69815-0

No. 69815-0-I
August 1, 2016
Court Originals

IN THE COURT OF APPEALS OF THE STATE
OF WASHINGTON-DIVISION ONE.

No. 69815-0-I

Don Kennedy Properties, LLC, 4224 University Way, NE, Suite "B," Seattle, WA, 98105, Plaintiff/Respondent }

}

VERSUS }

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 JUL 25 PM 2:07

Mr. Joel Christopher Holmes, PRO SE, Hudson House, 1712 Summit Avenue, Apt. #2, Seattle, WA, 98122, Defendant/Appellant.

Court of Appeals No. 69815-0-I/King County Superior Court No. 12-2-39304-4 SEA

REPLY BRIEF OF APPELLANT. July 22nd, 2016.

ON APPEAL FROM THE HON. CARLOS Y. VELATEGUI, KING COUNTY SUPERIOR COURT COMMISSIONER.

PRESENTED BY: JOEL C. HOLMES, PRO SE, July 22nd, 2016.

Pro Se
July 22nd 2016

Pro Se
July 22nd

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IDENTITY OF PETITIONER. Mr. Joel Christopher Holmes, the Appellant PRO SE in the above-entitled Cause Number Court of Appeals No. 69815-0-I, hereby appears again PRO SE in order to contest Respondent's Arguments (July 1, 2016) that this Appeal should be dismissed, and to demand that demised premises which are the subject of this Appeal, located at 4120 Brooklyn Avenue, NE, Seattle, WA, 98105, should be returned to this Appellant.

SUMMARY OF FACTS & PROCEDURE. Petitioner was "evicted" from his longtime domicile (since Sept. 6, 1978, and in the same apartment unit [#405] since March 26, 1993), following a Summary Show Cause Hearing, held before King County Superior Court Commissioner Hon. Carlos Y. Velategui (No. 12-2-39304-4 SEA), on Thursday, Dec. 27, 2012. The leased premises were summarily returned to Plaintiff Don Kennedy Properties, LLC, following execution of a Writ of Restitution, on Jan. 4, 2013. See Judgment & Writ of Restitution, No. 12-2-39304-4 SEA. No further proceedings, at the trial Court level, concerning the issue of ultimate possession, have ever been held in this matter. RCW 59.12.170, Right to jury trial in unlawful detainer matter. Instead, Appellant's personal property, was willfully destroyed by the Landlord, in the case at bar, and King County Superior Court personnel, placed numerous roadblocks in the path of Appellant (who was incarcerated, first in the

local King County Jail [KCCF], and, ultimately, in Washington State Department of Corrections {DOC}, on unrelated charges, after his "arrest," on Wednesday, December 5, 2012 [Judgment & Sentence at 1, King County No. 12-1-06088-2-SEA, May 13TH, 2013]), and his attempts to perfect this Appeal. Appellant was informed, that he needed the exact "Sub-Number", for each required document, even though this information was unavailable to him in jail or prison, and his attempts to request and pay for the entire Case File, in No. 12-2-39304-4 SEA, were refused by the King County Superior Court Clerk. See Motion For Extension Of Time, No. 69815-0-I, April 13, 2013. Finally, the Filing Fee, along with the Judgment And Writ of Restitution, were filed by Appellant, in August, 2013, while he was still in WA DOC "custody." But he was effectively stopped, by the King County Superior Court Clerk, from filing the other documents in the Case File, necessary to perfect this Appeal. Cf. Brief of Resp. at 1-5, July 1, 2016. Hence, Petitioner, could only raise several "Issues For Review," challenging the legality of his "eviction," rather than an element-by-element series of "Assignments Of Error," challenging every element of Respondent's Case against this ex-Tenant. Brief of Resp., at 1-10. And, since there was NEVER any Jury Trial, in the Landlord-Tenant case at bar, there were NO "Jury Instructions," and only very limited Findings Of Fact, for this Appellant to assign "error" to.

See Clerk's Papers Nos. 5-15, King County No. 12-2-39304-4 SEA; but cf. Form 21, RAP 5.5 (c), Civil Appeal Statement, "Issues For Review." In any event, Appellant was effectively prevented from perfecting this Appeal, in a timely manner, both by King County Superior Court Clerk's Office procedures, and by KCCF/WA DOC Rules, which prevented him from timely serving the Plaintiff/Respondent, with copies of the filed Opening Brief of Appellant (filed March 12, 2013, with this Court), as well as other required portions of the Record (RAP 9.2, Verbatim Report of Proceedings), necessary in order to contest his Summary Eviction. Respondent filed a Motion To Dismiss this Appeal, in December 2013, while Petitioner was still in custody. From this point on, and subsequent to Appellant's release from WA DOC "custody" (Dec. 4, 2014), the Case File in No. 69815-0-I, was not available to Appellant.

ANSWERS TO RESPONDENT'S ARGUMENTS: I. "ISSUES FOR REVIEW," ARE FUNCTIONALLY EQUIVALENT TO A LIST OF ENUMERATED "ASSIGNMENTS OF ERROR." II. THE TRIAL COURT LACKED JURISDICTION OVER THE LANDLORD-TENANT CASE AT BAR, BECAUSE PETITIONER WAS ERONEOUSLY "EVICTED" UNDER THE GENERAL "UNLAWFUL DETAINER" STATUTE, RCW 59.12.030 (1)-(6), RATHER THAN UNDER THE MORE SPECIFIC, *RESIDENTIAL* LANDLORD-TENANT ACT, RCW 59.18.140. III. THE TRIAL COURT LACKED JURISDICTION OVER THE CASE BECAUSE APPELLANT WAS ERRONEOUSLY INFORMED BY THE LANDLORD, THAT HE HAD A "DUTY TO APPEAR" AT THE DECEMBER 27, 2012, "SHOW CAUSE" HEARING CONVENED BY PLAINTIFF IN THIS MATTER (ORDER TO SHOW CAUSE,

DECEMBER 10, 2012)—AND APPELLANT WAS THEN PREVENTED FROM APPEARING, BY KCCF RULES. IV. APPELLANT WAS WRONGLY DEPRIVED OF HIS RIGHT TO A CIVIL "TRIAL BY JURY" UNDER AMENDMENT VII, USCA, AND ARTICLE I, SECTION 21, RCWA, AND, HENCE, THE TRIAL COURT HAS NO JURISDICTION, TO ARBITRARILY CONVERT A SUMMARY "SHOW CAUSE" HEARING (December 27, 2012), INTO AN EXCLUSIVE ISSUE OF FINAL POSSSESSION. V. THE PORTIONS, WRITTEN INTO RCW 59.18.130 (1)-(2), AND APPLIED AGAINST THIS APPELLANT, ARE VAGUE AND OVERBROAD (Fountain Valley Chateau Blanc Homeowner's Association v. Department of Veterans' Affairs, 67 Cal.App. 4TH 743, 754-755, 79 Cal.Rptr. 248 (4th Dist., Div. 3(1998)). VI. ANY AWARD OF "ATTORNEY"S FEES" TO THE PLAINTIFF, IN THIS CASE, IS IMPROPER.

STATEMENT OF THE CASE. Petitioner's several listed "Issues For Review," previously enumerated in his 'Opening Brief" (March 12, 2013), filed in this Matter, ARE functionally equivalent to "Assignments Of Error" (RAP 5.5 (c)). Since there was NO Jury Trial, ever convened in the case at bar, there can be no "Assignments Of Error," either (where only a very limited factual record exists at all). Petitioner was erroneously "evicted" under a general Unlawful Detainer statute, supposedly applying to all "real property" in Washington State, when, in fact, the "more specific" Residential Landlord-Tenant Act (RCW 59.18.140), allowing the Tenant, **at least 30 days** (rather than just "10 days," RCW 59.12.130 (1)-(3)) to correct alleged violations of the Rental Agreement (there was NONE, in the case at bar) or of the Statute itself, applies to the issue of

ultimate possession of the residential rental apartment unit (#405, 4120 Brooklyn Avenue, NE, Seattle, WA, 98105), that is the subject of this controversy. State v. Shriner, 101 Wn.2d 576, 580, 681 P.2d 237 (1984) ("more specific" Washington civil or criminal statute governs). In any event, if the Plaintiff, Landlord Don Kennedy Properties, LLC, wished to "evict" this Tenant, using a **general** Unlawful Detainer statute, then the trial court needed to preserve Defendant's rights to a **jury trial (RCW 59.12.070)**, on the issue of the ultimate right to possession, of the apartment unit in question. Since the trial court (and Plaintiff/Respondent), failed to preserve this right (Article I, Sec. 21, RCWA, Wash. Const.), the 'Unlawful Detainer" action, supposedly executed, on or about, Jan. 4, 2013, is null and void. Since Defendant, was unlawfully deprived of his right to a civil jury trial, this Court, need not consider, whether defects in the Order To Show Cause (Dec. 10, 2012), prepared by Plaintiff, also deprived the trial court, of jurisdiction over this matter. See MHM & F, LLC v. Pryor, 168 Wash.App. 451, 460, 277 P.3d 62 (2012) (Wash. Const., Article IV, Sec. 6, defining "inherent jurisdiction" of superior courts). However, this Court may properly consider, whether the trial court, still had proper "jurisdiction," in a case where the Defendant, was forcibly prevented by the State from attending, or challenging, ANY aspects of the cited "Show Cause" Summary Proceedings invoked by the

Landlord. Since Plaintiffs, NEVER returned to inspect the unit, on or before 5:00 PM, on Friday, Nov. 30, 2012 (the expiration date of the cited "10 Day" period, contained in the Notice To Comply Or Vacate [RCW 59.18.130 (1)-(2)]), the Landlord effectively **waived** his rights, under either RCW 59.12.030 (1)-(6) or under RCW 59.18.130 (1)-(2), to legally "evict" this Tenant, without "serving" another Notice. Plaintiff NEVER provided the trial Court with any degree of proof, that the conduct ascribed to Defendant, unlawfully deprived Plaintiff of any economic value, from the lease of the rental unit, inhabited by Defendant before Dec. 5, 2012. Minutes of Summary "Show Cause" Proceeding, Dec. 27, 2012. Thus, even interpreting the facts presented at the Dec. 27, 2012 "Show Cause" hearing (analogous to an Arraignment, in a criminal case, rather than to a complete Jury or Bench trial), in the light most favorable to the Plaintiff, the Landlord, in the Residential Landlord-Tenant case at bar, NEVER showed: e.g., waste, nuisance, or damage to the leased property, resulting from the actions ascribed to the Defendant. William B. Stoebuck [1929-2012], The Law Between Landlord And Tenant In Washington, 49 Washington Law Review 291, 331 (1973). Furthermore, following the post-1860's modern "subjective" Neoclassical Theory of Value (which seems to mystify Respondent) to this case (and to the cited RCW 59.18.130 (1)-(2)), it is impossible, for a third party (such as the trial

Court attempted, in the case at bar) to rationally quantify, exactly **what** degree of disposal of: "rubbish, garbage, and trash…", or what amount of "clean [ing]", is supposedly necessary on the part of the Tenant, in order to preserve the economic value of the rental unit (or to avoid an alleged "breach," of the Rental Agreement [where it exists] or a violation of the terms written in RCW 59.18.130 (1)-(2)). Gary Becker [1930-2014], "The Value Of Time," Economic Theory (1986; 1980 eds.). Requiring **unlimited** trash, etc., removal, uncompensated, on the part of the Tenant, is close to an economic condition mandating chattel slavery (or feudal serfdom), for Washington Tenants (and, worse, leads to the forced disposal of the Tenant's own personal property)—thereby negating the Landlord's "property rights" arguments, on behalf of RCW 59.18.130 (1)-(2) (and on behalf of the Summary Eviction proceedings occurring in the case at bar).

Figure 1 Apt. #405, Coho Apts., 4120 Brooklyn Avenue, NE.

```
Window_____________________________________________
__
_                                        X  Closet     I
_                                                  >  Door
_              Desk                  X Kitchen   X Bath     I
__________Bed_________________ X__________X__________ I
```

Figure 2 Time Chart Nov./Dec. 2012

November 2012

S M T W Th F S

4 5 6 7 8 9 10

11 12 13 14 15 16 17

18 19 20 21 22 23 24

25 26 27 28 29 30 1

December 2012

S M T W Th F S

2 3 4 5 6 7 8

9 10 11 12 13 14 15

16 17 18 19 20 21 22

23 24 25 26 27 28 29

January 2013

30 31] 1 2 3 4 5

11/18-"10 Day Notice To Comply Or Vacate" Prepared by Landlord

11/20-"10 Day Notice" 'Served' On Tenant

11/30-"10 Day Notice" Expires Without Action by Landlord

12/05-Tenant "Arrested" On Unrelated Charges (No. 12-1-06088-2 SEA)

12/11-"Show Cause" Order 'Served' On Tenant

12/27-"Show Cause" Summary 'Eviction' Hearing

01/04-"Writ Of Restitution" Executed/Notice Of Appeal Filed With Trial Court.

ARGUMENT: I. "ISSUES FOR REVIEW" ARE SYNONYMOUS, IN THE CASE AT BAR, WITH "ASSIGNMENTS OF ERROR (RULES ON APPEAL 10.3 (a)-(g), Content of Brief).

In the "Summary 'Show Cause'" Proceeding convened by Plaintiff in the Landlord-Tenant case at bar, there was obviously no Jury Trial

for Petitioner to preserve his objections for appeal, nor were there any Jury Instructions, given by the Parties. VRP, Dec. 27, 2012, at _____. Hence, Petitioner was limited to raising general "Issues For Review," in order to challenge his prior Summary "Eviction" on appeal. Rules On Appeal, 10.3 (a)-(g), Content Of Briefs, noting similarity between "Assignments of Error" and 'Issues For Review." Cf. Washington Courts, Form 21 Civil Appeal Statement, "Issues For Review." (The challenged "Issues For Review" format ascribed to Appellant, is used by both the U.S. and Washington Supreme Courts.) Where there is NO available Jury Trial, as occurred in the case at bar, and the Appellant, is **NOT allowed to appear personally in front of the Court,** a general list of "Issues For Review" is appropriate. State ex rel. Taylor v. Dorsey, 81 Wash.App. 414, 418-20, 914 P.2d 773 (1996) (Wiggins, J. Pro Tem, concurring) (Due Process rights of prisoners to attend child custody hearings); RAP 10.3 (a)-(g). Furthermore, both concepts are essentially isomorphic (i.e., a one-to-one mapping) onto each other: a list of alleged trial court "errors," necessarily connotes the set of "issues" the appellant specifically seeks to preserve for appellate review. See Assignment of errors, http://www.legal-dictionary.thefreedictionary.com. Here, where the Appellant was essentially stopped, by the Superior Court, from gathering the necessary portions of the trial court's factual findings, in order to perfect his appeal

(and where there was a very limited factual record to begin with), the distinction between the two concepts, is minimal. RAP 9.2, Record On Appeal; Appellate Procedure Rule 11, http://www.mass.gov; Commonwealth v. Harvey J. Bigelow, (No. 11974 (Supreme Judicial Court (MA))), review granted, October 20, 2015.

II. THE KING COUNTY SUPERIOR COURT (AND PLAINTIFF DON KENNEDY PROPERTIES, LLC) LOST JURISDICTION OVER THE LANDLORD-TENANT CASE AT BAR, BY ERROENEOUSLY "EVICTING" APPELLANT, USING THE GENERAL UNLAWFUL DETAINER STATUTE (RCW 59.12.030 (1)-(6)), RATHER THAN THE MORE SPECIFIC RESIDENTIAL LANDLORD-TENANT STATUTE, RCW 59.18.180 (1).

In spite of the absence of any written Landlord-Tenant agreement in the case at bar, the Plaintiff (and trial court), proceeded, on Dec. 27, 2012, summarily to "evict" the Appellant from his residential premises, following a general Unlawful Detainer statute, RCW 59.12.030 (1)-(6), despite the fact that Appellant's month-to-month tenancy, was clearly "Residential" in nature. RCW 59.18.180 (1), giving the Tenant "thirty days," to correct alleged violations of RCW 59.18.130 or the (absent) Rental Agreement. State v. Shriner, 101 Wn.2d 576, 580, 681 P.2d 237 (1984) (theft of rental property statute vs. "general" theft statute). Here, where any apartment unit, classified as "real property" under the general Unlawful Detainer statute, RCW 59.12.030 (1)-(7), is clearly first and

foremost, a residential apartment unit, the "more specific" Residential Landlord-Tenant statute, must govern. (The Plaintiff also denied Appellant, the right to a jury trial on the contested issue of ultimate possession, ostensibly guaranteed by RCW 59.12.070.)

III. THE TRIAL COURT LACKED PROPER JURISDICTION IN THIS CASE, BECAUSE THE "SHOW CAUSE" SUMMONS PREPARED BY PLAINTIFF, ERRONEOUSLY DEMANDED APPELLANT'S "PERSONAL APPEARANCE," AT THE SCHEDULED DECEMBER 20, 2012 (later continued, to Dec. 27, 2012), "SHOW CAUSE" HEARING IN THE CASE AT BAR.

All of the cases cited by Respondent (such as e.g., Truly v. Heuft, 138 Wash.App. 913, 920-21, 158 P.3d 1276 (2008)), proceed on the reasoning that **ANY & ALL** defects, in an eviction summons, such as the one filed by Plaintiff in the case at bar, wrongly demanding Appellant's "personal attendance" at a "Show Cause" or other "eviction" hearing, inherently rob the trial court, of further jurisdiction, to hear a Landlord's case against an allegedly deficient Tenant. Christiansen v. Ellsworth, 162 Wn.2d 365, 370, 173 P.3d 228 (2007)(computation of allowable time for tenant to follow "three-day notice" to pay or vacate). (All of the cases cited by Respondent, have been called into question, by later cases, such as e.g. MHM & F, LLC v. Pryor, 168 Wash.App. 451, 460, 277 P.3d 62 (2012)(Superior Court retains "inherent jurisdiction" to hear Landlord-

Tenant cases, under Wash.Const., Art. IV, Sec. 6). [The status of Pryor and its progeny, has not yet been determined by the Washington Supreme Court.]) Following the rationale of at least the pre-2012 cases cited by Respondent, the Superior Court, never had proper jurisdiction, under ANY statute, to hear this "Landlord-Tenant" case, since, inter alia: (1) The Dec. 10, 2012 "Show Cause" Summons, prepared by Plaintiff, erroneously demanded Appellant's "personal appearance," at the scheduled "Show Cause" hearing convened in this matter. Resp. Brief, at 6-10 (July 1, 2016); (2) Appellant, was forcibly prevented, by King County Superior Court Chief Criminal Judge Ronald Kessler, and by Court Commissioner Carlos Y. Velategui, from being transported, to attend personally, the "Show Cause" hearing, ultimately held in this matter. (The Summons was also deficient, in NOT pointing out to Appellant, that he had the right to demand a Jury Trial, in order to review his "eviction." RCW 59.12.070.) The trial court, lost jurisdiction of this case, under Amendment VII of the United States Constitution as well, by abridging Petitioner's fundamental rights, under that Amendment, to contest his "eviction." Lindsey v. Normet, 405 U.S. 56, 74- 79, 92 S.Ct. 862, 874-877, 31 L.Ed.2d 36 (1972) (Oregon "double indemnity" requirement for Residential Landlord/Tenant appeals, stricken under Due Process Clause).

IV. PETITIONER IS BEING PERMANENTLY DEPRIVED OF HIS PROPERTY INTERESTS IN HIS FORMER APARTMENT UNIT (#405, 4120 Brooklyn Avenue, NE, Seattle, WA, 98105), BASED SOLELY UPON THE DECISION REACHED IN a SUMMARY PROCEEDING (No. 12-2-39304-4 SEA, Dec. 27, 2012, Velategui, J.).

Even conceding the validity of the cases, cited by Respondent, to justify the reversion of the contested premises, in a Summary Proceeding (see especially e.g., Truly v. Heuft, 138 Wash.App. 913, 920-21, 158 p.3d 1276 (2007))—NONE of the cases cited by the Plaintiff, say ANYTHING about the alleged "right" of a Landlord, permanently to deprive the Tenant of the "use and enjoyment" of his former rental property. Housing Authority of the City of Pasco v. Pleasant, 126 Wash.Ap. 381, 389, 109 P.3d 422, 427, 428 (2005) (Schultheis, J.) (summary "show cause" hearing to determine issue of *immediate* "reversion of the property" contested **only**). Similar to an arraignment in a criminal case, the type of Summary "Show Cause" Hearing, used to permanently dispossess Appellant in the case at bar, is validly used ONLY to immediately return a rental unit or other real property, to a Landlord, pending a full jury trial, on all of the contested issues. RCW 59.12.070. Carlstrom v. Hanline, 98 Wash.App. 780, 788, 990 P.2d 986 (2000). (As noted several times **supra, Appellant can properly challenge at least the issue of the Respondent's admitted failure to return and inspect the condition of the apartment, on or**

before 5:00 PM on Friday, Nov. 30, 2012. Cf. Resp. Brief at 10-16.) Plaintiff, is, instead, trying permanently to dispossess Appellant from the leased premises, while leaving the expiration of the cited "10-Day" period, as well as several other critical factual issues, unresolved. RCW 59.12.030 (1)-(6); RCW 59.18.180 (Petitioner contends he was entitled to "thirty days," in order to remedy the allegedly deficient conditions of his apartment unit):

> ¶ 24 The Housing Authority asserts that no trial was required because the show cause hearing is the only summary proceeding required under [RCW 59.12.030 (1)-(7)]...It relies on Carlstrom [v. Hanline], 98 Wash.App. 780, 990 P.2d 986. In *Carlstrom*, Division One of this court observed, "Show cause hearings are summary proceedings to determine the issue of possession *pending* a lawsuit." [Citation omitted.] The statute [RCW 59.18.140 **et seq**] allows a landlord to apply for a writ to expeditiously determine who should possess the property while an unlawful detainer action is pending...In fact, since a pendent lite writ issues on summary proceedings, the landlord is typically required to post a bond to take possession. RCW 59.18.380. That is because "[a] show cause hearing is not the final determination of the rights of the parties in an unlawful detainer action." [Citations and footnotes omitted.]

Housing Authority of City of Pasco v. Pleasant, loc. Cit., 109 P.3d at 426-428 (2005). In the case at bar, ALL of these cited legal protections, written into RCW 59.12/59.18, in order to "protect" the rights of Tenants, were ignored, dismissed, or evaded, by the Plaintiff Don Kennedy Real Estate and by Court Commissioner Velategui. See Clerk's Papers, Sub-Nos. 5-15, King County No. 12-2-39304-4 SEA (Dec. 27,

2012): Appellant's personal property was wantonly destroyed by the Landlord, Appellant was arbitrarily assessed tens of thousands of dollars in "Attorney's Fees" by the trial court, following a summary proceeding—and, this Appellant has **NEVER** been legally allowed to return to his former residential apartment unit. Meanwhile, Plaintiff has enjoyed a very substantial economic return, from the "summary" eviction proceeding occurring in the case at bar, based upon being able to re-rent the unit vacated by Appellant, at a substantially higher rent, since at least May, 2013. Cf. "Dear Landlord", Seattle Weekly at 6, March 24, 2015, available at http://www.seattleweekly.com (describing crisis of "evictions" affecting long-term Seattle residential tenants); see also e.g. "Think Seattle Apartment [!!]," Seattle Business Journal, March 4, 2016, available at http://www.bizjournals.com (describing "7.3 percent" annual average rent increases in Seattle from 2015 to 2016). As noted before, Plaintiff **NEVER established any loss of economic value or damages to the rental unit**, allegedly caused by the deficiencies attributed to this Appellant as a residential Tenant. See also e.g., Handbook, The Law Between Landlord And Tenant In Washington, PDF/Adobe Acrobat File, http://www.heinonline.org. Since Plaintiff, admittedly "gained" economic value, in form of higher rents, from the summary "show cause" proceeding, convened in the case at bar, perhaps Appellant should be the

party seeking economic "damages" from this eviction (similar to "negative" central bank-regulated "interest rates")! See e.g., "Negative Interest Rate," at http://www.investopedia.com, or countless other financial publications. Since residential rents, are in fact a form of monthly "interest payment" (sufficient to compensate landlords for the foregone return on "safe" investments, such as long-term Treasury bonds or government-insured bank deposits), perhaps the coming of "negative" interest rates r<0, would lead to market rentals for housing, also falling into "negative" territory (i.e., the landlord would pay **you** to rent an apartment from him, as the opportunity costs of foregone investments, fell to <0).

V. RCW 59.18.030 (1)-(2), AS APPLIED TO "EVICT" APPELLANT IN THE CASE AT BAR, IS UNCONSTITUTIONALLY VAGUE & OVERBROAD.

1. Vagueness. Although continuously ridiculed by Respondent since the instant Landlord-Tenant case began, the terms written in RCW 59.18.130 (1)-(2), provide NO definition, limiting or construing phrases critical to the enforcement of the statute, including "trash," "rubbish," "garbage," etc. Clearly, a literal interpretation of this law, would allow residential building owners, as asserted by Appellant here in the case at bar, arbitrarily to seize and destroy, substantial portions of a Tenant's personal possessions & property. State v. Gunwall, 106 Wn.2d 54, 60-63, 720 P.2d

808 (1986) (Dolliver, C.J.) (application of Article I, §7, RCWA, Wash. Const., to police search of telephone company dial pen register in drug investigation case). There are NO limitations on the application of the statute, to cases where the conduct ascribed to a residential Tenant, created a common-law "nuisance" or "waste" on the leased premises, thereby causing direct economic loss or harm, to the Landlord. See e.g. Waste (law)-Wikipedia, at http://www.en. Wikipedia.org; "waste" defined at http://www.legal-dictionary.thefreedictionary.com.

Figure 3—Differing Consumer Preferences Between Cleanliness vs. "Trash"—"One Man's 'Trash,' Is Another Man's 'Treasure'"!!!

