

NO. 43200-5-II

IN THE WASHINGTON STATE COURT OF APPEALS,
DIVISION II

COUNTRY MANOR, LLC, a Washington limited liability company,

Appellant,

vs.

LES CLIFTON and LINDA A. CLIFTON,

Respondents.

BRIEF OF APPELLANT

Appeal from the Ruling of Judge Robert Lewis,
Clark County Superior Court

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Table of Contents

TABLE OF AUTHORITIES	II
A. INTRODUCTION OF PARTIES AND PROCEDURAL ISSUES.....	1
B. ASSIGNMENTS OF ERROR	4
(1) Assignments of Error.	4
(2) Issues Pertaining to Assignments of Error.....	4
C. STATEMENT OF THE CASE.....	5
D. SUMMARY OF ARGUMENT	9
E. ARGUMENT.....	10
(1) Standard of Review.....	10
(2) The Trial Court Incorrectly Injected a Reasonableness Analysis under RCW 59.20.073(6), Both At the Show Cause Hearing and Trial.....	11
(3) Country Manor Is Entitled to Its Attorney Fees At Trial and On Appeal	17
F. CONCLUSION.....	22
APPENDIX.....	24

TABLE OF AUTHORITIES

Cases

<i>Angelo Prop. Co., LP v. Hafiz</i> , 274 P.3d 1075, 1085 (Wash. Ct. App. 2012).....	18
<i>Bulman v. Safeway, Inc.</i> , 96 Wn. App. 194, 198, 978 P.2d 568 (1999) ...	17
<i>Carlstrom v. Hanline</i> , 98 Wn. App. 780, 789–90, 990 P.2d 986 (2000)..	16
<i>Cerrillo v. Esparza</i> , 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006).....	10
<i>Christensen v. Ellsworth</i> , 162 Wn.2d 365, 370-71, 173 P.3d 228, 231 (2007).....	14
<i>Cockle v. Dep't. of Labor & Indus.</i> , 142 Wn.2d 801, 807, 16 P.3d 583 (2001).....	10
<i>Dep't. of Ecology v. Campbell & Gwinn, L.L.C.</i> , 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).....	10
<i>Dot Foods, Inc. v. Wash. Dep't. of Revenue</i> , 166 Wn.2d 912, 919, 215 P.3d 185 (2009).....	10
<i>Ethridge v. Hwang</i> , 105 Wn. App. 447, 20 P.3d 958 (2001).....	14
<i>Hartson P'ship. v. Martinez</i> , 123 Wn. App. 36, 196 P.3d 449, <i>review denied</i> , 154 Wn.2d 1010 (2004)	17
<i>Herzog Aluminum, Inc. v. General American Window Corp.</i> , 39 Wn. App. 188, 197, 692 P.2d 867 (1984).....	20, 21, 22
<i>Hous. Auth. v. Pleasant</i> , 126 Wn. App. 382, 390, 109 P.3d 422 (2005)..	17
<i>Johnson v. Rothstein</i> , 52 Wn. App. 303, 305, 759 P.2d 471 (1988).....	17
<i>Kaintz v. PLG, Inc.</i> , 147 Wn. App. 782, 788, 197 P.3d 710, 713 (2008).	22
<i>Kaplan v. NW Mut. Life Ins. Co.</i> , 115 Wn. App. 791, 799, 65 P.3d 16 (2003).....	17
<i>Kilian v. Atkinson</i> , 147 Wn.2d 16, 20, 50 P.3d 638 (2002)	11
<i>Leda v. Whisnand</i> , 150 Wn. App. 69, 207 P.3d 468 (2009)	15
<i>MacRae v. Way</i> , 64 Wn.2d 544, 546, 392 P.2d 827, 829 (1964).....	14
<i>McGahuey v. Hwang</i> , 104 Wn. App. 176, 15 P.3d 672, <i>review denied</i> , 144 Wn.2d 1004 (2001).....	17
<i>Mt. Hood Beverage Co. v. Constellation Brands, Inc.</i> , 149 Wn.2d 98, 63 P.3d 779 (2003).....	20, 21
<i>Riss v. Angel</i> , 131 Wn.2d 612, 633, 934 P.2d 669 (1997)	18

