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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 351378

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

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Luz Castellon and Juan Castellon,

Plaintiffs/Respondents,

v.

Sergio Rodriguez,

Defendant/Appellant.

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**BRIEF OF APPELLANT**

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## I. INTRODUCTION

Appellant Sergio Rodriguez is a former tenant who had an eviction wrongfully filed against him for a rental unit he had not possessed for several months. Sergio Rodriguez was never served with a Notice to Vacate or a Summons and Complaint for Unlawful Detainer. Despite the Superior Court indicating that no further action was to be taken after a show cause hearing, several months later, Respondents obtained a judgment against him for alleged damages to the rental unit. To compound these problems, the Superior Court did not follow its Language Access Plan by providing a Spanish interpreter for Sergio Rodriguez. Without the aid of an interpreter, Sergio Rodriguez could not meaningfully dispute the inflated damages on which the judgment is based.

Unlawful detainer actions are supposed to be about possession. Unlawful detainer actions are narrow in scope. In unlawful detainer actions, Superior Courts are limited to hearing only questions related to possession, such as restitution of the premises and rent. When someone is not in possession or otherwise claiming a right to possession, there is no legal basis for filing an unlawful detainer against them, let alone using the unlawful detainer process as a means to obtain a judgment for damages. This appeal asks the Court to uphold this basic tenet in landlord/tenant law: unlawful detainer actions are about possession.

Sergio Rodriguez appeals the Walla Walla Superior Court's refusal to 1) vacate the December 12, 2016, judgment; 2) quash a writ of garnishment; and 3) dismiss the Complaint for Unlawful Detainer. Because Sergio Rodriguez was neither in possession of the rental unit, nor claimed any right to possession when the Unlawful Detainer Complaint was filed, the underlying unlawful detainer action was wrongfully filed against him and must be dismissed. Furthermore, the judgment entered on December 12, 2016, is void as the Court did not have personal jurisdiction over Sergio Rodriguez and the court lacked subject matter jurisdiction over the claim for damages because the action was never converted to an ordinary civil action. Finally, all subsequent writs of garnishment must also be quashed, as a garnishment cannot exist without an underlying judgment or cause of action.

## **II. ASSIGNMENTS OF ERROR**

- No. 1. The Superior Court erred when it failed to enter an order dismissing the unlawful detainer action.
- No. 2. The Superior Court erred when it failed to vacate the December 12, 2016, judgment entered against Sergio Rodriguez.
- No. 3 The Superior Court erred when it failed to quash the writ of garnishment.

### III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Was it improper for Respondent Castellon to file an Unlawful Detainer Complaint against Appellant Sergio Rodriguez when his possession was not at issue? **Yes.** (Assignment of Error 1)
- B. Was the judgment and writ of garnishment against Appellant Sergio Rodriguez void for lack of personal jurisdiction when he was not served with the Summons and Complaint? **Yes.** (Assignments of Error 2 & 3)
- C. Could the Superior Court exercising its unlawful detainer subject matter jurisdiction, entertain a claim for damages when the action was not converted to an ordinary civil action for damages? **No.** (Assignments of Error 2 & 3)
- D. Did the Superior Court abuse its discretion by failing to vacate the judgment and quash the writ of garnishment, when it failed to adhere to its Language Access Plan and awarded damages, costs, and fees not recoverable by law? **Yes.** (Assignments of Error 2 & 3)

### IV. STATEMENT OF THE CASE

#### A. Factual Background

Sergio Rodriguez (“Sergio”) and Angela Rodriguez (“Angela”)<sup>1</sup> rented the property at 428 S. 8th Avenue, Walla Walla, WA 99362 (“Property”) for approximately two years starting in 2014. CP 96. Respondents Luz and Juan Castellon (“Castellon”) are the owners of the Property. CP 04. The parties never signed a written lease agreement, but

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<sup>1</sup> In the unlawful detainer action, Angela was initially referenced as Jane Doe Rodriguez. For consistency and clarity, she will be referenced by her first name.

they orally agreed to a month-to-month tenancy for \$1000.00 per month. CP 04, 96. Sergio also provided Castellon with a \$900.00 security deposit. CP 99.

When Sergio and Angela moved in, the Property was not in good condition and needed repairs. CP 96-98. The toilet tank was broken, the bathroom cabinet doors were hanging off their hinges, and doorframes barely nailed in. CP 96-98. The basement window frames were windowless and covered only with plastic and wood. CP 96-98. While living there, Sergio did a lot of work to improve the Property. CP 96-98. He installed carpet in the living room and in three bedrooms, he secured the doorframes, and he replaced the bathroom door. CP 96-98. Sergio also notified Castellon when repairs were needed. CP 96-98. For example, Sergio told Castellon about the leaky toilet, but Castellon responded that he was not going to fix it. CP 96-98.

In April 2016, Sergio and Angela separated. CP 95-96. Sergio agreed to move out of the Property, and he told Castellon that he would no longer be living there. CP 96, 105. Sergio moved into a new home and he changed his mailing address. CP 96. After moving out, and as part of their informal separation agreement, Sergio continued to pay rent to Castellon for a few months on Angela's behalf. CP 95-96. However, this arrangement was not intended to be indefinite. Sergio informed Castellon

that after August, he was no longer going to pay rent on Angela's behalf, and that Castellon and Angela would have to work something out between the two of them. CP 96. In response, Castellon issued a 20-Day Notice to Vacate, effective August 31, 2016. CP 11. Castellon served the Notice by mailing and posting a copy at the Property. CP 7-11. Sergio never received the Notice to Vacate because he did not live at the Property and he had a new mailing address. CP 96. Angela did not timely vacate. CP 04-06.

