

NO. 66027-6-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

EDWARD PRYOR, JR., and VAN PRYOR,

Appellants,

v.

MHM&F, LLC,

Respondent.

201107-2 11:11 AM
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BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignments of Error

1. The trial court erred in determining that it had subject matter jurisdiction in this unlawful detainer action brought by MHM&F, LLC.

2. The trial court erred in entering Finding of Fact C that plaintiff “owns and has the right to possession” of a certain interest in land described in C 1, and that plaintiff’s rights arose from the three contracts specified in C 2.

3. The trial court erred in entering Finding of Fact D 2 that Pryor Junior “never took steps specified in the Contracts for transfer of his father’s shares of stock to him until serving a Notice and Declaration pursuant to RCW 11.62.010 on March 29, 2001, which was too late to establish his right to his father’s shares in the Association.

4. The trial court erred in entering Finding of Fact E. 3 that Pryor Junior failed to make a timely or sufficient tender of payment as required by the May 15, 2007 Notice of Default.

5. The trial court erred in entering Finding of Fact E 4 to the effect that there was a valid forfeiture and sale of the 100 shares of stock purchased by Pryor Senior.

6. The trial court erred in entering Finding of Fact G 1 that pursuant to the terms of the tenancy Defendants were obligated to pay the Plaintiff rent at the rate of \$191.24 per month for the use and occupancy of the premises from

June 1, 2007, payable on the 1st day of each and every month.

7. The trial court erred in entering Finding of Fact G 2 that defendants paid no rent to Plaintiff following the trial in March, 2008, and that defendants were delinquent in rent payments.

8. The trial court erred in entering Finding of Fact H that notice to pay and vacate was duly and properly served on Defendants.

9. The trial court erred in entering Finding of Fact I to the effect that Defendants were unlawfully possessing the premises, and that rent was owed to plaintiff.

10. The trial court erred in entering Finding of Fact J that Defendants owed Plaintiff unpaid rent in the amount of \$190.24 per month.

11. The trial court erred in entering Conclusion of Law A to the effect that the decision of Judge Bowden in the first trial was binding under the doctrine of collateral estoppel.

12. The trial court erred in entering Conclusion of Law C 1 to the effect that at all material times Defendants were in a landlord-tenant relationship with Plaintiff (and the Plaintiff's predecessor) and the Plaintiff is the landlord.

13. The trial court erred in entering Conclusion of Law C 2.1 to the effect that defendants did not cure the default in the stock purchase installment and did not take reasonable steps thereafter to cure their default, and that therefore defendants are not stock purchasers.

14. The trial court erred in entering Conclusion of Law C 2.2 to the effect that Pryor Junior's putative interest in his father's shares of stock in the Association were foreclosed upon by Notice of Default and failure to cure, that plaintiff's predecessor had the right and did sell the shares to Edwin Wellington, Pryor Junior's interest in the shares were thereby extinguished, and there was nothing improper in the sale of the shares.

15. The trial court erred in entering Conclusion of Law D to the effect that unlawful detainer under Chapter 59.20 RCW does lie, that defendants are guilty of unlawful detainer, that their right to occupy the premises should be terminated, that they should be evicted and that a writ of restitution should be issued.

16. The trial court erred in awarding costs and attorney's fees to plaintiff.

B. Issues Pertaining to Assignments of Error

1. Did the trial court lack subject matter jurisdiction due to the deficiency of the form of summons used by respondent? (Assignment 1.)

2. Did the trial court lack jurisdiction over an unlawful detainer action brought by a secured party foreclosing on its security under a stock purchase agreement, who chose not to bring an ejectment action? (Assignment 1.)

3. Did the trial court lack jurisdiction over this case for the respondent's failure to join a necessary party, i.e., the Association?

(Assignment 1.)

4. Did the trial court incorrectly conclude that a landlord-tenant relationship ever arose between MHM&F, LLC and Pryor Junior?

(Assignments 1, 6, 7, 8, 12, 15.)

5. Was the trustee's sale of Pryor Sr.'s 100 shares invalid so as not to vest title to those shares in MHM&F, LLC? (Assignments 2, 3, 4, 5, 8, 10, 14, 15.)

6. Did Willie Wellington, brother of the seller, improperly carry out his duties as trustee on behalf a defunct corporation, given the lack of formalities in his appointment, his lack of independence, his conflicts of interest and lack of fairness to Pryor Junior? (Assignment 13.)

7. Even if "rent" were owed to MHM&F, LLC when the five-day notice was served, was Pryor Junior able to assert an offset against MHM&F, LLC on account of Pryor Junior's judgment against MHM&F, Inc., which judgment exceeded the amount of the claimed "rent"? (Assignment 9.)

8. Was the trial court in error in giving collateral estoppel effect to trial court rulings in the First Lawsuit, where those rulings (a) were ambiguous and (b) were made when Pryor Junior was not able to offer evidence or testify because the First Lawsuit was dismissed on the close of the plaintiff's case? (Assignments 11, 15.)

9. Was the trial court incorrect in awarding costs and attorney's fees to

plaintiff? (Assignments 1, 3, 5.)

II. STATEMENT OF THE CASE

Ed Wellington owned Thunderbird Mobile Home Park (the “park”), a mobile home park containing 65 mobile home lots (RP 124). Desiring to sell the lots to the tenants, he formed the Thunderbird Estates Mobile Home Association, a non-profit corporation (the “Association”) incorporated under RCW ch. 24.06, and transferred the ownership of the park to the Association in exchange for shares in the Association (RP 20-21; RP 94). These shares were then transferred to a corporation called Manufactured Homes Management and Financial Company, Inc., a Washington corporation (“MHM&F, Inc.”), whose shares were apparently owed at least in part by Ed Wellington, which corporation would act as the seller of the shares in the Association to the tenants renting the lots on which their homes were placed (RP 21).

Each tenant signed a stock purchase agreement, which outlined the purchase price and extended terms of payment for 100 shares of stock in the Association (Ex. 1). The purchaser’s obligations under the stock purchase agreement were secured by a pledge and trust agreement, whereby the 100 shares of stock in the Association were pledged to a trustee with a power to sell the stock in the event of a default (Ex. 2). The tenants entered into a proprietary lease (the “lease”) with the Association, permitting the tenant to use a particular lot in the park for 99 years, renewable for another 99 years (Ex. 3).

The rent due under the lease was payable to the Association and consisted of the tenant's pro-rata share of the expenses of maintenance and operation of the park (*id.*; RP 6; RP 42-43). MHM&F, Inc. ended up owning about one half of the lots (RP 126).

Edward G. S. Pryor ("Pryor Senior") owned the home in space #65 of the park (Ex. 26, FOF #4). He entered into a stock purchase agreement dated February 16, 1981, whereby he agreed to purchase 100 shares of stock in the Association from MHM&F, Inc. for \$18,495.00, payable in 360 equal monthly installments of \$190.24 each, commencing on December 1, 1982, with interest payable at 12% per annum (Ex. 26, FOF #1). Pryor Senior lived in the home with his son, defendant Edward Pryor Junior (referred to as "Pryor Junior") (Ex. 26, FOF #5). Pryor Senior signed a pledge and trust agreement with MHM&F, Inc on October 30, 1982 (Ex. 2). He also executed the Proprietary Lease with the Association on October 30, 1982 (Ex. 3).

Pryor Senior made the payments to MHM&F, Inc. under the stock purchase agreement and to the Association under the proprietary lease from 1981 until September, 2003, when he died (Ex. 26, FOF #5; RP 156). Pryor Junior is the only heir of Pryor Senior (Ex. 40), and is the owner of the mobile home (RP 172). After his father's death, Pryor Junior had an attorney send Ed Wellington a letter dated July 13, 2005, asking that the shares in the Association be transferred from Pryor Senior's name to Pryor Junior's name

(Ex. 39).

Pryor Junior lived in the home from 1982 before his father's death, and has continued to live in the home through April, 2010 (Ex. 26, FOF #5 and #6). Pryor Junior continued to make the monthly payments to MHM&F, Inc. under the stock purchase agreement and to the Association under the proprietary lease from 2003 until the spring of 2007 (RP 156).

Pryor Junior had made late payments to MHM&F, Inc. from time to time (RP 29-31). On May 15, 2007 a notice was sent to Pryor Junior stating that he was in arrears for the months of April and May, 2007, and owed for two months, plus a late charge of \$5.00 per month, plus "cost of service of \$75.00" for a total delinquent amount of \$467.00 (Ex. 26, FOF 7; Ex. 13; RP 36). The notice was entitled "Thunderbird Estates Mobile Home Association Notice of Default and Breach of Stock Purchase Agreement & Pledge and Trust Agreement" (Ex. 13). The notice stated it was "to" the Estate of Edward Pryor; it was "from" Ed Wellington, trustee under the pledge and trust agreement; and it was signed on behalf of "manufactured Homes Management & Financial Co." by Wilie Wellington (Ex. 13). Wilie Wellington was Ed Wellington's brother (RP 20). The notice stated that if the breach was "not cured within ten (10) days since [sic] the date of this notice," the trustee would commence foreclosure of Pryor Junior's shares in the Association by selling them "at public or private sale without further notice to you . . ." (Ex. 26, FOF #7; Ex.

13).

Pryor Junior received the notice on May 25, 2007 (Ex. 15). He mailed a check to MHM&F, Inc. on May 31, 2007, in the amount of \$400 (Ex. 26, FOF #8; Ex. 18). Willie Wellington refused the check, which had been sent by certified mail (Ex. 43). The check was returned to Pryor Junior on June 13, 2007 (Ex. 18; Ex. 43; RP 177).

Pryor Junior tendered money orders and checks to MHM &F, Inc. in the following amounts: \$467 on 6/14/07; \$200 on 7/12/07; \$200 on 7/23/07; and \$200 on 8/9/07 (Ex. 41). These checks and money orders were returned to Pryor Junior's counsel on August 17, 2007 (Ex. 24). These tendered checks and money orders would have covered more than the payments due from April, 2007 through August, 2007. Pryor Junior tendered \$3,438 on November 10, 2009 (Ex. 37; RP 167-68). The check was returned to him (RP 168). After that, Pryor Junior decided that it was a futile act to tender further amounts to MHM&F, Inc. (RP 169).

Meanwhile, Willie Wellington, purporting to act as trustee under the stock purchase agreement, purported to sell the 100 shares relating to space #65 to his brother, Ed Wellington, for \$11,447.27 on May 30, 2010 (Ex. 17; RP 43-44). The lot was worth at least \$25,000 at the time (Ex. 10). Willie did not put out any notices or give anyone any opportunity to buy or bid more (RP 75). Willie and his brother were the only ones present at the sale (RP 75).

On July 27, 2007, Wilie Wellington, purporting to act as agent for the Association, sent a notice of termination of lease to Pryor Junior, notifying him that space #65 must be vacated on or before August 11, 2010, or the Lessor (the Association) would bring “summary dispossession” proceedings (Ex. 26, FOF #9; Ex. 23; RP 50).

The first unlawful detainer action was filed in 2007 (the “First Lawsuit”) (Ex. 26). The plaintiffs were the Association and Ed Wellington as trustee for MHM&F, Inc. (Ex. 26). At that time MHM&F, Inc. was a non-existent entity, having been dissolved years earlier (Ex. 26, FOF 14(a)). The plaintiffs alleged that various defaults and delinquencies in payments were due under the stock purchase agreement by Pryor Junior, as putative successor of Pryor Senior, and that MHM&F, Inc. notified Pryor Junior in a “Notice of Default” dated May 15, 2007 of the delinquency existing at that time and of the trustee’s intention under the Pledge and Trust Agreement to foreclose upon and sell the 100 shares that Pryor Senior agreed to purchase (Ex. 26, FOF #7).

The Notice was sent to Pryor Junior by certified mail pursuant to paragraph 9 of the Pledge and Trust Agreement and advised him that the delinquent amount he owed was \$467.00 and that he had ten days to cure the delinquency or his stock would be sold by the Trustee at “private sale” without further notice (*id.*). Pryor Junior did not attempt to cure the default until May 31, 2007, when he tendered \$400 (Ex. 26, FOF #8). MHM&F, Inc. returned

the check (Ex. 26, FOF #8), then served Pryor Junior with a Notice of Termination of Lease, stating that Pryor Junior's lease would expire on August 10, 2007 and that he must vacate space #65 by August 10, 2007 (Ex. 26, FOF #9). When Pryor Junior did not vacate space #65, Willie Wellington, acting as limited agent of the Association, and Ed Wellington, acting as trustee for MHM&F brought an unlawful detainer action against Pryor Junior to obtain possession of space #65 (Ex. 26, FOF 10)

A one-day bench trial was held on the unlawful detainer action before Judge Bowden on March 11, 2008 (Ex. 26). He dismissed the plaintiffs' claims in the First Lawsuit at the close of their case, following a motion by defendants (Ex. 26, p. 1).

