COA Division III Case #395251 GCSC Case # 22-2-00318-13

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SHANNON HUNTER BURNS and BRIAN J. MARTLIN, a married couple, ALL OTHER OCCUPANTS AT 133 CATALPA AVE, N.E. #3, #4, #5

Appellant,

v.

ROYAL COACHMAN HOMEOWNERS' COOPERATIVE, a Washington Corporation

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. STATEMENT OF FACTS

Shannon Hunter Burns is married to Brian J. Martlin. Ms. Burns' history with the Royal Coachman Mobile Home Park goes back to the beginning of the Mobile Home Park when it was started and operated by Shannon Burns' grandfather in 1981. CP 193. On October 29, 1993, her grandfather quit claimed the Park to her mother, Darla Mae Turner. CP 194. Ms. Turner incorporated the Park as Royal Coachman Mobile Home Park, LLC ("LLC") and was its sole member. *Id.* Ms. Burns has resided in the Park since its inception, first with her grandfather in a mobile home on Lot 30 and later with her mother in a mobile home on Lots 3, 4 and 5. Ms. Turner died on September 10, 2014. Ms. Burns has continued to occupy the Lot 4 mobile home to the present time. *Id.*

Ms. Burns managed the Park for many years. *Id.* Ms. Burns is the Personal Representative and sole beneficiary of her mother's estate and operated the Park and LLC on behalf of the

estate. OB 1. Ms. Burns has never paid any rent on any of the lots she occupies (3, 4 and 5). CP 260.

The tenants at the Park commenced litigation related to Ms. Burns' treatment of the tenants. A consent decree was entered, and the tenants became creditors of Ms. Burns and the LLC. CP 153.

On October 3, 2016, Royal Coachman Mobile Home Park, LLC filed a petition seeking bankruptcy protection under Chapter 11. CP 129-55. Ms. Burns' petition was signed by her as Personal Representative of the Estate of Darla May Turner, Member of Royal Coachman Mobile Home Park, LLC. CP 132. The US Trustee moved to convert or dismiss the bankruptcy several times. CP 133. Eventually, the US Trustee and Ms. Burns agreed to appoint John Munding as Trustee "with all decision making powers concerning operation of limited liability company's business." CP 134.

> 9. When Trustee Munding took over Debtor's business, he found the mobile home park and the records relating to the business in

> disarray. He reported Debtor's business "was an administrative and operational quagmire…the First Amended Plan of Reorganization was in default, the accounting and bookkeeping was incomplete, and the tenant relations with Royal Coachman were strained." (ECF No. 391).
>
> 10. Ten months after his appointment, on October 10, 2020, Trustee Munding filed a Motion to Sell Property Free and Clear of Liens related to the park. (ECF N0. 397) The Trustee noted that funding the Amended Plan was based on continuing business operations, "but the net monthly income to be derived from business operation is insufficient to fund the Plan in a timely manner." (ECF No. 398).

CP 134-35. The Bankruptcy Court gave the Trustee authority to sell the mobile home park by order dated November 9, 2020. CP 125-27. The Trustee proposed to sell the mobile home park for $1.4 million to the Northwest Cooperative Development Center, a Washington non-profit corporation, and a nominee for the tenant cooperative being formed by the residents of the park. CP 135.

Ms. Burns found her own proposed buyer, Hurst & Sons, LLC, but it was not a cash offer. Thereafter, Ms. Burns made objections, and several court hearings took place. CP 137-42. Finally, in an order entered in the Bankruptcy Court on March 17, 2021, the Bankruptcy Court expressed frustration with Ms. Burns' proposals to sell the park to Hurst & Sons, LLC.

