COA NO. 39596-1-III

COURT OF APPEALS, STATE OF WASHINGTON,
DIVISION III

HEIDI COOPER,

Appellant,

vs.

EAGLE POINTE ICG, LLC, a Washington limited liability company, and SECURITY PROPERTIES RESIDENTIAL, LLC, a Washington corporation,

Respondents.

ANSWER OPPOSING PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

Security Properties Residential, LLC, and Eagle Pointe ICG, LLC, are the Respondents in this matter and make this Answer opposing Appellant/Petitioner Heidi Cooper's Petition for Review [hereafter *Petition*]. Security Properties Residential owns Eagle Pointe ICG who, in turn, owns the property at issue in this litigation, Eagle Pointe Apartments. For clarity, the two Respondents, Security Property Residential and Eagle Pointe ICG, will be referred to collectively as "SPR" and the apartment complex will be referred to by its name – Eagle Pointe Apartments.

II. INTRODUCTION

Cooper's argument throughout this lawsuit and process has been that SPR discriminates against her based on source of income and in violation of RCW 59.18.255(1)(c) by charging her a higher rent rate than other tenants for the same apartment because she participates in the Federal low income Housing Choice Voucher [HCV] program. Her interpretation of the

RCW 59.18.255(1)(c) is that it requires SPR to charge tenants the same rent and if they do not, for whatever reason, it is discrimination in violation of the statute.

Ironically, Ms. Cooper is not arguing that SPR should charge the other tenants the *higher* HCV rent rate she is charged, to even out the alleged disparity and discrimination. This is because the base rent rate Ms. Cooper is using to compare with her rent is set by a different Federal program, the Low Income Housing Tax Credit [LIHTC] program. Like the HCV program, the LIHTC program sets the maximum rent SPR can charge tenants who qualify and participate in that program, and that maximum rent is less than the rent Ms. Cooper is charged under the HCV program.

Again, Ms. Cooper is contending that SPR must charge her the same rent rate as the lower LIHTC rent, or it is discrimination under RCW 59.18.255(1)(c) and her entire position is based on the assumption that RCW 59.18.255(1)(c)

requires all landlords to charge all tenants the same rent rate for the same size apartment.

The Court of Appeals took a look at the plain language of RCW 59.18.255(1)(c) and concluded that, no, the statute does not require landlords to charge tenants the same rent. The Court also concluded that the statute does not prohibit landlords from charging tenants different rent based on a legitimate reason for the difference – and the HCV and LIHTC provide such a legitimate reason for charging such different rent, expressly permitting landlords to do exactly what SPR does.

Thus, rather than find the state statute prohibits what the Federal regulations authorize, the Court of Appeals reconciled or harmonized the state and federal laws and concluded that SPR's participation in both Federal programs served the purpose of RCW 59.18.255 in proving more options for low income housing for tenants. The Court of Appeals found no other basis for Ms. Cooper's claim of discrimination besides

her erroneous interpretation of RCW 59.18.255(1)(c) and thus affirmed the dismissal of her lawsuit on summary judgment.

Ms. Cooper's Petition for Review is contending that the Court of Appeals decision involves an issue of substantial public interest because it involves landlord tenant law and, specifically, 1) under the policies and purpose of the Residential Landlord Tenant Act [RLTA] and RCW 59.18.255**Error! Bookmark not defined.**, the Court should have decided for her because she is a tenant and SPR is a business; and 2) by putting SPR's business interests ahead of her interests the Court's decision will have large, sweeping, negative impact on all tenants. This is strictly a policy argument, to try to combat the Court of Appeals' legal decision.

As the Court of Appeals noted in its opinion, Ms. Cooper misses the point. The Court of Appeals' decision not only harmonizes the Federal low income law with the state statute, but also permits SPR to continue renting to low income tenants under both the HCV and LIHTC tenants without violating state

law. In other words, while the Court of Appeals decision allows SPR to stay in business, it also allows Ms. Cooper to continue to stay in her home and other tenants to have more options and access to low income housing across Washington State.

Thus, rather than create a substantial public interest requiring review by the Supreme Court, the Court of Appeals decision eliminates a potential statutory conflict and preserves low income housing for Washington tenants under the LIHTC and HCV programs – serving the public policy interests and purpose of the RLTA. Ms. Cooper's Petition for Review should be denied.

