

No. 69056-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CARL LARSEN, Respondent
SHARON LARSEN, Respondent
VS.
RUTH LORETTA RIEDLINGER™, Defendant
DARY GAIL RIEDLINGER™, Defendant

Ruth-Loretta: Riedlinger, Appellant
Dary-Gail: Riedlinger, Appellant
vs.
CARL LARSEN, Third-Party Defendant
SHARON LARSEN, Third-Party Defendant
RANDY M. BOYER, Third-Party Defendant
BRYCE HOLZER, Third-Party Defendant
SUSAN C. GAER, Third-Party Defendant

OPENING BRIEF OF APPELLANTS

Respondent Dary-Gail
in propria persona
and
Respondent Ruth-Loretta
in propria persona

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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I. Introduction

This is an unlawful detainer case in which the Plaintiffs/Respondents Carl and Sharon Larsen (hereinafter “Plaintiffs”) made no allegation of delinquent rent. Appellants Ruth-Loretta and Dary-Gail, of the Riedlinger family, are not the Defendant(s) and refer to Themselves as “Respondents”. Being unschooled in law, Respondents respectfully request the indulgence of this court, as provided by *Haines vs. Kerner* at 404 U.S. 519.

Respondents claim lack of *in personam* jurisdiction on the basis that They are Natural Beings Who abide upon land and are not subject to the admiralty/maritime jurisdiction of the trial court. This special appearance was qualified on revision, and now on review, in that limited jurisdiction has been voluntarily granted for the exclusive purpose of revision/review.

Respondents objected to this unlawful detainer action on the grounds of lack of subject matter jurisdiction. Plaintiffs failed to state a claim upon which relief can be granted. They did not meet their *prima facie* case.

Plaintiffs neglected to assert that they own the property in question or to append an abstract of title to their complaint – both of which are clearly mandated by the statute. After the Respondents brought this to the attention of the trial court, the Plaintiffs persistently refused to so much as allege that they own the property, let alone produce an abstract of title.

The issue of title is further exasperated by the truth that Respondent Dary-Gail did assert a claim to title, due to adverse possession. Interestingly, Plaintiffs did not deny or dispute Dary-Gail's claim to title. In point of fact, the Plaintiffs admitted on the record during the hearing on revision that there indeed was an issue of adverse possession because the Plaintiffs did not want Dary-Gail living on the property. Yet, faced with a Respondent claim to title, and having stipulated to the Respondent's allegation of adverse possession, the Plaintiffs still asserted no claim to title.

Only an action in ejectment and quiet title under RCW 7.28 can finally decide ownership of the property in question herein. However, for purposes of this instant action, the trial court had before it, not conflicting claims to title, but a unilateral claim to title by Respondent Dary-Gail predicated on a proven (*i.e.*, stipulated by all parties) claim of adverse possession. Moreover, no blue-ink original of the alleged rental contract was in evidence and, in Their Answer, Respondents denied the allegation of a rental contract.

Based on these facts, the trial court should have acted, at least for purposes of this case, on the presumption that Dary-Gail owns the property. Such a presumption would mean that the Plaintiffs had no standing to claim unlawful detainer or to obtain a writ of restitution. Alternatively, with conflicting claims to title, the trial court lacks subject matter jurisdiction.

Respondents timely filed and served a proper Answer. Nevertheless, Commissioner Gaer entered *default* judgment, which was affirmed both on revision and on reconsideration. The Commissioner also found that the Respondents' affirmative defenses are not recognized by the court. However, each of the Respondents' defenses is individually and expressly authorized by court rule, by case law, by the Common Law or by the Constitution.

Respondents applied for a stay of execution on the writ of restitution, pending the hearing on revision, by posting a bond. However, the trial court refused to set the amount of the bond, as provided by statute, and thereby created for itself an excuse to deny the motion to stay. Respondents could not possibly post a bond if They did not know the amount of the bond.

It is noteworthy that the Plaintiffs have never answered or responded to any of the foregoing points of fact or any issues which Respondents raised in the trial court proceedings. Plaintiffs' Response to the motion for revision summarized the Commissioner's ruling and, in effect, asserted that the decision is correct because the order was entered. This tactic evaded all of the factual and legal issues raised on revision.

Respondents filed a formal objection asserting that the Response was irrelevant and non-responsive, and asked the trial court to strike it. The objection/motion to strike was never decided.

The Plaintiffs made no Response at all to the Respondents' motion for reconsideration. It will be interesting indeed to see how the Plaintiffs will attempt to answer this appeal, without raising issues they did not raise with the trial court.

Plaintiffs' attitude on the trial court level was to assert that they were entitled to a writ of restitution simply because they applied for it. Once again, this approach evades all of the factual and legal issues, and circumvents the errors assigned to the Court Commissioner on revision.

From beginning to end, this case defies reason, and negates all sense of compassion and justice, in every detail. A lonely and frightened 89-year-old widow who, together with her late husband of seventy (70) years, had been a faithful tenant¹ for twenty-one (21) years, was needlessly, mercilessly, ruthlessly and unlawfully put on the street. It was an atrocity.

¹ This statement is not intended to admit that Respondent Ruth-Loretta was in fact a tenant of, or had a lawful contract with, the Plaintiffs. Using the word "tenant", or any synonym thereof, in this action, both in the lower court proceedings and on review, is exclusively for purposes of argument. Neither does a payment history, in and of itself, constitute a preponderance of the evidence to prove a rental contract. Likewise, Respondent Dary-Gail's claim of adverse possession does not prove the Plaintiffs' ownership. Federal courts require strict compliance with evidentiary requirements to establish standing and subject matter jurisdiction in foreclosure actions. See US District Court, Northern District of Ohio, Eastern Division, *07-cv-02950-CAB*; US District Court, Southern District of Ohio, Western Division at Dayton, *07-cv-00433-TMR-SLO*. Respondents submit that this establishes *res judicata* for unlawful detainer cases, too. In both instances, the plaintiff has the burden of proof. Fourth Amendment Rights are also at issue. The truth is that Plaintiffs did not produce the blue-ink signed original of the alleged rental contract or an abstract of title. Respondents rest on their pleadings in which they denied the allegation of such contract and asserted that Plaintiffs made no claim to title. Additionally, defenses may be in the alternative and need not be consistent. CR 8(e)(2).

II. Errors Assigned to the Trial Court

A. Assignments of Error

No. 1. The trial court erred in finding that “Defendant” is a resident of Snohomish County. [CP #11, Finding #1.]

No. 2. The trial court erred in finding that the Plaintiffs are entitled to possession of the premises. [CP #11, Finding #2.]

No. 3. The trial court erred in finding that Plaintiffs and “Defendant” entered into a lease or rental agreement. [CP #11, Finding #2.]

No. 4. The trial court erred in finding that “Defendant has been and now is in actual possession of the premises.” [CP #11, Finding #3.]

No. 5. The trial court erred in finding that “Defendant” has a month-to-month periodic tenancy. [CP #11, Finding #4.]

No. 6. The trial court erred in finding that Plaintiffs served “Defendant” a notice terminating the alleged tenancy. [CP #11, Finding #5.]

No. 7. The trial court erred in finding that “Defendant” failed to take appropriate action. [CP #11, Finding #6.]

No. 8. The trial court erred in finding that “Defendant” was personally served in this matter. [CP #11, Finding #7.]

