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No. 100333-1

SUPREME COURT
OF THE STATE OF WASHINGTON

SYHADLEY, LLC

Respondent,

v.

ADDIE SMITH,

Petitioner.

RESPONSE TO PETITIONER'S
PETITION FOR REVIEW

By:

Drew Mazzeo, WSBA No. 46506
HARBOR APPEALS AND LAW, PLLC
2401 Bristol Court SW, Suite C-102
Olympia, WA 98502
Email: office@harborapeals.com
Phone: (360) 539-7156
Fax: (360) 539-7205

Attorney for Respondent

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1. IDENTITY OF RESPONDENT

SyHadley, LLC, (“SyHadly”) is the Respondent to this Petition for Review. It Requests this Petition for Review be Denied.

2. ANSWER TO ISSUES PRESENTED TO REVIEW

- 2.1. Whether E2SSB 5160 is relevant to this Appeal Regarding a Tenant Being Evicted and Arrested for Assaulting Another Tenant, and Whether this Court Should Grant Review? No.
- 2.2. Whether the Doctrine of Judicial Estoppel is Relevant to this Appeal Regarding a Tenant Being Evicted and Arrested for Assaulting Another Tenant, and Whether this Court Should Grant Review? No.
- 2.3. Whether the Supremacy Clause is Relevant to this Appeal Regarding a Tenant Being Evicted and Arrested for Assaulting Another Tenant, and Whether this Court Should Grant Review? No.
- 2.4. Whether a Fifth Amendment Waiver is Relevant to Appeal Regarding a Tenant Being Evicted and Arrested for Assaulting Another Tenant, and Whether this Court Should Grant Review? No.
- 2.5. Whether this Court Should Review the Court of Appeal’s Decision Affirming the Trial Court’s Decision Not to Adjudicate Unrelated Claims of Discrimination in an Unlawful Detainer Action

Where the Tenant Claiming Discrimination was Ordered to Be Evicted for Being Arrested for Assaulting Another Tenant? No.

2.6. Whether this Court Should Grant SyHadley Attorney Fees and Costs for Having to Respond to this Petition? Yes.

3. RESTATEMENT OF THE CASE

3.1. In 2019, Ms. Smith had an “at will” employment agreement. (CP at 54-60). As of the spring and into the summer of 2019, she made \$90,000.00 per year in income and worked as rental manager. (Unpublished Decision). She also rented, pursuant to a separate rental agreement, a luxury apartment with luxury amenities, at \$3,011.00 per month. (Unpublished Decision). Pursuant to an addendum to her rental agreement, Ms. Smith enjoyed a credit towards her rental while employed. (CP at 24, 592).

3.2. Ms. Smith’s employment was terminated during the summer of 2019. (RP January 28, 2020, at 44) (employer stating, “I spoke about the fact that the way you were handling situations that were of a difficult nature, that you were making them worse.

And that you needed to find a way to basically tone that down and deliver a message of negative aspects in a different way. And that we were getting complaints from residents, not because what you were saying was wrong, but the way that you were saying to them was demeaning and they were taking offense to it.”); RP January 28, 2020, at 50 (employer stating, “We received many complaints from current and past residents that the manner in which [Ms. Smith] was handling situations was aggressive and – or demeaning and that was a problem.”).

3.3. After Ms. Smith was terminated from her “at will” employment, she did not pay rent to her landlord. (CP at 8-24). A Fourteen-Day Notice to her provided that the owner/landlord was “The Hadley Apartment Homes” with an “Office” address at 2601 76th Avenue SE, Mercer Island, WA.” (CP at 21-22). Ms. Smith’s former work colleague, Christina Jones, signed the notice. (CP at 21-22).

3.4. Well before COVID-19 mandates impacted people’s employment and incomes, as of November 30, 2019,

Ms. Smith owed \$11,088.29 in back due rent. (*See* CP 72).

3.5. “Hadley Landowners, LLC” brought an unlawful detainer based on the failure to pay rent after Petitioner failed to pay rent pursuant to the Fourteen-Day Notice. (CP at 1-32). A show cause hearing was scheduled for November 19, 2019. (CP 31-32).

