

74434-8

74434-8

Case Number 74434-8-1

IN THE COURT OF APPEALS IN AND FOR THE STATE OF
WASHINGTON, DIVISION I

NATE PRUDHON, Appellant

v.

R. THORESON HOMES, LLC, Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON COUNTY OF KING

The Honorable Monica Benton,
Presiding at the Trial Court
Superior Court Case No. 15-2-17910-1 SEA

APPELLANT'S REPLY BRIEF

Attorney for Appellant:

Elizabeth Powell, WSBA No. 30152
Elizabeth Powell, PS Inc.
535 Dock Street, Suite 108
Tacoma, WA 98402

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 AUG -8 PM 2:50

TABLE OF CONTENTS

	Pg
I. Table of Authorities	2
II. Reply Argument	3
A. It was error of law to order an eviction without a valid predicate notice.....	3
B. The question of whether the superior court had the authority to terminate this tenancy when the City determined the predicate notice was invalid is not a new argument	5
C. The termination notice was invalid and therefore not a proper predicate for an eviction action.....	5
D. The predicate notice was invalid because the plain language of the statute requires the owner to give 60- days advance written notice to the tenant and commence selling activity after the tenant has vacated.....	6
III. Conclusion	7

TABLE OF AUTHORITIES

Washington Case Law

Cranwell v. Meseck 77 Wn. App. 90, 890 P.2d 491 (1995)	6
Tacoma Rescue Mission v. Stewart 155 Wn. App. 250, 228 P.3d 1289 (2010)	4, 5

Statute(s) and Municipal Code(s)

SMC 22.206.160(C)(1)(f)	3.6.7.8
-------------------------	-------	---------

A. IT WAS AN ERROR OF LAW TO ORDER AN EVICTION WITHOUT A VALID PREDICATE NOTICE.

There is no dispute about the underlying facts: Burnside signed a purchase and sale agreement on April 1, 2015 with Blueprint Capital Services, LLC, with Prudhon living in the property. On April 2, Burnside issued a notice to Prudhon requiring him to vacate the property within sixty days because she intended to sell the property. Blueprint assigned the purchase and sale agreement to Thoreson Homes, LLC, who bought the property from Burnside on April 11, 2015. C.P. 99.

Thoreson Homes, LLC, did not issue any notice to its tenant, Nate Prudhon. Thoreson Homes, LLC instead relied upon the Burnside Notice to Terminate Tenancy as the predicate for its eviction. Thoreson Homes, LLC purchased the property with a tenant in residence, and never intended to sell the property.

SMC 22.206.160(C) (1)(f) provides a landlord with Just Cause when the tenant is given sixty days' advance notice to vacate because of the landlord's intent to sell the property before the property is sold.

As the City of Seattle explained when it sustained the Notice of Violation:

“The owner cannot rely on an “intent to sell” just cause designed to allow an owner to make a property more saleable by offering it without a tenant in place, if the property has already been sold with a tenant in residence.”

“ [To] allow this just cause to be applied in these circumstances would enable the new owner to evade his obligations under the Tenant Relocation Assistance ordinance and thereby frustrate the intent of that Ordinance”

C.P. 336.

It was not necessary to evict the tenant from the property in order to sell it; this is clear, because the property sold with the tenant in place.

“Once a property is sold with a tenant in place, it is up to the new owner to determine whether to keep the tenant or whether there is just cause to terminate the tenancy.” C.P. 336.

The new owner, Thoreson, simply relied upon the Burnside notice rather than issuing its own notice to terminate the tenancy. The Burnside’s termination notice was determined by the City to violate the Just Cause Eviction Ordinance. Burnside’s notice, like *Tacoma Rescue Mission*’ notice, was insufficient to permit the eviction action to be maintained by the subsequent purchaser, Thoreson Homes, LLC. *See Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254 n.9, 228 P.3d 1289 (2010).

B. THE QUESTION OF WHETHER THE SUPERIOR COURT HAD THE AUTHORITY TO TERMINATE THIS TENANCY WHEN THE CITY DETERMINED THE PREDICATE NOTICE WAS INVALID IS NOT A NEW ARGUMENT.

Thoreson never requested review by the Seattle Municipal Court of the DCD's order on appeal. Seattle Municipal Court was the only Court with the authority to determine the validity *vel non* of this predicate notice. There is nothing new about this argument, it was articulated in the Defendant's Revised Trial Brief, C.P. 479. Thoreson needed a valid predicate notice in order to commence this eviction.

Thoreson did not have a valid predicate notice, because the City ordered him to rescind the Burnside notice, and issued a Notice of Violation to Thoreson Homes, LLC when it refused to rescind that notice. C.P. 334. Without a valid predicate notice, an eviction cannot be maintained. *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. at 254 n.9.

