

No. 70018-9-I

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

OWL TRANSFER BUILDING LP,
a Washington limited partnership,
Respondent,

v.

HUA YUEN INTERNATIONAL TRADING GROUP, INC.,
a Washington corporation, and
WAH LOUIE and his marital community,
Appellant.

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APPELLANT'S OPENING BRIEF

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1. INTRODUCTION

Mrs. Wah Louie respectfully requests that the Court reverse the trial court's decision to grant its *sua sponte* motion to reconsider, vacating its Order to Vacate and thereby reinstating a Default Judgment entered against Mrs. Louie.

In 2007, landlord Owl Transfer Building LP published service to and obtained a default judgment against Mrs. Louie, who was guarantor of a lease between the landlord and tenant Hua Yuen International Trading Group Inc. Almost five years later, Owl Transfer Building finally enforced the judgment by garnishment Mrs. Louie's bank accounts. After she learned that there had been a judgment filed against her, Mrs. Louie applied to reopen and defend the action, pursuant to RCW 4.28.200, CR 55, and CR 60.

Although the trial court initially vacated the default judgment, it subsequently moved, *sua sponte*, to reconsider; specifically, it wished to reconsider whether application RCW 4.28.200 was time barred. Without addressing or considering Mrs. Louie's CR 55 or CR 60 arguments, the trial court then granted its own motion. Mrs. Louie appeals.

2. ASSIGNMENTS OF ERROR

(1) On February 6, 2013, the trial court erred in vacating its

previous Order Vacating Default Judgment, entered on November 14, 2012.

(2) On February 6, 2013, the trial court erred in granting its *sua sponte* Motion for Reconsideration and entering an Order on Reconsideration, which vacated its previous Order Vacating Default Judgment entered on November 14, 2012.

(3) On February 6, 2013, the trial court erred in determining that Mrs. Wah Louie had failed to challenge the Order of Default and Default Judgment of December 14, 2007, in a timely manner pursuant to RCW 4.28.200.

(4) On February 6, 2013, the trial court erred in failing to consider or address Mrs. Wah Louie's CR 55 and CR 60 arguments in favor of vacating a default judgment and, instead, relied only on RCW 4.28.200 to reach its conclusion.

3. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Whether the trial court erred in vacating its Order Vacating Default Judgment when (a) the Order of Service by Publication was obtained after Owl Transfer Building LP failed to search for Mrs. Wah Louie's current address in the public record, where it was located; (b) pursuant to the one year deadline provided by RCW 4.28.200, Mrs. Louie moved to vacate the Default Judgment less than one year after

entry of the Amended Judgment that Owl Transfer Building was attempting to enforce; and (c) there was authority other than RCW 4.28.200 in support of vacating the Default Judgment (Assignments of Error 1, 2, 3, and 4.)

4. STATEMENT OF THE CASE

4.1. Procedural History

On June 11, 2007, Owl Transfer Building LP (“Owl Transfer Building”), landlord-respondent, filed suit against Hua Yuen International Trading Group (“Hua Yuen Group”), tenant, for breach of a property lease, and against “Mr. Wah Louie [sic]”¹, appellant, as guarantor of the property lease. Clerk’s Papers at 1-3 (CP 1-3). Plaintiff alleged that Hua Yuen Group prematurely terminated a commercial lease in March 2007, prior to the lease expiry date of October 2009, and that Hua Yuen Group damaged the property’s roof in June 2006. CP 3.

On August 28, 2007, Owl Transfer Building moved for an Order Allowing Service by Publication. CP 8-20. The Court granted the Order, and subsequently, after apparently publishing service, Owl

¹ In the initial case filing, and most of the subsequent filings, Owl Transfer Building mistakenly referred to Mrs. Wah Louie as “Mr. Wah Louie,” a mistake that likely contributed to its inability to locate and personally serve “Mr. Wah Louie.”

Transfer Building obtained an Order of Default and Default Judgment against Hua Yuen Group and “Mr. Wah Louie” on December 14, 2007. CP 61-63.

On August 29, 2012, Owl Transfer Building applied for a Writ of Garnishment against Hua Yuen Group and “Mr. Wah Louie,” and on October 19, 2012, the Court entered an Amended Judgment and Order to Pay. CP 242-243.

