

FILED
Court of Appeals
Division II
State of Washington
8/20/2019 2:18 PM

NO: 53277-8-II

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

REAL PROPERTY, ET AL,
APPELLANTS
v.
GRAYS HARBOR DRUG TASK FORCE AND GRAYS HARBOR
COUNTY,
RESPONDENTS

Grays Harbor County Superior Court Case Number 18-2-00363-14
Honorable David Edwards, Presiding

Respectfully submitted:

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

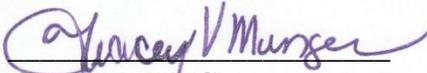
BY: 
TRACEY V. MUNGER
Deputy Prosecuting Attorney
WSBA #33854
102 W. Broadway, #102
Montesano, WA 98563
(360) 249-3951

Table of Contents

I.	INTRODUCTION	1
II.	RESPONSE TO ASSIGNMENTS OF ERROR.....	1
III.	STATEMENT OF CASE	2
IV.	ARGUMENT	5
	a. STANDARD OF REVIEW	5
	b. SERVICE OF PROCESS MET CONSTITUTIONAL STANDARD FOR DUE PROCESS	6
V.	CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<i>City of Bellevue v. Lee</i> , 166 Wash. 2d 581, 585, 210 P.3d 1011, 1013 (2009).....	6
<i>Crystal, China, and Gold, Ltd. v Factoria Center...</i> , 93 Wash.App 606, 969 P.2d 1093	8, 10
<i>Davis v. Blumenstein</i> , 7 Wash.App.2nd 103, 432 P.3d 1251 (2019)...	17,20,21, 22
<i>Farmer v. Davis</i> , 161 Wash.App. 420, 432, 250 P.3d 138 (2011).....	5
<i>International Shoe v. State of Washington</i> , 326 U.S. 310 (1945).....	12, 13
<i>Jones v. Flowers</i> , 547 U.S. 220, 126 S.Ct 1708, 1713, 164 L.Ed. 2d 415 (2006)	14
<i>Martin v. Triol</i> , 121 Wash.2d 135, 847 P.2d 471, (1993).....	8, 9, 10
<i>Robinson v. Hanrahan</i> , 409 U.S. 38, 93 S. Ct. 30, 34 L. Ed. 2d 47 (1972).....	15
<i>Scanlan v. Townsend</i> , 181 Wash. 2d 838, 846–47, 336 P.3d 1155, 1159 (2014)..	5
<i>State v. Larson</i> , 184 Wash. 2d 843, 365 P.3d 740, 742 (2015).....	19
<i>Tellevik v. Real Prop. Known as 31641 W. Rutherford St.</i> 120 Wash. 2d 68, 78, 838 P.2d 111, 116 (1992).....	17
<i>Weiss v. Glemp</i> , 127 Wash.2d 726, 734, 903 P.2d 455 (1995).....	8

Statutes

RCW 23.95.405	11, 16, 22
RCW 23.95.410	11
RCW 23.95.415	11
RCW 23.95.435	11, 22
RCW 23.95.450	passim
RCW 23B.01.020.....	6
RCW 23B.04.050.....	10
RCW 24.03.395	22
RCW 46.64.040	10, 20, 21

INTRODUCTION

Tao Yuan, Inc. (hereinafter TYI) and Andy Zheng argue that compliance with RCW 23.95.450 regarding service of process on corporations is constitutionally deficient and does not satisfy Due Process (U.S. Const. amend XIV). They are wrong.

RESPONSE TO ASSIGNMENTS OF ERROR

1. The manner in which service of process was made did not violate the due process rights of the interested party because the statutory requirements for service of process on domestic corporations comport with due process and GHC and the DTF exercised reasonable diligence in the efforts to effect service of process on TYI and Andy Zheng.