X I^1

X I^1

X I^1

X I^1 I^1

X I^1 I^1

X

X

0_____I^2_____I^2_____I^2_____
>

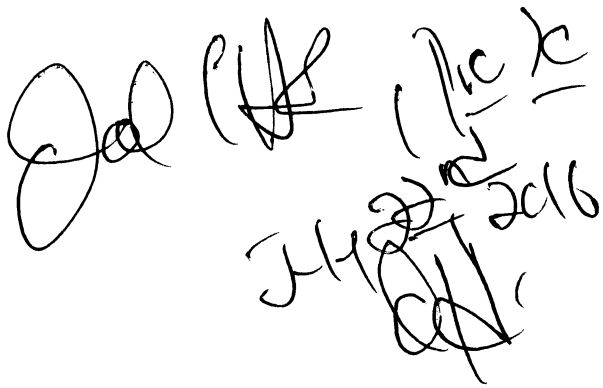
X1-Axis="Cleanliness", X^2-Axis="Trash" (or "Personal Possessions"). In the Figure 3 shown, Mr. 1's indifference locus (represented by the points labelled "I^1"), represents a person willing to tradeoff some neatness in order to keep more personal possessions, while Mr. 2's preference scale is monotonically based on "orderliness." See e.g., Hal Ronald Varian [1947-], Microeconomic Analysis (2011 ed.).

With NO clear definitions, contained in the statute, limiting a Tenant's alleged "Duties," to the Residential Landlord (and no Rental Agreement, alleged to have been violated by the Tenant, in this case), the possibilities for dispute are endless. See Anthony M. Amsterdam, "The Void-for-Vagueness Doctrine In The Supreme Court," 109 University of Pennsylvania Law Review 67-116 (1960). May a residential Landlord, as subsequently occurred to this Appellant, in August 2015, after vacating the cited apartment unit on Don Kennedy Real Estate premises, thence cite the terms of the challenged RCW 59.18.130 (1)-(2), dealing with the Tenant's alleged "duty," to remove all "[pest] infestations"—and, forcibly require a recalcitrant Tenant, to "get a haircut"—overriding that Tenant's "sincere religious beliefs" **NOT to ever cut ANY portion of his hair?** Cf. Holmes [Petitioner] v. Pioneer Human [Housing] Services, SOCR No. HO044, City of Seattle, WA, Office for Civil Rights, pending. Cf. Rogers v. American Airlines, Inc., 527 F.Supp. 229, 231-232 (Southern District New York (NY) (1981)) (Sofaer, J.) ("business necessity" held sufficient to justify private airline employee "grooming" policy, under Title VII of 1964 Civil Rights Act); but see Kumar v. Gate Gourmet, Inc., 180 Wn.2d 481, 487, 325 P.3d 193 (2014) (Gordon McCloud, J.) (right to "religious accommodation" in airline caterer's menus for in-airport employees).

2. Overbreadth. Nor are personal keepsakes, legal documents, and cluttered personal possessions, inherently some kind of "unprotected" "true threat," a manifestation of unlawful "hoarding" (similar to the rules in e.g., a foreign dictatorship, such as North Korea or Venezuela), and legal grounds for summary "eviction." In Fountain Valley Chateau Blanc Homeowner's Association v. Dept. of Veterans Affairs, et al., 79 Cal.Rptr. 248, 252-256, 257-58, 67 Cal.App. 4TH 743 (California Court of Appeal, Fourth District, Division Three (October 30, 1998)), a case with facts strikingly similar to the appellate matter at bar, a Southern California "homeowners' association," attempted to "evict" elderly veteran and condominium owner Robert S. Cunnigham, for an alleged "fire hazard"-level accumulation, of "trash, garbage, etc."—mostly consisting of Mr. Cunnigham's personal papers and effects—construing Fountain Valley Homeowner's Association by-laws ("CC & R's"), essentially identical to the challenged RCW 59.18.130 (1),(2), placed at issue by this Appellant. Idem, 79 Cal.Rptr. 248 at 256-257 (1998). Cunnigham was evicted on a judgement n.o.v., similar to the summary proceeding invoked in the case at bar, notwithstanding the fact that a trial jury, had found "no fire hazard" created by that appellant's attempts to retain his longstanding personal possessions. Here, in this Appeal, Mr. Holmes has **NEVER been allowed, by King County Superior Court, even to present his claim that the**

former contents of Apt. Unit No #405, posed no fire or other safety "hazard," and that Plaintiff Don Kennedy Properties, LLC, was arbitrarily confiscating Appellant's personal possessions. See e.g., VRP, Dec. 27, 2012 (Commissioner Velategui, asserting, without proof, that Appellant's 35+ years of accumulated possessions, etc., posed a **potential** "fire and safety hazard [sic]" to others). Tacoma Rescue Mission v. Stewart, 155 Wash.App. 250, 254 n. 9, 228 P.3d 1289 (2010) ("vagueness" in rental agreement construed). Mr. Holmes (Petitioner) should be granted a Jury Trial, on the issue of whether his possession of the property, at #405, 4120 Brooklyn AV, NE, really ***DID COMPRISE, A "TRUE THREAT," TO OTHERS OR TO HIMSELF.***

VI. ATTORNEY'S FEES. Forcing a litigant, with a total monthly income < 125 % of the Federal Poverty Level, to pay Appellate Costs, violates Wash. Constitution., Article I, Secs. 3, 12. Jafar v. Webb, 177 Wn.2d 520, 532, 303 P.3d 1042 (2013) (C.W. Johnson, J.) (GR 34 (a)); State v. Blazina, 182 Wn.2d 827, 831, 344 P.3d 680, 683-84 (2015)(Madsen, J.) (trial court must inquire into criminal defendant's "ability pay" costs at time of Judgment & Sentence). The award of Costs, by the trial Court, should be reversed by this Court, as well.



VI. SUMMARY & CONCLUSIONS: RELIEF REQUESTED. Apt. #405, Coho Apts. 4120 Brooklyn AV, NE, Seattle, WA, 98105, should revert to the **Appellant. S/O, JOEL CHRISTOPHER HOLMES, PRO SE, Hudson House, 1712 Summit Avenue, #2, Seattle, WA, 98122, antalfoods@yahoo.com, nelsevman@gmail.com, (206)-898-9744.**

CERTIFICATE OF SERVICE. I, JOEL CHRISTOPHER HOLMES, Appellant in the above-entitled Court of Appeals Case No. 69815-0-I, King County Superior Court No. 12-2-39304-4 SEA, hereby do Certify & Declare: That I Served Mr. Christopher D. Cutting, Attorney-At-Law, Law Offices of Evan Lee Loeffler, PLLC, Loeffler Law Group, 500 Union Street, Suite 1025, Seattle, Washington, 98101, ccutting@loefflerlegal.com, With: one copy of the enclosed Reply Brief of Appellant, No. 69815-0-I, this Day the 22ND of July, 2016. BY: JOEL CHRISTOPHER HOLMES, PRO SE, July 22ND, 2016.

Pro Se

July 22ND 2016

Via U.S. Mail or other methods

Appendix A —

79 Cal.Rptr.2d 248 (1998)
67 Cal.App.4th 743

FOUNTAIN VALLEY CHATEAU BLANC HOMEOWNER'S ASSOCIATION, Plaintiff and Appellant,
v.
DEPARTMENT OF VETERANS AFFAIRS, Defendant and Respondent.
Robert S. CUNNINGHAM, Petitioner,
v.
The SUPERIOR COURT of Orange County, Respondent;
Fountain Valley Chateau Blanc Homeowner's Assoc., Real Party In Interest.

and other (ors).

Nos. G021233, G021948.

Court of Appeal, Fourth District, Division Three.

October 30, 1998.
Rehearing Denied November 30, 1998.
Review Denied January 27, 1999.[*]

250 *250 Fiore, Walker, Racobs and Powers and C. Mark Hopkins, Irvine, for Plaintiff and Appellant and Real Party in Interest.

Arnulfo Hernandez, Jr., Craig L. Stevenson, Elizabeth Carol Wied, Frank Perez Tays and Bruce A. Crane, Sacramento, for Defendant and Respondent Department of Veterans Affairs.

Cameron & Dreyfuss, Santa Ana, Lawrence J. Dreyfuss, Houston, TX, and Alexandria C. Phillips, Santa Ana, for Petitioner and as amici curiae on behalf of Defendant and Respondent Department of Veterans Affairs.

No appearance for Respondent.

OPINION

SILLS, Presiding Justice.

Like Shel Silverstein's proverbial Sarah Cynthia Sylvia Stout, the petitioner in this case, Robert S. Cunningham, would not take the garbage out. So, reminiscent of Sarah's daddy who, in the famous poem would scream and shout, Cunningham's homeowner's association did the modern equivalent. It instituted litigation. The association's theory in essence was that Cunningham's property constituted a fire hazard. Local fire authorities, however, determined that his property posed no fire hazard, either indoors or outdoors. Even so, the lawyers for the homeowner's association wrote letters demanding that he clear his bed of all papers and books, discard "outdated" clothing, and remove the papers, cardboard boxes and books from the floor area around his bed and dresser. Books that were "considered standard reading material" could, however, remain in place.

Cunningham is a senior citizen who suffers from Hodgkins' disease. The letter from the association's lawyers was, in essence, a demand backed up by threat of litigation telling him to straighten up his own bedroom. So Cunningham found a lawyer and sued the association by filing a cross-complaint for invasion of the right to privacy and breach of the homeowner's association's covenants, conditions and restrictions (commonly referred to as "CC & R's").

251 *251 The association's original complaint against Cunningham was soon settled; Cunningham agreed to abide by the rules. His cross-complaint against the association, by contrast, went to trial, with the issue being the *reasonableness* of the association's conduct after the litigation started. The trial was bifurcated between liability and damage phases, and

the jury found in favor of Cunningham on the liability issue. However, before the damage phase could be heard, the trial judge granted the association's new trial motion, stating he believed the association had acted reasonably. And he went on to say that he would keep on granting new trial motions as long as the jury returned liability verdicts for Cunningham. Cunningham then petitioned for a writ to set aside the new trial order, which we now grant.

Treating the new trial order as what it *really* was—a judgment notwithstanding the verdict—it cannot stand. The association's behavior, in particular the sheer presumption of telling Cunningham what sort of reading material he could keep in his own home, was easily the sort of conduct that the jury could find was unreasonable and beyond the association's rights as stated in the CC & R's. We hasten to add, however, that this is all we decide. We do *not* hold that a letter from the lawyers for a homeowner's association threatening litigation unless an adult cleans up his or her own room is necessarily actionable. That issue has not been briefed. It is enough for the moment that we merely hold that, given the actual CC & R's involved, the demands set forth in the letter were *unreasonable.*

The homeowner's association also sued the Department of Veterans Affairs, hoping to make it also responsible to clean up what it perceived to be Cunningham's mess. The trial judge ruled in favor of the Department on that one, holding that it was, in *substance,* a lender, not an owner. We affirm the judgment in favor of the Department because the applicable statute, Civil Code section 2920, also looks to substance over form.

FACTS

Robert Cunningham bought an attached home subject to the CC & R's of the **Fountain Valley Chateau** Blanc Homeowner's Association with the help of the Department of Veterans Affairs. The deal was structured as a traditional land sale installment contract, with the Department taking title and entering into a recorded contract with Cunningham which showed him as the real purchaser of the property.

In September 1993 a roofing contractor hired by the association complained that he could not maneuver his equipment in Cunningham's backyard due to "debris" there. That, and some previous complaints by neighbors, generated a letter from the association's lawyers demanding Cunningham not only clear his patio, but also open up the interior of his unit because there had been reports of fire hazards inside.

In November 1993 Cunningham allowed association representatives to inspect his home—albeit under threat of litigation. After the inspection Cunningham removed a number of personal items from the house.

On December 9, 1993, the association returned for another inspection and decided Cunningham still had not removed enough of his belongings. That inspection generated another letter threatening litigation.

Litigation came on March 14, 1994, based on alleged fire and safety hazards arising from the junk and paper stored in and about Cunningham's home. The association named both Cunningham and the Department as defendants.

In May 1994, however, housing code and fire inspectors found no hazardous conditions on the property. Still, the association continued with the litigation. And in early February 1995, the association's attorneys wrote a lengthy letter to Cunningham detailing the inadequacies of Cunningham's housekeeping and demanding he undertake a number of actions concerning the *interior* of his home. He was told to:

— Clear his bed of all paper and books.

— Remove paper, cardboard boxes and books from the floor area around his bed and dresser.

252 *252 — Remove all boxes and papers not currently in use in the living room and dining room because they increased the risk of fire.

— Clear all objects, including cardboard boxes, from his interior stairs and stairwells to allow passage.

— Not use his downstairs bathroom for storage.

— Maintain a functioning electrical light in his downstairs bathroom.

On top of these demands, the letter contained this statement: "The Association suggests that all outdated clothing that has not been worn in the last five years be removed and/or donated to the Salvation Army or similar organization. This would allow the upstairs bathroom to be used for what *[sic]* designed for. Any other remaining clothes could be stored in a walk-in closet." The letter further told Cunningham that "[b]ooks that are currently in book shelves, and which are considered standard reading material, can remain in place." It ended by reminding him that the association's attorney fees had reached over $34,000 and were continuing.

Cunningham has Hodgkins' disease and had been, up to that point, representing himself. In February 1996, however, he found an attorney who agreed to represent him. His new attorney then obtained leave to file a cross-complaint against the association based on a variety of causes of action, including violations of the right to privacy, trespass, negligence and breach of contract, predicated on the association's use of the threat of litigation to gain entry to his home and force him to throw out various of his personal belongings. What the association had characterized as "debris" now had a name: "furniture, magazines, books, appliances, bookshelves, plants, bicycles, camping equipment and other personal items."

The complaint eventually was settled in August 1996, with Cunningham stipulating he was subject to the association's CC & R's and agreeing to such things as keeping his patio clean, maintaining reasonable access through his garage, and not storing gasoline or kerosene in the interior of the residence.

The complaint against the Department then went to a bench trial in September 1996, with judgment entered in favor of the Department in December 1996. The judgment declared that the Department was *not* the legal owner of the property or responsible for compliance with the CC & R's. The association then timely appealed from that judgment.

Meanwhile, Cunningham's cross-complaint against the association had been first bifurcated into liability and damage portions, with the liability portion tried separately in March 1996. During the trial, the judge *denied* the association's requests for a nonsuit and directed verdict, stating there *was* sufficient evidence for the case to go to the jury. The case went to the jury on an instruction asking it to determine the reasonableness of the association's "activities toward the plaintiff in regard to its alleged requests and/or demands to plaintiff for the removal of items from inside the residence" during the period June 14, 1994 through May 1996. The jury was then told that the association acted reasonably if Cunningham's activities "actually posed an unreasonable risk of fire danger" or if it "sincerely, though mistakenly, believed, under the circumstances known to it, that [Cunningham's] residence constituted an unreasonable risk of fire danger." On the other hand, the jury could find that the association was unreasonable if "no reasonable person" would have "believed under the circumstances known at the time" that Cunningham's residence "posed an unreasonable risk of fire danger."

On March 12, 1997 the jury returned a verdict in favor of Cunningham on the liability issue, having specifically found that the association had acted unreasonably. Less than a month later, the association responded with a motion for judgment notwithstanding the verdict or, in the alternative, for new trial.

On May 6, the trial judge stated that he believed the association acted "totally reasonably" and therefore he would "breach the pure law" and grant the new trial motion even though the damages phase had not yet been tried. Such a trial would be a "complete waste of time." Indeed, said the trial court, "if we try it again on the same facts, *253 you can look for the same ruling." The court set a new trial for November 1997. Cunningham petitioned for a writ commanding the trial court to set aside the new trial order. We consolidated the writ proceeding with the association's appeal from the judgment in favor of the Department of Veterans Affairs.

DISCUSSION

A Trial Court Cannot Grant a Judgment Notwithstanding the Verdict By

Perpetually Granting New Trial Motions

At the outset we must confront a serious anomaly in California's procedural law regarding attacks on decisions made by juries. Typically, if a defendant believes that the plaintiff has not presented substantial evidence to establish a cause of action, the defendant may move for a nonsuit if the case has not yet been submitted to the jury, a directed verdict if the case is about to be submitted, or a judgment notwithstanding the verdict (jnov) following an unfavorable jury verdict.

While made at different times, the three motions are analytically the same and governed by the same rules. (See *Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 327, 274 Cal.Rptr. 766 ["different aspects of the same judicial function and have long been held to be governed by the same rules"].) The function of these motions is to prevent the moving defendant from the necessity of undergoing any further exposure to legal liability when there is insufficient evidence for an adverse verdict. (E.g., *Reynolds v. Willson* (1958) 51 Cal.2d 94, 99, 331 P.2d 48.) Put another way, the purpose of motions for nonsuit, directed verdicts and jnovs is to allow a party to prevail as a matter of law where the relevant evidence is *already in.*

And naturally, given the constitutional right to jury trial and a policy of judicial economy against willy-nilly disregarding juries' hard work (even, in the case of a motion for nonsuit, the work of the jury in listening to the case up to that point), the basic rules regarding these motions are predictably strict. Conflicts in the evidence are resolved *against* the moving defendant and in favor of the plaintiff; all reasonable inferences to be drawn from the evidence are drawn against the moving defendant and in favor of the plaintiff. (See, e.g., *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291, 253 Cal.Rptr. 97, 763 P.2d 948 [for nonsuit, "`every legitimate inference which may be drawn from the evidence'" should be drawn in plaintiffs favor, and the evidence should be evaluated "`in the light most favorable to the plaintiff "]; *CC-California Plaza Associates v. Poller & Goldstein* (1996) 51 Cal.App.4th 1042, 1050-1051, 59 Cal.Rptr.2d 382 [`"A nonsuit or a directed verdict may be granted "only when, disregarding conflicting evidence and giving to plaintiffs evidence all the value to which it is legally entitled, herein indulging in every legitimate inference which may be drawn from that evidence, the result is a determination that there is no evidence of sufficient substantiality to support a verdict in favor of the plaintiff if such a verdict were given.""]; *Hansen v. Sunnyside Products, Inc.* (1997) 55 Cal.App.4th 1497, 1510, 65 Cal.Rptr.2d 266 [for judgments notwithstanding the verdict, "`"[i]f there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied""].)

By contrast, the motion for a new trial has a different purpose. As the Supreme Court noted in the famous case of *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 458-459, 20 Cal.Rptr. 321, 369 P.2d 937, the function of a new trial motion is to allow a *reexamination* of an issue of fact.

The difference in purpose means a difference in standards. Unlike nonsuits, directed verdicts, and judgments notwithstanding the verdict—we will call these the "dispositive" motions—granting a new trial does not entail a victory for one side or the other. It simply means the reenactment of a *process* which may eventually yield a winner. Accordingly, the judge has much wider latitude in deciding the motion (e.g., *Jones v. Evans* (1970) 4 Cal.App.3d 115, 121, 84 Cal.Rptr. 6), which is reflected in an abuse of discretion standard when the ruling is reviewed by the appellate court. A
254 new trial motion allows a *254 judge to disbelieve witnesses, reweigh evidence and draw reasonable inferences contrary to that of the jury, and still, on appeal, retain a presumption of correctness that will be disturbed only upon a showing of manifest and unmistakable abuse. (*Mercer v. Perez* (1968) 68 Cal.2d 104, 112, 65 Cal.Rptr. 315, 436 P.2d 315.) Hence, given the latitude afforded a judge in new trial motions, orders granting new trials are "infrequently reversed." (*Id.* at p. 113, 65 Cal.Rptr. 315, 436 P.2d 315.)

Now here is the anomaly. The reason for the "dispositive" motions is that the plaintiff cannot win, because the plaintiff has presented insufficient evidence to support a favorable judgment. Yet a new trial motion may *itself* be based on insufficient evidence to support a favorable judgment. (Code Civ. Proc., § 657, clause 6 ["for any of the following causes ... :[¶] 6. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law."].) Moreover, even though there are some extra requirements on the judge before he or she may grant a new trial on insufficient evidence,[1] the fact remains that the trial judge may, in granting such a motion, draw inferences and resolve

conflicts in the evidence different from that of the jury. (E.g., *Widener v. Pacific Gas & Electric Co.* (1977) 75 Cal.App.3d 415, 440, 142 Cal.Rptr. 304 ["'In passing upon a motion for a new trial made upon the ground of insufficiency of the evidence the trial judge is required to weigh the evidence; and in doing so he may disbelieve witnesses and draw inferences contrary to those supporting the verdict.'"].) Accordingly, it is natural to ask, if a trial judge is convinced that a litigant has no substantial evidence to justify a favorable judgment, why take the hard and narrow road of granting one of the dispositive motions with the attendant stringent standard of review when he or she can take a much easier and wider path by granting a new trial?

The answer is this: Inherent in the new trial statute is the following, but unstated, premise: When a trial judge grants a motion for new trial based on insufficiency of the evidence, it is *not* because the judge has concluded that the plaintiff *must* lose, but only because the evidence in the trial that actually took place did not justify the verdict.[2] Evidence might exist to justify the verdict, but for some reason did not get admitted; perhaps the plaintiffs attorney neglected to call a crucial witness or ask the right questions. *There is still the real possibility that the plaintiff has a meritorious case.* Indeed, such a conclusion is a simple corollary from the observation of our Supreme Court in the venerable *Auto Equity* decision that the essential function of the new trial is to *re-examine* the evidence. (*Auto Equity Sales, Inc. v. Superior Court, supra,* 57 Cal.2d at pp. 458-459, 20 Cal.Rptr. 321, 369 P.2d 937.) At the same time, misuse of a new trial motion as a *dispositive* motion renders surplusage the Legislature's provisions for nonsuits, directed verdicts, and judgments notwithstanding the verdict. (See Code Civ. Proc., §§ 581c, 629-630 [providing respectively for dispositive motions].)

It is true that we might analyze the judge's grant of a new trial prior to the trial of the damages issue as a simple error of prematurity. The trial judge himself appears to have recognized that he was legally incorrect—"breach the pure law" was the telltale phrase—in not waiting for the damages phase to be completed.[3]

255 *255 But that wasn't the real error. The real error was misusing a motion for new trial as a de facto dispositive motion; the trial court signaled its intention by stating on the record that plaintiff could *never* prevail given the reasonableness of the defendant's position.[4] Moreover, the trial court pointed to no problem in the process of the trial which warranted a retrial.[5] The bottom line is that the judge might as well have said the association acted reasonably *as a matter of law* and given judgment for the defendant there and then.

We will therefore *not* review the trial judge's new trial decision according to the usual abuse of discretion standard. It is clear from the record that the granting of the motion was a de facto judgment notwithstanding the verdict, and we will review the order according to those standards.[6] This resolution is important, because it means that we must conclude the jury rejected the association's "sincere-though-mistaken" belief in the fire danger posed by Cunningham's unit, and that, as a matter of the technical minutia of combustibility, no reasonable person would believe there really was a risk of fire.

There is precedent for looking to the substance of a new trial motion rather than just its title. In *Jean v. Collins Construction Co.* (1963) 215 Cal.App.2d 410, 30 Cal.Rptr. 149 the defendant moved for nonsuit. The motion was granted, then the plaintiff moved for a new trial on the ground that granting the nonsuit was error. *That* motion was also granted. On appeal, the court looked to the *substance* of the so-called new trial motion and determined it wasn't a new trial motion after all, but simply a request to reconsider the earlier nonsuit. (*Id.* at p. 414, 30 Cal. Rptr. 149.) Along the same lines, we will treat the trial judge's order as what it really was: the granting of a judgment notwithstanding the verdict. In that sense, this writ proceeding has the *substance* of an appeal from such a judgment.

It Cannot Be Said That the Association Acted Reasonably As a Matter of Law

The association argues it was perfectly reasonable for the trial judge to grant a motion for new trial after the completion of the liability phase because the trial judge decided "all issues" of liability against Cunningham. As we have pointed out above, the logical implication of this argument is that the trial judge did not, in substance, grant a new trial motion but a

de facto judgment notwithstanding the verdict.

While we must pass on the propriety of the judge's decision to grant the de facto jnov, we stress that there are at least two issues which we expressly do not decide in this proceeding: (1) Whether the association can be held liable for gaining access and ostensible voluntary removal of property through no more than a *threat* of *court proceedings.* (I.e., whether the mere specter of lawful resort to the courts can ever be the kind of "coercion" that would violate the CC & R's.) 256 (2) Whether the jury should have even decided *256 the question of whether the association's actions were *reasonable.* It is, of course, one thing for the jury to determine, as factual matters, that there really was no fire danger posed by Cunningham's unit, or that the association *actually believed* in a fire danger. Those are matters of fact. It is another to allow *the jury* (as distinct from the judge) to make the *ultimate* call that, at the end of the day, the association acted "unreasonably." However, because the association has not raised these specific points in its defense, we do not address them.

Turning then to what we must decide, we begin with the now established fact that there was no actual fire danger that a reasonable person would perceive—the relevant city departments had, after all, found no fire hazard. Further, the association did not have a good faith, albeit mistaken, belief in that danger. The jury resolved those questions against the association and, in what is really an appeal from a judgment notwithstanding the verdict, those are the operative facts.

In light of those operative facts, it is virtually impossible to say the association acted reasonably. It is true the CC & R's require "owners" to "maintain the interiors of their residential units and garages, including the interior wall, ceilings, floors and permanent fixtures and appurtenances in a clean, sanitary and attractive condition."[7] It is also true that they provide for entry by the board "when necessary in connection with maintenance, landscaping or construction for which the board is responsible."[8] But these sections of the CC & R's cannot reasonably be read to allow an association to dictate the amount of clutter in which a person chooses to live; one man's old piece of junk is another man's *objet d' art.* The association's rather high-handed attempt to micromanage Cunningham's personal housekeeping—telling him how he could and could not use the interior rooms of his own house—clearly crossed the line and was beyond the purview of any legitimate interest it had in preventing undesirable external effects or maintaining property values.

Particularly galling to us—and clearly to the jury as well—was the presumptuous attempt to lecture Cunningham about getting rid of his old *clothes,* the way he kept his own bedroom, and the kind of "reading material" he could have.[9] To obtain some perspective here, we have the spectacle of a homeowner's association telling a senior citizen suffering from Hodgkin's Disease that, in effect, he could not read in his own bed![10] When Cunningham bought his unit, we seriously doubt that he contemplated the association would ever tell him to clean up his own bedroom like some parent nagging an errant teenager.