No. 9. The trial court erred in finding that “Defendant” filed the referenced pleadings. [CP #11, Finding #8.]

No. 10. The trial court erred in finding that “Defendant’s” Answer fails to state a recognized affirmative defense. [CP #11, Finding #9.]

No. 11. The trial court erred in finding that “Defendant’s” Counterclaims were unacceptable. [CP #11, Finding #10.]

No. 12. The trial court erred in finding that “Defendant’s” counterclaims do not relate to issue of possession. [CP #11, Finding #10.]

No. 13. The trial court erred in finding that “Defendant” had unlawfully occupied the premises for fourteen days. [CP #11, Finding #11.]

No. 14. The trial court erred in finding that reasonable attorney’s fees are \$1,145.00. [CP #11, Finding #12.]

No. 15. The trial court erred in concluding that the court has jurisdiction of the subject matter. [CP #11, Conclusion #1.]

No. 16. The trial court erred in concluding that the court has jurisdiction over “the parties”. [CP #11, Conclusion #1.]

No. 17. The trial court erred in concluding that “Defendant is in unlawful detainer of the premises.” [CP #11, Conclusion #2.]

No. 18. The trial court erred in concluding that “Defendant was properly served” in this matter. [CP #11, Conclusion #3.]

No. 19. The trial court erred in concluding that “Defendant has failed to state any affirmative defenses.” [CP #11, Conclusion #4.]

No. 20. The trial court erred in concluding that a writ of restitution should be issued. [CP #11, Conclusion #5.]

No. 21. The trial court erred in dismissing “Defendant’s” Counterclaims. [CP #11, Conclusion #6.]

No. 22. The trial court erred in concluding that the Plaintiffs are entitled to damages. [CP #11, Conclusion #7.]

No. 23. The trial court erred in concluding that the Plaintiffs are entitled to attorney’s fees, costs and expenses. [CP #11, Conclusion #8.]

No. 24. The trial court erred in entering default judgment on April 20, 2012. [CP #12.]

No. 25. The trial court erred in adjudging that the “defendants hav[e] previously been found in default, for failure to appear or answer the summons and complaint.” [CP #12, Page 1, Line 25 to Page 2, Line 1.]

No. 26. The trial court erred in neglecting to adjudge that Respondents were present at the hearing. [CP #12, Page 2, Lines 2-3.]

No. 27. The trial court erred in determining that “the defendants are in default and plaintiffs are entitled to the relief prayed for in the complaint.” [CP #12, Page 2, Lines 4-5.]

No. 28. The trial court erred in ordering that a “Writ of Restitution shall issue.” [CP #12, Page 2, Lines 7-9.]

No. 29. The trial court erred in decreeing that there is “no substantial issue of material fact.” [CP #12, Page 2, Lines 11-12.]

No. 30. The trial court erred in entering summary judgment on April 20, 2012. [CP #12, Page 2, Lines 11-12.]

No. 31. The trial court erred in adjudging that “Defendants are guilty of unlawful detainer.” [CP #12, Page 2, Lines 13-14.]

No. 32. The trial court erred in decreeing that “their [Defendants’] occupancy of the designated premises is hereby terminated.” [CP #12, Page 2, Lines 13-15.]

No. 33. The trial court erred in awarding “judgment against Defendants.” [CP #12, Page 2, Lines 16-19.]

No. 34. The trial court erred in issuing an order for a writ of restitution on April 20, 2012. [CP #13.]

No. 35. The trial court erred in refusing to set the amount of the bond to stay execution of the writ, pending the hearing on revision, on April 26, 2012. [CP #22.2.]

No. 36. The trial court erred in affirming Commissioner Gaer’s decision on May 8, 2012. [CP #31.]

No. 37. The trial court erred in affirming its decision of May 8, 2012, on June 4, 2012 by reconsideration. [CP #39.]

No. 38. The trial court erred in neglecting to provide Respondents a remedy in Admiralty, as is provided by Title 28 USC § 1333(1). [CP #8, Page 1, Opening Paragraph.]

No. 39. The trial court erred in failing to indulge Respondents for being unschooled in law. [CP #8, Page 1, Opening Paragraph.]

No. 40. The trial court erred in mistaking Respondent Ruth-Loretta for the Defendant, RUTH LORETTA RIEDLINGER™, wrongly prosecuting Respondents, and making Respondents surety for the Defendant. [CP #9, Page 13, Count XII.]

B. Issues Pertaining to Assignments of Error

No. 1. The named Defendant, known as RUTH LORETTA RIEDLINGER™, is a juristic person. Can a fictitious entity:

- a. Be a resident of any county? [Assign. of Error #1.]
- b. Execute a contract? [Assign. of Error #2.]
- c. Occupy any premises? [Assign. of Error #4, 13, 27.]
- d. Engage month-to-month tenancy? [Assign. of Error #5.]
- e. Receive service of process? [Assign. of Error #6, 8, 18.]
- f. Take action? [Assign. of Error #7.]
- g. File pleadings? [Assign. of Error #9.]
- h. State a defense? [Assign. of Error #10, 19.]

- i. Make counterclaims? [Assign. of Error #11, 12, 21.]
- j. Be under a court's jurisdiction? [Assign. of Error #16.]
- k. Be in unlawful detainer? [Assign. of Error #17, 31.]
- l. Appear and answer? [Assign. of Error #24, 25, 27.]

No. 2. Respondents are Natural Beings Who are domiciled in Original jurisdiction, organic venue, in Snohomish County, within the Washington Republic, one of the foreign States of the united States Republic. Conversely, the Plaintiffs are residents of the corporate STATE OF WASHINGTON. Under Title 28 USC § 1332(a)(2), the federal district courts have original jurisdiction in cases of diversity of citizenship. Did the trial court then have jurisdiction over the parties? [Assign. of Error #1, 16.]

No. 3. Plaintiffs failed to prove that they had a rental contract. Nor did they claim, or produce evidence of, title to the property in dispute. Have they then established any right to the possession thereof? Did the Plaintiffs have standing to assert unlawful detainer or obtain a writ of restitution? Were the Respondents truly in unlawful detainer? [Assign. of Error #2, 3, 5, 13, 17, 20, 22-23, 27-32, 34.]

No. 4. Respondents claim title to the property in question. Were they then obligated to act upon the Plaintiffs' notice to vacate? [Assign. of Error #7.]

No. 5. Respondents' defenses are predicated on CR 8(c) and 12(b), established case law, the Common Law, and a constitutional challenge. Are these valid and effectual grounds for affirmative defenses? [Assign. of Error #10, 19.]

No. 6. Plaintiffs claim that Respondents violated Paragraph 22 of the alleged rental contract. Is Respondents' claim of breach of the covenant to live peaceably a valid affirmative defense which excuses the alleged contract violation? Is such a breach a viable basis for counterclaims in an unlawful detainer action? Should the trial court have summarily dismissed such counterclaims without trial? [Assign. of Error #11, 21.]

No. 7. Respondents stated counterclaims predicated on breach of the covenant of quiet enjoyment, which gave rise to claimed damages in excess of the value of the property. When Respondents then asserted a claim to title based on those damages, did the counterclaims relate to the issue of possession? [Assign. of Error #12.]

