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SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals Div 1 No. 83713-3)

ROCK HOLDINGS LLC

Plaintiffs/Respondents,

v.

MICHAEL D. LEVITZ.

Defendants/Appellants.

7-6-23:
Treated as the petition
for review.
*Supreme Court Clerk's
Office*

APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION:

Hereby submitted before this honorable Court:

1. The Appellant Michael D. Levitz submits this instant response in support of his appeal brief before the Supreme Court for reasons set herein below, it is requesting this Court grant the requested relief in favor of the Appellant and against the Respondent

II. FACTUAL BACKGROUND:

2. In February 2022, the Plaintiff filed a complaint for unlawful detainer in King County, Washington Case No. 22-2-01181-5 SEA against Appellant's home and land of 23 years while Appellant's wrongful foreclosure case was pending, Case No. 21-2-15638-6 SEA. Appellant responded to Plaintiff's UD complaint asserting fraud on title of and demanding a jury trial be held in the Superior Court for the State of Washington, in and for the County of King ("**Jury Demand**"). In respect to Plaintiff's UD Suit, the UD Court ignored the jury demand stating there were no issues of triable fact and granted summary judgment in favor of Plaintiff.
3. Defendant/Appellant demanded a jury trial asserting fraud on title. Moreover, it was argued that the Defendant, Levitz, had not been properly served. However, the Superior Court granted summary judgment in favor of the Plaintiff, issued a writ of ejectment against the Defendant thereby denying Appellant a fair hearing based on law before a jury.
4. Appellant and his minor son were left homeless and moreover were disallowed a pending sale of their home and land by a qualified and bank approved buyer that would have afforded them equity to purchase

another home. Appellant has since exhausted all of his savings to contest what he claims is a wrongful taking of his property and for which he is prepared to show incontrovertible evidence at trial before a jury.

5. The UD Court's Eviction Suit Decision was appealed by the Defendant in the Court of Appeals of the State of Washington, Division I, Case No.83713-3 ("**Appeal**"). The Court of Appeals rendered an unpublished decision dated May 1, **2023**, upholding the UD Court's decision.

6. Thereafter, the Defendant files this petition for review of the UD and COA decisions before the Supreme Court of the State of Washington praying for a **grant** of trial before jury to hear the facts of the case and review the evidence.

III. LEGAL GROUNDS FOR INSTANT BRIEF:

7. At the outset, the Appellant highlights that the UD Court's decision ought to be reviewed under abuse of discretion in denying Appellant his Constitutional right to trial by jury.
8. Because of their summary nature, other claims, including counterclaims, are not allowed in an unlawful detainer action. *Id.*
9. However, [w]here the right to possession ceases to be at issue at any time between the commencement of an unlawful detainer action and trial of that action, the proceeding may be converted into an ordinary civil suit for damages, and the parties may then properly assert any cross claims, counterclaims, and affirmative defenses. *Id.* at 45-46. And, "the trial court has inherent power to fashion the method by which an unlawful detainer action is converted to an ordinary civil action." *Id.* at 47
10. On January 27, 2016, the trial court held a hearing on the motion to strike the jury demand. At the hearing, the parties disputed whether Taylor's claims were legal or equitable in nature. The court ruled, It seems to me that the underlying premise is that equitable remedies are not entitled to jury. There's nothing that I see in the landlord tenant act that changed that. And all the issues here are equitable issues. So I'm going to strike the jury.
11. Verbatim Report of Proceedings (Jan. 27, 2015) at 5. The trial court also entered a written order finding that Taylor's motion for return of personal property was purely equitable and not subject to a jury trial

12. Appellant argues trial court erred by striking demand for a jury. We agree.
13. **The Washington State Constitution provides an inviolate right to a jury trial.** WASH. CONST., art. I, section 21; *Brown v. Safeway Stores*, 94 Wn.2d 359, 365, 617 P.2d 704 (1980). Our Supreme Court has “consistently interpreted this constitutional provision as guaranteeing those rights to trial by jury which existed at the time of the adoption of the constitution.”
14. Therefore, there is a right to a jury trial when action is purely legal in nature, and there is not right to a jury trial when the action is purely equitable in nature.
15. “The overall nature of the action is determined by considering all the issues raised by all of the pleadings.” However, when the pleadings present both legal and equitable issues, the trial court has wide discretion to allow a jury on “ ‘some, none, or all issues presented.’ ” The trial court must determine whether issues are primarily equitable or primarily legal. In making this determination, the trial court should consider a variety of factors, including, but not limited to the following:
 - (1) who seeks the equitable relief;
 - (2) is the person seeking the equitable relief also demanding trial of the issues to the jury;
 - (3) are the main issues primarily legal or equitable in their nature;
 - (4) do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury;

(5) are the equitable and legal issues easily separable;

(6) in the exercise of such discretion, great weight should be given to the constitutional right of trial by jury and if the nature of the action is doubtful, a jury trial should be allowed;

(7) the trial court should go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.”

