

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

NO. 48191-0-II

FILED
COURT OF APPEALS
DIVISION II
2016 MAR 21 PM 1:11
STATE OF WASHINGTON
BY AR
DEPUTY

JOHN CHOQUER, a married man, as his sole and separate
property,

Appellant,

vs.

GUY WAY AND ZENAIDA WAY, husband and wife,

Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON IN AND FOR THE COUNTY OF CLARK

APPELLANT CHOQUER'S OPENING BRIEF

JOHN CHOQUER, Plaintiff Pro se
9213 NE Mason Creek Rd.
Battle Ground, WA 98604
(503) 819-5115

P/M: 3/16/16

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TABLE OF AUTHORITIES

STATE STATUTES

RCW CHAPTER 59.12

(1)	59.12.032	6
(2)	59.12.040	1, 6, 7, 8

RCW CHAPTER 61.24

(1)	61.24.060	3, 4, 6
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I ASSIGNMENT OF ERROR

1. The trial court erred by granting Defendants' Motion for Writ of Restitution even though Plaintiffs-Respondents failed to give the notice required by RCW 59.12.040 to Defendant-Appellant Marian Choquer.

A. Issue Pertaining to Assignment of Error.

1. May an unlawful detainer action proceed to summary trial if the unlawful detainer plaintiff fails to provide statutory notice to a necessary party?

II STATEMENT OF THE CASE

On or about August 4, 2015 Plaintiff-Respondent commenced an unlawful detainer action by having registered process server Brian S. Davis post a 20-DAY NOTICE TO END TENANCY on Defendants-Appellants' property located at 9213 NE Mason Creek Road Battle Ground, WA 98604 ("Property"). CP, at 6-8. The notice was addressed to John Choquer and "all persons occupying 9213 NE Mason Creek Rd., Battle Ground, WA 98604." CP, at 6. Even though Marian Choquer, Defendant-Appellant John Choquer's ("D-A 1's") wife, prior to the trustee's sale, had always been a co-owner of the Property, the notice did not name her. *Id.* Defendant-Appellant Marian Choquer ("D-A 2") did not receive notice of the unlawful detainer action.

On August 4, 2015, D-A 2 did not reside on the Property (D-A 2 and D-A 1 were separated), but D-A 2 was a co-purchaser of the Property and remained a co-owner of the Property, uninterrupted, until the day the

Property was sold at public auction. CP, at 33 and 44. D-A 2's name appears on the note (as a co-borrower) and deeds of trust 1 and 2 (as co-grantor of each) (*Id.*). Additionally, D-A 2 is listed as the co-grantor of the deed of trust in the Trustee's Deed Defendants-Respondents presented as evidence of ownership of the Property during the unlawful detainer trial. CP 44. Plaintiffs-Respondents were aware or should have been aware that D-A 2 was a party entitled to notice of the initiation of the unlawful detainer action.

The unlawful detainer action came on for summary trial on September 25, 2015. *VRP*, at 1. D-A 1 requested the court dismiss the action because D-A 2 had not received notice of the proceeding:

JC: So I want to thank the court for allowing us the time on Tuesday to meet with the – Mr. Peter – Peter Jackson.

In that time Mr. Jackson found substantial problems with this case in that the Notice was never given to my wife, Marion Choquer. She and I were together and signed this loan – both the first and the second loan in 2004. And she is a named party – in fact even named in the – in the documents that Mr. Posner has supplied.

So – you know – I'm clearly not an attorney. I am – I am a bit nervous here today but I would like to submit that the response that we've supplied here today be – be read by the court and I'm willing to stand on that evidence that her – her rights to be served have not been – not been properly done.

In fact they made no attempt to recognize her even though she is clearly in the original documentation of these loans. And so to allow for expediency of the court today would ask that you would possibly take the time – it's a five and a half page response – and I'm willing to stand on that defense today your Honor. Thank you.

VRP, at 2: 22 through 3: 15.

Plaintiffs-Respondents rebutted this defense by asserting that the omnibus clause “and all other persons occupying 9213 NE Mason Creek Road, Battle Ground, WA, 98604” in the caption of the Complaint was broad enough to include D-A 2:

I’d also like – that the – the – it was addressed to John Choquer and all other occupants as is the Complaint here. And so was 59.12. This is a married couple in the State of Washington Your Honor. This is how the notice³ is – as the court is aware – this is how the Notices are served.

You list – he’s not a tenant – there’s no reason why that was – was served. It was just to maybe take care of any of tho – those sorts of arguments.

So dealing with the – the Twenty- Day Notice to Terminate Tenancy it falls 59.12 – that was properly served as to argue that and – and any other occupants.

But like I said even if he’s correct and you throw that Notice out, we still have the RCW 61.24.060 Notice that states you’ve got twenty days until you’ve got to be out. That was received by him on August 4th and gave him until August 31st in which to vacate the premises.

