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SC96376

IN THE MISSOURI SUPREME COURT

BRAINCHILD HOLDINGS LLC,
Plaintiff/Respondent,

v.

STEPHANIE CAMERON,
Defendant/Appellant.

Appeal from the Circuit Court of St. Louis City
Associate Circuit Court
Case No. 1522-AC11511
The Honorable Michael Noble

On Transfer from the Missouri Court of Appeals, Eastern District
Case No. ED104122

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ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

This appeal is taken from the trial court's Judgment, entered on February 3, 2016, in favor of Brainchild Holdings LLC ("Brainchild Holdings" or "Brainchild"), in a Chapter 535, Rent and Possession, lawsuit for alleged unpaid rent. (L.F. at 20.)

Under Mo. R. Civ. P. 81.05(a)(1), the court's Judgment became final on March 4, 2016, thirty days after its entry. Defendant's notice of appeal and required supporting documents were filed on March 16, 2016. (L.F. 1, 24-25.) On September 1, 2016, the appellate court issued an Order to Show Cause as to why the case should not be dismissed for late filing, and on September 2, 2016, Defendant filed a Motion to Appeal Out of Time. The Motion to Appeal Out of Time was granted on September 12, 2016, and the appellate court granted twenty days from the date of its order for the Defendant to file a new notice of appeal. Pursuant to this order, Defendant filed her notice of appeal with the circuit court on September 23, 2016.

On April 25, 2017, the Missouri Court of Appeals, Eastern District ruled that it would reverse and remand, but for its unanimous decision to transfer this case to the Missouri Supreme Court, pursuant to Mo. R. Civ. P. 83.02, based on the general importance of the issues raised in the case.

Therefore, this Court has jurisdiction pursuant to Mo. R. Civ. P. 83.02 and Article V, section 10 of the Missouri Constitution.

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STATEMENT OF FACTS

Defendant, Ms. Stephanie Cameron, entered into a lease with the plaintiff from May 7, 2015 to April 30, 2016 for use of Apartment D at 2300 S. Jefferson, St. Louis, MO 63104 (hereinafter the "premises") in exchange for $1020 per month in rent. (Tr. 19: 1-6.) Ms. Cameron has a handicap: she is legally blind and has been diagnosed with cardiomyopathy. (Tr. 44: 7-14.) She lived at the property with her 10-year-old son. (Tr. 70: 11-13.) Immediately preceding her residence at 2300 S. Jefferson, Ms. Cameron lived in the Gateway 180 homeless shelter. (Tr. 40: 20-25.) On or around March 2015, Ms. Cameron obtained a housing choice voucher from the housing authority that allowed her to receive assistance in renting a private apartment. (Tr. 40: 4-6, 20-23.)

Shortly after Ms. Cameron moved into the premises, the air conditioning in the premises failed to work. (Tr. 42: 24-25; 43: 1, 16-19.) Due to her disability, Ms. Cameron is especially sensitive to heat and requires air conditioning (Tr. 44: 8-12), which the lease stated would be kept in good repair by the landlord (Tr. 36: 3-14). Ms. Cameron's ability to live at the premises was also impaired by other conditions. (Tr. 43: 7-13; Tr. 61: 18-23.) The upstairs toilet did not work. (Tr. 42:10.) Ms. Cameron had to sleep on the floor downstairs in her apartment so that she could use a working toilet. (Tr. 43: 12:13.) The first floor bathroom lacked any ventilation. (Tr. 78: 23-25; 79: 1-4.) A loose kick plate on the door and loose floorboards created a tripping hazard (Tr. 69: 2-8; 48: 19-21), and the lack of a railing on the top stair outside of the apartment had caused Ms. Cameron to fall (L.F. at 10).

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Ms. Cameron gave the plaintiff notice of these conditions soon after moving in. (Tr. 55: 21-22.) Despite Ms. Cameron's notice, the plaintiff failed to make the property habitable by adequately fixing the ventilation system and air conditioning, replacing dangerous loose tiles, removing nails, or repairing other health and safety hazards. (Tr. 57: 7-18.) The apartment failed inspections made by the Department of Housing and Urban Development (HUD) in September 2015. (Tr. 56: 15-25.) Because of these deficient conditions, Ms. Cameron began spending the majority of her nights living and sleeping in other locations, including some nights at the Greyhound bus station. (Tr. 44: 18-25; 45: 1-4.) Ms. Cameron also attempted to sleep at the homeless shelter on some nights. (Tr. 45: 5-10.) Over the summer months she and her son spent as few as five or six days per month living on the premises because of the unmitigated heat in the apartment. (Tr. 47: 8-18.) Ms. Cameron was subsequently sued in this action by the plaintiff for falling behind on her rent. (Tr. 27: 17-19.) In this Chapter 535 rent and possession action, Ms. Cameron raised the affirmative defense that her unit violated the implied warranty of habitability. (L.F. 9.)

Ms. Cameron requested a jury trial with her answer. (L.F. 14.) The case was initially set for jury trial on November 30, 2016 before the Honorable Nicole Jean Colbert-Botchway, but was subsequently reassigned to the Honorable Michael Warren Noble. (L.F. at 3.) On November 30, 2016, Judge Noble heard arguments on whether the defendant had a right to trial by jury. (Tr. at 6:8-11:22.) The trial court denied the request for trial by jury and ordered trial by judge. (Tr. at 10:22-23.) The court then heard the

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matter without a jury (Tr. 17:10-86:12), and the judge entered a verdict in favor of the plaintiff (Tr. 86:17-87:18; L.F at 20-22).

On appeal, the case was submitted on briefs to a three-judge panel of the Missouri Court of Appeals, Eastern District, on March 9, 2017. On April 25, 2017, the court issued its opinion in case number ED104122. While the appellate panel unanimously agreed to transfer the case to this Court pursuant to Rule 83.02, each judge submitted his or her own opinion or concurring opinion.

In the main opinion, Judge Van Amburg stated that the court would reverse the judgment in favor of Brainchild and remand the case for a jury trial, but for its determination that transfer to this Court was appropriate due to the importance of the issues raised. CoA Op. at 10. Judge Dowd, in a concurring opinion, agreed in the transfer to this Court, but stated he would have otherwise affirmed the Circuit Court's denial of the jury trial based on his conclusion that "rent and possession actions [are] primarily designed to compel specific performance of the terms of the lease, a contract between a landlord and tenant," and are therefore equitable claims not subject to trial by jury. CoA Op., Dowd, J., concurring, at 7-8. In a separate concurring opinion, Judge Quigless acknowledged that legislative amendments to Chapter 535 have "eliminated the provision for a trial de novo in rent and possession cases, thus removing the parties' ability to 'agree to' their constitutional right to a jury trial of six persons. A right that the Missouri Constitution indicates 'shall remain inviolate.'" CoA Op., Quigless, J, concurring at 1 (citing Mo. Const. art. I, § 22(a)). Nevertheless, she stated that she shared Judge Dowd's practical concerns with the potential burden of allowing for jury trials in eviction cases

and concurred in the transfer to this Court in order to determine the appropriate balance between "the rights of the landlord to claim his property expeditiously, while affording the right of any party to a trial by jury" in light of the legislative changes to Chapter 535. *Id.* at 2. This appeal follows.

