

NO. 63102-1-I

COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION I

MINI-DOZER WORK, WAYNE R. RICHARDSON, appellants,

vs.

TOSHI KASAHARA, *et al.*, respondents.

BRIEF OF RESPONDENTS

Evan L. Loeffler
WSBA No. 24105

Law Office of Evan L. Loeffler PLLC
2033 Sixth Avenue, Suite 1040
Seattle, WA 98121
(206) 443-8678
(206) 443-4545 facsimile

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 JAN -4 PM 2:54

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES 2

INTRODUCTION 2

STATEMENT OF CASE 2

ARGUMENT 6

 1. The Court did not err by refusing to vacate its order
 dismissing the case for lack of personal jurisdiction. 6

 2. Even if the trial court had jurisdiction to hear the case, the
 doctrine of *res judicata* requires dismissal on the merits as the
 trial court and the Court of Appeals have already ruled on each
 relevant issue in separate litigation. 10

 3. Appellants’ assignments of error are not properly raised on
 appeal or discussed in the appellants’ brief. 14

CONCLUSION..... 18

APPENDIX..... 1

 A. Appellate Opinion and Mandate in *Wayne R. Richardson*
 v. Countrywide Home Loans Recon Trust, COA No. 58934-2-I..... 1

 B. Findings of Fact, Conclusions of Law, Judgment and
 Order Issuing Writ of Restitution in *Kasahara v. Richardson*,
 No. 07-2-03559-1SEA 10

 C. Order Granting Motion to Modify 15

 D. Mandate..... 17

 E. “COMPLAINT” Cause No. 09-2-18295-7KNT 19

TABLE OF CASES AND AUTHORITIES

Cases

<i>DeYoung v. Cenex Ltd.</i> , 100 Wn. App. 885, 1 P.3d 587 (2000).....	11, 13
<i>In re Marriage of Lutz</i> , 74 Wn. App. 356, 873 P.2d 566 (1994).....	18
<i>In re Metcalf</i> , 92 Wn. App. 165, 963 P.2d 911 (1998).....	11
<i>Landry v. Luscher</i> , 95 Wn. App. 779, 976 P.2d 1274 (1999).....	14
<i>Pybas v. Paolino</i> , 73 Wn. App. 393, 869 P.2d 427 (1994).....	6
<i>Roberson v. Perez</i> , 156 Wn.2d 33, 123 P.3d 844 (2005).....	11

Statutes

RCW 65.12.135	8
---------------------	---

Rules

CR 60	9
-------------	---

INTRODUCTION

The issue presented on appeal is whether the trial court erred in denying the plaintiff's motion to vacate an order dismissing an action entered eight months earlier. The case was dismissed for lack of personal jurisdiction as the defendants were never served. The plaintiff has advanced several arguments relating to the merits of the case that the trial court never ruled on due to the lack of jurisdiction. Assuming there was jurisdiction, each of the issues has already been decided at the trial court level and on appeal in other litigation.

STATEMENT OF CASE

This case is the most recent in a series of cases relating to the foreclosure of Mr. Richardson's home and his subsequent eviction. Mr. Richardson has pursued a strategy of making the same unsuccessful arguments in several cases. This is the third case raising the same

arguments to reach the Court of Appeals. In this case the trial court dismissed the action in April 2008 for failure to serve the plaintiff. Mr. Richardson filed a motion to vacate the dismissal in December 2008 which was denied in January 2009. Mr. Richardson appeals the motion denying the motion to vacate the dismissal.

A brief summary of the relevant facts and background cases follows:

Case 1: Mr. Richardson loses his house

Mr. Richardson is the former owner of real property located at 7201 South 126th Street, Seattle, Washington. Mr. Richardson failed to make payments on the loan after September 2005 and the mortgage holder foreclosed on the loan. Mr. Richardson brought an action against the mortgage holder to stay the foreclosure in King County Superior Court, cause no. 06-2-14561-5KNT. Mr. Richardson lost a motion to enjoin the sale. He appealed this ruling to the Court of Appeals, cause no. 58934-2-I and lost on appeal. Appendix A. He appealed this to the Washington State Supreme Court which refused to hear the case.

During the pendency of the various appeals, the foreclosure sale occurred on December 1, 2006. Respondent Toshi Kasahara purchased the property at public auction on that date. A trustee's deed conveying property to Mr. Kasahara was issued and recorded.

Case 2: Mr. Richardson is evicted.

Mr. Richardson did not vacate the house within 20 days after the trustee's sale as required by law. On January 12, 2007, Mr. Kasahara brought an unlawful detainer action on behalf of Mr. Kasahara in King County Superior Court, case no. 07-2-03559-1SEA. A show cause hearing took place on February 7, 2007 at which time the court commissioner ruled in favor of Mr. Kasahara and awarded a judgment and a writ of restitution. Appendix B. Mr. Richardson was physically evicted on February 20, 2007.

Mr. Richardson filed an appeal in the Court of Appeals, case no. 59690-0-I. In July of 2007 the Court of Appeals dismissed Mr. Richardson's appeal after he failed to file a statement of arrangements or the appellant's brief. Mr. Richardson filed a motion to modify this ruling. On October 1, 2007, the Court of Appeals reinstated the appeal subject to Mr. Richardson filing the statement of arrangements within 30 days and payment of \$500.00 in sanctions. Appendix C. Mr. Richardson declined to do either. The appeal was dismissed. Mr. Richardson filed a petition for review to the Washington Supreme Court, case no. 81121-1, on January 22, 2008. The Supreme Court denied Mr. Richardson's petition for review on September 3, 2008. The Court of Appeals issued a mandate to Superior Court on October 1, 2008. Appendix D.

Case 3: Mr. Richardson sues Mr. Kasahara

During the pendency of the cases and matters discussed above, Mr. Richardson brought the present action against Mr. Kasahara, cause no. 07-2-07959-9SEA. Mr. Kasahara's motion for summary judgment was granted on April 25, 2008. CP 99-103. The trial court's order stated that, "No service of process was made on Mr. Kasahara in the present case. Mr. Kasahara learned of the action when a copy of the summons and complaint was delivered to his attorney's office." CP 101. "Plaintiff has failed to comply with RCW 4.28.080 because he did not effect personal service of process on Defendant." CP 102. "Plaintiff has further failed to comply with RCW 4.28.100 and 4.28.110 in failing to file an affidavit with the Court and publish notice of this action for six consecutive weeks." CP 102. "The plaintiff has not complied w/ 65.12.135 RCW. Service by publication not appropriate as Mr. Kasahara was known to the plaintiff and should have been personally served." CP 102.

The order dismissing the case was not appealed within 30 days.

On December 29, 2008, Mr. Richardson filed a motion "to vacate all previous orders in favor of Toshi Kasahara per CR 60(b) perjury, false documents, due process of law violation Title 42 § 1983, trafficking stolen personal/real property, motion add Windermere Real Estate Eastside LLC [sic]." CP 109-170. On January 9, 2009, the court determined the case

“was dismissed for lack of personal jurisdiction in April 2008, the motion is untimely and improper and without legal basis.” CP 176-177. The motion was therefore denied. Mr. Richardson filed a motion for reconsideration on January 20, 2009. CP 178-196. The motion was denied on January 30, 2009. CP 197. Mr. Richardson filed a notice of appeal on March 4, 2009.

Case 4: Mr. Richardson sues Mr. Kasahara again

On May 6, 2009, Mr. Richardson commenced a separate cause of action in King County Superior Court, Cause no. 09-2-18295-7KNT alleging the same causes of action and referencing this matter. Appendix E. That action is still pending.

