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NO. 23956-0-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION NO. III

DAVID PITTS, a single person,

Appellant,

v.

GORDON H. CRAFTS and JAYMIE V. CRAFTS

Respondents

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR SPOKANE COUNTY

THE HONORABLE HAROLD CLARKE III

BRIEF OF RESPONDENTS

WORKLAND & WITHERSPOON, PLLC
PETER A. WITHERSPOON
WSBA #7956
WEST 601 MAIN, SUITE 714
SPOKANE, WA 99201
(509) 455-9077
ATTORNEYS FOR RESPONDENTS

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I. STATEMENT OF THE CASE

David Pitts agreed to execute a quitclaim deed to convey any interest that he may have in a parcel of property if he did not exercise an option to purchase granted in a lease agreement or if he defaulted in making rent payments required under the lease. There is no dispute that Mr. Pitts did not exercise the option to purchase. There is no dispute that Mr. Pitts defaulted in making the lease payments. There is no dispute that the legal right to obtain the quitclaim deed was assigned to Gordon and Jaymie Crafts. The issue before this Court is whether the Superior Court was correct in granting the equitable relief requested by ordering Mr. Pitts to specifically perform his obligations under the contract. The Superior Court correctly entered the order of specific performance and the court's decision should be affirmed.

The Respondents, Gordon H. Crafts and Jaymie V. Crafts (hereinafter referred to as the "Crafts") are the current owners of 160 acres described as the Southwest quarter of Section 15, Township 26 North, Range 41 E.W. (CP 20). The property that is the subject matter of this action is a triangular piece of property comprising approximately 9 acres adjoining the Crafts' Property to the North (hereinafter referred to as the

“Subject Property”). (A map of the Crafts’ Property and the Subject Property is located at CP 20).

Prior to 1990, the Subject Property was used in conjunction with the property shown on CP 20 (hereinafter referred to as the “Crafts’ Property”). An old residence is located on the Crafts’ Property. (CP 59) For years, the residence was serviced by a well located on the Subject Property. A fence line was located on the North boundary of the Subject Property to separate the Crafts’ Property and the Subject Property from the property to the North. The Crafts’ Property and the Subject Property were used as one parcel. (CP 20, 59).

In 1990, a legal action for adverse possession was commenced by John and Ruth Kennedy (who then owned the Crafts’ Property) against the owners of the Northwest Quarter of Section 15, Township 26 North, Range 41 E.W.M. (the Subject Property and the property north of the fence line). (CP 22-26). In that action, the Kennedys were asking the Court to quiet the title of the Subject Property in them so that the legal ownership of the Subject Property and the Crafts’ Property were aggregated in one ownership. Shortly after the commencement of the quiet title action, the Kennedys entered into a Real Estate Contract dated August 1, 1990, with Betty J. Pitts to sell to her the Crafts’ Property.

(CP 25). Betty Pitts was joined as a plaintiff in the adverse possession litigation on May 24, 1991. (CP 25). In 1993, the parties to the adverse possession action entered into a settlement agreement by which it was agreed that the title to the Subject Property south of the fence line transferred to the Kennedys subject to the Real Estate Contract with Betty Pitts. (CP 22-26).

Subsequent to the resolution of the adverse possession suit, a quitclaim deed was executed by the Kennedys whereby Ms. Pitts received legal title to the Subject Property. (CP 46).

On August 10th, 1999, Betty Jane Pitts passed away. Her will was admitted to probate in the Spokane County Superior Court on November 8, 1999. (CP 50-58). The quitclaim deed received by Ms. Pitts from the Kennedys was recorded prior to her death. (CP 46). Under the terms of her Will, the Appellant, David Pitts (hereinafter referred to as "Mr. Pitts") inherited all of Betty Pitts' interest in the property located at 14829 N. Burnett Road. (CP 53-56).

