Court of Appeals Nos. 49138-9-II and 49518-0-II (consolidated)

SUPREME COURT OF THE STATE OF WASHINGTON
No. 95477-1

GALAXY THEATRES, LLC,
Appellant,

v.

GREGORIO GARZA and LIZBETH GARZA,
Respondents.

ANSWER TO PETITION FOR REVIEW

MORGAN & KOONTZ, PLLC
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I. IDENTITY OF RESPONDENT

Respondents are Gregorio Garza and Lizbeth Garza, Plaintiffs at the superior court and Respondents at the Court of Appeals.

II. STATEMENT OF CASE

Appellant Galaxy Theatres did business as "Galaxy Theatres" at 4649 Point Fosdick Drive Northwest, Gig Harbor, Washington 98338.[1] On February 19, 2012, Gregorio Garza was injured at a movie theater operated by Galaxy Theatres in Gig Harbor, Washington, which caused substantial injury to his right foot and ankle and necessitated surgery.[2] Mr. Garza further testified that the manager on duty asked him to contact Adrienne Ingham, the general manager.[3] Ms. Ingham told Mr. Garza to "go ahead and seek medical help and they would cover everything."[4] Ms. Ingham instructed Mr. Garza that "someone with [her] corporate office would be contacting [him] to let [him] know where [he could] send his medical bills from the injury."[5] Ms. Ingham also told Mr. Garza to "submit the medical bills to [her]."[6] Ms. Ingham's email address was "[her name]@galaxytheatres.com."[7]

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[1] Clerk's Papers ("CP") 1 – 2.
[2] CP at 188.
[3] CP at 271.
[4] CP at 271.
[5] CP at 302.
[6] CP at 302.
[7] CP at 302.

On December 10, 2014, the Garzas filed a Complaint for Personal Injuries and Damages in the Pierce County Superior Court alleging physical and emotional damages relating to the fall he suffered in 2012.[8] The Garzas served Galaxy Theatres with a copy of the Summons and Complaint by way of service on its registered agent, Fanny Sparling.[9] Galaxy Theatres does not dispute that its registered agent was properly served. The Garzas followed up with a courtesy copy of the Summons and Complaint by U.S. Mail to Galaxy Theatres' insurance carrier, Gallagher Bassett Services, Inc.[10]

On January 13, 2015, more than 20 days after Galaxy Theatres' service of the Summons and Complaint without any notice of appearance or Answer filed, the Garzas moved for and obtained an Order of Default.[11]

On March 4, 2015, the Garzas moved for entry of Default Judgment, presenting evidence of Galaxy's liability and their damages.[12] On March 13, 2015, the trial court entered Findings of Fact and Conclusions of Law against Galaxy, including a finding that the Garzas and their children were business invitees and lawfully on Defendant's premises at Galaxy

[8] CP at 1 – 4.
[9] CP at 7 – 8.
[10] CP at 11, 14.
[11] CP at 10, 28 – 29.
[12] CP at 65 – 75, 195, 206 – 462.

Uptown Movie Theatres in Gig Harbor, Pierce County, Washington.[13] The trial court entered a Judgment against Galaxy Theatres in the amount of $711,268.72 that same day.[14]

On May 25, 2016, more than one year after the trial court entered Judgment against Galaxy Theatres, Galaxy Theatres filed a Motion to Set Aside Amount of Damages pursuant to CR 60(b)(1) and (11).[15] In its motion, Galaxy Theatres admitted that it was properly served through its registered agent and that its registered agent emailed a copy of the Summons and Complaint to Galaxy Theatres' corporate office in California.[16] Galaxy Theatres claimed that its corporate office did not receive this email nor the courtesy copy mailed by the Garzas' counsel.[17] Galaxy Theatres argued that the Judgment should be set aside because (1) its failure to appear and defend was a result of "mistake, inadvertence, surprise, excusable neglect, and irregularity," and (2) damages were allegedly excessive.[18]

Galaxy Theatres argued that the evidence was insufficient to support the damages awarded because jury verdicts from other, unrelated cases resulted in lower damages awards.[19] Galaxy Theatres admitted that service

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[13] CP at 76 – 81.
[14] CP at 82 – 83.
[15] CP at 84.
[16] CP at 86.
[17] CP at 86 – 87.
[18] CP at 88 – 89.
[19] CP at 91 – 93.