STATEMENT OF CASE

On May 7, 2018, Grays Harbor Drug task Force and Grays Harbor County (collectively referred to hereafter as DTF) filed a forfeiture action against the defendant property pursuant to RCW 69.50.505. CP1. DTF had previously run title to the property and discovered that it was owned by a corporation, Tao Yuan, Inc., (hereinafter referred to as TYI) CP 14. According to the Secretary of State's Business information website, the agent for service of process for TYI was Andy Zheng. CP 87. The address for the corporation's principal office, principal mailing address and the address for the corporation's registered agent were the same, 107 S. Harbor Street, in Aberdeen, Washington. CP 87. On May 24, 2018, May 31, 2018 and June 2, 2018, plaintiffs, through the Sheriff's Office, attempted to serve TYI, the interested party in this matter, through its registered agent for service of process, Andy Zheng, at the only address on file for the corporation or the agent. CP 21, 87. Plaintiffs were unable to locate and serve TYI. On June 4, 2018 Grays Harbor County Sheriff's Office filed an affidavit setting forth the times and dates of attempted service of process. CP 21 The affidavit further certified that a diligent search was made to find Andy Zheng and that he was not locatable. CP 21

Thereafter, on June 2, 2018, plaintiffs sent via, certified mail to TYI at their last known principal place of business address, a copy of the

Summons, Complaint, Motion for Warrant of Arrest *In Rem*, Warrant of Arrest *In Rem*, Lis Pendens, and Declaration of Sergeant Joe Strong. CP 77. On June 15, 2018 the documents were returned undelivered and unclaimed. CP 77.

On July 11, 2018, after being notified of a defect in the original service attempt made in June, 2018, DTF forwarded a second notice and cover sheet to the Secretary of State along with two sets of documents for service to TYI. CP 79. On July 12, 2018, plaintiffs received notice from the Secretary of State that the legal documents relating to TYI were received in their office and placed on file. CP 79.

On October 23, 2018, plaintiffs presented to the court a Motion and Declaration for an Order of Default, an Order for Default, and an Order of Forfeiture *In Rem*. CP 24-31 Neither TYI nor Andy Zheng had made an appearance in the matter. The court signed the Order of Default and the Order of Forfeiture *In Rem*. CP 26 and CP 31.

On January 7, 2019, Plaintiffs received a Notice of Appearance and a Motion to Vacate on behalf of TYI and Andy Zheng, both as interested parties. CP 36-50. The declaration from Andy Zheng indicates that he left Washington in late 2017, approximately six months prior to the seizure of the residence owned by TYI. CP 39. Mr. Zheng's declaration states that he went to New York where he remained for an undetermined period of time.

CP 39. Mr. Zheng asserts in his declaration that he made provisions for his mail to be forwarded; however, he failed to change the business address for TYI with the Secretary of State. CP 39, CP 81 and CP 87 Mr. Zheng's declaration indicates that he returned to Washington in October, 2018 at which time he paid the taxes on the property and returned to the property to initiate some form of clean-up. CP 39. Mr. Zheng's declaration indicates that he was only visiting NY and his departure from Washington was only temporary. CP 39.

A hearing was held on the Motion to Vacate the Default Order on January 19, 2019 which the court denied. CP 88. During the hearing the court confirmed that TYI's basis for the motion was alleged improper service on the parties of interest. RP 2, ln 21-24. The court made inquiry in the service attempted. RP 3, ln 2-17. The court then confirmed that TYI was the sole owner of the property and the sole interested party. RP 3, ln 20. The court inquired whether service on the corporation was accomplished through service on the Secretary of State to which TYI agreed. RP 3, ln 22-25. TYI then asserted that despite service being made on the corporation, the other basis for their motion was that service was not made on Andy Zheng as the sole shareholder of the corporation. RP 4, ln 3-19. The court found that Andy Zheng, as a shareholder, was not an interested party and denied TYI's motion to vacate. RP 4 ln 20-22. The court then explained the

rational for denying the motion finding that shareholders are not interested parties and the law does not require service on shareholders. RP 4 ln 1-9.

TYI then made a motion for reconsideration and argued that TYI had appeared in the action when Andy Zheng obtained copies of the action from the Sheriff's department. CP 90-91. This argument was made despite the fact that the only Notice of Appearance in the record on behalf of TYI was filed on January 7, 2019, almost three months after the default was taken. CP 36. The court denied TYI's motion for reconsideration. CP 102. This appeal follows wherein TYI now argues that DTF should have tried harder to serve process on Andy Zheng in his capacity as the agent for service of process. This argument was not raised in the court below.

