No. 100250-5
SUPREME COURT
OF THE STATE OF WASHINGTON

MARK HOFFMAN,
Respondent

v.

DAN LOGAN,
Petitioner

King County Superior Court No. 18-2-20180-2 SEA
The Honorable Regina S. Cahan presiding
–
Court of Appeals, Division I, No. 81887-2-1

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Dan Logan, CPA MBA (Logan henceforth) is the defendant[1] below and petitioner.

II. DECISIONS BELOW

Logan asks the Court to grant discretionary review of the following court of appeals' decisions: (1) Unpublished Opinion – filed July 26, 2021[2], and (2) Order Denying Motion for Reconsideration and Motion to Publish Opinion– filed August 6, 2021[3].

III. ISSUES PRESENTED FOR REVIEW

The issues presented are whether the court of appeals erred by:

(1) Inferring that Logan was in control of The Funding Center based on supposition by Respondent Mark Hoffman (Hoffman henceforth), claiming groundlessly that Logan directed automated telephone calls be made to Hoffman.

(2) Disregarding the only prima facie evidence extent: sworn affidavits by Logan,

(3) Disregarding Logan's testimony and sworn affidavit that his ex-wife did not reside with him, as well as King County Superior Court twice rejecting service as improper

(4) Affirming King County Superior Court's claims to jurisdiction despite all evidence being to the contrary, and in violation of Logan's right to due process[4]

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[1] Logan is the defendant, and not the plaintiff. This becomes important as the court of appeals assigns Logan responsibility for disproving jurisdiction per MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.

[2] Appended hereto as Appendix 1

[3] Appended hereto as Appendix 2

[4] The appeals court essentially argued that Logan's affidavit was not "clear and convincing" evidence, citing Woodruff v. Spence for the "clear and convincing" standard.

IV. STATEMENT OF THE CASE

A. Procedural background

Plaintiff Hoffman filed a superior court lawsuit in August 2018, alleging that Capital Advance Solutions (Capital henceforth) and its officers, including Logan, violated the Telephone Consumer Protection Act (TCPA henceforth) when The Funding Center, an unrelated third party, allegedly called Hoffman 8 times on October 28 and 29 of 2015. Hoffman guessed or imputed that Capital caused the calls to be made, in spite of the fact that no call to Hoffman ever connected to or involved Capital. Instead, Hoffman eventually called The Funding Center pretending to be a business in search of financing and was only then connected to Capital. Further, despite the fact that Logan was not an officer at the time of the alleged incident, Hoffman baselessly guessed or imputed that Logan was personally directing the alleged automated calls.

Because Capital had been closed for over a year when Hoffman filed suit, Capital did not defend itself nor did it indemnify Logan. Because service was improper, Logan did not find out about the lawsuit until July 2, 2020, when the State of New Jersey notified Logan that Hoffman's judgment against Logan had been domesticated into New Jersey.

On July 7 2020, Logan (et. al.) filed a motion to vacate Hoffman's default judgment against Logan due to lack of jurisdiction and improper process service. The trial court rejected this motion on August 24, 2020, which Logan appealed on September 24, 2020.

The court of appeals rejected Logan's appeal on July 26, 2021, and denied reconsideration on August 26, 2021.

B. Factual background.

Capital was a business loan brokerage that operated between October 11, 2007 and March 31,

2017. Capital had no dealings with the public, as the loan products available to it were a form of factoring, exclusively structured for business clients.[5]

Logan joined the company as an accountant on November 7, 2014 and was an accounting manager with no authority at the time of the alleged calls. On January 1, 2016, Logan was promoted to Chief Financial Officer, which he remained until the company closed a little over a year later, on March 31, 2017, ending his employment there.[6]

The alleged autodialed calls from The Funding Center to Hoffman did not connect him with Capital. Hoffman was only able to connect with Capital by Hoffman himself initiating the call and engaging in subterfuge, pretending to be a business in need of financing. When Hoffman subsequently called into The Funding Center and requested a business loan, he was a legitimate and legal business lead.

Hoffman eventually filed suit based on his guess that Capital had directed that the alleged 8 TCPA-noncompliant calls be made. Hoffman's process servers were poor, to say the least, and service on Logan was attempted on Logan's ex-wife on Logan's front lawn. The server did not notarize his so-called affidavit of service. One wonders why this was never rectified, as simple matter. It raises the question of whether the process server was unwilling to perjure himself. Logan's affidavit testifies that process service was completely inadequate.[7] This is a valid affidavit sworn in a court of law. Logan's affidavit is also the only factual evidentiary matter on this topic, as the so-called affidavit of service has numerous problems not least of which is that it is not notarized and lacks the declaration page that might have been acceptable

[5] See affidavit submitted during the appeal process, appended as Appendix 4.
[6] As above.
[7] See affidavit submitted with the motion to reverse the default judgment, appended as Appendix 3.

within the State of Washington—had it existed.[8]