**B. Procedural Background**

On September 1, 2016, Castellon filed a Complaint for Unlawful detainer against Sergio Rodriguez, Jane Doe Rodriguez, and all other occupants. CP 04-06. The allegations raised in the Complaint are limited to 1) identification of the parties; 2) facts related to service of a 20-day Notice terminating the tenancy; and 3) Defendants' alleged failure to timely vacate. CP 04-06. A show cause hearing was scheduled for September 12. CP 15-16.

That same day, Castellon's process server went to the Property to attempt service. CP 17-18. When the process server arrived at the home, a minor girl answered the door. CP 17-18. She indicated that her mother was not home, but that she could be found at a neighbor's. CP 17-18. The girl

then took the process server a couple houses down to 412 8<sup>th</sup> Avenue<sup>2</sup> and Angela was personally served with the Summons and Complaint. CP 17-19. In his Certificate of Service, the process server indicated that Sergio was served via substitute service on Angela. CP 17-18. Sergio never received a copy of the Summons and Complaint. CP 96.

Sometime before the September 12, 2016, show cause hearing, Angela called Sergio and told him there was a court action against him, and that he should go.<sup>3</sup> CP 96. At the September 12, show cause hearing, Court Commissioner Mitchell initially inquired to the gallery “[i]s Sergio Rodriguez here?” July RP 3.<sup>4</sup> Recognizing his name, Sergio approached. In response to the Commissioner questions, Sergio requested a Spanish interpreter. July RP 3. With no Spanish interpreter present, the matter was rescheduled for the following day. CP 19, 97; July RP 3.

The following morning, court-certified Spanish interpreter Jeff Adams was present in the courtroom. CP 20, 62-64, 97; July RP 4-6.

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<sup>2</sup> The Property subject to the Unlawful Detainer action is located at 428 8<sup>th</sup> Avenue. CP 04-06.

<sup>3</sup> It is unclear whether Angela realized that she was the “Jane Doe” identified in the Complaint.

<sup>4</sup> There are two different Report of Proceedings filed in this matter. The first set was filed on May 11, 2017, and the second set was filed on July 7, 2017. Both RPs start at page 1. In order to minimize confusion, each RP will be also be identified by the month in which it was filed with this court.

Commissioner Mitchell indicated that he was going to hear “Ms. Geidl’s case” (Castellon’s counsel).<sup>5</sup> CP 62; July RP 4. Castellon’s counsel began by acknowledging that possession was no longer at issue, but Commissioner Mitchell stopped her because Sergio was unaware that his case had been called. Commissioner Mitchell had to specifically state, “Sergio Rodriguez, can you come up here.” CP 62; July RP 4. Interpretation services began only at this point. CP 62-64, 97; July RP 4.

At the Show Cause hearing, Castellon’s counsel acknowledged that she was aware that Sergio and Angela had separated and that everyone had vacated prior to the hearing. CP 62-63; July RP 4-5. When asked by Commissioner Mitchell whether he moved out, Sergio responded “Yeah, like three months ago.” July RP 5. After obtaining a forwarding address for Sergio, it was determined that no writ of restitution was necessary. July RP 5-6. The court declined to take any further action. CP 20; July RP 6.

A month and a half later, on October 31, 2016, Castellon made a Motion for Entry of Judgment and Judgment Summary. CP 21-34. For the first time, Castellon alleged that back rent was due and owing under the

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<sup>5</sup> To add further confusion for Sergio, Castellon’s counsel on September 12 was Glenn MacLeod (spelled McCleod in CP 18; July RP 3), while Ms. Geidl appeared on September 13. CP 19-20. Mr. MacLeod and Ms. Geidl are attorneys with the same law firm.

verbal lease agreement and that there was damage to the house. CP 04-06, 22, 31-32. That same day, Sergio was served with the judgment paperwork, including the Declaration of Juan Ramon Castellon, a Cost Bill, and a Note for Motion Docket with a hearing date set for December 12, 2016. CP 35-36. Neither the Superior Court nor Castellon's counsel arranged for an interpreter to be present for the December 12 hearing.

On December 12, 2016, no Spanish interpreter was present in the courtroom. CP 39. Counsel for Castellon indicated she had not received any response from Sergio or Angela<sup>6</sup> and that "[she did not] know if they are here in the courtroom." CP 66-67; May RP 1-2. Neither the Superior Court nor Castellon's counsel made any inquiry to verify the presence of Sergio in the courtroom. CP 66-67; May RP 1-2. No request was made to the gallery for Sergio to come forward, as Commissioner Mitchell had done the previous two court hearings. CP 66-67; May RP 1-2, July RP 3-4. Instead, the Superior Court asked if she had an order and signed it as presented. CP 39, 66-67; May RP 1-2. Castellon's judgment was obtained without any inquiry as to its merit. The judgment was comprised of \$5335.04 in damages, \$277.00 in costs, \$800.00 in attorney fees, and \$1000.00 rent for an unspecified month. CP 38.