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POINTS RELIED ON

I. THE TRIAL COURT ERRED IN DENYING MS. CAMERON'S REQUEST FOR A JURY TRIAL IN A CLAIM BROUGHT UNDER CHAPTER 535 OF THE REVISED STATUTES OF MISSOURI BECAUSE MS. CAMERON HAS A RIGHT TO TRIAL BY JURY UNDER ARTICLE I, SECTION 22(a) OF THE MISSOURI CONSTITUTION IN THAT RENT AND POSSESSION CLAIMS ARE LEGAL ACTIONS WHERE THE RIGHT TO JURY IS INVIOLATE AND MS. CAMERON HAS NO OTHER OPPORTUNITY TO HAVE HER CASE HEARD BY A JURY.

State ex rel. Diehl v. O'Malley, 95 S.W.3d 82 (Mo. banc 2003)

State ex rel. Burlison Inv. v. Conklin, 741 S.W.2d 825 (Mo. App. S.D. 1987)

Rice v. Lucas, 560 S.W.2d 850 (Mo. 1978)

Pernell v. Southall Realty, 416 U.S. 363 (1974)

Mo. Const. art. I, § 22(a)

§ 535 RSMo 2016

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ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING MS. CAMERON'S REQUEST FOR A JURY TRIAL IN A CLAIM BROUGHT UNDER CHAPTER 535 OF THE REVISED STATUTES OF MISSOURI BECAUSE MS. CAMERON HAS A RIGHT TO TRIAL BY JURY UNDER ARTICLE I, SECTION 22(a) OF THE MISSOURI CONSTITUTION IN THAT RENT AND POSSESSION CLAIMS ARE LEGAL ACTIONS WHERE THE RIGHT TO JURY IS INVIOLATE AND MS. CAMERON HAS NO OTHER OPPORTUNITY TO HAVE HER CASE HEARD BY A JURY.

The Missouri Constitution provides that the right to a jury trial shall remain inviolate. Mo. Const. art. I, § 22(a). This Court has recognized that this right applies to legal actions, regardless of whether they lie in common law or statute. *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82, 85-86 (Mo. banc 2003). Chapter 535 Rent and Possession actions fulfill this criterion. Actions seeking rent are damages actions arising from breach of contract, and possession is a legal remedy that cannot be brought through equitable proceedings. Accordingly, as Missouri courts have consistently recognized, the constitutional right to a jury attaches in Rent and Possession actions whenever and by whatever means they reach the circuit court. *Rice v. Lucas*, 560 S.W.2d 850, 857 (Mo. 1978).

Appellant Stephanie Cameron requested a jury trial as a defendant in a Chapter 535 rent and possession case. L.F. 14. The statutory language of Chapter 535 provides that, "[u]pon return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause." § 535.040.1, RSMo. The statute is otherwise silent as to whether the trial will be heard by judge or jury, neither expressly precluding nor permitting trial by jury. Ms. Cameron's request for trial by jury was denied by the circuit court, J. 1-3, and she therefore lost her only opportunity for a jury trial. A reversal and remand to circuit court is the appropriate remedy for the deprivation of her inviolate constitutional right.

STANDARD OF REVIEW

This is an appeal from a bench-tried case in the Circuit Court for the City of St. Louis. In a court-tried case, appellate courts will affirm the judgment of the trial court unless there is no substantial evidence to support it, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). Statutory interpretation is a question of law, which is reviewed *de novo*. *Finnegan v. Old Republic Title Co. of St. Louis*, 246 S.W.3d 928, 930 (Mo. 2008).

A "statute is presumed to be valid and will not be declared unconstitutional unless it clearly contravenes some constitutional provision." *Doe v. Roman Catholic Diocese of Jefferson City,* 862 S.W.2d 338, 340 (Mo. banc 1993). Further, "it should be obvious that a statute cannot supercede [*sic*] a constitutional provision," *id.* at 341, and "[n]either the

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language of the statute nor judicial interpretation thereof can abrogate a constitutional right." *State v. Bolin,* 643 S.W.2d 806, 810 (Mo. banc 1983). *See also State ex rel. Liberty Sch. Dist. v. Holden,* 121 S.W.3d 232, 234 n.6 (Mo. banc 2003). Statutes are to be interpreted so as not to conflict with the constitution whenever possible. *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838-39 (Mo. banc 1991) ("It is a well-accepted canon of statutory construction that if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended.").

A. The Missouri Constitution requires a jury trial in actions at law, regardless of the common law or statutory nature of the cause of action.

The Missouri Constitution provides that "the right to jury as heretofore enjoyed shall remain inviolate." Mo. Const. art. I, § 22(a). To determine whether this right extends to a given case, the key inquiry is whether the cause of action "is the kind of case that carried a right of trial by jury in 1820." *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82, 85 (Mo. banc 2003). The right to trial by jury extends back to acquisition of the Louisiana Territory by the United States from France. *Id.* at 84. It was first provided in 1804, even before Missouri gained statehood. *Id.* (citing Mo. Terr. Laws 4, 5 (1804)). "After establishment of the Louisiana territorial government, the territorial laws provided for jury trials in 'all civil cases of the value of one hundred dollars . . . if either of the parties require it.'" *Id.* (citing Mo. Terr. Laws 58, Sec. 13 (1804)). "A review of the cases since the state's Constitution of 1820 makes clear that the exceptions recognized for the right of

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jury trial are cases under the courts' equitable jurisdiction, and those claims that are adjudicated in administrative proceedings." *Id.*

Despite *Diehl*'s reference to a court's "equitable jurisdiction," this Court has emphasized that the significance of determining whether a claim is equitable or legal is practical rather than jurisdictional. *State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462, 472 (Mo. banc. 2004). While "the right to trial by jury has become a fundamental element of our judicial system, . . . Missouri's constitutional guarantee to jury trial has never been applied to claims seeking equitable relief." *Id.* (citing *Diehl* at 85). "However, Article I, section 22(a) of the Missouri Constitution nonetheless reflects the general historical preference for trial by jury in our state." *Id.* at 473. Allowing the existence of equitable claims alongside legal claims "to supplant a litigant's ability otherwise to have a jury trial of his or her claims at law demonstrates inadequate respect for this preference." *Id.* "Unless circumstances clearly demand otherwise, trials should be conducted to allow claims at law to be tried to a jury, with the court reserving for its own determination only equitable claims and defenses." *Id.*

The Missouri Supreme Court has consistently found that the Constitutional right to trial by jury extends to cases brought pursuant to statutory claims at law, even if the statute in question was enacted after the first state constitution was ratified. *See Diehl* at 85-86 (summarizing the historical record). In *Briggs v. St. Louis & S.F. Ry. Co.*, 20 S.W. 32, 33 (Mo. 1892), the Court explicitly rejected the argument that the right to trial by jury did not apply to a claim based on a statute enacted after 1820. Instead, it found that the

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right to trial by jury "is implied in all cases in which an issue of fact, in an action for the recovery of money only, is involved, whether the right or liability is one at common law or is one created by statute." *Id.* at 33. Similarly, in *Bates v. Comstock Realty,* 267 S.W. 641, 644 (Mo. 1924), the Court rejected the argument that an action on a special tax bill was not triable by jury because such proceedings were unknown at the common law. The Court held that "[t]he right of trial by jury as it existed at common law may well include the right to such a trial not only in common law action, so called, but those of like nature in which that mode of trial is appropriate." *Id.* at 644.

