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STATE OF WASHINGTON  
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Supreme Court No. 97057-2  
Court of Appeals No. 50997-1-II  
Kitsap County Superior Court No. 17-2-00146-7

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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**JOHN SCANNELL**, *petitioner*

v.

**GIORGIY BULKHAK**, *respondent*

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**ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT  
STATE OF WASHINGTON**

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**REPLY TO ANSWER TO PETITION FOR REVIEW**

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John Scannell

**Cases**

. *Glaubach v. Regence Blue Shield* 149 Wn.2d 827, 833, 74 P.3d 115 (2003).... 11  
*Acosta Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992)..... 3  
*Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App.  
12/09/1993)..... 4, 5  
*Coy v Raabe*, 69 Wash.2d 346, 418 P.2d 728 (9/22/1966) ..... 7  
*Fed. Nat’l Mortg. Ass’n v. Ndiaye*, 188 Wn. App. 376, 382, 353 P.3d 644 (2015).  
..... 10  
*Graham v. Raabe*, 62 Wa.2d753, 384 P.2d 629(1963) ..... 7  
*Greenwood v. FAA*, 28 F.3d 971, 977 (9<sup>th</sup> Cir. 1994)..... 3  
*Honan v. Ristorante Italia, Inc.*, 66 Wash. App. 262, 269, 832 P.2d 89, review  
denied, 120 Wash. 2d 1009 (1992) ..... 4  
*Kimball v. Lincoln*, 72 Haw. 117, 809 P.2d 1130 (1991) ..... 5  
*McGraw v. Lamb* 31 Wash. 485, 72 P. 100 ..... 6  
*Meehan v. County of L.A.*, 856 F.2d 102, 105 n.1 (9th Cir. 1988)..... 3  
*Proctor v. Forsythe* 4 Wn. App 238, 480 P.2d 511. .... 5  
RCW 59.16 ..... 6  
*River Stone Holdings*, 199 Wn. App. at 92..... 10  
*Seattle Housing Authority v. Silva*, 94 Wn.App. 731, 952(1999) ..... 3  
*State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978)..... 2  
*Stritzel v. Smith*, 20 Wa.App.218, 579 P.2d 404(05/26/1978)..... 7

**Statutes**

RCW 59.16.030 ..... 6  
RCW 7.28 ..... 7  
RCW 84.64.080 ..... 7

**Other Authorities**

28 C.J.S. Ejectment § 1, at 848 (1941) ..... 5  
CJS Landlord and Tenant §1361 at 122..... 5

**REPLY TO ANSWER TO PETITION FOR DISCRETIONARY**

**REVIEW**

A. Reply Argument

In his petition, petitioner Scannell asserted that this case involves an unlawful detainer action where Bulkhak, an alleged owner who has never been in possession of the disputed property claims to be a landlord simply by demanding rent. He has never cleared title with the owner in possession. According to the division 2 panel, this is enough to establish a landlord tenant relationship and the tenant cannot assert title as a defense.

The court of appeals has never been able to articulate how the court obtained subject matter jurisdiction other than refer to another statute that has no basis in this proceeding. Bulkhak does not address the this argument because there is no authority that supports the panel's position.

Unlike the court of appeals, Bulkhak relies entirely upon RCW 58.12 for his argument that the court had jurisdiction to hear this dispute, but like the court of appeals, provides no authority how someone who has never been in possession of property can utilize the summary proceeding of this statute to evict a tenant. In Washington, courts may assume that where no authority is cited, counsel has found none after search. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

The ninth circuit has made similar rulings: See *Acosta Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992); see also *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); *Meehan v. County of L.A.*, 856 F.2d 102, 105 n.1 (9th Cir. 1988).

He ignores the petitioner's arguments that unlawful detainer statutes are in derogation of the common law and thus construed in favor of tenants. *Seattle Housing Authority v. Silva*, 94 Wn.App. 731, 952(1999). He ignored all that case authority that Scannell has presented that indicate that the unlawful detainer statute does not apply. First he claims that RCW 59.12 applies because he put it in his petition. (Answer p. 9). Obviously, There is no authority that he can invoke a statute just by putting it in his complaint. He has to show that the statute actually applies.

He then attempts to utilize RCW 59.04.50, ignoring the plain fact that in order for him to establish himself as the owner as opposed to the present owner in possession he first has to clear title with the owner in possession. If the owner in possession is actually the owner, then Bulhak's argument falls apart. Scannell did not obtain possession without possession of the owner. He obtained possession because he had a lease with the owner. He states to no authority as to how the court can determine Bulhak is the owner without clearing title first.

He again puts the cart before the horse when he argues that *Williamson v. Hallett*, 108 Wash. 176, somehow applies. Again, *Williamson id.*, was a case where ownership of the premises was not in dispute. There is no authority that he can somehow create a tenancy at sufferance, when he has never been in possession and he has not cleared title with the present owner who is in possession.