III. ISSUES FOR REVIEW

Ms. Cooper's issues for review are all based on and perpetuate her erroneous interpretation of RCW 59.18.255(1)(c) as requiring landlords to charge all tenants the same rent rate. Thus, the actual issue for review would be did the Court of Appeals correctly interpret RCW 59.18.255? The Court relied

on the rules of statutory construction and the plain meaning of the statute for its interpretation and decision. Ms. Cooper relies on the policies and purpose of the RLTA to contend the Court of Appeals was wrong. That is the issue and the arguments for review.

IV. SUPPLEMENTAL STATEMENT OF THE CASE

Ms. Cooper's Statement of the Case consists of one paragraph explaining she is claiming violation of RCW 59.18.255 for herself and a putative class of other HCV tenants – and that is it. *Petition, p. 6.* The rest of her Statement of the Case is legal authority and argument, rather than facts and procedure. RAP 13.4(c)(6). SPR therefore provides the following relevant facts and procedural history. All of these facts are supported by the record before the Court of Appeals.

A. Eagle Pointe Apartments.

Eagle Pointe Apartments is an apartment complex in Spokane Valley, Washington, that consists of 141 units. One

unit is reserved for use by an SPR employee and is exempt from rental.

All 140 other units participate in the LIHTC program. Eagle Pointe Apartments also rents to tenants who qualify and participate in the HCV program, so long as they also meet the requirements of the LIHTC program for the property. Thus, all of the units at Eagle Pointe Apartments are low income housing and none of the units are rented to non-low income or conventional tenants.

B. Heidi Cooper.

Ms. Cooper has been and remains a tenant of Eagle Pointe Apartments – since August of 2014. This is significant because this is not a lawsuit where Ms. Cooper was denied or prevented from renting an apartment, or was priced out of her apartment and forced to move. She is and has been a tenant of Eagle Pointe Apartments for ten years.

As a resident of Eagle Pointe Apartments, Ms. Cooper must meet the income requirements of the LIHTC program.

She also qualifies for and participates in the HCV program. This is significant because it means Ms. Cooper *can choose* to participate in the LIHTC program with the lower rent rate, but instead chooses to participate in the HCV program with the higher rent rate.

Ms. Cooper chooses the HCV program because while the rent rate may be higher, the actual cost to her is lower. Throughout her tenancy at Eagle Pointe Apartments, Ms. Cooper has received a rent subsidy under the HCV that has consistently paid all or most of her rent. This is the irony of Ms. Cooper's lawsuit: She chooses the HCV program with the higher rent rate and claims discrimination, but she has always *paid less* under this program. Most tenants who qualify for the HCV program choose that program because regardless of their rent rate, they still pay less that LIHTC tenants. This is because the two programs provide two different types of rent assistance – one property based and one tenant based.

C. The LIHTC Program.

The LIHTC statutes "provide substantial federal income tax credits as an incentive for developers to construct and operate housing for low-income families." In re Green of Pine Glen, 356 N.C. 642, 644, 576 S.E.2d 316, 317 (2003) (citing 26 U.S.C. §42 (2000)). Thus, landlords who commit to rent a certain percentage of their apartments to tenants at or below a certain percentage of the median income, at a reduced rental rate, receive substantial tax credits to make up the different in rent. The benefit attaches to the property, not the tenant, and stays with the property even if the tenant leaves.

Thus, the LIHTC program is a property based program or benefit. As noted above, Eagle Pointe Apartments is a 100% LIHTC program, meaning all of the apartments participate in the program and all tenants must meet the LIHTC income requirements.

The lower LIHTC rent rate is set by the Federal government and is below market value for the area where the

property is located. Thus, different LIHTC properties across Washington State charge different rent rates set by the LIHTC program. Additionally, the rent rates change each year and thus tenants in the same building, who started their rental contracts in different years, may also pay different rent. Finally, while the landlords cannot charge more than the maximum rent rate, they can charge less in order to maintain occupancy requirements. In other words, the LIHTC program does not contemplate or require that landlords charge all LIHTC tenants the same rent rate. The same is true under the HCV program.

D. The HCV Program.

HCV is a rent subsidy program funded by the Federal government and administered by local public housing authorities [PHAs] in accordance with Federal regulations. Austin Apt. Ass'n v. City of Austin, 89 F. Supp. 3d 886, 889 (W.D.Tex. Feb. 27, 2015). Thus, the HCV program is a tenant based program because the PHA pays the rent subsidy directly to the landlord on behalf of the tenant and the benefit can go

with the tenant if the tenant moves to another property, because it is tied to the tenant, not the property.

The PHAs determine both the maximum rent rate for a tenant AND the actual amount, if any, the tenant will pay based on the tenant's income. The rent rate must be a "reasonable rent" and the regulatory scheme provides a formula for calculating reasonable rent under the HCV. Significantly, the HCV regulations specifically provide that the "reasonable rent" shall not exceed 110% of fair market value, but also shall not be less than 90% of fair market value. 42 U.S.C. §143f(o)(1)(B).

