

66027-6

66027-6

NO. 66027-6-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

EDWARD PRYOR, JR., and VAN PRYOR,

Appellants,

v.

MHM&F, LLC,

Respondent.

REPLY BRIEF OF APPELLANT

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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I. INTRODUCTION

Respondent argues that Pryor Junior is the “great invisible escapist” (RB 25) who was “occupying Space 65 for some 39 months . . . without paying anything for its use and occupancy” (RB 43). In another place respondent argues that “Pryor, Jr. and his wife have lived in and occupied a mobile home on Space 65 of the Park since May 1, 2007 – a period of over 39 months—without paying a cent to Wellington or MHM –or to anyone else, for that matter” (RB 5). The 39-month period is mentioned again in respondent’s brief (RB 25).

This *ad hominem* argument overlooks the multiple times Pryor Junior tendered rent. Willie Wellington refused to even accept from the post office a certified letter Pryor Junior sent containing a \$400 check (Ex. 26, FOF #8; Ex. 18, Ex. 43; RP 177). Four money orders for rent were returned to Pryor Junior’s counsel (Ex. 24). Pryor Junior tendered \$3,438 on November 10, 2009 (Ex. 37; RP 167-68). After the check was returned to him, he decided that it was futile to tender further amounts to MHM&F, Inc. or its successors (RP 169).

Pryor Junior and his father had made payments on the 100 shares of stock in the Association from 1982 to 2007, a period of twenty five years. They had obviously built equity during that period. Then because of a claimed delinquency of \$467.00 or \$444.00 (RB 5), respondent asserts that

Wilie Wellington is entitled to mail a certified letter to Pryor Junior and sell Pryor Junior's father's shares on the tenth day following the mailing of the letter, regardless of whether Pryor Junior was in the hospital, on vacation, or simply unavailable to pick up the certified letter within the ten-day period.¹ Respondent argues that Pryor Junior "still had time to go and make a personal visit to Wilie Wellington's office and hand-deliver a payment" (RB 40), but this is entirely speculative. There is no evidence that Pryor Junior even knew where Wilie Wellington's office was. Only a post office box number was given on the notice of default, and no physical address was provided (Ex. 13). Respondent also suggests that Pryor Junior could have called and asked for more time to pay (RB 40). Based on Wilie Wellington's conduct in refusing to even accept and open a letter from Pryor Junior (Ex. 43), it is highly doubtful that a telephonic request for an extension of time would have had a favorable response. The law should not countenance such forfeitures.

II. REPLY TO RESPONDENT'S ARGUMENT

Pryor Junior responds to the legal arguments made by respondent:

1. The Form of Summons Was Defective (RB 11-13).

Respondent argues that RCW 59.20.040 does not expressly

¹Wilie Wellington testified that "there's no good reason" why Pryor Junior did not run down to the post office to pick up the certified letter within a day or two (RP 74), in spite of the fact that Pryor Junior may have been working or out of town (*Id.*).

incorporate RCW 59.18.365, so the form of summons described in RCW 59.12.080 is “the only authorized form of summons applicable to cases under the MHLTA” (RB 12). This argument is without merit.

While RCW 59.20.040 does not expressly mention RCW 59.18.365 as being incorporated within the MHLTA, RCW 59.20.040 does provide in relevant part that “RCW 59.18.370 through 59.18.410 shall be applicable to any action of . . . unlawful detainer arising from a tenancy under the provisions of this chapter . . .” RCW 59.20.040. And both RCW 59.18.370 and RCW 59.18.375 mention the summons contained in the RLTA, thus making it clear that the form of summons set forth in RCW 59.18.365 is the form of summons to be used in a MHLTA case.

RCW 59.18.370, for example, describes the procedure for a landlord to obtain a show-cause hearing after filing a complaint in an unlawful detainer action. The landlord, after obtaining the order to show cause, is required to serve the defendant tenant with a “copy of the order, together with a copy of the summons and complaint if not previously served upon the defendant . . .” RCW 59.18.370. The “summons” mentioned in RCW 59.18.370 is clearly the summons referred to in RCW 59.18.365, not the summons mentioned in the general unlawful detainer statute.