3.6. On November 18, 2019, Hadley Landowners, LLC’s attorney moved for “an order to amend the caption to change the name of the Plaintiff to SyHadley, LLC. . . .” (CP at 37). On November 19, 2021, the Court heard the Motion to Amend the caption and granted it. (CP at 71; RP November 19, 2019 at 22). There was no prejudice in granting the motion as there was no confusion who Ms. Smith’s landlord was or who gave her notice or who was attempting to evict her. (*See e.g.*, CP at 39, 40, 43; Unpublished Decision).

3.7. The trial court took testimony regarding the unlawful detainer action. (RP November 19, 2019). A manager for Hadley Apartments testified as to the termination of Ms.

Smith’s “at-will” employment with Legacy Partners, her back rent owed due to SyHadley, and the service of the 14 Day Notice to Pay or Vacate on Ms. Smith. (RP November 19, 2019, at 6-13). Ms. Smith testified and argued that her tenancy was conditioned on her employment. (RP November 19, 2019, at 14, 19). She claimed “retaliation, harassment and discrimination based on race and sex. . . . by [her] employer and [her] landlord.” (RP November 19, 2019, at 24). She argued federal arbitration law superseded unlawful detainer notices. (RP November 19, 2019, at 27). She claimed that SyHadley’s attorney “threaten[ed] her “in the hallway.” (RP November 19, 2019, at 28).

3.8. At the conclusion of the show cause hearing, the trial court entered an order for a writ of restitution reasoning that Ms. Smith was “conflating [her] employment action versus the tenancy action” in “an unlawful detainer action.” (RP November 19, 2019, at 27).

3.9. In December of 2020, and January of 2021, Ms. Smith obtained a series of stays of the eviction order as the trial

court determined appropriate supersedeas bond. Also, during this time, she had numerous final protection orders issued against her for harassing and threatening and/or assaulting other tenants at the premises.¹ (e.g., RP January 28, 2020, at 36). She was videotaped beating another tenant on the premises and was arrested. (CP at 562; Ex “D”, USB Thumb Drive, filed 01/28/20; RP January 28, 2020, at 60-68). The trial court in the criminal action doubled her bond because of the extent of the victim’s injuries.

3.10. On January 16, 2020, SyHadley filed another

¹ Ms. Smith also filed bar complaints (now dismissed with prejudice) against SyHadley’s attorneys. She posted on social media that the trial court judge and SyHadley’s attorneys were “racist.” Facebook marked her account as “spam.” She maintained that Seattle Housing Justice attorneys were unethically collaborating against her with SyHadley’s counsel. Protection orders against Ms. Smith were also issued by the district court regarding her harassing former employees and colleagues such as Christina Jones. The superior court later reversed those particular protection orders, reasoning there was not enough connection between the beating of the other tenant and fear of harm or harassment to employees for Hadley Apartments.

unlawful detainer, under King County cause number 20-2-01335-8, based on Petitioner’s assault on another tenant and subsequent arrest on the premises. (CP at 465-85; RP January 28, 2020, at 34, 47). This action named SyHadley as plaintiff. (*e.g.*, CP at 465-85)

3.11. On January 28, 2020, at the show cause hearing, the trial court admitted evidence and took testimony from the parties and witnesses. (*e.g.*, RP January 28, 2020). Video evidence of Ms. Smith attacking and assaulting another tenant was admitted as evidence with the trial court. (CP at 562; Ex “D”, USB Thumb Drive, filed 01/28/20; RP January 28, 2020, at 60-68). Evidence showing Ms. Smith was arrested was placed into evidence. (CP 591; 593-95; RP January 28, 2020, at 55-57 (“Booking number is 19-22481” and “assault in the fourth degree and provoking assault” and “cause number . . . 9Z0930066”))

3.12. At the show cause hearing, Ms. Smith pled “the Fifth Amendment” when asked if she was arrested”, but admitted she was a part of the “Criminal matter” with “video. . . .

involve[ing]” her assaulting another. (RP January 28, 2020, at 46, 51-53).