Mrs. Wah Louie, guarantor of the lease, was unaware of the present suit until more than five years later, around September 17, 2012, when she received a notification from her bank regarding Owl Transfer Building’s application for a Writ of Garnishment of her bank funds. CP 161-163. As a result of this garnishment, on October 29, 2012, Mrs. Louie’s banks disbursed funds to Owl Transfer Building’s attorney: Washington Federal Savings disbursed \$76,068.94, and Bank of America dispersed \$9,889.98. Owl Transfer Building garnished a total of \$85,958.92 from Mrs. Louie. *Id.*

On November 1, 2012, because she had not previously been made aware of the underlying suit, Mrs. Louie moved the Court to Vacate the Default Judgment and Quash the Writ of Garnishment (“Motion to Vacate and Quash”) for insufficient service. CP 116-144.

On November 14, 2012, the Court entered an Order to Vacate Default Judgment and Quash Writ of Garnishment (“Order to Vacate

and Quash”). CP 164-165. In so doing, the Court found and concluded that the “Order of Default and Default Judgment were obtained based on Plaintiff’s [Owl Transfer Building’s] insufficient service of process on the Defendants [Hua Yuen Group and “Mr. Wah Louie”].” CP 164-165.

On December 11, 2012, following the Court’s finding that Owl Transfer Building’s previous attempt at service of process was insufficient, Owl Transfer Building attempted to serve Mrs. Wah Louie and Mr. Kwong Louie, her husband. However, Owl Transfer Building failed to complete service of process on the Louies until January 8, 2013, when a process server personally served them at their residence. CP 244-245. (Return of Service).

On December 14, 2012, the court heard oral argument on cross-motions on possession of the funds while the case proceeded. At that hearing, the trial court, on its own motion, re-raised the issue of whether its order to vacate the default judgment was proper under RCW 4.28.200, which allows a party to challenge a judgment that is obtained after service by publication. Specifically, the trial court requested briefing to address whether the time period for relief under RCW 4.28.200 had expired. However, the trial court did not take issue with any of the other grounds that Mrs. Louie had initially raised in

support of her Motion to Vacate Default Judgment; instead, the trial court focused solely on RCW 4.28.200.

On February 6, 2013, the trial court granted its *sua sponte* Motion for Reconsideration. CP 232. Specifically, it held that Mrs. Louie's challenge of the default judgment was untimely because it had occurred more than one year after the default judgment was entered against her. *Id.* As a result, the trial court vacated its Order Vacating Default Judgment, dated November 14, 2012, thereby affirming the original Default Judgment as valid. *Id.*

Substantive Facts

4.1.1. The Underlying Lease and Alleged Damages

Hua Yuen Group, tenant, entered into a written commercial lease with landlord Owl Transfer Building on or about June 9, 2004, for lease of a warehouse ("property") in Seattle, Washington. Allegedly, defendant "Mr. Wah Louie [sic]"² was personal guarantor to the lease between Owl Transfer Building and Hua Yuen Group. According to the terms of the lease, Hua Yuen Group would begin leasing the property on November 1, 2004, and the lease would terminate on October 31, 2009.

² See n.1, *supra*.

On June 11, 2007, Owl Transfer Building filed suit against Hua Yuen Group, for breach of the property lease, and against “Mr. Wah Louie,” as guarantor of the property lease. CP 1-3. In its amended complaint filed in December 2012, Owl Transfer Building alleged (1) that Hua Yuen Group ceased paying rent beginning November 1, 2006; (2) that Hua Yuen Group prematurely terminated the commercial lease in March 2007, prior to the lease expiry date of October 2009, and (3) that Hua Yuen Group was liable for repair costs for the property’s roof. CP 166-170. According to the roof contractor’s work proposal, the damage occurred on or before June 12, 2006. CP 191.