Quite simply Your Honor the statute has been complied with by my client and my client would like to take possession of his – of his property.

Id., at 12: 16 through 13: 10.

Prior to deciding the unlawful detainer action, Judge Vanderwood decided this key notice issue *in favor of Plaintiffs-Respondents*:

What has been disputed by Mr. Choquer is the issue of whether or not Notice was defective because Notice did not include by name his wife. I’ll note that both of the Twenty-day Notices do identify Mr. Choquer by name and identify then all other occupants, where the one Notice identifies and all persons occupying the particular address.

As to those two Notices I don't find that the facts that apparently she wasn't identified by name – that is Mr. Choquer's wife – as causing those notice to be defective. They did include

That provided both actual Notice to Mr. Choquer and to any other occupants that were involved as well. The fact that she was not identified in those Notices I don't believe makes them defective on their face. There was a proper Notice that was provided at the time.

The issue with the Summons and Complaint that was also then filed in this court under 59.12, I find to be appropriate again based on the provisions of RCW 61.24.060. There is an issue as far as service of the lawsuit would need to be established. That was not objected to by Mr. Choquer.

I'll note that there is a Certificate of Service that has been filed identifying service was completed and that – that service was completed on September 3rd with ;personal service on Mr. Choquer as well of that. Again I'll note that for the lawsuit purposes all – any – excuse me – all other persons occupying are also identified as a named Defendant.

So with those findings I'm going to find in favor of the Plaintiffs. I believe there is an adequate basis to grant that relief requested as far as the Writ or [sic] Restitution is concerned and will so order at this time.

Id., 15: 21 through 16: 25.

Thereafter, the Court listened to the examination of the parties and witnesses present. After considering all of the evidence and evaluating the parties' stated positions, the court made several findings of fact: (1) Plaintiffs rented the property located at 9213 NE Mason Creek Rd., Battle Ground, WA 98604 ("Property") to Defendants; (2) Defendants remain in possession of the Property; (3) on July 27, 2015, Plaintiffs' served Defendants, *including all other occupants*, with notice to vacate the

premises, and Defendant failed to vacate; (4) on August 4, 2015 Plaintiffs served Defendants with a second notice to vacate, and Defendants failed to vacate; (5) the Eviction Summons and Complaint was served on Defendants on September 3, 2015; (6) Plaintiff is the owner or authorized manager of the Property; and (7) the judgment entered in this case is a final judgment. VRP, at 14: 8 through 17: 2; DP, 48-50.

D-A 1 objected to the court's ruling that Plaintiffs had properly served D-A 2, thereby preserving this appeal. VRP, at 22: 6-9. The court found that the phrase "all other occupants" contained in the title to the Eviction Summons and Complaint was sufficiently expansive to include D-A 2 and that it was not necessary to specifically name D-A 2. VRP, at 15: 21 through 16: 10.

The court then held Defendants-Appellants had unlawfully detained the Property, and granted a Judgment and Order for Writ of Restitution. VRP, at 16: 22-25; DP, at 51-52.

On the early morning of Tuesday, September 29, 2015, Defendants-Appellants filed a Notice of Appeal. A copy of the Notice of Appeal is included in the Appendix at A-1. That same day, shortly after 12 pm, a Clark County Sheriff's Office deputy served a copy of the writ of restitution on D-A 1 at the Property. Appendix A-2. D-A 2 was not served with a copy of the writ of restitution.

On or about October 1, 2015, Defendants-Appellants moved Judge Vanderwood to stay enforcement of the Judgment and Order for Writ of

Restitution. A true and correct copy of Defendants-Appellants' motion is included in the Appendix at A-3 through A-9. After considering the parties' arguments and taking the parties' pleadings into consideration, the court ordered a stay of execution of the writ of restitution on October 6, 2015. A true and correct copy of the Ordering Staying Enforcement of the Writ of Restitution is included in the Appendix at A-10 through A-11. The stay was conditioned on Defendants-Appellants posting a \$26,000 bond by October 8, 2015. Defendants-Appellants posted the bond on October 8, 2015. A true and correct copy of the Clark County Clerk's Office receipt in the amount of \$26,000 is included in the Appendix at A-12 through A-14.

III ISSUE PRESENTED

1. May an unlawful detainer action proceed to summary trial if the unlawful detainer plaintiff fails to provide statutory notice to a necessary party?

IV EVIDENCE RELIED UPON

This appeal is based on RCW 59.12.040, the files, records, and pleadings herein, and oral arguments, if oral arguments are permitted.

V ARGUMENT

Pursuant to RCW 59.12.032, an unlawful detainer action commenced as the result of a trustee's sale conducted under RCW Chapter 61.24, must comply with the requirements of RCW 61.24.060. RCW 61.24.060(1) gives the purchaser at a trustee's sale who initiates an

unlawful detainer action to obtain possession of the property the right to utilize the summary proceedings of RCW Chapter 59.12. Plaintiffs- Respondents initiated an unlawful detainer action to obtain possession of the Property, and therefore were subject to the requirements of RCW Chapter 59.12.