16. Moreover, the

Supreme Court ought to take into account the errors committed by the UD Court in rendering its summary judgements without following due process of law.

IV. PRAYER(S):

In view of the above, it is humbly requested before this honorable Court that the Court enters a judgment declaring that:

- a. the summary judgments rendered by UD Court in denying Appellant a trial by jury be overturned for abuse of discretion;
- b. a fresh hearing be scheduled to make a fair determination in light of correct facts and proper procedural process; and
- c. such other and further relief as the Court deems just and proper.
- d. Appellant intends to motion to amend this petition of review and
- e. Appellant, who is legally blind, intends to motion for leave to seek and retain proper counsel and prays this Court consider appointing counsel on behalf of Appellant.

/s/ Michael D. Levitz
Michael D. Levitz
3718 E Alder St
Seattle, Washington 98122
Appellant, Pro Se

Date: July 3, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROCK HOLDINGS LLC, a Washington
Limited Liability Company,

Respondent,

v.

MICHAEL D. LEVITZ, INESA LEVITZ,
AND ALL OTHER OCCUPANTS,

Appellants.

No. 83713-3-I

DIVISION ONE

UNPUBLISHED OPINION

DÍAZ, J. — Michael Levitz appeals an order directing issuance of a writ of restitution, alleging that respondent had no standing below because a separate lawsuit challenging the foreclosure proceeding was unresolved and that he was entitled to a jury trial. Because this unlawful detainer action complied with Washington’s statutory requirements, we affirm.

I. FACTS

On December 3, 2021, Rock Holdings purchased residential property in Seattle at a nonjudicial foreclosure sale. Levitz, who previously owned the property and brought a separate action in November 2021, acknowledged that he failed to seek to enjoin the sale before it was conducted because of a “series of errors.” On December 14, 2021, Rock Holdings recorded the trustee’s deed and

provided Levitz with a post-foreclosure notice of sale the next day. After the sale, and despite the notice, Levitz remained on the property.

In January 2022, Rock Holdings began this unlawful detainer proceeding, seeking possession of the property and Levitz's eviction. The trial court granted Rock Holdings's motion to serve Levitz by posting and mail, which was completed on January 25. Levitz, representing himself, filed an answer claiming that Rock Holdings had "no standing to take action against" him and the issue of possession was "immaterial" because he had filed a separate lawsuit challenging the foreclosure proceedings and "thus, the ownership of the property [was] still pending."

At a show cause hearing in February 2022, Levitz again argued, in pertinent part, that Rock Holdings had "no standing to proceed" on the unlawful detainer action until his pending action against the trustee, concerning "legal ownership" of the property, was resolved. Levitz also argued that he was entitled to a jury trial on whether he had been properly served in this matter. He asked the court dismiss "or, in the alternative, that [the court issue] an order to stay the proceedings until the other case regarding ownership is disposed." The next hearing in that matter was scheduled for February 25, 2022.

After a review of the record, the trial court found that Levitz had not sought a "stay" or "some interim relief to prevent this eviction" in either this matter or his separate action against the trustee. It rejected Levitz's claim of improper service, concluding that "service has been shown to be proper on the record" and there was no basis for a jury trial. The court found Levitz guilty of unlawful detainer and

entered an order issuing the writ of restitution to Rock Holdings, instructing that Levitz could not be physically evicted until March 4, 2022.¹

Levitz appeals.

II. ANALYSIS

Representing himself on appeal, Levitz primarily contends that the trial court erred by issuing the writ of restitution to Rock Holdings because his claims against the trustee and challenges to the nonjudicial foreclosure were unresolved.²

A. Unlawful Detainer Action

After a nonjudicial foreclosure sale, the purchaser is entitled to possession of the property after 20 days as against the previous owner and “shall also have a right . . . to obtain possession of real property provided in chapter 59.12 RCW.” RCW 61.24.060(1); River Stone Holdings NW, LLC v. Lopez, 199 Wn. App. 87, 93, 395 P.3d 1071 (2017). In turn, RCW 59.12.032 requires an “unlawful detainer action, commenced as a result of a trustee’s sale under chapter 61.24 RCW, [to] comply with the requirements of RCW 61.24.040 and 61.24.060.” The purchaser must provide written notice of the purchase to the previous owner. RCW 61.24.060(2).

