Supreme Court No. 101316-7

SUPREME COURT OF THE STATE OF WASHINGTON

COURT OF APPEALS NO. 83286-7-I
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION 1

TODD G. GLOVER and CHRISTINA S. GLOVER,

Respondents,

v.

PHILLIP CANADAY,

Appellant

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF THE PARTIES

The Respondents are Todd and Christina Glover ("Glovers"), who were the Plaintiffs in the Superior Court proceedings, and Respondents in the Court of Appeals. The Petitioner, Philip Canaday ("Canaday") was the Defendant in the Superior Court proceedings, and Appellant in the Court of Appeals, and before this Court.

II. CITATION TO COURT OF APPEALS DECISION

The Court of Appeals decision is the unpublished opinion filed in the matter of *Glover v. Canaday, 83286-7-I, WL 2800525 (Wash. Ct. App. July 18, 2022)* (herein "the Decision"). *See*: *Petition, Appx. A1-A13*. Following filing of the Decision, Petitioner filed a Motion For Reconsideration, which the Court of Appeals denied. *See: Petition, Appx. A-14*. Even though he was entitled to, Petitioner did not file a Motion to publish the Court of Appeal's Decision. *See: RAP 12.3(e)*. On September 22, 2022, Canaday filed his Petition For Review with this Court.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether Canaday's Petition meets the criteria for discretionary review set by RAP 13.4(b)? Answer: No.

B. Whether the Court of Appeal's affirmation of the trial court's

dismissal of Canaday's Counterclaim For Unlawful Detainer was proper? Answer: Yes.

C. Whether the Court of Appeal's decision to leave in place the trial court's Judgment restraining Canaday from interfering with the Glovers' right of quiet enjoyment of the lease premises was correct? Answer: Yes.

D. Whether the Glovers were the prevailing party in both the trial and Court of Appeals proceedings? Answer: Yes.

E. Whether the Glovers should be awarded their attorney fees and costs incurred in responding to Canaday's Petition?. Answer: Yes.

IV. RESPONDENTS' STATEMENT OF THE CASE

For purposes of responding to the Petition, the relevant facts are straightforward. Glovers believe that the Decision succinctly states the crucial facts, and procedural background relating to the litigation involving the Glovers and Canaday. To this end, in answer to the Petition, Glovers incorporate by reference the Court of Appeal's statement of facts set forth in the Decision. *See: Petition, Appx. A-2 through A-6.*

V. ARGUMENT WHY THE COURT SHOULD DENY CANADAY'S PETITION FOR DISCRETIONARY REVIEW

A. *Canaday's Petition Does Not Meet The Required Criteria For*

Discretionary Review Set By RAP 13.4(b).

RAP 13.4(b) states:

> *A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution the State of Washington or if the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court*. (Emphasis added).

The threshold issue to be decided is whether, or not the Petition satisfies one of the 4 mandatory requirements identified within RAP *13.4(b)*. The requirements of *RAP 13.4(b)* are clear. *Only if* Canaday is able to meet 1 of the 4 conditions stated with *RAP 13.4(b)* should the Supreme Court then consider whether, or not the Petition should be accepted for review. A review of the Petition reveals that it fails to meet any of the requirements of *RAP 13(b)*.

In an attempt to satisfy the requisites of *RAP 13.4(b)*, Canaday merely asserts *"Review Should Be Granted Per RAP 13.4(b)(1),(2) & (4) Because..."* *See: Petition, @ pp. 7, 9, and 2.* Beyond the foregoing statements, the Petition fails to identify the specific facts, or legal basis relied upon to meet the requirements of *RAP 13.4(b)*. Additionally, the Court should deny

review because the Petition does not comply with the requirement of *RAP 13.4(c)*, which requires a petition for review to contain argument of why review should be granted under *RAP 13.4(b)*.

1. *Contrary To The Requirements Of RAP 13.4(b)(1) and (2) The Decision Does Not Conflict With Either A Supreme Court Or Another Court of Appeals Decision*: The Court of Appeal's unpublished Decision created no conflicts in decisional law, and its decision will have zero effect beyond the two parties in this case. *See: RCW 2.06.040; GR 14.1.*

2. *Contrary To The Requirements Of RAP 13.4(b)(3), The Decision Does Not Raise A Significant Issue Of Law Under the Washington State or US Constitutions, Nor Does This Proceeding Involve the United States:* Canaday's Petition makes no mention of *RAP 13.4(b)(3)*, nor does the Petition contain any argument that the Decision raises a significant issue of law under the Washington State or US Constitutions, or that the United States is involved in this proceeding.

