

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

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4 SEATTLE'S UNION GOSPEL MISSION,) Appeal No. 83185-2-I
5 Plaintiff,) Cause No. 21-2-07727-3 SEA
6 v.)
7 REBECCA BAUER,)
8 Defendant.)

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10 SUMMARY JUDGMENT HEARING

11 The Honorable John R. Ruhl Presiding

12 September 7, 2021

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22 Also Present:

23 YUAN TING, Housing Justice Project observing attorney

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25 JAKE PHILLIPS, Housing Justice Project paralegal

I N D E X O F P R O C E E D I N G S

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September 7, 2021

THE COURT: Well, thank you all for your patience. It took no fewer than three bailiffs to get this meeting started. I appreciate your patience. We're letting two of them leave now.

This is a hearing in No. 21-2-07727-3, Seattle's Union Gospel Mission versus Rebecca Bauer. And I see there are several people on the -- online here at the Zoom hearing. And I'll let you all introduce yourselves, starting with lawyers for the plaintiff and then lawyers for the defense.

MR. TAYLOR: Good afternoon, Your Honor. My name is Nathaniel Taylor and I am counsel for the plaintiff, Seattle's Union Gospel Mission.

MR. MILLIMAN-JARVIS: Good morning -- afternoon, Your Honor. My name is Dashiell Milliman-Jarvis. I am a staff attorney with the Housing Justice Project here on behalf of Rebecca Bauer, the defendant.

THE COURT: All right. And your name again? Can you -- maybe we can put your name on it. I can't rename you. Your name again is Mr. -- Mr. Thomas, you say?

MR. MILLIMAN-JARVIS: Dashiell Milliman-Jarvis. I will drop it in the chats for -- so that might make it easier for the bailiff to be able to rename me.

1 THE COURT: Okay. Oh, I see. Millman -- Milliman. I've
2 seen your name. I'm sorry. I just haven't written it down.

3 Okay. But I think there may be some other people for
4 the -- are there anybody else -- is there anybody else for
5 the plaintiff?

6 No.

7 MR. MILLIMAN-JARVIS: There are other members of the HJP
8 staff who are here largely to be observers, but they are not
9 here to argue in front of you, Your Honor. I'm here as the
10 primary counsel for this matter -- motion.

11 THE COURT: All right.

12 MR. TAYLOR: And Your Honor, I'm the only -- I'm the only
13 person present for the plaintiff.

14 THE COURT: Okay. All right. So we have -- let's see
15 here. Ms. Ting is listening. We have some- -- another
16 person labelled "HJP Observer."

17 And you are who?

18 MR. STOCKPYLE: Good afternoon, Your Honor. Sebastian
19 Stockpyle on behalf of Defendant Rebecca Bauer. I was the
20 original sort of counsel of record. And this was taken over
21 by Dashiell Milliman-Jarvis as main counsel.

22 THE COURT: All right.

23 MR. STOCKPYLE: I'm also with the Housing Justice Project.

24 THE COURT: Okay. I do now remember you, yes.

25 And Jake Phillips, and --

1 MR. MILLIMAN-JARVIS: Jake Phillips is a paralegal from
2 our office. Also online is Christopher Graves, who's
3 another attorney on from our office.

4 THE COURT: All right.

5 Well, welcome.

6 My own bailiff, my normal bailiff, is out on medical leave
7 right now, and for a bunch of other reasons there is a
8 shortage of bailiffs in our court on the last few weeks and
9 including today. And then we've just had a flood of plea --
10 people wanting to plead guilty, so I have been assigned to
11 the plea court. And we just finished that a little after
12 3:00 today. But we were still short of bailiffs, and now we
13 are ready to go.

14 This is a hearing on the defendant's motion for summary
15 judgment.

16 How much time do you think you will need, Mr. Jar- --
17 Milliman-Jarvis.

18 MR. MILLIMAN-JARVIS: I have about three pages of
19 argument. I assume it shouldn't take more than -- I
20 don't -- I want to be respectful of the Court's time. I
21 don't expect it would take more than ten minutes or so.

22 THE COURT: Well, okay. I'll give you 15 minutes.

23 MR. MILLIMAN-JARVIS: All right.

24 THE COURT: And let me just see. I want to get a -- make
25 sure I have a pad here. Yeah. All right.

1 Is that enough time for -- for the plaintiff?

2 MR. TAYLOR: Yes, it is, Your Honor. Thank you.

3 THE COURT: All right.

4 All right. So let's go right ahead, then, for the
5 defense.

6 MR. MILLIMAN-JARVIS: Thank you, Your Honor. And again,
7 good afternoon. For the record, once again, my name is
8 Dashiell Milliman-Jarvis. I am a staff attorney with the
9 Housing Justice Project here on behalf of Rebecca Bauer.
10 We're here today on a summary judgment motion brought on a
11 matter under the Unlawful Detainer Act, Revised Code of
12 Washington, 59.12. Just quickly, the summary judgment's
13 standard, of course, means that all facts are drawn in favor
14 of the nonmoving party here, the plaintiff.

15 The Unlawful Detainer Act is interesting in that it is in
16 derogation of the common law right of possession and action
17 on possession and it is -- must be strictly construed in
18 favor of tenants. So we're in a situation where all
19 reasonable factual inferences should be drawn in favor of
20 the plaintiff and all reasonable legal inferences construed
21 in favor of tenants.

