IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JUNG JIN and HAE JIN, husband and wife, Respondents/Cross-Appellants, v. KYB FARMS, Inc., a Washington corporation, Appellant/Cross-Respondent, and YONG BONG KIM and JIN HAE HAN, husband and wife, Defendants/Cross-Respondents.	No. 42365-1-II UNPUBLISHED OPINION

Worswick, C.J. — KYB Farms, Inc., appeals an order ruling that it unlawfully detained a farm leased from Jung Jin and Hae Jin. KYB argues that (1) the trial court lacked jurisdiction over the action and (2) the trial court's findings of fact do not support its conclusion that the Jins lawfully commenced the action. The Jins cross appeal, arguing that the trial court erred by awarding reasonable attorney fees to KYB Farms, Inc.'s owner, Yong Bong Kim, and his wife, Jin Hae Han. We affirm the judgment of unlawful detainer, but vacate the award of attorney fees to Kim and Han.

FACTS

Jung Jin and Hae Jin owned two parcels of farmland, which included a house. In March 2009, KYB Farms, Inc. and the Jins entered into a five-year lease. KYB's owner, Yong Bong Kim,[1] occupied the house with his wife, Jin Hae Han, and ran the farm business.

The lease ostensibly called for rent payments of $2,000 per month, payable in advance on the first day of every month. However, KYB paid the Jins only $1,200 per month in rent, and the Jins accepted the payments without objection until late August 2010.

On August 27, 2010, the Jins served KYB with a three-day notice to pay rent or vacate the farm. The notice demanded delinquent rent of $800 per month dating back to March 2009, plus late charges and interest. The notice was addressed to "Young Bong Kim and Jin Hae Han d/b/a KYB Farm." Ex. 4.

On August 30, 2010, KYB tendered a $1,200 check as payment for September rent, but the Jins refused to accept it. KYB neither tendered another rent check to the Jins nor deposited any rent into the court registry, but Kim and Han continued to reside in the house nonetheless.

On March 22, 2011, the Jins filed a complaint for unlawful detainer against KYB, Kim, and Han. The complaint alleged that KYB owed $800 per month in rent from March 2009 to August 2010, and $2,000 per month in rent from September 2010 onwards.

After a bench trial, the trial court determined that (1) the lease actually called for rent payments of $1,200 per month, not $2,000 per month as the Jins had maintained in their three-day

[1] We note that the judgment below identifies Mr. Kim as "Yong Bong Kim," but Mr. Kim's reply brief identifies him as "Young Bong Kim." Clerk's Papers at 9-10; Reply Br. of KYB at 5. We mean no disrespect.

notice served on August 27, 2010; (2) KYB was current on rent through August 2010; and (3) KYB was delinquent on rent from September 2010 to June 2011. CP at 11, 14. Ruling that the defendants unlawfully detained the farm, the trial court terminated the lease, granted the Jins a writ of restitution restoring them to the premises, and ordered KYB to pay delinquent rent and late charges.

The lease included an attorney fee provision. Pursuant to "[t]he written agreement of the parties," the trial court awarded the Jins reasonable attorney fees from KYB, and the trial court also awarded Kim and Han reasonable attorney fees from the Jins. CP at 10, 15.

KYB appeals, and the Jins cross appeal.

ANALYSIS

I. Jurisdiction and Notice

KYB argues that the trial court lacked jurisdiction over this unlawful detainer action because the Jins' statutorily required notice to KYB was defective. We disagree. Defects in a notice to pay rent or vacate do not deprive the superior court of its subject matter jurisdiction.

A. *Subject Matter Jurisdiction*

KYB claims that the three-day notice was deficient because it misstated the amount due, was premature, and was addressed to the wrong party. Br. of Appellant at 11-12. KYB then argues that these deficiencies deprived the trial court of subject matter jurisdiction. Br. of Appellant at 1, 10-11, 13. We disagree.

