

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court No. 1034041  
Court of Appeals No. 58183-3-II

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SUPREME COURT OF THE STATE OF WASHINGTON

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PRINCETON PROPERTY MANAGEMENT, INC.,

Petitioner,

v.

KATHLEEN ALLEN AND AARON ALLEN,

Respondent.

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AMICUS CURIAE MEMORANDUM BRIEF ON BEHALF  
PETER SCHWEDA

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By:

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### Cases

*Princeton Prop. Mgmt., Inc. v. Allen*,  
550 P.3d 56 (Wash. Ct. App. 2024).....*passim*

### Statutes

RCW 59.12.030.....4, 5

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### Rules

CR 2A.....*passim*

## 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 has been continuously licensed to practice law in the State of Washington since 1977. A significant of my practice is devoted to unlawful detainer cases, generally representing the landlord. I move to file an amicus brief 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 CR 2A or other

settlement agreements in unlawful detainer actions. This is because of the risk of such agreements being vacated as void.

As long as a legally cognizable basis to evict a tenant exists under RCW 59.18.650 the tenant is not waiving a right under the Residential Landlord Tenant Act (hereinafter “RLTA”). By entering a CR 2A agreement the tenant is not waiving any RLTA right either. Rather, the tenant is recognizing that a legal basis to evict exists. The tenant enters into a CR 2A agreement to obtain some benefit e.g., the ability to reinstate the tenancy upon the fulfillment of conditions’, a delayed move out date; avoidance of an eviction in the public records, etc. The court’s holding in this case prevents the tenant from entering an agreement to obtain benefits that may not be otherwise available to the tenant. The holding puts a chilling effect on the tenant’s ability to receive a concession from the landlord in the eviction setting.

A tenant does not have a right to a show cause hearing. RCW 59.18.370 states that a plaintiff “may” apply for a show

cause order at any time after commencement of an unlawful detainer action. This is permissive, not mandatory.

The ability to set a show cause hearing is an important tool that the landlord can employ. The order to show cause directs the tenant to appear in court to show cause, if any the tenant has, why the landlord should not be granted an immediate judgment and order for writ of restitution restoring possession of the rented premises to the landlord. Employing a show cause hearing is a coercive action the landlord may take against the tenant.

Admitting in a CR 2A agreement that the landlord has a bona fide reason to evict a tenant is not a waiver of a right. Instead, it is recognition of merits of the landlord's case.

The complaint in this case sought an eviction based upon nuisance. That rent was due and owing was not the purpose of the action. Therefore, the reinstatement and stay provisions to pay rent due under RCW 59.18.410 and RCW 59.18.380 would have no application. RCW 59.18.410(2) allows reinstatement of the tenancy by the payment of rent “[w]hen the tenant is liable

for unlawful detainer after a default in the payment of rent.” *Id.* (emphasis added). A tenant is “liable” for unlawful detainer upon service of a notice to pay or vacate, RCW 59.12.030(3). The term “liable” in RCW 59.18.410(2) should be considered a term of art. Previously, a tenant was “guilty” of unlawful detainer by violating RCW 59.12.030. In 2019 when the legislature amended the “guilty” standard in RCW 59.12.030 to being “liable” for unlawful detainer. Laws of 2019, Chapter 356, Section 2. The Respondents were not being evicted for failing to pay rent.

RCW 59.18.380 permits a stay “in an action for the recovery of possession of the property for failure to pay rent.”

Here, the action sought recovery of possession of the property for nuisance. The action here was not brought based on rent owing. The unlawful detainer action was commenced and pursued for a nuisance under RCW 59.18.650(2)(c). That the tenants have agreed to make timely payments as a condition to granting a forbearance on a nuisance eviction does not convert

the action to one for rent. Rather, it is a means by which the landlord may be made whole.

The Court should adopt a due process standard in determining what is a “right” that cannot be waived under RCW 59.18.230(1)(b). In other words, tenants have the right to notice and the opportunity to be heard. The right to notice would be the jurisdictional notices providing a discrete basis for eviction required by RCW 59.18.650 and RCW 59.12.030 and properly served as required by RCW 59.12.040. Further, the required notice would then include a properly served eviction summons and complaint for unlawful detainer. From this would flow the opportunity to be heard. The right to deny the allegations is necessary but, the tenant should also have the right to admit that case against him or her has merit with the ability to come to a mutually beneficial bargain with the landlord. A CR 2A agreement should not be considered the waiver of a right under the Residential Landlord Tenant Act. An admission or agreement by tenants that the landlord’s case has merit, should



not be considered a waiver of a right under the Residential  
Tenant Landlord Act.

## 5. CONCLUSION

For the above reasons, I respectfully request this Court  
reverse the Court of Appeals.

Respectfully submitted this 23rd day of October, 2024

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//s// *Peter Scweda*  
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\_\_\_\_\_*//s// Peter Scweda*\_\_\_\_\_  
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## Transmittal Information

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