was proper on its registered agent, but argued that an unknown failure caused its corporate office to not receive a copy of the Summons and Complaint from the registered agent.[20] Galaxy Theatres contended that this amounted to an inadvertent mistake that justified vacating the Judgment.[21]

In its supporting materials, Galaxy Theatres admitted that it operated the theater at issue. For example, Galaxy Theatres admitted that "Galaxy Theatre, they're the defendants here. They've had a judgment entered against them. Their business, they have, I believe, a dozen theaters around California and Nevada, one up here in Gig Harbor."[22] Galaxy Theatres also conceded that Adrienne Ingham, General Manager of the Galaxy Uptown 10 movie theater in Gig Harbor where Mr. Garza was injured, is an employee of Galaxy Theatres.[23] The "Incident / Accident Investigation" form is on "Galaxy Theatres" letterhead.[24] And Ms. Ingham and Pamela Bush, an employee in Galaxy Theatres' "corporate office," share email addresses with the same domain name: "galaxytheatres.com."[25]

The Garzas opposed the Galaxy Theatres' Motion, arguing that a motion under CR 60(b)(1) for mistake or inadvertence was untimely

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[20] CP at 93 – 94.
[21] CP at 95.
[22] CP at 599.
[23] CP at 97, 102.
[24] CP at 104.
[25] CP at 102, 108.

because more than a year had passed since entry of Judgment.[26] Additionally, the Garzas argued that the damages were reasonable and supported by live and expert testimony, and that the damages calculation did not qualify as an "extraordinary circumstance" under CR 60(b)(11).[27]

In reply, Galaxy Theatres argued that "Defendant Galaxy Theatre recognizes the time limitations under the Civil Rules, and for that reason has conceded liability under the circumstances. However, Defendant does not seek to set aside the judgment itself. Rather Defendant seeks only to vacate the *amount of damages*."[28]

At the hearing on the Motion, Galaxy Theatres conceded liability:

> THE COURT: That's kind of what happens. The cases in Morin v. Burris that was in your reply brief, that's kind of what happened in every one of those, and two of the defaults were reversed by the Court of Appeals, or default judgments were reversed, and then the Supreme Court reinstated them, so they kind of say, hey, you've got to get on this.
>
> MS. FLEMING: Absolutely. But the distinction in this case is that we understand the time limits and the rules and ***Galaxy has conceded, made a heavy concession that we're not asking to have the entire judgment vacated.*** We're seeking not vacation on – we're not seeking to have the order vacated on liability and damages. We're just talking about damages and an opportunity to do what's just and proper.[29]

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[26] CP at 176.
[27] CP at 176 – 77.
[28] CP at 482 – 83 (emphasis in original).
[29] CP at 588 (emphasis added).

Later in the hearing, Galaxy Theatres again clarified that it was not contesting liability:

> THE COURT: But do you have much of a defense to liability? If there's a hole in the theater and you're in the dark and step in it –
>
> MS. FLEMING: Well, Your Honor, that's why we're here. ***We're not arguing that. We're not wasting the Court's time, quite frankly, with that argument*** because we believe the time has run on that argument.[30]

On June 3, 2016, the trial court denied Galaxy Theatres' Motion to Set Aside the Amount of Damages.[31]

Galaxy Theatres appealed the Order denying its motion to this Court.[32] In addition to designating the June 3 Order, Galaxy Theatres also designated in its Notice of Appeal the Judgment and Findings of Fact and Conclusions of Law.[33] The Garzas objected, arguing that Galaxy Theatres was attempting to appeal the Judgment and Findings of Fact and Conclusions of Law more than 30 days after entry of those Orders.[34] A Commissioner of this Court denied the Motion, but warned Galaxy Theatres that "[i]f Appellant engages in the bootstrapping about which the

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[30] CP at 563 (emphasis added).
[31] CP at 485 – 86.
[32] CP at 487 – 498.
[33] CP at 493 – 98.
[34] *See Spindle*, Motion to Strike.

