NO. 1032072

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MORGAN AIKEN III,
Appellant

v.

ROCIO SANCHEZ and MARTA BECERIA,
Respondents.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING

The Honorable Judge Ruhl

RESPONDENT ROCIO SANCHEZ'S OPPOSITION TO PETITION FOR REVIEW OF THE COURT OF APPEALS MAY 28, 2024 DECISION IN 84115-7-1

NEWMAN LLP
Keith Scully, WSBA No. 28677
keith@newmanlaw.com
1201 Second Avenue, Suite 900
Seattle, WA 98101

Attorney for Respondent Rocio Sanchez

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

Defendant/Respondent Rocio Sanchez was the manager of an apartment complex where both Plaintiff/Petitioner Morgan Aiken III and co-Defendant Marta Beceria[1] lived. Beceria complained of noise coming from Aiken's apartment—specifically, that she could hear him having sex and it was disturbing to her and her young child. Sanchez asked Aiken to quiet down and gave him two noise warnings. Later, Beceria called the police for noises coming from Aiken's apartment.

These complaints infuriated Aiken and he began a campaign of frivolous litigation. After one lawsuit against the apartment complex was dismissed without prejudice, he filed no less than sixteen separate complaints and proposed amendments attempting to find a legal theory wherein he could sue the apartment building manager and his neighbor for being warned about noise. The Honorable John Ruhl dismissed Aiken's second lawsuit with prejudice, finding Aiken's pro se filings rambling, confusing, and lacking a cognizable legal theory. Judge Ruhl also granted Sanchez's request for attorney's fees and sanctions under CR 11 and RCW 4.84.185.

The Court of Appeals of Washington affirmed the trial court's dismissal of Petitioner's civil conspiracy and breach of

[1] Beceria was represented by separate counsel at the trial level and is pro se now.

the covenant of quiet use and enjoyment claims and CR 11 sanctions, engaging in a *de novo* review of the trial court's grant of summary judgment. The court also declined review of Petitioner's unfair trial claim for failure to bring a timely motion for a new trial at the Superior Court.[2]

In his petition to this Court, Petitioner continues to fail to advance any legal theory upon which relief can be granted. None of Petitioner's proposed questions involve any significant question of law or issue of substantial public interest. The Court should decline review.

II. STATEMENT OF THE CASE

A. Statement of the Facts.

Petitioner Aiken was a tenant at Sky Garden Park Villa Apartments where Respondent Rocio Sanchez was the property manager and Respondent Marta Beceria was his neighbor. CP 1. Aiken received two noise warnings from Sanchez in December 2020 and January 2021 after Sanchez received complaints from Beceria. CP 14–15. Aiken vehemently denied that the noises were caused by him and blamed his other neighbors for making noise. Aiken then began sending Sanchez daily noise complaints about everyday noises he heard from his

[2] The Court of Appeals reversed only the trial court's award of anti-SLAPP sanctions against Aiken and awarded to Beceria. Sanchez did not seek anti-SLAPP sanctions.

neighbors, such as snoring, toilets flushing, washing dishes, and random conversations. Sanchez thanked him for his emails but requested that Aiken only report noises that disturbed the peace or constituted a nuisance under the terms of his lease.

Aiken was never fined, evicted, or otherwise penalized for any of the noise complaints or for any other reason. When Aiken's lease expired on October 31, 2020, the lease was not renewed and Aiken began to be charged for a month-to-month tenancy, in accordance with the terms of his expired lease.

B. Procedural History

Petitioner filed this action against Sanchez and Beceria in King County Superior Court on July 12, 2021. CP 1. This was the second lawsuit brought by Aiken alleging identical facts. CP 501–509. The first lawsuit was brought on February 17, 2021 against Sanchez and Sky Garden Park Villa Apartments for criminal solicitation, criminal conspiracy, criminal harassment and threats, and breach of contract. *Id.* The Honorable Michael Scott dismissed Aiken's first lawsuit without prejudice. CP 670.

In the instant lawsuit, Aiken's sole relief was initially requests that the nuisance notices be removed from the apartment building's record, that the alleged harassment and threats cease, and that his costs in preparing the complaint be

reimbursed. CP 1–7. Aiken identified no monetary loss or other damage. In a later filing Aiken sought $100 million in punitive damages for civil conspiracy (CP 1068–1077), which was then amended to a request for $1 billion in punitive damages "to deter such acts as committed by the Defendants." CP 1246.