ARGUMENT

1. The Court did not err by refusing to vacate its order dismissing the case for lack of personal jurisdiction.

An appeal is allowed from the trial court's ruling on a motion to vacate the judgment but it is limited to whether the court abused its discretion when ruling on the motion. *Pybas v. Paolino*, 73 Wn. App. 393, 399, 869 P.2d 427 (1994).

In this matter, the court dismissed this action on April 25, 2008 for lack of jurisdiction as Mr. Richardson had never served Mr. Kasahara with the summons and complaint. CP 99-103. Mr. Richardson did not appeal

this ruling within 30 days. On December 29, 2008 Mr. Richardson filed a motion to vacate all previous orders pursuant to CR 60(b). CP 109-170. The motion was denied on January 9, 2009. The court ruled the motion was untimely, improper and “without legal basis to vacate.” CP 176-177. Mr. Richardson filed a motion for reconsideration. CP 178-196. This motion was also denied. CP 197.

The sole issue in front of the Court of Appeals is whether or not the trial court abused its discretion by denying Mr. Richardson’s motion to vacate its order dismissing the case for lack of service of process. Mr. Richardson’s opening brief discusses a number of other cases between himself and Mr. Kasahara, but does not deny that service of process was not effected in this case prior to the court dismissing the case in April 2008. Mr. Richardson states that he had Mr. Kasahara served on May 2, 2008, a week *after* the case had been dismissed, and that this was done pursuant to the trial court’s order dated April 25, 2008. Appellants’ brief 16. The court’s order dismissing the case contains no such order or permission. CP 99-103.

Mr. Richardson’s motion to vacate the order mentioned the existence of CR 60(b) in the caption, but did not discuss this court rule, its elements, or suggest any set of facts for why the case should not have been dismissed in the body of the motion. The unsuccessful motion for

reconsideration was similarly devoid of any case law, analysis of CR 60(b) or other authority supporting his position. The motion to vacate, the motion for reconsideration, and the brief of appellants mostly contain collateral attacks on the eviction case that was upheld on appeal. CP 178-189.

For the first time on appeal, Mr. Richardson suggests that RCW 65.12.135 allows him to serve by publication without seeking leave of the court. He did not raise this argument in the December 2008 motion to vacate or in the subsequent motion to reconsider. Even if timely raised, however, the record establishes that the trial court considered the application of RCW 65.12.135 and found Mr. Richardson did not properly serve Mr. Kasahara. The court noted during oral argument as follows:

It is undisputed that Mr. Kasahara was not personally served.

Mr. Richardson does not rely on 4.28.100, in that he does not contend that defendant cannot be found within the state, or that Mr. Kasahara is not a resident of the state and cannot be found (inaudible). And that also requires six weeks of publication.

Rather, Mr. Richardson claims this is a Torrens Act petition, pursuant to RCW 65.12.135. 65.12.135, however, requires the same service to process as required in all other civil actions. The exception being upon nonresident defendants and, quote, "all such unknown persons or parties, defendant," which does allow for publication for three consecutive weeks in a newspaper of general circulation.

There is no assertion that Mr. Kasahara is a nonresident defendant. ... Mr. Kasahara is a known

individual. Whether or not his address is known to Mr. Richardson does not make him an unknown person for purposes of the state 65.12.135. As a consequence, it is necessary for Mr. Kasahara to be personally served and jurisdiction over him before this Court.

... The Court finds there is insufficiency of service and process and dismisses the case on that basis.

VRP 23-24.

Mr. Richardson failed to allege any fact or legal theory in his motion to vacate the summary judgment order that would have merited granting the motion. It was for this reason that the court determined the motion was made “without legal basis to vacate.” The motion to reconsider was similarly lacking.

Using the “abuse of discretion” standard, it is impossible to find that the court’s ruling was in error. The matter was dismissed without prejudice due to lack of personal jurisdiction. The court had no option but to dismiss the case. Once this order was entered in April 2008 Mr. Richardson had 30 days to file an appeal and did not. The CR 60 motion was untimely, did not allege mistakes, irregularity, newly discovered evidence, or fraud, misrepresentation, or misconduct in the proceedings resulting in the dismissal of the case.

A motion for relief from judgment is to be made within a reasonable time. CR 60. Here, Mr. Richardson’s case was dismissed in April 2008 for lack of service. Mr. Richardson served Mr. Kasahara with

a summons and complaint a week after this date and then took no further action until December 2008 when he filed the motion to vacate. This is not a reasonable delay. Even if a delay of eight months could be considered timely, it does not excuse the fact that Mr. Richardson did not timely serve the defendant with a summons and complaint prior the case being dismissed.

It was not error to deny the motion where service of process was admittedly improper. Under any standard of review the court cannot be found to have committed reversible error.

- 2. Even if the trial court had jurisdiction to hear the case, the doctrine of *res judicata* requires dismissal on the merits as the trial court and the Court of Appeals have already ruled on each relevant issue in separate litigation.**

Mr. Richardson's cause of action is based on his belief he has a colorable interest in the ownership of the subject premises located at 7201 South 126th Street, Seattle, Washington. This issue has been resolved at trial in two prior actions. Both prior actions were appealed by Mr. Richardson and ultimately resolved against him.

The doctrine of *res judicata* applies where a plaintiff starts a lawsuit alleging issues and damages that have already been fully adjudicated in a previous lawsuit. In the present case, Mr. Richardson's claims regarding ownership have all been previously defeated or

dismissed. “Washington law . . . treats dismissals as final judgments The possibility of appeal does not affect finality for *res judicata* or collateral estoppel purposes.” *In re Metcalf*, 92 Wn. App. 165, 175, 963 P.2d 911 (1998). There are four main elements to the doctrine of *res judicata*.

For *res judicata* to apply, a prior judgment must have a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made . . . *Res judicata* applies to matters that were actually litigated and those that could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding . . . A grant of summary judgment is a final judgment on the merits with the same preclusive effect as a full trial.

DeYoung v. Cenex Ltd., 100 Wn. App. 885, 891, 1 P.3d 587 (2000) (internal citations and quotations omitted; italics added); *accord, Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005).

As to the subject matter of the present case, it is the same as in previous cases: it concerns ownership of the property located at 7201 South 126th Street, Seattle, Washington.

With regard to the issue of causes of action, the *DeYoung* court used the following analysis with sub-elements:

[a] whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; [b] whether substantially the same evidence is presented in the two actions; [c] whether the . . .

suits involve infringement of the same right; and [d] whether the . . . suits arise out of the same transactional nucleus of facts.

DeYoung at 892. With regard to sub-element (a), of whether existing rights or interests would be destroyed or impaired, prosecution of the present case expressly argues that the foreclosure sale to Mr. Kasahara was invalid. This was decided against Mr. Richardson at the trial level and by the Court of Appeals. In Mr. Richardson's unsuccessful appeal to this Court in *Richardson v. Countrywide Home Loans*, No. 58934-2-I, he assigned error to the trial court for "denying plaintiff's Motion to Quiet Title without oral argument," and that the trial court erred by failing to read his petition to quiet title. Appendix A, page 4. In the eviction case, the trial court entered a finding of fact 1: "Plaintiff purchased the property located at **7201 South 126th Street, Seattle, Washington, 98178** at a trustee's sale held on December 1, 2006." Appendix B, page 2. Mr. Richardson unsuccessfully appealed these results as well, resulting in sanctions of \$500.00 for failing to file a statement of arrangements or an appellate brief and a mandate back to Superior Court on October 1, 2008. Appendices C and D.

