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STATE OF WASHINGTON

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NO. 68539-2-1

COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

MARY FUNG KOEHLER,

Plaintiff-Appellant,

v.

BLYTHE C. LAWRENCE, as Personal Representative of the
ESTATE OF REXFORD LAWRENCE, deceased,

Defendant-Respondent.

ON APPEAL FROM KING COUNTY SUPERIOR COURT OF
WASHINGTON CAUSE NO. 08-2-05568-0 SEA

(HONORABLE RICHARD A. EADIE)

OPENING BRIEF OF APPELLANT

MARY FUNG KOEHLER,
Appellant, Plaintiff, *Pro se*

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I. INTRODUCTION

This appeal must be viewed in the light of the Res Judicata effect of the law of the case in King County Superior Court Case NO. 06-2-05945-0 SEA, *Lawrence v. Koehler*, the rights under which were extant and legally available to Defendant Lawrence herein as a pre-existing Judgment Creditor in this "Prior Litigation."

This appeal arises from an Unlawful Detainer Special Proceeding under RCW 59.12.030 (1). The Case at Bar had before it the question of right to possession of residential real property subsequent to Lawrence having elected to be awarded money damages in lieu of exercising any right he may have had under an Option to Purchase. Under the terms of the Option Agreement, crafted by Defendant, the exercise of the Option terminated the underlying lease. Hence, Plaintiff Koehler, as the holder of the fee interest, had the legal right to receive a Writ of Restitution (or whatever result the law provides) as a result of proceeding in Unlawful Detainer.

In derogation of well established law and compliance with the statute, the Trial Court converted the summary statutory proceeding to one of general jurisdiction and proceeded to adjudicate the matter as though it was a case at law. The sole

remedy prayed for was the right to possession; and double damages for reasonable rent less amount actually paid since the date of termination of the lease as provided for in the unlawful detainer statute RCW 59.12. Any rulings outside that were beyond In derogation of well established law and the limitation of the statute. The sole remedy prayed for was the right to possession and damages; any rulings outside that were beyond the jurisdiction of the Court, extra legal and void.

The Trial Court proceeded to appoint a Custodial Receiver of the real property and empowered, directed and ratified such Custodial Receiver to conduct activities outside the statutory authority of a Custodial Receiver including selling the property.

Appellant asserts that all of these proceedings were without jurisdiction, extra legal and void as they were not available in this special proceeding nor in compliance with the statutes .

Koehler also asserts that the Trial Court disregarded the Declaration of Homestead filed by her, failed to hold, as a matter of law that any equitable liens which may have existed merged into the judgment for money damages in the Prior Litigation. The Trail Court's ruling that an equitable lien existed was outside the Jurisdiction of the Court, was extra-legal and void and barred

by Res Judicata.

Respondent Lawrence, as a Judgment Creditor had an adequate remedy at law by proceedings in Aid of Execution in the money judgment case; all of which were ignored by the Trial Court which proceeded to use this Special Proceeding to satisfy the money judgment and countenance the clear avoidance of compliance with the statutory mandate incumbent in a Judgment Creditor. The result was to violate the Constitutional Right of Appellant by abrogating her right as the Owner of a Fee Simple interest in the property by authorizing a sale through a Deed of Receiver, all of which is outside the authority of a Custodial Receiver.

Appellant also raises the question of Abatement arising upon the death of Respondent, a fact withheld from the Court by Counsel for two years. The rights of the deceased Defendant Lawrence as a Judgment Creditor survived his death; any rights before the Trial Court were personal rights and did not survive his death.

The Trial Court held on to this case for almost 5 years all in the face of repeated objection by Koehler. In its rulings, the Trial

Court acknowledged, in dicta, that Plaintiff was owner of a fee interest and would have had the right to possession. None of these issues were addressed in any of the Court Rulings and remain unresolved to date.

Koehler is requesting that this matter can be finalized by the Court of Appeals Panel without remanding it to the trial court which has yet to issue a final order which should have taken four weeks maximum from filing. Based upon the fact that 90% of the Trial Court's signed interlocutory orders that are being appealed are void because of lack of jurisdiction, or the blatant refusal to comply with the mandates of the relevant statutes used to take away unlawfully, deprive, and prevent Koehler from her constitutional right to her to unfettered use, enjoyment, or profits from her homesteaded Condo, Over \$60,000 was collected by the Custodial Receiver who has admitted in open court that he shifted most of his responsibility to Blackmon in this case and was still awarded Lodestar attorneys fees of \$375/hr.

A. IDENTITY OF PETITIONER AND RELEVANT PARTIES

"The parties will be referred to as follows:"

Mary Fung Koehler ("Koehler") is the Appellant, Plaintiff, Lessor, Optionor, *pro se*. The original Defendant; Lessee,

Optionee, was Rexford Lawrence (“Lawrence”), now deceased.

(“Prior Litigation”) refers to King County Superior Court Case NO. 06-2-05945-0 SEA, *Lawrence v. Koehler*, in which Lawrence elected money damages against Koehler and at all times herein was and is *Res Judicata*.

(“Case at Bar”) refers to King County Superior Court Cause NO. 08-2-05568-0 SEA which is the subject of this appeal.

(“Court”) refers to Judge Richard A. Eadie, presiding over the Case at Bar, and the multiple Rulings issued forth, to which Koehler objected and which are the subject of this appeal.

(“Varnell”) refers to James L. Varnell, attorney appointed “Custodian Receiver” herein.

Respondent, Defendant, Blythe Lawrence , (“Blythe”) refers to the Personal Representative of the Estate of Rexford Lawrence, deceased, who was substituted in place of Lawrence on September 16, 2010.

Craig Blackmon (“Blackmon”) was counsel for Lawrence, now deceased as of August 17, 2008, and eventually for Blythe Lawrence, the Personal Representative of the Estate of Rexford Lawrence, Deceased, who was substituted on September 16, 2010, in place of Lawrence.

