

NO.: 335925

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

FILED

NOV 14 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

SALUD RUIZ, individually

Respondent

v.

JOSE G. CERVANTES and
CYNTHIA C. CERVANTES, individually,

Appellants

BRIEF OF APPELLANTS

[Appeal From the Superior Court for the State of Washington in and for the County of Benton,
Ruiz v. Cervantes, Civil No.: 10-2-01988-7]

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both individually and upon behalf of their
community property marital estate

TABLE OF CONTENTS

ASSIGNMENTS OF ERROR 1

Assignment of Error No.: 11

 A. The Superior Court Abused Its Discretion By Denying Appellants’ CR 60(b) Motion
 For Relief From Judgment 1

INTRODUCTION1

STANDARD OF REVIEW.....3

PROCEDURAL STATEMENT OF THE CASE 7

STATEMENT OF THE CASE 8

ARGUMENT 9

 A. Procedural Due Process Irregularities Rationally Justify Granting Relief

 1. Erroneous Service Address On Record Deprived Appellants of Procedural
 Due Process. 9

 2. Appellants’ Former Counsel Did Not Disclose Defendants’ Correct Home
 Street Address For Notice Purposes in the Withdrawal Motion. 10

 3. Ruiz’s Deficient Service Upon Defendants. 11

 4. The LCR 16 Ruling Constituted A Draconian, Austere Result.....12

 5. Entering The Requested Relief Is Appropriate. 17

 6. Manifest Injustice Will Arise in the Absence of Allowing the Relief
 Requested.18

CONCLUSION19

TABLE OF AUTHORITIES

CASES

Friebe v. Supancheck,
98 Wash. App. 260, 269, 992 P.2d 1014,1018 (1999). 17

Ha v. Signal Electric, Inc.,
182 Wash.App. 436 (Wa. App. 2014)(Div. I).7

Hendrix v. Hendrix,
101 Wash. 535, 538, 172 P. 819 (1918). 17

Jensen v. Luecke,
170 Wash.App. 1052 (Wash. App. 2012)(Div. I).4

Khlea v. Peters,
191 Wash.App. 1041(Wash. App. 2015)(Div. I). 7

Lindgren v. Lindgren,
58 Wn.App. 588, 596, 794 P.2d 526 (1990).7

Little v. King,
160 Wn.2d 696 (Wash. 2007). 13, 18

*Marcy Grantor, an individual, individually and as Guardian ad Litem for M.G., a minor,
v. Big Lots Stores, Inc., et.al.*, Nos. 67916-3-I, 67917-1-I, (Wash. App. Div. I, September
16, 2013).4-6

Pamelin Industries, Inc. v. Sheen-USA, Inc.,
95 Wn.2d 398, 622 P.2d 1270 (1981).17

Rivas v. Jung,
86 Wn.App. 1041 (Wash. App. 1997)(Div. I).4

Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson,
95 Wn.App. 233 (1999)(Div. I)3-4

Wanna Choi v. Ashley Young,
No. 71166-1-I, (Wash. App. Div. I, 29 December 2014).6

White v. Holm,

73 Wash.2d 348, 352, 438 P.2d 581 (1968)..... 18-19

RULES

CR 55passim

CR 60(b)passim

CR 71passim

ASSIGNMENTS OF ERROR

Assignment of Error No.: 1

A. The Superior Court Abused Its Discretion By Denying Appellants' CR 60(b) Motion For Relief From Judgment

INTRODUCTION

Appellants Jose G. Cervantes and Cynthia C. Cervantes became embroiled in this specific performance action as a result of Respondent Salud Ruiz initiating these 2010, proceedings to quiet title in certain real property, 45909 N. Crosby Road NW, Prosser, WA 99350 [“Crosby Property”]. Clerks Papers (CP) 1, 2-7, 10-11. Ruiz alleged Cervantes allegedly agreed to sell the Crosby Property to Ruiz, that Ruiz’s late husband, Elia, allegedly paid Cervantes approximately \$280,000.00, solely and strictly in cash, through Ruiz’s familial intermediaries, Ruiz’s sons-in-law, purportedly functioning as Cervantes’s ‘agents,’ without independent documentation to prove payment, and that Cervantes allegedly reneged.

