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STATE OF WASHINGTON
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No. 95575-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

RANDY REYNOLDS & ASSOCIATES, INC.

Respondent

v.

KASEY HARMON, Petitioner

RESPONDENT'S SUPPLEMENTAL BRIEF

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1. REYNOLDS IS AGGRIEVED

Under RAP 3.1 only an aggrieved party may seek review. The court directed the parties to address whether Reynolds is aggrieved. A party whose pecuniary interest is affected is aggrieved. State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003). Having waived the bond required by RCW 59.18.390(1), the trial court entered a supplemental judgment of \$1,662 for Reynolds (CP 81 - 84). Waiving the bond deprived Reynolds of a ready means of satisfying the judgment. The judgment is unsatisfied. The Court of Appeals reversed on other grounds and did not reach this issue. Randy Reynolds & Assoc. v. Harmon, 1 Wn. App.2d 239, 250 fn. 4, 404 P.3d 602 (2017). Reynolds remains aggrieved as to this issue.

2. THE COURT OF APPEALS COMMISSIONER PROPERLY ALLOWED THE LANDLORD TO ADD THE DECLARATIONS TO THE RECORD AS AN APPENDIX TO THE BRIEF

The Court of Appeals Commissioner allowed the landlord to add to the record declarations of Strickler and Gusa as an appendix to the brief. Citing RAP 9.10 and 9.11, the tenant argues that this was error (Petition pages 11 - 13). The tenant did not oppose the motion. Under RAP 17.7 objection to a ruling of a commissioner may be made only by a motion to modify. The tenant did not move to modify the ruling.

RAP 9.10 “allows a party to request that additional portions of an already existing trial record be transmitted to the appellate court.” Buckley v. Snapper Power Equipment, 61 Wn. App. 932, 941, 813 P.2d 125, rev. denied 118 Wn.2d 1002 (1991). The rule applies when a party fails to provide a complete record of the proceedings below. Id. at 941. The declarations are not portions of an already existing trial record. RAP 9.10 does not apply.

The tenant then argues that the criteria in RAP 9.11 were not met. RAP 9.11 provides that “[t]he appellate court may direct that additional evidence **on the merits of the case be taken**” (emphasis supplied). The declarations show that stays have been granted and the bond required by RCW 59.18.390(1) waived multiple times, evidence that the case presents an issue of continuing and substantial public interest. They are not “evidence on the merits of the case”. Consequently, RAP 9.11 does not apply.

In support of her argument, the tenant cites Buckley, 61 Wn. App. at 941, Harbison v. Garden Valley Outfitters, 69 Wn. App. 590, 593, 849 P.2d 671 (1993), State v. Murphy, 35 Wn. App. 658, 669 P.2d 892 (1983) rev. denied 100 Wn.2d 1034 (1984) and State v. Armstead, 13 Wn. App. 59, 533 P.2d 147 (1975). Her reliance on these cases is misplaced. At issue in each

of the four cases was evidence on the merits. RAP 9.10 and 9.11 do not prohibit allowing a party to add to the record evidence that does not address the merits of the case and that pertains to an issue relevant only on appeal.

In any event, RAP 10.3 provides that “An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4 (c).” RAP 1.2 (c) allows the appellate court to waive any rule. RAP 10.3 and RAP 1.2(c) authorize the Court of Appeals Commissioner to allow the landlord to add the declarations to the record as an appendix to the brief.

3. THE CASE PRESENTS ISSUES THAT WARRANT REVIEW

The tenant argues that the Court of Appeals applied the wrong test when it chose to hear the case (Petition pages 6 - 11). When the Court of Appeals determined that the case presented an issue of continuing and substantial public interest, it applied the three factor test in In Re Detention Of M.W., 185 Wn.2d 633, 648, 374 P.3d 1123 (2016):

Courts look to three factors when considering whether a case fits the continuing and public interest exception: [(1)] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question.

citing State v. Hunley, 175 Wn.2d 901, 907, 287 P.3d 584 (2012))(emphasis supplied). Reynolds, 1 Wn. App. 2d at 244.