RCW 59.12.040 contains the notice requirements for an unlawful detainer action in Washington. Under its terms, an unlawful detainer plaintiff is obligated to serve any notice provided for in Chapter 59.12 either: “(1) by delivering a copy personally to the *person entitled thereto*; or (2) *if he or she be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his or her place of residence[.]*”

A person who owns property prior to a trustee’s sale is entitled to notice that the purchaser at the trustee’s sale has initiated an unlawful detainer action to take possession of the property. Prior to the trustee’s sale of the Property, D-A 2 was a co-owner of the Property. Her ownership was not secret; it was precisely as open and obvious as D-A 1’s ownership of the Property.

Like D-A 1, D-A 2 executed the mortgage note and deed of trust 1 and deed of trust 2 (the \$20,000 second deed of trust that was foreclosed on). Like D-A 1, D-A 2 is mentioned in the trustee’s deed as one of the two co-owners of the Property. Plaintiffs-Appellants presented the

trustee's deed to the trial court as proof of ownership of the Property during the unlawful detainer trial. Thus, pursuant to RCW 59.12.040, Plaintiffs-Appellants were required to provide the same name-specific notice to D-A 2 that they provided to D-A 1.

If Plaintiffs-Appellants were not required to provide name-specific notice to D-A 2, then they were not required to provide name-specific notice to D-A 1 or anyone else. And if RCW 59.12.040 does not require an unlawful detainer plaintiff to provide name-specific notice to anyone, then the language in RCW 59.12.040(1) that requires the unlawful detainer plaintiff to provide notice *to the person entitled thereto* means nothing. The unlawful detainer plaintiff, whether he knows the name(s) of the former owner(s) or not, need only address notice to "the persons occupying the property."

Moreover, the language of RCW 59.12.040(2) that requires the unlawful detainer plaintiff to leave a copy of the notice at the property and simultaneously send a copy of the notice through the mail ***addressed to the person entitled thereto at his or her place of residence*** is also superfluous if Plaintiffs-Respondents' position is correct.

Merely to state the two propositions is to expose their absurdity.

One cannot address notice *to the person entitled to the notice* unless one knows the name of the person entitled to the notice and includes that name in the notice. One cannot mail notice *to the person entitled to the notice* unless one knows the name and address of the person

entitled to notice, addresses the mail to *the person entitled to the notice*, and sends the notice to the address at which *the person entitled to the notice* lives.

Plaintiffs-Respondents knew D-A 2's name and address.¹ In a second unlawful detainer (an action that was summarily dismissed on collateral estoppel and res judicata grounds), Plaintiffs-Respondents named D-A 2 in the summons and complaint and sent notice to her address. In that unlawful detainer action, D-A 1 suggested Plaintiffs-Respondents should voluntarily dismiss the proceeding and begin the process anew. Defendants-Respondents chose instead to argue, successfully, they had already given D-A 2 appropriate notice. Initiation of the second unlawful detainer action is ample evidence Plaintiffs-Respondents did not believe their own argument.

If the court chooses to reverse the trial court and require Plaintiffs-Respondents to start over, as Plaintiffs-Respondents (acting in violation of

¹ Plaintiffs-Respondents, obviously concerned about the possibility this court would determine notice had not been properly given, initiated a second unlawful detainer action on February 1, 2016, long after Defendants-Appellants initiated this appeal, and long after the lower court granted the stay of the writ of restitution pending resolution of this appeal.

Despite having argued, successfully, in the original unlawful detainer action D-A 2 was included in the omnibus phrase "all other persons occupying 9213 NE Mason Creek Rd., Battle Ground, WA 9804," Plaintiffs-Respondents obviously did not believe their own successful argument. The second unlawful detainer action was intended to address the specific objection D-A 1 had raised unsuccessfully during the original unlawful detainer action—D-A 2 had not been given proper notice.

The Eviction Summons and Complaint for the second unlawful detainer action was identical to the Eviction Summons and Complaint for the original unlawful detainer action, with one exception: D-A 2 was named in the caption of the second Summons and Complaint. Through this confused maneuver, Plaintiffs-Appellants attempted to remove jurisdiction to resolve this dispute from this court.

Defendants-Appellants timely moved for dismissal of the second unlawful detainer action on res judicata and collateral estoppel grounds, and the court summarily dismissed the action.

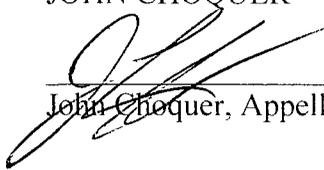
a stay order) voluntarily attempted to do in the second unlawful detainer action, then this court's rebuke will have been well-earned.

