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Division III  
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IN THE COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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KRISTOPHER ROBINSON, JENNIFER KRAFT,  
and all other Occupants of 422 Barth Ave., Richland, WA 99352,  
Appellants-Defendants,

v.

RONALD THORNHILL and MADELINE THORNHILL,  
Husband and Wife,  
Respondents-Plaintiffs

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BRIEF OF RESPONDENTS

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## I. INTRODUCTION

The Respondents are Ronald and Madeline Thornhill, husband and wife (hereinafter, the Thornhills). The Appellants, Kristopher Robinson and Jennifer Kraft (hereinafter, Robinson), seek reversal of the Trial Court's order granting writ of restitution and entry of judgment in favor of the Thornhills, and against Robinson.

## II. ASSIGNMENT OF ERRORS

1. Whether the trial court erred by concluding the unlawful detainer proceeding was properly applied to the parties' contract.

2. Whether the trial court erred by refusing to dismiss the unlawful detainer proceeding on subject matter grounds.

## III. COUNTERSTATEMENT OF THE CASE

### A. **Facts and Procedural History.**

This action for Unlawful Detainer for Nonpayment of Rent stems from the parties' execution of a Lease on October 16, 2014 and the subsequent landlord tenant relationship that followed. CP 2, Ex. A. The Lease is titled Rent to Own Agreement, but self-refers to itself as "this 'Lease'". *Id.* The Lease uses the word Lease in some form 10 additional times in the little more than one page of text contained in the document. *Id.* The Lease consists of one

full page of text and a second page with two sentences of text. *Id.* The Lease does not directly refer to or contain any other document. *Id.* The Lease does contain an “option to purchase”, but that option would not vest until after September 30, 2019, and then only if the time and performance conditions therein were met. *Id.* As evidenced by the underlying lawsuit those terms were not met.

The Lease refers to the Thornhills, Respondents herein, as Landlords and Robinson and his ex-wife as Tenants and each party signed as such. *Id.* The word tenant appears 10 times in the Lease and landlord appears six times. *Id.* The parties are not listed as buyer and seller or with any similar language that would denote a sale and no other document that would evidence a sale, or even a potential future sale, has been executed by the parties. *Id.*

The Lease also lacks most of the information relative to the terms of what any eventual sale would be should the option to purchase eventually be exercised and how that sale would be conducted. *Id.* No deed is attached, and the form of deed is not mentioned. *Id.* There is no earnest money agreement, and no payments called for aside from rent. *Id.*

Despite this, Robinson attempts to frame this transaction exclusively as a sale. The very first sentence of the Robinson Brief under the Statement of the Case simply claims that the Thornhills testified that they agreed to sell the home to Robinson. This claim is not supported by the record, and there is no

evidence the Thornhills have agreed to do so. Further, and despite their citation to it, VRP1, p. 53-55 does not supply the support for this claim. At most, it supports a potential future sale, but only upon fulfillment of certain terms and conditions over a five-year period. *Id.* The Court will find that the agreement was a true lease with an option to purchase, and the parties understood that to be the case.

Because of this arrangement, and a number of missed rent payments, a Complaint for Unlawful Detainer for Nonpayment of Rent pursuant to the Residential Landlord Tenant Act was filed in this matter on October 26, 2017. CP 2. Therein, the Thornhills requested relief in the form of a Writ of Restitution and damages for back rent, costs, and attorney's fees. *Id.* Robinson filed his Answer on October 31, 2017. CP 9. Therein Robinson admitted the document at issue was a lease. *Id.* He also asserted a series of defenses, none of which were related to lack of subject matter jurisdiction, and no claim was made that the Lease between the parties was actually a real estate contract. *Id.* The Answer was never amended.

As there was a factual dispute regarding the amount of rent, the Thornhills' unlawful detainer claim was brought before an Evidentiary Hearing on December 12, 2017. VRP1, p. 6. At that hearing, Robinson again admitted there was a lease between the parties and failed to assert lack of subject matter jurisdiction or that the Lease was a real estate contract. *Id.* In

verifying the existence of the Lease, he specifically stated that “my biggest holdup is that we have a lease that is in writing, that is signed by all parties that lists a specific amount.” VRP1, p. 49, ln. 13-16. He then referred to it as a lease three more times as shown in the next paragraph. *Id.* at ln. 17-24. He was then asked by the Court if the purchase was “the \$141,136.23 after the five-year lease” and he concurred with that characterization of the document by stating “Yes, ma’am.” VRP1, p. 49-50, ln. 25-2. He also acknowledged at the hearing that he was “paying rent”, and referred to himself and his ex-wife as “tenants”. VRP1, p. 50, ln. 10; VRP1, p. 93, ln. 2. For Robinson to now claim the document was not a lease and he was not a tenant is disingenuous and contrary to his prior testimony and admissions.