Whether a court has subject matter jurisdiction is a question of law subject to de novo review. *Young v. Clark*, 149 Wn.2d 130, 132, 65 P.3d 1192 (2003). "Lack of jurisdiction over

the subject matter renders the superior court powerless to pass on the merits of the controversy brought before it." *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). If a court enters a judgment while it lacks subject matter jurisdiction, the judgment is void and a party may challenge it at any time. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 538, 541, 886 P.2d 189 (1994).

The superior court derives its subject matter jurisdiction in unlawful detainer actions from the state constitution, not from the parties' compliance with statutory procedures. *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254 n.9, 228 P.3d 1289 (2010); *accord Hous. Auth. of the City of Seattle v. Bin*, 163 Wn. App. 367, 373-74, 260 P.3d 900 (2011). "The state constitution grants the superior court original jurisdiction in 'all cases at law which involve the title or possession of real property' and 'actions of forcible entry and detainer' as well as in 'all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.'" *Bin*, 163 Wn. App. at 375 (quoting Wash. Const. art. IV, § 6); *see Young*, 149 Wn.2d at 133. The trial court's subject matter jurisdiction over this unlawful detainer action is beyond question.

KYB argues to the contrary, citing cases that have referred to notice requirements as "jurisdictional." For example, cases have said, "Failure to comply with the notice requirement defeats the court's jurisdiction over the action," *Hous. Auth. of the City of Seattle v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952 (1999), and "Proper statutory notice under RCW 59.12.030 is a '"jurisdictional condition precedent"' to the commencement of an unlawful detainer action," *Christensen v. Ellsworth*, 162 Wn.2d 365, 372, 173 P.3d 228 (2007) (quoting *Hous. Auth. of the*

City of Everett v. Terry, 114 Wn.2d 558, 564-65, 789 P.2d 745 (1990) (quoting *Sowers v. Lewis*, 49 Wn.2d 891, 894, 307 P.2d 1064 (1957))).

But in the unlawful detainer context, "the word 'jurisdiction' [has been used] to refer to *statutory* limitations on a court's authority to let an unlawful detainer action go forward." *Bin*, 163 Wn. App. at 375 (emphasis in original). As *Tacoma Rescue Mission* pointed out, a landlord's statutorily inadequate notice cannot deprive the superior court of its constitutional subject matter jurisdiction. 155 Wn. App. at 254 n.9; *accord Bin*, 163 Wn. App. at 376. Thus, this argument fails.

B. *Notice Defects*

KYB asserts that the Jins' notice was defective in three respects: (1) the notice misstated the amount of rent owed, (2) the Jins delivered notice at a time when KYB was not delinquent on rent, and (3) the notice was not addressed to KYB. We disagree.

An unlawful detainer action is a summary proceeding brought "to determine the right of possession as between landlord and tenant" and to resolve "related issues such as restitution of the premises and rent." *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). RCW 59.12.030(3) provides that a tenant "is guilty of unlawful detainer"

> [w]hen he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due.

Case law distinguishes defects in the "time and manner" of serving a notice from defects in a notice's "form and content." *Marsh-McLennan Bldg., Inc. v. Clapp*, 96 Wn. App. 636, 640 n.1,

980 P.2d 311 (1999). A landlord must *strictly* comply with the time and manner requirements written into the statute. *Christensen*, 162 Wn.2d at 372. In contrast, a landlord may *substantially comply* with form and content requirements on which the statute is silent. *Foisy v. Wyman*, 83 Wn.2d 22, 32, 515 P.2d 160 (1973).

1. *Amount of Rent Owed*

First, KYB argues that the Jins' notice was defective because, in light of the trial court's resolution of the parties' rent dispute, the notice overstated the amount of rent KYB actually owed. This argument fails.

In an unlawful detainer action where the parties dispute the amount of rent, the landlord's notice is not defective if it states the amount the landlord contends is due and the trial court later rules that the tenant owed less than the notice contended. *Foisy*, 83 Wn.2d at 32-33.