This minimum rent restriction exists for the HCV program because there is no other compensation for landlords under the HCV program besides the rent. Unlike LIHTC, which provides tax credits to offset the lost profit for the lower

rent charge, HCV has no tax benefit or other compensation if the landlord charges a lower rent rate.[1]

Thus, if landlords under the HCV program are required to charge the lower LIHTC rent rate – as Ms. Cooper argues under RCW 59.18.255 – without any offset or tax benefit, they will no longer be able to afford to rent to HCV tenants. This is the long term impact Ms. Cooper misses. If her interpretation of RCW 59.18.255(1)(c) is correct, then she may collect damages under her lawsuit but she will lose her home and her housing options under the HCV program, because landlords will no longer be able to stay in business renting to HCV tenants.

The Federal government recognizes this and not only contemplates but expressly authorizes landlords to charge HCV

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[1] SPR would note that Ms. Cooper's second Issue for Review is based on a misstatement of this law, asking if a landlord can set higher rent rates for HCV tenants if the landlord "can capitalize from federal tax benefits for doing so?" *Petition, p. 5.* Landlords do not get any tax benefit for the rent rates under HCV; they only receive a tax benefit under the LIHTC program, which does not set rent rates for HCV tenants.

tenants higher rent than LIHTC tenants. 24 CFR §982.507(c)(2). Thus, under the controlling Federal law, SPR is not required to charge Ms. Cooper the same rent rate as the LIHTC tenants at Eagle Pointe Apartments. This leads to the actual rent rates at issue and Ms. Cooper's lawsuit.

E. Rent Rate Quotes and Procedural History.

On January 30, 2020, Ms. Cooper emailed SPR asking for a rent quote for a friend – first for a two bedroom apartment and then for a three bedroom apartment. She asked for rent rates both with a "voucher" [i.e., HCV] and without and SPR provided the rates; for a three-bedroom apartment, the HCV rate was $1,190.00 per month and the non-HCV rate was $943.00 per month. A month later, Ms. Cooper informed SPR she intended to report them to the local housing authority for charging HCV tenants higher rent than other tenants. Instead, she filed her lawsuit.

Initially, Ms. Cooper's lawsuit claimed SPR discriminated against her under RCW 59.18.255(1)(c) by

charging her a higher rental rate than conventional tenants because she participated in the HCV program. However, she then learned that all the tenants at Eagle Pointe Apartments were low income tenants and amended her claim for discrimination by charging more than other tenants in other low income programs or no programs.

SPR moved for summary judgment to dismiss Ms. Cooper's lawsuit, arguing no distinction or discrimination under RCW 59.18.255(1)(c) because they were complying with both Federal low income housing programs – and if it was a violation of RCW 59.18.255 to rent to tenants at different rates under the two different Federal programs, then Federal conflicted with the state law and preemption applied. Ms. Cooper opposed the motion and after full briefing and a hearing on the motion, the trial court granted SPR's motion.

Ms. Cooper then filed a Notice of Appeal to Division III of the Court of Appeals and after all briefs were filed and a hearing held, the Court issued its decision in an unpublished

opinion on September 17, 2024. SPR timely filed a motion to publish the opinion that was denied on October 16, 2024 and Ms. Cooper timely filed this Petion for Review on November 15, 2024. SPR notes that while the Court of Appeals decision remains unpublished, it can be cited as provided in General Rule 14.1(a).

V. ARGUMENT

Ms. Cooper chose to participate in the HCV program, with the higher rent rate than the LIHTC program, and is now looking for a Court to say that choice is a discrimination by SPR under RCW 59.18.255(1)(c). The Court of Appeals correctly declined to do so, instead harmonizing the Federal low income programs and law with the Washington statute and preserving the availability – for Ms. Cooper and other tenants – of more low income housing options and resources. This decision by the Court of Appeals does not threaten or confuse but rather preserves and protects the rights of low income tenants such as Ms. Cooper and thus there is risk of harm to a

substantial public interest. Ms. Cooper's Petition for Review should be denied.

Before addressing Ms. Cooper's arguments in her Petition, SPR would note that the most significant conclusions of the Court of Appeals were that RCW 59.18.255 1) does not require landlords to charge the same rent to all tenants AND 2) does not prohibit landlords from charging different rents "when the difference is based on a legal reason apart from where the tenant obtains their income." Cooper v. Eagle Pointe ICG, LLC, 2024 Wash. App. LEXIS 1856, *16-17.

