100333-1

No. 80780-3-I

SUPREME COURT
OF THE STATE OF WASHINGTON

ADDIE SMITH,

Petitioner,

v.

SYHADLEY, LLC.,

Respondent.

PETITION FOR REVIEW

ORAL ARGUMENT REQUESTED

Addie Smith, Pro Se

2601 76th Ave SE
Mercer Island, WA 98040
absmith27@icloud.com

December 1, 2021

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TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

Pursuant to the establishment of clear precedent which has been enacted by the Washington State Legislature, including the House and Senate, and Governor Inslee, due to the Covid-19 Pandemic to help preserve and maintain life, health, property or the public peace, the application and implementation of claims and defenses in this petition involves issues of substantial public interest that should be determined by the Supreme Court. Racism has been declared a public health crisis, much like the Covid-19 pandemic in this State. Racism nor the Covid-19 Pandemic are releasing its hold on this Nation or Washington State. Ms. Smith and her daughter are, without question, hate crime survivors. Ms. Smith and her daughter were continuously attacked, threatened, harassed and stalked by residents living in the Respondent's apartment building. Ms. Smith was hired to manage that apartment building for the Respondents. The Respondents refused to keep their employee, the Petitioner, safe. They were her first line of defense, protection and support. The Respondents didn't. The police didn't. The courts didn't. This is America for people who look like the Petitioner. Prior to the November 26, 2019, arrest for provoking and assault, Ms. Smith had absolutely never been arrested for provoking and assault. She has never provoked and assaulted anyone. The Court of Appeals affirmed the judgment of the trial court. This contradicts current controlling newly established precedent that this state's laws govern.

II. IDENTITY OF THE PETITIONER

Addie Smith, the Petitioner, hereinafter, "Ms. Smith", seeks review of the decision of the Court of Appeals identified in Part III below.

III. COURT OF APPEALS DECISION

Division I of the Court of Appeals issued an unpublished decision in Cause No. 80780-3-I on September 27, 2021, and a motion to publish has not been ruled upon yet. Ms. Smith filed a Motion to Publish and is waiting for a decision from the court of appeals.

IV. ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals erred in affirming the trial court's ruling in both unlawful detainer actions.

Whether Washington State's new laws governing "Tenancy Preservation – A Bridge to E2SSB 5160" applies to Ms. Smith? This petition involves issues of substantial public interest that should be determined by the Supreme Court.

Whether the Respondents breached the covenant of quiet enjoyment.

V. STATEMENT OF THE CASE

Ms. Smith was hired by the Respondents on May 6, 2019. Beginning in June, 2019, Ms. Smith and her teenaged daughter were hate crime survivors. The leader of the racist group of attackers, in the building, even attempted to run Ms. Smith over with their car. Ms. Smith was terminated by the Respondents after reporting hate crime attack. Ms. Smith requested arbitration, pursuant to the arbitration agreement, on September 16, 2019. On September 18, 2019, the Respondents filed an eviction notice in retaliation. The trial court granted an eviction on November 19, 2019. Ms. Smith filed an appeal on November 20, 2019. Less than one week after filing the appeal, on November 26, 2019, Ms. Smith was attacked by one of the racists in the building. That resident had a weapon. That resident is a convicted felon.

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should grant review for three reasons. First, the Court of Appeals' decision conflicts with decisions of this Court and published decisions of the Court of Appeals. Second, the Court of Appeals' decision conflicts with the United States Supremacy Clause and principles of arbitration. Third, the Court of Appeals' decision involves an issue of substantial public interest that should be determined by the Supreme Court. The Respondents', SyHadley, LLC., are Ms. Smith's former employers. The Court of Appeals is now saying the Respondents aren't Ms. Smith's former employers.

A. There is no dispute that state and federal law allows estoppel to be asserted in response to a defense that precludes a party, or a court, from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.

The Respondents' brief was submitted to the Court of Appeals on April 8, 2021. They state in the first sentence of the Introduction section states, "Petitioner, Addie Smith ("Petitioner"), is a former rental manager, who earned $90,000.00 per year, for Respondent." While she was employed, she received a credit towards her rent due under a rental agreement." On Page 3, paragraph 3.1, SyHadley writes, "Petitioner had an 'at will' employment agreement with Respondent [SyHadley, LLC]." During her employment, she was paid a salary of $90,000 per year for the managing the apartment complex."

SyHadley also represented that Christina Jones signed the lease agreement on behalf of SyHadley, LLC., and that pursuant to that agreement, Addie Smith "enjoyed a credit towards her rental while employed with Respondent." On page 5, paragraph 3.5 the Respondents state, "On November 18, 2019, Respondent moved for 'an order to amend the caption to change the name of the Plaintiff to SyHadley, LLC…" On page 6, paragraph 3.6 the Respondents state, "On November 19, 2021, the Court heard the motion to Amend the caption and granted it. A manager

for Respondent testified as to the termination of Petitioner's 'at-will' employment, her back rent owed, and the service of the 14 Day Notice to Pay or Vacate."

Not only are the actions of the Court of Appeals showing clear bias, but judicial estoppel which is in conflict with a published decision of the Court of Appeals, and the Court of Appeals is in conflict with a decision of the supreme court. Courts apply the equitable doctrine of judicial estoppel to protect the integrity of the judicial process by precluding a party from gaining an advantage by asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position. *Urbick v. Spencer Law Firm, LLC*, 192 Wn.App. 483, 367 P.3d 1103 (Div. 1 2016) (internal citation and quotation marks omitted). The trial court heard argument from the Respondents.

The trial court allowed the Respondents, Ms. Smith's former employers, to amend the caption. Under the Standard of Review, "Where the trial court has weighed the evidence, [an appellate court's] review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether those findings of fact support the trial court's conclusions of law. *Green v. Cmty. Club*, 137 Wn. App. 655, 689, 151 P.3d 1038, 1050 (2007); *Merklinghaus v. Bracken*, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910 (unpublished opinion) If that standard is satisfied, [appellate courts] will not substitute [their] judgment for that of the trial court even though [they] might have resolved disputed facts differently." Green, 137 Wn. App. at 689; Bracken, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910.
[CP Vol 1 – Pg 37]

On page 21, SyHadley, LLC., argues, "Rent was due/comped as a benefit **while she was employed with Respondent** [SyHadley, LLC] On page 22 it states, "In sum, Respondent elected to terminate Petitioner's 'at-will' employment, and then later elected to terminate the tenancy

because Petitioner failed to pay rent". This is clearly proof that the Respondents are Ms. Smith's former employers and her employment was based on tenancy. On page 26, SyHadley, LLC., represented that Christina Jones, "a colleague of Petitioner [Ms. Smith] while she worked for Respondent – signed both the rental agreement and fourteen-day notice. On page 27, SyHadley LLC argued that amending the caption to change the identity of the party in interest "had no impact on Petitioner's substantive argument", where she clearly attempted to put her employment agreement at issue. These statements implicate principles of judicial estoppel.

OCCUPANCY AS A CONDITION OF EMPLOYMENT

In the decision from the Court of Appeals, it stated that Ms. Smith did not raise occupancy as a condition of employment is the second unlawful detainer. This is false. The decision from the Court of Appeals further stated that because Ms. Smith did not raise occupancy as a condition of employment that she waived it as to the order of eviction in that case. The decision of the Court of Appeals is hopelessly flawed, strained and faulty. *State v. Barnett*, 139 Wn. 2d 462, 465, 987 P.2d 626, 628 (1999); *Agrilink Foods, Inc. v. State, Dep't of Revenue*, 153 Wn. 2d 392, 397, 103 P.3d 1226,1229 (2005); *State v. Steinbach*, 101 Wn.2d 460, 462, 679 P.2d 369, 370 (1984). Ms. Smith filed her Response for Order to Show Cause; And, Motion to Dismiss with the trial court in the second Unlawful Detainer Action on January 24, 2020. She did raise her occupancy as a condition of employment. In both cases (19-2-28674-1 SEA and 20-2-01335-8 SEA) and in both the Response to Legal Document; and, Sworn statements; and, Responses to Order to Show Cause dated October 25, 2019; and, November 18, 2019; and, January 16, 2020; and, January 24, 2020 informed the trial court that Ms. Smith and the Respondents signed an arbitration agreement; and, that her apartment was part of her salary; and, offer of employment.
[CP Volume 2 – Pg 481-482; and, CP Volume 3 – Pg 523-526]

B. The United States Constitution's Supremacy Clause requires that precedent governs the application of the arbitration agreement.

In the decision from the Court of Appeals, it stated, "The trial court did not err in concluding that the arbitration clause did not apply to her relationship with her landlord. The employment agreement Smith signed with Legacy Partners provides that 'Legacy Partners and I will utilize binding arbitration to resolve all disputes that may arise out of the employment context.' SyHadley sought to evict Smith because she refused to pay rent and she then assaulted another tenant in the building. It was the landlord, SyHadley, who sought to evict her from the building, not her employer, Legacy Partners. Thus the arbitration clause in her employment agreement did not apply." On page 21, of the brief filed April 8, 2021, by the Respondent's Attorney, Drew Mazzeo, filed with the Court of Appeals, Respondent's stated, "Rent was due/comped as a benefit **while she was employed with Respondent** [SyHadley, LLC] On page 22 it states, "In sum, Respondent elected to terminate Petitioner's 'at-will' employment, and then later elected to terminate the tenancy because Petitioner failed to pay rent". [EXHIBIT 1] This is clearly proof that the Respondents are Ms. Smith's former employers and her employment was based on tenancy.

1. The Supremacy Clause mandates that its law be applied to claims of arbitration and defenses.

"Under the Supremacy Clause, from which our preemption doctrine is derived, any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield". Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 219-220 (1985)

2. Court of Appeals decisions in this case conflicts with published decisions in the Court of Appeals.

Ms. Smith has requested arbitration in both the first and second unlawful detainer action.

Ms. Smith has filed a Motion to Compel Arbitration in the trial court on November 20, 2019. Ms. Smith has filed a Motion to Compel Arbitration in the Court of Appeals on December 19, 2019. Despite all these attempts, which are just and in compliance with the laws of the state of Washington including the trial court, court of appeals and superior court, there is still no order compelling arbitration. When the contract concerns an arbitration agreement, we "determine the arbitrability of the dispute by examining the arbitration agreement between the parties," and we review "questions of arbitrability de novo". *Davis v. Gen Dynamics Land Sys.*, 152 Wn. App. 715, 718, 217, P.3d 1191 (2009). The burden of showing that an arbitration agreement is unenforceable is on the party opposing arbitration. *Townsend v. Quadrant Corp.*, 173 Wn.2d 451, 455, 268, P.3d 917 (2012). The Respondents have not done that. Pursuant to RCW 7.04A.060 governs the enforceability of arbitration agreements. Under RCW 7.04A.060(1), "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract". "Washington strongly favors arbitration", *Davis*, 152 Wn.App, at 718. There is a presumption that, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Kamaya Co., Ltd v. Am. Prop. Consultants, Ltd.*, 91 Wn. App. 703, 714, 959 P.2d 1140 (1998)

The Court of Appeals ruled that the "arbitration clause" in her employment agreement did not apply. The Arbitration Agreement specifically states, "any claim, dispute, and/or controversy that either I may have…(or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit health plan)". The Respondents have identified themselves as Ms. Smith's former employers. They've even corrected the record by amending the caption in their unlawful detainer.