ARGUMENT

1. Standard of Review

Proper service of process must comply with both constitutional and statutory requirements. See: *Farmer v. Davis*, 161 Wash.App. 420, 432, 250 P.3d 138 (2011). The only dispute in this case is about the statutory requirements. This court reviews de novo if service of process was proper. *Scanlan v. Townsend*, 181 Wash. 2d 838, 846-47, 336 P.3d 1155, 1159 (2014) (citing *Streeter-Dybdahl v. Nguyet Huynh*, 157 Wash.App. 408, 412, 236 P.3d 986 (2010) (citing *Pascua v. Heil*, 126 Wash.App. 520, 527, 108 P.3d 1253 (2005))

In *City of Bellevue v. Lee*, 166 Wash. 2d 581, 585, 210 P.3d 1011, 1013 (2009), the court reiterated that the constitutionality of a statute is reviewed de novo and went on to state, “A statute is presumed to be constitutional, and the party challenging the constitutionality of a statute must prove its unconstitutionality “beyond a reasonable doubt.” *Bellevue, id*, citing *Island County v. State*, 135 Wash.2d 141, 146, 955 P.2d 377 (1998).

2. Tao Yuan, Incorporated’s due process rights were not violated by service in accordance with RCW 23.95.450.

Chapter 23B of the Revised Code of Washington, enacted in 1989, is titled Washington Business Corporations Act. Pursuant to RCW 23B.01.020, all foreign and domestic corporations are subject to the provisions of the Washington Business Corporations Act. RCW Title 23 was enacted as Washington’s adaptation of the Uniform Business Operations Code, Article 1 provisions, and governs the operation of corporation in Washington. RCW Title 23 also provides for the Secretary of State’s oversight of business entities that are governed by the new laws.

RCW 23.95.450 establishes the requirements for properly serving a corporation with legal documents¹. By adopting the UBOC, Washington

¹ (1) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

established a clear and concise set of rules governing virtually all business entities in the state. The UBOC also created standardized framework for serving all corporate and partnership businesses with legal process. RCW 23.95.450 provides that the business entity may be served with process, notice, or demand by serving the legal papers to the registered agent of the business. (see RCW 23.95.450(1)). RCW 23.95.450(2) permits, *but does not require*, that if the business entity cannot be personally served according to subsection 1, service may be made by registered or certified mail addressed to the business at the business's principal office address. RCW 23.95.450(3) provides that if service cannot be made pursuant to either

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- (2) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:
- (a) The date the entity receives the mail or delivery by the commercial delivery service;
 - (b) The date shown on the return receipt, if executed by the entity; or
 - (c) Five days after its deposit with the United States postal service or commercial delivery service, if correctly addressed and with sufficient postage or payment.
- (3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2) of this section, service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.
- (4) The secretary of state shall be an agent of the entity for service of process if process, notice, or demand cannot be served on an entity pursuant to subsection (1), (2), or (3) of this section.
- (5) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under RCW 23.95.420 that it will accept.
- (6) Service of process, notice, or demand may be made by other means under law other than this chapter.

subsection 1 or 2, service *may be made* by personal service to an individual in charge at any regular place of business for the entity so long as the person served is not also a plaintiff in the action. Finally, RCW 23.95.450(4) mandates that the Secretary of State is an agent of all businesses for service of process if service cannot be made pursuant to subsections 1, 2 or 3. It is important to note that subsection four does not require a plaintiff to attempt service in every applicable manner established prior to serving the Secretary of State. It only requires that a plaintiff attempt to serve a corporation's agent for service of process prior to serving the Secretary of State. However, the inquiry into whether RCW 23.95.450 comports with due process requires a deeper look into the application of the statute.

“Constitutional due process concerns determine the minimum requirements for service, but statutory service requirements may add to the constitutional requirements.” *Weiss v. Glemp*, 127 Wash.2d 726, 734, 903 P.2d 455 (1995). The constitutional requirement for RCW.95.450 to satisfy Due Process is one of *reasonable diligence* in attempting service on the business entity. “Determination of reasonable diligence is a mixed question of fact and law.” See *Martin v. Triol*, 121 Wash.2d 135, 150–51, 847 P.2d 471 (1993).