3. *Contrary To RAP 13.4(b)(4), the Petition Does Not Involve An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court*: The Opinion raises no "*...issue of substantial public interest that should be determined by the Supreme Court.*" *RAP 13.4(b)(4).* The

Petition raises no issues beyond this single civil lawsuit over the parties' respective rights, and obligations under a Lease Agreement for pasture land. *See: Lease, Ex. 3).*

B. The Court of Appeals Did Not Error In Allowing The Trial Court's Injunction Prohibiting Appellant From Interfering With Respondent's Right of Quiet Enjoyment To Remain In Place: The Court of Appeals properly allowed the trial court's injunction prohibiting Canaday's from interfering with the Glover's right of quiet enjoyment to remain undisturbed. The Glover's right of quiet enjoyment to utilize the Premises is clearly granted by Lease. *See: Ex. 3, §15.* The terms of the trial court's injunction were straightforward:

> "*Canaday shall be permanently restrained from interfering with the Glovers' right of quiet enjoyment, and use of the Premises as provided within the Lease...*"

See: CP 28. The trial court's injunction prohibits Canaday from engaging in conduct, which interferes with the Glovers' right of quiet enjoyment. In any event, both the Lease and Washington law prohibit Canaday from engaging in such conduct.

As noted within the Decision, the covenant of quiet enjoyment:

> "*secures the tenant from any wrongful act by the lessor which impairs the character and value of the lease premises or*

> *otherwise interferes with the tenant's right of quiet and peaceable use and enjoyment thereof.*"

Cherberg v. Peoples Nat'l Bank of Wash., 15 Wn. App. 336, 343, 549 P.2d 46 (1976), rev'd in part on other grounds, 88 Wn. 2d 595, 564 P.2d 1137 (1977).

Contrary to Canaday's claims, neither the Decision, nor the trial court's Judgment restrain Canaday from taking legitimate action to enforce the Lease if violated by the Glovers. Canaday's claim that the Court of Appeal's and the Trial Court's judgment "*prevents him from enforcing lease violations*" is conjured, and totally without merit. *See: Petition, @ p. 8, ll. 9-12.*

Even though he claims otherwise, Canaday has not been harmed by entry of the injunction prohibiting him from interfering with the Glovers' right of quiet enjoyment. *See: Petition @ p. 8.* As held by the Court of Appeals, Canaday is not an aggrieved party as a result of the trial court's conclusion that he had breached the covenant of quiet enjoyment. The fact that the trial court's entry of the injunction may have been erroneous was not a prejudicial error, and did not effect the outcome of the trial. *See: Decision, Appdx A-11; RAP 3.1 (only an aggrieved party may seek appellate review).* Canaday has not been harmed by the Court of Appeal's Decision allowing the

injunction to remain in place.

C. *The Court's of Appeal's Decision Affirming The Trial Court's Dismissal Of Canaday's Counterclaim For Unlawful Detainer Was Entirely Correct:* Canaday's argument that he was entitled to serve Glovers with an eviction summons up to 15 days, or that he had another 7 days to serve a notice of show cause hearing before trial is not supported by statutory or caselaw authority. *See: Petition, pp. 9-12.* Contrary to Canaday's claims, the Decision is well supported by the evidence, various statutes, and well established Washington caselaw authority. *See: Decision, @ pp. 6-8.* While Canaday asserts that the Court of Appeals "*misapprehends the caselaw*" regarding his right to file an unlawful detainer claim in a civil action, it is he who misunderstands the law. *See: Petition, @ p. 10.*

A *RCW Chapter 59.12* unlawful detainer action is a proceeding where the court:

> *"...sits as a special statutory tribunal to summarily decide the issues authorized by statute and not as a court of general jurisdiction with the power to hear and determine other issues."*

Hall v. Feigenbaum, 178 Wn. App. 811, 823-824, 319 P.3d 61 (2014). Where the Civil Rules conflict with the unlawful detainer statute they are inapplicable because unlawful detainer actions are "special proceedings"

within the meaning of *CR 81(a). Christensen v. Ellsworth 162 Wash.2d 365, 370, 173 P.3d 228 (2007).* In order to protect the summary nature of the unlawful detainer proceedings, other claims, including counterclaims, are generally not allowed, and the court is limited to resolving the issue right of possession. *Housing Auth. v. Terry, 114 Wash.2d 558, 563, 789 P.2d 745 (1990); Munden v. Hazelrigg, 105 Wn.2d 39, 45, 711 P.2d 295 (1985).*

