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No. 36165-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THOMAS SILVER, Appellant,

vs.

RUDEEN MANAGEMENT COMPANY, INC., Respondent.

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

Assignments of Error

1. The Superior Court erred in applying a two-year “catchall” statute of limitations, RCW 4.16.130, to Appellant’s claims for the recovery of his tenancy deposit trust funds, rather than the three-year statute of limitations for actions involving “taking, detaining, or injuring personal property . . . or for any other injury to the person or rights of another not hereinafter enumerated.” RCW 4.16.080(2).

2. The Superior Court erred in finding that “Silver’s action is not for taking, detaining, or injuring personal property,” and that “the sole claim of the Complaint hinges on [Respondent’s] violation that requires [it] to provide a statement,” (CP 120), when Appellant’s sworn and verified Complaint expressly states that it is an action to recover his deposit trust funds, and specifically and repeatedly alleges that Respondent failed to provide the requisite deposit disposition statement, *or any portion of Appellant’s deposit monies being held in trust that were due to him.* (CP 5, ¶ 4.12; CP 6, ¶¶ 4.19, 4.21-4.23).

Issues Pertaining to Assignments of Error

1. This is a claim for the recovery of wrongfully withheld trust monies, which squarely fits within the category of actions for “taking, detaining, or injuring personal property, including an action for the specific recovery

thereof, or for any other injury to the person or rights of another.” A residential tenant’s deposit trust funds under RCW 59.18.280 is personal property and the action is therefore subject to a three-year statute of limitations under RCW 4.16.080(2)?

2. Did the trial court err, where the Plaintiff stated claims for “taking, detaining, or injuring personal property” or “injury to the person or rights of another” under RCW 4.16.080(2) and the controlling authority of *Seattle Prof'l Eng'g Emples. Ass'n (SPEEA) v. Boeing Co.*, 139 Wn.2d 824 (2000), yet the trial court applied a 2-year statute of limitations and dismissed the claim on that basis alone?

B. STATEMENT OF THE CASE

As presented in his sworn and verified Complaint, on or about March 26, 2012, Appellant Thomas Silver agreed to rent an apartment at the “Pheasant Ridge” complex from Respondent Rudeen Management Company, Inc. (hereinafter “Rudeen”). (CP, ¶ 4.2). The parties’ lease provided for a six-month term ending on September 30, 2012, with the tenancy continuing on a month-to-month basis thereafter. (*Id.* at ¶ 4.3). In addition to monthly rent of eight hundred ten dollars (\$810), the parties’ lease required a “Damage/Cleaning/Security Deposit” of three hundred dollars (\$300.00), which Mr. Silver paid. (*Id.* at ¶¶ 4.4, 4.8). Rudeen’s standardized lease specified that “[w]ithin fourteen days of the termination

of the contract and vacating the premises, Landlord shall send an itemized accounting to Tenant stating the basis for retaining any part of the deposit, together with payment of any refund.”¹ (*Id.* at ¶ 4.5).

After residing at the Pheasant Road premises for several years, Mr. Silver provided proper notice of his intent to terminate his month-to-month tenancy on June 30, 2015. (*Id.* at ¶ 4.9). Almost immediately after Mr. Silver vacated the Pheasant Ridge premises on June 30, 2015, Rudeen sent him a Deposit Disposition statement, dated the same day as the termination date and marked “PRELIMINARY,” claiming that Mr. Silver was liable for deposit deductions of exactly three thousand dollars (\$3,000) for largely unspecified and completely undocumented “excessive wear and tear”. (*Id.* at ¶ 4.11). Mr. Silver disputed that he was responsible for the uncertain and allegedly “excessive wear and tear” claimed by Rudeen. (*Id.* at ¶¶ 4.12, 4.19).

Although Rudeen’s standard lease agreement stated that “Tenant shall forfeit unclaimed [deposit trust] funds after 45 days,” (CP 5, ¶ 4.6), Rudeen did not bother to send Mr. Silver a so-called “Final” Deposit Disposition statement until August 18, 2015, or forty-nine (49) days after

¹ The lease agreement between Mr. Silver and Rudeen specifies a 14-day timeframe, consistent with RCW 59.18.280 prior to statutory amendments that were implemented on June 9, 2016, which expanded this timeframe to 21 days.

the termination of his tenancy, and without substantial support for its claim that that Mr. Silver was liable for deposit deductions of two thousand seven hundred sixty-five dollars and thirty-five cents (\$2,765.35) related to allegedly excessive “wear and tear.” (CP 6, ¶¶ 4.13-4.15, 4.18).