<i>Seashore Villa Ass'n. v. Hagglund Family Ltd. P'ship.</i> , 163 Wn. App. 531, 547, 260 P.3d 906, 915 (2011) <i>review denied</i> , 173 Wn.2d 1036, 277 P.3d 669 (2012).....	18
<i>State ex rel. Royal v. Board of Yakima County Comm'rs.</i> , 123 Wn.2d 451, 459, 869 P.2d 56 (1994).....	11
<i>Stone v. Chelan County Sheriff's Dep't.</i> , 110 Wn.2d 806, 810, 756 P.2d 736 (1988).....	11
<i>Tesoro Refining & Marketing Co. v. State, Dep't. of Revenue</i> , 164 Wn.2d 310, 318, 190 P.3d 28 (2008).....	10
<i>Tobin v. Fish</i> , 161 Wn. App. 1019, <i>review denied</i> , 172 Wn.2d 1019, 262 P.3d 64 (2011).....	17
<i>Tradewell Group, Inc. v. Mavis</i> , 71 Wn. App. 120, 126, 857 P.2d 1053 (1993).....	19
<i>White River Estates v. Hiltbruner</i> , 84 Wn. App 352, <i>reversed on other grounds</i> , 134 Wn.2d 761 (1998).....	14
Statutes	
Ch. 59.20 RCW	1, 11, 14
RCW 19.126	21
RCW 4.84.330	20
RCW 59.12.030(6).....	2, 7, 20
RCW 59.18.370	14
RCW 59.18.380	passim
RCW 59.18.410	2, 5, 9, 14
RCW 59.20.040	7, 14
RCW 59.20.045	2
RCW 59.20.073	passim
RCW 59.20.073(2).....	13
RCW 59.20.073(5).....	4, 13
RCW 59.20.073(6).....	passim
RCW 59.20.110	3, 11, 17, 18
Other Authorities	
Chapter 213, Laws of 2012, SHB 2194	12
Rules	
CR 56	17
RAP 18.1.....	17
Constitutional Provisions	
Wash. Const. art. I, § 16.....	2, 24

A. INTRODUCTION OF PARTIES AND PROCEDURAL ISSUES

Country Manor is a manufactured home community located in Brush Prairie, Washington, and is owned by the Appellant (the “Landlord”). The Landlord rents out lots to tenants for the placement of their manufactured homes that are subject to the parties’ leases and the Manufactured/Mobile Home Landlord Tenant Act at Ch. 59.20 RCW (the “MHLTA”). In the leases for the community, and in RCW 59.20.073 (originally enacted in 1981), the Landlord and Tenant are required to follow a specific procedure by which any existing tenant may sell their mobile home and transfer their tenancy to a prospective purchaser.

Respondent Linda Clifton (the “Tenant”) lived alone in her home on Lot 5 at Country Manor pursuant to a lease she signed in 2008, and her husband Les moved into Ms. Clifton’s home as an unauthorized occupant under her lease shortly after that. In September 2011, the Tenant purchased the home on Lot 15 without providing notice or obtaining the Landlord’s prior approval. Tenant also sold her home located on Lot 5 and took steps to move into the home on Lot 15 without providing notice or obtaining the Landlord’s prior approval. Despite repeated requests, the Tenant refused to submit a full and complete application for tenancy of the

home on Lot 15, until the trial court fashioned its own remedy sua sponte, and ordered that they do so at the conclusion of the trial in this matter.

In this case, the Landlord was not afforded the opportunity to approve the transfer of the tenancy for Lot 15 to the Tenant, which is a fundamental property right afforded by state statute at RCW 59.20.073 and Washington's Constitution at art. I § 16. Despite failing to follow the statutory procedure for notice, and failing to obtain approval for their tenancy, the Cliftons purchased the manufactured home on Lot 15 and brazenly moved into the Premises anyway, apparently believing that the Landlord would acquiesce and somehow waive this constitutional property right.

The Landlord did not and could not acquiesce despite its expense and still comply with RCW 59.20.045. The Park owner served notices on the tenants stating that they must quit the premises. The Cliftons failed to vacate.