Additionally, RCW 59.18.375, describes the procedure whereby a defendant tenant may be required to deposit into the court registry the amount

of rent claimed to be due by the landlord, plus the monthly rent as it becomes due. Where an unlawful detainer action is brought based on non-payment of rent, RCW 59.18.375 provides that the tenant is not required to pay monies into the court registry if the tenant submits a written statement signed and sworn under penalty of perjury denying that the alleged rent is due based upon a legal or equitable defense or set-off arising out of the tenancy. RCW 59.18.375(2).

The defendant tenant must comply with these provisions of RCW 59.18.375(2) “within seven days after completed service of a filed summons and complaint . . .” RCW 59.18.375(3). The summons referred to is obviously the form of summons set forth in RCW 59.18.365.

This is made even more explicit in RCW 59.18.375(4) as follows:

The defendant shall send written notice that the rent has been paid into the court registry or send a copy of the sworn statement referred to in [RCW 59.18.375(2)] to the person whose name is signed on the unlawful detainer summons. A defendant may serve the written notice or a copy of the sworn statement by any of the methods described in RCW 59.18.365.

RCW 59.18.375(4). Thus RCW 59.18.375, specifically incorporated into the MHLTA by RCW 59.20.040, explicitly refers to RCW 59.18.365.

If the landlord intends to use the procedure set forth in RCW 59.18.375 to require the tenant to deposit the rent into the court registry, the landlord must include with the summons a specified notice advising the

tenant that the tenant must either pay the rent into the court registry or file a sworn statement setting forth why the tenant does not owe the amount claimed in the complaint to be due. RCW 59.18.375(6). Again, the summons referred to is the form of summons contained in RCW 59.18.365. The notice specified in RCW 59.18.375(6) to be contained in the summons also provides that the tenant may send a copy of his sworn statement to the person signing the summons “by personal delivery, mail, or facsimile.” RCW 59.18.375(6). The reference to personal delivery, mail or facsimile further emphasizes the importance of those methods in the statutory scheme and the reason for mentioning them in the summons.

It is thus clear that provisions of the RLTA, specifically incorporated into the MHLTA, do refer, implicitly and explicitly, to the form of summons contained in RCW 59.18.365.

The respondent argues that the form of summons “described in RCW 59.12.080 [is] . . . the only authorized form of summons applicable to cases under the MHLTA” (RB 12). That argument is misdirected, not only because of the implicit and explicit references in RCW 59.18.370 and .375 to RCW 59.18.365 as noted above, but also because RCW 59.12.080 does not provide any form of summons. That statute merely states as follows:

The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of 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 designated or that the relief sought will be taken against him or her. The summons must be directed to the defendant . . .

RCW 59.12.080. While this bare-bones language might be suitable in the context of a commercial tenancy, it is significantly different from the information contained in a summons used in the residential context.

It is worth noting that the summons respondent used in this case (CP CP 112-114) is in the form prescribed by RCW 59.18.365, as opposed to the bare-bones requirement of RCW 59.12.080, except that the summons respondent used admittedly did not contain the language advising the defendant that the defendant could reply by facsimile (RB 12). So respondent was not misled as to whether it should choose the form of summons required by RCW 59.18.365, or create its own form of summons based on the bare-bones specifications contained in RCW 59.12.080.

Finally, it is not inconsistent for appellant to argue that the RLTA does not apply, but the form of summons contained in it, does apply. The RLTA does not apply for the reasons set forth in appellant's opening brief (AB 20-21). But if the MHLTA does apply, that statute incorporates the summons provided for in the RLTA, i.e., RCW 59.18.365, because of the MHLTA's reference to RCW 59.18.370 and .375 in RCW 59.20.040. And since the summons is defective, the trial court lacked jurisdiction over the

case.

2. Pryor Junior Had No Landlord-Tenant Relationship With MHM&F, Inc. or Its Successors (RB 13-14, 16-23, 24-25).

An unstated assumption appearing throughout respondent's brief is that as soon as MHM&F, Inc., or one of its successors, was no longer a secured party, the relationship between that successor and Pryor Junior was instantaneously converted from the relationship of a secured party-debtor to a landlord-tenant relationship. Respondent has cited no authority for such position.