Though Cervantes were represented by counsel for a certain period of time, upon counsel’s subsequent withdrawal in 2014, Cervantes appeared *pro per* from that point forward. CP 12-14. The Superior Court continued the matriculation of these proceedings towards trial through 2014, scheduling settlement conference, a pre trial conference, and trial dates in early 2015. CP

20-21, 22-23, 25-26. Cervantes failure to appear at a previously scheduled telephonic settlement conference, and the scheduled pre-trial management conference, 6 March 2015, resulted with entry of default and default judgment. CP 46, 57-60, 61-222, 33-40, 46, 53-56, 15-19, 227-229, RP 4-12. Judge Carrie Runge entered default judgment pursuant to CR 55 and LCR 16(a)(4), finding Cervantes willfully failed to comply with the court's order. CP 227-229, 230-232.

The Superior Court entertained oral argument on 12 May 2016, on Cervantes' CR 60(b) relief from judgment motion, which was continued from 4 March 2016, by the Honourable Jacqueline Shea Brown, to allow Judge Runge to hear the motion. CP 494-495. RP 14-19, 20-39. Judge Runge denied the motion. CP 379. This appeal, timely filed in 2015, within the period allowed under the Civil Rules, was stayed pending the resolution of Cervantes' CR 60(b) motion. CP 381-384.

Cervantes contend the striking of their answer, dismissing their counterclaim, and entering default and default judgment constituted an extremely Draconian, austere result, and that a less drastic measure should have been, and was not, considered by the Superior Court in order to allow Cervantes to both present evidence to prove their affirmative defenses and

litigate the underlying merits of the action. Accordingly, relief should be granted as a result of abuse of discretion committed by the Superior Court.

I. Standard of Review

The immediate threshold issue pending before this Honourable Court is whether the Superior Court abused its discretion by denying Appellants' CR 60(b) relief from judgment motion. Appellants maintain the Superior Court abused its discretion as analyzed *infra*. Washington courts consistently disfavour default judgments, preferring merits resolution. The standard of review in this context is for abuse of discretion. The Washington Court of Appeals in *Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 95 Wn.App. 233 (1999)(Div. I) found such relief appropriate in a damages award arising from entry of default judgment where the defendant did not advance a defense:

Nonetheless, a trial court has discretion to vacate the damages portion of a default judgment even where no meritorious defense is established. [23]. In *Calhoun v. Merritt*, no defense was presented and denial of a motion to vacate the liability portion of a default judgment was affirmed, but denial of the motion to vacate the damages portion of a default judgment was reversed as an abuse of discretion. [24] In *Calhoun*, there was no indication of hardship to the plaintiff. [25] The defendant's failure to appear was due to bona fide mistake, and he promptly moved to vacate. [26] The *Calhoun* court held that it would be inequitable and unjust to deny a motion to vacate the damages portion of the default judgment on the ground that the defendant failed to present a valid defense where the pain and

suffering award warranted further discovery. [27]

Calhoun is the only Washington case addressing the vacation of default judgment damages. It does not set forth a standard as to when default damages should be vacated. We have reviewed the law of states with similar provisions and find that Indiana Trial Rule 60(b)(1) is essentially identical to Washington's rule. The Indiana courts have held that the standard for vacating awards of damages from default judgments is the same as the standard for setting aside awards of damages from trials. [28] In Indiana, such determinations require a showing that the evidence Before the court granting the award was insufficient to support the amount of damages. [29] This is analogous to Washington's standard that requires the existence of substantial evidence to support an award of damages. [30] Because the Indiana rule and precedents are similar to Washington's, we adopt Indiana's rule that the standard for vacating awards of damages from default judgments is the same as the standard for setting aside awards of damages from trials.