22 For the purposes of this motion, we're not really
23 contesting any of the facts alleged in the Complaint. We're
24 taking them all as true, at least for the purposes of this
25 motion. There are some disputes; but if it goes to trial,

1 I'm sure that those with all be worked out and adjudicated
2 fairly.

3 Some of the facts that are undisputed and we believe are
4 relevant -- one, the subject property is located within the
5 city of Seattle. Our client, Ms. Bauer, moved in, in July
6 of 2018. She signed a handbook in May of 2019, which stated
7 that guests of Re:Novo are invited for a one- to two-year
8 period with the exact length of stay determined on a
9 case-by-case basis. She was, at that point, a formally
10 homeless woman who, I think it's pretty undisputed, has not
11 participated in any religious services at Re:Novo. She has
12 paid rent, which I believe were termed "program fees" by the
13 plaintiff, based on her income. The plaintiff is a
14 faith-based organization that provides social services to
15 the homeless as part of their faith-based mission, and the
16 instant action was filed on June 11.

17 So just to road map our argument a little bit, Your Honor,
18 we believe this is -- action is based solely on the Unlawful
19 Detainer Act under a particular provision we don't believe
20 applies. Even if it did apply, we believe that our client
21 is protected by applicable moratoria that were passed in
22 response to the residential -- or the -- the coronavirus
23 pandemic. And we also believe that even -- even if those
24 moratoria did not -- weren't currently enforced, our client
25 could -- would still be protected under the Residential

1 Landlord-Tenant Act.

2 So --

3 THE COURT: So can I stop -- just one second.

4 MR. MILLIMAN-JARVIS: Yeah.

5 THE COURT: So you would contend, then, that -- well, do
6 you contend that 59.12, the Unlawful Detainer Act, controls
7 or do you contend that the 59.18, the Residential
8 Landlord-Tenant Act -- or do you contend they both have some
9 bearing?

10 MR. MILLIMAN-JARVIS: We contend that they both have some
11 bearing. 59.12 is -- 59.18 acts as sort of an overlay over
12 59.12. 59.12 applies to all terminations of tenancies, all
13 unlawful detainer acts whether residential, commercial,
14 sometimes even in strange situations where there's not
15 actually a tenancy but someone is an adverse possessor.
16 59.18 has specific restrictions that -- that -- where in
17 residential tenancies certain portions of 59.12 don't apply,
18 and residential land- -- tenants also have certain extra
19 protections and residential landlords also have certain
20 additional duties.

21 THE COURT: Okay. Thanks.

22 MR. MILLIMAN-JARVIS: So I think our first point is that,
23 under the Unlawful Detainer Act, this action was brought as
24 a -- under 59.12.030(1), which is the holdover provision. A
25 "holdover tenant" is one who fails to vacate their tenancy

1 at the expiration of a specified term where the property is
2 let to a tenant. We believe a strict reading of the law,
3 regardless of whether you were required to construe the law
4 in the tenant's favor, shows that this really only applies
5 to specified terms.

6 The FPA Crescent case that we quote in our briefing goes
7 into some depth as to what the specified term -- expiration
8 of a specified term means. But, basically, yeah, it -- that
9 there -- there is a term of tenancy where there is a fixed
10 term, one that has a -- a definite start and a definite end,
11 and that is -- that time runs out. These used to be called
12 "tenancies of years." And, you know, going to Black's Law
13 Dictionary, the basic definition of these sorts of tenancies
14 are one's that -- that have a definite beginning and a
15 definite end. And that's important because we're in -- the
16 Unlawful Detainer Statute, in general, is a notice-based
17 statute. In practically every other form of eviction, some
18 sort of notice has to be given. In this case a notice would
19 have to be in the lease contract.

20 Here there's not really a specified move-out period.
21 There's this term that says that someone can be there for
22 one to two years, but it does -- it -- which is variable.
23 It doesn't provide them with a specific notice as to when
24 they would move out. We would argue that to terminate such
25 a tenancy there has to be some form of notice that isn't

1 really being provided here. Even if there was notice within
2 the contract itself, the tenancy has this effect in excess
3 of one year.

4 Different parts of Chapter 59, you know, just kind of
5 disfavor these. And Washington state law has, in general,
6 disfavored tenancies in excess of one year. For example, we
7 quote Labor Hall Association v. Danielsen where a tenancy
8 was for one year with a peri- -- with a -- a -- an option to
9 renew for another year. That was found by the court to
10 explicitly be an invalid lease without acknowledge- -- when
11 it lacked acknowledgment. And, similarly, there was another
12 lease in Anderson v. Frye & Bruhn where there was a lease
13 for a year with a potential renewal for two years, again
14 found to be invalid. The term -- the -- the tenancy term
15 for the lease was struck. It was found to default to a
16 month-to-month tenancy.

17 This has been the consistent finding of Washington state
18 courts both because of the case law and the statutory
19 language. Those sorts of tenancies that have, in effect, an
20 excess of one year usually have to be acknowledged, which
21 again lacks -- the term of "acknowledgment" means you're
22 sworn in public, usually in front of a notary. There's
23 language about what "acknowledgment" means also within the
24 Revised Code of Washington at 42.45.010.