8. Order Denying Plaintiff's Motion for Reconsideration of the August 26, 2011 Orders, dated October 18, 2011. (CP 29) (A-20)

9. Order Reauthorizing Receiver's Sale of Condominium Unit dated October 31, 2011. (CP 630-631) (A-21 through A-22).

10. Order Granting Defendants Motion to Declare Invalid Plaintiff's Declaration of Homestead and to Permit Credit Bidding dated August 26, 2011. (CP 632-634) (A-23 through A-25).

11. The Order Granting Defendant's Motion for Determination of Date of Attachment of Equitable Lien dated November 22, 2011. (CP 635-636) (A-26 through A-27)

12. "Order Denying Plaintiff's Motion for Reconsideration Of Order dated November 22, 2011," dated December 30, 2011. (CP 637-638) (A-28 through A-29).

13. Order Reimbursing Expenses and Awarding Fees to Custodial Receiver and Discharging Receiver dated March 2, 2012. (CP 639-641) (A-30 through A-32).

C. ISSUES PRESENTED FOR REVIEW

1. Did the Court improperly dismiss the Unlawful Detainer proceeding filed pursuant to RCW 59.12.030 (1), without making Findings of Fact and Conclusions of Law on March 17, 2008?

2. Did the Court properly reinstate the Unlawful Detainer Special Proceedings under RCW 59.18.040 (2) without the consent of Koehler; erroneously convert the case to one of general jurisdiction; expand the scope of this Special Proceeding, without the consent of Koehler or upon the filing by

Lawrence of a motion to file and prosecute a cross action at law?

3. Does the Case at Bar abate upon the incompetence or death of Lawrence, as the gravamen of the Case at Bar is right to possession. did Blackmon, as an Officer of the Court, have a duty to disclose this to the Court in a timely manner?

4. Is the sole remedy available to Blythe, the judicially established remedy to execute on the Judgment for money damages of the Prior Action held by the Estate of Lawrence, deceased, since the right to possession is a personal right and does not survive the death of Lawrence?

5. Did Blythe possess the clear right to prosecute a remedy In Aid of Execution within a special statutory Unlawful Detainer proceedings action, when her clear remedy was to comply with the available procedures as a Judgment Creditor in the Prior Action under RCW 6.13?

6. Did the entry of the Judgment in the Prior Action dispose of all inchoate rights, extant at the time the Judgment became final, such that all equitable liens, statutory liens or other encumbrances on the Condo merge into the judgment for money damages that gave Lawrence the benefit of his bargain?

7. Did the Court disregard the mandate of the Homestead priority established by Koehler, by her filing, in good faith, her Declaration of Homestead on the Condo?

3. Once a judge acquires jurisdiction over a statutory controversy, must the judge grant whatever relief the facts warrant, including the granting of legal remedies beyond the purpose of the statute?

4. Can judge give effect to a Judgment in Prior Litigation to Benefit that Judgment Creditor, by a violation of the Judgment Debtor's due process rights and a taking of her constitutional rights to free and unfettered use and possession of her Condo without the Judgment Creditor complying with state statutory law in RCW 6.13 in aid of execution?

5. Based on the affidavits of Koehler and Beverly Kolash, together with the Court's disregard of *stare decisis* and statutory laws in this action, should Judge Eadie have recused himself or at least had a hearing in open court, or stated reasons to support his refusal?

10. Did Judge Eadie have jurisdiction to appoint a Custodial Receiver *sua sponte* in this statutory proceeding?

11. Did the Court err in finding and concluding that Koehler was required to give Lawrence a 3 day notice when the Lease

terminated by operation of the law retroactive to September 22, 2005 upon the entry of the final judgment in the Prior Litigation?

12. Did Judge Eadie err in finding and concluding that Rex became a month to month tenant under RCW 59.18 after being guilty of Unlawful Detainer RCW 59.12.130 (1) since September 22, 2005 as a result of the Prior Action?

13. Can an Unlawful Detainer tenant under an option to purchase be converted to a residential tenant, pursuant to RCW 59.18?

D. STATEMENT OF THE CASE

This is a statutory unlawful detainer action under RCW 59.128.030 (1), the situation of holding over after an affixed term lease, which requires no notice. It was initiated on February 8, 2008 by Koehler to gain possession of her Condo from Lawrence after he was awarded money damages in lieu of specific performance in the Prior Litigation, *Lawrence v. Koehler*. (CP 1-20)

Koehler and Lawrence had signed a rental agreement dated January 12, 1999 (CP 14-15). The Condo was purchased on March 3, 1999, at which time the Option to Purchase drafted by Lawrence stated in a separate paragraph. "Lessor/lessee agrees that in the event of the exercise of the option set forth above,

aforesaid lease between the parties shall terminate and be of no further no effect.” (CP 12)

In the Prior Litigation case, Judge Canova decreed on December 14, 2007, that Koehler breached her obligations under the Option without legal excuse when she failed to honor Lawrence’s notice of exercise dated September 22, 2005. (CP 10, lines 12-13)

Koehler could not start an eviction during the *Prior Litigation* as it was still possible that Lawrence was entitled to specific performance and thereby title to the date of the Option in 1999.

When Lawrence and his counsel realized that Koehler was correct in her contention that the Option lacked a method of determining a purchase price, they changed their focus and claimed that the Lease and Option were two separate and distinct contracts shortly before the summary judgment hearing in 2007.

Judge Gregory Canova bought their argument and ruled that only damages would be determined at trial when he issued his December 2007 summary judgment ruling.

Lease not part of Prior Action

Judge Norma Jean Middaugh , in, *Lawrence v. Koehler*, King Cause No. 06 2-05945-0 SEA , found on March 18, 2008 that the Lease involved here was not the subject of that litigation and

made no findings as to whether Lawrence was current in his Lease obligations as that issue was not relevant.(CP 119) (A - to A -).