VI CONCLUSION

For the reasons listed herein above, the court should reverse the trial court's ruling that notice was properly given and order the trial court to dismiss the original unlawful detainer action.

Respectfully submitted,

JOHN CHOQUER



John Choquer, Appellant Pro se

APPENDIX

COPY ORIGINAL FILED
SEP 25 2015

CLARK COUNTY
SHERIFF'S DEPARTMENT

Scott G. Weber, Clerk, Clark Co.

2015 SEP 25 P 12: 25

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

GUY WAY and ZENAIDA WAY,
husband and wife,

NO. 15-2-02454-3

Plaintiffs

WRIT OF RESTITUTION

vs.

JOHN CHOQUER, and all other persons
occupying 9213 NE Mason Creek Road,
Battle Ground, WA 98604,

Defendant

STATE OF WASHINGTON: To the Sheriff of Clark County, Greetings:

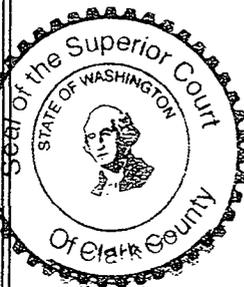
WHEREAS on the 25th day of September, 2015, one of the Judges of the above-entitled Court made an order granting a writ of restitution restoring possession of the premises described in the complaint filed herein in the manner provided by law,

NOW, THEREFORE, you are hereby commanded to deliver to the above-named plaintiff possession of the premises described in said Complaint, to-wit: 9213 NE Mason Creek Road, Battle Ground, WA 98604, which property is located in Clark County, State of Washington, and make return of this Writ according to law, provided that if return is not possible within twenty days, return on this Writ shall be automatically extended for an additional twenty days.

WITNESS the Honorable Presiding Judge of the Superior Court, and seal thereof this 25th day of September, 2015.

Scott G. Weber, Clerk

Deputy Clerk



IMPORTANT NOTICE - PARTIAL PAYMENTS

YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.

COPY
Original Filed

OCT 02 2015

Scott G. Weber, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY**

GUY WAY AND ZENAIDA WAY,
Husband and Wife,

Plaintiffs,

vs.

JOHN CHOQUER, and all other persons
occupying 9213 NE Mason Creek Road, Battle
Ground, WA, 98604

Defendants.

) Case No.: 15-2-02454-3

)
)
) **DEFENDANT'S MOTION TO STAY
ENFORCEMENT OF PLAINTIFFS'
WRIT OF RESTITUTION**

) "*CLERK'S ACTION REQUIRED*"

) *EX-PARTE MOTION*

I RELIEF REQUESTED

Comes now Defendant, John Choquer, and moves this Court for an Order Staying Execution of Plaintiffs' Writ of Restitution.

II FACTS RELEVANT TO THIS MOTION

The above-referenced matter came on for summary trial on September 25, 2015. The Court examined the parties and witnesses present, and, after considering all of the evidence and evaluating the parties' stated positions, made several findings of fact: (1) Plaintiffs rented the property located at 9213 NE Mason Creek Rd., Battle Ground, WA 98604 ("Property") to Defendant; (2) Defendant remains in possession of the Property; (3) on July 27, 2015, Plaintiffs' served Defendant, including all other occupants, with notice to vacate the premises, and

I - MOT FOR STAY OF WRIT OF RES

JOHN CHOQUER
9213 NE MASON CREEK ROAD
BATTLE GROUND, WA 98604
(503) 819- 5115

A-3

OCT 02 2015

Scott G. Weber, Clerk, Clark Co.

1 Defendant failed to vacate; (4) on August 4, 2015 Plaintiffs served Defendants with a second
2 notice to vacate, and Defendants failed to vacate; (5) the Eviction Summons and Complaint was
3 served on Defendant on September 3, 2015; (6) Plaintiff is the owner or authorized manager of
4 the Property; and (7) the judgment entered in this case is a final judgment.

5 Defendant objected to the Court's ruling that Plaintiffs had served Defendant's wife. The
6 Court found that the phrase "all other occupants" contained in the title to the Eviction Summons
7 and Complaint was sufficiently expansive to include Defendant's wife and that it was not
8 necessary to specifically name her. Defendant objected to this finding by the Court and indicated
9 his intention to appeal.¹

10 The Court held that Defendants were guilty of unlawful detainer, and Defendants should
11 be evicted pursuant to an immediate writ of restitution. The Court then awarded judgment in the
12 amount of \$408.74

13 Following the hearing, Plaintiffs filed the Judgment and Order for Writ of Restitution in
14 the Court Clerk's Office. Thereupon, the Clerk's Office issued the Writ of Restitution to Plaintiff
15 at 12:14 pm on September 25, 2015. Approximately ten (10) minutes later Plaintiffs delivered
16 the writ to the Sheriff's Department.

