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WASHINGTON STATE
SUPREME COURT

NO. 92978-5

SUPREME COURT OF THE STATE OF WASHINGTON

Stephen Faciszewski and Virginia Klamon,

Petitioner,

v.

Michael R. Brown and Jill A. Wahleithner,

Respondent.

FILED *E*
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WASHINGTON STATE
SUPREME COURT

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BRIEF OF AMICUS CURIAE NORTHWEST JUSTICE PROJECT

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I. Introduction

In most of Washington, a landlord may terminate a residential tenancy on twenty days' notice to the tenant; no grounds for the eviction need be given or good cause proven.¹ While separate statutes prohibit landlords from terminating leases for retaliatory or discriminatory reasons,² as a general rule landlords are free to terminate tenancies even for frivolous reasons having little or nothing to do with the tenancy at all.

In Seattle, however, residential tenants are protected against arbitrary termination of their rental agreements under the Just Cause Evictions Ordinance, SMC 22.206.160(C). The JCEO prohibits the termination of a residential tenancy except where "just cause" exists, and just cause is limited to sixteen specific grounds set forth in the ordinance.³ A landlord who seeks to terminate a residential tenancy shall "advise the affected tenant or tenants in writing of the reasons for the termination and the facts in support of those reasons."⁴ And "[i]n any action commenced to evict or

¹ See RCW 59.12.030(2).

² See RCW 59.18.240 (prohibiting retaliation); see RCW 49.60.222 (discrimination); see also *Josephinum Associates v. Kohli*, 111 Wn. App. 617, 45 P.3d 627 (2002) ("Discrimination may be a defense that arises out of the tenancy. When it does, the statute permits a tenant to assert the defense and requires the court to consider it.").

³ See SMC 22.206.160(C)(1).

⁴ See SMC 22.206.160(C)(3).

to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for the eviction or termination[.]”⁵

One of the sixteen just cause provisions allows a landlord to terminate a residential tenancy where “[t]he owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person’s principal residence.”⁶ In the decision below, however, the Court of Appeals interpreted this provision to mean that just cause is established whenever a landlord certifies an intention to occupy the unit (or have an immediate family member occupy the unit)—regardless whether that certification is true or false.⁷

In holding that tenants may not challenge such certifications and that courts may not inquire into their veracity, the Court of Appeals’ decision invites unscrupulous landlords to circumvent the JCEO and evict tenants through false certifications (of intent to occupy rental dwellings) whenever those landlords wish to remove tenants but lack genuine just cause. The decision obligates lower courts to honor such certifications, no matter how demonstrably false they might be.⁸

⁵ See SMC 22.206.160(C)(5).

⁶ See SMC 22.206.160(C)(1)(e).

⁷ See *Faciszewski v. Brown*, 192 Wn. App. 441, 453, 367 P.3d 1085 (2016).

⁸ See *Faciszewski*, 192 Wn. App. at 453 (“The Tenants ... ask for the right to contest the truthfulness of the certification in the unlawful detainer action. The city’s legislative body has the authority to consider this policy choice. That authority does not belong to this court, whose fundamental function is review of lower court decisions.”).

The Court of Appeals evidently reached its decision in hopes of sparing honest landlords from the costs and burdens of litigating cases against tenants who, lacking any evidence, dispute a landlord's claim (of an intent to occupy) on the basis of mere subjective disbelief.⁹ But the existing unlawful detainer framework sufficiently protects landlords against this concern by enabling courts to award pre-trial writs of restitution in cases where the evidence strongly favors the landlords—and to award judgment outright when the tenant's position has no meaningful evidentiary support.¹⁰ And the far-reaching implications of the Court of Appeals' decision invite fraud and dishonesty on the part of unscrupulous landlords, secure in the knowledge that a false certification of just cause cannot be challenged by tenants or evaluated by a court.

This Court should reverse that ill-considered decision, and hold that a court must not accept a landlord's certification of intent to occupy rental premises as conclusive when there is evidence calling the truth of that certification into question. Rather, a court should utilize the two-stage unlawful detainer procedure established by the Residential Landlord-

⁹ See *Faciszewski* at 452.