Findings of Fact were entered on January 8, 2010 (Ex. 26). The findings acknowledged the stock purchase agreement between Pryor Senior and MHM&F, Inc. for the purchase of 100 shares in the Association; the proprietary lease with the Association for space #65; and the notice of termination of lease dated July 26, 2007 (Ex. 26, FOF #1, #3 and #9). The court determined as a conclusion of law (Ex. 26, COL #2) that Pryor Junior was a tenant of the park subject to the provisions of the Mobile Home Landlord-Tenant Act, ch. 59.20 RCW (the "MHLTA"), and that he was entitled to the protections of RCW 59.20.080 (Ex. 26, COL #3). Since Pryor Junior was not properly served in compliance with the requirements of RCW 59.20.150 of any

notice to permit him to cure any default (Ex. 26, COL #5), the court concluded that it did not have jurisdiction to reach the merits of the unlawful detainer action (Ex. 26, COL #6).

The court also concluded in the First Lawsuit that “the interests of Pryor Junior as a successor of Pryor Senior and purported stock purchaser was inchoate and never perfected. It was therefore not subject to forfeiture under the terms of the Stock Purchase Agreement” (Ex. 26, COL #7).

The court in the First Lawsuit then dismissed the plaintiffs’ causes of action for unlawful detainer (Ex. 26, COL #15) and indicated that it was appropriate to enter judgment for attorney’s fees against the following: MHMFC, Inc.;¹ Ed Wellington, as he was substituted as plaintiff for MHMFC, Inc. (Ex. 26, COL #14(b)); and the Association “as the Association was a necessary party to this unlawful detainer action . . . “ (Ex. 26, COL #14(d)). Since Ed Wellington died on January 31, 2009 (Ex. 26, FOF # 17; RP 20), his estate was substituted for him as a party plaintiff in the First Lawsuit in connection with the judgment (Ex. 26, COL #14(b)). The court in the First Lawsuit then entered a judgment against MHMFC, Inc.; the personal representatives of the Estate of Ed Wellington; and the Association in the

¹The court in the First Lawsuit considered it appropriate to enter judgment against MHMFC, Inc. “although that corporation was dissolved years ago and is a non-existent entity” Ex. 26, COL #14(d). No appeal was taken from the judgment.

amount of \$12,702.50 (CP 68-69); RP 111). Nothing was ever paid on the judgment (RP 83, 111).

Ed Wellington's son, Jonathon Wellington, is one of the personal representatives of his father's estate (Ex. 36). In 2009 after his father's death, Jonathon Wellington formed a limited liability company, which he called MHM&F, LLC, using the same initials as the previous defunct corporation of a similar name (RP 96). The personal representatives of the Estate of Ed Wellington then purported to transfer MHM&F, Inc.'s interest in pledge agreements and lots at Thunderbird to the new LLC (Ex. 35).

Between March, 2008, and the end of 2009, no one communicated with Pryor Junior asking for payment on the stock purchase agreement (RP 83-84). On January 21, 2010, less than two weeks after the judgment in the First Lawsuit was entered, Jonathon Wellington, acting on behalf of MHM&F, LLC (the new LLC), wrote Pryor Junior a letter stating that MHM&F, LLC was "the owner and lessor of the mobile home space where your home is located" (Ex. 27). The letter mentions \$467.00 in back rent owed for the period prior to May, 2007, and that Pryor Junior owed \$6,744.92 in unpaid rent (*id*). Even after trial of the First Lawsuit Pryor Junior had tendered amounts to both MHM&F, Inc. and the Association, but such tenders were refused (Ex. 37). The letter further mentioned that current rent was \$190.24 per month and was increasing on May 1, 2010 to \$560 per month "whether [Pryor Junior] sign[ed] the [offered] lease

or not” (Ex. 27, p. 2).

Pryor Junior responded in a letter dated February 10, 2010 essentially stating that he did not owe rent to MHM&F, LLC, but was entitled to complete the stock purchase contract his father signed (Ex. 29). The next day Pryor Junior was served with a notice from MHM&F, LLC, purporting to act as “Lessor/Landlord,” to pay \$6,770 in “rent for the months of April, 2007 through January, 2010 for the premises” or vacate (Ex. 28). At that point Pryor Junior did not believe he had any landlord-tenant relationship with MHM&F, LLC, (RP 169-170).

On or about March 4, 2010, plaintiff MHM&F, LLC filed the present unlawful detainer action (the “Second Lawsuit”) against Pryor Junior and his wife (CP 115-124). The theory of the complaint was that MHM&F, LLC is the owner of space #65 (CP 118, ¶ C); that Pryor Junior and his wife for “some considerable time prior to April 1, 2007 . . . took possession of the premises on the basis of a month-to-month tenancy; and have occupied the premises since then (CP 119, ¶ D); that pursuant to the terms of the tenancy Pryor Junior was obligated to pay rent at the rate of \$191.00 per month (CP 119, ¶ E 1); and that Pryor Junior was in default in the payment of rent from April 1, 2007 through March 1, 2010, plus late charges and cost of service, in a “total delinquent balance now owing of \$6,961” (CP 119, ¶ E 2). The complaint alleges that a five-day pay-or-vacate notice was duly served on defendants (CP 120, ¶ G), and

MHM&F, LLC sought immediate restitution of the premises (CP 120).

Pryor Junior filed an answer denying that he had a landlord-tenant relationship with the new entity, MHM&F, LLC (CP 106, ¶ 19) and denying that Pryor Junior ever owed any rent to MHM&F, LLC or its predecessor (CP 106, ¶ 18). (The obligations of Pryor Senior were alleged in the answer to be under the stock purchase agreement) (CP 106, ¶ 20). The answer further alleged that MHM&F, LLC had no ownership interest in space #65 and therefore was not the real party in interest to bring this action (CP 108, ¶ 36), and further asserted the right to set off the judgment of \$12,702.50 against any monies actually owing to MHM&F (CP 108, ¶ 37). A number of other defenses were asserted, including the inefficacy of the purported foreclosure sale of the 100 shares of stock in the Association (CP 108, ¶ 35).

Following receipt of the complaint, Pryor Junior sent a declaration on April 20, 2010, to MHM&F, LLC, the personal representatives of the Estate of Ed Wellington and the Association pursuant to RCW 11.62.010 to the effect that under RCW 11.69.005, Pryor Junior was the successor to Pryor Senior, who died intestate, and that Pryor Junior was entitled to delivery of the personal property of Pryor Senior (Ex. 40). Pryor Junior contended that this perfected his inchoate interest in the stock purchase agreement and proprietary lease (CP 106-107, ¶ ¶ 21-23).

The Second Lawsuit was tried before the court on August 10, 2010 (CP

31). MHM&F, LLC filed a motion to amend the complaint to include a third-party claim of the Association against Pryor Junior for unpaid rent allegedly owed to the Association (RP 3-6). On the first day of trial the court denied the motion to amend the complaint (RP 6). The trial court entered findings of fact and conclusions of law on August 19, 2010 (CP 40). The court essentially found that the foreclosure sale of the 100 shares of stock relating to space #65 was valid, that MHM&F, LLC became Pryor Junior's landlord by virtue of Judge Bowden's decision in the First lawsuit (giving it collateral estoppel effect), that Pryor Junior perfected his interest in his father's shares too late, that Pryor Junior was delinquent in the amount claimed, that MHM&F, LLC properly notified Pryor Junior of the latter's default, and the requirements for unlawful detainer were satisfied (CP 31-40). The trial court entered a writ of restitution in favor of MHM&F, LLC and a judgment for attorney's fees in the amount of \$29,782.50 and "unpaid rent" in the amount of \$7,419.36, against which the trial court offset Pryor Junior's judgment of \$13,683.86 obtained in the First Lawsuit (CP 41-44). Pryor Junior timely filed the present appeal (CP 1).

III. SUMMARY OF ARGUMENT

The trial court erred in not dismissing the unlawful detainer action for lack of subject matter jurisdiction. In an unlawful detainer action, the court sits as a special statutory tribunal to decide the narrow issue of right to possession

of real property and the incidents thereto, not as a court of general jurisdiction. *Kessler v. Nielsen*, 3 Wn. App. 120, 123, 472 P.2d 616 (1970). A plaintiff may not bring an unlawful detainer action without a statutory basis. *Puget Sound Investment Group, Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998) (no statutory basis for purchaser at a federal income tax foreclosure sale to bring an unlawful detainer action).² There is no statutory basis for MHM&F, LLC, as a secured creditor under a stock purchase agreement, to bring an unlawful detainer action with respect to a mobile home lot owned by Thunderbird Association.

In addition, although not raised at trial, the form of summons used by respondent is defective, thereby depriving the court of subject matter jurisdiction. *Truly v. Heuft*, 138 Wn. App. 913, 922-23, 158 P.3d 1276 (2007). Respondent also failed to join a necessary party, the Association, thereby depriving the trial court of jurisdiction. *See Laffranchi v. Lim*, 146 Wn. App. 376, 190 P.3d 97 (2008).

The claims of MHM&F, LLC were apparently brought under the MHLTA, RCW 59.20.080(1)(b) for “[n]onpaymnt of rent or other charges specified in the rental agreement, upon five days written notice to pay rent . .

²A purchaser at a deed of trust foreclosure sale or sale in lieu of foreclosure on a real estate contract may bring an unlawful detainer action under RCW 61.24.060 and RCW 61.30.120(7), respectively. *Puget Sound, supra*, 92 Wn. App. 523, 526.

. or to vacate.” However, MHM&F, LLC and Pryor Junior never had a landlord-tenant relationship. The payments made by Pryor Junior to MHM&F, Inc., the predecessor to MHM&F, LLC, were under the stock purchase agreement and the stock pledge agreement, not under any written or verbal rental agreement. MHM&F, LLC was at most a secured party under the stock pledge agreement. Even if MHM&F, LLC foreclosed upon stock owned by Pryor Senior and acquired those shares, and the proprietary lease between Pryor Senior and the Association which owned the park was cancelled, MHM&F, LLC was not somehow *ipso facto* transformed into a landlord whose payments under the stock pledge agreement were transformed into rent payments due on lot #65. Pryor Senior’s landlord was at all times the Association, which was the owner of all the lots in the mobile home park, and which accepted rent payments from Pryor Junior after Pryor Senior’s death.

Both the trial court and respondent MHM&F, LLC mistakenly assumed that when Judge Bowden in the First Lawsuit referred to Pryor Junior as a “tenant of the Park” and that the MHLTA applied, Judge Bowden meant that MHM&F, Inc. (or its successor) was the landlord and that the MHLTA applied to the relationship between MHM&F, Inc. and Pryor Junior. In fact, Judge Bowden meant that Pryor Junior was a tenant of the Association, and that the MHLTA applied to the relationship between the Association and Pryor Junior. The MHLTA could not apply to the relationship between MHM&F, LLC and

Pryor Junior, as MHM&F, LLC is not a landlord as defined in the MHLTA, i.e., “the owner of a mobile home park” or an agent of the owner of the mobile home park. RCW 59.20.030(2). The Association is the owner of Thunderbird Mobile Home Park. The MHLTA applies only to the “legal rights, remedies, and obligations arising from any rental agreement between a landlord and tenant regarding a mobile home lot . . .” RCW 59.20.040.

MHM&F, LLC was required to bring an ejectment action under RCW 7.28 or some action other than an unlawful detainer action. *Puget Sound Inv. Group, Inc. v. Bridges, supra*, 92 Wn. App. 523, 526. The form of action is highly significant in this context, as the court in an unlawful detainer action has limited jurisdiction and may consider only limited issues. Here, even if Pryor Junior were late a few days in paying on the stock purchase agreement, a court of equity could fashion a remedy by allowing a grace period to avoid a forfeiture. *John R. Hansen, Inc. v. Pacific International Corp.*, 76 Wn.2d 220, 228-29, 455 P.2d 946 (1969); *Moeller v. Good Hope Farms*, 35 Wn.2d 777, 783, 215 P.2d 425 (1950); *Dill v. Zielke*, 26 Wn.2d 246, 252, 173 P.2d 977 (1946).

The trial court thus incorrectly applied the doctrine of collateral estoppel to a misinterpreted ruling of Judge Bowden in the First Lawsuit.

Also, at the time that respondent brought the present unlawful detainer action for “rent”—in reality payments under the stock purchase agreement—Pryor

Junior had an unpaid judgment against respondent which exceeded the amount claimed. This offset should have precluded any recovery.

The trustee's sale of the 100 shares of stock had serious shortcomings. Not only was the sale conducted following a defective notice on behalf of a non-existent entity by a trustee whose appointment was completely vague and who was the brother of the seller, but the conduct of the sale was unconscionable. There was no notice of sale, no bidders other than Ed Wellington, and the price obtained was less than half the value of the collateral. The trustee also refused to even open a certified letter from Pryor Junior a few days after the sale, which letter contained a check sufficient to cure the actual default (after deducting an improper \$75 service fee). Together, these shortcomings rendered the sale void.

This Court should reverse the judgment entered by the trial court, dismiss the action, and award attorney's fees and costs to Pryor, Junior.

