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NO. 71340-0-1 COURT OF APPEALS DIVISION ONE OF
STATE OF WASHINGTON

RECEIVED
COURT OF APPEALS
DIVISION ONE
MAY 11 10 42 AM '11

KAY B. KAYONGO, PLAINTIFF/APPELLANT

V

WESTFIELD, LLC, DEFENDANT/RESPONDENT

AMENDED OPENING BRIEF OF PRO SE APPELLANT

KAY B. KAYONGO
PRO SE APPELLANT

12714 Lake City Way NE
Seattle, WA 98 125

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I INTRODUCTION

1. Pro Se appellant/Plaintiff seeks a review of her Complaint for Damages Based on Product Liability with the Court of Appeals for the reversal or modification of trial court's decision filed on November 25, 2013 to which the injury happened on or about June 15, 2010 at Westfield Southcenter Mall or Wea-Southcenter's public restroom by brown towel papers and which also the settlement of it was demanded and served to his Claims Representative NovaPro Risk Solution on 02-09-2013 for over 90 days. On May 29, 2013 the summons 20 days and complaint were delivered to Westfield Southcenter and filed with King County Superior Court on June 28, 2013 after more than 20 days the requirement rule 4 to appear, answer or otherwise defend or demand the plaintiff in writing to file the lawsuit with the court has expired. There is a prima facie. The respondent Westfield was well-served pursuant to RCW 4.28.080(9) under the name of Wea-Southcenter a self-managed and pursuant to RCW 4.28.080 (10) under the name of Westfield, LLC due to respondent's default and fraudulent misrepresentation concealment of material of facts known to them of secretary, appointed agent representative to receive lawsuit document and the proper party Independent

Contractor National Janitorial Service Inc. who purchased and stocked towel papers in restroom by not raised the defense of lack of personal Jurisdiction over defendant timely up on received summons 20 days on May 29, 2013 and the correct address of Westfield, LLC Southcenter's appointed agent in fact to receive summons and complaint CT Corporation System upon requested it by pro se appellant on July 05, 2013, and he disclosed them only after October 21, 2013 to dismiss the claim on summary judgment. The appellant also has requested the right to amend any defense or issues even after the statute of limitation to do so has expired on August 27, 2013.

2. Trial court fraudulent, prejudicially, wrongfully and erred in granting summary judgment to respondent Westfield, LLC when the respondent was in default of failure to comply with summons 20 days rule 4 and Fraudulent Misrepresentation concealed the material of facts known to them based on declaration of Christina Samples, the receptionist; Mr. Andrew Ciarrocchi, the Senior Manager; Mr. Peter E. Sutherland, the respondent attorney, Wea-Southcenter, the self-managed company at the time appellant was injured CP 407-408, and then denied to accept the affidavit of personal service of Wola Okako even though the respondent has

appointed/agent he concealed. The Rest. 2d of Tort Section 550 and 551; Rest. 2nd of Agency Section 265, 266 and 267, Rest. 2nd of Property Section 19.1 and 2, Washington Practice Tort Law and Practice Section 31-18 and Section 31-18.12, Washington Practice Tort Law and Practice Section 19: 7 allow for the liability and the recovery of damages therein.

II ASSIGNMENT OF ERRORS

3. 1. Trial court erred, fraudulent and prejudicially considered declaration of Christina Samples when he endorsed it in the order granting summary judgment in respondent's favor for appellant's Complaint for Damages Based on Product Liability and denied affidavit of personal service of Walo Okako. CP156, 162, 429, 347, 35.

B ISSUES PERTAINING TO ASSIGNMENT ERROR

B. Declaration of Christina Samples...My duties including answering the telephone switches board and receiving office mails. This work required that I screen telephone calls and mails for 11 different office personnel including the office of manager Andrew Ciarrocchi CP 162, 353.

1. Based on Christina Samples job responsibilities, can she receive summons and complaint as an office assistant of the president or other head of the company or corporation pursuant to RCW 4.28.080 (9) for Wea-Southcenter, LLC the former self-managed company in June of 2010 when appellant claimed that she was injured CP 407 for the court's ruling of plaintiff failed to accomplish timely and effective service on defendant and statute of limitation has run CP430? ASSIGNMENT ERROR NO. 1,2,5
2. For the confusion of declaration of Christina Samples denied to a secretary by receptionist and Affidavit of personal service of Walo-Okako she accepted to be a secretary upon asked, and confusion of statutes RCW 4.28.080 (9) and (10) for the word secretary thereof under construction of law, by August 27, 2013 and within 90 days from the date of service on defendant May 29, 2013, appellant raised request to amend on Plaintiff's Reply Answer to Defendant's Response to Plaintiff's Reply Question to Defendant any defense under CR 12 and other issues if any pursuant to CR 15 in case the defendant and court find that default cannot be entered against defendant Westfield event the statute of limitation to amend has elapsed CP 114. Does the trial court abuse its discretion to allow amendment of service process to CT

Corporation System an appointed agent representative in fact to receive lawsuit document on behalf of Westfield, LLC under CR 4 (h) because the respondent was in default of failure to untimely disclose agent in fact above upon timely requested by appellant, disclosure of Christina Samples not to be a secretary thereof under construction of law RCW 4.28.080 (10) even though the respondent has agent representative in fact, and also the disclosure of Westfield, LLC to be a foreign corporation was disclosed only after the time to reserve has expired on Oct. 21, 2013? CP 216, 325, 407. ASSIGNMENT ERROR NO.1, 2, 3, 5

A. ASSIGNMENT ERROR

5 NO. 2. Trial Court Erred in Considering the Declaration of Andrew Ciarrocchi when he endorsed it in granting summary judgment order to defendant Westfield, LLC for appellant's Complaint for Damages Based on Product Liability CP 429

6. B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

a. **Declaration of Andrew Ciarrocchi...**Westfield has an appointed Agent for service of summons and complaint in lawsuits: CT Corporation in Olympia. CP 216, 429. On July 05, 2013, appellant requested the

correct address for Westfield, LLC Southcenter registered under secretary of state from the respondent's attorney Mr. Peter Sutherland CP 235. He restated the same address summons and complaint were delivered of 633 Southcenter, Sea Tac 98188 CP 92, 156, 347.

1. Does the act of disclosure of Westfield's appointed agent for service of summons and complaint and his address in Olympia CP 410-411 constitute an act of default and fraudulent misrepresentation concealment of material of facts known to them when the appellant has already requested within statute of limitation RCW 4.16.170 on July 05, 2013 for the court ruling of plaintiff failed to accomplish timely and effective service on defendant and statute of limitation has run under of Fraudulent Misrepresentation, Concealment of material of facts known to her under Restatement 2nd of Tort section 550 Liability for concealment, section 551 Liability for Non-disclosure; Rest. 2nd of Agency section 265 General Rule, section 266 Physical Harm Caused by Reliance Representation, section 267 Reliance upon Care or skill of Apparent Servant or other agent; Washington Practice Tort Law and Practices Section 31-18 Element of Fraud and Concealment? ASSIGNMENT ERROR NO. 2, 3, 5. Does trial court abuse its discretion of impartial on ruling plaintiff failed to accomplish timely and effective service on

defendant and statute of limitation has rule CP 430 under respondent's default and fraudulent concealed appointed agent representative in fact's address for the confusion of statute RCW 4.28.080 (10) that the secretary thereof can receive summons and complaint under construction of law when Christina has accepted to be secretary to affiant? ASSIGNMENT ERROR NO. 2,3,5.