In January of 2001, Glen A. Cloninger obtained a deed of trust (hereinafter referred to as "Deed of Trust") on the Crafts' Property. (CP 58, 63-67). Due to a mistake in the drafting of the Deed of Trust, the Subject Property was not included in the legal description. (CP 59). It

was Mr. Cloninger's intent that the Subject Property was to be included in the Deed of Trust. (CP 59). A default occurred in the obligations secured by the Deed of Trust and Glen A. Cloninger foreclosed on the Deed of Trust. (CP 59). On November 30, 2001, a foreclosure sale regarding the Crafts' Property took place and title was transferred to Glen A. Cloninger pursuant to a Trustee's Deed. (CP 59, 70-73).

Mr. Cloninger then discovered that the Subject Property was mistakenly omitted from the Deed of Trust CP 59). Mr. Pitts had previously attempted to sell all or portions of the Crafts' Property and the Subject Property to one or more third parties. Mr. Pitts requested that Mr. Cloninger give him the opportunity to continue to market the properties. (CP 59). On March 14, 2002, Mr. Cloninger entered into a "Real Estate Lease With Purchase Option" ("Lease") with David Pitts. (CP 74). While Mr. Pitts argues that he signed the Lease under duress, he has not provided any facts or any evidence supporting this claim either at the trial court level or on appeal. The issue regarding alleged duress is not before this Court.

The Lease specified, in part, that (1) upon execution of the Lease, Mr. Pitts was to provide a quitclaim deed for the Subject Property conveying all of his interest in the property to Mr. Cloninger, (2) the deed

was to be held in trust by Mr. Cloninger's attorney, and (3) upon default by Mr. Pitts or his failure to exercise the purchase option as outlined in the Lease, the deed would be recorded. (CP 74-81.) The purpose of the deed was to aggregate the title of the Subject Property with the Crafts' Property because those two parcels had always been used together. In the event Mr. Pitts was successful in marketing the properties to a third party, the properties would be aggregated. In the event the Lease terminated without the option to purchase being exercised, the title to the properties would also be aggregated in Mr. Cloninger. (CP 60). The intent of the Lease was to rectify the mistake of leaving the description of the Subject Property out of the Deed of Trust since the Subject Property had always been used with the Crafts' Property. (CP 60). Under the Lease, Mr. Pitts was given continued possession of the Crafts' Property. (CP 74).

Mr. Pitts subsequently failed to exercise the purchase option under the Lease and defaulted in the payment of rent. Despite these defaults, Mr. Pitts continued in possession of the Crafts' Property. (CP 60; 143-144). Despite repeated demands, Mr. Pitts failed to provide the quitclaim deed for the Subject Property as required under the Lease. (CP 60).

On September 6, 2002, Mr. Cloninger filed an action for unlawful detainer to have Mr. Pitts removed from the property and, in that action,

sought recovery of damages sustained in connection with possession of the premises. (CP 142-144). Mr. Cloninger requested the Court to enter judgment for restitution of the premises and damages for unpaid rents, late charges and for unlawful detention of the premises. (CP 144). Judgment was entered accordingly.

In April, 2003, Mr. Cloninger sold the Crafts' Property to the Crafts. (CP 60). In September, 2003, Mr. Cloninger assigned to the Crafts the right to proceed against Mr. Pitts for specific performance and quiet title relating to the Subject Property so that the Subject Property could again be aggregated to the Crafts' Property. (CP 60, 86).

On September 24, 2003, the Crafts commenced this litigation in Spokane County Superior Court seeking specific performance of Mr. Pitts' obligations under the Lease to require him to execute a quitclaim deed for any interest he may have in the Subject Property. (CP 1-14).

On March 18, 2004, Mr. Pitts filed a Chapter 7 bankruptcy proceeding. (CP 121). On April 12, 2004, counsel for the Crafts attended the First Meeting of Creditors relating to Mr. Pitts' bankruptcy proceeding. (CP 107-108). Mr. Pitts was placed under oath and examined concerning the Subject Property. Mr. Pitts testified that he did not own the Subject Property, but that he could sign a quitclaim deed even if he did

not own the Subject Property. (CP 107-112). Mr. Pitts also stated that, at the time he executed the Lease, he did not believe he was giving anything away by agreeing to sign a quitclaim deed regarding the Subject Property. (CP 107-112).