> 51. In support of a motion to sell the property to Hurst, Ms. Burns declared that "[t]his sale reflects the best offer made for purchase of the mobile home park or the purchase of equity interests in Debtor." (ECF No. 452, ¶3). Ms. Burns lacks credibility. The record is replete with evidence of Ms. Burns' inability to manage the mobile home park, including her repeated failure to carry out the provisions of the Amended Plan, the disarray and lack of records discovered by Trustee Munding, and the consent decree won by the park's tenants that set forth conditions related to Ms. Burns' treatment of the tenants. Ms. Burns' failure to competently manage the mobile home park resulted in numerous delays to the case, and ultimately the appointment of a post-confirmation Chapter 11 Trustee. The Court has not been presented with sufficient, if any, evidence that Ms. Burns knows what is in the best interest of the Debtor.

CP 153. The Court granted authority to the Trustee to sell the mobile home park to Northwest Cooperative Development Center ("NWCDC") for $1.6 million.

Plaintiff was formed by the tenants of the Park under 24.06 RCW Nonprofit Miscellaneous and Mutual Corporations Act under the name of Royal Coachman Homeowners' Cooperative ("the Park") on March 30, 2021 and assumed the assignable purchase offer made by NWCDC. CP 160-66.

On May 24, 2021, Trustee Munding executed a statutory warranty deed conveying the mobile home park to Plaintiff. CP 157-58. This conveyance included all lots, with no exclusions or carveouts, and thus includes the lots in dispute (Lots 3, 4 and 5). *Id.*

Up to the conveyance, Ms. Burns was the manager of the mobile home park. After the conveyance, the Park engaged the services of an accounting firm that employs Thelma Trevino, as Property Coordinator of the Park for the cooperative. CP

106-07. Ms. Burns has never worked for the homeowners' cooperative (the Park).

After transfer of ownership, Ms. Burns continued to occupy Lots 3, 4 and 5 as a single dwelling unit. Ms. Burns has a mobile home on Lot 4. There is a cyclone fence around Lots 4 and 5. There is a fifth wheel trailer owned by Ms. Burns on Lot 3. CP 194.

On June 16, 2021, Ms. Trevino wrote Ms. Burns advising her that she was the new property manager of the Park. CP 240. Ms. Trevino advised that she would need to work with Ms. Burns to establish occupancy agreements for Lots 3, 4 and 5 and 30.[1] Ms. Trevino advised that rent was $475.00 per lot (prorated for June at $316.00 per month). Ms. Trevino attached a copy of the occupancy agreement and Community Rules. CP 240. The lot rent of $475 per month is the same for all the tenants at the Park.

1/Lot 30 is rented out to third parties and the rent for Lot 30 is paid by them. Lot 30 is not at issue here.

The letter was received by Ms. Burns because her attorney, Jerry Moberg, promptly responded to it. Mr. Moberg's letter did not accept the offer of a lease. Mr. Moberg instead said "[t]here seems to be some confusion regarding…the rental charges for units you described… Mr. Burns has a legal right to occupancy at this time and I find nothing in the file to indicate that she can be excluded from the property at this time. We need to clear up this confusion before anyone proceeds further." CP 242. The offer was rejected.

Ms. Trevino responded to Mr. Moberg by letter dated June 22, 2021, stating the confusion was about a Park office structure that was included in Plaintiff's purchase and stating it was her understanding that the Estate of Darla Turner was the owner of the mobile homes on lot 4 and 30. Ms. Trevino also stated "[a]s the owner of the homes, it is the responsibility of the Estate to make monthly lot rent payments ($475.00 per lot) and execute a non-member occupancy agreement (i.e. lease)

regardless of occupancy of the home." Ms. Trevino again gave the address where rent payments should be made and enclosed a non-member occupancy agreement and community rules. Ms. Trevino added, "please accept this letter as formal notice that the Owner plans to reestablish Lot 5 as a usable rental space. All personal property on this lot will be removed." CP 244.

Ms. Burns maintains she asked Plaintiff's woman manager for a rental agreement at least two times but never received one. CP 195.

No rent was forthcoming. The occupancy agreement and community rules were not returned.