Respondent is concerned, the Respondent may bring a motion at that time."[35]

On August 16, 2016, Galaxy Theatres filed another Motion to Vacate, this time arguing that the Garzas "failed to present sufficient factual evidence to support the legal conclusion that Galaxy Theatres owed the Garzas a duty" and that, "[a]lternatively, the judgment should be vacated" under CR 60(b)(9) because an internet email system failure prevented them from receiving notice of the Summons and Complaint.[36] Galaxy Theatres included a "Memorandum of Lease" filed with the Pierce County Auditor's Office in 2007, which stated that the tenant was "GALAXY GIG HARBOR, LLC," "whose mailing address is c/o Galaxy Theatres, LLC."[37] In fact, Pamela Bush notarized one of the signatures on the Memorandum of Lease.[38]

The Garzas opposed the second motion, arguing that (1) Galaxy Theatres could not withdraw its prior admission of liability absent a showing of fraud, mistake, or want of jurisdiction;[39] (2) judicial estoppel prohibited Galaxy Theatres from taking an inconsistent position on liability;

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[35] *See Spindle*, July 28, 2016, Ruling by Commissioner Schmidt.
[36] CP at 548, 552 – 55.
[37] CP at 505.
[38] CP at 507.
[39] CP at 565 – 66.

and (3) they presented sufficient facts to support a conclusion that Galaxy Theatres owed them a duty.[40]

At the hearing, the trial court attempted multiple times to determine the relationship between Galaxy Theatres, LLC and Galaxy Gig Harbor, LLC, and Galaxy Theatres' counsel was evasive each time:

> THE COURT: Well, as a matter of fact, do we know what the relationship between Galaxy Gig Harbor, LLC, and Galaxy Theatres, LLC, is?
>
> MR. HAMELL: Based on the record in front of you, you don't, Your Honor. And, again, that is the point of my argument.
>
> THE COURT: Well, it would seem like if they were unrelated, Galaxy Theatres, LLC, would want to make it real clear that this is a franchisee or something, so why haven't they provided that?
>
> MR. HAMELL: Well, Your Honor, because first that would go against the legal theory we're advancing . . . .[41]

Although counsel for Galaxy Theatres argued, without authority, that the trial court could consider only that evidence before the Court at the time of default, Judge Culpepper pointed out that Galaxy Theatres had introduced new evidence, such as the Memorandum of Lease, while being evasive about the relationship between the two entities at issue.[42]

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[40] CP at 565 – 570.
[41] Verbatim Report of Proceedings ("VRP") (Sept. 30, 2016) at 12 – 13.
[42] VRP (Sept. 30, 2016) at 26.

When counsel tried to move on, Judge Culpepper again noted that Galaxy Theatres had not answered his question:

> THE COURT: But you didn't really answer. Galaxy Gig Harbor, LLC, Galaxy Theatres, LLC, what is the relationship; do we know?
>
> MR. HAMELL: That evidence isn't before Your Honor, and I'm going to continue to dodge that question.
>
> THE COURT: It's not before me and that's actually why I asked the question, and you're going to dodge it; okay. It's not before me; you're right.[43]

The trial court denied the Motion to Vacate.[44] Galaxy Theatres appealed this Order as well, and the Division II Court of Appeals consolidated the two appeals.[45]

On January 4, 2018, the Court of Appeals issued an unpublished opinion affirming the trial court, holding that the superior court did not abuse its discretion denying Galaxy Theatres' Motion to Vacate the default judgment.[46] The Court held that Galaxy Theatres was not entitled to vacate the judgment under (a) CR 60(b)(9) because the alleged failure of Galaxy Theatres' email server was a "foreseeable, avoidable breakdown in office communications that may – or may not – constitute 'excusable neglect

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[43] VRP (Sept. 30, 2016) at 14.
[44] CP at 643 – 44.
[45] *See Spindle.*
[46] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 1 (Jan. 4, 2018).

under CR 60(b)(1)";[47] or (b) CR 60(b)(11) because the Garzas submitted sufficient factual averments that Galaxy Theatres exercised control over the premises where Mr. Garza was injured to demonstrate premises liability.[48]

Galaxy Theatres filed its Petition for Review on February 2, 2018.

III. ARGUMENT

A. The alleged failure of Galaxy Theatres' email server was a foreseeable error that does not implicate a matter of substantial importance.

The alleged failure of an email server is a foreseeable, avoidable error that did not justify vacating the Garzas' judgment under CR 60(b)(9) and the substantial public interest is not implicated. Parties are not permitted in Washington State to use email as a method of accomplishing original service of process, and Galaxy Theatres' registered agent's reliance on email in that instance was an unreasonable practice not likely to impact the wider public.