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<sup>6</sup> Angela was never served with the judgment paperwork.

Sergio was in the courtroom on the morning of December 12, 2016, but never heard his case or name called and was not asked to come forward as he had been the previous two court hearings. CP 97. He did not see Castellon or the court-certified interpreter in the courtroom. CP 97. He came prepared to dispute the damages alleged by Castellon. CP 97-98. Regardless, even if he had heard his case or name called, without an interpreter present, he would not have been able to dispute the alleged damages or otherwise meaningfully participate in the proceeding. CP 95, 97.

On December 21, 2016, Castellon obtained a writ of garnishment on Sergio's earnings. CP 40-47. After receiving the garnishment paperwork, Sergio secured the undersigned counsel, who in turn filed a Motion to 1) Vacate the December 12, 2016, Judgment; 2) Quash the Writ of Garnishment; and, 3) Dismiss the Complaint for Unlawful Detainer. CP 48, 58-103.

On March 6, 2017, the Superior Court heard argument regarding Sergio's Motion. CP 150. The Superior Court orally ruled that because Sergio was personally served with the judgment paperwork on October 31, 2016, the Motion to Vacate, Quash, and Dismiss would thus be denied. May RP 8-9. The Superior Court thereafter entered a written order

denying Sergio's Motion.<sup>7</sup> Sergio Rodriguez appeals this Order. CP 151-155.

## V. ARGUMENT

### A. **The unlawful detainer action must be dismissed because Sergio Rodriguez was not in possession of the Property when the action was commenced.**

#### 1. **Unlawful detainer actions are about possession.**

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. *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); *Stevens v. Jones*, 40 Wash. 484, 82 P. 754 (1905); *Barr v. Young*, 187 Wn. App. 105, 108, 347 P.3d 947 (2015); *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."). Unlawful detainers are summary in nature, in derogation of the common law, and 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).

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<sup>7</sup> The written order did not include any Findings of Facts, Conclusions of Law, or any other reasoning for denying the Motion. CP 148-149.

A tenant is guilty of unlawful detainer if they remain in possession, in person, beyond the final date of the tenancy. *See* RCW 59.12.030. RCW 59.12.030 consists of seven different subsections that outline when someone may be guilty of unlawful detainer. RCW 59.12.030(1)-(5) make it clear that a tenant is only guilty of unlawful detainer if they possess, by person, the real property after the final date of the tenancy:

- (1) When he or she holds over or continues in possession, in person or by subtenant...
- (2) When he or she . . . continues in possession thereof, in person or by subtenant...
- (3) When he or she continues in possession in person or by subtenant...
- (4) When he or she continues in person or by subtenant...
- (5) When he or she . . . remains in possession . . .

RCW 59.12.030(1)-(5).<sup>8</sup> Thus to be guilty of unlawful detainer, the tenant must be 1) in possession of the property, 2) in person or by subtenant, 3) after the termination of the tenancy. If any one of these three requirements are not met, then there is no basis in law or fact to bring an unlawful detainer action against that person.

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<sup>8</sup> RCW 59.12.030(1)-(5) apply exclusively to tenants or subtenants. RCW 59.12.030(6) does not pertain to tenants, but rather an illegal or otherwise uninvited entrant. RCW 59.12.030(7) relates to gang-related activity, which is not relevant here.

**2. The unlawful detainer action was wrongfully filed against Sergio Rodriguez because he was not in possession of the Property.**

Here the record is unequivocal: Sergio Rodriguez was not in possession of the Property on September 1, 2016. Sergio moved out of the Property in April 2016 when he and Angela separated. Castellon had full knowledge of this fact and even admitted in the written response to Sergio's Motion to Vacate: "The landlord was aware that the couple was estranged and that Sergio had been staying elsewhere the majority of the time." CP 105. Despite this knowledge, Castellon elected to bring an unlawful detainer against Sergio.

Castellon advanced several theories for why the unlawful detainer action against Sergio was proper. First, Castellon argued that although Sergio was not personally there, Angela and the children were, and her tenancy was his "community expense." CP 108. Second, they argued that Sergio never provided a written 20-day notice to terminate his tenancy and because he continued to pay rent on Angela's behalf, he was "affirmatively renew[ing] the tenancy" each month. CP 108. Finally, Castellon argued that Sergio still had personal possessions at the Property, thus the unlawful detainer action was valid. CP 143. However, none of these theories are supported by the record or by law.

**a. The tenancy is not a community expense.**

If Angela remained in possession of the Property after August 31, as a matter of law her wrongdoing cannot be imputed to Sergio. When Sergio and Angela separated in April 2016, they became *de facto* separated. *De facto* separations are governed by RCW 26.16.140, which states in relevant part:

When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each.

RCW 26.16.140. When Sergio moved out of the Property at the end of April 2016, he and Angela had a mutual intent to abandon their marital relationship. From that point onward, Sergio and Angela's respective earnings and accumulations (including debts) are their separate property – not communal property. Castellon may have had a plausible claim to bringing the action against Sergio had their separation been unknown. But this is not the case. Castellon had full knowledge of the separation prior to the commencement of the unlawful detainer. Thus, Castellon cannot hold Sergio responsible for Angela's separate liability.