The Court of Appeals has taken the position, for the Respondents, that the Respondents aren't Ms. Smith's former employers. Which clearly conflicts with its own decisions in the Court of Appeals, as well as the ruling from the trial court. The doctrine of judicial estoppel, in its most generic form, prevents a party from asserting a position in one legal proceeding that directly contradicts a position taken by that same party in an earlier proceeding. "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." *Bartley-Williams v. Kendall*, 134 Wash. App. 95, 98, 138 P.3d 1103 (2006). The doctrine seeks "`to preserve respect for judicial proceedings,'" and "`to avoid inconsistency, duplicity, and . . . waste of time.'" *Cunningham v. Reliable Concrete Pumping, Inc.*, 126 Wash. App. 222, 225, 108 P.3d 147 (2005) (alteration in original) (internal quotation marks omitted) (quoting Johnson v. Si-Cor, Inc., 107 Wash. App. 902, 906, 28 P.3d 832 (2001)). We review a trial court's decision to apply the equitable doctrine of judicial estoppel for abuse of discretion. *Bartley-Williams*, 134 Wash. App. at 98, 138 P.3d 1103.

BREACH OF QUIET ENJOYMENT AND RIGHT TO TRIAL

The decision from the Court of Appeals stated, "Smith next contends the trial court erred in refusing to grant her request for a jury trial. During the first unlawful detainer proceeding, Smith asked for a jury trial. The trial court did not err in rejecting that request because a jury trial at the initial stage of an unlawful detainer action is not available in such summary proceedings." Then the Court of Appeals finds error in that Ms. Smith didn't ask for a jury trial in the second unlawful detainer proceeding, and thus, "failed to preserve it as to the second order." RCW 59.18.380 "Whether or not the court issues a writ of restitution at show cause hearing, if material factual issues exist, the court is required to enter an order directing the

parties to proceed to trial on the complaint and answer. Id.; Pleasant, 126 Wn. App. At 393 "expressly and repeatedly states that a tenant who has answered the eviction summons may stay a writ "pending final judgment" – that a trial on the merits will be held." The Law Between Landlord and Tenant in Washington: Part II, 49 WASH. L. REV. 1013, 1074 (1974), and in practice, many counterclaims and set-offs were allowed in unlawful detainer proceedings, provided that they are related to the issues of possession."

Ms. Smith and her daughter have a right to the peaceful enjoyment of their home. It has been breached in a variety of ways by the Respondents. Income Properties Inv. Corp. v. Trefethen, 155 Wash. 493, 508-9, 284 P. 782 (1930)(breach of right to peaceful enjoyment can be brought in unlawful detainer case). The Court of Appeals erred in affirming the ruling of the trial court because there are material issues of fact warranting a trial. By affirming the ruling of the trial court the Court of Appeals decision is in conflict with decisions of the Court of Appeals. The statute allows the landlord such "other relief" at the show cause hearing only "'if it shall appear to the court that there is no substantial issue of material fact affecting the landlord's right to that relief.'" If issues of material fact exist, the matter must proceed to trial in the "usual manner." A tenant's testimony specifically disputing the breach of the lease alleged by the landlord creates issues of material fact warranting trial. *Hartson P'ship v. Goodwin*, 99 Wn. App. 227, 231, 991 P.2d 1211 (2000) (quoting RCW 59.18.380) (emphasis added) (internal quotation marks omitted). *Meadow Park Garden Assocs.*, 54 Wn. App. at 374; *Hous. Auth. of City of Pasco & Franklin County*, 126 Wn. App. at 391. *Hous. Auth. of City of Pasco & Franklin County*, 126 Wn. App. at 393; see also *Meadow Park Garden Assocs.*, 54 Wn. App. at 372 (holding that "one is entitled to a jury trial on contested issues in an unlawful detainer action including the ultimate issue of possession"). The Trial Court Erred in refusing to grant Ms.

Smith's Counterclaim. The Court of Appeals decision affirming the trial court ruling is in conflict with a published decision of the Court of Appeals. An exception is made for counterclaims involving facts which excuse a tenant's breach. If she had properly exercised the option, she would have been entitled to continued possession. Thus, the trial court had to reach the merits of the counterclaim to decide the issue of possession. An exception is made for counterclaims involving facts which excuse a tenant's breach. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985)

The Court of Appeals erred in affirming the trial court's ruling which is in conflict with the Court of Appeals published decision of the Court of Appeals. In the Court of Appeals decision it states, "she did not allege a breach of the covenant of quiet enjoyment". "An exception to the general rule is made when the counterclaim, affirmative equitable defense, or set of is 'based on facts which excuse a tenant's breach.' Examples of such exceptions are: breach of implied warranty of habitability, and breach of covenant of quiet enjoyment." Id. (internal citations omitted). Ms. Smith filed her Payment or Sworn Statement with the trial court on November 18, 2019. In her sworn statement, she attested that the Respondents and their attorneys failed to provide the peaceful enjoyment of her apartment.
[CP Volume 1 – Pg 43]

C. **The Fifth Amendment of the United States Constitution, and this Court, and the Court of Appeals states that no one shall be deprived of life, liberty or property without due process of law. The ruling and statements made by the Court of Appeals are in conflict with a published decision of the Court of Appeals, this Court and the Fifth Amendment of the United States Constitution.**

The Court of Appeals stated, "the trial court found that Smith assaulted another tenant and was arrested and criminally charged with assault. It clearly rejected Smith's testimony that she acted in self-defense." While these statements are totally fabricated, flawed, a true stretch of the

imagination, completely inflammatory and wrong. The trial court granted the eviction only because of an extremely flawed law, RCW 59.18.130(8) The Court of Appeals decision in *Wade Webster v. Thomas Litz No.* 81547-4-I filed July 6, 2021, wherein it reversed the decision of the trial court. RCW 59.18.380 refers both to "substantial issue[s] of material fact as to whether or not the plaintiff is entitled to other relief" and to "genuine issue[s] of material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer." Ms. Smith presented the trial court with "genuine issues of material fact pertaining to a legal or equitable defense or set-off raised in her answer.

In Webster v. Litz, because a question of fact existed about the use and presence of methamphetamine on the premises, a trial was required before the court could grant the Websters' request. Id. at 103. 19 RP (May 15, 2020) at 67, 70-71.

If the prosecutor uses the slanderous, inflammatory, and false language from the decision of the Court of Appeals, it would unfairly prejudice Ms. Smith's right to a fair trial before any conviction. Amendment VI, U.S. Constitution, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed..." The Fifth Amendment says that no one shall be "deprived of life, liberty or property without due process of law". Court are a foundational part of Washington's government at all levels". [See Const. art. IV, § 1, et seq.; State v. Jones, 6 Wash. 452, 461-62, 34 P. 201 (1893) "The purpose of CrR 8.3(b) is to ensure fairness to defendants by protecting their right to a fair trial. CrRLJ 8.3(b); see City of Kent v. Sandhu, 159. Wn.App. 836, 841, 247, P.3d 454 (2011) (citing State v. Chichester, 141 Wn. App. 446, 457, 170 P.3d 583 (2007) (explaining dismissal can be appropriate where the proceedings were unfair to the defendant and prejudiced his right to a fair trial)." A person may not be compelled to give

testimony in any proceeding, civil or criminal, formal or informal, before administrative, legislative or judicial bodies, when that person's answers may tend to incriminate him in future criminal proceedings. See Lefkowitz v. Cunningham, 431 US 801, 804-805 (1977) (Fifth Amendment privilege available in criminal as well a civil proceedings where the testimony might later subject the witness to criminal prosecution); State v. Langan, 301 Or 1, 5 (1986)(Article I, section 12 privilege against self-incrimination applies in any judicial or non-judicial setting where compelled testimony is sought that might be used against the witness in a criminal prosecution). As the United States Supreme Court affirmed in United States v. Balsys: [The privilege against self-incrimination] "can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory, "in which the witness reasonably believes that the information sought, or discoverable as a result of his testimony, could be used in a subsequent state or federal criminal proceeding. Kastigar v. United States, 406 U.S. 441, 444-445, 92 S.Ct. 1653, 1656, 32 L.Ed2d 212 (1972); see also McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S.Ct. 16, 17, 69 L.Ed. 158 (1924) (the privilege "applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it.") 524 U.S. 666, 672 (1998) (emphasis added). The Supreme Court has held that the privilege is to be construed liberally "in favor of the right it was intended to secure." Hoffman v. United States, 341 US 479, 486 (1951)

D. There is no dispute that state law enacted due to the Covid-19 Pandemic applies in this case. Governor Inslee's "Tenancy Preservation – A Bridge to E2SSB 5160" including the Engrossed Second Substitute Senate Bill (E2SSB) 5160, Chapter 115, Laws of 2021, and the Engrossed Substitute House Bill (ESHB) 1236, Chapter 212, Laws of 2021, applies in this matter. Ms. Smith is protected from eviction under these news laws, created due to Covid-19 and its still evolving variants.

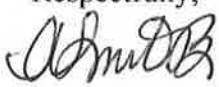
Pursuant to Governor Inslee's Tenancy Preservation, E2SSB 5160, and ESHB 1236, Ms. Smith has a right to an attorney. The Governor's Emergency Proclamation, enacted by the House and Senate Legislature E2SSB 5160, "whereas, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) intends to provide housing stability through passage of Engrossed Second Substitute Senate Bill 5160, Chapter 115, Laws of 2021, which bolsters tenant protections, and it further intends to preserve tenancies through passage of Engrossed House Bill 1236, Chapter 212, Laws of 2021."

If the Deputy Commissioner grants the Respondent's Motion to Modify the ruling, it would conflict with the executive order [Emergency Proclamation – signed September 24, 2021]; and current legislation, ie- Engrossed Second Substitute Senate Bill (E2SSB) 5160, Chapter 115, Laws of 2021, which bolsters tenant protections, and it further intends to preserve tenancies through passage of Engrossed Substitute House Bill (ESHB) 1236, Chapter 212, Laws of 2021; and RCW 38.08, 38.52 and 43.06; and, RCW 43.06.220(l)(h). Ms. Smith has suffered tremendous financial hardship due to the Respondents, and the Covid-19 Pandemic. Thus, review should be granted under RAP 13.4(a)(b).

VII. **CONCLUSION**

Division I's decision in this case conflicts with important and logical precedent from this Court, the Court of Appeals, and the United States Constitution. The Court should grant review of Division I's opinion and reverse; and, reverse the trial court's judgment; and, grant Ms. Smith's Motion to Compel Arbitration; and reverse ruling granting attorney's fees.

Respectfully,



Addie Smith

CERTIFICATE OF SERVICE

I, Addie Smith, certify under penalty of perjury the attached Petition For Review has been mailed via USPS to the Appellees' Attorney of Record: Drew Mazzeo, Harbor Appeals and Law, PLLC, 2401 Bristol Court SW, Suite C-102 Olympia, WA 98502.

Respectfully

Addie Smith

No. 100333-1

No. 80780-3-I

SUPREME COURT
OF THE STATE OF WASHINGTON

Addie Smith,

Petitioner,

vs.

SyHadley, L.L.C.,

Respondent.