The docket and Clerk's Papers accurately depict Aiken's misuse of the judicial system and history of frivolous filings. (*See generally* Index.) In less than one year, the docket for the underlying trial court action has 202 entries, nearly all filed by Aiken and nearly all before defendants had a chance to file their motion to dismiss. Aiken filed over 16 documents with the court for his pleadings alone. Aiken filed one complaint, two amended complaints, six motions to amend the complaint, one motion to supplement the complaint, one motion to correct exhibit numbers, and five motions to strike his own complaint.

Aiken was on notice as early as March 11, 2021 when Sanchez filed her motion to dismiss Aiken's first lawsuit that his pleadings were not grounded in law. CP 522–29. Many of the legal arguments that were advanced in Sanchez's motion to dismiss the second lawsuit were the same as the ones advanced in her motion to dismiss the first lawsuit, including Aiken's inability to prosecute crimes as a private citizen, Aiken's failure to request the proscribed remedies under the RLTA, and Aiken's failure to identify any loss or damage. *Id.*

Aiken also had other chances to dismiss this second action when Sanchez's counsel reached out to Aiken. On one occasion Sanchez's counsel sent a draft of the unfiled motion to dismiss and offered Aiken an opportunity to dismiss the action in exchange for Sanchez not filing the motion and request for fees. CP 537–546. Aiken did not dismiss the matter. On another occasion, Sanchez's counsel reviewed Aiken's proposed motion to amend his pleading and warned him that his lawsuit was frivolous and that the proposed amendments would not fix the issues with his pleadings. CP 547–549. Aiken was again warned that he would likely be liable for attorney fees and that continuing with court filings that create more work for Sanchez and her counsel would continue to raise those costs. *Id.*

Aiken sent discovery to Sanchez which contained numerous inappropriate and irrelevant requests. Aiken asked Ms. Sanchez "[d]o you engage in sexual activity in your apartment," "[h]ave you noticed any newborn babies in the apartment complex? If so, do you think they were conceived in one of the units at the complex," and "[h]ave you seen Plaintiff with someone that can be construed as a sexual partner?" CP 1091–1095.

On April 7, 2022, Judge Ruhl held a hearing on the two motions to dismiss filed by each Respondent. Judge Ruhl found that Aiken's filings did not state any cognizable claim for a

viable remedy. CP 1379–90. Because there was no contract between Aiken and either Sanchez or Beceria, there could be no breach of the covenant of quiet enjoyment. And because Aiken is a private citizen, not a sovereign, he could not prosecute crimes against the Respondents. Judge Ruhl found that Aiken persisted in his lawsuit without any reasonable basis, brought the claims in bad faith to harass the Respondents, and abused judicial resources. He also denied Aiken's discovery motions as moot.

Aiken appealed the court's dismissal of his claims of civil conspiracy and breach of the implied covenant of quiet use and enjoyment to the Court of Appeals of Washington, which reviewed the Superior Court's order granting summary judgment *de novo*. Court of Appeals Opinion ("Opinion") at 9. For the first time on appeal, he also argued that the Superior Court violated his right to a fair trial because, he alleged, the judge's sanctions and damages decisions were "tainted by racial bias." *Id*. at 22. Petitioner raised this issue for the first time on appeal and presented no evidence, instead speculating that because Beceria's attorney characterized Aiken as " harassing, vexatious, abusive, intimidating, trying to silence Becerra (sic), retaliatory, trying to get revenge, lying to or misleading the tow company, targeting Becerra, watching violent images on his television, and invasive for sending interrogatories about the

subject matter of the case, while describing Becerra as 'extremely fearful for her safety and the safety of her child'" those words must be imputed to the Superior Court judge who heard the case because he used the words "harassment in search of a legal theory" to describe Aiken's meritless lawsuit. (Petition at 8-9.)

As to the civil conspiracy claim, the Court of Appeals found no error because Aiken failed to allege circumstances that were inconsistent with a lawful purpose and consistent *only* with the existence of a conspiracy. *Id*. at 11–12. The Court of Appeals also found no error in the Superior Court's dismissal of Aiken's breach of the covenant of quiet use and enjoyment claim because a landlord does not breach any duty by "[w]arning a tenant that he must comply with noise restrictions in his lease," and therefore Aiken did not meet the standard for a breach of the covenant of quiet use and enjoyment under *Cherberg v. National Peoples Bank of Washington*, 15 Wn. App. 336 (1976). *Id*. at 12–13. The Court also noted that Aiken was never evicted, fined, or otherwise punished for the noise complaints. *Id*. at 12.

