

RECEIVED & FILED  
MASON CO. CLERK

2022 FEB 17 AM 10:33

SUPERIOR COURT OF WA.  
SHARON K. FOGO

BY BP b DEPUTY

**IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR MASON COUNTY**

22-2-00076-23  
MT 4  
Motion  
11863412



**JOSEPH A. SHELTON and SHAWNA SHELTON, )  
a married couple, and SHAWNA SHELTON )  
as her separate property, )  
Plaintiffs, )**

**NO. 22-2-00076-23**

**vs. )**

**MOTION FOR PRELIMINARY  
INJUNCTIVE RELIEF  
and MEMORANDUM OF LAW  
IN SUPPORT**

**BRIAN NULL, and JANE DOE NULL, and )  
any other occupants, )  
Defendant(s). )**

COME NOW the Plaintiffs, JOSEPH A. SHELTON and SHAWNA SHELTON, a married couple, and SHAWNA SHELTON, as her separate property, by and through their attorneys STEPHEN WHITEHOUSE & JULIE NICHOLS of WHITEHOUSE & NICHOLS, LLP, and moves this court for an Order Granting Preliminary Injunction. This motion is based on the following Memorandum of Law as well as the verified Complaint filed herewith.

**I. INTRODUCTION**

Plaintiffs purchased two parcels in the Shorecrest neighborhood of Mason County in March and June 2021.

Soon after the purchases of the two parcels were closed, Plaintiffs caused a survey of the property to be completed. It confirmed that the Defendant(s) was occupying and

MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

**WHITEHOUSE & NICHOLS, LLP**

Attorneys at Law

P.O. BOX 1273

601 W. RAILROAD AVE., SUITE 300

SHELTON, WASHINGTON 98584

(360) 426-5885 • FAX (360) 426-6429

(A)

1 causing damage to the subject property, as shown in photos referenced in paragraph  
2 3.11 of the verified Complaint.

3 Defendant refuses to vacate, despite having no legal claim to remain on the  
4 property. In the past several months, Defendant has proceeded to cut down trees, dig  
5 ditches, and construct outbuilding(s) on the property. All of these actions are without  
6 authorization and illegal.  
7

8 The underlying lawsuit asks for ejectment, quiet title, damages both a preliminary  
9 and a permanent injunction prohibiting Defendant(s) from continuing to occupy the  
10 property unlawfully. The Court is asked to enter a temporary restraining order requiring  
11 Defendant(s) to vacate.  
12

13 **II. DEFENDANT(S) IS EITHER: TENANT AT SUFFERANCE,**  
14 **LICENSEE WHOSE PERMISSION HAS BEEN REVOKED,**  
15 **or TENANT AT WILL --**  
16 **BUT ARE IS MERE TRESPASSER.**

17 There is not any rental, or lease, or tenancy, between Plaintiffs and Defendants.

18 As a courtesy, Plaintiffs had delivered a final notice to vacate on or around January  
19 10, 2022, giving the Defendant until January 25, 2022. This final notice is attached to the  
20 verified Complaint as Exhibit D, incorporated by reference therein.

21 Out of the possible state statutory schemes that can apply to various tenancies  
22 and their termination, none is believed to apply squarely to these facts, for the obvious  
23 reasons that (1) this scenario was never a tenancy, (2) Defendant never had any rights  
24 in the property of Plaintiffs, and (3) there was never any other aspect of a tenancy  
25 relationship between them.  
26

1 Defendant is now a trespasser and Plaintiffs are entitled to possession of the  
2 subject property according to the analysis set forth below.

3 **A. RCW chapter 59.18 Residential Landlord Tenant Act does not apply.**  
4

5 This statute applies to the rental or leasing of residences to tenants. A tenant is  
6 defined as "any person who is entitled to occupy a dwelling unit primarily for living or  
7 dwelling purposes under a rental agreement." RCW 59.18.030(21) (emphasis added).  
8 There is no rental agreement here.

9 **B. Defendant is either a tenant at sufferance, or a licensee whose**  
10 **permission has been revoked.**

11 RCW chapter 59.04 only applies to tenancies, which are not defined by the statute.  
12 All sections refer to either leases or payment of rent. RCW 59.04.050 does provide that  
13 whenever "any person obtains possession of premises without the consent of the owner...  
14 he shall be deemed a tenant by sufferance...."

15  
16 This statute goes on to say that Plaintiffs are entitled to possession "immediately  
17 upon said demand." *Id.*

18 Plaintiffs believe the Defendant entered without permission, but in the event that  
19 Defendant did enter with permission initially, he would be considered a licensee and is in  
20 the property under what we know as a "tenancy at will." This arrangement can be  
21 terminated, obviously, "at will." The owner has to give a reasonable time for the tenant to  
22 vacate. *Najewitz v. Seattle*, 21 Wash. 2d 656 (1944). This reasonable notice has been  
23 provided, as provided in the verified Complaint. Once permission was revoked, then  
24 Defendant became a trespasser.  
25  
26

1 A trespasser is defined by WPI 120.01 as one "who enters or remains upon the  
2 premises of another without permission..."