Additionally, the Court of Appeals noted that eviction proceedings are designed to be an expedited process, and the facts of this case are short-lived. Reynolds, 1 Wn. App.2d at 244 - 246 citing In re Marriage of Horner, 151 Wn.2d 884, 892, 93 P.3d 124 (2004) and Christensen v. Ellsworth, 162 Wn.2d 365, 374, 173 P.3d 228 (2007). State v. Bigsby, 189 Wn.2d 210, 399 P.3d 540 (2017).

Nonetheless, the tenant argues that a fourth factor is recognized, whether there was genuine adverseness and quality advocacy on the issues, and that the Court of Appeals erred by not considering this fourth factor. Attempting to explain away both the passage in M.W. that “courts look to three factors” and the fact that the court did not consider the fourth factor she advocates, the tenant asserts that it is understandable that “the Supreme Court skipped over providing such an analysis because there was no question about the adverseness of the parties or the quality of the advocacy on the issues (Petition page 10). Both authority subsequent to M.W. and several of the cases the tenant cites are contrary to her argument.

In State v. Cruz, 189 Wn.2d 588, 404 P3d 70 (2018) decided a year

after M.W., the State sought to appeal a trial court decision to grant the State's own motion to dismiss. The case was moot. The Supreme Court noted that the State failed "failed to assign error to the order of dismissal in violation of one RAP (RAP 10.3(a)(4)); second, the State failed to brief and argue the propriety of the order of dismissal, in violation of another RAP (RAP 10.3(a)(6))" Id. at 596.

Despite the clear lack of quality advocacy on the issues, the Supreme Court opined "[w]e **consider three factors in determining whether**" the case involved a matter of continuing and substantial public interest, and applied the three factor test in M.W. 185 Wn.2d at 598 (emphasis supplied). Even with a clear lack of quality advocacy on the issues, the Cruz court did not mention quality advocacy on the issues as a fourth factor when it recited the test.

Much of the authority cited by the tenant is also contrary to her argument. In State v Beaver, 184 Wn.2d 321, 330, 358 P.3d 385 (2015), the court opined that "[t]o determine whether a case presents an issue of continuing and substantial public interest, **we consider three factors,**" the three factors subsequently discussed in M.W. (emphasis supplied). The court then opined that "[a]s a fourth factor, the court **may** also consider the level

of adversity between the parties.” *Id.* at 331 (citing Hart v. DSHS, 111 Wn.2d 445, 448, 759 P.2d 1206 (1988) (emphasis supplied). Beaver makes it clear that appellate courts may elect to consider the level of adversity, but doing so is not required. *Id.*

Stating that “[t]he continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, the validity of statutes or regulations, **and matters that are sufficiently important to the appellate court,**” Beaver makes it clear that the decision to hear a moot case is entirely within the sound discretion of the appellate court. *Id.* at 331 citing Hart, 111 Wn.2d at 448 (emphasis supplied).

As the tenant correctly notes, in Washington State Comm’l Passenger Fishing Vessel Ass’n v. Tollefson, 87 Wn.2d 417, 418 - 419, 553 P.2d 113 (1976), the Supreme Court observed that the three factors later discussed in M.W. were met, but declined to render an opinion because “other considerations” made it undesirable to do so. The court noted that in hearing a moot case there is risk that the question may not have been adequately developed. *Id.* at 419. However, that risk does not absolutely preclude hearing a moot case when circumstances warrant, as they do here.

The court in Westerman v. Cary, 125 Wn.2d 277, 278, 892 P.2d 1067

(1994) opined that:

Three factors in particular are determinative: “(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur”. **A fourth factor may also play a role: “the level of genuine adverseness and the quality of advocacy of the issues”. This factor serves to limit review to cases in which a hearing on the merits has occurred.**

(citations omitted emphasis supplied).

Westerman clearly states that if a court elects to consider the level of adversity and the quality of the advocacy, it considers the adversity and the quality of the advocacy before the trial court; and that the level of adversity and the quality of the advocacy are not determinative. Id. The findings of fact and conclusions of law show that all necessary facts and issues were litigated (CP 81 - 84). There is no basis in the record to conclude that there was a lack of adversity or a lack of quality advocacy on behalf of the tenant before the trial court.