The Park owner then filed this unlawful detainer action contending that the Cliftons were unlawfully detaining the Premises pursuant to RCW 59.12.030(6). At the show cause hearing on November 23, 2011, the trial court incorrectly set the matter for an evidentiary hearing or trial under RCW 59.18.410, despite the fact that the tenants had not submitted any pleading in opposition to the show cause hearing, and despite the fact that the parties did

not dispute that the tenants failed to obtain approval of their tenancy as provided in RCW 59.20.073(6). As a result, Country Manor incurred unnecessary expense and delay, including three additional hearings and nearly three months of delay in what is supposed to be an expedited and statutory 30-day action, as a result of the trial court's misinterpretation of RCW 59.20.073 during each of the three (3) eviction hearings.

At trial, the court found that the Cliftons were occupying the premises without the permission of the Park owner and without a rental agreement. That should have been the end of the court's inquiry because at any one of the four (4) hearings in this action, the remedy for that legal conclusion is restoration of possession of the premises. But, the trial court then sua sponte ordered the tenants to submit an application for Lot 15, and required the Landlord to accept or deny the application upon the same basis that it accepts or denies any new applicant. The trial court then set a future hearing date in which the court would review and determine whether any denial by the Landlord was reasonable.

The parties attended that final hearing, and the trial court ruled that the Landlord had reasonably denied the application under RCW 59.20.073, and then issued a Judgment for Unlawful Detainer. However, the trial court denied the Park owner's request for attorney fees pursuant to RCW 59.20.110, and instead awarded only statutory costs.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error.

1. The trial court erred in failing to issue a Writ of Restitution pursuant to RCW 59.18.380, when there were no disputed issues of material fact regarding the Tenant's failure to comply with RCW 59.20.073 and provide timely notice or obtain the Landlord's prior written approval before moving onto the Landlord's lot.

2. The trial court erred in setting this matter for trial on November 23, 2011.

3. The trial court erred in finding the tenants in Unlawful Detainer at trial, but failing to then issue a Writ of Restitution, and instead allowing the tenants to retrospectively comply with RCW 59.20.073 by submitting an application for tenancy, and requiring that the Landlord then consider the application and comply with RCW 59.20.073(5).

4. The trial court erred in denying Country Manor's request for attorney fees and costs in its Order dated March 9, 2012.

5. The trial court erred in making conclusion of law number 1 with respect to the award of attorney fees.

(2) Issues Pertaining to Assignments of Error.

1. Where the Tenant is in possession of the Landlord's premises after the Tenant failed to follow RCW 59.20.073, does the trial

court's setting of the matter over for trial misinterpret the second and third sentences of RCW 59.18.380? (Assignments of Error Numbers 1 and 2).

2. Where the Tenant is in possession of the Landlord's premises and admits again at trial that she did not comply with RCW 59.20.073, or obtain the Landlord's prior written permission to occupy Lot 15, did the trial exceed its authority in RCW 59.18.410 by ordering that the Tenant apply for tenancy and that the Landlord reasonably accept or deny the application? (Assignments of Error Number 3).

3. Is the Park owner entitled to an award of attorney fees at trial and on appeal? (Assignments of Error Numbers 4 and 5).

C. STATEMENT OF THE CASE¹

On February 1, 2008, only Ms. Clifton signed a rental agreement with her Landlord. Trial Exhibit ("Ex.")² 7; 2RP 30. The Tenant's rental agreement was only a rental agreement for Lot 5. Ex. 7. On the original application, Ms. Clifton stated "N/A" for spouse. Ex. 6; 2RP 29-30. Paragraph 18 of her rental agreement specifically advised her of the process by which any home or tenancy is transferred at the Park. Ex. 7. Disregarding these provisions, her husband, Les Clifton subsequently

¹There are four volumes of verbatim report of proceedings which are cited herein as follows: 1RP – 11/23/11 (Motion Hearing); 2RP – 12/12/11 (Trial Volume I); 3RP – 1/6/12 (Trial Volume II); 4RP – 2/10/12 (Motion Hearing).

²In addition, the Landlord filed a Supplemental Designation of Clerk's Papers to include each exhibit admitted at trial, cited herein as "Ex.".

moved into the home on Lot 5 without the Landlord's permission. 2RP 83. Eventually Mr. Clifton was screened for criminal history only, because he applied as an occupant of Lot 5 rather than the Tenant of Lot 5. Ex. 14; 2RP 84.