95 Wn.App. at 241-242. See *Jensen v. Luecke*, 170 Wash.App. 1052 (Wash. App. 2012)(Div. I)(citing and following *Calhoun* in affirming granting of relief from default judgment motion); *Rivas v. Jung*, 86 Wn.App. 1041 (Wash. App. 1997)(Div. I)(reversing denial of relief from default judgment motion, finding abuse of discretion, citing and following *Calhoun*).

This analysis is further illustrated in *Marcy Grantor, an individual, individually and as Guardian ad Litem for M.G., a minor, v. Big Lots Stores, Inc.*, et.al., Nos. 67916-3-I, 67917-1-I, (Wash. App. Div. I, September 16, 2013). Affirming the granting of the motion to set aside and vacate the entered default judgment, the Court of Appeals reviewed and applied

Washington case law, liberally in preferring merits resolution:

Grantor contends the court erred in granting the motion to vacate the order of default and the default judgments against BLSI for \$250,000.

We review a trial court's decision vacating a default judgment for an abuse of discretion. *Little v. King*, 160 Wn.2d 696, 702, 161 P.3d 345 (2007). "An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court." *Little*, 160 Wn.2d at 710 (citing *Cox v. Spanqler*, 141 Wn.2d 431, 439, 5 P.3d 1265 (2000)). "Abuse of discretion is less likely to be found if the default judgment is set aside." *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979). We review a trial court's factual findings for substantial evidence. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Substantial evidence is the quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. *Sunnyside*, 149 Wn.2d at 879. Unchallenged findings are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

Default judgments are disfavored in Washington. *Griggs*, 92 Wn.2d at 581. Courts prefer to determine cases on their merit rather than by default. *Griggs*, 92 Wn.2d at 581. "A proceeding to vacate a default judgment is equitable in character and relief is to be afforded in accordance with equitable principles." *Griggs*, 92 Wn.2d at 581. In reviewing a motion to vacate a default judgment, the court's principle inquiry should be whether the default judgment is just and equitable. *Little*, 160 Wn.2d at 710-11. "This is not a mechanical test; whether or not a default judgment should be set aside is a matter of equity." *Little*, 160 Wn.2d at 704. The trial court may exercise its discretion "liberally, as well as equitably, to the end that substantial rights be preserved and justice between the parties be fairly and judiciously done." *White v. Holm*, 73 Wn.2d 348, 351, 438 P.2d 581 (1968).

We engage in a fact-specific inquiry to determine whether or not justice is being done. *Griggs*, 92 Wn.2d at 582. Because we do not favor default judgments, we are less likely to find that the trial court

based its decision on untenable grounds when the court vacated the default judgment than when it did not. *Griggs*, 92 Wn.2d at 582.

A motion to vacate a default judgment is governed by CR 55 and CR 60. *Morin v. Burris*, 160 Wn.2d 745, 754, 161 P.3d 956 (2007). CR 55(c)(1) provides that a court may set aside an order of default for good cause and upon terms the court deems just. If a default judgment has been entered, the court may set it aside under CR 60(b). CR 60(b) sets out the specific grounds that warrant setting aside a default judgment, including "[mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." CR 60(b)(1). The moving party bears the burden of proof. *Little*, 160 Wn.2d at 704-05.

To vacate a default judgment, a moving party must demonstrate that (1) there is substantial evidence to support a prima facie defense; (2) the failure to timely appear and answer was occasioned by mistake, inadvertence, surprise, or excusable neglect; (3) the moving party acted with due diligence after notice of entry of the default judgment; and (4) the opposing party will not suffer a substantial hardship if the trial court vacates the default judgment. *White*, 73 Wn.2d at 352. The first two factors above are "primary, " and the latter two are "secondary." *Little*, 160 Wn.2d at 704. We view the evidence in the light most favorable to the moving party when deciding whether there is substantial evidence of a prima facie defense. *Pfaff v. State Farm Mut. Auto. Ins. Co.*, 103 Wn.App. 829, 835, 14 P.3d 837 (2000).