On February 18, 2005, the trial court granted the Crafts' Motion for Summary Judgment and ordered Mr. Pitts to execute the quitclaim deed. On March 11, 2005, the Court denied Mr. Pitts' Motion for Reconsideration. (CP 189-191, 207-208).

Mr. Pitts does not dispute that the contract rights held by Mr. Cloninger (that required Mr. Pitts to sign the quitclaim deed) were assigned to the Crafts. Mr. Pitts does not dispute that he agreed to sign a quitclaim deed and that this deed was to be recorded upon the termination of the Lease. Mr. Pitts does not dispute that the intent of the provision in the Lease requiring him to provide a quitclaim deed was to aggregate the ownership of the Subject Property with the Crafts' Property regardless of who ended up owning the Crafts' Property. Mr. Pitts does not dispute that, under the Lease, the Crafts, through the assignment from Mr. Cloninger, have the right to obtain the quitclaim deed from Mr. Pitts. Instead, Mr. Pitts' assignments of error to this Court are that: (1) the Crafts' claim for specific performance violates the order of discharge that he obtained in his bankruptcy proceeding

and (2) the Crafts' claim constitutes "claim splitting". Neither argument is supported by law and the decision of trial court should be affirmed.

II. ARGUMENT

A. STANDARD OF REVIEW.

An appellate court reviews a lower court's ruling granting summary judgment on a "de novo" basis. The appellate court will therefore engage in the same inquiry as the trial court. Shannon v. State, 110 Wn.App. 366, 369, 40 P.3d 1200 (2002).

The purpose of summary judgment is to examine evidence relevant to any allegation and to grant a judgment as a matter of law where there is no genuine dispute as to any material fact. Island Air, Inc. v. LaBar, 18 Wn. App. 129, 136, 566 P.2d 972 (1977). If no genuine issue of material fact upon which reasonable persons could disagree exists, the court should grant the motion. Lundgren v. Kieren, 64 Wn.2d 672, 677, 393 P.2d 625 (1964).

In this appeal, Mr. Pitts is not contending that there is a genuine issue of material fact. In his brief, Mr. Pitts sets forth an extensive narrative of background facts relating to his ownership and involvement in the properties. Whether or not that factual narrative is accurate is irrelevant to the issues before this Court because those facts are not material to the motion

for summary judgment before this Court. Mr. Pitts contends that the court below erred in its application of the law to the uncontested facts.

B. THE TRIAL COURT’S SPECIFIC ENFORCEMENT OF THE CONTRACT DOES NOT VIOLATE THE BANKRUPTCY CODE.

1. Summary.

Appellant contends that the trial court’s order granting specific performance violates the discharge provisions of the Bankruptcy Code. This contention is based on an argument that the failure of Mr. Pitts to provide an executed quitclaim deed gave rise to a right to payment to the Crafts. In an attempt to provide credit to this argument, the Appellant characterizes the provision in the Lease requiring the quitclaim deed as a “forfeiture/penalty provision”. Appellant then argues that the Crafts had the right to pursue an alternative remedy for monetary damages to recover this “penalty”.

There are no facts in this case supporting the Appellant’s argument that the provision in the Lease requiring Mr. Pitts to provide the quitclaim deed was a “penalty” provision allowing an alternative recovery of monetary damages. The undisputed facts show that the provision requiring the quitclaim deed was to again aggregate the title of the Subject Property to the Crafts’ Property in the event Mr. Pitts was unable to sell

both parcels to a third party. The purpose of the quitclaim deed was specific to the combining of the legal titles of the properties in one ownership. Mr. Pitts' failure to provide the quitclaim deed leads to only one possible remedy to implement the intent of the parties – an action for specific performance. Therefore, the action for the equitable relief of specific performance in this case is not a “claim” under the Bankruptcy Code and is not a matter that was discharged in Mr. Pitts' bankruptcy proceeding.