Accordingly, civil actions at law, whether brought under common law or statute, are entitled to trial by jury when they are analogous to common law actions that were entitled to jury in Missouri in 1820.

B. Under Chapter 535, claims for both rent and possession are legal claims, analogous to common law claims that existed prior to 1820, and are therefore entitled to trial by jury.

This Court has held that the test for determining the legal or equitable nature of an action, as it pertains to the right to a jury trial, is the legal or equitable nature of analogous common law claims. *Bates*, 267 S.W. at 644; *Diehl*, 95 S.W.3d at 85. While legal actions carry an inviolate guarantee of the right to trial by jury, "[a]n action that is equitable in nature, as viewed in historical perspective and with respect to the equitable remedy sought, does not come within the jury trial guarantee." *Diehl*, 95 S.W.3d at 85 (citations omitted). Thus, to determine the applicability of the jury trial guarantee, "[t]he question

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then resolves itself into whether the proceeding . . . is analogous to an action at common law, or whether it in the nature of a suit in equity." *Id.* When assessed under this test, both the rent and possession aspects of Chapter 535 actions are squarely legal in nature, and therefore carry an inviolate right to trial by jury.

1. Claims for rent under Chapter 535 are entitled to trial by jury because claims for monetary damages are legal claims.

Monetary claims for damages are almost always legal claims. *Diehl*, 95 S.W.3d at 86. In *Diehl*, this Court reviewed 183 years of case law and found that "it is quite clear that, ordinarily, a suit that seeks only money damages is an action at law rather than equity." *Id.* (citing *Jaycox v. Brune*, 434 S.W.2d 539, 542-43 (Mo. 1968)). Although damages are usually a legal remedy, a court of equity may decree them where they are the relief necessary in order to do equity. *Willman v. Beheler*, 499 S.W.2d 770, 778 (Mo. 1973); *see also* 47 Am. Jur. 2d Jury § 34 (1995). In order to determine whether monetary contribution is equitable or legal, courts must look to the essential nature of the action, not merely the remedy sought. *Id*.

Accordingly, this Court has treated damages for breach of contract as legal in nature. In *Kitchen v. Cape Girardeau & State Line R.R.*, 59 Mo. 514, 517 (Mo. 1875), this Court found that damages for breach of a services contract was a "legal demand" subject to the right to trial by jury. The defendant asserted an equitable defense of fraud, alleging that an employment contract signed by the employee-plaintiff contained false representations. *Id*. at 516-17. Both the trial court and this Court, on appeal, held that this

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equitable defense of fraud did not obviate the right to trial by jury. *Id*. at 517. Because the breach of contract was "a legal demand," the case was "properly triable by a jury." *Id.*

Similarly, in *Wolf v. Hartford Fire Ins. Co.*, 269 S.W. 701, 704 (Mo. App. W.D. 1925), the Missouri Court of Appeals reversed a claim for damages from an insurance contract that was improperly tried in equity. *Id.* at 704. The insurance contract was designed to cover damages resulting from fire, and a fire had killed or dispersed the plaintiffs' cattle. *Id.* at 702. When the insurance failed to cover the damages, the plaintiffs sued to recover damages from breach of the contract. *Id.* The defendant answered that the contract provided for no recovery in this circumstance. *Id.* at 703. Reversing the lower court, the court of appeals found that "the plaintiffs' remedy was at law, and the defense was also at law. . . . Hence it was error to treat the case as one in equity and deny plaintiffs' right to a jury." *Id.*

More recently, this Court reaffirmed that damages for breach of contract are properly triable before a jury. *Sherry*, 137 S.W.3d at 474. In *Sherry*, a pharmaceutical company brought suit against a doctor under a restrictive consulting contract. *Id.* at 464. The contract required the doctor to wait for one year before consulting with other similar companies. *Id.* In response, the doctor filed counterclaims seeking damages under breach of contract and breach of implied covenant of good faith and fair dealing. *Id.* On appeal, this Court reversed the trial court's denial of the doctor's request for a jury trial. *Id.* at 465. It clarified that "labeling an action as equitable or legal in the modern sense typically bespeaks the type of relief being sought." *Id.* at 471. While "coercive remedies like

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declaratory judgments and injunctions" are equitable, monetary damages "constitute the legal remedies." *Id.* at 471.

The few instances where monetary damages are not legal in nature are drawn from non-contractual remedies. For example, the claim of contribution between co-debtors originated as an equitable action in Missouri. *See Mo. Dist. Tel. Co. v. Sw. Bell Tel. Co.*, 93 S.W.2d 19, 23 (Mo. 1935)."The doctrine of contribution is not founded on contract, but is based on the principle that equality of burden as to a common right is equity, and that wherever there is a common right the burden is also common." *Id*. "The doctrine of contribution finds its basis in general principles of equity and of natural justice rather than contract." *Commercial Union Ins. Co. v. Farmers Mut. Fire Ins. Co.*, 457 S.W.2d 224, 226 (Mo. App. E.D. 1970). "The ultimate money judgment is awarded only after the court has determined that it is equitable to share the burden of the debt when no actual contract existed between the co-debtors." *Hammons v. Ehney*, 924 S.W.2d 843, 846 (Mo. 1996). Conversely, where damages arise from breach of contract, such as breach of a lease for failure to pay rent, the claim is legal in nature, and the right to a jury trial attaches.

As the Court of Appeals recognized, "[a]n action for a money rent is a purely personal action as contradistinguished from real and mixed actions, differing in nothing from an action for any other money demand arising out of contract." CoA J. at 8 (citing *Cooper v. Ratley*, 916 S.W.2d 868, 870 (Mo. App. S.D. 1996) (internal citations omitted)). Missouri law recognizes that "a lease is not only a conveyance but also gives

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rise to a contractual relationship between the landlord and tenant." *King v. Moorehead*, 495 S.W.2d 65, 75 (Mo. App. W.D. 1973).