**b. Sergio's failure to provide a written notice to terminate his tenancy does not justify an unlawful detainer against him.**

Sergio's failure to provide written notice or his continued paying of rent on Angela's behalf after he moved out do not justify filing an

unlawful detainer action against him. Castellon is correct that RCW 59.18.200(1)(a) allows for month-to-month tenancies to be terminated upon delivery of a written 20-day notice by either party. However, this is not the exclusive method for terminating a tenancy.

For example, when a month-to-month tenant “reasonably indicates by words or actions the intention not to resume tenancy” the tenant shall be deemed to have abandoned the tenancy and at most shall be liable to pay for the next regular rental payment. *See* RCW 59.18.310. When Sergio told Castellon that he was ending his tenancy, the most Castellon could have held him liable for was the next month’s rent. Sergio paid this amount and more. Further, even if Sergio’s tenancy “renewed” each time he paid rent, the fact remains that Sergio was not in possession on September 1, 2016. So even if his tenancy continued through August, he vacated prior to the date indicated in the notice, and thus there was no basis in fact or law for filing the unlawful detainer action against him.

**c. Abandoned personal property does not equate to possession under RCW 59.12.030.**

If Sergio did still have personal possessions at the Property, an unlawful detainer is not the proper recourse for addressing such an issue. RCW 59.18 *et seq.* provides Castellon with proper procedures to deal with abandoned personal property. *See, e.g.,* RCW 59.18.310(2). Filing an

unlawful detainer action is not the procedure. Abandoned personal property is not equivalent to remaining in possession by person. If it were, RCW 59.12.030(1)-(4) would have no reason to include the “in person or by subtenant” language. *See Whatcom Cnty., v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”) Therefore, Castellon’s arguments must fail.

**d. Wrongfully filed unlawful detainers are harmful to tenants.**

With affordable housing already a precious commodity, any negative mark on tenant’s record reduces their future housing opportunities.<sup>9</sup> The harm caused by wrongfully filed unlawful detainers cannot be understated:

Having access to acceptable housing is not just a compelling interest on its own, but, practically speaking, it is also necessary to secure other fundamental rights and interests. Access to employment, education, voting, health care, and most other public and private interests is greatly diminished, if not eliminated, when stable, suitable housing is unavailable.

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<sup>9</sup> *See, e.g.*, Laws of 2012, Ch. 21 § 1 “The legislature finds that residential landlords frequently use tenant screening reports in evaluating and selecting tenants for their rental properties. These tenant screening reports purchased from tenant screening companies may contain misleading, incomplete, or inaccurate information, such as information relating to eviction or other court records . . .”

*Hundtofte v. Encarnacion*, 181 Wn.2d 1, 23-24, 330 P.3d 168 (2014)  
(Gonzalez, J. dissenting).

In response to *Hundtofte*, the Legislature enacted RCW 59.18.367, authorizing orders of limited dissemination of unlawful detainer records when plaintiff's case is sufficiently without basis in fact or law, the tenancy is reinstated, or on a showing of other good cause. However, even with orders of limited dissemination being available, there is no substitute to not having the unlawful detainer filed in the first place.

While the damage is already done to Sergio and his rental record, this Court can still send a strong message to other landlords to dissuade them from misusing the unlawful detainer process. A holding finding that: 1) unlawful detainers can only be brought in order to recover possession; 2) unlawful detainers can only be brought against those actually in possession; and 3) unlawful detainers cannot be utilized to fast-track a judgment against a tenant instead of bringing an ordinary civil action, will go a long way to protecting Washington tenants from the harms that come with having an eviction on one's record.

Therefore, because Sergio 1) did not possess the Property, 2) in person, 3) after the termination of the tenancy, he cannot be guilty of unlawful detainer. The unlawful detainer was wrongfully filed against

him, and the Superior Court erred by denying the Motion to Dismiss the Unlawful Detainer.

**B. The Superior Court has a nondiscretionary duty to vacate a void judgment and quash a writ of garnishment.**

**1. The Superior Court did not have personal jurisdiction over Sergio Rodriguez because he was not served with the Summons and Complaint.**

Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party. *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). Whether service of process was proper is a question of law subject to *de novo* review. *Scanlan*, 181 Wn.2d at 847. RCW 4.28.080 governs service of the summons.

Castellon claims that service was made via substitute service as authorized by RCW 4.28.080(16). RCW 4.28.080(16) provides that service can be made upon a Defendant “by leaving a copy of the summons at the house of the [Defendant’s] usual abode with some person of suitable age and discretion then resident therein.” Thus in order for substitute service to be proper, the summons needs to be left at 1) the Defendant’s usual abode, 2) with someone of suitable age and discretion, 3) who currently lives with Defendant. These requirements are not disjunctive and all must be met to effect proper substitute service. *See Gross v. Evert-*

*Rosenberg*, 85 Wn. App. 539, 543, 933 P.2d 439 (1997) (substitute service was not proper when a process server left a copy of the summons and complaint at a house the defendant owned but no longer lived at); *Lepeska v. Farley*, 67 Wn. App. 548, 551, 833 P.2d 437 (1992) (substitute service on a son at his parents' home when the son maintained his own separate residence did not satisfy the requirements under RCW 4.28.080(16)); *Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wn. App. 480, 483-84, 674 P.2d 1271 (1984) (service was improper when defendants were served by leaving papers at their son's house).