Galaxy Theatres argues that the Judgment should be vacated because it "never received the summons and complaint."[49] Galaxy Theatres suggests that the alleged failure of its or its registered agent's email server to deliver a copy of the summons and complaint constitutes an unavoidable

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[47] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 6 (Jan. 4, 2018).
[48] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 8 – 9 (Jan. 4, 2018).
[49] *Petition for Review* at 18.

casualty or misfortune that justifies vacating the Judgment.[50] The Court of Appeals correctly declined to extend the interpretation of CR 60(b)(9) in this fashion, and the decision does not implicate a matter of substantial public importance.

Relief under CR 60(b)(9) is justified if "events beyond a party's control – such as a serious illness, accident, natural disaster, or similar event – prevented the party from taking actions to pursue or defend the case."[51] Relief is not warranted for "something other than an accident or disease or natural catastrophe preventing the appearance of a party or [their] witness."[52] As the Court of Appeals held, "[a]n unavoidable casualty is one that 'cannot be avoided because it is produced by an irresistible physical cause that cannot be prevented by human skill or reasonable foresight.'"[53]

As the Court of Appeals correctly reasoned, the alleged failure of Galaxy Theatres' email server or that of its registered agent is "not an occurrence that is unavoidable" nor is it "an accident, a disease, or a natural catastrophe," but rather "the type of foreseeable, avoidable breakdown in office communications" any modern work environment should expect.[54]

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[50] *Petition for Review* at 18 – 19.
[51] *Stanley v. Cole*, 157 Wn. App. 873, 882, 239 P.3d 611 (2010).
[52] *Stanley*, 157 Wn. App. at 882.
[53] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 6 (Jan. 4, 2018) (citing BLACK'S LAW DICTIONARY 18, 1756 (10th ed, 2014); *Stanley*, 157 Wn. App. at 882, n.14).
[54] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 6 (Jan. 4, 2018).

Galaxy Theatres' registered agent could have avoided this situation by, for instance, requesting a read receipt on the email, following up with a phone call, using a legal messenger, or mailing by first class or certified mail, or other common redundancies designed to anticipate common, foreseeable technology problems.

The inherent unreliability of email and modern technology distinguishes this matter from the 1935 Oklahoma case Galaxy Theatres relies on for this issue.[55] In that matter, the responding party mailed their answer using the United States Postal Service, but for reasons unknown the answer was never delivered and default judgment entered. In granting relief from the judgment, the Oklahoma Supreme Court reasoned that "[t]he reliability of the United States mail service, where mail is properly addressed, is such that the public generally have justified confidence therein to such an extent that they continuously intrust [sic] their most important transactions to the mails. The garnishee was justified in believing that his answers so intrusted [sic] to the mails would be delivered to and filed by the clerk . . . ."[56]

Email systems are not so reliable. Of the many ways a plaintiff can accomplish service on a defendant,[57] for instance, email service remains an

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[55] *See Petition for Review* at 17 – 18 (citing *Kellogg v. Smith*, 171 Okla. 355 (1935)).
[56] *Kellogg*, 171 Okla. at 494.
[57] CR 4(d); RCW 4.28.080 – .120.

invalid method of service of process for a reason.[58] Given the requirements for original service of process, such as personal service, Galaxy Theatres' registered agent's reliance on email to communicate original service of process is not a practice that implicates a substantial public interest.

As the Court of Appeals held, an allegedly faulty email server is more appropriately analyzed under CR 60(b)(1), which applies to mistakes, inadvertence, or surprise. Other sections of CR 60(b) cannot be used to circumvent the one-year time limitation applicable to a motion to vacate judgment.[59] Galaxy Theatres attempted to cast the supposed error in its registered agent's email system as a "misfortune" or "unavoidable

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[58] *Kellogg* is further distinguishable in that the defendant offered "a valid prima facie defense." 171 Okla. at 496. Here, Galaxy Theatres failed to offer a prima facie defense that it did not have possession and control over the movie theater. As the trial court repeatedly noted, Galaxy Theatres failed to present evidence that it did not control the premises, and Galaxy Theatres' counsel refused to answer straightforward questions about the issue. Galaxy Theatres' counsel incorrectly stated that no evidence of a defense was required and admitted that he was "dodg[ing]" the question. CP at 643 – 44.