17 On the early morning of Tuesday, September 29, 2015, Defendant filed a Notice of
18 Appeal, and delivered a copy of the notice to Plaintiffs' counsel. A copy of the Notice of Appeal
19 is attached as **Exhibit A** to Defendant's Declaration in Support of Motion for Order Staying
20 Execution of Writ of Restitution and is incorporated by this reference as though fully set forth
21 herein. The same day, shortly after 12 pm, a deputy of the office of the Clark County Sheriff
22 delivered a copy of the Writ of Restitution and several other documents to Defendant at the
23 Property.

24 Defendant filed this motion and delivered a copy, with all accompanying documents, to
25 the Court and Plaintiffs' counsel on October 2nd, 2015.

26 ¹ Defendant's wife Marian Choquer was not living on the Property when the foreclosure action commenced, and,
27 though Marian is co-owner of the Property, she has not occupied the Property at any time since the foreclosure
proceeding commenced. Consequently, RCW 59.12.040(2) required that Marian Choquer be specifically named and
served in the way mandated by RCW 59.12.040(2).

JOHN CHOQUER
9213 NE MASON CREEK ROAD
BATTLE GROUND, WA 98604
(503) 819- 5115

A-4

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III ISSUES PRESENTED

1. May Defendant apply Ex-Parte for an Order Staying Execution of the Writ of Restitution?
2. Is Defendant Entitled to an Order that Stays Execution of Plaintiffs' Writ of Restitution?

IV EVIDENCE RELIED UPON

This motion is based on CR 6(d), RCW 4.44.470, and RAP 8.1, the files, records, and pleadings herein, oral arguments that were made before this Court on September 25, 2015, and Washington common and statutory law.

V ARGUMENT

A. *Ex-parte* Application for Order Staying Execution is authorized by Statute.

Under CR 6(d) "A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, *unless a different period is fixed by these rules or by order of the court.* Such an order *may for cause shown be made on ex parte application.*" (italics and bolding added).

This motion is not a contested matter. Plaintiffs may contest the *amount* of the bond, but, because the unlawful detainer action involved the right to the possession, ownership, or use of real property, Defendant is entitled to a bond in some amount as a *matter of right.* RAP 8.1(b). Moreover, *after a supersedeas bond, cash, or alternative security has been filed,* RAP 8.1(g) authorizes the trial court, on its own motion or on the motion of a party, and for good cause shown, to "discharge the bond, change the supersedeas amount or require a new bond, additional cash or alternative security." *Id.* Hence, Plaintiffs will not lose the ability or right to challenge the amount of the bond if this Court grants a stay of execution of the writ in Plaintiffs' absence. Also, if Plaintiffs choose to contest the amount of the bond, they will not be required to do any more work than they would have been required to do to contest the bond amount at this hearing. The only change would be *when* the work is done.

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1
2 **B. Defendant Entitled to Order Staying Enforcement of Trial Court's Decision**

3 **1. Statutory Requirements for Order to Stay Enforcement.**

4 Rule of Appellate Procedure ("RAP") 8.1 establishes that a party who appeals a trial
5 court decision in a civil case that affects the right to possession, ownership, or use of real
6 property has a right to stay enforcement of the trial court decision for the duration of the appeal.
7 *RAP 8.1(b)*. (italics, bolding, and underlining added). The party may invoke the right by filing in
8 the trial court a supersedeas (appeal) bond or cash. *RAP 8.1(b)(2)*. Or, if the property at issue has
9 value, the property itself may secure the non-moving party against any loss, and the trial court is
10 authorized to determine that no additional security need be filed to stay enforcement of the trial
11 court decision. *RAP 8.1(c)(2)*.

12 If the trial court requires a bond or cash, the amount of the bond or cash shall be "the
13 amount of any money judgment, plus interest likely to accrue during the pendency of appeal and
14 attorney fees, costs and expenses likely to be awarded on appeal entered by the trial court plus
15 the amount of the loss which the prevailing party in the trial court would incur as a result of the
16 party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be
17 equal to the reasonable value of the use of the property during review. *Id.*

18 If a party files a supersedeas bond or cash in the amount set by the court, enforcement of
19 the trial court decision against the party furnishing the bond or cash is stayed. Unless otherwise
20 ordered by the trial court or the appellate court, upon the filing of a supersedeas bond or cash,
21 any execution proceedings against the party furnishing the bond or cash shall be of no further
22 effect. *RAP 8.1(d)(2)*. Finally, if the court does not require the appellant to post a bond, then the
23 appellant is required to file a notice that the trial court decision is superseded without a bond and,
24 after filing the notice, the appellant shall be in the same position as if he had posted a bond
25 pursuant to the provisions of RAP 8.1. *RAP 8.1(f)*

26 **2. Neither Supersedeas Bond nor Cash should be required for Stay.**

OCT 02 2015

Scott G. Weber, Clerk, Clark Co.