b. Declaration of Andrew Ciarrocchi...while Westfield, LLC previously has Management Responsibility for the southcenter mall, the Mall was self-managed by WEA-Southcenter, LLC in June of 2010 when Kay B. Kayongo claimed that she was injured CP 216, 407, 429. Can Christina Samples, a receptionist receive summons and complaint pursuant to RCW 4.28.080 (9) under office assistant of the president, or other head of company or corporation, secretary, Cashier? ASSIGNMENT ERROR NO. 2,4,5

c. Declaration of Andrew Ciarrocchi... I have reviewed the initial suit papers left in my management office of Westfield at Southcenter CP 217, 408. Does the act that Mr. Andrew C., the manager of Westfield Southcenter, at the location the injury happened, received and reviewed timely suit papers, saw including damages amount claimed CP1-55, the name of Westfield on letter from Westfield, LLC's Claims Representative

Nova Pro Risk to whom he sent the complaint in 2010 which contained the name of Westfield, LLC and Westfield Southcenter, he remained silence until the time to serve proper defendant Independent Contractor has expired constitute an act of default for failure to raised timely the defense of lack of personal jurisdiction over defendant and an act of fraudulent Concealment of material of fact known to them under Restatement 2nd Torts and Washington Practice Tort Law and Practice above in page # 6 ; Washington Practice Tort Law and Practice Section 31-18.12 Fraud and reliance ; Washington Practice Tort Law and Practice Section 19:7 Silence and Fraudulent and Misrepresentation

ASSIGNMENT ERROR NO. 2, 3

d. Declaration of Mr. Andrew Ciarrocchi...These papers were left with an office receptionist Christina Samples who is not authorized to receive service of process and is not even an employee of Westfield,LLC CP 217,408. Can Christina Samples receive summons and complaint under RCW 4.28.080 (9) in the name of WEA-Southcenter, self-managed company as an office assistant of president or other head of company or corporation based on her duties description CP 162? ASSIGNMENT ERROR NO. 1,2,4,5.

e. Declaration of Andrew Ciarrocchi... first contrary to her allegations Westfield does not manufacture the paper towel; Westfield does not retail the paper towels, or markets them in any way. Westfield does not purchase the paper towels place in restroom at southcenter mall. The manager at the time of the subject did not manufacture, market, retail or supply the paper towels in question. An Independent Contractor Notional Janitorial serve at mall and that company purchase and stocks paper towels at southcenter mall CP 217. Does the act of Westfield disclosed the true defendant Independent Contractor, the purchaser and stocker of towel papers in restroom after the time to serve the party above has been expired and they received summons 20 days rule 4, 3 and 12 within statute of limitation when there is material of fact a prima facie, the injury, diagnosis and treatment, the location to where injury happened at public restroom, the cause of the injury brown towel papers and the laws allowing to file a lawsuit 7.72. RCW, Washington Practice Tort Law and Practice Section 16.4, and Rest. 2nd Tort Section 402A CP 3-20, 328, 347, 356, 373 ASSIGNMENT ERROR 2,5,6. Does the act of default of failure to comply with summons 20 days rule 4,12 constitute an act of Fraudulent Misrepresentation Concealment of Material of Fact Known to Them which prevent appellant to serve proper purchase who knows more about the towel papers above and also to allow Westfield's name be dismissed

from liability, under Restatement 2nd Torts and Washington Practice Tort Law and Practice section 31-18.12 above in page # 6, 8 ? ASSIGNMENT ERROR NO 2, 5, 6,

f. Declaration of Andrew Ciarrocchi.. I have no knowledge that anyone else has complained of injury by using the paper towels in the restroom. I am not aware that the towel papers supplies by NJS are defective in any way CP 217, 408. Does Westfield need to have a knowledge or notice of defective product to be liable under Rest. 2nd of Property Section 19.1 Repair Which Landlord Is Under to His Tenant and Section: 19,2 Maintenance Structure on Properties of Retained Enjoyment of Lease; to be liable under Default for Failure to comply with summons 20 days rules 4, 3,12 and Fraudulent Concealment of Material of Facts Known to Them of true defendant? ASSIGNMENT ERROR NO. 2,4,6

3. ASSIGNMENT OF ERRORS

7. NO. 3. Trial Court erred and fraud in considering declaration of Peter E. Sutherland when he endorsed it in granting summary judgment to defendant Westfield, LLC CP 429-430

B. ISSUES PERTAINING TO ASSIGNMENT ERROR

8. a. Declaration of Peter E. Sutherland...over years I have in fact represented Westfield in other legal action as well...I make this declaration based on my personal knowledge, or upon my review of the file which is kept in ordinary court of legal representation CP 134, 325. Does an attorney who has previously legal representative, received and reviewed timely lawsuit papers, he knew the content of suit , he knew that Westfield, LLC was improper defendant , he knew that the towel paper located in the public restroom caused the injury, knew that the Independent Contractor National Janitorial Service Inc. was in charge of performing mall's restroom task including purchasing and stocking of towel papers in public restroom and he knew that the complaint was addressed to a purchaser and stocker of towel papers in restroom under 7.72 RCW, Rest. 2nd of Tort Section 402A and Washington Practice Tort Law and Practice Section 16.4, he knew the prayer amount and injunction, he knew that respondent Westfield's name was legally given by s Claims Representative Nova Pro Risk Solution CP 384 to whom Westfield sent the complaint on or about June 15, 2010, he knew about statute of limitation end on June 15, 2013 up reviewed and received summons 20 days on May 29, 2013 and he remained silence without raised his defense of lack of jurisdiction over defendant for Independent Contractor National Janitorial Service Inc., the purchaser and stocker of towel papers in the

restroom and raised it after the statute of limitation to serve party has expired CP 1-20 constitute acts of default for failure to comply with rule summons 20 days rule 4, 3, 12 requirement and default under CR 55.

ASSIGNMENT ERROR NO. 2,3,5.

1. Does this acts above constitute act of Fraudulent Misrepresentation Concealment of material of facts known to them which prevented appellant to serve the proper party who purchased and stocked the towel papers knows more about the product for more discovery of element of product liability under 7.72 RCW and to allow his name be dismissed from the action because he was not the purchaser, stocker, manufacture, retailer, or marketer under Restatement 2nd Tort section 550 Liability for concealment, 551 Liability for Non-disclosure; Washington Practice Tort Law and Practice section 31-18, 31-18.12; Rest.2nd Tort Section 265 General Rule, 266 Physical Harm Caused by Reliance Representation, 267 Reliance upon Care or Skill of of Apparent Servant or other agent? ASSIGNMENT ERROR 2,3.
2. Does the acts above violate the Rule of Professional Conduct Sections RPC 8.4 Misconduct; RPC Section 3.4 Fairness to opposing party and counsel; RPC Section 4.1 (b) Failure to

disclose material of fact to third party; RPC Section 4.4 (b)

