**IN THE SUPERIOR COURT OF WASHINGTON**

**FOR MASON COUNTY**

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| JANE DOE, a widowed woman, Plaintiff,  v.JAMES ROE, a single man, Defendant.  | NO. MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION  |

**I. INTRODUCTION**

 This lawsuit is brought on behalf of Plaintiff Jane Doe, a widow, who, while vulnerable after the loss of her husband and her parents, allowed herself to be pressured into agreeing to let Defendant, James Roe, park his truck in the driveway of her cabin near Forks, and stay in the truck camper. This happened sometime in October of 2012.

 Mr. Roe did promise to do minor repairs, and he did a very few, very minor small repairs, such as replacing about 12 deck boards, over time. But he has long overstayed his welcome. He refuses to leave, and makes a very substantial nuisance of himself to Mrs. Doe and the neighborhood. He abuses her kindnesses and simply tells her that he has nowhere else to go and she is stuck with him.

 This lawsuit asks for ejectment, quiet title, both a preliminary and a permanent injunction prohibiting him from returning and requiring him to take his camper and belongings, and for damages. The Court is asked to enter a temporary restraining order requiring him to leave and take his possessions with him.

**II. UNLAWFUL DETAINER RELIEF IS NOT AVAILABLE**

 There was never any rental, or lease, or tenancy, between Mrs. Doe and Mr. Roe. There was not any sort of lease. Therefore, she cannot make use of the summary procedures of the Unlawful Detainer statutes.

 On September 14, 2013, a friend provided Mrs. Doe with a document that she had prepared from internet sources that was entitled, "Termination of Tenancy Agreement." It recited that a tenancy agreement had been made on October 15, 2012, and that the two parties, called landlord and tenant, wanted to "terminate and cancel the Tenancy Agreement." It went on to say that there was a verbal tenancy agreement dated October 15, 2012; that it was terminated, and that James Roe would vacate the premises within 30 days of the execution of the agreement to terminate the tenancy. It also required Mr. Roe to not leave a mess when he left.

 This agreement was signed by Jane Doe and James Roe, and witnessed by a neighbor, Ralph Johnson.

 This agreement did not create a tenancy, and no tenancy had ever been created. Defendant has always understood that he has no right to remain on Mrs. Doe's property, and that he only ever did so as a matter of permission. The agreement did, however, constitute acknowledgement that Mr. Roe understood that he had to leave by October 14, 2013, and it contains Mr. Roe' agreement to do so.

 There are four state statutory schemes that can apply to various tenancies and their termination. None can apply to these facts, for the obvious reasons that this was never a tenancy, there was never any rent, Mr. Roe never had any rights in the property of Mrs. Doe, and there was never any other aspect of a tenancy relationship between them. These statutes are as follows:

 **A. RCW chapter 59.04 Tenancies**: This chapter only applies to tenancies, which are not defined by the statute. All sections refer to either leases or payment of rent. RCW 59.04.050 does provide that whenever "any person obtains possession of premises without the consent of the owner... he shall be deemed a tenant by sufferance...." This does not apply as Defendant was allowed to stay on the premises in the beginning.

 **B**. **RCW chapter 59.12 Forcible Entry and Forcible and Unlawful Detainer**. This chapter defines forcible entry as either breaking into property, or if the defendant entered peacefully, the defendant then ejected the plaintiff from his or her own property with force. RCW 59.12.010. It defines forcible detainer as unlawfully holding and keeping the possession of any real property by force or by menaces and threats of violence; or by entering when the plaintiff is not present and refusing to leave. RCW 59.12.020. Unlawful detainer is defined as when a tenant of real property holds over after the expiration of the lease term, or after a default in payment of rent. RCW 59.12.030. This only applies, of course, when the Defendant is a tenant.

 C. **RCW chapter 59.16 Unlawful Entry and Detainer.** This chapter defines unlawful detainer as when a defendant enters without permission and refuses to leave. Here, Mr. Roe did not enter initially without permission. See discussion below about the definition of trespasser, which can include original permission then staying over without permission.