In *Foisy*, the court found no defect in a notice that became inaccurate only after the trial court resolved the case on the merits. 83 Wn.2d at 33. There, a rent dispute was "basic" to the unlawful detainer claim. 83 Wn.2d at 31. Our Supreme Court stated:

> It appears that the plaintiff's demand for rental in the notice was in conformity with his good faith determination as to the amount of rental due, and that the defendant was not prejudiced as he could have tendered to the plaintiff the amount of rental due according to his understanding of the agreement.

83 Wn.2d at 33. After a trial, the trial court concluded that the tenant was guilty of unlawful detainer but that the notice overstated the amount of rent due. 83 Wn.2d at 23-24, 32. Under those circumstances, hindsight did not make the notice defective: "the fact that there was a dispute as to the amount of rent due, which was later determined contrary to the plaintiff, should not invalidate the unlawful detainer proceeding." 83 Wn.2d at 33.

Similarly, the parties here disputed the amount of rent due. The Jins' notice reflected their contention that the lease required rental payments of $2,000 per month, but the trial court determined that KYB actually owed $1,200 per month in rent. Despite this discrepancy, the notice is not defective.

2. *Timing of the Notice*

KYB next argues that the notice was premature because the trial court found that KYB became delinquent only after the date of the notice. We disagree.

To maintain an unlawful detainer action alleging that the tenant has defaulted on rent, the landlord must serve the tenant with a written notice to pay the amount owed or, in the alternative, vacate the premises within three days from service of the notice. *Sowers*, 49 Wn.2d at 894-95. "The notice may be served at any time after the rent becomes due." RCW 59.12.030(3). "[T]he purpose of the notice [is] to apprise the tenant of the defaults claimed in order to give him the opportunity to correct them within the time allowed in the notice." *Wilson v. Daniels*, 31 Wn.2d 633, 643, 198 P.2d 496 (1948).

The reasoning of *Foisy* shows that the Jins' notice is not premature. 83 Wn.2d 22. This unlawful detainer claim also centers on the disagreement about how much rent was due. Like the landlord in *Foisy*, the Jins based their notice on their determination of the rent owed. *See* 83 Wn.2d at 33. Like the tenant in *Foisy*, KYB suffered no prejudice because it could have paid the rent it contended was due.[2] *See* 83 Wn.2d at 33. Most importantly, KYB's grounds for attacking

[2] KYB did not pay any amounts into the court registry after the Jins refused to accept KYB's $1,200 rent payment in August 2010.

the notice as premature arose only after the court held a trial and ruled that the rent was less than the Jins' notice had contended. Following *Foisy*, we hold that a trial court's decision partly favoring a tenant does not render a three-day notice defective, nor does it invalidate the unlawful detainer proceeding. *See* 83 Wn.2d at 33.

Accordingly, we hold that the Jins' notice was not premature.

3. *Addressee on the Notice*

Third, KYB asserts, without citation to authority, that the notice is defective because the Jins addressed it to Kim and Han, rather than to the tenant KYB.[3] We disagree.

RCW 59.12.30(3) does not require the landlord to name the tenant in the notice. With respect to a matter of form or content on which the statute is silent, a notice must substantially comply with the statute. *Foisy*, 83 Wn.2d at 32; *Erz v. Reese*, 157 Wash. 32, 35, 288 P. 255 (1930).

A technically inaccurate notice substantially complies with the statute if it is not misleading or deceptive to the tenant. *See Provident Mut. Life Ins. Co. of Phila. v. Thrower*, 155 Wash. 613, 617, 285 P. 654 (1930). In *Provident Mutual*, the landlord's notice to pay rent or vacate contained two inaccuracies. 155 Wash. at 616-17. First, it incorrectly described the leased premises as "901½ South G Street" instead of "the second and third floors of 901½, 903½, and 905½ South G Street." 155 Wash. at 614-15. Second, the notice was signed by the landlord's agent rather than the landlord. 155 Wash. at 615. But the tenant "did not attempt to show that

[3] KYB does not allege that the Jins' service of the notice deviated from the manner required by RCW 59.12.040.

she was in any manner misled or deceived," and the notice substantially complied with the statute. 155 Wash. at 617.