1 **a. Value of Property vs. Indebtedness Property Secures.**

2 The Property has a market value of approximately \$600,000. The total indebtedness the
3 property secures is \$275,000, at most; leaving approximately \$325,000 of equity in the Property.
4 Consequently, there is enough equity in the Property to secure, many times over, any reasonable
5 expenses Plaintiffs might incur during the course of the litigation.

6 **b. Proof of Equity – Value of First and Second Mortgage.**

7 **(i) First Mortgage**

8 The Property had always been encumbered by a first and second mortgage. Plaintiffs
9 bought the second mortgage. Today, the first mortgage secures an indebtedness in the amount of
10 approximately \$206,000. In addition, there is a payment arrearage of approximately \$43,000 on
11 the first mortgage note. Thus, currently, the total indebtedness secured by the first mortgage is
12 approximately \$249,000. Following Plaintiffs/Respondents purchase of the second mortgage
13 indebtedness, Defendant/Appellant remains fully responsible for the \$249,000 indebtedness
14 secured by the first mortgage. Defendant/Appellant continues to work with the first mortgagee to
15 satisfy these two financial obligations on terms that are acceptable to the first mortgagee.

16 **(ii) Second Mortgage**

17 Including allowable costs and fees associated with the unlawful detainer action, to date
18 Plaintiffs/Respondents have invested approximately \$25,500 in the Property.

19 **(iii) Total of First and Second Mortgage**

20 The total outstanding indebtedness against the Property – including the first-mortgage-
21 note indebtedness, first-mortgage-note arrearages, and Plaintiffs'/Respondents' \$25,500
22 investment -- is approximately \$275,000.

23 **(iv) Property Market Value minus Total Debt (Equity)**

24 The assessed value – Assessed value almost always lags behind a property's market
25 value. -- of the Property as of 2015 is \$327,800 dollars. A copy of the 2015 assessment is
26 attached to Defendant/Appellant's Declaration as **Exhibit B** and is incorporated herein by this
27 reference. The assessment does not include the value of the 7-acre vineyard Defendant installed

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1 on the Property; nor does the assessment include the value of the three (3) man-made ponds
2 Defendant installed on the Property.

3 Defendant invested approximately \$250,000 in building the commercial-quality vineyard.
4 The grapevines planted on the acreage are the highest-quality, grafted grapevines. The trellis
5 system, the wire structure on which the grapes grow, was designed and built by
6 Defendant/Appellant. The vineyard represents an investment by Defendant of approximately
7 \$250,000. The total cost of the three ponds was approximately \$50,000. Finally, Defendant
8 invested approximately \$30,000 in remodeling the home that sits on the Property.

9 When the investments in the Property identified in the preceding paragraph are added to
10 the assessed value of the Property, the total is \$657,800.

11 Defendant recognizes property improvements are very rarely recouped on a dollar-for-
12 dollar basis. Accordingly, Defendant, after consulting several local realtors, believes the Property
13 has a market value of approximately \$600,000. However, even if this estimate is as much as
14 \$200,000 to high, the Property's value is more than sufficient to cover any conceivable
15 reasonable costs Plaintiff/Respondent might incur as a result of Defendant's appeal.

16 Defendant hereby requests that the Court find the value of the Property to be sufficient to
17 secure any reasonable loss Plaintiffs might incur and allow the Property to serve as the security
18 for the Stay of Execution of the Writ of Restitution without the provision of additional security
19 by Defendant.

20
21 **3. If Supersedeas or Cash Bond required, Bond Amount should not exceed
22 \$5,000.**

23 The Court is entitled to set the amount of a bond. *RCW 4.44.470*. If, despite the large
24 amount of equity in the Property, the Court decides to impose a supersedeas or cash bond
25 requirement, Defendant requests that the bond amount not exceed \$5,000.

26 The average appellate proceeding lasts approximately 14 months. Prior to the second
27 mortgage foreclosure, Defendant was obligated to pay approximately \$130 per month on the

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1 second mortgage. Defendant requests that the Court, in determining the amount of the bond,
2 allocate \$1900 as the portion of the bond amount that would be lost due to Plaintiffs' inability to
3 enforce the judgment during the pendency of the appeal. The \$408.74 judgment should be added
4 to this amount.² The Court should require that the bond allocate \$1500 for potential attorney
5 fees, and \$750 as potential costs and expenses likely to be awarded on appeal.
6

7 The total of expenses recited in the preceding paragraph is \$4558.74. If the Court decides
8 a bond is necessary, and, based on the statutory scheme, Defendant does not believe a bond is
9 recommended under the circumstances here presented; the amount of the bond should not exceed
10 \$5,000.
11

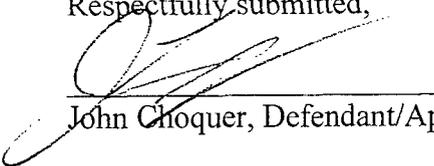
12 VI CONCLUSION

13
14 The Court is empowered by CR 6(d) to grant the stay on an ex-parte basis. By court rule,
15 as a matter of right, Defendant is entitled to a stay of execution of the Court's order granting
16 Writ of Restitution. Because there is at least \$200,000 equity in the Property, Defendant should
17 not be required to post a bond.