If it is indeed true that homeowner's associations can often function "as a second municipal government" (*Chantiles v. Lake Forest II Master* ***Homeowners*** *Assn.* (1995) 37 Cal.App.4th 914, 922, 45 Cal.Rptr.2d 1), then we have a clear cut case of a "nanny state"— nanny in almost a literal sense—going too far. The association's actions flew in the face of one 257 of the most ancient precepts of *257 American society and Anglo-American legal culture. "A man's house is his castle" was not penned by anonymous, but by the famous jurist Sir Edward Coke in 1628.[11]

The jury could thus find that the association did not act reasonably under the circumstances (and that is all we decide). The de facto judgment notwithstanding the verdict masquerading as a new trial order therefore must be the de facto equivalent of reversed. The case must now proceed to damages.

The Department of Veterans Affairs Was Indeed a Lender, Not an Owner, and Therefore Not Bound By The CC & R's

Cunningham purchased his home through the *state* "Cal-Vet" program enacted after World War I—not to be confused with the traditional "G. I. Loan" program operated by the federal government. (See generally *Department of Veterans*

Affairs v. Duerksen (1982) 138 Cal.App.3d 149, 155, 187 Cal.Rptr. 832.)[12] The Cal-Vet program (see Mil. & Vet.Code, § 987.50 et seq.)[13] is specifically targeted at California veterans. (See generally *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 4 Cal.Rptr.2d 826, 824 P.2d 632 [holding that conditioning program on California residency at a "fixed point in the past" violated the federal equal protection clause].) The program is funded by general obligation bonds. (Former § 987.567.)

In keeping with its early 1920's enactment, and in contrast with the federal program (in which the Department of Veterans Affairs guarantees loans to buy homes), the state program operates by having the Department of Veterans Affairs *take title* to the home the veteran seeks to buy, with the veteran entering into a long term installment contract with the Department at a low rate of interest. (*Id.* at p. 151, 187 Cal.Rptr. 832; see §§ 987.69, 987.51.) The device of taking title allows the Department to assure that a veteran or a member of his or her family will actually reside on the property until the loan is paid off or the property is sold. (See *Nadler v. California Veterans Board* (1984) 152 Cal.App.3d 707, 712, 199 Cal.Rptr. 546; § 987.60.) Of course, there are provisions for a waiver of occupancy requirements under certain circumstances, including reentry into active military service. (§§ 987.62-987.63.)

The installment sales contract obligates the veteran to keep the property "in good order and repair all buildings, fences, and other permanent improvements," and maintain insurance. (§ 987.75.) In the same vein, the veteran must pay all taxes and assessments and other charges against the property and keep the buildings on it in "good order and repair," and, if he or she doesn't, the Department has the *discretionary* right to pay the taxes and assessments or even do repair work itself. (§ 987.75; cf. *Brown v. Department of Veterans Affairs* (1986) 178 Cal.App.3d 392, 224 Cal.Rptr. 149 [noting Cal-Vet did not have a duty to procure insurance, but could do so at its discretion and assess the cost to the veteran].)[14]

Because Cal-Vet loans involve land sale installment contracts, they are, as a technical matter, loans enforced by a forfeiture rather than a foreclosure. (*Duerksen, supra,* 138 Cal.App.3d at p. 157,187 Cal.Rptr. 832 ["The simple fact is that the Legislature has, by section 987.77, expressly authorized the Department to force a forfeiture when a veteran breaches his Cal-Vet contract."].) Indeed, the applicable statute, section 987.77, provides for a classic forfeiture remedy. ("All payments theretofore made shall be deemed to be rental paid for occupancy.")

258 However, when read in conjunction with section 2920, subdivision (b) of the Civil *258 Code, it is clear that a Cal-Vet sales contract is still, in reality, a mortgage. That statute provides that "any security device or instrument, other than a deed of trust, that confers a power of sale ... after a breach of the obligation" is a mortgage for purposes of default (see also Civ.Code, § 2924).

As Civil Code section 2920 would lead one to believe, the Department clearly acts as a lender, as distinct from owner, on a Cal-Vet loan. The veteran retains control and actual possession of the property; he or she has all the indicia of ownership except legal title.

Accordingly, we must agree with the trial court that because the Department functions as a lender, not an owner, it is not bound by the CC & R's.[15] The Department only had options against *Cunningham's* poor management of the property, not obligations. The Department did not control how Cunningham kept house, he did. The idea that *it* might be held responsible as a kind of backup enforcement arm to the homeowner's association is simply a makeweight to support a claim against the Department for legal fees.

Our conclusion should hardly serve as some novel legal sunburst. Anyone who has ever bought a home would understand that the true legal substance of the veteran's loan obtained by Cunningham was to make him the owner of the house, with the Department being the lender, even if technical legal title were retained in the Department as a security device. The law always favors substance over form as a general rule in any event (see Civ.Code, § 3528), but here we even have a specific statute, Civil Code section 2920, subdivision (b), which mandates that we look to the substance of an installment sales contract as well. The trial judge was, accordingly, correct in rendering judgment for the Department.

DISPOSITION

The judgment in favor of the Department is affirmed. The Department is to recover its costs on appeal.

Let a peremptory writ of mandate issue directing the trial court to vacate the order granting the association's new trial motion and to enter a new and different order denying the motion, and to proceed with the second half of the bifurcated trial on the issue of damages. Cunningham is to recover his costs.

Because the trial judge predetermined that Cunningham was to lose, we direct the presiding judge of the superior court to reassign the case to another judge for further proceedings. (Code Civ. Proc., § 170.1, subd. (c).)

WALLIN and BEDSWORTH, JJ., concur.

[*] Kennard, J., dissented.

[1] The 10th paragraph of section 657 of the Code of Civil Procedure provides: "A new trial shall not be granted upon the ground of insufficiency of the evidence ... unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision."

[2] The questions arise: Suppose there is evidence to justify the jury's verdict, but the great weight favors the other side? Would granting a new trial be an abuse of discretion because it represented a substitution of the court's view for the jury's? We need not explore these matters. We need only note for the moment that a new trial motion based on insufficient evidence certainly entails the possibility that the plaintiff could still win on retrial.

[3] And in that respect he was right: It is well established hornbook law that a motion for new trial is premature where the plaintiff has prevailed on the liability issue if the motion is made before the damages phase has even commenced (Cal. Rules of Court, rule 232.5 ("Any motion for a new trial following a bifurcated trial shall be made after all the issues are tried ...."); e.g., *Auto Equity Sales, Inc. v. Superior Court, supra,* 57 Cal.2d at pp. 458-459, 20 Cal.Rptr. 321, 369 P.2d 937; *Cobb v. University of So. California* (1996) 45 Cal.App.4th 1140, 1144-1145, 53 Cal. Rptr.2d 71; *Horton v. Jones* (1972) 26 Cal. App.3d 952, 955-956, 103 Cal.Rptr. 399; *Meyser v. American Bldg. Maintenance, Inc.* (1978) 85 Cal.App.3d 933, 937, 149 Cal.Rptr. 808.)

[4] That is because the trial judge said so, clearly, on the record. But what is to prevent a trial judge, bound and determined to wear down one of the litigants, from granting a new trial motion on the ground of insufficiency of the evidence and then discreetly keeping mum? The answer is that the granting of a *second* new trial motion based on insufficient evidence after the plaintiff has again prevailed requires the appellate court to look at the whole record to see if the trial court is up to any sort of unarticulated mischief.

[5] The announced intention to assure that plaintiff never won would mean that granting of the new trial motion in this case would constitute an "abuse" of the trial judge's discretion, even assuming that were the applicable standard.

[6] In support of the grant of the new trial motion, the association makes a "judicial economy" argument, i.e., there is no reason to waste time with a damage trial if the plaintiff must lose anyway. The irony here is that this very argument underscores the essential nature of the motion not as a new trial motion, but as one for a jnov.

[7] Article XIII of the CC & R's states: "The owners shall maintain the interiors of their residential units and garages, including the interior walls, ceilings, floors and permanent fixtures and appurtenances in a clean, sanitary and attractive condition, reserving to each owner, however, complete discretion as to choice of furniture, furnishings and interior decorating and interior landscaping."

[8] Article XIV states: "The Board or its agents may enter any unit when necessary in connection with maintenance, landscaping or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Board, at the expense of the maintenance fund."

[9] At oral argument, counsel for the association was confronted with the letter concerning "appropriate reading material" and what Cunningham could have strewn about his own bed. Counsel conspicuously did not make an argument that the letter was a matter of minimizing combustible materials *qua* combustible materials. Temperatures must, after all, get pretty high before paper starts burning. (Cf. Bradbury, Fahrenheit 451 (1953).)

[10] Or, to give the association the benefit of the doubt, of telling him that he had to limit the amount of books, newspapers and magazines within easy reach when he did read in bed.

[11] Oxford Dictionary of Quotations (1992) at page 209, referencing The Third Part of the Institutes of the Laws of England (1628).

[12] The G.I. Loan program is now set forth at 38 U.S.C. sections 3700 et seq.

[13] All further statutory references are to the Military and Veterans Code unless otherwise noted.

[14] The statute is very clear that the power is discretionary, not mandatory. Section 987.75 provides in pertinent part: "If the purchaser

fails or neglects to pay ... [or] satisfy ... all ... assessments, and all other charges and encumbrances which are a lien upon the property being purchased from the department ... or to keep the buildings ... in good order and repair ... then, in such event, the department *may* pay ... [or] satisfy ... assessments, charges, or encumbrances." (Emphasis added.)

[15] We certainly do not discern any blanket rule, however, that anyone who can be styled in some sense as a "lender" is automatically free of the CC & R's. A much harder case, for example, would be one where a homeowner leased out his or her residence with an option to buy.

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Appendix B - Date of Appellant's "Arrest"

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 12-1-06088-2 SEA
Vs.	)	**JUDGMENT AND SENTENCE FELONY (FJS)**
JOEL CHRISTOPHER HOLMES, Defendant,	)	

I. HEARING

I.1 The defendant, the defendant's lawyer, PRO SE, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court **finds**:
2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 05/13/2013 by jury verdict of:

Count No.: I Crime: Intimidating a Judge
RCW 9A.72.160 Crime Code: 04735
Date of Crime: 11/18/2012 – 12/05/2012 Incident No. _____

Count No.: II Crime: Felony Harassment
RCW 9A.46.020 (1)(2)(b) Crime Code: 00500
Date of Crime: 11/18/2012 – 12/05/2012 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[ ] Additional current offenses are attached in **Appendix A**

RCW 59.12.130

Jury—Actions given preference.

Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions.

[**1891 c 96 § 15**; RRS § 824. Prior: **1890 p 79 § 15**.]

RCW 59.12.030

Unlawful detainer defined.

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW **59.12.040** provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW **59.12.040** provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW **59.12.040** provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW **59.12.040** provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW **59.12.040**. Such person may also be subject to the criminal provisions of chapter **9A.52** RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW **59.18.130**.

[**1998 c 276 § 6**; **1983 c 264 § 1**; **1953 c 106 § 1**. Prior: **1905 c 86 § 1**; **1891 c 96 § 3**; **1890 p 73 § 3**; RRS § 812.]

NOTES:

*Termination of month to month tenancy: RCW **59.04.020, 59.18.200**.*

*Unlawful detainer defined: RCW **59.16.010**.*

RCW 59.18.180

Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of noncompliance—Landlord's remedies.

(1) If the tenant fails to comply with any portion of RCW **59.18.130** or **59.18.140**, and such noncompliance can (a) substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident, and (b) be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter **59.12** RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorneys' fees.

(2) Any other substantial noncompliance by the tenant of RCW **59.18.130** or **59.18.140** constitutes a ground for commencing an action in unlawful detainer in accordance with chapter **59.12** RCW. A landlord may commence such action at any time after written notice pursuant to chapter **59.12** RCW.

(3) If drug-related activity is alleged to be a basis for termination of tenancy under RCW **59.18.130**(6), **59.12.030**(5), or **59.20.140**(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action.

(4) If criminal activity on the premises as described in RCW **59.18.130**(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who was arrested for this activity.

(5) If gang-related activity, as prohibited under RCW **59.18.130**(9), is alleged to be the basis for termination of the tenancy, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action in accordance with chapter **59.12** RCW, and a landlord may commence such an action at any time after written notice under chapter **59.12** RCW.

(6) A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity, for creating an imminent hazard to the physical safety of others, or for engaging in gang-related activity that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW **59.18.380** to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out.

[2011 c 132 § 10; 1998 c 276 § 3; 1992 c 38 § 3; 1988 c 150 § 7; 1973 1st ex.s. c 207 § 18.]

NOTES:

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

159 P.3d 1 (2007)

QUALITY ROCK PRODUCTS, INC., a Washington corporation, and Eucon Corporation, an Idaho corporation, Respondents/Cross-Appellants,

v.

THURSTON COUNTY, a municipal corporation and political subdivision of the State of Washington, and Black Hills Audubon Society, Inc., a Washington nonprofit corporation, Appellants/Cross-Respondents.

No. 34128-0-II.

Court of Appeals of Washington, Division 2.

February 7, 2007.

2 *2 Elizabeth Petrich, Olympia, WA, David Alan Bricklin, Devon N. Shannon, Bricklin Newman Dold LLP, Seattle, WA, for Appellants/Cross-Respondents.

Gregory Jack Dennis, Michael C. Simon, Landerholm, Memovich, Lansverk & Whitesi, Vancouver, WA, David J. Ward, Greenberg Traurig LLP, Phoenix, AZ, Dawn Findlay Reitan, Inslee Best Doezie & Ryder PS, Katherine F. Weber, Bellevue, WA, for Respondents/Cross-Appellants.

PART PUBLISHED OPINION

ARMSTRONG, J.

¶ 1 A **Thurston County** hearing examiner granted a special use permit (SUP) to **Quality Rock Products**, Inc. and Eucon Corporation (collectively "**Quality Rock**") to expand gravel mining operations at their **Thurston County** mine. On review, the Board of **County** Commissioners (Board) remanded the matter to the hearing examiner to determine the proposed use's effect on the Black River. The hearing examiner, after considering a report and testimony from **Quality Rock's** expert, again conditionally approved the SUP. The Board again reversed the hearing examiner's decision and denied
3 the SUP, ruling that **Quality Rock** failed to show that the proposed expansion would have no *3 significant adverse impact on the surrounding environment, specifically the Black River. **Quality Rock** then filed an action under the Land Use Petition Act (LUPA), chapter 36.07 RCW, seeking to reinstate the hearing examiner's decision. **Quality Rock** also sued for damages and attorney fees and sought a declaratory judgment allowing it to operate an asphalt plant at the mine site. The superior court reversed the Board's ruling and reinstated the hearing examiner's decision.

¶ 2 **Thurston County** and the Black Hills Audubon Society now appeal and **Quality Rock** cross-appeals the superior court's order dismissing its claims for damages and attorney fees and its request for a declaratory judgment. We hold that the Board did not err in finding that **Quality Rock** failed to show that the proposed use was consistent with **Thurston County's** comprehensive plan goals and that its proposed use would not significantly impact the Black River. Accordingly, we reverse and reinstate the Board's decision denying the SUP. We affirm the trial court's dismissal of **Quality Rock's** damage and declaratory relief claims.

FACTS

¶ 3 **Quality Rock** owns a 151-acre site in **Thurston County** that is adjacent to a national wildlife refuge's designated boundaries and approximately 500 feet east of the Black River. The area's geological conditions cause the groundwater under **Quality Rock's** site to flow toward and recharge the Black River. **Quality Rock** currently operates a gravel mine on 26 acres of the 151-acre site under a permit the **County** granted to the mine's previous owners. The Department of

Natural Resources has designated those 26 acres as a Mineral Resource Land of Long Term Commercial Significance. The site's remaining 125 acres do not share that designation.

¶ 4 The Washington State Department of Ecology (DOE) lists the Black River as "water **quality** impaired" under section 303(d) of the Clean Water Act. Administrative Record (AR) at 346. Low flows are partially at fault for the Black River's water **quality** impairment. The Black River is one of the last large, intact riparian systems in the Puget Sound area, and the U.S. Fish & Wildlife Service is actively acquiring properties along portions of the Black River to preserve the existing wetland system and the habitat for migratory birds and fish and other species. Because of the Black River's low volume in the summer months, DOE closes the river to any additional water takings from July 1 to September 30. WAC 173-522-050.

¶ 5 Shortly after acquiring the site, **Quality Rock** applied to the **County** for a SUP, seeking to expand its mineral extraction operation from the originally permitted 26 acres to 151 acres, replace a concrete batch plant, install a new asphalt plant, and recycle concrete and asphalt. **Quality Rock** proposed to expand the mine in several phases. In phases one through three, **Quality Rock** plans to excavate above the groundwater table. **Quality Rock** then plans to excavate below the groundwater table in phases four through six. Excavation phases four through six would create a 75-acre lake.

¶ 6 The hearing examiner approved **Quality Rock's** SUP subject to 25 conditions. Condition "Y" of the hearing examiner's first decision stated, "The last three phases of the operation shall be subject to further review including detailed analysis of the impact of groundwater to the site, the aquifer and the Black River. This information shall be presented at a public hearing at the appropriate time." AR at 362. Black Hills appealed the hearing examiner's decision to the Board, and **Quality Rock** appealed certain conditions that the hearing examiner imposed.

¶ 7 After a closed-record appeal, the Board remanded the matter to the hearing examiner with directions for **Quality Rock** to perform a "detailed analysis" of the mine expansion's impact to the groundwater, aquifer, and the Black River. AR at 3223-24. The Board stated that several of the hearing examiner's findings, conclusions, and conditions necessitated remand "for the purpose of conducting a detailed analysis of the impact to the groundwater, aquifer and the Black River, called for in condition Y, prior to the issuance of the SUP, because if there are problems that can't be
4 mitigated it may alter the entire approval of the project which *4 should be done up front and not several years down the road." AR at 3224.

¶ 8 **Quality Rock** hired Pacific Groundwater Group to perform an additional hydrogeological analysis to address the Board's concerns. As part of Pacific Groundwater Group's analysis, it installed four monitoring wells, excavated three pits to examine the upper 18 feet of geologic materials, measured water levels in wells and surface water bodies, measured stream flows at two locations, conducted an aquifer test, developed a groundwater flow model of part of the Ashley Creek[1] groundwater basin, and "assessed effects of aggregate extraction on groundwater and surface water." AR at 41. Robert Mead, the **County's** expert hydrogeologist, concluded that the materials **Quality Rock** submitted, including the Pacific Groundwater Group report, "adequately address the Hearing[] Examiner's issues." AR at 2489.

¶ 9 The hearing examiner's decision on remand incorporated most of the factual findings and all of the conclusions from the first hearing. The hearing examiner entered additional factual findings relating to the Board's concerns and entered conclusions based on those findings. Based on his findings and conclusions, the hearing examiner again approved the SUP, subject to conditions. Black Hills appealed the decision to the Board. **Quality Rock** did not cross-appeal the conditions the hearing examiner imposed in approving its SUP on remand.

¶ 10 The Board again denied **Quality Rock's** SUP, determining that (1) "the proposed location for the gravel mine is not appropriate due to the gravel mining operations' significant adverse impacts on the surrounding sensitive environment[,] ... [and (2)] the proposed gravel mine is not consistent with the comprehensive plan policies on the natural environment." AR at 3229. The Board stated that based on the hearing examiner's findings and the lack of findings regarding impacts to the Black River, the examiner's ultimate conclusion that the project's proposed location was appropriate was not supported by substantial evidence.

¶ 11 **Quality Rock** filed a LUPA petition seeking review of the Board's decision and filed a complaint for money damages and declaratory relief. The trial court reversed the Board and reinstated the hearing examiner's decision. It also denied **Quality Rock's** damages and attorney fee claims, finding that the Board did not arbitrarily, capriciously, or unlawfully reverse the hearing examiner's decisions.

¶ 12 The trial court stated that the hearing examiner was the highest fact finder entitled to deference and that the court "reviews the record to determine if the determination made by the trier is supported by substantial evidence when viewing the record as a whole." Report of Proceedings (RP) at 119. It ruled that "[t]he [B]oard, by failing to take issue with the [Hearing Examiner's] findings of fact, accept[s] those facts as verities." RP at 118. It then determined that, viewing the record as a whole, "the hearing examiner's decision[] ... [is] extensive and ... supported by ... substantial evidence." RP at 119. Additionally, the trial court stated that although the hearing examiner mislabeled some findings of fact as conclusions of law, his conclusions of law were "appropriate applications of the law." RP at 120.

¶ 13 The **County** and Black Hills appeal the trial court's decision. **Quality Rock** cross-appeals the trial court's denial of its damages claims and the court's failure to rule on **Quality Rock's** motion for declaratory judgment.

¶ 14 The principal issue on appeal is whether the Board erred in ruling that **Quality Rock** failed to demonstrate that its proposed use was consistent with the **County's** comprehensive plan's goals and that its proposed special use would not significantly adversely impact the environment.

ANALYSIS

I. STANDARD OF REVIEW

5 ¶ 15 LUPA governs review of land use decisions. *See Wenatchee Sportsmen* *5 *Ass'n v. Chelan **County**,* 141 Wash.2d 169, 175, 4 P.3d 123 (2000). A land use decision is "a final determination by a local jurisdiction's body ... with the highest level of authority to make the determination, including those with authority to hear appeals[] on ... [a]n application for a project permit." RCW 36.70C.020(1)(a). In this case, the Board, functioning as an appellate body, had the **County's** highest level of decision making authority. TCC[2] 2.06.070, .080; TCC 20.60.020 (Table 2). Accordingly, we review the Board's decision, not the hearing examiner's.

¶ 16 We limit our review of the Board's decision to the record before the Board. *HJS Dev., Inc. v. Pierce **County**,* 148 Wash.2d 451, 483-84, 61 P.3d 1141 (2003) (citing *King **County** v. Wash. State Boundary Review Bd.,* 122 Wash.2d 648, 672, 860 P.2d 1024 (1993)). We may grant relief to **Quality Rock**, as the party seeking relief under LUPA, only if **Quality Rock** establishes one of RCW 36.70C.130(1)'s six standards. Under the facts of this case, **Quality Rock** must establish that:

> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
>
> . . .
>
> (d) The land use decision is a clearly erroneous application of the law to the facts;
>
> (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision.

RCW 36.70C.130(b), (d), (e).

¶ 17 Standards (b) and (e) present questions of law that we review de novo, giving deference to the Board's specialized knowledge and expertise. *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assoc's.,* 151 Wash.2d 279, 290, 87 P.3d 1176 (2004) (citing *Isla Verde Int'l Holdings v. City of Camas,* 146 Wash.2d 740, 751, 49 P.3d 867 (2002)); *see also Cingular Wireless, L.L.C. v. **Thurston County**,* 131 Wash.App. 756, 768, 129 P.3d 300 (2006) (citing *HJS Dev., Inc.,* 148 Wash.2d at 468, 61 P.3d 1141).

¶ 18 Under standard (d)'s "clearly erroneous application" test, we apply the law to the facts and overturn the land use decision only if we have a "definite and firm conviction" that the decision maker committed a mistake. *Citizens to Pres. Pioneer Park, L.L.C. v. City of Mercer Island*, 106 Wash. App. 461, 473, 24 P.3d 1079 (2001) (citing *Schofield v. Spokane County*, 96 Wash.App. 581, 586, 980 P.2d 277 (1999)).

II. BURDEN OF ESTABLISHING RCW 36.70C.130(1)'S ENUMERATED ERRORS

¶ 19 Black Hills argues that **Quality Rock**, as the party seeking relief from a land use decision, has the burden of establishing one of RCW 36.70C.130(1)'s enumerated errors on appeal. **Quality Rock** argues that "[i]t is unclear from the case law" whether the party appealing from the highest fact finding level, or the party appealing from an appellate body, bears the burden of proof on appeal. Reply Br. of Respondent at 8. **Quality Rock** maintains that because the **County** and Black Hills lost before the hearing examiner, they bear the burden of proof on appeal, regardless of "whether that appeal is to the [Board], [the] Superior Court, or to this Court." Reply Br. of Resp. at 10. **Quality Rock** is mistaken.

¶ 20 **Quality Rock** bases its position on its belief that "[Black Hills] was the party seeking relief from the land use decision." Reply Br. of Resp. at 9. But as we have discussed, the Board, and not the hearing examiner, entered the land use decision in this case. And RCW 36.70C.130(1) provides potential grounds for relief from a *land use decision*. Here, **Quality Rock** filed a LUPA petition in Mason **County** Superior Court seeking review of the Board's denial of its SUP.

¶ 21 On appeal, the party who filed the LUPA petition bears the burden of establishing one of the errors set forth in RCW 36.70C.130(1), even if that party prevailed on its LUPA claim at the superior court. *See Tahoma Audubon Soc'y v. Park Junction* *6 *Partners*, 128 Wash.App. 671, 681, 116 P.3d 1046 (2005) (citing *Pinecrest*, 151 Wash.2d at 288, 87 P.3d 1176).[3] Thus, although **Quality Rock** partially prevailed before the superior court, it still bears the burden of establishing that one of RCW 36.70C.130(1)'s enumerated standards provides relief from the Board's decision.

¶ 22 In any event, the question of who has the burden of proof is not significant here because we are reviewing a legal decision. To obtain a SUP, **Quality Rock** had the burden of showing that its proposed use complies with the **County's** zoning code. TCC 20.54.040. The zoning code requires that the use comply with the comprehensive plan and that it is appropriate in the proposed location. TCC 20.54.040(1), (3). And this requires a showing that the proposed use will not result in substantial or undue adverse effects on the natural environment. TCC 20.54.040(3)(a). The hearing examiner found that **Quality Rock** had carried its burden of proof. The Board accepted the hearing examiner's findings but disagreed with his legal conclusion that **Quality Rock's** proposal complied with the **County's** zoning code. The question on appeal is whether the Board erred in ruling that **Quality Rock's** evidence failed to establish that its proposed use posed no threat of substantially harming the environment.