Here, the Jins addressed their notice to "Young Bong Kim and Jin Hae Han d/b/a KYB Farm." Ex. 4. Although the notice inaccurately identified the tenant, KYB never asserted that the notice misled or deceived it. *See Provident Mut.*, 155 Wash. at 617. The Jins' notice substantially complies with the statute and is not defective.

II. Support for Conclusions of Law

KYB reframes its earlier argument that the Jins' notice was premature by arguing that, because the trial court found that KYB's rent was not delinquent as of the date of the Jins' notice, the trial court erred in concluding that the Jins commenced an unlawful detainer action.[4] We disagree.

Questions of law are reviewed de novo. *Bishop v. Miche*, 137 Wn.2d 518, 523, 973 P.2d 465 (1999). The trial court's conclusions of law must have the support of its findings of fact. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). The findings of fact here are unchallenged. Unchallenged findings of fact are verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

KYB asserts that Conclusion of Law 3, which ruled that the Jins commenced an unlawful detainer action, lacks the support of the trial court's findings.[5] The trial court found that the Jins

[4] KYB broadly charges that the findings of fact do not support the conclusions of law, but its only particular challenge asserts that Finding of Fact 16 cannot support Conclusion of Law 3. Br. of Appellant at 11. We do not address issues not adequately briefed. RAP 10.3(a)(6).

[5] A portion of Conclusion of Law 3 is nearly identical to Finding of Fact 13, which is a verity because KYB does not challenge it. This portion states, "Plaintiffs gave defendants a Three-Day

served notice on August 27, 2010, and that KYB became delinquent beginning with September 2010. By inference, KYB argues that the trial court erred in concluding that the Jins commenced the action because their notice was premature. We disagree.

As discussed above, the Jins' notice was not premature. When a rent dispute is at the center of an unlawful detainer action and the trial court enters a final judgment resolving the dispute against the landlord, the court's resolution does not invalidate the entire proceeding just because the final judgment differs from the notice the landlord delivered before commencing the action. *Foisy*, 83 Wn.2d at 33. The Jins' notice is not premature, and KYB's argument fails.

III. Reasonable Attorney Fees

The Jins cross appeal the trial court's award of reasonable attorney fees to Kim and Han. The Jins argue that the award of attorney fees is supported neither by (1) the lease agreement nor (2) RCW 4.84.330. We agree.

A court may award attorney fees only when authorized by a contract, a statute, or a recognized ground in equity. *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 70, 847 P.2d 440 (1993). "Whether a contract or statute authorizes an award of attorney fees is . . . a question of law reviewed de novo." *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009).

A. *Lease Agreement*

The Jins claim that the lease does not authorize a reasonable attorney fee award to Kim

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Notice to Pay Rent or Vacate on August 27, 2010." CP at 14-15. The remainder of Conclusion of Law 3 states, "[Plaintiffs] thereafter commenced this action under RCW 59.12." CP at 14-15.

and Han because they are not parties to the agreement. We agree.

The lease contains an attorney fee provision. In pertinent part, this provision states:

> COSTS AND ATTORNEY'S FEES: If it becomes necessary for one party to commence an action against the other party for failure to abide by any of the terms of this Lease Agreement, the prevailing party in such action shall be entitled to recover all costs, including reasonable attorneys' fees, associated with the action. Such relief is in addition to any other relief which may be awarded to the prevailing party. The court shall determine in any such litigation which party is the prevailing party.

Ex. 7 at 6.

In general, a contract does not confer benefits on nonparties, even if the contract contains expansive language that does not refer to specific parties. *Touchet Valley Grain Growers, Inc. v. Opp & Seibold Gen. Constr., Inc.*, 119 Wn.2d 334, 342-43, 831 P.2d 724 (1992). Here, the lease agreement was made "by and between Jung Jin and Hae Jin ('Landlord'), and KYB Farms, Inc. ('Tenant')." Ex. 7 at 1. Kim and Han acknowledge that they are not parties to the lease.