After the evidentiary hearing, the Thornhills filed a Motion for Leave to Amend the Complaint to add Jennifer Kraft as a defendant after learning she was also residing at the subject property. CP 23. The Amended Complaint was filed and served on December 22, 2017. *Id.* Ms. Kraft filed her Answer to the Amended Complaint on December 28, 2017. CP 30. Therein she too admitted the document is a Lease on multiple occasions and referred to the subjects of the Lease as “landlord and tenants”. *Id.* She also failed to assert defenses of lack of subject matter jurisdiction or that the Lease was a real estate contract. *Id.* This Answer also was never amended.

Robinson and Kraft then filed a joint Answer to the Amended Complaint on December 29, 2017. CP 34. Therein they specifically admitted that the Thornhills are the owners of the subject real property and that they are also “the landlord of the Defendants herein”. *Id.* at p. 1; CP 23. They also specifically admit in that answer that the governing document is a lease. *Id.* Robinson and Kraft also cite only to the unlawful detainer statutes for their affirmative defenses. *Id.* That Answer was never amended.

On January 18, 2018, the parties received a letter from the Superior Court in which the Court specifically found that there was a lease between the parties and that Robinson failed to pay rent on multiple occasions. CP 37. Because of this, the letter states that “the court grants the Plaintiffs’ request for unlawful detainer and for a writ of restitution.” *Id.* The following day, January 19, 2018 an Order Granting Writ of Restitution was entered by the Court.

The foregoing is pertinent to the unvested option to purchase in the Lease, as the Lease states that the option to purchase is only available “upon satisfactory performance of this Lease”. CP 2, Ex. A. The terms of the Lease dictate a five-year rental period prior to the option vesting and require the timely payment of rent over those five years. *Id.* The Superior Court found that Robinson did not satisfactorily perform under the terms of the Lease as he failed to pay all rent due and owing over the course of the Lease. *Id.* He

was thus found to be in unlawful detainer of the real property, meaning he no longer had a possessory interest in the property. *Id.* Because of this, the option to purchase was also lost.

On March 12, 2018, Robinson filed a Motion to Dismiss asserting solely, and for the first time, that the trial court lacked subject matter jurisdiction because the suit “was brought as an unlawful detainer”. CP 59. Robinson asserted that “the exclusive remedy” was termination pursuant to the foreclosure process under RCW 61.30. *Id.* This argument was rejected by the trial court and an order entered denying the motion. CP 81.

Robinson now appeals the Trial Court’s order solely based on the Court’s finding that it had subject matter jurisdiction. The Thornhills oppose this Appeal based on the above recited facts and admissions by Robinson, and because the relief sought is not available pursuant to the statutory and case law on the subject. In short, Robinson has already admitted that the document was a lease, that he and Kraft were tenants, and that they paid rent, and did so in multiple pleadings and under oath. There is no support for their claim that the Lease was actually a real estate contract.

#### IV. ARGUMENT

##### A. Standard of Review.

Whether a trial court had subject matter jurisdiction over a controversy is a question of law, which is reviewed de novo. *Young v. Clark*, 149 Wn.2d 130, 132, 65 P.3d 1192 (2003).

##### B. Even upon De Novo Review, Robinson is Not Entitled to the Relief Sought.

Robinson brings this Appeal based on the contention that the Superior Court lacked subject matter jurisdiction over the Complaint for Unlawful Detainer. However, the parties signed a document titled Rent to Own Agreement, which self refers to itself as “this ‘Lease’”. CP 2, Ex. A. Robinson has also previously admitted in multiple pleadings and under oath that the document was a lease, that he and Kraft were tenants, the Thornhills were Landlords, and that he paid rent. Despite this, Robinson now claims that the Lease at issue is actually a real estate contract and thus not subject to the unlawful detainer procedure, but rather subject to forfeiture. The support for the position is lacking.

