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Case Number 74434-8-I

IN THE COURT OF APPEALS IN AND FOR THE STATE OF WASHINGTON, DIVISION I

NATE PRUDHON, Appellant

v.

R. THORESON HOMES, LLC, Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF KING

The Honorable Monica Benton,
Presiding at the Trial Court
Superior Court Case No. 15-2-17910-1 SEA

APPELLANT'S OPENING BRIEF

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 APR 22 AM 2:50

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I. Assignment of Error

The trial court erred in granting Plaintiff a judgment and writ of restitution.

II. Issues On Review

- A. Did the trial court err in signing a judgment and an order issuing a writ of restitution when no valid predicate notice was provided to Appellant?
- B. Did the trial court have jurisdiction to evict this tenant when the Seattle Municipal Court has exclusive jurisdiction over Seattle’s Just Cause Eviction Ordinance, SMC §22.206.160(C) and the respondent did not appeal the Notice of Violation to the Seattle Municipal Court?
- C. Does Appellant have standing to request review when possession is no longer at issue when his right to possession is at issue?
- D. Should this Court vacate the decision of the trial court and award fees to the Appellant?

III. Statement of the Case

This appeal arises out of an eviction action. Appellant Nate Prudhon (“Prudhon”) rented a house located at 728 14th Ave., Seattle, Washington, 98122 from Denise Burnside on May 22, 2009 C.P. 299, 1-9.

The initial lease expired a year later, and the rental agreement continued as a month-to-month agreement, subject to Seattle's Just Cause Eviction Ordinance ("JCEO"), SMC §22.206.160.

On April 1, 2015, Mrs. Burnside entered into a purchase and sale agreement with Blueprint Capital Services, LLC. ("Blueprint") C.P. 299:16. Blueprint assigned the purchase and sale agreement to R. Thoreson Homes, LLC ("Thoreson"). C.P. 299 16-18. On April 2, 2015, Mrs. Burnside issued a notice to Mr. Prudhon that she intends to sell the property, and as such was giving him sixty days advance notice that he needed to vacate under SMC 22.206.160(C)(1)(f). C.P. 330.

Mr. Prudhon brought this notice to the City of Seattle and requested review of the notice. C.P. 339-341.

On April 9, 2015, the sale closed. C.P. 335.

On April 16, the City of Seattle issued a Notice of Violation to Mrs. Burnside, advising her that the notice she had issued did not comply with SMC 22.206160(C)(1)(f). C.P.340.

On April 16, Thoreson requested review of the City's Notice of Violation. On May 15, 2015, Diane C. Davis, Review Officer, City of Seattle Department of Planning and Development, upheld the City's determination that the notice to terminate the tenancy was invalid, and sustained the Notice of Violation. C.P. 334-338.

Ms. Davis articulated that “The owner cannot rely on an “intent to sell” just cause designed to allow an owner to make a property more saleable by offering it without a tenant in place, if **the property has already been sold with a tenant in residence.**” C.P. 336. (emphasis added). Ms. Davis sustained the Notice of Violation and extended the compliance date. C.P. 338. Thoreson did not appeal this decision to the Seattle Municipal Court.

Instead, on June 11, 2016 Respondent Thoreson filed suit under King County Cause No. 15-2-14147-3 SEA against the City and Mr. Prudhon asserting that it had no remedy at law, and requested that the Superior Court find the notice applicable and proper, and requested that the Superior Court permanently enjoin the City from enforcing SMC 22.206.160(C) (f)(1). C.P.487.

Then on July 23, 2015, Respondent Thoreson filed this unlawful detainer, asserting that the April 2, 2015 notice served on Mr. Prudhon was the basis for this eviction action. C.P. 300, 1-3. At the show cause hearing held August 14, 2015, Commissioner Henry Judson set the matter on for trial. C.P. 347-348.

The parties agreed to present the arguments without testimony, because the dispute concerns the validity of the predicate notice.

On October 8, 2015, the Honorable Monica Benton heard argument. C.P. 349. Plaintiff admitted that the core question was whether or not the notice was valid. R.P. 5:8-9. The Court then requested argument on the propriety of the statute. R.P. 5:19. Plaintiff argued that “the fact that the City issued a Notice of Violation doesn’t have any effect on this Court to determine that the termination notice was valid”. R.P. 6:19-21. Plaintiff argued that, “there is no requirement that it must wait until the tenant’s vacated the property” R.P. 8:23, 24. Plaintiff stated that, “the policy behind this is so they don’t use this as a sort of a way to evict tenants when they have no intention of actually selling the property”. R.P. 9:20-23. Thoreson has never demonstrated any intention of selling the property.