Notwithstanding the uncertainty of its “preliminary claims, its contractual obligations, and Mr. Silver’s statutory rights under the RLTA, Rudeen intentionally refused to refund any portion of Mr. Silver’s deposit trust monies within fourteen (14) days of the termination of his tenancy or at any time before or after its so-called “final” Deposit Disposition statement dated August 18, 2015, the bases of which were then and remain still disputed by Mr. Silver. (*Id.* at ¶¶ 4.21-4.22).

Following the Division III Court of Appeal’s ruling in *Goodeill v. Madison Real Estate*, 191 Wn. App. 88 (2015) (review denied at 185 Wn.2d 1023 (2016)), Mr. Silver filed the present action, on behalf of himself and all those similarly situated, alleging that the Defendant’s deposit trust management practices violated the provisions of RCW 59.18.280 – specifically that Defendant’s standard procedures caused it to neither provide a full and specific deposit disposition statement within the required time, nor return any unaccounted-for portion of the tenants’ security deposit to former tenants.

On August 10, 2017, Mr. Young filed his Complaint, on behalf of himself and all those similarly situated, alleging that Rudeen wrongfully withheld his deposit trust monies in violation of Washington's Residential Landlord Tenant Act (RLTA), RCW 59.18, *et seq.*, which requires landlords to "provide a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement" within twenty-one (21) days of the termination of tenancy. RCW 59.18.280(1).² Mr. Silver prayed for the refund of his deposit monies held in trust pursuant to RCW 59.18.270, damages of twice the amount of his trust deposit, plus costs and reasonable attorneys' fees as provided by RCW 59.18.280(2). (CP 10).

Rudeen appeared through counsel and filed an Answer to Mr. Silver's Complaint on September 26, 2017. Following substitution of counsel, Rudeen amended its Complaint and moved to dismiss Mr. Silver's lawsuit under its theory that his claims were not subject to the three-year statute of limitations in actions "for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated,"

² The terms and conditions of the parties' rental agreement specified that the requisite statement and deposit refund due would be provided within fourteen (14) days, consistent with RCW 59.18.280 prior to statutory amendments that were implemented on June 9, 2016. (CP 5, ¶ 4.5).

RCW 4.16.080(2), but rather that his claims were barred by a two-year “catchall” statute of limitations in actions “for relief not hereinbefore provided for [in RCW 4.16, *et seq.*].” RCW 4.16.130. Following oral arguments, the lower court entered an Order dismissing Mr. Silver’s claims on April 6, 2018.

Mr. Silver timely moved for reconsideration, which the Superior Court denied, finding that “Silver’s action is not for taking, detaining, or injuring personal property; the sole claim in the complaint hinges on Rudeen’s violation of the statute that requires him [sic] to provide a statement.” (CP 120).

In so finding, the lower court appeared to overlook Mr. Silver’s specific and repeated claims that he was entitled to not just a deposit disposition statement, but also the recovery of his deposit trust funds under RCW 59.18.280(2). (CP 6-7 ¶¶ 4.20-23; CP 9, ¶¶ 6.1.7-6.1.8; CP 10, ¶¶ 7.2, 7.4). Consequently, the lower court did not address why Mr. Silver’s action to recover his deposit trust funds was not essentially an action for “taking, detaining, or injuring personal property, including an action for the specific recovery thereof” under 4.16.080(2). (CP 6-7, ¶¶ 4.21-4.22; CP 10; CP 120). Similarly, the lower court did not address why Mr. Silver’s action to assert his tenancy rights and enforce Rudeen’s fiduciary obligations under RLTA was not essentially an action for an “injury to the person or

rights of another not hereinafter enumerated.” RCW 4.16.080(2). (*Id.*). Significantly, the lower court acknowledged that the three-year statute of limitations under RCW 4.16.080(2) would apply to either of those circumstances. (CP 120).

Mr. Silver, respectfully assigning error to these findings and conclusions of the lower court, thereafter filed his timely appeal.