One of the key questions that must be explored is whether the alleged tort can be said to have anything to do with Logan, since Capital demonstrably did not commit a tort[9]. Leaving that aside for a moment, the court of appeals ruled that Logan was in control of The Funding Center. Then the Court used that presumed control over The Funding Center as the basis for both contact with Washington State as well as the tortuous act required to invoke the long-arm statute. Again, there is no evidence of any kind on this topic other than Logan's affidavit to the contrary, an affidavit properly sworn in a court of law.[10]

V. ARGUMENT

A. Standard for discretionary review.

The Court should accept discretionary review of the court of appeals' decisions under RAP 13.4(b)(2) and (4) because the decisions conflict with this Court of Appeal's decision in SeaHAVN, Ltd. v. Glitnir Bank, 154 Wn. App. 550, 563, 226 P.3d 141 (2010) regarding the duty of the plaintiff—Hoffman, in this case—to prove jurisdiction with at least a prima facie evidence. The court of appeals cited this opinion, evidently reversing the roles of Hoffman and Logan in specifying the plaintiff's duties in this regard. The Court should accept discretionary review in the public interest because granting Washington courts jurisdiction based on a misinterpretation of prior opinions such that the defendant must provide proof of "lack of jurisdiction" is not only punitive and unreasonably burdensome, but also impossible.

[8] Regardless, affidavits of service must be attested to in good form, which this is not. Ref. NJCPR 4:4
[9] Receiving a call initiated by a customer is not a tort.
[10] Which see, Appendix 3

It is clearly in the public interest that due process be maintained within Washington State courts.

B. The court of appeals' ruling that Logan should have presented defenses against the ineffective process service at the very court that failed to serve him essentially erases all pretense of due process. "…there is no indication that he raised this claim for the superior court to consider." Even though the so-called affidavit of service is improper and lacks a proper declaration or any sort of court-sworn notarization or clerk's stamp, it still does not contradict the fact that Logan was not served. Service may have been attempted on Logan's ex-wife, estranged and separated at the time. But this is not adequate service and it was not effective service. Washington courts could conceivably consider Logan effectively served as of July 1 or 2 of 2020, due to the State of New Jersey taking care of it for them at that time. To entrust a hostile, estranged, and separated ex-wife to provide the final step of due process service is nonsensical, and the failure of the attempt should have been obvious from her deportment and actions. One wonders if Logan's ex-wife failed to clarify this to the process server.

C. All evidence is evidence of Logan's innocence. Even Hoffman's statement of facts in his complaint, which might be considered prima facie under the circumstances, fails to mention any specific activity by Logan or any interaction with Logan whatsoever. Hoffman's vague supposition that Logan must have had something to do with it cannot be construed as anything other than fiction. Further, Logan's Affidavit clears Logan of any wrongdoing—and that is a real affidavit, sworn in a court of law, and this is uncontested, dispositive evidence. The court of appeals tries to play this down by referring to the Logan affidavit as a "declaration", but if a sworn affidavit is not prima facie evidence, what is?

Hoffman's complaint against Logan et. al. is based on calls Hoffman received from third party The Funding Center. Hoffman never provided any evidence other than his narrative describing calls from The Funding Center and culminating in Hoffman initiating a call to Capital Advance Solutions. Hoffman's account of the incident does not mention Logan, even indirectly. Thus, Hoffman's complaint proves Logan is innocent.

D. The court of appeals makes unwarranted and unreasonable inferences based on supposition and entirely devoid of evidence. Inferring that Logan controls The Funding Center based on Hoffman's supposition that "Upon knowledge and belief" Logan authorized the calls is untenable, and undermines the clear-headed logic required in a court of law.

The court of appeals stated, "Hoffman claimed Logan, as Capital's chief financial officer, authorized "the Funding Center" to make "the illegal telemarketing calls" to his Washington-based cellular phone number to solicit business loans." The snippets of quotes strung together in this statement do not appear in this gestalt formation within Hoffman's complaint. The court of appeals made this claim, not Hoffman. Nowhere in Hoffman's complaint nor anywhere in the record does Hoffman make this specific claim. Hoffman instead claims "Upon information and belief, Defendants…had direct, personal participation in causing the …calls to be made…" In other words, since we were the last officers to work at Capital before it closed, we must have been in charge of telemarketing calls at Capital. But since Capital would not accept the telemarketing calls in question, and is thus innocent, then being in charge at Capital is no longer sufficient. The Funding Center, based on Hoffman's complaint, is still potentially a bad actor. So the court of appeals must assume that Logan controlled not only Capital, but also The Funding Center. The fact that Capital did not commit a tort against Hoffman becomes irrelevant if you "skip" Capital and give Logan direct control

over The Funding Center.

The court of appeals notes that the plaintiff must prove lack of jurisdiction with prima facie evidence. Logan's affidavit, sworn in a court of law, is prima facie evidence—and is all of the evidence in this case. It bears repeating that Logan is the *defendant.*

"I did not call the plaintiff, nor did I direct the plaintiff to be called…" This is Logan's sworn testimony. There is no carve out for The Funding Center, Logan's affidavit is unequivocal and all-encompassing. Logan did not direct that Hoffman be called. Period. Not via Capital, and not via The Funding Center.

