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No. 98024-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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THOMAS SILVER, Petitioner,

vs.

RUDEEN MANAGEMENT COMPANY, INC., Respondent.

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SUPPLEMENTAL BRIEF OF PETITIONER

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**TABLE OF CONTENTS**

**I. Mr. Silver Has a Property Interest in His Deposit  
Moneys Held in Trust .....1**

**II. Returning a Tenant’s Deposit Trust Money is Not a Penalty .....3**

**III. An Action Based on a Landlord’s Failure to Return a Tenant’s  
Deposit Moneys is Subject to a Three-Year Statute of  
Limitation .....6**

**IV. Mr. Silver is Entitled to an Award of Costs and Reasonable  
Attorney Fees.....10**

**V. Conclusion.....10**

**TABLE OF AUTHORITIES**

**Cases**

*Homestreet, Inc. v. State, Dept. of Revenue,*  
166 Wn.2d 444, 452, 210 P.3d 297, 301 (2009).....2

*St. Michelle v. Robinson,* 52 Wn.App. 309, 314, 759 P.2d  
467, 469-70 (1988).....6

<i>Easton v. Chaffee</i> , 8 Wash.2d 509, 516, 113 P.2d 31 (1941) .....	6
<i>Physicians' &amp; Dentists' Business Bur v. Dray</i> , 8 Wash.2d 38, 111 P.2d 568 (1941).....	6
<i>French v. Uribe, Inc.</i> , 131 Wn.App. 1013 (2006) .....	6
<i>Stenberg v. Pac. Power &amp; Light Co., Inc.</i> , 104 Wn.2d 710, 714-15, 709 P.2d 793, 795-96 (1985).....	6, 7
<i>Bader v. State</i> 43 Wn.App. 223, 227, 716 P.2d 925 (1986).....	6
<i>Sorey v. Barton Oldsmobile</i> , 82 Wn. App. 800 (1996).....	7
<i>Lewis v. Lockheed Shipbuilding &amp; Constr. Co.</i> , 36 Wn.App. 607, 613, 676 P.2d 545 (1984).....	7
<i>Goodman v. Boeing Co.</i> , 75 Wn.App. 60, 77, 877 P.2d 703 (1994) .....	7
<i>Cannon v. Miller</i> , 22 Wn.2d 227, 155 P.2d 500 A.L.R. 530 (1945) .....	7
<i>Fast v. Kennewick Pub. Hosp. Dist.</i> , 187 Wn.2d 27, 37, 384 P.3d 232, 238 (2016).....	8
<i>Seattle Prof'l Eng'g Employees Ass'n. v. Boeing Co.</i> , 139 Wn.2d 824, 838, 991 P.2d 1126, 1133 (2000).....	8
<i>Silver v. Rudeen Mgmt. Co.</i> , 10 Wn.App.2d 676, 680, 449 P.3d 1067, 1069 (2019).....	8, 9
<b>Statutes</b>	
RCW 4.16.080 .....	<i>Passim</i>
RCW 4.16.080(2).....	<i>Passim</i>
RCW 4.16.080(3).....	8

RCW 4.16.130 .....	7
RCW 4.84.250 .....	10
RCW 4.84.270 .....	10
RCW 49.46.020(1).....	8
RCW 59.18, <i>et seq.</i> .....	1
RCW 59.18.260 .....	5
RCW 59.18.270 .....	<i>Passim</i>
RCW 59.18.280 .....	<i>Passim</i>
RCW 59.18.280(1).....	2
RCW 59.18.280(2).....	2, 10
RCW 59.18.280(3).....	3

**Rules**

FLSA 29 USCA §201-219.....	7
RAP 18.1.....	10

**I. Mr. Silver Has a Property Interest in His Deposit Moneys Held in Trust.**

Washington’s Residential Landlord Tenant Act (RLTA), RCW 59.18, *et seq.*, provides that “[a]ll moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution ...or licensed escrow agent located in Washington.” RCW 59.18.270. Moreover, “[t]he tenant’s claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.” *Id.*

These provisions firmly establish that the Washington Legislature intended that tenants’ security deposit money must be held in trust by the landlord. (Respondent’s Brief, 5-6). Nevertheless, Respondent attempts to recharacterize the otherwise clearly articulated deposit “trust” as a “performance bond” or some other account where tenant security deposits must be held from other “common law” trusts. (*Id.* at 5, 7). There is no distinction in the related duties and no statutory or case-law support for this distinction, as it pertains to a statute of limitations, anywhere in Washington jurisprudence.