Regarding *DeYoung* sub-element (b), there is no evidence in the present case that was not presented in the past cases. Even though the case was dismissed for lack of service of process, Mr. Richardson has

made a record in this matter that he is presenting the same evidence in this matter as he did in prior actions. *See, e.g.*, Appendix B to Mr. Richardson’s Brief of Appellants, a motion to stay the writ of restitution in the unlawful detainer case. In this motion, Mr. Richardson attempted to re-litigate his case against Countrywide Home Loans and sought to be allowed back into possession of the subject premises. Also, in Mr. Richardson’s motion to vacate the order dismissing this action, he included a prayer to vacate the writ of restitution obtained in the unlawful detainer action. CP 114.

As to sub-element (c), the suits all involve the same right of possession of the real estate located at 7201 South 126th Street, Seattle, Washington. On sub-element (d), the present case arises out of the same transactional nucleus of facts as did each of the other cases.

The third element is “persons and parties.” *DeYoung, supra*. While Mr. Kasahara was not a named party in the case Mr. Richardson brought against Countrywide Home Loans, Mr. Kasahara purchased the property on December 1, 2006 at a trustee’s sale held at the request of Countrywide Home Loans. Mr. Kasahara is the same party who evicted Mr. Kasahara in the unlawful detainer action. Appendix B.

The fourth and final element of “quality of the persons for or against whom the claim is made” requires that where the parties are

substantially identical, there must exist some privity between them. *Landry v. Luscher*, 95 Wn. App. 779, 785, 976 P.2d 1274 (1999). In other words, the relationship between the parties that drove the former case must be the same in the current case. *Id.* This element is satisfied because the dispute stems from the parties' relationship with the same piece of real property. In this case, in the unlawful detainer case, and in the case Mr. Richardson brought against Countrywide Home Loans, the same parties disputed over who owned the property. As decided in the prior cases and upheld in the Court of Appeals, Mr. Richardson lost each time. Appendix A and C. Mr. Richardson seeks here to re-litigate the same issues he previously lost twice. This is improper.

3. Appellants' assignments of error are not properly raised on appeal or discussed in the appellants' brief.

Mr. Richardson makes nine assignments of error in his brief of appellants. To the extent they actually indicate any actual error, assignments of error 1 through 6 are improperly raised. Assignment 7 is raised for the first time on appeal. Assignment 8 supports Mr. Kasahara's position. Assignment 9 is not discussed or argued in the opening brief.

Assignment of error 1

Mr. Richardson complains it was error that there was evidence of other several other actions in front of the trial court as part of the motion

for summary judgment that led to dismissal of the action. The Court dismissed the case for lack of personal jurisdiction as Mr. Richardson did not serve Mr. Kasahara and therefore did not reach a decision on the merits raised in the motion for summary judgment.

Mr. Richardson's appeal is based on the Court's refusal to vacate the order of summary judgment. This argument was not raised in his motion to vacate.

Assignment of error 2

Mr. Richardson claims there were "fictitious headings." This appears to be a claim the caption in the motion was incorrect. Mr. Richardson did not raise this argument in his motion to vacate and appears to raise the issue for the first time on appeal. The trial court did not appear to be confused as to which case it was ruling on when it granted the motion for summary judgment and denied the motion for reconsideration. Even if the allegations regarding fictitious headings had any basis in fact, it is not clear what prejudice there was to Mr. Richardson.

Assignment of error 3

There is no error assigned here. Mr. Richardson claims there was a ruling against Mr. Kasahara's attorney in the unlawful detainer case by Court of Appeals Commissioner Ellis. This appears to be a reference to Mr. Richardson's motion to stay the writ of restitution several months

after it had been executed upon, which was denied. There was no ruling against Mr. Kasahara or his attorney in that case. In any event, this is nothing more than a collateral attack on the ruling of this Court in the unlawful detainer case that has already been resolved. There is no error.

Mr. Richardson also discusses an anti-harassment order Mr. Kasahara obtained against him, which has no bearing on this case. For the sake of accuracy, however, Mr. Richardson's statements that the Superior Court dismissed the anti-harassment order on appeal and that any judge condemned or censored Mr. Kasahara or counsel is inaccurate.

Assignment of error 4

There is no assignment of error here. Mr. Richardson relates how he deliberately violated an anti-harassment order, was convicted and subsequently exonerated on appeal. All the events discussed occurred after this case was dismissed by the trial court. None of these events are relevant to the case at bar.

Assignment of error 5

Mr. Richardson claims that Mr. Kasahara received a foreclosure notice for property located in Enumclaw. It is not known when this happened or what relevance this has to the case at bar. This argument was not raised in Mr. Richardson's motion to vacate. It is not clear even if an error is alleged.

Assignment of error 6

Mr. Richardson mentions the existence of the Torrens Act, but there is no error assigned. The fact Mr. Richardson filed a Torrens petition several months after the subject property no longer belonged to him is not relevant to whether the court properly dismissed his case for lack of service of process.

Assignment of error 7

Mr. Richardson assigns error to the trial court for dismissing the case due to lack of service of process. As discussed above, Mr. Richardson raises this issue for the first time on appeal, having failed to raise it in his motion to vacate the order dismissing the case or in his motion to reconsider. Even if timely raised, however, the record establishes that the trial court considered the application of RCW 65.12.135 and found Mr. Richardson did not properly serve Mr. Kasahara.

Assignment of error 8

Mr. Richardson correctly states that the motion for summary judgment argued that the claims he raised were *res judicata*. However, the trial court dismissed the action based on Mr. Richardson's failure to serve the defendant and did not rule on any of these issues. If the court finds that there was jurisdiction despite the lack of personal service it would be appropriate to dismiss the case for this reason.

Assignment of error 9

Mr. Richardson states it was error to award statutory attorney's fees to the prevailing party in the case. However, he provides no argument in his brief to support this assignment of error and, therefore, "is deemed to have abandoned it." *In re Marriage of Lutz*, 74 Wn. App. 356, 372, 873 P.2d 566 (1994).

CONCLUSION

For the reasons discussed above, Mr. Kasahara respectfully requests that this Court affirm the ruling of the trial court dismissing this action for lack of personal service.

Respectfully submitted this 4th day of January 2010.

LAW OFFICE OF EVAN L. LOEFFLER PLLC



Evan L. Loeffler
WSBA No. 24405
Attorney for Toshi Kasahara, respondent

APPENDIX

- A. Appellate Opinion and Mandate in *Wayne R. Richardson v. Countrywide Home Loans Recon Trust*, COA No. 58934-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WAYNE R. RICHARDSON,	)	NO. 58934-2-I
)	
Respondent,	)	DIVISION ONE
)	
v.)	
)	
COUNTRYWIDE HOME LOANS)	
RECON TRUST (trustee),	)	Unpublished Opinion
)	
Appellant.	)	FILED: July 23, 2007

PER CURIAM. The principle issue in this case is whether the trial court abused its discretion in denying Wayne Richardson's request for an injunction of a nonjudicial trustee's sale of real property. We conclude that the court acted within its discretion in denying the motion because Richardson did not comply with the Washington Deed of Trust Act (Act) and did not support his motion for an injunction with any declarations of fact. The other issues Richardson raises either lack merit or were raised for the first time in his reply brief.

FACTS

This case concerns the foreclosure on a deed of trust secured by residential real property and improvements. Wayne Richardson obtained title to the property by statutory warranty deed in June 2004. He granted a security interest in the property to

New Century Mortgage in the form of a deed of trust. In January 2005, Richardson refinanced the loan secured against the property with Mylor Financial Group, Inc. In February 2005, Mylor informed Richardson that Countrywide Home Loans, Inc. had purchased the loan.