. In Orwick v City of Seattle, 103 Wn.2d 249, 253 692 P.2d 793 (1984), the Supreme Court opined that:

[T]he moot cases which this court has reviewed in the past have been cases which became moot only after a hearing on the merits of the claim (citations omitted). In those cases, the facts and legal issues had been fully litigated by parties with a stake in the outcome of a live controversy. After a hearing

on the merits, it is a waste of judicial resources to dismiss an appeal on an issue of public importance which is likely to recur in the future.

This case became moot only after the hearing on the merits, when the sheriff executed a writ of restitution and possession of the property was returned to the landlord. Reynolds, 1 Wn. App. 2d at 245. As in Orwick, it would have been a waste of judicial resources for the Court of Appeals to dismiss this case. The decision of the Court of Appeals to hear this case was well founded and was not reversible error.

4. THE COURT OF APPEALS DID NOT ERR BY DECIDING THE CASE BASED UPON WHAT WAS BEFORE IT

A. Alleged Inadequacies In The Record Below

On the basis that the record is insufficient to permit review, the tenant argues that the Court of Appeals erred by deciding the case (Petition pages 13 - 14). The findings of fact and conclusions of law show that all necessary issues were litigated (CP 81 - 84). That the tenant's appellate counsel wishes that the record was more fulsome is of no moment. The Court of Appeals did not err by hearing the case based on the trial court record.

B. Absence Of A Respondent's Brief

The tenant did not file a brief of respondent and argues that the Court

of Appeals erred by deciding the case without having such a brief (Petition pages 6 - 9). A respondent who elects not to file a brief allows “her opponent to put unanswered arguments before the court, and the court is entitled to make its decision based on the argument and record before it.” Adams v. L & I, 128 Wn.2d 224, 229, 905 P.2d 1220 (1995). That is no less true when a case is moot. The Court of Appeals was entitled to decide the case based on the argument and record before it.

If, as the tenant claims, a named respondent’s choice not to file a brief bars appeal of a moot case, instead of filing a brief and risking an adverse decision, named respondents in future moot cases can block an appeal by electing not to file a brief. That cannot be the law. The Court of Appeals did not err by deciding the case on the record at hand without a brief from the tenant.

5. NOTICE OF HEARING IS REQUIRED

A. CR 5(A), RCW 59.18.390(1) And Code Of Judicial Conduct Rule 2.9(A)(1)(a) Require Notice

CR 5(a) requires that every motion be served on all other parties, except motions that are permitted to be heard ex parte. Reynolds, 1 Wn. App. 2d at 248. Under CR 5(a), if an ex parte motion is permitted, there must be a source of legal authority that permits it. Id. No legal authority authorizes

a court to hear an ex parte motion to stay execution of a writ of restitution. Id. at 248 - 249. CR 5(a) required notice of the motion. Id. at 253.

The legislature may enact statutes that govern court procedures. State v. Gresham, 173 Wn.2d 405, 428, 269 P.3d 207 (2012). As a condition precedent to a stay, RCW 59.18.390(1) requires that the tenant post a bond and that the landlord have notice of the hearing where the bond will be set:

The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon the bond before the bond shall be approved by the court.

A statute which imposes a duty upon a public officer that is intended to protect a private citizen against loss or injury to property is mandatory. Niichel v. Lancaster, 97 Wn.2d 620, 625, 647 P.2d 1021 (1982). Statutes that regulate court procedures and are intended to protect rights of litigants are mandatory. Singer, Statutes and Statutory Construction, Seventh Ed. Vol. 3 § 57:23 page 91 (2008). RCW 59.18.390(1) protects the rights of landlords by assuring that they have notice of the hearing where a stay will be sought and a bond to cover damages. Reynolds, 1 Wn. App. 2d at 251 - 252. RCW 59.18.390(1) is mandatory.

Courts may look to the Code of Judicial Conduct to determine whether

a motion may be heard ex parte. Reynolds, 1 Wn. App. 2d at 249 (citing Buckley, 61 Wn. App. at 938 and State v. Watson, 155 Wn.2d 574, 578-79, 122 P.3d 903 (2005)). Code of Judicial Conduct Rule 2.9(A)(1)(a) prohibits the ex parte hearing. Reynolds, 1 Wn. App. 2d at 253. CR 5(a), RCW 59.18.390(1) and Code of Judicial Conduct Rule 2.9(A)(1)(a) each requires that the landlord have notice of the hearing.