Respect to right of third party or person? ASSSIGNMENT

ERROR NO. 3

8. b. Declaration of Peter E. Sutherland... Westfield has appointed an agent for service of process of process registered with Washington State Secretary of State CT Corporation System in Olympia CP 134, 219, 325. Appellant Kay B. Kayongo...I am writing to you this letter to request the correct address registered under Secretary of State for defendant Westfield, LLC Southcenter Mall if it is contrary to the one was given by Westfield, Southcenter mall. I enclosed a copy of business card that was given by it employee at the day I went to complaint on June, 2010. You can e-mail the defendant. LLC'S permanent address... I also send a copy of affidavit personal service...CP 156, 235. Does the act that respondent attorney Mr. Peter E. Sutherland concealed the address of Westfield, LLC Southcenter appointed agent in fact to receive summons and complaint 's address registered under Secretary of State up on requested by appellant timely within RCW 4.16.170 on 07-05-2013. He disclosed it only to dismiss the claim to effect service has expired. Christina Samples, the receptionist also fraud accepted to be a secretary thereof to affiant under construction of law RCW 4.28.080 (10) which made the appellant to rely

on not reserve at them same address the summons 20 day and complaint were delivered constitute acts of fraudulent misrepresentation under Restatement 2nd Torts and Washington Practice Tort Law and Practice above in page # 6, 8 and Restatement 2nd of Agencies above in page # 6? ASSIGNMENT ERROR NO.3, 5

A ASSIGNMENT OF ERRORS

9. NO. 4 Trial Court erred in considering and endorsed the WEA-Southcenter, LLC Reply in Support of Summary Judgment to Respondent Westfield CP 429.

B. ISSUES PERTAINING TO ASSIGNMENT ERROR

10 a) Declaration of Wea-Southcenter, LLC...A. Plaintiff did not substantially comply with the applicable statute of service of process RCW 4.28.080(10). Plaintiff's service on a receptionist of office of Wea-Southcenter failed to comply the dictated of RCW 4.28.080 (10) or even substantially comply with requirement of the statute leaving the summons and complaint to receptionist Christina Samples does on equate with manager of foreign corporation or his secretary of CP 239, 412 no merely construction of law CP 318. Can Christina receptionist of Self-managed WEA-Southcenter, LLC at the time plaintiff was injured in 2010 CP 216, 407, receive summons 20 days and complaint under RCW 4.28.080 (9)

based on declaration of Andrew Ciarrocchi and WEA-Southcenter Reply Support and Christina Samples' job description responsibility CP 162-163 and also can the summons 20 days be served to Andrew Ciarrocchi CP 92 under construction of law or in fact representative to CT Corporation System CP 318? ASSIGNMENT ERROR NO.2,4.

1. Does the act that the defendant is raising both service of process under construction of law RCW 4.28.080 (10) and in fact appointed agent registered under secretary of state CT Corporation System constitute an act of fraudulent misrepresentation concealment of material of fact known to them under Restatement 2nd Torts and Washington practice above in page # 6, 8 ?
ASSIGNMENT ERROR NO. 2,3,4

11 b). Declaration of WEA-Southcenter ... B. Plaintiff has not been misled with regard to the party defendant. Plaintiff's argument regarding her failure to name national Janitorial Service Inc. (or the product manufacturer) as a proper defendant is without merit. First, her request for information regarding the proper party defendant did not come until August 8, 2013 after the three years statute of limitation has already run in this case. Recall that plaintiff claimed she was injured by the paper towels in the southcenter mall public restroom on June 15, 2010. Plaintiff then

alleges she served summons and complaint in this matter on May 29, 2013 then filed the summons and complaint on June 28, 2013. The statute ran on June 15, 2013 CP240, 316..

1. Does the act that the defendant received summons 20 days and complaint on May 29, 2013 before June 15, 2013, he failed to timely comply with rule 4 requirement for the disclosure of the true defendant who purchased, stocked and know more about product constitute an act of fraudulent concealment of material of fact known to them under Restatement 2nd of Torts and Washington Practice Tort Law and Practice above in page # 6, 8 and Restatement of Agency above in page # 6, and act of default under CR 55? ASSIGNMENT ERROR NO. 2,3,4
2. Was not appellant misleading on the act above when he remained silence to timely raise his defenses of lack of personal jurisdiction over defendant when he knew that he was not the purchased, stocker, marketer, retailer and manufacturer CP 316?

ASSIGNMENT ERROR 2, 3, 4

12 c) Declaration of WEA-Southcenter, the reason that plaintiff is untimely and misdirected is entirely unrelated to any action by Westfield, LLC CP 240.

1. Does the act that Westfield failed to comply with summons 20 day requirement under rule 3, 4, and 12 upon received it on May 29, 2013 and he knew that he was not a party in the action who purchased and stocked the towel papers in restroom and that his name was given by his employees legally CP 35 and remained silence constitute an act of misleading under Restatement Second of Tort section 550-551 ; Washington Practice Tort Law and Practice section 31-18, 31-18.12 , and section 19:7, and also violate RPC 8.4 and Default under CR 55? ASSIGNMENT ERROR NO. 2,3,4

2. Does the act that appellant requested the correct address of Westfield, LLC Southcenter registered under secretary of state on July 5, 2013 CP 235 and the defendant disclosed it only on or about October 21, 2013 to dismiss the claim for the confusion of declaration of Christina Samples and affidavit of Walo Okako CP 156, 162-163 for the service to secretary under construction of law statute RCW 4.28.080 (10) for foreign corporation and RCW 4.28.080 (9) for domestic corporation or company which is not on statute 4.28 RCW 1 through 8 constitute an act of misleading or misdirected under restatement second of torts above? ASSIGNMENT ERROR NO. 2,3,4

13. Declaration of WEA-Southcenter... Westfield has no notice that paper towels distributed by its Contractors National Janitorial Service Inc. were in way defective plaintiff cannot show the necessary element of premise liability theory under Restatement Tort (second) section 323 CP 241.

1. Can Westfield have a notice of defective product to which Independent Contractor pursuant to Washington Practice Tort Law and Practice section 4.28 definition of Independent Contractor which says __ Independent Contractor is a person who under takes to perform work for another, but who is no subject to that other person's control of, or right to control the manner or means of one who engage an independent contractor is no liable to other for the negligence of the Independent contractor? ASSIGNMENT ERROR NO. 4, 6
2. Can Restatement Second of Tort Section 323 be applicable to Westfield's liability of the negligence of Independent Contractor for the element of premise Liability CP 241, 430 or Restatement of Second of Property Section 19.1 and 19.2 are applicable to Westfield's liability of Negligence of His Independent Contractor for the element of premise liability CP 3-20 for the location

restroom to where the injury happened? ASSIGNMENT ERROR

NO.4, 6

A ASSIGNMENT OF ERRORS

14. NO. 5 Trial Court erred in ruling that plaintiff failed to accomplish timely and effective service to defendant and statute of limitation has run CP 430

B. ISSUES PERTAINING TO ASSIGNMENT ERROR.

15. On May 29, 2013, appellant served Westfield with summons and complaint CP 156, and on the same day affiant Walo Okako asked Christina Samples if she was a secretary and she accepted to be Westfield Southcenter's secretary and she denied it on her declaration CP 162-163, then on June 28, 2013, appellant filed the complaint with King County Superior Court Clerk CP 1, 3. On July 3, 2013, the respondent untimely appeared after more than 20 days CP 56? On July 5, 2013, appellant requested from the respondent attorney Mr. Peter E. Sutherland a correct address of Westfield, LLC Southcenter registered under Secretary of State CP 235, and the respondent attorney responded by restating the same address the summons 20 days and complaint was delivered on May 29, 2013 of 633 Southcenter, Sea-Tac, WA 98188 CP 92. The true that Christina Samples was not assuming a secretary responsibilities of

Westfield Southcenter, Westfield to be a foreign corporation and has an appointed agent in fact registered under Secretary of State with correct address in Olympia to receive lawsuit document on behalf of Westfield, LLC was disclosed only after October 21, 2013 CP 219, 325. The appellant also has requested the court and defendant to amend any defenses or issues even after statute of limitation to do so has expired with tolling RCW 4.16.170 On August 27, 2013 from the date of service to respondent on May 29, 2013 CP 114.