See also *Wanna Choi v. Ashley Young*, No. 71166-1-I, (Wash. App. Div. I,

29 December

2014)(unpublished)(affirming entry of granting of relief motion based upon governing factors).

Accordingly, Appellants maintain the Superior Court abused its discretion by denying the timely filed relief from judgment motion to permit

a merits resolution so Appellants' defenses could be litigated and established by admissible evidence. See *Ha v. Signal Electric, Inc.*, 182 Wash.App. 436 (Wa. App. 2014)(Div. I)(affirming relief from default judgment where defendant demonstrated existence of evidence of defenses); see *Khlea v. Peters*, 191 Wash.App. 1041(Wash. App. 2015)(Div. I)(denying untimely filed CR 60(b) motion where motion filed more than one year after entry of default)("Relief under CR 60(b)(1) must be requested no more than one year after the judgment was entered. CR 60(b); *Lindgren v. Lindgren*, 58 Wn.App. 588,596, 794 P.2d 526 (1990) (noting that the CR 60(b)(1) grounds to vacate a default judgment do not apply when the party brings the motion more than one year after the judgment was entered). Judgment was entered November 1, 2010. The motion to vacate was filed May 15, 2012. More than a year passed from entry of the judgment to any action on the part of AMH. Relief under CR 60(b) is barred. We hold that the trial court did not abuse its discretion in denying AMH's motion to vacate the default judgment.").

PROCEDURAL STATEMENT OF THE CASE

Ruiz filed a quiet title action against the Cervantes in 2010. CP 1, 2-7,10-11. On 6 March 2015, the Superior Court entered default and default judgment against the Cervantes, quieting title of the Crosby Property in the

name of Ruiz. CP 227-229, 230-232. RP 4-12. The Cervantes moved for relief from judgment, which the Superior Court denied on 12 May 2016. RP 20-39. The denial of the relief motion is the sole issue appealed by the Cervantes before the Court of Appeals, Div III.

STATEMENT OF THE CASE

Ruiz initiated a quiet title action against the Cervantes, based upon an alleged ‘arrangement’ arose between the parties regarding the Crosby Property. CP 1. No admissible evidence exists, or has been produced, to confirm that alleged ‘arrangement,’ much less the alleged ‘payment’ by Ruiz. Instead, Ruiz offered self serving testimony, through deposition, of Ruiz’s late husband, Elia, allegedly ‘paying cash’ to Cervantes, by and through Ruiz’s sons-in-law, Felipe Hurtado and Rodolfo Hurtado, to Cervantes, which Cervantes contested by relief from judgment motion and supporting declarations. CP 305-308, 388-396, 315-359, 437-459, 248-257, 234-247, 260–304, 403-432, 309-311, 252-256 . No documentary evidence exists, or was even proffered, to establish alleged ‘payments.’ Ruiz obtained a windfall as a result of the entry of default judgment quieting title of the Crosby Property. Accordingly, relief from judgment should have been permitted.