E. The Court repeatedly ignored evidence and then claimed none was presented. The appeals court stated, "Logan did not present any evidence to refute the alleged TCPA violation occurred in Washington." However, Logan clearly demonstrated that there never was a TCPA violation in Washington, because Capital did not commit a TCPA violation, because Capital never called Hoffman and never connected with Hoffman on a potentially TCPA non-compliant phone call. Logan did not attempt to exonerate The Funding Center because Logan had nothing whatever to do with them.

The appeals court failed to acknowledge arguments, preferring instead to ignore them: "It is undisputed that this cause of action arose out of the alleged calls Hoffman received from the Funding Center at the direction of Logan." However, Logan swore an oath that he did not direct ANY calls to Hoffman. Clearly, this is not "undisputed".

Additionally, the appeals court stated, "Logan failed to articulate how or why defending himself against this action in Washington State offends traditional notions of fair play and substantial justice." In fact, Logan wrote extensively on this topic. This case is a textbook example of every way in which fair play can be violated in jurisdiction, and Logan was not

shy in pointing it out.

VI. CONCLUSION

The Court of Appeals decision undercuts and obviates due process, wrongfully exchanging the roles of plaintiff and defendant with regard to jurisdiction. Logan was not served. When he was "effectively" served by a notification by the State of New Jersey, Logan took all action possible within his means and ability. Logan had nothing to do with the alleged calls in Hoffman's complaint. He was not in a position of authority when the calls were made, such calls were outside his knowledge even when he was promoted to a position of authority, and Capital itself had nothing to do with the calls, based on the fact pattern provided by Hoffman. Logan did not fail to prove his innocence, providing extensive evidentiary matter up to and including uncontested affidavits, as well as volumes of clear and compelling argumentation that the Court either missed or ignored. The Court, even to the extent of the Court claiming they did not exist, wrongfully disregarded most of the arguments and evidence presented. The Court made nonsensical inferences based on supposition, presupposing guilt and undermining the role of evidence in a court of law. In the Court's exuberant support for quasi-criminal torts[11], the court of appeals made numerous serious errors with long-term consequences to the public. This is a serious miscarriage of justice which will serve as a model for harmful and unjust torts, greatly magnifying the harm to society.

[11] Quasi-criminal torts is intended to refer to statutory torts with punitive awards far in excess of actual damages, such as the TCPA. In effect, such statutes solicit vigilantes to enforce popular laws that would be deemed unconstitutional if enforced under criminal law. Bear in mind that The Funding Center, if it exists, does not reside within the United States of America—otherwise Hoffman would have sued them. This entire subset of laws is already well off the rails, and will only get worse until courts get a handle on effectively criminalized activity running through civil courts.

Logan respectfully requests the Court accept review of the court of appeals' published opinion and order denying the Logan's motion for reconsideration.

Respectfully submitted this 28th day of October, 2021,

Dan Logan, CPA MBA

/s/ Dan Logan **Dan Logan, CPA (pro se)**

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APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MARK HOFFMAN, Respondent, v. DANIEL LOGAN, Appellant. CAPITAL ADVANCE SOLUTIONS, LLC, CHARLES BETTA, GEOFFREY HORN, and JOHN DOES 1-10, Defendants.	)	No. 81887-2-I UNPUBLISHED OPINION

VERELLEN, J. — Mark Hoffman obtained a default judgment against Capital Advance Solutions, LLC (Capital) and its officers, Charles Betta, Geoffrey Horn, and Daniel Logan. The officers moved to vacate the judgment but the superior court denied their request. Logan appeals, claiming the judgment is void as to him for lack of personal jurisdiction and invalid service of process.[1]

Because Logan failed to establish the absence of personal jurisdiction and defective service of process with clear and convincing evidence, the superior court did not err in denying the motion under CR 60(b)(5). Therefore, we affirm.

[1] Capital, Betta, and Horn are not parties to this appeal.

FACTS

In May 2018, Mark Hoffman commenced this civil action in King County Superior Court against Daniel Logan. A process server handed Logan's wife the summons and complaint at Logan's apartment located at 550 Cumberland Street in Westfield, New Jersey. She handed them back to the process server and closed the door. Neither Logan nor his wife would answer the door. The process server "place[d] the summons and complaint under the door" and "repeatedly yelled, 'I am leaving the papers outside your door. You are being served."[2] The process server also prepared an affidavit of service but did not swear to it before a notary or court clerk as required under CR 4(g)(6).[3]

Hoffman's complaint alleged that "the Funding Center," at Logan's direction as Capital's chief financial officer, made eight automated calls to his residential cellular phone soliciting business loans in violation of the Telephone Consumer Protection Act of 1991 (TCPA)[4] and the Washington Telephone Solicitation Act (WTSA).[5] He also alleged his phone number had been on the "National Do Not Call Registry" since 2007, and that:

> Upon information and belief, Defendants Betta, Horn, and Logan had direct, personal participation in causing the illegal telemarketing calls alleged in this complaint to be made, and they directly authorized these illegal telemarketing calls to be made. They failed to take efforts to implement appropriate policies or procedures designed to comply with the federal laws and regulations that are the basis for

[2] Clerk's Papers (CP) at 19.