In September 2011, the Tenant sold her home located on Lot 5 to Eva Ball, after Ms. Ball complied with the Landlord's application requirements. 2RP 85; 3RP 171. The Landlord advised the Cliftons that they also needed to submit an updated application before purchasing or moving into the home on Lot 15. 2RP 88-89; 3RP 173-174.

But, the Cliftons ignored the Landlord's requests and purchased the manufactured home located on Lot 15 from Bernadine Baum on September 22, 2011. 2RP 98. Although repeatedly requested by the Landlord, the Cliftons refused to apply for tenancy in Lot 15, and both purchased and moved into the home on Lot 15 without complying with RCW 59.20.073, and without Country Manor's permission. 2RP 32-33, 38, 95.

Instead, on September 28, 2011, the Cliftons provided Country Manor with an untimely notice of intent to sell. Ex. 12; 2RP 87. On September 30, 2011, Country Manor delivered a notice of Denial of Transfer of Tenancy to the seller of the home and the Cliftons. Ex. 8; 2RP 31. A Three-Day Notice to Quit (Possession without Permission in

Violation of RCW 59.12.030(6) was served on the Cliftons on September 30, 2011. Ex. 9; 2RP 37. Cliftons failed to vacate Lot 15 as required by the notice.

Country Manor commenced an unlawful detainer complaint on the Three-Day Notice to Quit on November 7, 2011 which was served on November 11, 2011. CP 4-7, 12. The complaint was amended and filed on November 17, 2011, adding a cause of action for failure to comply with RCW 59.20.073. CP 16-21; Ex. 10. No Answer was initially filed. 1RP 20-21. At the show cause hearing held on November 23, 2011, Judge Daniel L. Strahnke determined that there was an issue regarding the reasonableness of Country Manor's denial of the tenancy. 1RP 18-20. There was no issue that the Cliftons had failed to timely notify Country Manor of the sale, or obtain the Landlord's prior written approval before moving in. 1RP 10-11, 18-20. In their Response to Summons dated November 22, 2011, CP 69, the Cliftons admit paragraph III of the complaint, which stated: "The defendants are occupying the Premises without the permission of the plaintiff." CP 17.

Notwithstanding the legal standards contained in RCW 59.18.380, which are incorporated by the MHLTA at RCW 59.20.040, the trial court incorrectly set the matter over for trial. 1RP 19-21.

The case was assigned for trial before the Honorable Robert Lewis who heard testimony on December 12, 2011 and January 6, 2012. At the conclusion of trial on January 6, 2012, the trial court initially ruled that the Cliftons could cure their defaults by applying for tenancy by January 18, 2012, and that Country Manor had until January 25th to comply with RCW 59.20.073. 3RP 204. The trial court further ruled that if Country Manor denied the tenancy, the trial court would review the reasonableness of any denial on January 27, 2012. 3RP 205. Additionally, the court orally ruled that both parties substantially prevailed and did not order attorney fees. 3RP 205.

Cliftons then submitted an application for tenancy. CP 183-199. Country Manor performed a screening check and denied the tenancy based on the Cliftons' credit, criminal, and eviction history. CP 168-177, 200-241.

On February 10, 2012, Judge Lewis ruled that Country Manor reasonably denied the tenancy and entered Findings of Fact and Conclusions of Law and Judgment for a Writ of Restitution, past due rent and other charges, and statutory costs and fees. 4RP 15-16, CP 245-249. The trial court, however, denied Country Manor's motion for attorney fees, ruling that there was no statutory or contractual basis for attorney fees. 4RP 16. This timely appeal followed.

D. SUMMARY OF ARGUMENT

The trial court misinterpreted RCW 59.20.073 by failing to apply RCW 59.20.073(6) as written, and instead injecting an additional reasonableness requirement into .073(6). The plain language of the statute confirms that the legislature deemed it reasonable as a matter of law to deny any application for a transfer of tenancy in cases where the purchaser of the home moves in without obtaining the Landlord's prior written approval. *Id.* Here, there was no dispute of material fact regarding Country Manor's right to possession at the RCW 59.18.380 show cause hearing, because the tenants then admitted that they did not obtain the Landlord's prior written approval before moving in.

Because the Cliftons did not comply with RCW 59.20.073, the court should have followed the plain language in RCW 59.18.380 and entered a Judgment for Unlawful Detainer and Fees/Costs at the first show cause hearing in this matter, or the court should have followed RCW 59.18.410 and entered a Judgment for Unlawful Detainer and Fees/Costs at the conclusion of trial rather than fashion some other remedy not provided in the MHLTA.