ARGUMENT

A. Procedural Due Process Irregularities Rationally Justify Granting Relief

1. Erroneous Service Address On Record Deprived Appellants of Procedural Due Process

The Superior Court Clerks Office erroneously and inexplicably posted on the case docket sheet Appellants home street address for purposes of service as 5881 Bethany Rd, Sunnyside, WA. Appellants previously vacated that address in the fall of 2010, in the aftermath of an unlawful detainer action, *Adams v. Cervantes, et.al., and all those occupying 5881 Bethany Road, Yakima, Wa*, 10-2-03127-7, filed 10 September 2010. In point of fact, Appellants' home street address was 1091 Harrison Rd, Sunnyside, WA. As a result of the incorrect address posting, the Clerks mailing of the notice of telephonic status conference scheduled for 9:00 a.m., 10/09/2014, docket entry date, 09/16/2014. CP 22-23, and the notice and order amending case schedule, dated, 10/10/2014, settlement conference, pretrial management conference, and trial date, CP 25-26, setting those events for 01/08/2015, 01/15/2015, both at 1:30 p.m.], and trial date [set for 02/09/2015], were returned to the Clerks office as unclaimed. CP 24, 27. A later mailed notice from the Clerks Office of the notice of hearing of

settlement conference, pretrial management conference, and trial, Dkt ## 123-125, dated 12/10/2014, CP 28, 29,30-31, was also returned as unclaimed, Dkt # 126, dated 12/19/2014, CP 32.

Inasmuch as the mailings of those notices from the court were addressed to an erroneous home street address, and both envelopes returned unclaimed, Appellants were unaware of the afore identified scheduled court events.

2. Appellants' Former Counsel Did Not Disclose Appellants' Correct Home Street Address For Notice Purposes in the Withdrawal Motion

Appellants' former counsel, Scott Johnson, Esq., moved to withdraw from representing Appellants, Dkt # 116, dated 03/31/2014, CP 12-14. A review of the motion and supporting declaration does not disclose Appellants' correct home street mailing address, much less any street address, of the former clients, as required by CR 71(c)(1)-(2), which expressly requires strict compliance:

(c) Withdrawal by Notice. Except as provided in sections (b) and (d), an attorney may withdraw by notice in the manner provided in this section.

(1) Notice of Intent To Withdraw. The attorney shall file and serve a Notice of Intent To Withdraw on all other parties in the proceeding. The notice shall specify a date when the attorney intends to withdraw, which date shall be at least 10 days after the service of the Notice of Intent To Withdraw. The notice shall include a statement that the withdrawal shall be effective without order of court unless

an objection to the withdrawal is served upon the withdrawing attorney prior to the date set forth in the notice. If notice is given before trial, the notice shall include the date set for trial. The notice shall include the names and last known addresses of the persons represented by the withdrawing attorney, unless disclosure of the address would violate the Rules of Professional Conduct, in which case the address may be omitted. If the address is omitted, the notice must contain a statement that after the attorney withdraws, and so long as the address of the withdrawing attorney's client remains undisclosed and no new attorney is substituted, the client may be served by leaving papers with the clerk of the court pursuant to rule 5(b)(1).

(2) Service on Client. Prior to service on other parties, the Notice of Intent To Withdraw shall be served on the persons represented by the withdrawing attorney or sent to them by certified mail, postage prepaid, to their last known mailing addresses. Proof of service or mailing shall be filed, except that the address of the withdrawing attorney's client may be omitted under circumstances defined by subsection (c)(1) of this rule.

The Appellants' home street mailing address was not included within the motion, and the subsequent mailings from the Clerks Office to the Appellants, albeit to an erroneous street address, resulted with the Appellants not being properly notified of the matters specifically identified and referenced above, those envelopes being returned "unclaimed." CP 120, 122, 126.

3. Ruiz's Deficient Service Upon Defendants

Ruiz filed a declaration of service with the Superior Court on 15 January 2015, stating that personal service of Ruiz's proposed third trial

management report and exhibits, transmittal letter of trial management conference set for 15 January 2015, and a copy of LCR 16. CP 33-40, 41-42, 44-45. Appellants contend the purported service was in fact deficient inasmuch as the papers were left in a pick up truck located at 7481 Van Bell Road, Sunnyside, WA, the location of Cervantes Nurseries, belonging to someone else other than Cervantes. Cervantes was unaware of this alleged service, and did not learn of the existence of those papers until February, 2015, from the individual owner of that truck . That individual regularly played soccer in the warehouse since the warehouse also served as an indoor soccer facility used by the public on a regular basis. CP 234-247, 260-304, 403-432. Appellant Cervantes in fact appeared at the Superior Court on 8 January 2015, late, and checked with the Clerk's Office, being advised the papers were served at an incorrect street address.