CERTIFICATE OF COMPLIANCE

As required by RAP 18.17(b) Addie Smith, certify the Petition for Review contains 4,986 words, excluding the parts of the petition that are exempted.

I declare under penalty of perjury the foregoing is true and correct.

This 1st day of December , 2021.

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[APPENDIX A]

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
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September 27, 2021

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Case #: 807803
Syhadley, LLC, Respondent v. Addie Smith, Appellant
King County Superior Court No. 19-2-28674-1

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Lea Ennis
Court Administrator/Clerk

Hcl

C: Hon. Julie Spector

FILED
9/27/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

SYHADLEY, LLC, Respondent, v. ADDIE SMITH, Appellant.	No. 80780-3-I (consolidated with No. 81080-4-I) DIVISION ONE UNPUBLISHED OPINION

ANDRUS, A.C.J. — Addie Smith appeals two court orders finding her to be in unlawful detainer status and authorizing the issuance of writs of restitution for her eviction. We affirm.

FACTS

In May 2019, Legacy Partners, Inc. hired Addie Smith as a rental manager for the Hadley Apartments, owned by SyHadley, LLC. Legacy Partners provided Smith an annual salary and a rent credit equal to the market rate for an apartment in the building.

Smith signed a month-to-month lease agreement identifying SyHadley as the owner and Legacy Partners as its managing agent. In the lease, the apartment rent was set at $3,011 a month. In an "Employee Addendum" to the lease, Smith

agreed that if her employment was terminated by Legacy Partners, and Legacy Partners asked Smith to vacate the apartment, she had seven days in which to do so. If she did not vacate, Smith was required to pay the monthly rent.

Legacy Partners terminated Smith's employment on August 7, 2019. On September 18, 2019, Legacy Partners, acting as SyHadley's agent, served Smith with a 14-day notice to vacate for non-payment of rent, and a 20-day notice terminating Smith's month-to-month tenancy. At the time Smith received these notices, she was in arrears by $5,066.29. Smith refused to vacate the apartment or pay the past due rent.

On October 14, 2019, an entity identifying itself as Hadley Landowners, LLC brought an unlawful detainer action against Smith for nonpayment of rent and for not vacating the premises after the landlord terminated the tenancy with a 20-day notice.[1] Hadley Landowners received an order to show cause, requiring Smith to appear for a hearing on November 19, 2019. Smith responded, stating she "has no idea whom 'Hadley Landowner, LLC' is" and that she had not signed a lease with that entity. In her answer to the unlawful detainer complaint, Smith alleged

> Defendant is willing to agree to an eviction proceeding, before a trial by jury, and requests Counterclaim of Promissory estoppel, Wrongful Termination, Discrimination, Retaliation, Harassment and Mental, Social and Physical Abuse, Emotional Distress and Fair Housing violations . . . .

On November 18, 2019, Hadley Landowners filed a motion to amend the caption to identify the plaintiff as SyHadley LLC, the correct name of the owner of

[1] The first unlawful detainer complaint bears the King County Superior Court case number of 19-2-28674-1.

the property. The court granted this motion at the start of the November 19 show cause hearing. Smith objected, arguing that she had only received the motion five minutes before the hearing and SyHadley should be required to dismiss the pending unlawful detainer action and properly serve her with pleadings identifying the correct party. The court overruled her objection.

At the November 19 hearing, SyHadley called Christina Jones, the regional manager for Hadley Apartments, to testify about Smith's employment by Legacy Partners, her lease with SyHadley, her termination as rental manager, her refusal to vacate the apartment, and service of the 14-day and 20-day notices to vacate. Jones explained that the apartment rent credit Legacy Partners provided Smith was a benefit of her employment, Smith was not required to live on site, and her employment offer was not conditioned on her doing so.

Smith disputed Jones's testimony and claimed she was told she would not be offered a position unless she moved into an apartment on the property. She admitted she had not paid rent after she was terminated because she could not afford it. She also contended that she was wrongfully discharged, that she had suffered "retaliation, harassment and discrimination based on race and sex" by both her landlord and employer, that her landlord and employer were required by federal law to arbitrate any disputes they had with her, and that the law on federal arbitration preempted state unlawful detainer laws. Smith orally asserted a "counterclaim" for retaliation, harassment and discrimination. The court informed Smith that the law did not permit Smith to assert employment-related counterclaims in an unlawful detainer action and Smith would need to file a

separate lawsuit to make such claims. As for the arbitration clause in her employment contract with Legacy Partners, the court informed Smith that she was "conflating [her] employment action" with the landlord's right to end her tenancy.

The trial court found that Smith was properly served with a notice to pay past due rent or to vacate the premises, that she owed rent in the sum of $11,088.29, and that she had not complied with the requirement to pay rent, and was therefore unlawfully detaining the premises. The court ordered the clerk to issue a writ of restitution to restore the apartment to its owner. The court denied Smith's motion for reconsideration. The clerk issued the writ on November 19, 2019.

On November 22, 2019, Smith filed a notice of appeal to this court. She also sought an emergency stay of execution of the writ of restitution from this court. A commissioner granted a temporary stay to allow the parties to address the amount of appeal bond Smith should post under RCW 59.12.210. On January 16, 2020, the trial court ordered Smith to post a supersedeas bond in the amount of $53,631.85 on or before January 30, 2020 and for the landlord to seek further relief from this court in the event Smith failed to timely post bond or other security. A commissioner of this court denied Smith's objection to the court's supersedeas decision. On February 20, 2020, a panel of this court denied Smith's motion to modify and lifted the temporary stay.

Meanwhile, on January 16, 2020, SyHadley filed a second unlawful detainer action against Smith, alleging that Smith had assaulted another tenant resulting in

her arrest.[2] It again obtained an order to show cause, requiring Smith to appear for a hearing on January 28, 2020.

Smith answered this second unlawful detainer complaint, indicating she had been the victim of racial harassment by tenants in the building and demanded that the disputes with SyHadley be resolved by arbitration.

At a January 28, 2020 show cause hearing, Mike Holt, the Regional Vice President for Legacy Partners, testified that Smith had been employed and then terminated by Legacy Partners after her employer received complaints from current and past residents about her aggressive and demeaning treatment of residents. Brett Wilson, a maintenance supervisor at the apartment complex, testified that on November 26, 2019, he observed Smith physically assault a female tenant and captured the assault on video using his phone. He further testified that as a result of this assault, Smith was arrested and charged with assault in the fourth degree and provoking an assault. SyHadley presented Wilson's video for the court to review.

Smith initially pleaded the Fifth Amendment to the United States Constitution, but then testified that she had been the victim of harassment, stalking, and threats, and that she was merely defending herself from a woman who had grabbed and smashed her cell phone and had reached for a weapon to use against her. Smith admitted she was arrested for assault, while the other woman involved

[2] The second unlawful detainer action bears the King County Superior Court number 20-2-01335-8.

in the altercation was not. Smith again argued she had been the victim of retaliation, harassment, and racial discrimination.

The court found that Smith had violated RCW 59.18.130(8) by assaulting another person resulting in her arrest. The court entered judgment in favor of SyHadley and ordered the clerk to issue a writ of restitution. The clerk issued a writ of restitution on January 28, 2020.[3]

On February 4, 2020, Smith appealed the second unlawful detainer order. This court consolidated Smith's two appeals.

ANALYSIS

Smith raises several assignments of error.[4]

Standard of Review

We review a trial court's findings of fact in an unlawful detainer action for substantial evidence, and we review its conclusions of law de novo. Tedford v. Guy, 13 Wn. App. 2d 1, 12, 462 P.3d 869 (2020). Substantial evidence in an unlawful detainer action is "evidence sufficient in quantum to persuade a fair-minded person that a given premise is the truth." Phillips v. Hardwick, 29 Wn. App. 382, 387, 628 P.2d 506 (1981).

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[3] From the parties' briefing, it appears that Smith has not posted a supersedeas bond but remains a tenant in the apartment.

[4] Smith's eighth assignment of error seeks the reversal and cancellation of "Appellees' Fraudulent Orders of Protection." This assignment of error appears to relate to a protection order that Legacy Partners employee Christina Jones obtained against Smith in district court which was reversed on appeal by King County Superior Court in No. 19-2-33038-4. As there is no appeal pending before this court relating to the protection order proceeding, we decline to address this assignment of error.

RCW 59.18.130(8)

Smith challenges the trial court's order evicting her from SyHadley's apartment complex under RCW 59.18.130. We affirm this order as it is supported by substantial evidence.

RCW 59.18.130(8)(b)(i) provides that a tenant shall "not engage in any activity at the rental premises that . . . [e]ntails physical assaults upon another person which result in an arrest . . . ." Smith contends she should not be evicted for this assault because she was the victim of racial harassment and acted out of self-defense. The trial court rejected this argument below and the record supports the trial court's finding that Smith was the aggressor.

Smith's assault of the resident was captured on video and observed by an eye witness, Brett Wilson. Smith did not deny that an assault occurred; she merely testified that she acted in self-defense. But Smith admitted that she, and not the other woman involved in the altercation, was arrested and charged criminally.

A trier of fact is free to believe or disbelieve a witness. The trial court here evaluated the credibility of Smith's testimony in light of Wilson's personal observations, the video evidence, and Smith's arrest. Its finding that Smith committed an assault means it rejected her testimony of self-defense. We will not review this credibility determination on appeal. Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).

Based on the record before us, the trial court did not err in ordering Smith evicted for violating RCW 59.18.130(8).

Occupancy as Condition of Employment with Landlord

Smith argues that the trial court could not evict her because the Residential Landlord-Tenant Act (RLTA) does not apply to her tenancy with SyHadley. She relies on RCW 59.18.040(8) which exempts from the scope of the RLTA certain living arrangements, including any "[o]ccupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises."

First, Smith did not raise this argument during the second unlawful detainer proceeding and therefore waived it as to the order of eviction in that case. RAP 2.5(a). Second, RCW 59.18.040(8) did not preclude an order of eviction in either unlawful detainer proceeding because there was no evidence that Smith was "an employee of a landlord." Smith was employed by Legacy Partners, not SyHadley. Third, Smith failed to prove that her tenancy with SyHadley was a condition of her employment with Legacy Partners. The lease agreement did not make Smith's tenancy conditioned on employment with Legacy Partners. In fact, the lease agreement gave SyHadley the right to terminate the tenancy for any reason on 20 days' notice. RCW 59.18.040(8) does not apply.

Smith's Request for Arbitration

Smith contends the trial court erred in refusing her request to arbitrate the dispute. Smith claimed below that the arbitration clause in her employment agreement with Legacy Partners precluded SyHadley from using the unlawful detainer statute to evict her.

The trial court did not err in concluding that the arbitration clause did not apply to her relationship with her landlord. The employment agreement Smith

signed with Legacy Partners provides that "Legacy Partners and I will utilize binding arbitration to resolve all disputes that may arise out of the employment context." SyHadley sought to evict Smith because she refused to pay rent and she then assaulted another tenant in the building. It was the landlord, SyHadley, who sought to evict her from the building, not her employer, Legacy Partners. Thus, the arbitration clause in her employment agreement did not apply.

