Supreme Court No. 1034041
Court of Appeals No. 58183-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

PRINCETON PROPERTY MANAGEMENT, INC.,

Petitioner,

v.

KATHLEEN ALLEN AND AARON ALLEN,

Respondent.

AMICUS CURIAE MEMORANDUM BRIEF ON BEHALF KEON KNUTSON

By:

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1. ISSUES OF CONCERN TO AMICUS CURIAE

Division Two's Decision causes landlords and tenants to no longer enter into CR 2A Agreements.

2. IDENTITY AND INTEREST OF AMICUS CURIAE

Undersigned is a competent and practicing landlord-tenant attorney within this state. I file this amicus for the benefit of my many landlord clients based on my own personal knowledge regarding the area of landlord-tenant law, my many years of practicing law in this field, and my review of the published decision issued in this case.

3. STATEMENT OF THE CASE

Amicus incorporates the statement of facts as set forth in Petitioner's Petition for Review.

4. ARGUMENT

The published decision in this matter results in landlords and property owners no longer entering into CR2A or other settlement agreements in unlawful detainer actions. This is because of the risk of such agreements being vacated as void.

I am gravely concerned with the unnecessary and unintended consequences of the published decision. The decision held that the parties' CR2A settlement agreement was void and unenforceable, because it waived tenant rights afforded under the RLTA, in violation of RCW 59.18.230(1)(b). As a result, landlords and their counsel are no longer utilizing settlement agreements, as they risk such agreements being deemed ineffective at best and unenforceable at worst. I would like to address some specific areas of concern.

1. The Importance of Out of Court Settlement

CR2 Stipulated Agreements have been at the very foundation of my practice, and even the highest conflict cases improve with the dialogue that comes with settlement efforts. I will spend many hours on such negotiations, resulting in either a definite vacate date or re-payment plan.

In the decision, the appeals court took issue with waiver language in the Allen settlement agreement, specifically that the parties would "*forego* the usual unlawful detainer procedures."

However, in many cases, this ability to *forego* the usual unlawful detainer procedures is the main incentive for both parties to attempt settlement.

The mutual advantages of a CR2A agreement are all conditioned on the case remaining unfiled and out of court. The tenant avoids any public record of court filing, and the stress of being Defendant in a judicial proceeding. The landlord avoids increased fees/costs, and the extra time required to bring their case to a show cause hearing. Both parties avoid the risk of an unfavorable outcome at any such hearing.

If the landlord is forced to go through the "usual unlawful detainer procedures," even after successfully reaching an agreement, it becomes difficult to imagine any other motivation for them to engage in settlement efforts.

2. <u>What is a Tenant Right?</u>

The decision's vague definition of tenant rights will make the drafting of an enforceable agreement an impossible task. Per RCW 59.18.230(1)(b), "Any agreement… entered into pursuant

to an unlawful detainer action…that waives *any rights* of the tenant under RCW 59.18.410 or any other rights afforded under this chapter …. is void and unenforceable." In holding that the *Allen* settlement agreement violated this anti-waiver provision, the appeals court made some puzzling rationales.

The decision stated that the language of RCW 59.18.230(1)(b) is "sweeping in its scope." Yet this is due not to the text of the statute, so much as it is with the court's own sweeping definition of rights. The decision specified a long list of these "rights", including (1) the right to be evicted only for certain specified reasons RCW 59.18.650 and (2) the right to three days between the service of the writ of restitution and execution of the writ (RCW 59.18.390). (The decision also indicated that there could be other rights not included in their list.)

But are these actual tenant's rights, or procedural requirements? (Nowhere in the RLTA is the term "right to be evicted" found; the phrase itself is a contradiction.) The court

appears to accept Allen's enumeration of tenant rights without any hesitation. However, if we were to adopt the plain meaning of the words, the legislature's intent as to what is and is not a "right" for the purposes of RCW 59.18.230 becomes much more limited. Whereas the reinstatement statute RCW 59.18.410 explicitly refers to "rights," this language is not found in .380, .390, or .650.

Having gathered this loose collection of rights, the appeals court then found it "unnecessary to decide whether each of the specific rights listed by Allen are directly implicated by this dispute." I think such analysis is extremely necessary. The court's fuzzy treatment of both (1) what is a right, and (2) which of those rights are affected by settlement, will cause certain confusion for parties and their counsel. Without a clear enumeration of these tenant rights, parties will have no guidance as to whether their agreement is enforceable or void. If the Supreme Court were to adopt the appellate court's expansive definition of tenant's rights, it is hard to imagine *any* stipulated

agreement that would comply with RCW 59.18.230(1)(b), and the statute would nullify itself.