In 1999, Division One of the Washington State Courts of Appeal decided the case of *Crystal, China, and Gold, Ltd. v Factoria Center...*, 93

Wash.App 606, 969 P.2d 1093. In that case, the court recognized that there were no Washington cases that discussed reasonable diligence in the context of service of process on registered agents for corporations. *Crystal* at 610. Plaintiff *Crystal* argued that reasonable diligence should be given the same meaning as due diligence in Washington's non-resident motor vehicle statute and Division One agreed. *Crystal* at 611. "Our Supreme Court, in addressing the term "due diligence" in the nonresident motorist statute, held that the term required the plaintiff to "make honest and reasonable efforts to locate the defendant" but "[n]ot all conceivable means need be employed." *Crystal* at 611 (citing: *Martin v. Meier*, 111 Wash.2d 471, 482, 760 P.2d 925 (1988)).

The *Crystal* Court went on to note that the due diligence test had also been addressed in *Martin v Triol*, supra. The Supreme Court in *Triol*, reversed the Court of Appeals finding that due diligence was satisfied. The Supreme Court held that, despite plaintiffs not attempting personal service until five days prior to the 90-day expiration, due diligence had been satisfied because, "[t]heir inability to personally serve the Triols was not because of a lack of diligence, but was because the Triols were away from home on a boat sailing into Canadian waters. We conclude from this that Respondents diligently attempted to personally serve the Petitioners in

accordance with the mandates of RCW 46.64.040” *Triol* at 150–51, 847 P.2d at 479.

The *Crystal* Court, citing former RCW 23B.04.050 which was re-codified as 23.95.450 with the adoption of the UBOC, went on to state:

The trial court in this case cited both the appellate and Supreme Court opinions in *Triol* and expressly found that the two attempts at service were not sufficient to satisfy due diligence under the substitute service statute. In addition, Factoria argues that Crystal did not present evidence that it attempted to serve any of the other listed individuals that are authorized in RCW 4.28.080(9). Yet, there is no requirement for a plaintiff to attempt to serve additional individuals in order to satisfy the reasonable diligence standard of RCW 23B.05.040. Rather, RCW 23B.05.040 speaks only about service on a corporation’s registered agent at the registered agent’s office and permits service on the Secretary of State as the corporation’s agent if the registered agent is unavailable after reasonable diligence. This is completely consistent with the theory that even if the officers of a corporation are difficult to locate, the corporation’s registered agent will be locatable at his or her office.

...

Thus, just as in *Triol*, Crystal’s inability to serve the registered agent was not a result of its lack of diligence but was a result of the registered agent not being available for service. *Crystal* at 612

In the instant case, the principal business street address for TYI was listed with the Secretary of State as 107 S. Harbor Street, Aberdeen, WA 98520. Through January 15, 2019, this was still the listed principal business street address and the business was listed as “active.” Additionally, 107 S.

Harbor Street was also listed as the street address for the registered agent for service of process for the corporation. CP 87

Three different attempts were made to serve the corporation and Mr. Zheng at the principal office for the business. Those attempts were made on May 24, 2018, May 31, 2018 and June 2, 2018, all within thirty days of the filing of the forfeiture action. CP 21,87. Unbeknownst to the plaintiffs, Mr. Zheng had left Washington State months before the forfeiture action was filed thus negating his ability to serve as agent for service of process². As manager of the corporation, he did not file with the Secretary of State a change of address of the principal place of business for the corporation nor did he as registered agent of the corporation for service of process, file a statement of change as required by the UBOC³. Furthermore, the UBOC requires that corporations maintain registered agents for service of process who are present in the state of Washington.⁴ When Mr. Zheng left the state

² See: RCW 23.95.410 and RCW 23.95.415 requiring corporations to maintain in-state agents for service of process

³ RCW 23.95.435: (1) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under RCW 23.95.415(1), the agent shall deliver to the secretary of state for filing, with respect to each entity represented by the agent, a statement of change executed by the agent which states:

...
(d) If the address of the agent has changed, the new address.

⁴ See RCW 23.95.405: The following shall designate and maintain a registered agent in this state:

(1) A domestic entity; and
(2) A registered foreign entity.

indefinitely, he was no longer eligible to serve as the agent for service of process. Consequently, neither Mr. Zheng nor TYI could have been served in Washington State by any other means than service on the Secretary of State. Because they left no updated information with the Secretary of State, the whereabouts of both could not be ascertained. Finally, as set forth in *Crystal*, there is no requirement that a plaintiff utilize more than one of the methods of service established by RCW 23.95.450 in order to satisfy the due diligence standard.