Right to Jury Trial

Smith next contends the trial court erred in refusing to grant her request for a jury trial. During the first unlawful detainer proceeding, Smith asked for a jury trial. The trial court did not err in rejecting that request because a jury trial at the initial stage of an unlawful detainer action is not available in such summary proceedings. Tedford, 13 Wn. App. 2d at 10-11. In any event, Smith made no such request in the second unlawful detainer proceeding and, thus, failed to preserve it as to the second order.

Smith's Counterclaim for Retaliation and Discrimination

Smith argues the trial court erred in denying her the right to assert counterclaims against SyHadley.

On appeal, Smith contends that SyHadley breached the covenant of quiet enjoyment by failing to evict tenants who committed racially motivated hate crimes against her. She argues the trial court erred in refusing to allow her to proceed with this counterclaim. This argument fails for several reasons.

First, while Smith raised several counterclaims in the first unlawful detainer proceeding, she did not allege a breach of the covenant of quiet enjoyment. The

only reference we can find to an alleged counterclaim for breach of the covenant of quiet enjoyment is in a declaration Smith submitted on November 20, 2019, after the hearing had concluded. It appears she filed this declaration with a motion for reconsideration. A trial court has discretion not to consider new or additional claims or evidence on a motion for reconsideration. Martini v. Post, 178 Wn. App. 153, 162, 313 P.3d 473 (2013). The trial court's refusal to consider a claim first asserted after the unlawful detainer hearing occurred is not an abuse of discretion.

Second, although Smith alleged in her answer to the second complaint that she had been assaulted by other tenants in the apartment complex, and testified during the second hearing that she had reported the harassment to her supervisors, she did not allege any counterclaims against SyHadley at that time. It would not be the basis for reversing the second order for eviction.

Third, 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.' Examples of such exceptions are: breach of implied warranty of habitability, and breach of covenant of quiet enjoyment." Id. (internal citations omitted).

But not all claims of breach of quiet enjoyment fall within a trial court's unlawful detainer jurisdiction. Angelo Prop., 167 Wn. App. at 812. Because a

landlord may have varying grounds for pursuing an unlawful detainer action, a court must (1) first look at the underlying basis for the landlord's unlawful detainer action as set out in the notice to vacate or the complaint; and (2) then ask whether a tenant's counterclaim is based on facts that may "excuse" the tenant's breach alleged by the landlord. Id. at 814-15.

In Angelo Property, this court held that the trial court could not consider the tenant's counterclaim for breach of the covenant of quiet enjoyment because any breach by the landlord could not excuse the tenant's sale of alcohol to minors, disorderly and lewd conduct, and criminal assaults on the property. Id. at 815-16.

We find this case analogous. The trial court found that Smith assaulted another tenant and was arrested and criminally charged with assault. It clearly rejected Smith's testimony that she acted in self-defense. Even 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. Had Smith raised this issue in the second unlawful detainer proceeding, the trial court could not have considered it.

As for the claim of retaliation that Smith alleged in the first proceeding, it does not appear she alleged retaliatory eviction under RCW 59.18.250, but instead alleged retaliatory discharge by Legacy Partners. The trial court did not err in concluding that this employment-related claim against Legacy Partners was not an appropriate counterclaim to assert in an unlawful detainer proceeding because it did not relate to Smith's right to remain a tenant in SyHadley's apartment complex.

Amendment of Caption

Finally, Smith argues the trial court erred in permitting SyHadley to amend its caption to change the name of the landlord from Hadley Landowners LLC to SyHadley LLC. We reject this argument as well.

We review a decision to allow a party to amend pleadings for abuse of discretion. Sprague v. Sumitomo Forestry Co., 104 Wn.2d 751, 763, 709 P.2d 1200 (1985).

Smith contends SyHadley did not serve her with a summons in the first unlawful detainer proceeding and she did not receive adequate notice of the motion to amend the caption. As to the first argument, RCW 59.18.365 provides that a summons in an unlawful detainer proceeding must contain the names of the parties to the proceeding, the attorney, the court in which the proceeding has been brought, the nature of the action, the relief sought, the duty to appear and answer within a designated time, and a street address for service of a notice of appearance or answer. Substantial compliance with the statutory requirements will not foreclose a trial court from exercising jurisdiction in an unlawful detainer proceeding. Sprincin King St. Partners v. Sound Conditioning Club, Inc., 84 Wn. App. 56, 61, 925 P.2d 217 (1996). The purpose of the summons is to give notice of the time prescribed by law to answer a complaint and to advise a defendant of the consequences of failing to do so. Id. at 60.

The summons substantially complied with the statute. Although the summons identified the plaintiff as Hadley Land Owner LLC, it referred repeatedly to "the landlord," making it clear that the party seeking to evict Smith was her

landlord. It informed Smith of the need to appear for the show cause hearing and if she failed to show up, "the landlord can evict you."

As to the second argument, a defendant is generally not entitled to dismissal based on a plaintiff's failure to include the plaintiff's name in the caption of a summons and complaint in the absence of demonstrated prejudice. Quality Rock Prods., Inc. v. Thurston County, 126 Wn. App. 250, 272-73, 108 P.3d 805 (2005). Smith fails to demonstrate any prejudice from the court's decision to permit the name change in the caption.

Finally, any defect in the pleadings affected only the first unlawful detainer proceeding. The second eviction summons and complaint properly identified SyHadley as the plaintiff and landlord. Smith does not dispute proper service in the second proceeding. Even if the trial court erred in allowing SyHadley to amend the caption in the first proceeding, it does not affect the validity of the order of eviction in the second proceeding.

Attorney Fees

SyHadley seeks attorney fees on appeal. RAP 18.1(a) allows a prevailing party to recover reasonable attorney's fees if applicable law grants a party the right to recover and the party requests the fees or expenses. We will award attorney fees to the prevailing party when authorized by private agreement, statute, or a recognized ground in equity. Tedford, 13 Wn. App. 2d at 17.

RCW 59.18.410(1) provides for reasonable attorney fees under RCW 59.18.290(3), which states, "Where the court has entered a judgment in favor of

the landlord restoring possession of the property to the landlord, the court may award reasonable attorneys' fees to the landlord." The lease also provides that

> In the event either party engages, retains or hires an attorney to enforce any provision of this Lease, or any obligation under law, including but not limited to the collection of rent and/or other charges due hereunder, both Owner and Resident agree that, to the fullest extent permissible by law, court costs, prejudgment interest at the judgment rate from the date of default, and reasonable attorney's fees may be awarded to the prevailing party.

Because we affirm judgment in favor of SyHadley, we grant its request for attorney fees.[5]

We affirm.

Andrus, A.C.J.

WE CONCUR:

Mann, C.J.

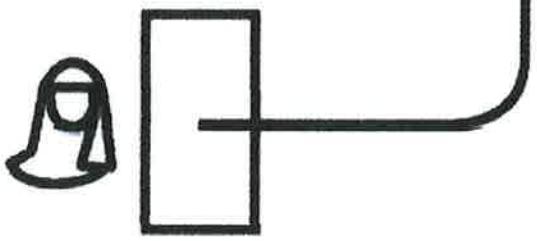
Appelwick, J.

[5] While Smith also requested attorney fees, she represented herself on this appeal and is not the prevailing party. Self-represented litigants are generally not entitled to attorney fees for their work representing themselves. Mitchell v. Washington State Dept. of Corrections, 164 Wn. App. 597, 608, 277 P.3d 670 (2011). We deny Smith's request for attorney fees on appeal.

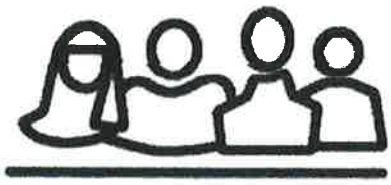
[APPENDIX B]

The "Problem" Woman of Colour in the Workplace

white leadership



Woman of colour enters the organization



Honeymoon

- woman of colour feels welcomed, needed, and happy

tokenized hiring

Reality

- woman of colour points out problems
- tries to work within
- pushes for accountability

repetitive injury

Response

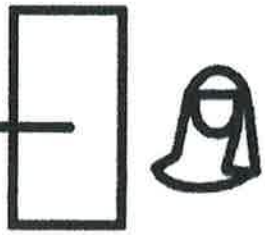
- organization denies ignores, and blames
- puts responsibility back on woman of colour to fix the problem
- people of colour are pitted against each other

denial of racism

target & attack

Retaliation

- organization decides that the woman of colour is the problem and targets her
- organization labels the conflict as a communication issue, a personnel issue, or claims the woman of colour is not qualified or "not a good fit"



Woman of colour exits the organization

Adapted from "The Chronicle of the Problem Woman of Color in a Non-Profit by the Safehouse Progressive Alliance for Nonviolence

[APPENDIX C]

No. 80780-3-I

COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

SYHADLEY, LLC,

Respondent,

v.

ADDIE SMITH,

Appellant.

BRIEF OF RESPONDENT

By:

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1. INTRODUCTION

Petitioner, Addie Smith ("Petitioner"), is a former rental manager, who earned $90,000.00 per year, for Respondent. While she was employed, she received a credit towards her rent due under a rental agreement. After her "at will" employment was terminated, she refused to vacate her own luxury apartment.

She appeals two separate superior court, unlawful detainer, actions consolidated in this one appeal. In the first unlawful detainer action, in November of 2019, the trial court issued an order to evict her for not paying months of rent. In the second unlawful detainer action, in January of 2020, the trial court issued an order to evict Petitioner because she was arrested and charged with assault for physically beating another tenant on the premises. The attack was memorialized on video. That video as well as evidence of her arrest and booking were admitted into evidence during a show cause hearing in which live testimony was taken. The maintenance man recording the video testified to its authenticity and that Petitioner was the assailant. Petitioner did not deny she was arrested or that she attacked the other tenant. Rather, she pled the Fifth Amendment and trial court properly issued an order to evict her.

On appeal, Petitioner fails to assign any errors to the trial court's written findings of fact or conclusions of law in the second unlawful

detainer action. She fails to argue the dispositive arrest issue at all. Instead, she raises arguments made in the first unlawful detainer action, claiming that her tenancy was conditioned on her employment, that discrimination occurred when she was fired, that the trial court erred in allowing an amendment to the caption of the case, and that there were counterclaims requiring a trial.

The major problem for Petitioner is that the second unlawful detainer is dipositive to this appeal, and this Court need not even review her arguments as to the first unlawful detainer action. Even if this Court did review the first unlawful detainer, all of Petitioner's arguments fail. The plain language of the employment and rental agreements refutes Petitioner's claim of a tenancy conditioned on employment, or the triggering of an arbitration clause. The trial court had discretion to amend the caption. Petitioner was not discriminated or retaliated against and her "counterclaims" were not properly before the trial court, in the expedited unlawful detainer action.

Respondent respectfully requests the trial court be affirmed and that it be awarded attorney fees and costs for having to respond to this action.

2. RESTATEMENT OF THE ISSUES

2.1. Whether Petitioner failed to assign error to specific findings of fact and failed to challenge written conclusions of law, causing such unchallenged findings to be verities and such unchallenged conclusions are

the law of the case? Yes.

2.2. Whether Petitioner failed to raise, and thus waived, the issue of the employment agreement in the second unlawful detainer action? Yes.

2.3. Whether substantial evidence supports the trial court's ruling in the second unlawful detainer action that Petitioner was arrested for assaulting another tenant and properly evicted based on that arrest? Yes.