¹⁰ See RCW 59.18.380; see also *Carlstrom v. Hainline*, 98 Wn. App. 780, 789, 990 P.2d 986 (2000).

Tenant Act to resolve these claims.¹¹ If a tenant raises a genuine issue of material fact as to the sincerity of the landlord's intent to occupy, then a court should set the matter for trial.¹² And if a trial is scheduled, then the court should grant or deny a pre-trial writ of restitution based on the strength of the competing evidence.¹³

II. Identity & Interest of Amicus Curiae

The Northwest Justice Project (NJP) is Washington's largest provider of free civil legal services those of low- and moderate-income. NJP's mission is to secure justice through high quality legal advocacy that promotes the long-term well-being of low-income individuals, families, and communities. NJP operates 17 field offices, a telephone hotline, and multiple websites to reach its client-eligible population across the state. In 2015, NJP served nearly 33,000 individuals and closed over 14,800 cases.

On a statewide basis, NJP prioritizes landlord-tenant cases and its attorneys appear regularly on behalf of tenants facing eviction in unlawful detainer proceedings. NJP has its largest office in the City of Seattle and regularly handles rental housing-related legal matters on behalf of Seattle tenants, including matters arising under the Just Cause Evictions

¹¹ See RCW 59.18.370-380, 410 (providing for a show cause hearing on a landlord's motion for entry of a pre-trial writ of restitution, followed by a trial).

¹² See RCW 59.18.380.

¹³ *Id.*

Ordinance. Interpretations of the JCEO and unlawful detainer procedures generally are central to NJP's work and the clients NJP serves.

III. Statement of the Case

Amicus NJP relies on the Statement of the Case set forth in the Brief of Appellants.

IV. Argument

A. A tenant who challenges the veracity of a landlord's stated basis for terminating a tenancy presents a cognizable defense to unlawful detainer under the Just Cause Evictions ordinance.

Under the Unlawful Detainer Act of 1890, a residential landlord can terminate a periodic tenancy on as little as twenty days' notice to the tenant. See RCW 59.12.030(2). The landlord need not state or prove any grounds or just cause for the termination. See *Id.* A tenant is guilty of unlawful detainer if he or she continues in possession beyond the final date of the tenancy. See RCW 59.12.030. The landlord carries its burden of proving unlawful detainer simply by establishing that the required notice was given and that the tenant remained in possession. See RCW 59.12.030(2).

In Seattle, however, a residential landlord must establish a third element, "just cause," to prevail in an unlawful detainer action. See SMC 22.206.160(C)(1) (landlord may not "terminate or attempt to terminate the tenancy of any tenant unless the owner can prove in court that just cause

exists.”); see also *Housing Authority v. Silva*, 94 Wn. App. 731, 736; 972 P.2d 952 (1999) (dismissal of unlawful detainer action appropriate where landlord fails to satisfy Seattle just cause requirement).

1. When the supposed just cause the landlord has asserted for lease termination is false, there is no just cause.

Seattle limits “just cause” (for the termination of a residential tenancy) to specific grounds set forth by ordinance. SMC 22.206.160(C)(1). One such ground is where “[t]he owner seeks possession so that the owner or a member of his or her immediate family may occupy the unit as that person's principal residence[.]” SMC 22.206.160(C)(1)(e).

The plain language of this provision suggests that, to terminate a tenancy on this ground, the landlord must actually intend to move into the dwelling unit or intend for an immediate family member to do so. *Id.* Absent such intent, there is no just cause. Since the lack of just cause is a defense to eviction, a bona fide dispute regarding the sincerity of the landlord’s stated intention to occupy (or have a family member to occupy) a rental unit is thus a material question of fact bearing on the right to possession of the disputed premises. See SMC 22.206.160(C)(5).