4. The LCR 16 Ruling Constituted A Draconian, Austere Result.

Fueled by defendants' failure to appear at the previously scheduled settlement conference and the pre-trial management conference, Ruiz immediately moved the court to summarily enter default, and subsequently enter default judgment, upon defendants. Defendants contend that the entry of default and default judgment by the Superior Court on 6 March 2015,

constituted an extremely austere, Draconian result, and that a less extreme alternative measure was available in order to both assure and protect defendants' procedural and substantive rights as well as maintain control and management of the litigation by the court.

The Superior Court engaged in the following colloquy with Appellant Jose G. Cervantes at th 6 March 2015, hearing regarding the matter:

THE COURT: Thank you. Mr. Cervantes, I do note in the court file that there have been some notices that went to you that have been returned and are, in fact, in place in the court file. Of course, it is up to you to keep the court advised of your current address. So, having heard from Mr. Kimbrough that after he observed that you were not receiving the notices that he, then, took the extra step to, in fact, have you personally served with notice of the pretrial hearing, as well as the settlement hearing.

And given the information supplied by Mr. Kimbrough, again, I have not heard any basis for this Court not to sign the Orders that have been presented. So is there anything else that you wish to say?

MR. CERVANTES: I've been, umm - - You know, on this, I never got any money from these people - - or from this Miss Ruiz. I don't have any - - anything on that. I don't have nothing to do with her. The only people that was working on this property is, Your Honor, is these two people in this declaration [Rodolfo Hurtado and Felipe Hurtado] in this declaration that have here on that, that they were working - - the sone-in-law of this Salud Ruiz.

THE COURT: Well, so if you believe that there was some information or defenses, then this matter needed to go forward to a trial. But if we can't get you to come to the courthouse to defend the action, then this is what happens, sir.

MR. CERVANTES: Yes, I'm here, Your Honor.

THE COURT: Unfortunately, you're here a little too late and the Court has not heard any reason not enter the Orders that were presented by Mr. Kimbrough. You cannot simply ignore court

settings after having notice of those court settings. It's clear to the Court that you've known for some time that there's a case pending. It's been in place, as I said, since 2010. It's been set for trial numerous times. And I understand that it's not always been your fault that the matter has not proceeded to trial, but you can't simply ignore a court case.

So I have signed the Judgment Quietening Title as well as the Order of Default.

RP at pp.10-11.

The colloquy does not evidence, indicate, reflect, or reveal consideration or discussion of the particulars of LCR 16(a)(4). Rather, the Superior Court concluded that, based upon Cervantes' appearance and explanation, entering default and default judgment was allegedly proper. Cervantes noted the existence of witnesses to support a defense, the sons-in-law of the Respondent. Summarily jettisoning Cervantes' argument as 'too little, too late,' the Superior Court's action constituted an extreme, austere Draconian result.

LCR 16(a)(4) provides:

(4) Failure to Attend.

(A) Sanctions. Failure to comply with the provisions of paragraphs 1 and 2 above may

result in the imposition of terms and sanctions as the Court may deem appropriate.

(B) Default. Failure to appear at the settlement conference, without prior approval of the court, may constitute an act of default. Any party appearing at the settlement conference may move for default pursuant to CR 55. Costs and terms may be assessed at the discretion of the court.

LCR 16(e)(1) provides:

(e) Sanctions. On motion or on its own, the court may issue any just orders, including those set forth herein, if a party or its attorney: (I) fails to appear at a scheduling or other pretrial conference; (ii) is substantially unprepared to participate - or does not participate in good faith - in the conference; or (iii) fails to obey a scheduling or other pretrial order.

