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**SUPREME COURT
OF THE STATE OF WASHINGTON**

NO. 98024-1

THOMAS SILVER,

Petitioner,

v.

RUDEEN MANAGEMENT COMPANY, INC.,

Respondent.

**RESPONDENT'S ANSWER TO AMICUS BRIEF
OF NORTHWEST CONSUMER LAW CENTER**

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A. ARGUMENT.

Amicus, Northwest Consumer Law Center (Amicus), filed a brief in support of the Petitioner in this matter. The two arguments presented by the Amicus are, first, the Court of Appeals ignored the nature of the right which the Petitioner is attempting to vindicate, and second, public policy favors the 3 year limitation period.

1. THE REMEDY PROVIDED FOR A VIOLATION OF RCW 59.18.280 IS UNIQUE.

Amicus attempts to characterize the right being vindicated as a property right. However, the application of RCW 59.18.280 is not strictly a right to recovery property.

Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Remedies for landlord's failure to make refund.

(1) Within twenty-one days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within twenty-one days after the landlord learns of the abandonment, the landlord shall give 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.

(a) No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

(b) The landlord complies with this section if the required statement or payment, or both, are delivered to the tenant personally or deposited in the United States mail properly addressed to the tenant's last known address with first-class postage prepaid within the twenty-one days.

(2) If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he or she shall be liable to the tenant for the full amount of the deposit.

RCW 59.18.280.

This statute is procedural in nature. It provides a remedy when a landlord does not follow a specific procedure. The nature of the right being enforced is the right to have an accounting for the damage deposit. If the landlord fails to provide that accounting, then a remedy is provided.

This is the remedy sought by the Petitioner. Petitioner brought filed his complaint as a class action. The remedy he sought was not to recover the damage deposit based on the substantive rights of class members to return their damage deposit, he was seeking a procedural penalty for all tenants who did not receive a proper accounting. The substantive rights to recover a damage deposit would not lend itself to class litigation because of the individual facts involved - the Petitioner would be unable to establish commonality and typicality. The procedural

aspects of the statute would form a claim which could be typical and common i.e. did each plaintiff receive an accounting for his or her damage deposit?

The distinction is that a remedy is created by the statute not based on any other right to be vindicated. The other cases involving the statutes of limitations are based on a substantive right which coexists with the statutory right.

- a. ***SEATTLE PROFESSIONAL ENGINEERING EMPLOYEES ASSOCIATION V. BOEING, 139 WN.2D 824, 991 P.2D 1126 (2000).***

Amicus states that the decision in *Silver v. Rudeen*, 10 Wn.App.2d 676, 449 P.3d 1067 (2019) undermines the *SPEEA* holding. *SPEEA* is distinguishable. In *SPEEA*, the substantive rights being vindicated were completely in accord with the statutory rights being vindicated.

Thus, in instituting this action, the employees are in essence seeking recovery under an obligation imposed by law, and the WMWA, for Boeing's unjust enrichment (i.e., receiving the benefit of the employees' work without paying for the work.) As such, the employees' claims are subject to the three-year statute of limitations applicable to implied contracts, as provided under RCW 4.16.080(3).

Id., at 837, 838.

In every application of Washington Minimum Wage Act (WMWA), there is a corresponding substantive right to the same relief;

someone who works is entitled to wages. This is not true of the remedy provided in RCW 59.18.280. There are many instances where the tenant would have no substantive right to recover the damage deposit, but the statute would provide a remedy based on the landlords procedural error.

b. *SOREY V. BARTON OLDSMOBILE*, 82 WN. APP. 800, 805, 919 P.2d 1276, 1278 (1996).

Amicus also states that *Sorey v. Barton* supports the Petitioner's case. The *Sorey* case was nicely summarized in the final holding:

Based on this case law, we conclude that *Cannon* stands for no more than the proposition that a claim based upon wage and hour statutes is not a contract claim. That proposition does not in any way diminish the argument that violation of a wage and hour statute is an invasion of a personal right subject to the three-year statute of limitations and we so hold.

Sorey v. Barton Oldsmobile, 82 Wn. App. 800, 806 (1996).

This holding again illustrates that a substantive right to wages is a personal right which the statute protects and does not create. The remedy provided by RCW 59.18.280 exists independently of any existing substantive right. The landlord becomes liable when the statute is violated regardless of any substantive right of the tenant.

2. AMICUS OVERSTATES THE PUBLIC POLICY IMPLICATIONS.

Amicus states that the RLTA is remedial and should be liberally construed. While the RLTA is remedial in some aspects, it is largely regulatory. Many of the sections do not provide a remedy. When remedies are provided, most of the remedies and provisions for court costs and attorney fees are based on prevailing party analysis.¹ Consumer protection statutes usually are based on a one-way attorney fee clause when violations occur. This would indicate a more regulatory statute in which both parties' behaviors are modified. Additionally RCW 59.18.020 requires good faith on the part of anyone seeking a remedy under the RLTA. Based on a complete reading of the RLTA, the intent of the legislature seems to be one of a reasonable standard of conduct for both landlords and tenants, and not simply a remedial tool used only by tenants.

Be that as it may, liberal construction of the statute does not affect the analysis of the remedies provided by the statute. They are spelled out in clear detail as seen in RCW 59.18.280. Liberal construction does not

¹ Prevailing party to be awarded fees in the following sections: RCW §§ 59.18.115(5)(c), 59.18.150(8), 59.18.200(3), 59.18.230(4), 59.18.250, 59.18.253(5), 59.18.257(3), 59.18.260, 59.18.270, 59.18.280(2), 59.18.300, 59.18.510(5), 59.18.580(3), and 59.18.595(6),

alter the fact that a tenant can have no substantive claim whatsoever for his or her damage deposit, and still pursue a landlord for liability if he or she misses the 21 day deadline.

B. CONCLUSION

The penalty allowed by RCW 59.18.280 is created by it's own terms. As such, the applicable statute of limitations is two years as provided by RCW § 4.16.130.

Respectfully Submitted, on
October 5, 2020.



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