In *Calhoun*, the court excused a defendant's failure to put on evidence of a defense to the plaintiff's pain and suffering damages because the facts of any defense would be virtually impossible to determine without discovery. *Calhoun v. Meritt*, 46 Wn. App. 616, 620, 731 P.2d 1094 (1986). In contrast, all facts relating to the alleged defense are within Galaxy Theatres' control. For instance, Galaxy Theatres could have put forth the actual lease, instead of a "Memorandum of Lease," any management agreement between the entities involved, or sworn statements of the owners and managers of the entities demonstrating who controlled the premises. As the trial court noted, the Memorandum of Lease did not provide any clarity on whether Galaxy Theatres controlled the premises, particularly when all correspondence was directed to Galaxy Theatres at its corporate address in California. Galaxy Theatres chose not to put the facts supporting its alleged defense before the trial court, and coupled with counsel's admission that he was dodging questions about the relationships between the entities, the only reasonable conclusion for this failure is that the facts are not favorable to Galaxy Theatres. Galaxy Theatres failed to comply with the basic requirements of CR 60(e)(1) and the trial court properly denied the motion.

[59] *See Friebe v. Supancheck*, 98 Wn. App. 260, 267, 992 P.2d 1014 (1999).

casualty," which is simply another way of saying that a mistake was made at some point and they were surprised by the lawsuit.

The Court of Appeals correctly held that the trial court did not abuse its discretion in denying Galaxy Theatres' motion to vacate under CR 60(b)(9). The Garzas ask this Court to deny review.

B. The Court of Appeals' holding does not conflict with prior decisions interpreting CR 60(b)(11) because the Garzas produced factual evidence that Galaxy Theatres occupied the movie theater where Mr. Garza was injured with intent to control.

The Court of Appeals held the Garzas to the same standard as prior plaintiffs, ensuring that they properly provided factual evidence that Galaxy Theatres possessed the premises with intent to control it. Accordingly, this Court should deny review.

Civil Rule 60(b)(11) is a disfavored catch-all provision authorizing a trial court to vacate a judgment for "[a]ny reason justifying relief from the operation of the judgment." The use of CR 60(b)(11) "should be confined to situations involving extraordinary circumstances not covered by any other section of the rule."[60] Such circumstances must relate to irregularities extraneous to the action of the court or questions concerning the regularity of the Court's proceedings.[61] Extraordinary circumstances have been found

[60] *Yearout v. Yearout*, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985).
[61] *Yearout*, 41 Wn. App. at 902.

when a lack of due process occurred,[62] and due to an attorney's severe mental illness.[63] Civil Rule 60(b)(11) cannot be used to circumvent the one-year limit of CR 60(b)(1).[64] Errors of law do not justify vacating an order under CR 60(b)(11).[65]

CR 60(b)(11) can support "vacation of a default order and judgment that is based on incomplete, incorrect or conclusory factual information."[66] A party moving for default judgment must "only . . . set forth facts supporting, at a minimum, each element of the claim."[67] A defaulting defendant admits the factual allegations in the complaint.[68] The court can also look to the "materials . . . submitted in support of" the plaintiff's request for default judgment to determine whether the plaintiff had provided a factual basis to support an essential element of their claim.[69] Legal conclusions are insufficient to support a default judgment.[70]

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[62] *Topliff v. Chicago Ins. Co.*, 130 Wn. App. 301, 305 – 06, 122 P.3d 922 (2005), *rev. denied*, 157 Wn.2d 1018 (2006).
[63] *Barr v. MacGugan*, 119 Wn. App. 43, 46, 78 P.3d 660 (2003).
[64] *Friebe*, 98 Wn. App. at 267; *see also Bergen v. Adams Cnty.*, 8 Wn. App. 853, 857, 509 P.2d 661, *rev. denied*, 82 Wn.2d 1009 (1973).
[65] *Union Bank, N.A. v. Vanderhoek Assocs., LLC*, 191 Wn. App. 836, 843, 365 P.3d 223 (2015).
[66] *Friebe*, 98 Wn. App. at 268.
[67] *Friebe*, 98 Wn. App. at 268.
[68] *Kaye v. Lowe's HIW, Inc.*, 158 Wn. App. 320, 326, 242 P.3d 27 (2010).
[69] *Caouette v. Martinez*, 71 Wn. App. 69, 78, 856 P.2d 725 (1993).
[70] *Caouette*, 71 Wn. App. at 78 – 79 (alleging that truck was "negligently entrusted" to another was a legal conclusion, not factual allegation, insufficient to support default judgment).