C. SUMMARY OF ARGUMENT

This Court should reverse the ruling of the lower court, dismissing Mr. Silver’s action, and find that the three-year statute of limitations provided by RCW 4.16.080(2) applies to his claims for two reasons:

First, the lower court erred in concluding that Mr. Silver’s action for the recovery of his deposit trust monies, which were wrongfully withheld from him in violation of Washington’s Residential Landlord Tenant Act (RLTA), RCW 59.18, *et seq.*, was not essentially “an action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated,” under RCW 4.16.080(2).

Second, the lower court erred in finding that “the sole claim in the complaint hinges on Rudeen’s violation of the statute that requires him [sic] to provide a statement,” without consideration of Mr. Silver’s expressly

stated claims regarding Rudeen's "taking, detaining, or injuring personal property" (i.e., being his deposit trust monies), or for "injury to the person or rights of another," (i.e., being his tenancy rights imposed by law. (CP 120). The lower court acknowledged that the three-year statute of limitations would otherwise apply in either of those circumstances. (*Id.*).

Finally, pursuant to RCW 59.18.280(2), Mr. Silver is entitled to recovery of his costs and fees as the prevailing party in any action to recover his deposit trust monies. He therefore requests an award of costs and fees pursuant to RAP 18.1.

D. ARGUMENT

Washington's three-year statute of limitations applies to "[a]n action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated." RCW 4.16.080(2). Washington courts have consistently affirmed that, "[w]here the defendant directly invades a legally protected interest of the plaintiff, the 3-year statute applies." *Lewis v. Lockheed Shipbuilding & Constr. Co.*, 36 Wn. App., 607, 612 (1984). This is true even in cases involving liabilities that are created by statute. *Id.* at 610 (rejecting the proposition that all liabilities created by statute fall under the two-year "catchall statute" of RCW 4.16.130); *and see Sorey v. Barton Oldsmobile*, 82 Wn. App. 800, 805 (1996) (citing *State ex*

rel. Bond v. State, 59 Wn.2d 493, 497 (1962) (“All of the discussion about “a liability created by a statute,” is a red herring. We do not have a statute of limitations, as many states do, specifically applicable to an action for a liability created by statute.”)).

Only in cases for which no other statute of limitations is applicable does the two-year “catch-all” provision apply.³ RCW 4.16.130; *and see Sorey*, 82 Wn. App. at 805-806 (approving compiled cases). “We reiterate that there is no such category as “an action on a liability created by a statute” in our limitation statutes. *Such an action does not fall within the ‘catch-all’ statute [RCW 4.16.130] unless there is no other statute of limitations applicable thereto, i.e., it is “an action for relief not hereinbefore provided for.” Lewis*, 36 Wn. App. at 611 (emphasis original) (citing *State ex rel. Bond v. State*, 59 Wn.2d 493 (1962)). Otherwise, “[t]he language of RCW 4.16.080(2) is clear and should apply to any other injury to the person or rights of another not enumerated in other limitation sections.” *Stenberg v. Pacific Power & Light Co.*, 104 Wn.2d 710, 720 (1985). Furthermore, “[w]hen there is uncertainty as to which statute of limitation governs, the longer statute will be applied.” *Id.* at 715.

³ RCW 4.16.30 states “An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.”

In this case, Mr. Silver's claims that Rudeen wrongfully withheld his deposit trust funds, as well as disclosures related to the same, represent an action for "taking, detaining, or injuring personal property," including "the specific recovery thereof," being his deposit monies, as well as an action for "injury to the ... rights of another," by invading Mr. Silver's tenancy rights and fiduciary benefits afforded to him under the RLTA. RCW 4.16.080(2). Under these facts and authorities, the three-year statute of limitations under RCW 4.16.080(2) clearly applies. *Sorey*, 82 Wn. App. at 806 (citing *Lewis*, 36 Wn. App. at 612).

Significantly, the lower court acknowledged on reconsideration that RCW 4.16.080(2) applies to "direct invasions of a plaintiff's person or property rights," and "[w]here a defendant directly invades a legally protected interest of the Plaintiff." (CP 120 (citing *Lewis*, 36 Wn. App. at 611, 612)). At the same time, the court's findings that "Silver's action is not for taking, detaining, or injuring personal property," and that "the sole claim in the complaint hinges on Rudeen's violation of the statute that requires him [sic] to provide a statement," plainly contradict both the form and substance of Mr. Silver's Complaint. In fact, Mr. Silver's sworn and verified Complaint specifically and repeatedly states that he disputed Rudeen had any basis for withholding any of his deposit trust funds, (CP ¶¶ 4.12, 4.16, 4.19), and alleges that he was not only entitled to a full, specific,

and timely “statement,” as the lower court found, but that he is also entitled to a “refund due” from his deposit trust account (*see* RCW 59.18.270), as well as additional damages, costs, and fees provided by statute. (CP 6-7 ¶¶ 4.20-23; CP 9, ¶¶ 6.1.7-6.1.8; CP 10, ¶¶ 7.2, 7.4).