25 But even if you found that this lease was valid, this type

1 of eviction for holdovers were barred by both state and city
2 moratoria. The state's moratoria was -- moratorium was
3 broad. It included any tenancy in excess of 14 days where
4 someone lawfully entered -- including tenancies that aren't
5 normally covered by the Residential Landlord-Tenant Act:
6 Airbnbs, transient housing, and hotels -- and it prevented
7 landlords from engaging in eviction action unless the
8 eviction was based on specific narrow circumstances, a
9 notice was given, and the landlord attached an affidavit
10 swearing that the reasons for bringing the eviction were
11 within the -- the -- the exceptions of the moratorium.

12 That moratorium was in effect until June 30th. And the
13 plaintiff in this case didn't -- brought this case on
14 June 11th. So it was sort of untimely under the state
15 moratorium. We raised that in our initial briefing. The
16 reply just noted that the -- that the moratorium had
17 expired, didn't give, really, any reason why it was filed
18 early.

19 In any case, the city moratorium also protects -- prevents
20 evictions for reason of holdover. That's still in effect
21 through the end of the month. The sole exception to that
22 moratorium is when there is an imminent threat to health and
23 safety. The only briefing we've really gotten and
24 allegations we've really gotten were actions that allegedly
25 occurred -- you know, taken as true, occurred months prior

1 to the filing of this case. They all happened in 2020.
2 This case wasn't filed until June 11th of 2021. It's kind
3 of hard to find that these are imminent threats even in the
4 most favorable circumstances.

5 In any case, it still says that the action itself has to
6 be based upon an imminent threat to health and safety. And
7 this action was, again, brought under the holdover provision
8 with no notice, no claim of nuisance or further -- or --
9 or -- or such notice so that our client could really present
10 a defense.

11 There was a claim that the -- that the city moratorium
12 doesn't apply because it only -- it states that the -- it
13 only applies to residential landlord. They say they are not
14 a residential landlord without, really, further citation. I
15 believe that they were trying to implicate them because
16 they're not covered by the Residential Landlord-Tenant Act;
17 they're not residential landlords. I don't think the
18 city -- the city of Seattle moratorium is necessarily bound
19 by the Residential Landlord-Tenant Act. There are
20 differences between city of Seattle law and state law. But
21 even assuming that was the case, we believe that the RLTA
22 does apply.

23 The claim of exemption brought is that under 59.18.040(1),
24 residences at institutions where residence is merely
25 incidental to detention or provision of medical, religious,

1 educational, or recreational, or similar services is -- are
2 exempted and includes -- you know, it gives some examples,
3 including correctional facilities, licensed nursing homes,
4 monasteries, convents, and hospitals.

5 We think that this fails. The case that they rely upon
6 here is Sunrise Group v. Ferguson, which stated that any
7 living arrangement where a tenant has a purpose for living
8 there -- and I want to emphasize the tenant has a purpose --
9 they're independent from the basic requirements of shelter
10 amenities is where the exemption applies. In the Sunrise
11 case, the tenant, or resident, was a developmentally
12 disabled woman living in an institution that was designed to
13 help her because she couldn't live independently, and the
14 reason for the eviction in that case was actually because
15 they determined that they couldn't provide the sort of
16 services she needed. She needed something more intensive
17 than that.

18 Now, the point there is that there -- those were services
19 that were being provided. While Plaintiff has argued at
20 length that the purpose in providing housing services is
21 because of their religious goals and their -- their -- their
22 faith, which we don't dispute, it's not our tenant's purpose
23 for receiving housing. It's our tenant's purpose for
24 receiving housing as to be housed. So we think that
25 that's -- that's sort of focusing on the wrong part of -- of

1 the relationship.

2 Washington state law also recognizes that the -- the
3 listing of those types of institutions is another limiting
4 factor. In *Gray v. Pierce County Housing Authority*, the
5 housing authority tried to bring a -- tried to claim they
6 were exempt because they started a housing program with
7 certain educational elements in it and sought to be seen
8 like a university. The court found that -- that the -- the
9 exemption just didn't apply because they are -- they're not
10 like a university; they're a housing authority.

11 Now, here the -- the -- the plaintiff says that they
12 should be seen like a congregate care home or a university,
13 but they don't argue, really, that their institutional
14 purpose is similar to those. The only religious institution
15 status specifically kind of called out as religious
16 institutions are monasteries and convents where residency is
17 usually limited to members of the clergy. My client just
18 isn't a member of the clergy. She's not a nun or a monk nor
19 a prisoner, patient, student, or any other person with
20 special status that -- at the institution because of that
21 special status. She's there because she needs housing.

22 So we think the RLTA does apply; and, therefore, there is
23 a number of provisions that were passed this last
24 legislative session that say that holdover tenancies are not
25 a good reason to terminate. I don't think we need to really

1 get into them.

2 I'll turn it back over to my -- opposing counsel to have
3 their argument.

4 THE COURT: Okay. Well, you've -- you've used 15 minutes,
5 so I'll give you 5 minutes for rebuttal, and that means I'll
6 give counsel for the defense -- excuse me -- for the
7 plaintiff 20 minutes.

8 Go ahead.

9 MR. TAYLOR: Thank you, Your Honor.

10 May it please the Court, good afternoon. My name is
11 Nathaniel Taylor, and again I represent the plaintiff
12 Seattle's Union Gospel Mission. I appreciate Counsel's good
13 advocacy -- great advocacy, really. And, you know, the
14 COVID-19 pandemic and the -- the strain on the court staff
15 and shortages of bailiffs, I'm cognizant that it -- you
16 know, the optics of being here suing to evict somebody are
17 not good, and I would hope that -- that the Court would
18 appreciate that we did not bring this action lightly. We
19 are not a commercial landlord. Seattle's Union Gospel
20 Mission reluctantly brought this action after it concluded
21 it could no longer risk the ongoing and imminent threat to
22 the health or safety of its staff and the other program
23 participants that's created by Ms. Rebecca Bauer's conduct.