Judge Gregory Canova had granted summary judgment that Lawrence was entitled to damages and that the lease and option were two distinct contracts on December 2007. (CP 9, lines 26-27; CP 10, line1 1-5)

Pursuant to RCW 59.12.030 (1), Koehler obtained an Order for Lawrence to Show Cause on February 19, 2008, why a Writ of Restitution should not be issued restoring her possession of the Condo that he was still occupying (CP[16-17);

Lawrence appeared with his counsel, Blackmon: with an Answer claiming he had not been served the proper pre-eviction Notice; Reinstatement of Tenancy; and affirmative defenses. (CP 21-24) and his declaration. (CP 25-61) Commissioner Velategui sent the parties to the clerk's office where Judge Eadie was assigned to hear the trial, which didn't occur until March 17, 2008.

Lawrence claimed under penalty of perjury on his February 18, 2008 Declaration (CP 31, lines 25-26) to have provided insurance coverage on the Condo and garage from 1999 to May 2007. The Pemco copies he supplied were of his annual renter policies from 1999 to May 2007, and provided absolutely zero or no coverage A on the dwelling and the same zero or no

Coverage- B other structures for the Condo from 1999 to 2007. (CP 35-51) Koehler was at risk for nine years and never listed as an additional insured under any policy.

He finally provided insurance coverage of \$100,000 on the Dwelling and \$1,250 limits on private structures starting May 14, 2007 for \$181.00 coverage. (CP 52-53).

None of the policies named Koehler as an additional Insured during the time she was liable for as much \$95,000 on the Condo deed of trust with no insurance protection, Because of this, Koehler's May 2005 Chapter 11 reorganization filing, to give her time to sell her Lake Forest Park office building, for which she had accepted an \$890,000 offer, was dismissed in part because Lawrence could not produce insurance coverage on the Condo.

Koehler lost that sale and a profit of \$340,000 when she was forced to sell the building to stop its foreclosure in October-November 2005. That was why she had counter offered to sell Lawrence the Condo for \$50,000 when he finally chose to exercise his option to purchase the Condo on September 22, 2005 without having set a price or a binding method of determining one in his option to purchase.

Pemco policies for each year under Section 1 provided No Coverage A-Dwelling and Coverage B-Other Structures provided absolutely no liability coverage for Koehler. This is proof that Lawrence was in total default his obligation to provide Koehler Insurance coverage on the Condo.

On May 14, 2007, Lawrence finally obtained a new policy with Metropolitan Property and Casualty Insurance Condominium Declarations insuring the Dwelling for \$100,000 and the Private Structures for \$1,250 at a premium of \$281/year over and above the coverages for his personal property and liability {CP 53-54}

March 17, 2008, the minute entry states, "Respective counsel argue dichotomous remedy issue and Pltf's motion for a writ of restitution/summary judgment on unlawful detainer." The Court found no unlawful detainer of the property and denied the writ of restitution requested. (CP 64-65)

It was ordered that the Defendant' motion for summary judgment of dismissal as a matter of law was granted without prejudice. (CP 63)

On March 25, 2008, Koehler filed her Motion for Reconsideration of the above order, objecting to the award of attorney's fees to Lawrence pursuant to RCW 59.18.290 on the basis that he never lost possession and under RCW 59.18.415 did not apply to single family dwelling tenants with a lease option to purchase of more than a year.. (CP 105-107)

Koehler had filed a Declaration of Homestead on the Condo on April 23, 2008. (CP)

On June 16, 2008, a short trial on stipulated evidence was held as evidenced by the Exhibit List. (CP 34)

On June 24, 2008 Blackmon moved to invalidate Koehler's Homestead Declaration on . Koehler responded that there was no competent party with legal authority to bring that motion and that this case should abate.

had no ???

In 2009, Koehler found an affidavit (A- to A - of a former client, Beverly Kolash, in her documents at her storage lockers. She did not recall seeing it and did not remember having any contact with Mr. Richard A. Eadie in law school or with respect to any legal case. (CP 206-207)

She could not understand the treatment she had been receiving from Judge Eadie so she researched the issue of bias and moved that he recuse himself and undo the damage of his prejudicial rulings. Of course he denied Koehler's motion on January 19, 2010, which was filed on January 20, 2010, without a hearing or any basis for his ruling.

E. PROCEDURAL HISTORY

Koehler, as owner of the fee simple interest in real property (herein after referred to as the Condo), filed an Unlawful Detainer Proceeding on February 7, 2008, under RCW 59.12.030 (1), seeking a Writ of Restitution and obtained an Order for Lawrence to appear on February 19, 2008 to Show Cause why a writ should not be issued directing the Sheriff to put her in immediate possession of the premises and as otherwise set forth in her Complaint for Unlawful Detainer (CP 1-20).

Lawrence personally appeared with his attorney, Blackmon, and filed his Answer (CP 21-23). on that date admitting that Koehler was the owner of the Condo: and the authenticity of Exhibit A, the Order Granting Partial summary Judgment in the Prior Litigation case (CP 8-11): Exhibit B, the Option to Purchase Real Property (CP 12-13): and Exhibit C, Residential Lease Agreement with Option to Purchase (Cp 14-15) .

Lawrence also filed his Declaration in Support of Defendant's Response to Show Cause Hearing on February 19, 2008. (CP 25-61), He admitted the following at (CP 29, lines 15-19: . . . Since early 2005 I have deposited the mortgage payments into a special checking account in Mrs. Koehler's name but also named "in trust for" me. We have arranged

with the lender to automatically deduct the mortgage payments from this account, and it has no other function. Prior to that time we used her personal checking account for that purpose, and in the same way. . .

Therefore, Lawrence was never current in his rental obligations to insure the Condo to protect Koehler from the inception of the lease in 1999 for 8 years for a total of \$1,448.