Sanctions may include the following:

(1) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(2) Striking pleadings in whole or in part;

(3) Staying further proceedings until the order is obeyed;

(4) Dismissing the action or proceeding in whole or in part;

(5) Rendering a default judgment against the disobedient party; or

(6) Treating as contempt of court the failure to obey any order

except an order to submit to a physical or mental examination.

Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses - including attorney's fees - incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Appellants' contend that a less austere, extreme, Draconian measure should have been entered, and the Appellants be accorded the opportunity to address the merits of the action. LCR 16(d)(4) allows for the entry of a stay of proceedings until the order is obeyed. Due to the fact of the erroneously recorded home street address allegedly that of Appellants, and the absence of the written disclosure of the accurate, correct home street address by former counsel, Appellants were substantially deprived of their procedural due process rights to litigate the underlying merits. Parol evidence issues and principal/agency issues permeated the litigation requiring a merits resolution.

Washington courts consistently rule that a trial court can enter an order vacating default judgment conditioned upon the moving party satisfying particular requirements. CR 60(b) is broad in its language, and authorizes the imposition of any terms that are just. The case law in Washington specifically

allows a trial court to condition the vacating of a default judgment on the payment of fees. *Hendrix v. Hendrix*, 101 Wash. 535,538, 172 P. 819 (1918) (upholding conditions imposed in an order vacating judgment that included an obligation to comply with a prior order of the court which included an award of attorneys' fees); *Pamelin Industries, Inc. v. Sheen-USA, Inc.*, 95 Wn.2d 398, 622 P.2d 1270 (1981)(motion to vacate default judgment "was granted on condition that defendants pay plaintiffs' attorneys' fees and post a \$50,000 performance bond, id at 400; "the trial judge had sufficient justification to impose conditions on the order setting aside the default judgment", id at 404); see also *Friebe v. Supancheck*, 98 Wash. App. 260, 269, 992 P.2d 1014,1018 (1999)(where the trial court conditioned order vacating default judgment upon an award of \$3,500 in attorneys' fees to the plaintiffs). Indeed, if the language in CR 60(b) "upon such terms as are just" is to have any meaning, it must be read to give the trial court the discretion to condition the vacation of a default judgment on compensating a plaintiff for the fees the plaintiff incurred as a result of a defaulted party having failed to comply with the court rules.

5. Entering The Requested Relief Is Appropriate

The submitted declarations of Jose G. Cervantes, Felipe Hurtado, Jr.,

and Rodolfo Hurtado specifically state that plaintiff failed to produce any evidence to corroborate and substantiate Ruiz's position. CP 248-257, 252-256, 234-247, 260-304, 403-432. The failure to offer admissible evidence to substantiate this critically significant aspect renders the default judgment subject to bona fide good faith challenge.

6. Manifest Injustice Will Arise in the Absence of Allowing the Relief Requested.

Appellants have admissible evidence, substantiated by testimony of the Hurtado Brothers, to establish previously asserted affirmative defenses that no 'agreement' arose between the parties. Moreover, Ruiz has not produced admissible evidence that Elia Ruiz paid approximately \$280,000.00, 'cash,' to Cervantes. CP 248-257, 252-256, 234-247, 260-304, 403-432. See *Little v. King*, 160 Wn.2d 696 (Wash. 2007). A party moving to vacate a default judgment must be prepared to show (1) that there is substantial evidence supporting a prima facie defense; (2) that the failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect; (3) that the defendant acted with due diligence after notice of the default judgment; and (4) that the plaintiff will not suffer a substantial hardship if the default judgment is vacated. *White v. Holm*, 73 Wash.2d 348,