2. Courts hearing unlawful detainer cases need not honor false certifications of intent to occupy.

To deter landlords from falsely establishing just cause for eviction by dishonestly claiming an intent to occupy rental premises, the JCEO also

contains a provision that allows a tenant who disputes the veracity of such a claim to make a complaint to the city, after which the landlord must certify her intent to occupy.¹⁴ A landlord who makes a false certification under this provision “shall be liable to such tenant in a private right for action for damages up to \$2,000, costs of suit, or arbitration and reasonable attorney's fees.” SMC 22.206.160(C)(7).

The Court of Appeals found this provision represented the sole remedy for a tenant whose lease is terminated based on a false certification that the landlord would occupy the dwelling unit.¹⁵ The Court of Appeals did not fully explain its rationale for this interpretation of the JCEO. But the principal basis appears to have been that landlords were not required to give cause for terminating a tenancy at common law, and that tenants protected by the JCEO have only those remedies the ordinance provides.¹⁶ See *Eastwood v. Horse Harbor Foundation, Inc.*, 170 Wn.2d 380, 403, 241 P.3d 1256 (2010) (Madsen, C.J., concurring) (“Where the legislature has acted to create rights and remedies, courts cannot enlarge or restrict

¹⁴ See SMC 22.206.160(C)(7).

¹⁵ See *Faciszewski*, 192 Wn. App. at 453.

¹⁶ See *Faciszewski* at 452-53 (“With SMC 22.206.160, the city provides tenants added protections not available to them under Washington law. ... The city also has provided remedies for a tenant who questions the landlord's intent or compliance with Seattle's ordinance. The tenant can demand a certification of the reason for termination. The landlord's failure to provide the certification provides a defense to an eviction action. The landlord's failure to carry out the reason stated in the certification provides the tenant with a claim for damages up to \$2,000. We decline the Tenants' request that we rewrite the ordinance to provide another remedy.”).

those rights or remedies”), citing *Park Avenue Condominium Owners Ass’n v. Buchan Developments, LLC*, 117 Wn. App. 369, 382, 71 P.3d 692 (2003).

The monetary cause of action under SMC 22.206.160(C)(7) is not the only remedy the JCEO provides in this context, however. The JCEO also states that “[i]n any action commenced to evict or to otherwise terminate the tenancy of any tenant, it shall be a defense to the action that there was no just cause for such eviction or termination as provided in this Section 22.206.160.” SMC 22.206.160(C)(5). This provision entitles a tenant to challenge the truth of the landlord’s alleged basis for just cause, because a false assertion of just cause is no just cause at all. See, accord, *Housing Authority v. Pleasant*, 126 Wn. App. 382, 109 P.3d 422 (2005) (“[W]hen a tenant challenges her landlord’s allegations that she was in material noncompliance with her lease terms, she is entitled to a trial.”).

Even apart from the JCEO, the Residential Landlord-Tenant Act supplies ample other grounds on which a court could permissibly consider the veracity of a landlord’s good cause certification in an unlawful detainer suit. For instance, the RLTA requires a court, in an unlawful detainer show cause hearing, to “examine the parties and witnesses orally to ascertain the merits of the complaint and answer.” RCW 59.18.380. In a Seattle case, the presence or lack of just cause relates directly to the

merits. See SMC 22.206.160(C)(5). A court in such a proceeding may not disregard evidence that credibly supports a legitimate defense. *Leda v. Whisnand*, 150 Wn. App. 69, 81, 207 P.3d 468 (2009).

The RLTA also states that “[e]very duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.” RCW 59.18.020. A landlord who brings an unlawful detainer action to evict a tenant based on a false claim (of an intent to occupy the premises) does not act in good faith, and is thus disqualified from utilizing unlawful detainer procedures. *Id.*

The RLTA further recognizes that a tenant may prevail on equitable defenses to eviction. See RCW 59.18.400 (“The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy.”). Allowing a landlord to benefit from falsely certifying an intent to occupy a rental property would hardly be consistent with equitable principles. See generally *J.L. Cooper & Co. v. Anchor Securities Co.*, 9 Wn.2d 45, 73, 113 P.2d 845 (1941) (“a court will not allow the use of its powers and process to obtain a benefit founded directly upon a breach of law by the applicant therefor”).