No. 8. Respondents are not juristic "persons" or sea bound "passengers" but real live breathing Natural Beings Who abide upon land. The trial court operates in admiralty/maritime jurisdiction. Judiciary Act of 1789. Title 28 USC. Did the trial court have jurisdiction over such Natural Beings Who are on land? [Assign. of Error Nos. 16.]

No. 9. Plaintiffs did not strictly comply with statutory requirements. There were also conflicting claims to title or, more correctly, a unilateral claim to title by Respondents. Did the trial court have subject matter jurisdiction in this unlawful detainer action? [Assign. of Error #15.]

No. 10. Plaintiffs failed to state a claim upon which relief can be granted because they did not meet their *prima facie* case. Were they entitled to a writ of restitution, default or summary judgment, damages, attorney's fees, costs and expenses? [Assign. of Error Nos. 14, 20, 22-24, 28, 33.]

No. 11. Respondents made a formal special appearance disputing jurisdiction, challenged subject matter jurisdiction, filed and served a timely Answer, stated affirmative defenses which are authorized by the court rules, challenged the lawfulness and constitutionality of the unlawful detainer statute, filed counterclaims based on breach of covenant to live peaceably, attended the show cause hearing, and, asserted that the Plaintiffs had failed to meet their *prima facie* case. Was default judgment therefore appropriate in this unlawful detainer action? [Assign. of Error Nos. 24- 28.]

No. 12. Plaintiffs failed to meet their *prima facie* case. Is that a substantive issue of material fact? [Assign. of Error #29, 30.]

No. 13. Plaintiffs did not prove they hold title to the property in question. Additionally, Respondents asserted an adverse or, more correctly,

a unilateral claim to title. Do issues of title constitute substantive issues of material fact? [Assign. of Error #29, 30.]

No. 14. Respondents deny that Plaintiffs had a rental contract with the Respondents or the “Defendant”. Is a challenge to the authenticity of the alleged contract a substantive issue of material fact? [Assign. of Error #3, 29, 30.]

No. 15. Plaintiffs failed to strictly comply with statutory requirements. Does a dispute over statutory compliance raise a substantive issue of material fact? [Assign. of Error #29, 30.]

No. 16. Respondents raised substantive issues of material fact; challenged the court’s jurisdiction (both *in personam* and subject matter); and, made an adverse or, more correctly, a unilateral claim to title. Was summary judgment therefore appropriate in this unlawful detainer action? [Assign. of Error #30.]

No. 17. Respondents applied for a stay of execution on the writ, pending the hearing on revision, by posting a bond. Should the trial court have established the amount of bond as provided by RCW 59.18.390(1)? [Assign. of Error #35.]

No. 18. Should the trial court have affirmed Commissioner Gaer’s decision on May 8, 2012? [Assign. of Error #36.]

No. 19. Should the trial court have affirmed, on reconsideration, its decision which denied revision, on June 4, 2012? [Assign. of Error #37.]

No. 20. Respondents sought a remedy in Admiralty, as provided by the “saving to the suitors” clause at Title 28 § 1333(1). Did the trial court err in dismissing Respondents’ counterclaims, thus neglecting to provide said remedy? [Assign. of Error #38.]

No. 21. Being unschooled in law, Respondents requested the trial court’s indulgence as provided by *Haines*, supra. However, Commissioner Gaer’s behavior was not only far less than indulgent but also very rude and belligerent. Did the trial court err in this regard? [Assign. of Error #39.]

No. 22. The Defendant RUTH LORETTA RIEDLINGER™ is a juristic person, a corporate fiction. Respondents are real live breathing Beings and negatively averred being the Defendant. Did the trial court err in making the Respondents surety for the Defendant? [Assign. of Error #40.]

III. Statement of the Case

A. Facts of the Case

No. 1. On or about July 5, 1991, Theodore and Respondent Ruth-Loretta, of the Riedlinger family, took possession of the real estate in dispute herein.² [CP #2, Page 2, Lines 8-9 and 14-15.]

² In Their Answer, Respondents mistakenly denied the legal description of this property, as stated in ¶3 of Plaintiffs’ Complaint [CP #2]. However, it was an innocent mistake and the Respondents submit that it is harmless error.

No. 2. Subsequently, Respondent Dary-Gail, of the Riedlinger family, also came into possession of the said property, without the Plaintiffs' permission. [CP #9, Page 7, ¶2; CP #28, Page 7, ¶3.2, Lines 23-24.]

No. 3. No lease agreement was executed between Plaintiffs and the named Defendant. [CP #28, Page 1, ¶2.1.] Respondents deny being in a rental agreement with Plaintiffs. [CP #9, Page 7, Answer #2.]

No. 4. On January 7, 2011, Plaintiff Sharon Larsen granted the Everett police access to the said property. [CP #8, Page 2, Count 2.] The police searched the premises, took unauthorized pictures, and unlawfully abducted and kidnaped Theodore, with the full consent of Ms. Larsen and without a lawful warrant for doing so. [CP #8, Page 2, Count 3.] There was at least one other occasion when Ms. Larsen granted the police unlawful access to the Respondents' home without a lawful warrant and without Respondents' permission. [CP #8, Page 3, Count 5.]

No. 5. Subsequent to the referenced abduction, Theodore was unlawfully detained³; tortured by cutting His hand and His temple (near the eye), and by putting out His eyes with a harsh chemical (making Him blind); and, murdered in cold blood. [CP #8, Page 3, Count 6.] These atrocities were committed on the mandate of Theodore and Ruth-Loretta's daughter,

³ On April 7, 2011, Superior Court Judge Anita L. Farris made the determination that Theodore was being unlawfully detained.

Shirley Delores Gullicson, who was acting on a lawfully revoked and canceled Power of Attorney, Health Care Directive, and Last Will and Testament.⁴ [CP #8, Page 2, Count 4.] Ms. Larsen was privy to, and in agreement with, Ms. Gullicson's actions. [CP #8, Pages 2-3, Count 4.]

No. 6. By these and other unconscionable acts, Plaintiffs breached Theodore's and Respondents' covenant to live peaceably. [CP #8, Page 5, ¶20; CP #9, Page 8, ¶5.] Damages due to Respondents for such breach and for the wrongful death of Theodore exceed the value of the real property in question [CP #8, Page 6, ¶20, ¶25] and constitute the grounds for the Respondents' adverse claim to title. [CP #8, Page 2, Count 5, Note; CP #28, Page 5, Lines 11-13.]

No. 7. Plaintiffs accepted bribe(s) from Ms. Gullicson, paid out of Theodore and Ruth-Loretta's estate (a vast fortune) and consistent with (unlawful) provisions of the said revoked Power of Attorney; such bribe(s) enticed Plaintiffs to perform the referenced unconscionable actions which breached Theodore and Respondents' covenant to live peaceably. [CP #8, Page 3, Count 5.]

No. 8. The value of the referenced bribes, which were illegally paid out of Theodore and Ruth-Loretta's estate, are the equivalent of pre-paid rent for months to come. [CP #8, Page 3, Count 5; CP #9, Page 8, ¶7.]

⁴ Judge Farris also made the determination that the revocation was legal.

No. 9. By such bribes, Plaintiffs were also enticed to dispossess Respondents from their home. [CP #8, Page 3, Count 5.]