A suit for damages arising from a breach of a rental contract is legal in nature. In *Young v. Coleman*, 43 Mo. 179, 184 (Mo. 1869), this Court examined a petition that "contains in the same count a prayer for equitable relief; also, prayer for rents and profits, and for possession of the premises." The Court found misjoinder on the grounds that "different causes of action, whether legal or equitable, or both, may be united in one petition, but they must be separately stated with the relief sound for each cause of action." *Id.* Accordingly, the Court ruled that the equitable claim could be considered, but that it would "treat as surplusage [sic] the rest of petition" (i.e. the non-equitable claims for rent and possession). *Id.*

Claims seeking monetary damages for breaches to a rental agreement are contractual claims that are legal rather than equitable. Accordingly, such claims entail parties to trial by jury under Missouri law.

2. The constitutional right to trial by jury extends to actions seeking possession under Chapter 535, because claims for possession have always been treated as legal, rather than equitable actions.

In Missouri, actions seeking the remedy of possession are tried as legal claims. *See*, *e.g.*, *Mexico Refractories Co. v. Pignet's Estate*, 161 S.W.2d 417, 419 (Mo. 1942). The court below, however, misreads *Diehl* to limit the universe of legal claims to pleas

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for monetary damages. CoA Op. at 1, 10. (citing *Diehl*, 95 S.W.3d at 85).[1] *Diehl* does not make such a limiting statement. Instead, *Diehl* grants that "a suit that seeks only money damages is an action at law rather than equity." *Id.* at 85. Conversely, this Court has never said that *only* suits seeking money damages are actions at law, and it has consistently held that suits for possession are legal claims that entail parties to trial by jury.

Historically, possession has been obtained by the common law action of ejectment. *See*, *e.g.*, *Janney v. Spedden*, 38 Mo. 395, 402 (Mo. 1866). An action for ejectment is not an equitable action, but rather an action at law. *Steelville v. Scott*, 684 S.W.2d 880, 886 (Mo. App. S.D. 1984); *Blumenberg v. Minton*, 507 S.W.2d 26, 28 (Mo. App. E.D. 1974). This stems from ejectment's connection to common law forfeiture. In Missouri, forfeiture

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[1] In his concurrence, Judge Dowd also characterizes the remedy of possession, holding that "rent and possession actions [are] primarily designed to compel specific performance of the terms of the lease, a contract between a landlord and tenant." *Id.* at 7. (J. Dowd, concurring). Specific performance, though, occupies a very limited jurisprudence in Missouri, compared to the remedy of possession. *See Smith v. Lore*, 29 S.W.2d 91, 95 (Mo. 1930) ("[T]rue specific performance cases are rare."); *Perrin v. Grimshaw*, 221 S.W.2d 727, 730 (Mo. 1949) (denying the "extraordinary relief" offered by "this exceptional remedy" of specific performance). Possession has been historically available to Missouri litigants *exclusively* as a legal remedy. *See Mexico Refractories Co.*, 161 S.W.2d at 419.

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claims arise when a condition of contract is violated. *See Waring v. Rogers*, 286 S.W.2d 374, 377-78 (Mo. App. E.D. 1956). Where the contract is a lease of premises, forfeiture warrants an action of ejectment to obtain possession. *See*, *e.g.*, *Brooks v. Gaffin*, 90 S.W. 808, 815 (Mo. 1905) ("[W]here the deed contains a provision for forfeiture for a breach of an essential condition of the deed, ejectment will lie for the possession of the premises."). Forfeiture is a claim enforced by courts of law. *Koehler v. Rowland*, 205 S.W. 217, 218 (Mo. 1918). Indeed "a court of equity will not enforce a forfeiture . . . [although] it may relieve against one." *Id.*

Furthermore, ejectment existed prior to 1820 and has consistently included a right to jury trial. *See State ex rel. Barker v. Tobben*, 311 S.W.3d 798, 801 n.4 (Mo. banc 2010). In *Barker,* this Court held that ejectment claims require a trial by jury because "[e]jectment is a legal remedy." *Id.* This holding followed an established history of ejectment claims being tried as legal actions. *See*, *e.g.*, *Hageman v. Pinska*, 37 S.W.2d 463, 467 (Mo. App. E.D. 1931) ("There is no doubt" that a cause of action for ejectment "was properly triable before a jury."); *Hall v. Small*, 77 S.W. 733, 734 (Mo. 1903) ("The court erred, however, in holding that the case was one in equity, and in discharging the jury. The petition stated a cause of action in ejectment."); *Gonsolis v. Douchouquette*, 1 Mo. 666, 666-667 (Mo. 1826) (trial by jury in ejectment case); *Collins v. Brannin*, 1 Mo. 540, 540-541 (Mo. 1825) (trial by jury in ejectment case). These earliest recorded cases indicate that actions seeking the remedy of possession, such as ejectment, have always been tried as legal claims in Missouri.

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The U. S. Supreme Court's evaluation of the applicability of the right to jury trial in landlord and tenant cases in the District of Columbia also supports the existence of the right to trial by jury in ejectment cases. *Pernell v. Southall Realty*, 416 U.S. 363, 376 (1974). In *Pernell,* the Court found that the right to a jury trial enshrined in the Seventh Amendment applied to evictions brought under the District of Columbia's unlawful detainer statute. *Id.* at 376. The Court reached that conclusion by comparing the statute with the common law action of ejectment. *Id.* at 374-76. It found that the two actions serve "the same essential function—to permit the plaintiff to evict one who is wrongfully retaining possession and to regain possession himself." *Id.* at 375. Accordingly, the Court held that eviction under the District of Columbia's unlawful detainer statute entailed the right to a jury trial. *Id.* at 376.

The Missouri constitutional right to a jury trial is more expansive than the U.S. Constitution's Seventh Amendment right to a jury trial. *Diehl*, 95 S.W.3d at 84. "Quite simply, the words of [Mo. Const. art. I, § 22(a) are] intended to guarantee a right, not to restrict a right." *Id.* "The choice of words, particularly the use of the words 'remain inviolate,' is a more emphatic statement of the right" *Id.* Furthermore, in Missouri, much more tenuous connections between common law claims and statutory causes of action have supported the right to a jury trial. *See id.* at 83, 85-86 (holding that that the common law action of trespass supported the right to a jury trial in discrimination and retaliation cases under the Missouri Human Rights Act). Likewise, statutory eviction actions also

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entail a constitutional right to a jury because they are analogous to the common law legal action for ejectment.

At its root, Chapter 535 provides a statutory equivalent to common law contract and ejectment claims, providing both monetary damages and a means to recover possession of real property. The statute was intended by the legislature to provide a fair, expeditious, and evenhanded statutory forfeiture, which the landlord may elect in lieu of the harsh common law forfeiture. *Carbonetti v. Elms*, 261 S.W. 748, 751 (Mo. App. E.D. 1924); *Duchek v. Carlisle*, 735 S.W.2d 791, 793 (Mo. App. E.D. 1987). This purpose was evident in the earliest versions of the rent and possession statute, which are almost identical to the current statute.

