

No. 74406-2-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

MARIAN LANDA,

Appellee,

v.

HAELLEN HOLIDAY,

Appellant, pro se.

OPENING BRIEF OF APPELLANT

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COURT OF APPEALS, DIVISION 1
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I. Table of Cases

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III. STATEMENT OF THE CASE

In the first week of June 2015, appellee Landa spoke with appellant Holiday, regarding an offer for employment for Ms. Holiday, to operate Ms. Landa's Air Bed and Breakfast, located in Columbia City, Washington.

Appellant Holiday informed Ms. Landa, she would be willing to work for Ms. Landa, however, Ms. Holiday advised Ms Landa at that time; Ms. Holiday would have to leave her employ soon as Ms. Holiday commenced receiving her Social Security Disability, indicating the employment period would be rather short and would do it more to help Ms. Landa. Ms. Landa had voiced her desire to move out of her house containing the Bed and Breakfast, to move in with her boyfriend.

During the aforesaid meeting, the two parties established the rules of employment, including; wage, work duties, tasks and responsibilities Appellant Holiday would be responsible. Ms. Landa made it emphatically clear that a requirement of the employment was Appellant Holiday was required to live in the house on the third floor. In subsequent conversations appellee Landa stated she wanted appellant Holiday to stay for at least two years.

However, as anticipated by Appellant Holiday, in October 2015, Appellant Holiday started receiving the aforementioned disability. Immediately Ms. Holiday contacted Appellee Landa to inform Ms. Landa of Ms. Holiday's intent to terminate her employment, as she was now receiving Social Security Disability, and Appellant Holiday wanted to provide Appellee Landa with notice.

It should also be noted by this Court, Appellee Landa has refused to pay Appellant Holiday for any work and/or services rendered. Subsequently, Appellant Holiday filed a formal complaint against Appellee Landa for non-payment for work and services, with the United States Department of Labor, # 3775970, for the nonpayment of wages, overtime, and service fees against appellee Landa.

On November 1st 2015, appellant Holiday received two notes from appellee Landa; the first note stated; Ms. Holiday was required to move herself and her personal property out of the house, by no later then the first of November 2015. The second note received by Appellant dated the same date, cited to the date to vacate was the first of December 2015. Noting, Appellant had already given notice to terminate employment, two weeks prior, in an effort to help Ms. Landa out, Appellant Holiday agreed to stay

at the house until the first of December, although, Appellant had already commenced packing her personal property and moving to another location.

The third note received by Appellant was dated November 10th 2015 from Appellee, in which appellee Landa again noted the first of December 2015 as the move out date, and she then rambles on about things Appellant has no knowledge of. Appellant continued in her efforts to move out on or before the first of December 2015, as previously agreed upon by both parties.

The notes received by Appellant seems to have been sent in retaliation for the filing of the aforesaid complaint with the United States Department of Labor, for the non-payment, i.e., petition for redress and due process of the law, both constitutionally protected rights.

IV. ASSIGNMENTS OF ERROR

Trial Court Lacked Subject Matter Jurisdiction.

Whether the trial Court committed error of Constitutional magnitude when the Court allowed this case to proceed and render final judgment against Appellant, when statutory language emphatically creates the *exempted status* of appellant who was an **employee** of appellee Landa not a tenant?

V. ARGUMENT IN SUPPORT OF ASSIGNMENT OF ERROR

Appellee Landa has already conceded the fact, there was never any type of rental agreement between appellee Landa and Ms. Holiday, nor was there any form of a lease contract or agreement. There could not have been, Ms. Holiday was an employee, who had been required to live on site in the house in which appellee Landa operated an Air Bed and Breakfast.

On the 30th day of November 2015 Ms. Landa's legal counsel admitted to the Superior Court Judge, on the record, that there was no rental agreement. Exhibit 29, verbatim report of proceedings. See also: Declaration of Holiday at page 3, paragraph 9.

The statutory language is emphatically clear, RCW 59.18.040(8), which is controlling law as found in Sullivan v. Purvis, 90 Wn. App. 456 (1998), held "the trial court lacked subject matter jurisdiction to order the tenant to vacate the premises." The Court reasoned; "jurisdiction of a court to consider an unlawful detainer action is wholly statutory."

In the instant case, RCW 59.18 is controlling statutory law, the statute establishes any person required to reside on the job is not a tenant and is NOT subject to a writ of restitution by and through the eviction process, pursuant to RCW 59.18.180

RCW 59.18.040 (8), Living arrangements exempted from chapter.

The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises.

Again, in the instant case Appellant was required to live on site to operate a business for appellee Landa. As the situation turned out, Ms. Landa became an overbearing and verbally abusive employer, coupled with Ms. Landa had been given notice regarding the amount of time Ms. Holiday would be able to work, and that was contingent on Ms. Holiday's receipt of her disability payments.

At the time Appellant Holiday started to receive her disability from Social Security, she advised Appellee Landa that she would be leaving her employ as Ms. Landa had already been informed prior to the commencement to starting work.

Appellee Landa wanted Appellant Holiday to stay on the job until the first day of December 2015, which Ms. Holiday agreed, however, Ms. Landa began to have overwhelming conflicts, nonetheless Appellant Holiday stayed on the job till the evening of the hearing, 30th day of November 2015.

The trial Court error in issuance of the writ of restitution the day before Appellee's notice to vacate had expired, of which Appellant had already agreed.

As the statutory language is well established, in accordance with RCW 59.18.040 (8) clearly sets forth the applicability of the chapter, in short, court rule, CR 12(b)(6) provides for dismissal of a complaint if it fails to state a claim upon which relief can be granted. The Court lacked subject matter jurisdiction, as applied, RCW 59.18.040 (8) shields Appellant Holiday from the application of this statute to her given situation.

The only option the Court had before it, was to dismiss the petition for writ unlawful detainer, this should have been done sua sponte. Sullivan v. Purvis, 90 Wn. App. 456 (1998), for lack of subject matter jurisdiction.

IV. CONCLUSION

Appellant Holiday asks this Court to reverse the Trial Court's judgment, remand this case to the Trial Court with instructions to dismiss this case. Based upon the foregoing, the Attachments, files and records herein, and fundamental fairness, equal protection.

Respectfully submitted, this 30th day of September 2015

A handwritten signature in black ink that reads "Haellen Holiday". The signature is written in a cursive, flowing style.

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