2.4. Whether Petitioner Improperly attached to her Brief of Appellant irrelevant filings from the other court proceedings that ironically support the trial court's findings of fact? Yes.

2.5. Whether, in the first unlawful detainer action, the plain language of the employment agreement, rental agreement, and addendum to the employee agreement provide that Petitioner's tenancy was not conditioned upon employment? Yes.

2.6. Whether the trial court erred in not granting a trial on Petitioner's "counterclaims" regarding alleged retaliation and discrimination? No.

2.7. Whether the trial court abused its discretion granting Respondent's motion to amend the caption in the first unlawful detainer action? No.

2.8. Whether the summons issued in the first unlawful detainer action substantially complied with RCW 59.18.365 and due process requirements? Yes.

2.9. Whether attorney fees and costs should be awarded to Respondent for having to respond to this appeal? Yes.

3. RESTATEMENT OF THE CASE

3.1. Petitioner had an "at will" employment agreement with Respondent. (CP at 54-60). During her employment, she was paid salary of $90,000.00 per year for the managing the apartment complex. (CP at 59).

She also rented, pursuant to a separate rental agreement, an upscale residence at Respondent's apartment complex, in which Christina Jones signed for the landlord. (CP at 24, 47-53, 564-90, 592). Rent for her dwelling was $3,011.00 per month. (CP at 47-53, 564-90). Pursuant to an addendum to her rental agreement, Petitioner enjoyed a credit towards her rental while employed with Respondent. (CP at 24, 592).

3.2. Petitioner'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 [Petitioner] was handling situations was aggressive and – or demeaning and that was a problem.").

3.3. After Petitioner was terminated from her "at will" employment, she did not pay rent as agreed. (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). Petitioner's former work colleague, Christina Jones, signed the notice. (CP at 21-22).

3.4. Respondent brought an unlawful detainer based the failure to pay rent after Petitioner failed to pay rent pursuant to the Fourteen-Day Notice. (CP at 1-32). The Complaint provided that the plaintiff in the action was "Hadley Land Owner, LLC" and that the Plaintiff's address was "2601 76th Avenue SE, #502, Mercer Island, King County, Washington." (CP at 1-7). A show cause hearing was scheduled for November 19, 2019. (CP 31-32).

3.5. On November 18, 2019, Respondent moved for "an order to amend the caption to change the name of the Plaintiff to SyHadley, LLC. . . ." (CP at 37). On the same date, Petitioner filed a "Sworn Statement." (CP at 38-68). In her "Sworn Statement," Petitioner stated, "Plaintiffs, "Hadley Landowner, LLC, . . . may also [be] known as SyHadley, Legacy Partners, Inc, Hadley Apartments, and Legacy Partners Residential Inc, et al and their attorneys Puckett & Redmond, PLLC; and Allen, Matkins, Leck, Gamble, Mallory & Natsis LLP. . . ." (CP at 40) (internal punctuation omitted). She provided that she "relocated to Washington at the demand of the Plaintiffs" because that according to her "[i]t was a requirement to receive an offer of employment." (CP at 43). She also claimed that "The Hadley Apartments .

. . provided legal advice during my employment with Legacy Partners Residential Inc." (CP at 43). Petitioner further alleged that "Plaintiffs and their attorneys are attempting to knowingly, and willing mislead the Court by using the name Hadley Landowner, LLC because Plaintiffs and Defendants have signed no lease, contracts, or agreements with Hadley Landlord Owner, LLC." (CP at 39).

3.6. 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). The trial court took testimony regarding the unlawful detainer action. (RP November 19, 2019). A manager for Respondent testified as to the termination of Petitioner's "at-will" employment, her back rent owed, and the service of the 14 Day Notice to Pay or Vacate. (RP November 19, 2019, at 6-13). Petitioner 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 Respondent's attorney "threaten[ed] her "in the hallway." (RP November 19, 2019, at 28).

3.7. At the conclusion of the show cause hearing, the trial court entered an order for a writ of restitution reasoning that Petitioner was

"conflating [her] employment action versus the tenancy action" in "an unlawful detainer action." (RP November 19, 2019, at 27).

3.8. In December of 2020, and January of 2021, Petitioner obtained a series of stays of the eviction order as the trial court determined appropriate supersedeas bond. Also, during this time, Petitioner had numerous final protection orders issued against her for harassing and threatening and/or assaulting other tenants at the premises. (*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.

3.9. Protection orders against Petitioner 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 Respondent.[1]

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[1] Petitioner also filed bar complaints (now dismissed with prejudice) against Respondent's attorneys. She posted on social media that the trial court judge and Respondent's attorneys were "racist." Facebook marked her account as "spam." She maintained that Seattle Housing Justice attorneys were unethically collaborating against her with Respondents' counsel.

3.10. On January 16, 2020, Respondent filed another unlawful detainer, under King County cause number 20-2-01335-8, based on Petitioner's assault to another tenant and 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 admitted evidence and took testimony from the parties and witnesses. (*e.g.*, RP January 28, 2020). Video evidence of Petitioner attacking and assaulting another tenant was supplied to the trial court. (CP at 562; Ex "D", USB Thumb Drive, filed 01/28/20; RP January 28, 2020, at 60-68). Evidence showing Petitioner 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. In response, Petitioner 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). Counsel for Respondent pointed out to the trial court that "While the defendant does have a Fifth Amendment right[,] she does not have to testify to this and she does have a right to remain silent regarding any criminal charges against her." (RP January 28, 2020, at 59). "But in a

civil case that silence can be used against them." (RP January 28, 2020, at 59)."

3.13. Under this second unlawful detainer cause number (*i.e.*, 20-2-01335-8), Petitioner did not make any arguments regarding the employment agreement, rental agreement, or that her tenancy was allegedly condition on her employment. She did not argue that the employment agreement was 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. On February 5, 2020, a commissioner for this Court 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).

3.17. Petitioner has not paid rent since the summer of 2019. She has lived on Respondent's property in a luxury apartment, with luxury amenities, for free. She has not paid supersedeas bond.

3.18. On appeal, as to the first unlawful detainer action under cause number 19-2-28674-1, Petitioner argues, in pertinent part, the following:

- Trial court erred not dismissing the action because the service of the 14 Day Notice to Pay or Vacate and/or summons was not

proper.

- Trial court erred granting motion to change Plaintiff's name from Hadley Landowner, LLC, to SyHadley, LLC. Instead of granting the motion to amend the caption, the first unlawful detainer action should have been dismissed based on untimely service of the motion to amend.

- Trial court erred by not ordering a trial regarding Petitioner's claims of racism, sexism, and retaliation.

- Trial court erred not ruling that Petitioner's occupancy was condition on her employment, and that she could not be evicted under the residential landlord-tenant act.

- The trial court erred not ruling that the employment agreement mandated that the matter be resolved pursuant to arbitration.

3.19. On appeal, as to the second unlawful detainer under cause number 20-2-01335-8, in pertinent part, Petitioner argues on appeal the following:

- The trial court erred not ordering a trial regarding Petitioner's claim of racism, sexism, and retaliation.

3.20. For the first time, and on appeal, Petitioner argues that "[Respondent's] fraudulent orders of protection were reversed and cancelled." (Brief of Appellant at 29).

4. STANDARD OF REVIEW

"Where the trial court has weighed the evidence, [an appellate court's] review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether those findings of fact

support the trial court's conclusions of law. *Green v. Cmty. Club*, 137 Wn. App. 665, 689, 151 P.3d 1038, 1050 (2007); *Merklinghaus v. Bracken*, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910 (unpublished opinion) (holding "courts review a trial court's findings of fact in an unlawful detainer [show cause hearing] for substantial evidence."). "Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise." *Green*, 137 Wn. App. at 689; *Bracken*, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910. "If that standard is satisfied, [appellate courts] will not substitute [their] judgment for that of the trial court even though [they] might have resolved disputed facts differently." *Green*, 137 Wn. App. at 689; *Bracken*, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910. "There is a presumption in favor of the trial court's findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence." *Green*, 137 Wn. App. at 689; *Bracken*, 2018 Wash. App. LEXIS 2618, *2, 2018 WL 6046910.

5. RESPONSIVE ARGUMENT

5.1. Petitioner Failed to Assign Error to Specific Findings of Fact and Failed to Challenge Written Conclusions of Law. Findings of Fact Unassigned Error are Verities on Appeal and Unchallenged Conclusions of Law are the Law of the Case.

An "appellant must present argument to the court why *specific*

findings of fact are not supported by the evidence and must cite to the record to support that argument or they *become verities on appeal.*" RAP 10.3(g) (emphasis added); *Buck Mountain Owner's Ass'n v. Prestwich*, 174 Wash. App. 702, 714, 308 P.3d 644, 651 (2013) (some internal punctuation omitted); *Matter of Marriage of Vanwey*, 82063-0-I, 2021 WL 960820, at *4 (Wash. Ct. App. Mar. 15, 2021) (unpublished opinion). "Strict adherence to the aforementioned rule is not merely a technical nicety." *In re Estate of Lint*, 35 Wn.2d 518, 531-33, 957 P.2d 755, 762 (1998). This is because courts of appeal have no "obligation to comb the record with a view toward constructing arguments for counsel as to what findings are to be assailed and why the evidence does not support these findings." *Estate of Lint*, 135 Wn.2d at 531-33. Conclusions of law are reviewed de novo. *In re Committed Intimate Relationship of Muridan*, 3 Wn. App. 2d 44, 54, 413 P.3d 1072, 1077 (2018); *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). However, when unchallenged they "become the law of the case." *Detonics .45 Associates v. Bank of California*, 97 Wash. 2d 351, 353, 644 P.2d 1170, 1172 (1982); *State v. Slanaker*, 58 Wash. App. 161, 165, 791 P.2d 575, 578 (1990); *Millican of Washington, Inc. v. Wienker Carpet Serv., Inc.*, 44 Wash. App. 409, 413, 722 P.2d 861, 864 (1986). Mislabeled findings or conclusions are treated as what they are. *Dep't of Revenue v. Warehouse Demo Servs., Inc.*, No. 50057-4-II, 2018 Wash. App. LEXIS

649, at *6 (Ct. App. Mar. 20, 2018) (unpublished opinion). "[U]nsupported arguments need not be considered." *Prestwich*, 174 Wash. App. at 714.

Here, dispositive to this appeal is the fact that Petitioner failed to assign error to the trial court's written findings in the second unlawful detainer action, cause number 20-2-01335-8. The trial court's findings regarding Petitioner's arrest on another tenant are verities:

> 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.

(Finding of Fact, Conclusions of Law, and Judgment, filed 01/28/20). The conclusion of law that Petitioner was properly evicted under RCW 59.18.130(8) and RCW 59.18.180(4) is not only the correct legal result, and the law of the case, but these conclusions are supported by verities that in turn constitute substantial evidence supporting the trial court's decision to issue a writ of restitution. Assigning error or raising any issue or argument in a reply brief is too late to warrant consideration. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549, 553 (1992); *In re Marriage of Sacco*, 114 Wash.2d 1, 5, 784 P.2d 1266 (1990).