##### 1. An Option to Purchase is Not a Real Estate Contract and thus is Not Subject to Foreclosure.

As Robinson previously admitted to the Trial Court, but has neglected to address to in his Brief to this Court, Washington law is exceedingly clear

that “options to purchase” are not real estate contracts. *See* RCW 61.30.010(1); CP 59, p. 5. Specifically, RCW 61.30 governs real estate contract forfeitures, which is the only relief Robinson claims was available to the Thornhills. The very first section of that statute and very first definition thereunder undermines their entire argument. It states that:

"Contract" or "real estate contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. **"Contract" or "real estate contract" does not include earnest money agreements and options to purchase.**

RCW 61.30.010(1) (**Emphasis added**). In this case, there is simply nothing vague about the statute or the definition that requires any further explanation. The Washington State Legislature has effectively declared, in no uncertain terms, that an option to purchase is not a real estate contract. Because it is not a real estate contract, it is, by definition, not subject to the foreclosure proceeding, and the entirety of Robinson’s argument fails.

In determining what relief is available when a tenant does not pay rent, a party has to be able to rely on the statutory language in making the determination as to the proper method to achieve the desired relief. The Court has the same responsibility in assessing the method chosen by the party. As the Supreme Court has consistently held “[i]n interpreting a statute, this court looks first to its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110,

156 P.3d 201, 203 (2007). If the plain language of the statute is unambiguous, then this court's inquiry is at an end. *Id.* The statute is to be enforced in accordance with its plain meaning. *Id.*

Here, the statute at issue clearly told the Thornhills that they could not pursue a foreclosure against Mr. Robinson for failing to pay rent. The Lease here includes an option to purchase and RCW 61.30.010 specifically states that an option to purchase is not a real estate contract and thus is not subject to foreclosure. Because of this, the only method by which the Thornhills could obtain relief for Robinson's failure to pay rent was the unlawful detainer process. As there is no ambiguity in the statute, it cannot be disputed that the Trial Court had subject matter jurisdiction, and this Appeal must be dismissed on that basis alone.

**2. The Lease at Issue also lacks the Requisite terms to Make it a Real Estate Contract.**

Assuming, arguendo, that further proof is required, Robinson's attempt to show that the Lease contains the "material terms of a real property contract" as determined by the case law, also lacks significant support. *See Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993). *Kruse* provides 13 different criteria for finding a real estate contract that derive from the Supreme Court's opinion in *Hubbell v. Ward*, 40 Wn.2d 779, 246 P.2d 468 (1952). It is important to note that in *Kruse*, the Court found fault where,

the parties did not refer to or attach an agreed upon real estate contract form, and the option itself did not address the terms necessary...for...a real estate sale. No “meeting of the minds” occurred as to material and essential terms, and thus, the trial court's grant of specific performance is erroneous.

121 Wn.2d 715, 723, 853 P.2d 1373, 1378. The same faults can be attributed to the Lease at issue here, with even more essential terms being absent. However, because of the Court’s reliance on *Hubbell*, it is important to consult that opinion as it provides a much more nuanced look at the required elements of a real estate contract. There, the Court detailed the following terms:

1. No provision is made as to the time for the transfer of title to the personal property or as to the manner of passing title thereto.
2. After the purchaser is given possession of the premises (which is to be within thirty days after closing the transaction), in what manner, if any, may the seller declare a forfeiture of the proposed real estate contract in the event of default by the purchaser in his performance thereof? In such event may the seller retain all payments theretofore received as liquidated damages for the breach?
3. Which party bears the loss if the building, or the contents, is damaged or destroyed by fire or other casualty?
4. What kinds of risks are to be insured against while the contract is in effect? What are the limits of the policies? Who pays the premiums? Who is to be designated as the insured therein and who holds the policies?
5. Who pays the taxes and assessments levied on the property?

6. Who is responsible for keeping the building in repair?
7. Who pays the water or other utility charges?
8. May the purchaser make capital improvements without the consent of the seller?
9. What protection, if any, is the seller to have against mechanic and materialmen's liens created by the purchaser?
10. Is the purchaser permitted to remove any furniture or other personal property from the apartment house or replace worn out pieces without the seller's permission?
11. May the purchaser use the premises for any other purpose than operating an apartment house?
12. When and where are the monthly payments to be made by the purchaser?
13. Is the purchaser to indemnify the seller against claims of third persons for personal injuries and property damage arising because of accidents occurring on the premises?