2. A “claim” under the Bankruptcy Code does not include a claim of specific performance.

Once a discharge is obtained under Chapter 7, the discharge acts as an injunction to recover against any debt owed by the debtor. 11 U.S.C.

§524(a)(2). A “debt” is defined as any liability on a “claim”. 11 U.S.C.

§101(12). A “claim” is defined in 11 U.S.C. §101(5)(B) as including a:

“(B) right to an equitable remedy for breach of performance *if such breach gives rise to a right to payment*, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.”
(emphasis added)

The definition of a “claim” is not boundless and does not include future rights to payments that are unknown and unenforceable. In re Hexcel Corporation 239 B.R. 564, 566-567 (N.D. Cal. 1999). To constitute a

“claim”, the right to payment must be an alternative to the right for an equitable remedy or otherwise related to an equitable remedy. Matter of Udell, 18 F.3rd 403, 408 (C.A. 7 (Ind., 1994)). See also In re Indian River Estates, 293 B.R. 429, 434 (N.D. Ohio 2003). (“The key... is to ascertain whether the equitable remedy would give rise to a right of payment; that is could a monetary award substitute for the equitable remedy.”)

Whether the non-breaching party to a contract has the right to obtain a money judgment or, in the alternative, an equitable judgment, is determined by state law. In re Aslan, 65 B.R. 826, 831 (Dist. of Cal. 1986). As the court stated in Aslan:

“Damages... become a claim dischargeable in the bankruptcy only if under state law the creditor would have the choice of more than one possible remedy, with one of the choices being a money claim.” Id. at 832 head note 8.

Therefore, under the Bankruptcy Code, the definition of “claim” is

“...intended to include as a claim a right to an equity remedy for breach of performance *if the breach gives rise to an alternative right to payment*. If the *only* remedy allowed by law is non-monetary, the equitable remedy is not transformed into a claim...” Id. at 830-831. (emphasis added)

In this case, the Crafts do not have a “claim” as defined by the Bankruptcy Code because the remedy available to the Crafts to implement the intent of Mr. Cloninger and Mr. Pitts under the Lease is the equitable remedy of specific performance to obtain the quitclaim deed. There is no

provision in the Lease stating that, should Mr. Pitts fail to provide the quitclaim deed, Mr. Mr. Cloninger was entitled to damages. There is nothing in the Lease that indicates that the requirement to provide the quitclaim deed was a “penalty” provision. The Assignment of Interest from Mr. Cloninger to the Crafts specifically provides that Mr. Cloninger is assigning “the right to obtain from David M. Pitts a quitclaim deed relating to the property” and “include the assignment of the right to proceed with an action for specific performance and quiet title relating to the property.” (CP 86). The Lease did not provide (nor is there any evidence of any intent by the parties to the Lease to have it provide) the alternative right to payment from Mr. Pitts.

3. Since the Crafts cause of action assigned to them by Mr. Cloninger was not a “claim”, this action does not violate 11 U.S.C. §524.

Contractual rights can be assigned unless the assignment is forbidden by statute or is against public policy. International Commercial Collectors, Inc. v. Mazel Company, Inc., 48 Wn.App. 712, 716-717, 740 P.2d 363 (1987). The assignee’s rights include those identified in the contract. Federal Financial Co. v. Gerard, 90 Wn.App. 169, 177, 1998 Wash. App. Lexis 811 (1998). Once assigned, the assignee of the contract

will stand in the shoes of the assignor and has the right to sue under the contract. Paullus v. Fowler, 59 Wn.2d 204, 212, 367 P.2d 130 (1961) and Estate of K.O. Jordan v. Hartford Accident and Indemnity Co., 120 Wn.2d 490, 495, 844 P.2d 403 (1993).