24 So Counsel is, I guess, right and wrong that we are
25 absolutely doing this under -- regardless of what legal

1 exceptions there are or what -- on the moratoria. This
2 action was only brought because we believe it satisfies the
3 imminent health and safety exceptions to both the city and
4 state moratoria. The Complaint says exactly as much to
5 Counsel's point about notice. And the Complaint was
6 accompanied by a declaration of a staff member that detailed
7 the imminent threat to health and safety. And so there's
8 notice both in the -- the -- the Notice of Pleading and the
9 form of the Complaint itself, but it's accompanied by a
10 supporting affidavit that was filed and served with the
11 Complaint in addition for the motion for an order to show
12 cause. So from the get-go, the defendant has been on -- on
13 notice of what the issues are. And it -- and it -- you
14 know, as we'll talk about, it dates back further than that.

15 So I do want -- I think the facts are relevant both on the
16 applicable -- the -- you know, whether the moratoria bar
17 this and then also on the issue of whether the exception in
18 59.18.040 applies. I will concede from the outset that if
19 the Court were to find that 59.18 were to apply that we have
20 not complied with the provisions of 59.18. But I want to
21 make the argument that Seattle's Union Gospel Mission, in
22 terms of its institutional purpose and the religious nature
23 of the programs it serves, it cannot comply with that, and
24 it would have to appeal that sort of decision. I hope
25 we're -- I hope we don't have to get there, regardless of

1 what grounds that, you know, this is decided upon.

2 I want to paint a picture, talk- -- getting back to the
3 facts of what's actually going on at this program in West
4 Seattle. And yes, we agree with Defendant's point that it
5 is contained within the city of Seattle. If you can, I want
6 you to try to place yourself in the shoes of another
7 participant in this same program that resides in the program
8 property. Maybe you've come out of your most recent bout
9 with drugs and alcohol. You're clean and sober for a little
10 over a year. You've relapsed several times before, and you
11 know that sobriety is a day-to-day struggle. You also know
12 that extra stress increases the temptation to again return
13 to drugs or alcohol to numb the pain.

14 You're welcomed into a Christian group program where other
15 people believe in you more than you believe in yourself.
16 Maybe you think Jesus died for your sins, maybe you don't,
17 maybe you're not sure. But the program staff at the mission
18 sure believe it unashamedly, and they offer a way to a
19 transformed life centered in the Christian message of
20 Christ, death, and resurrection. Some of the program staff
21 might even be program graduates themselves. Something like
22 25 percent of Seattle's Union Gospel Mission staff are
23 graduates of its own programs.

24 These outspoken Christians know that you need love but
25 also structure and accountability. So they come asong --

1 along side you like a good parent, a good coach, and they
2 hold you accountable, and they -- but they believe in you.
3 They present the conditions at the front end. There's no
4 bait and switch. They're right there in the handbook, and
5 you're free to leave at any time.

6 You agree to the conditions of the program because you
7 know that the accountability will be good for you and help
8 you avoid falling back into a much more dangerous life or
9 relapse, return to domestic violence, homelessness,
10 whatever, so you agree to these terms. It's regular drug
11 testing, a strict curfew, room checks, make your beds daily,
12 no R-rated movies -- my kids get to watch R-rated movies --
13 no sexual activity, a dress code, regular meetings with an
14 on-site case manager, budgeting, Bible study, religious
15 worship attendance, and no guests in your -- in your bedroom
16 without approval. You have to work 30 hours a week and pay
17 a percentage of your earnings as a nominal program fee, and
18 if you can't find work, the mission staff will help you with
19 all aspects of the job search, or you can go to school.

20 You live in this congregate community sharing a kitchen
21 and a living room with four or five other women in the
22 program. Some of them have also come out of addiction or
23 are domestic violence victims and have finally gotten up the
24 courage to leave their abuser and they're -- together
25 they're on a journey. They can relate to one another's

1 struggles. They can support one another. They help to hold
2 one another accountable. They pray together, and they
3 know -- each of them know that recovery is a fragile
4 day-by-day thing. And you thank God for the program that
5 helps you in recovery.

6 Into that setting comes another program participant, and
7 that's the defendant here, Rebecca Bauer. And she too is an
8 individual with her own story and her own struggles. She
9 doesn't come into the program as a Christian, but she knows
10 it's a Christian program. And the staff are okay with that.
11 The program serves the institutional purpose of Seattle's
12 Union Gospel Mission, which is to share the gospel of Jesus
13 Christ, that is to evangelize, to proselytize. They serve
14 everyone in hopes that others will also come to share their
15 faith. So the program is deeply Christian, but it is not
16 limited to coreligionists.

17 At first things are fine with this new guest, but then the
18 pandemic hits. Everyone needs to shelter in place. The
19 guest develops symptoms of COVID and is instructed to
20 isolate in her room and meals will be brought to her.
21 Instead, she comes into the common kitchen to cook a meal,
22 potentially -- potentially exposing you to this deadly
23 virus. The staff tell her to return to her room and not do
24 that again, but she keeps doing it, while symptomatic. And,
25 remember, you're in a fragile state yourself already. You

1 have this -- and now we have the stress of the pandemic.
2 But this guest is regularly putting your own health and
3 safety and possibly even your life at risk.