IV. LEGAL ARGUMENT

A. This Court's Review of the Trial Court's Conclusions of Law is De Novo.

Issues of law are reviewed de novo. *Wingert v. Yellow Freight Systems, Inc*, 146 Wn.2d 841, 847, 50 P.3d 256 (2002).

The court of appeals reviews the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the

findings and in turn, whether the findings support the trial court's conclusions of law. *Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003). Substantial evidence is that sufficient to persuade a fair minded person of the finding's truth. *City of Tacoma v. William Rogers Co.*, 148 Wn.2d 169, 191, 60 P.3d 79 (2002).

B. The Trial Court Was Without Subject Matter Jurisdiction Over Respondent's Unlawful Detainer Action.

“Washington law provides two alternate methods of removing a tenant from the landlord's premises: an action in ejectment under RCW 7.28; or an action for unlawful detainer under RCW 59.12.” *Housing Authority v. Terry*, 114 Wn.2d 558, 566, 789 P.2d 558, 566, 789 P.2d 745 (1990).

Because respondent filed and brought this action under the court's narrow and limited jurisdiction in an unlawful detainer action with no statutory basis therefor, the Court of Appeals should reverse the judgment and dismiss the case for lack of subject matter jurisdiction. “S u b j e c t m a t t e r jurisdiction is ‘the authority of the court to hear and determine the class of actions to which the case belongs.’” *Amy v. Kmart of Washington LLC*, 153 Wn. App. 846, 852, 223 P.3d 1247 (2009). Lack of subject matter jurisdiction renders the superior court powerless to pass on the merits of a case. *Skagit Surveyors & Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998); *In re custody of A.C.*, 137 Wn. App. 245, 253, 153 P.3d

203 (2007).

In addition, the amended summons used in this action is defective, and respondent failed to join a necessary party, thereby depriving the court of jurisdiction.

1. The Amended Summons Is Defective, Depriving the Court of Jurisdiction.

RCW 59.18.365 provides a form of summons to be used in an unlawful detainer action. It provides that the summons must contain a street address and a facsimile number for the plaintiff's attorney, if the plaintiff has an attorney who has a facsimile number. RCW 59.18.365(1). If a facsimile number is available, the summons must advise the defendant that the defendant may reply by facsimile to the facsimile number listed on the summons. RCW 59.18.365(2)(c). If the summons fails to contain such provision, then the summons is defective and the court has no jurisdiction to hear the unlawful detainer matter. *Truly v. Heuft*, 138 Wn. App. 913, 922-23, 158 P.3d 1276 (2007); see also, *Housing Authority of Everett v. Kirby*, 154 Wn. App. 842, 846-48, 226 P.3d 222 (2010) (court lacked subject matter jurisdiction because summons stated that tenant could respond only by personal delivery); *Laffranchi v. Lim*, 146 Wn. App. 376, 383-84, 190 P.3d 97 (2008).

The amended summons used by respondent in this action fails to contain the language required by RCW 59.18.365(b)(2) and (c)(2), i.e., that the

defendant may serve a copy of an answer or notice of appearance by facsimile or by mail (CP 112-114). The summons is therefore defective, and this court has no jurisdiction to hear this case. The judgment entered in this lawsuit should therefore be reversed, and this case should be dismissed. *Truly, supra*; *Kirby, supra*.

2. Respondent Did Not Join a Necessary Party, Depriving the Trial Court of Jurisdiction.

Judge Bowden in the First Lawsuit determined that the Association was a necessary party in the First Lawsuit (Ex. 26, COL #14(d)). The Association is the owner of the park (Ex. 3; RP 94). Giving Judge Bowden's decision collateral estoppel effect as to respondent, the Association is therefore a necessary party in the Second Lawsuit, because the actions are essentially the same.

If a necessary party is not named in an unlawful detainer action, the court lacks subject matter jurisdiction. *Laffranchi v. Lim*, 146 Wn. App. 376, 378, 190 P.3d 97 (2008) (failure to name necessary party in unlawful detainer action deprived court of subject matter jurisdiction).

This Court should therefore reverse the judgment in the Second Lawsuit and dismiss the action for lack of subject matter jurisdiction.

3. An Unlawful Detainer Action is a Special, Narrow Action.

The unlawful detainer statutes create a special, summary proceeding for

the recovery of possession of real property. *Housing Auth. of City of Seattle v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952 (1999). The court sits as a special statutory tribunal to summarily decide the issues authorized by statute and not as a court of general jurisdiction with the power to hear and determine other issues. *State ex rel. Seaborn Shipyards Co. v. Superior Court*, 102 Wash. 215, 217-18, 172 Pac. 826 (1918); *Puget Sound Investment Group, Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998); RCW 59.12.130. The action is narrow, and the court's jurisdiction is limited to settling the right of possession. *Little v. Catania*, 48 Wn.2d 890, 893, 297 P.2d 255 (1956); *Tuschoff v. Westover*, 65 Wn.2d 69, 73, 395 P.2d 630 (1964); *Kessler v. Nielsen*, 3 Wn. App. 120, 123, 472 P.2d 616 (1970); *Josephinum Associates v. Kahli*, 111 Wn. App. 617, 624, 45 P.3d 627 (2002).

Unlawful detainer statutes are in derogation of the common law and are strictly construed in favor of the tenant. *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231-32, 991 P.2d 1211 (2000). Even if an owner may be entitled to possession of real property, if there is no statutory authority for bringing an unlawful detainer action, the owner must proceed by some other action. *Puget Sound Inv. Group, Inc. v. Bridges, supra*, 92 Wn. App. 523, 526 (a purchaser of real property at a federal income tax foreclosure sale is not authorized to bring an unlawful detainer action to remove an occupant of the property, since there is no statutory authority for such an action, even though

purchasers at a deed of trust foreclosure sale, or at a sale in lieu of foreclosure on a real estate contract are allowed to bring such an action, because in those situations the action is specifically authorized by statute); *Bar K Land Co. v. Webb*, 72 Wn. App. 380, 385, 864 P.2d 435 (1993) (vendor and purchaser relationship governed by ejectment action, not unlawful detainer).

Here, even assuming that the forfeiture of Pryor Junior's stock was valid (which Pryor Junior does not concede), there is simply no statutory authority for a secured party foreclosing upon its collateral to bring an action as landlord to remove a party in possession. Respondent had to proceed, if at all, by an ejectment action.

4. The Present Unlawful Detainer Action Does Not Meet the Statutory Requirements for an Unlawful Detainer Action.

(a) The Present Unlawful Detainer Action Does Not Meet the Requirements of the Residential Landlord-Tenant Act (RCW ch. 59.18).

The Residential Landlord-Tenant Act ("RLTA") applies to a "dwelling unit," which may include a mobile home. RCW 59.18.030(1). The landlord is the owner, lessor of the dwelling unit or the property of which it is a part. RCW 59.18.030(2). A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement. RCW 59.18.030(8). Respondent here does not fit within these definitions. Respondent is not the owner of the mobile home (RP 172), nor any property of which the mobile home is a part. Pryor Junior is not a tenant, as he

has no rental agreement with respondent. The RLTA therefore does not apply.

(b) The Present Action Does Not Meet the Requirements of RCW ch. 59.12.

RCW 59.12.030 lists seven categories of cases defining when a tenant of real property is “guilty” of unlawful detainer. RCW 59.12.030(1) through (7). These are situations when a tenant holds over after the expiration of the rental term, continues in possession after the landlord gives notice of termination of an indefinite tenancy, continues in possession after a default in payment of rent, continues in possession after failure to perform the covenants of the lease agreement, commits waste upon the premises, enters upon the property without the permission of the owner, or commits or permits gang-related activity. RCW 59.12.030(1) through (7). None of these situations applies to the present situation, as Pryor Junior is not a tenant of Respondent and he did not owe any “rent,” i.e., payment for the use of space #65.

The main problem with MHM&F, LLC’s position is that the unlawful detainer statutes are very narrow in scope, and do not provide the seller under a stock purchase agreement the right to bring an unlawful detainer action for possession of real property which may relate to the stock. See, RCW 59.12.030. The unlawful detainer statutes apply only to “a tenant of real property.” *Id.* Pryor Junior is not a tenant of real property with respect to respondent under the Stock Purchase Agreement. Nor was Pryor Junior a

tenant of real property with respect to MHM&F, LLC on the date the unlawful detainer action was filed (about March 4, 2010). Only the landlord at the time the action was filed—here the Association, as the owner of the real property—can bring an unlawful detainer action against Pryor Junior. Nor is MHM&F, LLC here seeking the rent due the Association. Rather, MHM&F, LLC sought amounts allegedly past due to it (or its predecessors) under the Stock Purchase Agreement. The trial court simply had no jurisdiction within the limited scope of the unlawful detainer action to determine the status of payments under the stock purchase agreement or a failed stock purchase agreement.

(c) The Present Action Does Not Meet the Requirements of the Mobile Home Landlord-Tenant Act (RCW ch. 59.20).

The MHLTA regulates and determines the legal rights, remedies and obligations arising from any rental agreement between a landlord and tenant regarding a mobile home lot. RCW 59.20.040; *Holiday Resort Community Association v. Echo Lake Associates*, 134 Wn. App. 210, 222, 135 P.3d 499 (2006), *review denied*, 134 Wn. App. 210, 135 P.3d 499 (2007). Under the MHLTA, the landlord is the “owner of the mobile home park . . .” RCW 59.20.030(2). It is undisputed that the Association is the owner of the park (Ex. 3; RP 94). The Association comes within the definition of a mobile home park cooperative in RCW 59.20.030 (7), as it contains “two or more lots held out for placement of mobile homes . . . in which both the individual lots and the

common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members.” RCW 59.20.030(7).

Pryor Junior is the tenant, as he pays the Association rent for the mobile home lot. RCW 59.20.030(11). (He and his father have paid the rent under the Proprietary Lease since 1982.) It is therefore clear that the MHLTA applies to this case, as between Pryor Junior and the Association, as all the requirements of RCW 59.20.040 are satisfied. The court in the First Lawsuit also correctly so found (Ex. 26, COL #2). But the MHLTA cannot apply to the relationship between respondent and Pryor Junior, as respondent does not own the mobile home park and does not have a tenant paying anything denominated as rent to use space #65. Respondent is simply a secured party under the pledge and trust agreement, who at most would have the right to realize upon its collateral (the 100 shares), which would then give it the right to have a new proprietary lease with the Association. Pryor Junior does not become a tenant of respondent merely by making \$192 monthly payments on the stock purchase agreement.

(d) Ejectment Is the Appropriate Action in This Case.

As noted above, when an unlawful detainer action is not statutorily authorized, an action for ejectment may be pursued. RCW 7.28.010; *Bar K Land Co. v. Webb, supra*, 72 Wn. App. at 383-84. This distinction is important

because of the limited and narrow nature of the unlawful detainer action. In the case at bar respondent was at most a secured party under a stock Pledge and Trust Agreement (Ex. 2).

C. The Trial Court’s Conclusion that Respondent is the Landlord of Pryor Junior Under Judge Bowden’s Findings and Conclusions is Erroneous.

Respondent argued at trial in the Second Lawsuit that Judge Bowden determined that it was a landlord under the First Lawsuit, and for that reason respondent proceeded under the MHLTA in this case (RP 150). The trial court in the Second Lawsuit was “guided in [its] analysis” by the findings of fact and conclusions of law entered by Judge Bowden, which indicated “that Pryor Junior was a tenant” (RP 238, 242). However, Judge Bowden never determined that Pryor Junior was a tenant of respondent herein under the MHLTA.

1. The Findings of Fact and Conclusions of Law in the First Lawsuit do Not Expressly State That Respondent is the Landlord of Pryor Junior Under the MHLTA.

Respondent claims that the findings of fact and conclusions of law in the First Lawsuit established that respondent is the landlord, so proceeding under the MHLTA is appropriate (RP 150). However, Judge Bowden never determined that respondent was a landlord, or that Pryor Junior was a tenant of respondent (Ex. 26).

The conclusions of law in the First Lawsuit state that Pryor Junior was

a “tenant of the Park” subject to the MHLTA (Ex. 26, COL #2). But the “Park” is clearly not a legal entity. The owner of the park is the Association (Ex. 3). Thus if Pryor Junior were a tenant of the park, he would have to be a tenant of the Association. The notice of default given in the First Lawsuit was even on the letterhead of the Association (Ex. 13).

Conclusion of law #4 provided that the only basis for eviction of appellant in the First Lawsuit was RCW 59.20.080(1)(b) (Ex. 26, COL #4). That is not inconsistent with Pryor Junior’s being a tenant of the Association. Judge Bowden also ruled in the First Lawsuit that the Association was “a necessary party” to the unlawful detainer action (COL #14(d)). The only reason the Association would be a necessary party to an unlawful detainer action is that it was the landlord suing for possession of the premises and associated past-due rent. CR 19(a).