The above documents was his evidence that he filed claiming that he satisfied the Insurance requirement of the rent pursuant to the lease as stated in his Declaration .in Response to the Order to Show Cause dated February 18, 2008 as set forth below:

Plaintiff claims I failed to insure the Condo. That is simply not true. Insurance was always in force, with reasonable and appropriate limits on coverage. In 1999 I obtained a Homeowners Policy from PEMCO, a Seattle-based carrier where I had long had auto coverage. A copy of the set of declaration pages is attached as Exhibit 3. In 2007 I moved coverage to Met-Life. Its declaration page is Exhibit 4. Contrary to plaintiff's averments, there has been insurance at all times, and there has accordingly been no breach of the lease. (CP 29, lines 21-26, paragraph 20)

On March 17, 2008, the Court dismissed the Unlawful Detainer Proceeding without prejudice under RCW 59.18.040 (2), which requires a 3 day notice based on Lawrence's argument of Koehler accepting rental payments converting the unlawful detainer to a new month to month tenancy under RCW 59.18 of the

Landlord Tenant Act .

The Court declined to apply RCW 59.18.415, that exempts a single family dwelling with a Lease of more than a year containing a bona fide Option to Purchase by the tenant from proceeding under RCW 59.18, which is the Res Judicata effect extant in the Prior Action, NO. 06-2-05945-0 SEA. (CP 113-123)

On a Motion for Reconsideration by Koehler (CP 68-94), the Court, on May 19, 2008, reinstated the Case at Bar and set it for trial on June 9. (CP 147-148),

Eadie then sua sponte appointed a custodial receiver, Mr. James Varnell ("Varnell"), on July 7, 2008, (A- to A-) who immediately took over possession and control of Koehler's Condo in violation of her constitutional rights to the use and possession of her property rights; since Jul7 7, 1008,

lien. Koehler has received not a penny of profit now that reasonable

rent was being paid close to what she had asked for in her Complaint. (CP 1-20)

The Findings of Fact and Conclusions of Law signed by Judge Eadie on July 21,2008 is a chronology of this statutory eviction case that Koehler does not agree with in part. He ruled that

Rex became a month to month tenant and was entitled to a 3 day notice on the basis that Rex paid the mortgage payments into the trust account that he had set up in Koehler's name in trust for him.

Judge Eadie than concluded that Koehler's petition for a writ of restitution was denied as well as her complaint for damages for no paid insurance coverage for 9 years, double reasonable rental value for holding over since September 22, 2005 less amounts paid into the trust account.

On July 7, 2008, *sua sponte*, the Court appointed James Varnell , Esq., pursuant to the authority of RCW Ch. 7.60

as Custodial Receiver of Unit F-204, 14058 NE 181st Street, Woodinville, Wa. The Receiver shall manage the property to ensure that it is maintained in a safe and sanitary condition and that fair rental is received pending final resolution of this matter. To that end the Receiver may enter into rental agreements or initiate unlawful detainer actions to protect the revenue producing capacity of the property. The Receiver shall also advise the court on the issue of benefit to the parties of a sale of the property. The Receiver shall execute and file a bond in as required by law the amount of \$10,000.00. Both parties to the litigation are directed to assist and cooperate with the Receiver.

The fees and costs of the Receiver shall be submitted monthly and paid by Plaintiff within ten (ten) days following court approval and shall be a lien on the property until paid.
(CP 611 lines 14-21, CP 612 Lines 1-3)

At no time was there notice to Koehler of any adversary proceeding prior to such appointment. At all times thereafter, Varnell and the Court performed the function of General Receiver, as opposed to those of a Custodial Receiver without the proper authority.

Since Lawrence died on August 17, 2008, Blackmon made no attempt to advise the Court, or Koehler that he had intentionally decided not to substitute Blythe in this action to save attorney's fees as the Court and Varnell were working on selling the Condo through the Custodial Receivership. He had knowingly continued to act as attorney knowing that there was no competent defendant of record to represent in. (CP 372)

Koehler had called this to the attention of the Court of Appeals in her appeal of the Prior Litigation. He did substitute Blythe in that action so Koehler thought he had done so in this case. It was only after Blackmon filed his August 18, 2010 motion to invalidate her homestead declaration that Koehler objected to his lack of standing to continued to act as if he had authority to represent the defendant where there was no competent defendant of record to represent; that the Estate of Lawrence had a remedy at law: and

that the right to possession has been rendered moot. (CP)*****

On September 16, 2010, the Court, ex parte, issued its Order Substituting Blythe in as Party Defendant. Thereafter, various proceedings occurred to review the ongoing jurisdiction of the Court and of the extra-legal activities of the Varnell.

In Koehler's reply to Blackmon's Response to her Motion for Judge Eadie to recuse himself, she objected to Blackmon's lack of standing as there was no competent party defendant of record since Lawrence passed on August 17, 2008. (CP 231-231). Blackmon admitted intentionally not substituting Blythe in this Action

The Court issued its Orders authorizing Varnell to sell the Condo to Blythe, all in the the face of exception and objection by Koehler.

The case at bar is still extant and no dispositive Order dealing with Ownership of the Fee Simple interest of the Condo has been issued.

Koehler appeals the question of jurisdiction; extra-legal

processes of the court; extra-legal actions of Varnell as a Custodial Receiver, the refusal to abstain from ruling on the legal effect of the election of remedies and whether that extinguishes any equitable lien, the protection of the Homestead as well as a course of conduct by the Court denying Koehler of Due Process,

IV. ARGUMENT AND AUTHORITIES

a. Unlawful Detainer

An unlawful detainer action is a summary statutory proceeding that requires that the action be prosecuted without delay and the scope of the trial court's jurisdiction is limited to the question of possession, and related issues such as restitution of the premises and rent. The remedies available to the Lessor are restitution if the Lessee is found to be in unlawful detainer; include issuance of a writ of restitution, recovery of any past due rent and/or rental damages, and an award of double that amount .

Lessor initiated her unlawful detainer action under RCW 59.12.030 (1) which is holding over after expiration of a fixed term lease that requires no prior notice when the lease expires.