III. THURSTON COUNTY'S CODE AND THE BOARD'S DECISION

¶ 23 Under the **Thurston County** Code, "[e]ach zoning district lists special uses that, because of their special impact or unique characteristics, can have a substantial adverse impact upon or be incompatible with other uses of land." TCC 20.54.010. The code also provides a review process for evaluating a proposed special use's location, scale, compatibility with rural character, and development characteristics as well as its impact on adjacent properties and the community as a whole. TCC 20.54.010, .040, .060, .070. Because **county** officials often cannot determine the proposed uses in advance, the **County** requires compliance with general and specific development standards for these special uses as a prerequisite to permit approval. TCC 20.54.010, .040, .070. ("In addition to the specific standards set forth hereinafter with regard to particular special uses, all uses authorized as special uses shall meet the following standards"); *Cingular*, 131 Wash. App. at 775, 129 P.3d 300 (citations omitted). Thus, for the Board to approve its SUP, **Quality Rock** had to meet both the specific standards applicable to mineral extraction and the general standards applicable to all special uses. TCC 20.54.040, .070(21); Chapter 17.20 TCC.

¶ 24 TCC 20.54.040 provides the general standards applicable to **Quality Rock's** proposed project. TCC 20.54.040(1) states that all proposed special uses "shall comply with the **Thurston County** Comprehensive Plan and all applicable federal, state, regional, and **Thurston County** laws or plans." And the general standard in TCC 20.54.040(2) requires " [t]he proposed use [to] comply with the general purposes and intent of the applicable zoning district regulations and subarea plans." Additionally, "[n]o application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed." TCC 20.54.040(3). The decision making authority must base that finding, in part, on the following criteria:

> Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare.

TCC 20.54.040(3)(a).

7 ¶ 25 When the Board remanded this case to the hearing examiner, it asked for a "detailed *7 analysis of the impact to the groundwater, aquifer and the Black River." AR at 3224. **Quality Rock** produced a hydrogeologic analysis report ("report" or "study") and a supplemental report from Pacific Groundwater Group addressing groundwater issues. **Quality Rock** argues that the supplemental report shows that the proposed expansion would have very little impact to water **quality** and quantity.

¶ 26 **Quality Rock** points to a portion of the study that says the resulting 75-acre lake would result in an "estimated reduction in groundwater recharge at the pit lake [of] approximately 5 to 9 [percent] of the current groundwater flow beneath the mine[, which is] equivalent to the withdrawal of a few domestic wells."[4] AR at 2507. The report says that " [i]n comparison to the water budget of the Black River valley, however, the change is extremely small." AR at 2507. Missing from this analysis, however, is any assessment of this withdrawal's effect on the Black River's flow volume, particularly during the peak production, dry summer months.

¶ 27 **Quality Rock** admits that it did not conduct site specific analysis from the area downgradient of the mine, but it maintains that it did not need to because (1) TCC 17.20.200 does not require that data; (2) that data was unnecessary in any event because Pacific Groundwater Group assumed that all water flows through the site into the Black River; and (3) Robert Mead, the **County's** expert hydrogeologist, never requested any such information and deemed the Pacific Groundwater Group studies appropriate and conclusive on all water issues that the Board remanded. **Quality Rock** argues that by "assuming that 100 [percent] of the groundwater flowing through the site reaches the Black River, [Pacific Groundwater Group] projected the maximum impact to that system." Br. of Respondent at 25. Thus, **Quality Rock** argues, "Site specific studies downgradient of the mine were [unnecessary]." Br. of Respondent at 25.

¶ 28 But none of this directly answers the Board's concern about the specific impact the increased mining would have on the Black River. In addressing the problem of increased water evaporation from the new lake, Pacific Groundwater Group concluded that "[i]n comparison to the water budget of the Black River valley, however, the change [from previous evaporation to new] is extremely small." AR at 2507. The Board was clearly looking for more than this. The hearing examiner's findings document the Black River's fragile condition, particularly during the dry months, which are also the high-volume mining months. So sensitive is the river during these months that the State has closed it to further water takings. The Board was properly concerned with knowing the exact impact, as far as science can demonstrate, that the increased mining would have on the river. An "extremely small" conclusion does not meet this concern. Rather, it removes from the Board the ability to decide on its own whether the increased evaporation would significantly impact the river.

¶ 29 In addition, Pacific Groundwater Group did not investigate **Quality Rock's** 5,000 gallon-per-day well presently on the property. **Quality Rock** contends that because the well is legal and it has the right to draw 5,000 gallons per day from it, the **County** lacks authority to regulate, restrict, or prohibit **Quality Rock's** use of the well. **Quality Rock** misses the point. **Quality Rock** had the burden of showing that its expanded operation would not significantly impact the river. And even if some of its present water use would be protected under an expanded mining operation, the Board was entitled to
8 know the impact on the river of present water use combined with new water use. *8 Again, **Quality Rock**, through Pacific

Groundwater Group's study, did not provide the specific information the Board needed to evaluate the total impact.

¶ 30 Finally, **Quality Rock's** failure to present sufficient information on the critical question is reflected in the hearing examiner's findings. The examiner entered findings on the expected effects on neighbors' wells and Ashley Creek, the expected evapotranspiration changes caused by the 75-acre lake, and the general effect to the underlying aquifer. But he made no findings as to the specific effect the project would have on the Black River.

¶ 31 The Board's decision to deny **Quality Rock's** SUP is consistent with TCC 20.54.040(3)(a)'s requirement that the **County** will not grant a SUP without a showing that the proposed special use will not cause substantial adverse impacts to the environment. In ultimately denying **Quality Rock's** SUP application, the Board stated that several of the hearing examiner's factual findings "clearly establish that there is a hydraulic link between the groundwater on site and to the water **quality** impaired Black River[,] ... [and that] the proposal [poses] a significant risk to groundwater." AR at 3230-31. The Board also noted that although it had remanded for study of the impacts to the Black River, "the hearing examiner did not make any findings on impacts to the Black River." AR at 3231. Based on the hearing examiner's findings and the lack of findings addressing impacts to the Black River, the Board ruled that the record did not support the conclusion that the proposed project "will not have an adverse impact on the surrounding environment, including the Black River." AR at 3231.

¶ 32 The Board also explained that the proposed expansion was not consistent with the comprehensive plan's natural environment policies on (1) protecting wildlife habitat for important species and protecting unique and rare habitats, (2) recognizing the hydrologic continuity between ground and surface water, (3) protecting groundwater aquifers, fish and wildlife habitat, and recreational functions of streams, and (4) protecting streams from adverse impacts of activities occurring adjacent to their waters or within their watersheds by avoiding degradation of water **quality**.

¶ 33 **Quality Rock** takes issue with the brevity of the Board's finding with respect to compliance with the comprehensive plan's policies. But the Board's decision lists several of the hearing examiner's factual findings that show inconsistencies between the proposed project and the comprehensive plan's policies on the natural environment. For instance, the Board noted the hearing examiner's findings that (1) the Black River refuge surrounds the subject property, (2) the U.S. Fish & Wildlife Service is actively acquiring properties along the Black River to preserve the existing wetland system that provides a habitat for migratory birds and fish and other species, (3) groundwater beneath the site flows from east to west, toward the Black River, (4) the Black River is water **quality** impaired, and (5) the Black River is considered to be one of the last large, intact riparian systems in the Puget Sound area.

IV. ALLEGED RCW 36.70C.130 ERRORS

1. *Decisions Outside the Board's Authority or Jurisdiction — RCW 36.70C.130(e)*

¶ 34 We may grant **Quality Rock** relief from the Board's decision if **Quality Rock** establishes that the decision "is outside the [Board's] authority or jurisdiction." RCW 36.70C.130(1)(e). **Quality Rock** argues that the Board acted outside of its authority and jurisdiction because the **County's** Mitigated Determination of Nonsignificance (MDNS) was final and binding, and the Board's decision contradicts the MDNS.

¶ 35 **Quality Rock** reasons that because the **County's** responsible official determined that, as mitigated, the project "does not have a probable significant adverse impact upon the environment[,]" the **County** is now "bound by its own final determination that the project did not have probable significant adverse environmental impacts." Br. of Respondent at 29. Citing *Lakeside Indus. v. **Thurston County***, 119 Wash.App. 886, 83 P.3d 433 (2004), and *Wenatchee Sportsmen Ass'n*, 141 Wash.2d 169, 4 P.3d 123, **Quality Rock** contends *9 that the **County's** and Black Hills's failure to appeal the MDNS bars the Board from determining that the project has a significant adverse impact on the surrounding environment. Thus, **Quality Rock** argues, the Board acted outside of its authority and jurisdiction when it disregarded the "binding conclusion" and declared that the project would have "`significant adverse impacts on the surrounding sensitive

environment.'" Br. of Respondent at 29 (quoting CP at 475); *see* RCW 36.70C.130(1)(e).

¶ 36 Neither *Lakeside* nor *Wenatchee Sportsmen Association* stands for the proposition that the failure to appeal an MDNS bars the Board from determining that the project has significant or undue adverse impacts. **Quality Rock** is correct that a party who wants to appeal a SEPA determination, such as an MDNS, must appeal that decision along with the underlying government action subject to SEPA. *State ex rel. Friend & Rikalo Contractor v. Grays Harbor* **County**, 122 Wash.2d 244, 249, 857 P.2d 1039 (1993). But no Washington court has held that a party must appeal a SEPA decision, such as an MDNS, to validate a challenge to the permit itself.

¶ 37 The MDNS is a "threshold determination." AR at 631. The MDNS expressly notes that "[t]he issuance of this Determination of Nonsignificance does not constitute project approval. The applicant must comply with all applicable requirements of **Thurston County** Departments and/or the Hearing Examiner prior to receiving permits." AR at 631. Moreover, the MDNS requires **Quality Rock** to obtain a SUP. And to get the SUP, **Quality Rock** had to show that its proposed use would not result in substantial or undue adverse affects to the natural environment. TCC 20.54.040(3)(a). The **County** issued the MDNS without access to most of the information that the hearing examiner and the Board ultimately based their decisions on. For instance, **Quality Rock's** response to the environmental checklist that it completed to obtain the MDNS did not even identify the Black River as a surface water body in the proposed expansion's vicinity. The MDNS did not bind the Board to a determination that the proposed expansion would not result in significant adverse impacts to the natural environment.

2. *Clearly Erroneous Application of the Law to the Facts — RCW 36.70C.130(1)(d)*

¶ 38 Under LUPA, we may grant **Quality Rock** relief from the Board's decision if **Quality Rock** establishes that the decision "is a clearly erroneous application of the law to the facts." RCW 36.70C.130(1)(d).

¶ 39 **Quality Rock** argues that the Board misapplied the law to the facts because the Board applied the wrong criteria in denying **Quality Rock's** SUP. Specifically, **Quality Rock** maintains that the Board erroneously applied TCC 20.54.040(3)'s "appropriate location" criteria to the facts when the Board concluded that the proposed expansion would result in "significant adverse impacts" rather than "substantial or undue adverse effects," per TCC 20.54.030(3)(a).

¶ 40 In denying **Quality Rock's** SUP, the Board stated that "the proposed location for the gravel mine is not appropriate due to the gravel mining operations' significant adverse impacts on the surrounding sensitive environment." AR at 3229. The Board also stated that "the proposed gravel mine is not consistent with the comprehensive plan policies on the natural environment," that "the proposal does pose a significant risk to groundwater," and that "the hearing examiner's ultimate conclusion that the proposed location of the project is appropriate and that the project will not have an adverse impact on the surrounding environment, including the Black River, and community is not supported by the evidence in the record." AR at 3229, 3231.

¶ 41 The Board's statements adequately convey the Board's basis for denying the SUP. Further, TCC 20.54.040(3) does not require the Board to use the exact phrase "substantial or undue adverse effects" in explaining its decision. And the Board's language accurately reflects its core decision that **Quality Rock** failed to show the absence of a substantial
10 adverse or harmful impact to the environment. **Quality Rock** has not persuaded us that the Board clearly misapplied *10
the law. *Mercer Island*, 106 Wash.App. at 473, 24 P.3d 1079 (citing *Schofield*, 96 Wash. App. at 586, 980 P.2d 277).

3. *Erroneous Interpretation of the Law — RCW 36.70C.130(1)(b)*

¶ 42 As previously mentioned, we may grant **Quality Rock** relief from the Board's denial of its SUP if **Quality Rock** establishes that the Board's decision "is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise." RCW 36.70C.130(1)(b).

¶ 43 **Quality Rock** contends that the Board erroneously interpreted the law when it concluded that the hearing examiner's mitigating conditions were inadequate. But the heart of the Board's decision was that **Quality Rock** failed to show the project's true impact of its proposed SUP on the Black River. And if the Board did not know the full impact, it could not test the adequacy of the hearing examiner's mitigating conditions. Thus, because **Quality Rock** failed to provide an accurate measure of the risk, the Board did not err in rejecting mitigating factors.

¶ 44 A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur: HOUGHTON, C.J., and HUNT, J.

[1] Ashley Creek is a stream that flows through a portion of **Quality Rock's** property and empties into the Black River.

[2] **Thurston County** Code.

[3] **Quality Rock's** attempt to distinguish *Tahoma Audubon*, 128 Wash.App. 671, 116 P.3d 1046, on the ground that no Board reviewed the hearing examiner's decision fails because there the losing party before the hearing examiner filed a LUPA petition in the superior court. *Tahoma Audubon*, 128 Wash.App. at 677, 116 P.3d 1046. The court stated that "burden [of establishing one of the errors set forth in RCW 36.70C.130(1)] remains with the petitioning party on appeal, even if that party prevailed on its LUPA claim." *Tahoma Audubon*, 128 Wash.App. at 677, 116 P.3d 1046 (citing *Pinecrest*, 151 Wash.2d at 288, 87 P.3d 1176). **Quality Rock** filed the LUPA petition; it is the petitioning party.

[4] The **County** and Black Hills criticize the analysis because Pacific Groundwater Group compared the new lake evapotranspiration rate with a forested land's evapotranspiration rate. The area is not forested and more water flows through bare land than forested land to an underlying aquifer. Pacific Groundwater Group used the forested land comparison, assuming that the land would be returned to a vegetated state "after mining is completed." AR at 2503. The **County** and Black Hills point out that Pacific Groundwater Group's estimated loss to the aquifer is low because of this. Moreover, **Quality Rock** may not be complete with the mining for years.

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54 Wn. App. 371 (1989)
773 P.2d 875

MEADOW PARK GARDEN ASSOCIATES, Respondent,

v.

VALINDA CANLEY, Petitioner.

No. 12086-1-II.

The Court of Appeals of Washington, Division Two.

June 8, 1989.

E. Jane Molt of *Puget Sound Legal Assistance,* for petitioner.

Patrick O'Malley, for respondent.

Paul J. Lawrence, amicus curiae.

PETRICH, A.C.J.

Valinda Canley appeals the trial court's order, in an unlawful detainer action, directing that the issue of the immediate right to possession be resolved in a show cause hearing by the court sitting without a jury.

372 *372 The order appealed from is not an appealable order. RAP 2.2(a). Nevertheless, we accepted the matter as one for discretionary review. RAP 2.3.

The issue on appeal is whether a residential tenant in an unlawful detainer action who disputes the allegations of a breach of his or her lease is entitled to a jury trial at the initial stage of an unlawful detainer action to determine the right of possession pending the lawsuit. We are satisfied that although one is entitled to a jury trial on contested issues in an unlawful detainer action including the ultimate issue of possession, one is not entitled to a jury trial on the issue of the initial right of possession pending the lawsuit. Accordingly, we affirm.

Valinda Canley was a tenant at Meadow Park Garden Apartments, where rents are subsidized by the United States Department of Housing and Urban Development. According to federal regulations, a landlord may not terminate any tenancy in a subsidized project unless there is material noncompliance with the lease or other good cause. 24 C.F.R. § 247.3.

In February 1987, Ms. Canley received a notice of material noncompliance with the terms of her tenancy apprising her that she might be subject to an unlawful detainer action if the noncompliance continued. Noncompliance was premised on charges that, contrary to the rules, she allowed another female companion to live with her and that the sound volume of her stereo player disrupted other tenants. In March 1987, Meadow Park filed an unlawful detainer action against Ms. Canley, and a Commissioner issued a writ of restitution after a hearing. On a motion to revise, Canley claimed she was at a disadvantage because she was not advised that the Commissioner would consider oral testimony and was unprepared to meet the oral testimony presented by Meadow Park. She also contended that she was entitled to a jury trial on the hotly disputed issue of whether she was in material noncompliance before a writ of restitution could be issued.

373 *373 Upon review, the Superior Court Judge agreed that Canley was entitled to notice that oral testimony would be considered at a hearing on show cause to determine the right to immediate possession, and ordered a new hearing.[1] However, the Judge ruled that she was not entitled to a jury trial on the issue of immediate possession pending the lawsuit.

Canley challenges the order on review claiming that it deprived her of her *statutory* right to a jury trial. Two sets of statutes are involved: the unlawful detainer statutes, RCW 59.12, and the Residential Landlord-Tenant Act of 1973, RCW 59.18. The Residential Landlord-Tenant Act of 1973 embraces certain aspects of the unlawful detainer statutes with respect to rights of possession between the landlord and the tenant when there is a claimed substantial breach of the rental agreement. RCW 59.18.180. However, the act modifies the procedures for obtaining a writ of restitution in unlawful detainer actions involving residential properties. While the unlawful detainer act allows the landlord to obtain a writ of restitution restoring him to the premises by an ex parte order upon filing of a bond, the Residential Landlord-Tenant Act of 1973 requires a show cause hearing. *See* RCW 59.12.090; RCW 59.18.370.

[1] We agree with petitioner that RCW 59.18.380 is the critical statute. A careful examination of the statute shows that it does not support the petitioner's claim to the right to a jury trial regarding possession pending the lawsuit.[2]

374 *374 First a show cause hearing is held where the plaintiff's motion for a writ of restitution is heard and the defendant is allowed to assert legal or equitable defenses or setoffs. Next, the court examines the parties and witnesses. If the *court* finds that the plaintiff has the right to repossess the property it will enter an order directing issuance of the writ. The writ will be issued only after the landlord posts a bond conditioned on prompt prosecution of the action and payment of all costs and damages to the tenant as a result of a wrongfully issued writ. The *court* must also direct that the matter proceed to trial in the usual manner. If the *court* finds that the plaintiff does not have the right to repossess the property it will enter an order directing the parties to proceed to trial within 30 days of the complaint and answer.

At the show cause hearing stage, the statute makes no reference to a trial by the jury. It 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. In either case the court directs the parties to proceed to trial. Subject to the provisions of CR 38 and CR 39, the trial may be by a jury. Thompson v. Butler, 4 Wn.
375 App. 452, 454, 482 P.2d 791, *review denied,* 79 Wn.2d 1004 (1971). In the event a preliminary writ had been *375 issued and after trial, the jury, or the court when trial is to the court, finds for the dislodged tenant, the tenant could be restored to the property. In any event, the plaintiff landlord and his bond would be liable for costs and damages suffered by the tenant because of the wrongful issuance of the writ.

Canley mistakenly relies on RCW 59.18.410 to support her claim to the right to a jury determination as to whether the writ will issue pending the lawsuit. The statute provides in part: "If upon the trial the *verdict of the jury* or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff ..." (Italics ours.) RCW 59.18.410. She argues that the language of the statute clearly shows that all phases of the unlawful detainer action are subject to a jury trial where issues are contested.

[2] We apply the general rules of statutory construction to interpret RCW 59.18.380 and RCW 59.18.410. Whenever possible, a court will harmonize and give effect to all statutory provisions applying to a particular subject. Harmon v. Pierce Cy. Bldg. Dep't, 106 Wn.2d 32, 36, 720 P.2d 433 (1986). The trial referred to in RCW 59.18.410 is the trial that occurs after the writ is issued or after the court denies the writ and orders the parties to proceed to trial. The hearing on the motion is not the trial contemplated in RCW 59.18.410. To hold otherwise would substantially disrupt the judges' traditional function of resolving motions. Therefore, no jury trial is provided for at the initial stage; we will not read into a statute matters which are not there. King Cy. v. Seattle, 70 Wn.2d 988, 991, 425 P.2d 887 (1967).

[3] Petitioner alludes in argument that she is afforded a right to a jury trial under article 1, section 21 of the Washington Constitution. This constitutional provision guarantees those rights to trial by jury that existed at the time of the adoption of the Washington Constitution. In re Marriage of Firchau, 88 Wn.2d 109, 114, 558 P.2d 194 (1977). At the time of the
376 adoption of the Washington Constitution, the Code of 1881 provided for a jury trial in unlawful *376 detainer actions. Code of 1881, § 1838. However, the trial contemplated by the 1881 code was that trial which ultimately decided the rights of the parties in the unlawful detainer action.

Summary proceedings to recover possession of real property pending the lawsuit were first enacted in 1890, a few months after the adoption of the Washington Constitution (Laws of 1889, p. 73-81). The 1890 statutes, like the statutes

now in effect, allowed the judge alone to issue a writ of restitution restoring the property to the plaintiff pending the lawsuit (Laws of 1889, § 9, p. 77). The writ would not issue unless the plaintiff posted a bond covering the costs to the defendant in the event the writ was wrongfully issued (Laws of 1889, § 9, p. 77).

Both the 1890 statute and RCW 59.18 allow the plaintiff to obtain a writ of restitution and to gain immediate possession prior to the ultimate trial whether it be to the court or jury. However, neither statute interferes with the right to the jury trial as guaranteed by the Washington Constitution. Both statutes provide for a trial by jury on the ultimate issues of the unlawful detainer action as such rights existed at the time the constitution was adopted. The summary proceedings were adopted by the Legislature in 1890 to expedite the decision as to who should possess the property while the unlawful detainer action is pending.

The Washington Constitution does not require a jury trial on the issue of immediate possession pending the lawsuit. The Washington Constitution is not offended because the right to a jury is preserved in the trial on the ultimate issues in the unlawful detainer action.

Meadow Park Garden Association has requested its attorney's fees on appeal. The request is denied since respondent has failed to file the detailed fee affidavit required by RAP 18.1(c). *See* Kreidler v. Eikenberry, 111 Wn.2d 828, 766 P.2d 438 (1989).

377 *377 Affirmed.

REED and WORSWICK, JJ., concur.

Reconsideration denied September 1, 1989.

[1] At the new show cause hearing, the Commissioner determined there was a breach of the lease and rules of the complex amounting to material noncompliance and granted to Meadow Park a writ of restitution pending the lawsuit.

[2] RCW 59.18.380 in pertinent part provides:

"At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution ... *Provided further,* That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

"If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer...."

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109 P.3d 422 (2005)
126 Wash.App. 382

HOUSING AUTHORITY OF the CITY OF PASCO AND FRANKLIN COUNTY, Respondent,
v.
Ianthia PLEASANT, Appellant.

No. 22687-5-III.

Court of Appeals of Washington, Division 3, Panel Seven.

March 15, 2005.

424 *424 George Fearing, Attorney at Law, Kennewick, WA, for Appellant.

Kenneth J. Diamond, Lisa Marie Vanderford-Anderson, Attorneys at Law, Seattle, WA, for Respondent.

SCHULTHEIS, J.

¶ 1 Ianthia Pleasant was evicted from public housing administered by the Housing Authority of the City of Pasco and Franklin County (Housing Authority) for lease violations. In the Housing Authority's ensuing unlawful detainer action, the trial court issued a writ of restitution of premises at a show cause hearing. Ms. Pleasant vacated the premises and appealed. She contends the writ issued on insufficient and incompetent evidence and she was entitled to a trial. We agree, reverse, and remand for trial.

FACTS

¶ 2 On July 18, 2003, the Housing Authority filed an eviction summons and complaint for unlawful detainer against Ms. Pleasant. The complaint alleged two bases for eviction involving lease violations. The first charged a variety of lease violations over the preceding year, including the most recent failure of a semiannual inspection of the premises. The Housing Authority served a 30-day notice terminating tenancy on March 27. An informal hearing through the agency was decided against her. Her request for a formal hearing was denied as untimely. The second basis for eviction alleged a lease violation for criminal activity for which Ms. Pleasant was served a three-day notice to terminate. The Housing Authority contended that Ms. Pleasant engaged in prohibited criminal activity, as evidenced by her arrest on May 21, 2003. She was charged with third degree assault of a child when she struck her 13-year-old son several times with a plastic clothes hanger because he failed to obey her. The charge was reduced to fourth degree assault, a misdemeanor, on May 27.

¶ 3 Ms. Pleasant filed a written answer to the complaint and a counterclaim. She denied the contentions and alleged harassment and/or discrimination on the basis of disability and race.

¶ 4 On December 5, 2003, the Housing Authority filed a motion for an order to show cause why a writ of restitution should not issue. The court entered an order to show cause on December 8. A show cause hearing was scheduled for December 22. Ms. Pleasant opposed the issuance of the writ by filing an affidavit in which she challenged the facts for the Housing Authority's first basis for eviction (the multiple violations). A friend of Ms. Pleasant's also filed an affidavit that contradicted these facts. On the second basis for eviction (the assault arrest) she countered that the misdemeanor to which she pleaded guilty while acting pro se was not a crime for which eviction was appropriate as it did not endanger other tenants. She also pointed out she had never had her children taken away because of abuse.

¶ 5 On December 22, 2003, the trial court issued a writ of restitution. The judge took no testimony. On December 23, the sheriff served a notice to terminate by December 31 or face forceful eviction. Ms. Pleasant vacated and filed this appeal. She seeks to regain housing through the Housing Authority's facilities.

DISCUSSION

STANDARD OF REVIEW

¶ 6 When the record consists entirely of written material, an appellate court stands in the same position as the trial court and reviews the record de novo. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wash.2d 243, 252, 884 P.2d 592 (1994); *Amren v. City of Kalama*, 131 Wash.2d 25, 32, *425 929 P.2d 389 (1997). Additionally, the dispositive issue in this case is the procedural requirements under the unlawful detainer statutes. Issues of statutory interpretation are reviewed de novo. *Hartson P'ship v. Goodwin*, 99 Wash.App. 227, 231, 991 P.2d 1211 (2000).

MOOTNESS

¶ 7 "'A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief.'" *Josephinium Assocs. v. Kahli*, 111 Wash.App. 617, 622, 45 P.3d 627 (2002) (quoting *Snohomish County v. State*, 69 Wash.App. 655, 660, 850 P.2d 546 (1993)). The Housing Authority argues that since Ms. Pleasant does not have possession of the premises, the appeal is moot. However, the law draws a distinction between possession and the right of possession. *Kessler v. Nielsen*, 3 Wash.App. 120, 126, 472 P.2d 616 (1970).