[3] "In case of personal service out of the state," under CR 4(g)(6), proof of service shall be "the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record."

[4] 47 U.S.C. § 227.

[5] RCW 80.36.390.

> this cause of action. They authorized and ratified the illegal telephone calls. They refused to alter their company's business practices and continued to place illegal prerecorded and automated telephone calls to telephone consumers in violation of federal laws after being sued at least 12 times in federal court since 2012 for engaging in illegal telemarketing practices. Defendant Betta's, Horn's, and Logan's contacts with Washington state were and are sufficient that they could reasonably anticipate being ha[i]led into court here.[6]

In August 2018, more than 60 days after Logan failed to respond to the summons or answer the complaint, Hoffman moved for an order of default. In support of this motion, he filed declarations attesting to his efforts to serve Logan and how service could not be made in Washington. He also filed the process server's affidavit. The superior court granted Hoffman's motion, entered a default judgment awarding him $25,042.47, and enjoined Logan from continuing to make unsolicited telemarketing calls in Washington.

In August 2019, Hoffman assigned the judgment to James Shelton, who resided in Pennsylvania.

In July 2020, Logan filed a motion in the superior court to vacate the default under CR 60(b)(5), alleging the judgment was void for lack of personal jurisdiction, defective service, and meritorious defenses. Logan supported this motion with a declaration stating he (1) was "a resident of New Jersey," (2) was "not affiliated with any business" in Washington, (3) never owned property in Washington, (4) had no relationship with Hoffman, (5) neither called nor directed Hoffman to be

[6] CP at 3.

called, and (6) "was not served personally and did not accept delivery of the summons and complaint."[7]

Shelton opposed Logan's motion, arguing the affidavit of service "documents in detail exactly what occurred during the service of process on May 20, 2018," specifically "that the process server handed the papers to Daniel Logan's wife and told her to give them to her husband, but she handed them back to him, so he put them in a door jamb of their residence."[8] Shelton asserted "the process server took photos of him walking towards Mrs. Logan to hand her the papers, and later leaving them in the door jamb" and filed copies of the photographs.[9]

After a hearing and supplemental briefing regarding individual liability of Capital's officers, the superior court denied Logan's motion finding that Hoffman "met the requirements for service of process and that no equitable basis for vacating the default and default judgment exists under applicable law."[10]

Logan, appearing pro se, appeals the denial of his CR 60(b) motion.[11]

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[7] CP at 211-12.

[8] CP at 283

[9] CP at 283.

[10] CP at 260.

[11] Pro se litigants are held to the same standards as attorneys and must comply with all procedural rules on appeal. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). While Logan attempts to argue on behalf of Betta and Horn in his briefing to this court, we ignore those arguments because Logan cannot represent anyone other than himself as a pro se litigant.

ANALYSIS

A superior court may, upon a CR 60(b)(5) motion, relieve a party from a final judgment if that judgment is void. A judgment entered without personal jurisdiction of a party is void and a superior court does not have personal jurisdiction over a party lacking minimum contacts in Washington or if service of process was improper.[12] "Because courts have a mandatory, nondiscretionary duty to vacate void judgments, a trial court's decision to grant or deny a CR 60(b) motion to vacate a default judgment for want of jurisdiction is reviewed de novo."[13]

An appeal from the denial of a CR 60(b) motion is not a substitute for an appeal from the final judgment, so our review is narrowed to the propriety of the denial not the impropriety of the default judgment.[14] Once a default judgment is entered, the party challenging the judgment has the burden to show by clear and convincing evidence that the judgment is void.[15] Clear and convincing evidence exists "when the evidence shows the ultimate fact at issue to be highly probable."[16]

[12] In re Marriage of Markowski, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988); Powell v. Sphere Drake Ins. P.L.C., 97 Wn. App. 890, 899, 988 P.2d 12 (1999); RCW 4.28.185.

[13] Dobbins v. Mendoza, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997).

[14] Bjurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980).

[15] Woodruff v. Spence, 88 Wn. App. 565, 571, 945 P.2d 745 (1997) ("after judgment is entered, the burden is on the person attacking the service to show by clear and convincing evidence that the service was irregular"); see also Moss v. Indus. Leasing Corp., 2005 WL 3050277 at *2-3 (E.D. Wash. 2005) (unpublished) (federal district court applying Washington's long-arm statute, concluding that the defaulted party "bears the burden of refuting Plaintiffs' allegations of minimum contacts with the [s]tate of Washington by 'compelling evidence'").

[16] In re Dependency of K.S.C., 137 Wn.2d 918, 925, 976 P.2d 113 (1999).