The instant case is about the due process rights of a corporation and the plaintiff's obligation to afford notice and an opportunity to be heard that comports with notions of fair play. In that regard, *International Shoe v. State of Washington*, 326 U.S. 310 (1945) speaks on point to the issues presented.

There the court specifically stated:

But, to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, **a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.** Compare *International Harvester Co. v. Kentucky*, supra, with *Green v. Chicago, B. & Q. R. Co.*, supra, and *People's Tobacco Co. v. American Tobacco Co.*, supra. Compare *Connecticut Mutual Co. v. Spratley*, supra, 172 U. S. 619, 172 U. S. 620, and *Commercial Mutual Co. v. Davis*, supra, with *Old*

Wayne Life Assn. v. McDonough, supra. See 29 *Columbia Law Review*, 187-195.

International Shoe at 319.
(**emphasis added**)

The Supreme Court went on to say:

...

It is enough that appellant has established such contacts with the state that the **particular form of substituted service adopted there gives reasonable assurance that the notice will be actual.** *Connecticut Mutual Co. v. Spratley*, supra, 172 U. S. 618, 172 U. S. 619; *Board of Trade v. Hammond Elevator Co.*, 198 U. S. 424, 198 U. S. 437-438; *Commercial Mutual Co. v. Davis*, supra, 213 U. S. 254-255. Cf. *Riverside Mills v. Menefee*, 237 U. S. 189, 237 U. S. 194, 237 U. S. 195; See *Knowles v. Gaslight & Coke Co.*, 19 Wall. 58, 86 U. S. 61; *McDonald v. Mabee*, supra; *Milliken v. Meyer*, supra. Nor can we say that the **mailing of the notice of suit** to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. Compare *Hess v. Pawloski*, supra, with *McDonald v. Mabee*, supra, 243 U. S. 92, and *Wuchter v. Pizzutti*, 276 U. S. 13, 276 U. S. 19, 276 U. S. 24; cf. *Becquet v. MacCarthy*, 2 B. & Ad. 951; *Maubourquet v. Wyse*, 1 Ir.Rep.C.L. 471. See *Washington v. Superior Court*, supra, 289 U. S. 365.

International Shoe at 320-321.
(**emphasis added**)

Although the ultimate issue in *International Shoe* was establishing whether a foreign corporation, had sufficient contacts with the state to justify personal jurisdiction, the issues of due process and service of process upon a corporation were addressed by the court. Pertinent to the issues raised by TYI, *International Shoe* addressed whether a copy of a notice, that

was sent by registered mail to the corporation at its home office address in St. Louis, Missouri, was sufficient to notify the corporation of the proceedings. Ultimately the court found that mailing notice to the corporation at its registered corporate address was reasonable to apprise *International Shoe* of the suit. RCW 23.95.450(2) exactly mirrors this standard and the Respondent's strictly adhered to the statute when they mailed notice of the forfeiture action to the interested corporation at its known principal office. Due process, as required under the Fourteenth Amendment was satisfied and thus the reasonableness standard for attempted service of process was also met.

Finally, TYI argues that the reasonable diligence standard in the UBOC is the same as the due diligence standard found in the Out of State Motorist Statutes. TYI confuses the standard with the actions required to comport with the standard.

TYI cites to *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct 1708, 1713, 164 L.Ed. 2d 415 (2006) for the proposition that service by certified mail was legally insufficient to apprise an owner of the pending sale of his house. While it is true that the U. S. Supreme Court reversed the lower courts, that holding is misconstrued by TYI. The Supreme Court held the state procedure unconstitutional because the procedures at issue required only a single attempt at service, via certified mail, to the residence. Flowers did no

more than the statute required. No attempts to personally serve Jones were ever made and no process servers ever went to Jones' residence to attempt service on a person of suitable age and discretion. The argument made by Flowers was that the single attempt to service Jones by mail satisfied the statute and therefore due process. The court rightfully disagreed.

Factually, the case at bar is distinguishable. Personal service on TYI was attempted three times. See CP 21. When personal service failed, service by certified mail to the corporation at its principal place of business and to the registered agent for service of process at his registered address was attempted. Only after five attempts at service had failed was service made on the Secretary of State as provided for in RCW 23.95.450. In looking at what the court found lacking in *Jones*, had Flowers made the same attempts at service as DTF made in the instant case, the outcome of the *Jones* case would have been different.