Indeed, the Court of Appeals’ ruling practically invites such fraud and abuse. The ruling encourages landlords to simply make dishonest

certifications (of intent to occupy) whenever they wish to terminate Seattle tenancies but don't have just cause. If tenants may not challenge the veracity of such claims, and if courts may not consider their truthfulness, then courts must simply rubber-stamp tenants' evictions no matter how demonstrably false and fraudulent particular certifications might be. Even if a tenant is later able to discover and prove the deceit and recover the \$2,000 maximum damages (under SMC 22.206.160(C)(7)), this is not even an average month's rent in Seattle.¹⁷

B. Washington's residential unlawful detainer procedures are well-equipped to resolve disputes regarding a landlord's intent to occupy a dwelling in a fair and expedient manner.

It is unlikely that the Court of Appeals went astray because of a desire to aid dishonest landlords in circumventing tenant protections under the JCEO. Rather, the Court of Appeals' overarching concern seemed to be with protecting honest landlords from having to bear the costs and burdens of trial against tenants who make unfounded disputes regarding an owner's intent to occupy.¹⁸ While the possibility that some tenants might assert unfounded disputes cannot deprive those with legitimate defenses of

¹⁷ See Rosenberg, Mike, "Seattle rents now growing faster than in any other U.S. city," *Seattle Times*, Jun. 21, 2016 (average Seattle rent as of June 2016 was \$2,031/mo.); article available on-line at: <http://www.seattletimes.com/business/real-estate/seattle-rents-now-growing-faster-than-in-any-other-us-city/>, last visited Sept. 19, 2016.

¹⁸ See *Faciszewski*, 192 Wn. App. at 454 ("The tenant's disbelief, even if justified, does not provide a defense to an unlawful detainer action.").

their rights to trial,¹⁹ the existing unlawful detainer framework already provides adequate protection against this concern.

1. Material questions of fact bearing on the right to possession of disputed premises are resolved by trial.

Washington has long required that factual disputes concerning a landlord's basis for terminating a tenancy be resolved by trial. The original Unlawful Detainer Act of 1890 provided that "[w]henever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases." RCW 59.12.130. Washington retained this trial requirement in the RLTA of 1973, which calls for material issues of fact in residential unlawful detainer actions to be resolved by trial. See RCW 59.18.380, 410; see also *Meadow Park Garden Assoc. v. Canley*, 54 Wn. App. 371, 376; 773; P.2d 875 (1989) ("Both statutes provide for a trial by jury on the ultimate issues of the unlawful detainer action as such rights existed at the time the constitution was adopted."); see *Indigo Real Estate Services v. Wadsworth*, 169 Wn. App. 412, 426; 280 P.3d 506 (2012) ("Because the question of material noncompliance is 'an inappropriate issue to summarily resolve,' the final determination of the parties' rights in this unlawful detainer action must be determined at trial."), quoting *Pleasant*, 126 Wn. App. at 393.

¹⁹ See *Leda*, 150 Wn. App. at 81; see *Pleasant*, 126 Wn. App. at 393.

Thus, when a Seattle landlord attempts to terminate a tenancy on the grounds that the landlord or a family member seeks to occupy the unit as a primary residence, and the tenant disputes the veracity of that claim, there is a material question of fact relating to the right of possession. See SMC 22.206.160(C)(1, 5). A court, in an unlawful detainer action involving such a scenario, must conduct a trial to determine whether the landlord genuinely intends to occupy the premises. See RCW 59.18.380, 410.

2. An actual trial is not necessary if there is no genuine issue of material fact.

Under the RLTA, however, courts typically hear residential unlawful detainer actions in summary pre-trial “show cause hearings,” so named because the tenant is directed to appear and show cause why a writ of restitution (restoring the landlord to possession of the premises) should not be issued. See RCW 59.18.370. Show cause hearings have much in common with both preliminary injunction hearings (under CR 65) and summary judgment proceedings (under CR 56). See RCW 59.18.380.