“Whenever possible, statutes are to be construed so no clause, sentence, or word shall be superfluous, void, or insignificant.”

*HomeStreet, Inc. v. State, Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297, 301 (2009) (internal quotations omitted). In short, Respondent urges this Court to reject the Legislature's plainly-stated intention in favor of its own self-serving interpretation of RCW 59.18.270. Under the RLTA, the trust is not created because of the statute. Rather, the RLTA requires that the deposit money be placed in a trust account and creates rules for the trust administration, as well as penalties for violating those rules.

Trusts do not exist without a property interest. Here, the deposit money held in trust exists for the benefit of both the landlord and the tenant. "For a trust to be valid, it must involve specific property, reflect the settlor's intent, and be created for a lawful purpose." *Black's Law Dictionary* 1546 (8th ed. 2004). In fact, there is not a single definition of "trust" in *Black's Law Dictionary* that contemplates any type of trust that does not include a property interest. *Id.*

During every residential tenancy, the tenants' deposit trust moneys must be held by the landlord in a separate account. RCW 59.18.270. Within 21 days of the termination of the tenancy, the landlord must provide a "full and specific" accounting for retaining any portion of the funds held in trust. RCW 59.18.280(1). If the landlord fails to give such a statement together with any refund due, the landlord is liable for the full amount of the deposit. RCW 59.18.280(2). The landlord may pursue

recovery for damages at some future date<sup>1</sup>, just like any other asserted creditor. RCW 59.18.280(3). In other words, at the end of the 21-day period following termination of the tenancy, the trust must be dissolved and the tenant must be refunded any money not fully and specifically accounted for by the landlord. From inception of the tenancy until 21 days following its termination, the tenant has an ongoing property interest in his or her security deposit trust, which supersedes the rights of all other creditors. RCW 59.18.270.

## **II. Returning a Tenant's Deposit Trust Money is Not a Penalty.**

While statutory penalties apply if a landlord does not fulfill its obligations under the RLTA, every tenant has an independent property interest in his or her deposit moneys throughout the tenancy and afterward. The RLTA provision requiring landlords to place deposits in trust accounts, RCW 59.19.270, underscores this fact. For example, it requires landlords to advise all tenants regarding the location of their trust money and any subsequent changes. RCW 59.18.270. This information would be meaningless to a tenant if he or she had no interest in the trust property. Similarly, if a rental property is foreclosed, a landlord must transfer the money to the successor or immediately refund the money to the tenant. *Id.* If a landlord fails to do so, the tenant has an immediate right to sue for the

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<sup>1</sup> If the deposit money is returned and the landlord later seeks recovery for damages to the property, the landlord's recovery action would also be governed by the RCW 4.16.080(2) three-year statute of limitations.

return of the trust moneys. Although tenants ordinarily do not have a right to demand return of their deposit until the tenancy is terminated, they are entitled to know where their deposit moneys are being held in trust and ensure that these funds are properly held for their benefit.

The penalties imposed by RCW 59.18.270 and RCW 59.18.280 for landlords' mishandling or misappropriation of trust money are ancillary to the tenant's right to receive the required notice and refund. They have no bearing on the tenant's continued right in the property. In both RCW 59.18.270 and RCW 59.18.280, the sections pertaining to penalties are separated from the trust handling requirement by the conditional conjunction, "if." That is, "[i]f the foreclosed-upon owner does not either immediately refund the full deposit to the tenant or transfer the deposit to the successor," RCW 59.19.270, or "[i]f the landlord fails to give such statement together with any refund due within the time limits specified," RCW 59.18.280(2), then statutory penalties of up to twice the amount of the deposit may apply. This language suggests that the legislature intended the tenant's property interest in the trust to exist fully independent of any related penalty for the landlord's mishandling. Unless the landlord establishes a right to withhold a security deposit within 21 days of the termination of the tenancy, it must be returned to the tenant. RCW 59.18.280.

