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No. 90088-4

SUPREME COURT OF THE STATE OF WASHINGTON

JOSE SEGURA and TABETHA GONZALEZ,

Petitioners,

v.

ROGACIANO AND RAQUEL CABRERA,

Respondents.

PETITIONERS' ANSWER TO AMICUS BRIEF OF THE RENTAL HOUSING ASSOCIATION OF WASHINGTON

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ORIGINAL

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I. ARGUMENT

A. THE TERM "ACTUAL DAMAGES" HAS A CLEAR AND UNAMBIGUOUS MEANING

Amicus Curiae Rental Housing Association of Washington ("RHA") does not dispute that the plain and ordinary meaning of "actual damages" allows for an award of emotional distress and mental anguish damages. Noticeably, the RHA does not address this Court's clear precedent defining "actual damages" in other Washington statutes. *See Rasor v. Retail Credit Company*, 87 Wn.2d 516, 554 P.2d 1041 (1976); *Martini v. Boeing Co.*, 137 Wn.2d 357, 971 P.2d 45 (1999) ("actual damages" as generally used, including in RCW 49.60.020, "encompass[es] all the elements of compensatory awards," including "damages for emotional distress"); *Ellingson v. Spokane Mortg. Co.*, 19 Wn. App. 48, 56-58, 573 P.2d 389 (1978) (generally accepted meaning of "actual damages" includes damages for emotional distress); *Conrad v. Alderwood Manor*, 119 Wn. App. 275, 78 P.3d 177 (2003) (affirming $2.75 million jury verdict for mental pain and suffering under RCW 74.34.200(3), which permits recovery of "actual damages").

Instead, the RHA attempts to manufacture doubt that the

legislature intended the clear, established and ordinary meaning of "[i]n addition ... actual damages" within the context of the Residential Landlord Tenant Act ("RLTA") as a whole and RCW 59.18.085 specifically. It does so by artfully misdirecting the inquiry away from the statutory language and toward common law breach of contract remedies. But, the argument is premised on the implication[1] that the RLTA merely encompasses contractual rights and remedies between landlords and tenants. *But see, Foisy v. Wyman,* 83 Wn.2d 22, 26, 515 P.2d 160 (1973) *quoting Lemle v. Breeden*, 51 Haw. 426, 462 P.2d 470 (1969) (implied warranty of habitability has counterparts in sales and torts); RCW 59.18.085 (allowing non-party government entities to recover advanced relocation assistance from landlords). If the common law of contracts and common law remedies were adequate to address the landlord tenant relationship then the RLTA, as a whole, would be

[1] Without citation to other authority, the RHA frequently over simplifies the RLTA as statute governing the contractual aspects of rental housing. Amicus Brief of RHA, p. 2 (the "RLTA *addresses* the contractual relationships between landlords and tenants"); p. 3 (contains "contract *based*" remedies) ("*largely* contractual in nature"); p. 6 ("a statute *addressing* landlord-tenant contractual remedies"); p. 7 (focusing on RCW 59.18.085 overlooks "the *overall thrust* of the RLTA itself"); ("*governs* contractual relationship"); ("remedies *essentially* contractual in nature"); p. 13 ("in contractual *context*"); ("statute *implicating* contract rights"); p. 17 ("*addressing* contractual relationships") (permits "contract *based* remedies"); ("*primarily* economic in nature") (emphasis added). The RHA does not, and cannot, expressly claim that the RLTA is exclusively an embodiment of contract law as opposed to a statute addressing the wide range of rights and duties implicated in a landlord tenant relationship, from contract, to property to tort law.

unnecessary.

To the contrary, the stated legislative purpose and common theme throughout the RLTA is that "the people of Washington deserve decent, safe, and sanitary housing. Certain tenants in the state of Washington have remained in rental housing that does not meet the state's minimum standards for health and safety because they cannot afford to pay the costs of relocation in advance of occupying new, safe, and habitable housing." Laws of 2005, ch. 364 § 1. This is particularly true in the context of RCW 59.18.085.

The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, it is "'give[n] effect to that plain meaning.'" *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (*quoting Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). An undefined term is "given its plain and ordinary meaning unless a contrary legislative intent is indicated." *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920–21, 969 P.2d 75 (1998). The legislature is aware of the common law in enacting a statute and that courts must apply common law terminology employed in a statute. *See City of Federal Way v. Koenig*, 167 Wn.2d 341, 351, 217 P.3d 1172 (2009).