Respondent cites *Hughes v. Chehalis School Dist. No. 302*, 61 Wn.2d 222, 224, 377 P.2d 642 (1963) for the proposition that the "relationship of landlord and tenant is established where the owner of the premises permits another to take possession thereof for a determinate period of time." An essential characteristic of the relationship is permission. Thus, an adverse possessor or one claiming title cannot be a tenant. *Snyder v. Harding*, 34 Wash. 286, 290-91, 75 Pac. 812 (1904) (such adverse occupier of property simply had "no standing"). MHM&F, LLC offered Pryor Junior a one-year lease in January, 2010 (Ex. 27). Pryor Junior refused it, because he contended that he was entitled to a purchase contract in his name, i.e., he was a purchaser, not a tenant (Ex. 29). There was no evidence presented at trial that MHM&F, LLC or its predecessor permitted Pryor Junior to use space 65

for a determinate period of time. Rather, the Association permitted Pryor Senior, followed by Pryor Junior, to occupy space 65 for ninety nine years pursuant to the Proprietary Lease. MHM&F, LLC was merely the successor to a secured party following the sale of the 100 shares of stock to Pryor Senior.

Even if the foreclosure sale were valid, and the Proprietary Lease between Pryor Senior and the Association were cancelled, and a new Proprietary Lease entered into between MHM&F, LLC and the Association, that still does not make Pryor Junior the tenant of MHM&F, LLC. Pryor Junior would simply be a trespasser under that theory. *Meyer v. Beyer*, 43 Wash. 368, 371-72, 86 Pac. 661 (1906) (landlord tenant relationship not established where owner did not charge rent and occupant asserted ownership interest in property).

Respondent claims that it is the landlord under three theories, none of which was argued at trial: (1) Pryor Junior was a tenant by sufferance under RCW 59.04.050 and 59.12.030(6); (2) Pryor Junior was a holdover tenant under RCW 59.12.030(1); and Pryor Junior was an occupant under RCW 59.20.080(1). These arguments are without merit.

A tenancy by sufferance is defined in RCW 59.04.050 as follows:

Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he or

she shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he or she occupied the premises, and shall forthwith on demand surrender his or her said possession to the owner or person who had the right of possession before said entry, and all his or her right to possession of said premises shall terminate immediately upon said demand.

RCW 59.04.050. This statute is applicable to the trespasser situation. See, *Sarvis v. Land Resources, Inc.*, 62 Wn. App. 888, 891-92, 815 P.2d 840 (1991), *review denied*, 118 Wn.2d 1020, 827 P.2d 1012 (1992) (non-party to lease within ambit of RLTA residing on property after expiration of lease was a tenant by sufferance). Here neither MHM&F, LLC nor its predecessors ever had a lease with Pryor Junior, nor Pryor Senior, for that matter. Pryor Junior had the consent of both the owner—the Association under the Proprietary Lease—and Pryor Senior to enter the premises, so RCW 59.04.050 on its terms clearly does not apply.

Respondent also confuses ownership of the 100 shares of stock with ownership of space 65. For example, respondent asserts, without citation of authority, that “when Ed Wellington purchased Pryor’s shares of stock he became the **owner** of Space 65 and Pryor, Jr. became his – and subsequently MHJ’s –tenant subjecting Pryor Jr. to these unlawful detainer proceedings” (RB 14). If Ed Wellington legitimately purchased Pryor’s shares (Pryor Senior’s?), at most Ed Wellington got ownership of the 100 shares, not

ownership of space 65, which he never had after he transferred it and all the other spaces to the Association.

Respondent also asserts, without citation of authority, that “MHM *became* a landlord and Pryor, Jr. it’s [sic] tenant when it was established that Pryor, Jr. was no longer a stock purchaser” (RB 28). Respondent provides no evidentiary or legal basis why a landlord-tenant relationship immediately arises as a matter of law upon the termination of the debtor-creditor relationship. Thus, if the contract of purchase between a buyer and automobile dealer were terminated, the purchaser would not necessarily immediately, by operation of law, become the lessee of the vehicle. If a homeowner loses his home in foreclosure, he does not automatically become the tenant of the beneficiary of the deed of trust. Failure to recognize that a landlord-tenant relationship does not automatically arise from the termination of a prior relationship is one of the main underlying errors made by the trial court below and an error continuing to be propounded by respondent here.