1. Can appellant be in default of failure to accomplish timely and effective service to defendant and statute of limitation has run CP 430 based on the facts presented here in above no.15 under RCW 4.16.170, RCW 4.28.080 (9) and (10)? ASSIGNMENT ERROR 1,2,3,4, 5
2. If the defendant is not in default for service process, can the appellant have right to amend service of process to Westfield's appointed agent in fact CT Corporation System as she has already requested the agent's address since July 5, 2013 CP 235 and Right to amend since August 27, 2013 CP 114? because of the late disclosure of material facts known to them and the request to

ament was done within tolling RCW 4.16.170 ? ASSIGNMENT

ERROR NO. 1,2,3,4,5

3. Does the act of Christina Samples and respondent attorney herein in this brief constitute an act of default and fraudulent misleading, misdirected and misrepresented under restatement second of torts, Washington Practice Tor Law and Patrice and Rule of professional Conduct cited herein? ASSIGNMENT ERROR NO. 1,2,3,4,5

A ASSIGNMENT OF ERRORS

16 NO. 6 Trial Court erred on Ruling on that even if jurisdiction over this defendant was established, no evidence has been presented tending to prove essential element of Product Liability or Premise Liability.

B ISSUES PERTAINING TO ASSIGNMENT ERROR

17.

1. Does the act that Westfield received the summons 20 days and complaint timely, he reviewed it he knew the content of summons 20 day and complaint, he knew that he must appear, answer or otherwise defend or demand plaintiff in writing to file lawsuit with the court, he knew that he was not the purchaser, stocker, retailer nor manufacturer of the towel papers locate at mall's restroom, he knew that his name was given by his employees CP 1-2, 3-20, 35

and he remained silent until time to serve proper respondent who knows about the towel paper has expired constitute liability of Westfield, LLC under Vicarious liability of his negligence, default and/or fraudulent misrepresentation concealment of material facts known to them as evidence tending to prove essential elements of vicarious liability default and fraudulent misrepresentation for complaint for damages based on the product liability because he was not the purchase or stocker of towel papers? ASSIGNMENT ERROR NO. 1,2,3, 4,6

2. Does the act that it is well-stated in complaint for damages based on product liability that the injury happened in mall's restroom, the part of property is in the hands of Westfield's control and to where the towel papers were located constitute the fact evidences tending to prove essential elements for premise liability when the court did not specified legal or fact evidences CP 5,6,8 for the negligence of independent contractor pursuant to Restatement Second of Property Section 19.1 and 19.2? ASSIGNMENT ERROR NO. 4,6.

A. ASSIGNMENT OF ERRORS

18. NO. 7 Trial Court lacked of jurisdiction of its discretionary or abuse its discretion when appellant is pro se unprofessional at laws and rules even if there should be a legal advisor because not all of legal advisors are fluent in application and interpretation of laws and rules. CP 249

B. ISSUES PERTAINING TO ASSIGNMENT ERROR

19. He summons and complaint shall be served by delivered a copy thereof as follows: RCW 4.28.080 (10) if lawsuit against a foreign corporation... to any agent, cashier or secretary thereof. _____ *Crose v. Volkswagenwerk aktiengesellschaft, 88 Wn. 2d 50, 58, 558, p, 2d 764 (1977)* state: service of process on an agent of foreign corporation doing business within the state must be on an agent representing the corporation with respect to such business. It must be made on an authorized agent of the corporation who is truly and thoroughly a representative of it, rather than a mere servant or employee, or person who authority and duties are limited to a particular transaction. The agent must be an agent in fact, no merely by construction of law, and must be one having in fact representative capacity and derivative authority CP 318.

20. Based on what is stated at above stated No. 19 CP 318, 407-408 Can Mr. Andrew Ciarrocchi, Westfield Southcenter's manager receive summons and complaint under construction of law RCW 4.28.080 (10)

when it says that...agent must be an agent in fact, on merely construction of law and must be one having in fact representative capacity and derivative authority CP 92, 235, 318? ASSIGNMENT ERROR 3, 7

21. Is CT Corporation System an agent in fact representative who has capacity and derivative authority, and who is truly and thoroughly a representative to receive summons and complaint on behalf of Westfield, LLC when the respondent attorney concealed the him upon requested by appellant on July 5, 2013 CP 235, 92 for fraudulent Misrepresentation and Plaintiff failed to accomplish timely and effective service to defendant and the statute of limitation has run CP 430? ASSIGNMENT ERROR 5, 7

III STATEMENT OF CASE

22. Pro Se Appellant /Plaintiff Kay B. Kayongo is the injured party and resident of King county at address of 12714 Lake City Way NE, Seattle, WA 98125 CP 2, 3,4, 20.

24. Respondent Westfield, LLC is Mall's foreign Limited Liability Company, a commercial landlord or leaser who is doing business in branch name of Westfield Southcenter Mall at 633 Southcenter # 2800, Tukwila (Seattle), WA 98188 CP 4, 156, 347.

25. WEA-Southcenter, LLC is Mall's Former Self-Managed Limited Liability Company, a commercial landlord or leaser at 633 Southcenter, Tukwila (Seattle), WA 98188 and who was in management of Southcenter Mall at the time the appellant was injured on June of 2010 CP 216, 407-408.

26. On or about June 15, 2013, appellant /plaintiff was injured by the Westfield Southcenter 's towel papers in the public restroom and complained it to Westfield Southcenter Management Office at 633 Southcenter # 2800, Tukwila (Seattle), WA 98188 of Skin Irritation in her face Swelling and itching; nose sneezing, running and bleeding, and presented the towel papers to Westfield receptionist who was at the time she was injured, and she also presented the papers to her to smelled it and she refused to do so. CP 3-20, On or about July 2, 2010 appellant was diagnosed of contact dermatitis and allergic conjunctivitis CP 172, 36, 325.

27. On June 30, 2010, the respondent's Claims Representative NovaPro Risk Solution responded to appellant/plaintiff stated ___ RE: location: Westfield Southcenter...NovaPro Risk Solution is the Claims administrator for Westfield, LLC 's Claims. A report was taken while you were their mall... Westfield wish to advise that Washington has a three years state of

limitation for the date of incident in which MUST either settle, your claim or file a lawsuit... CP 35, 384

28. On February 9, 2013, appellant mailed to respondent administrator a demand settlement letter which lasted more than 90 days to get the answer CP 29, 378-379.

29. On or about May 29, 2013, appellant served Respondent Westfield, LLC Southcenter with Summons 20 days and Complaint for Damages Based on Product Liability at 633 Southcenter, # 2800 Tukwila (Seattle), WA 98188 to secretary s Christina Samples, the receptionist responded to server Walo Okako CP 1-55, 156, 162-163, 165-212, 328-403 ?

