys, shall have notice of the time and place where the court or judge thereof *shall* fix the amount of the defendant's bond . . ." (emphasis added).

In general, as this Court held in *Housing Authority of City of Pasco and Franklin Cty. v. Pleasant*, 126 Wn. App. 382, 390, 109 P.3d 422 (2005), forfeiture or termination of leases is disfavored and never enforced in equity unless the right is so clear as to make it undeniable. Consistent with that principle, *Glover* supports Hempzen's position that a bond should have been ordered by the trial court in an amount sufficient to

satisfy any damages incurred by Roth during Hempzen's continued possession or occupation of the premises.[7] *Glover*, together with the statutory provisions cited herein, clearly indicate that the Legislature recognized the hardship that a tenant might incur for being evicted from its property unjustly. This hardship is alleviated by the tenant's ability to post any of the statutory bonds set forth herein.

The trial court erred in refusing to set a bond.

(4) Hempzen Is Entitled to an Award of Fees at Trial and on Appeal

For the reasons set forth herein, Roth was not entitled to an award of fees under the terms of the lease that stated:

> COSTS AND ATTORNEY'S FEES
> Notwithstanding actions by local, state, or federal government agencies or other actions beyond the lawful control of Lessee that are taken and attributable to the unique business operation or natural disasters or acts of God beyond the control of Lessee, if by reason of any default on the part of Lessee it becomes necessary for the Lessor to employ an attorney or in case Lessor shall bring suit to recover any rent due hereunder, or for breach of any

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[7] The RCW 59.12.100 bond is distinct from a supersedeas bond in the event that any unlawful detainer action is appealed. For example, RCW 59.12.200-.220 specifically address appellate supersedeas-type bonds. Consistent with the policy of RAP Title 8, such bonds are mandatory. This is consistent with the mandatory "shall" language in each supersedeas bond statute. *See* Appendix. The Legislature's intent to alleviate any tenant hardship is evident by the language of RCW 59.12.220 that requires a writ of restitution be suspended pending appeal and further requires that if the writ has been executed, that the tenant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

The trial court here erred in failing to allow an RCW 59.12.100 bond and instead forcing Hempzen to incur the expense of a supersedeas bond hearing.

> provision of this lease or to recover possession of the leased Premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Lease, the prevailing party shall have and recover against the other party in addition to the cost allowed by law, such sum as the court may adjudge to be a reasonable attorney's fee. In the event the Lessee defaults in the payment of rental, the Lessee agrees to pay for the cost of any collection agency, or attorney, employed by the Lessor.

CP 11. The trial court's fee awards were improper.

Instead, under the lease, Hempzen was entitled to its fees at trial as the prevailing party. Moreover, as Hempzen had a right to recover fees below, it was entitled to an award of fees on appeal. RAP 18.1.

F. CONCLUSION

This Court should vacate the writ of restitution entered by the trial court and the fee awards to Roth. It should remand the case to the trial court for an award of fees to Hempzen. Costs on appeal, including reasonable attorney fees, should be awarded to Hempzen.

DATED this 19th day of January, 2017.

Respectfully submitted,

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APPENDIX

RCW 59.12.030:

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant 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, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in

actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

(6) 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 days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130.

RCW 59.12.100:

The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be

fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that he or she will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

RCW 59.12.190:

The court may relieve a tenant against a forfeiture of a lease and restore him or her to his or her former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made.

RCW 59.12.200:

> A party aggrieved by the judgment may seek appellate review of the judgment as in other civil actions: PROVIDED, That if the defendant appealing desires a stay of proceedings pending review, the defendant shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the proceeding.

RCW 59.12.210:

> When the defendant shall appeal, and shall file a bond as provided in RCW 59.12.200, all further proceedings in the case shall be stayed until the determination of said appeal and the same has been remanded to the superior court for further proceedings therein.

RCW 59.12.220:

> If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the Brief of Appellant in Court of Appeals, Division III Cause No. 34747-8-III to the following parties:

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Original E-filed with:
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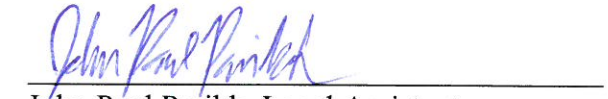
Spokane, WA 99201

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: January 19, 2017, at Seattle, Washington.



John Paul Parikh, Legal Assistant
Talmadge/Fitzpatrick/Tribe