Because Owl Transfer Building found a new tenant for the property, with a lease that commenced on June 1, 2007, it sought damages for unpaid rent from Hua Yuen Group from November 2006 to May 2007. CP 168. It also sought damages for the property’s roof, which it alleged Hua Yuen Group damaged on or before June 12, 2006. *Id.*

4.2.2. Hua Yuen Group, Officers, and Registered Agent

Confusingly, Owl Transfer Building’s pleadings prior to November 14, 2012, conflated Mr. and Mrs. Louie: Owl Transfer Building originally named “Wah Louie and *his* marital community” (emphasis added) in the case caption, and in most instances within

those pleadings, it referred to “Wah Louie” and “Mr. Louie” as if they were one and the same person, even for the purpose of service of process. For example, in Owl Transfer Building’s original Complaint, it referred to the parties as “Defendant Wah Louie and his marital community,” and in its Motion and Declaration for Order Allowing Service by Publication, it referred to attempted service upon “Mr. Louie” only, despite (Mrs.) Wah Louie being the named defendant and not her husband. *See, e.g.*, CP 9. (Pl’s Motion for Alternative Service, para. 3). Mr. Kwong Louie, the husband of the named defendant “Mr. [Mrs.] Wah Louie,” was also the President and Chairman of the now-inactive corporation Hua Yuen Group, a named defendant in the underlying action. However, he was never a named defendant in this action until December 14, 2012, when his name appeared on the caption of the Order Granting Plaintiff’s Motion and Directing Issuance of Prejudgment Writ of Attachment as to Funds Held in Trust, presented by Owl Transfer Building’s attorney. CP 242.

On June 30, 2006, Hua Yuen Group’s status as a Washington corporation expired, and it became inactive on October 2, 2006. According to the public records found at the State of Washington’s Secretary of State, Corporations and Charities Division, the last known registered agent for the corporation was Mr. Rodney Wong, and his address is listed as 318 6th Avenue South, Suite 110, Seattle,

WA 98104. CP 137-138 (Hua Yuen Group's corporate filing with the Washington Secretary of State). According to the Washington State Bar Association ("WSBA") Lawyer Directory, Mr. Rodney Wong is an active attorney whose address remains the same as when Hua Yuen Group's corporate status expired. CP 139-140.

Additionally, according to the public records found at the State of Washington's Secretary of State, Corporations and Charities Division, the last known President and Chairman of the Hua Yuen Group was Mr. Kwong Louie, and his address is listed as 525 Maynard Avenue, #204, Seattle, WA 98104. CP 137-138. According to Mr. Louie's Declaration, this address remains his current residential address. CP 145-147.

Mrs. Wah Louie, however, was never a director or officer of Hua Yuen Group, and therefore never had authority to accept service on behalf of Hua Yuen Group. CP 137-138 and 161-163.

4.2.3. Owl Transfer Building's Service of Process by Publication

According to Paragraph 3 of Plaintiff's Motion for Service by Publication, Owl Transfer Building attempted service on Hua Yuen Group by delivering process to it "care of Wah Louie," despite the fact that she was not an authorized person to accept service on behalf of the corporation because she had no relationship to the corporation. CP

161-163. Additionally, Owl Transfer Building attempted service upon “Wah Louie individually.” *Id.* Both of these attempts at service of process involved delivery of process to 8501 39th Avenue South, Seattle, WA 98118. *Id.* However, the Louies had sold this property to an unrelated third party in 2003, and so Owl Transfer Building failed to locate Mrs. Wah Louie there. The Statutory Warranty Deed involved in this sale clearly revealed Mrs. Wah Louie’s gender and the identity of her spouse; it stated, “Kwong Yin Louie and Wah Louie, husband and wife[,]” conveyed the property to another on January 10, 2003. CP 141.

According to Paragraph 4 of Plaintiff’s Motion for Service by Publication, Owl Transfer Building then allegedly attempted service on “Mr. Louie [sic]” at 5235 Columbia Drive South, Seattle, WA. CP 9. However, the Louies did not own property at that address at the time nor have they ever owned property there. Per Owl Transfer Building’s Exhibit D, attached to its Motion for Service by Publication, property at that address belonged to one *Mr. Wah Shuck Louie* (emphasis added). CP 20. However, Mr. Louie’s legal name is Kwong Yin Louie and Mrs. Louie’s is Wah Louie. They did not know or have any relationship with any Mr. Wah Shuck Louie nor did they have any connection to that address. Because that property did not belong to

either the named defendant or her husband, Owl Transfer Building obviously failed to locate them there.

Owl Transfer Building never attempted to serve the corporation via a person authorized to accept service on behalf of the corporation. Rather, it has only alleged attempted service upon the corporation "care of Wah Louie," a person who was not authorized to accept service on behalf of Hua Yuen Group.