30. On or about June 7, 2013, appellant received demand settlement 's answer from respondent Claims Administrator Carl WARREN & Company CP 28

31. On June 10, 2013, Pro Se appellant faxed her reply answer to Car Warren & Company and to Westfield Southcenter restated the request to settle or to bring lawsuit CP 23-27, 157-158, 348, 349

32. On June 28, 2013, Pro Se Appellant/Plaintiff filed the Summons 20 Days and Complaint for Damages Based on Product Liability to where she

stated the date requested the defendant to appear, answer, or otherwise defend or demand the plaintiff in writing to file the lawsuit with the court under rule 4 requirement and the complaint's the cause of injury, the date and location the injury happened, the hospital diagnosis and treatment, money and injunction damages, the defendant's name, the laws allowed to bring lawsuit against the purchased and stocker of the product, the removal of the product from the public use CP 1-2, 3-20, 347.

33. On July 1, 2013, Pro Se Appellant filed with Ex-parte Department a motion for an order of default for default judgment which was denied and the court ordered to resubmit it with notice to defendant which appellant did CP 76.?

34. On July 3, 2013, the respondent Westfield, LLC untimely and formally appeared through the King County Superior Court Clerk by his attorney of record Mr. Peter E. Sutherland with defenses of without objection of service process or Jurisdiction after more than 20 days without getting a notice from appellant CP 56.

35. On July 5, 2013, Pro Se Appellant faced to respondent attorney a letter to request a correct address of Westfield, LLC Southcenter registered under Secretary of State if it is contrary to the address the

summons 20 days and complaint were delivered on May 29, 2013 CP 92,
235

36. On July 8, 2013, respondent answered the appellant through the E-mail with the ambiguous of other issues contrary to appellant's request CP 92.

37. On 07-12-2013, appellant replied to respondent attorney's e-mail to reconfirm the address the server delivered the summons and complaint on May 29, 2013 if it was contrary to what she delivered CP 92, 235

38. On July 12, 2013, respondent replied to appellant's e-mail confirming of 633 Southcenter, Sea Tac, WA 98188, and Mr. Andrew Ciarrocchi to be a senior manager of Westfield Southcenter Mall, the same address summons 20 days and complaint were delivered to Christina Samples who accepted to be a secretary to Server Walo Okako and denied it to her declaration. CP 92, 156, 163.

39 On July 19, 2013, defendant informally answered without received notice from appellant for his failure to complaint with summons 20 days requirement to appear, answer or otherwise defend within 20 days CP 1-2,
78

40. On July 29, 2013, appellant filed a motion for an order of default as ex-parte ordered to do so with notice to defendant and to allow the defendant to file his answer with court clerk CP58-62, 76.

41. On July 30, 2013, respondent answered through the court with affirmative defense of including insufficiency of service process CP 64,- 67 name of WEA-Southcenter CP 66.

42. On August 6, 2013, appellant replied to respondent's answer and to respondent's answer to appellant's motion for order of default, asked some discovery questions to find who was the true defendant in the action CP 87-92-93,100.

43. On August 19, 2013, the respondent filed answered to appellant's reply questions where he disclosed the name of WEA-Southcenter and Independent Contractor Janitorial after more than 20 days CP 106-120.

44. On August 27, 2013, appellant replied to respondent's reply to plaintiff's reply questions to where requested the right to amend any defense or issue even after the statute of limitation has expired CP 110-114.

45. On October 21, 2013, respondent filed a motion for summary judgment requested the court to dismiss the appellant's Complaint for Damages Based on Liability CP123-133, 314, 324

46. On November 12, 2013, appellant filed Plaintiff's Response to Defendant Summary Judgment Motion to grant summary judgment in her favor and denied respondent's motion CP 221-236

47. On November 25, 2013, the court entered an granting order for summary judgment to dismiss the plaintiff's Complaint for Damages Based on Product Liability rules that the appellant failed to accomplish timely and effective service on defendant and the statute of limitation has run, and even if jurisdiction over this defendant was established, no evidence has been presented tending to prove essential element of product liability of premise liability CP429-430.

48. On December 10, 2013 plaintiff filed a motion for reconsideration for vacation for judgment in opposing the court's decision above upon declaration of Christina Samples; Andrew Ciarrocchi; Peter E.Sutherland and Wea-Southcenter for default judgment and ,or Fraudulent Misrepresentation stated that Westfield was properly served with summons 20 days and complaint under RCW 4.28.080 (9) under the name

of Wea-Southcenter, the self-managed company who was in managing mall at the time appellant was injured based on declaration of Mr. Andrew Ciarrocchi CP 243-250,407-408

IV Summary of Argument

Based on the factual and legal evidences presented in the pleadings and in this brief, the respondent Westfield, LLC is liable under:

1. default for failure to comply with summons 20 days rules 4,3, 12 a
2. Fraudulent Misrepresentation concealment of material of facts known to him of Complaint for Damages Based on Product Liability which are undisclosed upon received summons 20 days of Independent Contractor National Janitorial Service Inc. who purchased and stocked towel papers and knows more about the product, undisclosed of Westfield, LLC's appointed representative agent in fact to receive summons and complaint in behalf of him and undisclosed of the true secretary of Westfield Southcenter even though he has a representative agent; and
3. for negligence of his Independent Contractor Nation Janitorial Service Inc. who perform the task in the restroom, the part of property in hand' of owner respondent's control.

The respondent Westfield, LLC was served with the summons 20 days and complaint timely under RCW 4.28.080 (9) to receptionist Christina Samples under the name of self-managed WEA-Southcenter and who was managing of mall at the time the Kay Kayongo claimed was injured, and he also was served under his default and fraudulent Concealed the material of facts known to him of CT Corporation System, the appointed agent in fact to receive legal document in his behalf. He also was well served with the summons 20 days and complaint under RCW4.28.080(10) in the name of Westfield, LLC foreign corporation due to respondent is default and fraudulent conceal the material of fact known to him CT Corporation System , the appointed agent of Westfield, LLC in fact to receive lawsuit document upon timely requested the address by appellant on July 5, 2013, and default and fraud acceptance of receptionist Christina S. to be a secretary thereof by affiant if she were a secretary even though the respondent has agent in fact to receive lawsuit document the respondent hid. The appellate should reverse the trial court decision and enter order under vicarious liability for default, and Fraudulent Misrepresentation for product liability and for negligence of his Independent Contractor National Janitorial Service Inc. for premise liability

V ARGUMENT

This argument is regarding the trial court's ruling decision on granting summary judgment to respondent Westfield, LLC for;

1. Improper of Service of Summons 20 days and Complaint CP 430
2. No evidence was presented to tending to prove essential element of product liability CP 430.
 - a. Default for Failure to comply with summons 20 days
 - b. Fraudulent Misrepresentation

1. Improper of Service of Summons 20 Days and Complaint CP 430

The trial court ruled on plaintiff failed to accomplish timely and effective service on defendant and statute of limitation has run is fraud and prejudice and lacked of jurisdiction of its discretion or abuse its discretion and impartial because the respondent Westfield, LLC

- a. Well-served with the summons 20 days and complaint to receptionist Christina S. under the name of self-managed WEA-Southcenter, LLC CP 216,243-250 pursuant to RCW4.28.080 (9) CP 92-104 which says: if against a Company or Corporation..., to president or other head of the company or corporation, the registered agent, secretary,

cashier or stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

- b. The respondent Westfield was well-served with summons 20 days and complaint in his name under construction of law because the receptionist Christina S.'s default and fraudulent concealed the material of fact known to her when she accepted to be Westfield's secretary when she was not, 156,163,123-133 and he was also well-served because the respondent attorney Peter E.Sutherland default and fraudulent concealed the material of fact known to his CT Corporation System, the appointed agent in fact representative to receive summons and complaint on behalf of Westfield, LLC pursuant RCW 4.28.080 (10) which says: if against a foreign corporation...doing business within this state, to any agent, cashier or secretary thereof

when the appellant has requested timely the correct address of Westfield, LLC Southcenter registered under Secretary of State CP 92, 233, 235 which if it was provided, the appellant should not rely on fraud and acceptance of receptionist to be a secretary there of under construction of

law to affiant when she asked her, and also should not rely on construction of law statute RCW 4.28.080 (9) and (10) if the disclosure of an appointed representative agent in fact would be timely disclosed upon requested of it by appellant on July 5, 2013.