Such was the case here when Lessee obtained a summary judgment in a prior action on December 14, 2007 that Lessor

breached her obligation under the Lessee's exercise on September 22, 2005 of his Option to Purchase her Condo.

Lawrence has argued in the eviction case that he was entitled to keep renting the Condo for the rest of the 20 year lease pursuant to the separateness of the Lease from the Option, where he was awarded damages of about \$110,000 in the Prior Action.

In his Answer on March 19, 2008, Lawrence admitted the authenticity of the Option, attached to the Complaint for Unlawful Detainer as Exhibit B (CP 12), speaks for itself. The paragraph that determined the date of end of the tenancy was drafted by him and stated: "Lessor/Optionor agrees that in the event of the exercise of the option set forth above, the aforesaid lease between the parties shall terminate and be of no further effect." Therefore, the date of his exercise was September 22, 2005 by operation of the law of the case in the Prior Action so that RCW 59.12.030 (1) applies so that this Court should have granted Koehler a writ of restitution

(1). **Trial court has no jurisdiction for subsequent interlocutory orders**

The Court has not complied with Chapter RCW 59.12 that governs unlawful detainer actions and creates a special, summary proceeding for the recovery of possession of real

property. See **Housing Auth. v. Terry**, 114 Wash.2d 558, 563, 789 P.2d 745 (1990), (citing **Wilson v. Daniels**, 31 Wash.2d 633, 643-44, 198 P.2d 496 (1948)).

Based on the authority cited above, the Superior Court was without jurisdiction to appoint a receiver, **supra**.

"Issues unrelated to possession are not properly part of an unlawful detainer action. See **First Union Management, Inc. v. Slack**, 36 Wash. App. 849, 854, 679 P.2d 936 (1984) (claims not properly asserted if not related to possession)."

"An unlawful detainer action is a special proceeding and Superior Court's jurisdiction in such action is limited to primary issue of right of possession, plus Incidental issues such as restitution and rent, or damages." **Mead v. Park Place Properties** (1984) 37 Wash. App. 403, 681 P.2d 256, review denied.

"Special summons employed in unlawful detainer action was wholly insufficient to give court jurisdiction of parties in general proceeding, the Court having obtained jurisdiction of parties only for limited statutory purpose of determining issue of possession in unlawful detainer action; and having obtained that limited jurisdiction, court could not transform special statutory proceedings

into ordinary law suit and determine issues and grant relief therein as though action was general proceeding." **Little v. Catania** (1956) 48 Wash.2d 890, 297 P.2d 255.

"Appointment of receiver based upon judgment entered without jurisdiction is also without jurisdiction." **French v. Ajax Oil & Development Co.** (1906) 44 Wash. 305, 87 P. 359.

Washington law clearly limits the actions of a custodial receiver. The Appointment of a custodial Receiver in an Unlawful Detainer proceeding is an extra-legal act as the law does not confer the court with general jurisdiction as it is not a case at law. By way of contrast, an interim Receiver in bankruptcy has no title to the estate but holds property to preserve it pending the proceedings. **Fletcher v. Murray Consolidated Co.** 72 Wash. 525, 130 P. 1140 (1913).

After an appeal has been perfected from an order appointing a receiver, the lower court has no authority to take any steps or make any order in regards to the Receiver. When the appointment is unwarranted, his claim of possession of the property is wrongful. **Brundage v. Home Savings & Loan Assn.**, 11 Wash. 288, 39 P. 669 (1895).

It is not a proper function of a Receiver to press claims against the estate. It is his duties to collect, administer, and dispense of the property of the estate as the Court shall direct. *Volinn v. United Pacific Insurance Co.*, 61 Wn.2d 342, 378 P.2d 453 (1963).

RCW 7.60 Receivership Statute

Unlawful "Custodial Receiver

***The illegal custodial receiver, Varnell, had fees of awarded "Receiver fees of \$13,480.00 and fees related to preparation and motion for approval of fees, to be determined by subsequent motion and reimbursement of \$200.00 by Judge Eadie 2008 Findings of Fact and Conclusions of Law (A- to A-) and has retained jurisdiction with his interlocutory orders and the for the foreseeable future. It is now over 4.5 years since Koehler initiated the eviction process.

Before the Court signed the order awarding fees and reimbursements in favor of Varnell on January 20,2010, it made the following statement which is implicit of why it had been appointed a custodial receiver. The Court (at RP 9, lines 12-20) stated the

following:

In the Court's view, this case was and this property was headed for bankruptcy court for, if for no other reason all of somewhat uncontrolled litigation that was going on in the matter, and the attorneys fees that were being accrued, legitimately, given the issues, but being accrued unnecessarily, it seemed to me and were essentially depriving either of the basic litigants of any chance of recovery of any amount of monies to which they're entitled in this case.

Upon hearing this, Koehler asked the Court where it got the the idea that the case was headed for bankruptcy.

His response was, " Well, I'll rely on the order. We put findings in the order." (RP 12, lines 13-14) Implicit in this statement is his

July 7, 2008 Order Appointing Custodial Receiver. (CP 610-612)

Due Process violations

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The State may not deprive a person of life, liberty, or property without due process of law. U.S. CONST. amend. XIV, 4 1; WASH. CONST. art. I, sec 3. In *Olympic Prod. v. Chausee Corp.*, 82 Wn.2d 418, 511P.2d 1002 (1973) the Supreme Court expounded as follows:

1] The fourteenth amendment to the United States Constitution provides in part that no "state [shall] deprive any person of life, liberty, or property, without due process of law.' .. " Article 1, section 3 of the Washington State Constitution likewise states that, "No person shall be deprived of life, liberty, or property, without due process of law." Noting the near identity in the language of these clauses, we stated in *Petstel, Inc. v. County of King*, 77 Wn.2d 144, 153, 459 P.2d 937 (1969), that "the federal cases while not necessarily controlling should be given 'great weight' in construing our own due process provision." We are further cognizant, of course, that in s far as the due process clause of the Fourteenth Amendment provides greater protection than does article 1, section 3, the federal Constitution must prevail. U.S. Const. art. 6.