40 Wn.2d 779, 782–83, 246 P.2d 468, 470–71.

In this case, the above terms are mostly absent from the one page and two sentence Lease signed by the parties. Of the foregoing criteria, the Lease significantly does not include the manner for transferring title, a procedure for declaring forfeiture, allocation of risk with respect to damage or destruction, insurance provisions, or indemnification provisions. Robinson has even previously admitted that the Lease's "terms are silent with respect to many of these elements". CP 59, p. 5.

Further shortcomings are prominent as well. Notably, in Washington a deed or real estate contract must be notarized. § 21.5.

Required formalities of execution, 18 Wash. Prac., Real Estate § 21.5 (2d ed.). *See also* RCW 19.36.010 (the “Statute of Frauds”). This is so that the document may be recorded as the Forfeiture Act makes it a condition to forfeiture that “the contract being forfeited, or a memorandum thereof, is recorded in each county in which any of the property is located.” *Id.* The Lease at issue here is not notarized, and thus falls outside of this real estate contract requirement.

Additionally, “[t]here must be an express promise by the vendor(s) to sell and by the purchaser(s) to purchase.” § 21.6. Clauses essential to legally enforceable contract, 18 Wash. Prac., Real Estate § 21.6 (2d ed.). It is also “essential that the land being sold be adequately described. In most states, it is necessary only to describe the land sufficiently that it can be identified by extrinsic evidence, for instance, by street address. Washington, however, requires the contract itself to contain the full legal description.” *Id.* Again, the Lease at issue here contains none of these elements.

Further, since a contract must have consideration, the purchaser must covenant to pay the purchase price. *Id.* An agreement to do so is evidenced with words like “promises,” “covenants,” or “agrees”; the promise should not be implied by indirection by a phrase such as “for a purchase price of” such and such an amount. *Id.* Here, there is no such terminology in the subject Lease.

Because the vendor's consideration is to convey title, the contract must also contain his promise to give a fulfillment deed when the purchaser has fully performed. *Id.* Again, the vendor should use language expressly promising to do so. *Id.* No such promise is contained in the subject Lease. The form of deed should also be explicitly given, usually a “statutory warranty deed.” *Id.* Here there is no language regarding a deed, let alone the form of the deed. Moreover, since marketable title is implied in a contract that does not state otherwise, the real estate contract must list all existing encumbrances subject to which the purchaser agrees to take title. *Id.* The clause that contains the vendor's promise to convey needs to provide that title will be subject to those existing encumbrances and to subsequent encumbrances except such as may attach by or through acts of the vendor. *Id.* All this implies that the parties need to have a title search made before they execute the real estate contract. *Id.* Here, there is no evidence that a title search was done, let alone what encumbrances if any exist.

Robinson admits the absence of these material terms and his argument is solely that the parties' performance provides the terms for these criteria, but then proceed to attempt to pound a bevy of square pegs into round holes. Robinson claims the “parties agree the Contract was not fully integrated”, but cannot cite to any such admission by the Thornhills. Brief for Appellants at

12-13. At no point is Robinson able to show how each of the criteria from the case he cites have been met here, let alone meet the requirements of *Hubbell*.

Robinson's section on time and manner for transferring title at no point addresses what the actual time or manner for transferring title is. As to the procedure for declaring forfeiture, again Robinson makes no explanation of how the statutory procedure he outlines would be subsumed into the Lease. *Hubbell* asks "in what manner, if any, may the seller declare a forfeiture of the proposed real estate contract". 40 Wn.2d at 782, 246 P.2d at 470 (Emphasis added). It also asks whether "[i]n such event may the seller retain all payments theretofore received as liquidated damages for the breach?" *Id.* In response, Robinson can only provide the statutory procedure for declaring a forfeiture, not the cause thereof and the Lease does not speak at all to the retainment of payments.