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E. ARGUMENT

(1) Standard of Review.

This Court reviews statutory interpretation issues *de novo*. *Dot Foods, Inc. v. Wash. Dep't. of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). “The primary goal of statutory construction is to carry out legislative intent.” *Cockle v. Dep't. of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington’s traditional process of statutory interpretation, this analysis begins by looking at the words of the statute. “If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself.” *Id.* The Court looks to the statute as a whole, giving effect to all of its language. *Dot Foods*, 166 Wn.2d at 919. The Court must look to what the Legislature said in the statute and related statutes to determine if the Legislature’s intent is plain. *Dep't. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the language of the statute is plain, that ends the Court’s role. *Cerrillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006).

Merely because two interpretations of a statute are conceivable, does not render a statute ambiguous. *Tesoro Refining & Marketing Co. v. State, Dep't. of Revenue*, 164 Wn.2d 310, 318, 190 P.3d 28 (2008). The object of statutory construction is still to effectuate the Legislature’s intent. *Dep't. of Ecology*, 146 Wn.2d at 9-10, 11-12; *State ex rel. Royal v.*

Board of Yakima County Comm'rs., 123 Wn.2d 451, 459, 869 P.2d 56 (1994). But this Court does not read language into a statute even if it believes the Legislature *might* have intended it. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't.*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988).

By its plain unambiguous terms, RCW 59.20.073 provides that the Cliftons' failure to provide timely notice, arrange an interview, or obtain prior written approval from the Landlord before moving in, are all separate and independent grounds for disapproval of the tenancy for the Premises.

In addition, RCW 59.20.110 provides for attorney fees to the prevailing party in an action arising out of the Manufactured Home Landlord Tenant Act, Ch. 59.20 RCW.

(2) **The Trial Court Incorrectly Injected a Reasonableness Analysis under RCW 59.20.073(6), Both At the Show Cause Hearing and Trial.**

RCW 59.20.073 provides that a tenant may transfer a rental agreement to any person to whom the tenant sells or transfers title to the mobile home, but only if the tenant follows the procedures set out by RCW 59.20.073:

The statute provides in relevant part:

(2) A tenant who sells a mobile home, manufactured home, or park model within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home, manufactured home, or park model and mobile home lot.³

...

(5) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(6) Failure to notify the landlord in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer.

The Cliftons' failure to follow the procedures in this statute is itself sufficient grounds for disapproval of the transfer, and the trial court incorrectly injected a reasonableness standard into that inquiry which eviscerates the bright line rules in RCW 59.20.073(6), and renders that statute meaningless.

³Chapter 213, Laws of 2012, SHB 2194, effective June 7, 2012, amended RCW 59.20.073 to add the following sentence at the end of paragraph 2: "The tenant shall notify the buyer of all taxes, rent, and reasonable expenses due on the manufactured/mobile home or park model and the mobile home lot."

Specifically, the trial court incorrectly invoked the reasonableness standard contained in RCW 59.20.073(5), when the legislature expressly identified specific reasons for denial as reasonable in RCW 59.20.073(6). Because the Cliftons admitted since the commencement of this action that they moved in without the Landlord's prior written approval, and without the timely notice required by RCW 59.20.073(2), this is legally sufficient to find the Tenant in unlawful detainer of the Premises.

The Cliftons purchased the mobile home occupying the Premises on September 22, 2011. The Tenant provided a notice of intent to sell to Country Manor on September 28, 2011, six days after the sale was consummated. This also violated RCW 59.20.073(2) which requires notice before any sale of any manufactured home in any manufactured home community. Despite repeated requests to do so, the Cliftons refused to fill out an application, erroneously believing that the Tenant's 2008 approval for Lot 5 somehow entitled the Cliftons to a 2011 tenancy on Lot 15.