Richardson did not make his September 2005 payment to Countrywide, and he was served with a notice of default by Recon Trust. Recon Trust served Richardson with a notice of trustee's sale on January 26, 2006. The sale was scheduled for April 28, 2006, with Recon Trust to serve as the trustee. The notice of trustee's sale specifically referenced RCW 61.24.130 as the manner in which Richardson could restrain the sale. On April 17, 2006, Countrywide attempted to work with Richardson to cure his default by mailing him a repayment plan agreement. On May 1, 2006, however, Richardson informed Countrywide that he would resort to the judicial process to avoid foreclosure.

Two days later, Richardson filed a "Petition to Stay Foreclosure for Failure to Provide a Copy of the Deed of Trust Pursuant to RCW 61.24.040(2), (3), RCW 61.24.130(b)." Countrywide and Recon Trust, the defendants, answered the petition. Richardson then filed his "Motion to Quiet Title, Injunction, Strike Answer Under CR 12(f) for Conflict of Interest & Withholding Evidence by RPC 3.3(f), RPC 1.7(b)(2)." The defendants responded. The trial court denied Richardson's motion on September 5, 2005, by entering its "Order Denying Plaintiff's Motion to Quiet Title, Injunction, Strike Answer Under CR 12(f) for Conflict of Interest and Withholding Evidence by RPC 3.3(f), RPC 1.7(B)(2)." In that order, the court added a handwritten note stating that it had "considered the absence of declarations of fact from plaintiff [.]"

Richardson then filed a motion for reconsideration, which the trial court also denied.

Richardson appeals.

ANALYSIS

Judging from his notice of appeal and his opening brief, Richardson generally contends that the trial court erred by entering its September 5 order denying his motion. His motion sought relief in the form of an injunction of the trustee's sale. An order denying an injunction is reviewed for an abuse of discretion. Kucera v. Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000). "A trial court necessarily abuses its discretion if the decision is based on untenable grounds, or the decision is manifestly unreasonable or arbitrary." Kucera, 140 Wn.2d at 209. The court acted within its discretion in denying Richardson's request for an injunction because he did not comply with the Washington Deed of Trust Act (Act) and did not support his motion with any declarations of fact.

The Act sets forth the only way in which a party may legally challenge a properly noted nonjudicial trustee's sale. RCW 61.24.130; Plein v. Lackey, 149 Wn.2d 214, 226, 67 P.3d 1061 (2003); Cox v. Helenius, 103 Wn.2d 383, 388, 693 P.2d 683 (1985). The Act requires as a condition of granting an injunction that the "applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed[.]" RCW 61.24.130(1). Richardson failed to present evidence that he submitted payment to the clerk of the court of the sums due. He argues that payment is not required before the court's hearing on an injunction. The Washington Supreme Court has held, however, that under the Act, "a court cannot grant a 'restraining order or injunction to restrain a trustee's sale' unless the person seeking

the order has provided five days' notice to the trustee of the attempt to seek the order and has paid amounts due on the obligation secured by the deed of trust." Plein, 149 Wn.2d at 225–26 (quoting RCW 61.24.130(1), (2) (emphasis added).

The court also did not abuse its discretion because Richardson failed to support his motion with any declarations of fact. In its order denying the motion, the trial court noted that it had "considered the absence of declarations of fact from plaintiff." King County Local Rule 7(b)(4)(B)(iv) provides that the evidence on which a motion is based "must be specified with particularity." Richardson did not support his motion with declarations of fact, affidavits, or any other evidence. The trial court acted within its discretion by denying the motion.

In addition to arguing that the court abused its discretion by denying his motion, Richardson makes eight assignments of error. He claims in his first and fourth assignments of error that the trial court erred by "denying plaintiff's Motion to Quiet Title without oral argument" and "refusing to have an oral argument on defendant's mislabeled motion to dismiss[.]" Brief of Appellant, at 1. The trial court did not err by denying Richardson's motion without hearing oral argument because Richardson never requested oral argument when he noted the motion for hearing or afterwards. Additionally, Richardson provides no argument in his opening brief or reply brief to support this assignment of error and, therefore, "is deemed to have abandoned it." In re Marriage of Lutz, 74 Wn. App. 356, 372, 873 P.2d 566 (1994).

Richardson's second and third assignments of error allege that the trial court erred by failing to read his petition to quiet title. These assignments of error are without

merit because Richardson cites to no evidence that the trial court failed to read his petition.

Richardson's fifth assignment of error alleges that his "Civil Rights to due process of law was denied under Title 42 U.S.C. § 1983." Brief of Appellant, at 1. This assignment of error is without merit because Richardson does not explain it or cite to evidence in support of it.

Richardson's sixth assignment of error claims that the trial court erred by not requiring Countrywide and Recon Trust "to exhibit documents to counter" Richardson's claim that "Countrywide had no color of title" to the property. Brief of Appellant at 1. Richardson does not support this assignment of error with any argument. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996), remanded on other grounds, 132 Wn.2d 193, 937 P.2d 597 (1997). Richardson makes a related argument that Countrywide violated RCW 59.12.030(6) because it had no color of title to the property.¹ This statute does not apply to this case because it concerns physical entry onto the land of another, and Richardson concedes that "Countrywide did not physically enter onto the property" Brief of Appellant, at 5.

In his reply brief, Richardson makes extensive argument on his seventh assignment of error, which alleges that "Recon Trust was not licensed under chapter 61.24 RCW to foreclose on real property in Washington State" and that the court erred

¹ RCW 59.12.030(6) provides: "A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040 [is guilty of unlawful detainer]."

“by not requiring [Countrywide and Recon Trust] to exhibit documents to counter the pleadings statements.” Brief of Appellant, at 2. He did not make an argument based on this assignment of error in his opening brief. Therefore, he waives this issue because he essentially raises it for the first time in his reply brief, thus not allowing Countrywide and Recon Trust an opportunity to respond. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); see also In re Disciplinary Proceeding of Kennedy, 80 Wn.2d 222, 236, 492 P.2d 1364 (1972) (“Points not argued and discussed in the opening brief are deemed abandoned and are not open to consideration on their merits.”); and Dickson v. United States Fid. & Guar. Co., 77 Wn.2d 785, 787–88, 466 P.2d 515 (1970) (“Contentions may not be presented for the first time in the reply brief.”).²

Additionally, even in his reply brief he has not produced evidence to raise an issue of material fact. Richardson alleges that Recon Trust is not qualified as a trustee because it described itself in one of the pleadings as a “nationally chartered financial institution.” Richardson argues that this does not satisfy the plain terms of RCW 61.24.010(1)(f), which provides that a “national bank, savings bank, or savings and loan association chartered under the laws of the United States” may be a trustee. Recon Trust’s description of itself as a “nationally chartered financial institution” does not necessarily exclude the possibility that it is a “national bank, savings bank, or savings and loan association chartered under the laws of the United States.”

² Richardson was pro se in his opening brief, but subsequently retained counsel who prepared the reply brief on his behalf. While we appreciate that counsel came in after the preparation of the opening brief, that does not affect the rule regarding new arguments in reply briefs.

RCW 61.24.010(1)(f). Under the circumstances presented, Richardson fails to make a sufficient showing that Recon Trust is unqualified to be a trustee.

Richardson's final assignment of error alleges that the court erred by "not requiring the defendants to comply with court rules of procedure used against a pro se party without licensed counsel." Brief of Appellant, at 2. This argument lacks merit because "pro se litigants are bound by the same rules of procedure and substantive law as attorneys." Westberg v. All-Purpose Structures, Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

Richardson also argues in a footnote in his reply brief that Recon Trust cannot be a trustee because it is a subsidiary of Countrywide and under RCW 61.24.020, "No person, corporation or association may be both trustee and beneficiary under the same deed of trust." This argument is waived because Richardson raises it for the first time in his reply brief. Cowiche Canyon, 118 Wn.2d at 809. This issue is also waived because it is treated only in passing. Palmer, 81 Wn. App. at 153.