B. CR 60 Did Not Authorize The Ex Parte Hearing

The tenant argues that motions to vacate default judgments are governed by CR 60 which addresses relief from judgment, not RCW 59.18.390(1); and that CR 60 authorized the trial court to hear the motion ex parte (Petition pages 14 - 15). A court will not read into a statute words that are not there. State v. Chapman, 140 Wn.2d 436, 442, 998 P.2d 282 (2000). Nothing in the language of RCW 59.18.390(1) limits application of the statute only to writs granted after litigation on the merits. When both a statute and a court rule apply, the court will attempt to harmonize and give effect to both. Gresham, 173 Wn.2d at 428 - 429. To the extent that RCW 59.18.390(1) and CR 60 are in harmony, both apply.

Special proceedings are proceedings created by statute that are unknown to the common law. Putman v. Wenatchee Valley Medical Center,

P.S., 166 Wn.2d 974, 980, 982, 216 P.3d 374 (2009). The legislature's power to enact statutes that govern court procedures is broad regarding special proceedings and more limited regarding common law actions. Id. This standard protects the separation of powers by preserving the Supreme Court's ability to set court rules for common law actions, but allows the legislature to set rules for proceedings created by statute. Id.

Unlawful detainer actions are special proceedings. Christensen, 162 Wn.2d at 374 (citing State ex rel. Smith v. Parker, 12 Wn. 685, 688, 42 P. 113 (1895)). Under CR 1 the civil rules govern all suits of a civil nature, except as stated in CR 81. In re Detention of Young, 163 Wn.2d 684, 689, 185 P.3d 1180 (2008). CR 81(a) provides that:

Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings.

Under CR 81(a) when a civil rule conflicts with a statute that applies to unlawful detainer actions, the statute applies. To the extent that RCW 59.18.390(1) and CR 60 conflict, the statute applies. CR 60 does not authorize the trial court to waive notice of the hearing.

The tenant argues that she has a right to be heard and that absent ability to seek a stay ex parte, courts may require that tenants follow time

requirements in local rules that govern civil motion practice (Petition pages 16 - 17). Nothing in the Court of Appeals decision prevents a tenant from filing a motion for a stay and obtaining ex parte an order to shorten time. Kittitas County v. Allphin, 2 Wn. App. 2d 782, 791, 413 P.3d 22 (2018).¹ At the hearing on the motion for the stay, the court can consider any defenses.

C. Courts Have No Inherent Authority To Hear The Motion For Stay Ex Parte

The tenant argues that inherent equitable authority allowed the trial court to hear the motion ex parte (Petition pages 17 - 18). The legal authority she cites does not support that claim. An “equitable remedy is an extraordinary, not ordinary, form of relief”. Sorenson v. Pyeatt, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006). A court will not give equitable relief in contravention of a statutory requirement. Longview Fibre Co. v. Cowlitz County, 114 Wn.2d 691, 699, 790 P.2d 149 (1990). Equitable relief is not available in derogation of a statutory mandate. Rhoad v. McLean Trucking Co. Inc., 102 Wn.2d 422, 427, 686 P.2d 483 (1984) quoting L & I v. Dillon, 28 Wn. App. 853, 855, 626 P.2d 1004 (1981).

As discussed in §5(A) above, CR5(a), RCW 59.18.390(1) and Code

¹ Code of Judicial Conduct Rule 2.9(A)(1)(a) allows ex parte communication for scheduling purposes.

of Judicial Conduct Rule 2.9(A)(1)(a) require notice. The trial court does not have inherent equitable authority to waive notice of the hearing. If superior courts have inherent equitable authority to act ex parte, CR5(a), RCW 59.18.390(1) and Code of Judicial Conduct Rule 2.9(A)(1)(a) are nullities.

6. A BOND IS A CONDITION PRECEDENT TO A STAY

A. RCW 59.18.390(1) Requires A Bond

RCW 59.18.390(1) provides that:

[T]he defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all costs of the action.