On September 30, 2011, Country Manor served a denial letter in response to the Notice of Intent to Sell. The notice specified the failure to comply with the procedural requirements of RCW 59.20.073 as the basis for denial and set forth the reasons for denial to comply with. See *White River Estates v. Hiltbruner*, 84 Wn. App 352, *reversed on other grounds*,

134 Wn.2d 761 (1998) (landlord may impliedly waive the procedural requirements of RCW 59.20.073); See also *Ethridge v. Hwang*, 105 Wn. App. 447, 20 P.3d 958 (2001) (By not using mobile home park tenant's failure to comply with assignment provisions of the MHLTA as the reason for refusing to allow tenant to sell her home to prospective buyers, landlord waived the right to object to the sale on that basis).

An unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of property. *Christensen v. Ellsworth*, 162 Wn.2d 365, 370-71, 173 P.3d 228, 231 (2007); *MacRae v. Way*, 64 Wn.2d 544, 546, 392 P.2d 827, 829 (1964).

To that end, RCW 59.18.380 provides that at this show cause hearing:⁴

. . . 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, returnable 10 days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant

⁴Pursuant to RCW 59.20.040, RCW 59.18.370 through RCW 59.18.410 are applicable to Ch. 59.20 RCW.

such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter

Division III further explained this statute in *Leda v. Whisnand*, 150

Wn. App. 69, 207 P.3d 468 (2009):

[T]he proper procedure by which a trial court should conduct a RCW 59.18.380 show cause hearing is as follows: (1) the trial court must ascertain whether either the defendant's written or oral presentations potentially establish a viable legal or equitable defense to the entry of a writ of restitution; and (2) the trial court must then consider sufficient admissible evidence (including testimonial evidence) from parties and witnesses to determine the merits of any viable asserted defenses. Because RCW 59.18.380 contemplates a resolution of the issue of possession based solely on the show cause hearing, the court must either manage its examination in a sufficiently expeditious manner to accommodate its calendar while still preserving the defendant's procedural rights, or it must briefly set the matter over for a longer show cause hearing in which those rights are respected.

150 Wn. App. at 83 (footnote omitted).

There was no reason for the trial court to extend this unlawful detainer action unnecessarily and controvert the purpose of an unlawful detainer action, in order to inquire into the reasonableness of the disapproval of tenancy. Here, the trial court did not deprive the Cliftons of an opportunity to present a defense, because RCW 59.18.380 required the Judge to examine the parties personally to determine the merits of the case, and if the tenants' "answer is oral, the substance thereof shall be endorsed on the complaint by the court."

The trial court did neither at the show cause hearing in this matter. If it had, the court would have considered the parties' testimony and endorsed the Cliftons' oral answer on the filed complaint, to confirm that the parties did not dispute that the tenants failed to provide legal notice or obtain the Landlord's prior written approval before just moving in. This was all RCW 59.18.380 required, and what RCW 59.20.073(6) authorized the trial court to do. *See also Carlstrom v. Hanline*, 98 Wn. App. 780, 789–90, 990 P.2d 986 (2000) (summary proceedings under RCW 59.18.380 do not violate due process).

The Cliftons' failure to comply with RCW 59.20.073 by failing to obtain written approval for their tenancy prior to occupancy of the Premises entitled Country Manor to deny the right to possession of the Premises. RCW 59.20.073(6). Given that there was no issue of material fact that the Cliftons were not entitled to possession of the premises, the

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trial court should have complied with RCW 59.18.380 and entered a Judgment for Unlawful Detainer at the show cause hearing⁵ on November 23, 2011.⁶

(3) **Country Manor Is Entitled to Its Attorney Fees At Trial and On Appeal.**

RCW 59.20.110 authorizes the recovery of attorney fees in “any action arising out of [the MHLTA].” *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001); *Hartson P’ship. v. Martinez*, 123 Wn. App. 36, 196 P.3d 449, *review denied*, 154 Wn.2d 1010 (2004). This case arises out of the Cliftons’ insistence upon their claimed rights under the MHLTA.

Under RCW 59.20.110 and RAP 18.1, the Landlord is entitled to recover its attorney fees at trial and on appeal.

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⁵Even if the Cliftons had raised a defense, if they wished to continue to occupy the premises, a bond is required. *Hous. Auth. v. Pleasant*, 126 Wn. App. 382, 390, 109 P.3d 422 (2005).