Furthermore, Judge Bowden declined to rule upon whether the foreclosure sale was valid (Ex. 26, COL #8). Clearly, the only way the respondent could possibly be the landlord of Pryor Junior is if the foreclosure sale were valid and respondent obtained ownership of the 100 shares of stock, and subleased lot #65 to Pryor Junior. But Judge Bowden made no such finding or conclusion. Judge Bowden specifically did not reach the issue of whether the foreclosure sale of the stock was valid (Ex. 26, COL #8).

2. Appellant Was a Tenant of the Association.

Appellant was clearly a tenant of the Association, as he made lease payments to the Association, and the Association was the owner of the land. The Association was a party to the First Lawsuit, so it would be appropriate to conclude that appellant was a tenant of the Association. Respondent's status as a secured party under the stock pledge agreement would not, *ipso facto*, make respondent a landlord. There is no evidence that the \$191 monthly payments Pryor Junior made to respondent's predecessor were anything other than payments under the stock purchase agreement, which respondent accepted (RP 239).³

3. Judge Bowden's Prior Rulings Should Not be Accorded Collateral Estoppel Effect Against Pryor Junior.

(a) Pryor Junior Did Not Have a "Full and Fair" Opportunity to Present His Case.

The doctrine of collateral estoppel "prevents relitigation of an issue after the party estopped has had a full and fair opportunity to present its case."

³Pryor Junior had no signed rental agreement with MHM&F, LLC, as required by RCW 59.20.060(1), and furthermore, he had not been given notice of any transfer from the Association to MHM&F, LLC of any right to receive rent (RP 115, 122). On April 19, 2010, after the present lawsuit was filed, the Association secretly signed an assignment agreement purporting to transfer to MHM&F, LLC all of the Association's "claims and causes of action against" Pryor Junior arising out of the proprietary lease between Pryor Senior and the Association (Ex. 32). Neither the Association nor MHM&F, LLC ever notified Pryor Junior of this purported assignment (RP 115, 122). It is not binding on Pryor Junior until he received notice of the assignment. *Stansbery v. Medo-Land Dairy*, 5 Wn.2d 328, 337, 105 P.2d 86, 90 (1940).

Hanson v. The City of Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993). Pryor Junior in the First Lawsuit had no opportunity to present his case, i.e., call witnesses or introduce evidence, because all of plaintiff's claims were dismissed on Pryor Junior's motion at the close of plaintiff's case (Ex. 26, p. 1).

The requirements which must be met in applying the doctrine of collateral estoppel are the following:

(1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice.

Hanson, supra, 121 Wn.2d at 562; *Christensen v. Grant County Hospital District No. 1*, 152 Wn.2d 299, 307, 96 P.3d 957 (2004); *Brighton v. Department of Transportation*, 109 Wn. App. 855, 860, 38 P.3d 344 (2001).

Here, the fourth requirement is not met, because application of the doctrine to Pryor Junior would work an injustice. He had no opportunity to rebut any of the evidence presented by plaintiff in the First Lawsuit.

The trial court in the Second Lawsuit determined that the findings and conclusions made by Judge Bowden in the First Lawsuit were binding upon the trial court in the Second Lawsuit, under the doctrine of collateral estoppel

(COL III A). This was error.⁴

(b) Ambiguous or Contradictory Findings or Conclusions Should Not be Given Collateral Estoppel Effect.

The trial court in the Second Lawsuit found an “inherent contradiction” in Judge Bowden’s stating that Pryor Junior was a tenant, and had not perfected his interest under the stock purchase agreement, but that in the conclusions of law in the First Lawsuit [Ex. 26, COL #8] Judge Bowden was not going to reach those issues (RP 238-39). Nevertheless, the trial court believed that Judge Bowden indicated in the findings in the First Lawsuit that appellant was a tenant (RP 238, 242).

There are additional ambiguities in Judge Bowden’s decision. FOF #11 states that plaintiffs in the First Lawsuit did not properly personally serve Pryor Junior with any notice providing an opportunity to cure any alleged default “before the ten-day cure period had expired” (Ex. 26. FOF #11). The MHLTA has no ten-day cure period. The cure period following notice of a non-monetary default is typically fifteen days. See, e.g., RCW 59.20.080(1)(a), .080(1)(c), and .080(1)(i) through .080(1)(l). The cure period following notice of a monetary default is five days. RCW

⁴Application of collateral estoppel against respondent does not work an injustice. Respondent had a full and fair opportunity to present its witnesses and evidence in the First Lawsuit.

59.20.080(1)(b).

But COL #5 in the First Lawsuit states that service of the notice of default of May 15, 2007 (Ex. 13) by certified mail was not in compliance with the service requirements of the MHLTA, specifically RCW 59.20.150 (Ex. 26, COL #5), and therefore the court in the First Lawsuit lacked jurisdiction to reach the merits of the unlawful detainer action (Ex. 26, COL #6). It seems highly anomalous to conclude that the May 15, 2007, notice of default was insufficient to support eviction under the MHLTA, as Judge Bowden concluded, but the same notice was sufficient to effect a valid foreclosure sale of the shares of stock under the stock pledge and trust agreement, as the court concluded in the Second Lawsuit.⁵

Ambiguities in the findings of fact and conclusions of law in the First Lawsuit should not lead to the application of collateral estoppel. One of the purposes of the doctrine of collateral estoppel is to avoid relitigation of issues already decided so as to promote efficiency in the judicial system. If findings and conclusions are ambiguous, they have not really been decided.

Moreover, applying ambiguous findings and conclusions against the tenant here in the Second Lawsuit runs counter to the policy of strictly

⁵Exhibit 13 itself is highly ambiguous, as it is on the letterhead of the Association, it states that it is “from” Ed Wellington, trustee under the pledge and trust agreement, and yet it is signed by Wilie Wellington, purporting to act on behalf of the defunct MHM&F Co., a non-existent company.

construing unlawful detainer statutes in favor of tenants. *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231-32, 235-36, 991 P.2d 1211 (2000). Doubt should be construed in favor of tenants, not against tenants, as the law does not favor forfeitures. *Id.* at 232 fn 12 (citing *Stevenson v. Parker*, 25 Wn. App. 639, 647, 608 P.2d 1263 (1980)).

D. Respondent Did Not Become Pryor Junior's Landlord By the Claimed Forfeiture of the 100 Shares Relating to Space # 65 at the Foreclosure Sale.

The trial court concluded that the stock purchase agreement was rightly foreclosed upon, and thereafter Pryor Junior became a tenant of the successor to MHM&F, Inc. and thereafter the purchase payments on the stock were converted to rent (RP 242-43). This conclusion was error.

1. The Foreclosure Sale Was Not Valid.

(a) The Seller Was Defunct and Not Authorized to Conduct Business.

MHM&F, Inc., the seller under the Stock Purchase Agreement and Pledge and Trust Agreement, was found by Judge Bowden in the First Lawsuit to be “dissolved years ago and is a non-existent entity” (Ex. 26, COL 14(a)).⁶ A dissolved corporation “may not conduct any business except that appropriate to wind up and liquidate its business and affairs . . .” RCW 23B.14.050(1); *Equipto Div. Aurora Equipment Co. v. Yarmouth*, 134

⁶“Years ago” as of the date of trial in March, 2008.

Wn.2d 356, 365, 950 P.2d 451 (1998). MHM&F, Inc. was obviously conducting business by signing letters sent to tenants (Ex. 13). Its acts were thus *ultra vires*.

(b) The Five-Day Notice Was Defective.

The May 15, 2007 Notice of Default (Ex. 13) suffered from fatal defects. It was addressed to the Estate of Edward Pryor (*id.*). There was no such entity, and no one to receive notice on behalf of a non-existent Estate. It was signed by Wilie Wellington on behalf of a defunct corporation, thereby suffering the same defect noted above. While Wilie signed the notice on behalf of a defunct corporation, at trial Wilie claimed to be the trustee (RP 40).

(c) There Was no Independent Trustee.

The Pledge and Trust Agreement designated the law firm of Dempcy & Braley as the trustee under the Agreement (Ex. 2, p. 1). The stock certificates were to be delivered to the trustee (Ex. 2, ¶ 2). The trustee had the power to “extend or consent to the extension of time of payment . . . of any obligation owed by Purchaser . . .” (Ex. 2, ¶ 8 B (2)). Yet the trustee proceeded “strictly according to what the contract documents called for” (RP 45). In the event of default, the trustee was to “use the same degree of care and skill in his exercise [of such rights and powers vested in it] as a prudent man would exercise or use under the circumstances in the conduct of his own

affairs” (Ex. 2, ¶ 4).

Judge Bowden determined in the First Lawsuit that Ed Wellington was acting as trustee for MHM&F, Inc. when the First Lawsuit was filed (Ex. 26, FOF #10).⁷ Ed Wellington as trustee under the Pledge and Trust Agreement is listed as the “from” party in the notice of default dated May 15, 2007 (Ex. 13). Yet Ed Wellington’s brother, Wilie Wellington, testified in the Second Lawsuit that he—Wilie Wellington—was actually the trustee (RP 38). Wilie testified that he became the trustee because he was taking care of the books and doing all the accounting of the company on a day-to-day basis (RP 40). He could not recall if he was appointed trustee in writing (RP 41). He was not aware of any document appointing him trustee (RP 58). He did not know when he was appointed trustee (RP 58-59), nor the specific incident or occasion when he was appointed (RP 59). As trustee, he proceeded “strictly according to what the contract documents called for” (RP 45). He signed a memorandum of sale indicating that as trustee he sold the 100 shares of stock relating to space #65 to his brother, Ed Wellington, on May 30, 2007 for \$11,447.27 (Ex. 17).

Wilie worked half time—four hours daily—on mobile home matters and “stock purchase stuff” for his brother (RP 69). He was paid by the month for

⁷Ed Wellington also appears in the caption of the First Lawsuit as the trustee for MHM&F, Inc. (Ex. 26).

his accounting duties (RP 61-62). He worked in the motor scooter store his brother owned and had desks side by side with his brother (RP 69). Wilie made entries on the company ledger from January, 2006, and had custody and control of the ledger through October, 2009 (RP 57). Wilie signed the notice of default dated may 15, 2007, on behalf of MHM&F, Inc, on behalf of a defunct corporation (Ex. 13). Wilie and Ed's son, Jonathon, continued to run the business after Ed Wellington died (RP 54). The company was made into an LLC after Ed died (RP 54).

Wilie was also the agent for the Association (Ex. 23; RP 50).

It is evident that during the same period of time, Wilie Wellington acted on behalf of MHM&F, Inc.; on behalf of his brother in doing accounting for his brother as a sole proprietor; on behalf of the Association; and as trustee under the Pledge and Trust Agreement. These conflicting roles prevented him from acting capably and fairly as a trustee under the documents.

The trial court agreed that "it would have been better" with an independent trustee (RP 242). But, the trial court reasoned, this was "a very closely held corporation" and "Wilie Wellington was acting in the best capacity that he knew how . . ." (RP 242). This is not the test for measuring the conduct of a trustee.

(d) Wilie Wellington as Trustee Had a Conflict of Interest.

A trustee “is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.” *Cox v. Helenius*, 103 Wn.2d 383, 389, 693 P.2d 683 (1985). “Where an actual conflict of interest arises, the person serving as trustee and beneficiary should prevent a breach by transferring one role to another person. See, e.g., *Mintener v. Michigan Nat'l Bank*, 117 Mich.App. 633, 324 N.W.2d 110 (1982).” *Cox v. Helenius, supra*, 103 Wn.2d 383, 390.

Wilie Wellington, as the brother of Ed Wellington, wore many hats: he was a half-time worker for the successor to a defunct corporation involved with the mobile home park and stock purchases; he did the accounting for the company and had custody and control of the ledgers; he acted as agent for the Association; and he claimed to be the trustee under a vague, unwritten, undated verbal agreement, in spite of the fact that Judge Bowden had determined that Ed Wellington was the trustee during the same period of time.

“Because the deed of trust foreclosure process is conducted without review or confirmation by a court, the fiduciary duty imposed upon the trustee is exceedingly high.” *Cox, supra*, 103 Wn.2d 388-89. Similarly here, where the foreclosure sale was conducted without review or confirmation by a court, the fiduciary duty upon the trustee was also “exceedingly high.”

Even the trial court accepted Pryor Junior’s argument that “it would

have been better with an independent trustee” (RP 242).

There was no evidence here that the trustee considered extending the time for payment or considered the detriment to Pryor Junior in conducting the sale. If the trustee had been independent, without conflict and fair to both sides, he would have considered granting a grace period. Courts in equity have frequently done that.

Even if a sale contract and security agreement have been forfeited by a lapse in payment, a court of equity will intervene to give the purchaser a grace period beyond the forfeiture date. *John R. Hansen, Inc. v. Pacific International Corp.*, 76 Wn.2d 220, 228-29, 455 P.2d 946 (1969); *Moeller v. Good Hope Farms*, 35 Wn.2d 777, 783 , 215 P.2d 425 (1950); *Dill v. Zielke*, 26 Wn.2d 246, 252, 173 P.2d 977 (1946).

In *Hansen, supra*, the court quoted the long-standing rule as follows:

It is elementary law in this jurisdiction that forfeitures are not favored and never enforced in equity unless the right thereto is so clear as to permit no denial.