For these reasons, and for the arguments in sections *supra*, Mr. Silver appeals to this Court to reverse the court below and allow his action to proceed.

**E. Mr. Silver’s Action to Recover His Deposit Trust Funds Is
Subject to a Three-Year Statute of Limitations
Under RCW 4.16.080(2).**

**Rights and Obligations Regarding Collection, Maintenance,
and Disposition of Tenancy Deposits in Trust.**

Washington’s Supreme Court has recognized that the history of the RLTA “shows the care exercised by the Legislature in writing the act and in delineating the specific rights, duties, and remedies of both landlords and tenants.” *State v. Schwab*, 103 Wn.2d 542, 551, 693 P.2d 108, 113 (1985). The RLTA is a remedial statute, and as such it is “construed liberally in order to accomplish the purpose for which it is enacted.” *State v. Douty*, 92 Wn.2d 930, 936, (1979).

The RLTA establishes statutory standards for landlords’ collection, maintenance, and disposition of tenants’ tenancy deposits. For example, landlords who wish to collect tenancy deposits must first provide both a

written lease and complete a written checklist or statement of the condition of the premises. RCW 59.18.260. Landlords must maintain tenants' deposit funds in a specially designated trust account. RCW 59.19.270. Upon the termination of tenancy, tenants have a right to receive a "full and specific" statement of the basis for withholding any portion of tenants' deposit trust monies, along with any refund due, within statutorily defined timelines. RCW 59.18.280. Landlords may not withhold tenants' deposit trust funds for normal "wear and tear," RCW 59.18.260; RCW 59.18.280(1)(a), and tenants may not be charged for "normal cleaning if [they] have paid a nonrefundable cleaning fee." RCW 59.18.130(10).

A landlord who fails to provide a full, specific, and timely statement, along with any refund due from a tenant's deposit trust account, is "liable to the tenant for the full amount of the deposit," costs, and attorneys' fees, as well as exemplary damages "for the intentional refusal of the landlord to give the statement or refund due" at the court's discretion. RCW 59.18.280(2). Moreover, "[w]ith one exception, unless the landlord timely provides the required [deposit disposition] notice, RCW 59.18.280 bars a landlord from asserting any claim to the tenant's deposit. The exception requires "the landlord [to show] that circumstances beyond [its] control prevented [it] from providing the statement within the fourteen days." *Goodeill v. Madison Real Estate*, 191 Wn. App. 88, 101 (2015).

As stated in his sworn and verified Complaint, Mr. Silver not only disputed Rudeen's allegations of excessive "wear and tear," (CP 5, ¶ 4.12; CP 6, ¶¶ 4.16, 4.19), but under *Goodeill's* application of RCW 59.18.280, Rudeen is presumptively barred from even "asserting any claim or raising any defense for retaining any Mr. Silver's deposit trust funds," having waited at least forty-nine (49) days from the termination of tenancy before offering a so-called "final" deposit disposition statement, then claiming all of Mr. Silver's deposit trust funds and demanding that he pay thousands of dollars more. (CP 5, ¶ 4.13). Although Mr. Silver noted the rule of *Goodeill* in his response to Rudeen's Motion to Dismiss, (CP 57), Rudeen was permitted to proceed with its affirmative defense, even as it appropriated all of Mr. Silver's deposit trust funds for its own benefit.

Mr. Silver's Action is for "taking, detaining, or injuring personal property, including an action for the specific recovery thereof."

In his verified Complaint, Mr. Silver states a cause of action titled "Violation of the Washington Residential Landlord-Tenant Act," in which he claims:

6.1.7 The Defendant did not, within fourteen (14) days after the termination of the rental agreement with the Plaintiff, provide a full and specific statement *or return any portion of deposit* to the Plaintiff.