As to allocation of risks, while Robinson was determined to have agreed to pay for the cost of insurance, these payments were made to the Thornhills and there is nothing in the record to indicate that the insurance was in Robinson's name. There is also nothing in the Lease nor a finding from the court as to "[w]hich party bears the loss" or "[w]hat kinds of risks are to be insured against while the contract is in effect? What are the limits of the policies?...Who is to be designated as the insured therein and who holds the

policies?” *Id.* at 783, 470. All of these are material terms that are missing from the Lease and not in the record.

*Hubbell* also requires terms regarding “[w]hat protection, if any, is the seller to have against mechanic and materialmen's liens created by the purchaser?” *Id.* The Lease at issue is silent to this inquiry. Robinson claims he was “prohibited from encumbering his interest in the home”, Brief of Appellants at 14, but the Lease does not reflect that and he cites to CP 5, which was not made part of the record by Robinson.

Finally, Robinson confuses indemnification provisions with the fact that there was insurance. *Hubbell* asks “[i]s the purchaser to indemnify the seller against claims of third persons for personal injuries and property damage arising because of accidents occurring on the premises? 40 Wn.2d at 783, 246 P.2d at 470–71. Just because there is insurance does not address who would be responsible for such an injury or damage, especially given the fact that such a claim could easily, and often does, eclipse an insurance policy.

Thus, despite multiple claims that the Lease “is a real estate contract”, Robinson cannot simply speak it into existence. Further, the course of performance does not provide the terms of the alleged contract. Their argument is conclusory and lacks substance. Robinson must overcome RCW 61.30.010(1) and provide proof of all elements. He simply has not done so.

Robinson also relies on RCW 59.18.040(2)'s language regarding "earnest money agreements" and that the Residential Landlord Tenant Act does not apply where the "tenant is, or stands in the place of, the purchaser." The problem with that argument is that there was no earnest money agreement and Robinson is not a purchaser because he had no exercisable right to purchase the property until 2019.

Aside from demonstrating the faults in the Robinson Brief, the Court should be aware that there are cases on record in Washington where the unlawful detainer process was successfully used to remove a tenant who had an option to purchase. *See e.g. Kelly v. Powell*, 55 Wn. App. 143, 776 P.2d 996 (1989). There, the plaintiff filed a complaint for unlawful detainer based on a lease with option to purchase. *Id.* The defendants were to make twelve monthly payments, but were untimely in their payments and the subject suit was filed. *Id.* The defendants denied they were in default and counterclaimed for specific performance claiming they had exercised the option to purchase. *Id.* The trial court rejected this and found the defendants unlawfully detained the premises. *Id.* The Trial Courts decision was then upheld on appeal. *Id.*; *See also Corbray v. Stevenson*, 98 Wn.2d 410, 656 P.2d 473 (1982) *infra*.

Robinson instead relies heavily on *Bar K Land Co. v. Webb*, 72 Wn. App. 380, 864 P.2d 435 (1993), but it is easily distinguishable. There, the

plaintiff brought suit to recover possession of the plaintiff's home from the defendant with whom it had entered an "Early Possession Agreement." *Id.* The plaintiff had "advertised for sale a house" and the defendant "responded to the advertisement". *Id.* They then entered into an "Early Possession Agreement." *Id.* There the written agreement specifically provided for earnest money and the rental agreement was only set up to run from February 13, 1990 to at the latest June 1, 1990, which is fairly typical for a real estate sale. *Id.* In this case, the Thornhills never advertised the home for sale and the contract was not set up as an early entry agreement that is typically present with such a sale. There is a rental period here which is five years, not 107 days. There also is no earnest money agreement here as no earnest money was ever requested or paid.

The remodeling agreed to in *Bar K* is also substantially different than anything that occurred in this case. There the defendant was required to pay the first \$3,600 in remodeling expenses. *Id.* Here, the house was essentially unlivable when purchased and required improvements to make livable, which were paid for by the Thornhills. VRP1, p. 18, ln. 2-7; p. 53.

*Bar K* is also distinguishable based on its reliance on *Aldrich v. Forbes*, 237 Or. 559, 391 P.2d 748 (1964). In *Aldrich*, purchasers of a home paid earnest money under a purchase agreement. *Id.* In a supplemental agreement, the purchasers agreed to pay rent on the property until they

obtained a loan. *Id.* In addition, they agreed to make certain repairs to the home, which they did. *Id.* When the purchasers did not obtain their loan by the specified time, the seller brought an unlawful detainer action. *Id.* The court found that it was the earnest money agreement that created the vendor-purchaser relationship and the supplemental agreement continued this relationship because of the expense involved in making the repairs. *Id.* It is key that the repair agreement was only seen as continuing the vendor-purchaser relationship as here there was no such earnest money agreement to establish a vendor-purchaser relationship in the first place. These facts substantially differentiate the foregoing cases from the case at hand as there were no payments made here in anticipation of a sale.