The Court of Appeals then declined to review the fair trial issue because, under *Henderson v. Thompson*, 200 Wn.2d 417, 435 (2022), "the determination of whether racial bias warrants a

new trial must be raised in the trial court, and Aiken did not assert racial bias below as a basis for relief." *Id*. at 22 and n. 13.

III. REASONS THE COURT SHOULD DENY REVIEW

A. The issues proposed by Petitioner are well-settled.

RAP 13.4(b) provides that "[a] petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court."

B. Breach of contract and RLTA law is well-settled and there is no issue requiring the Court's intervention.

Washington law regarding claims for civil conspiracy and breach of the implied covenant of quiet use and enjoyment is well-settled and easily resolves Petitioner's challenge of the trial court order dismissing his claims in Respondents' favor. Petitioner does not argue otherwise: although he mistakenly claims both the trial court, and the Court of Appeals in its de novo review were wrong, he identifies no inconsistencies between Courts of Appeal, unresolved issues of law, or matters

of public import in either contract or RLTA law. Those claims can be disposed of on this basis alone.

C. Alleged racial bias must be raised to the trial court.

Petitioner argues that the Court should consider whether a party must raise an allegation that a result was racially biased to the trial court. But this too is well-settled. CR 59(a)(1) and (9) provide that a motion for a new trial or reconsideration "may be granted for . . . [i]rregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial . . . [or where] substantial justice has not been done." However, CR 59(b) states, such a motion "shall be filed not later than 10 days after the entry of the judgment, order, or other decision . . ." (emphasis added). *Henderson v. Thompson*, 200 Wn.2d 417, 422, 518 P.3d 1011, 1017 (2022), the Washington Supreme Court case upon which Petitioner relies, confirms this requirement: in that case, the plaintiff moved at the trial court level for a new trial on the ground that appeals to racial bias affected the jury verdict. In reversing the trial court's denial of the motion, the Court held that "[a] trial court must hold a hearing on a new trial motion when the proponent makes a prima facie case showing that an objective observer (who is aware that implicit, institutional, and unconscious biases, in

addition to purposeful discrimination, have influenced jury verdicts in Washington State) could view race as a factor in the verdict."

The Court of Appeals applied this settled principle in the very recent case of *In re Dependency of N.M.L.H.*, 2024 Wash.App. LEXIS 1266, *28–30 (June 24, 2024) and declined to consider a fair trial claim based on alleged racial bias because the petitioner neither raised the issue below nor sought a new trial on that basis.

There is a solid reason this motion must be made to the trial court. Without it, there is no opportunity for a record to be made regarding the bias allegations. This case is a stellar example of why that is so important. Appellate counsel, who was not present for the trial, plucked a couple of random facts from the record—words like "vexatious" used by Beceria's attorney and that Beceria noted that the violent television Aiken watched and she could hear disturbed her--and from those isolated facts claims a whole new hearing must be held because Judge Ruhl was influenced by them. No party had a chance to explore and develop those facts, or ask for findings from Judge Ruhl regarding whether he interpreted terms like "vexatious" and "abusive" as racially-charged or if he relied on those terms at all in his ruling. Judge Ruhl retired from the Superior Court

bench shortly after the hearing, and even if the Court were to remand for fact-finding none could be held.

D. Even if the racial bias issue had been preserved, there is no basis to remand.

Petitioner was required to present evidence that "an objective observer (who is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have influenced jury verdicts in Washington State) could view race as a factor." *Henderson,* 200 Wn.2d at 422–23. For example, in *In re Dependency of Aa.D.Y.*, 2023 Wash.App. LEXIS 1027 at *33–34 (Wash. App. May 30, 2023), the Court of Appeals found that the terms "thwarted" and "refusal" used by the trial court to describe "I.A.'s" nonengagement with services offered by the Department of Children, Youth, and Families, in context, was not a signal of bias, but an "assessment of I.A.'s behaviors relevant to her ability to parent the children," and so I.A. did not make a prima facie case of racial bias affecting the trial court's decision.