3 As to remaining unlawfully,

4  
5 "Unlawful remaining" occurs when (1) a person has lawfully entered a  
6 dwelling pursuant to license, invitation or privilege; (2) the invitation,  
7 license or privilege is expressly or impliedly limited; (3) the person's  
8 conduct violates such limits; and (4) the person's conduct is accompanied  
9 by intent to commit a crime in the dwelling. *State v. Thomson*, 71 Wash.App.  
10 634, 640, 861 P.2d 492 (1993)(citing RCW 9A.52.030(1); RCW  
9A.52.020(1); RCW 9A.52.010(3); *State v. Collins*, 110 Wash.2d 253, 751  
11 P.2d 837 (1988); *State v. Rio*, 38 Wash.2d 446, 230 P.2d 308, *cert. denied*,  
12 342 U.S. 867, 72 S.Ct. 106, 96 L.Ed. 652 (1951)); RCW 9A.52.025(1); RCW  
13 9A.04.110(7).

14 *State v. Crist*, 80 Wash. App. 511, 514 (1996).

15 Despite repeated and reasonable notice, Defendant refuses to vacate and is doing  
16 damage to the property.

17 Plaintiffs are entitled to an Order restoring immediate possession of the property.

18  
19 **IV. PLAINTIFF IS ENTITLED TO A**  
20 **PRELIMINARY INJUNCTION, CR 65(a)**

21 When it appears by the complaint that the plaintiff is entitled to the  
22 relief demanded and the relief, or any part thereof, consists in restraining  
23 the commission or continuance of some act, the commission or continuance  
24 of which during the litigation would produce great injury to the plaintiff;  
25 ...an injunction may be granted to restrain such act or proceedings until the  
26 further order of the court, which may afterwards be dissolved or modified  
upon motion.

RCW 7.40.020. "The injunction may be granted at the time of commencing the  
action, or at any time afterwards, before judgment in that proceeding." RCW 7.40.040.  
Reasonable notice is required, RCW 7.40.050, and has been given. An injunction bond is

1 required, in an amount "sufficient to pay all damages and costs which may accrue by  
2 reason of the injunction..." RCW 7.40.080; CR 65(c).

3 **Bond.** The amount of the bond is within the discretion of the Court. *Hockley v.*  
4 *Hargitt*, 82 Wash.2d 337, (1973) (\$500,000 bond requested, \$1,000 bond ordered,  
5 Defendant failed to provide any specific information about need for bond and potential  
6 damages).

7  
8 Plaintiffs respectfully request that the Court consider that Defendant has  
9 absolutely no right to stay on the subject property; and that Defendants have received  
10 repeated requests to surrender the property. Further, as outlined in the verified  
11 Complaint, Defendant is cutting trees, building structures and digging ditches on the  
12 property, without permits or authorization. This creates immediate and continuing legal  
13 exposure for the Plaintiffs.

14  
15 Any damages from the issuance of a wrongful injunction would have to be  
16 premised on a finding that Defendant has a right to continue to live on the property, an  
17 unusual proposition under these circumstances. Otherwise, forcing Defendant to leave  
18 now simply *lessens* the amount of damages that will be sought against Defendant for  
19 their timber trespass, trespass/waste, nuisance and damages, by reducing the number  
20 of days Defendant commits these wrongs.

21  
22 For the reasons stated herein, Plaintiffs recommend a cash bond of \$200.

23  
24 The Defendant is bound by the Court's injunction as soon as the bond required by  
25 the Court is posted, because he will have been served with the application for the  
26 injunction. RCW 7.40.130.

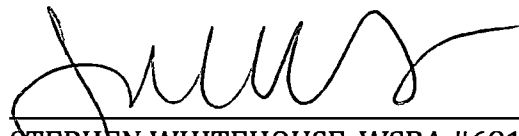
1 As this Court is aware, the form of the preliminary injunction must meet the  
2 requirements of CR 65:

3 **(d) Form and Scope.** Every order granting an injunction and every  
4 restraining order shall set forth the reasons for its issuance; shall be  
5 specific in terms; shall describe in reasonable detail, and not by reference  
6 to the complaint or other document, the act or acts sought to be restrained;  
7 and is binding only upon the parties to the action, their officers, agents,  
8 servants, employees, and attorneys, and upon those persons in active  
concert or participation with them who receive actual notice of the order  
by personal service or otherwise.

9 In addition, findings of fact and conclusions of law are required, CR 52(a)(2)(A).<sup>1</sup>

10 **Writ of Assistance or Writ of Restitution.** As part of the preliminary relief,  
11 Plaintiff requests the Court issue an Order granting Writ of Assistance, allowing the  
12 Sheriff to enter and remove Defendant from the subject property if Defendant has not  
13 surrendered the property at the time they are bound by the Court's injunction.  
14

15 Respectfully submitted this 14 day of February, 2021.

16  
17   
18 STEPHEN WHITEHOUSE, WSBA #6818  
19 JULIE NICHOLS, WSBA #37685  
20 WHITEHOUSE & NICHOLS, LLP  
21 Attorneys for Plaintiffs  
22  
23  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Plaintiffs respectfully request, pursuant to CR 65(a)(2), that the hearing on her application for  
a preliminary injunction be consolidated with the trial of the action on the merits.