

FILED

MAR -4 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CF

Court of Appeals No. 71166-1

SUPREME COURT OF THE STATE OF WASHINGTON

91271-8

WANNA CHOI,
an individual,

Petitioner,

v.

ASHLEY YOUNG,
an individual,

Respondent.

**REPLY TO RESPONDENT'S ANSWER TO PETITION FOR
REVIEW BY THE SUPREME COURT**

Eileen I. McKillop, WSBA 21602
Attorneys for Petitioner Wanna Choi

LANE POWELL PC
1420 5TH AVENUE, SUITE 4200
SEATTLE, WA 98111-9402
PHONE: (206) 223-7000
FAX: (206) 223-7107



ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
A. ARGUMENT	1
1. Neither the Trial Court nor the Court of Appeals Ruled that the Order of Default Entered on June 27, 2013 is Void and Unenforceable.	1
2. The Trial Court’s Decision to Vacate the Default Judgment as to Damages was not Based on Lack of Personal Jurisdiction.	3
B. CONCLUSION.....	4

A. ARGUMENT

1. Neither the Trial Court nor the Court of Appeals Ruled that the Order of Default Entered on June 27, 2013 is Void and Unenforceable.

Respondent Ashley Young improperly argues that the Court of Appeals held that the Order of Default entered on June 27, 2013 was void because the motion for default was not filed with the Court Clerk, and thus the Court of Appeals ruled that Young was entitled to notice of Choi's filing of the motion for default judgment. This is incorrect.

First, as the Court of Appeals' decision points out, the trial court denied Young's Motion to Vacate the Order of Default entered on June 27, 2013. After an evidentiary hearing, the trial court entered an order denying Young's motion to vacate the default order, stating in pertinent part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Vacate and Set Aside the Order of Default is DENIED. The court further orders that the default as to liability stands but not as to damages and that the defendants are entitled to a hearing or jury trial on the issue of damages and causation of damages only.

There is nothing in the Court of Appeals' Decision which indicates that the Order of Default entered on June 27, 2013 is somehow void. Moreover, there is no dispute that the Court Commissioner filed the Order of Default with the Clerk of the Court on June 27, 2013, and that both USAA and Young's counsel had actual notice of the Order of Default.

Furthermore, Young never filed an appeal of the trial court's order denying her motion to vacate the default order. Thus, the Order of Default entered on June 27, 2013 is valid and enforceable.

The Court of Appeals completely disregarded the Order of Default entered on June 27, 2013, and relied instead on Young's argument raised for the first time on appeal that, despite entry and knowledge of the Order of Default, Young was still entitled to notice of the motion for default judgment because the "motion" for default order had not been filed with the Clerk of the Court. Young attempts to convince this court that the Court of Appeals considered whether the Motion for Default Judgment was filed with the Clerk of the Court. The Court of Appeals only considered whether the Motion for Default Order was filed with the Clerk of the Court, and not whether the Motion for Default Judgment was filed with the Clerk of the Court.

Furthermore, at no time did the trial court or the Court of Appeals decide that Young was entitled to notice of the Motion for Order of Default. The Court of Appeals' decision was that Young was entitled to notice of the Motion for Entry of the Default Judgment because Choi's Amended Motion for an Order of Default was filed in the Ex Parte Department but not with the Clerk of the Court. Thus, despite entry of the Order of Default with the Clerk of the Court on June 27, 2013, and

USAA's and Young's actual notice of the Order of Default, the Court of Appeals improperly ruled that Young was still entitled to notice of the motion for default judgment.

The trial court vacated the default judgment as to damages on the basis that the default judgment was entered without notice to Young's counsel even though Young's counsel had not appeared until after the default order was entered. The Court of Appeals erred in considering Young's argument raised for the first time on appeal which was not raised or even considered by the trial court in its decision. Because Young never raised this argument to the trial court, and did not appeal the trial court's order denying her motion to vacate the default order, Young has waived this argument on appeal. The Order of Default entered on June 27, 2013 is valid and enforceable, and Young was not entitled to notice of the default judgment because Young's counsel did not appear for purposes of CR 55(a)(3) until July 16, 2013.