Plaintiff billed the Estate of Darla Turner in care of Mr. Moberg (CP 247-50, 252-54) and Ms. Burns at her Tacoma, Washington address (CP 251) for rent on Lots 3, 4 and 5. Mr. Moberg wrote Plaintiff on November 23, 2021, acknowledging receipt of these eight invoices for the occupancy of Lots 3, 4 and 5. Mr. Moberg stated "[i]f invoices are intended to be

claims against the Estate of Darla Turner, they are rejected." CP 246.

A notice to vacate Lots 3, 4 and 5 within three days of service (CP 111-12) was served on February 24, 2022, on Ms. Burns and her husband by posting on the premises and mailing the same to Lot 3, 4 and 5 and Ms. Burns' Tacoma address. CP 107.

The notice did not demand the payment of rent, it only demanded that Defendants vacate.

This action commenced on April 18, 2022. CP 1. The action sought the ejectment of Ms. Burns and her husband from inter alia, Lots 3, 4 and 5 but, did not seek a judgment for rent. CP 10-11.

According to Grant County records, the mobile home on Lot 4 was transferred by the Estate of Darla Mae Turner to Ms. Burns on September 12, 2022, Ms. Burns' address was listed as being in Tacoma, Washington. CP 117-18.

The Complaint at ¶ 3.8 alleges that Defendants, after the sale to Plaintiff, continued to occupy Lots 3, 4 and 5 without paying rent. CP 6. On May 5, 2022, Defendants answered by stating that "they were the owners of said Lots and had no obligation to pay rent." CP 85. In their Amended Answer, filed November 10, 2022, Defendants state that they are not the owners of Lot 4 and 5 but had no obligation to pay rent because Plaintiff refused or failed to offer Defendants an occupancy agreement and Plaintiff did not ask Defendants to pay rent. Defendants also alleged that "Plaintiff's refusal to offer Defendants an occupancy agreement is retaliatory and discriminatory in nature under law including but not limited to under RCW 59.20.045." CP 230.

Paragraph 3.9 of the Complaint alleges that Plaintiff sent the eight invoices described above that Mr. Moberg acknowledged receiving them, and, on behalf of the Estate of Darla Mae Turner, rejected them. CP 7. Defendants' Answer

(CP 85) and Amended Answer (CP 230) admit these allegations.

Paragraph 3.13 of the Complaint alleges Defendants refused to pay lot rent of $475.00 per month. CP 7. Defendants' answer (CP 85) and Amended Answer (CP 231) admit that Defendants "failed to pay rent on property they own."

Plaintiff moved the trial court for summary judgment on the ejectment of the Defendants from the Park. CP 99-105.

On January 6, 2023, Judge John Knodell entered a written opinion granting summary judgment, holding,

> Because the MHLTA does not define the verb "to rent," courts will resort to its common law meaning, that is, compensation given for possession of land. *See In re: McSheridan,* 184 B.R. 91 (1995). Neither party disputes that Royal Coachman, the owner of the mobile home lot which the Defendant occupies, has never entered into a lease with Mrs. Hunter Burns. The Defendant originally occupied the lot with her mother's consent. She later managed the mobile home park first for her mother and later for the LLC in return for her occupancy of the lot, but she has never

> compensated the Plaintiff for occupying her mobile home lot.
>
> After the Plaintiff acquired the mobile home park, if not before, the Defendant was a tenant at will and subject to immediate ejectment without notice. *Najewitz v. City of Seattle*, 21 Wash.2d 656, 659, 152 P.2d 722 (1944). Her occupancy alone does not therefore make her a tenant under MHLTA. The Court finds as a matter of law that the Defendant is not subject to its protections.

Id.

Judgment (CP 343-45) and an Order for a Writ of Execution (CP 346-48) were entered on February 3, 2023. Defendants timely appeal.

On June 18, 2024, the Court of Appeals, Division III, affirmed the Summary Judgment appealed based on the definition of "Tenant" under the MHLTA, which defines a person "who rents a mobile home lot" RCW 59.20.030(27). The Court held that "the meaning of 'rent' for purposes of RCW 59.20.040 to be the taking possession of a lot under an

agreement to pay money to the owner of the mobile home park." Slip Op at 11. "The undisputed facts establish Burns and Martin did not take possession of a lot under an agreement to pay money." ,*Id.*, 12. "Royal Coachman was willing to accept Burns and Martin as tenants, but the wife and husband never acknowledged any obligation or agreement to pay Royal Coachman." *Id*., 13.