While the boundaries of the concept of due process are not capable of precise formulation, there are certain fundamental considerations

involved.[2] For over a century it has been recognized that "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin v. Hale*, 68 U.S. Wall.) 223, 233 (1864). The fundamental requisites of due process are "the opportunity to be heard," *Grannis v. Ordean*, 234 U.S. 385, 394, 58 L. Ed. 1363, 34 S. Ct. 779 (1914), and "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 94 L.Ed. 865, 70 S. Ct. 652 (1950). Thus, "at a minimum" the due Process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case." *Mullane* at 313. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S.Ct. 1187 (1965).

synthesizing decisions "representing over a hundred years of effort," the United States Supreme Court recently refined these fundamental requirements of procedural due process into the following standard: Due process requires, at a minimum, that absent a countervailing state interest of overriding significance,

persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard ***Boddie v. Connecticut***, 431 U.S. 371, 377, 28 L.Ed. 4. Thus the basic due process requirements of notice and a prior hearing are not limited to the protection of only certain types of property for "if the root principle of procedural due process is to be applied with objectivity, it cannot rest on such distinctions. The Fourteenth Amendment speaks of 'property' generally." Fuentes at 90. where any "significant property interest" is at stake the safeguards of procedural due process are applicable.

This interest can be contrasted to those considered in Fuentes at 84 and 86 where "most, if not all, of the appellants lacked full title to the chattels; and their claim even to continued possession was a matter in dispute. Moreover, the chattels at stake were nothing more than an assortment of household goods. " Yet the court held that the appellants had been deprived of a significant property interest: "the interest in continued possession and use of the goods. " and consequently had concluded that general due process standards were not applicable.

The Sniadach court, in contrast, recognized that realistically such procedures did deprive the debtor of the use of the attached property and that such deprivation was indeed a "taking" of a

significant property interest, which often resulted in serious hardship. (Footnote omitted.) *Randone v. Appellate Dep't*, 5 Cal. 3d 536, 550-52,488 P.2d 13, 96 Cal. Rptr. 709. (1971).

Article ~9, section 1 of the Washington State Constitution provides: " The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

HOMESTEAD EXEMPTION

Blackmon, in open Bankruptcy Court, on the record, on July 8, 2011, stipulated that Koehler filed her Declaration of Homestead in good faith on April 23, 2008. He then moves to have the trial court at bar invalidate Koehler's Homestead Declaration in order to have Varnell sell her condo to Blythe at a private a sale with no redemption period, and to use her judgment lien as down payment and pay off the existing loan balance so that Varnell can execute a warranty deed in her name, Blythe does not fit the definition of a BFP buyer and has knowledge that the sale process is void due to lack of jurisdiction by the trial court in the summary statutory proceeding.

3-12-2012 transcription where
Varnell at (VP 19, lines 19-25 to VP 20, line s1-9):

Long story short, we went through three or four offices of escrow agents that wouldn't touch this thing. They would look into it, wouldn't touch it with a 10-foot pole, number one.

Number two, every lease that was signed in this case was prepared by Mr. Blackmon and in some respects I feel bad I shifted all of the responsibility to him and his client, but I felt like that was the most – how do I say it? Cheapest way to do it. Same with the closing. He prepared all the papers. He finally ended up doing the closing. He prepared the deed, the escrow papers, the financial statements, et cetera, et cetera, Anyway, on the -- well, that's all leases prepared, all documents prepared by Mr. Blackmon, otherwise these would probably been quite a bit more,

In response to this constitutional mandate, the Legislature passed, in 1895, what is now RCW 6.12, the homestead act, which exempts from "execution or forced sale" the homestead, except as provided in the statute. RCW 6.12.090. (The homestead is defined in RCW 6.12.010...050.) The exceptions to this general exemption of homestead property are found in RCW 6.12.100, which states, in pertinent part: The homestead is subject to execution or forced sale in satisfaction of judgments obtained: (1) On debts secured by vendor's liens upon the premises; (2) On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by any unmarried claimant; ...

When equity assumes jurisdiction over the subject matter of an action and the parties to be affected by its decree, it will retain jurisdiction for all purposes. Jurisdiction having attached, it extends to the whole controversy, and whatever relief the facts warrant will

be granted. *Jordan v. Couller*, 30 Wash. 116, 70 Pac. 257; *Davies v. Cheadle*, 31 Wash. ~68, 71 Pac. 728; *Phillips v. Blaser*,
RCW 6.13.030

Homestead exemption limited.

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of one hundred twenty-five thousand dollars in the case of lands, manufactured homes, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.13.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

[2007 c 429 § 1; 1999 c 403 § 4; 1993 c 200 § 2; 1991 c 123 § 2; 1987 c 442 §

RCW 6.13.100 Execution against homestead -- Application for appointment of appraiser. When execution for the enforcement of

a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof. [1987 c 442 § 210; 1895 c 64 § 9; RRS § 537. Formerly RCW 6.) .140.]

Chapter 6.17 RCW

EXECUTIONS

RCW 6.0.170

Application of proceeds.

If the sale is made, the proceeds must be applied in the following order: First, to the amount of the homestead exemption, to be paid to the judgment debtor; second, up to the amount of the execution, to be applied to the satisfaction of the execution; third, the balance to be paid to the judgment debtor.