Despite the fact that the Secretary of State's public records showed the then-and-still current address of Hua Yuen Group's registered agent, Attorney Rodney Wong, Owl Transfer Building attempted to serve Hua Yuen Group only by serving Mrs. Wah Louie, whom it referred to as "Mr. Louie," at an outdated address, then at a property that the Louies never owned or possessed.

Despite the fact that the Secretary of State's public records showed the then-and-still current address of Hua Yuen Group's President and Chairman, Mr. Kwong Louie, Owl Transfer Building never attempted to serve him. Instead, it attempted to serve the corporation "care of Wah Louie" by serving "Mr. Louie [sic]" at an outdated address and, when that failed, at a property that the Louies never owned or possessed. Because Mrs. Wah Louie was neither a director nor officer of Hua Yuen Group, she would not have been

eligible to receive service on behalf of the corporation even if Owl Transfer Building had been able to complete service.

On August 28, 2007, being unable to locate Mrs. Wah Louie, whom Owl Transfer Building referred to as "Mr. Louie," Owl Transfer Building moved for an order allowing service by publication, and the order was granted. CP 57-58. However, both Mr. and Mrs. Louie remained unaware of the lawsuit. After apparently publishing service, Owl Transfer Building soon thereafter moved for and was granted an Order of Default on December 14, 2007. CP 61-63.

On August 29, 2012, Owl Transfer Building applied for a Writ of Garnishment to garnish funds in Mrs. Louie's bank accounts. CP 236-239. Soon thereafter, Mrs. Louie's bank notified her of Plaintiff's application for a Writ of Garnishment, and Mrs. Louie learned of the underlying lawsuit on or around September 17, 2012. CP 161-163.

Owl Transfer Building finally completed service of process on Mr. Kwong Louie and Mrs. Wah Louie on January 8, 2013, CP 244-245 (Return of Service), when a process server personally delivered the underlying summons and complaint to the Louies at their residence, an address that has been in the Hua Yuen Group's corporate filing with the Secretary of State this entire time. CP 137-138.

5. SUMMARY OF ARGUMENT

The trial court erred in vacating its Order to Vacate Default Judgment.

First, under RCW 4.28.200, Mrs. Louie's motion was timely because she filed her Motion to Vacate Default Judgment less than one year after the court entered the Amended Judgment of October 19, 2012. Additionally, *in arguendo* and as a matter of equity, even if RCW 4.28.200 provided a strict time bar that Mrs. Louie did not follow, it was Owl Transfer Building's near five-year delay in enforcing the judgment that caused her not to discover and challenge the judgment against her.

Second, nonetheless, the plain language of RCW 4.28.200 does not provide a time bar to defendants who wish to reopen a case after service by publication.

Third, in the alternative, RCW 4.28.200, which applies to situations in which a defendant wishes to reopen a case after service by publication, does not even apply here. Rather, Owl Transfer Building completely failed to serve the defendants constructively, and because service was never complete, the statute does not apply.

Fourth, Owl Transfer Building's attempt at constructive service fails due to its failure to attempt personal service diligently

before moving to serve by publication. Without a diligent attempt at personal service, its motion to serve by publication and the court's related order for service by publication were improperly obtained.

Fifth, the trial court failed to address and consider grounds to vacate a default judgment under CR 55 and CR 60. Because Mrs. Louie raised these arguments below, the trial court erred in focusing only on RCW 4.28.200, which constituted merely one ground on which a court may vacate a default judgment.

For these reasons, the trial court improperly granted its *sua sponte* Motion for Reconsideration and improperly vacated its Order to Vacate Default Judgment.

6. ARGUMENT

"Questions of law and conclusions of law are reviewed de novo." *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 73 P.3d 369, 372 (2003). Because the assignments of error here pertain to the trial court's interpretation of a statute, this Court should conduct a de novo review of the trial court's decision.

6.1. Mrs. Louie's challenge was timely and, additionally, was raised at a reasonable time in light of Owl Transfer Building's five year delay in enforcing the original Default Judgment.

6.1.1. Mrs. Louie timely challenged the judgment because she

filed a Motion to Vacate Default Judgment less than one year after the Amended Judgment was entered on October 19, 2012.