I. Specific Personal Jurisdiction

Logan argues the default judgment against him was void for lack of specific personal jurisdiction under Washington's long-arm statute because he did not have sufficient minimum contacts with this state.[17] We disagree.

For purposes of determining jurisdiction under the long-arm statute, the plaintiff bears the initial burden of making a prima facie showing of the jurisdictional facts.[18] Therefore, "the allegations in the plaintiff's complaint must be taken as correct."[19] Once that burden is met and default has been entered, the burden shifts to the defendant who challenges jurisdiction in a motion to vacate to refute the factual allegations with clear and convincing evidence. Thus, we examine the record to see if Hoffman's complaint alleges facts sufficient to invoke Washington's long-arm jurisdiction, then look to see if Logan presented convincing evidence to refute them.

"Washington's long-arm statute, RCW 4.28.185, authorizes the court to exercise jurisdiction over a nonresident defendant to the extent permitted by the due process clause of the United States Constitution."[20] Our courts "may exercise

[17] Logan also claims the superior court lacked general jurisdiction over him under RCW 4.28.080(10), but we need not address this claim as general jurisdiction was not the basis upon which Hoffman asserted Washington's jurisdiction in this action.

[18] SeaHAVN, Ltd. v. Glitnir Bank, 154 Wn. App. 550, 563, 226 P.3d 141 (2010) (citing CTVC of Hawaii Co., Ltd. v. Shinawatra, 82 Wn. App. 699, 707, 919 P.2d 1243 (1996)).

[19] Walker v. Bonney-Watson Co., 64 Wn. App. 27, 33, 823 P.2d 518 (1992) (citing MBM Fisheries, Inc. v. Bollinger Machine Shop and Shipyard, Inc., 60 Wn. App. 414, 418, 804 P.2d 627 (1991)).

[20] SeaHAVN, 154 Wn. App. at 563 (citing MBM Fisheries, 60 Wn. App. at 423.)

specific jurisdiction over a nonresident defendant when the defendant's limited contacts give rise to the cause of action."[21] Here, Hoffman alleged Washington had specific jurisdiction over Logan, as authorized by RCW 4.28.185, because Logan transacted business and committed tortious acts in Washington. The long-arm statute provides in pertinent part:

> (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any said acts:
>
> (a) The transaction of any business within this state;
>
> (b) The commission of a tortious act within this state;
>
> . . . .
>
> (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this section.[22]

Washington courts apply the following three-prong test in determining whether to exercise personal jurisdiction over a nonresident defendant under RCW 4.28.185:

> (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
>
> (2) the cause of action must arise from, or be connected with, such act or transaction; and
>
> (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the

[21] CTVC of Hawaii, 82 Wn. App. at 709 (citing MBM Fisheries, 60 Wn. App. at 422-23).

[22] RCW 4.28.185(1), (3).

> activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.[23]

A. Purposeful Acts

"A plaintiff can establish purposeful availment by showing the initiation of a transaction outside the state 'in contemplation that some phase of it will take place in the forum state.'"[24] Hoffman claimed Logan, as Capital's chief financial officer, authorized "the Funding Center" to make "the illegal telemarketing calls" to his Washington-based cellular phone number to solicit business loans.[25] Drawing inferences in Hoffman's favor, as we must, Logan's knowledge that Washington phone numbers were being called suffices to satisfy the first prong of the jurisdictional test.

With his motion to vacate, Logan attached a declaration stating that he did not call Hoffman, did not direct that Hoffman be called, and was not aware of any call being made to Hoffman. But he said nothing about his relationship with, or his ability to control, the Funding Center's activities. Moreover, Logan did not provide any evidence to refute Hoffman's allegation that the Funding Center called Washington-based telephone numbers at his direction. "When a party fails to produce relevant evidence within its control, without satisfactory explanation, the

[23] Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 767, 783 P.2d 78 (1989) (quoting Deutsch v. West Coast Mach. Co., 80 Wn.2d 707, 711, 497 P.2d 1311 (1972)).

[24] SeaHAVN, 154 Wn. App. at 565 (quoting CTVC of Hawaii, 82 Wn. App. at 711).

[25] CP at 3, 8-9.

inference is that such evidence would be unfavorable to the nonproducing party."[26] Thus, we draw a reasonable adverse inference from Logan's failure to produce such evidence, and conclude that evidence exists showing Logan did have the authority to control the Funding Center's activities including telephone soliciting Washington residents for purposes of transacting business in this state.

Hoffman also alleged Logan purposely acted in Washington by committing tortious acts in this state, claiming Logan was personally liable under the TCPA. A tort "occurs in Washington when the injury occurs within our state"[27] and "[a]n injury 'occurs' in Washington for purposes of the long-arm statute, 'if the last event necessary to make the defendant liable for the alleged tort occurred in Washington.'"[28]

To maintain a claim under the TCPA, the plaintiff must establish three elements: "(1) the defendant called a cellular telephone number; (2) using an automated telephone dialing system; [and] (3) without the recipient's prior express consent."[29] Here, the complaint alleged that Logan "authorized and ratified the illegal telephone calls," Logan "refused to alter [Capital's] business practices and continued to place illegal prerecorded and automated telephone calls to telephone consumers in violation of federal laws," and Hoffman "never provided prior express

[26] Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 123 Wn.2d 678, 689, 871 P.2d 146 (1994) (citing Pier 67, Inc. v. King County, 89 Wn.2d 379, 385-86, 573 P.2d 2 (1977)).