B. Procedural History of the Case

No. 1. On March 2, 2012, Plaintiffs served Respondents a Notice Terminating Tenancy. [CP #2, Page 2, Lines 16-19.] Defendant was not served. [CP #9 Page 7, Answer #3; CP #28, Page 2, ¶3.1.]

No. 2. The Defendant, being a fiction and never having been in possession, and not having been served any notice, did not vacate the premises. [CP #28, Page 1, ¶2.3; Page 2, ¶3.2] Respondents, who claim title to the property, did not surrender possession. [CP #22, Page 2, Lines 23-25; CP #28, Page 2, ¶3.2.]

No. 3. On April 9, 2012, Plaintiffs served Respondent Ruth-Loretta a summons, complaint and show cause order. [CP #22, Page 2, Lines 4-7.] Defendant was not served. [CP #28, Page 1, ¶2.4; Page 2, ¶3.3.]

No. 4. In their complaint, Plaintiffs did not produce proof of title to the property in dispute herein; in point of fact, they did not allege to be the owners of the property [CP #28, Page 3, ¶3.7.], as provided by RCW 59.12.020 and 59.16.030. [CP #28, Page 3, ¶3.11.]

No. 5. Plaintiffs also produced no lawful proof that they “let the premises” to a fictitious “Defendant” **OR** to the Respondents, by evidencing

the blue-ink signed original of the alleged contract/lease agreement. [CP #28, Page 3, ¶3.8.]

No. 6. On April 18, 2012, Respondents filed and served a Formal and Constructive Notice, including an Answer and a criminal complaint, and an Affidavit of Specific Negative Averment, including a counterclaim. [CP #22, Page 2, Lines 6-11; CP #28, Page 2, ¶3.4.] Defendant did not file or serve any pleadings. [CP #28, Page 2, ¶2.5.]

No. 7. Respondents also made an adverse or, more correctly, a unilateral claim to title of the property. [CP #8, Page 2, Count 5, Note; CP #28; Page 2, ¶3.2; Page 3, ¶3.7.]

No. 8. Respondents attended the show cause hearing on April 20, 2012. [CP #22, Page 2, Line 12; CP #28, Page 2, ¶3.9.] The Defendant, being a fiction, was not in attendance. [CP #28, Page 2, ¶2.6.]

No. 9. Commissioner Susan C. Gaer entered findings and conclusions without providing the Respondents five (5) days' notice, as provided by CR 52. [CP #28, Page 3, ¶3.10.]

No. 10. The Court did not enter default [CP #28, Page 3, ¶3.11] but Commissioner Gaer entered summary judgment "by default" [CP #12].

No. 11. Motions for Revision and for Reconsideration were denied. [CP #31, 39.]

IV. Argument

A. Respondents filed and served a timely Answer.

1. They made a special appearance. Baron's Law Dictionary by

Stephen H. Gifis (1994) says:

SPECIAL APPEARANCE one made for the sole purpose of attacking the **jurisdiction** of the court over the defendant's person. [Emphasis in original.]

And, Black's Law Dictionary, 7th Edition, West Group (1999), defines "special appearance" in pertinent part as follows:

2. A defendant's showing up in court for the sole purpose of contesting the court's assertion of personal jurisdiction over the defendant.

These definitions are supported by *Pease v. City of San Diego*, 93 Cal. App. 2d 706, 209 P.2d 843, 845 (1949):

Whether an appearance is general or special is determined by the relief sought and if a defendant, by his appearance, insists only upon the objection that he is not in court for want of jurisdiction over his person, and confines his appearance for that purpose only, then he has made a special appearance, but if he raises any other question or asks any relief which can only be granted upon the hypothesis that the court has jurisdiction of his person, then he has made a general appearance. (*Judson v. Superior Court*, 21 Cal. 2d 11, 13 [129 P.2d 361].)

Respondents properly noticed the trial court of Their special appearance. *Sowers v. Lewis*, 49 Wn.2d 891 (1957), at 894, teaches:

By appellant's special appearance, the jurisdiction of the court over the person of the appellant and over the subject matter of the action was put in issue. RCW 4.28.210 [cf. Rem. Rev. Stat., § 241] provides in part:

“Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance.”

In compliance with the above statute, the appellant did appear specially. We have held that, when one appears specially, the jurisdiction of the court over the person and subject matter is properly before the court by a motion to quash. *Matson v. Kennecott Mines Co.*, 103 Wash. 499, 175 Pac. 181 (1918).

The trial court in the instant case operates in admiralty/maritime jurisdiction. Judiciary Act of 1789. Title 28 USC. However, on February 22, 2010, the Honourable Michael T. Downes, presiding judge of the Snohomish County Superior Court, identified Respondent Dary-Gail as a Freeman-on-the-LAND. [See CP #9, Exhibit E.] Respondent Ruth-Loretta also claims to be a Freewoman-on-the-LAND. [See CP #9, Page 3, ¶3.] Having stipulated that Respondent Dary-Gail abides on land, and facing an **undisputed** claim that Respondent Ruth-Loretta abides on land; the maritime trial court was in no position to assert jurisdiction over the Respondents.

Moreover, the Respondents deny that the named “Defendant” RUTH LORETTA RIEDLINGER™ was served. [CP #28, Page 2, ¶2.5; CP #33, Page 2, ¶2.4, Lines 20-21.] A special appearance may be made to “object[] to improper service of process.” Black’s, supra. *Sprincin v. Sound Conditioning*, 84 Wn. App. 56, 925 P.2d 217 (1996), at 60-61, teaches:

The purpose of a summons is to give certain notice of the time prescribed by law to answer and to advise the defendant of the consequences of failing to do so. An unlawful detainer summons implicates both personal and subject matter jurisdiction: an

ineffective summons deprives the court of personal jurisdiction because the defendant was not properly hailed into court; it also deprives the court of jurisdiction over the unlawful detainer proceeding, which is a special summary procedure.

“Because compliance with service procedures is jurisdictional, we conclude that the trial court lacked jurisdiction.” *IBF, LLC v. Heuft*, 141 Wn. App. 624 (2007), at [8]. The Defendant was not served. The Respondents abide outside the trial court’s maritime authority. The court lacked jurisdiction over both the Defendant and the Respondents.

The Respondents did not formally move for a CR 12(b)(2) dismissal, as They felt that would not be permitted. However, a special appearance is not converted into a general appearance by motion to quash (*Sowers, supra; Matson, supra*) or by motion for award of costs (*Muncie v. Westcrot Corporation*, 58 Wn.2d 36 (1961), at 38-39). *Frohman v. Bonelli*, 91 Cal. App. 2d 285, 287, 204 P.2d 890 (1949), enlightens the point:

Appellant also claims that by making the motion to dismiss respondent appeared generally in the action.... The point is not good. (*Sharpstein v. Eels*, 132 Cal. 507, 508 [64 P. 1080]; *Bellingham Bay L. Co. v. Western A. Co.*, 35 Cal. App. 515, 518 [170 P. 632].) ...An appearance made only for the purpose of moving to dismiss an action on any one of the grounds specified in [CR 12(b)] is made only on the hypothesis that the party is not properly before the court. It is a special appearance. (*Brock v. Fouchy*, 76 Cal. App. 2d 363, 370....)