When material facts relating to the right of possession are in dispute, show cause hearings resemble preliminary injunction hearings. The court must examine the parties orally and can issue a pre-trial writ of restitution “if it shall *appear* that the plaintiff has the right to be restored to possession of the property.” RCW 59.18.380 (italics added); see also

Rabon v. City of Seattle, 135 Wn.2d 278, 285; 957 P.2d 621 (1998) (in determining whether a party has a “clear legal or equitable right” that would support a preliminary injunction, court considers whether the plaintiff is likely to prevail on the merits).

As a practical matter, the issuance of a pretrial writ of restitution often resolves an unlawful detainer case. The landlord (on posting a bond) may recover possession of the premises immediately—meaning the tenant is displaced and must prevail at trial for the right to re-take possession back from the landlord. Few tenants continue litigating unlawful detainer actions in hopes of returning to premises from which they have already been physically evicted. This is not always true—and if a tenant does not concede possession, the court must set a case for trial. See RCW 59.18.380; see *Pleasant*, 126 Wn. App. at 391; see also *Meadow Park*, 54 Wn. App. at 376 (“The Washington Constitution does not require a jury trial on the issue of immediate possession pending the lawsuit ... because the right to a jury is preserved in the trial on the ultimate issues in the unlawful detainer action.”). But trials are rare in unlawful detainer actions where a writ of restitution is issued at the show cause stage.

When no material issues of fact are in dispute and it is clear which party is entitled to possession of the premises, unlawful detainer show cause hearings more closely resemble summary judgment motions. In this

scenario, the court may dispense with an actual trial and enter judgment (for the landlord) or dismiss the case (for the tenant) based on which party is entitled to judgment as a matter of law. See RCW 59.18.380; see also CR56(c); see also *Carlstrom v. Hainline*, 98 Wn. App. 780, 789; 990 P.2d 986 (2000) (unlawful detainer action properly resolved at show cause stage because undisputed facts showed that lease had terminated as a matter of law and landlord was entitled to possession).

“An issue of material fact is genuine if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party.” *Keck v. Collins*, 184 Wn.2d 358, 370; 357 P.3d 1080 (2015). If a landlord has offered testimony or a sworn affidavit asserting that the landlord will occupy rental premises as her primary dwelling, then the tenant cannot avoid summary judgment simply by stating a subjective belief that the landlord’s assertions are false. Rather, the tenant must come forward with evidence of specific facts tending to impeach the landlord’s testimony or otherwise raising a genuine issue of fact. See *LaPlante v. State*, 85 Wn.2d 154, 158; 531 P.2d 299 (1975) (“When a motion for summary judgment is supported by evidentiary matter, the adverse party may not rest on mere allegations in the pleadings but must set forth specific facts showing that there is a genuine issue for trial.”).

Together, these twin aspects of the unlawful detainer show cause hearing adequately protect landlords from spurious and unsupported contentions that a landlord has falsified his intent to occupy a rental unit. If a tenant has no evidence at all, just a subjective belief that a landlord's certification is dishonest, then the court may enter judgment for the landlord at the show cause hearing. See RCW 59.18.380. If a tenant has some evidence to dispute a landlord's claim, then the court must set the case for trial—but may still grant a pretrial writ of restitution if the overall record shows the landlord appears entitled to possession of the premises. *Id.* But when a tenant offers persuasive evidence calling into question the sincerity of a landlord's stated intent to occupy premises (i.e., enough to preclude a finding that the landlord appears entitled to possession), then there is neither any reason to deny the tenant a trial nor to award the landlord possession before that trial takes place.