All MHM&F, Inc. and its successors had, at most, was ownership of the 100 shares relating to space 65 and rights as a secured party after the shares were sold to Pryor Senior. Even after the purported foreclosure sale, assuming it was valid, all they had were the rights to 100 shares of stock. The Association, as actual owner of the real property, was always the landlord.

Respondent claims that “almost half the park” is owned by the LLC, citing RP 126 (RB13-14). However, Mr. Hutchins was asked how many homes, i.e., mobile homes, the LLC owned in the park, and Mr. Hutchins responded “about 30” (RP 126). Pryor Junior’s counsel then asked, “. . .[S]o almost half the park is owned by the LLC?” (RP 126). Mr. Hutchins responded, “Yes” (*Id.*). In the context of the questioning, Mr. Hutchins was saying that half of the mobile homes in the park were owned by the LLC, not that an undivided half of the park was owned in fee simple by the LLC. The Proprietary Lease states that the Association is the owner of the mobile home park (Ex. 3, p. 1, second paragraph). The findings of fact in the First Lawsuit state that the Association is the owner of the park (Ex. 26, FOF ¶ 1). The purported assignment (Ex. 33) recites that the Association is the “underlying fee owner of Thunderbird Estates Mobile Home Park.” Finding of Fact II C 2 in the Second Lawsuit states that the Association is the “owner of the park.” Mr. Hutchins’s testimony does not establish that MHM&F, LLC has any ownership interest in the real property constituting the mobile home park.

Respondent next claims that Pryor Junior comes within the scope of a tenant under RCW 59.12.030(1) (holding over after expiration of term); RCW 59.12.030(3) (default in payment of rent); or RCW 59.12.030(6) (entering without permission of the owner). This argument completely ignores the Proprietary Lease. If Pryor Junior was a holdover tenant, he was

holding over under the lease with the Association. Neither Pryor Senior nor Pryor Junior ever had a lease with MHM&F, Inc. or its successors, so Pryor Junior could not be holding over under a non-existent lease.

Further, Pryor Junior never owed or paid any “rent” to MHM&F, LLC. What he paid were payments on a purchase contract.

RCW 59.12.030(6) applies to someone who entered on property “without the permission of the owner and without having color of title thereto . . .” Pryor Junior did not enter space 65 without permission of the owner of the property. The owner was the Association or Pryor Senior. The Association has never claimed Pryor Junior entered without its permission. Moreover, Pryor Junior has color of title (Ex. 40). So RCW 59.12.030 is not helpful to respondent.

In addition, *Puget Sound Investment Group, Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998) supports the conclusion that respondent, even if the foreclosure sale were valid, had no statutory basis to proceed by way of unlawful detainer. While there was an issue of title in *Puget Sound*, there was an issue of title in this case: both Pryor Junior and respondent asserted an ownership interest in the 100 shares of stock relating to space 65. That issue had to be resolved. But the limited scope of an unlawful detainer action is not the appropriate forum to litigate title to property or the validity of a foreclosure sale.

Respondent further asserts that Pryor Junior is a tenant under the MHLTA because he is an “occupant” under RCW 59.20.030(13). There an “occupant” is defined as “any person . . . other than a tenant, who occupies a mobile home . . .” A “tenant” is “any person, except a transient, who rents a mobile home lot.” RCW 59.20.030(11). While Pryor Junior certainly fits those definitions, for every tenant or occupant there has to be a corresponding landlord. A “landlord” is defined in the MHLTA as “the owner of a mobile home park and includes the agents of the landlord . . .” RCW 59.20.030(2). Respondent is not the owner of the mobile home park—clearly the Association is—so respondent does not come within the definition of a landlord under the MHLTA, even though Pryor Junior would be classified as a tenant or occupant if the MHLTA applied.²

Respondent argues that he is an agent of the Association by virtue of the assignment of the rights of the Association to MHM&F, LLC on April 19, 2010 (Ex.32). That assignment came after respondent’s five-day notice to pay or vacate, dated February 8, 2010 (Ex. 28). Pryor Junior would not have any reason to believe in February, 2010, that he should pay monies claimed to be rent by the respondent, when at that time there was no assignment from

²Respondent has not provided a citation to evidence in the record showing that it is the agent of the Association. An agent of a mobile home park owner would be the manager and employees operating the park. The Assignment of Rent and Claims (Ex. 32) does not mention the word “agent.”

the Association and Pryor Junior could have no understanding as to why something denominated as rent should be paid to respondent. Also, since Pryor Junior was not notified of the assignment, it was not binding upon him, regardless of whether a third-party transaction took place (AB 26 fn3).

