

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

KATHRYN M. RICHMOND,
a married woman as to her separate estate,

Plaintiff,

TERESSA HERNANDEZ, a single woman,
and JOHN and JANE DOES 1-4,

Defendant(s).

NO. 16-2-21723-1 SEA

MOTION FOR NEW TRIAL

I. RELIEF REQUESTED

Defendant Teresa Hernandez respectfully requests this Court to set aside the verdict/judgment rendered against her on November 8, 2016 and grant her a new trial in this cause.

II. STATEMENT OF FACTS

Defendant moves to request the Court vacate the verdict entered on November 8 after the trial held November 7 & 8, 2016. The Court should grant a new trial for the following causes that materially affected the substantial rights of Defendant pursuant to Washington Civil Court Rule 59:

a. Misconduct of the prevailing party. At least one of the plaintiff's three witnesses testifying under oath committed perjury. Witness Geary knowingly made false and misleading statements under oath. Our legal system depends on trust and credibility. Any individual testimony has the power to tip the scales of justice and radically change the outcome of a trial. *Pro se* Defendant Hernandez objected to the use of the false testimony on multiple occasions, and requested it and any exhibits thereto be stricken from the record due to the obvious conflict between testimony and signed declaration by said witness.

Facts alleged in the Declaration of Karyn Ann Geary are certified under the penalty of perjury under the laws of the State of Washington and are false, which is proven with Geary's follow-up oral testimony and with evidence Defendant attempted to get on record and is producing via reference in her declaration in support of this motion.

The alleged evidence obtained by Plaintiff's witness Geary was gained illegally, was objected to by Defendant Hernandez, and should have been stricken from the record per Hernandez' request.

The alleged evidence obtained by Plaintiff's non-testifying witness McMahon was gained illegally, was objected to by Defendant Hernandez, and should have been stricken from the record per Hernandez' request.

Plaintiff's Trial Brief, p. 2 at 21 (See Hernandez Dec. Exhibit A): On August 26, Plaintiff instructed "workman Mike McMahon to finish some repairs at the unit. Late that day, he advised Ms. Richmond that the unit was a mess replete with animals and garbage and sent her pictures. Defendant was not given proper notice that any "workman" would be entering the premises on August 26. Defendant's daughter made her aware of the fact that a "plumber" was at the premises. Plaintiff's "workman" entered the premises illegally and any photographs taken

during his entry were taken during a criminal trespass and therefore, as Hernandez requested, any testimony or exhibits arising from the Plaintiff's "workman's" entry should be stricken.

The purpose of taking photographs of a tenant and/or a tenant's unit must be identified prior to or at the time of collection. The individual's knowledge and consent must be obtained, and a reasonable effort must be made to ensure that the individual understands how the information will be disclosed. *Plaintiff submitted and had exhibits admitted with pictures of Defendant and Defendant's minor child included in said photographs taken during illegal entry made by Plaintiff's "sister" on August 28, the submittal of which was objected to by Defendant.*

Facts alleged in the trial brief do not match with the facts backed up by evidence admitted by the Plaintiff and Defendant, as well as by evidence submitted by Defendant but not allowed by the Court, as follows:

Plaintiff Trial Brief, p. 2 at 24 (Id.): "Ms. Richmond inquired of Ms. Hernandez about birds in the unit. When she heard no response..." The second part of this statement is false, as shown in a string of text messages dated August 26 – 28, 2016 (*See Hernandez Dec., Exhibit B*), wherein Plaintiff and Hernandez are communicating daily, which also reflect Hernandez' prompt response to any communications from Plaintiff. Hernandez did respond to Plaintiff on the date referenced in this section of the Plaintiff's trial brief.

Plaintiff Trial Brief, p. 3 at 10 (Id.): "...Ms. Hernandez maintains...some sort of flying squirrels in the unit." This statement is false. There is no evidence Hernandez has any type of flying squirrel at the Premises and has never admitted the same.

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b. CR 59(a)(8): *Error in law occurring at the trial and objected to at the time by the party making the application...*

Defendant Hernandez was cross-examined by Plaintiff's counsel after attempting to give complete, fact-based testimony and was not provided the opportunity/invitation to re-direct herself after being cross-examined.

Evidence Defendant objected to prior to trial and at the time of trial was still admitted although there was lack of relevancy. Evidence Defendant attempted to submit in the same form as plaintiff's counsel was objected to and the objections were sustained.

III. STATEMENT OF ISSUES

Should the Defendant be granted a new trial when the appropriate conditions are present pursuant to Civil Rule 59 indicating her substantial rights were materially affected and that the initial verdict should be ordered vacated and a new trial be granted on all or some of the issues?

IV. EVIDENCE RELIED UPON

Hernandez would direct the Court's attention to her attached declaration accompanying this motion, as well as the legal authorities listed below.

V. LEGAL AUTHORITY

This motion is presented within the time limits prescribed by the Washington Rules of Civil Procedure for a Motion for New Trial and is requested for good cause as provided in Court Rule 59, as follows:

“Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:”

a. CR 59(a)(2): “Misconduct of prevailing party or jury....” This misconduct on the part of the prevailing party is detailed above with supporting documentation already on record and attached to the Defendant’s declaration in support of this motion.

b. R 59(a)(8): “Error in law occurring at the trial and objected to at the time by the party making the application; or (9) substantial justice has not been done.” Errors in law are explained above and also in the following rules and statutes.

ER 103: Rulings on Evidence.

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike is made....

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

ER 104: Preliminary Questions.

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b). In making its determination it is not bound by the Rules of Evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

ER 401: Definition of “Relevant evidence.”

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

ER 607: Who may impeach.

The credibility of a witness may be attacked by any party, including the party calling the witness.

ER 608: EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(a) Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of reputation, but subject to the limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

ER 603: PRIOR STATEMENTS OF WITNESSES

(a) Examining Witness Concerning Prior Statement. In the examination of a witness concerning a prior statement made by the witness, whether written or not, the court may require that the statement be shown or its contents disclosed to the witness at that time, and on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

RCW 59.18.230 states an agreement inconsistent with the RLTA is unenforceable.

VI. CONCLUSION

The granting of a new trial will not prejudice the other party to this cause. Hernandez prays that after notice and hearing, the judgment rendered in this cause will be set aside and she will be granted a new trial.

RESPECTFULLY SUBMITTED this 18th day of November, 2016 at Seattle, Washington.

/s/Teresa Hernandez

Teresa Hernandez, Defendant
3601 24TH Avenue W., #304
Seattle, WA 98199
(206) 377-9669

CERTIFICATE OF SERVICE

I, Teresa Hernandez, certify under penalty of perjury under the laws of the State of Washington that on November 18th, 2016, I coordinated service of the following documentation in the manner so described:

I ~~faxed~~ e-mailed a copy of the foregoing document(s) to James U. Bittner, Kasperson & Bittner, PLLC, attorneys for plaintiff, at the following ~~facsimile number~~ e-mail address as provided by plaintiff: ~~(206) 682-1197~~. jbittner@bittnerlaw.com

DATED this 18th day of November, 2016 at Seattle, Washington.

/s/Teresa Hernandez

Teresa Hernandez, Defendant