Plaintiff argued that there was “no mechanism for requesting a hearing”, R.P. 8:18 when in fact there is a mechanism, which is a request for review by the Seattle Municipal Court. The court requested additional briefing on the issue of where and to whom the Notice of Violation should have been appealed. R.P. 23:8, stating that the Court’s understanding was the “appeal of the Director’s Order invalidating the Notice of Violation has not been satisfied. It seems to me that makes this a jurisdictional question, which can always be raised.” R.P. 25:8-12.

Defendant's revised trial brief articulated that RCW 35.20 *et seq.* vests the Seattle Municipal Court with exclusive jurisdiction to determine the applicability and enforceability of the April 2, 2015 notice. C.P. 479 at 20, RCW 35.20.030.

On December 3, 2015, without further argument or notice, the Honorable Monica Benton signed an order evicting Mr. Prudhon C.P. 527-529. On December 9, 2015, the Appellant requested a stay of the writ, and reconsideration of that decision. C.P. 532 – 539. On December 22, 2015, the Court signed a judgment awarding Respondent \$17,725.46 in attorney fees and costs C.P. 582-583, and on January 5, 2016, denied the Appellant's December 9, 2015 motion to stay the writ and for reconsideration, by which time the physical eviction had happened.

IV. Argument

A. STANDARD OF REVIEW

“A challenge to the adequacy of unlawful detainer notice presents a mixed question of law and fact, which an appellate court reviews *de novo*.” *Hall v. Feigenbaum*, 178 Wn. App. 811, 815, 319 P.3d 61, 63 (2014).

Appellant maintains that the notice he received was irrelevant, inadequate and untimely.

An appellate court considers de novo the adequacy of a termination notice under a lease. *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 251, 228 P.3d 1289, 1289 (2010).

Because there was no testimony taken by the Court, the Court's decision of December 3, 2015 should be reviewed on a summary judgment standard.

When reviewing a summary judgment order, the appellate court engages in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Riojas v. Grant County Pub. Util. Dist.*, 117 Wn. App. 694, 697, 72 P.3d 1093 (2003). Summary judgment is appropriate only if the moving party can show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). "A material fact is one upon which the outcome of the litigation depends in whole or in part."

FPA Crescent Assocs., LLC v. Jamie's LLC, 190 Wn. App. 666, 674, 360 P.3d 934, 938 (2015)(citing *Atherton Condo. Apt.-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990))

Here, the outcome of the litigation turns on whether the April 2, 2015 notice was valid under SMC 22.206.160(C)(f)(1), when the City determined the notice was not valid, and ordered Thoreson to rescind it, on the basis that SMC 22.206.160(C)(f)(1) did not apply to this termination notice, and Thoreson did not appeal that determination to the Seattle Municipal Court.

“A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons.” *State v. Garcia*, 179 Wn. 2d 828, 318 P.3d 266 (2014) (internal citations omitted).

The Court abused its discretion by concluding the notice was valid and a proper basis for this eviction. The notice has been twice ordered rescinded, and Thoreson did not appeal the City’s decision to the Seattle Municipal Court.

“A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. Untenable reasons include errors of law.” *Council House, Inc. v. Hawk*, 136 Wn. App. 153, 156, 147 P.3d 1305, 1306 (2006).

The Court’s order merely recites that the notice was applicable and proper. C.P. 528. No analysis was provided. It was an error of law to order an eviction without a predicate notice.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; and it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.”

Keck v. Collins, 181 Wn. App. 67, 325 P.3d 306 (2014).

The only reasonable decision the Superior Court could have made was to dismiss this action. This eviction was predicated on an invalid

notice, that the Respondent failed to request review by the only court that could have reviewed it: Seattle Municipal Court. Because Thoreson did not appeal the City's Notice of Violation, the Notice became a final order. These facts do not meet the correct standard for evictions in Seattle, Washington so this Court should dismiss this action, and award appellant fees.

A. ISSUE ONE

DID THE TRIAL COURT ERR WHEN IT GAVE PLAINTIFF POSSESSION OF THE PROPERTY WITHOUT A VALID PREDICATE NOTICE?