These two conclusions form the basis for the Court's opinions affirming the dismissal of Ms. Cooper's lawsuit. Under the first conclusion, Ms. Cooper's argument that different equals discrimination fails and under the second conclusion, SPR had a legitimate legal basis for charging the different rent rates under the two different Federal programs, and did not charge LIHTC tenants less than Ms. Cooper because of where her income came from in violation of RCW

59.18.255(1)(c). Thus, under the Court's interpretation of RCW 59.18.255, there was no evidence SPR violated the applicable statute and the Court affirmed dismissal of Ms. Cooper's lawsuit.

Ms. Cooper does not challenge these conclusions or the Court's decision based thereon in her Petition for Review. Instead, Ms. Cooper makes a public policy and purpose argument to contend the Court of Appeals should have construed the statute in her favor, regardless of the language, because she is the tenant and the law requires strict construction in favor of tenants. However, the law she cites – and the law she omits – does not support Ms. Cooper's position.

A. The Court of Appeals Decision Upholds the Principles, Purpose and Intent of the RLTA and RCW 59.18.255.

Ms. Cooper's first argument is that the decision of the Court of Appeals contradicts the well established principles, purpose and intent of the RLTA as applied by Washington Courts for decades. *Petition, p. 11-12.* She contends that the

Act is to be strictly construed in favor of tenants but also liberally construed to accomplish the purpose for which it was enacted and she cites cases in support both of these requirements. *Petition, p. 7-8, 12-13.*

However, what Ms. Cooper does not state, anywhere in her Petition, is what the actual purpose **is** of the RLTA or RCW 59.18.255.

"The Residential Landlord-Tenant Act of 1973 (RLTA), ch 59.18 RCW, governs the rights, responsibilities, and remedies of residential landlords and tenants." Lockett v. Saturno, 21 Wn. App. 2d 216, 221, 505 P.3d 157 (2022). The RLTA was designed and intended to maximize the obligations of the landlords, protect tenant rights, and balance the bargaining positions between them in residential leasing. Id. (citing Silver v. Rudeen Mgmt. Co., 197 Wn.2d 535, 548, 484 P.3d 1251 (2021)).

"In 2018, the legislature amended the RLTA to include a new statute, RCW 59.18.255, prohibiting source-of-income

discrimination by landlords." Id. **"The intent of the statute was 'to ensure housing options.'"** Id., at 221-222 (quoting LAWS of 2018, ch. 66, §1) (emphasis added).

Thus, the Court has expressly recognized that one of the purposes of the RLTA generally and of RCW 59.18.255 specifically is to increase low income housing options for low income tenants. Id. This case law, stating this purpose, is not new to Ms. Cooper; it was included in the briefing and record before the Court of Appeals and is quoted in the Court of Appeals' decision. Cooper, 2024 Wash. App. LEXIS 1856 at *16.

Yet Ms. Cooper fails to mention this law or the purpose of RCW 59.18.255 anywhere in her Petition, instead focusing on the requirement that the RLTA to be strictly construed in favor of tenants. Her arguments underscore that she does not understand (or accept) the analysis or conclusions of the Court of Appeals, and thus how the Court harmonized the Federal

programs with the statute Act and statute to serve the purpose of RCW 59.18.255 to provide more housing options.

First, she argues that the Court of Appeals failed to follow the "principles" for construing the RLTA both liberally and strictly by narrowing RCW 59.18.255 to serve the business interests of landlords. *Petition, p. 13.* However, what the Court actually said – and Ms. Cooper quotes this language in her Petition – was that by complying with the regulations from the HCV and LIHTC programs, SPR can sustain its business model **"while continuing to provide options for low-income tenants."** Cooper, 2024 Wash. App. LEXIS 1856 at *18 (emphasis added). Ms. Cooper apparently got hung up on the first part of the sentence and missed the second part, where the Court of Appeals expressly explained how its interpretation and analysis served the purpose of RCW 59.18.255 by keeping SPR in business so it can continue to provide options for low income housing.