Koehler initiated an eviction in *Koehler v. Lawrence*, in King County Cause No. 08-2-05568-0 SEA on February 7, 2008 in an attempt to gain possession of her Condo at issue because Judge Middaugh stated that Lawrence had objected to Koehler's claim for lease obligations owed by him and the lease were not relevant to the subject of the Option contract in the Prior Action. Koehler was advised she would have to file a separate action if she wished to litigate whether the lease was breached. (CP 119)

It has been turned from a special statutory proceeding by Judge Eadie into an ordinary lawsuit or general proceeding in excess of his jurisdiction. The judge had no jurisdiction to appoint a custodial receiver, Varnell, who rented the Condo to Blythe Lawrence and her mother for 41 months at \$1,450 per month for a total Of \$59,750, not a penny was disbursed to Koehler, who has been deprived of her constitutional rights to be secure in her property and to enjoy the fruits and possession thereof. Koehler has been damaged in that she was forced to pay storage fees of up to \$1100/month and not allowed the use, fruits, and enjoyment of her property at a month plus shy of her 79th year.

Defendant's Proper Remedy – in Aid of Execution

There is a statutory procedure that should have been followed if Lawrence or Blythe wanted any proceeds out of the Condo. Washington law requires that proceedings in aid of execution must be initiated prior to Debtor recording her Declaration of Homestead in order to elevate the Creditor's judicial lien to the status of a senior lien. (*R.C.W. 6 et seq.*), *infra*.

1. At no time has any proceeding in Aid of Execution (judicial sale) been Initiated or attempted by Lawrence or Blythe, which was the adequate remedy available under Washington law

which mandates that notice of judicial sale is a prerequisite to elevating the judicial lien to superior status;

2. Counsel Blackmon for Creditor Blythe has failed to present a verified petition requesting an appraiser to comply with **R.C.W. 6.13.110, infra.**

That such judicial lien does not come within the exemptions specified in **R.C.W. 6.13.110//**

3. Lawrence ,Blythe, and Blackmon both failed to observe the clear hierarchy of Washington law by circumventing the following sections of **the RCW, to wit; 6.13.070, 6.13.080, 6.13.090, 6.13.100, 6.13.110, 6.13.120, 6.13.200, 6.13.210, and 6.13.240, infra.**

Substitution of Defendant

did not substitute, Blythe from August 17, 2008 to September 16, 2010, there was no defendant as Blackmon had Blythe/ It wasn't until September 16, 2010 that the trial court granted defendant's motion to substitute Blythe Lawrence ("Blythe") as personal representation of the Estate of Rexford Lawrence in place of the "current defendant." (CP 624-625) It was not a *nunc pro tunc* order, so that all pleadings by Blackmon from August 17, 2008 to September 15, 2010, should be ignored and of no force and

effect, since there was no competent party defendant during that sale of the Condo to Blythe it is void;

R.C.W. 7.60.240 codifies the General Receiver's clear right to sell the assets of the Receivership free and clear of liens. The court may authorize this category of Receivers to sell estate property free and clear of liens and rights of redemption whether or not proceeds would be sufficient to satisfy secured claims. {The code does not confer such powers to a Custodial receiver; *Expressio unis est exclusion alterius.*}

Failure by Varnell to follow Receivership statutes.

Notice of sale requires 30 days' notice under **R.C.W. 7.60.190(4)**.

As a condition precedent to conferring the power to sell, a Receiver must take title. ***Pappas v. Taylor***, 138 Wash 22, 244 P. 390 (1926)

Assuming *arguendo*, a Receiver that has lawful authority must accept the highest bid. ***Meador v. Stephens***, 106 Wash. 145, 179 P, 95 (1919)

(1) Except as provided in *RCW 6.13.080*, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in *RW 6.13.030*

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated. . **RCW 6.13.070**

Though provision is made by statute for reaching the excess value of real estate claimed as homestead over amount exempted, it is not ordinary enforcement of lien or sale under execution; it is a special mode of sale after appraisement. Traders' Nat. Bank of Spokane v. Schorr (1896) 20 Wash 1, 54 P. 543, 72 Am. St. Rep. 17.

No execution can be had unless the sum bid exceeds the homestead exemption. **Philbrich v. Andrews** (1894) 8 Wash. 7, 35 P. 358.

A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. **RCW 6.13.090.** (Emphasis added.)

When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in **RCW 6.13.080** is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof. **RCW 6.13.100**

The law states that the judgment creditor is required to obtain a court order appointing an appraiser. In this case, Creditor has not complied with the mandate of this code section which requires the application under **RCW 6.13.100** by filing a verified

petition which clearly must contain:

- (1) The fact that an execution has been levied upon the homestead.
- (2) The name of the owner of the homestead property.
- (3) That the net value of the homestead exceeds the amount of the homestead exemption. **RCW 6.13.110**

A copy of the petition, with a notice of the time and place of hearing, must be served upon the owner and the owner's attorney of record, if any, at least ten days before the hearing. **RCW 6.13.120**

Any sale is void if there is no compliance with the statutes providing for sale on execution of homestead property. **Asher v. Sekofsky** (1894) 10 Wash. 379, 38 P1133; **Whitworth v. McKee** (1902) 32 Wash. 83, 72 P. 1046; **Lewis v. Mauermann** (1904) 35 Wash. 156, 76 P. 737.

The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in **RCW 6.13.150** and **6.13.160** the amount so paid must be added as costs on execution, and collected accordingly. **RCW 6.13.200**

Trial court's interlocutory orders are all void

3-12-2012 transcription where
(VP 19
Eadie on p.22 lines 2-10)

. . . but I think that really, in the court's view, the participation of the receiver has been the only way in which this estate has been saved from being totally consumed by fees and litigation that would

have left no asset at all for any party. So I think that that went well, of course, thanks to the receiver and parties, but I will discharge the receiver, sign your order, and approve the fees, recognizing there is a reservation of rights, which I recognize that –

(VP 22, lines 22-25)

As I say, I think it was essential to get this case to the point where it is now, where we are able to close the estate, we're able to establish ownership of that property.

Eadie on p.23:

This began, as I say, as an unlawful detainer action, didn't it , Ms. Koehler?

K: That's correct your honor.

Ct: So I don't think we have a regular case schedule or trial date assigned to it, It really should be dismissed in some way formally, but this is post receivership. We're back into court, we have this as a case back into court, and assets, if any, back into the court, and so it's for the parties that are now involved in that to present whatever

final orders are necessary, if any, So you can set that
-- . . .