 **D.** **RCW chapter 59.18 Residential Landlord Tenant Act.** This applies to the rental or leasing of residences to tenants. A tenant is defined as "any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement." RCW 59.18.030(21).

 **E. Tenancy at Will.** There is an arrangement that has been called a "tenancy at will." This is the case where a “tenant” enters with the permission of the owner, the owner can terminate the “tenancy” without notice, and there was no provision for periodic or other payments. These “tenancies” are terminable upon demand for possession, so long as the owner allows a reasonable time for the tenant to vacate. *Najewitz v. Seattle*, 21 Wash. 2d 656 (1944). The application of this doctrine is confusing, as it uses terms connected to leases, such as “tenant” and “tenancy,” where no lease or tenancy actually exists. It is preferable to consider these matters as mere licenses, discussed below, and not as some sort of subcategory of tenancy, especially in light of the statutes examined above as they apply to tenants and tenancies.

 **F. Summary.** None of the above can apply. Defendant has never been a tenant, or a person occupying premises under a rental agreement; chapter 59.04 only applies to tenancies; chapter 59.12 does address unlawful detainers, but these require either a holding over after a previous rental or lease term, or a default in payment of rent, waste committed on leased premises, or entering without the permission of the owner; chapter 59.16 requires entry without permission; and chapter 59.18 requires a tenancy, which means a right to occupy under a rental agreement. Finally, tenancies at will are not proper tenancies at all, and can be terminated upon notice with a reasonable time to vacate.

**III. DEFENDANT WAS A LICENSEE, THE LICENSE WAS**

 **REVOKED, AND IS NOW A MERE TRESPASSER**

 Here, Plaintiff allowed Defendant to stay on her property. There was no rental agreement, no rent to be paid, and nothing else that would meet any definition of tenancy that might apply. He did agree to do minor repair work, he has done a very limited amount of that, and he has done nothing for months. He just refuses to leave.

 Defendant was initially a licensee:

 An easement, although an incorporeal right, is an interest in land. *Humphrey v. Krutz*, 77 Wash. 152, 137 P. 806. A license, on the other hand, authorizes the doing of some act or series of acts on the land of another without passing an estate in the land and justifies the doing of an act or acts which would otherwise be a trespass. *Conaway v. Time Oil Co*., 34 Wash.2d 884, 210 P.2d 1012.

 A license differs from an easement in that it is revocable and nonassignable, and does not exclude possession, either wholly or partially by the owner of the servient tenement. Tiffany says, in his work on Real Property, Vol. 3 (3d Ed.), p. 414, that if a license is intended to be irrevocable, it is intended as an easement, as it gives an interest of a permanent or quasi permanent nature.

*Bakke v. Columbia Valley Lumber Co.,* 49 Wash. 2d 165, 170 (1956).

 Licenses are close relatives of easements and profits, but there is a fundamental difference between them. Stated theoretically and in Hohfeldian terminology, an easement or profit is a legal “right,” an interest in land, whereas a license is a “privilege,” not an interest in land.10 The practical distinction is that a license exists at the will of the landowner; it is permissive use, and therefore not wrongful, but it is revocable at will. An easement, on the other hand, is not revocable at will, though it may have a life that is limited to a stated time or to the duration of some purpose it serves. Because a license is not an interest in land, it may be created orally; the Statute of Frauds for deeds does not apply to it. Easements and profits, as we saw previously, must either be created by an instrument that complies with the deed statute or in some way in which the rules of law or equity excuse the absence of a writing. Confusion of licenses with easements and profits comes about because they both allow the same sort of acts, the use of land owned by another person. Ultimately the question is whether the parties intended a license, revocable at the will of the creator, or an easement or profit that is not so revocable. That the recipient paid consideration for the usage tends to indicate an easement, though it is not conclusive evidence.11 Other factors that tend to suggest the parties intended an easement are that it is for a designated time, that the area of use is defined with some specificity, and that the holder is allowed to exercise a great degree of control of the area. Opposites of these factors tend to indicate a license was intended.12

n10 Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 Yale L. J. 16, 43–44 (1913). In Washington *Bakke v. Columbia Valley Lumber Co.,* 49 Wn.2d 165, 298 P.2d 849 (1956), spells out the basic distinction between easements and licenses. *See also Showalter v. City of Cheney,* 118 Wn.App. 543, 76 P.3d 782 (Div. 3, 2003), which holds that a business building's canopy whose posts rested on a public sidewalk was a “revocable license.”