He then contends that the first three sections of RCW 59.12 somehow apply. The first section does not apply because the term of Scannell's second ten year term had not expired. Scannell was not in a month to month tenancy, so the second section does not apply. He did not default in the payment of rent because Bulhak has never established a tenancy at sufferance. Scannell was current in his rent with the owner who he had a contract with. It is well settled that additional claims cannot be joined in an unlawful detainer action. *Honan v. Ristorante Italia, Inc.*, 66 Wash. App. 262, 269, 832 P.2d 89, review denied, 120 Wash. 2d 1009 (1992). Bulhak has never attempted to argue how he can get the court to consider who the owner is in an unlawful detainer action. Any issue not incident to the right of possession within the specific terms of RCW 59.18 must be raised in an ordinary civil action. *Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993).

Ejectment is the remedy for one who, claiming a paramount title, is out of possession. Ejectment is a mixed action, and damages for the ouster or wrong can be simultaneously recovered. 28 C.J.S. Ejectment § 1, at 848 (1941). *Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993). Where the form of the summons and complaint only invoked the unlawful detainer statute, the court cannot rule on the issue of title. *Proctor v. Forsythe* 4 Wn. App 238, 480 P.2d 511. Bulkhak never addresses any of this in his response

Bulhak simply ignores the petitioner's argument that when the plaintiff contends that a landlord tenant relationship exists, then an admitted relationship of landlord and tenant is required. Summary possession only lies where there is or has been an admitted relationship of landlord and tenant. It does not lie where the relationship of landlord and tenant is in dispute. CJS Landlord and Tenant §1361 at 122, citing *Kimball v. Lincoln*, 72 Haw. 117, 809 P.2d 1130 (1991).

The court of appeals cited RCW 59.12 as the basis for their jurisdiction. (Dec. at 5). However, the panel ignored that this chapter requires that the owner must actually be in possession for the procedure to be utilized. It has long been held in Washington that it is not sufficient for a complaint to allege the plaintiff is owner in fee simple, as it is does not

show possession required for RCW 59.12. *McGraw v. Lamb* 31 Wash. 485, 72 P. 100.

The panel also ignored that RCW 59.16 requires that in an unlawful detainer action be treated like an ejectment if the tenant denies the landlord is an owner in his answer. In RCW 59.16.030, it is made clear that if the alleged owner is not in possession, the summary procedure may not be utilized if the defendant alleges facts that dispute who the landlord is:

It shall not be necessary for the plaintiff, in proceedings under this chapter, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he or she is the legal owner and entitled to the immediate possession thereof: PROVIDED, That if the defendant shall, by his or her answer, deny such ownership and shall state facts showing that he or she has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of \*chapter XLVI of the code of eighteen hundred and eighty-one. Reviser's note: "chapter XLVI of the code of eighteen hundred and eighty-one" is codified as RCW 7.28.010, 7.28.110 through 7.28.150, and 7.28.190 through 7.28.270

In his answer, Scannell alleged that Bulkhak was not the landlord or owner, that Scannell has been in continuous possession long before Bulkhak was alleged to have purchased the property and that the title Bulkhak obtained was void because it was not acquired through a legal

auction. Under these facts, Bulkhak had no choice, if he wanted to prove he had superior title, but to note the action as an ordinary civil action of ejectment (RCW 7.28),

Bulkhak does not address these arguments. He simply ignores them.

From his pleadings, it is clear that Bulkhak is claiming superior title to both King and Scannell. Since this lease was filed, the plaintiffs have constructive notice of the lease. As a holder of a valid option to purchase, and lease, his option to purchase and lease survive any tax sale, because as a tenant and the holder of an option, he is not responsible for the taxes. *Coy v Raabe*, 69 Wash.2d 346, 418 P.2d 728 (9/22/1966) and *Graham v. Raabe*, 62 Wa.2d753, 384 P.2d 629(1963)

Both King and Scannell are claiming superior title because the county sold without notice to them and without a public posting as required by statute and caselaw. (See RCW 84.64.080, *Stritzel v. Smith*, 20 Wa.App.218, 579 P.2d 404(05/26/1978), the notice requirements of RCW 84.64.080 were held to be jurisdictional.) Again, Bulkhak nor the court of appeals address this argument. Bulkhak, in his answer to the petition, simply proclaims that Scannell's lease did not survive the sale, by assuming that the sale was valid. He cannot do so without first



establishing the sale was in fact valid, which he cannot do in an unlawful detainer action. He again puts the cart before the horse.

The petitioner argued that the defendant has posted invalid notices which do not list which tenants he is trying to evict from which part of the premises. This building is an office and a duplex, with the duplex having two different addresses. There are several tenants and/or guests that occupy the building yet the landlord wants to evict them all without giving any except John Scannell any kind of notice. These other occupants are not under the control of John Scannell as they are located in parts of the building that are not included in his tenancy. The plaintiff has cited to no authority which allows him to evict various occupants without giving them notice or a description of which part of the premises he is trying to attempt an eviction. Any notices he has posted list only 543 6th St. Bremerton Washington, ignoring the fact that the building has two addresses, 543 and 545. In addition, much of 543 is not under the control of John Scannell, it is under the control of the owner. This includes an area of the premises that includes thousands of legal files from hundreds of clients from the offices of Paul H. King, all of whom belong to the clients. There are at least two other occupants that are in the section of the building that are not part of the defendant's tenancy. Bulkhak does not and cannot address this deficiency.