6.1.8 The Defendant did not, within twenty-one (21) days after the termination of the rental agreement with

the Plaintiff, provide a full and specific statement *or return any portion of deposit* to the Plaintiff.

(CP 9) (emphasis added).

Mr. Silver's verified Complaint then requests various forms of relief, including:

7.2 For *refund of each class member's security deposit* paid to or retained by Defendant ...

7.4 Two times the amount of the deposit illegally retained by defendant ...

7.5 Reasonable attorney's fees and costs ...

(CP 10) (emphasis added).

These claims and causes of action for the recovery of Mr. Silver's deposit trust monies, plus exemplary damages, costs, and fees, are supported by numerous allegations in his verified Complaint, including but not limited to paragraphs 4.4 (deposit required by lease), 4.5 (lessor's obligation to provide lessee a statement and refund within 14 days of termination), 4.4 (deposit paid by tenant), 4.10 (termination of tenancy), 4.11 (deficient "preliminary statement" with no refund), 4.12 (untimely "final" disposition with no refund, 4.20-23 (intentional refusal to provide full, timely, and specific statement *and refund due from trust account* within contractual and statutorily mandated timeframes). (CP 4-7).

In these respects, Mr. Silver's action is expressly and fundamentally an action for "taking, detaining, or injuring personal property, including an action for the specific recovery thereof," RCW 4.16.080(2). In construing the language of the three-year statute of limitations, RCW 4.16.080, courts have found that "[t]he language used by the legislature is broad and was intended to cover injury to that kind of property that is intangible in nature, especially when the injury consists of some direct, affirmative act which prevents another from securing, having, or enjoying some valuable right or privilege." *Sorey*, 82 Wn. App. at 804 (citing *Luellen v. City of Aberdeen*, 20 Wn.2d 594, 604 (1944)). Even within such an inclusive application, the personal property Mr. Silver seeks to recover in this action is readily discernible as his deposit trust monies. *See, e.g., State ex rel. Wolfe v. Parmenter*, 50 Wash. 164, 176 (1908) (presumptively equating money and personal property for purposes of taxation).

In its arguments to the lower court, both on its Motion to Dismiss and Mr. Silver's Motion for Reconsideration, Rudeen urged the lower court to rely on an obsolete principle that any liability created by statute is necessarily subject to a two-year statute of limitations under RCW 4.16.130, (CP 41-42, 115-116). This principle, which was espoused by *Cannon v. Miller*, 22 Wn.2d 227, 155 P.2d 500 (1945), and its progeny, was expressly overruled by the Supreme Court in *SPEEA v. Boeing Co.*, 139 Wn.2d 824

(2000). However, under the controlling authority of *SPEEA*, whether or not Mr. Silver seeks relief under a particular statute is not a relevant question; rather, the issue to be adjudicated is whether his claim is for the types of injuries and invasions articulated in RCW 4.16.080(2), which includes “taking, detaining, or injuring personal property, including an action for the specific recovery thereof,” as well as “injury to the person or rights of another.” *SPEEA*, 139 Wn.2d 824, 837 (2000). In this case, “[t]he language of RCW 4.16.080(2) is clear and should apply to any other injury to the person or rights of another not enumerated in other limitation sections,” including Mr. Silver’s action to recover his deposit trust funds. *Stenberg*, 104 Wn.2d at 720 (1985).

Mr. Silver’s Action is “for any other injury to the person or rights of another not hereinafter enumerated” under RCW 4.16.080(2)

Mr. Silver’s action is not only an action for “taking, detaining, or injuring personal property, including an action for the specific recovery thereof,” RCW 4.16.080(2), but also an action for “injury to the ... rights of another,” being Mr. Silver’s tenancy rights and fiduciary benefits afforded to him under the RLTA. *Id.*

RCW 59.18.270 mandates that “[a]ll moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant’s obligations in a lease or rental agreement shall be promptly deposited by

the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord ...” In addition to imposing certain fiduciary obligations on Rudeen, this statutory provision gave Mr. Silver important rights and benefits related to account security, receipts, and disclosures, as well as the formidable right to enforce a claim to his deposit trust funds “prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.” RCW 59.18.270. Most importantly, Rudeen was required to maintain Mr. Silver’s deposit funds in a designated trust account unless and until it established a right to re-appropriate those monies to itself. Instead, it converted Mr. Silver’s deposit trust monies without complying with the legal requirements for doing so under RCW 59.18.280.