But ultimately, if Pryor Junior is a tenant under the MHLTA and respondent is an agent of the mobile home park owner for purposes of the MHLTA, and the MHLTA applies, jurisdiction is still lacking because of the defective form of summons used.

3. This Case Does Not Come Within the Purview of the Unlawful Detainer Statutes (RB17).

Pryor Junior cited *Puget Sound Investment Group, Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998) for the principle that to proceed in an action for unlawful detainer, there must be a statutory basis for unlawful detainer. The only basis relied upon by the trial court and respondent below was the MHLTA. As noted above, if the MHLTA does not apply, there is no other statutory category under which this case can fit to bring it within the purview of the unlawful detainer statutes.

4. Judge Bowden's Rulings Should Not Be Given Collateral Estoppel Effect as to Pryor Junior (RB 29-30).

Respondent argues that because Pryor Junior filed a motion to dismiss respondent's case at the close of the First Lawsuit, Pryor Junior made a

choice not to present evidence, and thus invited the unfairness of which he now complains (RB 29). This turns on its head the requirement of fairness in the application of collateral estoppel.

Judge Bowden dismissed the First Lawsuit. No appeal was taken from his decision. It would have been a waste of judicial and economic resources for Pryor Junior to put on witnesses and evidence in that case, just to avoid the later application of collateral estoppel. No litigant would ever do that. The doctrine of collateral estoppel has a safety valve: it is not applied where it would be unfair to do so. Where findings are ambiguous, or where a party did not have an opportunity to present witnesses and evidence because his opponent's case was dismissed on a directed verdict, it is unfair to apply the doctrine of collateral estoppel against the party who had no opportunity to fully and fairly litigate his case. That is why it was inappropriate for Judge Wilson to apply the doctrine of collateral estoppel against Pryor Junior.

Nor can respondent successfully argue that application of the doctrine of collateral estoppel really did not matter, that Judge Bowden independently determined the final outcome. The conclusions of law state otherwise: "The Findings and Conclusions made by Judge Bowden in the first trial between these parties or their successors are binding on this Court in this trial under the doctrine of collateral estoppel" (AB, Appen. B, ¶ III A; CP 37). Finding

of Fact II F in the Second Lawsuit states that Judge Bowden’s findings and conclusions “have a bearing on this case” (AB, Appen. B, ¶ II F; CP 35). As pointed out in appellant’s brief, the trial court in the Second Lawsuit erroneously interpreted unclear provisions of Judge Bowden’s findings and construed them against Pryor Junior, the most significant one being that the MHLTA applied to this case.

5. Pryor Junior Should Have Been Allowed to Set Off His Judgment Against Respondent (RB 43-46).

Respondent mischaracterizes the case of *Reichlin v. First National Bank*, 184 Wash. 304, 313, 51 P.2d 380 (1935). Respondent states that while the case was denominated as one of unlawful detainer, “the case actually was not an unlawful detainer case in that it did not involve an issue of possession” and the “court makes no mention that the plaintiff was seeking possession . . .” (RB 45). This statement is inaccurate. The court in *Reichlin* specifically stated that the appellant bank retained possession of a cattle farm, and the property owner orally requested the bank to remove the cattle from the farm, which was not done.³ 184 Wash. at 308. The property owner served the bank with “a written notice to quit and surrender the premises within three days .

³The property owner was in possession of the farm under an executory contract to purchase, which had been foreclosed upon, but he had a right to possession during the year of redemption. 184 Wash. at 311.

... and there being a failure to comply, this [unlawful detainer] action was thereafter commenced.” *Id.* This case has all the elements of a classic unlawful detainer case.

