No. 100827-9
SUPREME COURT
OF THE STATE OF WASHINGTON

OLIVE OSHIRO, *et al.*, Petitioners,
v.
WASHINGTON STATE HOUSING FINANCE COMMISSION, *et al.*, Respondents.

PETITIONERS' REPLY ON EMERGENCY MOTION TO MODIFY THE COMMISSIONER'S APRIL 19, 2022 RULING AND REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF

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Federal law confers jurisdiction on "any State court" to adjudicate eviction disputes under the Low Income Housing Tax Credit ("LIHTC") program, to which Petitioners' homes belong. *See* 26 U.S.C. § 42(h)(6)(B)(ii). Riders to Petitioners' leases state that "[u]nder federal law, [Petitioners] have the right to enforce" the federal prohibition on evictions without good cause "in state court." A-0100, A-0162, A-0238. Nevertheless, the Commissioner found the State lacks jurisdiction and, therefore, denied Petitioners' request for emergency injunctive relief. *See generally* Ruling Denying Motion for Injunctive Relief (Apr. 19, 2022) ("Ruling"). That decision was erroneous, and the Court should modify it and enjoin Petitioners' evictions.

A. STATE PARTNERSHIP RESPONDENTS CONCEDE INJUNCTIVE RELIEF.

State Partnership Respondents failed to answer Petitioners' Motion to Modify and Emergency Request for Injunctive Relief. They likewise failed to oppose the merits of Petitioners' preliminary injunction request both before the superior court and

the Supreme Court Commissioner. A-0006-A-0011[1]; A-0865–A-0880; Answer (Apr. 14, 2022). Accordingly, this Court should grant Petitioners preliminary injunctive relief.

B. THE COMMISSIONER ERRED ON JURISDICTION.

Petitioners' homes are owned by three limited partnerships formed under Washington State law. A-0509, A-0574, A-0636, A-0709, A-0774-A-0778. Each of those partnerships is 99.99% owned by a Raymond James subsidiary chartered under

[1] State Partnership Respondents have not disputed at any stage that: (1) Petitioners have clear federal legal rights to not be evicted from homes to which they hold conveyance rights, without good cause; (2) that Petitioners have well-grounded fears of immediate invasion of those rights; and (3) that Petitioners' imminent eviction from homes they have been buying for as many as 24 years will result in actual and substantial injury to them. A-0006-A-0011; *Port of Seattle v. International Longshoremen's & Warehousemen's Union*, 52 Wash. 2d 317, 319 (1958). State Partnership Respondents have also yet to address, and therefore have conceded, Petitioners' core jurisdictional and legal contentions that Congress conferred jurisdiction on "any State court" to adjudicate LIHTC eviction disputes; and that good cause, as defined by applicable federal and state authority, is lacking. A-0865–A-0880; Answer (Apr. 14, 2022); 26 U.S.C. § 42(h)(6)(B)(ii).

Delaware state law.[2] *See, e.g.,* A-0513, A-0529, A-0550. More specifically, as the limited partner for each partnership, each Raymond James subsidiary assumes 99.99% of any liabilities or

[2] Raymond James' 99.99% ownership interests are held by a slew of subsidiaries chartered in Delaware as limited liability companies. *See* A-0798, A-1005–A-1006. Those LLCs are collectively referred to herein as "Raymond James." Raymond James came to Washington to participate in the "highly competitive" LIHTC development process. A-0800. State Partnership Respondents "crafted" their "LIHTC applications in such a way as to take maximum advantage of the LIHTC program's preference for homeownership." A-0801. In turn, the Washington State Housing Finance Commission ("WSHFC")—which the State Legislature formed to facilitate low-income, rural housing for the likes of Petitioners—"awarded application points to each of the Limited Partnerships based on that 15-year home ownership concept, and in turn awarded tax credits to each of the Limited Partnerships." *Id.*; *see, e.g.*, A-0379 (awarding points "intended for eventual tenant ownership after the initial 15-year Compliance Period"); RCW 43.180.010. WSHFC admits State Partnership Respondents' have breached those promises "for federal 'tax liability' reasons"—i.e., to minimize Raymond James' income tax liability. *See* A-1010. But not wanting to draw attention to its own nonfeasance, WSHFC looks away. Having enjoyed lucrative federal income tax credits throughout the initial 15-year Compliance Period, Raymond James now appears content to allow its 00.01% partners and their lawyers to bear the brunt of Petitioners' lawsuit. Because WSHFC will not stymy this shell game and halt Petitioners' evictions through regulatory enforcement, this Court must do so through judicial enforcement.

profits. *See*, *e.g.*, A-0532, A-0550. State Partnership Respondents are decidedly non-tribal in character. *Cf. Wright v. Colville Tribal Enterprise Corp*., 159 Wn.2d 108, 113-114 (2006) (en banc) (sovereign immunity extends to "tribal governmental corporations owned and controlled by a tribe, and created under its own tribal laws").[3]

Petitioners' homes are non-trust personal property[4] subject to regulatory agreements with the Washington State Housing Finance Commission ("WSHFC"), and "at all times" governed by "federal, state and local laws," including "Tax Credit Laws" such as Section 42 of the Internal Revenue Code as well as the Washington State Landlord Tenant Act. A-0030, A-0115, A-0117. The regulatory agreements themselves "shall be governed

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[3] In the regulatory agreements, State Partnership Respondents concede "Tribal sovereignty immunity does not apply" to them, as "Owner" of the homes. *See*, *e.g.*, A-0045.