Petitioner has failed to make a prima facie case of racial bias. He argues that "[t]he trial court demonstrated that it was influenced by this coded language invoking racial stereotypes when it stated in its order that Aiken's lawsuit was 'harassment in search of a legal theory,' and that he 'knowingly and deliberately proceeded with no reasonable basis' even though

Aiken demonstrated in this appeal that he did have a legal basis." Petition at 18–19. Petitioner's claims were frivolous and advanced without reasonable cause and the trial court ruled as such. Like the Court of Appeals in *In re Dependency of Aa.D.Y* found, the terms used by the trial court merely reflected the facts of the case relevant to the court's dismissal of claims and issuance of sanctions: that Petitioner filed nearly 200 entries in the underlying trial court action in less than a year, including 16 documents for his pleadings alone; failed to identify any monetary loss or other damage or state any cognizable claim for a viable remedy, CP 1379-90; sought $100 million and then $1 billion in punitive damages, CP 1246; was put on notice on several occasions that his pleadings were not grounded in law, even when filing his second lawsuit, and still refused to dismiss his action, CP 522–29, 537–49; and sent discovery to Respondent Sanchez containing numerous inappropriate and irrelevant requests, including an interrogatory asking whether she "engage[s] in sexual activity in [her] apartment," CP 1091–95.

No objective observer, aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have influenced jury verdicts in Washington State, could view race as a factor in this order. Speculation that an opposing counsel's comments might have been racially

biased and might then have affected a trial court's ruling cannot be the basis for overturning every ruling; if every word is scrutinized and assumed to have maximum impact few results would pass muster.

Further, unlike the jury verdict in *Henderson* which is reviewed on a substantial evidence basis, the Court of Appeals reviewed each ruling from the Superior Court de novo. Even if Judge Ruhl had been racially biased—and there is absolutely no indication that he was—Petitioner has already had his de novo review.

E. The trial court ruled and the Court of Appeals correctly affirmed that Petitioner's claims were frivolous and that Petitioner failed to state a claim upon which relief could be granted.

The Superior Court dismissed this case on Respondents' motions to dismiss under CR 12(b)(6) and (c). Order at 3–5. Petitioner mischaracterizes the trial court's order as a dismissal "for lack of evidence." Petition at 2, 5, 6, 25, and 26. To the contrary, the Superior Court ruled that the Petitioner's Complaint "fail[ed] to state a claim upon which relief can be granted," and that Respondents were "entitled to a judgment as a matter of law." Order at 10. The trial court only dismissed the case after reviewing Petitioner's several attempts to amend and considering supporting affidavits.

Petitioner alleges no harm entitling him to relief. Respondent Sanchez took no action further than the few notices to comply with the complex's noise and anti-harassment policies; Petitioner was never evicted, a fact which Petitioner does not deny. Order at 8; Opinion at 2. Petitioner failed to identify any loss or damage other than that he "experienced extreme emotional distress and lived in fear of being evicted." Petition at 4.

With regard to his civil conspiracy claim, Petitioner needed to allege that (1) two or more people combined to accomplish an *unlawful purpose*, or combined to accomplish a lawful purpose by unlawful means; and (2) the "alleged conspirators entered into an *agreement* to accomplish the object of the conspiracy." *Corbit v. J.I. Case Co.*, 70 Wn.2d 522, 528–29 (1967). The circumstances "must be inconsistent with a lawful or honest purpose and reasonably consistent *only* with existence of the conspiracy." *Id*. at 529. In *Corbit*, the Court held that the trial court erred by denying the defendant's motion for a directed verdict on the plaintiffs' civil conspiracy count because the plaintiffs failed to prove the first prong. One could infer, the Court explained, that the letter relied upon by the plaintiffs reflected a conspiracy for an unlawful purpose, but it was "equally possible to attribute a lawful motive" to the communications. *Corbit*, 70 Wn.2d at 530–31. *See also Couie*

v. United Bhd. of Carpenters & Joiners, 51 Wn.2d 108, 112–13 (1957) (holding that plaintiff failed to prove civil conspiracy where plaintiff was charged by defendant carpenters' local with violation of a provision other members had also violated without disciplinary action being taken even though the defendant allegedly had a motive for ousting plaintiff.)

Petitioner attempts to argue that he met his burden under *Corbit* by alleging that Respondents were "in cahoots," and that this was a "reasonable inference" from the "fact that every time Beceria banged on the wall at night, Sanchez would initiate a pre-litigation eviction notice to Aiken the next day." Petition at 24–25. If true, the circumstances alleged by Petitioner could possibly reflect a combination for an unlawful purpose, but, like the courts in *Corbit* and *Couie* found, they are also consistent with the lawful purpose of preventing nuisance, as the Court of Appeals explained. Opinion at 11–12. Similarly, the alleged actions of Respondents may indicate an agreement between the parties but could also be explained independently of each other. *Corbit*, 70 Wn.2d at 529. In short, the alleged circumstances are not, as *Corbit* requires, "inconsistent with a lawful or honest purpose and reasonably consistent *only* with existence of the conspiracy." *Id*. at 529.