To commence an unlawful detainer action, the tenant must first be in violation of a condition of their lease, and then issued a predicate notice. RCW 59.12.030. Under state law, here are seven different notices that a landlord can use to commence an unlawful detainer action. RCW 59.12.030.

The unlawful detainer statute, Wn. Rev. Code § 59.12.030(1), (3), is in derogation of common law. . . To take advantage of the unlawful detainer action and reap the benefits of a summary proceeding, the landlord must comply with the requirements of the statute. Because the statute curtails the application of common law, any ambiguities must be strictly construed in favor of a tenant.

FPA Crescent Assocs., LLC v. Jamie's LLC, 190 Wn. App. 666, 668, 360 P.3d, 935 (2015).

Thoreson failed to comply with the JCEO, and thus never had standing to evict this tenant.

If the tenancy is located in the City of Seattle, then the City's Just Cause Eviction Ordinance applies. With Seattle, Wash., Code § 22.206.160, the city provides tenants added protections not available to them under Wash. Rev. Code Ch. 59.18, the Residential Landlord-Tenant Act of 1973. The city adopts substantive provisions and procedures applicable to an eviction process and safeguards to ensure landlord compliance. § 22.206.160(C). . . . In Seattle, the landlord cannot evict, or attempt to evict, a residential tenant unless the landlord can prove in court that just cause exists. § 22.206.160(C).

Faciszewski v. Brown, 192 Wn. App. 441, 443 (2016).

Here, Thoreson never proved just cause existed to terminate Prudhon's tenancy, because there was never a valid predicate notice.

"A landlord of property in Seattle must use one of sixteen specific reasons in order to terminate a tenancy. The ordinance prohibits evictions or terminations without just cause and provides a defense to any eviction or termination proceeding under § 22.206.160(C)(1, 5)." *Hous. Auth. v. Silva*, 94 Wn. App. 731, 732, 972 P.2d 952, 953 (1999).

SMC 22.206.160(C) (1)(f) provides a landlord with Just Cause when the tenant is given sixty days **advance** notice of the landlord's intent to sell the property. (emphasis added). In order to utilize this section, the previous landlord, Mrs. Burnside, would have had to have given this notice to Prudhon on or before January 10, 2015 in order to give him sixty

day's advance notice of the sale, to then have the property vacant so the property could be sold without a tenant in residence on April 11, 2015. The notice was not provided until April 2, 2015, after Mrs. Burnside had already agreed to sell the property. April 2 to April 11 is nine days, not sixty.

Thoreson has never asserted he intends to sell the property.

Prudhon asked the City to review the notice he had received; the City reviewed the notice and ordered Ms. Burnside to rescind the notice. The notice was not rescinded. Thoreson closed the sale on April 11, 2015 C.P. 300 Line 4, and appealed the City's decision to uphold the Notice of Violation issued to Ms. Burnside. C.P. 335. The DCD issued a decision on that appeal, upholding the City's decision that the notice was improper and giving Thoreson additional time to rescind the notice. Thoreson never rescinded the notice, and Thoreson never appealed the DPD's decision to the Seattle Municipal Court.

Instead, Thoreson filed suit in Superior Court requesting injunctive relief, under Cause No. 15-2-14147-3 SEA. He requested that the Superior Court determine that the notice was valid, and prohibit the City from using this provision ever again. C.P. 488. Without waiting for a decision in that action, Thoreson filed this unlawful detainer action.

When Thoreson commenced this unlawful detainer action, Thoreson did not have a valid predicate notice. The property was sold by the previous owner with the tenant in place, and the new owner (Thoreson) had no plans to sell the property.

As Diane Davis explained:

“The owner cannot rely on an “intent to sell” just cause designed to allow an owner to make a property more saleable by offering it without a tenant in place, if the property has already been sold with a tenant in residence.”

“ to allow this just cause to be applied in these circumstances would enable the new owner to evade his obligations under the Tenant Relocation Assistance ordinance and thereby frustrate the intent of that Ordinance”

C.P. 336.

The Superior Court never had the authority to terminate this tenancy, because Mr. Prudhon was never provided a valid predicate notice. “Public policy choices are for legislative bodies to make; this authority does not belong to an appellate court, whose fundamental function is review of lower court decisions”. *Faciszewski v. Brown*, 192 Wn. App. 441, 443 (2016).