Defendants filed their Petition for Review by the Supreme Court on July 17, 2024, which is now pending and before the Court.

II. ARGUMENT

A. Standard of Review.

The decision of the Court of Appeals (1) does not conflict with a decision of the Supreme Court (2) nor does it conflict with a published decision of the Court of Appeals, (3) does not present a question of law under Constitution of the State of Washington,

and (4) it does not involve a substantial issue of public interest.

Defendants maintain the decision of the Court of Appeals ignores long-standing precedent against granting summary judgment when substantial issues of material dispute exist. The argument misses the mark. The undisputed material fact is Defendants are not "tenants" as defined in RCW 59.20.030 (27) and, therefore, the Manufactured Home Landlord Tenant Act (MHLTA), Chapter 59.20 RCW does not apply.

As will be demonstrated, Defendants were the putative owners of the mobile home park. The park filed bankruptcy. The Bankruptcy Court ordered the park sold. Plaintiff is a cooperative of present mobile home owners, which now owns the park.

After transfer of ownership, Defendants refused to pay lot rent, instead taking the position they have a right to occupy lots 3, 4 and 5. Defendants make

several references to a dispute as to the amount of rent owing, however, the record discloses no evidence of such a dispute.

B. Defendants Never Became "Tenants" Covered by the MHLTA Making Ejectment a Proper Remedy

Plaintiff agrees with Defendant: The central question in this appeal is whether Defendants are "tenants." Petition[2] 17. If Defendants are "tenants" they have the protection of the MHLTA, 59.20 RCW. If not, they are tenants-at-will and their "tenancy can be terminated when demand for possession was made, and the only possible right the [Defendants] had thereafter was a reasonable time in which to vacate." *Najewitz v. City of Seattle*, 20 Wn.2d 656, 659 (1944).

2/ "Petition" refers to Appellants Petition for Review by Supreme Court filed on July 17, 2024.

RCW 59.20.030(27) states "'[t]enant' means any person, except a transient,[3] who rents a mobile home lot." Therefore, to be a tenant under the MHLTA the tenant must "rent" a mobile home lot.

Defendants up to the time the property was conveyed to Plaintiff were a landlord or owner. Ms. Burns as Personal Representative of her mother's estate, the sole member in the Royal Coachman Mobile Home Park, LLC and as the heir of her mother's estate and manager of the Park was the putative landlord and owner's agent at that time

The MHTLA "regulate[s] and determine[s] [the] rights, remedies and obligations arising from a rental agreement between a landlord and a tenant

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3/Defendants are not "transients" which is "a person who rents a mobile home lot for a period of less than one month for purposes other than a primary residence." RCW 59.20.030(28).

regarding a mobile home lot…when the tenant has no ownership right in the property or in the association which owns the property, whose uses are referred to as part of rent structured paid by the tenant." RCW 59.20.040 (emphasis added).

The MHLTA does not govern Defendants' situation. Ms. Burns came into possession of Lots 3, 4 and 5 because she was the landlord's agent. No written rental agreement is required where "[a]n employer-employee relationship exists between a landlord and tenant." RCW 59.20.050(2)(b).

Plaintiff did not permit the Defendant to move a mobile home into the Park because Defendants already resided there. No written rental agreement was required to be offered Ms. Burns under RCW 59.20.050(1).

What is undisputed is that Plaintiff expected Ms. Burns, if not individually, as Personal

Representative of her mother's estate, to start paying rent. Ms. Burns was advised by Ms. Trevino's June 16, 2021, letter of the monthly rent rate and where payments should be made. CP 240. It is undisputed that instead of making any payment whatsoever, Mr. Moberg responded for Ms. Burns claiming "confusion" and that Defendants had "a legal right to occupancy at this time." CP 242. It is also undisputed that when Plaintiff sent invoices dated from June to November 2021 (CP 247-54) Mr. Moberg acknowledged receipt but rejected them as claims against the estate. CP 246. No rent was forthcoming.