RCW 4.28.200 provides that defendants who are constructively served by publication may, on “sufficient cause shown” and “on such terms as may be just,” apply to reopen an action within one year after entry of judgment. Specifically, the Washington State Court of Appeals has recognized the purpose behind allowing defendants such an opportunity: “defendants could be served by publication of summons pursuant to the provision of RCW 4.28.100, [but] such service is constructive only and is not, as a practical matter, an effective means of notifying a party of the pendency of a lawsuit.” *Caouette v. Martinez*, 71 Wn. App. 69, 75, 856 P.2d 725 (1993).

Here, Mrs. Wah Louie met the time requirements of the statute because her application to reopen the action, a Motion to Vacate Default Judgment and Quash Writ of Garnishment, was filed on November 1, 2012, less than one year after entry of the Amended Judgment and Order to Pay on October 19, 2012. Although Owl Transfer Building obtained an Order of Default and Default Judgment on December 14, 2007, it failed to act on this judgment until August 29, 2012, when it applied for a Writ of Garnishment against funds in Mrs. Louie’s bank accounts. Thus, Mrs. Louie did not learn of this

lawsuit until her banks informed her of the garnishment on or about September 17, 2012. Thereafter, Owl Transfer Building presented and the Court entered an Amended Judgment on Answer and Order to Pay on October 19, 2012.

The judgment that Owl Transfer Building sought to enforce was not the original Default Judgment entered in January 2008 but rather the Amended Judgment of September 2012. Because Mrs. Louie's Motion to Vacate was filed less than one year after this Amended Judgment, her Motion was timely. Moreover, Owl Transfer Building did not seek to enforce the December 2007 Default Judgment until August 2012 and, thus, it is not prejudiced by Mrs. Louie's application to reopen.

6.1.2. Even if RCW 4.28.200 provides a one-year time bar, preventing Mrs. Louie from reopening the case would be manifestly unjust because it was Owl Transfer Building's delay in enforcing the Default Judgment that prevented her from challenging it earlier.

The purpose of the RCW 4.28.200 is to allow defendants an opportunity to defend after they merely receive constructive but not actual notice of a lawsuit. With this purpose in mind, Mrs. Louie's application to reopen the case came within a reasonable time: it was a little more than one month after she discovered there was a judgment against her. In contrast, it was Plaintiff's unreasonable delay—almost five years—between obtaining the Default Judgment in 2007 and

enforcing it in 2012, that prevented Mrs. Louie from learning of the lawsuit. Nonetheless, after her banks notified her that her accounts were being garnished, Mrs. Louie took action to apply to reopen the case.

To bar Mrs. Louie's application now would provide a perverse incentive for plaintiffs to delay enforcing judgments beyond one year so that defendants who are constructively served, but presumably do not actually know about the suit, would be unable to apply to reopen the case per the time constraints of RCW 4.28.200. In such a case, a plaintiff would constructively serve by publication and obtain a default judgment; then it would simply wait for more than one year before enforcing the default judgment to prevent any RCW 4.28.200 challenges from the defendant. And here, to add to the unjust result, Owl Transfer Building never even diligently attempted personal service and only visited outdated or wholly incorrect addresses before obtaining an order to serve by publication.

Additionally, barring Mrs. Louie's application would be contrary to the intent of the statute to provide constructively served defendants with an opportunity to defend. To allow the Default Judgment to stand would substantially prejudice Mrs. Louie by depriving her of her right to defend the suit and award Owl Transfer

for its sloppy attempts at service of process and unreasonable delay in enforcing the judgment.

6.2. Additionally, RCW 4.28.200 does not limit a defendant, not personally served, from reopening an action and defending more than one year after the rendition of the judgment.

The court's primary duty in interpreting any statute is to discern and implement the intent of the legislature. *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). The starting point must always be "the statute's plain language and ordinary meaning." *Id.* When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and the court will not construe the statute otherwise. *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). Just as a court "cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language," *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003), it may not delete language from an unambiguous statute: "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128

Wn.2d 537, 546, 909 P.2d 1303 (1996)). The plain meaning of a statute may be discerned "from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002); *State v. Clausing*, 147 Wn.2d 620, 630, 56 P.3d 550 (2002) (Owens, J., dissenting) (noting that "[a]pplication of the statutory definitions to the terms of art in a statute is essential to discerning the plain meaning of the statute"). Where the court is called upon to interpret an ambiguous statute or conflicting provisions, it may arrive at the legislature's intent by applying recognized principles of statutory construction. *State v. J.P.*, 149 Wn.2d 444, 69 P.3d 318, 320 (2003). A kind of stopgap principle is that, in construing a statute, "a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results." *Delgado*, 148 Wn.2d at 733, 63 P.3d 792 (Madsen, J., dissenting) (citing, among other cases, *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983)).