As address previously, the RLTA requires landlords to provide a “full and specific” deposit disposition statement and deposit refund due within twenty-one (21) days of the termination of tenancy. RCW 59.18.280(1). Under the terms of the Mr. Silver’s lease, which was consistent with statutory requirements at the time,⁴ Rudeen was obliged to

⁴ Prior to amendments implemented June 9, 2016, RCW 59.18.280 provided a 14-day timeline for landlords to provide the required statement and/or refund

send Mr. Silver a full and specific deposit disposition statement and/or refund due within fourteen (14) days of the termination of tenancy. (CP 5, ¶ 4.5). Any landlord who has not satisfied these requirements must return the full amount of the deposit, plus exemplary damages at the discretion of the court, as well as costs and reasonable attorneys' fees. RCW 59.18.180(2). In addition, a landlord who fails to provide a "full and specific" statement and/or "refund due" within the mandated timeframe "is barred from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the [mandated timeframe] or the tenant abandoned the premises as defined in RCW 59.18.310." *Id.* "[a] landlord may not avail itself of RCW 59.18.280's exception unless it accounts for any active or passive delay sufficient to show that it made a conscientious attempt to comply with the statutory 14-day notice. *Goodeill*, 191 Wn. App. at 102.

In Mr. Silver's case, Rudeen not only failed to provide the required notice and/or refund within statutory timelines, it did not even try. In this case, Mr. Silver's tenancy was set to expire at midnight on June 30, 2015. (CP 5, ¶¶ 4.9-4.10). Rudeen's "preliminary" deposit disposition statement, dated the same day, was actually issued *before* the termination of Mr. Rudeen's tenancy. (CP 5, ¶ 4.11). The "preliminary" statement claimed

that Mr. Silver owed all of his deposit trust monies, plus exactly three thousand dollars (\$3,000.00) more, for allegedly excessive “wear and tear,” (*id.*), which Mr. Silver persistently disputed. (CP 5, ¶ 4.12; CP 6, ¶ 4.19). At the time Rudeen claimed these amounts due, none of the work that was allegedly required to restore the premises had been commissioned, completed, or invoiced (CP 6, ¶¶ 4.14-4.16). Rudeen’s preliminary statement was void of any factual basis for the claimed charges. Not until more than six (6) weeks later, on August 18, 2015, did Rudeen finally issue a so-called “final” deposit disposition statement claiming a total of two thousand two hundred eighty-one dollars and thirty-five cents (\$2,281.35) due, and was based on one invoice with its total price redacted and another for three thousand three hundred fifteen dollars and thirty-five cents (\$3,315.35) from a flooring company, both of which were dated in August 2015. (CP 6, ¶¶ 4.14-4.15, 4.18).

Far from providing a “full and specific statement” of the basis for withholding Mr. Silver’s deposit trust funds under RCW 59.18.280, the “preliminary” notice that Rudeen issued the same day the tenancy was set to expire was nothing more than an unsubstantiated, and ultimately inaccurate, guess that it was entitled to take all of Mr. Silver’s deposit trust funds and make him pay thousands of dollars more. As such, Rudeen never satisfied the legal requirements for appropriating Mr. Silver’s trust funds to

itself, but nonetheless converted them against Mr. Silver rights and interests in those funds.

In these respects, Mr. Silver's action to recover his deposit trust funds is not only one for the recovery of personal property, but also one for "injury to the ... rights of another," being his rights as a tenant and the fiduciary benefits afforded to him under the RLTA. RCW 4.16.080(2). Mr. Silver is "in essence seeking recovery under an obligation imposed by law," as well as the RLTA, and his claims are subject to any applicable provision of RCW 4.16, *et seq.* *SPEEA*, 139 Wn.2d at 838. Only in cases for which no other statute of limitations is applicable does the two-year "catch-all" provision apply to actions "for relief not hereinbefore provided for." RCW 4.16.130; *and see Sorey*, 82 Wn. App. at 805-806 (approving compiled cases). An action on a liability created by a statute "*does not fall within the 'catch-all' statute [RCW 4.16.130] unless there is no other statute of limitations applicable thereto, i.e., it is "an action for relief not hereinbefore provided for."* *Lewis*, 36 Wn. App. at 611 (emphasis original) (citing *State ex rel. Bond v. State*, 59 Wn.2d 493 (1962)). Otherwise, "[t]he language of RCW 4.16.080(2) is clear and should apply to any other injury to the person or rights of another not enumerated in other limitation sections." *Stenberg*, 104 Wn.2d at 720. Furthermore, "[w]hen there is uncertainty as to which statute of limitation governs, the longer statute will be applied." *Id.* at 715.