2. The Trial Court's Decision to Vacate the Default Judgment as to Damages was not Based on Lack of Personal Jurisdiction.

Young contends that the trial court found that Young had demonstrated a prima facie defense of defective service of process. This is incorrect. Young fails to note that the trial court held an evidentiary hearing on the service of process issue on November 15, 2013, and entered

an order denying Young's motion to vacate the default order, finding that Young had not shown by clear and convincing evidence that Young was not properly served with process on May 30, 2013. Contrary to Young's representations, the trial court's decision vacating the default judgment as to damages was not based on a lack of personal jurisdiction.

B. CONCLUSION

For the foregoing reasons, Petitioner Wanna Choi respectfully requests that the Court consider her reply and reinstate the default judgment against Ashley Young entered on July 30, 2014 in the amount of \$134,744.00.

DATED this 3 day of March, 2014.

LANE POWELL PC

By 

Eileen I. McKillop, WSBA 21602
Attorneys for Petitioner Wanna Choi

APPENDIX

- A. Order Granting Defendant's Motion to Vacate Order and Judgment by Default or, in the Alternative, Granting the Request for Evidentiary Hearing, entered on October 22, 2013.

APPENDIX A

FILED
KING COUNTY WASHINGTON

The Honorable Jean Rietschel
Hearing Date: 10/18/13
Without Oral Argument

OCT 22 2013

SUPERIOR COURT CLERK,

DAVID WITTEN

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY**

WANNA CHOI, an individual,

Plaintiff,

v.

ASHLEY YOUNG, an individual,

Defendant.

NO. 13-2-14374-7 SEA

ORDER GRANTING
DEFENDANT'S MOTION TO
VACATE ORDER AND
JUDGMENT BY DEFAULT OR,
IN THE ALTERNATIVE,
GRANTING THE REQUEST
FOR EVIDENTIARY HEARING

"Clerk's Action Required"

THIS MATTER, having been heard by the undersigned Commissioner of the
above-entitled Court, having reviewed the records and materials contained herein,
including the following:

1. Defendant Young's Motion to Vacate Order and Judgment by Default and Request for Evidentiary Hearing;
2. Plaintiff's response, if any;
3. Defendant's reply, if any;

ORDER GRANTING DEFENDANT'S MOTION TO
VACATE ORDER AND JUDGMENT BY DEFAULT
OR, IN THE ALTERNATIVE, GRANTING THE
REQUEST FOR EVIDENTIARY HEARING- 1

HE\9448\order vacating order and judgment and request evidentiary hearing.wpd

FEIZER & ZIONTZ, P.S.
1600 PACIFIC BUILDING
720 THIRD AVENUE

SEATTLE, WASHINGTON 98104-1825
PHONE (206) 682-7700 FAX (206) 682-0721

ORIGINAL

1 being fully advised in the premises, now, therefore makes the following findings and
2 conclusions:
3

4 1. Defendant appeared after entry of the order of default and filed a Motion to
5 Vacate Order of Default and demonstrated ^{a prima facie} ~~lack of personal jurisdiction~~, due diligence ^{issue of P} ~~and excusable neglect~~.
6 ^{lack of personal jurisdiction}
7

8 2. Defendant has shown that the default judgment herein was obtained by plaintiff
9 without notice and after defendant had entered a notice of appearance, ~~shown lack of~~
10 ^{OR} ~~personal jurisdiction~~ and met the 4-part test of ~~White v. Holm~~.
11 ^{OR}