For example, Section 4130 of the 1899 Revised Statutes of Missouri grants the landlord the right to recover rented premises "if rent be not paid as agreed," just as § 535.010 does now. Section 4131, RSMo 1899, in turn outlines the procedure for recovering possession: "[w]hen any rent has become due and payable, and payment has been demanded by the landlord or his agent from the lessee or person occupying the premises, and payment thereof has not been made, the landlord or his agent may file a statement" to begin the court ejectment process. This portion of the 1899 statute is identical to the language of the current statute, § 535.020, RSMo. Under both the original and the current statute, if the tenant is in default, and the landlord demands payment unsuccessfully, then the landlord can recover possession. The historical statute provided

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legal remedies, which are the same as those provided today: rent and possession. *See Stevens v. Myers*, 73 S.W.2d 334, 336 (Mo. App. W.D. 1934),

Prior to the adoption of a statute covering forfeiture of tenancy, common law ejectment provided the means by which possession was obtained. *See*, *e.g.*, *Janney v. Spedden*, 38 Mo. 395, 402 (1866). In the earliest cases on record, ejectment afforded the right to a jury trial in Missouri. *See*, *e.g.*, *Gonsolis v. Douchouquette*, 1 Mo. 666, 666-667 (1826); *Collins v. Brannin*, 1 Mo. 540, 540–541 (1825). As such, statutory claims for possession entail the right to a jury trial as well. *See Diehl,* 95 S.W.3d at 85.

In contrast to its availability in common law ejectment claims, this Court has explicitly denied possession as an available remedy in equitable actions. *Mexico Refractories Co.*, 161 S.W.2d at 419. "It is a rule of almost universal application that an injunction will not issue for . . . possession." *Stevens*, 73 S.W.2d at 336. Contemporary trial practice materials indicate that this restriction on equitable remedies to obtain possession remains. *See* 18A Mo. Prac., Real Estate Law--Transact. & Disputes § 51:1 (3d ed.); *Recovery of Possession* 43A C.J.S. Injunctions § 128 ("An injunction may not be used to recover property from a defendant who is in possession of the property. . . . Injunction is not a possessory remedy.").

In a line of cases stretching back to 1866, the Missouri Supreme Court has held that claims for possession cannot be brought in courts of equity. In *Janney*, 38 Mo. at 402, for example, this Court reversed a trial court's grant of relief for possession, with directions to dismiss, because the lower court was a court in equity. In that case, the court

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overturned a trial court judgment because it had granted possession under its equitable jurisdiction. *Id*. It held that equitable jurisdiction does not include the remedy of possession: "it is scarcely necessary to say that a bill in equity is not the proper remedy for the recovery of the possession of lands. The party has an adequate remedy at law by the action of ejectment or otherwise." *Id.*

In particular, specific performance and the possession remedy are incompatible. *See* 18A Mo. Prac., Real Estate Law--Transact. & Disputes § 51:1 (3d ed.). "A landlord cannot regain possession by bringing a direct equitable claim, such as a claim for specific performance of a lease requirement that tenant vacate following breach, because equity deems *the legal remedies for regaining possession* to be sufficient." *Id.* (emphasis added) (citing *State ex rel. Janus v. Ferriss*, 344 S.W.2d 656, 659-60 (Mo. App. E.D. 1961)). This reading is consistent with centuries of Missouri court cases holding that possession is a legal remedy that forestalls alternative, equitable claims.

Similarly, the Court of Appeals has held that a suit for injunction cannot encompass a possession remedy. *Mexico Refractories Co.*, 161 S.W.2d at 419. In that case, two suits were filed concerning a clay mine and surrounding land by parties who claimed a right to a subset of the property. In the first suit, at equity, the petitioner sought and obtained an injunction denying access by the other parties to the property in question. *Id.* at 419. In a subsequent suit, the enjoined parties sought and obtained an abatement of the injunction. *Id.* Upon review of the second case, the court found that abatement was inappropriate because "it is evident that the cause of action was not the same in its

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entirety, and that the essential relief sought in the second suit could not by any possibility have been granted in the first." *Id.* "The second cause of action sought to have executed a deed to appellant which would give to it the title and possession to the land in dispute, while the first suit was to enjoin respondent . . . from . . . the land to which the title is in dispute." *Id.* In establishing the distinction between the two claims, the court emphasized that "[t]he rule is well-settled that an injunction will not issue for the taking of property out of the possession of one party and placing it in the possession of another." *Id.* Accordingly, it was inappropriate for a claim for possession of real property to have been adjudicated as an equitable claim.

Declaratory actions also cannot give rise to a remedy for possession under Missouri law. In *Bobb v. Woodward*, 42 Mo. 482, 487-88 (1868), plaintiff creditors alleged that land had been fraudulently conveyed to defendant, the foreclosed-upon owner, by his brother-in-law. *Id.* at 487. The plaintiffs sought both declaratory relief concerning the title to the land and a writ for possession. *Id*. The trial court held for plaintiffs on both accounts, but the Missouri Supreme Court reversed. *Id.* at 488-89. "So far as the recovery of the possession of the property itself is concerned, the petition fail[ed] to set out the necessary averments to constitute it an action of ejectment. It was an effort to recover possession of real estate by a bill in equity, which cannot be permitted." *Id.* at 488.

Missouri is not alone in its recognition of possession as a legal remedy. In *Whitehead v. Shattuck*, 138 U.S. 146, 150 (1891), the US Supreme Court evaluated a

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claim of fraudulent title and right of possession. It found that there was an "adequate and complete remedy at law" and that "there is no occasion for resort to a court of equity, either to establish [plaintiff's] right to the land or to put him in possession thereof." *Id.* at 150-151. While the Court acknowledged the difficulty inherent in developing a general, bright line rule as to whether a claim is legal or equitable, it unequivocally held that "where an action is simply for the recovery and possession of specific real or personal property, or for the recovery of a money judgment, the action is one at law." *Id.* at 151.

Both the Missouri Supreme Court and the U.S. Supreme Court have consistently held that claims for possession are legal claims. Accordingly, such claims entail parties to trial by jury under Missouri law.

3. Even if this Court finds that the claim for possession is equitable, Missouri trial courts have authority to try cases seeking equitable relief and damages in one proceeding.

While the majority in the Court of Appeals acknowledged that the claim for monetary damages for unpaid rent was legal, it determined that the claim for possession was equitable because it "allows no award of legal damages and is, therefore, in the nature of a suit in equity." CoA Op. at 9. This analysis appears inconsistent with established Missouri case law holding that a claim for possession of real property is a legal claim. Even so, if this Court agrees with the Appellate Court and concludes that Chapter 535 actions contain both legal and equitable claims, parties are still entitled to request a jury.