Therefore, lest the Plaintiffs attempt to argue that the Respondents’ motions for revision and for reconsideration requested relief of the court, which is not permitted with a special appearance, it should be

judicially noticed that those motions, and this appeal, seek dismissal on CR 12(b) grounds. The Respondents also gave express judicial notice as follows: “This motion does not constitute change in status in any manner but, rather is in pursuit of establishing the Respondents’ appearance by special visitation, **Sui Juris**, *in propria persona*.” [CP #18, Page 5.] And, this defense was not waived because it was included in the Respondents’ responsive pleading. [CR #9, Page 7, Defense #2.] CR 12(h)(1)(B).

2. They pleaded lack of subject matter jurisdiction. “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court **SHALL** dismiss the action.” (Emphasis added.) CR 12(h)(3). A court may address subject matter jurisdiction anytime, with or without a party raising the issue. *Community Health Plan of Ohio v. Mosser*, 347 F.3d 619, 622 (6th Cir. 2003). Federal Judge Thomas M. Rose, in *07-cv-00433-TMR-SLO*, supra, stated:

Finally, if subject matter jurisdiction is questioned by the court, the plaintiff cannot rely solely upon the allegations in the complaint and must bring forward relevant, adequate proof that establishes subject matter jurisdiction. *Nelson Construction Co. v. U.S.*, No. 05-1205C, 2007 WL 3299161 at *3 (Fed. Cl., Oct. 29, 2007) (citing *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178 (1936)); see also *Nichols v. Muskingum College*, 318 F.3d 674, (6th Cir. 2003)....

A motion to dismiss on grounds of CR 12(b)(1) by the Respondents was unnecessary, as it was clear from the Respondents’

pleadings that the trial court lacked subject matter jurisdiction. A dismissal was mandated by CR 12(h)(3). “Because standing involves the ... court’s subject matter jurisdiction, it can be raised sua sponte. *Id.* (citing *Central States*, 433 F.3d at 198).” *07-cv-00433-TMR-SLO*, supra.

a. Plaintiffs did not meet their *prima facie* case. RCW 59.16.030 provides that the plaintiff shall plead title to the property in question. RCW 59.12.020 mandates that the plaintiff shall append an abstract of title to his/her complaint. The Plaintiffs in the instant case did neither. In *Truly v. Heuft*, 138 Wn. App 913 (2007), we learn:

The statutes governing unlawful detainer actions (chapter 59.12 RCW, chapter 59.18 RCW, and RCW 59.18.365-.410) are in derogation of the common law and are **strictly** construed in favor of the tenant. [Emphasis added.]

See also *Housing Authority of the City of Pasco v. Pleasant*, 126 Wn. App. 382 (2005). When the statutory elements are not met, the trial court lacks subject matter jurisdiction. “That statute, however, is not rendered superfluous. Unless the plaintiff substantially complies with it, the court is deprived of subject matter jurisdiction.” *Sprincin*, supra.

b. Respondents made a claim to title. The issue of title is further exasperated in the truth that the Respondents made a claim to title. [CP #8, Page 2, Count 5, Note; CP #28; Page 2, ¶3.2; Page 3, ¶3.7.] A claim to title, by adverse possession which was stipulated by the Plaintiffs supra,

proves that Respondent Dary-Gail has a lawful claim to possession. We are instructed by RCW 59.16.030, in pertinent part, as follows:

...if the defendant shall, by his or her answer, deny such ownership and shall state facts showing that he or she has a lawful claim to the possession thereof, the cause **SHALL** thereupon be entered for trial.... [Emphasis added.]..

The Respondents denied the Plaintiffs' ownership (which Plaintiffs did not plead) by asserting Their Own claim to title. Prolonged adverse possession raises an issue of possession and, pursuant to RCW 59.16.030, the court was required to note the matter for trial. Contrary to that provision, Commissioner Gaer entered summary judgment against the "Defendant" [CP #12] and issued an order for a writ of restitution [CP #13].

But, Washington jurisprudence carries this point further. "A court may not grant a writ of restitution in an unlawful detainer action when title to the property remains in dispute." *Puget Sound Inv Group v. Bridges*, 92 Wn. App. 523 (1998), at 524. Also, *Little v. Catania*, 48 Wn.2d 890 (1956), at 892, teaches:

Even if the respondents had complied strictly with the statutory requirements for an unlawful detainer action, it would have been error for the trial court to have determined the ownership of the property located on the premises. See *Provident Mut. Life Ins. Co. v. Thrower*, 155 Wash. 613, 285 Pac. 654, and cases cited.

If there were conflicting claims to title, the court lacked subject matter jurisdiction in this unlawful detainer case. Here, there were

not conflicting claims to title. There was a unilateral claim to title by the Respondents. [CP #8, Page 2, Count 5, Note; CP #28; Page 2, ¶3.2; Page 3, ¶3.7.] Moreover, the authenticity of the Plaintiffs' alleged rental contract is in dispute. Based on these facts, the Plaintiffs did not have standing to assert unlawful detainer. In *07-cv-00433-TMR-SLO*, supra, we learn:

Plaintiffs have the burden of establishing standing. *Loren v. Blue Cross & Blue Shield of Michigan*, No. 06-2090, 2007 WL 2726704 at *7 (6th Cir. Sept. 20, 2007). If they cannot do so, their claims must be dismissed for lack of subject matter jurisdiction. *Id.* (citing *Central States Southeast & Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care*, 433F.3d 181, 199 (2d Cir. 2005)).

The fact that the Plaintiffs herein claimed unlawful detainer suggests that they at least **believe** they own the property and, therefore, creates an implied issue of conflicting claims to title. Either way, if the Plaintiffs do not have standing, or if there are conflicting claims to title, the matter should be dismissed for lack of subject matter jurisdiction.

3. They provided judicial notice. "Pleading. A party who intends to raise an issue concerning the law of a state, territory, or other jurisdiction of the United States, or a foreign country shall give notice in his pleadings in accordance with rule 9(k)." CR 4.1(a). "Every court of this state shall take judicial notice of the Constitution [and] common law...." RCW 5.24.010. Respondents gave such judicial notice. [CR #9, Pages 2, 5.]

a. Common Law action. On Page 5 of Their Answer [CP #9], the Respondents gave judicial notice that Their Answer is a Common Law action, which is reflected in the Criminal Complaint section starting at Page 8. Common Law actions may be brought in Washington State. *Potter v. Washington State Patrol*, 165 Wn.2d 67 [*en banc*] (2008).

b. Federal law application. On Page 2 of Their Answer [CP #9], the Respondents provided judicial notice that They intended to rely, at least in part, on federal law for Their defense.

c. Constitutional challenge. On Page 2 of Their Answer [CP #9], the Respondents also gave judicial notice that They intended to dispute the constitutionality of the unlawful detainer statute.

d. Lack of jurisdiction. On Page 2 of Their Answer [CP #9], judicial notice was given that the Respondents intended to dispute both subject matter and *in personam* jurisdiction.

4. They denied most of the material facts alleged. On Page 7 of Their Answer [CP #9], the Respondents stated their formal answer to the Plaintiffs' complaint. All of the facts alleged in the complaint were denied, excepting two (2) partial paragraphs.² See also Their Reply to the Plaintiffs' Response to the motion for revision. [CP #28, Pages 1-3, ¶'s 2.1 through 3.14.] Therefore, contrary to Commissioner Gaer's decree [CP #12, Page 2,

Lines 11-12], all of the substantive material facts of the case were in dispute. [CP #33, Page 2, ¶2.7.] These factual issues were not resolved in the show cause hearing of April 20, 2012. Moreover, the Plaintiffs' supposed claim to title is in dispute. Commissioner Gaer expressly decided the issue of title. [CP #18, Page 2, ¶2.4, Line 5; Page 5, ¶6.2.] That was error. *Little*, supra.