Under RCW 4.28.200, a defendant who was constructively served may appear and defend the action within one year after judgment has been entered:

If the summons is not served personally
on the defendant in the cases provided in

RCW 4.28.110 [service by publication] . . . on application and sufficient cause shown . . . the defendant or his or her representative *may* . . . be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs.

RCW 4.28.200 (emphasis added). Thus, this statute provides summary relief to a defendant constructively served.

Here, the plain language of the statute is clear and unambiguous. Nowhere in the statute does the plain language of this statute limit or bar the defendant from seeking relief under this statute if the defendant seeks such relief beyond one year from entry of judgment. Rather, it merely states that a defendant *may* apply within one year and does not state that a defendant shall apply within one year. In contrast, within the same chapter, to which the statute here refers, there is a requirement that service by publication “*shall* be made” in a particular manner and form. *See* RCW 4.28.110 (emphasis added).

It is well-settled law in Washington that the word “*may*,” which is permissive, is distinguishable from a word like “*shall*,” which is

mandatory or imposes a duty. See, e.g., *Scannell v. City of Seattle*, 97 Wn.2d 701, 705, 648 P.2d 435 (1982) (“it is presumed that the lawmaker intended to distinguish between [‘may’ and ‘shall’], ‘shall’ being construed as mandatory and ‘may’ as permissive”); *State v. Rains*, 87 Wn. 626, 634, 555 P.2d 1368 (1976) (“Where . . . different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word.”); *Nat’l Elec. Contractors v. Riveland*, 138 Wn.2d 9, 978 P.2d 481, 490 (1999) (“The statute’s express use of the term ‘may’ is permissive”); *Rudolph v. Empirical Research Systems, Inc.*, 107 Wn. App. 861, 28 P.3d 813, 816 (2001) (“[‘Will not’ and ‘shall’] are mandatory, as opposed to “may” which is permissive.”). Here, the legislature’s intent is clear because RCW 4.28.200 states that a defendant *may* be allowed to defend, while in contrast, RCW 4.28.110, to which .200 refers, uses “shall”: therefore, a defendant is permitted to defend within the year after judgment, but nothing in the statute constrains him or her from defending after more than one year has passed.

Additionally, the Washington State Supreme Court supports this view in its analysis of the intent behind this statute. The Court has stated that defendants have additional rights under Rem. Rev. Stat. § 235, the predecessor of RCW 4.28.200, if the default judgment against them was based upon service by publication:

It will be noticed that this section relates only to judgments and decrees rendered upon service by publication, its *purpose evidently being to give to parties having judgments and decrees rendered against them upon such service . . . an opportunity to appear and defend* at any time within one year thereafter, when they can show any sufficient cause within the discretion of the court rendering such judgment or decree.

Chaney v. Chaney, 56 Wash. 145, 150-51, 105 P. 229 (1909). In other words, the policy behind this statute is “to provide the trial court in such instances with a greater discretion in granting a vacation than in the case of personal service of process.” Trautman, *Vacation and Correction of Judgments in Washington*, 35 Wash. L. Rev. 505, 527 (1960).

Here, the trial court originally ruled correctly when it concluded that Mrs. Louie timely challenged the Order of Default and Default Judgment and that the Order and Judgment were obtained based on Owl Transfer Building’s insufficient service of process on the Defendants. The court was correct because (1) Defendant Wah Louie challenged the judgment by filing a Motion to Vacate Default Judgment and Quash Writ of Garnishment on November 1, 2012, less than one year after the Amended Judgment was entered on October

19, 2012, and (2) other grounds exist for vacating the default judgment and quashing the writ of garnishment.

6.3. In the alternative, RCW 4.28.200 does not apply because Owl Transfer Building failed to serve Hua Yuen Group constructively.