3.13. Under this second unlawful detainer cause number (*i.e.*, 20-2-01335-8), Ms. Smith did not make any arguments regarding the employment agreement, rental agreement, or that her tenancy was allegedly conditioned on her employment. She did not argue that the employment agreement should be subject to arbitration. The employment agreement was not filed with the trial court in this suit and cause number.

3.14. At the conclusion of the show cause (evidentiary) hearing, the trial court entered an order terminating Petitioner’s residential tenancy (again) and ordered that another writ of restitution be (again) issued. (CP at 596-99).

3.15. The trial court reasoned that under RCW 59.18.130(8) a tenant may be evicted for being arrested for assaulting another tenant on the premises, that in this matter Petitioner was arrested for assault of another tenant on the premises, and that the evidence admitted was sufficient to issue

an eviction order and writ of restitution:

RCW 59.18.130(8) provides that the tenant not engage in activity that is, and under (b)(1) entails assaults upon another person which results in an arrest. Ms. Smith has admitted that she was arrested for assault. . . . The record from the -- is it from the court which was admitted here confirms that Ms. Smith was arrested for assault. I viewed the video. I will tell you that my ruling would be the same with or without the video, because I think the proof here is sufficient to meet the burden under RCW 59.18.130(8)(b)(1). . . . it is my finding that the tenant did violate (8) of RCW 59.18.130, and in that case the writ will issue.

(RP January 28, 2020, at 36, 76-78). In its written findings, the trial court found:

On November 26, 2019, Defendant assaulted another person on the premises and was arrested for assault in the 4th Degree under Mercer Island Cause Number 9Z09330066 and booking number 19-22481. Defendant[']s actions are in violation of RCW 59.18.130(8). Pursuant to RCW 59.18.180(4), Plaintiff may proceed directly to an unlawful detainer without serving a prelitigation notice.

(CP at 596-99).

3.16. Ms. Smith appealed this ruling as well.

3.17. On February 5, 2020, a commissioner for the Court

of Appeals consolidated both appeals for the first and second unlawful detainer actions to “simplify the appeals moving forward.” (Appendix 1, Letter Order, dated February 5, 2020).

3.18. On Appeal, Ms. Smith argued that the summons was defective, the trial court erred in allowing the amendment to the plaintiff’s name, the trial court erred in not ordering a trial on her claims of discrimination, and that the trial court erred in not dismissing the action because she believed that her occupancy was conditioned on her employment and subject to arbitration.

3.19. On September 27, 2021, the Court of Appeals affirmed the trial court in both actions. (Unpublished Decision). In pertinent part, it reasoned that Ms. Smith did not raise the arbitration argument in the second unlawful detainer action and waived it. (Unpublished Decision at 4). It ruled also she “failed to prove that her tenancy with SyHadley was a condition of her employment with Legacy Partners.” (Unpublished Decision at 4). “[T]he lease agreement gave SyHadley the right to terminate the tenancy for any reason on 20 days’ notice” and “RCW

59.18.040(8) d[id] not apply.” (Unpublished Decision at 4).

As to Ms. Smith’s claim of racism and discrimination and the like, it ruled that “[e]ven if the landlord breached the covenant of quiet enjoyment by not evicting residents whom Smith claimed were harassing her, it could not excuse her assaulting one of those residents” and that “Had Smith raised this issue in the second unlawful detainer proceeding, the trial court could not have considered it.” (Unpublished Decision at 5).

Finally, as to the amendment of the caption in the first unlawful detainer, the Court of Appeals ruled that the “summons substantially complied with the [law]”, Ms. “Smith fail[ed] to demonstrate any prejudice from the court's decision to permit the name change in the caption”, and “any defect in the pleadings affected only the first unlawful detainer proceeding.” (Unpublished Decision at 6).

3.20. Ms. Smith argues review should accepted for the following reasons:

- “E2SSB 5160 applies to Ms. Smith” and “this petition involves issues of substantial public interest that should be determined by the Supreme Court.” (Petition at 7, 18).

