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No. 72397-9-I

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

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WAYNE R. RICHARDSON,

Appellant,

v.

COAST REAL ESTATE SERVICES FOR  
GREENTREE APARTMENTS IN KING COUNTY,  
JEANETTA WALSTON (manager),

Respondents.

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**BRIEF OF RESPONDENTS**

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## I. INTRODUCTION

This dispute arose when the Appellant, Wayne R. Richardson (“Richardson”) as a tenant of the Greenfield Apartments filed the King County Superior Court action (Cause No. 13-2-40091-0 KNT) for claimed defects in his rental unit managed by Coast Real Estate Services (“Coast”). Mr. Richardson failed to provide notice to Coast of any of the claimed defects in the unit before filing the complaint in Superior Court. Upon inspection by Coast, the unit had none of the defects complained of by Richardson.

Mr. Richardson failed to serve Coast with original process, but nevertheless moved for default and a temporary injunction. On December 23, 2013, the Court denied the motion for the temporary injunction and on December 27, 2013 struck the motion for default. CP 127-128, CP 125-126.

On January 17, 2014, Richardson re-noted the Motion for Injunction. CP 29-30. Coast again objected on the basis of lack of service and also responded with admissible evidence contradicting Richardson’s claims. CP 129-135. On March 7, 2014, the Court denied the motion for an injunction. CP 165-166.

Richardson subsequently moved from the apartments and on March 20, 2014 filed a Motion/Discovery Under CR 26. CP 167-179. In

that motion Richardson provided the Court and counsel with two new addresses for service. CP 178.

On May 20, 2014, Coast moved for summary judgment and served Richardson at the addresses provided. CP 188-191, CP 194-195. Richardson failed to timely respond to the motion. CP 196-197. On June 27, 2014, the Court granted Coast's Motion for Summary Judgment. CP 198-199. On July 17, 2014, Richardson moved to vacate the Order Granting Defendants' Motion for Summary Judgment. CP 104-119. The Court treated it as a motion for reconsideration and denied the motion. CP 200-202. Richardson appeals from that Order.

## **II. COUNTERSTATEMENT OF THE ISSUES**

Whether the Court properly granted summary judgment when Richardson 1) provided the Court and counsel with his change of address for service of pleadings, 2) failed to respond to Coast's Motion for Summary Judgment despite service at the addresses provided, and 3) failed to produce any admissible evidence to raise any issues of fact in opposition to summary judgment when he filed his motion for reconsideration of the Order Granting Defendants' Motion for Summary Judgment.

### III. COUNTERSTATEMENT OF THE CASE

Coast is a real estate management company that provides property and asset management services for office, retail, medical/office, multi-family and other properties throughout the Puget Sound area. It provides services to private, public and non-profit organizations. CP 136-148. Coast manages the Greentree Apartments located at 6900 South 125th Street, Seattle, WA 98178 and comprised of 13 buildings with 208 units. The Greentree Apartments is an IRS Section 42 property which provides affordable housing to residents that meet low income standards. The apartment complex is not subsidized by any state or local funding. It is owned, operated and maintained in the same manner as any other private residential multifamily apartment complex. CP 136-138.

Richardson originally entered into a lease agreement on February 28, 2007 for Apartment J-181. CP 137-141. Richardson's lease expired and at all relevant times was on a month to month tenancy. CP 137. At the time this action was filed his rent was \$705 per month.

On November 25, 2013 Mr. Richardson filed the King County Superior Court action for claimed defects in his rental unit managed by Coast under RCW 59.18. CP 1-17. Mr. Richardson had stopped paying rent for the unit as of November 2013. CP 137, CP 149. Mr. Richardson failed to provide any notice to Coast of any of the claimed defects in the

unit as required by the lease prior to initiating suit. CP 137-140. Upon inspection by Coast, the unit had none of the defects complained of by Mr. Richardson and the Coast employees responsible for management of the apartments certified the same to the Court by declaration. CP 136-148, CP 149-164. The units had also been recently inspected by the Housing Finance Commission in accordance with the IRS Section 42 requirements and passed all inspections. CP 145-148.

Mr. Richardson failed to serve Coast with original process, but nevertheless moved for default and a temporary injunction. CP 22-24, CP 25-28. Coast objected to the pleadings filed by Richardson on the grounds of lack of jurisdiction, improper service and failure to properly note the motion in accordance with King County Local Rules. CP 120-124. On December 27, 2013, the Court struck the motion for default for failure to comply with LCR 7. CP 125-126. The court further denied the motion for temporary injunction without prejudice. CP 127-128.

On January 17, 2014 Richardson re-noted the Motion for Injunction. CP 29-30, CP 31-36. Richardson provided a new address in such pleadings. CP 29, CP 36. Coast again objected on the basis of lack of service and also responded with admissible evidence contradicting Richardson's claims. CP 129-135, CP 136-148, CP 149-164. On March

7, 2014, after conducting a hearing, the Court denied the motion for an injunction. CP 165-166.