18 The court should stay execution of the Writ of Restitution.
19

20 DATED this 1st day of October, 2015, at Battle Ground, Washington.
21

22 Respectfully submitted,

23 
24 John Choquer, Defendant/Appellant
25
26
27

28 ² No interest should be allocated because Defendant has already paid the judgment.
7 - MOT FOR STAY OF WRIT OF RES

JOHN CHOQUER
9213 NE MASON CREEK ROAD
BATTLE GROUND, WA 98604
(503) 819- 5115

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

GUY WAY and ZENAIDA WAY,
Husband and Wife,

Plaintiffs,

v.

JOHN CHOQUER, and all other persons
occupying 9213 NE Mason Creek Road,
Battle Ground, WA, 98604,

Defendants.

No. 15-2-02454-3

ORDER REGARDNG DEFENDANTS'
MOTION TO STAY ENFORCEMENT
OF WRIT OF RESTITUTION

THIS MATTER having come before the court upon the Defendants' Motion to Stay Enforcement of Writ of Restitution, the Court having reviewed the Defendants' Motion to Stay Enforcement of Plaintiffs' Writ of Restitution, Declaration in Support of Motion to Stay Execution of Writ of Restitution, having heard the argument of the parties, and being otherwise fully advised in the premises,

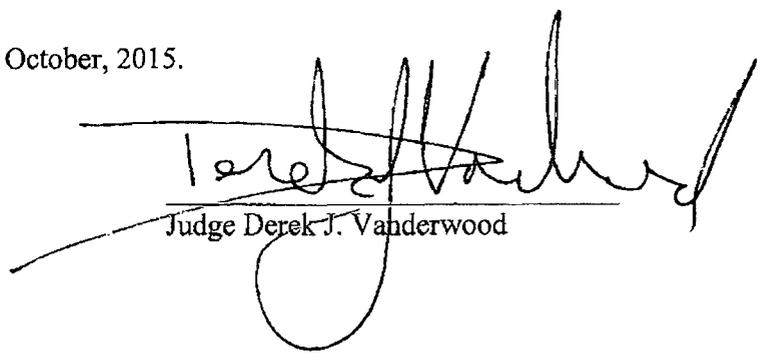
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The Court hereby orders, adjudges and decrees as follows:

1. To the extent necessary, execution of the previously ordered writ of restitution shall be stayed until 11:59 p.m. October 8, 2015.

2. If the Defendants desire to further stay the proceedings in this matter during an appeal, the Defendants shall post a bond in the amount of \$26,000.

DATED this 6th day of October, 2015.



Judge Derek J. Vanderwood

COPY
ORIGINAL FILED

OCT 08 2015

Scott G. Weber, Clcrk, Clark Co.

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

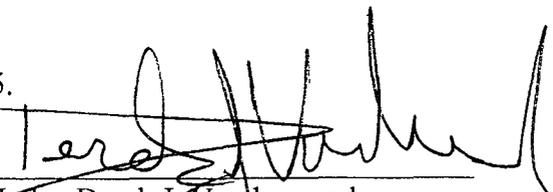
GUY WAY and ZENAIDA WAY,)
Husband and Wife,)
)
) Plaintiffs,)
)
) v.)
)
) JOHN CHOQUER, and all other persons)
) occupying 9213 NE Mason Creek Road,)
) Battle Ground, WA, 98604,)
)
) Defendants.)

No. 15-2-02454-3

VERIFICATION OF CASH BOND
TO STAY PROCEEDINGS

IT SHALL BE NOTED THAT a cash payment of twenty six thousand dollars (\$26,000.00) was deposited with the Clerk of this Court on October 8, 2015 at 10:12 a.m. on behalf of the Defendant identified herein. The payment was made in compliance with the previously entered Order Regarding Defendants' Motion to Stay Enforcement of Writ of Restitution and shall, pending appeal, stay enforcement of the Judgment, including execution of the writ of restitution, previously filed in this matter.

DATED this 8th day of October, 2015.



Judge Derek J. Vanderwood
Clark County Superior Court

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

COPY
ORIGINAL FILED

OCT 08 2015

Scott G. Weber, Clerk, Clark Co.

GUY WAY and ZENAIDA WAY,
Plaintiff,

vs.