But of more importance in *Reichlin* is the court’s discussion of why, as a matter of law, the bank was allowed a set off based on a previous judgment it had obtained against the property owner:

The judgment which is set-off is a liquidated demand of the highest order and form. A court of competent jurisdiction has passed upon certain issues and has entered a solemn judgment establishing finally an indebtedness certain in amount. So far as the set-off is concerned, there is nothing left to litigate and it is beyond the power of a jury or of the court itself (except in special instances) to deny or defeat the right of a judgment creditor to receive the sum due him from the judgment debtor. Hence, a judgment, especially a judgment entered by the same court, when pleaded as a set-off must as a matter of law be credited upon any recovery which the judgment debtor, as plaintiff, may establish against the judgment creditor as defendant. No other course would be equitable.

Reichlin, supra, 184 Wash. at 313.

While respondent believes that this Court should “firmly slam” the “dangerous door” of allowing set offs in unlawful detainer cases, the logic of *Reichlin* is compelling. Respondent is referring to situations where unliquidated claims or claims not even relating to the property are interposed in an attempt to defeat a landlord’s rent claim in a summary proceeding. But where a claim has been reduced to judgment, there has been a full and complete determination that the money is owed, and there can be no defense

to payment of it. Moreover, Pryor Junior's judgment for attorney's fees arose out of previous litigation regarding the possession of space 65.

6. The Demand of the Default Notice Was Incorrect (RB 42).

Respondent asserts that the trial court heard the evidence and evidently found that respondent's demand of \$467 in the Notice of Default (Ex. 13) was correct (RB 42). As demonstrated by Pryor Junior in appellant's opening brief (AB 40-41), the \$467 claim was excessive, as there was no legal basis to charge a \$75 fee for "cost of service."

Respondent tries to find other charges, e.g., NSF fees or a \$5 late charge that the trial court "could have" determined to be valid (RB 42). However, there was no testimony that these charges were not paid or were valid. The appendix to plaintiff's trial brief (CP 79-102) cannot be used to come up with an amount greater than \$400, because that document was never admitted into evidence. The trial court was therefore precluded from considering it. *Dodge v. Stencil*, 48 Wn.2d 619, 622, 296 P.2d 312 (1956) (a document "must be offered in evidence before it can be used as proof of the matter contained therein")

Moreover, it is highly unusual for a tenant to have a judgment against his landlord—rather than an unliquidated claim, and to be in a position to set off the judgment against the landlord's claim for rent. That is undoubtedly why *Reichlin* has been so infrequently cited and why there is really no door

to slam.

7. The Foreclosure Sale Was Not Valid (RB 31-40).

Respondent emphasizes that the trial court found the foreclosure sale of Pryor Senior's 100 shares of stock to be valid. The actions of the trustee are excused with the comment that the Wellington brothers were "just a couple of small businesspeople trying to prepare papers on their own . . ." (RB 33), as though that excused the conflicts of interest, the breach of fiduciary duty, the rejection of a reasonable tender, the draconian terms of the documents if literally applied, the refusal to transfer the shares into the name of Pryor Junior (Ex. 39), and the forfeiture of Pryor Junior's equity worth thousands of dollars because a letter notifying him of a default was delivered to him late in the mail. This Court should not put its imprimatur on such inequitable conduct.

III. SUMMARY

The problem respondent has on this appeal is to try to string together a coherent legal theory supporting the reasoning and result reached by the trial court. If the MHLTA truly applies to this case, then the case should be dismissed for lack of jurisdiction, due to the defective summons and failure to join an indispensable party. And ambiguous findings in the First Lawsuit cannot be bootstrapped through the doctrine of collateral estoppel to support application of the MHLTA. If anything, collateral estoppel would apply so

as to require the finding that Pryor Junior is a tenant of the Association. So if respondent's main theory is correct, i.e., the MHLTA applies, then the case must be dismissed for lack of jurisdiction.

On the other hand, if the MHLTA does not apply, respondent cannot fall back on other landlord-tenant law. Respondent concedes the RLTA does not apply. The general unlawful detainer statute cannot apply, because the facts of the case do not fit within any of the categories of RCW 59.12.030.