Equally fatal to this appeal is the fact that Petitioner made no argument regarding her arrest and eviction under RCW 59.18.130(8) and

RCW 59.18.180(4). This Court does not comb through the record or make arguments for parties and assigning error or raising any issue or argument in a reply brief is too late to warrant consideration. *Prestwich*, 174 Wash. App. at 714; *Bosley*, 118 Wn.2d at 809; *Marriage of Sacco*, 114 Wash.2d at 1, 5.

In sum, Petitioner has failed to assign error to written finding of the trial court. Those findings are verities and constitute substantial evidence that Petitioner was arrested. The failure to challenge the conclusions of law that RCW 59.18.130(8) and RCW 59.18.180(4) allow eviction after arrest in these circumstances is not only correct, but also the law of the cases. Moreover, Petitioner's failure to provide adequate briefing on the dispositive issue, *i.e.*, her arrest as applied to RCW 59.18.130(8) and RCW 59.18.180(4), during the second unlawful detainer proceeding prevents this Court from considering her arguments in a reply brief. The trial court decision in the second unlawful detainer action should be affirmed and consideration of Petitioner's other arguments on appeal is unnecessary.

5.2. Petitioner Failed to Raise the Issue of the Employment Agreement in the Second Unlawful Detainer Action.

An "appellate court may refuse to review any *claim of error which was not raised to the trial court.*" RAP 2.5(a) (emphasis added); *In re Marriage of Choate*, 143 Wn. App. 235, 245, 177 P.3d 175, 179 (2008). A

party fails to preserve and waives alleged errors by failing to object, or by failing to claim error, at the time the error is allegedly made. *In re Det. of Audett*, 158 Wn.2d 712, 724, 147 P.3d 982, 987 (2006) (citing *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985) (holding "a litigant cannot remain silent as to claimed error during trial and later, for the first time, urge objections thereto on appeal."); *Marriage of Vanwey*, 82063-0-I, 2021 WL 960820, at *4.

Here, during the second unlawful detainer action, under cause number 20-2-01335-8, Petitioner made no argument regarding the parties' employment agreement at all. She did not argue her tenancy was conditioned on employment and she did not argue that any arbitration clause applied. The employment agreement was not filed with the trial court.

On appeal, she may not make such arguments regarding the second unlawful detainer action and this Court should not consider them. RAP 2.5(a) (emphasis added); *Marriage of Choate*, 143 Wn. App. 235, 245, 177 P.3d 175, 179 (2008); *In re Det. of Audett*, 158 Wn.2d at 724; *Marriage of Vanwey*, 82063-0-I, 2021 WL 960820, at *4. Rather, the trial court properly issued an order for a writ of restitution based on her arrest and its decision should be affirmed. Consideration of other arguments is unnecessary.

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5.3. Substantial Evidence Supports the Trial Court's Ruling in the Second Unlawful Detainer Action that Petitioner was Arrested for Assaulting Another Tenant and Properly Evicted Based on that Arrest.

Under RCW 59.18.380, "it is undisputed that a defendant at such a hearing is not entitled to a full trial." *Tedford v. Guy*, 13 Wn. App. 2d 1, 11, 462 P.3d 869, 875 (2020). "Rather, the statute refers to the hearing on the motion for a writ and provides that the court shall ascertain the merits of the complaint and answer, and that the court shall either deny the motion or order the issuance of the writ. RCW 59.18.380; *Tedford*, 13 Wn. App. 2d at 11.

"[A]ppellate review is limited to determining whether the findings are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law and judgment." *Prestwich*, 174 Wash. App. at 713-14; *Marriage of Vanwey*, 82063-0-I, 2021 WL 960820, at *4. The trial court's findings are presumed supported. *Id.* Evidence and its persuasiveness is not reweighed on appeal. *Id.* All reasonable inferences drawn from evidence are viewed in favor of the prevailing party, as is conflicting evidence, and "the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence." *Prestwich*, 174 Wash. App. at 714; *Dave Johnson Ins., Inc. v. Wright*, 167 Wn. App. 758, 778, 275 P.3d 339, 351 (2012); *In re Estate of Muller*, 197

Wn. App. 477, 486, 389 P.3d 604, 609-10 (2016); *Marriage of Vanwey*, 82063-0-I, 2021 WL 960820, at *4.

Here, evidence showing Petitioner was arrested was admitted. 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"). Video evidence of her beating another tenant was placed into the record and person recording the video testified as to Petitioner assaulting the other tenant. (CP at 562; Ex "D", USB Thumb Drive, filed 01/28/20; RP January 28, 2020, at 60-68).

Petitioner did not deny she was arrested. She did not deny she was booked on charges for assault. She did not deny that she was charged and prosecuted for assault. Rather, she pled the Fifth Amendment, and the trial court was "entitled to draw an adverse inference from his refusal to testify." *Smith v. Smith*, 1 Wn. App. 2d 122, 131, 404 P.3d 101, 105 (2017) (citing *Ikeda v. Curtis*, 43 Wn.2d 449, 458, 261 P.2d 684, 690 (1953) (holding "The privilege is not for the benefit of the guilty nor to enable the claimant to prevail in civil suits by means of it. . . . [and] "To hold that no inference could be drawn from the refusal of these witnesses to explain their dealings, in the face of so many suspicious circumstances, would be an unjustifiable extension of the privilege for a purpose it was never intended to fulfill.").

In sum, substantial evidence supports the trial court's factual

findings and legal conclusions in the second unlawful detainer action and this Court should affirm. Considering further arguments of Petitioner is unnecessary.

5.4. Petitioner Improperly Attached to Her Brief of Appellant Irrelevant Filings from the Other Court Proceedings that Ironically Support the Trial Court's Findings of Fact.

"An appendix may not include materials not contained in the record on review without permission from the appellate court. . . ." RAP 10.3(a)(8). Here, Petitioner has improperly attached to her appendix an irrelevant order from a separate superior court action, in violation of RAP 10.3(a)(8). The attachment is irrelevant because it has to do with a protection order proceeding where an employee of Respondent sought a protection order against Petitioner based on being afraid of Petitioner after Petitioner violently assaulted another tenant on the premises. The district court found unlawful harassment by Petitioner, while the superior court disagreed. Either way, the order sheds no helpful light up Petitioner's appeal in this action.

In other words, Petitioner was evicted in the second unlawful detainer action for being arrested for the crime of violently assaulting another tenant on the premises; the eviction actions at issue in this appeal have nothing to do with the action or court order attached to Petitioner's improper appendix. Ironically, and seemingly overlooked by Petitioner, the

judicial officer signing the order found that the video, also submitted in the second unlawful detainer action, of Petitioner "punch[ing]" the other tenant on Respondent's property "disturbing." (Petitioner's Improper Appendix Attachment at 7). Indeed, the attack memorialized in the video is "disturbing." (CP at 562; Ex "D", USB Thumb Drive, filed 01/28/20; RP January 28, 2020, at 60-68). Petitioner was justifiably arrested and ordered to be evicted.

In sum, the appendix attachment—while improperly submitted to this Court and thus irrelevant to this appeal—undoubtedly contains a finding in support of Respondent's arguments. Most importantly, it does nothing to refute that Petitioner violently beat another tenant on Respondent's property, was arrested, was charged with assault, and was properly ordered to be evicted under RCW 59.18.180 and RCW 59.18.130 in the second unlawful detainer action. The trial court decision should be affirmed.

5.5. Petitioner's Argument, in the First Unlawful Detainer Action, that Her Tenancy Was Conditioned on Employment is Belayed by the Plain Language of the Employment Agreement, Rental Agreement, and Addendum to the Employee Agreement.

Governed by chapters 59.12 and 59.18 RCW, an unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of property. *Christensen v. Ellsworth*,

162 Wn.2d 365, 370-71, 173 P.3d 228 (2007). The procedures set forth in the generalized unlawful detainer statutes, chapter 59.12 RCW, "apply to the extent they are not supplanted by those found in the Residential Landlord-Tenant Act." *Hous. Auth. v. Pleasant,* 126 Wn. App. 382, 390, 109 P.3d 422 (2005). Ancillary issues outside of the rightful possession of the property are not decided in the expedited procedure. *Angelo Prop. Co., LP v. Hafiz*, 167 Wn. App. 789, 809, 274 P.3d 1075, 1085 (2012).

Here, the plain language of the employment and rental agreement demonstrate that Petitioner is a (holdover) "tenant" (at sufferance) and was an employee "at will" (CP at 24, 47-60, 564-90, 592). Her "occupancy" on the premises was not "conditioned upon employment." (CP at 24, 47-60, 564-90, 592) (providing employee rent credit as a part of compensation). Rather, she had monthly rent due each month, under her rental agreement. (CP at 24, 47-60, 564-90, 592). Rent due was reduced/comped as a benefit while she was employed with Respondent. Stated simply, as a part of her compensation for managing the complex, she received a rent credit. (CP at 24, 47-60, 564-90, 592). Upon terminating Petitioner's "at will" employment, Respondent was entitled to collect monthly rent for the dwelling unit as agreed. No material issues of fact remained after the show cause hearing and the trial court did not err in not ordering a trial, jury or otherwise. *See Tedford*, 13 Wn. App. 2d at 11. Any employment issue

needing arbitration or civil litigation was ancillary to the unlawful detainer action. *Angelo Prop. Co., LP*, 167 Wn. App. at 809 (holding "an issue is not incident to the right to possession, the trial court must hear the issue in a general civil action.").

In sum, Respondent elected to terminate Petitioner's "at will" employment, and then later elected to terminate the tenancy because Petitioner failed to pay rent and because Petitioner is violent and was arrested for beating another tenant. Just because the two actions by Respondent, *i.e.*, termination of the "at will" employment, and termination of the tenancy, occurred within a few weeks of each other in no way changes the fact that Petitioner was properly ordered to be evicted for failure to pay rent (and properly evicted for being arrested). There was no need for trial. There was no error by the trial not hearing Petitioner's employment claims, in a trial or otherwise, in the expedited unlawful detainer proceeding.

5.6. The Trial Court Did Not Err in Not Granting a Trial on Petitioner's "counterclaims" Regarding Alleged Retaliation and Discrimination.

Ancillary issues outside of the rightful possession of the property are not decided in the expedited procedure. *Angelo Prop. Co., LP*, 167 Wn. App. at 809. "So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful. . . ." RCW

59.18.240. Retaliatory actions are defined as "Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant." RCW 59.18.240. "[I]f at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant." RCW 59.18.250.

Here, Petitioner was not in compliance with Chapter, 59.18, RCW, when Respondent terminated her tenancy and brought the unlawful detainer action for failure to pay rent and for being arrested. No evidence of any complaint to a government authority was presented, let alone regarding "the maintenance or operation of the premises." Respondent was entitled a presumption of no retaliatory action taken. Petitioner's claims of alleged discrimination and/or "retaliation" were not supported by the evidence and were ancillary to the eviction proceeding. The trial court decision should be affirmed.

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5.7. The Trial Court Did Not Abuse Its Discretion Granting the Motion to Amend the Caption in the First Unlawful Detainer Action.