[4] The homes are personal property owned by State Partnership Respondents. *See* A-0509, A-0574, A-0636, A-0709, A-0774-A-0778. *See Chief Seattle Properties, Inc. v. Kitsap County*, 86 Wash. 2d 7, 16 (1975).

by the laws of the state of Washington." A-0048, A-0133, A-0195.

State Partnership Respondents promised WSHFC that after fifteen years they would "transfer ownership of 100 percent of the units in the Project to tenant ownership." A-0033, A-0118, A-0180; *see also* A-0083, A-0144, A-0221. The regulatory agreements also imposed a lease rider upon State Partnership Respondents that prohibits Petitioners' evictions "'other than for 'good cause,'" which "shall mean the serious or repeated violation of a material term of your lease or a condition that makes your unit uninhabitable." A-0100, A-0162, A-0238. The lease rider makes plain to Petitioners: "Under federal law, you have the right to enforce this requirement in state court as a defense to any eviction action brought against you." A-0100, A-0162, A-0238; *see also* 26 U.S.C. § 42(h)(6)(B)(ii).

Petitioners' homes are situated on off-reservation trust lands, which are also subject to Washington State law according to subordination agreements entered into with WSHFC. *See* A-

0897–A-0926. Each agreement "unconditionally subjects the Land" to the regulatory agreements and, therefore, Internal Revenue Code Section 42 and state landlord-tenant law. *See* A-0901, A-0910, A-0921; *see also* A-0030.

Petitioners' homes are managed by State Partnership Respondents' "property representative," the Nooksack housing authority. *See, e.g.*, Declaration of Malori Klushkan ("Klushkan Decl."), Exs. 8, 10. Since at least 2005, each Petitioner was "told that if [they] paid our rent and maintained our home for 15 consecutive years, [they] would become the owner of the home." *See e.g.* A-0843, A-0858. Each Petitioner was also advised that State Partnership Respondents are "prohibited from evicting you 'other than for 'good cause,'" which they understood to mean not paying rent or maintaining their home in poor shape. *Id.*; *see e.g.,* Malori Decl., Exs. 8, 10. Petitioners were specifically advised: "Under federal law, you have the right to enforce this requirement in state court as a defense to any eviction action brought against you." *Id*.; *see also* 26 U.S.C. § 42(h)(6)(B)(ii).

As the Commissioner correctly observed, "[t]here are no allegations that petitioners have not paid their rent or have damaged the lease premises." Ruling at 2–3. As such, Petitioners invoked their federal right to enforce the federal good cause requirement "in any State court" as the basis for the superior court's jurisdiction. A-1006.

Petitioners have not invoked RCW 37.12, and State Partnership Respondents cannot unilaterally convert this action into one brought under that statutory scheme. *See* Ruling at 5 (citing RCW 37.12.060). Petitioners' lawsuit does not involve the assertion of civil jurisdiction "over Indians" in Indian territory. RCW 37.12.010. As established above, Petitioners sue three *non-tribal*, Washington State limited partnerships. *See* A-0504, A-1005–06. Further, because the rule of RCW 37.12.010 does not apply to establish superior court jurisdiction, the exception in RCW 37.12.060 cannot apply to defeat its jurisdiction. *See Snohomish County v. Seattle Disposal Co.*, 70 Wash. 2d 668, 671 (1967) (the limitation found in RCW

37.12.060 is a limitation on the State's assumption of jurisdiction through RCW 37.12.010); *see also* RCW 37.12.021 (recognizing that "jurisdiction *assumed pursuant to this section* shall nevertheless be subject to the limitations set forth in RCW 37.12.060) (emphasis added). RCW 37.12 is categorically inapplicable to this lawsuit.

C. WASHINGTON STATE HAS JURISDICTION.

State Partnership Respondents' jurisdictional arguments to the superior court and Commissioner are reminiscent of those rejected in *Outsource Services Management v. Nooksack Business Corporation*, where this Court held that the "plain language" of contracts established superior court jurisdiction. 181 Wash. 2d at 278–79. There, a Nooksack enterprise entered a contractual financing arrangement for trust land casino construction that conferred jurisdiction to "any court of general jurisdiction in the State*.*" *Id*. at 278.

This Court began its analysis by explaining:

> There are very few limitations on the subject matter jurisdiction of superior courts in Washington. Pursuant to the Washington State Constitution, superior courts 'have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.' WASH. CONST. art. IV, § 6. This original jurisdiction includes contract claims, the subject matter of the dispute in this case.

Id. at 276. The Washington State Constitution did not preclude jurisdiction—it affirmed it. *Id.* The same holds true here. *But see* Ruling at 5 (citing Wash. Const. art. IV).

Notwithstanding Nooksack's tribal land-based jurisdictional contentions, *Outsource* did "not fall within the scope of the civil jurisdiction that Washington assumed pursuant to Public Law 280." *Id.* at 277. As discussed above, that same conclusion must also be reached here.

Instead the question was "whether asserting jurisdiction in this case would infringe on the rights of the tribe," which the Court answered in the negative. *Id.* As with the regulatory agreements and lease riders, the enterprise's financing contracts were expressly subject to state court jurisdiction. As such,

superior court personal and subject matter jurisdiction did not violate Nooksack self-rule. *Id.* at 279 ("In fact, we believe the opposite is true: ignoring the tribe's decision to . . . consent to state court jurisdiction would infringe on the tribe's right to make those decisions for itself.").

This Court should modify the Commissioner's Ruling to find jurisdiction and preliminarily enjoin State Partnership Respondents from evicting Petitioners pending the Court's review of the superior court order and until further order of the Court.

This document contains 1677 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 12th day of May, 2022.

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