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Seeking both equitable and legal relief does not preclude the right to a jury trial. *Diehl*, 95 S.W.3d at 88-89 ("[T]hat the statute authorizes equitable relief . . . does not, however, make the civil action for damages an action in equity"). "Missouri trial courts have authority to try cases seeking equitable relief and damages in one proceeding." *Sherry*, 137 S.W.3d at 473. "The trial court has discretion to try such cases in the most practical and efficient manner possible, consistent with Missouri's historical preference for a litigant's right to a jury trial on claims at law." *Id.* "Unless circumstances clearly demand otherwise, trials should be conducted to allow claims at law to be tried to a jury, with the court reserving for its own determination only equitable claims and defenses, which it should decide consistently with the factual findings made by the jury." *Id.*

Even where a case does require separation of equitable and legal claims, courts must "protect the plaintiff seeking equitable relief from irreparable harm while affording a jury trial in the legal cause." *Id.* (citing *Beacon Theatres Inc. v Westover,* 359 U.S. 500, 510 (1959)). "Since a right to jury trial is constitutional one, however, while no similar requirement protects trials by the court, that discretion is very narrowly limited and must, whenever possible, be exercised to preserve jury trial." *Id.* at 510.

Ms. Cameron should have been allowed a jury trial because the petition in this case alleged claims in law. CoA Op. at 9-10. Even if, *arguendo*, possession actions were to be considered equitable claims, claims under Chapter 535 would still require a finding on rent, a legal claim, as a prerequisite to a finding on possession. § 535.010, RSMo ("In all cases in which lands and tenements are or shall be rented or leased, and default shall be

made in the payment of the rents at the time or times agreed upon by the parties, it shall be lawful for the landlord to dispossess the tenant and all subtenants and recover possession of the premises rented or leased, in the manner herein provided."). In addition, the statute allows the tenant-defendant to avoid judgment for possession by tendering before the judge "the amount of rent then due, with court costs." § 535.040.1, RSMo. Accordingly, a finding of possession may only issue after a finding of outstanding money owed, a quintessentially legal claim. Thus, under Missouri law, Ms. Cameron is entitled to have the claims against her heard by a jury.

C. Missouri courts have consistently held that the right to trial by jury extends to cases brought under Chapter 535 of the Revised Statutes of Missouri.

The Missouri Supreme Court has consistently held that the constitutional right to trial by jury applies to actions for Rent and Possession brought under Chapter 535, RSMo, "whenever and by whatever means, the case reaches the circuit court." *Rice*, 560 S.W.2d at 857. In *Rice*, the Supreme Court reviewed whether the Missouri Constitution entitled a tenant to demand a jury trial in a claim brought under § 535.010, RSMo 1969. *Id*. at 853. While the statute then in effect mandated that the case was to be held before a magistrate judge without a jury, the Court reviewed Missouri's Constitutions (as enacted in 1820, 1865, and 1875) and found that "the right to a jury trial was preserved by the original and subsequent constitutions of Missouri and to be that which existed at the time of the adoption of the 1820 constitution." *Id.* at 855. The Court found that the tenant was

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entitled to a jury trial, but that the jury trial did not have to occur in the magistrate court itself. *Id.* It based that decision on a finding that the "statute in question does not provide for a jury trial, yet it does provide, without unreasonable restriction, for an appeal to a court where a jury trial may be had." *Id.* at 856. The Court held that, where the statute expressly permitted appeal to a court where a jury was available, "the constitution is not only not violated, but the mode and manner of securing the constitutional right is pointed out." *Id.*

In reaching its decision, the Missouri Supreme Court in *Rice* distinguished its holding from that in *Pernell,* 416 U.S. at 384-85, which upheld a tenant's right to trial by jury in eviction cases brought in the District of Columbia. *Id.* at 857. The Court in *Rice* emphasized that it was "important to recognize that the tenant in *Pernell* could not obtain a jury trial at all if he did not obtain it in the Superior Court of the District of Columbia," noting that "[t]he Superior Court there is a court of general jurisdiction similar to our circuit court, and appeals therefrom go to the District of Columbia Court of Appeals on the record." *Rice* at 857. In contrast, the Missouri Supreme Court recognized that, as of the date of the opinion, "[i]n Missouri, the jury trial is available on appeal from magistrate court to circuit court or whenever the case reaches circuit court by any other method and is tried there originally." *Id.* Thus, even as the Court ruled that the tenant was not entitled to a jury in an eviction action brought before a magistrate judge, it confirmed that parties in eviction actions were eventually entitled to trial by jury when the action reached the circuit court on appeal via trial *de novo*. *Id.*

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The Southern District Court of Appeals has reaffirmed that parties to eviction actions under Chapter 535 are entitled to trial by jury. In *State ex rel. Burlison Inv. v. Conklin,* 741 S.W.2d 825, 826 (Mo. App. S.D. 1987), the court reviewed a Chapter 535 case brought after the legislature replaced the magistrate court system with a system of associate circuit court judges.[2] *Id.* at 826. As part of these new procedures, the initial trial on the merits for a Chapter 535 case was typically heard before an associate court judge without a record being kept. *Id.* The first appeal of such an off-the-record decision was a trial *de novo* in front of a circuit court. *Id.* In *Burlison,* however, the court recognized that the case fell within a special exception to that general rule. *Id.* at 827. It held that the rules applicable to that case required the creation of a record and appeal "to the appropriate appellate court" instead of a trial *de novo*. *Id.* (citing § 512.180, RSMo 1978). After evaluating this Court's decision in *Rice*, the court found that "[w]ithin the meaning of

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[2] Whereas the magistrate judge system provided separate, non-common law jurisdiction for magistrate judges, the current system provides that "circuit judges and associate circuit judges may hear and determine all cases and matters within the jurisdiction of their circuit courts." § 478.220, RSMo. Thus, subject to local orders and rules governing assignment of cases under Sections 478.240 and 478.245, RSMo, associate circuit judges have joint original jurisdiction with circuit judges over all cases in their circuits. In short, Missouri has a unitary trial court system. *See Robinson v. Lohman*, 949 S.W.2d 907, 910-12 (Mo. App. S.D. 1997).

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Rice, the cases have reached the Circuit Court and the relators are entitled to trial by a jury." *Id.* Because there was no longer an option for jury trial on appeal, jury trial had to be available at the first (and only) trial on the merits. *Id.*

While the specific procedures for handling cases brought under Chapter 535 have changed over time, Missouri courts have consistently held that eviction actions are entitled to trial by jury at some point in the process. Even the Court in *Rice*, which found that jury trial was not appropriate at a particular point in a particular case, made explicitly clear that the right to trial by jury existed and could be satisfied at a later point in the proceedings. Where a court denies the right to trial by jury at every point in the proceedings, it violates the Missouri Constitution.

D. The 2014 amendments to Chapter 535 of the Revised Statutes of Missouri eliminating the right to appeal by trial *de novo* mean that parties are entitled to a jury trial in the initial proceeding before a trial court.