⁶The legal standard for entering judgment at the show cause hearing per RCW 59.18.380 is different than a summary judgment standard under CR 56, and requires less of a showing from the Landlord to prevail. But, insofar as the Court disagrees, it is true that an order denying summary judgment based **upon the presence of material, disputed facts** will not be reviewed when raised after a trial on the merits. *Johnson v. Rothstein*, 52 Wn. App. 303, 305, 759 P.2d 471 (1988). **However**, this is not the case here. An issue of law under RCW 59.20.073 was decided at the show cause hearing, and this can be appealed. *Kaplan v. NW Mut. Life Ins. Co.*, 115 Wn. App. 791, 799, 65 P.3d 16 (2003); *see also Bulman v. Safeway, Inc.*, 96 Wn. App. 194, 198, 978 P.2d 568 (1999) (When denial of summary judgment turns on a substantive legal issue, an appellate court may review the denial after entry of final judgment). *See also Tobin v. Fish*, 161 Wn. App. 1019, *review denied*, 172 Wn.2d 1019, 262 P.3d 64 (2011).

The award of fees is mandatory, not discretionary under RCW 59.20.110 which provides:

“In any action arising out of this chapter, the prevailing party *shall* be entitled to reasonable attorney’s fees and costs.” [Emphasis added].

A prevailing party is one who obtains a judgment in its favor.

Seashore Villa Ass’n. v. Hagglund Family Ltd. P’ship., 163 Wn. App. 531, 547, 260 P.3d 906, 915 (2011) *review denied*, 173 Wn.2d 1036, 277 P.3d 669 (2012), citing *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669 (1997).

An unlawful detainer action is a summary proceeding designed to facilitate the recovery of possession of leased property; the primary issue for the trial court to resolve is the “right to possession” as between a landlord and a tenant. *Angelo Prop. Co., LP v. Hafiz*, 274 P.3d 1075, 1085 (Wash. Ct. App. 2012).

Here, Country Manor obtained the relief it sought, i.e., possession of the premises and preservation of the enforceability of the Landlord’s tenant screening criteria and rules, and RCW 59.20.073. Accordingly, there is no question that Country Manor was the prevailing party in this matter.

This action also “arises” out of the MHLTA, because the parties’ right to possession of the Premises is based on the provisions of the

MHLTA. Specifically, RCW 59.20.073 determines how the right to possession is acquired in the context of the purchase and sale of a mobile home in a mobile home park. Having failed to comply with the requirements of RCW 59.20.073, the Cliftons, as unauthorized occupants without color of title to Lot 15, unlawfully detained the Premises.

The dispositive factual issue in this case is whether the Cliftons provided notice and obtained the Landlord's prior written permission to occupy Lot 15 as required by RCW 59.20.073. The Cliftons failed to apply for tenancy or follow the procedure set forth in RCW 59.20.073. At trial, the court found that the Cliftons were occupying the premises without the permission of Country Manor and without a rental agreement.

Most cases interpreting the phrase "*arising out of*" involve contract cases. Under Washington law, an action is on a contract for purposes of a contractual attorney fees provision if the action arose out of the contract and if the contract is central to the dispute. *Tradewell Group, Inc. v. Mavis*, 71 Wn. App. 120, 126, 857 P.2d 1053 (1993). There is no question that RCW 59.20.073 was central to this dispute. The underlying basis for the trial court's conclusion arose out of its interpretation of RCW 59.20.073, which provides the standards by which a lease is assigned and a new tenancy is created. Interpretation of this statute was foundational to the result in this action.

Country Manor successfully prevailed on its claim under RCW 59.20.073 that it was entitled to possession of the premises. RCW 59.12.030(6) was simply the statutory mechanism for the court's unlawful detainer jurisdiction. The dispute itself arose out of RCW 59.20.073.

In addition, a party who successfully proves a statute does not apply is still entitled to fees under that statute. In *Mt. Hood Beverage Co. v. Constellation Brands, Inc.*, 149 Wn.2d 98, 63 P.3d 779 (2003), the Washington Supreme Court held that a party who prevails in voiding a statute is not precluded from obtaining attorney fees under that statute. The Court noted that Washington Appellate Courts have held that a party who successfully defends an action on a contract by arguing the contract is void is nevertheless entitled to fees pursuant to the contract. The Supreme Court stated:

This line of cases begins with *Herzog Aluminum, Inc. v. General American Window Corp.*, 39 Wn. App. 188, 197, 692 P.2d 867 (1984). In *Herzog*, Division One of the Court of Appeals held that even though no contract had been formed, the prevailing party was entitled to fees and cost pursuant to RCW 4.84.330, which provides:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall

be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

The *Herzog* court construed “[i]n any action on a contract” to include actions that invalidate the contract. *Herzog*, 39 Wn. App. at 192, 692 P.2d 867. Significant to the case before us, *Herzog* also noted that, had the other party prevailed in its suit on the contract, it would unquestionably be entitled to attorney fees and costs. *Herzog*, 39 Wn. App. at 191, 692 P.2d 867.

