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Court of Appeals
Division III
State of Washington

NO. 351378

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

Luz Castellon and Juan Castellon,

Plaintiffs/Respondents,

v.

Sergio Rodriguez,

Defendant/Appellant.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

This case has everything to do with access to justice and a Plaintiff who abused a summary proceeding. Bringing an unlawful detainer action against someone who is not in possession of a property is contrary to the statutory requirements. Using the wrongfully filed unlawful detainer as a vehicle to obtain an inflated judgment so you can remodel a rental unit is an abuse of the system. Failing to provide interpretation services so a party – one that never should have even been named a party – can explain their side of the story is the definition of the lack of access to justice. For these reasons, the reasons set forth below, and the reasons raised in Sergio Rodriguez's Opening Brief, Sergio Rodriguez¹ asks this court to overturn the Superior Court's refusal to vacate the judgment, quash the writs of garnishment, and dismiss the unlawful detainer action.

II. ARGUMENT

A. **Unlawful detainers are about possession – not community liability**

Using the unlawful detainer process for anything other than recovery of possession of real property is an abuse of the statutory process. Unlawful detainer actions are statutorily created proceedings that

¹ Hereinafter, Sergio and Angela Rodriguez will be referenced by their first names for consistency and clarity.

provide an expedited method for resolving the right to possession of property between a landlord and tenant. *Christensen v. Ellsworth*, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007); *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). Because unlawful detainers are in derogation of the common law, they must be strictly construed in favor of the tenant. *Hous. Auth. of the City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 745 (1990).

There was no basis in fact or law for naming Sergio in the unlawful detainer action when he was not in possession of the property, nor had he been for several months - a fact well known to Castellon. CP 96, 105. Although it is not entirely clear from Castellons' argument, it appears Castellon is arguing that the Superior Court had jurisdiction over Sergio in an unlawful detainer action because of community liability.² See *Respondent's Brief*, III.B.1. at page 12 ("The Walla Walla County Superior Court had jurisdiction to proceed against appellant and his marital community"). This argument is contrary to law, as well as demonstrates Castellons' fundamental misunderstanding of jurisdiction.

² It is further unclear whether Castellon is arguing that community liability grants the Superior Court personal jurisdiction over Sergio Rodriguez, or whether community liability is a separate basis for the Superior Court to exercise its subject matter jurisdiction over the action. Either of these arguments are severely flawed.

“Jurisdiction ‘is the power and authority of the court to act.’”

Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 315, 76 P.3d 1183 (2003) (citing 77 Am. Jur.2d *Venue* § 1, at 608 (1997)). More specifically, subject matter jurisdiction is the court’s authority to hear the particular type of case and controversy. *ZDI Gaming Inc. v. State ex rel. Wash. State Gambling Comm’n*, 173 Wn.2d 608, 624, 268 P.3d 929 (2012) (citing *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 130 S.Ct. 2869, 2877, 177 L.Ed.2d 535 (2010)). Personal jurisdiction is the court’s authority to bring a person into its adjudicative process. See *Jurisdiction*, Black's Law Dictionary (10th ed. 2014). On the other hand, a community liability is neither of these things and has no relation to jurisdiction. A community liability is nothing more than an obligation or responsibility of the community. See *Liability*, Black's Law Dictionary (10th ed. 2014).

A Superior Court does not obtain jurisdiction over an unlawful detainer because of community liability, or for that matter, even by the unlawful detainer statute. Rather, the Washington Constitution vests the Superior Court jurisdiction to hear unlawful detainer actions. See *Hall v. Feigenbaum*, 178 Wn. App. 811, 818, 319 P.3d 61 (2014); WASH. CONST. art IV, §6 (“The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property...”) (emphasis added). Thus, when possession of real property is at issue, the

Superior Court has subject matter jurisdiction over the case and controversy.

Likewise, “unlawful detainer actions are statutorily created proceedings that provide an expedited method for resolving the right to possession of property between a landlord and tenant.” See *Christensen*, 162 Wn.2d at 370-71 (emphasis added); *Munden*, 105 Wn.2d at 45. RCW 59.12.030 specifically enumerates that to be guilty of unlawful detainer, the tenant must remain in possession of the property, in person, after the end of the tenancy. See RCW 59.12.030(1)-(4); see also Appendix A-1 – A-2. Thus, the issue of possession of property is also a statutory condition precedent for the commencement of unlawful detainers.