[27] SeaHAVN, 154 Wn. App. at 569 (citing Grange Ins. Ass'n v. State, 110 Wn.2d 752, 757, 757 P.2d 933 (1988)).

[28] Id. (quoting MBM Fisheries, 60 Wn. App. at 425).

[29] Meyer v. Portfolio Recovery Assocs., LLC, 707 F.3d 1036, 1043 (9th Cir. 2012) (citing 47 U.S.C. § 227(b)(1)).

written consent or any other kind of consent to receive telemarketing calls made by or on behalf of Defendants."[30]

The "last event necessary" allegedly occurred when the Funding Center, at Logan's direction, made automated calls to Hoffman's cellular phone in Washington.[31] Logan did not present any evidence to refute the alleged TCPA violation occurred in Washington.

Instead, Logan argued the complaint did not allege sufficient facts to impose personal liability onto him.[32] But Logan's argument ignores that "[i]ndividuals who directly . . . violate the TCPA should not escape liability solely because they are corporate officers" and a corporate officer is deemed to have "made" a call, and thus liable under the TCPA, if the officer "had direct, personal participation in or personally authorized the conduct found to have violated the statute."[33] His argument also ignores that Washington courts extend personal liability to corporate officers who supervised, directed, or approved wrongful business conduct.[34]

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[30] CP at 3, 8.

[31] For this reason, we conclude the fact that Hoffman made a return call to the Funding Center, who then transferred him to "the sales manager at Capital" is of no consequence in determining jurisdiction over Logan. CP at 9.

[32] Though the parties filed supplemental briefing at the superior court's request following the hearing on Logan's motion to vacate, we note Logan did not designate his supplemental brief as part of the record on appeal. Therefore, we do not have the benefit of reviewing any additional arguments he may have asserted below on this issue.

[33] Texas v. Am. Blastfax, Inc., 164 F. Supp. 2d 892, 898 (W.D. Tex. 2001).

[34] Grayson v. Nordic Constr. Co., 92 Wn.2d 548, 554, 599 P.2d 1271 (1979) ("if a corporate officer participates in wrongful conduct or with knowledge approves

Again, viewing the allegations in Hoffman's favor, we conclude that the complaint raised a prima facie claim for relief under the TCPA and established the first prong of the jurisdictional test. And Logan did not establish facts to the contrary in his motion to vacate.

B. Forum-Related Conduct

Under the second prong of the jurisdictional test, "[j]urisdiction is proper if the events giving rise to the claim would not have occurred 'but for' the solicitation of business in the forum state."[35] It is undisputed that this cause of action arose out of the alleged calls Hoffman received from the Funding Center at the direction of Logan. But for those calls, Hoffman would not have suffered any injuries the TCPA and WSTA were enacted to prevent. Hoffman's allegations satisfied the second prong of the test, and Logan offered no evidence to refute them.

C. Fair Play and Substantial Justice

The final prong in determining whether long-arm jurisdiction is appropriate requires consideration of the quality, nature, and extent of Logan's activities in Washington, the relative convenience of maintaining the action here, the benefits Washington law affords, and the basic equities.[36]

Hoffman specifically alleged "Logan's contacts with Washington state were and are sufficient that [he] could reasonably anticipate being ha[i]led into court

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of the conduct, then the officer as well as the corporation, is liable for the penalties").

[35] SeaHAVN, 154 Wn. App. at 571 (quoting CTVC of Hawaii, 82 Wn. App. at 719).

[36] Shute, 113 Wn.2d at 767 (quoting RCW 4.28.185).

here."[37] But in the declaration used to support his motion to vacate, Logan did not assert any facts or present any evidence to counter Hoffman's allegation. In other words, Logan failed to articulate how or why defending himself against this action in Washington offends traditional notions of fair play and substantial justice.

Accordingly, we conclude Logan had sufficient minimum contacts with Washington for the superior court to obtain specific personal jurisdiction. The superior court did not err in denying Logan's motion to vacate the default judgment on this ground.

II. Service of Process

Logan contends he was not properly served with the summons and complaint, so the default judgment against him is void for lack of personal jurisdiction. But because he failed to establish defective service of process, we disagree.

In order to obtain jurisdiction over nonresident defendants, the long-arm statute requires personal service on them.[38] Personal service of the summons shall be served by delivering a copy thereof to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.[39]

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[37] CP at 3.

[38] RCW 4.28.185(2) reads: "Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state."

[39] RCW 4.28.080(16).