n11 *See Bakke v. Columbia Valley Lumber Co*., 49 Wn.2d 165, 298 P.2d 849 (1956). *See also Washburn v. Esser*, 9 Wn.App. 169, 511 P.2d 1387 (1973).

n12 W. Stoebuck & D. Whitman, The Law of Property § 8.1 (3d ed. 2000). *See Showalter v. City of Cheney,* 118 Wn.App. 543, 76 P.3d 782 (2003), holding that a tavern's canopy that rested on a city sidewalk was there only by license.

17 Wash. Prac., Real Estate § 2.1 (2d ed.)

 There is no doubt that Defendant was not a tenant, but a licensee, when he initially entered the property of Plaintiff. Once Plaintiff revoked his permission, then he became a trespasser. A trespasser is defined by WPI 120.01 as one "who enters or remains upon the premises of another without permission...." As to remaining unlawfully,

“Unlawful remaining” occurs when (1) a person has lawfully entered a dwelling pursuant to license, invitation or privilege; (2) the invitation, license or privilege is expressly or impliedly limited; (3) the person's conduct violates such limits; and (4) the person's conduct is accompanied by intent to commit a crime in the dwelling. *State v. Thomson,* 71 Wash.App. 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 P.2d 837 (1988); *State v. Rio,* 38 Wash.2d 446, 230 P.2d 308, *cert. denied,* 342 U.S. 867, 72 S.Ct. 106, 96 L.Ed. 652 (1951)); RCW 9A.52.025(1); RCW 9A.04.110(7).

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

 There is also no doubt that Plaintiff has revoked Defendant's license. She has done so orally many times, and she has done so in a writing, which was signed by Defendant, and by which he agreed to leave by October 14, 2015.

 In the alternative, the Court may wish to consider tenancy at will an alternate theory that would support the same result as the theory that the relationship is a license: Plaintiff is entitled under either doctrine to an Order requiring Defendant to leave within a reasonable time under the circumstances.

**IV. PLAINTIFF IS ENTITLED TO A**

**PRELIMINARY INJUNCTION, CR 65(a)**

 When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; ...an injunction may be granted to restrain such act or proceedings until the 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 required, in an amount "sufficient to pay all damages and costs which may accrue by reason of the injunction...." RCW 7.40.080; CR 65(c).

 The amount of the bond is within the discretion of the Court.   [*Hockley v. Hargitt,* 82 Wash.2d 337, (1973)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1973123767&pubNum=661&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)) ($500,000 bond requested, $1,000 bond ordered, Defendant failed to provide any specific information about need for bond and potential damages).   Plaintiff respectfully requests that the Court consider that Mr. Roe has absolutely no right to stay on Mrs. Doe's property; and that he has signed an acknowledgment of the same, and agreed to leave by October 14, 2013, over three months ago. Any damages from the issuance of a wrongful injunction would have to be premised on a finding that he has a right to continue to live on Mrs. Doe's property, an unusual proposition under these circumstances. Otherwise, forcing him to leave now simply lessens the amount of damages that will be sought against him for his trespass and wrongful invasion of privacy, by reducing the number of days he commits these wrongs.

 Plaintiff recommends a cash bond of $200.

 Mr. Roe is bound by the Court's injunction as soon as the bond required by the Court is posted, because he will have been served with the application for the injunction. RCW 7.40.130.

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

**(d) Form and Scope.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, 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.

 In addition, findings of fact and conclusions of law are required, CR 52(a)(2)(A).

 Finally, Mrs. Doe requests, 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.

 Respectfully submitted this \_\_\_\_\_\_\_ day of January, 2014.

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 Robert D. Wilson-Hoss, WSBA #8620

 Attorney for Plaintiff