TYI also cites *Robinson v. Hanrahan*, 409 U.S. 38, 93 S. Ct. 30, 34 L. Ed. 2d 47 (1972), and argues that the Supreme Court held that service by mail violated due process. TYI is wrong.

The outcome of *Robinson* is not disputed. In *Robinson*, the State had actual knowledge that the homeowner was incarcerated locally, yet only attempted service by mail to his residence. The State made no attempt at personal while he was in the local jail.

Again, the instant case is distinguishable. TYI is a corporation, not a human. Furthermore, a corporation's actual whereabouts can only be known by the managers of the corporation and its agent for service of process. They alone are statutorily required to keep the Secretary of State apprised of the actual location of both the corporation and the agent for service of process at all times⁵. TYI and Andy Zheng failed to adhere to the statutory requirements to maintain updated records with the Secretary of State. TYI and Andy Zheng's noncompliance deprived DTF and the Secretary of State of any actual knowledge of the location of the corporation or of the agent for service of process. Worse still, Andy Zheng, left the state a month prior to the residence being seized and chose not to update the corporate information for over a year after leaving the state.

TYI next argues that the state should have known better than to attempt service of process on the agent's registered address or the corporation's principal business location because that residence had also been seized as a result of a marijuana grow operation discovered there. TYI's argument asserts that the DTF should have known that it was unlikely that anyone was at the principal place of business; however, TYI cites no authority for this proposition and this argument fails. Seizure of a residence

⁵ RCW 23.95.405

in a drug forfeiture case does not divest the owner or the occupants from that occupancy. Divestiture only occurs after the property is forfeited. See: *Tellevik v. Real Prop. Known as 31641 W. Rutherford St.* 120 Wash. 2d 68, 78, 838 P.2d 111, 116 (1992), (clarified on denial of reconsideration sub nom. *Tellevik v. Real Prop. Known as 31641 W. Rutherford St., Located in City of Carnation, Wash.*, 845 P.2d 1325 (Wash. 1993)). Contrary to TYI's implications, simply because the property at 107 S. Harbor was the subject of a forfeiture action did not mean the state had divested anyone of their rights of ownership or occupancy.

TYI, drawing on the facts of *Davis v. Blumenstein*, 7 Wash. App. 2d 103, 432 P.3d 1251 (2019) argues that DTF failed to exercise reasonable diligence because it failed to use databases to locate a current address for TYI's agent for service of process/managing stockholder, Andy Zheng. TYI bases this argument on an allegation that DTF had Mr. Zheng's license plate number or that DTF could have gotten Mr. Zheng's information from the Public Utility District.

In this instance, appellants are arguing facts that are not in the record. The court record is utterly devoid of any documentation or reference to a license plate number for a car owned by Andy Zheng or a public utility district bill. Appellant cites to CP 14 for support of his assertion that the state had knowledge of a vehicle owned by Mr. Zheng, however, CP 14 is

a page from the Declaration of Sergeant Joe Strong in support of the Arrest Warrant for the defendant property. The only reference to a vehicle on that page is found on lines 17-22. The reference is that a car was seen at the residence by a neighbor and driven by Asians. No license plate number was given and no owner was named so the assertion that the state could have used this information to locate Andy Zheng is speculative at best and therefor completely without merit.

Equally misleading is appellant's assertion that the PUD bills would have led DTF and GHC to Andy Zheng. Again, this argument is completely outside the facts and arguments put forth in the motion to vacate the default order and the order for default for which this appeal was taken. The cited reference to the PUD bills in CP 15 which, as set forth above, is part of a declaration by the Detective Joe Strong in support of an arrest warrant for the property. More importantly, the reference to the PUD records does not reveal, assert, imply or otherwise disclose what address was on the PUD bills. Nor is there any reference to facts or evidence supporting the implications that Sergeant Strong knew, or had any reason to know, of a different address for Andy Zheng. The sergeant's declaration merely affirms that PUD bills existed and that monthly usage information was observed. Additionally, appellant seems to imply that Mr. Zheng had a different address, on file with the PUD, than the address appearing on the

bills. There is absolutely no evidence in the record that supports this implication that would lend credence to this conclusory assertion. This argument should be disregarded as outside the scope of evidence considered in lower court.