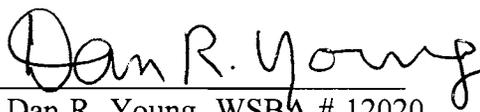
Respondent argues that Pryor Junior must be a "nothing" if he is not a tenant (RB 19). That is essentially correct. He has "no standing" under landlord-tenant law. So respondent should have brought an action in ejectment to remove him from the property. The unlawful detainer action brought by respondent should have been dismissed by the trial court.

IV. CONCLUSION

This Court should reverse the decision of the trial court and dismiss the action, awarding costs and attorney's fees to Pryor Junior.

Respectfully submitted this 15th day of July, 2011.

Law Offices of Dan R. Young

By 
Dan R. Young, WSBA # 12020
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APPENDIX A

RCW 59.18.365

Unlawful detainer action -- Summons -- Form.

(1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court in which the same is brought, the nature of 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 designated or that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff's attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR COUNTY

Plaintiff,		NO.
vs.		EVICTION
		SUMMONS
		>
		(Residential)
Defendant.		

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.

PLEASE READ IT CAREFULLY. THE DEADLINE FOR YOUR WRITTEN

RESPONSE IS: 5:00 p.m., on

TO: (Name)

. (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer to your landlord's attorney (or your landlord if there is no attorney) by personal delivery, mailing, or facsimile to the address or facsimile number stated below **TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE**. Service by facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause **IN ADDITION** to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

.....
Name
.....
Street Address
.....
Telephone Number
.....
Facsimile Number (Required if Available)

[2008 c 75 § 1; 2006 c 51 § 1; 2005 c 130 § 3; 1989 c 342 § 15.]

RCW 59.18.370**Forcible entry or detainer or unlawful detainer actions -- Writ of restitution -- Application -- Order -- Hearing.**

The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he or she has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of the motion, which shall not be less than seven nor more than thirty days from the date of service of the order upon defendant. A copy of the order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. The order shall notify the defendant that if he or she fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter.

[2005 c 130 § 2; 1973 1st ex.s. c 207 § 38.]

RCW 59.18.375**Forcible entry or detainer or unlawful detainer actions -- Payment of rent into court registry -- Writ of restitution -- Notice.**

(1) The procedures and remedies provided by this section are optional and in addition to other procedures and remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent as provided in RCW 59.12.030(3), the defendant shall pay into the court registry the amount alleged due in the notice described in this section and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. Such payment is not required if the defendant submits to the court a written statement signed and sworn under penalty of perjury that sets forth the reasons why the rent alleged due in the notice is not owed. In the written statement, the defendant may provide as a reason that the rent alleged due in the notice is not owed based upon a legal or equitable defense or set-off arising out of the tenancy.

(3) A defendant must comply with subsection (2) of this section on or before the deadline date specified in the notice, which must not precede the deadline for responding to the eviction summons and complaint for unlawful detainer. If the notice is served with the eviction summons and complaint, then the deadline for complying with the notice and the deadline for responding to the eviction summons and complaint must be the same date.

(4) Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without further notice to the defendant and without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not affect the defendant's right to schedule a hearing on the merits. If the defendant fails to comply with this section and a writ of restitution is issued, the defendant may seek a hearing on the merits and an immediate stay of the writ of restitution. To obtain a stay of the writ of restitution, the defendant must make an offer of proof to the court that the plaintiff is not entitled to possession of the property based on a legal or equitable defense arising out of the tenancy. The court shall only grant the stay upon such prior notice as the court deems appropriate to the plaintiff's attorney, or to the plaintiff if there is no attorney. The court may grant the stay on such conditions as the court deems appropriate. The court may set a show cause hearing as soon as possible, but no later than seven days from the date the stay is sought or the date the defendant moves the court for a show cause hearing. If the court concludes at the show cause hearing that the writ of restitution should not have been issued because of any legal or equitable defense to the eviction, then the writ of restitution must be quashed and the defendant must be restored to possession.

(5) The defendant shall deliver written notice that the rent has been paid into the court registry or deliver a copy of the sworn statement referred to in subsection (2) of this section to the plaintiff by any of the following methods:

(a) By delivering a copy of the payment notice or sworn statement to the person who signed the notice to the street address listed on the notice;

(b) By mailing a copy of the payment notice or sworn statement addressed to the person who signed the notice to the street address listed on the notice;

(c) By facsimile to the facsimile number listed on the notice. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the notice; or

(d) As otherwise authorized by the superior court civil rules.