Under these facts and authorities, Mr. Silver's action is subject to a three-year statute of limitations for actions for "taking, detaining, or injuring personal property, including an action for the specific recovery thereof," RCW 4.16.080(2), as well as an action for "injury to the ... rights of another." RCW 4.16.080(2). The lower court erred in ruling otherwise.

F. The Lower Court Erroneously Found that Mr. Silver's Complaint Is Not for Taking, Detaining, or Injuring Personal Property.

In ruling on Rudeen's Motion to Dismiss, the lower court erred by adopting the obsolete reasoning of *Cannon* and its progeny, which were overruled by the Supreme Court's decision in *SPEEA*, to conclude that "[t]he claims in the complaint are statutory in nature and there is no specific statutory statute of limitations set for a cause of action based on RCW 59.18.280. Because there is no other limitation the general limitation of RCW 4.16.130 shall apply in this matter." (CP 85).

In its ruling the trial court specifically relied upon *Unisys Corp. v. Senn*, 99 Wn. App. 391 (2000), which was the singular authority Rudeen provided for its proposition that a two-year statute of limitations applied to Mr. Silver's action to recover his deposit trust funds. (CP 39). As Mr. Silver clarified in his Motion for Reconsideration, *Unisys* relied on the obsolete reasoning espoused by *Cannon*, "which was heavily criticized in subsequent years and ultimately overruled" by the Supreme Court's decision in *SPEEA*. (CP 103).

Mr. Silver advised the trial court that, because *SPEEA* and *Unisys* were being considered by their respective courts almost concurrently, and the decisions in the two cases were issued near the same date, the Court of Appeals in *Unisys* could not have been aware of the Supreme Court's controlling ruling in *SPEEA* until after its *Unisys* decision was written, which is likely the reason why one case does not appear to recognize the other. (CP 104). Neither case mentions the other.

On reconsideration, the lower court properly acknowledged that “RCW 4.16.080(2) applies only to certain direct invasions of a plaintiff's person or property rights.” [footnoting *Lewis*, 36 Wn. App. at 611] Where a defendant directly invades a legally protected interest of the plaintiff, the three-year statute applies. [footnoting *Lewis*, 36 Wn. App. at 612]” (CP 120). In the same case, the *Lewis* court also disapproved of the proposition that “the catchall statute applied, because the plaintiff's claim was founded on a liability created by statute,” unequivocally stating “[w]e do not agree.” *Lewis*, 36 Wn. App. at 610. The *Lewis* court went on to emphasize the Supreme Court's ruling in *Bond*, which states “[w]e reiterate that there is no such category as “an action on a liability created by a statute” in our limitation statutes. *Such an action does not fall within the “catch-all” statute unless there is no other statute of limitations applicable thereto, i.e., it is “an action for relief not hereinbefore provided for.”* *Lewis*, 36 Wn. App. at 611, 676 (quoting *Bond*, 59 Wn.2d at 498) (emphasis original).

Lewis further clarifies that RCW 4.16.080(2) does not just apply to invasions of tangible property, but that “the 3-year statute covers all direct invasions of property that is intangible in nature.” *Id.* at 613 (citing *Luellen v. Aberdeen*, 20 Wn.2d 594, 148 P.2d 849 (1944) (finding right to union representation to be intangible property subject to the three-year statute of limitation under RCW 4.16.080(2)). This much is consistent with the controlling authority of *SPEEA*, which references *Lewis* among a compilation of cases supporting its principle that, where a plaintiff is essentially seeking recovery under an obligation imposed by law, those claims are subject to any statute of limitation under RCW 4.16 that could apply *instead* of RCW 4.16.130, regardless of its basis in statutory law. *SPEEA*, 139 Wn.2d at 837-838.

In its ruling on Mr. Silver’s Motion for Reconsideration, one of the lower court’s critical errors was its finding that “Silver’s action is not for taking, detaining, or injuring personal property; the sole claim in the complaint hinges on Rudeen’s violation of the statute that requires him to provide a statement; the return of the damage deposit is the remedy for Rudeen’s alleged violation of the statute,” in concluding that “[a]s such, the three year statute does not apply.” (CP 120).