For the foregoing reasons, we affirm.

FOR THE COURT:

Columan, J.

Appelwick, J.

Azid, J.

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

WAYNE R. RICHARDSON,	)	No. 58934-2-1
)	
Appellant,)	
	)	MANDATE
v.)	
	)	King County
COUNTRYWIDE HOME LOANS)	
RECON TRUST (trustee),	)	Superior Court No. 06-2-14561-5.KNT
)	
Respondent.)	
)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on July 23, 2007, became the decision terminating review of this court in the above entitled case on July 16, 2008. An order denying a motion for reconsideration was entered on September 6, 2007. An order denying a petition for review was entered in the Supreme Court on June 4, 2008. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

APPENDIX

- B. Findings of Fact, Conclusions of Law, Judgment and Order Issuing Writ of Restitution in *Kasahara v. Richardson*, No. 07-2-03559-1SEA

FILED

CERTIFIED COPY

KING COUNTY SUPERIOR COURT
BARBARA MINER
DIRECTOR & SUPERIOR CT CLERK
SEATTLE WA

FILED

07 FEB -7 AM 10:55

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Receipt Date 02/07/2007 Acct. Date 02/07/2007

Time 10:52 AM

Receipt/Item # 2007-03-02955/01 Tran-Code 1110
Cashier: RCF

Docket-Code \$FFRAF

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

Re: EVAN L. LOEFFLER, EVAN
Transaction Amount:

\$20.00

TOSHI KASAHARA,

Plaintiff,

vs.

WAYNE R. RICHARDSON and ALL OTHER
OCCUPANTS,

Defendants.

Case No.: 07-2-03559-1SEA

FINDINGS OF FACT, CONCLUSIONS OF
LAW, JUDGMENT AND ORDER ISSUING
WRIT OF RESTITUTION

[Clerk's action required]

ISSUED
FEB 07 2007

JUDGMENT SUMMARY

Judgment Creditor:	Toshi Kasahara
Judgment Debtors:	WAYNE R. RICHARDSON
Attorney for Judgment Creditor:	Evan L. Loeffler
Principal Judgment Amount:	\$0.00
Plus daily rent of \$33.33 from December 22, 2006 through February 7, 2007 or until possession is restored to Plaintiff:	\$1,566.51
Plus double damages pursuant to RCW 59.12.170:	\$1,566.51
Interest on Judgment:	\$0.00
Attorney's Fees:	\$1,000.00
Costs:	\$297.20

**PRINCIPAL JUDGMENT, ATTORNEY'S FEES AND COSTS SHALL BEAR INTEREST AT
THE RATE OF 12% PER ANNUM UNTIL PAID IN FULL**

FINDINGS OF FACT, CONCLUSIONS OF
LAW, JUDGMENT AND ORDER ISSUING
WRIT OF RESTITUTION - PAGE 1

LAW OFFICE OF EVAN L. LOEFFLER PLLC
2033 Sixth Avenue, Suite 1040
Seattle, WA 98121-2527
Phone: 206.443.8678 Fax: 206.443.4545

ORIGINAL

1 THIS MATTER having come on regularly for hearing before the Court on February 7, 2007;
2 Defendants having previously been ordered to appear on this date and show cause why a writ of
3 restitution should not be issued restoring to Plaintiff possession of the property described in the
4 complaint, Plaintiff appearing through counsel, Evan L. Loeffler and the Law Office of Evan L. Loeffler
5 PLLC,

6 () Defendants not appearing for the show cause hearing;

7 (X) Defendants appearing;

8 and the Court having examined the parties and witnesses present, considered the evidence, and being
9 fully advised in the premises, now makes the following:

10 **FINDINGS OF FACT**

- 11 1. Plaintiff purchased the property located at 7201 South 126th Street, Seattle, Washington,
12 98178 at a trustee's sale held on December 1, 2006.
- 13 2. Defendants received notice on or about August 31, 2006 they would have until 20 days after the
14 trustee's sale to vacate the premises.
- 15 3. Defendants did not vacate the premises by December 21, 2006 and continue to reside in the
16 premises at this time.
- 17 4. The fair rental value of the premises is \$1,000.00 a month. A pro-rated rent of \$33.33 per day
18 from December 22, 2006 through February 7, 2007 has accrued for an amount of \$1,566.51 and
19 will continue to accrue until possession of the premises has been returned to Plaintiff.

20
21 From the foregoing Findings of Fact, the Court makes the following:

22 **CONCLUSIONS OF LAW**

- 23 1. Defendants are guilty of forcible detainer pursuant to RCW 59.12.020.
- 24 2. Plaintiff is entitled to possession of the subject property and a Writ of Restitution should be
25 issued directing the sheriff to restore possession of the premises to Plaintiff.

- 1 3. Defendants are liable to Plaintiff for unpaid rent, court costs and attorney's fees, and a judgment
2 in favor of Plaintiff and against Defendants should therefore be awarded.
- 3 4. Plaintiff is entitled to double damages for unpaid rent pursuant to RCW 59.12.170.
- 4 5. The issue of damage to the premises is reserved for later adjudication and is not a part of this
5 judgment.
- 6

7 **JUDGMENT**

8 The Court having made and entered its Findings of Fact and Conclusions of Law, NOW,
9 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 10 1. The clerk of the court shall issue a writ of restitution forthwith, returnable ten (10) days after its
11 date of issuance, directing the sheriff to restore to Plaintiff possession of the property located at
12 7201 South 126th Street, Seattle, Washington, 98178 provided that if return is not possible
13 within ten (10) days, the return on this writ shall be automatically extended for a second ten (10)
14 day period. The writ shall also authorize the sheriff to break and enter as necessary.
- 15 2. There is no substantial issue of material fact concerning the right of Plaintiff to be granted relief
16 as prayed for in the complaint for unlawful detainer and as provided for by statute.
- 17 3. Defendants are guilty of forcible detainer and the tenancy of Defendants in the subject premises
18 is hereby terminated.
- 19 4. Plaintiff is entitled to judgment against Defendants as set forth in the judgment summary above.
20 Said sums shall accrue interest at the rate of twelve percent (12%) per annum until paid.
- 21
- 22
- 23
- 24
- 25

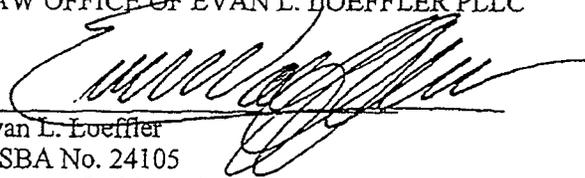
2/07/07

DONE IN OPEN COURT this ___ day of ___, 2007


COURT COMMISSIONER

Presented by:

LAW OFFICE OF EVAN L. LOEFFLER PLLC



Evan L. Loeffler
WSBA No. 24105
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

•

APPENDIX

C. Order Granting Motion to Modify

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

TOSHI KASAHARA,
Respondent,
v.
WAYNE RICHARDSON,
Appellant.

No. 59690-0-1

ORDER GRANTING
MOTION TO MODIFY

Received

OCT 02 2007

Evan L. Loeffler
Attorney at Law

Appellant Wayne Richardson moves to modify the commissioner's July 13, 2007, ruling dismissing the appeal. Respondent has filed a response to the motion to modify. We have considered the motion under RAP 17.7 and have determined that it should be granted and the appeal reinstated on condition that within 30 days of this order appellant files the statement of arrangements, pays respondent \$500 in sanctions, and files proof that he has paid the sanctions.