67254-1

Title of Case: Margaret Mary David-oytan, Respondent V. Kudret David-oytan, Appellant

File Date: 11/05/2012

The meaning of a statute is a question of law reviewed de novo. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 43 P.3d 4 (2002). The court's objective is to ascertain and carry

out the legislature's intent. Campbell & Gwinn, 146 Wn.2d at 9-10.

To determine legislative intent, we first look to the language of the statute. If the statute is unambiguous, we determine legislative intent from the plain meaning,

On January 12, 1999, the parties entered into a Residential Lease Agreement with Option to Purchase ("Lease") in regards to the Condo. (CP 14-15). Lawrence would occupy the the Option. (CP 12-13).

Lawrence was the occupant of the Condo under color of the Lease/Option commencing March 3, 1999 and making all the mortgage payments, other than payments of insurance, homeowners' dues, and real estate taxes, into Koehler's personal account from which the biweekly payments were automatically deducted until early 2005 when, Lawrence created a Bank of America checking account in Koehler's name "in trust for" himself, In which he could deposit funds that would automatically be withdrawn by the mortgage company. Subsequent to 2005, at no time did Koehler take into her possession or control any monies or any benefit from that account. No Bank of American statements were made available to Koehler as they were only directed to Lawrence's home address. (CP 29)

[ADD here the letter re an attempt to negotiate the option,}

The trial court at bar made written Findings and Conclusions of Law on July 21, 2008 establishing Koehler as the owner in fee simple of the Condo (CP 613, lines 24-25) after it *sua sponte* appointed a Custodial Receiver without due process of law on July 7, 2008 (CP 6). Instead, of dismissing this summary statutory proceeding or awarding her possession and double the damages set forth in her complaint and Declarations, the Court converted this statutory unlawful detainer into a case of general jurisdiction without Koehler's consent, to give effect to the judgment in the Prior Litigation (in his unlawful appointment of Varnell as "Custodian Receiver." (CP

After the June 16, 2008 trial on stipulated findings in open Court, Lawrence suffered a massive stroke shortly after his June 2008 surgery and died on August 17, 2008 without regaining consciousness. His attorney, Blackmon, continued to engage in the proceedings, negotiating with Varnell to rent the Condo to Blyrhe at \$1,450.00 per month, pending the sale of the Condo' operate and be recognized as if he had standing he finally sent the Court another of his ex parte communications (CP 183, 194-195, and 199-200).

The letter to the Court, dated and mailed on September 8,

2008, and emailed to Koehler and Varnell on September 11, 2008, was the first time, Blackmun notified them of Lawrence's death on August 17, 2008. (CP 290) His letter (CP 183) of July 17, 2008 to the Court inquiring as to the status of the case was based on his declaration on October 8, 2008, she had objected to Blackmon's authority to act as to Lawrence's competence at the time of his surgery from which Blackmon had the obligation to reveal his client's passing. Instead, he sent letters, pleadings, and proposed orders for the Court to sign on August 22, 2008, (CP

Koehler had appealed the Prior Litigation and Blackmon filed a motion to modify the ruling of the Court of Appeal's Commissioner and discovered that Blackmon had never legally substituted the Personal Representative for the Estate of Rexford Lawrence, decedent in this action for over two years until September 16, 2010.

Blackmon moved to invalidate Koehler's Homestead Declaration on August 18, 2010. Koehler responded that there was no competent party with legal authority to bring that motion and that this case should abate..

language of the statute as written. Fraternal Order of Eagles, Tenino Aerie No. 564 v.

Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 239, 59 P.3d 655 (2002).

Examining the particular provision of a statute, as well as other statutory provisions in the act is appropriate to decide whether a plain meaning can be ascertained. *Campbell & Gwinn*, 146 Wn.2d at 10.

Statutory provisions must be read in their entirety and within the context of the statutory scheme as a whole. *ITT Rayolnier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863

CONCLUSION

There has been a terrible injustice inflicted upon Koehler by the Court that has not only violated Koehler's due process and constitutional rights but by totally exceeding his jurisdiction by converting the matter to a general jurisdiction case without the consent of Koehler.

This Court then proceeded to continue to ignore the legislative intent of RCW 7.6 Receivership; RCW 6.13 as to homestead exemption; ignoring the Aid in Execution remedy; and misapplying the clear mandate of RCW 59.18.415 that a lease with an option to purchase does not apply under RCW 59.18, the Residential Landlord-Tenant statute.

Common law, *stare decisis*, and *due process* have been totally disregarded by this Court in violation of his judicial duties

toward his stated goal to give effect to "the judgment in this case"
when his implicit actions have been to satisfy his desire to harm
Koehler for the declaration of his former client, Beverly Kolash, on
September 15, 1987. (CP 209-212)

Koehler has been irrevocably damaged by:

1. Being unable to commence another unlawful detainer action to gain use and possession of her fee simple interest by over 4 years of litigation without a final judgment to date.
2. An unconstitutional taking of her right to the unfettered use and enjoyment of her property by the *sua sponte* appointment of a custodial receiver without due process;
3. Receipt of \$59,450 for 41 monthly rentals at \$1,450 each by the custodial receiver los which Koehler received not a penny.
4. Being forced to pay storage fees in excess of the Condo

mortgage payments and loss of use and possession of her Condo
and having her judgment creditors living in her homestead without.

(CP)(A- to A-)

Respectfully submitted.



Mary Fung Koehler

Petitioner, Plaintiff, Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the

laws of the State of Washington that on November 16, 2012, I personally caused to be served upon counselor by e-mail to craig@blackmonholmes.com per agreement of the parties as a true and correct copy of the incomplete Opening Brief that will probably be rejected by the court upon receipt so that a completed brief will be forthcoming.

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Dated this 16th day of November, 2012, at Seattle, Washington.



Mary Fung Koehler