¶ 8 "'[O]ne may have a right to the possession as against another who has the possession, as in the simple case of one who has been ousted from the land by another.'" *Id.* (quoting 1 H. TIFFANY, REAL PROPERTY § 20 (B. Jones 3d ed.1939)). In an unlawful detainer context, it is the right to possession that is pivotal, not mere present possession. *Little v. Catania*, 48 Wash.2d 890, 893, 297 P.2d 255 (1956); *First Union Mgmt., Inc. v. Slack*, 36 Wash.App. 849, 853-54, 679 P.2d 936 (1984); *Motoda v. Donohoe*, 1 Wash.App. 174, 175, 459 P.2d 654 (1969). When the right to possession is at issue, the issue is not moot. *Lochridge v. Natsuhara*, 114 Wash. 326, 330, 194 P. 974 (1921). The Washington Supreme Court has specifically held that an unlawful detainer case is not moot simply because the tenant does not have possession of the premises at the time of appeal. *Id.*"[E]ven though the [landlords] were in possession at the time of the appeal, the [tenants] who were still asserting their possessory right had to be precluded as to this right. The action was not moot until this issue had been determined vis-a-vis the parties." *Kessler*, 3 Wash.App. at 126, 472 P.2d 616. Here, Ms. Pleasant continues to assert a right to possession. The issue is therefore not moot.

¶ 9 The Housing Authority relies on *Josephinium*, 111 Wash.App. 617, 45 P.3d 627. In that case, Division One of this court, without discussion or citation to authority, held that the tenant's evacuation during the pendency of the action mooted the issue. *Id.* at 622, 45 P.3d 627. Neither the legal nor the factual basis upon which Division One determined the issue to be moot is clear. The court did not consider the tenant's right to possession when addressing mootness.[1] Nonetheless, *Josephinium* is distinguishable on its facts. The unlawful detainer in *Josephinium* was based upon the landlord's refusal of the tenant's tender of a reduced rent payment. The case before us does not deal with failure to pay rent. Additionally, the court in *Josephinium* appears to have decided the issue was moot because the tenant vacated voluntarily, i.e., without compulsion of a writ. *See Kato v. Union Oil Co.*, 91 Wash. 302, 157 P. 688 (1916) (holding that return of property was not a voluntary satisfaction of the judgment even where appellant neither sought stay of execution nor gave supersedeas bond); *Proctor v. Appleby*, 110 Wash. 403, 411-12, 188 P. 481 (1920) (holding that surrender of stock in compliance with judgment before appeal perfected did not amount to a cessation of the controversy thereby barring appeal); *Josevig-Kennecott Copper Co. v. James F. Howarth Co.*, 261 F. 567, 568 (9th Cir.1919) (applying Washington law and determining that where stock was transferred to the plaintiff after time that supersedeas bond could be had, and transfer was made under threat of contempt, transfer did not affect right to appeal). That is also not the case here.

426 *426 ¶ 10 Once an unlawful detainer action is commenced and the defendant does not concede the right to possession, the defendant has the right to have the issue determined. Kessler, 3 Wash.App. at 126-27, 472 P.2d 616. A tenant's relinquishment of the property does not necessarily mean the right to possession is undisputed. Sullivan v. Purvis, 90 Wash.App. 456, 459, 966 P.2d 912 (1998). An issue is not moot if a court can still provide effective relief. State v. Turner, 98 Wash.2d 731, 733, 658 P.2d 658 (1983). Here, the right to possession is disputed. We can determine whether Ms. Pleasant's right to possession was wrongfully terminated by the improper issuance of a writ and provide relief by restoring her possession.

BOND REQUIREMENT

¶ 11 The Housing Authority argues that since Ms. Pleasant did not seek to retain possession of the premises and post a bond pending appeal, she has no right to appeal. RCW 59.18.390(1) provides that within three days of the service of the writ of restitution, the tenant

> *may* execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises.

(Emphasis added.) The legislature's use of "may" instead of "must" makes it permissive. Canyon Lumber Co. v. Sexton, 93 Wash. 620, 626, 161 P. 841 (1916).

¶ 12 RCW 59.12.200 provides that "*if* the [tenant] appealing desires a stay of proceedings pending review, the [tenant] *shall* execute and file a bond." (Emphasis added.) RCW 59.12.220 provides that if a writ of restitution has been issued and executed, then the posting of the bond entitles the tenant to be restored to possession of the premises, where the tenant is entitled to remain until the appeal is determined. A bond is required only if the tenant wishes to continue to occupy the premises pending trial. It is to secure the landlord against losses during the pendency of the proceedings when the tenant continues to occupy the premises. RCW 59.18.390.

¶ 13 The bond need only be filed if the tenant seeks a stay pending review. A bond is not a jurisdictional condition precedent to the maintenance of an appeal under the unlawful detainer statutory scheme.

SUMMARY PROCEEDINGS FOR PENDENTE LITE WRIT

¶ 14 Since the dispute involves a residential lease we apply the Residential Landlord-Tenant Act of 1973, chapter 59.18 RCW, to this case. However, the procedures found in the unlawful detainer statutes, chapter 59.12 RCW, apply to the extent they are not supplanted by those found in the Residential Landlord-Tenant Act.

¶ 15 As a general rule, forfeiture or termination of leases is "'not favored and never enforced in equity unless the right thereto is so clear as to permit no denial.'" Shoemaker v. Shaug, 5 Wash.App. 700, 704, 490 P.2d 439 (1971) (quoting John R. Hansen, Inc. v. Pac. Int'l Corp., 76 Wash.2d 220, 228, 455 P.2d 946 (1969)). At any time during an unlawful detainer proceeding the landlord may apply to the court for a pendente lite writ of restitution. RCW 59.18.370. In order to obtain such a writ of restitution the landlord must apply to the court for an order directing the tenant to appear and show cause why a writ should not issue restoring the landlord to possession of the property. *Id.* At the time of the show cause hearing "[t]he court *shall examine the parties and witnesses orally* to ascertain the merits of the complaint and answer." RCW 59.18.380 (emphasis added). "[I]f it shall appear that the [landlord] has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution." *Id.*"The court *shall also enter an order directing the parties to proceed to trial* on the complaint and answer in the usual manner." *Id.*
427 (emphasis added). The court may also at that time address *427 other relief requested by the landlord together with the tenant's defenses and set-off claims as relates to that relief. *Id.*

¶ 16 Here, neither party provided the transcript from the show cause hearing at which the writ of restitution issued. Ms. Pleasant contends that the judge did not conduct an evidentiary hearing as contemplated by the statute. The Housing Authority claims that the documentary evidence provided by Ms. Pleasant was a sufficient basis for the issuance of the writ of restitution. Nonetheless, the Housing Authority concedes that the judge did not hear testimony or examine the parties or witnesses; rather, it based the issuance of the writ on argument.

¶ 17 The statute uses the mandatory term "shall," which requires that the parties and any witnesses be examined. RCW 59.18.380. Its use of the word "shall" is presumptively imperative and operates to create a mandatory duty. *See State v. Marking*, 100 Wash.App. 506, 510, 997 P.2d 461 (2000). The examination of parties and witnesses is not a formality as the Housing Authority asserts. It is the basis for the issuance of the writ pendente lite. Further, the statute uses the term "shall" in directing that the matter be set for trial. RCW 59.18.380.

¶ 18 The Housing Authority asserts[2] that since there is no report of proceedings we must assume the evidence sustained the court's findings. That rule limits review to a determination of whether the findings support the judgment. *Chace v. Kelsall*, 72 Wash.2d 984, 987, 435 P.2d 643 (1967). Because the court made no findings, the rule does not apply.

ISSUANCE OF WRIT

¶ 19 The burden is upon the plaintiff in an unlawful detainer action to prove, by a preponderance of the evidence, the right to possession. *Duprey v. Donahoe*, 52 Wash.2d 129, 135, 323 P.2d 903 (1958). A show cause hearing in an unlawful detainer action is a summary proceeding. *Carlstrom v. Hanline*, 98 Wash.App. 780, 788, 990 P.2d 986 (2000). In summary proceedings, the rules of evidence still apply; inadmissible evidence may not be considered. *Unger v. Cauchon*, 118 Wash.App. 165, 177 n. 34, 73 P.3d 1005 (2003) (citing *Dunlap v. Wayne*, 105 Wash.2d 529, 535, 716 P.2d 842 (1986)). At oral argument, the Housing Authority argued that because Ms. Pleasant admitted to criminal conduct in her affidavit, it needed no more proof. However, because there is no competent evidence regarding a lease at all, the Housing Authority cannot prove a violation under one. Further, a writ of restitution cannot issue without competent evidence to prove substantial compliance with the statutory notice requirements. *Marsh-McLennan Bldg., Inc. v. Clapp*, 96 Wash.App. 636, 641-42, 980 P.2d 311 (1999). For instance, proof of service of the notice under the unlawful detainer statutes requires an affidavit. *Id.* at 640-41, 980 P.2d 311 (citing RCW 59.12.040 and CR 4 (g)). There is no affidavit here.

¶ 20 Moreover, if the pleadings in an unlawful detainer action disclose a material issue of fact, the issue must be resolved at trial. RCW 59.12.130; *Meadow Park Garden Assocs. v. Canley*, 54 Wash.App. 371, 372, 773 P.2d 875 (1989). Specifically, when a tenant challenges her landlord's allegations that she was in material noncompliance with her lease terms, she is entitled to a trial. *Meadow Park*, 54 Wash.App. at 372, 773 P.2d 875. That is precisely the contention made by Ms. Pleasant.

¶ 21 Ms. Pleasant contends the lease and its termination are subject to the U.S. Housing Act. The Housing Authority's own materials cite to the U.S. Housing Act and point out that Ms. Pleasant is subject to its provisions. The U.S. Housing Act requires that the tenancies be terminated only for "serious or repeated violation of the terms or conditions of the lease or for other good cause" and that termination for "criminal activity" threaten the "health, safety, or right to peaceful enjoyment of the premises by other tenants." 42 U.S.C. § 1437d(*l*)(5), (6). The issue of whether these requirements are met *428 under the statute was an inappropriate issue to summarily resolve. *See Hartson P'ship v. Goodwin*, 99 Wash.App. 227, 237, 991 P.2d 1211 (2000). Ms. Pleasant was entitled to a trial on this issue.

¶ 22 The writ was premature. We need not address the merits of the forfeiture or the defenses that should be addressed at trial on remand. *See id.*

TRIAL REQUIRED

¶ 23 Whether or not the court issues a pendente lite writ at the show cause hearing, the court is required to enter an order directing the matter to proceed to trial. RCW 59.18.380. *See also* RCW 59.12.130 (providing that all factual issues in unlawful detainer actions must be determined by a jury unless one is waived). RCW 59.18.410 also requires the entry of a final judgment following trial. The court did not set a trial in this case, nor was a final judgment entered.

¶ 24 The Housing Authority asserts that no trial was required because the show cause hearing is the only summary proceeding required under the statute. It relies on *Carlstrom*, 98 Wash.App. 780, 990 P.2d 986. In *Carlstrom,* Division One of this court observed, "Show cause hearings are summary proceedings to determine the issue of possession *pending* a lawsuit." *Id.* at 788, 990 P.2d 986 (emphasis added) (citing *Meadow Park*, 54 Wash.App. at 375, 773 P.2d 875). The statute allows a landlord to apply for a writ to expeditiously determine who should possess the property while an unlawful detainer action is pending. *Meadow Park*, 54 Wash.App. at 376, 773 P.2d 875. In fact, since a pendente lite writ issues on summary proceedings, the landlord is typically required to post a bond[3] to take possession. RCW 59.18.380. That is because "[a] show cause hearing is not the final determination of the rights of the parties in an unlawful detainer action." *Carlstrom*, 98 Wash.App. at 788, 990 P.2d 986. *Carlstrom* does not support the Housing Authority's argument.

ATTORNEY FEES

¶ 25 Under RAP 18.1, a party may recover reasonable attorney fees and expenses on appeal if applicable law grants the party such right. Ms. Pleasant requested attorney fees under RCW 59.18.410. That statute, however, only applies to fees and costs to a landlord on final judgment. RCW 59.18.290(1)[4] provides for attorney fees when the landlord removes or excludes a tenant without a court order. *Gray v. Pierce County Housing Auth.*, 123 Wash.App. 744, 759-60, 97 P.3d 26 (2004). Here, a writ was issued. The statute does not provide for attorney fees for a wrongfully issued writ. She has provided no clear authority for attorney fees.

CONCLUSION

¶ 26 The pendente lite writ of restitution was issued on incompetent evidence and without examination of the parties and witnesses as required by statute. Ms. Pleasant was wrongfully denied a trial. We therefore reverse and remand for trial. Ms. Pleasant's request for fees is denied.

WE CONCUR: KATO, C.J., and KURTZ, J.

[1] Although moot, Division One reached the merits on an exception to mootness: the issue of whether the tenant's asserted defense of disability discrimination was a cognizable defense was a matter of "continuing and substantial public interest." *Josephinium*, 111 Wash.App. at 622, 45 P.3d 627. The court addressed the right to possession in the context of the tenant's disability discrimination defense. *Id.* at 624-26, 45 P.3d 627. It held that under the facts of the case, the defense bore upon the tenant's right to possession.

[2] The Housing Authority included an unpublished case to support this proposition. It need not, and will not, be considered. RAP 10.4 (h); *Sundquist Homes, Inc. v. Snohomish County Pub. Util. Dist. No. 1*, 140 Wash.2d 403, 409 n. 3, 997 P.2d 915 (2000).

[3] Under these facts, the Housing Authority, as a quasi-municipal corporation, would probably be exempt from having to file a bond. RCW 4.96.050. *See* RCW 4.96.010(2) (providing that RCW 4.96.050 applies to municipal and quasi-municipal corporations); RCW 35.82.030 (authorizing creation of housing authorities); *Housing Auth. of City of Seattle v. City of Seattle*, 56 Wash.2d 10, 13, 351 P.2d 117 (1960) (observing that housing authorities were created as municipal corporations).

[4] RCW 59.18.290(1) provides: "It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorneys fees."

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Motion To Extend Time

Motion To
Extend Time
- April 13, 2013
- Describing
Appellant's
Problem
assembling
Record
of
Case
(RAP 9.12(a))

Court/Appeals
No.

King County
Superior Court
No.

SEA

STATE OF WASHINGTON
2013 APR 17 PM 1:33

(OFA)

EXTENSION OF
6.8(a) AND
GRANTING PETITIONER
ACCESS

[illegible] Mr. Joel Christopher Holmes, the Defendant / Appellant Pro Se in Washington Court of Appeals No. 69815-0-I, hereby appears In Pro Persona again to request an extension of time (RAP 18.8(a)), in order to file the Clerk's Papers (RAP 9.6(a)) with the Washington Court of Appeals, Division One, or, in the alternative, access to the outside Internet, while an inmate here at KCCF, so that he might properly obtain an Appearance Docket (RAP 9.6(c)(1)) and so, Designate the Clerk's Papers, each by sub-number, including a copy of the Court's Judgment And Order, signed by King County Superior Court Commissioner Carlos Y. Velarequi, on December 27, 2012, but never "served" (CR 5(b)) on this Appellant by the Court, at his current or any other Inmate Address.

SUMMARY OF PRIOR PROCEEDINGS.

On Thursday, December 27, 2012, Petitioner was legally "evicted" from his 20-year long residential apartment unit (#401, Cobo Apts., 4100 Brooklyn Avenue, Northeast, Seattle, Washington, 98105) by Landlord Don Kennedy Real Estate (Don Kennedy Properties, LLC), Appellant/Defendant Mr. Joel Christopher Holmes, an inmate at the King County Jail (SEA), was not allowed to attend the December 27, 2012 "eviction" hearing, in front of King County Superior Court Commissioner Carlos Y. Velarequi, nor was he properly "served" with a copy of the Superior Court Judgment And Order, affirming his

[illegible] 62 (2002) (Bowden, J.) (abrogating prior "jurisdictional" rules for "eviction" summons and complaint); Christensen v. Ellsworth, 162 Wn. 2d 365, 173 P.3d 228 (2007) (sufficiency of "3-day" notice to "pay rent or vacate"); see also IBF, LLC v. Hoyt, 141 Wash. App. 624, 174 P.3d 95 (2007) ("The unlawful detainer statute is strictly construed..." in Washington State).

Subsequently, on January 7, 2013, Defendant Joel C. Holmes, filed a timely Notice of Appeal with the trial court, in order to commence an appeal (RAP 5.1, 5.2) of his "eviction" to the Washington Court of Appeals, Division One. See Letter to Parties, Court of Appeals No. 69815-0-I, January 30, 2013. Petitioner[1]/Appellant/Defendant, has absolutely NO legal access to the outside Internet, while incarcerated at the King County Jail, nor to photocopying machines nor to inmate typing, nor to any legal assistance in non-criminal cases, provided by e.g. Legal Aid Societies. State v. Alterso, 41 Wash. App. 121, 127, 702 P.2d 1216 (1985) ("delay in filing electronic transcript of

1. Henceforth, the author of this pleading shall be referred to as "Petitioner," or as "Appellant," or as "Defendant."

[redacted] Petitioner has attempted to pay for and/or obtain, copies of the relevant Clerk's Papers, filed by the King County Superior Court Department of Judicial Administration (DJA), since February 4, 2013, but each time, his attempt to do so has been rejected by DJA, allegedly each time because of insufficient funds and/or information submitted by the requestor. See e.g. Rejection of Designation of Clerk's Papers, No 12-2-39304-4 SEA, March 29, 2013. In particular, the King County Superior Court Clerk's Office, insists on requesting that Appellant, provide DJA with a complete list of each requested document, sought by this Petitioner, including but NOT limited to the "sub-number" associated with each document, the file date, etc. Cf. RAP 9.6. All of this information, is available to Petitioner **ONLY** on the Washington Courts' http://www.courts.wa.gov website, which, together with the rest of the Internet, Petitioner is forbidden to use, by applicable KCCF Rules. See King County Jail, Inmate Handbook (2009 ed.). Furthermore, Petitioner, has been refused, on several different occasions, both by the King County Superior Court Clerk's Office (DJA) AND by the Washington Court of Appeals, Division One, in offering to pay for the complete

[redacted]

Jones, GR4V 1512(c) by Department II of the Washington State Supreme Court on April 03, 2013 (Case No. 88380-1). See Letter to Richard D. Johnson, Court of Appeals, April 9th, 2013; Letter to DJA, March 27, 2013 (Notarized). First, Washington State trial and/or appellate courts, demand payment of a statutory filing fee (RCW 2.32.070) or other forms of compliance from Petitioner; then, these courts reject the payment or other submissions as allegedly "insufficient"; then, these same courts repeatedly assert that Petitioner, is the "obstacle" to the settlement of whatever legal issue or barrier to Appellant, that these courts raised in the first place. Cf. Case No. 11-2-27942-1 SEA writ of mandamus sought by Petitioner to file timely Notice of Appeal in Shoreline No. 48027854 SHO [revocation of "probation" by Judge Douglas J. Smith]. See e.g. State ex rel. Taylor v. Dorsey, 81 Wn. App. 414, 914 P.2d 775 (1996) (Coppiriem of Wiggins, J., concurring); Rights of Prisoners, § 10:39 Appearance in Court

[redacted] Petitioner has attempted to pay for and/or obtain copies of the relevant Clerk's Papers, filed by the King County Superior Court Department of Judicial Administration (DJA), since February 4, 2013, but each time, his attempt to do so has been rejected by DJA, allegedly each time because of insufficient funds and/or information submitted by the requestor. See e.g. Rejection of Designation of Clerk's Papers, No 12-2-39307-4 SEA, March 29, 2013. In particular, the King County Superior Court Clerk's Office, insists on requesting that Appellant, provide DJA with a complete list of each requested document, sought by this Petitioner, including but NOT limited to the "sub-number" associated with each document, the file date, etc. Cf. RAP 9.6. All of this information, is available to Petitioner **ONLY** on the Washington Courts' http://www.courts.wa.gov website, which, together with the rest of the Internet, Petitioner is forbidden to use, by applicable KCCF Rules. See King County Jail, Inmate Hand book (2009 ed.). Furthermore, Petitioner, has been refused, on several different occasions, both by the King County Superior Court Clerk's Office (DJA) AND by the Washington Court of Appeals, Division One, in offering to pay for the complete

Funds, (RAP 15.2(c)) by Department II of the Washington State Supreme Court on April 03, 2013 (Case No. 88380-1). See Letter to Richard D. Johnson, Court of Appeals, April 9th, 2013; Letter to DJA, March 27, 2013 (Notarized). First, Washington State trial and/or appellate courts, demand payment of a statutory filing fee (RCW 2.32.070) or other forms of compliance from Petitioner; then, these courts reject the payment or other submissions as allegedly "insufficient"; then, these same courts repeatedly assert that Petitioner, is the "obstacle" to the settlement of whatever legal issue or barrier to Appellant, that these courts raised in the first place. Cf. Case No. 11-2-27940-1 SEA, Writ of Mandamus (sought by Petitioner to file timely Notice of Appeal in Shoreline No. 48027834-9 SHO [revocation of "probation" by Judge Douglas J. Smith]). See e.g., State ex rel. Taylor v. Dorsey, 81 Wn. App. 414, 914 P.2d 775 (1996) (opinion of Wiggins, J., concurring); Rights of Prisoners, § 12:39 Appearance in Court

[redacted] 196 (1978); William B. Stoebuck, The Law Between Landlord And Tenant in Washington, 49 WASHINGTON LAW REVIEW 1013, 1032-1033 (1974); RCW 59.18.055; State v. Sweet, 90 Wn. 2d 280, 286, 581 P.2d 579 (1978) (three-year delay in filing Pro Se Notice of Appeal after retained counsel withdrew). In particular, King County Superior and District Court Clerks write derogatory comments about Petitioner's "hard writing" or physical appearance, have NOT cooperated to a satisfactory resolution of this Appellant's problems during the past thirty (30) years, living in King County, Washington. State v. Wall, 100 Wash. App. 1014, 2001 Westlaw 1729682 (Division I) (November 13, 2001) at *1-*4 (30-year delay in reporting "insanity" acquittal on first-degree assault and burglary charges against landlady).

ARGUMENT: I. PETITIONER HAS "SUBSTANTIALLY COMPLIED" WITH THE TERMS WRITTEN IN CR 10, IN ATTEMPTING TO OBTAIN THE CLERK'S PAPERS FROM KING COUNTY No. 12-2-39304-4 SEA AND TO "TRANSMIT" (RAP 9.6) THESE TO THE COURT OF APPEALS.

(DOCS)], Less Talk Lie]" -- CR 10, as cited by the King County Department of Judicial Administration (DJA), is not a "jurisdictional" requirement to the Petitioner commencing his Appeal to the Court of Appeals, of King County No. 12-2-39304-4 SEA.

2. "Living In A Feminist [Lie] Paradise (DJA)" -- The King County Superior Court Department of Judicial Administration (DJA), should be compelled by this Court (Washington State Court of Appeals, Division One), to reproduce the Clerk's Papers (including a copy of the Judgment And Order, in King County No. 12-2-39304-4 SEA) and to Transmit the File, in Case No. 12-2-39304-4 SEA, to the Washington State Court of Appeals, Division One.

II. THE WASHINGTON STATE COURT OF APPEALS DIVISION ONE, SHOULD BE COMPELLED TO ACCEPT PETITIONER'S PURPORTED "OVERPAYMENT" OF THE $290.00 STATUTORY FILING FEE (2.32.070).

[redacted] incarcerated,
[redacted] bail in the downtown
KCCF-operated King County Jail (See
King County No. 12-1-06088-2 SEA, pending),
and has legal access, neither to word
processors, nor typewriters, nor to computers
which can access Microsoft-Word style
typing programs nor the general Internet.
See e.g. KCCF Inmate Manual (Doc. ed.);
Cf CR 10 (e)(4), CR 11(a) (requiring "filer's typed
name and address [sic]" as asserted by DJA).
Furthermore, Petitioner's access even to pencils, has
been sharply limited (no pen interested!), since
his March 26, 2013 transfer, to KCCF "Administrative
Segregation" without notice or
hearing, by the KCCF and KCPAO. See e.g.
Court of Appeals No. 69453-9-I, pending.
Hence, Petitioner literally CANNOT comply
with the terms of e.g. CR 10, CR 11, etc. requiring
the Appellant in a civil action allegedly to

---

3. Petitioner has also been subjected to KCCF
imposed "Place Deadlock" / "Administrative
Segregation" ("Ad-Seg" [sic]) since March 26, 2013,
but KCCF General Population inmates do not have
access to these things (typing pens), either. See
e.g. Ramos v. Vaughn, 148 Wn.2d 224, 238 (Eastern District
Pennsylvania - [illegible]) ("prisoners" rights" to phone access).

numbers, etc.[3] Apparently, in order to proceed with this Appeal in No. 69815-0-I, Petitioner must prude DJA and this Court, with a "Jylow prime" decomposition of the "group" of Clerk's Papers "alba-numbers" into normal subgroups, etc. See e.g. Thomas W. Hungerford, Algebra (1980 ed.) Chapter 3, The Structure of Groups). Furthermore, Petitioner had a valid Motion For Expenditure of Public Funds (RAP 15.2(c)) pending before the Washington Supreme Court, until Wednesday, April 3, 2013, and, hence, has had less than two weeks to assemble and pay for (see enclosures) the Appellate Court of Appeals filing fee, together with $0.50/page for each Clerk's Paper along with the $100 pagital Appearance Docket fee (together with $100 per additional page), Petitioner offered, in a Notarized Letter to DJA (March 29, 2013), to pay the costs of reproducing and transmitting the entire

3. This is the DJA interpretation of RAP 10.11. The Clerk's Office provides no rule law or other authority to show that these documents must be "typed" or computer-printed. Cf. U.S. Supreme Court Rule 33.1 (allowing handwriting).

DJA for the Court of Appeals, but this offer was rejected by DJA. See Letter to Appellant, March 29, 2013. The Court of Appeals rejected Petitioner's offer to pay their court costs plus some $ 700.00 in additional costs as well. See letter to Appellant, April 6, 2013.