What actually occurred in this case does not meet the statutory requirements for substitute service. First, all parties acknowledge that Sergio was no longer living at the Property on September 1, 2016. Thus, service made at the Property was not at Sergio's usual abode. Second, the service was not at the Property, but rather, a neighbor's home. Finally, Sergio and Angela were separated, and not living together – thus she could not accept service for him.<sup>10</sup> The “substitute service” made on Sergio does not comply with the statutory requirements of RCW 4.28.080(16) and

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<sup>10</sup> As discussed in *Supra* §V. A. 2. (a), even if Castellon's claim that the tenancy is a “community obligation” were true, service on only Angela is still not proper, because service needs to be on both husband and wife to hold the community liable. *See John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 372, 83 P.2d 221 (1938) (“The mere service on one spouse does not give the court jurisdiction over the community”) (internal citation omitted); *Dolan v. Baldrige*, 165 Wash. 69, 72-75, 4 P.2d 871 (1931) (holding that substitute service for husband was not valid when it was left with wife at location other than husband's usual abode).

therefore, Sergio was never served. Failure to serve Sergio deprives the Superior Court of personal jurisdiction over him and renders any subsequent judgment void.

**2. Sergio Rodriguez did not waive personal jurisdiction.**

“The defense of insufficient service of process is waived unless the party asserts it either in a responsive pleading or in a motion under CR 12(b)(5).” *French v. Gabriel*, 116 Wn. 2d 584, 588, 806 P.2d 1234 (1991) (citing CR 12(h)(1)(B)). A party may also personally submit to the jurisdiction of the court by requesting affirmative relief. *Negash v. Sawyer*, 131 Wn. App. 822, 827, 129 P.3d 824 (2006). “Affirmative relief is defined as ‘[r]elief for which defendant might maintain an action independently of plaintiff’s claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to establish it.’” *Negash*, 131 Wn. App. at 827 (quoting *Grange Ins. Ass’n v. State*, 110 Wn.2d 752, 765-66, 757 P.2d 933 (1988)). An appearance alone does not constitute such a request nor does it waive the defense. *Id.*; see also *Allstate*, 75 Wn. App. at 326 (“Where a defendant appears in a case **and** files responsive pleadings or engages in discovery prior to the entry of a final judgment, that defendant is subject to the requirements of CR 12(b) and (h)(1).”) (Emphasis added).

Nothing in the record indicates that Sergio waived personal jurisdiction. While Sergio appeared at the September 12 and 13 Show Cause hearings, he did not request any affirmative relief, engage in discovery, or file any answer or other responsive pleadings. The transcripts show nothing more than a monolingual Spanish-speaking *pro se* defendant responding to the court's questions about when he moved out of the Property and giving his current mailing address. July RP 5-6. This brief exchange between Sergio and the Commissioner does not mean that Sergio was personally submitting himself to the court's jurisdiction. *See Negash*, 131 Wn. App. at 826. ("Construing the statute in favor of the tenant compels a narrow characterization of [tenant's] response.") Rather, Sergio properly raised the defense of lack of personal jurisdiction in the motions to dismiss and vacate filed on February 21, 2017. CP 87-88. The pleadings filed on February 21, 2017, were the first pleadings and motions made by Sergio, satisfying the requirements of CR 12(b). Thus, Sergio did not waive the defense of lack of personal jurisdiction.

**3. A judgment entered without jurisdiction is void.**

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).

When a judgment is void, there is no need to demonstrate a meritorious defense because the court has a non-discretionary duty to vacate the

judgment.<sup>11</sup> *John Hancock*, 196 Wash. at 380; *Turner*, 94 Wn. App at 305; *Matter of Marriage of Dugan-Gaunt*, 82 Wn. App. 16, 18-19, 915 P.2d 541 (1996); *Allstate*, 75 Wn. App. at 323 (citing *Leen v. Demopolis*, 62 Wn. App. 473, 478, 815 P.2d 269 (1991), *review denied*, 118 Wn.2d 1022, 827 P.2d 1393 (1992)). Unlike attacks on judgments based on other grounds specified in CR 60(b), a void judgment under CR 60(b)(5) must be vacated as a matter of law. *Marriage of Dugan-Gaunt*, 82 Wn. App. at 18-19; *Markowski*, 50 Wn. App. at 635. A void judgment may be vacated at any time. *Allstate*, 75 Wn. App. at 325.

The fact that Sergio was personally served with the judgment paperwork nearly two months later does not cure the prior lack of service of the summons and complaint. The Superior Court erred when it determined that personally serving Sergio with the judgment paperwork was a proper basis for denying the Motion to Vacate. This later service is irrelevant because service of the Summons establishes personal jurisdiction-- not service of a motion for judgment. Thus, subsequent service of other documents does not grant the Superior Court personal jurisdiction and is not a legal basis to leave a void judgment intact. The void judgment must be vacated.

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<sup>11</sup> Regardless, Sergio does have meritorious defenses that he never had an opportunity to present. *See Infra* §C.2.