Richardson continued to withhold rent payments and following an unlawful detainer hearing moved out of the apartment. On March 21, 2014, Richardson filed a Motion/Discovery Under Rule 26 and provided two new addresses for service of future pleadings:

P.O. Box 98618  
Seattle WA 98178

KOA campground space 18  
5801 So. 212 St.  
Kent, WA 98032

CP 178

On May 20, 2014, Coast filed and served via US Mail its Motion for Summary Judgment against Richardson. CP 188-191, CP 192-193, CP 194-195. At the time of the filing of the motion Richardson had failed to pay rent from November and owed at least \$2,170 in past due monthly rental payments including late charges. CP 184

The Motion for Summary Judgment was noted for hearing on June 20, 2014, before the Honorable Bill Bowman. CP 192-193. The motion was served with 31 days' notice which included 3 additional days for mailing. CP 194-195. The motion was served on the addresses provided by Richardson in his prior pleading. CP 194-195. Richardson failed to



respond to the motion. On June 16, 2014, Coast filed a Reply confirming it had not received any responsive pleadings. CP 196-197. The court granted the Motion for Summary Judgment on June 27, 2014. CP 198-199.

On July 21, 2014, Richardson filed a document captioned Motion to Vacate Order of Defendants' Summary Judgment. CP 104-119. The Court treated the motion as a Motion for Reconsideration and denied the request. CP 200-202. This appeal by Richardson followed.

#### IV. ARGUMENT

##### A. The Court's Granting of Summary Judgment was Proper.

Summary judgment rulings are reviewed de novo. *Seybold v. Neu*, 105 Wash.App. 666, 675, 19 P.3d 1068 (2001). When reviewing an order granting summary judgment, the appellate court engages in the same inquiry as the trial court, considering all facts and reasonable inferences in the light most favorable to the nonmoving party. *Kahn v. Salerno*, 90 Wash.App. 110, 117, 951 P.2d 321 (1998). Summary judgment is appropriate if the record before the court shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ruff v. County of King*, 125 Wash.2d 697, 703, 887 P.2d 886 (1995). An appellate court may affirm a trial courts

disposition of a summary judgment motion on any basis supported by the record. *Redding v. Virginia Mason Med. Ctr.*, 75 Wash.App. 424, 426, 878 P.2d 483 (1994).

1. Richardson Failed to Respond after being Properly Served with Notice Provided to the Address Provided To Coast's Counsel.

Richardson claims error by the Court in denying the Motion to Vacate the Order on Summary Judgment. Richardson claims Coast's Motion for Summary Judgment was not served on his correct address. However the Motion was properly granted. Based upon the undisputed facts, Mr. Richardson was timely served with Coast's summary judgment motion and related pleadings at the addresses that Mr. Richardson designated for service in the pleadings he served on Coast. Coast's summary judgment motion was timely filed and served by mail with 31 days' notice. CP 188-191, CP 192-193, CP 194-195.

Coast served its motion at the addresses that Mr. Richardson provided in the pleadings he provided to Coast. CP 178, CP 207. On March 24, 2014, Counsel for Coast received via mail from Mr. Richardson his Note for Motion and Motion/Discovery Under CR 26. CP 203-207, CP 167-179 (with addresses on CP 207 and CP 178). On Richardson's Motion he lists his address as follows:

New mailing address  
P.O. Box 98618  
Seattle, WA 98178  
(206) 772-6181 landline with ans.

New address for personal service to June 1, 2014  
KOA campground space 18  
5801 So. 212 St,  
Kent WA 98032

CP 178.

On Richardson's Note for Motion he provided the same address:

New mailing address  
P.O. Box 98618  
Seattle, WA 98178  
(206) 772-6181 landline/answer  
(206) 551-8064 cell

Special Notice: Plaintiff purchased a used class "A" Motor Home that was finalized on March 18, 2014. It was moved to 5801 S. 212th St., Space 18 KOA campground in Kent, WA 98032 on Tuesday March 18, 2014. This space will be valid to June 1, 2014. Plaintiff has to quiet title on house at 7201 So 126th St. before the Sheriff will extricate an unknown third interloper still squatting on the premises.

CP 207.

The address in the Note for Motion was typewritten but Richardson hand wrote the first number in the P.O. Box as number "9" consistent with the address in the Motion. CP 207. Richardson filed the Note for Motion with the King County Superior Court but apparently changed the first number in the P.O. Box from "9" to "7". Compare CP 207 with CP 47, line 10. Richardson did not change the address in the

Motion. Richardson admits that he mistyped his address on the pleadings served on Coast. CP 75, Lines 13-24. Richardson provided no notice to Coast of his apparent mistake. Coast was not aware of any discrepancy until obtaining copies of the clerk's papers in this appeal. CP 203-207.

Regardless, Coast also served Richardson by mail at the campground address he provided to both Coast and the court. CP 194-195. Consequently, any issue associated with the one address Richardson apparently mistyped was alleviated by the second campground address he provided. There is no allegation that the campground address was incorrect.

Consequently Coast properly served Richardson by mail on Tuesday, May 20, 2014. CP 194-195. CR 5 (2)(A) states:

2) Service by Mail.

(A) How made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. **The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday**, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

CR 56(c) states:

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation **shall be filed and served not later than 28 calendar days before the hearing.**

Emphasis added.