The lower court’s first quoted finding, that Mr. Silver’s action “is not for taking, detaining, or injuring personal property,” (*id.*), contradicts the most fundamental aspect of his case, which is an action for the recovery

of his deposit trust funds. While the RLTA provides special considerations for tenants seeking to recover their deposit trust monies, and imposes specific requirements for landlords who wish to take those monies for themselves, the essential character and substance of Mr. Silver's action is for the recovery of his money, which he is entitled to with or without the additional awards available under RCW 59.18.280. (CP 6-7 ¶¶ 4.20-23; CP 9, ¶¶ 6.1.7-6.1.8; CP 10, ¶¶ 7.2, 7.4). To be clear, Mr. Silver has always had a legally protected interest against Rudeen's improper conversion of his deposit trust funds, and his action to recover those funds under RCW 59.18.280 plainly represents an action "for taking, detaining, or injuring personal property" subject to the three-year statute of limitations under RCW 4.16.080(2) and the authority of *SPEEA*.

The lower court's second quoted finding, that "the sole claim in the complaint hinges on Rudeen's violation of the statute that requires him to provide a statement," is also erroneous. (CP 120). The statute at issue, RCW 59.18.280, requires landlords to provide both a "full and specific statement" *and* "any refund due" within a statutorily defined timeframe. Mr. Silver's verified Complaint alleges that Rudeen failed to do either of these things, and as a result, Rudeen was not legally entitled to appropriate his deposit trust monies to itself. (CP 6-7 ¶¶ 4.20-23; CP 9, ¶¶ 6.1.7-6.1.8; CP 10, ¶¶ 7.2, 7.4). With regard to Rudeen's alleged violations of the RLTA, and whether or not Mr. Silver's claim involves a liability created by

statute, “the relevant issue is whether the claim is for an injury to the rights of another irrespective of its basis in statutory law.” *SPEEA*, 139 Wn.2d 824, 837 (2000) (paraphrasing *Stenberg*, 104 Wn.2d at 718). Furthermore, the proposition that a claim is based on certain statutes does not in any way diminish the principle that a violation of those statutes is also an injury or invasion subject to the three-year statute of limitations under 4.16.080(2). *Id.* (paraphrasing *Sorey*, 82 Wn. App. at 806).

Finally, the lower court’s third quoted finding, that “the return of the damage deposit is the remedy for Rudeen’s violation of the statute,” is erroneous to the extent that it has any bearing on the applicable statute of limitations for Mr. Silver’s action to recover his deposit trust funds. (CP 120). Because Rudeen failed to establish a legal basis for converting Mr. Silver’s deposit trust funds under RCW 59.18.280(2) and *Goodeill*, 191 Wn. App. 88, Mr. Silver is and was entitled to the return of his money, irrespective of the remedies provided by RCW 59.18.280. In an action stating conversion, RLTA remedies such as an award of the “full amount” of the deposit (i.e., even when a tenant may have received a partial, albeit untimely, refund), exemplary damages, costs, and attorneys’ fees might not be available. In any event, and regardless of the remedies available, both actions are ones for “taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury

to the person or rights of another not hereinafter enumerated [under RCW 4.16, *et seq.*],” and are therefore subject to a three-year statute of limitations under RCW 4.16.808(2). The lower court erred in finding otherwise.

G. Mr. Silver Is Entitled to an Award of Costs and Fees.

Pursuant to RCW 59.18.280(2), Mr. Silver is entitled to recovery of his costs and fees as the prevailing party in this action. Pursuant to RAP 18.1, he requests that this Court make such an award as provided by RCW 59.18.280(2).

H. CONCLUSION

Based upon the legal authorities and arguments herein presented, Mr. Silver respectfully requests that this Court reverse the decision of the Superior Court below and rule in favor of his claims or remand with instructions.

DATED this 21st day of December, 2018.

Respectfully submitted,



Brian G. Cameron, WSBA #44905
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the **21st day of December, 2018**, at Spokane, Washington, I caused to be served the foregoing document(s), and accompanying exhibits, on the following person(s) and/or entity(ies) in the manner indicated:

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DATED this 21st day of December, 2018.



Rachel Elston
Paralega

KIRK D. MILLER, P.S.

December 21, 2018 - 4:59 PM

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