4 The staff tell her she needs to leave for repeatedly
5 violating the rules of the program, and putting other guests
6 and staff at risk. She acknowledges this in writing. But
7 she doesn't leave. Instead, she abandons her room and --
8 and any claim of right in any sort of tenancy and moves into
9 a different room without permission. She leaves her
10 original assigned room completely trashed.

11 Then this other program participant, Ms. Bauer, who's not
12 really -- no long- -- she refuses all efforts to pro- --
13 provide the program services: the counseling, the
14 budgeting, case management, et cetera, et cetera; refuses
15 the one-on-ones that are scheduled and required; and she
16 becomes verbally abusive. She slams doors regularly. She
17 yells at the staff and other guests. She walks around the
18 indoor common areas without a mask. She leaves stove
19 burners on unattended, and she refuses to let the
20 maintenance come in to check her smoke and carbon monoxide
21 alarms even though there's a trouble alert.

22 These other gue- -- other guests who are -- are, you know,
23 coming from difficult situations are -- are triggered by all
24 this screaming and yelling and banging doors. They're
25 brought back to memories of abuses of ex's, et cetera, and

1 eventually, one by one, they start to leave. And now this
2 hypothetical guest, the person I want you to imagine, the
3 stress and strain of Ms. Bauer's actions become so acute
4 that you realize you're safer in your own recovery
5 elsewhere, and so you leave. And so Seattle's Union Gospel
6 Mission helps you find another place to stay, but it doesn't
7 have the wraparound services of this program you were just
8 forced out of. It cost a whole lot more than \$100 to \$500
9 per month, and you're now -- now your recovery is at much
10 greater peril.

11 Finally, the on-site staff member is forced out because of
12 this disruptive guest. The remaining program participants
13 in the other pods, the other sort of common suite, no longer
14 have on-site support -- now, the -- the -- all the guests in
15 Ms. Bauer's pod have all -- have already left; they've been
16 chased off by her behavior -- and so now their recovery is
17 that much more fraught. They have a different kitchen and
18 living room, so they don't have the COVID exposure. They
19 still have the banging doors, yelling, and the potential
20 fire risk. And that's the guests.

21 Now look at the staff. The case manager literally had to
22 abandon her office because of the -- the banging, the
23 yelling, the verbal abuse, the uninvited entries. It's much
24 harder to meet one-on-one with other vulnerable program
25 participants, to pray with them, encourage them, and check

1 on their progress when you can't even be on-site.

2 Another staff member is a Black woman. She goes to get
3 the mail out of the -- out of the common mailbox for the
4 remaining program participants. Ms. Bauer gets right up in
5 her personal space without a mask, starts yelling at her,
6 and calls her a black stupid bitch. She gets to go to work
7 each day wondering if she's going to be subject to that
8 thing.

9 The Union Gospel Mission, their staff, they have fairly
10 thick skins. Again, look at the type of people the --
11 the -- the staff members were dealing with. They're used to
12 dealing with people who -- in difficult circumstances:
13 homeless, vulnerable, people with mental health and
14 addiction issues. The fact that they're bringing this
15 unlawful detainer action in -- when they're used to enduring
16 a fair amount of -- of difficult circumstances suggests this
17 is -- really is a significant problem. So this lady gets to
18 go to work each day. Is she going to get exposed to COVID?
19 Is she going to get subject to more racial abuse? It's
20 awful. It's life-draining.

21 So that's why we're here today. This is not about money.
22 It's not about property damage. I applaud the -- the work
23 of the Housing Justice Project -- Project to try and keep
24 people from being homeless, and in that sense we're aligned.
25 There's four other vacant units on Ms. Bauer's side of the

1 program building that they can't put vulnerable people into
2 because of her conduct, and it's also threatening the
3 employees. And it's so severe and pervasive that's why we
4 finally brought this unlawful detainer action.

5 As it relates to the legal arguments, the -- first of all,
6 we'd argue that the two-year maximum stay is clear, and she
7 agreed to that on -- on May 31st, further, that she agreed
8 to vacate the premises about -- you know, about -- about a
9 year into it after her repeated violations of the -- of the
10 program and signed off on that. And then in terms of the --
11 sort of the -- the absence of notice, again, there's
12 detailed allegations in the Complaint supported by a motion
13 for an order to show cause, supported by a sworn affidavit,
14 all filed the same day, all served on the -- the defendant.
15 And so the defendant is on notice of what the issue is.

16 But because the -- the plaintiff did not want to be in a
17 situation -- don't see this -- because of the emergency of
18 the moratorium, this is not a, you know, comply, change,
19 comply, change. They'd already been through that cycle
20 with -- with Ms. Bauer where she was told to change her
21 behavior or she would be ordered to leave the program.
22 Repeatedly, she didn't. And so she was finally given
23 written notice, which she acknowledged that she must leave
24 by X-and-such date. And she left her unit, but instead she
25 just invaded another unit that she didn't have right to and

1 has, you know, unlawfully possessed that to this day.