C. A court can determine the veracity of a landlord's claimed intent to occupy real property in the future.

Both the Court of Appeals and the respondent appear bewildered by the possibility of a trial court determining the honesty of a landlord's claimed intent to occupy a dwelling unit in the future.²⁰ Yet courts are

²⁰ See *Facişzewski* at 452 (failing to consider the landlord's intent while noting that "the Landlords here could not carry out the stated reason for eviction because the Tenants did not vacate the rental property."); see Supplemental Brief of Respondents at pp. 9-11

routinely called upon to ascertain the sincerity of claims regarding future intentions across many different branches of law—such as criminal law,²¹ contract interpretation,²² testamentary estates,²³ and so forth. Perhaps a person's intended future actions cannot be determined with certainty, but certainty is often unattainable in judicial fact-finding—this is why courts employ the preponderance of evidence standard in civil cases (including unlawful detainers). See *Wadsworth*, 169 Wn. App. at 421.

A landlord's testimony that he intends to occupy premises (or that a family member will) would ordinarily establish a presumption that the landlord will indeed occupy the premises. See, accord, *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (in summary judgment context, the moving party bears the initial burden of showing the absence of an issue of material fact). A landlord could further support this presumption with corroborating evidence, such as relocation plans, arrangements for the future disposition of the landlord's (or family member's) current home, and so forth. But no matter how strong of a

(suggesting that a trial to determine the veracity of the landlord's intent to have his mother occupy the rental premises would be "nonsensical").

²¹ See, e.g., *State v. Samalia*, ___ Wn.2d ___, 375 P.3d 1082, 1089 (2016) ("A trial court finds intent as an inference from objective factors.").

²² See, e.g., *International Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 282; 313 P.3d 395 (2013) ("During interpretation, a court's primary goal is to ascertain the parties' intent at the time they executed the contract.").

²³ See, e.g., *Niemann v. Vaughn Community Church*, 154 Wn.2d 365, 377; 113 P.3d 463 (2005) ("the creation and administration of a charitable trust lies with the settlor's intent.").

showing the landlord makes of intent to occupy, the defendant's right to a trial implies that she must have an opportunity to rebut this presumption. See RCW 59.18.380; see also *Leda v. Whisnand*, 150 Wn. App. at 81 (court in unlawful detainer action may not properly disregard evidence that credibly supports a legitimate defense).

There are several basic methods by which a tenant could potentially refute a landlord's claimed intent to occupy premises. A tenant could present admissions or inconsistent statements by that landlord. A tenant could present conflicting testimony from third-parties, such as members of the landlord's household or the family member(s) who would supposedly move into the disputed residence. A tenant could present evidence of acts or omissions (of the landlord) inconsistent with a stated intention to occupy the premises.

A tenant could also challenge the credibility of the landlord's own testimony or corroborating evidence. A jury could disregard a landlord's testimony (regarding an intent to occupy premises) entirely if it found the landlord dishonest or the relevant statement to lack credibility. See WPI 1.02 (jurors are "the sole judges of the credibility of the witness [and] of the value or weight to be given to the testimony of each witness."). Such a result would preclude a tenant's eviction because "[i]t is the landlord's burden in an unlawful detainer action to prove, by a preponderance of the

evidence, the right to possession of the premises.” *Wadsworth*, 169 Wn. App. at 421.

D. This Court should vacate the Court of Appeals’ decision regardless of whether the tenants’ evidence was sufficient to raise a genuine issue of material fact.

In this case, the tenants presented some evidence that the landlord’s mother (who was the immediate family member the landlord claimed would occupy the premises) owned a home in Colorado and had not made any plans for the sale or other planned disposition of that property, and that she had plans to volunteer at a Colorado hospital and teach a course at a Colorado community center during the time she would supposedly be moving into the premises.²⁴ The tenants also presented evidence calling the landlord’s credibility into question; specifically, this included evidence showing the landlord had equivocated in naming the specific person(s) who would move into the property, and had an ulterior motive for terminating the tenancy (because of a parking dispute that occurred before the termination notice was given).²⁵

If this Court finds that a reasonable person viewing this evidence in the light most favorable to the tenants could conclude that the landlord did not actually intend for his mother to occupy the disputed premises, then the

²⁴ CP at 14-18, 44-48, 82-84.

²⁵ CP at 44-48, 79-81.