(6) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(7) If the plaintiff intends to use the procedures in this section, the plaintiff must first file the summons and complaint with the superior court of the appropriate county and deliver notice to the defendant of the payment requirements or sworn statement requirements of this section. The notice must:

(a) State that the defendant is required to comply with this section by a deadline date that is not less than seven days after the notice has been served on the defendant;

(b) Be separate from the eviction summons and complaint;

(c) Contain the names of the parties to the proceeding, the attorney or attorneys, if any, and the court in which the proceeding is being brought;

(d) Be signed and dated by the plaintiff's attorney, or by the plaintiff if there is no attorney;

(e) Contain a street address for service of the payment statement or sworn statement and, if available, a facsimile number for the landlord; and

(f) Be no less than twelve-point font type, in boldface type or capital letters where indicated below, and be substantially in the following form:

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON IN AND FOR
COUNTY

Plaintiff,)
) NO.
)
vs.) RCW 59.18.375
) PAYMENT OR SWORN STATEMENT
) REQUIREMENT
Defendant,)
)
)

TO: (Name)

. (Address)

IMPORTANT NOTICE

READ THESE INSTRUCTIONS CAREFULLY

YOU MUST DO THE FOLLOWING BY THE DEADLINE DATE:

THE DEADLINE DATE IS.

1. PAY RENT INTO THE COURT REGISTRY;

OR

2. FILE A SWORN STATEMENT THAT YOU DO NOT OWE THE RENT CLAIMED DUE.

IF YOU FAIL TO DO ONE OF THE ABOVE ON OR BEFORE THE DEADLINE DATE, THE SHERIFF COULD EVICT YOU WITHOUT A HEARING EVEN IF YOU HAVE ALSO RECEIVED A NOTICE THAT A HEARING HAS BEEN SCHEDULED.

YOUR LANDLORD CLAIMS YOU OWE RENT

This eviction lawsuit is based upon nonpayment of rent. Your landlord claims you owe the following amount: \$. The landlord is entitled to an order from the court directing the sheriff to evict you without a hearing unless you do the following by the deadline date:

YOU MUST DO THE FOLLOWING BY THE DEADLINE DATE:

1. Pay into the court registry the amount your landlord claims you owe set forth above and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending;

OR

2. If you deny that you owe the amount set forth above and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a written statement signed and sworn under penalty of perjury that sets forth why you do not owe that amount.

3. You must deliver written notice that the rent has been paid into the court registry **OR** deliver a copy of your sworn statement to the person named below by personal delivery, mail, or facsimile.

.....

Name

.....

Address

.....

Telephone Number

.....

Fax Number

4. The sworn statement must be filed **IN ADDITION TO** delivering your written response to the complaint and **YOU MUST ALSO** appear for any hearing that has been scheduled.

Dated:

Signed:

(8) The notice authorized in this section may be served pursuant to applicable civil rules either with a filed eviction summons and complaint or at any time after an eviction summons and complaint have been filed with the court. If the defendant has served a response to the eviction summons and complaint, then the notice may be served before or with an order to show cause as described in RCW 59.18.370.

(9) This section does not affect the defendant's right to restore the tenancy under RCW 59.18.410.

[2008 c 75 § 2; 2006 c 51 § 2; 1983 c 264 § 13.]

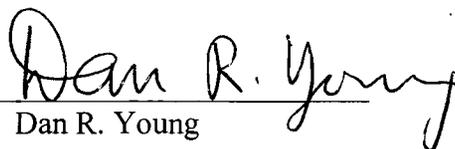
DECLARATION OF SERVICE

I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am an attorney representing the appellants Edward Pryor et ux. in this action.
2. On July 15, 2011, I sent by the USPS, first class mail with pre-paid postage affixed, a copy of the foregoing Reply Brief of Appellant to the following:

Jerome M. Cronk, P.S.
107 Shoreline Business & Professional Center
17544 Midvale Avenue North
Shoreline, WA 98133

Dated: July 15, 2011, at Seattle, Washington.


Dan R. Young

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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