It is undeniable that unlawful detainers are about possession of property. Community liability does not equate possession, but simply put, is whether the community is financially responsible for alleged damages. As was addressed in detail in *Appellant’s Brief*, V.B.4. at 22-25, questions as to liability for alleged damages are issues that a Superior Court cannot hear while exercising its unlawful detainer subject matter jurisdiction. This is because a debt is not the same thing as “possession of property” – a fundamental requirement to allow the Superior Court to exercise its unlawful detainer subject matter jurisdiction, as enumerated by the Washington Constitution, and the statutory requirements of RCW

59.12.030. *See also Woodward v. Blanchett*, 36 Wn.2d 27, 32, 216 P.2d 228 (1950) (When possession is not at issue, but rather, landlord is only seeking damages, the action is one that “does not purport to be a statutory action for unlawful detainer.”).

Community liability has no relation to jurisdiction. The determination of whether an obligation or responsibility is a community liability or separate liability is irrelevant for the purposes of determining jurisdiction. Because Sergio was not in possession of the Property, a fact well known to Castellon, bringing an unlawful detainer action against him was improper. Therefore, the Superior Court erred when it failed to dismiss the unlawful detainer action.

B. The existence of a community liability does not establish personal jurisdiction over Sergio

A determination of whether any alleged liability is a community liability or the separate liability of Angela is not necessary for determining whether the Superior Court had personal jurisdiction over Sergio. This is because community liability does not confer personal jurisdiction over a party. The court obtains personal jurisdiction over a party through proper service of the summons and complaint. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014); *Allstate Ins. Co. v. Khani*, 75 Wn. App. 317, 324, 877 P.2d 724 (1994); *In re Marriage of Markowski*, 50 Wn.

App. 633, 635-36, 749 P.2d 754 (1988). Substitute service – as was attempted here – requires the service of the summons and complaint at the usual abode of the Defendant. RCW 4.28.080(16); see also *Dolan v. Baldrige*, 165 Wash. 69, 72-75, 4 P.2d 871 (1931).

Serving Angela at a neighbor's home is not service at Sergio's usual abode – especially in light of the fact that Angela and Sergio were estranged and had not lived together for over four months. In order to obtain personal jurisdiction over both Angela and Sergio, both need to be served. To argue otherwise, begets the question of why Castellon had the process server attempt to serve both Angela and Sergio from the beginning? CP 17-18. Failure to serve Sergio with the summons and complaint deprived the court of personal jurisdiction over him.

Additionally, Castellons' reliance on *Oil Heat Co. of Port Angeles, Inc. v. Sweeney*, 26 Wn.App. 351, 356, 613 P.2d 169 (1980) for the premise that service on Angela gives the Superior Court jurisdiction over both Sergio and the entire community is misplaced. Factually, there are numerous differences between *Sweeney* and the present matter. In *Sweeney*, husband and wife separated, but 1) still occasionally lived together, 2) there was no evidence that creditor was aware of their separation, 3) husband listed wife's address as his address for billing purposes, 4) wife was personally served with summons and complaint, and

5) there was a determination that the obligation was a community liability enforceable against the wife and the community. *Id.* at 353. Here, Sergio and Angela maintained separate residences (CP 96, 105), Castellon knew of the separation and that the marriage was defunct before the action was commenced (CP 96, 105, July RP 4),³ Sergio did not use the Property as his mailing address (CP 96, 101), only Angela was served with the summons and complaint (CP 17-18), and Castellon obtained a judgment against Sergio and Angela in their individual capacity, without any findings supporting the claim that the obligation is a community liability (CP 37-38).

What Division 2 held in *Sweeney*, was not that the court had jurisdiction over husband (as the trial court correctly determined that it did not because he was never served), but rather, that a judgment could be obtained against the couple's community property:

The trial court also concluded that it did not have jurisdiction over D. D. Sweeney because he was not personally served with process and that, presumably, it did not have jurisdiction to proceed against the community. Under the terms of RCW 26.16.030 which permits either spouse to manage community property, service of process upon either

³ Casetllons' attorney acknowledged that Casetllon was aware of Sergio and Angela's separation prior to the issuance of the 20 day notice in August, and this concession was acknowledged long before Sergio raised the issue in the Motion to Vacate: "Apparently Mr. and Mrs. Rodriguez are in the process of separating and divorcing and there was some issues involved with their tenancy so my client served the 20 day notice for them to vacate the end of August." July RP 4.

spouse and a resulting judgment for a community obligation is enforceable against the community. Since it is undisputed that the defendant-wife was personally served, the trial court had jurisdiction to proceed against the community.

The judgment of the trial court is reversed, and the cause is remanded with direction to enter judgment against the community.