Court should reverse the Court of Appeals and remand the case for trial (on the question of whether the landlord genuinely sought possession so his mother could move into the home). If not, then the Court should still vacate the Court of Appeals' decision and affirm on the basis that the tenants did not raise a genuine issue of material fact for trial. Either way, this Court should reject the Court of Appeals' reasoning—that the tenants had no right to contest the sincerity of the landlord's certification or that the trial court had no authority to consider such a challenge.²⁶ Regardless of the outcome in this particular case, it is essential that this Court not endorse an opinion that invites the use of false notices and dishonest certifications designed to circumvent the JCEO.

V. Conclusion

For the reasons stated above, the Court should vacate the Court of Appeals' decision.

RESPECTFULLY SUBMITTED this 21 day of September, 2016.

NORTHWEST JUSTICE PROJECT

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²⁶ See *Faciszewski* at 453.

SUPREME COURT OF WASHINGTON

Stephen Faciszewski, et al.,

PLAINTIFF/PETITIONER,

VS.

Michael R. Braun, et al.,

DEFENDANT/RESPONDENT,

NO. 92978-5

DECLARATION OF
ELECTRONICALLY RECEIVED
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(DERD)

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing electronically transmitted for filing.
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3. My phone number is 253-383-1791
4. The facsimile number where I received the document is 253-272-9359 and or e-mail address is tac@abclegal.com.
5. I have examined the foregoing document, determined that it consists of 25 Pages, including this Declaration page.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: September 21st, 2016
At Olympia, Washington.

Signature: _____

Print Name: Jacob Josephsen

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SEP 21 2016

WASHINGTON STATE
SUPREME COURT

bjh

NO. 92978-5

SUPREME COURT OF THE STATE OF WASHINGTON

Stephen Faciszewski and Virginia Klamon,

Petitioner,

v.

Michael R. Brown and Jill A. Wahleithner,

Respondent.

DECLARATION OF SERVICE

Eric Dunn, WSBA #36622
Allyson O'Malley-Jones, WSBA #31868
Leticia Camacho, WSBA #31341
NORTHWEST JUSTICE PROJECT
401 Second Ave S. Suite 407
Seattle, Washington 98104
Tel. (206) 464-1519

 ORIGINAL

I, Marie Nguyen, certify under penalty of perjury under the laws of the State of Washington that on the 21st day of September, 2016, I caused a copy of the following:

1. Motion to File Brief of Amicus Curiae;
2. Brief of Amicus Curiae Northwest Justice Project; and
3. This Declaration of Service.

to be delivered via legal messenger, directed to the attention of the following:

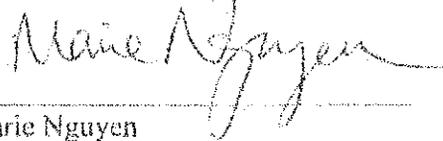
T. Jeffrey Keane
Keane Law Offices
100 NE Northlake Way, Suite 200
Seattle, WA 98105

Christopher Cutting
Loeffler Law Group PLLC
500 Union Street, Suite 1025
Seattle, WA 98101

Sidney Charlotte Tribe
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126

SIGNED at Seattle, Washington, this 21st day of September, 2016.

NORTHWEST JUSTICE PROJECT



Marie Nguyen
Legal Assistant

SUPREME COURT OF WASHINGTON

Stephen Faciszewski, et al.,

NO. 92978-5

PLAINTIFF/PETITIONER,

DECLARATION OF
ELECTRONICALLY RECEIVED
DOCUMENTS
(DERD)

VS.

Michael R. Brown, et al.,

DEFENDANT/RESPONDENT,

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing electronically transmitted for filing.
2. My address is: 1517 S. Fawcett St., Suite #100, Tacoma WA 98402.
3. My phone number is 253-383-1791
4. The facsimile number where I received the document is 253-272-9359 and or e-mail address is tac@abclegal.com.
5. I have examined the foregoing document, determined that it consists of 3 Pages, including this Declaration page.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: September 21st, 2016
At Olympia, Washington.

Signature: _____

Print Name: Jacob Josephsen