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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 324320-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

W.L. "LEE" BARR and SUSAN C. BARR,
Husband and Wife, Appellants,

vs.

BONITA "NITA" YOUNG,
Respondent

BRIEF OF RESPONDENT

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I. INTRODUCTION

This case began as an unlawful detainer action brought by appellant W. L. Lee Barr. Respondent Bonita Young timely answered that action and filed a counter claim for a retaliatory eviction seeking damages.

After Ms. Young voluntarily vacated the premises appellant took no further action to pursue his unlawful detainer claim. Therefore the only remaining issues before the court were respondent's counter claims.

Because both parties were on fixed incomes and the only remaining issue pertained to a request for monetary damages under \$50,000.00 the respondent requested a mandatory arbitration. Appellant objected to the same and continued his request that the case simply be dismissed.

Appellant did not participate in the arbitration and an award was entered in favor of the respondent. Appellant continued to object. Ultimately judgment was entered.

Respondent would submit that since the only issue that remained in this case involved a request for money damages and no other equitable or affirmative relief was requested, that this case was appropriately submitted to arbitration and that the trial court's decision should be upheld.

II. RESTATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in transferring respondent's counter claim against the Barr's to mandatory arbitration under the mandatory arbitration act and Superior Court Mandatory Arbitration Rules (MAR) and RCW 7.06?
2. Thereafter did the trial court err in appointing an arbitrator?
3. Whether the trial court erred in turning the arbitration award to a judgment against the appellants February 7, 2014?

4. Did the trial court err in refusing to grant appellant's motion for reconsideration and dismissal of the action on March 6, 2014?
5. Did the trial court err in refusing to grant appellant's motion for reconsideration?

III. STATEMENT OF THE CASE

Respondent Bonita Young is disabled and on a fixed income. (CP 5, pg 1). Ms. Young entered into a residential appellant W. L. "Lee" Barr on July 25, 2011 in a rental located at 1611 ½ McKinnley Avenue, Yakima, Washington. (CP 5, pg 1).

Within a month of moving into the home, appellant began to complain to respondent about leaving her window open and leaving fans on in the house. Without her knowledge and consent he entered the house, shut the windows and turned off the fans, and shortly thereafter while she was out of the home he entered the residence and installed wood dowels in the window casing preventing the windows from opening more than a few inches and also nailed shut a bedroom window. (CP 5, pg 1-2).

Respondent called the Yakima Police Department and an officer investigated the determined that the dowels and nailing the window shut created a safety issue and assisted the respondent in removing the dowels. (CP 5, pg 2).

Thereafter on September 10, 2011 appellant sent respondent a letter threatening criminal prosecution, stating that she has maliciously vandalized the home, and indicating if she did not agree to amend the lease he would immediately have the sheriff arrest her and book her into the Yakima County Jail for trespass. (CP 5, pg 2).

Thereafter respondent retained an attorney who wrote a letter to appellant asking all further correspondence be through the attorney's office. (CP 5, pg 2-3).

Thereafter appellant served respondent with a notice of eviction. (CP 5, pg 3).

Thereafter there was an altercation at the home on October 4, 2011 where appellant became confrontational with respondent and her daughter and at one point reached down and grabbed at a pistol and holster around his waist and unsnapped the holster. (CP 5, pg 4).

Thereafter appellant caused to be served on respondent an eviction summons and complaint for unlawful detainer. (CP 1).

Respondent denied the allegations set forth in appellant's complaint. (CP 5 pg 4-6). (CP 6).

On or about October 20, 2011 respondent filed her answer and counter claim for retaliatory eviction. (CP 6). In that counter claim respondent requested damages for appellant's violation of RCW 59.18.240 and 250 together with her costs, disbursements and attorney fees pursuant to RCW 59.18.410. (CP 6).

An agreed order continuing the show cause hearing on the writ of restitution was entered into between the party's counsel on October 25, 2011. (CP 7). However this case was never heard as respondent voluntarily vacated the premises and appellant's attorney withdrew on December 1, 2011. (CP 8).

Because appellant did not timely respond to the counter claim, on or about December 27, 2011 respondent's attorney filed a motion for default. (CP 9).

On or about January 13, 2012 appellant filed his answer to the counter claim, denying all allegations in the counter claim. Under the section entitled "affirmative defenses" appellant stated "defendant voluntarily vacated plaintiff's property described in the complaint, on or about November 20, 2011 – plaintiffs are now in possession of their own

property again as prayed for in the complaint. This is an unlawful detainer action and therefore this action is now moot and should be summarily dismissed.” (CP 13). Further under relief sought appellant simply asked that respondent’s counter claim be denied and dismissed. (CP 13).

Relying upon appellant’s statements and appellant’s answer to respondent’s counter claim and representations by the appellant that the unlawful detainer was moot and should be dismissed. (CP 13). It became evident that the only remaining issue in the case was respondent’s counter claim for money damages and as those money damages did not exceed \$50,000.00 respondent caused to be filed with the court her note for trial docket and initial statement of arbitrability. (CP 15).

Thereafter appellant filed his objection to transfer case to arbitration on or about October 1, 2012. (CP 18).

The case was submitted to arbitration on December 18, 2012, appellant failed to appear, and after testimony was taken the arbitrator awarded in favor of the respondent in the sum of \$4,463.67. (CP 21). Thereafter on or about January 2, 2013 appellant caused to be filed his “notice of appeal” in which he indicated he was appealing the arbitration award, requesting a trial de novo and requesting a jury trial. (CP 23).