ARGUMENT: 1. "HAVING LOST TO A 'CHRISTIANE OREGON PARADISE" (E-609, DJA, KING COUNTY SUPERIOR COURT)-PETITIONER HAS SUBSTANTIALLY COMPLIED WITH THE TERMS OF E.G. CR 10, 11 (A) WELL AS RAP 9.6), AND THE "CLERK'S PAPERS" IN NO. 12-2-39304-4 SEA SHOULD BE PROMPTLY TRANSMITTED TO THE COURT OF APPEALS, DIV. I.

[redacted] App. 250, 266, 267 (2005)],

Less Talk "[Sir]" (or "I'm Not on the Air in Olympia!") - CR 10 is not a "formalistic" jurisdictional prerequisite to assembling the Clerk's Papers in a "civil" appeal.

King County's Department of Judicial Administration (DJA), is constructing or erecting enormous "barriers to entry" (see e.g. Paul A. Samuelson and Richard Nordhaus Economics (19th edition) or any other American-Chicago School-"neoclassical" economics text) in terms of the Petitioner's "civil" appeal pursued in No. 12-2-06080-2 SEA, since January 9, 2013. In particular, Appellant now protest against DJA's constant demand, that the Appellant "must"

4. Similar to the lamented, departed KOLO, 920 AM in Olympia Washington, which left the air in April 2004, Ct. FCC v. Fox Television Stations, Inc., 50-U.S.- [illegible] (striking FCC rules),

[redacted]

Appearance Decree" must happen his name and address on the Designation of Clerk's Papers Form CRAP 9.7 (a), file|web95|forms|civil|DESIGCDC.doc (page 1 of 2), must "designate" exactly which "Clerk's Papers" he is ordering by date, sub-number, etc. — even though DOA is clearly aware that Petitioner is incarcerated, does not have legal access to a computer or even to a typewriter (beyond typing 3 lines of print per page on a brother — the same as DOA!), or to view case caselaw on the Internet at http://www.courts.wa.gov/opinions/index.cfm. Hence, Petitioner has no available means to comply with the jerkin DOA rules, purposefully ordering req. CR 10, CR 11. Bell v. Wolfish, 441 U.S. 520, 551, 99 S.Ct. 1861, 66 L.Ed.2d 447 (1979) (right of pre-trial detainees); Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977) (right of some prisoners to law libraries or other means of access to the courts" for habeas corpus petitions) id.

[redacted] (Female Jail Guards vs. all-male city jail employees). In particular, DOA's contention that "typing" is a jurisdictional prerequisite to commence a valid Appeal (or even to order the Clerk's Papers, as in the case at bar!) is mistaken:

52 The County's arguments are unpersuasive. The County admits that CR 16 is not a jurisdictional rule ... Indeed, it is elementary that CR 16 generally concerns the format and appearance of pleadings. See, e.g., 9 DAVID B. BROBECK, WASHINGTON PRACTICE: FORM OF PLEADINGS AND OTHER PAPERS 9101 (2000) ("Rule 16 sets out format requirements and recommendations for the pleadings ... These guidelines are designed to preclude uniformity, clarity and where possible, brevity of presentation of claims and defenses."). ... 59 A formalistic error in the land use petition's caption should not serve as the sole basis to deny review of land use actions under RCW 36.70C.040

[redacted] does not invoke the court's appellate jurisdiction, RCW 36.70C.010 cross-references and is consistent with RCW 36.70C, since these sections are more specific than the general statement in RCW 36.70C.030 (3) that the civil rules apply. Given this statutory structure, the civil rules are not jurisdictional requirements ...

Quality Rock Products, Inc. v. Thurston County, et al., supra, 126 Wash. App. 250 at 269, 272, 108 P.3d 805 (2005), emphasis added. [illegible] CR 10 and CR 11, are [illegible] mandatory, jurisdictional pre-requisites for commencing any kind of "civil" or even criminal appeal, as contended by the Court (DOSA) below. Rather, those rules are [illegible] especially the "rules" that [illegible] must be [illegible] over the pleadings [illegible]

[redacted] or to computer-
based Word programs. DJA should be
Ordered by the Court of Appeals, to
accept Petitioner's handwritten
requests to order Clerk's Papers in
No. 12-2-39304-4 SEA below, or
in the alternative, should offer Mr.
Holmes and other incarcerated civil
litigants, the opportunity to order
and transmit a complete case file
for one flat fee. Rozwik v. Society Repo.
Accused Persons (SCRAP), 139 Wash. App.
1010, 2007 WestLaw 2084899 (Wash. App.
Div. 1 (July 23, 2007)) at *3-*5 (sufficiency
of service in civil action). In addition, this
present Court should compel KCCF, to change
its current inmate policies, and to allow
ALL accredited Pro Se Inmates (such
as Petitioner) to have access to the
courts, and other state and Federal
court-based websites, as well as access to
Microsoft-Word or other computer-based

[redacted] among
Westlaw computer access for some
purposes (such as laptop usage for Pro
Se inmates to view Discovery, Westlaw
access in the Law Library to view previous
published and unpublished cases, etc.), but
forbidding such access for other
legitimate court-based purposes, such
as corresponding with and viewing
the inmate's appeal court cases,
Greene v. Lindsey, 456 U.S. 444, 72
L.Ed.2d 249, 102 S.Ct. 1874 (1982)
(opinion of Brennan, Jr.) (summary affirm
ed); Seanrell v. State, 128 Wn.2d
829, 832, 836, 916 P.2d 489 (1996)
(timely notice of appeal for civil litigant).

D. The King County Department of
Judicial Administration (DJA),
should be compelled by this Court
(Division One) to produce the
complete file, including the Clerk's
Papers, in No. 12-2-38364-4 SEA.

[illegible] has complied
[illegible] the relevant Rules of
Court, including RAP 9.6, CR 10, CR 11,
without itself viewing the complete
file in King County No. 12-2-39360-
4 SEA, as compiled by that Court
since December 11, 2012, including all of
the Clerk's Papers allegedly **NOT**
"properly" ordered by this Appellant.
Hence, the only way for the Court of
Appeals to fairly evaluate this issue,
is for that Court to request ALL of
the Clerk's Papers in No. 12-2-39360-4
SEA. State v. Rafay, 167 Wn. 2d 644, 648,
222 P.3d 86 (2009) (right to pro se
representation on direct appeal); see also
e.g. Harold Demsetz, **Why** Regulate Utilities?
[Such as e.g. WSA!!], 11 JOURNAL OF LAW
AND ECONOMICS 55 (1968) (advocate the
"natural monopoly" based regulation of public
[illegible]); Richard Posner, Natural
Monopoly and Its Regulation, 21 STANFORD
LAW REVIEW 548 (1969); Richard Epstein

Wallstein, Public Services Under Laissez-Faire (1816 edition) (questioning rationale for government ownership and/or regulation of "public" services); Morris and Linda Tarebill, The Market for Liberty (1971 edition) (argument for "anarcho-capitalism," including e.g. "private" police, prisons, courts, etc.).[5]

5. An Approximate Print-Out of the Clerk's Papers (cf. RAP 9.6, CR 10.11) in No. 12-2-39504-11 SEA.

Sub Number	Title of Document	File Date
? Need Interest	Friction Summons And Complaint	December 11, 2012
?	Order To Show Cause	" "
	10-Day Notice	" "
	Response By Defendant	December 14, 2012
	" " "	December 17, 2012

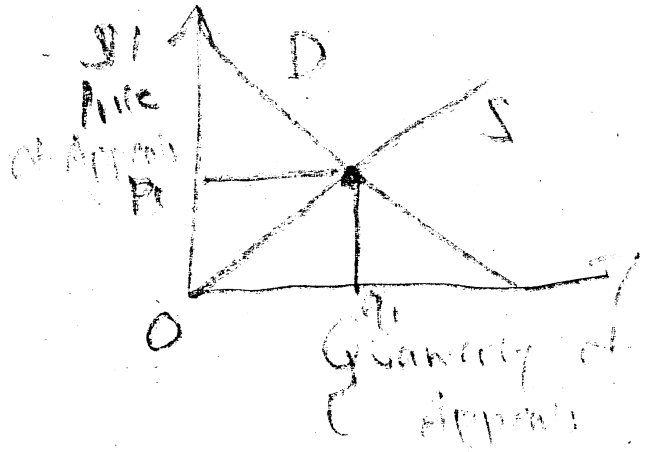
Figure 1

Sub. Number	Document	File Date
1	Order Granting Continuance	December 20, 2012
Need help!! www.courts.wa.gov	Findings of Fact Lsc's and Law, Writ of Restitution, Attorney's Fees	December 27, 2012
	Notice of Appeal	January 7, 2013

KCCF has not shown a valid, "security" based reason, for forbidding Petitioner, as well as other accredited "Pro Se" Detainees, from using the Internet, at least enough to access the courts/judiciary, doc.judiciary, and other Washington State Government based websites. Bell v. Wolfish, note supra, 441 U.S. 520 at 541 (1979) (Federal pre-trial detainees); Smith v. Mitchell, 2013 WL 6455993 at *4 (W.D. Wash. 2013 (W/H)) (Stafford Creek CCC). It is literally the possible for

(a) defendants effectively in a civil or even a criminal case, without access to computers, Microsoft WORD®-based typing programs and spreadsheets, and access to an local court-based websites, Sandin v. Conner, 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed. 2d 418 (1995) (deprivations and hardships "atypical" of prison life); Jafar v. Webb, 173 Wash.2d 1026, 274 P.3d 1059 (2012) (appeal of Snohomish Cty. #12-3-00284-5) (grant of indigent to waiver of fees under General Rule (GR) 34); U.S. v Microsoft Corporation, 253 F.3d 34, 108-116, 348 U.S. App. D.C. 330 (District of Columbia Circuit (DC) (2001)) (District Court's attempt to "break-up" Microsoft on "unequal" grounds); et Don Kennedy v. Real Estate Salesman Legal 151 A 53 Wn.2d 323, 325, 330 P.2d 939 (1958) (attempt to enforce real-estate brokers under Tolt Hardship-to-Creditor Wagner Act disputed),

Figure 2 Supply And Demand For Criminal Appeals



II. THE WASHINGTON COURT OF APPEALS SHOULD BE CONSIDERED TO ACCEPT PETITIONER'S ALLEGED "UNDERPAYMENT" OF THE $290.00 STATUTORY COURT OF APPEALS FILING FEE (RCW 2.32.070).

It also suffices to note that this Court should be compelled to accept petitioner's [illegible] filing fee, necessary

Appeals [illegible] 10-[illegible] v. [illegible] JFA,
from the Superior Court to the Court
of Appeals, RCW 2.06.010 (Effective
plus variable "legislative settings").
[illegible] Internal [illegible] Perhaps
could only guess what the [illegible] filing
fee was (see Figure 2, supra), State
v. Jones, 152 Wn. App. 514, 519-521, 216
P.3d 1001 (2009) (non-"appealable" [illegible]
of trial court "recusement" orders),
U.S. v. Microsoft, supra, 253 F.3d at (Order)
at 95-100 (contempt to "Bratty" Seattle-based
Microsoft (!) for charging prices,
allegedly concurrently "not highly"
[illegible] "same as competitors, [illegible]").
Cf. Ayn Rand, "Antitrust: The Role of
Unknown," in Capitalism: The Unknown
Ideal (1967 edition). This Court, has

cited to authority, to the effect that a litigant's attempt to pay a filing fee, can be rejected by an appellate court, for a payment that is, allegedly, in excess of the statutory amount. City of Lakewood v. Cheng, 164 Wash. App. 165, 219 P.3d 919 (2011) (filing fee requirement "jurisdictional" for RAP 5 Appeal to Supreme Court); Silverhand v. County of Los Angeles, 46 Cal. 4th 106, 113-116, 205 P.3d 1077, 1050-1055 (California Supr. Ct. 2009) (same). See also id. In re PRP of Hiber, 164 Wash. App. 319, 366, 319 P.3d 906 (2011) (PRP filed by County of Appeals), [illegible] offered by petitioner, on April 3, 2013, as well as other pleadings, a refund of all excess filing fees.

RELIEF REQUESTED

Petitioner should be granted a reasonable extension of time (RAP 18.8(a)), in order to file the Clerk's Papers and pay the statutory $200.00 filing fee, in Court of Appeals No. 69815-0-I. In addition, this Court should approve the following Order:

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

Joel C. Holmes,
Petitioner,
v.
State of Washington,
Respondent.

Petitioner requests that this Court order King County Jail to provide Petitioner/Appellant/Defendant Joel C. Holmes with:

(1) Access to the courts via gov [illegible]

(2) [illegible] Inmate [illegible]

JUDGE DATE

[illegible] Holmes, Petitioner
[illegible] In Court of Appeals [illegible]
O.T., hereby certify that I have
Mr. Christopher De Cosmo, Attorney At
Law, Law Offices of Mr. [illegible]
Lorettler, PLLC, [illegible] Street Away
Suite 1040, Seattle, WA [illegible]
with one copy of Petitioners [illegible]
[illegible] Motion, via Inmate legal Mail, this day the
Fifteenth Day of April, 2013, by Joel C.
Holmes, PRO SE.

Joel C. Holmes
KCCF #[illegible]
April 15th, 2013.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2013 MAR 12 PM 1:15

Opening Brief - filed Mar. 12, 2013

IN THE COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION ONE

Per Kennedy Regency LLC,
Plaintiff / Respondent,

v.

Mr. Jose Chiangpa Hernandez
Pro Se Defendant Appellant

King County Jail
500 Fifth Avenue
Seattle, Washington 98104

Supreme Court No. 88380-7

Court of Appeals No. 69013-0

King County Superior Court No. 12-2-[illegible]-SEA

OPENING BRIEF OF APPELLANT

RAP 10.3

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2013 MAR 12 PM 1:15

IN THE COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION ONE

Per Kennedy Regency LLC,
Plaintiff / Respondent,

v.

Mr. Jose Chiangpa Hernandez
Pro Se Defendant Appellant

King County Jail
500 Fifth Avenue
Seattle, Washington 98104

Supreme Court No. 88380-7

Court of Appeals No. 69013-0

King County Superior Court No. 12-2-[illegible]-SEA

OPENING BRIEF OF APPELLANT

RAP 10.3

IDENTITY OF PETITIONER

My [illegible] Hebres, Detention/Appellant [illegible] the Order, Writ of Restitution, and Judgment entered by the Honorable Carlos Y. Velarde-Garcia, Court Commissioner, King County Superior Court, on Thursday, December [illegible], 2012, affirming the Summary Judgment Order signed by Court Commissioner Mary Bartholomew-Johnson, on Tuesday, December [illegible], 2012 and [illegible] Appellant in [illegible] detained by the Washington State [illegible] Detention/Appellant [illegible] custody" [illegible] in the King County [illegible] criminal charges. See State v. Hebres, King County No. [illegible]

[illegible] OF PROCEEDINGS BELOW,

On Thursday, December [illegible], 2012, King County Commissioner Carlos Y. Velarde-Garcia,

IDENTITY OF PETITIONER

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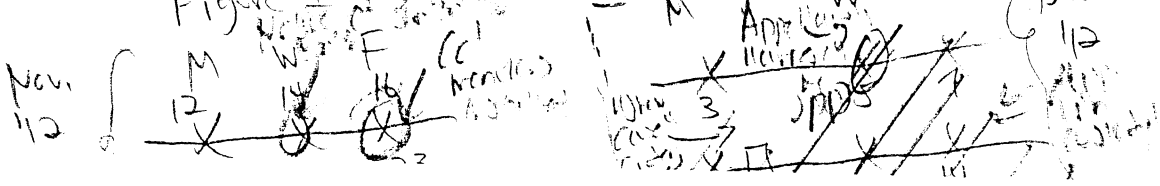
[illegible] OF PROCEEDINGS BELOW,

On Thursday, December [illegible], 2012, King County Commissioner Carlos Y. Velarde-Garcia,

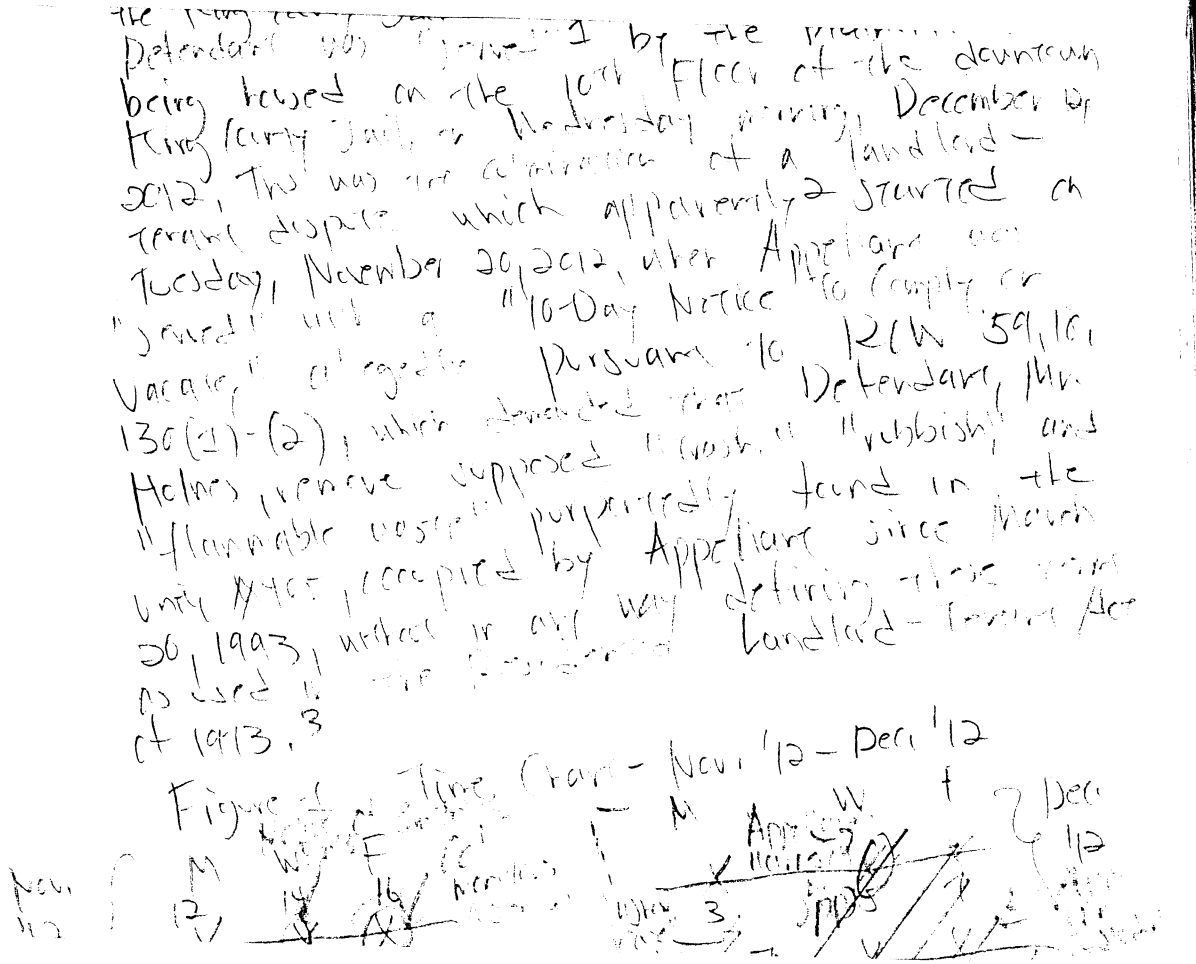
the King County Jail, Defendant was arrested 1 by the plaintiff being housed on the 10th Floor of the downtown King County Jail, on Wednesday morning, December 19, 2012. This was the culmination of a landlord-tenant dispute which apparently started on Tuesday, November 20, 2012, after Appellant was "served" with a "10-Day Notice to Comply or Vacate" alleging pursuant to RCW 59.18.130(1)-(2), which demanded that Defendant, Mr. Holmes, remove supposed "trash," "rubbish," and "flammable vapors" purportedly found in the unit #405, occupied by Appellant since March 20, 1993, without in any way defining these terms as used in the Residential Landlord-Tenant Act of 1973.[3]

Figure 1 Time Chart - Nov. '12 - Dec. '12



the King County Jail, Defendant was arrested 1 by the plaintiff being housed on the 10th Floor of the downtown King County Jail, on Wednesday morning, December 19, 2012. This was the culmination of a landlord-tenant dispute which apparently started on Tuesday, November 20, 2012, after Appellant was "served" with a "10-Day Notice to Comply or Vacate" alleging pursuant to RCW 59.18.130(1)-(2), which demanded that Defendant, Mr. Holmes, remove supposed "trash," "rubbish," and "flammable vapors" purportedly found in the unit #405, occupied by Appellant since March 20, 1993, without in any way defining these terms as used in the Residential Landlord-Tenant Act of 1973.[3]

Figure 1 Time Chart - Nov. '12 - Dec. '12



Plaintiffs [illegible]
by King County Superior Court Commissioner Nancy
Bradburn Johnson, on Tuesday, December 11, 2012,
despite: (1) Plaintiff's failure to inspect the
premises [illegible] Friday, [illegible] before the
hearing [illegible] a mandated 11 Day period
[illegible] in violation
with RCW 59.18.150, and (2) Defendant's
evident incompetence or uncharted criminal
charge and inability to decipher or vacate
with the provisions outlined in RCW 59.18.
130(1)-(2) during the time period mandated by
the statute and by the [illegible]

The Summons had [illegible] Defendant to
Bradburn [illegible] also required Defendant to
appear "personally" in order to [illegible]
of the Summons and correct the Unlawful
Detainer [illegible] previous [illegible]
by Washington State [illegible] RCW 59.18.365,
[illegible] Court of Evergreen [illegible]

Plaintiffs [illegible]
by King County Superior Court Commissioner Nancy
Bradburn Johnson, on Tuesday, December 11, 2012,
despite: (1) Plaintiff's failure to inspect the
premises [illegible] Friday, [illegible] before the
hearing [illegible] a mandated 11 Day period
[illegible] in violation
with RCW 59.18.150, and (2) Defendant's
evident incompetence or uncharted criminal
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of the Summons and correct the Unlawful
Detainer [illegible] previous [illegible]
by Washington State [illegible] RCW 59.18.365,
[illegible] Court of Evergreen [illegible]

purported "[illegible]" "agreement" supposedly signed by Appellant on March 22, 1993, upon entering the unit. The Exhibits submitted by Plaintiff, however, included copies of any valid rental agreement signed by Mr. Holmes. Nor did the Plaintiff show how the purported conditions in Defendant's rental unit, "substantially affected" the health and safety of the tenant or other tenants..." RCW 59.18.180(1). Cf. Plaintiff's Exhibits, A, B, C, December 21, 2012 (photographs of rental unit). See e.g. 17 WAPRAC 6.680:

> However it seems possible that the a tenant's failure to keep the premises clean... might not be so serious as to amount to waste... at common law...
>
> William B. Stoebuck, 17 WAPRAC 6.680.

See also Foisy v. Wyman, 83 Wn. 2d 22, 30, 515 P.2d 160 (1973) (implied warranty of habitability under RCW 59.18). Cf. RP, December 21, 2012, No. 12-2-39304-4 SEA at —. Here, Defendant could not have been "evicted" from his former rental unit, under the old common-law

---

5. Defendant/Appellant cannot attend to reproduce any of the Clerk's Papers in this case. See Washington Supreme Court No. 88380-7, Motion For Expenditure of Public Funds, RAP 15.2, pending.

purported "Rental Agreement" supposedly signed by Appellant on March 20, 1993, upon entering the unit, the Exhibits submitted by Plaintiff, neither included copies of any valid rental agreement, signed by Mr. Holmes. Nor did the Plaintiff, show how the purported conditions in Defendant's rental unit, "deliberately affected [] the health and safety of the tenant or other tenants..." RCW 59.18.180(1). Cf. Plaintiff's Exhibits, A, B, C, December 27, 2012 (photographs of rental unit). See e.g. 17 WAPRAC §6.80:

However it seems possible that "... a tenant's failure to keep the premises clean ... might not be so serious as to amount to waste ... at common law..."

William B. Stoebuck, 17 WAPRAC §6.80.

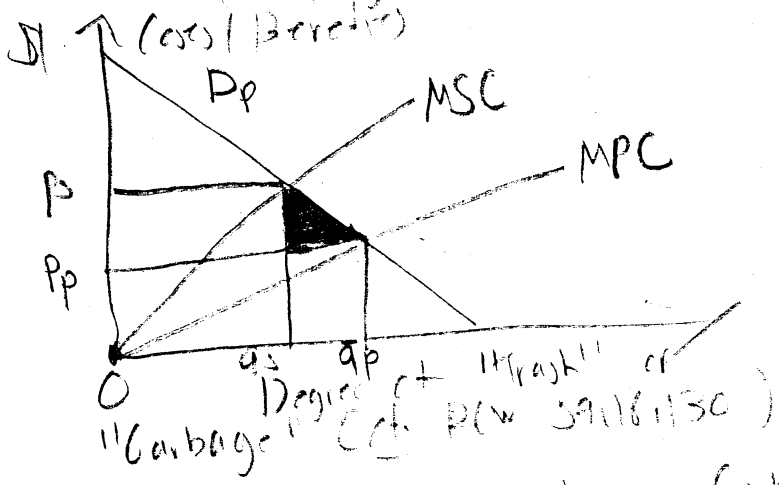
See also Foisy v. Wyman, 83 Wn. 2d 22, 30, 515 P.2d 160 (1973) (implied warranty of habitability under RCW 59.18). Cf. RP, December 27, 2012, No. 12-2-39304-4 SEA at —. Hence, Defendant could not have been "evicted" from his former rental unit, under the old common-law

---

5. Defendant/Appellant cannot afford to reproduce any of the Clerk's Papers in this case. See Washington Supreme Court No. 80380-7, Motion For Expenditure of Public Funds, RAP 15.2, pending.

[illegible] prevailing under eg. RCW 39.10, [illegible] Decision. See Figure 2 below!

