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SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 98889-7
(Court of Appeals Cause No. 79934-7-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KEITH WELCH,

Defendant/Appellant,

v.

US BANK NATIONAL ASSOCIATION,

Plaintiff/Respondent.

RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR
REVIEW

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Respondent herein, by and through counsel, respectfully files this ANSWER TO PETITION FOR REVIEW.

I. Introduction

Appellant seeks discretionary review of the Unpublished Opinion affirming the Skagit County Superior Court's judgment for restitution restoring possession of real property to Respondent in an unlawful detainer action.

II. Statement of the Case

This is a post-foreclosure eviction – the parties are not in a landlord-tenant relationship. Plaintiff-Respondent commenced an unlawful detainer action on November 9, 2018. On December 4, 2019, Plaintiff moved for an Order Authorizing Alternative Service pursuant to RCW 59.12.085, which was granted on December 5, 2018. Plaintiff subsequently issued an Amended Eviction Summons dated December 14, 2018, requiring a written response from Defendants no later than January 4, 2019. Plaintiff completed service of the Amended Eviction Summons and Complaint on December 26, 2018.

After service of process was completed, Plaintiff moved for an Order to Show Cause pursuant to RCW 59.12.090, which was granted on April 5, 2019. On April 25, 2019, Appellant filed a document entitled, "Defendants Answer and Affirmative Defenses; and to Dismiss Plaintiff's Complaint;

and Grant Defendant a Continuance under CR 56(f); and for Costs and Fees under CR 56(g).” In opposition to Petitioner’s aforementioned answer, Respondent subsequently filed “Plaintiff’s Response in Opposition to Defendant Keith Welch’s Motion for Summary Judgment Pursuant to CR 56(g),” on May 1, 2019. On May 3, 2019, an Order to Show Cause hearing was held, and judgment for restitution was subsequently granted on May 14, 2019. The Court of Appeals affirmed in an unpublished opinion filed on June 15, 20120.

III. Issue Presented for Review

- 1. Is there any basis, as required under the Washington Rules of Appellate Procedure 13.4 (b) for this Court to accept discretionary review of this matter?**

IV. Argument

A. Plaintiff’s Motion for Alternative Service was Proper and Service of Process was Sufficient.

Appellant argues that service of the summons was defective, and that the amended summons must be filed concurrently with the summons (Opening Brief, p. 2-3 ¶ 1). However, an Amended Summons is permitted by the court at any point in the case prior to entry of the final judgment, RCW 59.12.160. The Summons was filed on November 9, 2018, *CP 1*, the Amended Summons was filed on January 16, 2019, *CP 8*, and the Judgment was entered on May 14, 2019, *CP 23*. Plaintiff complied with RCW 59.12.085 in properly moving for an Order Authorizing Alternative Service, *CP 3*, *CP 4*, *CP 5*, as it exercised due diligence in attempting to service on

Appellant pursuant to RCW 59.12.080. According to Plaintiff's Declaration of Diligence, filed in support of Plaintiff's Motion for Order Authorizing Alternative Service, *CP 4* pg. 2, Plaintiff unsuccessfully completed personal service upon Appellant after six separate attempts to serve the Appellant.

Petitioner unsuccessfully argued that Plaintiff failed to comply with service requirements of RCW 59.12.085 in serving the Amended Summons by Alternate Service, stating that an Amended Summons was posted on December 28, 2018, with a stated return date of January 4, 2019, when service not be less than nine days from the return date, (Opening Brief, p. 6 ¶ 2; p. 7 ¶ 1). According to the Plaintiff's proof of service, a Declaration of Diligence filed on January 7, 2019, *CP 7*, Appellant was served pursuant to RCW 59.12.085 on December 26, 2018, exactly nine days before the Amended Summons return date of January 4, 2019. The Declaration of Diligence also indicates that Defendants were mailed three copies of the Amended Summons and Complaint by first class and certified mailed to all Defendants on the same day, *CP 7*. Petitioner was required to deposit copies of the summons and complaint in the mail, postage prepaid, by both regular and certified mail to Defendants, as indicated in the Declaration of Diligence, regardless of actual day of receipt, RCW 59.12.085 (2)(b).

The Skagit County Superior Court concluded service was pursuant to RCW 59.12.085, as reflected a letter from Judge Brain L. Stiles dated May 14, 2019, *CP 24*, accompanying the entered Judgment entered on 5/14/2019, *CP 23*.

B. Plaintiff's Service of an 'Order to Show Cause'

Appellant argues that service of the Order to Show Cause, noting the hearing dates was out of compliance with service requirements pursuant to RCW 59.18.370, stating that the Order to Show Cause document, posted on Appellant's front door on April 24, 2019, was "neither order by a judge nor personally served upon the Appellant Welch at least seven (7) days before the May 3, 2019, hearing date. According to the Declaration of Diligence, *CP 19*, the Order to Show Cause document, *CP 11*, was indeed posted on April 24, 2019, which was in fact 9 days prior to the set Order to Show Cause hearing date of May 3, 2019, and is this in compliance with RCW 59.18.370.

Pertaining to the matter of personal service of the Order to Show Cause, *CP 11*, pursuant to RCW 59.18.055, an Order Alternative Service of the Summons and Complaint may be sought in instances where the tenant is unable to be successfully served, which was accomplished as the Summons and Complaint was Served by Alternative service, *CP 7*. Pursuant to 59.18.370, it is permissible to serve the Summons and Complaint and Order to Show Cause concurrently, therefore it is reasonable to serve the Order to Show Cause by the same method as the Summons and Complaint, including alternative service when personal service cannot be achieved. Additionally, the cited RCW 59.18.370 makes no distinction between the requirements of personal service versus alternative service when serving the Order to Show

Cause. The Order to Show Cause, *CP 11*, was granted by the Court on April 5, 2019, by court commissioner Gwen L. Halliday.

The Court of Appeals observed that the show cause notice was served only seven days before the hearing, contrary to SCLR 6(d)(2)(i) (9 days). Unpublished Opinion, p. 6. However, the Court of Appeals correctly concluded that Petitioner did not argue any prejudice and any error was harmless and did not affect the outcome of the hearing. *State v. Robinson*, 153 Wn.2d 689, 697, 107 P.3d 90 (2005); *State v. Sublett*, 176 Wn.2d 58, 78, 292 P.3d 715 (2012). Petitioner does not provide any authority or basis to deviate from these principles in an unlawful detainer contest.

.V. Conclusion

Discretionary review should be denied. The public interest does not warrant review, nor is there conflict with established law.

MCCARTHY & HOLTHUS LLP

DATED: 9/11/2020

s/ John Thomas

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CERTIFICATE OF SERVICE

I, Jacob Flatau, certify that on 9/11/2020 I served a copy of the foregoing Answer to Petition for Review, described as **RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW**, on the following person by U.S. First Class Mail and electronic service:

Keith Welch
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this Declaration was executed in Portland, Oregon.

DATED: 9/11/2020 MCCARTHY & HOLTHUS LLP

s/ Jacob Flatau
Legal Assistant

MCCARTHY HOLTHUS, LLP

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Transmittal Information

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Appellate Court Case Number: 98889-7
Appellate Court Case Title: Keith Welch v. U.S. Bank National Association
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