- “Respondents breached the covenant of quiet enjoyment.” (Petition at 7, 13-15).

- “[T]he actions of the Court of Appeals show[ed] clear bias . . . and the Court of Appeals is in conflict with a decision of the supreme court. . . . [by failing to resolve this appeal in her favor and not applying the doctrine of] judicial estoppel. . . .” (Petition at 8-10).

- “The United States Constitution’s Supremacy Clause requires that the arbitration clause [within Ms. Smith’s at-will employment agreement] . . . appl[ies] to [Ms. Smith’s tenancy] relationship with her landlord” and the Court of Appeals’ decision conflicts with precedent. (Petition at 11-13).

- “The ruling and statements made by the Court of Appeals are in conflict with published decision of the Court of

Appeals, this Court and the Fifth Amendment of the United States Constitution.” (Petition at 15).

4. ARGUMENT IN RESPONSE TO PETITION FOR REVIEW

4.1. E2SSB 5160 was Irrelevant to this Appeal and No Substantial Issue of Public Importance Exists.

E2SSB 5160 was codified into law in the spring of 2021. Section 3 imposed restrictions on evictions based on a failure to pay rent when “An unlawful detain action . . . resulted from a tenant’s nonpayment of rent between March 1, 2020, and six months following expiration of the eviction moratorium.”

Here, all final orders for eviction were entered by the trial court in 2019 and January of 2020, over a year before E2SSB 5160 became law. This was also months before the law had any stated effect. The law had nothing to do with evictions based on beating another tenant and being arrested for that assault. Contrary to Ms. Smith’s claim that she has “suffered tremendous financial hardship due to Respondents, and the Covid 19 Pandemic”—she has never vacated the luxury apartment at issue.

Instead, she has lived in a luxury apartment with luxury amenities since the summer of 2019 without paying a dime in rent. Ms. Smith's argument that E2SSB 5160 "applies" or that this "petition involves issues of substantial public interest" is meritless. This Court should deny review.

4.2. Judicial Estoppel has Nothing to do with this Appeal.

"Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13, 15 (2007)

Here, judicial estoppel was not an issue at the trial court or on appeal. Ms. Smith, unartfully, argues in her Petition that the doctrine of judicial estoppel applies for the first time. So far as undersigned can interpret her Petition, the gravamen of her argument is that SyHadley allegedly made an inconsistent argument on appeal that "Rent was due/comped as a benefit

while she was employed. . . .” (Petition at 9). She desires this Court to prevent SyHadley from taking advantage of the alleged “inconsistent” argument by taking review of the Court of Appeals decision. (*See* Petition at 9). Notably, the unpublished decision did not mention the doctrine, as none of the parties ever did either.

While Ms. Smith’s judicial estoppel argument is unclear, it is clear that SyHadley made no inconsistent arguments, and that this Court has no reason to take review of the Court of Appeals decision. As the trial court succinctly ruled, Ms. Smith has “conflat[ed her] employment action versus the tenancy action.” (RP November 19, 2019, at 27). Her tenancy was governed by a rental agreement. Her management position was governed by an employment agreement. An addendum to the rental agreement provided a term that granted her a credit towards rent due each month while she was employed, but in no way was her tenancy contingent on employment. Her landlord

could terminate the tenancy with 20 days of notice, which was lawful at the time.

In sum, the Court of Appeals committed no error, there is conflict with prior precedent regarding judicial estoppel or any other doctrine of the law. No substantial issue of public importance exists. This Court should deny review.

4.3. The Supremacy Clause has No Application to this Case.

Federal law in some circumstances may preempt state law. *Stevedoring Servs. of Am., Inc. v. Eggert*, 129 Wn.2d 17, 23, 914 P.2d 737, 741 (1996).

Here, Ms. Smith maintains there are federal law and constitutional violations perpetrated by the Court of Appeals because it did not agree that her employment agreement's arbitration clause governed this unlawful detainer action. (Petition at 11-13). Again, her tenancy was governed by a rental agreement. While her management position was governed by an employment agreement that had an inapplicable (to this unlawful

detainer action) arbitration clause, her rental agreement was governed by contract and state law. Thus, her arguments regarding federal law have no merit. There is no reason for this Court to grant review.