Because appellant failed to pay the appropriate fee when he requested trial de novo or pay the jury fee in his request for jury no action was taken on this case and after the elapse of over a year, respondent filed a motion with the court on or about January 23, 2014 requesting that a judgment be entered against appellant pursuant to the arbitration award. (CP 25).

While appellant did not file a response to the motion with the court they did send to counsel via a fax letter on February 5, 2014 essentially threatening counsel should he continue with the motion. A copy of that

letter was filed with the court on February 5, 2014. (CP 28). Among the threats were disbarment and criminal prosecution. (CP 28). The matter was heard in the Superior Court of Washington for Yakima County on February 7, 2014 and Judge Susan L. Hahn entered a judgment in favor of the respondent against the appellant in the sum of \$4,463.67. (CP 29). Thereafter appellant filed a rather lengthy motion for reconsideration and dismissal of action, again simply requesting that the action be dismissed. (CP 30). The order on motion for reconsideration was entered March 19, 2014 and denied the motion for reconsideration. (CP 33).

Thereafter appellant filed the notice of appeal to the Court of Appeals, Division III. CP 34.

IV. ARGUMENT

A. Standard of Review.

In appellant's notice of appeal the only designation for review is the order on motion for reconsideration entered March 19, 2014. The standard for review on a motion for reconsideration is abuse of discretion, *GO2NET, Inc. v. CIHOST, Inc.*, 153 Wash.App. 73, 60P.3d 1245 (2003), reconsideration denied February 21, 2003.

B. The Trial Court did not Err in Transferring Respondent's Counter Claim against Appellant to Mandatory Arbitration and Appointing an Arbitrator under the Mandatory Arbitration Act as Alleged in Appellant's Assignments of Error No. 1 & No. 2.

Under RCW 7.06.020 all civil actions which are at issues in Superior Court in counties which have authorized arbitration where the sole relief is a money judgment, and the claim does not exceed whatever is accepted by that county, are subject to mandatory arbitration.

In appellant's answer to counter claim, (CP 13), appellant specifically states "defendant voluntarily vacated Plaintiff's property described in the Complaint, on or about November 30, 2011 – Plaintiffs are now in possession of their own property again, as prayed for in the Complaint. This is an unlawful detainer action and therefore this action is now moot and should summarily dismissed." It is clear from appellant's answer that they were no longer seeking any relief under the unlawful detainer action and therefore the only remaining issue in the action was respondent's counter claim which was seeking money damages below the limits necessitating a trial. It is worth noting that on page 17 of appellant's opening brief, appellant again asserts that they were not seeking any other relief after respondent vacated the property and that the only issue in the case is respondent's counter claim for monetary damages. While appellant states "counterclaims are not normally allowed in unlawful detainer actions" they submit no legal authority for this proposition.

The mandatory arbitration system was specifically designed to take relatively small and simple cases off the Superior Court's docket and resolve them quickly and inexpensively. *Mercier v. Geico Indemnity Company*, 139 Wash.App. 891, 165 P.3d 375 (2007), review denied 163 Wash.2d 1028, 185 P.3d 1195.

As indicated in the statement of facts, respondent is disabled and on a fixed income and as stated in the statement of facts in appellant's opening brief at page, the appellant's had no income or liquid assets available beyond their own basis subsistence needs and other essential obligations, to use in defending the matter in court.

The standard of review for the Court of Appeal on a trial court's determination of arbitrability is abuse of discretion. *Fernandes v.*

Mockridge, 75 Wash.App. 207, 877 P.2d 719 (1994), review denied 126 Wash.2d 1005, 891 P.2d 38.

Here we have two parties with very little income, by appellant's answer to the counter-claim it became evident that he was seeking no further relief from the court and the only issue before the court was respondent's claim for monetary damages for a retaliatory eviction pursuant to statute. The court did not abuse its discretion in determining that this case was subject to mandatory arbitration and setting this matter for arbitration.

C. The Trial Court did not Error in Converting the Arbitration Award to a Judgment and Denying Appellant's Motion for Reconsideration.

The Standard for Review on Motion for Reconsideration is Abuse of Discretion. *GO2NET, Inc. v. CIHOST, Inc.*, *supra*.

Appellants did not participate in the arbitration although they were notified of the same and a judgment was entered against them. Policy considerations do not support vacating a mandatory arbitration award when a party does not participate as vacating such an award will compromise the judicial systems compelling interest in finality and predictability and undermine the judicial economy goals underlying the mandatory arbitration process. *Stanley v. Cole*, 157 Wash.App. 873, 239 P.3d 611 (2010).

After the appellants had filed a request for trial de novo and request for jury trial on the arbitration award, despite the fact that they chose not participate in the arbitration, respondent's attorney noted a motion to reduce the arbitration award to judgment.

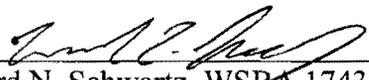
Thereafter, appellants filed a motion for reconsideration seeking the same relief they sought in the appeal and essentially requesting that the entire action be dismissed. (CP30).

Respondent would submit the trial court did not abuse its discretion on in denying the motion for reconsideration, especially as when in the original motion seeking judgment the appellant failed to respond.

V. CONCLUSION

Respondent Bonita L. Young respectfully requests this court to affirm the decision of the trial court for the reasons set forth.

Respectfully submitted this 26 day of August, 2014.


Howard N. Schwartz, WSPA 17432
Attorney for Respondent

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on the 26 day of August, 2014, I caused a copy of the attached Brief of Respondent, to be filed and served upon the following:

W. L. "Lee" Barr
Susan C. Barr
PO BOX 2978
Florence, AZ 85132-3056
U.S. Mail, postage prepaid

Dated this 26 day of August, 2014.



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