Mt. Hood Beverage Co. v. Constellation Brands, Inc., at 121.

The Supreme Court went on to state:

Although this case is an action on an invalid statute rather than a contract, the same principles apply. Had the Distributors prevailed, they would have been entitled to attorney fees and costs under RCW 19.126. Because the attorney fees provision was written reciprocally to apply to whichever party won, we hold that defending against an action based on a statute by successfully arguing the statute is unconstitutional allows an award of attorney fees under that statute.

Id. at 121-122.

This case is no different. Country Manor's claims arose out of its legal right to deny an assignment of the rental agreement under RCW 59.20.073, and so its claims arose under the MHLTA. The application of RCW 59.20.073 was central to the disposition of this case. If the Cliftons had prevailed based on application of RCW 59.20.073, there is no doubt that they would have been awarded their fees and costs as the prevailing party.

The rationale underpinning the doctrine of mutuality of remedy is that a party who prevails in invalidating a contract or statute ought to be entitled to attorney fees just the same as a party who prevails in validating the same is entitled to attorney fees. *Herzog*, 39 Wn. App. at 196, 692 P.2d 867; *Kaintz v. PLG, Inc.*, 147 Wn. App. 782, 788, 197 P.3d 710, 713 (2008) (holding that mutuality of remedy authorizes attorney fees when a party prevails in an action brought on a contract containing a bilateral attorney fee clause by establishing the contract is void).

For each of these reasons, Country Manor is entitled to its reasonable attorney and costs fees at trial and on appeal.

F. CONCLUSION

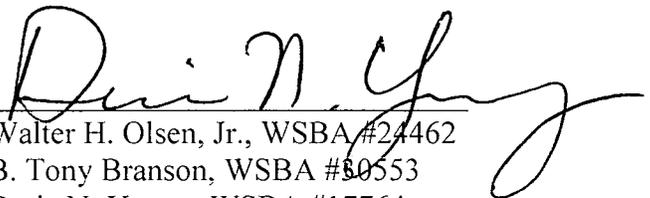
This Court should: (1) reverse the trial court’s Judgment with respect to attorney fees and costs on appeal, and award reasonable attorney fees and costs at trial and on appeal to Country Manor; and (2) reverse the

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trial court's ruling assigning this matter to trial, and enter Judgment for Unlawful Detainer and reasonable attorney fees and costs.

DATED this 20~~th~~ day of July, 2012.

Respectfully submitted,


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APPENDIX

Wash. Const. art. I, § 16:

Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefore be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases I courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

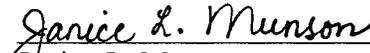
CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 20, 2012, I caused a true and correct copy of this *Brief of Appellant*, to be sent to:

Donald A. Esau, P.S. P.O. Box 822050 7711 N.E. 110 th Avenue Vancouver WA 98682-0047 <i>Attorney for Defs./Respondents</i>	<input checked="" type="checkbox"/> U.S. Mail (1 st Class) <input type="checkbox"/> Federal Express <input type="checkbox"/> Email to <u>donesaulaw@juno.com</u> <input type="checkbox"/> Fax to <u>360.253.5296</u> <input type="checkbox"/> Legal Messenger
Court of Appeals, Div. II ATTN: Clerk/Administrator 950 Broadway, Ste. 300 Tacoma, WA 98402	<input checked="" type="checkbox"/> U.S. Mail (1 st Class) <input type="checkbox"/> Federal Express <input type="checkbox"/> Email to <u>coa2filings@courts.wa.gov</u> <input type="checkbox"/> Fax to <u>253.593.2806</u> <input type="checkbox"/> Legal Messenger

Dated this 20th day of July, 2012, at Puyallup, Washington.



Janice L. Munson

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