A superior court has jurisdiction over unlawful detainer actions. Wash. Rev. Code § 59.12.050. The state constitution vests the superior courts with broad authority over real estate disputes, and the unlawful detainer statute explicitly gives jurisdiction over unlawful detainer actions to the superior courts. Wash. Const. art. IV, § 6. This jurisdiction remains constant regardless of procedural

missteps by the parties, *but a party filing an action after improper notice may not maintain such action or avail itself of the superior court's jurisdiction.*

Hall v. Feigenbaum, 178 Wn. App. 811, 815 319 P.3d 61, 63

(2014)(emphasis added).

Thoreson commenced this action based on an improper notice, that the City ordered rescinded. He appealed the City's decision to the Department of Planning and Development, but when he received an unfavorable ruling, failed to appeal DPD's decision to the Seattle Municipal Court, from which he could have appealed to the Superior Court. A Notice of Violation gives notice to interested parties and if not appealed becomes a final order. *Cranwell v. Mesec*, 77 Wn. App. 90, 890 P.2d 491(1995). The notice therefore remains improper, and thus is not a valid predicate to this eviction action. This Court should not allow this improper notice to be retroactively bootstrapped into compliance.

B. ISSUE TWO

DID THE SUPERIOR COURT PROPERLY OVERRULE THE CITY'S DECISION WHEN THE SEATTLE MUNICIPAL COURT HAS EXCLUSIVE JURISDICTION TO DECIDE ISSUES ARISING OUT OF THE SEATTLE JUST CAUSE EVICTION ORDINANCE, AND THORESON DID NOT REQUEST A DECISION REGARDING THE NOTICE FROM THE SEATTLE MUNICIPAL COURT?

First-class cities, including Seattle, are self-governing bodies, and the only limitation on their power is that their actions cannot contravene constitutional provisions or legislative enactments. The Seattle housing code contains

enforcement provisions and authorizes cumulative penalties for certain ongoing [municipal code] violations.

City of Seattle v. Sisley, 164 Wn. App. 261, 266, 363 P.3d 610

(2011)(citing Seattle Municipal Code (SMC) § 22.206.280). Seattle

Municipal Court is the court with jurisdiction to decide matters arising out

of the “Just Cause Eviction Ordinance Ordinance” (JCEO). SMC §

3.33.020.

“RCW 35.20.030 grants municipal courts exclusive jurisdiction to hear violations of city ordinances and to pronounce judgment in accordance therewith”. *Sisley*, 164 Wn. App. at 265.

All civil . . . proceedings in Municipal Court, and judgments rendered therein, shall be subject to review in the Superior Court by writ of review or on appeal. SMC 3.33.020.

Here, Thoreson did not ask the Municipal Court to review the City’s decision, and did not bring a writ of review or an appeal to the Superior Court as required by the Seattle Municipal Code § 3.33.020. It was therefore manifestly unreasonable for the Superior court to issue a judgment and a writ because the question of the validity of the predicate notice belonged in the Municipal Court, and thus was never properly before the Superior Court. Because Thoreson failed to appeal the City’s

Order, the notice given to Prudhon was invalid, and therefore, the notice could not be the basis for this eviction.

The landlord's noncompliance with laws and procedures governing the tenancy merely precludes the superior court from “exercising” subject matter jurisdiction over the unlawful detainer proceeding. *See Hous. Auth. of City of Seattle v. Bin*, 163 Wn. App. 367, 373-374, 260 P.3d 900, 901 (2011).

[T]he state constitution vests the superior court with subject matter jurisdiction in unlawful detainer actions, and its jurisdiction remains constant regardless of procedural missteps by the parties. *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254 n.9, 228 P.3d 1289 (2010). There, the tenant was served with a termination notice that failed to provide details required by the lease. The trial court denied a motion to dismiss. The Court of Appeals reversed and remanded for dismissal of the action—not because the trial court lacked subject matter jurisdiction, but because the notice was insufficient to permit the action to be maintained.

Bin, 164 Wn. App. at 373-74 (citing *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254 n.9, 228 P.3d 1289 (2010)).

This Court should reverse and remand this action for dismissal on the same basis.

C. ISSUE THREE

IS THIS MATTER MOOT WHEN POSSESSION IS NO LONGER AT ISSUE?