JOHN CHOQUER, and all other persons
occupying 9213 NE Mason Creek Road,
Battle Ground, WA 98604
Defendant

Case No.: 15-2-02454-3

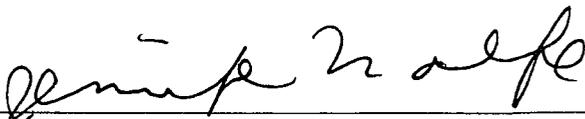
DECLARATION MAILING

I declare under penalty of perjury under the laws of the State of Washington that on this date I sent by regular U.S. Mail a copy of the attached **VERIFICATION OF CASH BOND TO STAY PROCEEDINGS** to the parties addressed below:

QUINN POSNER
ATTORNEY AT LAW
532 NE 3RD AVENUE
CAMAS, WA 98607

JOHN CHOQUER
9213 NE MASON CREEK ROAD
BATTLE GROUND WA 98604

DATED this 8TH day of October, 2015.



Jennifer Wolfe
Judicial Assistant, Dept. 3

CLARK COUNTY CLERK'S OFFICE

SCOTT G. WEBER
COUNTY CLERK

Rcpt. Date: 10/08/2015
Acct. Date: 10/08/2015
Receipt #: 2015-01-57693
Cashier ID: AJP
Time: 10:12 AM

Item	Case Number	Amount
01	15-2-02454-3	\$26,000.00
3100: Trust-Civil Cash Bond		
*TRB		

Total Due:	\$26,000.00
Check Tendered:	\$26,000.00
Change Due:	\$0.00

Paid By: MCDANIEL, CORY

RCW 59.12.032

Unlawful detainer action—Compliance with RCW 61.24.040 and 61.24.060.

An unlawful detainer action, commenced as a result of a trustee's sale under chapter 61.24 RCW, must comply with the requirements of RCW 61.24.040 and 61.24.060.

[2009 c 292 § 11.]

RCW 59.12.040

Service of notice—Proof of service.

Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he or she be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his or her place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his or her place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders, or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent, or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent, or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service

under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. RCW 59.18.375 may also apply to notice given under this chapter.

[2010 c 8 § 19007; 1983 c 264 § 2; 1911 c 26 § 1; 1905 c 86 § 2; 1891 c 96 § 5; RRS § 814. Prior: 1890 p 75 § 4.]

RCW 61.24.060

Rights and remedies of trustee's sale purchaser—Written notice to occupants or tenants.

(1) The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants who are not tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

(2) If the trustee elected to foreclose the interest of any occupant or tenant, the purchaser of tenant-occupied property at the trustee's sale shall provide written notice to the occupants and tenants at the property purchased in substantially the following form:

"NOTICE: The property located at was purchased at a trustee's sale by on (date).

1. If you are the previous owner or an occupant who is not a tenant of the property that was purchased, pursuant to RCW 61.24.060, the purchaser at the trustee's sale is entitled to possession of the property on (date), which is the twentieth day following the sale.

2. If you are a tenant or subtenant in possession of the property that was purchased, pursuant to RCW 61.24.146, the purchaser at the trustee's sale may either give you

a new rental agreement OR give you a written notice to vacate the property in sixty days or more before the end of the monthly rental period."

(3) The notice required in subsection (2) of this section must be given to the property's occupants and tenants by both first-class mail and either certified or registered mail, return receipt requested.

[2009 c 292 § 10; 1998 c 295 § 8; 1967 c 30 § 2; 1965 c 74 § 6.]

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7 **IN AND FOR THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
8 **DIVISION II**

9 GUY WAY AND ZENAIDA WAY,
10 Husband and Wife,

11 Plaintiffs,

12 vs.

13 JOHN CHOQUER, and all other persons
14 occupying 9213 NE Mason Creek Road, Battle
15 Ground, WA, 98604

16 Defendants.

) Appellate Ct. Case No.: 48181-0-II
)
)
)

) **DECLARATION OF DELIVERY OF**
) **DEFENDANT'S MOTION TO STAY**
) **EXECUTION OF WRIT OF EXECUTION**

17
18 I, John Choquer, declare as follows:

- 19 1. I am more than 18 years of age;
20 2. I am a Defendant-Appellant in this litigation;
21 3. On March 15, 2016, I caused to be delivered to counsel for Plaintiffs, Quinn H.
22 Posner, a copy of Defendants-Appellants' Opening Brief ; and a copy of this Declaration of
23 Delivery, prior to filing these documents in the Washington Court of Appeals, Division II.
24
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26 DATED this 15th day of March, 2016, at Battle Ground, Washington.
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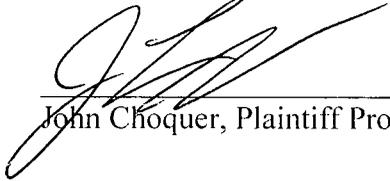
28 I - DECLARATION OF DELIVERY

JOHN CHOQUER
9213 NE MASON CREEK ROAD
BATTLE GROUND, WA 98604
(503) 819- 5115

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Respectfully submitted,

JOHN CHOQUER



John Choquer, Plaintiff Pro se