4.4. The Fifth Amendment has no Pertinent Relevance to this Case.

“The Fifth Amendment declares that no person “shall be compelled in any criminal case to be a witness against himself.” *Eastham v. Arndt*, 28 Wn. App. 524, 527, 624 P.2d 1159, 1162 (1981). “RCW 59.18.130(8)(b)(i) provides that a tenant shall not engage in any activity at the rental premises that . . . entails physical assaults upon another person which result in an arrest . . .” (Unpublished Decision at 3) (some internal punctuation omitted). Under RCW 59.18.380, “it is undisputed that a defendant at such a [show cause] hearing is not entitled to a full trial.” *Tedford v. Guy*, 13 Wn. App. 2d 1, 11, 462 P.3d 869, 875 (2020).

Here, Ms. Smith was caught on video camera beating another tenant and she was subsequently arrested. In the second unlawful detainer action, she both testified regarding the assault and raised the Fifth Amendment. The maintenance man recording the video testified as did other witnesses for the SyHadley. Regardless of her waiver of the privilege, the trial court weighed the evidence and credibility of the witnesses. Notably, Ms. Smith did not request a jury trial in the second unlawful detainer action.

In sum, there was no genuine issue of fact that she was indeed arrested for assaulting another tenant. Substantial evidence supported the trial courts factual findings and legal conclusions. The Court of Appeals, citing existing case law, properly affirmed. Thus, this Court should deny review.

4.5. The Court of Appeals Properly Affirmed the Trial Court's Decision Not to Adjudicate Unrelated Claims of Discrimination.

Unlawful detainer actions are narrow and “limited to the question of possession and related issues such as restitution of the

premises and rent.” *Angelo Prop. Co., LP v. Hafiz*, 167 Wn. App. 789, 809, 274 P.3d 1075 (2012). Generally, counterclaims are not allowed during unlawful detainer proceedings. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). An exception to the general rule is made when the counterclaim, affirmative equitable defense, or setoff is based on facts which excuse a tenant's breach. *Id.* Examples of such exceptions include breach of implied warranty of habitability, and breach of covenant of quiet enjoyment. *Id.*

Here, the Court of Appeals properly affirmed the trial court's ruling to not proceed to trial regarding Ms. Smith's discrimination counterclaims because “Even if the landlord breached the covenant of quiet enjoyment by not evicting residents whom [Ms.] Smith claimed were harassing her, it could not excuse her assaulting one of those residents.” (Unpublished Decision at 5). Nothing is out of the ordinary regarding the trial court's ruling or the Court of Appeals decision to affirm. The law was followed evicting Ms. Smith, and she is free to pursue

discrimination claims in an ancillary action. This Court should deny review.

5. ATTORNEY FEES AND COSTS

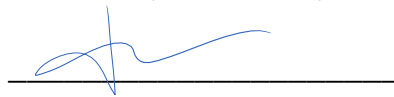
Pursuant to RAP 18.1(j), this Court may award costs and attorney fees if applicable law grants a party the right to recover fees and cost on appeal and such party was awarded such fees by the Court of Appeals.

Here, SyHadley was awarded fees and costs on appeal because Chapter 59.18, RCW, and the parties' rental agreement provide for attorney fees to the prevailing party. Ms. Smith's Petition is without merit. SyHadley respectfully requests reasonable attorney fees and costs for having to respond to this Petition.

6. CONCLUSION

Pursuant to RAP 13.4, SyHadley respectfully requests this Court deny review, for the reasons stated herein

Respectfully submitted this 3rd day of January, 2022,

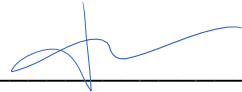


Drew Mazzeo
WSBA No. 46506
Attorney for Respondent

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**HARBOR APPEALS AND LAW,
PLLC**



Drew Mazzeo WSBA No. 46506
Attorney for Respondent

HARBOR APPEALS AND LAW, PLLC

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