In the alternative, RCW 4.28.200 does not apply because Owl Transfer Building entirely failed to serve Mrs. Louie constructively. Specifically, according to the trial court's findings in its Order to Vacate Default Judgment and Quash Writ of Garnishment on November 14, 2012, Owl Transfer Building's service of process was insufficient. But RCW 4.28.200 only applies when Plaintiff's constructive service is sufficient. Here, due to Owl Transfer Building's failure to conduct a reasonable search for Mrs. Louie prior to moving for an Order Allowing Service by Publication, the trial court had originally determined that its attempt to serve Mrs. Louie by publication was ineffective. Additionally, Owl Transfer Building never even attempted to serve Hua Yuen Group properly because it tried to serve this corporate defendant "care of Wah Louie," a person who was not authorized to accept service on behalf of the corporation. *See* RCW 4.28.080(9) (only a registered agent or specified officer of the corporation may accept service on behalf of the corporation). As a result, the trial court, in a prior ruling, had vacated the Default

Judgment due to Owl Transfer Building's insufficient service upon both Defendants.

6.4. Owl Transfer Building failed to attempt personal service diligently before moving for an order of service by publication.

"Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void." *In re Marriage of Markowski*, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988); *see also Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wn. App. 480, 486, 674 P.2d 1271 (1984). A party may move to vacate a void judgment *at any time*. *In re Marriage of Leslie*, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989) (emphasis added). Because a vacated judgment has no effect, the parties' rights are left as though the judgment had never been entered. *Id.* at 618.

The Default Judgment obtained against Mrs. Louie was invalid because Owl Transfer Building failed to perform a diligent search for Mrs. Louie prior to moving for an order to allow service by publication. Defendant Wah Louie's address, current at the time of Owl Transfer Building's attempted service in June 2007, was in the public record. Had Owl Transfer Building performed a diligent search, it would have found that Mrs. Louie, married to Mr. Kwong Louie, sold their home at 8501 39th Avenue South, Seattle ("the 39th Avenue property"), in

2003. In fact, the Louies had moved out of this home even before Hua Yuen Group entered into the commercial lease, at issue in the underlying action, with Owl Transfer Building in 2004. Had it performed a diligent search, Owl Transfer Building also would have discovered that Mr. Kwong Louie, the President and Chairman of Hua Yuen Group, which is the other named defendant in the underlying action, was Defendant Wah Louie's husband and that his address and that of the company's registered agent, Attorney Rodney Wong, were listed in the Secretary of State's records.

Instead of accessing the publicly available records from the Secretary of State, Owl Transfer attempted to serve Mrs. Louie at the outdated address of the 39th Avenue property, a residence that she had sold even before Hua Yuen Group and Owl Transfer Building entered into their commercial lease in 2004. When Owl Transfer Building failed to locate Mrs. Louie there, it then attempted service at 5235 Columbia Drive South, Seattle ("the Columbia Drive property"), at which the Louies had never resided and to which they had no connection whatsoever. According to Owl Transfer Building, this property belonged to a "Mr. Wah Shuck Louie," a person to whom Mrs. Wah Louie and Mr. Kwong Louie had no relation whatsoever. Additionally, contrary to Owl Transfer Building's contentions, the Louies never owned a Honda Accord that they registered at that

address. Ultimately, because Owl Transfer Building failed to attempt service at the most obvious address for the Louies—that which was registered with the Secretary of State due to Mr. Louie’s relationship with co-defendant Hua Yuen Group—its attempted service was insufficient.

Moreover, it is unclear to whom Owl Transfer Building attempted service—Mr. Louie or Mrs. Louie—because its Motion to Authorize Service by Publication conflated and confused the two persons: it named “Wah Louie and *his* marital community” (emphasis added) in the case caption and referred to attempted service on “Mr. Louie” throughout its pleadings. This confusion simply reflected the sloppiness of Owl Transfer Building’s approach to serve process on Mrs. Wah Louie.

6.5. The trial court improperly vacated the Order to Vacate Default Judgment because, even if the time period for relief under RCW 4.28.200 expired, Mrs. Louie is still entitled to relief under CR 55 and CR 60.