Specific performance is an equitable remedy available to an aggrieved party where there is no adequate remedy at law. If the evidence establishes that the breaching party has the ability to perform the duties under the contract, equity requires done that which ought to be done. Egbert v. Way, 15 Wn.App. 76, 79, 546 P.2d 1246 (1976). A court will specifically enforce a contract for the conveyance of an interest in real property if the contract is shown by clear and unequivocal proof, leaving no doubt as to the character, terms, and existence of the contract. Canterbury Shores Associates v. Lakeshore Properties, Inc., 18 Wn.App. 825, 572 P.2d 742 (1977).

Here, Mr. Cloninger assigned his rights to seek the quitclaim deed from Mr. Pitts to the Crafts. (CP 86). In their Complaint, the Crafts requested relief of specific performance, the only remedy to which they were entitled to implement the intent of the parties to the Lease. (CP 1-14). For many years, the Subject Property has been used as part and parcel of the Crafts' Property. (CP 20, 59). A well on the Subject Property has been used

to service the residence on the Crafts' Property. (CP 20, 59). The settlement in the prior adverse possession litigation was entered into to combine the parcels together. (CP 22 –26). The intent of the provisions of the Lease was to aggregate the parcels together regardless of who ended up in ownership of the parcels. (CP 60). The Subject Property is unique and the only remedy available to the Crafts to enforce the provisions of the Lease is this action for specific performance. As the Court held in In re Aslan (supra):

“In the case of transfer of real property, specific performance is allowed because courts have felt that real property is unique and that a money judgment cannot fully equate to the property itself.”

See also In re Renee Stewart Irizarry, (supra) at 878-879. (Since the plaintiffs sought equitable remedies including cancellation of a grant deed, recovery of property and cancellation of liens instead of money damages, a state court judgment granting these equitable remedies does not constitute a right to payment as discussed in 11 U.S.C. 101(5)).

4. Asking for general equitable relief in the prayer of the Complaint does not bring this action within the Bankruptcy Code discharge provisions.

Mr. Pitts argues that since the Crafts requested general equitable relief from the Court in their Complaint, this gave the Court the ability to award money damages, citing Zastrow v. W.G. Platts, Inc., 57 Wn.2d 347, 357

P.2d 162 (1960). Mr. Pitts argues that since the Court had the ability to award money damages, the Crafts had the ability to seek both specific performance and money damages. As a result, Mr. Pitts argues that this action violates the Bankruptcy Code.

In Zastrow, the issue was not the relief requested by the parties, but the Court's inherent power **after** retaining jurisdiction to dispose of all issues related to a case.

“As to the authority of an equity court to award damages, this question is well settled. The rule is this --once a court of equity has properly acquired jurisdiction over a controversy, such a court can and will grant whatever relief the facts warrant, including the granting of legal remedies.” Id. at 350.

In Zastrow, the Court invoked its inherent authority to award money damages instead of specific performance to convey property **only** because the property had been encumbered to a point where specific performance was not feasible. Id. at 350. See also Hubbell v. Ward, 40 Wn.2d 779, 246 P.2d 468 (1952). (When equity assumes jurisdiction over the subject matter and the parties to an action, it will retain jurisdiction over the whole controversy, and whatever relief the facts warrant will be granted.)

In this case, a general request for equitable relief in the prayer of the Complaint and the Court's general jurisdiction in equity cannot be said to constitute a “claim” for money damages, a contingent right to payment or

an enforceable obligation under the Bankruptcy Code. (CP 1-14). To hold otherwise would transform all for the purpose of the definition of “claim” in the Bankruptcy Code, all actions seeking equitable remedies into actions allowing for the “right to payment” and thereby effectively writing out of the Bankruptcy Code the distinction between: (1) equitable remedies for breach of performance and (2) equitable remedies for breach of performance if such breach gives rise to a right to payment. Obviously, the above distinction is in the Bankruptcy Code for a purpose and that purpose is that causes of action like the current action are not discharged in a bankruptcy proceeding since Mr. Pitts is not subject to a claim for monetary damages.