Assuming that the landlord timely returns the tenant's deposit money or complies with the statutory notice requirements, no penalty is contemplated. In this case, Mr. Silver alleges that Respondent Rudeen Management Company, his former landlord, fully ignored both the RLTA's deposit disposition notice requirement as well as its obligation to return the deposit to the tenant. Respondent's argument that the tenant's right to recover his or her deposit trust money is somehow co-extensive with the RLTA's conditional penalty for non-compliance is erroneous and not consistent with any argument advanced by Mr. Silver. Whether or not the landlord complies with the RLTA, and separate from any penalty for non-compliance, the tenant has a continuing interest in money paid to a landlord as a security deposit. RCW 59.18.270; RCW 59.18.280. Either the landlord complies with the trust requirements in a timely manner, or the requirements are violated and the statutory penalties arise. Of course, the landlord could avoid all trust requirements, and any potential liability for non-compliance by simply not requiring a security deposit in the first place. RCW 59.18.260. By choosing to become a fiduciary of tenants' trust deposits, the landlord knowingly assumes the relatively minimal risk of incurring a statutory penalty in the event that the landlord fails to comply with the corresponding statutory obligations.

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**III. An Action Based on a Landlord’s Failure to Return a Tenant’s Deposit Moneys is Subject to a Three-Year Statute of Limitations.**

There is no dispute that money paid into a trust is the personal property of the tenant who paid it. RCW 4.16.080 applies to “[a]n action for taking, [or] detaining, personal property, including an action for the specific recovery thereof ...” Mr. Silver, in his request for relief, specifically requested a “refund of each class member’s security deposit paid to or retained by Defendant.” (Compl. ¶ 7.2). This relief is clearly separated from Mr. Silver’s request for statutory damages thereafter. (Compl. ¶ 7.4).

Even if a purely statutory penalty would have otherwise been barred by the statute of limitations, “[w]here plaintiff has several remedies for the same cause of action, the fact that one or more remedies have become barred will not affect his or her right to any other remedies that are not barred.” *St. Michelle v. Robinson*, 52 Wn. App. 309, 314, 759 P.2d 467, 469–70 (1988) (citing: *Easton v. Chaffee*, 8 Wn.2d 509, 516, 113 P.2d 31 (1941); *Physicians’ & Dentists’ Business Bur. v. Dray*, 8 Wn.2d 38, 111 P.2d 568 (1941)). “Moreover, Washington courts have concluded that RCW 4.16.080(2) applies to any injury to a person or their rights not enumerated in other statute of limitations provisions.” *French v. Uribe, Inc.*, 131 Wn. App. 1013 (2006) (citing: *Stenberg*, 104 Wn.2d at 720; *Bader v. State*, 43 Wn. App. 223, 227, 716 P.2d 925 (1986)). “When there is uncertainty as to which statute of limitation governs, the longer

statute will be applied.” *Stenberg v. Pac. Power & Light Co., Inc.*, 104 Wn.2d 710, 714–15, 709 P.2d 793, 795–96 (1985). “All of the discussion about a liability created by a statute is a red herring. We do not have a statute of limitations, as many states do, specifically applicable to an action for a liability created by statute.” *Sorey v. Barton Oldsmobile*, 82 Wn. App. 800, 805, 919 P.2d 1276, 1278 (1996) (internal quotations omitted). “[A]n action on a liability created by statute may, or may not, fall within the two-year catchall statute.” *Id.*

In *Sorey*, the court applied the RCW 4.16.080(3) three-year statute of limitations to a statutory claim for overtime compensation. In doing so, the court analyzed *Lewis v. Lockheed Shipbuilding & Constr. Co.*, 36 Wn. App. 607, 613, 676 P.2d 545 (1984) and *Goodman v. Boeing Co.*, 75 Wn. App. 60, 77, 877 P.2d 703 (1994). Both cases applied a three-year statute of limitations to discrimination claims which are “also strictly creatures of statute (RCW 49.60).”