As to Petitioner's breach of implied covenant of quiet use and enjoyment claim, the Court of Appeals held that under

Cherberg, Petitioner presented no genuine issue as to any fact material to the claim, explaining that a landlord is liable for breaching such a covenant "only when it has breached an underlying duty which results in an invasion of the interests secured," and that a landlord does not breach any such duty by warning a tenant that he must comply with his lease's noise restrictions. *Cherberg*, 15 Wn. App. at 343; Opinion at 13. Further, Petitioner is not a party to a contract with Sanchez, the apartment complex manager. He is a party to his lease, which is with the property owner.

In response, the Petitioner scrambles to create a duty where there is none: he argues that RCW 59.12.030(4) and RCW 59.18.650, taken together, "impl[y] the landlord has a duty to investigate before serving a pre-litigation notice," and that Respondent Sanchez therefore breached a duty and the implied covenant of quiet use and enjoyment. Petition at 28–29. This argument fails because the landlord-tenant act is not incorporated into contracts nor is the duty of good faith and fair dealing incorporated into the RLTA. Petitioner must identify a contract and its breach for breach of contract, and a duty under the RLTA and its breach for an RLTA claim.

Further, what Petitioner calls a "pre-litigation [eviction] notice" is in fact a notice to comply. The Court of Appeals summed up the distinction well: "Aiken does not allege that he

was evicted, and the notices he received merely warned him that he must comply with the noise restrictions in his lease. If he did not comply, the notices caution, then he *might* be evicted." Opinion at 13 (emphasis added). RCW 59.12.030(4) lends no more support to Petitioner's characterization of the notice to comply than does the Court of Appeals' common-sense understanding. The statute provides that a landlord must serve a notice of violation before evicting but does not mandate that eviction occur. RCW 59.12.030. In other words, RCW 59.12.030 simply creates a cause of action for unlawful detainer, which a landlord *may or may not pursue*, and it is disingenuous to characterize notices to comply as "pre-litigation notices" on this basis. Because notices to comply are not eviction notices, RCW 59.18.650, which governs notices to "evict a tenant, refuse to continue a tenancy, or end a periodic tenancy," does not apply here.

Finally, Petitioner's selective analysis of RCW 59.12.030(4) and RCW 59.18.650 turns a blind eye to the fact that the RLTA explicitly lays out, in RCW 59.18.060, the duties of the landlord, which do not include a general "duty to investigate."

Likewise, Petitioner's rehashed arguments that sanctions should not be imposed create no issue requiring the Court's intervention. RCW 4.84.185 allows a prevailing party to receive

reasonable expenses for opposing an action which is "frivolous and advanced without reasonable cause." Petitioner has never had a legal theory entitling him to litigate whether noise warnings were unfairly provided and he still does not. Sanctions as the Superior Court ordered and the Court of Appeals affirmed under RCW 4.84.185 were appropriate.

IV. CONCLUSION

As the trial court properly recognized and the Court of Appeals rightly affirmed, Superior Court does not exist to litigate whether someone improperly received a noise warning. Petitioner's claims for civil conspiracy and breach of the implied covenant of quiet use and enjoyment are frivolous and Petitioner failed to state a claim upon which relief could be granted. The Court of Appeals was also correct in declining to consider the fair trial issue because well-settled law requires the Petitioner to make a prima facie case of racial bias at the trial court level. The petition should be denied.

I certify that this brief contains 4,009 words, in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED this 29th day of July, 2024.

Keith Scully, WSBA No. 28677
keith@newmanlaw.com
NEWMAN LLP
1201 Second Avenue, Suite 900
Seattle, WA 98101

Attorney for Respondent
Rocio Sanchez

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2024, I caused the foregoing to be served via USPS First-Class Mail to:

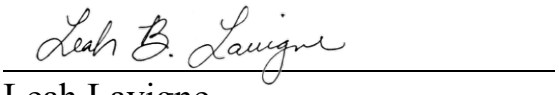
Legal Wellspring, PS
Erin C. Sperger
2367 Tacoma Avenue S
Tacoma, WA 98402

Attorney for Appellant Morgan Aiken III

Marta Beceria
3405 S. 176th St #105
Seatac, WA 98188

Respondent

I declare under penalty of perjury that the foregoing is true and correct.



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