The issue in this matter is whether the Garzas produced sufficient evidence to show that Galaxy Theatres owed a duty to the Garzas as the "possessor of land."[71] The Court of Appeals held, and Galaxy Theatres concurs, that "Galaxy was entitled to vacation of the default judgment only if the Garzas failed to set forth facts that could show that Galaxy occupied the premises with intent to control."[72]

As the Court of Appeals held, the Garzas presented sufficient factual evidence to justify entry of default judgment on this issue. The Garzas' Complaint alleges that Galaxy Theatres did business as "Galaxy Theatres" at 4649 Point Fosdick Drive Northwest, Gig Harbor, Washington 98338, "the location where the subject incident occurred."[73] Mr. Garza submitted a declaration stating that he was injured at "Galaxy Theatres in Gig Harbor."[74] Mr. Garza further testified that the manager on duty asked him to contact Adrienne Ingham, the general manager.[75] Ms. Ingham told Mr. Garza to "go ahead and seek medical help and they would cover everything."[76] Ms. Ingham instructed Mr. Garza that "someone with [her] corporate office would be contacting [him] to let [him] know where [he

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[71] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 8 (Jan. 4, 2018).
[72] *Garza v. Galaxy Theatres, LLC*, 49138-9-II, Slip Op. at 8 (Jan. 4, 2018).
[73] CP at 1 – 2.
[74] CP at 270 – 71.
[75] CP at 271.
[76] CP at 271.

could] send his medical bills from the injury."[77] Ms. Ingham also told Mr. Garza to "submit the medical bills to [her]."[78] Ms. Ingham's email address was "[her name]@galaxytheatres.com."[79]

These factual averments demonstrate that Galaxy Theatres operated at the location where Mr. Garza was injured, and that its employees (a) worked at that location, (b) responded to injuries that occurred there, and (c) accepted responsibility for those injuries. These allegations are more than sufficient to demonstrate that Galaxy Theatres occupied and controlled the movie theater where Mr. Garza was injured. Galaxy Theatres suggests that the reference to "Galaxy Theatres" in the Garzas' submissions was simply "colloquial,"[80] but there was no other "Galaxy Theatres" identified as a defendant, regardless of how many subsidiaries with similar names Galaxy Theatres now attempts to introduce.

Galaxy Theatres attempts to impose a heightened standard of proof more akin to a summary judgment. That is, Galaxy Theatres seems to believe that because they have had evidence to offer that might have called the Garzas' allegations into question, there is not sufficient factual evidence.

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[77] CP at 302.
[78] CP at 302.
[79] CP at 302. Galaxy Theatres offers no citation to the record regarding its statements about the frequency with which companies share email systems or regarding the email system at the University of Washington, *Petition for Review* at 14, 15 n.19, and those statements should be disregarded. RAP 10.3(a)(5).
[80] *Petition for Review* at 14.

However, the Garzas demonstrated sufficient factual allegations that Galaxy Theatres occupied and controlled the movie theater at which Mr. Garza was injured.[81]

The Court of Appeals' decision is consistent with prior decisions requiring a plaintiff to have averments of fact in support of each element of their claims. This Court should deny review.

IV. CONCLUSION

For the foregoing reasons, the Garzas ask this Court to deny review.

RESPECTFULLY SUBMITTED this 5th day of March 2018.

MORGAN & KOONTZ, PLLC

By: Danica D. Morgan
Danica Morgan, WSBA #31422
Attorney for Respondents

[81] Galaxy Theatres' allegation about the legal relationship of food vendors to a movie theater are unsupported by any citation to the record, *Petition for Review* at 13, and should be disregarded. RAP 10.3(a)(5).

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

Joseph A. Hamell Montgomery Purdue Blankinship & Austin 5500 Columbia Center 701 Fifth Avenue Seattle, WA 98104-7096	☐ U.S. First Class Mail, postage prepaid ☑ Via Legal Messenger ☐ Overnight Courier ☐ Electronically via email ☐ Facsimile

DATED this 5th day of March 2018, at Tacoma, Washington.

Kate Brogdon

MORGAN & KOONTZ, PLLC

March 05, 2018 - 2:32 PM

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