Bulkhak never addressed how the panel's decision and his argument leads to strained and absurd results.

It is clear that this action is an abuse of process where the plaintiff seek an order to "restore" possession to him when he never had possession. Even if he could somehow evict John Scannell, he would not be entitled to possession because he has not cleared title with the owner, who is currently in possession. Neither the plaintiff nor his counsel, nor the trial court nor the appellant panel have explained (nor can they explain) how they can take possession from the owners without any kind of notice or by making them part of the suit.

There is no authority in Washington for a person to seize possession from an owner in possession without first bringing a clear title or ejectment action. There is no authority in Washington, where an alleged owner can clear title and seek possession from the owner and all tenants/guests/occupants, by giving notice to only one tenant and listing unnamed "others" especially since they are aware of the name of one of the others, namely the owner. This is why this action is frivolous and should therefore be dismissed.

On page four of the decision the court lifted the two following principles out of context in unrelated unlawful detainer actions to claim that the plaintiff could not raise title in this action.

“[i]ssues unrelated to possession are not properly part of an unlawful detainer action” and must be resolved in a separate action. *River Stone Holdings*, 199 Wn. App. at 92. Unlawful detainer actions do not provide a forum for litigating claims to title. *Fed. Nat’l Mortg. Ass’n v. Ndiaye*, 188 Wn. App. 376, 382, 353 P.3d 644 (2015).

The petitioner Scannell, presented authority as to why the panel was wrong. Bulkhak doesn’t address these arguments, he simply ignores them, and tries to establish a landlord tenant relationship by sufferance, that leads to such absurd results, even the court of appeals never adopted his arguments.

Bulhak attempts to argue that he can somehow create a tenancy at sufferance, by demanding rent to a tenant who is current in his rent to the landlord who is in possession but provides no authority for this proposition other than providing cases where there were no other alleged owners in possession. This interpretation would lead to strained and absurd results. If Bulhak were correct, then anyone could come along, claim to be an owner, demand rent from Scannell, and then evict Scannell because Scannell didn’t pay him the rent. It would make no difference whether the person was an owner or not, because, according to Bulhak and the panel, Scannell could not raise title as a defense.<sup>1</sup> Washington

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<sup>1</sup> Another absurd result could occur because under Bulhak’s reasoning, a purported landlord out of possession gets possession of the premises by demanding rent and then evicting only one tenant of a building by

courts avoid readings of statutes that would lead to strained or absurd results. *Glaubach v. Regence Blue Shield* 149 Wn.2d 827, 833, 74 P.3d 115 (2003).

Bulkhak never addressed the argument that his strained interpretation of RCW 59.12 leads to absurd results. He simply ignores the argument.

According to the panel's decision, Scannell could not raise the lack of landlord tenant contractual relationship as a defense either. Contrary to the panel's decision, Scannell provided numerous authorities that assert when a landlord tenant relationship is in dispute, then it cannot be determined by the summary procedure given in an unlawful detainer action. Neither the panel nor Bulkhak even addressed these argument.:

Finally, both Bulkhak and the panel claim that the record was deficient but do not supply any reasoning as to why it was. The facts were straightforward, and were not in dispute. The record clearly established that Bulkhak has never been in possession and neither he nor the panel have disputed that. Neither he nor the panel have cited to any applicable

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including the words "and others" in the complaint, even though the "others" get no notice or summons. Thus one could obtain possession of an entire skyscraper, by demanding rent from only one tenant by claiming to be the owner and no one would have a defense. Again, Bulkhak does not address this in his answer.

authority that demonstrate how a court could assert jurisdiction without first determining who the owner is through a clear title action. Scannell has supplied numerous long established authorities from throughout the nation that supports his position as well as statutory and other authority in this state. The panel and Bulkhak have supplied nothing but unprecedented reasoning that leads to absurd results.

#### 6. Conclusion

For the reasons given in this brief, the petitioner respectfully requests that this court reverse the decision of the trial court to issue a writ of restitution in this case and award attorney fees to the petitioner.

Dated this 2nd day of May, 2019,

*S/ John Scannell*  
John Scannell

#### Declaration

Undersigned, on the basis of personal knowledge declares as follows:

I certify that I delivered this petition to opposing party by uploading into the appellant court ECF system..

Dated this 2nd day of May, 2019 at Bremerton, WA.,

*S/ John Scannell*  
John Scannell



**JOHN SCANNELL - FILING PRO SE**

**May 02, 2019 - 4:53 PM**

**Transmittal Information**

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