Hansen, supra, 76 Wn.2d at 228.

The rationale is set forth in *Hansen* by quoting language in *Dill v.*

Zielke, supra, 26 Wn.2d at 252 as follows:

Recognizing the hardship that often attends a strict enforcement of a forfeiture provision, and confronted with a situation where such enforcement would do violence to the principle of substantial justice between the parties concerned, under the particular facts of a case, the courts of this state have frequently

relieved a party from default of payment on an executory contract involving real estate by extending to such person a "period of grace" within which to make such payments.

Hansen, supra, 76 Wn.2d at 228. See, *Abrams v. City of Seattle*, 173 Wash. 495, 23 P.2d 869 (1933).

The court in *Hansen* acknowledged the “general rule that a forfeiture can be avoided by a simple tender of overdue payments bringing the contractual obligations up to date. In fact, this rule is the one favored by this court in such cases.” *Hansen* at 229.

Other courts have followed the rule of relieving a party from default in equity. See, e.g., *Housing Authority v. Pleasant*, 126 Wn. App. 382, 390, 109 P.3d 422 (2005); *Martin v. Seattle*, 111 Wn.2d 727, 734, 765 P.2d 257 (1988); *Esmieu v. Hsieh*, 20 Wn. App. 455, 460, 580 P.2d 1105 (1978), *affirmed*, 92 Wn.2d 530, 598 P.2d 1369 (1979) (“conditions of forfeiture must be substantial before they will be enforced in equity” with respect to forfeiture of lease); *Terry v. Born*, 24 Wn. App. 652, 655-56, 604 P.2d 504 (1979) (trial judge required to balance equities to avoid forfeiture of real estate contract on remand); *Clausing v. DeHart*, 83 Wn.2d 70, 71-72, 515 P.2d 982 (1973) (stock purchase agreement).

Accordingly, the trustee should have at least considered these equitable principles

(e) The Conduct of the Sale Was Unconscionable.

Wilie Wellington, purporting to act as trustee under the stock purchase agreement, claimed to have sold the 100 shares relating to space #65 to his brother, Ed Wellington, for \$11,447.27 on May 30, 2010 (Ex. 17; RP 43-44). The lot was worth at least \$25,000 at the time (Ex. 10). Wilie did not put out any notices or give anyone any opportunity to buy or bid more (RP 75). Wilie and his brother were the only ones present at the sale (RP 75).

While Wilie may claim he was simply carrying out the terms of the contracts (Ex. 2, ¶ 8 A), those terms were substantively unconscionable. "Substantive unconscionability involves those cases where a clause or term in the contract is alleged to be one-sided or overly harsh . . .". "Shocking to the conscience", "monstrously harsh", and "exceedingly calloused" are terms sometime used to define substantive unconscionability. *Nelson v. McColdrick*, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995) (quoting *Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 544 P.2d 20 (1975) and citations omitted). In *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 347, 103 P.3d 773 (2004) the court held that substantive unconscionability alone could support a finding of unconscionability so as to invalidate a contractual provision. Here, providing for a sale of such magnitude without notice, without other bidders and without an independent trustee does shock the conscience and renders the default terms unconscionable. Moreover, the short period to cure and the provision that mailing was sufficient also combine to add to the

unconscionability.

(f) The Trustee Should Not Have Refused Pryor Junior's Tender of \$400.

Pryor Junior tendered payment of \$400, mailing a check on May 31, 2007 to MHM&F, Inc. (Ex. 18). The notice of default (Ex. 13) was mailed by certified mail to Pryor Junior on May 15, 2007 (RP 72). The notice of default was received by Pryor Junior on May 25, 2007 (Ex.15, p. 2; RP 73). He thus mailed a check within six days of receipt of the notice.

The Pledge and Trust Agreement provides that the "Trustee shall give written notice of default to Purchaser and the Seller within fifteen (15) days of any breach of the Stock Purchase Agreement . . . Trustee shall commence foreclosure of this pledge after ten (10) days have elapsed since the mailing of default to Purchaser and the Seller" (Ex.2, ¶ 8 C).

First, there is no evidence that the trustee mailed a notice of default to the Seller of the shares, as required by paragraph 8 C. The trustee, by the express terms of the Pledge and Trust Agreement, could not commence foreclosure until such mailing occurred.

Second, the Pledge and Trust Agreement does not require that the notice of default be sent by certified mail. Sending it by certified mail caused

a delay of at least eight or nine days in Pryor Junior's receipt of the notice.⁸ If the notice were sent by certified mail, it should have also been sent by regular mail.

Third, Pryor Junior testified he mailed a check for \$400 to MHM&F, Inc. (RP 157-58). Wilie claimed he had no record of receiving Pryor Junior's \$400 check (Ex. 18) (RP 79). Pryor Junior offered incontrovertible proof—the original envelope addressed to Wilie Wellington--that the envelope containing the check was sent back to Pryor Junior marked “refused” on it (RP 160; Ex. 43). Such refusal to even consider a communication from Pryor Junior conflicts with Wilie's duty as a trustee to treat each party fairly. A trustee should at least have considered whether Pryor Junior had a legitimate reason for not sending a check within the ten-day period.

Moreover, even if a tender is insufficient, a trustee in similar circumstances has a duty to accept a late tender and grant a grace period for the balance. *Albice v. Premier Mortgage Services of Washington, Inc.*, 157 Wn. App. 912, 934, 239 P.3d 1148 (2010) (insufficient tender by borrower required trustee to reschedule foreclosure sale, as a “trustee must take reasonable and appropriate steps to avoid sacrificing the debtor's interest in the property.”

⁸The notice was mailed on May 15th (Ex. 13) and received on May 25th (Ex. 15). By regular mail it would have arrived in at least a day or two.

(g) The Notice of Default Claimed an Excessive Amount Due.

The notice of default claimed that \$467 was due (Ex. 13). This amount included a charge of \$75 for “cost of service” (Ex. 13). When asked the basis for this charge, Wilie responded that there were two potential paragraphs in the Pledge and Trust Agreement (Ex. 2): paragraph 11 (Ex. 2, p. 4) and paragraph 8 B(3) (Ex. 2, p. 3) (RP 70-72). Wilie conceded that if he were not authorized to charge \$75 for the cost of service, then Pryor Junior would have owed less than \$400 (RP 72).

Paragraph 11 merely provides that a court may assess reasonable costs, including reasonable attorney’s fees against any party to litigation (Ex. 2, ¶ 11). It does not authorize the trustee to charge a service fee for sending a default notice. Paragraph 8 B(3) provides that the Association or purchaser of the stock may cure a default by tendering payment of arrearages “including costs and attorneys’ fees . . .” (Ex. 2, ¶ 8 B(3)). This clause does not specifically authorize the seller of the shares or the trustee to charge for sending pre-litigation notices. In any event, the actual cost of sending the certified letter was only \$5.21 (Ex. 14, p. 1). Costs have historically been very narrowly defined to those set forth in RCW 4.84.010, which do not include the cost of sending a notice of default. *Travis v. Horse Breeders*, 47 Wn.App. 361, 369, 734 P.2d 956 (1987); *Nordstrom, Inc. v. Tampoulos*, 107 Wn.2d 735, 743, 733 P.2d 208 (1987) (telephone and photocopying expenses

not allowed because not specified in statute); *Evergreen Int'l v. American Casualty Co.*, 52 Wn. App. 548, 561, 761 P.2d 964 (1988); *Gerken v. Mutual of Enumclaw Ins. Co.*, 74 Wn.App. 220, 231, 872 P.2d 1108 (1994) (costs of investigation, photographs and expert witness fees not allowed); *Marriage of Van Camp*, 82 Wn. App. 339, 343, 918 P.2d 509, *review denied*, 130 Wn.2d 1019 (1996). Accordingly, the amount of the \$400 tender was sufficient.

2. Even if the Foreclosure Sale of the 100 Shares of Stock Relating to Space #65 Was Valid, Neither Respondent Nor Its Predecessors Had a Landlord-Tenant Relationship with Pryor Junior.

Even assuming for a moment that the foreclosure sale of the 100 shares of stock was valid, such sale did not automatically create a landlord-tenant relationship between respondent and Pryor Junior. At most, respondent was a secured creditor who had realized upon the collateral for a debt and was in possession of the collateral, i.e., the 100 shares of stock. As noted earlier, Pryor Junior had a landlord-tenant relationship with the Association, who is the owner of the land.

Pryor Junior made payments for some four years after his father's death of \$192 per month under the Stock Purchase Agreement Pryor Senior had with MHM&F, Inc. Those were payments on the purchase price of the stock, not rent under a rental agreement (RP 169-170).

Even after the purported forfeiture of the 100 shares of stock on May

30, 2007, Wilie, purporting to act as agent for the Association, on July 26, 2007, sent Pryor Junior a ten-day notice of termination of the Association's lease relating to space #65 (Ex. 23). This notice is, of course, inconsistent with Pryor Junior's being a tenant of anyone other than the Association on July 27, 2007, nearly two months after the purported forfeiture of the 100 shares of stock relating to space #65.

E. At the Time of the February 8, 2010, Notice to Pay Rent or Vacate, Pryor Junior Had a Set-Off Greater Than the "Rent" Owed to Respondent.

It is undisputed that when respondent sent Pryor Junior a notice to pay rent or vacate dated February 8, 2010, seeking payment of \$6,770 (Ex 28), Pryor Junior had an unpaid judgment against respondent's predecessors arising out of the stock purchase agreement in the amount of \$12,702.50 (CP 68-69; CP 42).⁹

Although other claims, including counterclaims are generally not allowed in an unlawful detainer action, if a counterclaim or setoff excuses the tenant's failure to pay rent, then it is properly asserted in an unlawful detainer action. *Heaverlo v. Keico Industries, Inc.*, 80 Wn. App. 724, 728, 911 P.2d 406 (1996).

In addition, under RCW 59.18.380, a tenant in an unlawful detainer

⁹The judgment, including interest, had increased to \$13,683.86 by the time judgment was entered in the Second Lawsuit in August, 2010.

action may assert “any legal or equitable defense or set-off arising out of the tenancy.” RCW 59.18.380; *Josephinium Associates v. Kahli, supra*, 111 Wn. App. 617, 625. RCW 59.18.380 is made applicable to mobile home parks pursuant to RCW 59.20.040.

A “set-off” is defined in *Black’s Law Dictionary* 1496 (9th ed. 2009) as “a defendant’s counterdemand against the plaintiff, arising out of a transaction independent of plaintiff’s claim.” It is used in the ordinary sense to mean “the right which exists between two parties, each of whom is indebted to the other to apply the debts to one another by mutual reduction so that everything but the difference between the two is extinguished.” *Brown v. Lobdell*, 36 Or. App. 397, 585 P.2d 4, 6 (1978). *See also, In re White’s Estate*, 179 Wash. 417, 420-21, 38 P.2d 244 (1934). In *Reichlin v. First National Bank*, 184 Wash. 304, 313, 51 P.2d 380 (1935) the court held that where a landlord brought an unlawful detainer action against a tenant, who pleaded as a setoff a lesser judgment that the tenant had obtained against the landlord, it was proper to allow the setoff.

Furthermore, under RCW 4.56.060, if at trial “the amount of the setoff, duly established, be equal to the plaintiff’s debt or demand, judgment shall be rendered that the plaintiff take nothing by his action . . .” Here it cannot be questioned that Pryor Junior’s setoff, consisting of the unpaid judgment against plaintiff’s predecessors in title, from whom the claimed

obligation herein arose, greatly exceeded the demand in the complaint. Therefore, under the clear wording of RCW 4.56.060, a judgment should have been entered that the plaintiff take nothing by its complaint, as the unpaid judgment exceeded the claimed “rent.” See, *Mitchell Int’l. Enterprises v. Daly*, 33 Wn. App. 562, 568, 656 P.2d 1113 (1983).

It follows that at the time MHM&F, LLC gave notice to Pryor Junior, no net sum was owed to MHM&F, LLC. It therefore had no basis to bring the unlawful detainer action.¹⁰

F. Attorney’s Fees Should Be Awarded to Pryor Junior.

RCW 59.20.110 provides that in any action arising out of the MHLTA, “the prevailing party shall be entitled to reasonable attorney’s fees and costs.” RCW 59.20.110. Respondent sought and was awarded attorney’s fees under RCW 59.20.110 (CP 39). A court may award attorney’s fees when an unlawful detainer action is dismissed for lack of subject matter jurisdiction, if there is a statutory basis for the award. *Housing Authority of City of Everett v. Kirby*, 154 Wn.App. 842, 852, 226 P.3d 222 (2010). The statutory basis here is RCW 59.20.110.

¹⁰To the extent that a tenant’s having a judgment against a landlord is not considered to be a setoff arising out of the tenancy in an unlawful detainer action, there is an even greater rationale for having this particular case heard in ejectment or some other form of action where the setoff would be considered.