In order to take advantage of the unlawful detainer statues a landlord must strictly comply with the service requirements contained within *RCW 59.12.*070) *(issuance and service of eviction summons). Housing Authority of City of Seattle v. Silva, 94 Wash.App. 731, 734, 972 P.2d 952 (1999); Terry, supra @ p. 563.*

One of the statutory requirements to maintain an unlawful detainer action is that the plaintiff must issue a special form of summons. *RCW 59.12.070–.080. Munden v. Hazelrigg, supra. @ 45..* To this end, *RCW 59.12.070 provides, in relevant part:*

> *A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than seven nor more than thirty days from the date of service...*

As to service of the eviction summons, *RCW 59.12.080,* requires that:

> *The summons must be served and returned in the same manner as summons in other actions is served and returned.*

Pursuant to *CR 3(a)* a civil action is commenced by service of a copy of a summons, together with a copy of a complaint.

A Landlord's strict compliance with the notice requirements of *RCW 59.12.070* and *RCW 59.12..080* are jurisdictional conditions precedent to the court's exercise of subject matter jurisdiction in an unlawful detainer action. Failure to comply with the notice requirements defeats the court's jurisdiction over the action. *Terry, supra @ 564.* To obtain unlawful detainer jurisdiction, a landlord must prove the tenant was properly served with a statutory unlawful detainer summons, and compliance with the statutory method of process is mandatory. *Christensen v. Ellsworth, supra. @ p. 372.* Canaday's attempt to distinguish *Munden vs. Hazelrigg, supra.*, does not change the correctness of the trial court's dismissal of his counterclaim for unlawful detainer, and the Court of Appeals affirming that ruling. The law stated by this Court in *Munden vs. Hazelrigg, supra.*, is applicable to this proceeding.

Prior to the trial court's entry of the Partial Summary Judgment Order, Canaday did not file, or serve Glovers with an eviction summons, or file a notice of hearing as provided by either *RCW 59.12.070, 59.12.080,* or *59.12.090. (Compare CP 108-110 and 111).* Canaday's unlawful detainer

claims, without proper citation to the record or legal authority, should be disregarded by this court. *Collins v. Clark County Fire Dist. No. 5, 155 Wash. App. 48, 95, 231 P.3d 1211 (2010); RAP 10.3(g).* There is no merit to Canaday's claim that the Residential Landlord-Tenant Act of 1973, as set out in *RCW Chapter 59.18*, is applicable in this proceeding. *See: Petition, @p. 11*. The Lease "Premises" does not contain a residential dwelling unit. *See: RCW 59.18.030(16) and (22).*

D. There Is No Merit To Canaday's Argument That The Court "Errored By Altering Material Terms To The Lease": Contrary to Canaday's claims, neither the trial court, or the Court of Appeals modified the parties' obligations under the Lease, i.e. "... *the trial's court's imposition of an inspection limit...*" *See: Petition @ p. 13.* Within the Lease, Canaday was granted a right of access to inspect the Lease Area "*at all reasonable times*" *(Ex. 3, Lease, @ p. 4, §9).* On the part of the Glovers, the Lease grants them a right of "*quiet enjoyment*" to utilize the Lease for pasture purposes, and other similar uses. *See: Ex. 3, Lease @ p. 5, §15.*

In accord with the Lease and the parties' evidence, the trial court interpreted the term "*reasonable*" to mean that Canaday should have access to the Lease Area for up to six (6) times per year for up to two (2) hours per

visit. *(FF 25, CL 6).* The interpretation of a lease is a question of law that this court reviews de novo. *4105 1st Ave. S. Invs., LLC v. Green Depot WA Pac. Coast, LLC, 179 Wash. App. 777, 784, 321 P.3d 254 (2014).* In interpreting a lease, the court's primary goal is to ascertain the parties' intent. *Berg v. Hudesman, 115 Wash.2d 657, 663, 801 P.2d 222 (1990).* When a court relies on inferences drawn from extrinsic evidence, interpretation of a contract is a question of fact. *Berg, @ pp. 667-68.* A contract should be construed as a whole and, if reasonably possible, harmonized in a way that gives effect to all of its provisions. *Colo. Structures, Inc. v. Ins. Co. of the W., 161 Wash.2d 577, 588, 167 P.3d 1125 (2007).* Interpretations giving lawful effect to all the provisions in a contract are favored over those that render some of the language meaningless or ineffective." *Grey v. Leach, 158 Wash. App. 837, 850, 244 P.3d 970 (2010).* When a contract is subject to different constructions, one which would make the contract unreasonable, and the other would make it reasonable and just, the latter interpretation is that which should be accepted. *Dickson v. United States Fid. and Guar. Co., 77 Wash.2d 785, 790, 466 P.2d 515 (1970).*

Neither the trial court, or the Court of Appeals modified the Lease. Rather, given Canaday's right of access under the Lease, coupled with the

Glovers' right to the quiet enjoyment of the Lease Area, the trial court's decision harmonized, and gave effect to both parties' rights.