**4. The judgment is void because the unlawful detainer action was never converted to an ordinary action for damages.**

Because the action was never converted from an unlawful detainer action into an ordinary civil action for damages, there was no jurisdiction to enter any judgment or take any action other than dismissal of the case. As such, the court lacked authority to enter any relief, including a monetary judgement for alleged damages. The law in Washington is well settled:

[i]n an unlawful detainer action, the court sits as a special statutory tribunal to summarily decide the issues authorized by statute and not as a court of general jurisdiction with the power to hear and determine other issues.

*Granat v. Keasler*, 99 Wn.2d 564, 571, 663 P.2d 830, *cert. denied*, 464 U.S. 1018, 104 S.Ct. 549, 78 L.Ed.2d 723 (1983). When the Superior Court hears an unlawful detainer action, it sits in a statutorily limited capacity and lacks authority to resolve issues outside the scope of the unlawful detainer statute. *Angelo Property Co., LP v. Hafiz*, 167 Wn. App. 789, 809, 274 P.3d 1075 (2012) (citing *Sprincin King St. Partners v. Sound Conditioning Club, Inc.*, 84 Wn. App. 56, 66–68, 925 P.2d 217 (1996)).

Given the special statutory nature of unlawful detainer proceedings, unless the court converts the unlawful detainer action to an

ordinary civil action subject to all the procedural rights and protections attached to civil proceedings (e.g., discovery, evidentiary hearing, jury trial, appropriate timelines), the court cannot exercise its statutory subject matter jurisdiction over claims that do not relate to the right of possession. An unlawful detainer can be converted to an ordinary civil action by motion and/or amended pleadings or by formal court action. The Superior Court ultimately has the “inherent power to fashion the method by which an unlawful detainer action is converted to ordinary civil action” *Munden*, 105 Wn.2d at 45. The Court of Appeals addressed this very issue in a similar dispute regarding a summary judgment motion for claims unrelated to possession in *Angelo*, 167 Wn. App 789.

In *Angelo*, the landlord (Angelo) brought an unlawful detainer action against the tenant (Maged) for alleged lease violations. *Id.* at 796. After commencement of the action, Maged returned his keys and relinquished possession of the property. *Id.* at 797. After doing so, Maged brought a motion to file an Amended Answer to add counterclaims, and since possession was no longer at issue, specifically requested the court to convert the action into an ordinary action for damages. *Id.* at 797-798. Angelo opposed the motion by claiming that possession was still at issue, but contradictorily also claimed that Maged had no legal right to claim possession. *Id.* at 798. The court elected to retain the proceedings as an

unlawful detainer action because it determined that possession was still at issue, however, the court also allowed Maged to amend his answer to include one of the counterclaims. *Id.* at 800. Angelo later moved for summary judgment on its unlawful detainer claim and on Maged's counterclaim. *Id.* at 802. The court granted Angelo's motion for summary judgment. *Id.* at 804-805.

On appeal, the Court of Appeals clearly and extensively articulated the necessity for conversion to a civil action in order for the Superior Court to have subject matter jurisdiction over claims not concerning possession, and why the lower court erred in granting Angelo's summary judgment motion. The Court of Appeals determined that since possession was not at issue, the trial court *could have* "converted" the unlawful detainer action into an ordinary civil action – to which it could then assert its *general subject matter jurisdiction* over the counterclaim. *Id.* at 818 (emphasis added). However, this is not what happened. Because the trial court did not convert the action, but instead proceeded under its *statutory unlawful detainer subject matter jurisdiction*, the court lacked subject matter jurisdiction over claims unrelated to possession. *Id.* (emphasis added). This is similar to what happened here.

The record is clear that Castellon did not take any action to convert the proceeding to an ordinary civil action. Castellon never made a motion

or request to convert the action, nor was an Amended Complaint filed with new allegations of property damage and rent owing. The Superior Court compounded this error when it entered the judgment after it previously determined that “[n]o further action [was] to be taken.” CP 20. Since this action was never converted to an ordinary civil proceeding, any relief on Castellon’s alleged claim for damages was outside the Superior Court’s statutory unlawful detainer subject matter jurisdiction.

If Castellon has a claim for damages against Sergio, then that claim must be brought in an ordinary civil action for damages, not through the unlawful detainer process. *See Stevens*, 40 Wash. at 486 (“The right to damages is a personal one, and when unaccompanied with the right to recover possession must be waged in an ordinary civil action.”). An unlawful detainer process simply cannot form the basis of an action for damages without the court first invoking its general jurisdiction and affirmatively converting the proceeding to an ordinary civil action. Even assuming the Superior Court could exercise subject matter jurisdiction over the unlawful detainer action and over Sergio in the first instance, as a matter of law and without affirmatively converting the proceeding, it could not retain and exercise its statutory unlawful detainer subject matter jurisdiction over Castellon’s claim for damages. Thus, the judgment entered is void, and must be vacated.