Where a landlord's claims are dismissed in an unlawful detainer action, the tenant is the prevailing party. *Soper v. Clibborn*, 31 Wn. App. 767, 769-70, 644 P.2d 738 (1982). Where a statute authorizes fees to the prevailing party, they are available on appeal as well as in the trial court. *Eagle Point Condominium Owners Association v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000). Accordingly, Pryor, Junior should be considered the prevailing party in this action, and should be awarded his attorney's fees and costs.

V. CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's judgment entered in the Second Lawsuit, dismiss the complaint in this action, and award attorney's fees and costs to Pryor Junior.

RESPECTFULLY SUBMITTED this 29th day of April, 2011.

Law Offices of Dan R. Young

By Dan R. Young
Dan R. Young, WSBA # 12020
Attorney for Appellants
Edward Pryor and Van Pryor

APPENDIX A

ORIGINAL

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**THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY**

MHM&F, LLC, a Washington limited liability
company,

Plaintiff,

vs.

EDWARD PRYOR, JR., and Jane Doe ,
PRYOR, JR, husband and wife and their
marital community,

Defendants.

Cause No. 10-2-03273-6

**MONEY JUDGMENT & DECREE FOR
WRIT OF RESTITUTION OF
PREMISES**

JUDGMENT SUMMARY

- 1. Judgment Creditor: MHM&F, LLC
- 2. Attorney for Judgment Creditor: Jerome R. Cronk
- 3. Judgment Debtor: Edward Pryor, Jr. and Jane Doe (Van) Pryor
- 4. Principal Judgment Amount: \$7,419.36.
- 5. Interest to Date of Judgment: \$ - 0 -
- 6. Attorneys Fees: \$ 29,782.50
- 7. Costs:

Filing fee	\$75.00	
Service of Summons and Complaint	\$90.00	
Service of Five Day Notice	<u>\$70.00</u>	
Cost total:		\$235.00

Judgment & Decree For
Writ Of Restitution

- 1 -

Jerome R. Cronk. P.S.
107 Shoreline Business & Professional Center
17544 Midvale Avenue North
Shoreline, WA 98133
Telephone: (206) 542-3181
Fax: (206) 542-3182

1 ~~8. Other Recovery Amounts: Additional rent accruing after August 31, 2010 and cost~~
2 ~~of restoring premises to be applied for as an additional judgment upon proof that~~
3 ~~Defendants and their mobile home remain on the premises beyond dates stated in~~
4 ~~the Judgment.~~ JRE DW

5 9. Principal Judgment Amount Shall Bear Interest at 12% Per Annum. (Signature)

6 10. Attorneys Fees, Costs and Other Recovery Amounts Shall Bear Interest At 12%
7 Per Annum.

8 11. A set off shall be made and applied in partial satisfaction of this judgment in the
9 sum of \$12,702.50,* as set forth in paragraph 9 of the Judgment and Decree below.

10 RECORD & HEARING

11 Based upon the trial of this matter and the record recited in the Findings of Fact
12 and Conclusions of Law entered at this time and good cause appearing, the Court now
13 hereby orders and grants to the Plaintiff the following:

14 JUDGMENT & DECREE

- 15 1. The tenancy and right of Defendants Edward Pryor, Jr. and Jane Doe
16 (Van) Pryor to possession of the Premises described in the Findings of
17 Fact is terminated.
- 18 2. The Clerk shall issue a Writ of Restitution directed to the Sheriff of
19 Snohomish County, Washington, returnable ten (10) days after its date of
20 issuance restoring to Plaintiff possession of the premises described in the
21 Complaint and located at space 65 located in Thunderbird Estates Mobile
22 Home Park, 19330 Winesap Road, Bothell, Snohomish County,
23 Washington.
- 24 3. In the event that it is not possible to return the Writ within the required 10
25 days there shall be an automatic extension for and additional 10 days.
- 26 4. Plaintiff is awarded judgment against the Defendants Edward Pryor, Jr.
27 and Jane Doe (Van) Pryor and their marital community in the sum of
28 \$7,419.36. for unpaid rent due at the date of this Judgment;

29 * Plus interest ~~\$931~~ \$981.36, for total \$13,683.86

30 Judgment & Decree For
Writ Of Restitution

- 2 -

Jerome R. Cronk, P.S.
107 Shoreline Business & Professional Center
17544 Midvale Avenue North
Shoreline, WA 98133
Telephone: (206) 542-3181
Fax: (206) 542-3182

1 5. Plaintiff is awarded a judgment against said Defendants in the sum of
2 *JAC* \$29,782.50 for its reasonable attorney's fees together with *(JAC)*
3 *DM* recoverable costs and disbursements in the sum of \$235.00.

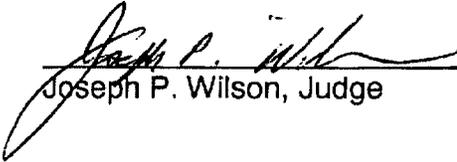
4 6. Plaintiff is entitled to apply for an additional money judgment for ~~rent,~~
5 ~~accruing at the rate of \$100.24 per month for every month Defendants or~~
6 ~~their mobile home occupy the premises after the end of August, 2010 upon~~
7 ~~proof that Defendants do continue to occupy the premises after that date.~~
8 *DM*
JAC

9 ~~7. Plaintiff is entitled to apply for an additional money judgment in the sum of~~
10 ~~\$3,500.00 for the cost of restoring the premises if Defendants fail to~~
11 ~~remove their mobile home from the premises by _____, 2010~~
12 ~~upon proof that Defendants' mobile home remains on the premises after~~
13 ~~that date.~~
14 *JAC*
DM
(JAC)

15 8. Plaintiff is entitled to apply for an additional money judgment for the cost of
16 executing the Writ of Restitution, including Clerk's fees, filing fees and all
17 Sheriff's fees and costs upon proof of the payment of such charges and
18 that they were necessary due to the failure of Defendants to promptly and
19 voluntarily vacate the premises.

20 9. Immediately after entry of the judgment entered herewith in this cause it
21 shall be off set by deducting from it the judgment in favor of Defendants
22 and against Plaintiff's predecessor, *i.e.*, the Estate of Edwin R. Wellington,
23 and Thunderbird Association in the sum of ^{13,683.86} \$12,702.50, which was granted
24 on January 8, 2010, in Snohomish County Cause No. 07-2-08397-7. The
25 Clerk is ordered to enter satisfaction of that judgment in full and credit the
26 amount thereof as partial satisfaction of the judgment entered in this cause.
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30 *DM*
JAC
(JAC)

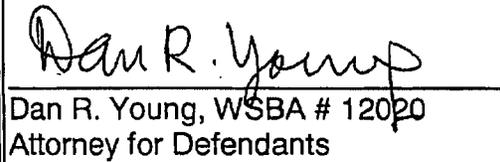
1 ENTERED this 19th day of August, 2010.

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Joseph P. Wilson, Judge

5 Presented by:

6
7 
8 Jerome R. Cronk, WSBA# 357
9 Attorney for Plaintiff

10 Copy received, approved as to form by:

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12 
13 Dan R. Young, WSBA # 12020
14 Attorney for Defendants

APPENDIX B

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**THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY**

MHM&F, LLC, a Washington limited liability
company,

Plaintiff,

vs.

EDWARD PRYOR, JR., and Jane Doe ,
PRYOR, JR, husband and wife and their
marital community,

Defendants.

Cause No. 10-2-03273-6

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

I. HEARING & RECORD PRESENTED

The Plaintiff's Complaint came on regularly for trial upon the trial calendar of this Court on August 10, 2010, and all unresolved issues of substance, procedure, fact and law were submitted to and heard by the undersigned trial judge, without a jury, commencing on August 10, 2010. The Plaintiff appeared by its authorized agent and manager, Jonathon Wellington, and was represented by its attorney, Jerome R. Cronk. The Defendant Edward Pryor, Jr. appeared in person and was represented by his attorney, Dan R. Young. The Court received in evidence the sworn testimony of Willie Wellington, Jonathon Wellington and Richard Hutchins on behalf of Plaintiff and Edward Pryor, Jr., Defendant, and admitted into evidence the various exhibits offered

Findings of Fact and Conclusion
of Law,

Jerome R. Cronk, P.S.
107 Shoreline Business & Professional Center
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Shoreline, WA 98133
Telephone: (206) 542-3181
Fax: (206) 542-3182

1 by the parties and considered the same, together with the argument and authorities
2 presented by counsel.

3 Based on the record, procedures and circumstances recited above, the Court
4 makes and enters the following

5
6 **II. FINDINGS OF FACT**

7 ***A. Plaintiff & Its Predecessors.***

8 **1. MHM&F, LLC**

9 The Plaintiff, MHM&F, LLC, is a Washington limited liability company (called
10 "MHM"). It is the successor in interest to the business owned and conducted by the
11 late Edwin R. Wellington doing business as "Manufactured Homes Management and
12 Financial Co. Mr. Wellington died on January 31, 2009, and MHM succeeded to his
13 interest herein by virtue of an assignment given on May 5, 2009, by the co-executors
14 of the Estate of Edwin R. Wellington, in King County probate Cause No. 09-4-01212-9
15 SEA

16
17 **2. Manufactured Homes**

18 Edwin R. Wellington, d/b/a "Manufactured Homes Management and Financial
19 Company" was the successor of Manufactured Homes Management & Financial Co,
20 Inc., a corporation, that was dissolved some years after 1982.) (each called
21 "Manufactured Homes.")

22 ***B. Status Of The Defendants.***

23 The Defendants are individuals, residents of Snohomish County the State of
24 Washington, and at all times pertinent hereto were husband and wife constituting a
25 marital community. The true given name of Defendant Jane Doe Pryor, is Van Pryor.

26
27 ***C. Premises, Ownership.***

28 The Plaintiff owns and has the right to possession of a certain interest in land
29 described as follows:

30 Findings of Fact and Conclusion
of Law,

1 **1. Description of Premises**

2 Mobile home space 65 located in Thunderbird Estates Mobile Home Park,
3 (called "the Park) at 19330 Winesap Road, Bothell, Washington, 98012 (called "the
4 Premises). The Park is legally described as:

5 Lots 11 and 12, Block 12, Alderwood Manor No. 5, as per
6 plat recorded in Volume 9 of Plats, pp. 79-83, records of Snohomish
7 County, Washington

8 **2. Contractual Arrangements - Source of Ownership**

9 Plaintiff's rights in the Premises arose from three contracts (called "the
10 Contracts"), entitled (1) "Stock Purchase Agreement," (2) "Pledge and Trust
11 Agreement" and (3) "Proprietary Lease" all dated and executed on October 30, 1982,
12 between the following parties:

- 13 1. Thunderbird Estates Mobile Home Association, a mutual corporation (a
14 cooperative association), owner of the Park (called "the Association");
15
16 2. Defendant Edward Pryor, Jr.'s father, Edward G.S. Pryor (called "Pryor,
17 Sr.") as purchaser of 100 shares of stock in the Association which
18 entitled Pryor, Sr. to lease Space 65 in the Park for 99 years on the
19 condition that his stock purchase payments were timely paid to the seller
20 of the shares, such shares being subject to forfeiture to the seller upon
21 default and notice as defined and set forth in the Contracts.
22
23 3. Manufactured Homes Management & Financial, Co., Inc., the
24 corporation (the predecessor of Edwin R. Wellington, d/b/a Manufactured
25 Homes Management and Financial Co.), seller of the shares to Pryor, Sr.

26 ***D. Tenancy, Possession.***

27 **1. Pryor, Sr.**

28 Pryor, Sr., took possession of and resided in a mobile home owned by him
29 located on Space 65 in the Park following execution of the Contracts. He paid stock

30 Findings of Fact and Conclusion
of Law,

1 purchase installments and remained in possession of Space 65 until his death in
2 September, 2003.

3
4 **2. Pryor, Jr.**

5 Pryor, Jr., who had resided with his father prior to his death, remained in Space
6 65 thereafter and continued to pay or attempted to pay to Manufactured Homes the
7 same monthly installment payments his father had been paying. Pryor, Jr., however,
8 never took steps specified in the Contracts for transfer of his father's shares of stock to
9 him until serving a Notice and Declaration pursuant to RCW 11.62.010 on March 29,
10 2001, which was too late to establish his right to his father's shares in the Association.

11 ***E. Default & Forfeiture of Shares***

12 **1. Early Delinquencies**

13 Beginning in 2004 and continuing from time-to-time until March, 2007, Pryor,
14 Jr.'s payments to Manufactured Homes were often late or insufficient in amount.
15 Manufactured Homes issued some notices of default in 2006 and early 2007, but
16 backed off on a claim of forfeiture in October, 2006, waiving and forgiving prior claimed
17 defaults.

18
19 **2. April & May Delinquencies – Notice of Default**

20 Defendant Pryor, Jr. failed to make any payments due on April 1, and May 1,
21 2007 and on May 15, 2007, Manufactured Homes issued a Notice of Default, stating
22 that the default must be cured within 10 days as specified in the Contracts.

23 **3. Failure to Cure**

24 Pryor, Jr. failed to make a timely or sufficient tender of payment as required by
25 the May 15, 2007 Notice of Default.