The appellant has requested her right to amend any defense under CR 12 and 15 in case the defendant and court find that the default cannot be entered against respondent Westfield, LLC event the statute of limitation to amend has elapsed because the respondent Westfield untimely failed to disclose the appointed agent in fact representative CT Corporation System which was done within

Tolling RCW 4.16.170 which says ...if the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service.

The complaint was served on May 29, 2013, filed on June 28, 2013, the respondent untimely appeared on July 3, 2013, request of the correct address of Westfield South registered under secretary of state if it was contrary was requested on July 5, 2013, request right to amend was also requested on August 27, 2013, the disclosure of appointed agent in fact

representative was disclosed only after October 21, 2013. CP 1-3, 159, 163, 93-104, 216, 219, 225, 235, 325, 407

CR 4 (h) Amendment of Process: at any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material of prejudice would result to the substantial rights of party against whom the process issued

There was not any material of prejudice if the court allowed amendment of service to CT Corporation System due defendant's default and fraudulent concealed appointed agent upon requested it timely by appellant.

2. No Evidence Has Been Presented Tending to Prove Essential

Element of Product Liability CP 430

a. Default for Failure to Comply with Summons 20 Days

Rule 4, 3 and 12

The respondent Westfield, LLC is liable of Complaint for Damages Based on Product Liability under default for failure to comply with the requirement of summons 20 days rule 4 as well as rule 3 and 12 which say:

1. CR 3 (a) Methods..., a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint within 14 days after service of the demand
2. CR 12 (a) When Presented. A defendant shall serve his answer within the following periods (1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint

upon him pursuant and (b) (2) lack of jurisdiction over the person, insufficiency of process (5) insufficiency of service of process, 3. to rule 4 No written demand was provided from the respondent to the plaintiff to file lawsuit nor answered to raise his defenses to appellant within 20 days since May 29, 2013 until July 3, 2013. CP 56, 156, 163.

4. **CR 4 a) Summons--Issuance.**

(1) The summons must be signed and dated by the plaintiff or his attorney, and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons ; 2) Form. CP 1-2

5. **CR 55 Default and Judgment**

(a) Entry of Default. (1) Motion. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made. 4) Venue. A motion for default shall include a statement of the basis for venue in the action (b) Entry of Default Judgment. As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4): (1) When Amount Certain. When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if he is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this subsection even though reasonable attorney fees are requested and allowed

b. Fraudulent Misrepresentation

Fraudulent Misrepresentation Concealment of Material of Fact Known to Him of Complaint for Damages based on Product Liability to which was filed in his name Westfield, LLC due to his name was given by his employees CP 35, and he failed also to timely raised the defense of lack of

personal jurisdiction over defendant to timely disclose the proper party who knows more about the product towel papers and who purchased and stocked them in restroom upon received, reviewed the lawsuit document; he failed to disclose Westfield, LLC's appointed agent in fact representative to receive summons and complaint the appellant requested it on July 5, 2013 and he also failed to disclose the true secretary of Westfield Southcenter when the server of summons and complaint asked on May 29, 2013 even though he has an appointed agent in fact to whom he concealed upon requested of him CP 58- 62, 110-122, 156, 163, 235, 243-250, 407-408

Washington Practice Tort Law and Practice

1. **Element of Fraud and Concealment Section 31-18**
 - a. the defendant concealed a material of fact;
 - b. The defendant was under duty to disclose the fact to the plaintiff
 - c. The defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff
 - d. The plaintiff was unaware of the fact and could not have acted as she did if she had known of the concealed;
 - e. and, finally, the concealment or suppression of the fact caused the plaintiff to sustain damages CP 224-226,156, 163, 216, 217,219, 235,325,429.

These are fore untimely disclosure Westfield, LLC to be a foreign corporation; Christina not to be a secretary thereof; CT Corporation System to be Westfield has an appointed agent registered in fact

representative beside of construction of law which made the appellant to rely upon secretary thereof can receive lawsuit document to not reserve after received the same address from defendant attorney Mr. Peter J. Sutherland; Independent Contractor National Janitorial Service Inc. to be the purchaser, stocker of towel papers in Mall's restroom but not Westfield Southcenter. These also constitute a confession of fact known to him because the appellant has already requested them on July 5, 2013 CP 235 timely after his untimely appearance on July 3, 2013 and he intentional concealed them.

b. Fraud and Reliance Section 31-18.12

To establish fraud by false representation, the plaintiff must establish reliance upon representation that is the representation must have caused the plaintiff's conduct in entering into the transaction without this representation plaintiff would not have entered into the transaction CP 226.

The plaintiff relied on construction of law statute RCW 4.28.080 (9) and (10) that the secretary thereof, cashier, or Office Assistance of president or head of company can receive summons and complaint when the receptionist Christina accepted to be a secretary to affiant Walo Okako; Westfield, LLC knew, not to be the purchaser and stocker of towel papers in restroom when she received the his name from Claims representative NavoPro Risk Solution CP 35 and on reconfirmation of the address

summons and complaint were delivered under construction of law by defendant attorney Peter E. Sutherland CP 92, 235 and the remained silence of respondent after received summons 20 days and complaint on May 29, 2013.

1. **Restatement Second of Tort CP 226**

- a. **Restatement Second of Tort Section 550: Liability for Concealment:** One party to transaction who by concealment or other action intentionally prevent the other from acquiring material information is subject to the same liability to the other for pecuniary loss.

Westfield Southcenter's receptionist concealed not to be a secretary thereof, and his representative attorney intentionally concealed the correct address of appointed agent in fact to receive lawsuit document CP 92, 122-133, 162-163, Westfield, LLC not to be the purchaser and stocker of towel papers in restroom. From his business Car and Letter from his claims administrator Navo Pro Risk Solution CP35, 384

- b. **Restatement Second of Tort Section 551: Liability for Non-disclosure:** (2) One party to a business transaction is under duty to exercise reasonable care to disclose to the other before the transaction is consummated; (b) matter known to him that he knows to be necessary to prevent his partial or ambiguous statement misleading.