"The Civil Rules are the rules of practice for virtually all civil actions, including unlawful detainer actions, unless the rules conflict with the unlawful detainer statutes." *Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 159, 437 P.3d 677, 686 (2019). "[I]n general, motions must be made on notice and orders should not be issued on ex parte application." *Harmon*, 193 Wn.2d at 162 (citing CR 5(a)). "The source of authority for hearing an ex parte motion is the court's inherent equitable powers to regulate its own procedures." *Id.* (citing *City of Spokane v. J-R Distribs., Inc.*, 90 Wash.2d 722, 727, 585 P.2d 784 (1978)). "Courts possess inherent equitable powers to fashion remedies as justice demands." *Id.* (citing "Const. art. IV, § 6) ("Superior courts and district courts have concurrent jurisdiction in cases in equity."); *State v. Werner*, 129 Wash.2d 485, 918 P.2d 916 (1996) (the power to regulate practice and procedure of superior courts is one that is inherently judicial and may not be abrogated or restricted by any legislative act)). "Where the court's inherent power is concerned" the court is at "liberty to set the boundaries of the exercise of that power." *Harmon*, 193 Wn.2d at 162 (citing *In re Recall of Pearsall-Stipek*, 136 Wash.2d 255, 267 n.6, 961 P.2d 343 (1998)).

Under court rules, "CR 15 governs a motion to amend and provides

that 'leave shall be freely given when justice so requires.'" *Quality Rock Products, Inc. v. Thurston Cty.*, 126 Wn. App. 250, 272–73, 108 P.3d 805, 816 (2005) (citing CR 15(a)). The purposes of Rule 15 are to "facilitate a proper decision on the merits", and to provide each party with adequate "notice of the basis of the claims" or defenses asserted against him. *Quality Rock Products, Inc.*, 126 Wn. App. at 272–73; *Pierce County Sheriff v. Civil Serv. Comm'n,* 98 Wash.2d 690, 695, 658 P.2d 648 (1983); *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 100 Wn.2d 343, 339, 670 P.2d 240 (1983).

"[T]he touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party." *Quality Rock Products, Inc.*, 126 Wn. App. at 272–73. Factors which may be considered in determining whether permitting amendment would cause prejudice include undue delay, unfair surprise, and jury confusion. *Prosser Hill Coal. v. Cty. of Spokane*, 176 Wn. App. 280, 287, 309 P.3d 1202, 1206 (2013); *Wilson v. Horsley*, 137 Wn.2d 500, 505–06, 974 P.2d 316, 318 (1999). "Thus, a motion's timeliness alone, without more, is generally an improper reason to deny a motion to amend." *Quality Rock Products, Inc.*, 126 Wn. App. at 272–73.

The decision to allow a party to amend the pleadings is within the discretion of the trial court. *Sprague v. Sumitomo Forestry Co.*, 104

Wash.2d 751, 763, 709 P.2d 1200 (1985); *Lincoln v. Transamerica Inv. Corp.*, 89 Wash.2d 571, 577, 573 P.2d 1316 (1978). It is reviewed for manifest abuse of discretion. *Caruso*, 100 Wash.2d at 351, 670 P.2d 240. The trial court's decision "will not be disturbed" unless "manifestly unreasonable." *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

Here, this Court need not reach this issue, as previous arguments are dispositive. The arguments, below, regarding the first unlawful detainer action and Respondent's motion to amend the caption are superfluous, as the second unlawful detainer action is dispositive. These are arguments are made, however, because the trial court did not abuse its discretion.

Petitioner was at no time genuinely, surprised, confused, or lacking notice of the claims against her. She signed a rental agreement with "Hadley Apartments" as the owner and "SyHadley, LLC" as the "Managing Agent" to the contract. "Hadley Apartments" and the address she lived at was expressly listed on the agreement. "Christina Jones"—a colleague of Petitioner while she worked for Respondent—signed both the rental agreement and fourteen-day notice. The fourteen-day notice listed *Hadley* Apartments as the owner/landlord. As a result, the complaint and summons listing "*Hadley* Land Owner, LLC" as plaintiff was hardly misleading or confusing. (emphasis added). This is especially true since the summons

instructed her to respond to her "landlord" and "Hadley Apartments." Her address at "Hadley Apartments" was clearly stated on the first page of the summons, which again was properly and timely served upon her.

Since she was a former rental manager—earning $90,000.00 per year—at this same apartment complex, it defies reality to believe she did have notice of claims against her and who was bringing them. As in *Quality Rock*, Respondent—other than omitting a party's name in the caption—complied with all procedural requirements necessary to invoke the superior court's jurisdiction. *See Quality Rock Products, Inc. v. Thurston Cty.*, 126 Wn. App. 250, 271-72. There was no manifest abuse of discretion is this expedited proceeding. A traditional motion for leave to amend a complaint's caption from one similar name to another similar name was not necessary, nor demanded by the legislature or court rules. Due process and meaningful opportunity to be heard on the merits of the case was in no way impeded. The change allowed in the caption had no impact on Petitioner's substantive argument making and was more akin to a correction of a clerical error as no actual adjustment of any claims against Petitioner were made. *See* CR 60(a) (stating "Clerical mistakes in . . . parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party."). The trial court's decision in the first unlawful detainer action should be affirmed.

5.8. The Summons in the First Unlawful Detainer Action Substantially Complied with RCW 59.18.365 and Due Process Requirements. Neither the Jurisdiction nor Authority of Court to Rule was Impacted.

The "improvident and inconsistent use of the term 'subject matter jurisdiction' has caused it to be confused with a court's authority to rule in a particular manner." *MHM & F, LLC v. Pryor*, 168 Wn. App. 451, 460, 277 P.3d 62, 67 (2012). "If the type of controversy is within the superior court's subject matter jurisdiction," such as granted by Wash. Const. art. IV, sec. 6, "then all other defects or errors go to something other than subject matter jurisdiction." *Id.* An error to a party's name in a caption is a matter of statutory interpretation and may not be fatal to proceeding with the action. *Id.*

Summary proceedings in a show cause hearing do not violate a tenant's right to due process. *Tedford*, 13 Wn. App. 2d at 10. "The purpose of a summons is to give certain notice of the time prescribed by law to answer and to advise the defendant of the consequences of failing to do so." *Sprincin King St. Partners v. Sound Conditioning Club, Inc.*, 84 Wn. App. 56, 60, 925 P.2d 217, 219 (1996). The summons requires "substantial compliance" as to listing the "the parties, the nature of the action (in concise terms), the relief sought, the return day, and that the relief sought will be taken against the defendant for failing to appear." RCW 59.18.365;

Sprincin, 84 Wn. App. at 62.

Here, Washington State is a notice pleading state, and strict jurisdictional rules regarding pleading have been rejected.[2] A complaint and summons must fairly put client on notice as to the claims against her and the relief sought. All of the pleadings and filings in the first unlawful detainer did just that as Respondent substantially complied with RCW 59.18.365. The different between "*Hadley* Land Owner, LLC" and "*Hadley* Apartments" and "Sy*Hadley*, LLC"—when all other substantive and procedural requirements are met—cannot be fatal to an expedited unlawful detainer action. Petitioner was correctly instructed by the summons and was in no way meaningfully deprived of any substantive notice or response to the unlawful detainer action filed against her. Accordingly, the trial court's decision in the first unlawful detainer action should be affirmed.

6. ATTORNEY FEES ON APPEAL

RAP 18.1 authorizes a party to recover reasonable attorney fees and expenses so long as the party requests the fees or expenses and applicable law grants to a party the right to recover. RAP 18.1(a). Under RCW 59.18.410, the Respondent may recover attorney fees and costs. *Tedford*, 13

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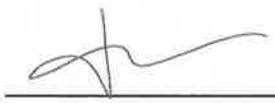
[2] Petitioner cited *Truly v. Heuft*, 138 Wash.App. 913, 918–23, 158 P.3d 1276 (2007) in support of her position on appeal, but *Truly*'s basis for strict interpretation of a summons, *i.e.*, a jurisdictional mandate, is no longer the law and has been overturned by the supreme court. MHM & F, LLC, 168 Wn. App. at 460 (holding "*Truly* . . . exemplif[ies] the problem identified by our Supreme Court. . . .").

Wn. App. 2d at 17.

Here, the rental agreement, RCW 59.18.410 and RCW 59.18.290, and equity require an attorney fee award against Petitioner. She was arrested on Respondent's property for violently beating another tenant. Video evidence memorialized the event and was presented to the trial court. She did not deny the attack or assault. She was properly evicted, never paid supersedeas bond, has not paid rent on a luxury apartment—with luxury amenities—for many months before and after COVID proclamations, and pursued a highly expensive course of vexatious and frivolous litigation during the supersedeas proceedings. Her appeal of the second unlawful detainer completely lacks merit and presents no arguable issues.

Should the governor's proclamations still be applicable, Respondent requests that the decision of the Court reflect that the attorney fees and costs be collectible, and reducible to a judgment, once the proclamations expire.

Respectfully submitted this 8th day of April, 2021,



Drew Mazzeo
Attorney for Respondent
WSBA No. 46506

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on April 8, 2021, I caused to be served:

Brief of Respondent

On:

Addie Smith
2601 76th Avenue SE, Unit # 502
Mercer Island, WA 98040

Via email, absmith27@icloud.com, and electronic service by the Court of Appeals.

Dated April 8, 2021, at Olympia, Washington.

Stacia Smith

[APPENDIX D]

STATE OF WASHINGTON
OFFICE OF GOVERNOR JAY INSLEE

EMERGENCY PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 and 21-09

21-09.01

Tenancy Preservation – A Bridge to E2SSB 5160

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to persist throughout Washington State; and

WHEREAS, the COVID-19 pandemic caused a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

WHEREAS, many in our workforce were impacted by these layoffs and substantially reduced work hours, and economic hardship disproportionately affected low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

WHEREAS, members of our workforce who are unable to pay rent due to the COVID-19 pandemic face an increased risk of being evicted from their homes, and the resulting increases in life, health and safety risks; and

WHEREAS, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent; and

WHEREAS, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act), tenants seeking to avoid

default judgment in eviction hearings must appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, as Washington state recovers from the COVID-19 pandemic, the Legislature intends to provide housing stability through passage of Engrossed Second Substitute Senate Bill (E2SSB) 5160, Chapter 115, Laws of 2021, which bolsters tenant protections, and it further intends to preserve tenancies through passage of Engrossed Substitute House Bill (ESHB) 1236, Chapter 212 Laws of 2021, which enumerates allowable grounds for eviction under residential landlord-tenant law; and

WHEREAS, while almost 4.5 million Washingtonians have become fully vaccinated to limit the severity and spread of COVD-19, the state needs more of its residents to become vaccinated before this pandemic emergency will end; and

WHEREAS, currently, COVID-19 vaccines are authorized only for people 12 years of age and older, so children under 12 years of age cannot yet be vaccinated and must rely on low levels of community transmission and health measures including face coverings, physical distancing, and hand hygiene to reduce their risk for COVID-19; and

WHEREAS, genomic sequencing shows that variants of concern that are more transmissible and may cause more severe disease, including Alpha, Gamma, and Delta, now represent the majority of new COVID-19 cases in Washington state; and

WHEREAS, vaccination rates vary across the state, leaving communities with low vaccination rates at risk for ongoing transmission of COVID-19 and unvaccinated people in these communities at risk for illness, hospitalization, and death from COVID-19; and

WHEREAS, during the 2021 legislative session, the Legislature appropriated hundreds of millions of dollars from the federal American Rescue Plan Act (ARPA) in rental assistance, but the program to disperse those funds is still in its early stages of operation; and

WHEREAS, although tremendous progress has been made, at this time, neither the eviction resolution pilot program nor the right to counsel program as provided by E2SSB 5160 are operational statewide; and

WHEREAS, data from the Census Bureau Pulse Survey released on August 30, 2021, shows that 129,997 renters, or 8% of all Washington renters, are behind on rent. Over 55,000 of those households have children under the age of 18; and

WHEREAS, the state of Washington has implemented a Roadmap to Recovery to assist businesses restart and to increase hiring, yet unemployment remains roughly 5% with slow recovery in significant industry sectors; and

WHEREAS, the U.S. Department of Justice, Office of the Associate Attorney General, encourages courts to consider eviction diversion strategies that can help families avoid the disruption and damage caused by eviction, and directs courts to federal resources to help them navigate this crisis.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that as of the date of this proclamation the majority of available rental assistance funding has not yet been distributed, and that because full implementation of Senate Bill 5160 has not yet occurred, Proclamation 20-05 et seq. and 21-09, are hereby amended to temporarily impose certain prohibitions and shall continue to preserve residential tenancy until 11:59 p.m. on October 31, 2021, as provided herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

ACCORDINGLY, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, through 11:59 p.m. on October 31, 2021, I hereby prohibit the following activities related to residential dwellings in Washington State.