**5. Dismissal of the unlawful detainer action or vacating the judgment requires that the writ of garnishment be quashed.**

For well over a century, Washington law has held that a garnishment cannot exist without a valid underlying action or judgment. *See State v. Sup. Court for King Cnty.*, 108 Wash. 183, 185, 183 P.74 (1919) (citing *Kelley v. Ryan*, 8 Wash. 536, 36 P. 478 (1894) (“[A] garnishment proceeding is in no sense an original or independent action, but is ancillary to the original cause and through which its existence comes.”)). “[W]ith the dismissal or termination of the original action in favor of the defendant therein, the garnishment proceeding must immediately die.” *Id.* Likewise, if the judgment is void, subsequent garnishments must be quashed. *See, e.g., Lindgren v. Lindgren*, 58 Wn. App. 588, 596-598, 794 P.2d 526 (1990).

As stated above there was no legal basis for initiating the unlawful detainer action against Sergio. As a non-tenant who had not been in possession of the Property for several months, Castellon could not bring an unlawful detainer action against Sergio. Even assuming the initial unlawful detainer action was valid, without having converted the proceeding to an ordinary civil action, proceeding to award relief on the alleged damages claim was invalid. Without the valid underlying cause of

action or a valid judgment, the garnishment cannot exist and must be quashed, and all previously garnished wages returned to Sergio.

**C. The Superior Court abused its discretion by failing to vacate the judgment and quash the writ of garnishment, when it failed to adhere to its Language Access Plan and awarded damages, costs, and fees not recoverable by law.**

**1. The Superior Court did not follow its Language Access Plan**

Non-English speakers involved in court proceedings are entitled to the assistance of a court-appointed interpreter. *State v. Aljaffar*, 198 Wn. App. 75, 82-83, 392 P.3d 1070 (2017), *review denied*, 2017 WL 3276411 (2017). Both Washington statute and the United States Constitution guarantee this right. *Id.* citing *State v. Gonzales-Morales*, 138 Wn.2d 374, 378-79, 979 P.2d 826 (1999). The standard for review for whether Sergio had a statutory right to an interpreter is whether the court abused its discretion. *Id.* at 84. “The standard of review for a claim of constitutional error is whether the court can conclude that the error was harmless beyond a reasonable doubt.” *State v. Levy*, 156 Wn.2d 709, 731, 132 P.3d 1076 (2006). Even by applying the lower standard of abuse of discretion, it is clear that it was error to enter the judgment without an interpreter present.

In order to comply with state and federal law, the Superior Court of Walla Walla has implemented a Language Access Plan (LAP) to insure equal access to court services for persons with limited English proficiency

(LEP) and deaf and hard-of-hearing persons. CP 70-78. When a non-English speaking person is a party to a legal proceeding, the Superior Court staff shall be primarily responsible for the scheduling of interpreters after they are made aware of the need by an LEP or any other personnel such as attorneys. CP 73-74. Attorneys should notify the court regarding an LEP individual's need for an interpreter for an upcoming court hearing by filing a "Request for Interpreter Services" and/or by notifying the court reporter of upcoming dates scheduled so that an interpreter can be secured. CP 73-74. Once identified in a court file, court staff should ensure that an interpreter is provided for each legal proceeding in the case. CP 73-74.

Sergio speaks Spanish and only has a limited understanding of English. CP 95. At the September 12, 2016, Show Cause hearing, Sergio requested a Spanish interpreter and the court continued the matter until September 13, 2016, so an interpreter could be present. CP 19, 97; July RP 3. At the September 13, 2016, Show Cause hearing, court-certified interpreter Jeff Adams interpreted on Sergio's behalf and this was the only way Sergio could participate in the proceedings. CP 97; July RP 4-5.

Despite the court and Castellon's counsel being aware of Sergio's limited English proficiency, when a new court date was set for December 12, 2016, neither scheduled nor requested an interpreter for the proceeding. The court file identified that Sergio needed an interpreter. CP

19. Castellon's counsel knew that Sergio needed an interpreter and failed to notify the court of the need, nor filed a request for interpreter services. The failure to provide an interpreter for Sergio at the December 12, 2016, hearing violated the Walla Walla Superior Court LAP, Washington law, and the United States Constitution. Had an interpreter been present, Sergio could have disputed the claims against him and possibly prevented the entry of the judgment. Without the interpreter, Sergio had no idea what was going on and he was effectively silenced. Therefore, the court abused its discretion when it failed to vacate the December 12, 2016, judgment and quash the writ of garnishment as Sergio wasn't given a meaningful opportunity to participate in the court proceedings against him.

**2. The damages awarded to Castellon are beyond what are legally recoverable.**

When the Superior Court signed Castellon's Order on December 12, 2016, Castellon was awarded damages, costs, and fees that were unsupported by law and fact. Castellon requested and received a judgment as follows:

Amount of rent owed:	\$1000.00
Damages:	\$5335.04
Costs:	\$277.00
<u>Attorney fees:</u>	<u>\$800.00</u>
Total	\$7412.04

CP 38. Sergio disputes the validity of all these charges.

Although not characterized as such, the judgment Castellon received is in effect a default judgment. When a party is effectively absent and a tribunal does not take evidence, the resulting judgment is a default judgment. *See In re Marriage of Daley*, 77 Wn. App. 29, 32, 888 P.2d 1194 (1994). Prior to entering the judgment, the record does not reflect that the court considered any evidence. Rather, the court entered the order as presented:

Ms. Geidl: "You Honor, this is a carryover from an UDA. There was some damage to the unit. I haven't received any response from Mr. and Mrs. Rodriguez. I don't know if they are here in the courtroom."