Next, Ms. Cooper argues the Court of Appeals incorrectly inserted a "reasonableness" requirement or standard into its analysis of RCW 59.18.255. *Petition, p. 13, 16.* However, what the Court of Appeals actually said was, again, SPR's compliance with the Federal programs increased low income housing options – thus serving the purpose of RCW 59.18.255:

> When the rent charged to a tenant in the Voucher Program is higher than the rent charged to a tenant in the Tax Credit Program, the regulations provide a specific method for determining the reasonable rent that can be charged to the tenant in the Voucher program. *See* 24 C.F.R. § 982.507(c)(2). Here, there is no evidence or allegation that the rent Security Properties charges Ms. Cooper is not reasonable according to the method established by the regulations. **Allowing Security Properties to set different rents based on the rules and regulations of the two programs ensures that low-income tenants have increased housing options.**

Cooper, 2024 Wash. App. LEXIS 1856 at *18-19 (emphasis added). Thus, the Court of Appeals did not insert a reasonableness requirement into its analysis of RCW 59.18.255,

but instead found its interpretation of the statute, allowing SPR to charge different rent rates to different tenants as contemplated by the Federal regulations, served the purpose of the state statute by increasing low income housing options. Id.

Finally, Ms. Cooper argued the Court of Appeals should not have focused its analysis and reasoning on the Federal programs or Federal law, but should have stuck to the controlling law under RCW 59.18.255 and the RLTA. *Petition, p. 16.* This is ironic, given Ms. Cooper failed to cite or rely on the Lockett case, from Washington, expressly stating what the purpose is of RCW 59.18.255. As noted above, this is the case the Court of Appeals relied upon and cited in making its critical conclusions that RCW 59.18.255 does not require landlords to charge tenants the same rent and does not prohibit landlords from charging different rent rates based on a legitimate legal reason.

What is more, it is Ms. Cooper's own amended lawsuit claiming discrimination between rent rates for HCV and

LIHTC tenants put these federal regulations at issue. As the Court of Appeals concluded, RCW 59.18.255 cannot prohibit the different rent rates these Federal regulations expressly authorize, or an issue of federal preemption will arise, and by interpreting the state statute to permit SPR to participate in both Federal programs and charge different rent rates thereunder, the Court is avoiding preemption AND increasing low income housing options as intended by the statute and the RLTA overall.

Again, Ms. Cooper's argument misunderstands what the Court of Appeals did in its decision and, specifically, how that decision harmonized the statute Ms. Cooper sued under with the Federal programs that set both rents she raised to support her lawsuit. Ms. Cooper's lawsuit combined these state and federal laws, the Court of Appeals just interpreted and then reconciled them. The significant public issue of low income housing for tenants is actually served by the decision of the

Court of Appeals and Ms. Cooper's Petition for Review should be denied.

B. The Court of Appeals Decision Maintains and Protects the Rights and Interests of Tenants Throughout Washington State.

Finally, relying on data that was never part of the record before the Court of Appeals, Ms. Cooper argues that the decision of the Court of Appeals present a significant public interest because there are so many tenants in Washington State. *Petition, p. 17-18.* However, as detailed above, those many, many tenants are the ones that are actually served and protected by the decision of the Court of Appeals, because it harmonizes the state statute with Federal law and permits landlords like SPR to stay in business and provide more low income housing options to this higher number of tenants.

Ms. Cooper's arguments in this section are just a reiteration of the same arguments she makes throughout her Petition – namely, that SPR discriminates in violation of RCW 59.18.255 because it charges her higher rent than other tenants,

regardless of the reason. For public policy reasons, Ms. Cooper wants the Court to ignore the legitimate reason SPR charges the different rent rates and the fact that she chose the HCV program that charges her the higher rent, instead of choosing the LIHTC program with the lower rent. Again, Ms. Cooper is trying to find a court that will make her choice of HVC over LIHTC and make that discrimination by SPR under RCW 59.18.255. This is not an issue of substantial public interest, it is Ms. Cooper seeing an opportunity to make some money off the RLTA and RCW 59.18.255 – which was never the purpose of the Act or statute. Ms. Cooper's Petition for Review should be denied.

C. No Authority for Award of Costs and Fees.

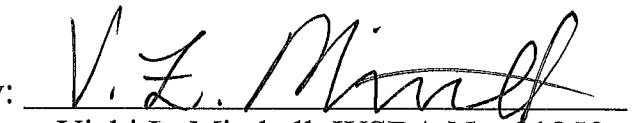
Finally, Ms. Cooper seeks an award of costs and fees if she is the prevailing party, pursuant to RAP 18.1. However, RAP 18.1 does not authorize the award of costs or fees to a prevailing party and does not otherwise authorize Ms. Cooper to collect costs and fees. SPR therefore objects to any award of

costs and fees to Ms. Cooper under RAP 18.1 at this point in the proceedings.

I certify that the total word count of this document, exclusive of the portion specified by RAP 18.17(b), is 4,121 words.

DATED this 13th day of December 2024.

MITCHELL & MITCHELL PLLC

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December 2024, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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