The *Sorey* court also distinguished *Cannon v. Miller*, 22 Wn.2d 227, 155 P.2d 500, 157 A.L.R. 530 (1945), which applied the two-year “catch-all” statute of limitations to a claim under the Fair Labor Standards Act (FLSA), 29 USCA §§ 201–219. Unlike Mr. Silver’s case, in *Cannon*, the parties simply failed to raise the issue of the applicability of RCW 4.16.080. The *Sorey* court recognized that had the plaintiff argued for a three-year statute of limitations under RCW 4.16.080(2), “the result may

well have been different.” *Sorey* at 805, 1278. The principle recognized in *Sorey* is that, whenever a cause of action, statutorily created or otherwise, falls within another statute of limitations, the two-year “catch-all” limitation contemplated in RCW 4.16.130 does not apply. “Such an action does not fall within the catch-all statute unless there is no other statute of limitations applicable thereto.” *Id.*; *see also Fast v. Kennewick Pub. Hosp. Dist.*, 187 Wn.2d 27, 37, 384 P.3d 232, 238 (2016).

In *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 838, 991 P.2d 1126, 1133 (2000), this Court analogized a claim under Washington’s Minimum Wage Act (WMWA), (RCW 49.46.020(1)), to unjust enrichment, as “receiving the benefit of the employees’ work without paying for the work.” *Id.* A similar analysis is appropriate in Mr. Silver’s case.

Following Mr. Silver’s tenancy, Respondent failed either to properly account for the security deposit or return it to him. Instead, Respondent wrongfully withheld Mr. Silver’s deposit and unjustly enriched itself by taking Mr. Silver’s money in clear violation of RCW 59.18.280. The lower court erroneously held that Mr. Silver failed to assert that he was entitled to possession of his deposit because he did not damage the property.<sup>2</sup> *Silver v. Rudeen Mgmt. Co.*, 10 Wn. App. 2d 676,

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<sup>2</sup> In his sworn and verified Complaint, Mr. Silver specifically disputes his landlord’s claims, stating that “[he] was not responsible for the allegedly excessive wear and tear to the premises.” Compl. ¶ 4.12; *see also* Compl. ¶ 4.19 (Mr. Silver specifically challenges his landlord regarding the amounts alleged due).

680, 449 P.3d 1067, 1069 (2019). But whether or not Mr. Silver would ultimately owe some amount to Respondent for damages is irrelevant. When Respondent failed to account for the security deposit within the statutory timeframe, Mr. Silver was entitled to its immediate return. RCW 59.18.280. Instead, Respondent either illegally detained Mr. Silver's property in a trust under its exclusive control, or it converted the money in Mr. Silver's trust account for its own use. Either way, Respondent was unjustly enriched by detaining or taking the deposit trust money when it was required by statute to return it to Mr. Silver. RCW 59.18.270; RCW 59.18.280.

That the Washington Legislature imposes a statutory duty on landlords to place tenants' deposit money in trust, and prescribes penalties if landlords breach their fiduciary duties to tenants, does not automatically make the three-year statute of limitation in RCW 4.16.080 inapplicable. The inquiry is not whether a statutory basis for the cause of action exists, but rather the fundamental nature of the claim. Whether the landlord's obligations are strictly statutory or would otherwise exist at common law, Respondents' alleged mishandling of Mr. Silver's trust account involves taking and/or detaining personal property, which falls squarely under the three-year statute of limitations pursuant to RCW 4.16.080(2).

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**IV. Mr. Silver is Entitled to an Award of Costs and Reasonable Attorney Fees.**

The RLTA provides that “[i]n any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney’s fee.” RCW 59.18.280(2). Additionally, since no class has yet been certified, Mr. Silver requests reasonable attorney’s fees and costs pursuant to RCW 4.84.250 and RCW 4.84.270. These statutes apply on appeal. Mr. Silver requests an award of reasonable attorney fees pursuant to RAP 18.1.

**V. Conclusion.**

For the reasons stated herein, Appellant respectfully requests that the Court find that a three-year statute of limitations applies to Appellant’s claim for wrongful withholding of his security deposit and remand the case to the trial court for further proceedings consistent with this Court’s ruling.

DATED this 8<sup>th</sup> day of June, 2020, and respectfully submitted,

*s/ Kirk D. Miller*  
\_\_\_\_\_  
Kirk D. Miller, WSBA #40025  
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the **5th day of June, 2020**, at Spokane, Washington, I caused to be served the foregoing document(s), and accompanying exhibits, on the following person(s) and/or entity(ies) in the manner indicated:

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DATED this 5<sup>th</sup> day of May, 2020.

s/ Teri A. Bracken  
TERI A. BRACKEN  
*Paralegal*

**KIRK D. MILLER, P.S.**

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