In Housing Authority v. Pleasant, 126 Wn. App. 382, 390, 109 P.3d 422 (2005), the Court of Appeals opined that under RCW 59.18.390(1), a tenant who wishes to stay a writ and continue to occupy the premises while litigation is pending must post a bond “to secure the landlord against losses during the pendency of the proceedings when the tenant continues to occupy the premises.”

To determine the meaning a statute, courts can examine “closely related statutes because legislators enact legislation in light of existing statutes”. Dep’t. Of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)(citing 2A Singer, Statutes and Statutory Construction § 48A; 116, at 809 - 10 (6th ed. 2000)). The legislature “is presumed to know the existing state of the case law” in an area in which it legislates. Price v. Kitsap Transit, 125 Wn.2d 456, 463, 886 P.2d 556 (1994).

The unlawful detainer action was created in Laws of 1890 pages 73 - 81.² Section 10 of the Act, (RCW 59.12.100), requires that the tenant post a bond as a condition precedent to obtaining a stay. Section 11 of the 1890 Act, (RCW 59.12.110), addresses modification of the bond. In Lowman v. West, 18 Wash. 233, 235, 51 P.373 (1897) the Supreme Court described the bond as “required” (“West and Jones, for the purpose of retaining possession, executed to the plaintiffs in that action (appellants herein) a bond in accordance with the provisions of section 11 of that act, and conditioned as **required** by law”)(emphasis supplied). Until 1973, RCW 59.12.100 and RCW 59.12.110 applied to all tenancies, including residential tenancies.

The legislature used much of the language of RCW 59.12.100 in § 40

² A copy of the 1890 session law is attached hereto as Exhibit “A”.

of the Residential Landlord-Tenant Act, which is codified as RCW 59.18.390(1).³ That language has existed in much the same form since 1890, first in RCW 59.12.100 and since 1973 in both RCW 59.12.100 and RCW 59.18.390(1). In Hall v. Feigenbaum, 178 Wn. App. 811, 824, 319 P.3d 61, (2014), the court opined that “the trial court erred by not ordering a bond as required by Chapter 59.12 RCW and chapter 7.40 RCW.” As a condition precedent to a stay, RCW 59.18.390(1) requires a bond.

B. CR 62(b) Does Not Authorize A Stay Without A Bond

The tenant argues that CR 62(b) authorized the trial court to grant the stay without a bond (Petition pages 14 - 17). As discussed in §5(B) above, under CR 81(a) when a civil rule conflicts with a statute that applies to unlawful detainer actions, the statute applies. RCW 59.18.390(1) and CR 62(b) irreconcilably conflict. First, RCW 59.18.390(1) requires that the landlord have notice of the hearing. Reynolds, 1 Wn. App. 2d at 251 - 252. CR 62(b) does not. Second, under RCW 59.18.390(1), as a condition precedent to obtaining a stay, the tenant must post a bond. CR 62(b) provides only that a court may stay execution of a judgment “on such conditions for the security of the adverse party as are proper” and does not require a bond.

³ A copy of Chapter 207, Laws of 1973 §40 is attached hereto as Appendix “B”.

Third, RCW 59.18.390(1) specifies how the bond is calculated. CR 62(b) has no such standard. Because RCW 59.18.390(1) and CR 62(b) irreconcilably conflict, the statute applies.

The tenant cites two unpublished unlawful detainer cases, One Der Werks II, LLC v. Duncan, 177 Wn. App. 1036 (2013) and Calibrate Property Management, LLC v. Nhye, 196 Wn. App. 1096 (2016). Her reliance on these cases is misplaced. In One Der Werks, the Court of Appeals opined that “CR 62(b) addresses the trial court’s authority to stay proceedings.” In Calibrate, the Court of Appeals noted “We also review the decision whether to stay execution of a writ of restitution for abuse of discretion. CR 62(b).” Neither case addresses RCW 59.18.390(1), CR 81(a) and the conflict between RCW 59.18.390(1) and CR 62(b).

C. Courts Have No Inherent Equitable Authority To Stay A Writ Ex Parte Or Do So Without Requiring A Bond.

The tenant argues that trial courts have inherent equitable power to grant emergency stays ex parte and do so without requiring a bond; and that the Court of Appeals decision “inappropriately” limits that power (Petition pages 17 - 20). Although not stated in this manner, the tenant’s argument is that as applied by the Court of Appeals, CR 5(a), RCW 59.18.390(1), CR 81(a) and Code of Judicial Conduct Rule 2.9(A)(1)(a) unconstitutionally limit

the power of the superior courts. That argument is without merit.