Now, therefore, it is hereby

ORDERED that the motion to modify is granted and the appeal is reinstated if, within 30 days of this order, appellant files the statement of arrangements with proof of service, pays respondent sanctions of \$500, and files proof that he has paid the sanctions; and it is

ORDERED that if appellant fails to comply with these conditions, the appeal will be dismissed without further order.

Done this 1st day of October, 2007

Schirrell, AS

George J
Colman, J

2007 OCT -1 PM 3:57

COURT OF APPEALS
STATE OF WASHINGTON

APPENDIX

D. Mandate

OCT 03 2008

Evan L. Loeffler
Attorney at Law

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

TOSHI KASAHARA,	)	No. 59690-0-I
)	
Respondent,	)	MANDATE
)	
v.	)	King County
)	
WAYNE RICHARDSON,	)	Superior Court No. 07-2-03559-1.SEA
)	
Appellant.)	
)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the ruling entered on December 7, 2007 became the decision terminating review in the above case on October 1, 2008. An order denying a petition for review was entered in the Supreme Court on September 3, 2008. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

c: Wayne Richardson
Evan Loeffler



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 1st day of October, 2008.

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

APPENDIX

E. "COMPLAINT" Cause No. 09-2-18295-7KNT

MOTION TO QUIET TITLE
MOTION FOR DEFAULT
MOTION FOR WRIT OF RESTITUTION AGAINST ALL PARTIES
COMMON TO THE ACTION AT 7201 SO. 126TH STREET SEATTLE,
WA 98178-4339 FOR FAILING TO ANSWER SERVICE, OF
PROCESS AUTHORIZED BY THE HONORABLE JOHN P. ERLICK
OF 07-2-07959-9SEA
MOTION FOR DAMAGES

FILED

09 MAY -6 PM 2:15

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

Hearing date May 6, 2009
Hearing time 1:30pm
Hearing place Kent Regional
Justice Center in Ex Parte

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MINI-DOZER WORK,)
WAYNE R. RICHARDSON,)

09-2-18295-7 KNT

Plaintiffs,)

NO. _____

vs.)

COMPLAINT
MOTION TO QUIET TITLE

MOTION FOR DEFAULT

MOTION FOR WRIT OF

TOSHI KASAHARA (a member of)
Windermere Property Management d/b/a)
The foreclosure group))

RESTITUTION AGAINST ALL

PARTIES COMMON TO THE

THE FORECLOSURE GROUP,)
WINDERMERE REAL ESTATE)
KARLA HURST (Co-Conspirator))

ACTION AT 7201 SO. 126TH ST.

SEATTLE, WA 98178-4339 FOR

FAILING TO ANSWER SERVICE,

OF PROCESS AUTHORIZED BY

THE HONORABLE JOHN P.

Defendants.)

ERLICK OF 07-2-07959-9SEA

MOTION FOR DAMAGES

STATUS OF CAUSE OF ACTION

1. April 25, 2008, Judge John Erlick dismissed Toshi Kasahara without
prejudice ruling he was not personally served the summons and complaint under
chapter 65.12 RCW; but, all persons living in Washington State were served by
publication in March of 2007. The Foreclosure group (the original party served
by publication) has not appeared or answered. Toshi Kasahara was personally

MOTION FOR DEFAULT

1 of 13

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MOTION FOR DEFAULT

served at his home in Madina on May 2, 2008 at 8:15pm. Affidavit was filed.

2. June 22, 2007 @ 11:30am the Honorable Commissioner Ellis of the Court of Appeals ruled against Kasahara's counsel, Evan L. Loeffler, WSBA #24105 stating his summons for the Writ of Restitution did not comply with RCW 59.12.070 that was revised on January 1, 2006 from **not more than 14 days to not more than 30 days** for an answer to the claim. Further, that the Deed of Trust was void for falsification of the notary to the signing of said document. It was signed on December 5, 2006 but not notarized until December 19, 2007. It contained two parties listed on the deed; Toshi Kasahara and Windermere Real Estate the Foreclosure Group that was assigned to Windermere Real Estate East Side Inc., assigned to Windermere Real Estate East Side/LLC. These assignments came after May 2, 2008 after service of process on Kasahara. The original deed only claimed Kasahara was to have a security lien on the property. This was impossible by not having a contract with the title-holder Wayne R. Richardson, plaintiff. Kasahara stipulated to this in case # 07-2-10226-4. There has never been a conversion filed under RCW 65.08.070. Lastly, there was never a foreclosure performed by Countrywide because they were never on title.

3. June 22, 2007, Loeffler did file a No Contact Order in favor of Kasahara

1
2
3 MOTION FOR DEFAULT -3-

4 solely for the purpose of removing Richardson' \$5,000.00 cash bond filed for the
5 Writ of Restitution. Richardson has since filed a claim to the bar against Loeffler
6 for perjury and falsification of documents to maintain his position against
7 Richardson. Richardson appealed the No Contact Order that was mandated back
8 to District Court for Further Action because Loeffler did not file an answer to
9 Richardson's brief nor did he file an answer to Richardson' Motion to Dismiss
10 that was ruled on in the Burien District Court on August 25, 2008. It denied
11 Kasahara' motion to extend the time for the no contact order for refusing to serve
12 papers of the hearing on Richardson. (Copy of motion is attached.)
13
14

15 The mandate returned to the District Court demanded that the court under
16 the original Judge Chow make a new ruling within 10 days after the date of the
17 mandate under crR for new trial or dismiss. That ten days passed on May 10,
18 2008 that made the no contact order inoperable. Nevertheless, the order filed with
19 the Seattle police department was still in an active status because no court notified
20 the police department. The new judge who ruled on the extension of time was a
21 pro temp judge who did not have jurisdiction over the parties because of failure to
22 serve process of service on Richardson and was not Judge Chow. It was not in
23 the proper jurisdiction as directed by legislature on January 1, 2006.
24
25

26 MOTION FOR DEFAULT -3-
27
28

1
2
3 MOTION FOR DEFAULT

-4-

4 4. Richardson surveyed the property at 7201 So. 126th St. Seattle, WA 98178
5 from the apartment he temporarily lives through binoculars and noticed Kasahara
6 demolished the kitchen cabinets after May 2, 2008 and personal service of the
7 Torrens Act ordered by the Honorable Judge John Erlick of the Superior Court.
8 The plaintiff waited until Friday of Memorial Day weekend in May and saw a
9 white van parked in the driveway of the above property. He drove by and took
10 pictures of the van, two men, and the license tag. The van backed out of the
11 driveway and sped West on So, 126th St. Richardson went back to the apartment
12 and waited. Two Sheriff's cars arrived about fifteen minutes later after the van
13 returned to the driveway. The plaintiff then drove his car purposefully slow past
14 the property to have himself arrested as he needed Kasahara on the witness stand
15 before the prosecuting attorney. It worked. Richardson was arrested for violation
16 of the invalid No Contact Order at 4:15pm. Court was held Saturday afternoon.
17 Richardson was PR at the hearing and made all his required dates and times for
18 future appearances. Monday, July 7, 2008, Richardson visited the clerk of the
19 District Court and found that Kasahara had applied for an extension of time on the
20 original claim and obtained a hearing date. Loeffler attended the hearing with
21 Kasahara again claiming untruths to a pro temp judge who signed the order.
22
23
24
25