Service on Mr. Richardson was deemed complete on Friday, May 23, 2014, the third day following the date the pleadings were placed in the mail to him, and accordingly, Mr. Richardson received 28 calendar days' notice **before** the Friday, June 20, 2014 hearing date.

A trial court must hold pro se parties to the same standards to which it holds attorneys. 6 *Westberg v. All-Purpose Structures, Inc.*, 86 Wash.App. 405, 411, 936 P.2d 1175 (1997); *Edwards v. Le Duc*, 157 Wash. App. 455, 460, 238 P.3d 1187, 1190 (2010). Mr. Richardson admits in his Motion to Amend Default that he mistyped his address on the pleadings. CP 75. It is Richardson's duty to keep the court and counsel informed as to his correct address. See CR 13(e). Richardson cannot claim error by the Court and Coast when notice was provided to him at the last addresses he provided. Richardson failed to timely respond to the motion and the motion was consequently granted.

The Court should affirm the trial court's decision to grant summary judgment as Mr. Richardson was timely served with Coast's summary judgment motion and related pleadings at the addresses that Mr. Richardson designated for service in the pleadings he served on Coast. As the Court stated in its July 31, 2014 Order:

The [Summary Judgment pleadings] were served by mail to Plaintiff's last known P.O. Box and to an address at KOA Campground in the city of Kent that Plaintiff specifically designated as the address to be used for personal services upon him (see ECR docket sub #27)

CP 200

Both CR 56(c) and King County Local Rule 56(c)(2), require the adverse (nonmoving) party to file any responding documents at least eleven calendar days prior to the hearing on the motion for summary judgment. Richardson failed to respond to the motion. Consequently, entry of summary judgment was appropriate. See *Davies v. Holy Family Hosp.*, 144 Wash. App. 483, 499-500, 183 P.3d 283, 291 (2008) (the trial court did not abuse its discretion by denying pro se defendant's motion to submit an untimely response.)

2. Richardson Failed to Submit any Admissible Evidence in His Motion to Vacate.

CR 56(e) governs the form of affidavits for purposes of summary judgment. The rule states that an affidavit in support of summary judgment shall (1) be made on personal knowledge, (2) set forth such facts as would be admissible in evidence, and (3) show affirmatively that the affiant is competent to testify. CR 56(e); *Hill v. Sacred Heart Med. Ctr.*, 143 Wn.App. 438, 449, 177 P.3d 1152 (2008). Richardson's Motion to Vacate was treated as a motion for reconsideration by the court. Therefore

Richardson was required to provide admissible evidence to refute Coast's claims. Richardson's motion contained no affidavits or declarations and therefore no admissible evidence upon which the Court could reconsider its order on summary judgment. Richardson failed to set forth any admissible facts to defeat summary judgment or any basis for the court to reconsider the order granting summary judgment. Consequently, the court properly denied the motion for reconsideration.

Similarly, if construed as a motion to vacate under CR 60, the court properly denied the motion. CR 60(e) provides the procedure for vacation of a judgment:

**(e) Procedure on Vacation of Judgment.**

(1) *Motion.* Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, *and supported by the affidavit of the applicant or his attorney* setting forth a concise statement of the facts or errors upon which the motion is based ...

CR 60(e) (Emphasis Added); See also *Grossman v. Will*, 10 Wash. App. 141, 147, 516 P.2d 1063, 1067 (1973).

Here, Richardson filed a document entitled Motion to Vacate but failed to submit any admissible evidence in the form of affidavits or declarations to support the motion. Richardson merely provided a motion with unsupported factual allegations and argument. Under these circumstances the motion was properly denied. There was no admissible

evidence supplied by Richardson on which the Court could vacate the summary judgment.

3. Richardson has Never Properly Noted a Motion for Default.

Richardson's claim that the Court erred by failing to grant his motion for default is also misplaced. Richardson has never properly served defendant Coast and therefore Richardson lacked jurisdiction over Coast. However, following the appearance by Coast, Richardson's initial motion for default was stricken for failure to properly note and serve the motion in accordance with King County Local Rule 7. CP 125.

Richardson has never properly or timely served Coast with a motion for default. Consequently any claim of error by the trial court for failure to grant default is without merit.

## V. CONCLUSION

Richardson filed this action claiming unsubstantiated defects in his apartment unit managed by Coast and its employee, on site manager Jeanetta Walston. Following inspection by Coast the unit was confirmed to be in accordance with all standards under RCW 59.18. Richardson's failure to properly identify parties, failure to properly serve parties, failure to produce evidence and unending failure to comply with the court rules resulted in substantial wasted time, finances and judicial resources. When served with defendants' motion for summary judgment at the addresses



provided by Richardson, he failed to respond resulting in the entry of an order on summary judgment. Any error in the address was admittedly an error by Richardson. When he filed a motion to vacate the judgment, Richardson failed to submit any admissible evidence to support reconsideration or vacation of the order granting summary judgment. Under these circumstances, the Court's order granting summary judgment was appropriate and should be affirmed.

Respectfully submitted this 25<sup>th</sup> day of December, 2014.

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