E. Glovers Were The Prevailing Party In Both The Trial and Court of Appeals Proceedings: The Lease contains a bi-lateral provision providing for the award of "*reasonable*" attorney fees and costs "*to the prevailing party*" in the event of litigation. *Ex. 3, @ p. 5, §12.* Within the Petition, Canaday claims he "*...was the prevailing party*". *See: Petition, @ pp: 15-16.* Canaday's claim that he was the prevailing party is not true, and unsupported by the record. To date, 2 trial court judges, and 3 Court of Appeals judges have ruled that Glovers were the prevailing party, and entitled to award of their attorney fees and costs. *See: CP 27-30; 31-44; 108-110*; *Decision @ p. 13*. As to holding that the Glovers were the prevailing party, the Court of Appeals stated:

> *The court agreed with the Glovers' interpretation of the lease on virtually all issues and concluded that they had not materially breached the lease. The Glovers also successfully defended against Canaday's primary claim that sought to terminate the lease. The trial court did not error in determining that the Glovers substantially prevailed, despite our contrary conclusion that Canaday did not breach the convenant of quiet enjoyment.*

See: Decision @ p. 13.

A review of the trial court's Order On Summary Judgment; Findings

of Fact and Conclusions, and Judgment, together with the Decision, and reading the Lease's attorney fees provision in a "*common sense*" matter leads to a singular conclusion - the Glovers were the "*prevailing party*" at the trial court and Court of Appeals, and were properly awarded their attorney fees and costs. *Riss v. Angel, 131 Wash.2d 612, 633-634, 934 P.2d 669 (1997).* There is absolutely no merit to Canaday's argument that he was, or should have been held to be the prevailing party.

F. *Glovers' Request For Award Of Attorney Fees And Costs In Responding To Petition For Review*: The Lease provides that the prevailing party shall be entitled to recover their attorney fees and costs "on any appeals therefrom." *See: Ex. 3, @ p. 5, §12.* Pursuant to *RAP 18.1*, and based upon the Lease provision governing the award of attorney fees and costs on appeal, Glover request this court to award them their attorney fees and costs in responding to Canaday's Petition for Review.

VI. CONCLUSION

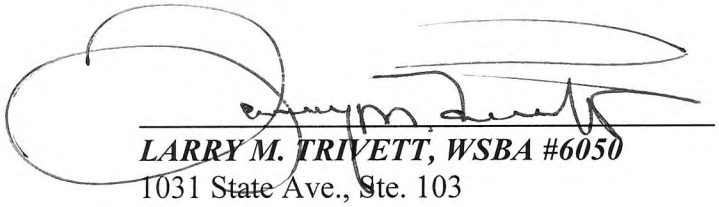
As a prerequisite for review by this Court, Canaday's Petition fails to satisfy this Court's mandatory requirements contained in *RAP 13.4(b).* Alternatively, the Court of Appeal's Decision correctly states the facts, and applies the law applicable in this case. For each of the foregoing reasons, this

Court should deny the Petition, and award the Glovers their attorney fees and costs incurred in responding to the Petition.

VII. CERTIFICATE OF COMPLIANCE

In compliance with *RAP 18.17,* I certify that Respondents' Brief contains 3,026 words.

RESPECTFULLY SUBMITTED this 10th day of November, 2022.



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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date give below I caused to be served in the manner noted a copy of the listed document on counsel below: RESPONDENTS' ANSWER TO PETITION FO REVIEW.

John H. O'Rourke	[ ] Via Federal Express
Law Office of John O'Rourke	[ ] Via Hand Delivery
2101 4th Avenue, Suite 2000	[ ] Via Fax
Seattle, WA. 98121-2332	[X] Via U.S. Mail
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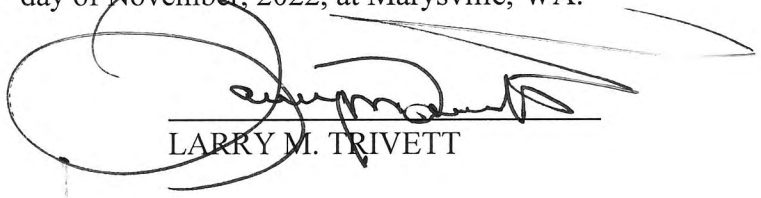
SIGNED this 10th day of November, 2022, at Marysville, WA.



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