26 MOTION FOR DEFAULT

-4-

27
28

1
2
3 MOTION FOR DEFAULT

-5-

4 Richardson had already been appointed a counsel by the Burien District Court that
5 maintained jurisdiction over the subject matter and the parties. The above hearing
6 was held in the District Court in Seattle that did not have jurisdiction over the
7 subject matter and the parties. Richardson served and filed a Demand for new
8 trial to the Burien Court that overturned the order to extend the time for the No
9 Contact Order. The following Monday, a claim was filed against Loeffler in the
10 Bar charging him with perjury and filing false documents under RPC 3.3(f) and
11 3.5(b).
12
13

14 5. Trial was heard on October 13, 2008. Kasahara appeared as a witness
15 under oath stating he never paid any money to a foreclosure on the above
16 property; that he did pay the Foreclosure Group, the second original defendant of
17 this case, over \$200,000.00+. That he did not know of any foreclosure, did not
18 view the property before he paid the money to the Foreclosure Group and did not
19 know where it was located. The trial was held past the 90-day speedy trial date
20 that was originally set to be heard on September 23, 2008 at the Burien Court.
21 Judge Chow, who first ruled on the No Contact order on July 6, 2007, jailed
22 Richardson on August 21, 2008 to keep him from attending the first trial, hoping
23 to be the judge assigned to the trial. He lost. The Honorable Ann
24
25

26 MOTION DEFAULT

-5-

27
28

1
2
3 MOTION DEFAULT

-6-

4 Pennella, Pro temp, ordered 60 days with time served. The time was served
5 before the trial started and the order released Richardson from jail without any
6 further commitments to stay away from 7201 So. 126th St., Seattle, WA 98178-
7 4339. The sentence is being appealed for jurisdiction and failure to have trial
8 within 90 days of incarceration that ended on September 23, 2008. STATE v.
9 CARPENTER 94 Wn.2d 690, 619 P.2d 697 (Nov. 1980).

10
11
12 MOTION TO VACATE WRIT OF RESTITUTION

13 Comes now the plaintiffs Mini-Dozer Work through it' owner, Wayne R.
14 Richardson, and moves this court for an order of default against Toshi (Toshihiro,
15 Toshihirohito, Toshiko aliases) Kasahara and sanctions against Evan L Loeffler,
16 Kasahara' attorney, WSBA # 24105. The positions, orders and judgments against
17 Wayne R. Richardson were gained by malicious prosecution by changing the
18 headings on the various claims and parties with perjury under oath to the tribunal.
19 LOEFFELHOLZ v. C.L.E.A.N. 119 Wn. App. 665, 82 P.3d 1199 (Jan. 2004)

20 @ 693

21
22 [14] Subject to one exception pertinent here, a court must resolve all claims for
23 and against all parties before it enters a final and enforceable judgment on any part of the
24 case.⁷⁵ The goals are to avoid confusion and piecemeal appeals.⁷⁶ For this reason, a final
25 judgment is generally "the final determination of the rights of the parties in the
26 action..."⁷⁷

27 MOTION VACATE JUDGMENTS

-6-

28

1
2
3 MOTION VACATE JUDGMENTS

-7-

4 The exception is found in CR 54(b). It provides:

5 When more than one claim for relief is presented in an action, whether as a claim,
6 counterclaim, cross claim, or third party claim, or when multiple parties are involved, *the*
7 *court may direct the entry of a final judgment as to one or more but fewer than all of the*
8 *claims or parties only upon an express determination in the judgment, supported by*
9 *written findings, that there is no just reason for delay* and upon an express direction for
10 the entry of judgment. The findings may be made at the time of entry of judgment or
11 thereafter on the court's own motion or on a motion of any party. In the absence of such
12 findings, determination and direction, any order or other form of decision, however
13 designated, which adjudicates fewer than all the claims or the rights and liabilities of
14 fewer than all the parties shall not terminate the action as to any of the claims or parties,
15 and the order or other form of decision is subject to revision at any time before the entry
16 of judgment adjudicating all the claims and the rights and liabilities of all the parties.
17 (Emphasis added.)

18 Loeffler moved this court for a Summary Judgment against *Wayne R.*

19 *Richardson d/b/a Mini-Dozer Work.* There is no such entity in the State of
20 Washington. The heading on the original Torrens Act claim (this action)
21 maintains two plaintiffs; Mini-Dozer Work licensed under chapter 19.80 RCW
22 and it' owner Wayne R. Richardson. The Summary Judgment of this court
23 *maintained a judgment against an entity not jurisdictional against the true parties*
24 *of interest subject to this court. This is one part of undue process of this counsel.*
25 Change the names to fit the situation. Further, the Summary Judgment order is
26 moot as there were no findings of fact or conclusions of law entered on said order
27 as required under CR 54(b) except that it was dismissed without prejudice that
28 cancels out any right of appeal. This is contrary to the thinking of Loeffler.

MOTION VACATE JUDGMENTS

-7-

1
2
3 MOTION VACATE JUDGMENTS -8-

4 The second issue to this motion is Loeffler did falsify Kasahara' first name
5 to gain a No Contact Order against Wayne R. Richardson with malice and intent
6 to keep Richardson from retrieving his mail at 7201 So. 126th St. Seattle, WA
7 98178-4339. The sole purpose was so he could move the court for an assignment
8 of the cash bond placed in the court to bond the appeal against the Writ of
9 Restitution. The loss of the \$5,000.00 to Loeffler, Richardson' Sixty day jail time
10 issued by a court without jurisdiction, and the fact that Loeffler knew the West
11 District Court had no Jurisdiction by mandate of the legislature on January 1,
12 2006, is sufficient for this court to find probable cause to hold Evan L. Loeffler,
13 WSBA #24105 in contempt of court. Further, Richardson did serve a claim
14 against Loeffler by ABC Legal Services charging him with these acts. Said claim
15 was also served on WSBA and is cited under File: 08-01161. Personal service
16 was made on Loeffler on July 24, 2008 three days after filing the action with the
17 bar. Loeffler entered a notice of appearance without answer or directive to enter
18 the action in the court as required under the Summons. Therefore the service of
19 process is still valid and was entered in 07-2-07959-9SEA as an exhibit. Loeffler
20 claims to be the licensed attorney who is representing him in this new cause of
21 action. Cannot do this because of conflict of interest. He can represent himself
22

23
24
25
26 MOTION VACATE JUDGMENTS -8-
27
28

4 without the help of his bar number but not with his bar number.

5
6 **PROPERTY RECONVEYED TO RICHARDSON**

7 September 7, 2007, Washington Reconveyance Group reconveyed the
8 property to Wayne R. Richardson. It was after this date that Kasahara placed the
9 property for sale through Windermere Real Estate East/Side. The tax record
10 department shows three different conveyances from Kasahara finishing up with
11 Windermere Real Estate Eastside LLC. However, there is no conveyance filed
12 under chapter 65.08 RCW. There is no record of any moneys transferring
13 ownership from one party to the next party. The original phony Deed of Trust
14 claims Windermere Real Estate Eastside to be part of the scheme. Kasahara
15 testified at the trial that he purchased the property from "The Foreclosure Group"
16 and that he had no knowledge of any foreclosure, that he never viewed the
17 property before he paid Windermere and that he did not know where the property
18 was situate. He did claim that he controlled 12 houses in Bellevue and collected
19 rent from those 12 houses. Their estimated income is \$30,000.00 to \$60,000.00
20 per month. However, he wanted to sell this house. **WHY?** Kasahara altered the
21 title in December 2008. Interlopers were vacated on 12, 20 2008 by the plaintiff.
22
23

24 Richardson still had some of his personal tools and personal property

1
2
3 MOTION VACATE JUDGMENTS -10-

4 stored in the two sheds on the property. Kasahara contacted Richardson to entice
5 him to come on the property to remove his personal items after May 2, 2008.