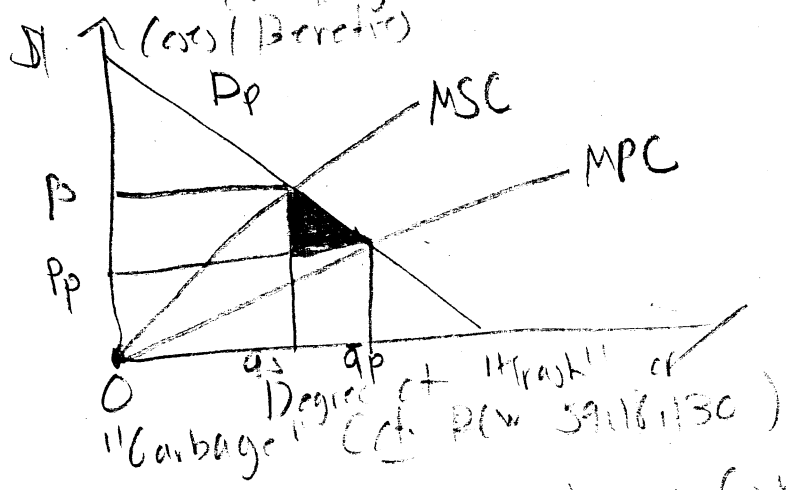
Figure 2. Economic "Externality" Decision (or Dogma) – Econ 1101 Classic



In the diagram, without regulations (public or private) such as the cited RCW 39.10.130 (1)-(3), the tenant only considers the marginal "private" costs of "trash" or "garbage," represented by the private cost curve MSC. Adding the "social" or "external" costs of others generates the "social" cost curve MPC. Pp represents the tenant's private demand curve for "garbage" or "trash." See e.g. R. Dorfman, Economics of the Environment (1977 ed.) or any other textbook on "environmental" economics

prevailing under e.g. RCW 39.18, [illegible]
Decision. See Figure 2 below:

Figure 2. Economic "Externalities" Decision (or Dogma) – Econ 1101 Classic



In the diagram, without regulations (public or private) such as the cited RCW 39.18.130 (1)-(2), the tenant only considers the marginal "private" cost of "trash" or "garbage," represented by the private cost curve MSC. Adding the "social" or "external" costs or others generates the "social" cost curve MPC. Dp represents the tenant's private demand curve for "garbage" or "waste." See e.g. R. Dorfman, Economics of the Environment (1977 ed.) or any other textbook on "environmental" economics

This is the [illegible] environmental rules and regulations of both "public" and "private" [illegible] Seattle Sea bar or "practical [illegible] flags < 0.05 mm. in thickness, See [illegible] Seattle Ordinance 123775, December 15, 2011.

However, in the case at bar, the private Plaintiff and Landlord, Don Kennedy Properties, LLC, has NEVER identified what alleged "general" roots Appellant "posy" apparently supposedly inflicted upon other tenants or upon the general property values of the building, i.e. rental values and prices, in order for the tenants attributed rendered to "substantially" affect the welfare of 240 other tenants or of the property owners in terms of the cited RCW 59.18.180(1): "substantially affect". Plaintiff has cited to accidental fires involving Defendant's apparent [illegible] fires, which he had [illegible] peacefully since March 30, 1993, beyond the conclusory allegations made by Mr. (Don Kennedy) Real Estate Property Manager James "Jim" Pen.

This is the [illegible] environmental rules and regulations of Seattle, both "public" and "private" just as [illegible] Seattle Dev bans on "plastic grocery bags < 0.25 mm. in thickness," See [illegible] Seattle Ordinance 125775, December 15, 2014.

However, in the case at bar, the private Plaintiff and Landlord, Dev Kennedy Properties, LLC, has NEVER identified what alleged "general" pets Appellants "noisy" apartment supposedly inflicted upon other tenants or upon the general property values of the building, i.e., rental values and prices, in order for the tenants affected rendered to "substantially" affect the "welfare" of 240 other tenants or of the property owners in terms of the case RCW 59.18.180(1): "substantially affect," Plaintiff has cited no accidents or fires involving Defendants' apartment unit since March 26, 1993, beyond the conclusory allegations made by DK (Dev Kennedy) Real Estate Property Manager James "Jim" Pen.

at the December 21, 2012 show cause hearing before Commissioner Velarde-Gui, See RP, December 21, 2012, at — (Cause Hearing Dec. 21, 2012).

At the December 21, 2012 Hearing, King County Superior Court Commissioner Charles V. Velarde-Gui, affirmed the earlier "Show Cause" Order, signed by Commissioner Nancy Bradshaw Jetrsen on Tuesday December 11, 2012. Commissioner Velarde-Gui also signed a Written Findings of Fact And Conclusions of Law, all in Plaintiff/Respondent's favor, and awarded Plaintiff Dr. Ferrey Real Estate some $1,700 in back rents, fees, and attorney fees, See Order And Judgment at 1-4, December 21, 2012. (Appellant's Tes Pers to reference these items. RAP 15.2.). This appeal timely follows. Cf. State v. Alfonso, 41 Wash. App. 121, 123-126, 703 P.2d 1218 (1985) (Appellant delay in submitting Clerk's Papers).

---

6. Appellant was not allowed to attend the Hearing personally because of KCCR 3 and Rules, but was permitted to attend telephonically. Cf. State ex rel Taylor v. Derse, 81 Wn. App. 414, 421, 423, 914 P.2d 773 (1996) (right to attend hearing).

at the December 21, 2012 Show Cause Hearing before Commissioner Velarequi, See RP, December 21, 2012, at — (9-10 Atty Dec 21, 2012).

At the December 21, 2012 Hearing, King County Superior Court Commissioner Carlos Y. Velarequi, affirmed the earlier "Show Cause" Order, signed by Commissioner Nancy Bradburn-Johnson on Tuesday December 11, 2012. Commissioner Velarequi also signed a Written Respondent Findings of Fact And Law, all in Plaintiff/Respondent's favor, and awarded Plaintiff Dan Ferrey Real Estate, some $1,760 in back rents, costs, and attorney's fees, See Order And Judgment at 1-4, December 21, 2012. (Appellant's Pro Per to reference these items, RAP 15.2.). This appeal timely follows. Cf. State v. Alfonso, 41 Wash. App. 121, 123-126, 702 P.2d 1218 (1985) (1 year delay in submitting Clerk's Papers).

6. Appellant was not allowed to attend the Hearing personally because of KCCR and Rules, but was permitted to attend telephonically. Cf. State ex rel Taylor v. Dorsey, 81 Wn. App. 414, 421, 423, 914 P.2d 773 (1996) (right to attend hearing).

ISSUES FOR REVIEW

I. DID THE KING COUNTY SUPERIOR COURT, NO. D-2-393[illegible] JEA, VIOLATE APPELLANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION BY NOT TRANSPORTING HIM TO THE DECEMBER 21, 2012 "SHOW CAUSE" HEARING?

II. DID KING COUNTY SUPERIOR COURT LACK JURISDICTION OVER THE DEFENDANT, BECAUSE THE SUMMONS PREPARED BY PLAINTIFF DON KENNEDY PROPERTIES, LLC, ERRONEOUSLY DIRECTED THE DEFENDANT TO "PERSONALLY APPEAR" AT THE DECEMBER 21, 2012 "SHOW CAUSE" HEARING?

III. DID KING COUNTY SUPERIOR COURT ERRONEOUSLY AWARD PLAINTIFF OVER $1,[illegible] IN ATTORNEY'S FEES AND OTHER COURT-MANDATED COSTS?

1. Lack of Jurisdiction
2. Lack of Basis for Costs

ISSUES FOR REVIEW

I. DID THE KING COUNTY SUPERIOR COURT, NO. D-2-39304-4 SEA, VIOLATE APPELLANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION BY NOT TRANSPORTING HIM TO THE DECEMBER 21, 2012 "SHOW CAUSE" HEARING?

II. DID KING COUNTY SUPERIOR COURT LACK JURISDICTION OVER THE DEFENDANT, BECAUSE THE SUMMONS PREPARED BY PLAINTIFF DON KENNEDY PROPERTIES, LLC, ERRONEOUSLY ORDERED THE DEFENDANT TO "PERSONALLY APPEAR" AT THE DECEMBER 21, 2012 "SHOW CAUSE" HEARING?

III. DID KING COUNTY SUPERIOR COURT ERRONEOUSLY AWARD PLAINTIFF OVER $1,700.00 IN ATTORNEY'S FEES AND OTHER COURT-MANDATED COSTS?

1. Lack of Jurisdiction
2. Lack of Basis for Costs

IV. DID PLAINTIFF CONSENT TO SEARCH OF DEFENDANT'S APARTMENT UNIT, ON NOVEMBER 16, 2012?

1. Installation of CO Detectors On November 16, 2012?

2. Subsequent release of evidence to Seattle Police Department (SPD) by Don Kennedy Real Estate (DK), after Appellant's December 21, 2012, "eviction"?

V. IS RCW 59.18.150(1)-(6), UNCONSTITUTIONALLY VAGUE AND OVERBROAD, "AS APPLIED" AGAINST THIS DEFENDANT? (America 2013, Pent Mal Version - for Grand Mal Version, see Case No. 84-[illegible]-2. SEA, pending!)

1. Vagueness?

2. Overbreadth?

STATEMENT OF CASE.

On Wednesday November 14, 2012, Plaintiff Don Kennedy Real Properties, LLC (DK), suddenly posted rental [illegible] apartments at the Cedro Apartments, 4126 Brooklyn Avenue, Northeast, Seattle, Washington, 98105, announcing the installation of CO (Carbon Monoxide) detectors in all 40 units, allegedly pursuant to a new State law

IV. DID PLAINTIFF CONS[illegible] SEARCH OF DEFENDANT'S APARTMENT UNIT, ON NOVEMBER 16, 2012?

1. Installation of CO Detectors On November 16, 2012?

2. Subsequent release of evidence to Seattle Police Department (SPD) by Don Kennedy Real Estate (DK), after Appellant's December 21, 2012, "eviction"?

V. IS RCW 59.16.030 (1)-(2), UNCONSTITUTIONALLY VAGUE AND OVERBROAD, "AS APPLIED" AGAINST THIS DEFENDANT? (America 2013, Penal Version - for Grand Mal Version, see Case No. 2-1-00088-2 SEA, pending!)

1. Vagueness?

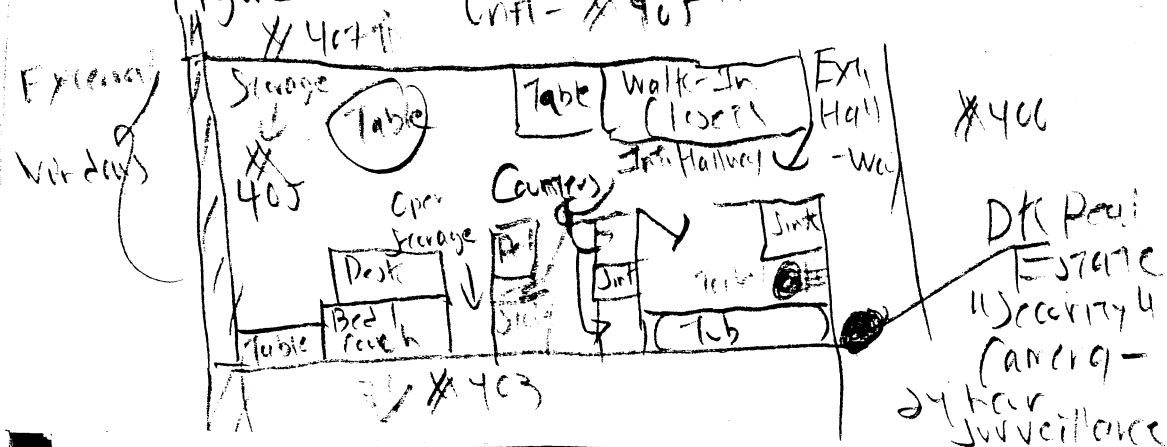
2. Overbreadth?

STATEMENT OF CASE.

On Wednesday November 14, 2012, Plaintiff Don Kennedy Real Properties, LLC (DK), suddenly posted notices [illegible] 40 apartments at the Lake Apartments, 4120 Brooklyn Avenue, Northeast, Seattle, Washington, 98105, announcing the installation of CO (Carbon Monoxide) detectors in all 40 units, allegedly pursuant to a new State law

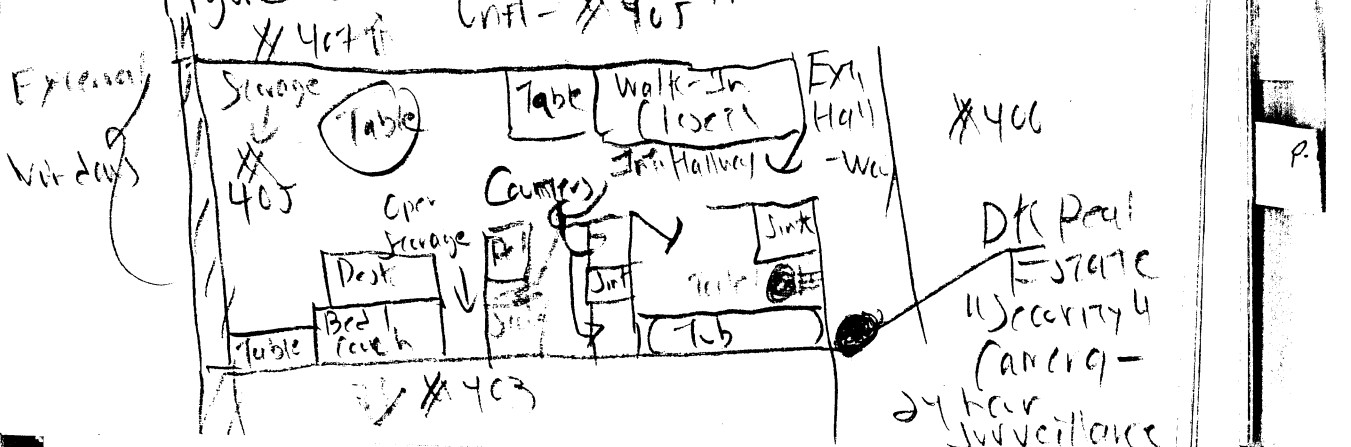
[illegible] Defendant was not present [illegible]
at the time of the 11 AM Friday morning
installation of the CO2 detectors, Apparently, and
unknown to all 40 tenants, Don Kennedy
Property Manager James "Jim" Paar and
Cote Apartments Residential Manager Julie
Hamilton, intended also to enforce a
mandatory inspection of all 40 units to check
for allegedly "sanitary" conditions. These
Don Kennedy agents also brought cell phones
equipped with digital cameras with them,
unbeknownst to the 40 tenants, including
Appellant, to document alleged violations
committed by tenants against RCW 59.18.130
(1)-(2) under the signed rental agreements.
(Defendant had never signed a valid rental
or lease agreement with the landlord, since
moving into #405 on March 26, 1993. See
Plaintiff's Exhibits, December 07, 2010.)

Figure 3. Defendant/Appellant's Apartment
Unit - #405



[illegible] Defendant was not present [illegible] at the time of the 11 AM Friday morning installation of the CO2 detectors. Apparently, and unknown to all 40 tenants, Don Kennedy Property Manager James "Jim" Paar and Cote Apartments Residential Manager Julie Hamilton, intended also to enforce a mandatory inspection of all 40 units to check for allegedly "insanitary" conditions. These Don Kennedy agents also brought cell phones equipped with digital cameras with them, unbeknownst to the 40 tenants, including Appellant, to document alleged violations committed by tenants against RCW 59.18.130 (1)-(2) under the signed rental agreements. (Defendant had never signed a valid rental or lease agreement with the landlord, since moving into #405 on March 26, 1993. See Plaintiff's Exhibits, December 07, 2010.)

Figure 3. Defendant/Appellant's Apartment Unit - #405



Defendant Judeny received a Letter, signed by Plaintiff Dr Kennedy Real Estate's legal counsel, and presenting Appellant with a "10-Day Notice to Comply or Vacate [sic]" allegedly pursuant to RCW 59.18.130(1)-(2). Since Appellant had never signed a valid rental agreement with the Plaintiff, and the "10-Day Order" never precisely described what Appellant's purported violations of RCW 59.18.130(1)-(2) supposedly consisted of, Appellant was never apprised that he was in violation of either: (1) RCW 59.18.130 (1-2) or any other valid statutory provision; or (2) A valid landlord-tenant rental agreement, or in breach the date of the inspection and entry by the landlord, Friday, November 16, 2012.

Furthermore, Plaintiffs never returned to inspect Defendant's apartment unit #407, within the statutory "10-Day" period mandated by the legislative drafters of RCW 59.18.130 (1)-(2). The expiration of this cited "10-Day" period defined by statute, was Friday, November 30, 2012. Since Plaintiffs never returned, to see if Appellant was in compliance with the terms of the "10-Day" Order, or in breach since Friday, November 30, 2012, Plaintiff

Defendant suddenly received a
Letter signed by Plaintiff's Dan Kennedy
Real Estate's legal counsel, and presenting
Appellant with a "10-Day Notice to
Comply or Vacate [sic]" allegedly pursuant
to RCW 59.18.130(1)-(2). Since Appellant
had never signed a valid rental agreement
with the Plaintiff, and the "10-Day Order"
never precisely described what Appellant's
purported violations of RCW 59.18.130(1)-(2)
supposedly consisted of, Appellant was never
apprised that he was in violation of either:
(1) RCW 59.18.130 (1)-(2) or any other valid
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tenant rental agreement, or in breach the
date of the inspection and entry by the
landlord, Friday, November 16, 2012.

Furthermore, Plaintiffs never returned to
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within the statutory "10-Day" period considered
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(1)-(2). The expiration of this cited "10-Day"
period defined by statute, was Friday, November
30, 2012. Since Plaintiffs never returned, to
see if Appellant was in compliance with the
terms of the "10-Day" Order, or in breach
since prior Friday, November 30, 2012, Plaintiff

Defendant [illegible]
alternative, except [illegible] "Serve" [illegible]
[illegible] Defendant if they still [illegible]
to remove Unlawful Detainer proceeding
[illegible] Appellant, pursuant to RCW 59.18.130
(7)-(2), See e.g. IBF, LLC v. Heath, 141 Wash
App. 624, 174 P.3d 95 (2007) ("[T]he unlawful detainer
detainer statute is strictly construed in"), However, Plaintiffs,
did not return to inspect Appellant's apartment until
Sunday, December 9, 2012, after Plaintiffs
were well aware that Appellant was absent from
the building, the unit had been searched, and
Defendant Joel Cellner, had been "arrested"
by Seattle Police (SPD), See SPD #395-281,
Case No. 12-1-06080-2 SEA, pending.

Furthermore, the December 11, 2012 "Show
Cause" Order, "served" upon Defendant in
the King County Jail the next day, was
defective [illegible] this Summons And
Complaint, [illegible] Plaintiffs
(Landlords) Attorney falsely implied that
Defendant (Tenant) Appellant was
required to "personally appear in court
[illegible] (emphasis added), in order to contest
the "Unlawful Detainer" [illegible]
Plaintiffs Summons And Complaint [illegible]

alternative, except [illegible] "Serve" [illegible] Notice upon Defendant if they still noted to commence "Unlawful Detainer" proceedings against Appellant, pursuant to RCW 59.18.130 (7)-(2). See e.g. IBF, LLC v. Heath, 141 Wash App. 624, 174 P.3d 95 (2007) ("[T]he unlawful detainer statute is strictly construed in"). However, Plaintiffs did not return to inspect Appellant's apartment unit, until Sunday, December 9, 2012, after Plaintiffs were well aware that Appellant was absent from the building, the unit had been searched, and Defendant Joel Cellner, had been "arrested" by Seattle Police (SPD). See SPD #395-281; Case No. 12-1-00088-2 SEA, pending.

Furthermore, the December 11, 2012 "Show Cause" Order, "served" upon Defendant in the King County Jail the next day, was defective in that this Summons And Complaint, prepared by Plaintiff's (Landlords) Attorney, falsely implied that Defendant (Tenant) Appellant was required to "personally appear in court" (emphasis added), in order to contest the "Unlawful Detainer" [illegible] Plaintiff's Summons And Complaint [illegible].

[illegible] Defendant [illegible]
[illegible] Washington State
[illegible] o[illegible]risdiction over this
[illegible] Defendant [illegible]
commenced [illegible] [illegible] 30
[illegible] (D), See e.g., Truly v. Heuft, 138 Wash.
App. 913, [illegible] P.3d [illegible] (2007), Sive
abrogated [illegible] F, LLC v. Pope,
[illegible] 168 Wash. App. 451, 277 P.3d
60 (2012) (citing). Article IV, §6, R(WA), The
purpose of this Appeal, is to [illegible] to the
extent Washington State's [illegible] may
arbitrarily "abrogate" and/or alter, their
own prior decisions. See Sears v. Hillyblade,
Lee, Crit., 163 Wn.2d 1, 8-15, 177 P.3d 685
(2008), [illegible] (citing et Redwood v.
Burkhart, 50 Wash. App. 21, 27-29, 991 P.2d
777 (2000) (construing RCW 9.61.230),

[illegible] executed upon Defendant [illegible] effectively [illegible] Washington State Court of Jurisdiction over this "Unlawful Detainer" action, improperly commenced pursuant to RCW 59.18.130 (11) (a), See e.g. Truly v. Heuft, 138 Wash. App. 913, 916, 158 P.3d 70 (2007), since abrogated Arthur & F, LLC v. Pryor, 166 Wash. App. 168 Wash. App. 457, 277 P.3d 63 (2012) (citing Article IV, §6, R(WA), The purpose of this Appeal, is to test to what extent Washington State's courts may arbitrarily "abrogate" and/or alter, their own prior decisions. See State v. Lilyblad, 163 Wn.2d 1, 8-15, 177 P.3d 686 (2008), abrogating [illegible] (in re Bedford v. Berkhart, 60 Wash. App. 31, 37-39, 801 P.2d 944 (1990) (construing RCW 9.61.230),

ARGUMENT

I. "THE CASE OF [illegible]
ABSENT APPELLANT" -- APPELLANT/
DEFENDANT'S RIGHTS TO DUE
PROCESS AND EQUAL PROTEC-
TION OF LAW, WERE VIOLATED
BY KCCF AND KING COUNTY
SUPERIOR COURT, ARBITRARILY
REFUSING TO TRANSPORT HIM
TO THE RECORDED [illegible]
WHEN CALLED HEARING [illegible]
WERE, KING COUNTY COURT-
HOUSE.

Plaintiff Dr Kennedy [illegible]
clearly knew Mr Helms was in the
King County Jail at the time that
the "unlawful Detainer" action was
commenced, on December 11, 2012. See
King County Jail, Inmate Lookup;
Ct. Mins Only Words," December 21,
2012, "Motions to Move Violence Against
Law Enforcement" http://www.mcso.org
words.jail (or Helms) (website accessing

0.5.

ARGUMENT

I. "THE CASE OF THE ABSENT APPELLANT" -- APPELLANT/DEFENDANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW, WERE VIOLATED BY KCCP AND KING COUNTY SUPERIOR COURT, ARBITRARILY REFUSING TO TRANSPORT HIM, TO THE RECORDED OBJECTION, WHEN CALLED HEARING ON WARDS, KING COUNTY COURT-HOUSE.

Plaintiff's Dr. Kennedy Real Estate, Clearly Knew Mr. Helms was in the King County Jail at the time that this "Unlawful Detainer" action was commenced, on December 11, 2012. See King County Jail, Inmate Lookup; Ct. Hrs. Only Words," December 21, 2012, "Threats of More Violence Against Law Enforcement", http://www.kingcounty.gov/jail/inmatelookup (website accessed

0.5.

[illegible]). Yet Defendant was deprived of any rights to "appear personally" as directed in the Summary prepared by Plaintiff and to contest his "[illegible]" from a building he had resided in for almost 40 years!! Instead, at the whim of Trace and Judge Donald M. Office (through a hundred [illegible] rights, Appellant was denied any rights to attend the cited December 3rd, 2012 King County Superior Court W-305 [illegible] before King County Superior Court Commissioner Carlos G. Velarde-Gui, and to contest his "[illegible]":

[6] Using its discretion [illegible] state [illegible] to the [illegible] and [illegible] of transporting a prisoner to the [illegible] security [illegible] the inmate poses to [illegible] subordinate [illegible] of the [illegible] (a) the need for an [illegible] the trouble of delay until the issue is [illegible] the trouble of delay until the prisoner is released; (b) the probability of success on the merits; (c) the [illegible]

[illegible] Yet Defendant was deprived of any rights to "appear personally" as directed in the Jurors prepared by Plaintiff, and to contest his "eviction" from a building he had resided in for almost 40 years!! Instead, at the whim of Trial and Judge Donald M. Clifford (Trial Court, Hartford) [illegible] Appellant was denied any rights to appeal the ruled December 27, 2012 filing (only reviews W-325, [illegible] before filing [illegible] Commissioner Paul G. Velmegui, and to consent to "Eviction":

[6] Using its discretion [illegible] should consider: (1) the risk and inconvenience of transporting a prisoner; (2) the prisoner's security risk; (3) the substantiality of the matters in issue; (4) the need for an early determination of the issue; (5) the feasibility of delay until the prisoner is released; (6) the probability of success on the merits; (7) the [illegible] of

p. 5.

interest in [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

Taylor v. [illegible], [illegible] 81 [illegible]
App. 414 at 422, [illegible] 473 at [illegible]
(1986), [illegible] [illegible] [illegible] [illegible]
bar, Defendant, a non-violent [illegible] [illegible]
(see [illegible] 9, 94 A.533 et seq.) was
[illegible] requesting that KCCF transport
him 2 blocks from the King County
(Seattle) Jail [illegible] to the
King County Courthouse. The transport
would pose no [illegible] [illegible]
the Defendant's upcoming jury
trial (see New Bail-Clerk-2 [illegible])
or courtesy order transport, ordered
by KCCF every day, inter alia,
to order jails, responsible court appearances
etc. After considering these factors, the
court may refuse to grant the inmate's
request to transport, but the [illegible] of a
[illegible] [illegible] Taylor v. [illegible]
[illegible] Bail Reform [illegible]
Idem, at [illegible]

0.5

interest in [illegible] his testimony
[illegible] deposition

Taylor v. Dorsey, [illegible] 81 Wash.
App. 414 at 422, 914 P.2d 173 at 177
(1996), [illegible] In the case at
bar, Defendant, a non-violent offender
(see e.g. RCW 9.94A.535 et seq.), was
merely requesting that KCCF transport
him 2 blocks, from the King County
Jail [illegible] to the
King County Courthouse. The transport
would pose no grave security risk,
than Defendant's upcoming jury
trial (see Nev. v. Clark, 2 JEA)
or countless other transports, conducted
by KCCF every day, inter alia,
to order jails, hospitals, court appearances
etc. After considering these factors, the
court may refuse to grant the inmate's
request for transport, but the [illegible] a
[illegible] Taylor v. Dorsey
Idem, at [illegible] Both Plaintiff's [illegible]

[illegible] Court Commissioner Cooles & Velasquez [illegible] refused to consider the [illegible] of these court orders [illegible] determining whether or not [illegible] W-305.