In 2014, Chapter 535 was amended to remove the right to a trial *de novo*. Section 535.110, RSMo, determines which appeal procedures govern Rent and Possession cases. Prior to the 2014 amendments, § 535.110 provided that "[a]pplications for trials de novo and appeals shall be allowed and conducted in the manner provided in chapter 512." § 535.110, RSMo 2000. Chapter 512, in turn, specified that "[a]ny person aggrieved by a judgment in a civil case tried without a jury before an associate circuit judge . . . shall have the right of a trial *de novo* in all cases tried . . . under the provisions of chapter[] . . . 535." § 512.180, RSMo, Supp. 2004. Through this appellate process, the statute preserved

the right to a trial by jury. *See Rice* at 857. Even if the original case were tried before a magistrate or associate circuit court judge without a jury, a party could subsequently appeal to a circuit court for a trial *de novo*. *Id.*

As amended, the law now provides that "[a]pplications for appeals shall be allowed and conducted in the manner provided as in other civil cases" (*i.e.*, to the Court of Appeals). § 535.110, RSMo. The trial *de novo* provisions of § 512.180, RSMo, have likewise been amended to remove reference to Chapter 535. These changes to the law mean that the first trial for any rent and possession case is the only trial on the merits that will be available to the parties. Accordingly, if the constitutional right to a jury is to be preserved, parties in a Chapter 535 action must be able to exercise that right during that first trial.

In light of the amendment, a tenant in a Rent and Possession case now has only one opportunity to have her case heard before a court where a jury trial is available. Missouri law now requires tenants to appeal adverse decisions directly to the Court of Appeals, just as in *Pernell* and *Burlison*. Thus, like the tenants in *Pernell* and *Burlison,* Missouri tenants must be permitted to request trial by jury in their first (and only) trial. Unlike the tenant in *Rice*, current Missouri law provides no other opportunity for tenants to request a jury trial after the first judgment. To deny a jury in the first trial would preclude tenant from ever having a hearing before a jury, in violation of the Missouri Constitution.

In Missouri, statutes are to be interpreted so as not to conflict with the constitution whenever possible. *Blaske*, 821 S.W.2d at 838-39 ("It is a well-accepted canon of

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statutory construction that if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended.”). Accordingly, a constitutional interpretation of § 535.110, RSMo, must preserve the right to a jury trial. *See Rice* at 857 (holding that the *de novo* appellate process in § 535.110, RSMo, 1969, preserved the right to trial by jury despite allegations that § 535.040 RSMo, 1969, denied trial by jury before the magistrate judge).

To avoid creating an unconstitutional denial of the right to trial by jury, this Court must interpret Section 535.110, RSMo, to allow parties in an action under Chapter 535 to request a jury at the first trial. Because there is no longer a right to a trial *de novo*, the initial trial before an associate circuit judge is the only opportunity a party has to have his or her claims heard by a jury. For these reasons, appellant petitions that the Court remand this case to the circuit court for trial by jury.

E. Neither burdens on judicial economy nor the summary nature of eviction actions justify abrogation of an inviolate constitutional right, and any such burden would in fact be minimal.

The Missouri Constitution provides that the right to a jury trial shall remain inviolate. Mo. Const. art. I, § 22(a). In evaluating whether this right to jury trial extends to eviction cases brought under Chapter 535, RSMo, the Court of Appeals in this case expressed concerns related to the “challenge to judicial economy and efficiency” that could result if large numbers of tenants availed themselves of trial by jury. CoA Op. at 10. Even if such challenges do exist, burdens on judicial economy cannot justify abrogation

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of an inviolate constitutional right. In any case, an empirical review by Washington University School of Law Civil Rights & Community Justice Clinic (CRCJC) of jury trial requests in eviction cases, where that right is expressly permitted by statutes, reveals that jury trials in these cases are extremely rare.

1. **Burdens on judicial economy or efficiency cannot justify abrogation of an inviolate constitutional right to trial by jury.**

While the legislature has designed Chapter 535 actions to be summary proceedings, this legislative intent cannot take precedence over an inviolate constitutional right to a jury trial. "[T]he right to a jury trial is 'beyond the reach of hostile legislation and [is] preserved' as it existed at common law before the state constitution's first adoption in 1820." *Dodson v. Ferrara*, 491 S.W.3d 542, 553 (Mo. banc 2016) (citing *State ex rel. St. Louis, Keokuk & Nw. Ry. Co. v. Withrow*, 36 S.W. 43, 48 (Mo. banc 1896)).

In evaluating similar concerns about the potential burden jury trials might place on courts in the District of Columbia, the U. S. Supreme Court found that the right to jury trial was unlikely to significantly impair courts' ability to expeditiously dispose of landlord-tenant actions. *Pernell*, 416 U.S. at 383-384. "In the average landlord-tenant dispute, where the failure to pay rent is established and no substantial defenses exist, it is unlikely that a defendant would request a jury trial." *Id.* at 384. Even if a tenant in a straightforward eviction action were to request trial by jury, the Court recognized that the ability to grant summary judgment "provides a substantial bulwark against any possibility

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that a defendant will demand a jury trial simply as a means of delaying an eviction." *Id.* Furthermore, the Court rejected the notion that a jury trial was inconsistent with speedy decisions, identifying Oregon as a state that permitted jury trial yet still provided for trial no more than six days after service of complaint. *Id.* (citing *Lindsey v. Normet*, 405 U.S. 56, 64 (1972)).

More importantly, the Supreme Court in *Pernell* recognized that claims about judicial efficiency are secondary when evaluating rights enshrined into a constitution. It found that "[s]ome delay, of course, is inherent in any fair-minded system of justice." *Id.* at 385. "A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases." *Id.* "Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home." *Id.*

2. Allowing jury trials in cases brought under Chapter 535 is unlikely to create substantial judicial burdens because, even in eviction cases where the right to jury is expressly permitted by statute, actual requests for trial by jury are exceedingly rare.

Missouri law provides two main statutory options for landlords to pursue eviction against tenants. Landlords may elect to pursue a claim under Chapter 534, the unlawful detainer statute, or Chapter 535, an expedited procedure to recover rent owed and/or

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possession of the premises when a tenant fails to make timely rent payments.[3] Whereas the current text of Chapter 535 is silent as to whether parties are entitled to trial by jury, Chapter 534 explicitly states that "[e]ither party shall have the right to a jury trial if a timely request therefor is made as in other civil cases." § 534.160, RSMo. Even with this express provision, though, an analysis of Chapter 534 cases from St. Louis City, St. Louis County, and Jackson County in 2016 by the Washington University Civil Rights & Community Justice Clinic (CRCJC) shows that actual requests for trial by jury are exceedingly rare.

Chapter 534 of the Revised Statutes provides a "special statutory action, summary in nature, in derogation of the common law" for unlawful detainer. *Quirk v. Sanders*, 673 S.W.2d 850, 853 (Mo. App. E.D. 1984). Unlawful detainer allows a landlord to retake possession of a premises "[w]hen any person willfully and without force holds over any lands, tenements or other possessions, after the termination of the time for which they were demised or let to the person." § 534.030, RSMo. In addition to possession of the property, a landlord can seek to recover double damages and double rents and profits from the judgment date until the date of restitution. § 534.330, RSMo; *Waring*, 286 S.W.2d at 379. The termination of a lease term that allows a landlord to seek restitution

[3] Chapter 441 provides an additional action for expedited eviction where an emergency situation exists that creates a "reasonable certainty" of physical injury or physical damage or where there is evidence of drug-related criminal activity on the leased premises. §441.740, RSMo.