The Court: "Do you have an order?"

May RP 1-2; CP 39. Thus, the judgment was effectively entered by what the court presumed was default.

Regardless of characterization, the court abused its discretion by refusing to vacate the judgment. First, Sergio vacated the Property at the end of April 2016. There has been no allegation that at the time he vacated, there was rent due and owing. Even so, Sergio continued to pay rent on behalf of Angela through August. CP 96. Contrary to what Castellon represented in the Motion for Entry of Judgment and Judgment Summary, owed back rent was never requested in the Complaint. CP 04-06, 32. The Notice to Vacate is also silent as to issue of rent owing. CP 11.

It is entirely unclear what period Castellon is claiming rent is due and owing, let alone how Sergio, who vacated months prior, would be responsible even if Angela did not pay the rent. As discussed above, Sergio is not liable for debts incurred by Angela after the separation. Therefore, there is no evidence to support that Sergio owes \$1000 in rent.

Second, Sergio disputes the grossly inflated \$5335.04 in alleged damages. When Sergio moved into the Property, it was not in good condition, and if anything, he made repairs that improved the value of the Property. CP 96-98. Much of what Castellon claimed for damages either predated Sergio's tenancy or happened after he moved out. The remainder of the damage is attributable to Castellon's own negligence or reasonable wear and tear. Additionally, Castellon never returned or used the \$900 security deposit to offset any alleged damage. CP 99.

Third, Sergio also disputes Castellon's ability to recover costs against him. Sergio and Angela were separated at the time the unlawful detainer action was commenced. Pursuant to RCW 26.16.140, if any costs were incurred due to Angela's failure to timely vacate, those costs are her separate property and not Sergio's responsibility.

Finally, there is no legal basis for an award of attorney fees in this matter. Washington follows the American rule that neither party can recover attorney fees unless authorized by statute, contract or recognized

ground of equity. *Public Utility Dist. 1 v. Kottsick*, 86 Wn.2d 388, 545 P.2d 1 (1976). Here, the contract between the parties was oral, so no attorney fee provision exists. Castellon has not advanced any legal theory or identified any statute that would authorize an award of attorney fees. Therefore, Castellon does not have a basis for obtaining an award of attorney fees in this wrongfully filed unlawful detainer action. For these reasons, the Superior Court abused its discretion by not vacating the December 12, 2016, judgment entered against Sergio Rodriguez.

**D. Attorney Fees and Costs**

Pursuant to RAP 18.1, Sergio Rodriguez makes a request for attorney fees and expenses if he is found to be the prevailing party.

“The prevailing party in a controversion proceeding is entitled to an award of attorney fees and costs.” *Bartel v. Zuckriegal*, 112 Wn. App. 55, 66-67, 47 P.3d 581 (2002) (citing RCW 6.27.230.) “RCW 6.27.230 provides mandatory assessment of attorney fees to a party who successfully opposes a writ of garnishment.” *Lindgren*, 58 Wn. App. at 598. “[W]hen a party must vacate a default judgment before successfully challenging a writ of garnishment, RCW 6.27.230 allows the recovery of attorney fees and costs for both proceedings.” *Allstate*, 75 Wn. App. at 327. Moreover, the attorney fees and costs under RCW 6.27.230 are also available to the prevailing party on appeal. *See Bartel*, 112 Wn. App. at

67; *Allstate*, 75 Wn. App. at 327; *Lindgren*, 58 Wn. App. at 599; *Caplan v. Sullivan*, 37 Wn. App. 289, 295, 679 P.2d 949 (1984) (citing RCW 7.33.290 [now RCW 6.27.230]). RCW 6.27.230 is liberally construed to insure that parties injured by wrongful writs of garnishment will not be discouraged from pursuing their statutory remedies. *Caplan*, 37 Wn. App. at 295.

Sergio brought this appeal to vacate a judgment and quash the writ of garnishment entered against him. At the time of the designation of Clerk's Papers, Sergio has already been garnished \$937.04, yet his "Total Amount Due" is still \$365.89 higher than it was when the judgment was entered on December 12, 2016. CP 157-158. As demonstrated above, the judgment is void, all subsequent garnishments must be quashed, and any funds garnished should be refunded to Sergio Rodriguez. Thus, the fees, costs, and expenses that Sergio Rodriguez has occurred in asserting his rights warrants the award of fees under RCW 6.27.230.

## VI. CONCLUSION

For the reasons set forth above, the Court should reverse the order denying the motion to dismiss the unlawful detainer action, 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 21<sup>st</sup> of August, 2017

Northwest Justice Project

A handwritten signature in black ink, appearing to read "Tyler Graber", written over a horizontal line.

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 21<sup>st</sup> day of August 2017, I caused to be delivered via personal service, a true a correct copy of this BRIEF OF APPELLANT, addressed to the following:

Mona Geidl, WSBA 42455  
Minnick-Hayner, P.S.  
Attorney for Plaintiffs/Respondents  
249 W. Alder Street  
Walla Walla, WA 99362  
(509) 527-3500

SIGNED at Walla Walla, WA, this 21<sup>st</sup> day of August 2017.

  
\_\_\_\_\_  
David Surratt  
Legal Assistant to Tyler Graber