A contractual attorney fee provision cannot authorize the recovery of fees from a nonparty. *Watkins v. Restorative Care Center, Inc.*, 66 Wn. App. 178, 195, 831 P.2d 1085 (1992). In *Watkins*, a party to the contract sought to recover fees from nonparties who had unsuccessfully claimed third-party beneficiary status. *Watkins*, 66 Wn. App. at 183. Because the nonparties "were strangers to the agreement," enforcing the attorney fee provision against them "would be both unfair and contrary to law." 66 Wn. App. at 195.

The same reasoning prohibits a contractual attorney fee award here. Having asserted no other rights under the lease, Kim and Han are "strangers to the agreement" to an even greater extent than the purported third-party beneficiaries in *Watkins*. *See Watkins*, 66 Wn. App. at 183,

195. Because Kim and Han are nonparties, the lease agreement confers no benefits on them and the lease cannot support Kim and Han's request for reasonable attorney fees. *See Touchet Valley*, 119 Wn.2d at 342-43.

B. *RCW 4.84.330*

Next, the Jins argue that RCW 4.84.330 does not authorize an attorney fee award to a litigant who is not a party to the contract at issue. Again, we agree.

When a contract allows only one party to recover attorney fees in an action to enforce the contract, RCW 4.84.330 entitles the other party to recover reasonable attorney fees if it prevails. *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 489, 200 P.3d 683 (2009). "By its plain language, the purpose of RCW 4.84.330 is to make unilateral contract provisions bilateral." *Wachovia*, 165 Wn.2d at 489.

Division One held that RCW 4.84.330's "'bilateral' application" provides no basis to award a prevailing litigant attorney fees when the litigant is not a party to the contract. *Mut. Sec. Financing v. Unite*, 68 Wn. App. 636, 643, 847 P.2d 4 (1993). Here, Kim and Han are not parties to the contract. For this reason, neither the lease itself nor RCW 4.84.330 allows Kim and Han to recover reasonable attorney fees, and the trial court erred by awarding reasonable attorney fees to them.[6]

ATTORNEY FEES

KYB, the Jins, and Kim and Han each seek reasonable attorney fees on appeal. Under RAP 18.1(a), a party on appeal is entitled to attorney fees if applicable law authorizes the award.

[6] Kim and Han also contend that they are prevailing parties. But Kim and Han cannot recover reasonable attorney fees under the lease or RCW 4.84.330 even if they are prevailing parties. "Prevailing party" is not defined in the lease, but RCW 4.84.330 defines it as "the party in whose favor final judgment is rendered." Here, the trial court ruled that "[s]aid defendants . . . are unlawfully detaining possession of the premises" and issued a writ of restitution restoring the Jins to possession of the property. CP at 15. Thus Kim and Han's contention lacks merit.

The lease authorizes an award of all costs, including reasonable attorney fees, to the prevailing party in an action brought for failure of a party to abide by the lease. A contract that authorizes an award of attorney fees at trial also supports an award of attorney fees on appeal. *Equitable Life Leasing Corp. v. Cedarbrook, Inc.*, 52 Wn. App. 497, 506, 761 P.2d 77 (1988).

Neither KYB nor Kim and Han have prevailed on appeal, so they are not entitled to recover attorney fees on appeal.

The Jins request reasonable attorney fees on appeal pursuant to the lease. Because the Jins brought suit against KYB for its failure to pay rent, and because the Jins are the prevailing party on appeal, the lease entitles the Jins to recover reasonable attorney fees from KYB on appeal. Accordingly, we conclude the Jins are entitled to reasonable attorney fees on appeal from KYB, the other party to the lease, subject to compliance with RAP 18.1. The commissioner of our court will make an appropriate award upon proper application. RAP 18.1(f).

Affirmed in part, reversed in part, and remanded for reentry of judgment.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, C.J.

We concur:

Hunt, J.

Van Deren, J.