Both the invoices and Ms. Trevino's letters constitute offers to establish a unilateral lease agreement that was never accepted by Defendants by paying rent. When one party makes an offer the other party can accept only through performance of his or

her end of the bargain. *Storti v. University of Washington*, 181 Wn.2d 28, 38 (2014). A unilateral contract becomes executed and binding once the offeree performs. *Multicare Med. Center v. DSHS*, 114 Wn.2d 572, 584 (1990). There was never a giving of promises to establish a bilateral contract. *Id.*, at 584. No agreement enforceable under the MHLTA was formed. Ms. Burns asking for a rental agreement was not a meeting of the minds.

Cases cited by Ms. Burns are instructive. In *Allen v. Dan and Bills RV Park*, 6 Wn.App.3d 349, 370 (2018), the tenant at a mobile home park was never provided a written rental agreement but paid rent. The Court held "there is a rental agreement. Here, Allen lived in the park and provided rent to the park. This agreement and Allen's use of the park was based upon the rules the park gave to Allen. Thus, there is a rental agreement."

Defendants also cite to *TST LLC v. Manufactured Housing Dispute Resolution Program of Office of Attorney Gen.* 17 Wn.App.2d 662, 669-70 (2021), which holds that where no written mobile home lot rental agreement exists, an implied rental agreement for one year, renewing automatically arises when the tenant provides lot rent to the landlord for use of the lot.

In pondering the meaning of "tenant" as defined in RCW 59.20.030(27) as "any person, except a transient, who rents a mobile home lot" the trial court looked to the common law definition of the verb "to rent." CP 323. The trial court cited *In re McSheridan,* 184 B.R. 91, 97 (1995) which observed,

> Rent has been defined as "the consideration paid for the use or occupation of property." George A. Pindar, American Real Estate Law, § 11-58 at 462 (1976). At common law, rent referred to compensation or "return of value given at stated times" for the possession of

> lands. Black's Law Dictionary 1166 (5th ed. 1979).

This definition of "rent" is codified in RCW 59.20.040, relied upon by the Court of Appeals.

Defendants had the power to create a landlord-tenant relationship by merely paying rent, which they failed to do. Asking the landlord to provide a lease agreement is not a promise that creates a contract. At best, such a request is an invitation to make an offer or commence negotiations. Defendants did nothing that triggered a landlord-tenant relationship protected by the MHLTA. There is no material issue of fact. "A material fact is one upon which the outcome of litigation depends." *Balise v. Underwood*, 62 Wn.2d 195, 199 (1963).

Instead, it is clear that Defendants are tenants-at-will subject to being ejected by a quiet title action under RCW 7.28.010. The *Najewitz* case is controlling. There Najewitz was employed as watchman and caretaker at a city sand and

gravel pit. The city engineer discharged Najewtiz and ordered him off the property. 21 Wn.2d at 657-58. Najewitz brought suit to enjoin the city from ejecting him from the property. *Id.*, 658. The court held that a legal relationship between the parties "was an agreement whereby plaintiff was permitted to occupy the house on the property in consideration of his services in taking care of and keeping the property in repair." *Id.*

The court held the tenancy was not one of the four species of tenancy recognized by statute. *Id.* Rather, the rights of the parties were "properly determined only by resort to the rules of the common law. Measured by such rules, the agreement created tenancy at will. It was for an indefinite term. No monthly or other periodic rent was reserved," *Id.*, 659, and "the occupancy was with the consent of the owner." *Id.*, 658. "The tenancy was terminated when demand was made upon the land, and the only possible right [Najewitz] may have had thereafter was a reasonable time within which to vacate." *Id.*, 659 (citation omitted).