**C. THE CRAFTS’ CLAIM FOR SPECIFIC PERFORMANCE
DOES NOT CONSTITUTE “CLAIM SPLITTING”.**

In September of 2002, Mr. Cloninger commenced an unlawful detainer proceeding under RCW Chapter 59.12 seeking possession of premises occupied by Mr. Pitts and seeking judgment for unpaid rent, late charges, and damages for unlawful detention of the premises in connection with that possession. (CP 139-152). Mr. Cloninger obtained a Judgment against Mr. Pitts in that unlawful detainer proceeding. Subsequently, in this action, the Crafts filed the Summons and Complaint for specific

performance seeking an order from the Court requiring Mr. Pitts to provide the quitclaim deed as required by him under the Lease. (CP 1-14).¹ Contrary to Mr. Pitts' claim, this does not constitute claim splitting.

Claim splitting prohibits one from splitting a single cause of action into multiple suits. Landry v. Luscher, 95 Wn.App. 779, 782, 976 P.2d 1274 (1999). The prohibition is focused on the elements of res judicata and prohibits any one from bringing a subsequent cause of action where the prior action is identical in four respects: (1) persons or parties, (2) cause of action (3) subject matter and (4) the quality of the persons for or against the claim is made. Id. at 783 (citations omitted). The doctrine of res judicata does not bar litigation of claims that were not adjudicated in the earlier proceeding. Estate of Black, 153 Wn.2d 152, 170, 102 P.3d 796 (2004).

As to the "cause of action" element, the Court's examination will include whether (a) the two suits involve infringement of the same right, (b) whether the second action would destroy or impair interests established in the first judgment and (c) whether the two suits arise out of the same

¹ Whether Appellant does or does not have title to the property is immaterial. Respondents' Complaint and the summary judgment motion requested that the Court enforce the contract and require Appellant to sign quitclaim deed conveying any interest he *may* have in the Subject Property. See RCW 64.04.050. Appellants did not seek a warranty deed guaranteeing title and the power to convey. RCW 64.04.030.

nucleus of facts. As to the “subject matter” element, the Court’s inquiry is focused on the nature of the claim and the parties. Landry at 784-785.

Mr. Pitts’ sole argument is that the Crafts’ claim for specific performance *could have been* brought by Mr. Cloninger in connection with the unlawful detainer action. In this regard, Mr. Pitts is incorrect.

An action for unlawful detainer under RCW Chapter 59.12 is in derogation of common law and is governed exclusively by statute. Lees v. Wardall, 16 Wn.App. 233, 237, 554 P.2d 1076 (1976). An action brought under the statute is a summary proceeding for the sole purpose of recovering possession of real property. Id. If an action is commenced under the statute, the Court’s jurisdiction is limited to (1) determining possession of the property and (2) damages sustained in connection with possession of the property. The Court’s jurisdiction **does not** include the power to hear general civil claims, which would include a demand for specific performance. As stated in Lees v. Wardall:

“...where proceedings are commenced using the special summons, the court obtains jurisdiction of the parties for only the limited statutory purpose of determining possession and damages sustained in that connection; **and the court cannot transform such special proceedings into an ordinary law suit or grant relief therein as though the action were a general proceeding.**” Id. at 238. (emphasis added)

See also Kessler v. Nielsen, 3 Wn.App. 120, 123, 472 P.2d 616 (1970), in which the court stated as follows:

“The purpose of the statutory action is to preserve the peace, Young v. Riley, supra, by limiting the common law right of personal reentry. Woodward v. Blanchett, 36 Wn.2d 27, 216 P.2d 228 (1950). In such an action there is only one issue before the court -- the right to possession. The statutory incidents are dependent on this right. MacRae v. Way, 64 Wn.2d at 546:

In such proceedings the superior court sits as a special statutory tribunal, limited to deciding the primary issue of right to possession together with the statutorily designated incidents thereto, *i.e.*, restitution and rent or damages.