Here, the process server prepared an affidavit setting forth the manner in which he served Logan on May 20, 2018. The affidavit states in pertinent part:

> When I arrived, a woman on the porch said she was Dan [Logan's] wife. I told her that I had some papers to deliver to Dan. She seemed very suspicious of me. I then asked if Dan was home. She started to say yes and looked towards the house, but stopped mid-sentence and said he wasn't there. I suspected she was lying and that Dan was really home. I asked what her name was, however I already knew her name is Deidre. She would not give it to me. I followed her to the door and handed her the papers, and told her that she needed to give the summons and complaint to her husband Dan who has been named as a defendant in a lawsuit. She gave the papers back to me. I told her that she either needed to get Dan to come and accept the papers, or she would need to accept the papers on her husband's behalf. She refused, went back inside, and locked the door. I knocked on the door for several minutes and no one answered.
>
> I called the police department to give them a heads-up that I was trying to serve legal paperwork. Officer Vagan . . . of the Westfield Police Department arrived. The officer knocked on the door and yelled "police department" but no one answered. It was obvious that the defendants were [sic] avoiding service. The door to the defendant's apartment unit is inside the physical house. After knocking on the door for approximately 15 minutes, I decided to place the summons and complaint under the door to . . . Daniel Logan's unit. I repeatedly yelled "I am leaving the papers outside your door. You are being served."[40]

Below, in the motion to vacate proceeding, Logan's declaration said the following on the issue of service: "I was not served personally and did not accept delivery of the summons and complaint."[41] But Logan's statement is general and conclusory. It is not convincing evidence of defective service. In his briefing to this court, however, Logan claims:

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[40] CP at 19.

[41] CP at 216.

> [He] was not served personally because at the time, as now, he was not on speaking terms with his ex-wife. He and his wife were separated at the time, the divorce becoming final in July 2018. She did not accept service and legally was not obligated to, since she did not reside with Logan at the time. She almost certainly made this clear to the process server. Regardless, the process server, according to his own records, did not serve her.[42]

We are unpersuaded by Logan's claim because it appears nowhere in the record and there is no indication that he raised this claim for the superior court to consider.[43] Moreover, we conclude the affidavit of service establishes that Logan actually received service of process.

Under RCW 4.28.080, a process server accomplishes personal service if there is a clear attempt to yield possession and control of the documents to the person being served. In United Pacific Insurance Co. v. Discount Co., the court held that defendant was served properly after the process server attempted to hand the documents to the defendant, but she evaded accepting them by slamming the door.[44] This case is similar to United Pacific in that the process server here attempted to yield possession and control of the documents personally to Logan's wife, but she affirmatively refused. Therefore, service of process was sufficient under RCW 4.28.080(16).

Logan also argues the affidavit of service in this case was not notarized as required by CR 4(g)(6), therefore it was deficient, rendered service improper, and invalidated personal jurisdiction. While he is correct that the affidavit does not

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[42] Appellant's Br. at 35.

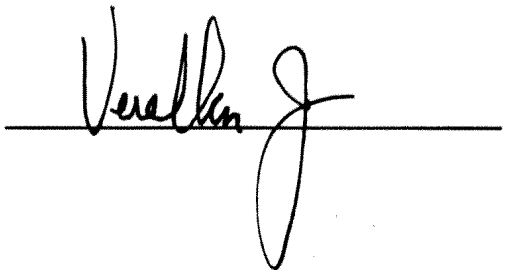
[43] We decline to consider Logan's factual assertions that are not supported by citations to the record. See RAP 10.3(a)(5).

[44] 15 Wn. App. 559, 561-62, 550 P.2d 699 (1976).

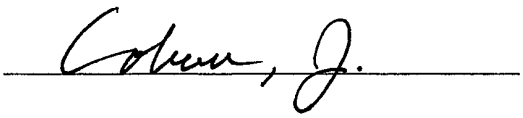
comport with the civil rules, this fact alone does not affect the validity of service of process upon him.[45] This is so because "[i]t is the fact of service that confers jurisdiction, not the return, and the latter may be amended to speak the truth."[46] And as we have already determined, Logan was properly served with the summons and complaint in this action.

The superior court properly denied the motion to vacate on the grounds of insufficient service of process.

We affirm.



WE CONCUR:



[45] CR 4(g)(7) reads: "In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service."

[46] Williams v. Steamship Mut. Underwriting Ass'n, 45 Wn.2d 209, 227, 273 P.2d 803 (1954).

APPENDIX 2

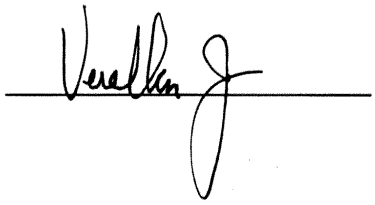
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MARK HOFFMAN, Respondent, v. DANIEL LOGAN, Appellant. CAPITAL ADVANCE SOLUTIONS, LLC, CHARLES BETTA, GEOFFREY HORN, and JOHN DOES 1-10, Defendants.	No. 81887-2-I ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH OPINION

Appellant filed a motion for reconsideration and a motion to publish the court's July 26, 2021 opinion. The panel has determined the motions should be denied. Now, therefore, it is hereby

ORDERED that the appellant's motions for reconsideration and to publish the opinion are denied.