3. The DTF exercised reasonable diligence in its attempts to serve Andy Zheng, TYI's registered agent for service of process and the manager of the corporation.

TYI asserts that the plain language of RCW 23.95.450 requires that service must be attempted utilizing each method set forth in section 1-3 of the statute. This is simply not true. In *State v. Larson*, 184 Wash. 2d 843, 365 P.3d 740, 742 (2015) this court reiterated the process for statutory interpretation and stated:

Whenever we are tasked with interpreting the meaning and scope of a statute, “our fundamental objective is to determine and give effect to the intent of the legislature.” *State v. Sweany*, 174 Wn.2d 909, 914, 281 P.3d 305 (2012) (citing *State v. Budik*, 173 Wn.2d 727, 733, 272 P.3d 816 (2012)). We look first to the plain language of the statute as “[t]he surest indication of legislative intent.” *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). “ ‘[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.’ ” *State v. Hirschfelder*, 170 Wn.2d 536, 543, 242 P.3d 876 (2010) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). We may determine a statute's plain language by looking to “the text of the statutory provision in question, as well as ‘the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.’ ” *Ervin*, 169 Wn.2d at 820 (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). *Larson*, id at 848

In the statute in question, a plain reading of the statute shows the use of the conjunction “or” throughout the service requirements and most particularly in subsection four. Also pertinent to the interpretation of the statute is the legislature’s use of the permissive “may” regarding the various methods by which service of process can occur. The legislature does not mandate any, or every, method set forth in the statute and did not intend to or it must be presumed that the legislature would have used the conjunction “and” instead of “or” in subsection four and that the legislature would have used “shall” instead of “may” in subsections 1-3.

As service is not required to be attempted in every method permitted in RCW 23.95.450, TYI’s assertion that more diligence than the statute requires also fails. TYI also cites to *Davis*, supra, as support for its assertion that satisfaction of due process necessitates more than RCW 23.95.450 requires. A plain reading of *Davis* illustrates the folly with TYI’s assertion.

In *Davis*, the court was interpreting the provisions of the non-resident motorist statute, RCW 46.64.040⁶. The statute requires service on

⁶ RCW 46.64.040 provides in pertinent part: . . . Service of such summons or process shall be made by leaving two copies thereof with a fee established by the secretary of state by rule with the secretary of state of the state of Washington, or at the secretary of state’s office, and such service shall be sufficient and valid personal service upon said resident or nonresident: **PROVIDED**, *That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known address of the said defendant, and the plaintiff’s affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff’s attorney that the attorney has with due diligence attempted to serve personal*

the tortfeasor at every known address prior to service on the Secretary of State. The issue in the case was whether service on the Secretary of State was effective after the plaintiff attempted personal service in Washington on the tortfeasor at the address listed in the police report. Contrary to what TYI has inferred, the actual holding in the case was that service was not affective on the Secretary of State because the attorney for the plaintiff had received the out of state address for the tortfeasor from her father and had not attempted to serve her at that address prior to serving the Secretary of State. The Court, in interpreting the out of state motorist statute's requirements stated, "This mandatory requirement is not limited to attempted personal service of process on a defendant "in this state." RCW 46.64.040.⁵ The statute requires attempted personal service "at all addresses known" to the attorney." *Davis* at 1258. The court went on to its holding as follows:

The undisputed record establishes Davis' attorney knew that Blumenstein had moved to 708 NE Penn Avenue, Bend, Oregon. The attorney made no attempt to serve Blumenstein at the address in Oregon. The attorney affidavit does not state that the attorney exercised due diligence in attempting to serve Blumenstein. The Plaintiff's Attorney's Affidavit of Compliance lists 7423 Eaglefield Drive, Arlington, Washington and 708 NE Penn Avenue, Bend, Oregon as known addresses of Blumenstein. But the affidavit states the only attempt at personal service was at the

process upon the defendant at all addresses known to him or her of defendant and further listing in his or her affidavit the addresses at which he or she attempted to have process served. ... (Emphasis added.)

Arlington address. Because Davis did not comply with the statutory notice requirements for substitute service, the court did not err in dismissing the lawsuit against Blumenstein. *Davis*, at 1258

Unlike corporations, non-resident motorists are not required to file address location information with the Secretary of State the moment they cross into Washington State. It is therefore reasonable that the non-resident motorist statute require service on “all known addresses” and perhaps some investigation to locate the non-motorist.