2 So as I -- as I conceded, if -- if -- if -- if 59.18 were
3 to apply, we would not -- you know, the -- this would be --
4 I would agree that this is a procedurally defective unlawful
5 detainer case. But 59.18 -- filed it under 59.12 because
6 59.18.040, in our view, fairly clearly does not apply, has a
7 number of exemptions, and the entire institutional purpose
8 of Seattle's Union Gospel Mission is a religious message.
9 It is not to provide housing. The housing is in furtherance
10 of its institutional purpose and -- and subordinate to the
11 institutional purpose. That language is in its articles of
12 incorporation for nine- -- from -- since 1940. It's not
13 something that was made up recently to get around 59.18.
14 The entire existence of the organization is religious, and
15 it doesn't just provide housing in isolation. It provides
16 housing as part of a comprehensive religious and educational
17 program that people can voluntarily enter into and they can
18 voluntarily leave.

19 To the Sunrise Group Home case, there -- there is a --
20 a -- a sentence in dicta there where it talks about the --
21 that Counsel mentioned -- where the tenant has a -- a
22 separate purpose. I would argue that that -- that dicta is
23 contrary to the rest of the case and contrary to the
24 statute. The statute is phrased in terms of the
25 institutional purpose. 59.18.040 talks about the

1 institutional purpose of the organization. And even one
2 paragraph down in that same case, I quote from the case, "It
3 does not mean that room and board must be trivial or
4 unimportant in comparison with the overall institutional
5 purpose. It means that living there is subordinate or
6 attended to the institutional purpose." It has nothing to
7 do with the tenant's intent. I mean, it -- otherwise a
8 tenant could -- just by a self-serving statement, could get
9 around the exemption in the statute.

10 And if the -- the -- all the procedural protections and
11 hooks of the Residential Landlord-Tenant Act, which really
12 do apply to residences, were to apply to a religious program
13 like this one, they really wouldn't be able to provide the
14 religious program because of its interference with the
15 accountability measures that puts other tenants at risk.
16 And so they have -- they have not tried to do some bait and
17 switch where they picture as this as, hey, this is just sort
18 of a -- a transitional housing only. It is sort of offered
19 as a religious program. It doesn't mean you have to be a
20 coreligionist, but you know what you get when you come into
21 it.

22 And we would argue that -- that it actually creates a
23 First Amendment problem if the Court were to conclude that
24 this is subject to the -- Seattle's Union Gospel Mission's
25 religious programming is subject to 59.18 when there is a --

1 a whole other host of other exemptions in the statute
2 because it treats a -- a religious organization on less
3 favorable terms in violation of the First Amendment as
4 described in Tandon v. Newsom and Ful- -- Philadelphia --
5 Fulton v. The City of Philadelphia.

6 The moratoria, I think we've made legal arguments, but
7 separate and apart for -- even if you applied the prior
8 version of the moratoria from the time the case was filed,
9 which we would argue has been mooted, and you apply the --
10 or you conceded, for purposes of argument, that this would
11 be considered residential, separate and apart from the RLTA
12 but under the city of Seattle moratoria, we quite clearly,
13 from the beginning, have -- have laid this out as this is a
14 health and safety threat, and that's the only reason this
15 action were brought. If it were not a health and safety
16 threat and were not endangering staff, endangering other
17 program participants and keeping other vulnerable people
18 away from available housing, we wouldn't be bringing this
19 action. It's not the position that Seattle's Union Gospel
20 Mission wants to find itself in. But here it is, and here
21 we are.

22 I'm happy to address any questions the Court has.

23 THE COURT: I think I'll reserve.

24 Go ahead. Any reply?

25 MR. MILLIMAN-JARVIS: Yes, thank you, Your Honor, for

1 giving me an opportunity to reply. I just -- I'll try and
2 be as quickly [sic] as possible. I think first thing is
3 that, you know, there's a lot of discussion here,
4 hypothetical. You know, while the -- all the factual
5 inferences are first drawn in favor of the plaintiff in this
6 case, I mean, there is a long -- a series of hypothetical
7 discussions that I -- I'm not sure how to really address
8 other than to say that -- just sort of skip to where the --
9 where the plaintiff is arguing that there would be some sort
10 of imposition upon them as a religious services organi- --
11 provide religious -- or faith-based organization providing
12 housing services. I guess I -- I'm just not quite clear on
13 that.

14 The legislature clearly intended that transitional housing
15 programs with a lot of these sort of services of, like, drug
16 counseling and -- and more intensive help to try and get
17 people from the streets and into -- into either, you know,
18 more permanent and supportive housing or traditional
19 market-rate housing or whatever might be appropriate on the
20 individual case to be within the Residential Landlord-Tenant
21 Act because the legislature passed laws defining what
22 transitional housing is and providing a specific means for
23 terminating tenancies in resident- -- in transitional
24 housing at the end of the appropriate period.

25 In addition, there are, you know, the -- the forms -- ways

1 to terminate people for just cause. You know, yelling at
2 staff or -- or -- or, you know, screaming, those are things
3 that could be in their handbook and -- and, you know, would
4 be lease violations for which they could give notice. Now,
5 there's a lot of discussion about how notice was given, but,
6 again, this is a -- this is a pretty formal statute. You
7 know, the way that you -- you -- you run a housing program
8 is you provide notice, an opportunity to comply, and then
9 if -- if the tenant doesn't comply, you can proceed with an
10 unlawful detainer action. And this is not something that,
11 you know, faith-based organization are unaccustomed to.