The respondent attorney had affidavit of personal service of affiant stated that the secretary received the summons and complaint CP 156,

347 at the same address, he should not concealed the appointed agent in fact representative upon received a faxed request correct address if it was contrary to what summons and complaint were delivered. CP 92, 134, 219, 235 for the clarification of declaration of Christina and affidavit of Walo-Okako under construction of law RCW 4.28.080 (9) and (10) and agent in fact representative. **Illustration** A, a stock breeder, tell B, A prospective buyer, that thorough breed mare is fact to well-known stallion. The mare's miscarriage, A is subject to liability to B for the loss that he suffers because the mare is not in foal as originally Misrepresented. *General Acquisition Inc. V. GenCorp, Inc. 766F. supp 1477-481 (S.D. OHIO 1990)* the court denied the defendant's motion, holding that under Ohio law, action for nondisclosure by one having or fraud or negligence and that plaintiff has sufficient alleged the material of Nondisclosure, as well as the element of causation and reliance CP 226-227 The respondent failed to disclose the true secretary thereof under construction of law when the affiant asked receptionist if she was a secretary; failed to disclose the appointed agent in fact to receive lawsuit document on behalf of Westfield, LLC registered under secretary of state upon time requested by appellant and also made the appellant to rely on not reserve the summons and complaint at the same address; failed to disclose the true defendant in the action who purchased and stocked the towel papers in

restroom and who know more about the product upon received, reviewed the complaint which led the appellant to file this complaint against Westfield, LLC which makes his to liable under default and Fraudulent Misrepresentaion.

- c. **Restatement Second of Agency Section 265: General Rule** A master or other principal is subject liability which result reliance upon or belief in statement or other conduct within an agent apparent authority.

Appellant relied and believed on acceptance of Westfield southcenter's receptionist to be a Secretary thereof and the restatement of the same address the summons and complaint were delivered on May 29, 2013 from respondent's attorney CP 92,156, 347 to be the correct address

- d. **Restatement Second of Agency Section 266: Physical Harm Caused by Reliance upon Representation:** purported master or other principal is subject to liability for physical harm caused to other in their belongings by tortious representation of apparent authority or apparent scope of employment

The concealment of the material of facts known to them of proper defendant who purchased and stocked the towel papers and who more about the product; Christina S. accepted to be a secretary to affiant and denies it on her declaration; concealment of appointed agent CT Corporation System appointed agent in fact representative's address reserve summons and complaint; concealment of Independent Contractor

National Janitorial Service Inc. up on timely received and reviewed the summons and complaint CP 156, 162-163, 216, 407-408.

e. **Restatement Second of Agency Section 267: Reliance upon Care on Skill Apparent Servant or Other**

Agent: One who present that another is his servant or other agent and there by cause a third person for harm caused by lack of care or skill of the one apparent to be a servant or one apparent a servant or other agent if they were such

Appellant relied on the respondent's receptionist to be a secretary thereof for Westfield Southcenter her answer to affiant up on delivered summons 20 days and complaint; relied on the respondent attorney's restatement of the same address lawsuit document were delivered under construction of law to secretary Christina S. when he concealed the material of fact known to him as stated on CP 123-133, 318 that:

The summons and complaint shall be served by delivered a copy thereof as follows: RCW 4.28.080 (10) if lawsuit against a foreign corporation... to any agent, cashier or secretary thereof. _____ *Crose v. Volkswagenwerk aktiengesellschaft*, 88 Wn. 2d 50, 58,558,p,2d 764 (1977) state: service of process on an agent of foreign corporation doing business within the state must be on an agent representing the corporation with respect to such

business (which is CT Corporation System but not agent Mr. Andrew under construction of law CP 92, 235,). It must be made on an authorized agent of the corporation who is truly and thoroughly a representative of it, rather than a mere servant or employee, or person who authority and duties are limited to a particular transaction. The agent must be an agent in fact, no merely by construction of law (Mr. Andrew is excluded in receiving summons and complaint under construction of law when the appellant requested address under Secretary of State CP 235), and must be one having in fact representative capacity and derivative authority (CT Corporation System) CP 318. The respondent attorney knew that CT Corporation was an appropriate agent in fact representing the corporation with respect to such business and the one having in fact representative capacity and derivative authority to receive lawsuit document on behalf of respondent Westfield, LLC, but not merely by construction of law (Mr. Andrew Ciarrocchi and secretary was under construction of law) and he fraudulent concealed the material of fact known to him of CT Corporation System up on timely requested by appellant the correct address of Westfield, LLC Southcenter registered under secretary of state which made the appellant to not reserve the lawsuit document at the same address and within statute RCW 4.16.170 CP 134, 216, 219, 235, 325, 318

These are essential elements tending to prove default for failure to comply with summons 20 days rules 4 after he received the summons and complaint and remained silence and Fraudulent Misrepresentation Concealment of material of facts known to him for the disclosure of the purchaser and stocker of towel papers Independent Contractor National Janitorial Service Inc. and for disclosure of CT Corporation System, appointed agent in fact representative to receive summons 20 days and Complaint for Damages Based on Product Liability which was addressed in the name of respondent Westfield, LLC because his name was given by his employees CP35, 384.

2. b. No Evidence Has Been Presented to Tending to Prove Essential Element for Premise Liability.

There are evidence presented to tending to prove essential elements in fact for Premise Liability on the appellant's Complaint which is the location to where the injury happened at Westfield Southcenter Mall's Restroom and where the towel papers were also stocked which makes respondent Westfield, LLC to be liable under premise liability of the negligence of his Independent Contractor National Janitorial Service Inc. CP 3-20 because this part of property is the hands of owner respondent Westfield Southcenter's Control

VI CONCLUSITON

Based on the factual and legal evidences presented in this brief:

1. The appellate court should reverse the trial court decision to which he granted the summary judgment in defendant's favor prejudicially, erred, fraudulent and to grant it to appellant Kay Benice Kayongo's favor because the respondent Westfield, LLC was well-served pursuant to RCW 4.28.080 (9) in the name of self-managed Wea-Southcenter who was in mall managing at the time appellant was injured and well-served under RCW 4.28.080 (10) to Westfield, LLC due respondent's default and fraudulent concealed the material of fact known to him of CT Corporation System, the appointed agent in fact representative to receive lawsuit document on the behalf of Westfield, LLC CP 123-133, 318, 325, 407-408, the acceptance of Christina Samples, the Westfield Southcenter's receptionist to be a secretary to affiant Walo-Okako even though the respondent has appointed agent in fact representative CT Corporation System to whom was concealed by defendant attorney when appellant requested it.

2. The appellate Court should reverse the trial court's decision and grants an order of default to appellant due to respondent failed to comply with summons 20 days rule 4 when he was timely served with summons and

complaint, there are prima facies, legal RCW 7.72.010 (5), Rest. 2nd Tort section 402A(2)(b) and Washington Practice Tort Law and Practice 16.4, and fact there are injury, hospital diagnosis and treatment the removal immediate of the towel paper from the public use after the appellant being injured, the location the injury was happened in public restroom, the summons and complaint were serve to place the injury happened, the letter that was given by his employee with his name and there is nothing prevented the respondent to timely comply with summons 20 days to raise his defenses after received, reviewed and the content of summons and complaint that he was not purchaser and stocker, marketer, retailer or manufacturer of towel papers to be dismissed for the action CP 1-55, 221-229, 325, 328-345, 347, 349, 356-373, 384-387, 407-408

3. The appellate court should reverse the trial court's decision and grants summary judgment to appellant for respondent's fraudulent misrepresentation concealment material of fact known to him of Complaint for Damages Based on Product Liability and concealment of CT Corporation System, the appointed agent in fact representative to receive lawsuit document When the appellant requested it CP 235, 410-411

4. The appellate Court should reverse the trial court's decision and grant summary judgment to appellant because the respondent's is liable of negligence of his independent contractor National Janitorial Service Inc. who is performing task in the part of property in the hands of owner respondent Westfield's control CP 302-305, 408 The appellate court should reverse the trial court decision and grants to appellant the right to amend service of process of summons 20 days and complaint to CT Corporation System, the appointed agent in fact representative was disclosed only after the time to serve under RCW 4.16.170 has expired due to the respondent's concealment of the address and right to amend any defense was raised and requested within tolling above on August 27, 2013 CP 114, 228, 325, 407.