Another case directly on point is *Turner v. White,* 20 Wn.App. 290, 291-92 (1978). White was employed by Turner. As part of his compensation White was allowed to live in a trailer owned by Turner. White's employment was terminated but he continued to live in the trailer. Turner commenced an unlawful detainer action. White vacated the trailer. Thereafter, Turner recovered judgment for double rent and costs. *Id.*

White appealed. The appellate court determined that none of the six bases for an unlawful detainer existed. In reversing, the court held,

> Here, the tenant had come upon the premises with the permission of the owner, the tenancy was terminable without notice and provided for no money or periodic payments. The tenancy was not one within the six sections of RCW 59.12.030. Rather, it was what was denominated in common law as a tenancy at will which was terminable only upon demand for possession, allowing the tenant a reasonable time to vacate. *Najewitz v. Seattle,* 21 Wash.2d 656, 152 P.2d 722 (1944).

Turner, 20 Wn.App. at 292.

Our case is the same. Ms. Burns was in possession of Lots 3, 4 and 5 with permission of the LLC owner, it was for an indefinite term with no monthly or periodic payments reserved. It was a tenancy at will that was terminated by the Park's new owner by demand of the three-day notice to vacate posted and mailed on February 24, 2021, by Ms. Trevino allowing Defendants a reasonable time to vacate. CP 106-12.

This ejectment action is under RCW 7.28.010 and is entirely appropriate. With the deed issued by the bankruptcy trustee (CP 157-58) Plaintiff has "a valid subsisting interest in [the] real property [consisting of the Park] and a right to possession thereof [and] may recover the same by [this] action in the superior court of the proper [Grant] county against the tenant in possession." RCW 7.28.010.

The Defendants have no leasehold interest in Lots 3, 4 and 5 as "tenants" under the MHLTA. RCW 59.20.030(27).

C. Defendants May Not Exercise any Remedies Under the MHLTA Because They are Not Current in Their Rent (Issues Presented for Review A, B, C, and D.

RCW 59.20.240 provides,

> The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded the tenant under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

D. The Trial Court Correctly Denied Tenants Rights under RCW 7.28.250 (Issues Presented for Review E).

Plaintiff has made no claim for rent due before judgment. CP 1-79. The notice terminating Defendants' tenancy at will only sought possession of Lots 3, 4 and 5, requiring Defendants to vacate. CP 109-10.

RCW 7.28.250 permits an ejectment action that "is equivalent to demand for rent" when a landlord seeks possession of the premises for failure to pay rent. Without a demand for rent in the complaint this section has no application to an ejectment action. *Neiffer v. Flaming*, 17 Wn.App. 440, 442(1977) recognized that this statute was so limited.

> In an action by a landlord to recover possession of the premises for the tenant's failure to pay rent, RCW 7.28.250 allows the tenant to deposit with the court the rent due, plus interest and costs of the action and to perform all the necessary covenants under the lease. Once the tenant has taken these necessary actions, he may continue in possession under the terms of the lease.

In *Petsch v. Willman*, 29 Wn.2d 135, 138 (1947) the Plaintiff brought an ejectment action based

upon the tenant's failure to pay rent. In interpreting the Code of 1881, §548, a previous codification of RCW 7.28.250, the court held that a landlord may bring an action to recover possession of real property for failure to pay rent without first giving notice required by the unlawful detainer statute to pay or vacate.

Here, Plaintiff's action is not based upon the failure to pay rent. Rather, it is based upon terminating the tenancy at will where no rent was reserved.

Defendants' tenancy was not converted to a rental agreement by Ms. Burns' request for a rental agreement.

E. Defendants Did Not Become "Tenants" under the Terms of RCW 59.20.050(1).

RCW 59.20.050(1) states: "No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more." The undisputed facts here demonstrate that on June 16, 2021, Thelma Trevino, the property manager of the park offered Ms. Burns to rent lots 3, 4, 5 and 30 at the monthly rate of $475.00 per lot. CP 240. Ms. Trevino stated "I will need to work with you to establish occupancy agreements for those lots…I'm attaching a copy of the occupancy agreement and community rules for your review prior to signing." *Id.*

This letter was received because it was promptly replied to. Attorney Jerry Moberg wrote on June 18, 2021, that "[t]here seems to be some confusion regarding…the rental charges for the units you described…Ms. Burns has a legal right to

occupancy at this time and I find nothing in the file to indicate that she can be excluded from the property at this time." CP 242.