### **3. The Option to Purchase is Foreclosed.**

The Supreme Court of Washington has also previously weighed in on a similar lease and rent payment situation to the case at hand. *See Corbray v. Stevenson*, 98 Wn.2d 410, 656 P.2d 473 (1982). There the Court found that where a lease requires a tenant to faithfully perform the terms and obligation of the lease for a five-year period before an option to purchase would come into being, and where the tenant was frequently in arrears, there was no option to exercise. *Id.* While there are factual distinctions between the cases, the holding of the case is exactly on point.

Here, Robinson has previously indirectly admitted that the Lease has not been satisfactorily performed. He stated that “the Option to Purchase cannot be exercised until the lease is satisfactorily performed, *ie* upon the 60<sup>th</sup> payment”. CP 59, p. 5. The problem with that statement is that Robinson never made payment one, was short on payment three, missed payment seven, and was late on six other payments as previously determined by this court in assessing back rent. VRP1, p. 79-80, ln. 14-25. As in *Corbray*, Robinson was frequently in arrears. As such, the option to purchase was foreclosed by Robinson’s failure to satisfactorily perform the obligations under this Lease well prior to these proceedings being commenced.

Because of that timing, any property interest above a possessory interest that could arguably have existed was lost, and the unlawful detainer process remained the appropriate remedy for the Thornhills. Further, regardless of the foregoing, Robinson’s claim that he has a purchase interest in the property is simply incorrect as any purchase interest he may eventually have had did not vest and would not have vested until September of 2019.

Another important note here is that the Thornhills entered into this Lease with option to purchase with Robinson and his then wife, Kathryn Robinson, and only them. There is an exclusivity clause in the Lease. CP 2, Ex. A. They are both signatories on the Lease and the option was available to the couple. There is nothing to indicate that it could be exercised by any one

of them on an individual basis. Mr. Thornhill testified to that intent when he stated that the Lease “was put together with the intention of Chris and Katie and [their son] Ben being a family.” VRP1, p. 60, ln. 4-5. However, that was “all destroyed” and “[d]oesn’t exist anymore.” *Id.* at ln. 7-8. Thus, their divorce arguably voids the option to purchase on its own, further destroying Robinson’s argument that he has something more than a tenant’s interest in the property.

Robinson has already been found to be in unlawful detainer of the subject real property, which determines the parties’ right to possession. What he seeks now is to somehow make the Thornhills pursue a forfeiture of a real estate contract that does not exist and the terms of which are non-existent, essentially foreclosing any available remedy by the Thornhills for Robinson’s material breach of the Lease. This simply cannot be condoned by this Court as it is not supported by the law.

**C. The Thornhills are entitled to an award of attorney’s fees and costs from this Court.**

Based on the foregoing, the Thornhills believe that the decision of the Superior Court must be upheld. Should the Court agree, the Thornhills would be entitled to an award of attorney's fees and costs for successfully defending against this appeal pursuant to RAP 18.1. The Thornhills thus respectfully request an award of fees and costs pursuant thereto.

V. CONCLUSION

The only issue here is whether the Superior Court had subject matter jurisdiction over the unlawful detainer action. Robinson argues that the court did not have subject matter jurisdiction based on the claim that the parties entered into a real estate contract, as opposed to a lease, which is subject to a forfeiture and not an unlawful detainer proceeding. However, by its own terms and the understanding of those terms as testified to by the parties, the Lease at issue is not a real estate contract. It also does not meet the statutory definition of a real estate contract and lacks most of the essential terms to make it a real estate contract. Because of this, the Superior Court undoubtedly had subject matter jurisdiction, and their decision to grant a writ of restitution must be upheld. Accordingly, the Thornhills respectfully request that this Court affirm the trial court's Judgment, and further request an award for their attorney's fees and costs on appeal pursuant to RAP 18.1.

DATED this 12th day of November, 2018.

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