26
27 **4. Forfeiture & Sale of Stock**

28 On May 30, 2007, Willie Wellington, as Trustee under the Pledge & Trust
29 Agreement, sold 100 shares of stock that had been purchased by Pryor, Sr. to Edwin

30 Findings of Fact and Conclusion
of Law,

1 R. Wellington, d/b/a Manufactured Homes.

2 ***F. Previous Trial***

3 There was a previous trial between these Defendants and Plaintiff's
4 predecessor, Edwin R. Wellington, d/b/a Manufactured Homes, held on March 11,
5 2008, before Hon. George N. Bowden, Judge of this Court (called "the first trial), being
6 Snohomish County Cause No. 07-2-08397-7. That case was brought by Edwin R.
7 Wellington, d/b/a Manufactured Homes and others as an unlawful detainer case under
8 Chapters 59.12 and 59.18.RCW seeking restitution of premises after claimed forfeiture
9 of stock and holding over. Judge Bowden, entered Findings of Fact and Conclusions
10 of Law and Judgment in that case on January 8, 2010. Those Findings, Conclusions
11 and Judgment have a bearing on this case.

12
13 **1. Determination of Status of Pryor, Jr. at Previous Trial**

14 At the first trial the Court found and concluded, among other things, that Pryor,
15 Jr. was a tenant of the park and "had no ownership interest in the property or the
16 association that owns the park." Judge Bowden also concluded "that the interest of
17 Pryor Junior as a successor of Pryor Senior and purported stock purchaser was
18 inchoate and never perfected." As such Judge Bowden finally concluded that Pryor,
19 Jr. was a mobile home tenant subject to eviction procedures of the Mobile/Manufac-
20 tured Home Landlord-Tenant Act, Chapter 59.20 RCW (MHLTA).

21
22 **2. Dismissal of Unlawful Detainer in First Trial**

23 Judge Bowden dismissed the case because Plaintiffs had not sought eviction of
24 Defendants under the MHLTA, but instead under foreclosure provisions of the
25 Contracts and residential landlord-tenant statutes.

26 **3. Attorney Fee Judgment**

27 Judge Bowden entered a judgment against plaintiffs in that case for
28 Defendants' attorney fees in the sum of \$12,702.50.

29
30 Findings of Fact and Conclusion
of Law,

1 **4. Off Set of Judgment**

2 Defendants in their Affirmative Defense No. 37 in this case pleaded that:

3 To the extent that any money were owed to plaintiff by defendants,
4 such money should be set off against the \$12,702.50 judgment defendants
5 obtained against plaintiff s predecessor(s) in cause #07-2-08397-7, which
6 judgment is a final judgment remaining wholly unsatisfied.

7 ***G. Tenancy & Default***

8 **1. Terms of Tenancy**

9 Pursuant to the terms of the tenancy Defendants were obligated to pay the
10 Plaintiff rent at the rate of \$191.24 per month for the use and occupancy of the
11 premises from June 1, 2007, payable on the 1st of day of each and every month.

12 **2. Default in Rent**

13 Defendants paid no rent to Plaintiff following the trial in March, 2008, nor after
14 Judge Bowden's written Findings, Conclusions and Judgment of January 8, 2010.
15 Defendants were delinquent in rent payments owing to Plaintiff in the sum of \$191.24
16 per month from June 1, 2007, and continued delinquent and unpaid as of February 11,
17 2010.

18
19 ***H. Notice To Terminate.***

20 A Notice to Pay Rent or Vacate the Premises (5 day notice) was duly and
21 properly served on the Defendants on February 11, 2010.

22 ***I. Elapse Of Time Period.***

23 More than five (5) days elapsed since the service of said Notice. Defendants
24 unlawfully continued to hold over and continued in possession of said premises,
25 without compliance with the demand of the Notice or tender of any payment to Plaintiff
26 and without permission of the Plaintiff, to the Plaintiff's damage in the amount of the
27 unpaid and accruing rent.

28
29
30 Findings of Fact and Conclusion
of Law,

- 6 -

Jerome R. Cronk, P.S.
107 Shoreline Business & Professional Center
17544 Midvale Avenue North
Shoreline, WA 98133
Telephone: (206) 542-3181
Fax:(206) 542-3182

1 **J. Plaintiff's Damages**

2 **1. Unpaid Rent**

3 Defendants rent owing to Plaintiff has accrued @ \$190.24 per month since
4 June 1, 2007, through August, 2010, a period of 39 months, amounting to a total of
5 \$7,419.36.

6
7 ~~**2. Restoration of Premises**~~

8 ~~The reasonable cost of removing Defendants' mobile home from the Park is the~~
9 ~~sum of \$3,500.00, which is the reasonable cost of restoring the premises if Defendants~~
10 ~~fail to remove the home themselves.~~

11 **3. Attorney's Fees**

12 Plaintiff has incurred reasonable attorney's fees and costs of suit in prosecuting
13 this action in a sum set forth in the Conclusions of Law and Judgment entered
14 herewith.

15
16 **III. CONCLUSIONS OF LAW**

17 **A. Decision of Judge Bowden**

18 The Findings and Conclusions made by Judge Bowden in the first trial between
19 these parties or their successors are binding on this Court in this trial under the
20 doctrine of collateral estoppel.

21 **B. Status of Plaintiff**

22 Plaintiff was a legal successor to the interest of Edwin R. Wellington in the
23 property and business known as Manufactured Homes Management and Financial
24 Co., and the subject matter of this case.
25
26
27
28
29

30 Findings of Fact and Conclusion
of Law,

1 ***C. Status of Defendants***

2 **1. Status as Tenants**

3 At all times material to this case Defendants were in a landlord-tenant
4 relationship with the Plaintiff (and the Plaintiff's predecessor) and the Plaintiff is the
5 landlord.

6 **2. Status as Stock Purchasers**

7 **2.1. Failure to Cure**

8 Defendants did not cure the default in stock purchase installment that existed
9 on May 15, 2007, in a timely or sufficient manner and did not take reasonable steps
10 thereafter to cure their default. Defendants are therefore not stock purchasers.

11 **2.2. Forfeiture of Stock**

12 Pryor, Jr.'s putative interest in his father's shares of stock in the Association
13 were foreclosed upon by Notice of Default and failure to cure. Plaintiff's predecessor
14 had the right to and did sell the shares to Edwin R. Wellington according the provisions
15 of the Contracts and Pryor, Jr.'s interest in the shares were thereby extinguished.
16 There was nothing improper in the sale of shares and the Trustee did not act in bad
17 faith.
18

19 ***D. Unlawful Detainer***

20 This action for unlawful detainer under Chapter 59.20 RCW does lie.

21 **1. Eviction of Tenants**

22 The Defendants Edward Pryor, Jr. and Jane Doe (Van) Pryor, and any other co-
23 tenant or inhabitant of the Premises who might be residing there are each guilty of
24 unlawful detainer and said Defendants' right to occupy the Premises should be
25 terminated. Said Defendants and other occupants of the premises should be evicted
26 and possession of the Premises should be restored to Plaintiff .
27
28
29
30

Findings of Fact and Conclusion
of Law,

1 **2. Writ of Restitution**

2 A writ of restitution should be issued herein in favor of Plaintiff, directing the
3 Sheriff of Snohomish County to restore exclusive possession of the Premises to
4 Plaintiff.

5 **E. Recoverable Sums**

6 **1. Rent**

7 Defendants are indebted to Plaintiff for unpaid rent and judgment should enter
8 in favor of Plaintiff for that through the end of August, 2010, in the sum of \$7,419.36.

9 ~~Should Defendants fail to remove themselves and their mobile home from the~~
10 ~~Premises before September 1, 2010, rent continues to accrue at the rate of \$190.24~~
11 ~~per month and Plaintiff is entitled to apply for such additional judgment on proof of~~
12 ~~non-payment and that Defendants' home remains on the Premises.~~

*JRC
DNY*

13 **2. Restoration of Premises – Removal of Home**

14 Defendants must remove their mobile home from the Premises by
15 ~~2010, and failing to do so, Plaintiff should be awarded an additional~~
16 ~~judgment in the sum of \$3,500.00 for the cost of removal of the home and is entitled to~~
17 ~~apply for such additional judgment on proof that Defendants failed to remove the home~~
18 ~~from the Premises by that date.~~

*Plaintiff may apply for a supplemental
judgment for damages and costs incurred after entry
of judgment.*

*JRC
DNY*

19 **3. Attorneys Fees & Costs**

20 Plaintiff is the prevailing party herein and is therefore entitled to a judgment for
21 its reasonable attorney's fees and costs of suit pursuant to RCW 59.20.110. Plaintiff's
22 attorney has incurred reasonable attorneys fees in the sum of \$29,782.50 and
23 recoverable costs of \$235.00

*JRC
DNY*

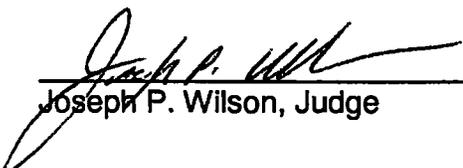
24 **4. Off Set of Judgment from First Trial**

25 Defendants' request made in its Affirmative Defense No 37 should be granted
26 and the judgment in favor of Defendants and against Plaintiff's predecessor in the first
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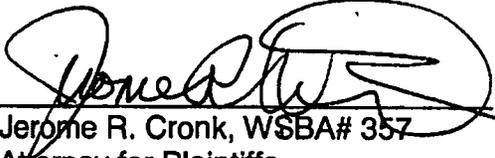
30 Findings of Fact and Conclusion
of Law,

1 trial in the sum of \$12,702.50 should be off set against the judgment entered in favor
2 of Plaintiff in this case.

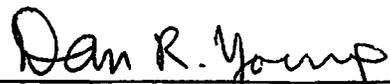
3 ENTERED this 19th day of August, 2010.
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5

6
7 
8 Joseph P. Wilson, Judge

9 Presented by:

10 
11 Jerome R. Cronk, WSBA# 357
12 Attorney for Plaintiffs

13 Copy received, approved as to form by:

14 
15 Dan R. Young, WSBA # 12020
16 Attorney for Defendants
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Findings of Fact and Conclusion
of Law,

APPENDIX C

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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL13950249

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF SNOHOMISH**

THUNDERBIRD ESTATES MOBILE HOME
ASSOCIATION, a mutual corporation, and ED
WELLINGTON, Trustee for "Seller"
MANUFACTURED HOMES MANAGEMENT
and FINANCIAL COMPANY, INC.

Plaintiff,

v.

SUCCESSORS IN INTEREST TO EDWARD
G. S. PRYOR, deceased, and EDWARD
PRYOR, JR., heir and successor to Edward G.S.
Pryor, JANE DOE PRYOR, his wife and THEIR
MARITAL COMMUNITY, and all other
TENANTS or OCCUPANTS OF SPACE 65,
THUNDERBIRD MOBILE HOME PARK,

Defendants.

NO. 07-2-08397
Proposed By Plaintiffs
**FINDINGS OF FACT
AND CONCLUSIONS
OF LAW**

THIS MATTER having come before the undersigned in a bench trial on March
11, 2008, and the court having heard the testimony of Plaintiffs' witnesses and
considered the exhibits entered in evidence, and having granted the defendants'
motion to dismiss following the close of the plaintiff's case, the Court enters the
following:

FINDINGS OF FACT

1. Edward G. S. Pryor ("Pryor Senior") entered into a stock purchase
agreement with Manufactured Homes Management and Financial Company, Inc.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW --1**

JEROME R. CRONK
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107 Shoreline Business & Professional Center
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EXHIBIT 26

44

1 ("MHMFC") dated February 16, 1981, for the purchase of 100 shares of common
2 stock in Thunderbird Estates Mobile Homes Association (the "Association"), owner of
3 the Park, which allocated space #65 in Thunderbird Estates Mobile Home Park (the
4 "Park"), to Pryor Senior, at a purchase price of \$22,995, payable in 360 equal
5 monthly instalments of \$190.24.
6

7
8 2. The Park is located at 19330 Winesap Road, Bothell, Snohomish
9 County, Washington

10 3. As a part of the stock purchase agreement Pryor Senior on October 30,
11 1982, entered into a proprietary lease with Thunderbird Estates Mobile Home
12 Association, the owner of the Park, for possession of space #65 for a period of
13 99 years.
14

15 4. Pryor Senior owned the mobile home in space #65.