5. They set forth affirmative defenses. On Pages 7-8 of Their Answer [CP #9], the Respondents stated Their affirmative defenses. Although each defense is predicated on appropriate legal authority, Commissioner Gaer found the defenses to be unacceptable [CP #11, Finding #9] and entered default judgment [CP #12]. However, since the Plaintiffs did not meet their *prima facie* case, supra, the Respondents were not obligated to present a formal defense. [CP #34, Pages 11-14, "V. Conclusion".]

a. Constitutional provisions. Having provided judicial notice that the Respondents challenged the constitutionality of the unlawful detainer statute, the Respondents stated Their case. A court commissioner is not granted the authority to rule on the constitutionality of a statute. RCW 2.24.040. The court shall make such determinations. RCW 5.24.030. Nevertheless, Commissioner Gaer entered summary judgment.

(1) The American Constitution. In the trial court setting, the Respondents suggested that a constitutional challenge to the

unlawful detainer statute may be a question of *first impression* in American jurisprudence. While this may be true for an unlawful detainer action, it is not a matter of *first impression* in similar types of actions.

For instance, in *07-cv-02950-CAB*, federal Judge Christopher A. Boyko made a revolutionary decision regarding foreclosure actions. In his opinion, Judge Boyko made precisely the point that the Respondents have attempted to argue in the instant case:

To satisfy the requirements of Article III of the United States Constitution, the plaintiff must show he has *personally suffered some actual injury* as a result of the illegal conduct of the defendant. (Emphasis added). *Coyne*, 183 F. 3d at 494; *Valley Forge*, 454 U.S. at 472. [Emphasis in original.]

Other federal judges have since followed suit. One case in point is *07-cv-00433-TMR-SLO*, *supra*, in which federal Judge Thomas M. Rose observed:

However, with regard the enforcement of standing and other jurisdictional requirements pertaining to foreclosure actions, this Court is in full agreement with Judge Christopher A Boyko of the United States District Court for the Northern District of Ohio who recently stressed that the judicial integrity of the United States District Court is “**Priceless.**”

The Respondents submit that a constitutional provision applying to foreclosure actions, which concern real estate, apply equally to unlawful detainer actions. “An unlawful detainer action is a special proceeding which relates only to real estate. RCW 59.12.030.”

Sowers, supra, at 894. This would particularly be true with constitutional provisions pertaining to property, as with the Fourth Amendment infra.

(a) Amendment IV, Bill of Rights. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

There have been prior cases before the Washington courts in which unlawful detainer actions were determined to implicate constitutional issues. See *Granat v. Keasler*, 99 Wn.2d 564, 663 P.2d 83 (1983). *Kennedy v. Seattle*, 94 Wn.2d 376, 617 P.2d 713 (1980). However, in those cases, real estate protections were attributed to the property owner. The Respondents wish to redress that interpretation.

According to Barron’s Law Dictionary, supra, the Fourth Amendment was incorporated into the American Constitution as a protection against writs which were similar to writs of restitution:

WRIT OF ASSISTANCE at common law, a general **warrant** under which an officer of the crown, such as a customs official, had blanket authority to search where he or she pleased for goods imported in violation of the British tax laws. Writs of assistance were greatly abused and hated in this country prior to the American Revolution, and ultimately resulted in the adoption of

the constitutional ban against unreasonable **searches and seizures** and especially the requirement of particularization.

These truths are supported by Black's Law

Dictionary, *supra*:

writ of assistance. ...**3.** *Hist.* In colonial America, a writ issued by a superior colonial court authorizing an officer of the Crown to enter and search any premises suspected of containing contraband. ● The attempted use of this writ in Massachusetts — defeated in 1761 — was one of the acts that led to the American Revolution.

Based on the foregoing, the use of historical writs of assistance precipitated, at least in part, the American Revolution and, ultimately, the Fourth Amendment. While a writ of restitution is not precisely the same as the referenced writ used by the British against the American colonies, the Respondents submit that there is sufficient similarity as to raise the question of incompatibility with the Fourth Amendment.

If this question is answered in the affirmative, concluding that indeed both writs are repugnant to the Fourth Amendment; then a writ of restitution attacks the very heart and soul of the Amendment and defies the intentions of the Founding Fathers in drafting it.

While, admittedly, this Amendment does protect real estate owners, a land owner is not necessarily the principal focus of the Amendment. The wording suggests that its meaning may be much broader than the limited perspective of land owners, as it applies in an

unlawful detainer context. It protects the people in Their “persons, houses, property, and effects, against unreasonable searches and seizures.” This verbiage suggests that One’s very HOME is protected. This is reminiscent of the old Common Law adage that possession is nine-tenths of the law.

To cement this point, the Fourth Amendment does not authorize the use of a writ, of any kind, to effect the seizure of One’s Home or Private property. It requires the issuance of a Warrant, only upon probable cause and a verified Complaint. This observation is supported by Judge Boyko’s opinion, in *07-cv-02950-CAB*, *supra*, in stating that a foreclosure “plaintiff must show he has personally suffered some actual injury as a result of the illegal conduct of the defendant.” In other words, the Respondents had the Right “to be informed of the nature and cause of the accusation”. Amendment VI. The Plaintiffs herein complained of no injury. They simply demanded that the Respondents vacate Their established Home of over twenty (20) years and such demand was granted through a summary procedure which ordered the issuance of a writ of restitution. The unlawful detainer statute is therefore repugnant to the Fourth Amendment.⁵

(b) Amendment V, Bill of Rights. “No person shall ... be deprived of life, liberty, or property, without due process of

⁵ Ireland has a constitutional provision which is identical in substance to the Fourth Amendment. Unlawful detainer actions where that provision was pleaded have been defeated in Irish Common Law courts. This supports the Respondents’ perspective on this point.

law....” *Troxel v. Granville*, 530 U.S. 57; 120 S. Ct. 2054 (2000), sets forth the established precedent regarding due process of law. It teaches that due process of law “guarantees more than fair process”. It also “provides heightened protection against government interference with certain fundamental rights and liberty interests.” It is noteworthy that the Supreme Court lumps together “fundamental rights” with “liberty interests”. This shows that there are certain “fundamental rights” which are on the same level of protection under the Due Process Clause as “liberty interests” or the threat of deprivation of liberty, as in criminal prosecutions. That property Rights, including the Right to be secure in One’s home and effects, are among those “fundamental rights” which are protected under the Due Process Clause is apparent from the Fourth Amendment of the American Constitution supra, as well as Article I, Sections 3 and 16, of the Washington Constitution infra. This supports that an unlawful detainer action should be governed by the same standards for due process as a criminal prosecution. But, that is not the case. It is a summary procedure and is repugnant to the Fifth Amendment.

(2) The Washington Constitution.

(a) Article I Section 3 PERSONAL RIGHTS.