A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide

effective relief. But an unlawful detainer action is not moot simply because a tenant no longer has possession of the premises. If the tenant does not concede the right of possession, she has the right to have the issue determined. Further, if a tenant has a monetary stake in the outcome of the case, such as payment of rent and attorney fees, the supreme court has held that obviously, such a case is not moot.

IBF, LLC V. HEUFT, 141 Wn. App. 624, 628, 174 P.3d 95, 97

(2007).

Prudhon has never conceded his right to possession. Prudhon relied to his detriment on the City's representations that Thoreson was in violation of the SMC Just Cause Eviction Ordinance, and that the Ordinance, by its plain language, provided him with a defense. SMC§22.206.160(C)(5). Prudhon now has a judgment entered against him obliging him to pay the Plaintiff \$17,725.46. This matter is not moot.

D. ISSUE FOUR

SHOULD THE TRIAL COURT'S ORDER REGARDING ATTORNEY FEES AND COSTS BE VACATED?

This court should vacate the trial court's ruling granting Plaintiff \$17,725.46 in attorney fees, and order that fees awarded to Appellant both for the trial work, and for this appeal.

When a lease agreement contains a provision providing for an award of attorney fees to the prevailing party in any action under the lease, the tenant may recover attorney fees in an action for unlawful detainer

under chapter 59.12 RCW that is dismissed because of the landlord's noncompliance with regulations and grievance procedures governing the tenancy. *See Bin*, 163 Wn. App. at 369. Reasonable attorney fees are recoverable on appeal if allowed by contract and a request for fees is made in compliance with RAP 18.1. *Bin*, 164 Wn. App. at 378.

Here, the contract between the parties provides for reasonable attorney fees to be awarded to the prevailing party. C.P.304. An attorney fee provision in a written lease will support an award of attorney fees on appeal. *IBF, LLC v. Heuft*, 141 Wn. App. 624, 628, 174 P.3d 95, 97 (2007). The Residential Landlord-Tenant Act provides for an award of attorney fees to the prevailing party. RCW 59.18.410. Prudhon requests attorney fees and costs should he prevail at this Court.

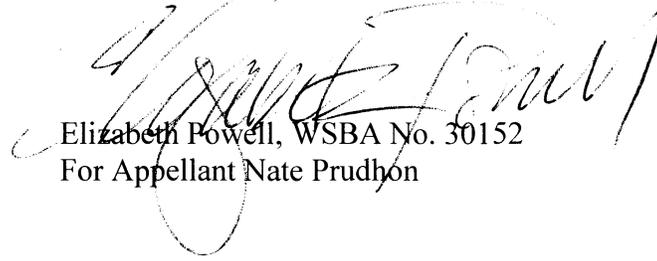
V. CONCLUSION

Because Thoreson failed to appeal the City's Just Cause Eviction Ordinance Notice of Violation to the Seattle Municipal Court, Thoreson could not avail himself of the Superior Court's jurisdiction to evict Prudhon. The trial court's decision should be reversed, and the order awarding fees and costs should be vacated.

This Court should uphold the City's determination that the notice given Prudhon was not valid, and vacate the trial court's orders.

Respectfully submitted this 21st day of April, 2016.

Elizabeth Powell, PS Inc

A handwritten signature in black ink, appearing to read 'Elizabeth Powell', is written over the typed name and company information.

Elizabeth Powell, WSBA No. 30152
For Appellant Nate Prudhon

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION ONE

NATE PRUDHON, Appellant,

COA No. 74434-8-I

v

Certificate of Service

R. THORESON HOMES, LLC, A
Washington Limited Liability Company,
Respondent.

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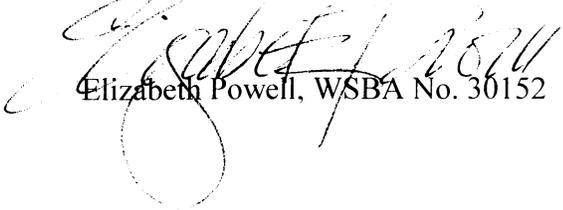
Elizabeth Powell on oath states:

On the 21st day of April 2016, I caused a true and correct copy of the Appellant's Opening Brief to be served on the following in the manner indicated below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this 21st day of April, 2016, and signed at Tacoma, Washington.

Elizabeth Powell, PS Inc.


Elizabeth Powell, WSBA No. 30152

CERTIFICATE OF SERVICE

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