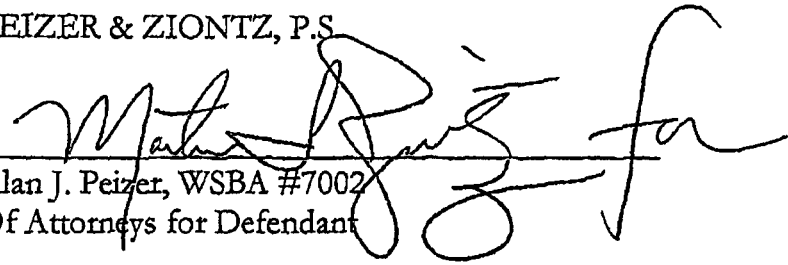
12 3. Plaintiff's claim is for an "amount uncertain" and ~~Plaintiff failed to present live~~
13 ~~testimony of her damages.~~
14

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that (1) the Order
16 of Default dated June 27, 2013 is ^{will be considered at the evidentiary hearing OR} ~~hereby VACATED~~; (2) the Default Judgment dated
17 July 30, 2013 is hereby VACATED; and/or (3) an evidentiary hearing on service of
18 process and ~~damages~~ is set for ^{4th} ~~November 15~~ ^{at 1:30pm} 2013. ~~Plaintiff may~~
19 ^{present affidavit for a Homage fees for default orders.} ~~OR~~
20 DATED this 22 day of October, 2013.
21

22 
23 _____
24 Judge Jean Rietschel
25
26
27
28

1 Presented by:

2 PEIZER & ZIONTZ, P.S.

3
4 
5

6 Alan J. Peizer, WSBA #7002
Of Attorneys for Defendant

7 Copy Received; Approved for Entry:

8
9 OLES MORRISON RINKER & BAKER LLP

10
11
12 Eileen I. McKillop, WSBA #21602
Of Attorneys for Plaintiff

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER GRANTING DEFENDANT'S MOTION TO
VACATE ORDER AND JUDGMENT BY DEFAULT
OR, IN THE ALTERNATIVE, GRANTING THE
REQUEST FOR EVIDENTIARY HEARING- 3

HE\9448\order vacating order and judgment and request evidentiary hearing.wpd

PEIZER & ZIONTZ, P.S.
1600 PACIFIC BUILDING
720 THIRD AVENUE
SEATTLE, WASHINGTON 98104-1825
PHONE (206) 682-7700 FAX (206) 682-0721

4370

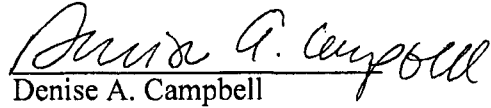
CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on March 4, 2015, I caused to be served a copy of the foregoing **Reply to Respondent's Answer to Petition for Review by the Supreme Court** on the following person(s) in the manner indicated at the following addresses:

Alan J. Peizer
Martin L. Ziontz
Peizer & Ziontz, P.S.
720 3rd Avenue, Suite 1600
Seattle, WA 98104-1813
Phone: (206) 682-7700
Fax: (206) 682-0721
Email: alan@przlaw.com
carolyn@przlaw.com

- by CM/ECF
- by Electronic Mail (per agreement)
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery

DATED this 4th day of March, 2015 at Seattle, Washington


Denise A. Campbell

OFFICE RECEPTIONIST, CLERK

To: Campbell, Denise
Cc: McKillop, Eileen I.
Subject: RE: Choi v. Young - Crt of Appeals No. 71166-1

Rec'd 3/4/2015

From: Campbell, Denise [mailto:CampbellD@LanePowell.com]
Sent: Wednesday, March 04, 2015 10:41 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: McKillop, Eileen I.; Campbell, Denise
Subject: Choi v. Young - Crt of Appeals No. 71166-1

Attached is the following document for filing with the Supreme Court:

Reply to Respondent's Answer to Petition for Review by the Supreme
Court of Appeal Case No.: 71166-1
Case Name: Wanna Choi v. Ashley Young
Filing Attorney: Eileen I McKillop, WSBA No. 21602

Thank you,

Denise A. Campbell



LANE POWELL
ATTORNEYS & COUNSELORS

Legal Assistant to Eileen I. McKillop
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338
Direct: 206.223.5495
CampbellD@LanePowell.com
www.lanepowell.com

This message is private or privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately, and please do not copy or send this message to anyone else.