16 5. Pryor Senior lived in the home with Edward G.S. Pryor, Jr. ("Pryor
17 Junior") until Pryor Senior's death in September, 2003.
18

19 6. Pryor Junior thereafter continued to live in the home in space #65 as a
20 tenant and made monthly payments of \$190.24, which were accepted by
21 MHMFC, and monthly payments to the Association for Park maintenance costs
22 apportioned to space #65 (sometimes referred to as "rent")
23

24 7. Due to various defaults and delinquencies in payments that MHMFC
25 believed to be due under the stock purchase agreement by Defendant Pryor
26 Junior, as putative successor of Pryor Senior, MHMFC notified Pryor Junior in a
27 "Notice of Default" dated May 15, 2007 (Ex 6) of the delinquency existing at that
28 time and of the trustee's intention under the Pledge and Trust Agreement to
29 foreclose upon and sell the 100 shares that Pryor Senior agreed to purchase.
30 The Notice was sent to Pryor Junior by certified mail pursuant to paragraph 9 of
31 the Pledge and Trust Agreement (Ex. 2) and advised him that the delinquent
32 amount he owed was \$467.00 and that he had 10 days to cure the delinquency
33 or his stock would be sold by the Trustee at "private sale" without further notice.
34
35
36

FINDINGS OF FACT AND CONCLUSIONS
OF LAW --2

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8. Pryor Junior made no attempt to tender a payment to cure the default until May 31, 2007, when he tendered the sum of \$400.00 by personal check dated that date (Ex. 11). MHMFC returned Pryor's tender of payment which was \$67 short and 6 days late of the requirement for cure set forth in the Notice Of Default.

9. On July 29, 2007, Pryor Junior was served with a "Notice of Termination of Lease" dated July 26, 2007, which notice stated that Pryor Junior's lease would expire on August 10, 2007, and stated that Space 65 must be vacated by August 10, 2007 (Ex. 8).

10. When Pryor Junior did not vacate space #65, Willie Wellington, acting as limited agent of the Association, and Ed Wellington, acting as trustee for MHMFC, brought the present unlawful detainer action against Pryor Junior to obtain possession of space #65.

11. Plaintiffs did not personally serve defendant Pryor Junior (in the manner required for service of process) with any notice providing an opportunity to cure any alleged default before the ten-day cure period had expired.

12. Plaintiffs' claims relating to possession of the property in question and eviction of defendants are resolved herein in favor of defendants for reasons stated in the Conclusions of Law, below.

13. Defendants' counsel reasonably spent 4.75 hours in connection with this litigation before January 1, 2008, and 32.9 hours after January 1, 2008.

14. Defendants' counsel's billing rates of \$250 per hour before January 1, 2008, and \$350.00 per hour after that date are reasonable.

15. The lodestar amount is therefore the sum of $4.75 \times \$250 = \$1,187.50$, and $32.9 \times \$350 = \$11,515$, for a total of \$12,702.50.

16. Defendants' counsel represented defendants on a contingent basis, thereby undertaking a significant risk that he would earn no fees. The case was

FINDINGS OF FACT AND CONCLUSIONS
OF LAW -3

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1 complicated at the outset due to the complex series of transactions involved and
2 the death of Pryor Senior apparently without a will or probate, thereby making
3 the outcome of the case dependent upon the resolution of factual issues and the
4 credibility of the parties, which could have been resolved by the fact finder in
5 favor of either party.
6

7
8 17. Defendant Ed Wellington died on January 31, 2009, in Snohomish
9 County, Washington

10 From the foregoing Findings of Fact, the Court now makes the following:
11

12 I. CONCLUSIONS OF LAW

13 1. No evidence was presented to the Court that Pryor Junior was an
14 owner or purchaser of stock in Thunderbird and Pryor Junior therefore had no
15 ownership interest in the property or in the Association which owns the Park.
16

17 2. The Court concludes as a matter of law that, although MHMFC believed
18 that Pryor Junior's interest in Space 65 arose by succession from Pryor Senior's
19 purchase of shares of stock of Thunderbird Association — which conveyed to the
20 shareholder an ownership interest in the association which owns the property —
21 Pryor Junior was and is nevertheless a tenant of the Park subject to provisions of
22 the Mobile Home Landlord- Tenant Act, Chapter 59.20 RCW (the "MHLTA")
23 because no steps were ever taken by Pryor Junior or anyone else to establish
24 his status as a legal successor to Pryor Senior's rights under the stock purchase
25 agreement.
26

27 3. Pryor Junior is entitled to the protections of RCW 59.20.080 and other
28 provisions of the MHLTA which govern the rights and duties of the parties to this
29 action.
30

31 4. There is no provision of the MHLTA which authorizes eviction of the
32 tenant under the circumstances of this case, except RCW 59.20.080 (1) (b)
33 providing for termination of tenancy for non-payment of rent upon 5-day notice to
34
35
36

FINDINGS OF FACT AND CONCLUSIONS
OF LAW --4

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cure.

5. Pryor Junior was not served with any notice in the manner required under RCW 59.20.150 to cure any breach or avoid any default until after there was no possibility to cure the alleged breach or default. Service of the Notice of Default of May 15, 2007 (Ex. 6) by certified mail was not in compliance with the requirements for service of notices by a landlord on a tenant according to RCW 59.20.150.

6. This court lacks jurisdiction to reach the merits of the unlawful detainer action because of lack of personal service under the provisions of the Mobile Home Landlord Tenant Act, as explained above.

7. The Court further concludes that the interest of Pryor Junior as a successor of Pryor Senior and purported stock purchaser was Inchoate and never perfected. It was therefore not subject to forfeiture under the terms of the Stock Purchase Agreement.

8. While Plaintiffs presented ^{evidence} ~~substantial and uncontradicted~~ proof that (a) Pryor Junior's interest in the 100 shares (whatever it was) were forfeited under procedures for sale of the Proprietary Lease, and (b) that the foreclosure sale of the shares took place according to the procedures set forth in the paragraph 8. A. of the Pledge and Trust Agreement (Exs. 2 and 14), the Court nevertheless declines to make a ruling thereon because, given the Courts dismissal of Plaintiffs' unlawful detainer action, those issues are not reached.. Plaintiffs' claims of forfeiture of shares of stock are therefore denied without prejudice.

*JRC
DMY
GAB*

9. Defendants are the prevailing parties in this litigation.

10. Defendants are entitled to a reasonable attorney's fee under the attorney's fees under the Mobile Home Landlord Tenant Act.

11. The amount of \$12,702.50 is a reasonable attorneys fee under the circumstances of this case including a consideration of the lodestar principle to be awarded to defendants' counsel, based on the quality of work, results obtained, his experience and general billing rates and a regard to the merits and

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW --5**

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good faith of the claims and defenses of the litigants.

12. The lodestar fee enhancement is not appropriate in this case.

13. An overall fee of \$12,702.50 is reasonable.

14. A judgment against some plaintiffs or successors is appropriate in the following manner:

(a) A judgment against MHMFC, a corporation, may be entered although that corporation was dissolved years ago and is a non-existent entity.

(b) Defendant Ed Wellington, individually and d/b/a MHMFC was substituted for Plaintiff MHMFC, Inc. by amendment in this case. Judgment ~~can~~ be entered against Ed Wellington because he is deceased and his estate has ~~not~~ been substituted as a party in this case.

(c) The Claims of Plaintiff Thunderbird Estates Mobile Home Association, a mutual corporation, should be dismissed with prejudice because Defendant Pryor Junior cured his default in "rent" (maintenance payments) to the Association 6 days before trial and that the Thunderbird Plaintiff dropped its claims for rent at the trial.

(d) ~~the~~ Judgment for attorney's fees, costs or other relief should be entered against the Plaintiff Thunderbird Estate Mobile Home Association, as the Association was a necessary party to this unlawful ~~act~~

15. Because the Court has dismissed Plaintiffs' cause of action for unlawful detainer under the theories and facts presented by Plaintiffs, the Court cannot rule on the claim of Plaintiff Ed Wellington for a finding or judgment against Pryor Junior for an amount owing for unpaid stock purchase installments. That claim is denied without prejudice.

DONE IN OPEN COURT this 5th day of January, 2010
~~December, 2009.~~

* detainer action and on the basis of *Soper v. Clibborn*, 31 Wn. App.

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NY
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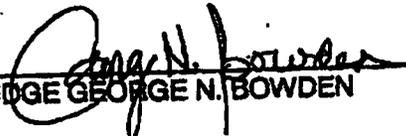
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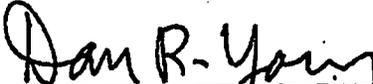
FINDINGS OF FACT AND CONCLUSIONS OF LAW --6

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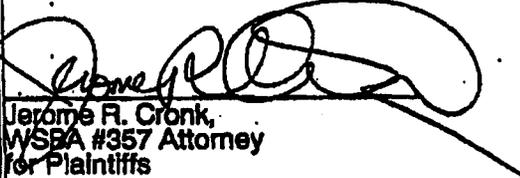

JUDGE GEORGE N. BOWDEN

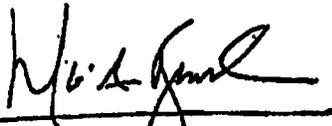
Presented by:
Law Offices of Dan R. Young



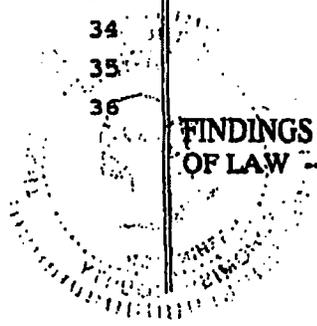
By Dan R. Young, WSBA # 12020
Attorney for Defendants

Approved as to form; Notice of
Presentation Waived:


Jerome R. Cronk,
WSBA #357 Attorney
for Plaintiffs



MARIO A. BIANCHI, WSBA 317#2
Attorneys for Estate of Ed Wellington



FINDINGS OF FACT AND CONCLUSIONS
OF LAW --7

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206-642-3181

APPENDIX D

FILED

JAN 08 2010

SONYA KRASHI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF SNOHOMISH

THUNDERBIRD ESTATES MOBILE HOME
ASSOCIATION, a mutual corporation, and ED
WELLINGTON, Trustee for "Seller"
MANUFACTURED HOMES MANAGEMENT
and FINANCIAL COMPANY, INC.

Plaintiff,

v.

SUCCESSORS IN INTEREST TO EDWARD
G. S. PRYOR, deceased, and EDWARD
PRYOR, JR., heir and successor to Edward G.S.
Pryor, JANE DOE PRYOR, his wife and THEIR
MARITAL COMMUNITY, and all other
TENANTS or OCCUPANTS OF SPACE 65,
THUNDERBIRD MOBILE HOME PARK,

Defendants.

NO. 07-2-08397-7

JUDGMENT

(Clerk's Action Required)

JUDGMENT SUMMARY

- | | |
|----------------------------------|--|
| 1. Judgment Creditor: | Edward Pryor, Jr. |
| 2. Judgment Debtors: | Thunderbird Estates Mobile Home Association;
Jonathon Wellington and James Wellington, as
personal representatives of the Estate of Ed
Wellington; and Manufactured Homes
Management and Financial Company, Inc. |
| 3. Principal Judgment Amount: | 0 |
| 4. Interest to Date of Judgment: | 0 |
| 6. Attorney's Fees | \$12,702.50 |

ORIGINAL

LAW OFFICES OF DAN R. YOUNG
ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3310
SEATTLE, WASHINGTON 98104-1046
(206) 292-8181

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1 7. Attorney's Fees, Costs and other
Recovery Amounts shall bear
Interest at 12% per annum

3 8. Attorney for Judgment Creditor: Dan R. Young

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6 The trial of this matter having been held before the Court on March 11, 2008, and the Court
7 having this date entered Findings of Fact and Conclusions of Law, after dismissing plaintiff's
8 complaint with prejudice, and the Court finding it appropriate to enter judgment, it is hereby

9 ORDERED, ADJUDGED and DECREED that judgment be and hereby is entered in favor
10 of defendant Edward Pryor, Jr. jointly and severally against Thunderbird Estates Mobile Home
11 Association; Jonathon Wellington and James Wellington, as personal representatives of the Estate
12 of Ed Wellington; and Manufactured Homes Management and Financial Company, Inc., in the
13 amount of \$12,702.50 as attorney's fees, plus interest from this date on the judgment at the rate of
14 12% per annum.

15 DONE IN OPEN COURT this 8th day of January, 2009.

16
17 
18 JUDGE GEORGE N. BOWDEN

19 Presented by:

20 Law Offices of Dan R. Young

21
22 By


23 Dan R. Young, WSBA #12020
Attorney for Plaintiff

24 
25 MARIO A. BIANCHI, WSBA No. 31742
26 Attorney for Estate of Ed Wellington

27 Approved as to form; Notice of Presentation
28 Waived:


29 Jerome R. Cronk, WSBA #357
Attorney for Plaintiffs

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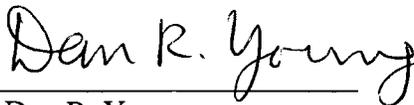
DECLARATION OF SERVICE

I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am an attorney representing the appellant Edward Pryor et ux.in this action.
2. On April 29, 2011, I sent by the USPS, first class mail with pre-paid postage affixed, a copy of the foregoing Brief of Appellant to the following:

Jerome M. Cronk, P.S.
107 Shoreline Business & Professional Center
17544 Midvale Avenue North
Shoreline, WA 98133

Dated: April 30, 2011, at Seattle, Washington.



Dan R. Young

2011 MAY -2 AM 11:44
COURT OF APPEALS
CLERK OF COURT