¹ Respondent sua sponte advised the court it was “willing to agree to . . . not execute on the writ until after the hearing on” February 25, 2022. The court accepted that invitation, effectively giving Levitz the relief he sought in the alternative.

² We hold self-represented persons to the same standards as attorneys and expect them to comply with the rules of appellate procedure. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Despite Levitz’s failure to follow several of these rules in his appellate briefing, we address the merits of his appeal.

Because the purpose is to provide a speedy determination of the right to possession of real property, only limited issues may be raised in an unlawful detainer action. Fed. Nat'l Mortg. Ass'n v. Ndiaye, 188 Wn. App. 376, 382-83, 353 P.3d 644 (2015). Such actions are “limited to the question of possession and related issues” and do not provide a forum for litigating claims to title or challenges to the foreclosure action. Id. at 382. “In unlawful detainer proceedings, the trial court has statutorily limited jurisdiction” and is not authorized to resolve issues outside the scope of chapter 59.12 RCW. Barr v. Young, 187 Wn. App. 105, 109, 347 P.3d 947 (2015).

We review findings of fact in unlawful detainer actions for substantial evidence and review conclusions of law in those proceedings de novo. Pham v. Corbett, 187 Wn. App. 816, 825, 351 P.3d 214 (2015). Unchallenged findings of fact are verities on appeal. Id.

Levitz challenges none of the trial court’s findings, which establish that Rock Holdings satisfied all of the requirements to prevail here. Namely, on December 3, 2021, Rock Holdings purchased the property at a nonjudicial foreclosure sale and recorded the trustee’s deed roughly 10 days later. On December 15, 2021, it provided Levitz the post-foreclosure notice of sale required by RCW 61.24.060(2). Levitz’s right to occupy the property expired on December 23, 2021. In January 2022, Rock Holdings filed this unlawful detainer action and properly served Levitz.³

³ The record shows that Levitz was served by mail and by posting, see RCW 59.12.085(2), so the trial court did not err in concluding that there was no basis for a jury trial on this issue. Levitz also appears to confuse the “summary proceedings” in an unlawful detainer action with the “summary judgment” standard in CR 56; either way, he did not have a right to a jury trial at the initial stages of these

Given the narrow issues that may be raised in an unlawful detainer action, it was immaterial that Levitz's lawsuit against the trustee and challenge to the foreclosure sale was still unresolved. Unlawful detainer actions simply are not the arena to litigate foreclosure or questions of title. Further, as the trial court established, Levitz neither obtained an injunction (or any other kind of restraint) to enjoin his eviction in either matter, nor did he identify any deficiencies in the unlawful detainer action. Accordingly, the trial court did not err by issuing a writ of restitution here.

B. Attorney Fees

Rock Holdings requests an award of attorney fees under RAP 18.9(a), contending that Levitz's appeal was frivolous. An appeal is frivolous if it "presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." Streater v. White, 26 Wn. App. 430, 434, 613 P.2d 187 (1980). "All doubts as to whether the appeal is frivolous should be resolved in favor of the appellant" and "[a]n appeal that is affirmed simply because the arguments are rejected is not frivolous." In re Marriage of Schnurman, 178 Wn. App. 634, 644, 316 P.3d 514 (2013) (citing Tiffany Family Trust Corp. v. City of Kent, 155 Wn.2d 255, 241, 119 P.3d 325 (2005)).

Though we reject Levitz's arguments, we do not view his appeal as so devoid of debatable issues as to be frivolous. In particular, the parties and the court entertained the theoretical possibility that Levitz could have obtained some

proceedings. Carlstrom v. Hanline, 98 Wn. App. 780, 788, 990 P.2d 986 (2000) ("Washington does not provide for a jury trial in unlawful detainer show cause proceedings.").

relief at that hearing on February 25, 2022, which might have affected his eviction in the instant matter and theoretically (if not legally) rendered the writ premature. Resolving all doubts in his favor, that fact provides the slimmest of reasonable grounds for appeal. The request for fees is denied.

III. CONCLUSION

Because this unlawful detainer action complied with Washington's statutory requirements, we affirm.

Díaz, J.

WE CONCUR:

Birk, J.

Dwyer, J.

MICHAEL LEVITZ - FILING PRO SE

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Filing Petition for Review

Transmittal Information

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Comments:

Sender Name: MICHAEL LEVITZ - Email: mdlevit@gmail.com
Address:
3718 E Alder St
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Phone: (425) 998-8492

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