Domestic corporations are fundamentally different from non-resident motorists. They are permanently present in the state. They have a statutory burden to keep their whereabouts, and those of their agents for service of process, publicly known and on file with the Secretary of State at all times. See RCW 23.95.405 and RCW 23.95.435. And finally, they have an annual report filing requirement.⁷ It is therefore reasonable to assume that the legislature did not insert an “all known addresses” service requirement to RCW 23.95.450 because all known address should already be on file with the Secretary of State. *Davis* is neither comparable nor applicable to the facts of this case.

⁷ See RCW 24.03.395: Each domestic corporation, and each foreign corporation registered to conduct affairs in this state, shall deliver an annual report to the secretary of state in accordance with RCW **23.95.255**.

4. Service of Process on the Secretary of State does not become ineffective if actual knowledge of the pending suit is acquired by the agent for Service of Process.

The TYI's next argument is that service of process on the Secretary of State was rendered ineffective when service was made on Andy Zheng upon his returned from New York. That is an argument rife with the potential for absurd results. Factually speaking, Andy Zheng, TYI's agent, was never served by the DTF. Per his declaration, Andy Zheng was handed only the complaint and the declaration of Joe Strong by someone at a local police station. CP 40. He was not provided a full set of pleadings and the DTF had not directed that the documents be served to Andy Zheng. In fact, there is no indication that the DTF even knew Andy Zheng was in the state such that service of process could have been initiated by DTF. The two documents that Mr. Zheng has acknowledged receiving were on file with the court, were public records, and were accessible by any number of people that could provide them as a courtesy to Mr. Zheng. Since neither GHC nor the DTF knew Mr. Zheng's whereabouts, nor had a reason to request service (because his whereabouts were unknown), it is disingenuous to assert that legally cognizable service of process was made on TYI. Furthermore, given the limited documents that appear to have been provided, if the court were to find that service was affected, it would also have to find that same service was deficient, and therefore ineffective for failure to serve a summons, the

lis pendens, arrest warrant in rem, and every other document that constituted the initial pleadings.

Finally, if this court were to rule that this form of acquisition were to constitute sufficient service, it would undermine the very purpose of the various service of process statutes. The statutes exist to provide clarity into what constitutes effective and complete service and to provide stability for the court system when deciding issues related to effective service. In the case of Mr. Zheng's acquisition, clearly the statutory requirements were not met. The logical conclusion therefrom is that service on the Secretary of State was the last proper service made and it was effective as of the date of service.

The final argument asserted by TYI is that when Mr. Zheng receive the complaint with declaration, the ninety day period for the interested party to assert its interest in the property was restarted. TYI puts forth no support for this argument either statutorily or through case law. This argument relies solely and entirely on this court finding that Mr. Zheng's acquisition of an *incomplete* set of pleadings, provision of which was not directed by the plaintiffs in the suit, constituted effective service. Finding merit in this novel concept would lead to absurd results and increased litigation in every suit where service failed to comport with the service statutes. It also

potentially renders the statutes meaningless. This court should find that the ninety day period commenced with service on the Secretary of State and that the default, subsequently entered, should not be reversed.

Finally, this court should deny the appellants request for attorney's fees as the statutes and case law applicable to this issues brought forth herein are clearly do not support the position asserted by appellants. Furthermore, Respondent's request this court to find they are the prevailing party and to award reasonable fees and costs related to defending this appeal.

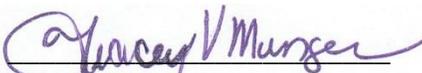
CONCLUSION

For the foregoing reasons, this court should affirm the decision of the trial court and award costs and fees to the Respondents as the prevailing party.

DATED: August 20, 2019.

Respectfully submitted:

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

BY: 
TRACEY V. MUNGER
Deputy Prosecuting Attorney
WSBA #33854
102 W. Broadway, #102
Montesano, WA 98563
(360) 249-3951

GRAYS HARBOR COUNTY PROSECUTING ATTORNEY'S OFFICE

August 20, 2019 - 2:18 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53277-8
Appellate Court Case Title: Grays Harbor Drug Task Force & Grays Harbor County, Respondents v. Real Property, et al, Appellants
Superior Court Case Number: 18-2-00363-2

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