Statutes and court rules are presumed to be constitutional, and a challenging party must prove unconstitutionality beyond a reasonable doubt. Hunley, 174 Wn.2d at 908 citing City of Bothell v. Barnhart, 172 Wn.2d 223, 229, 257 P.3d 648 (2011). The tenant has not met this burden. The Supreme Court has inherent power to adopt rules that govern the courts. Waples v. Yi, 169 Wn.2d 152, 158, 234 P.3d 187 (2010). CR 5(a), CR 81(a) and Code of Judicial Conduct Rule 2.9(A)(1)(a) were adopted by the Supreme Court in the exercise of that power. RCW 59.18.390(1) was enacted by the legislature in the exercise of its power to enact laws that govern special proceedings.

The cases cited by the tenant do not support her argument that inherent equitable power possessed by superior courts somehow supersedes CR 5(a), RCW 59.18.390(1), CR 81(a) and Code of Judicial Conduct Rule 2.9(A)(1)(a). The tenant cites TMT Bear Creek Shopping Center v. PETCO, 140 Wn. App. 191, 197, 165 P.3d 1271 (2007) for the sentence that “In determining whether a default judgment should be vacated, the court applies equitable principles to ensure that substantial rights are preserved and justice is done”. Id. at 205. Equitable principles and equitable powers are two very different things.

The tenant cites Bowcutt v. Delta North Star Corp., 95 Wn. App. 311,

976 P.2d 643 (1999) arguing that exceptions to superior court jurisdiction are narrowly read. At issue in this case are procedures required when a court acts, not exceptions to jurisdiction. In Jones v. Allen, 185 Misc.2d 443 (NY App. Div. (2000), the court held that a statute unconstitutionally limited the power of courts in eviction actions. Jones does not reflect Washington jurisprudence. In any event, CR 81(a) provides for the primacy of statutes such as RCW 59.18.390(1) in special proceedings.

In Rummens v Guaranty Trust Co., 199 Wash 337, 347, 92 P.2d 228 (1939) the Supreme Court opined that equitable relief can be granted when “the procedure prescribed by the statute for the enforcement of a right is inadequate” unless “the statutory remedy is exclusive” in the sense that it creates a right which did not exist before.

The means to obtain a stay in RCW 59.18.390(1) is not “inadequate”. Moreover, Chapter 59.18 RCW is exclusive in the sense that it provides a remedy that does not exist in the common law. The unlawful detainer action “is a legal substitute for the common-law right of personal re-entry for breach.” FPA Crescent Associates, LLC v Jamie’s LLC, 190 Wn. App. 666, 675, 360 P.3d 934 (2015) citing Woodward v. Blanchett, 36 Wn. 2d 27, 32, 216 P.2d 228 (1950). Even under the test in Rummens advocated by the

tenant, she is not entitled to equitable relief.

However, Rummens is not current law. As discussed in § 5(c) above, equitable relief is not available in contravention of a statute. Furthermore, other authority more recent than Rummens is that the legislature may limit the equitable power of courts. In Tyler Pipe Industries, Inc. v. State, 96 Wn.2d 785, 791, 96 Wn.2d 785 (1982), the court observed that RCW 82.32.150 “provides a legal remedy and limits the court’s equitable powers” to restrain or enjoin collection of taxes. Contrary to the tenant’s argument, superior courts are subject to statutes and to the court rules.

CONCLUSION

Reynolds respectfully requests that the court affirm the Court of Appeals; and in addition hold that as a condition precedent to a stay RCW 59.18.390(1) requires a bond that complies with the statute and award attorneys fees and costs of suit.