5. The appellate court should reverse the trial court decision if the matter was not the question of law and grant the appellant the right to trial CP 250

6. The appellate court should review these two proposed orders were presented to trial court and respondent to maintain one of them for the granting summary judgment in favor of pro se appellant, the copy of proposed orders are attached to this briefing

7. The appellate court should grant appellant's order for refund of review expenses if the decision is being reversed a copy of expenses is attached to this briefing in amount of \$ five hundreds twelve.77 cents (\$ 512.77).

8. The appellate court should accept any new issue in fact or law or rule which is raised in this briefing and was not raised at trial court due to trial court lacked jurisdiction its discretionary or abuse its discretion and impartial, the respondent's bad faith to accept liability for default and fraudulent misrepresentation concealment of material of facts known to him, for the merit of review and reverse of trial court decision and appellant is unprofessional at law, rule and unfamiliar with the use of them for the first time to proceed means never be at law school.

9. The trial court abused its discretion and the appellate court should reverse his decision to pro se appellant's favor means the appellate court should grant summary judgment or order of default or default judgment in appellant's favor in amount requested in Twenty million dollars (\$ 20,000,000.00) or injunction of to put back the brown towel papers in public use controlled by appellant/plaintiff Kay B. Kayongo, her family, her hers, and relatives to whom will be authorized for 100 years no change for any other towel papers or placement of any machine or staying or trial proceeding on the case schedule.

10. Appellant tried so hard to find matching case law for this claim review, and she could not find as many.

11. This brief was prepared by pro se appellant unprofessional at laws, rules, and writing of legal papers for ambiguous interpretation of laws, rules, and writing of legal or not mistakes CP 55, 345.

Date: November 14, 2014

Respectfully Submitted

Benice Kayongo

Signature of pro se appellant

Kay Benice Kayongo

VII APPENDIX:

PAGES

I Introduction

1. I-1 Pro Se Appellant requested reversal or modification of trial court's decision and grants it to her favor.....1-2
2. I-2 Trial court fraudulent, prejudicially wrongfully erred in granting summary judgment to respondent Westfield's favor of complaint for damages based on product liability.....2-3

II Assignment of Errors

1. II-1 Trial court erred in considering the declaration of Christina Samples and denied affidavit of service of Walo Okako when he endorsed it in the order granting summary judgment in respondent Westfield's favor3-5

- 4 **A. Declaration of Christina Samples:** ...I make this declaration based up on my personal knowledge at the request of the attorney for my employer Westfield, LLC... My employer I Westfield Properties

Management, LLC which is not Westfield, LLC, the named defendant in this case... On May 29, 2013, while seated at my desk at the Westfield, Southcenter, I was approached by a woman who asked if I was the receptionist then I said "yes" she laid papers down on my desk and then left without further explanation. CP 162-163, 353. Affidavit of personal service of Walo-Okako, on May 29, 2013, I served a true copy of summons and complaint to defendant's secretary at 633 Southcenter # 2800, Tukwila, WA 98188 CP 156, 347.

Does the at that Christina Samples on her declaration first accepted Westfield, LLC is her employer, then second, she stated that Westfield Properties Management, LLC is her employer not Westfield, LLC..., and she first accepted to be Westfield's secretary to affiant Walo-Okako when affiant asked her if she was Westfield's secretary, then she denied it on her declaration by accepting to be a receptionist constitute an act of Fraudulent Misrepresentation, Concealment of material of facts known to her under Rest. 2nd Tort Section 550 Liabilities for Concealment; Rest 2nd Tort Section 551 Liability for Non-disclosure; Rest 2nd of Agency Section 265 General Rule; Rest. 2nd of Agency Section 266 Physical Harm Caused by Reliance Representation; Rest. 2nd of Tort Section 267 Reliance upon Care or Skill of Apparent Servant or other agent;

Washington Practice Tort Law and Practice Section 31-18 Element of
Fraud and Concealment? ASSIGNMENT ERROR NO. 1

Does the act the trial court accepted the declaration of Christina Samples
and denied the affidavit of personal of Walo-Okako constitute an act of
fraudulent and prejudice, discrimination for race, national origin and equal
treatment for the re-service of summons and complaint RCW 4.28.080 (9)
and (10) for plaintiff failed to accomplish timely and effective service on
the defendant and the statute of limitation has run under construction of
law? ASSIGNMENT ERROR NO. 1, 5.....3-5

2. II-2 Trial Court Erred in Considering the Declaration of
Andrew Ciarrocchi when he endorsed it in order
granting summar judgment order to defendant Westfield, LLC for
appellant's Complaint for Damages Based on Product Liability
CP429.....5-10
3. II-3 Trial Court erred in considering declaration of Peter E.
Sutherland when he endorsed it in the order granting summary
judgment to defendant Westfield.....10-14
4. II-4 Trial Court erred in considering and endorsing the Wea-
Southcenter 's reply in support of summary judgment to
Westfield:

- a. Does the act that the respondent's raising two name of respondents Westfield, LLC or Wea-Southcenter, LLC constitute the service of process can be done to either party under RCW 4.28.080 (9) to Wes-Southcenter, LLC and RCW 4.28.080 (10). ASSIGNMENT ERROR 1,2,414-19
- 5. II-5 Trial Court erred in ruling that plaintiff failed to accomplish timely and effective service to defendant and statute of limitation has run.....19-21
- 6. II-6 Trial Court erred in ruling that even if jurisdiction over this defendant was established, no evidence has been presented tending to prove essential element of product liability or premises liability.....21-22
- 7. II-7 Referred to assignment errors and issues pertaining to assignment error number 1 through 18 and any new legal authorities cited herein. Does trial court lacked of jurisdiction of its discretion and impartial or abused its discretion and impartial under civil rule procedure book CR 7 section 1 Introduction Commentary, last paragraph which says that No requirement under CR 7 that a motion be supported by legal authorities or legal brief. However, it helpful and customary to provide the court with

citation supporting if possible when pro se appellant is unprofessional at law and rule and she could not find as many matching case laws to cited ? ASSIGNMENT ERROR NO. 1 through 623-24

III Statement of Case.....24-31

1. On February 28, 2014, appellant filed a motion for an order show cause of vacation of judgment. Ex-parte Department entered the order CP 267-269
2. On January 30, 2014 , appellant filed a motion for vacation of judgment, and the trial court did not heard the matter for the reason of review proceeding CP 274-281
3. On February 5, 2014, appellant filed a request notice of stipulation of parties for vacation for judgment and no action was done for it CP 282-284.
4. On April 28, 2014, appellant filed a Reply to Respondent's Opposition to motion for extending time review and payment review expenses to where she added some legal authorities for the merit of review proceeding to which was not raised on hearing at trial court to prove the merit of review proceeding CP 309-313.....24-31

IV Summary of Judgment

IV-1 Summary of Judgment..... 31-32

V Argument

V-1 Improper of service of summons 20 days and
complaint.....32-36

V-2 No evidence has been tending to prove essential element
of product liability or premise liability.....36-45

VI Conclusion

VI-1 relief sought from appellate
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