“No person shall be deprived of life, liberty, or property, without due process of law.” (Emphasis added.) The procedural due process Rights of those who

are in jeopardy of losing life or liberty are delineated in detail in Article I, Section 22. Since the deprivation of life, liberty or property are provided fundamentally the same Right to “due process of law”, it seems that the process guaranteed by Section 22 would apply equally to cases where deprivation of “life, liberty, or property” is at issue. The clause of particular interest here is the Right “to demand the nature and cause of the accusation against him.” This again reminds of Judge Boyko’s decision, *supra*, requiring an injured party. The Plaintiffs herein did not complain that the Respondents caused them harm. The unlawful detainer statute is repugnant to Article I Section 3 of the Washington Constitution. It is unconstitutional.

(b) Article I Section 21 TRIAL BY JURY. “The right of trial by jury shall remain inviolate....” Assuming that the trial court had jurisdiction over the case and the parties, and that the Plaintiffs had met their *prima facie* case, the Respondents were entitled to a jury trial to resolve the factual issues in dispute. Commissioner Gaer deprived the Respondents of this “inviolable” Right by entering summary judgment. The unlawful detainer statute, a summary procedure, is repugnant to Article I, Section 21, of the Washington Constitution. It is unconstitutional.

b. The Common Law. The unlawful detainer statute is an abrogation of the Common Law. *Truly, supra. Housing Authority v. Terry,*

114 Wn.2d 558, 789 P.2d 745 (1990). *Canterwood Place L.P. v. Thande*, 106 Wn. App. 844, 847, 25 P.3d 295 (2001), at 848. The Respondents pleaded the Common Law as an affirmative defense. *Potter*, supra, is an example of how the Common Law can be used in this regard. Potter had lost his car to a statutory impound in which the applicable WSP administrative rule was subsequently declared unconstitutional. Potter redressed the statutory impound and sale of his car through the Common Law action of conversion. The Supreme Court expressly ruled at ¶16:

[A] common law cause of action and its remedies are available ... unless the legislature clearly expressed its intent to abrogate the common law....

With unlawful detainer, the legislature did not express “its intent to abrogate the common law.” Moreover, a writ of certiorari may be granted when an action is “proceeding not according to the course of the common law....” RCW 7.16.040. In this light, Commissioner Gaer did not proceed according to the course of the Common Law, except to find that it is unrecognized by the court. [CP #11, Finding #9, Conclusion #4.]

c. CR 12(b) defenses.

(1) Lack of *in personam* jurisdiction. CR 12(b)(2).

The basis for the Respondents’ special appearance was fully delineated earlier in this presentation. But, there is more. Title 28 USC § 1332(a)(2) provides

that the federal district courts have original jurisdiction in cases of diversity of citizenship. This strips the state courts of jurisdiction in such cases.

Although the Respondents did not expressly plead Section 1332(a)(2) as a basis for Their special appearance, the parties did plead facts which established a diversity of citizenship in this case. The Plaintiffs alleged that they are residents of the COUNTY OF SNOHOMISH [CP #2, Page 1, ¶1], to which fact the Respondents admitted [CP #9, Page 7, Answer #1]. Being residents of the COUNTY OF SNOHOMISH, the Plaintiffs are members of the corporate STATE OF WASHINGTON.

On the other hand, the Respondents denied being residents of the COUNTY OF SNOHOMISH. [CP #9, Page 7, Answer #2.] The Respondents claim instead to be inhabitants of the organic Snohomish County, American Nationals domiciled in the Washington Republic, one of the several foreign States of the American Republic. The Plaintiffs did not dispute the Respondents' claim of diverse Citizenship. Additionally, Respondent Dary-Gail presented undisputed evidence which proves that the Chief Officers of the STATE OF WASHINGTON Corporation and the UNITED STATES Corporation acquiesced to Dary-Gail's expatriation from the said corporations. [CP #9, Page 2, ¶1.] There being a diversity of citizenship in this case, the state trial court did not have *in personam*

jurisdiction. Commissioner Gaer erred in finding that the court had jurisdiction “over the parties.” [CP #11, Conclusion #1.]

(2) Lack of subject matter jurisdiction. CR 12(b)(1).

The trial court’s lack of jurisdiction over the subject matter in the instant case has previously been explained. Commissioner Gaer declared this defense to be unrecognized by the court. [CP #11, Finding #9, Conclusion #4.]

(3) Failure to state a claim upon which relief may be granted. CR 12(b)(6). All of the foregoing contributes to this defense. Since the trial court lacked both *in personam* and subject matter jurisdiction, then it did not have a claim properly before it that could be granted. The court also cannot grant an unlawful detainer claim under the Common Law. But the most convincing observation in this regard is that the Plaintiffs did not make their *prima facie* case. Because they neglected to meet the statutory threshold for unlawful detainer, they did not prove the elements of their claim. The Plaintiffs did not state a claim. The court cannot grant a non-claim. But, once again, Commissioner Gaer determined that a CR 12(b)(6) defense is not recognized by the court [CP #11, Finding #9, Conclusion #4] and entered summary judgment against the Respondents [CP #12].

d. A CR 8(c) defense – Payment. The Respondents deny that the Plaintiffs had a legitimate rental or lease agreement. Nevertheless,

Respondent Ruth-Loretta admitted during the show cause hearing of April 20, 2012, that She paid rent to the Plaintiffs. Assuming, for the sake of argument, that the Plaintiffs' alleged contract is authentic, then the Respondents contend that rent has been paid on that contract for many months in advance. The Respondents claim that Ruth-Loretta and Theodore's daughter, Shirley Delores Gullicson, proffered bribes to various key people, including the Plaintiffs herein, and that those bribes were paid out of the estate which now lawfully belongs to Respondent Ruth-Loretta. If this claim were proven at trial, then Respondent Ruth-Loretta would be entitled to possession on the grounds of pre-paid rent. In the alternative, if the writ of restitution were affirmed by this Court, the Plaintiffs would be obligated to refund the pre-paid rent to Respondent Ruth-Loretta.⁶ Commissioner Gaer declared a CR 8(c) defense inadequate [CP #11, Finding #9, Conclusion #4] and entered summary judgment in the Plaintiffs' favor [CP #12].

e. ***Res Judicata.*** Commissioner Gaer dismissed the Respondents' counterclaims, finding that the counterclaims do not relate to the issue of possession. [CP #11, Finding #10.] However, Washington jurisprudence does not limit counterclaims in unlawful detainer actions exclusively to issues of possession. *Sprincin*, supra, at 57, teaches:

⁶ In either event, Respondent Dary-Gail is entitled to both possession and title on grounds of prolonged adverse possession.

The special summons required by the unlawful detainer statute (RCW 59.12) invokes the special, limited Jurisdiction of the superior court to decide only the right of possession and the incidental issues of restitution, lease forfeiture, rent, damages, other issues directly affected by the foregoing, **and counterclaims based on facts that excuse the tenant's breach of the lease.** [Emphasis added.]

Based on this, the trial court in an unlawful detainer action has limited jurisdiction but may consider counterclaims addressing the Plaintiffs' actions which resulted in the alleged violation of the lease or rental agreement by the Respondents. While Commissioner Gaer ruled that the Plaintiffs did not claim breach of the alleged rental contract, that ruling is not factually based. The Plaintiffs in fact contended that the Respondents did not comply with the provisions of Paragraph 22 of the alleged contract because They failed to vacate the property after the Plaintiffs served Them with a Notice pursuant to the said Paragraph 22, supposedly terminating the alleged tenancy. [CP #2, Page 2, Lines 17-19,⁷ 23-25.] The Respondents were permitted to state counterclaims based on facts which excuse the alleged violation of Paragraph 22 of the alleged contract, *infra*.