STATEMENT OF INTENT:
It is the intent of this order to bridge the operational gap between the eviction moratorium enacted by prior proclamations and the protections and programs subsequently enacted by the Legislature, and to reduce uncertainty as the state implements post-COVID-19 long-term housing recovery strategies contained in legislative enactments such as E2SSB 5160. To that end, any ambiguities contained in this proclamation shall be resolved by applying the processes, timelines, and definitions established in E2SSB 5160.

Furthermore, because the Legislature answered the call to help thousands of landlords and tenants who have endured great hardship during this pandemic by appropriating hundreds of millions of dollars (which are not yet fully disbursed to local communities) and establishing thorough and thoughtful programs to address the ongoing housing crisis (which programs are not yet operational statewide), I respectfully ask that local jurisdictions, rental assistance programs, eviction resolution

pilot programs, housing advocacy organizations, courts, landlords, and tenants work collaboratively, patiently, and in good faith to enable the Legislature's remarkable efforts to be effectuated.

PAST RENT OWED (February 29, 2020 through July 31, 2021)

- If based in whole or in part on any arrears (rent owed) that accrued due to COVID-19 from February 29, 2020 through July 31, 2021, landlords, property owners, and property managers (collectively, landlords) are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a tenant to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate <u>until</u> both (1) a rental assistance program and an eviction resolution pilot program as contemplated by Section 7 of E2SSB 5160 have been implemented and are operational in the county in which the rental property is located; and (2) a tenant has been provided with, and has, since the effective date of this order, rejected or failed to respond within 14 days of receipt of such notice to an opportunity to participate in an operational rental assistance program and an operational eviction resolution pilot program provided by E2SSB 5160.
    - Attestation to program implementation shall be provided by each county rental assistance grant recipient to the Department of Commerce, and by each eviction resolution pilot program to the Administrative Office of the Courts, Office of Civil Legal Aid, and the Office of Financial Management, and such attestations shall be posted to the local county or court public-facing website.
    - Tenants must respond to landlords regarding establishing reasonable repayment plans and participate in eviction resolution programs per the timelines established in SB 5160.
    - Landlords and tenants are encouraged to address payment of rent through September 30, 2021, as part of the eviction resolution pilot program process.
    - There is a presumption that any rent payment made on or after August 1, 2021, is applied to current rent before applying toward arrears.
    - Each rental assistance program is authorized to share the application status of a tenant with the tenant's landlord.
    - For purposes of this order, an operational rental assistance program means a program located in the county in which the rental property is located, is receiving or able to receive applications for rental assistance from eligible renters and landlords, is currently disbursing or is able to disburse funds, and remains open throughout the time period of this order.
    - For purposes of this order, an operational eviction resolution pilot program means a program that complies with the provisions of Section 7 of E2SSB 5160, is located in the county in which the property is located, is serving or is able to serve pilot program clients, and is located in a jurisdiction in which a standing judicial order of the relevant superior court exists. If an out-of-county resolution program is accepting out-of-county applications, a tenant and landlord may agree, but are not required, to use an operational eviction resolution program located in a different county.
    - In addition, both the in-county rental assistance programs and the eviction resolution pilot program must be accessible to persons with limited English proficiency (including access to appropriate professional interpreter services) and either

accessible to persons with disabilities or able to serve persons with disabilities by providing a reasonable accommodation.

ENFORCEABLE DEBT (February 29, 2020 through July 31, 2021)

- If based in whole or in part on any arrears that accrued due to COVID-19 from February 29, 2020 through July 31, 2021, landlords are prohibited from treating any unpaid rent or other charges related to a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was, in whole or in part, a result of the COVID-19 crisis, until such time as the landlord and tenant have been provided with an opportunity to resolve nonpayment of rent through a rental assistance program and an eviction resolution pilot program as provided by Section 7 of E2SSB 5160. This prohibition includes attempts to collect, or threats to collect, independently or through a collection agency, by filing an unlawful detainer or other judicial action, by withholding any portion of a security deposit, by reporting to credit bureaus, or by any other means.

FUTURE RENT OWED (August 1, 2021 through October 31, 2021)

- For rent accruing on August 1, 2021, or thereafter, it is the expectation that tenants will pay rent in full, negotiate a lesser amount or a payment plan with the tenant's landlord, or actively seek rental assistance if assistance is needed. For rent accruing on August 1, 2021, or thereafter, and unless an exception or other state law allows for eviction, landlords are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a tenant to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate, if, unless otherwise permitted by this order or under state law, a tenant has (1) made full payment of rent; or (2) made a partial payment of rent based on their individual economic circumstances as negotiated with the landlord; or (3) has a pending application for rental assistance that has not been fully processed; or (4) resides in a jurisdiction in which the rental assistance program is anticipating receipt of additional rental assistance resources but has not yet started their program or the rental assistance program is not yet accepting new applications for assistance.
    - There is a presumption that any rent payment made on or after August 1, 2021, is applied to current rent before applying toward arrears.
    - A landlord is not required to accept partial payment of rent but is required to offer a tenant a reasonable repayment plan under this order and pursuant to Section 4 of E2SSB 5160.
    - A rental assistance program is authorized to share the application status of a tenant with the tenant's landlord.

LATE FEES (February 29, 2020 through October 31, 2021)

- Landlords are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling where such non-payment or late payment occurred due to COVID-19 on or after February 29, 2020, through October 31, 2021.

RENT INCREASES (February 29, 2020 through October 31, 2021)

- While this order does not prohibit rent increases, any rent notice increases that were prohibited pursuant to Proclamation 20-19 et seq., continue to be prohibited and may not be retroactively imposed. Any rent increases issued within the effective dates of this order must conform to RCW 59.18.140. Landlords accepting funds through state and/or federal rent assistance program may be prohibited from increasing rents as part of state or local program guidelines.

WRITTEN NOTICE OF RESOURCES AND PROGRAMS (February 29, 2020 through October 31, 2021)

- For rent owed that accrued due to COVID-19 on or after February 29, 2020, landlords are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate without first providing the tenant with written notice of the funding resources and programs established in E2SSB 5160. The written material may be provided in hard copy or electronically. Links to these materials may also be found on the Washington state Attorney General Office's website.

REASONABLE REPAYMENT PLANS (February 29, 2020 through October 31, 2021)

- For rent owed that accrued due to COVID-19 on or after February 29, 2020, landlords are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate if the landlord has made no attempt to establish a reasonable repayment plan with the tenant per E2SSB 5160, or if they cannot agree on a plan and no local eviction resolution pilot program per E2SSB 5160 exists.
    - "Reasonable repayment plan" has the same meaning as "reasonable schedule for repayment," as defined in Section 4 of E2SSB 5160, and means a repayment plan or schedule for unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt.
    - Tenants must respond to landlords within 14 days of the landlord's offer, per the timeline established in E2SSB 5160.
    - If a tenant fails to accept the terms of a reasonable repayment plan or if the tenant defaults on any rent owed under a repayment plan, a landlord must first provide notice to the tenant informing the tenant of the eviction resolution pilot program, and then follow the procedures provided by E2SSB 5160, before filing an unlawful detainer action. The pilot program must be operational at the time the notice is sent and must be able to provide the tenant with an opportunity to participate in the program.

PERMISSIBLE UNLAWFUL DETAINER ACTIONS

- Excepting the prohibitions stated herein, all other allowable evictions under ESHB 1236 and the current Residential Landlord-Tenant Act (RCW 59.18) and Manufactured/Mobile Home Landlord-Tenant Act (RCW 59.20) may proceed as otherwise allowed by law.

LOCAL LAW ENFORCEMENT

- Local law enforcement entities are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling unless the eviction order, including a writ of restitution, contains a finding that the landlord has complied with this order and the unlawful detainer action is permitted under this order.

COMMUNICATIONS

- Nothing in this order precludes a landlord from engaging in customary and routine communications with tenants. "Customary and routine" means communication practices that were in place prior to the issuance of Emergency Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a tenant of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation; are related to negotiating a reasonable repayment plan or other program provided by E2SSB 5160; or are otherwise consistent with this order. Within these communications and parameters, landlords may provide information to tenants regarding financial resources, including coordinating with tenants in applying for rent assistance through the state's Emergency Rent Assistance Program (ERAP) or an alternative rent assistance program, and to provide tenants with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.
- Tenants must respond to landlords regarding establishing reasonable repayment plans and participation in eviction resolution programs per the timelines established in SB 5160.

RETALIATION

- Landlords are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 21-09 et seq., Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings.

RIGHT TO COUNSEL

- Nothing in this order modifies the requirement in Section 8 of E2SSB 5160 that a court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding while this order is in effect.

EXCLUSIONS

- This order and these prohibitions do not apply to emergency shelters where length of stay is conditioned upon a resident's participation in, and compliance with, a supportive services program. Emergency shelters should make every effort to work with shelter clients to find alternate housing solutions. In addition, this order and these prohibitions do not apply to long-term care facilities licensed or certified by Department of Social and Health Services; transient housing in hotels and motels; "Airbnbs"; motor homes; RVs; public lands; and camping areas.

FURTHERMORE, this order acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

This proclamation is effective immediately. Signed and sealed with the official seal of the state of Washington on this 24th day of September, A.D., Two Thousand and Twenty-One at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

ADDIE SMITH - FILING PRO SE

December 01, 2021 - 2:09 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,333-1
Appellate Court Case Title:	Syhadley, LLC v. Addie Smith

The following documents have been uploaded:

- 1003331_Motion_20211201140743SC491547_1358.pdf
  This File Contains:
  Motion 1 - Stay
  The Original File Name was Emergency Motion to Stay WA Supreme.pdf
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  Other - Proof of payment
  The Original File Name was Receipt - Petition For Review 100333-I.pdf
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A copy of the uploaded files will be sent to:

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Comments:

Sender Name: Addie Smith - Email: absmith27@icloud.com
Address:
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