6 Richardson waited until the time had passed for the No Contact Order remand to
7 pass, which would make the original order inoperative and die without the
8 plaintiff moving to comply with the order "for further action". That is why he
9 waited until the Friday before Memorial Day before he went to the property to
10 have himself arrested. Thus, Richardson was able to make Kasahara testify
11 before the prosecuting attorney under oath. His testimony is enough to wipe
12 Windermere off the map the same way Richardson was able to dispose of Partner'
13 Mortgage in 2001 in the Federal Bankruptcy Court.
14
15

16 **QUIET TITLE**

17 Richardson is still on title. Kasahara is not. Kasahara either quick
18 claimed the property to Windermere or assigned the deed of trust to Windermere.
19 In either event, he has no interest in the property at 7201 So. 126th St. Seattle, WA
20 98178-4339. Further, he did not mention that he still maintained an interest in the
21 property at the trial on October 14, 2008.
22

23 **ACTIONS BY KASAHARA AFTER SEPTEMBER 14, 2008**

24 Kasahara did on December 15, 2008, file a statutory warranty deed to
25

26 MOTION VACATE JUDGMENTS -10-
27
28

1
2
3 MOTION VACATE JUDGMENTS -11-

4 fraudulently convey the said property known as 7201 So 126th St. Seattle WA
5 98178-4339 to a Daria S. Macapagal and Jose A. Macapagal. He further
6 instigated his own wife Yoko Kasahara on the deed claiming she was part owner
7 of the said property that is not cited on the fraudulent deed of trust dated
8 December 5, 2006. The statement of the new deed to Macapagal claims he did
9 not acquire his (purported) interest on the above property until December 5, 2006.
10 That claim is not the claim he made to obtain the Writ of Restitution on February
11 7, 2007 but matches his statement under oath at trial on Oct. 14, 2008.
12
13

14 The circle is now complete against Toshi Kasahara for interstate
15 trafficking in stolen real property by gaining the same under false claims and false
16 documents. His action is in direct defiance against chapter 65.12 RCW including
17 RCW 65.12.730, RCW 65.12.740, RCW 65.12.750, RCW 65.12.760, RCW
18 65.12.770 and chapter 9A.56 RCW. Further, there is no contract in the transfer of
19 this property filled of record required under RCW 65.08.070.
20

21 Any purported sale of this property by Toshi Kasahara is null and void.
22 Kasahara does not have a court order authorizing any such sale or disposal of said
23 property. The trial of October 13, 2008 is on appeal. Further investigation shows
24 Karla Hurst, head agent for Windermere Real Estate Eastside LLC had signed a
25

26 MOTION VACATE JUDGMENTS -11-
27
28

1
2
3 MOTION VACATE JUDGMENTS -12-

4 deed of trust for \$173,000.00+ that seems to claim an interest by buying the
5 property from Richardson on December 28, 2006 that coincides with the date the
6 Kasahara Deed was filed in the records. However, there is no tax record of the
7 filing of this particular deed.
8

9 **DAMAGES**

10

11	1. Taxes for 2007.....	=\$001,466.00
12	2. Taxes for 2008.....	=\$001,812.04
13	3. Service of process by advertisement.....	=\$000,997.00
14	4. Separate personal service by court order.....	=\$000,106.00
15	5. Discovery process under CR 26 125 hours @ 150.00/hr...	=\$018,750.00
16	6. Court fees costs.....	=\$005,900.00
17	7. Frivolous jail time for fraudulent no contact order 60 days	=\$120,000.00
18	8. Moving fees from false claim of writ; move in move out...	=\$010,000.00
19	9. Apartment rental 24 months at \$650.00/mo.....	=\$015,600.00
20	10. Subrogation charge for lien	=\$890,000.00
21	11. Repair/replace original landscaping.....	=\$050,000.00
22	13. Criminal harassment with theft of personal property.....	=\$999,999.00
23	14. Loss of concertship and enjoyment of real property.....	=\$500,000.00
24	15. Theft of personal property including tools, machinery.....	=\$035,000.00
25	16. Malicious prosecution counts 5 each @ \$500,000 each....	=\$2,500,000.00
26	17. Continued harassment after service of process 12 months for trying to sell property and renew void no contact order five separate times without title; \$200,000.00 X 4.....	<u>=\$800,000.00</u>
27	Total damages	=\$5,949,630.04

28

SPECIAL NOTE

Mrs. Yoko Kasahara was never a party to this action and is not of any record with the state or the writ of restitution to be a party authorized to have her

1
2
3 MOTION FOR DEFAULT -13

4 name on any type transfer of this property or any properties acquired by Kasahara
5 under this type action. She is unknown to this court or any other court citing
6 Toshi Kasahara or other of his aliases. Nevertheless she may be a silent adversary
7 for the disposal of properties of this nature that Kasahara wants to unload on some
8 party without the knowledge of the workings of this group. Therefore, the
9 original pleading/claim is amended to include her as a co conspirator with Toshi
10 to fraudulently dispose of this property that involves interstate extortion through
11 Countrywide and Windermere Real Estate inclusive of all Windermere realtors.
12
13
14

15 Respectfully submitted by *April 15, 2009*

16 *Wayne K. Richardson*

17 Wayne K. Richardson, plaintiff owner
18 6930 So. 126th St. Apt. J181
19 Seattle, WA 98178-4330
20 (206) 551-8064
21
22
23
24
25

RONALD R. CARPENTER
SUPREME COURT CLERK

THE SUPREME COURT
STATE OF WASHINGTON

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY



(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

May 1, 2009

Wayne R. Richardson
6930 S. 123rd Street
Apt. J-181
Seattle, WA 98178-4330

Evan Lee Loëffler
Law Office of Evan L. Loeffler PLLC
2033 6th Avenue Suite 1040
Seattle, WA 98121-2527

Richard D. Johnson, Clerk
Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101-1176

Barbara Miner, Clerk
King County Superior Court
516 3rd Avenue, Room E609
Seattle, WA 98104-2361

Re: Supreme Court No. 83049-5 - Wayne Richardson d/b/a Mini Dozer Work et al. v. Toshi Kasahara d/b/a Foreclosure Group
Court of Appeals No. 63102-1-I
King County No. 07-2-07959-9 Sea

Clerks, Counsel and Mr. Richardson:

On May 1, 2009, this Court received from the clerk of the trial court the findings of indigency filed on April 24, 2009, in King County Superior Court cause number 07-2-07959-9 SEA. The matter has been assigned Supreme Court cause number 83049-5.

This expenditure of public funds matter (motion for expenditure of public funds) is set for hearing by a Department of this Court on the Court's July 7, 2009, Motion Calendar. The matter will be decided without oral argument.

Pursuant to RAP 15.2, by not later than June 4, 2009, Mr. Richardson, the appellant, should provide this Court with the following:

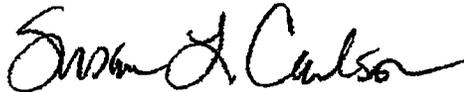
1. A statement of the expenses he wants waived or provided at public expense;
2. A description of the nature of the case;
3. A description of the issues he wishes to raise on review;
4. A statement that the review is sought in good faith; and
5. A demonstration of probable merit and a constitutional right to review partially or wholly at public expense.¹

¹ Because we have not yet received a copy of the motion for expenditure and any supporting affidavits, we have no way of knowing whether some or all of the information requested in 1 through 5 is contained in said pleadings. To the extent it is so provided therein, it does not need to be duplicated.

Page 2
83049-5

It is noted that the clerk of the trial court did not forward a copy of the motion for indigency and accompanying affidavits referred to in the findings entered by the trial court. Therefore, the clerk of the trial court is directed to immediately forward a copy of the same to this court.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Carlson".

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:alb