The record [illegible] N. [illegible] [illegible] currently [illegible] by Plaintiff, there is "most" appear [illegible] at the hearing. Jurors And Complainant, [illegible], [illegible] "winner", Appellant's December 21, 2015 "Decision" must be reversed!

II. PLAINTIFF [illegible] DEMANDED APPELLANT'S [illegible] APPEARANCE (EVICTION JURORS, A.R. 2) AT THE DEFENDANT'S [illegible] "SHOW CAUSE" HEARING IN FRONT OF COMMISSIONER VELASQUEZ.

In addition to denying Appellant the right to be [illegible] to the December [illegible] W-305 Courthouse hearing, Plaintiff is also [illegible]

Court Commissioner Charles G. Velazquez
adamantly refused to consider the
aforementioned eight factors in
determining whether or not the
transfer [illegible] W-325.
The record, after Mr. Hilton was
correctly told by Plaintiff, that he
"must" appear "personally" at the hearing,
Jumers And Complaint, Ex. Crt. Hearing
"minimum", Appellant's December 21, 2012
Hearing" must be reversed!

II. PLAINTIFF FORMALLY DEMANDED
APPELLANT'S "REMOVAL APPEARANCE"
(EXCELON JUMERS, AT 2) AT THE
DECEMBER 21, 2012, "SHOW
CAUSE" HEARING IN FRONT OF
COMMISSIONER VELAZQUEZ.
In addition to denying Appellant
the right to be transported to the
December 21, 2012, W-325 Courthouse
hearing, Plaintiff also unlawfully

O.S.

denied [illegible] pending [illegible] under a [illegible] hearing [illegible] and [illegible] [illegible] [illegible]

"disregard" the jurisdictional
holding, deciding instead that the
superior courts of this State, sentencing
are an "inherent" power, under
Article IV, § 6, PCWA, to decide
Unlawful Detainer" actions, regardless
whether or not the Plaintiff satisfies
the jurisdictional prerequisites
[illegible] in order to commence an
action. See e.g. MHM v. Rogers, 168
Wn. App. 451, 277 P.3d 63 (2012)
(regarding Title and other cases
involving Unlawful Detainer actions to
[illegible] jurisdiction). However, it is
the function of the Washington
[illegible] Appeals to disregard the law
[illegible] in the absence of
[illegible] directing it to do so, when the
[illegible] Supreme Court [illegible]
[illegible] cases, such as the
[illegible] State Supreme Court [illegible]
[illegible] regarding prior decisions of Washington

[illegible] Respondent, between the
[illegible] Truly v. Heath, 138 Wash. App.
[illegible] 3d 1016 (2007) and
[illegible] reversal rendered in MHM v. Nyberg,
68 Wash. App. 451, 844 P.2d 68 (2000),
[illegible] Plaintiff's summary judgment
[illegible] dismissal, based upon a determinative
[illegible] And lemphrey, alternatively
[illegible] Appellant at the economic
[illegible] of the rents he had paid
[illegible] 2007 and 2008, thereby
[illegible] the [illegible] clause of
[illegible], see A.

¶ 21 For example, [illegible]
[illegible] the [illegible]
[illegible] did not [illegible] the [illegible]
required notice than response by mail
[illegible] was an alternative
response by personal delivery.

[illegible] Authority of [illegible] v. Bir, 163 Wash.
[illegible] 377, 260 P.3d 900 (2011) (asserting
[illegible]

[illegible] abrogating [illegible]
[illegible] be submitted [illegible] Discretionary Review
[illegible] (B,2), to the Washington Supreme
[illegible], since the ruling MHM, was not
[illegible]pported by any authority, other than
[illegible] reference to Article 1v,G by
[illegible] by any other Divisions of the
[illegible] Appellate the case at bar,
[illegible] defendant was incarcerated and Internally
[illegible] could not "appear personally" to [illegible]
[illegible] purported "Summons" prepared by his
[illegible] undersigned in time for the hearing. Reddick
[illegible] Connecticut, 401 U.S. 371, 377, 91 S.Ct.
[illegible] 28 L.Ed.2d [illegible] (right of
[illegible] access to the courts [illegible] This Defendant, demands
[illegible] the right to appeal MHM and other
[illegible] similar cases to the Washington State
[illegible] Supreme Court! Cf. State v. [illegible]
[illegible] App. [illegible] (Division II (November 26, 2001),
2001 Westlaw 1413363, review denied,
163 Wn.2d [illegible] (Wash. [illegible] 2001)).

[illegible] AWARDED [illegible]
[illegible] AND ATTORNEY'S
FEES TO PLAINTIFF [illegible] D/N
KENNEDY PROPERTIES, LLC.
1. Lack of Jurisdiction under RCW
59.18.290 (1) (2)

The apparent basis for King County Superior Court Commissioner (Oakes) Velarde's awarding Plaintiff some $1,100 in statutory attorney's fees and costs, lies in RCW 59.18.290(1)(2). These provisions of the Residential Landlord-Tenant Act authorize the trial court to award statutory attorney's fees to the prevailing party in an unlawful detainer action, wherein:

... (2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except

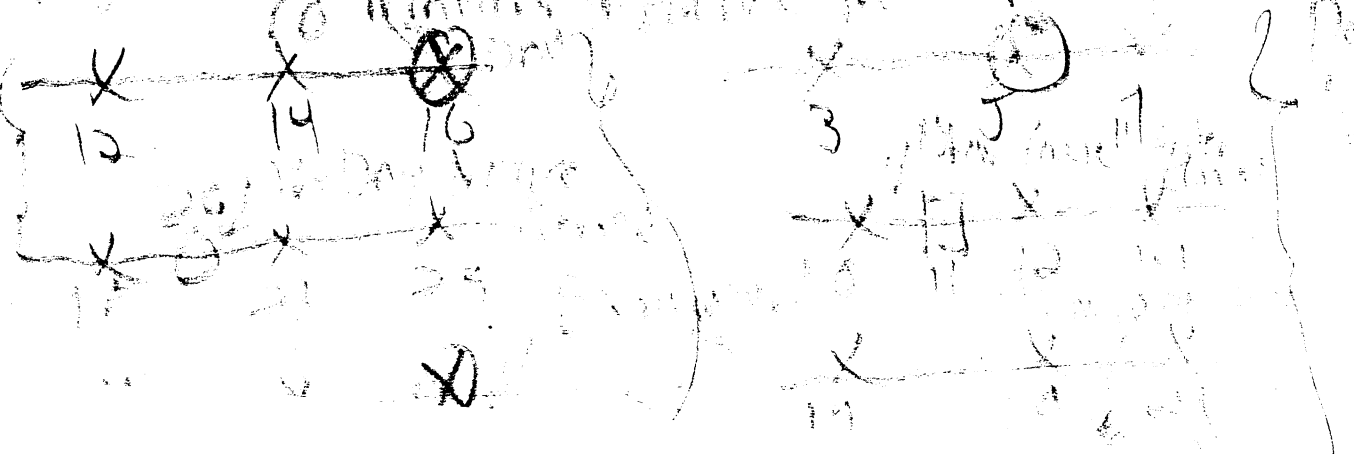
---

Appellant cannot afford, or cannot make payable the King County Department of Adminstration (DOA), the recovery costs plus the [illegible] Transcript Fee (RAP 9.2) to reproduce [illegible] this form RAP 10.2.

under a valid [illegible]
landlord so deprived of possession of
premises [illegible] this section, may recover his costs of suit and
reasonable attorney's fees.

Housing Authority of the City of [illegible]
v. Finley, 10th Dist. App. No. 87-850,
2d Dist. 2d [illegible] 20, 1988, tenants and
owners contested. In the case at bar,
Plaintiff DK Real Estate, was never
"deprived of possession of premises in
violation of ERC 5321.11, 11 since, in
also the landlord never returned to
inspect or monitor. Appellants [illegible] have
with the terms [illegible] "Notice"
Notice [illegible] Tenants Payment
[illegible]

Figure 4 Time Charge Returned



inspect conditions in ~~XX~~405, after
appellant was "arrested" by Jennie
Lee Beresford, Wesley "Way"
Vinson (SPD ~~XX~~ 395-281) (who was
apparently applying the Landlord Dan
Gredy's "10-Day" (Comply or Vacate)
letter, encapsulated in RCW 59.18.130
1)-(2), to this State's preferred "Anti-
harassment" law RCW 9A.46.020(b)), and
e unit had been thoroughly "searched" and/or
ated by SPD, State vs Jordan, 160 Wn.2d
01, 130, 156 P.3d 895 (2007) (mere negligence
[illegible]). Since this Appellant, regardless
[illegible] his apparent, in time for
[illegible] compliance with
[illegible] RCW 59.18.650(2)
the term "willfully" in RCW 59.18.650(2)
(b) does not amend
[illegible] attorney's fees in this case.
Carol Hase, Inc vs Harris, 136 Wash App 153,
147 P.3d 1305 (2006) (Plaintiffs
[illegible] the allegedly "wanton"
[illegible] conditions on their
[illegible] "unsanitary" conditions on the
[illegible] Appellant
[illegible] subsequently [illegible]
[illegible] RCW 59.18.180 [illegible]

[illegible] Appellant's alleged [illegible]
[illegible] constituted a [illegible] nuisance
[illegible] Unfortunately affected the health
and safety of [illegible] tenants." RCW
[illegible] (1), CP, December 3, [illegible]
[illegible] of Jim Pagar, the Property
Manager, claiming [illegible] "[illegible]
[illegible] defendant's property from electrical
baseboard heaters [sic]" constituted alleged
"fire hazard," when in fact baseboard
heaters and electrical circuits had been
turned off since [illegible] (RS 1),
Furthermore, the modifier "after the termination
of the rental agreement" included in RCW 59.18.290
(2), applies to both acts of the tenant "holding]
over in the premises" or "excluding] the
landlord therefrom [the premises]," since both
compound phrases, envision the existence of
a valid rental agreement between the
landlord and the tenant. See e.g. Tacoma
Rescue Mission v. Hevern, 157 Wash App
[illegible] 229 P.3d 1260 (2010)
[illegible] 10-[illegible] [illegible]
[illegible] In the case at bar, and analyzing

Exhibits, not one of these exhibits introduced as evidence by the landlord at the December 27, 2002 "show cause" Hearing, constituted a valid rental agreement, signed by Defendant. There was no such valid "rental agreement" providing for the awarding of attorney's fees or costs or clearly, costs, in the case at bar, and hence the trial court's judgment awarding Dan Kennedy, Real Estate, must be reversed on appeal. Kalich v. Clark, 152 Wash. App. 544, 550, 217 P.3d 1094 (2009). This holding is continued even if appellate court, find that the trial court, had subject matter jurisdiction over the Defendant despite Plaintiffs failing summarily commencing Appellant to appear at the "show cause" Hearing. Kirby, supra, 154 Wash. App. at 250 n.6 (2010) and the cases cited therein.

[illegible]

[illegible] Farm, [illegible]
[illegible] other tenants, and resulting from
[illegible] alleged violations, [illegible]
against the [illegible] [illegible] Since
[illegible] is a "civil" not a "criminal" case,
[illegible] Plaintiffs' action to go forward.
[illegible] Defendant Don Kennedy Properties, LLC,
[illegible] identify some specific [illegible]
[illegible] damages allegedly resulting
from the purported conduct of Defendants
[illegible] residential apartment [illegible] lost
[illegible] physical injury
committed by Defendant against other Co-
tenants, tenants. See e.g. Rogers v.
American Airlines, Inc., 527 F. Supp. 229,
231 (Southern District New York 1981) (Business
[illegible] Company [illegible] January 31) (Business
necessity held to justify challenged
airline employee "grooming" policy
under Title VII of 1964 Civil Rights
Act). Since Respondent Don Kennedy
Real Estate has identified the
tangible physical [illegible]

of Appellant's apartment [illegible]
action for damages under Residential
Landlord Tenant Act, cannot stand,
Christensen v. Ellsworth, 162 Wash.2d 365,
173 P.3d 228 (2007) (Lateness of 3-day
notice to pay rent),
2. Lack of Basis For Assignment of Costs,
Even accepting, arguendo, that Plaintiff
was entitled to "reasonable" attorney's
fees and/or costs in the civil
action No. 12-2-39304-4 SEA,
Don Kennedy Real Estate has neither
itemized or identified these
purported "costs" charged to
Appellant, in a case where the
landlord's counsel has retained or a
fixed fee deem charge, and almost
all of these asserted "costs"
were have had to be paid anyway
by the landlord, and Appellant's [illegible]
[illegible] Apartment, voluntarily
See Figure 1, below ⇒

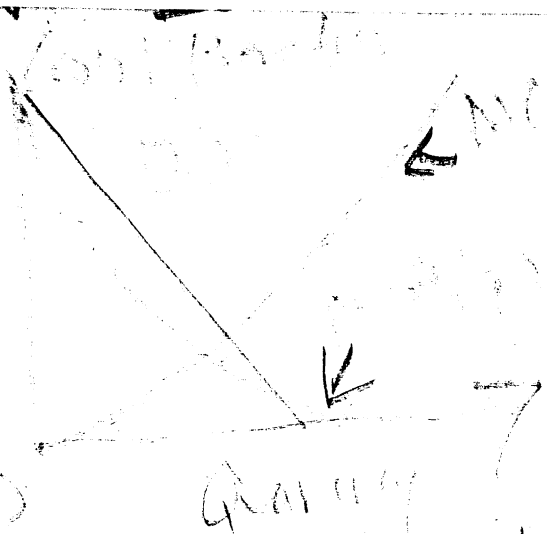


Chart apologies to Cigi John Bates Clark (1904)

$TC(q) = a + bq + cq^2 + \ldots + \text{(higher order terms in } q)$

$AC(q) = TC(q)/q$

the alleged "cost curve" $TC(q)$

is [illegible]

hiring temporary [illegible]
Labor Ready, See e.g. Ferencak v.
Department of Labor & Industries, 142 Wash.
App. [illegible] 175 P.3d (2008) (remitting
[illegible] fee award of [illegible]). In
[illegible] Appellant is being billed for so-called
[illegible] "economic" costs — the costs of
[illegible] hiring trial counsel for
[illegible] Plaintiff, costs of clearing for payroll,
[illegible] other alleged "costs" to the landlord,
which are not real variable costs in
any rational economic sense, but which are
simply part of Dan Kennedy's Real Estate
"fixed" costs of doing business in
his jurisdiction. See e.g. Paul Samuelson and
[illegible] (Nordhaus, Economics (19th edition)
[illegible] any other modern microeconomics
textbook). Since Plaintiff never served this
defendant with an itemized bill of
costs, nor explained the landlord's
lack of diligence in enforcing the
[illegible] provisions contained in RCW
59.18.310(1)(2), for the past 54

court's Award of costs
reversed, unless a new evidentiary
hearing is held (with Appellant to
be transported!) to decide the
basis of and for awarding attorney's
fees and other "costs" of this action,
to Respondent Don Kennedy Real
Estate PLLC [illegible] Sanders v. State
169 Wn. 2d, 827, 841-845, 866, 240 P.3d
120 (2010) (award of "attorney's fees (!)
to state supreme court justice).

IV. PLAINTIFF DON KENNEDY REAL
ESTATE, INC. EFFECTIVE &
POLICY OF ILLEGALLY SEARCHING
AND/OR SEIZING EVIDENCE,
FROM APPELLANT'S FORMER
APARTMENT UNIT (XXXX).

1. The November 16, 2012 Building
Inspection And Installation of the
CO2 (Carbon Monoxide) Detectors.
Appellant (along with the other two

was informed by [illegible]
[illegible] and the legally required
[illegible] of these 60 Defendants,
the landlord was going to conduct a
"search" of
[illegible] Defendant's apartment unit, see Notice
of Landlord's Intent to Enter Premises,
November 14, 2012. Cornwood Place, LLP
v. Thardee, 166 Wash App. 844, 25 P.3d
[illegible] (Kennedy, J.)
(Sec.) (Order entered [illegible]
Friday, November [illegible], while
Appellant was absent from the unit,
Respondent proceeded to search the
apartment unit for alleged "contraband,"
[illegible] to a state prison, [illegible] county
jail photographs [illegible] contents of
Defendant's [illegible] and other
possessions, and, thereby, to use all of the
alleged "evidence" of Defendant's tha-
ascribed violations, supposedly committed
against the terms written in Pen State
he had no valid rental agreement with the
[illegible] to remove the

"Unlawful Detain[illegible]" against this Appellant. In re [illegible], 171 Wn.2d 376, 312 n.6, 376, 256 P.3d 1131 (2011); Nauer v. Mayfield, 193 Wn.2d 332, 337, 440 P.3d 1136 (2019) (electronic records). Clearly, as noted by Appellant at the December 27, 2012 "Sixth Case" Hearing before Commissioner Velategui, Plaintiff violated Appellant's rights, to freedom from warrantless searches and seizures of evidence (at least in his and private social appurtenance [illegible]), as well as the Fourth Amendment expectation of privacy under Article 7, § 7 WA, in the literal privacy of the residential dwelling unit. State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808, 16 ALR 4th 571 (1986) [illegible] denied [illegible] 479 U.S. [illegible] (1986) [illegible] broader "privacy" [illegible] than under Federal Fourth Amendment. See also e.g.

Chapman v. U.S.

photographs of Appellant's

Manager Julie

Hamilton on Friday November 16, 2010, was

MAS
FOR USAF
MAS
FOR USAF
S

April 10, 1992, Appellants Joseph Jacobs and Teresa Jacobs, husband and wife, Appellants, v. State of Washington, Respondent.

No. 12[illegible]-0-[illegible]

3. Dr. Kenney [illegible] Headquarters to
[illegible] San Jose Police Department (SJPD) [illegible]
Appellant [illegible] to [illegible]
JSA. (See SJPD Police Report No.
D-[illegible])

Spring [illegible] Police [illegible]
describe the [illegible] of Dr. Paul
Fraple since April [illegible] (No [illegible]
on December [illegible] 2003) [illegible] the
JSA) and the service of the
Writ of [illegible] by the King
County Sheriff's Office (KCSO) [illegible]
January 4, 2003. Since December [illegible]
Dr. Kenney, Pepper, Manager, James
Pagin, Paul and Residence Manager
[illegible] the Hamilton [illegible] the [illegible]
any [illegible] (Appellants)
No. 2[illegible]-00[illegible] [illegible]
Commanding Officer [illegible] Police
SJPD Police [illegible]
SJPD Police [illegible]

security system, purpo
graphing Appellant, on 11/18/12 and
11/20/12, as well as giving the police
copies of the November 13,
William P.
Garbading

against [illegible] Manager Jim Paak, and Zero [illegible] Julie Hunt [illegible] Defendants [illegible] Annotation, [illegible] Jee [illegible] 10 [illegible]

Fasy v. [illegible], 83 Wn.2d 22, 32, 515 P.2d 160 (1973) (complaint [illegible] implied warranty of habitability).

V. DEN 59.18.130(1)-(2), WHICH [illegible] APPELLANTS DEMAND UNDER AMENDMENTS [illegible], [illegible], [illegible] WELL AS UNDER ARTICLE 7.9 3, 5, 7, 12, PCW.

1. Waivers.

Without a written landlord-tenant or other agreement to render it enforceable, RCW 59.18.130(1)-(2), does not specify the "Duties of Tenant" precisely enough to satisfy the [illegible] requirements [illegible] to deny the [illegible] define tenants' [illegible] objects or [illegible] or other illegal [illegible] "[illegible]" the statute, beyond purported [illegible]

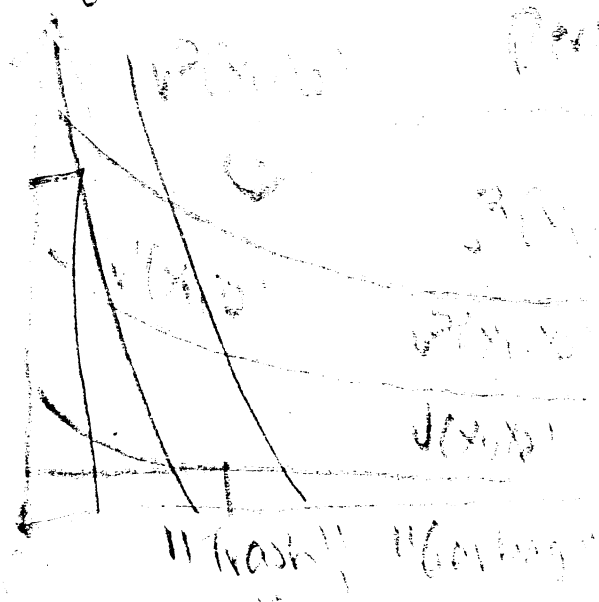
Tacoma Rescue Mission v. Haverty, 155 Wash App. 250, 254 rev'd, 220 P.3d 1280 (2010) (routinely of landlord-tenant agreement where tenant was "evicted" from publicly-subsidized housing for making "threatening" threat(s)). Asserted "economic" defenses, of which complaints unlawful "harsh, severe, apart from common law theories of waste and nuisance" - conduct by tenants or others which actually cause physical injury or economic losses - are not sufficient to satisfy the requirements of due process and/or equal protection, where as in the case at bar, the tenant is uniquely in position to perform specific duties on behalf of the landlord. Housing Authority of Juvenile v. Bin, 163 Wash. App. 367, 372, 260 P.3d 900 (2011) (allegedly landlord to transfer rental agreement to "Somali") Here, there was no written rental agreement (or lease since March 29, 1999), which Appellant argued was Unit Owners, to specify exactly what duties of tenant, the landlord could mandate. (Can there be a "free pass" clause? (or, the landlord ever enforce a tenant "agreement"? (or the landlord ever unit was built similar to experiment?), Furthermore, the related provisions, within the RCW 59.18.180(4)

to the tenant, [illegible] RCW 59.18.180(1), safety of other tenants..." Ct. rig. WAC 478-124-120, General Conduct Code for the University of Washington, "conduct which unlawfully threatens bodily harm..."; Helng v. Gerberding, King Co. No. 86-2-24903-0, Dec. 24, 1986 (Agid, J.), "Nor the landlord or other tenants, or any third parties, [illegible] actual economic or physical harm, to comprise an alleged "true threat" against "health and safety," or what Ct. RCW [illegible] "threat" to include "harm to personal relationships," "to [illegible] "expose a [illegible]" Ct. State v. Allen, No. 8014-6 (Wash. [illegible]) (Ct. [illegible] Ct. [illegible] v. Hall, 130 Wn. App. 918, 126 P.3d 121 (2006) (threatening [illegible] failure [illegible] "jurisdiction" of court to try [illegible] under Article IV, §6, RCW [illegible]

to other non-conserving [illegible]
of either Marshallian Luxury Income
held constant) or Hicksian Utility held
constant) demand curves) [illegible] so
(1)-(2) and RCW [illegible], [illegible], are
unconstitutionally vague as applied to
"Revised" the Appellant, [illegible]
Figure [illegible] Silberberg, The Structure of
Economics: A Mathematical Analysis
(1990 [illegible]) (showing impossibility of
comparing [illegible] in [illegible] indep
[illegible]).

2. Overbreadth:

Figure 6 Consumer Values Power U = U(X,Y)
Power 2 = V(X,Y)



"One man's trash is another man's treasure!" Whether true in a philosophical sense or not, it is true in an [illegible]

[illegible]

RCW 59.18.130(1)-(2), delegate broad powers to each residential landlord (as well as to local governments) arbitrarily to prescribe and/or enforce, a residential tenant's personal books, papers, diaries, records, belongings and other keepsakes, on grounds of purported nonentanglement with the stated terms written into RCW 59.18.130(1)-(2). Anything which is purportedly "[illegible]" may be arbitrarily confiscated and/or disposed of by the landlord, with little or

other rules of the [illegible]
RCW 59.18.130, prorated or scaled to
the square footage of the house or
apartment under consideration, or to
the real income or assets or disability
of the tenant. Tacoma Revise Municipal
Code 1.[illegible] or any rule or [illegible] Collected
"interfering" physical behavior by tenants
insufficient to compose unlawful
[illegible] Complex
[illegible] rule
[illegible] rule
consideration, of which the tenant
voluntary or involuntary leaves behind
"weak" and all other economic goods
(or terms) to be passed in the diagram
($U^i(X,X_B)$ - prefers more "weak") [illegible]
one person $\Rightarrow$ ($U^i(X_i,X_B)$ - prefers greater "
Government should not be unknowingly judging
[illegible] the class of tenants [illegible] order,
by RCW [illegible] (2), as well as the
[illegible]

Appellants December 27, 2012

[illegible] should be reversed. In addition, appellant [illegible]

least $1,000,000 are [illegible] dollars) in damages [illegible] allegedly from [illegible]

Jim Pong, Julie Hamilton, SPO [illegible]

Bell [illegible] Superior Court [illegible]

KCCF [illegible] Gal Pitts, Nade [illegible]

CERTIFICATE OF SERVICE

I, Jerl Anwyple Holmes, do hereby certify and declare that I served the Appellants (Pro Se) [illegible] Seattle WA, 98121-2521, (206)-443-8618, with the copy of the [illegible] Brief of Appellant, VIA Airmail legal mail [illegible] the Honorable [illegible] Gal Pitts [illegible]

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