3. CR2A Stipulated Agreements do not waive Reinstatement Rights under RCW 59.18.410

The court noted that *Princeton* arguments "focused on RCW 59.18.230(1)(b)'s reference to the rights under RCW 59.18.410," downplaying other statutes. This stands to reason, as RCW 59.18.410 is one of only a handful of statutes in the RLTA that specifically uses the language of "rights." These reinstatement rights include (1) the "right" to restore a tenancy after defaulting in the payment of rent within five days of entry of judgment and (2) the "right" to request a repayment plan after forfeiture of the tenancy due to nonpayment of rent.

Reinstatement rights have always been preserved under CR2A Agreements, even in those cases allowing for an immediate writ. The Allens contended that they were prevented from reinstating their tenancy, but this was due to being unaware of the judgment, not any prohibitory language in the agreement.

Following a tenant breach and issuance of writ, tenants have ample time (always more than 5 days) to restore the tenancy by paying the judgement or requesting a new repayment plan. This waiting period is essential to the sheriff's own eviction timeline and cannot be skipped over, regardless of language that the parties "*forego* the usual unlawful detainer procedures."

4. Is there a Tenant Right to Show Cause?

The show cause statute (RCW 59.18.370) makes no mention of a tenant right. The statute grants the court authority to issue an "order directing the Defendant to appear and show Cause." It is an optional mechanism for the *landlord* to progress the case, and to compel a response from the tenant.

The ability for the parties to resolve the case without filing is crucial to getting both landlord and tenant on board with an agreement. If RCW 59.18.370 is deemed a mandatory "right", gone are all the advantages and benefits of settlement. The landlord would be required to file the case in all circumstances, with an eviction on the tenant's record. The parties would be

required to (re)litigate the dispute they had just settled, only this time in court, the very thing they sought to avoid through settlement. Princeton is accurate in their prediction that landlords would "never enter into a CR2A agreement because you would ever be able to resolve the case without having a show cause hearing."

5. Effect of the Decision

Princeton also warned that the appellate court's ruling will greatly reduce the use of settlement agreements, and they are correct. Landlords have little incentive to resolve disputes if they are forced to schedule a show cause hearing upon any tenant's breach. Both parties are in an "untenable position" every time they attempt to settle an unlawful detainer action, forever at risk of such settlement agreement being void and unenforceable. In the three counties I practice, I note several changes, as follows.

Pierce County: CR2A stipulated agreements are no longer being utilized. All contested matters are now filed, with no real

option to settle without a show cause hearing. If the parties come to an agreement before the show cause date, the court would enter agreed issuing the writ, with extension language to postpone the physical eviction.

Snohomish County: I entered into several stipulated agreements with tenants in early 2024. The enforceability of these agreements have been challenged, and the landlords in some of these cases have had to re-start the matter.

King County: In the wake of decision, there seemed to be little consensus as to the enforceability of CR2A stipulated agreements. Some HJP attorneys were comfortable with their continued use and commissioners had granted some of my motions to issue writs based on these settlement agreements.

However, a recent case of mine illustrates that the tide has turned. In King County case number 24-2-03608-3 SEA a stipulated agreement was signed on July 2nd, 2024, with Housing Justice Project representing Defendants.

Per the agreement, Defendants agreed to vacate the premises by September 30th, 2024. Further, "should Defendants fail to vacate per Paragraph 2 above, Plaintiff will be entitled to an immediate Ex-Parte Order for Writ of Restitution and Judgment for the rent amount owed as stated in the Complaint, and for legal fees, costs, and attorney fees. No other issues shall be before the court. 72-hour notice shall be provided to Defense counsel."

Defendants failed to vacate by the agreed date. After providing the required notice to Defendants Counsel, I motioned the court, and an order for writ of restitution was signed on October 11th, 2024. However, shortly after delivering the writ to the Sheriff, I received a response from Defendant's counsel, arguing that under *Princeton vs. Allen,* the writ should not have been issued without a hearing on the alleged CR2A breach first.

Given the harmful effects from this decision, I can no longer recommend settlement agreements as a resolution to Unlawful Detainer. Landlords no longer have incentive to settle

the dispute, as they inevitably must spend the time, expense and hassle on the usual court procedures. And as any one of the agreements are at risk of being deemed void and unenforceable, entering into them is no longer a sound practice.

5. CONCLUSION

For the above reasons, I respectfully request this Court grant Petitioner's Petition for Review.

Respectfully submitted this 20th day of October 2024,

Keon Knutson

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