12 There are plenty of faith-based housing providers in and
13 around Washington. There's Catholic Housing Services that
14 provide a number of housing units. There's -- Mercy Housing
15 was -- you know, came out of the Sisters in Mercy in -- in
16 Omaha, Nebraska. Compass Housing Alliance, I believe, was
17 the Lutheran Sailors and Loggers Mission originally. So
18 there -- there -- there are just -- I mean, there are plenty
19 of institutions with a religious purpose in providing
20 housing services that still comply with the Residential
21 Landlord-Tenant Act. And so I don't -- I don't see the
22 First Amendment violation where -- the RLTA is a broad law
23 of neutral applicability.

24 We're not asking them to be treated unfavorably. We're
25 asking the plaintiff to be treated the same as -- as other

1 housing providers, secular and religious alike. So to the
2 extent that they concede that if the RLTA applies that
3 there's no compliance, I mean, I think we agree on that
4 matter.

5 I am sort of concerned that they believe that they're
6 following the -- the city and state moratoria. The city and
7 state moratoria are, again, pretty clear that, you know,
8 when you base the actual eviction, the reason for the
9 eviction -- the thing in your pleadings is -- is -- is like
10 a lease violation that -- or a -- or a nuisance that -- or a
11 (inaudible) that is an imminent threat to health and safety
12 and, you know, that's -- that you attach an affidavit --

13 THE COURT: Two minutes.

14 MR. MILLIMAN-JARVIS: -- onto -- onto your -- your notice
15 that that is the case, that's when, in the -- that you have
16 the exemption to the moratorium. Here it's undisputed that
17 there was no notice served that is compliance. That's not
18 what they're -- they seem to be relying upon. It's also
19 sort of strange to me that part of their argument is that
20 they -- they threatened to throw her out in the middle of
21 the pandemic in violation of those moratoria. It just seems
22 that they're not really intending to comply with the
23 moratoria that -- that was still in effect -- that -- and
24 still -- that is still in effect and was still in effect
25 when this case was filed. And I think that's -- that --

1 that will be the end of my argument there.

2 THE COURT: All right. All right. Thank you.

3 The plaintiff, Seattle's Union Gospel Mission has filed an
4 unlawful detainer action against Rebecca Bauer, the
5 defendant. This is a very important case for a number of
6 reasons. And one reason is that it could affect --
7 possibly, it could affect other actions in -- well, along --
8 involving parties in similar situations during coming weeks
9 or possibly months. The Court must take this case and the
10 issues raised very seriously, in particular because a
11 formerly housing -- a formerly homeless person may lose
12 their housing as a result of this with the coming winter.
13 On the other hand, the landlord has important rights as well
14 that need to be given full recognition in resolving the
15 issues here.

16 The parties have raised a whole host of issues in their
17 briefing. And I suppose all the different moratoria and
18 different statutes that touch on these issues might -- might
19 be involved, ultimately. But let me tell you how I'm going
20 to rule, and I'll try to explain it. I've spent a fair
21 amount of time trying to put together a written order that
22 explains this decision in a little bit -- in more detail.
23 But I'm going to grant the motion. However, having said
24 that, I'm not sure either party is going to be happy with --
25 with the ruling because I think that -- I think it's prudent

1 for me to make as narrow a ruling as necessary to adjudicate
2 the motion.

3 Findings of Fact and Conclusions of Law have been
4 submitted by the defendant, but findings are not required
5 and really not encouraged in a summary judgment; and the
6 Appellate Court can disregard findings when it undertakes a
7 de novo review of a ruling on a summary judgment. To get
8 right to the bottom line, I believe that the city's current
9 moratorium on -- excuse me -- the city's current moratorium
10 is broad enough to suspend Union Gospel Mission's general
11 right to evict somebody from -- from their housing program,
12 the Re:Novo program. Having said that, I am not going to
13 rule about whether the Union Gospel Mission can evict
14 Ms. Bauer on grounds that she poses a -- an imminent danger
15 or threat to the health and safety of herself or others.

16 I'm looking very closely and -- and -- at the Complaint.
17 The Complaint -- it's true that the Complaint does include
18 general allegations that Ms. Bauer engaged in certain
19 misconduct, and it does have the magic words of "immediate
20 health and safety hazard," et cetera, or, you know,
21 "imminent threat." But those are just general conclusory
22 terms. When it gets to actually stating the -- the claim,
23 the plaintiff relies entirely upon its factual allegation
24 that Ms. Bauer is a holdover tenant. And if that is the
25 sole ground, and I believe that's the only ground that's

1 asserted in the Complaint and the pleadings have not been
2 amended, then the imminent threat exception under the city's
3 moratorium does not apply to this Complaint as it's
4 currently pleaded -- or as it's pleaded.

5 There are a number of other arguments raised by the -- and
6 addressed by both parties. First of all, for example,
7 whether Ms. Bauer's living arrangement is governed by the
8 Residential Landlord-Tenant Act. That issue, I think, can
9 be disposed of at this point because I agree with the --
10 with the -- with the U- -- UGM.

11 Do you go by the word "UGM"? Is that how you call --
12 the -- the mission calls itself?

13 MR. TAYLOR: Yeah. That's fairly a common --

14 THE COURT: Okay. Yeah.

15 MR. TAYLOR: -- one. UGM is fine, Your Honor. Thank you.

16 THE COURT: Okay. Well, I think that 59.18.040(1) does
17 apply to exempt the UGM from the requirements -- procedural
18 requirements of the Residential Landlord-Tenant Act.