Dated this 5th day of July 2018

Respectfully submitted,

/s/
Michael G. Gusa
Attorney for Appellant
WSBA No. 24059

Appendix “A”

Excerpts from 1890 Session Law

defendant in the proceeding, nor
 bate, nor the plaintiff be non-suited
 any person who might have been
 ; but when it appears that any of
 process, or appearing in the pro-
 the offense charged, judgment must
 n. In case a defendant has become
 emises in controversy, after the ser-
 vided for by part 2 of section 3 of
 iant of the premises, the fact that
 rved on each sub-tenant shall con-
 the action. In case a married

r a sub-tenant, her coverture shall
 All persons who enter the premises
 or the commencement of the suit,
 all be bound by the judgment the
 had been made parties to the action.
 herein, the provisions of the code
 g to parties to civil actions are ap-
 plying.

; in his complaint, which shall be in
 the facts on which he seeks to re-
 premises with reasonable certainty,
 herein any circumstances of fraud,
 may have accompanied the alleged
 ble or unlawful detainer, and claim
 case the unlawful detainer charged
 e payment of rent, the complaint
 it of such rent. Upon filing the
 must be issued thereon, as in other
 lay designated therein, which shall
 ys nor more than twelve days from
 s when the publication of summons
 ase the court or judge thereof may
 is be made returnable at such time
 per, and the summons shall specify

as must state the names of the par-
 y, the court in which the same is
 the action in concise terms, and the

relief sought, and also the return day; and must notify
 the defendant to appear and answer within the time desig-
 nated, or that the relief sought will be taken against him.
 The summons must be directed to the defendant, and be
 served at least five days before the return day designated
 therein, and must be served and returned in the same
 manner as summons in civil actions is served and re-
 turned. Upon the return of any summons issued under
 this act, where the same has not for any reason been
 served, or not served in time, the plaintiff may have a
 new summons issued the same as if no previous summons
 had been issued.

Service o
 monis.

SEC. 9. The plaintiff, at the time of commencing an
 action of forcible entry and detainer or unlawful detainer,
 or at any time afterwards before judgment, may apply to
 the superior judge for a writ of restitution restoring to
 plaintiff the property in the complaint described, and the
 judge may, at his discretion, order a writ of restitution to
 issue. The writ shall be issued by the clerk of the supe-
 rior court in which the action is pending, and be return-
 able in twenty days after its date, but before any writ
 shall issue, the plaintiff shall execute to the defendant an
 undertaking in such a sum as the judge shall order, with
 two or more sureties, to be approved by the clerk, condi-
 tioned that the plaintiff will prosecute his action without
 delay and will pay all costs that may be adjudged to the
 defendant, and all damages which he may sustain by
 reason of the writ of restitution having been issued,
 should the same be wrongfully sued out.

Plaintiff

SEC. 10. The sheriff shall, upon receiving the writ of
 restitution, serve a copy thereof upon the defendant, his
 agent or attorney, or those in possession of the premises,
 and shall not execute the same for five days thereafter,
 within which time the defendant or those in possession of
 the premises may execute to the plaintiff an undertaking,
 to be filed and approved by the clerk of the court, in such
 a sum as may be fixed by the judge, conditioned that he
 will pay the plaintiff such sum as he may recover for the
 use and occupation of said premises, together with all
 damages the plaintiff may sustain by reason of the defend-

Duty of

ant's occupying or keeping possession of said premises. The plaintiff, his agent or attorney shall have notice of the time and place where the judge shall fix the amount of plaintiff's bond.

SEC. 11. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the judge of the superior court for an order raising or lowering the amount of the undertaking herein provided for. The judge, after hearing the same, shall make such an order as may be just in the premises.

Court may order arrest.

SEC. 12. If the complaint presented establishes, to the satisfaction of the court or judge, fraud, force or violence, in the entry or detainer, and that the possession held is unlawful, the court or judge may make an order for the arrest of the defendant.

Default.

SEC. 13. If at the time appointed the defendant do not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint.

SEC. 14. On or before the day fixed for his appearance, the defendant may appear and answer or demur.

Trial by jury.

SEC. 15. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

SEC. 16. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.

Amending complaint.

SEC. 17. When, upon the trial of any proceeding under this act, it appears from the evidence that the defendant has been guilty of either a forcible entry, or a forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted upon account

Appendix “B”

Excerpt from 1973 Session Law

substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper.

NEW SECTION. Sec. 40. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this 1973 amendatory act, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

NEW SECTION. Sec. 41. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy.

NEW SECTION. Sec. 42. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy

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