C. THE TERMINATION NOTICE WAS INVALID AND THEREFORE NOT A PROPER PREDICATE FOR AN EVICTION ACTION.

Thoreson should have taken up the issue of the validity of the Notice and the subsequent Notice of Violation at the Seattle Municipal Court. Thoreson Homes LLC did not. Therefore, the Notice to Terminate the Tenancy remains invalid. A Notice of Violation gives notice to interested parties and if not appealed becomes a final order. *Cranwell v.*

Mesec, 77 Wn. App. 90, 890 P.2d 491(1995). The Notice of Violation in this matter was never appealed.

- D. THE PREDICATE NOTICE WAS INVALID BECAUSE THE PLAIN LANGUAGE OF THE STATUTE REQUIRES THE OWNER TO GIVE SIXTY DAYS ADVANCE WRITTEN NOTICE TO THE TENANT AND COMMENCE SELLING ACTIVITY AFTER THE TENANT HAS VACATED.

Burnside did not wait to sell until Prudhon had vacated as required by the plain language of SMC 22.206.160(c)(1)(f). She entered into a purchase and sale agreement before she issued the notice, and sold the property ten days after she issued the notice.

Respondent is correct, there is nothing ambiguous about the statute. The relevant language says, 1) elect to sell; 2) give sixty days' written notice to the tenant to vacate and 3) make reasonable attempts to sell within thirty days after the tenant has vacated.

Here, Burnside got the cart before the horse. She elected to sell, gave sixty days' written notice and sold the property with the tenant in place nine days later. She did not wait to sell the property until after Prudhon had vacated. See SMC 22.206.160(c)(f). Because she did not wait to sell the property until after the tenant had vacated, as required by the plain language of the statute, the City found the notice invalid and ordered it rescinded.

The new owner, Thoreson Homes LLC, argued to the trial court that “there is no requirement that it must wait until the tenant’s vacated the property” R.P. 8:23, 24, which is inconsistent with the plain, unambiguous language of the statute, which in fact states that the owner may not sell the property until the tenant has had sixty days’ notice and has vacated the property. Thoreson stated that, “the policy behind this is so they don’t use this as a sort of a way to evict tenants when they have no intention of actually selling the property”. R.P. 9:20-23. Thoreson Homes LLC, the Plaintiff in this eviction proceeding, had no intention of selling the property, Thoreson Homes wanted to demolish it. Thoreson lacked just cause under the plain meaning of SMC 22.206.160(C)(1)(f).

The Superior Court lacked authority to terminate this tenancy and issue a writ, because Mr. Prudhon was never provided a valid predicate notice.

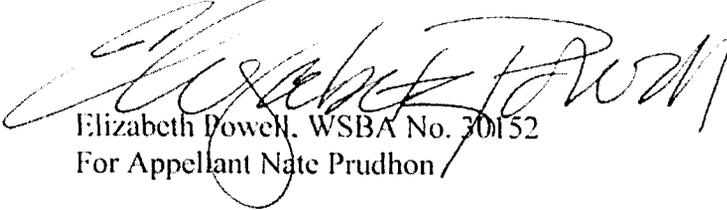
III. CONCLUSION

Because the developer, Thoreson Homes, LLC, failed to appeal the City’s Just Cause Eviction Ordinance Notice of Violation to the Seattle Municipal Court, it could not then avail itself of the Superior Court’s jurisdiction in order to evict Prudhon on the strength of an invalid predicate notice issued by its predecessor-in-interest. Thoreson Homes, LLC did not have the requisite predicate notice; Burnside arguably did.

but Burnside did not initiate the eviction proceedings. Burnside's predicate notice did not comply with the plain language of SMC 22.206.160(C)(1)(f), and Thoreson Homes, LLC, Plaintiff in this eviction proceeding gave no predicate notice whatsoever. The trial court's decision should be reversed, and the order awarding fees and costs should be vacated.

Respectfully submitted this 8th day of August, 2016.

Elizabeth Powell, PS Inc



Elizabeth Powell, WSBA No. 30152
For Appellant Nate Prudhon

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION ONE

NATE PRUDHON, Appellant,

COA No. 74434-8-I

v

Certificate of Service

R. THORESON HOMES, LLC, A
Washington Limited Liability Company,
Respondent.

Elizabeth Powell on oath states:

On the 8th day of August 2016, I caused a true and correct copy of the Appellant's Reply Brief to
served on the following in the manner indicated below:

Counsel for Respondent Thoreson Homes, LLC	() U.S. Mail
Name Brandon S. Gribben	(X) Hand Delivery
Address 1001 Fourth Ave., Suite 4200	(X) email
Seattle, WA 98154-1144	

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
true and correct. Dated this 8th day of August, 2016, and signed at Tacoma, Washington.

Elizabeth Powell, PS Inc.

Elizabeth Powell, WSBA No. 30152

CERTIFICATE OF SERVICE

Elizabeth Powell PS Inc
Attorney at Law
535 Dock Street Suite 108
Tacoma, Washington 98402
(253) 274 1518 fax (425) 663-7939
epowelllaw@comcast.net

2016 AUG - 8 PM 2: 50
COURT OF APPEALS DIV 1
STATE OF WASHINGTON