B. Respondents filed an Affidavit of Specific Negative Averment.

1. They sought a remedy in Admiralty. The Respondents claimed Their remedy in Admiralty, as provided by the saving to the suitors clause at Title 28 USC § 1333(1). [CP #8, Page 1, ¶1.] Their counterclaims

⁷ Contractual provisions outweigh statutory provisions in an unlawful detain action. *IBF*, *supra*, at [8].

constituted such remedy. In dismissing the counterclaims [CP #11, Conclusion #6], Commissioner Gaer deprived the Respondents of Their remedy in Admiralty.

2. They denied that Respondent is the Defendant. The Respondents negatively averred all association with the named Defendant RUTH LORETTA RIEDLINGER™. [CP #8, Pages 1-2, Count 1.] This contributes to the Respondents' special appearance, a CR 12(b)(2) defense.

3. They set forth counterclaims.

a. A Commercial Contract in Admiralty. In point of fact, the Respondents' counterclaims were stated pursuant to a contract in Admiralty. [CP #8.] It was inappropriate for Commissioner Gaer to interfere with a Private contract in Admiralty [CP #11, Conclusion #6], especially considering that she is named as a Third Party Defendant. No relief was being requested of the court. The terms of the contract were clearly defined in the contract [CP #8, Pages 3-4, "OPPORTUNITY TO CURE"] and the Third Party Defendants acquiesced to those terms by non-response. The Commissioner's decision was frivolous, irrelevant, immaterial, impertinent and evasive, and constituted unethical conduct. CJC 2.11(A)(2)(a).

b. Breach of covenant of quiet enjoyment. The Plaintiffs complained that the Respondents violated Paragraph 22 of the alleged rental

contract, *supra*. They claimed the Respondents failed to vacate the said premises after being noticed pursuant to ¶22 that the alleged tenancy had been terminated. [CP #2, Page 2, Lines 19, 23-25.]

The Respondents rebut that claim by asserting that the Plaintiffs' actions breached the covenant to live peaceably. [CP #9, Page 8, ¶5.] Such actions included, but were not limited to, aiding and abetting those who helped to murder Theodore, Ruth-Loretta's husband and Dary-Gail's father. [CP #8, Page 2-3, Counts 2-4.] This gives rise to counterclaims *inter alia* for the wrongful death of Theodore. These counterclaims are of such value that the Respondents have staked a claim to title of the property in dispute herein, as partial payment. [CP #8, Page 6, ¶20, ¶25.] If proven at trial, this would excuse the Respondents for refusing to vacate the property.

V. Conclusion.

The trial court lacked jurisdiction over this case and the parties, and the Plaintiffs did not meet their *prima facie* case. To further complicate their predicament, the Respondents claim title to the property and raised constitutional challenges based on the Common Law. The Respondents submit that the Plaintiffs wrongfully sued out a writ of restitution.

The face of it all is that the Plaintiffs claim they terminated a rental contract which they did not prove existed. *Housing Authority*, *supra*, teaches:

As a general rule, forfeiture or termination of leases is “not favored and **NEVER ENFORCED IN EQUITY UNLESS THE RIGHT THERETO IS SO CLEAR AS TO PERMIT NO DENIAL.**” *Shoemaker v. Shaug*, 5 Wn. App. 700, 704, 490 P.2d 439 (1971) (quoting *John R. Hansen, Inc. v. Pac. Int’l Corp.*, 76 Wn.2d 220, 228, 455 P.2d 946 (1969)). [Emphasis added.]

In the instant case, the Plaintiffs’ right to terminate the alleged contract is not “so clear as to permit no denial.” They had no contract and they had no right to terminate their non-existent alleged contract.

A. Respondents are entitled to a determination. *Housing*

Authority, supra, at 382, teaches:

An unlawful detainer action under chapter 59.12 RCW is not moot simply because the tenant does not have possession of the premises at the time of appeal. A tenant’s relinquishment of the premises does not necessarily mean that the right of possession is undisputed. Once an unlawful detainer action is commenced and the tenant does not concede the right of possession, the tenant has the right to have the issue determined.

B. Standard of Review. “Summary judgment rulings are reviewed de novo. *Wilson Court Ltd. P’ship v. Tony Maroni’s, Inc.*, 134 Wn.2d 692, 698, 952 P.2d 590 (1998).” *Potter*, supra, at ¶13.

C. Relief requested.

1. Reverse the trial court. Respondents ask for a reversal of the trial court’s decisions of April 20, 2012, May 8, 2012, and June 4, 2012.

2. Dismiss the Plaintiffs’ claim. Due to the trial court being deprived of jurisdiction, both *in personam* and subject matter, and

considering that the Plaintiffs failed to meet their *prima facie* case, the Respondents request that the Court of Appeals reverse the trial court by dismissing this unlawful detainer action and recall the writ of restitution.

3. Remand for further proceedings. In addition to a dismissal, the Respondents request an opportunity to redress the injuries caused to the Respondents by the Plaintiffs wrongfully suing out a writ of restitution.

a. Restore the *status quo ante*. The first and foremost consideration in regard to redress is to restore the *status quo ante*, as the Respondents have been wrongfully deprived of Their Home.

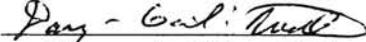
b. Redress for damages. The Respondents requested a stay of execution on the writ of restitution, pending revision, by posting a bond. But, by the time They learned that the trial court had refused to establish the amount of the bond, as provided by statute, it was too late to make alternate arrangements for the Respondents' Private property. This development resulted in the Respondents losing literally everything They owned. Included among those possessions were irreplaceable family treasures which were not necessarily of much intrinsic value but were of immense and incalculable sentimental value. The Respondents seek damages for those losses.

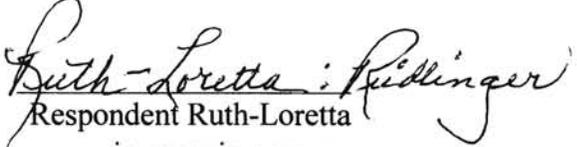
c. Breach of covenant of quiet enjoyment. The Plaintiffs breached the Respondents' right to live in peace, inter alia, by aiding and

abetting those who murdered Theodore, Respondent Ruth-Loretta's husband of 70 years. The Respondents request an opportunity to redress this atrocity, including the possibility of title transfer in partial payment for damages.

d. Deprivation of Rights under color of law. Title 42 USC § 1983. It has been shown supra, that an unlawful detainer action is in derogation of the Common Law. By definition, this identifies the statute authorizing such actions as *colourable* law. The Plaintiffs' actions in wrongfully suing out a writ of restitution deprived the Respondents of Their federally-protected Rights under the Fourth and Fifth Amendments of the American Constitution, under color of state law. Considering that bribes were involved, this was a conspiracy against Rights which is a criminal offense. Title 18 USC § 241. The Respondents seek to redress these issues, either through further proceedings herein or through an independent action.

Signed and dated this 25th day of September, 2012


Respondent Dary-Gail
in propria persona


Respondent Ruth-Loretta
in propria persona