Sweeney, 26 Wn. App. at 356 (emphasis added) (internal citations omitted). *Sweeney* should be read to hold only that 1) when the court has personal jurisdiction over only one spouse, a judgment can be entered against the spouse the court has personal jurisdiction over; and 2) when the spouse the court does not have personal jurisdiction over is the one who created the community liability, then the court can enter a judgment against the community property. *But see, John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 372, 83 P.2d 221 (1938) (quoting *Dane v. Daniel*, 28 Wash. 155, 165, 68 P. 446 (1902)) (“The mere service on one spouse does not give the court jurisdiction over the community”).

The mere fact the Superior Court had personal jurisdiction over Angela, and potentially the community,⁴ does not mean that there was personal jurisdiction over Sergio. Without proper service of the summons

⁴ Sergio uses the word potentially because determinations of whether a liability is community or separate is highly fact-specific, and this determination was never made.

and complaint on Sergio, the court lacked personal jurisdiction over him and could not enter a judgment against him or his separate property.

C. It was error for the Superior Court to deny the motion to vacate the judgment

1. Judgments entered without jurisdiction are void, and a court has a mandatory duty to vacate void judgments

As stated in *Appellant's Brief*, V.B.1-4, at 17-25, the judgment was void for both lack of personal jurisdiction and subject matter jurisdiction. The trial court never had personal jurisdiction over Sergio because he was never served with the summons and complaint. A judgment entered without personal jurisdiction is void. *State ex rel. Turner v. Briggs*, 94 Wn. App 299, 302-03, 971 P.2d 581 (1999). Likewise, because the unlawful detainer action was never converted to an ordinary civil action, the court could not exercise its unlawful detainer subject matter jurisdiction to enter the judgment for damages. See *Angelo Property Co., LP v. Hafiz*, 167 Wn. App. 789, 274 P.3d 1075 (2012).

Castellon now argues that they “converted the original detainer action into a general action to collect [] damages” by filing a Motion for Judgment and supplemental affidavits, and by serving those pleadings on Sergio. *Respondent's Brief* at 19. Aside from the fact that conversion to a civil action requires court action, reviewing Castellons' pleadings and the RPs, it is evident that prior to Sergio's Motion to Vacate, the words

“conversion,” “convert,” “ordinary civil action,” or even “*Munden v. Hazelrigg*” do not appear once. How Castellon can claim to have converted the action without ever asking the court to do so is a mystery. Further, Castellons’ claim of conversion is in direct conflict with the court’s minutes for September 13; “No further action to be taken.” CP 20.

Even if this court were to entertain the idea that the debt incurred by Angela was a community liability, the judgment is still void as to Sergio and his separate property because there is not personal jurisdiction over him. In order to be consistent with the holding in *Sweeney*, the judgment could only be against Angela⁵ and the community property, not Sergio’s individual property. However, the judgment in this case is not one against the community, but rather, against Sergio and Angela individually. See CP 37-38. This is evidenced by the fact that Sergio’s separate property is being garnished. CP 156-164. Because Sergio and Angela are living separate and apart, Sergio’s wages are considered his separate property, not community property. See RCW 26.16.140. Since the judgment was entered against Sergio without any personal jurisdiction

⁵ However, the judgment is also likely invalid against Angela as she was never served with the Motion for Judgment or given any notice, and she was never previously defaulted allowing for an order to be entered without notice. See CP 35-36.

over him, it is void and must be vacated, and all subsequent writs of garnishment should be quashed.

2. Sergio did not waive personal jurisdiction

A party doesn't waive personal jurisdiction until they request affirmative relief or file another responsive pleading under CR 12(b). *See Negash v. Sawyer*, 131 Wn. App. 822, 826-827, 129 P.3d 824 (2006); *Allstate*, 75 Wn. App. at 326.

Requesting an interpreter at a show cause hearing does not mean that a party is submitting themselves to the court's jurisdiction. Coming back the next day and answering the court's limited questions is not requesting affirmative relief or filing a responsive pleading. As the court held in *Negash v. Sawyer*, these limited appearances should be treated as nothing more than a notice of appearance, which does not personally submit the party to the jurisdiction of the court. 131 Wn. App at 826-827. Construing the unlawful detainer statute in favor of the tenant compels a narrow characterization of Sergio's limited appearances and a finding that he did not waive personal jurisdiction. *Id.* at 826.

3. Sergio properly appealed the denial of his motion

Castellon claims that Sergio "improperly used a motion to vacate the judgment as a means to appeal the judgment after the fact." However, a motion to vacate a void judgment may be made at any time. *Allstate*, 75

Wn. App. at 325. RAP 2.2(a)(10) specifically states that “[a]n order granting or denying a motion to vacate a judgment” is a basis for an appeal. Castellons’ peculiar argument that Sergio “should have properly contested the Motion for Judgment prior to entry of the judgment or thereafter as an appeal” is in direct conflict with RAP 2.2, and therefore must fail. *Respondents’ Brief*, III.E., at 18.