When the meaning of a statute is plain, enforcing it as written effectuates the legislative intent. *See Burns v. City of Seattle*, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). If the language of the statute is plain, that ends the Court's role. *Cerrillo v. Esparaza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006).

This Court's holdings in *Rasor* and *Martini* control. The term "actual damages" "encompass[es] all the elements of compensatory awards," including "damages for emotional distress." *Martini*, 137 Wn.2d at 971. To be sure, the RHA has not identified specific language within the RLTA supporting a finding that "[i]n addition ... actual damages" is ambiguous.

The RLTA, as a whole and particularly within RCW 59.18.085, is intent on ensuring "decent, safe, and sanitary housing" complete with remedies designed to both provide and recompense those furnished with substandard housing. Nothing found within the RLTA suggests a legislative intent to limit tenants' remedies to those available in the common law of contracts. Therefore, "actual damages" as used in RCW 59.18.085(3) should encompass all the elements of compensatory awards including damages for emotional distress. *See Ellingson v. Spokane Mortgage Co.,* 19 Wn. App. 48, 56-58, 573 P.2d 389, 393 (1978).

B. "IN ADDITION ... ACTUAL DAMAGES"; AND "ACTUAL DAMAGES" FOR BOTH INTENTIONAL AND "KNEW OR SHOULD HAVE KNOWN" VIOLATIONS DEMONSTRATE LEGISLATIVE INTENT NOT TO RESTRICT THE ORDINARY MEANING OF "ACTUAL DAMAGES"

Two other important features of RCW 59.18.085 buttress the clear legislative intent to allow for recovery of non-economic damages.

First, the legislature set the award of "actual damages" apart from the other enumerated damages. The statute first provides for "relocation assistance, prepaid deposits and prepaid rent." Then further provides, in a separate sentence, "[i]n addition, displaced tenants shall be entitled to recover any actual damages." RCW 59.18.085(3)(e). The words "in addition" are not insignificant.

Under the rules of statutory construction, all of the words of the statute must be given effect, so that no provision is rendered meaningless or superfluous. *State v. Roggenkamp*, 153 Wn.2d 615, 624, 106 P.3d 196 (2005). The damages available under the RLTA are limited to those available in common law breach of contract claims, then "in addition ... actual damages" would be rendered redundant and superfluous given the statute already expressly enumerates breach of contract damages before allowing for "[i]n addition ... actual damages." The RHA does not identify

what additional damages the legislature intended when it employed the phrase "in addition ... actual damages," if it did not intend the usual and ordinary meaning of the phrase and to include non-economic damages.

Second, the term "actual damages" appears twice within RCW 59.18.085; in the context of an "intentional" violation at .085(2) and then under the "knew or should have known" basis for liability at issue in this case under .085(3). Although this Court's holding in *White River Estates v. Hiltbruner*, 134 Wn.2d 761, 765, 953 P.2d 796 (1998), is distinguishable since RCW 59.18.085(3) is not silent on damages, it still stands for the proposition that statutory torts, which require intentional conduct, allow for recovery of non-economic damages. Therefore, even if .085(2) were silent on damages, the *White River* test would still result in the allowance of non-economic damages. Therefore, it cannot be that the term "actual damages" under .085(2) would be limited to economic damages where both the ordinary meaning of the term and a *White River* analysis allow for recovery of non-economic damages. Thus, limiting "actual damages" in the context of subsection .085(3) to economic damages, would result in the same phrase having two meanings within the same statutory section.

It stands to reason that the legislature employed the familiar term "actual damages" in both subsections, "intentional" and "knew or should have known," with intent that the well-established ordinary meaning of the phrase be employed consistently throughout RCW 59.18.085.

C. "OBJECTIVE SYMPTOMOLOGY" IS AN ELEMENT OF FORESEEABILITY LIMITED TO A BYSTANDER CLAIM

The Court should decline RHA's invitation to expand the requirement of "objective symptomology" to statutory causes of action. "[T]he objective symptom requirement applies in cases where negligent infliction of emotional distress is asserted, and goes to proof of liability, not damages. *Nord v. Shoreline Savings Ass'n,* 116 Wn.2d 477, 485, 805 P.2d 800 (1991). In addition to proximity, the requirement of objective symptomology serves as a foreseeability restriction on the class of persons who may recover as bystander to another injury. *See Colbert v. Moomba Sports, Inc.*, 163 Wn.2d 43, 50, 176 P.3d 497, 500 (2008).