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includes both the expiration of a lease term, without renewal, as well as the termination for cause after a tenant violates a condition of the lease. § 534.030, RSMo; § 441.040, RSMo. Accordingly, unlawful detainer actions can be used to support eviction for a variety of violations, ranging from nonpayment of rent to unauthorized occupants to damages to the premises or any other violation of a lease condition.

Chapter 535, in contrast, provides a specific remedy for nonpayment of rent that is both "simple and expeditious," *B-W Acceptance Corp. v. Benack*, 423 S.W.2d 215, 216 (Mo. App. E.D. 1967), and also "fair and equitable" *Carbonetti*, 261 S.W. at 751. Statutory forfeiture under Chapter 535 only applies to "cases in which lands and tenements are or shall be rented or leased, and default shall be made in the payment of the rents at the time or times agreed upon by the parties." § 535.010, RSMo.

Overall, Chapter 534 and Chapter 535 are similar actions, both summary in nature, both used to effect statutory forfeiture of leased property. Unlike Chapter 535, however, Chapter 534 contains an express statutory guarantee of the right to trial by jury. *Compare* § 534.160, RSMo ("Either party shall have the right to a jury trial if a timely request therefor is made as in other civil cases.") *with* § 535.040, RSMo. ("Upon the return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause."). The existence of a Chapter 534 action – a similar action to Chapter 535 that contains an explicit statutory guarantee of the right to trial by jury – allows the proportion of jury trial requests in Missouri eviction actions to be empirically evaluated.

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To that end, CRCJC conducted an empirical study of Chapter 534 eviction actions in the 16th Judicial Circuit (Jackson County), the 21st Judicial Circuit (St. Louis County), and the 22nd Judicial Circuit (St. Louis City), in 2016 to evaluate the frequency of jury trial requests and actual jury trials.[4] CRCJC compiled the eviction data by searching online court records through Missouri's automated case management system, Case.net, which allows searches by filing date within a Circuit. The search results display basic information about the case (including case number, style, and type) and provide links to access more detailed information about the cases (including the judgment amount, party addresses, and a list of docket entries. For cases filed after the initiation of e-filing in a county, a PDF copy of each judgment is also available. If a user has an attorney login account for Case.net, PDF copies of additional case documents (including the petition) can be downloaded.

Using the search by filing date option, CRCJC examined every civil case filed in the 16th Judicial Circuit (Jackson County), the 21st Judicial Circuit (St. Louis County), and the 22nd Judicial Circuit (St. Louis City) between January 1, 2016 and December 31, 2016. In a review of these cases, CRCJC identified those that were identified in the search results with a claim type of "AC Unlawful Detainer."[5] For these identified cases, CRCJC recorded the following variables:

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[4] Empirical study on file with the CRCJC.

[5] This analysis potentially excludes Unlawful Detainer cases identified as "AC Landlord Actions (Bulk)" in Case.net. That case type includes actions filed by landlord attorneys

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- The case number and heading;
- Whether the case was resolved via a default judgment;
- Whether any party in the case requested a trial by jury; and
- Whether the case was tried by a jury.

CRCJC's review of the filings identified a total of 2,317 cases identified in Case.net as "AC Unlawful Detainer" in these three counties.[6] Out of these cases, a party requested trial by jury in only 21 cases. CRCJC identified only one case where a jury was actually empaneled. In all of the other cases where a jury was requested, the case was dismissed, settled, or resolved on summary judgment before trial.

These results were consistent across all three counties examined. In St. Louis City, there was a single request for jury trial out of 405 unlawful detainer cases identified (0.25%). In Jackson County, there were eleven requests for jury trial out of 1,049 unlawful detainer cases identified (1.05%). In St. Louis County, there were nine requests for jury trial out of 863 cases identified (1.04%).

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designated as bulk filers. While the majority of these cases are filed for nonpayment of rent under Chapter 535, there are likely some cases that allege Unlawful Detainer.

[6] This number includes one case that was filed under Chapter 535 but subsequently amended to add an Unlawful Detainer claim and tried by a jury: *Chouteau/Lasalle Properties, LLC v. Griffin*, No. 16SL-AC17831 (Mo. 21st Jud. Cir. 2016).

Additionally, many unlawful detainer cases are resolved in default on the return case. Of the 2,317 cases identified in the study, just under half (1,030, or 44.45%) were resolved as a default judgment against the tenant. Even accounting for the number of default judgments, the proportion of cases involving a request for trial by jury is extremely low. A party requested a jury in only 1.63% of the cases that did not end in default.

This study clearly demonstrates that concerns related to the "challenge to judicial economy and efficiency" are arguably unfounded. Allowing jury trials in cases brought under Chapter 535 is unlikely to create substantial judicial burdens because, even in eviction cases where the right to jury is expressly permitted by statute, actual requests for trial by jury were found to be exceedingly rare.

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CONCLUSION

Section 22(a) of the Missouri Constitution preserves the right to a jury trial in legal actions, including actions for rent and possession and the analogous common law action of ejectment. Accordingly, Missouri courts have consistently held that this right to a jury trial in eviction actions brought under Chapter 535 applies whenever and by whatever means a case reaches the circuit court. Under prior versions of §§ 535.040 and 535.110, eviction cases appealable to a circuit court, where a trial by jury could proceed by trial *de novo*. Even if a jury was not available at the initial trial, the right to trial by jury was preserved so long as a jury was available at the trail *de novo* on appeal. Since 2014, eviction actions brought under Chapter 535 are directly appealable to the Court of Appeals, and there is no right to trial *de novo* or any other appellate action where trial by jury would be available. Accordingly, parties must be entitled to trial by jury at the first trial before an associate circuit or circuit court judge. The trial court's decision denying Respondent's jury trial request must be reversed in order to preserve an inviolate right under the Missouri Constitution.

Burdens on judicial economy or efficiency cannot justify abrogation of an inviolate constitutional right, even if such challenges exist. In any case, the empirical review by CRCJC of jury trial requests in 2016 eviction cases in key circuits in the State, where that right is expressly permitted by statute, demonstrates that jury trials in these cases are exceedingly rare.

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Appellant urge this Court to reverse the trial court's denial of Appellant's request for trial by jury and to remand this case to the trial court with instructions to grant Appellant's request for trial by jury.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

Comes now counsels for Appellant and certifies that:

1. This brief complies with Rule 55.03 in that it is signed, not filed for an improper purpose, the claims are warranted by existing law, and the allegations are supported by evidentiary support.
2. The brief complies with Rule 84.06(b).
3. The number of words contained in the brief is approximately 11,321 as listed by the word processor the document was prepared on, Microsoft Word 2016.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appellant's Brief was filed electronically through the Missouri Courts eFiling System and by U.S. Mail on June 27, 2017 to:

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