4. The Superior Court abused its discretion by awarding damages not supported by fact or allowed by law

Sergio has put forth numerous meritorious defenses - despite not needing to because of the void judgment. See *Turner*, 94 Wn. App. at 302-03. On December 12, 2016, Castellon was awarded a judgment of \$7412.04 that was not supported by fact or law. For example, \$1,000 of which was because Castellon represented that rent was not paid for August. See CP 106 (“The Rodriguezes also failed to pay their last month’s rent after the 20-Day Notice”). Castellon seems to concede this portion of the judgment in *Respondents’ Brief*:

It is undisputed that appellant paid the respondent monthly rent, including August 2016 rent.

Appellant Sergio Rodriguez had paid landlord/respondent Juan Castellon rent for the month of August 2016.

Respondents’ Brief at 1, 4. Respondent cannot argue in good faith that the \$1000 is supported by fact or law when they have conceded that “it is

undisputed” that the rent was paid. No reasonable judge would award a landlord \$1000 in rent for a period that was already paid, thus the court abused its discretion.

Sergio also has and continues to dispute the validity and the extent of the damages alleged. See CP 97-99. The house was not in good condition when they moved in. CP 96-98. Sergio also did not cause the damages alleged as he and Angela had separated and he moved out several months prior. CP 95-98. Further, whether the damages are a community obligation is a highly fact-specific determination and this determination was never made. See *Togliatti v. Robertson*, 29 Wn.2d 844, 852, 190 P.2d 575 (1948) (“Each case must be disposed of on its own peculiar facts.”). At most, once the issue is properly before the trial court with all jurisdictional requirements met, the court can then determine whether the damages are a community obligation, or Angela’s separate obligation. Until that time, there is nothing in the current record that indicates this is anything other than Angela’s separate liability.⁶ Given the record before the court, the judgement is not supported by fact or law, and thus the court abused its discretion by denying the motion to vacate.

⁶ Throughout this entirety of the proceedings, Castellon has even acknowledged that Angela and Sergio were separated, thus further supporting the argument that it is Angela’s separate liability. See CP 105, July RP 4:21-23; May RP 7:8-9.

D. The Superior Court did not follow its Language Access Plan

Putting up a few signs indicating that a litigant has a right to an interpreter is meaningless if an interpreter is not provided when the person shows up to court. A court has not met its statutory, constitutional, or ethical obligation to provide access to justice for all if a portion of our population is denied the basic opportunity to speak and to understand what is happening in their case. Placing the onus on the Limited English Proficient individual to request an interpreter every time they come to court does not comply with the Walla Walla Superior Court Language Access Plan, and doubtfully, any other Language Access Plan implemented by the courts across our state. The failure of the Walla Walla Superior Court to have an interpreter present at all hearings after Sergio Rodriguez's request is a violation of the Walla Walla LAP. This violation of the LAP and irregularity in the proceedings is more than enough to mandate vacating the judgment under CR 60. The failure to have an interpreter present caused Sergio to be denied the opportunity to participate in the proceedings and the court abused its discretion by not vacating the judgment.

III. CONCLUSION

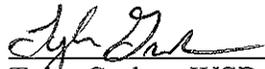
For the reason set forth above, the Court should reverse the order denying the motion to dismiss the unlawful detainer, vacate the judgment,

and quash all writs of garnishment. This Court should further order that all previously garnished funds be returned and award Sergio his costs and attorney fees for this appeal pursuant to RAP 18.1.

Respectfully submitted,

Dated this 30th of October 2017

Northwest Justice Project



Tyler Graber, WSBA #46780

Attorney for Appellant Sergio Rodriguez

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this 30th day of October 2017, I caused to be delivered via personal service and by E-service via the Washington State Appellate Courts' Portal, a true a correct copy of this REPLY BRIEF OF APPELLANT, addressed to the following:

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SIGNED at Walla Walla, WA, this 30th day of October 2017.



David Surratt
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IV. APPENDIX A: RELEVANT STATUTES

RCW 4.28.080

Summons, how served.

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

(16) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

RCW 26.16.140

Earnings and accumulations of spouses or domestic partners living apart, minor children.

When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse or domestic partner who has their custody or, if no custody award has been made, then the separate property of the spouse or domestic partner with whom said children are living.

RCW 59.12.030

Unlawful detainer defined.

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided)

requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130.

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