19 There's also the issue of whether the governor's current
20 proclamation suspending evictions applies to bar or suspend
21 UGM's right to evict people. And for similar reasons, I
22 think that the governor's proclamation does not -- their --
23 the -- their -- the prohibitions in the governor's
24 proclamation do not apply to suspend the unlawful detainer
25 action right of UGM because the proclamation states that it

1 does not apply to emergency shelters where a length of stay
2 is conditioned on a resident's participation in and
3 compliance with a supportive services program. It's really
4 sort of a restatement or a repetition of the very same
5 exemption in the Residential Landlord-Tenant Act.

6 The issue of whe- -- there's another issue that's raised
7 by the parties about whether the city's just cause ordinance
8 applies to the Union Gospel Mission. I don't think I need
9 to get to that right now because, as I say, what we have
10 here is a motion to dismiss on a number of reasons, but one
11 of them is that there's a moratorium in place. I think that
12 the -- the city has a sweeping residential eviction
13 moratorium. It's been extended numerous times. Right
14 now the current -- or the most recent extension will expire
15 at the end of September 2021. But it is so broadly
16 worded -- and I looked very hard at everything I could find
17 in it -- I just don't see anyplace where it carves out an
18 exception that would allow UGM to evict Ms. Bauer. Again,
19 I'm saying this in full recognition that the pleading I'm
20 looking at does not -- does not specifically cite -- as I
21 read it -- does not specifically assert imminent threat as a
22 grounds for eviction.

23 The Mission, UGM, may choose to bring another action. I'm
24 going to dismiss this action without prejudice. And whether
25 the UGM may choose to bring another action alleging imminent

1 threat specifically is up to them. There are a number of
2 other issues that may come up that were raised in the
3 briefing, but I don't think it's prudent for me to attempt
4 to give advisory opinions about various issues, for example,
5 whether the lease is subject to the statute of frauds; you
6 know, whether it's -- whether it's -- it really is a
7 two-year lease, and, if so, when it commenced and when it
8 expired; whether it's a month-to-month lease; whether a
9 valid -- if it is, whether a valid notice has been given.
10 I'm not going to try to give any opinion about whether
11 Ms. Bauer's alleged misconduct, if it were to be proved,
12 would be factually and legally sufficient to sustain an
13 action, you know, alleging that she's an imminent threat.
14 If UGM chooses to do -- to initiate a new unlawful detainer
15 action, either during the current moratorium or later, some
16 of these issues may become relevant.

17 Another issue, for example, is whether UGM needs to
18 register as a landlord. The Housing Justice Project -- or
19 excuse me, the defense counsel has made that argument. I
20 don't think I need to address that issue here because all I
21 need to do -- as far as I need to go and as far as I really
22 can go is just to say that everything is on hold right now.
23 And this -- this action needs to be dismissed without
24 prejudice.

25 And so I will -- I will grant the motion. I'll dismiss

1 the action without prejudice. I do agree with the defense
2 request for an order limiting dissemination of this unlawful
3 detainer action pursuant to RCW 59.18.367, although I --
4 I -- I do want to give some thought to that because I --
5 I'm -- agree to it at this point, but I need to give it a
6 little more thought because that is a statute within the --
7 the Residential Landlord-Tenant Act.

8 The UGM argues that that is inapplicable and, so far as I
9 can tell, that -- that appears to be true. So I don't know
10 whether the dissemination statute does or does not apply
11 here. But regardless, this is dismissed without prejudice
12 based on the current city moratorium. And, you know, what
13 happens next is up to the parties. This is a very difficult
14 issue. I can see it coming up in multiple iterations in
15 other cases. And I appreciate your briefing. I appreciate
16 the care that both sides have given to this case. This is
17 not the first one that we'll see, I'm sure.

18 Are there any questions before we break?

19 MR. TAYLOR: I have one question, Your Honor.

20 THE COURT: Sure.

21 MR. TAYLOR: I think it's -- I appreciate the Court's
22 thoughtful and comprehensive answer. When you lose, it's
23 always nice to know why, so thank you. As the dissemination
24 thing, they have no desire to hurt this lady. They're not
25 looking to hurt her credit or anything like that.

1 Obviously, I think you can see I'm pretty passionate about
2 the applicability of 59.18 and I'm mindful of, you know,
3 sealing court records and all that, but I -- I don't --
4 we're not looking to have it disseminated. So, I don't
5 know, maybe I can work out something with Counsel where
6 the -- you know, the Court can order -- you know, limit
7 dissemination without us conceding or the Court having to
8 decide that 59.18 applies because I -- I think it dissents
9 that we're pretty passionate about that one.

10 THE COURT: Okay. Yeah. Well, I'm pretty sure that
11 everyone is trying to be careful here. So let me give some
12 more thought to that. I'll try to get an order out later
13 tonight or tomorrow, and we'll -- you know, if I can get a
14 bailiff, we'll -- we'll send them out to you right away. If
15 not, I'll send it myself. All right.

16 All right. If there's nothing else, then I will -- I'll
17 let you all go. Thanks very much. Buh-bye.

18 MR. MILLIMAN-JARVIS: Thank you, Your Honor.

19 MR. TAYLOR: Thank you, Your Honor.

20 (Conclusion of hearing)

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3)

4 COUNTY OF KING)

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