For the sake of argument, if Mrs. Louie’s Motion for relief under RCW 4.28.200 were not timely, she is still entitled to relief from default judgment under CR 55 and CR 60, which do not have such a time requirement. Under CR 55, a court may set aside a default judgment for good cause shown and upon such terms as the Court deems just. And a motion to vacate may be brought at any time after

entry of judgment where there is a void judgment or any other reason justifying relief from the operation of the judgment; the rule gives no time limit. CR 60(b). See *Lindgren v. Lindgren*, 58 Wn. App. 588, 596, 794 P.2d 526 (1990), review denied, 116 Wn.2d 1009 (1991); see also *Brenner v. Port of Bellingham*, 53 Wn. App. 182, 188, 765 P.2d 1333 (1989) ("motions to vacate under CR 60(b)(5) are not barred by the 'reasonable time' or the 1-year requirement of CR 60(b)" (footnote omitted)). Void judgments may be vacated regardless of the lapse of time. *In re Marriage of Leslie*, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989). Consequently, not even the doctrine of laches bars a party from attacking a void judgment. *Leslie*, 112 Wn.2d at 619-20.

Therefore, even if Mrs. Louie's Motion to Vacate Default Judgment and Quash Writ of Garnishment was not timely for the purposes of relief under RCW 4.28.200, she is still eligible for relief from the Default Judgment under CR 55 and 60(b). Under these rules, in her original Motion to Vacate Default Judgment, CP 116-123, Mrs. Louie raised multiple grounds for vacation: among them, void judgment, due to the improperly obtained Order to Authorize Service by Publication, and "any other reason." Because the trial court failed to consider or even address those grounds, arguments for which were based, in part, on section 6.4, *supra*, and this section, *infra*, its Order on Reconsideration was improper.

Under CR 55(c), the court may set aside a default judgment for good cause shown and upon such terms as the court deems just. Under CR 60(b), where there is surprise or any other reason justifying relief from the operation of the judgment, a court may vacate a default judgment.

Here, Mrs. Louie has shown good cause for setting aside the default judgment because Owl Transfer Building failed to perform a reasonable search for Defendants prior to moving for an Order Allowing Service by Publication. Generally, a plaintiff must serve process upon an in-state defendant by personal service. CR 4(d). Service of summons by publication is not permitted unless a defendant cannot be found within the state. RCW 4.28.100.

Here, Mrs. Louie was certainly taken by surprise and has shown good cause for vacation as she was not aware that she and Hua Yuen Group had been served by publication. As argued in sections 6.3 and 6.4, *supra*, Owl Transfer Building could have easily found Defendants' current addresses in the public record and even in its own company file. By failing to do so, it failed to conduct a diligent search and, thus, failed to attempt personal service diligently before moving to serve by publication.

7. CONCLUSION

The trial court erred in vacating its Order to Vacate Default Judgment.

Under RCW 4.28.200, Mrs. Louie's was timely because she filed her Motion to Vacate Default Judgment less than one year after the court entered the Amended Judgment of October 19, 2012. Additionally, it was Owl Transfer Building's near five-year delay in enforcing the judgment that caused her not to discover and challenge the judgment against her.

Nonetheless, the plain language of RCW 4.28.200 does not provide a time bar to defendants who wish to reopen a case after service by publication.

Alternatively, RCW 4.28.200, does not apply to the issue here. Rather, Owl Transfer Building completely failed to serve the defendants constructively, and because service was never complete, the statute does not apply.

Specifically, Owl Transfer Building's failure to serve the defendants constructively was due to its failure to attempt personal service diligently before moving to serve by publication. Without a diligent attempt at personal service, its motion to serve by publication and the court's related order were improper.

Finally, the trial court failed to address and consider grounds to vacate a default judgment under CR 55 and CR 60. Because Mrs. Louie raised these arguments below, the trial court erred in focusing only on RCW 4.28.200, which constituted merely one ground on which a court may vacate a default judgment.

For the foregoing reasons, Mrs. Wah Louie respectfully requests that the Court of Appeals reverse the trial court's decision.

Respectfully submitted this 23rd day of May, 2013.



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

OWL TRANSFER) BUILDING LIMITED) PARTNERSHIP,)) Respondent,)) v.))	No. 70018-9-I
HUA YUEN) INTERNATIONAL) TRADING GROUP, INC.) AND WAH LOUIE AND) HIS MARITAL) COMMUNITY,) Appellant.))	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, Dennis C. Lam, state, under the penalty of perjury and under the laws of the State of Washington, that on May 23, 2013, I caused the original **APPELLANT'S OPENING BRIEF** to be filed in the **COURT OF APPEALS - DIVISION ONE** and a true and copy of the same to be served on the following parties by depositing said document via messenger.

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DATED this 23rd day of May, 2013.



Dennis C. Lam