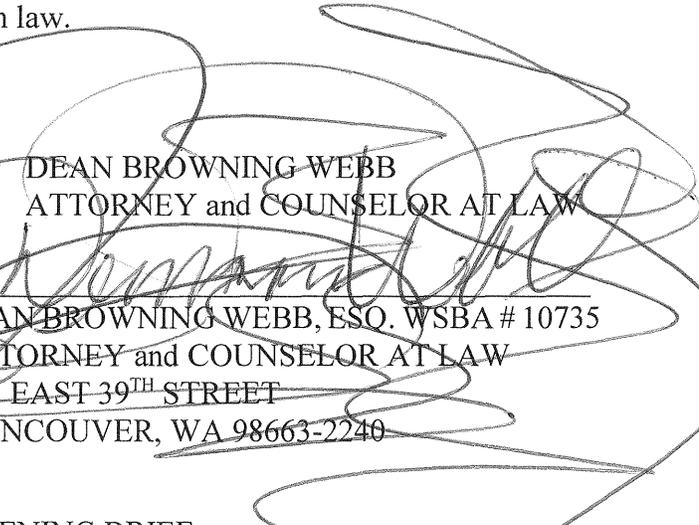
352, 438 P.2d 581 (1968)(citing *Hull v. Vining*, 17 Wash. 352, 49 P. 537 (1897)). This is not a mechanical test; whether or not a default judgment should be set aside is a matter of equity. *White*, 73 Wash.2d at 351, 438 P.2d 581. Factors (1) and (2) are primary; factors (3) and (4) are secondary. *Id.* at 352-53, 438 P.2d 581.

CONCLUSION

Washington courts consistently prefer issues resolved upon the merits. Relief from default judgment is part and parcel of that position. Less drastic, austere measures to assure Cervantes' compliance with court orders were summarily ignored by the Superior Court. Accordingly, Appellants respectfully request the Court of Appeals to reverse the Superior Court's decision and remand for appropriate relief from judgment, reinstate Cervantes' answer and counter claim, and remand for trial and attorneys' fees allowable under Washington law.

Respectfully presented,

Dated: 10 November 2016. DEAN BROWNING WEBB
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I mailed this day an original and true copies of the document referenced below to the following: postage prepaid, first class mail in Vancouver, WA, to:

Docket No.: Civ. App. No.: 335925
Benton County Superior Court No. 10-2-01988-7

Appellants: Jose G. Cervantes and Cynthia C. Cervantes

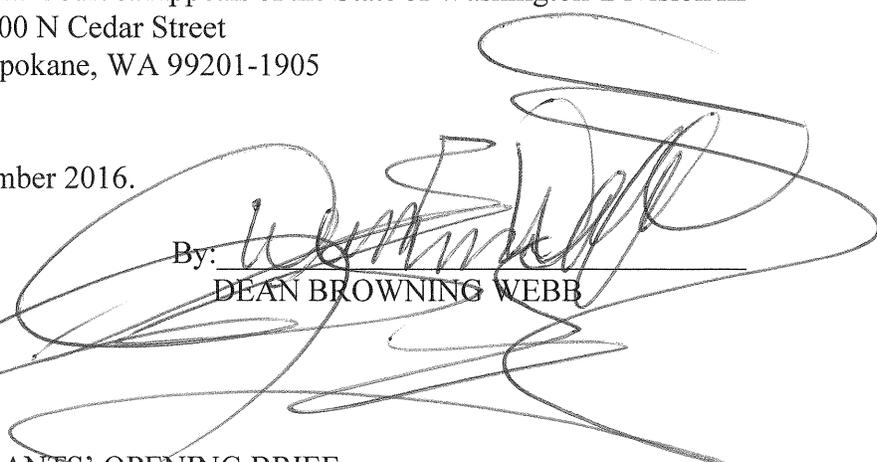
Document: Appellants' Opening Brief

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Ms. Renee S. Townsley, Clerk/Administrator
The Court of Appeals of the State of Washington Division III
500 N Cedar Street
Spokane, WA 99201-1905

Dated: 10 November 2016.

By: 
DEAN BROWNING WEBB