FOR THE PANEL:



APPENDIX 3

KENT & McBRIDE, P.C.
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(732) 326-1711

ATTORNEY FOR DEFENDANTS,
CHARLES BETTA, DANIEL LOGAN, GEOFFREY HORN

File No.: 293.92260

Mark Hoffman,

Plaintiff

v.

Capital Advance Solutions, LLC, et. al.

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY

Docket No.: DJ-010013-20

CIVIL ACTION

AFFIDAVIT OF DANIEL LOGAN

The undersigned, of full age and being duly sworn and deposed by law deposes and states:

1. I am an individual defendant in the instant matter. I make this affidavit in support of the motion to vacate the judgment against me, under the Uniform Enforcement of Foreign Judgments Act.
2. I am, and was at all times relevant to this matter, a resident of New Jersey.
3. I am not affiliated with any business that has locations in the State of Washington.
4. I have never owned property in the State of Washington, nor do I currently own property in that state.
5. I have no relationship at all with the plaintiff in this matter.
6. I did not call the plaintiff, nor did I direct the plaintiff to be called. I am not aware of

any call being made towards the plaintiff Mark Hoffman.

7. I was not served personally and did not accept delivery of the summons and complaint.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge.

Daniel Logan

Dated: 02/04/2020

Sworn and subscribed to
before me this 4th day
of February, 2020

NATALIE MUNOZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MU6333628
Qualified in Kings County
My Commission Expires 11-30-2023

APPENDIX 4

IN THE WASHINGTON COURT OF APPEALS DIVISION 1

MARK HOFFMAN	)	
Plaintiff/Respondent	)	
	)	
v.	)	**Case Number: 81887-2-1**
	)	
DAN LOGAN	)	
Appellant	)	

ON APPEAL FROM THE SUPERIOR COURT

OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

HONORABLE REGINA S. CAHAN

AFFIDAVIT OF APPELLANT DAN LOGAN, CPA MBA (PRO SE)

I am Dan Logan, CPA pro se. I am competent to make this Declaration. I make this Declaration on personal knowledge.

1. I was not the CFO of Capital Advance Solutions on October 28 and 29 of 2015. At that time, I was an accounting manager.

2. I did not authorize The Funding Center to call Hoffman.

3. I have never heard of The Funding Center, other than reading it in Hoffman's complaint. I have never heard of The Funding Center, and I have no knowledge whatsoever concerning their activities.

4. I have no relationship with The Funding Center. I have no control over The Funding Center. I have never interacted with The Funding Center in any way, precisely zero. They are utterly beyond my ken.

5. The Funding Center did not call into Washington State at my direction. I have no idea at all what The Funding Center does, but I do know that I did not direct any of their activity. I have never had any influence over The Funding Center at all. I have no idea who they are.

6. I do not have the authority to control the Funding Center's activities, including telephone soliciting Washington residents for purposes of transacting business in the State of Washington.

7. I have no knowledge of any telemarketing calls into Washington State.

8. I was an Accounting Manager at Capital Advance Solutions from my hire date of November 2014 through December 2015, with no control over anything. I had no control or even influence over telemarketing or any kind of marketing at the time of Hoffman's complaint, which was on October 28 and 29 of 2015. I did not direct Capital Advance Solutions to call Hoffman. I did not direct The Funding Center to call Hoffman. I did not direct anything, I simply did the accounting.

9. My duties have never involved me participating or authorizing telemarketing calls – never.

10. I have no contact with the State of Washington whatsoever. I do not conduct business or own property in Washington State. I do not communicate with any person or entity in Washington State, or authorize such communication, including telemarketing.

11. I have never transacted any business in the State of Washington.

12. I have never committed a tortious act in the State of Washington.

13. It is unfair to claim jurisdiction over me in Washington State, as I reside 3,000 miles away in New Jersey.

14. It is unfair to claim jurisdiction over me based solely on Hoffman's guess that I might have authorized calls to him.

15. It is unfair to claim I have control or authorized calls from unrelated third party The Funding Center. This unwarranted inference based on an unfounded supposition by Hoffman violates all notions of fair play.

16. I declare under penalty of perjury under the laws of the State of Washington as well as the State of New Jersey that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED at Westfield, New Jersey this 13th day of August, 2021.

Dan Logan, CPA MBA

Dated: 8/13/21

Sworn and subscribed
Before me this 13 day
of August, 2021

EUGENE S. CERULLI
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 1/26/2022

D L - FILING PRO SE

October 28, 2021 - 4:27 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Mark Hoffman, Respondent v. Daniel Logan, Appellant (818872)

The following documents have been uploaded:

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  This File Contains:
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Comments:

Sender Name: D L - Email: fynants@yahoo.com
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