Contrary to the line of cases requiring proof of objective symptomology, Mr. Segura and Mrs. Gonzalez ("Seguras") suffered an immediate physical invasion of the their personal security and a direct possibility of such an invasion when the City of Pasco

ordered them to vacate their home based on the Cabreras' failure to comply with the local housing regulations.[2] Liability is established within the framework of the statutory scheme. "[A] landlord shall not enter into a rental agreement" if a governmental agency has notified the landlord the property is condemned or unlawful to occupy. RCW 59.18.085(1). Further providing if a landlord "knowingly" violates subsection (1), or "know or should have known of the existence of" conditions violating subsection (1), then the landlord will be liable for the damages enumerated at subsection (2) and (3), respectively, including "actual damages" as provided for by both subsections. RCW 59.18.085(2)(3). *See Berger v. Sonneland*, 144 Wn.2d 91, 104, 26 P.3d 257, 264 (2001) (objective symptomology not required for proof of emotional distress damages as statutory "actual damages" for wrongful disclosure of heath records in violation of RCW 70.02.170).

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[2] The RHA further argues that objective symptomology, generally, should be required to protect against "routine recovery of punitive damages" and "fraudulent claims." Brief of Amicus Curiae RHA, p. 18-19. However, as discussed, the requirement serves as a foreseeability requirement for bystander claimant. Evaluation of a claim for emotional distress damages in direct harm cases are trusted to the finder of fact. For example, in *Rasor*, this Court affirmed recovery of emotional distress damages, as "actual damages," under the Fair Credit Reporting Act based on *plaintiff's testimony* that the plaintiff "suffered emotionally from the experience" with an offensive credit report. *Rasor*, 87 Wn.2d at 531. Acknowledging that the evidence of emotional injury was "not overwhelming" this Court found it "sufficient to support the [$2,500] awarded" by the trial court. *Id.* In this case, the Petitioners and their children were threatened with homelessness and forced from their home, yet sought recovery of just $1,000. CP 31-34. The testimony of the Seguras is sufficient to support an award of $1,000.

The present case is inapposite to the line of cases imposing the proof of objective symptoms. The RHA cites to *Hunsley v. Giard*, 87 Wn.2d 424, 553 P.2d 1096 (1976) for the proposition that proof of objective symptomology is required in negligent infliction of emotional distress claims. However, *Hunsley* involved a claim for negligent infliction of emotional distress when her neighbor negligently drove a car into Ms. Hunsley's back porch utility room causing fear and apprehension for the safety of her husband and a visiting minor in an adjacent room. *See also Hegel v. McMahon,* 136 Wn.2d 122, 960 P.2d 424 (1998) (proof of objective symptomology required for bystander to recover for observing injured family member at the scene of an accident).

In any case, it was the holding of the trial court that you could *never* recover emotional distress damages in the landlord-tenant context regardless of objective symptoms. On reconsideration the court found, "[t]he relationship of the parties arises from a contract to lease real property. The misconduct on the part of the landlord was intentional but is not an intentional tort." CP at 13.

The restriction of objective symptoms is inapplicable here where the statute expressly provides for "actual damages" and the

Seguras were directly harmed by Mr. Cabrera's failure to provide adequate housing resulting in the City of Pasco evicting the tenants by condemnation of the property. CP 67-72.

II. CONCLUSION

For all of the foregoing reasons, the Seguras respectfully request that this Court reverse the decision below, and find that the term "actual damages" as employed by RCW 59.18.085(3)(e) allow for recovery of emotional distress damages.

RESPECTFULLY SUBMITTED this 2nd day of March, 2015.

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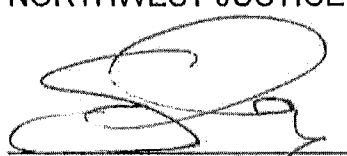

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2015, I caused a true and correct copy of this Petitioner's Answer to Amicus Brief of the Rental Housing Association of Washington to be served on the following via first class U.S. mail:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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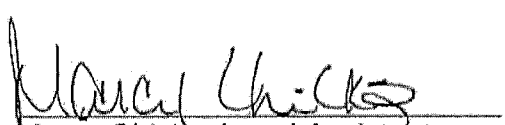

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Good afternoon,

Attached please find the Petitioners' Answer to the Brief of Amicus Curiae Rental Housing Association of Washington in Supreme Court Cause No. 90088-4 for today's filing. Thank you.

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Good Morning:

Attached please find the Brief of Amicus Curiae Rental Housing Association of Washington in Supreme Court Cause No. 90088-4 for today's filing. Thank you.

Sincerely,

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