There is no denial of having received the proposed occupancy agreement. The clear implication is that Ms. Burns "has a legal right to occupancy at this time" irrespective of any offer to lease. Ms. Burns' legal position makes any possible shortcoming of offering a written lease harmless error.

Furthermore, the analysis of the Court of Appeals' Opinion is clear, cogent and convincing. Slip Op., at 15-18. This includes that the MHLTA does not free the occupant from paying rent in order to be a "tenant" and, "[m]ost importantly, RCW 59.20.050(1)applies only if the landlord-tenant relationship existed in the first place, a predicate missing in this appeal." *Id.*

This interpretation recognizes and honors rules distinguishing the rights and duties of landlords and tenants. For example, an owner or its agents need not be provided a lease. See RCW 59.20.050(2)(b) (no requirement to offer lease if employer-employee relationship exists.)

F. Defendants are Not "Occupants" Covered by the MHLTA.

Defendants contend that since Plaintiff never served them with a 14 day notice to pay rent or vacate pursuant to RCW 59.20.080(1)(m) Plaintiff may not terminate their tenancy. Petition 28. RCW 59.20.080(1) limits a landlord's ability to "terminate or fail to renew the tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the [ ] reasons" stated in that section.

The Court of Appeals held one reason to terminate a tenancy under the MHLTA is the "[c]hange of land use of the mobile home park including…conversion of the mobile home park to a mobile home cooperative…where the park is sold to an eligible organization." RCW 59.20.080(1)(e)(iii). Here, the Park was sold to Plaintiff, a mobile home park cooperative of tenants. CP 160-66. Plaintiff is an eligible "organization." A mobile home park cooperative is defined as "an association of shareholders which lease or otherwise extends the right to occupy individual lots to its own members." RCW 59.20.030(13). This relieved Plaintiff from giving a 14-day notice to pay rent or vacate.

Second, this is not a rent case. The three-day notice served on Defendants required that they vacate, nothing more was demanded of them. To terminate a

tenancy at will, the landlord need only demand possession. *Najewitz*, 21 Wn.2d at 659. No advance notice is required, the landlord must only allow the tenant a reasonable time to vacate. *Id.*

Third, the MHLTA "regulates the rights, remedies and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot." RCW 59.20.040 (emphasis added). The MHLTA does not exclusively regulate the rights of "occupants" with no rental agreement.

And fourth, the common law action for ejectment is not precluded by unlawful detainer statues. They are not construed in pari materia. *Petsch*, 29 Wn.2d at 137-38. The MHLTA provides for unlawful detainer actions by incorporating provisions of 59.12 and 59.18 RCW. See RCW 59.20.040. But a landlord may proceed by ejectment.

Petsch, at 137-38. See *Gustin v. Klingenberg,* 190 Wash. 590,593-94 (1937), where a request for a writ of restitution was construed as a request for a writ of execution since a 20-day civil summons was used for the recovery of real property instead of an eviction summons.

Therefore, even as "occupants" as defined in RCW 59.20.030(18) this ejectment action and the trial court's summary judgment are appropriate.

III. CONCLUSION

The Court of Appeals distinguished and harmonized the rights and duties of landlords and tenants to each other especially as a landlord loses park ownership and transitions.

The decision of the Court of Appeals was driven by the actions and failures to act by the

Defendants in this action. The decision is correct and does not conflict with prior decisions.

The Petition for Review should be denied.

This document contains 4990 words, excluding parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 15th day of August 2024.

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IV. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2024, I caused to be served a true and correct copy of the foregoing Answer to Petition for Review on the following named person(s) via Court of Appeal E-Serve:

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