Accord, Motoda v. Donohoe, 1 Wn. App. 174, 459 P.2d 654 (1969); Muscatel v. Storey, 56 Wn.2d 635, 354 P.2d 931 (1960); Petsch v. Willman, supra; Stevens v. Jones, 40 Wash. 484, 82 P. 754 (1905). Rent or damages may only be recovered under the statute when there is a right to possession. When this right is not present, the damages or rent must be recovered in an ordinary civil action. Stevens v. Jones, supra.”

In the unlawful detainer lawsuit, the Court’s jurisdiction was limited to determine the right to possession of the property as between Mr. Cloninger and Mr. Pitts and, pursuant to the statute, to assess damages in connection with the possession of the property by Mr. Pitts. The relief awarded by the Court included a judgment for unpaid rent, late charges for the unpaid rent, and damages for continued possession, all in accordance with the statute. (CP 139-152).

Contrary to Mr. Pitts' argument, Mr. Cloninger was legally prohibited from pursuing another claim for specific performance in the unlawful detainer action. Therefore, the Crafts' suit for specific performance under the contract does not involve the same claims, does not involve the same subject matter and does not constitute claim splitting.

Mr. Pitts attempts to circumvent the statutory prohibition of including within an unlawful detainer proceeding causes of action for other than possession of the premises and damages relating to the unlawful possession of the premises by again arguing that the provision in the Lease requiring Mr. Pitts to provide the quitclaim was a "penalty" provision. Mr. Pitts argues that, just like the \$500.00 late fee relating to the payment of rent default, Mr. Cloninger could (and should) have included the cause of action for specific performance in the unlawful detainer action. Clearly, this argument has no support in law or in fact. There is no evidence in the record that the requirement to provide the quitclaim deed was intended to be a "penalty" relating to the failure to pay rent. To the contrary, the Lease required the providing of the quitclaim deed even if Mr. Pitts had not defaulted in the payment of rent but did not exercise the option to purchase the property. Therefore, it is impossible to characterize the provision requiring the quitclaim deed as "compensation for the

occupation of the premises” as required by RCW Chapter 59.12.070. Since the cause of action for specific performance could not legally have been brought in the unlawful detainer proceeding, the later commencement of this action by the Crafts does not constitute claim splitting.

III. CONCLUSION

The Crafts’ rights under the Lease Agreement are derived by virtue of the assignment from Mr. Cloninger. Since the only remedy of the Crafts to implement the intent of the parties under the Lease to aggregate the ownerships of the parcels is the equitable remedy of specific performance and because this right to relief does not include a contingent right to money damages, it does not constitute a “claim” as defined under 11 U.S.C. §101(5). As a result, it is not barred by 11 U.S.C. §524(a)(2).

The unlawful detainer proceeding previously commenced by Mr. Cloninger is, by statute, a special proceeding. The Court’s jurisdiction was limited to questions concerning (1) the right to possession of property and (2) damages in connection with the right to possession. In bringing the unlawful detainer action, Mr. Cloninger was legally prohibited from including therein a claim for specific performance relating to the quitclaim deed. As a result, the later commencement of this legal action by the

Crafts seeking specific performance does not constitute “claim splitting” and does not violate the doctrine of res judicata. The judgment of the trial court granting specific performance should be affirmed.

Respectfully Submitted,

WORKLAND & WITHERSPOON, PLLC

By:

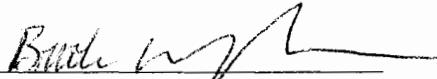


PETER A. WITHERSPOON, WSBA 7956
Attorneys for Respondents
West 601 Main, Suite 714
Spokane, WA 99201
(509) 455-9077

CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered a true and correct copy of the Brief of Respondents on the 5th day of July, 2005 to the attorney of record for Appellant at the following address:

Robert P. Hailey
RANDALL & DANSKIN, P.S.
601 W. Riverside, Suite 1500
Spokane, WA 99201



Brook Cunningham