

No. 70018-9-I

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

OWL TRANSFER BUILDING LP,
a Washington limited partnership,
Respondent,

v.

HUA YUEN INTERNATIONAL TRADING GROUP, INC.,
a Washington corporation, and
WAH LOUIE and his marital community,
Appellant.

APPELLANT'S REPLY BRIEF

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1. ARGUMENT

A court sets aside a default judgment pursuant to CR 55(c)(1): “For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with CR 60(b).”

Under CR 60(b), a court may relieve a party from a final judgment, order, or proceeding for the following reasons:

- (1) mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order
 - (4) . . . misconduct of an adverse party
 - (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
 - (11) any other reason justifying relief from the operation of the judgment.
- For reason (1), the motion “shall be made . . . not more than 1 year after the judgment, order, or proceeding was entered or taken. CR 60(b)(1).

1.1. Mrs. Louie’s Motion to Vacate Default Judgment is timely.

Mrs. Louie’s motion is timely. The judgment that Owl Transfer Building seeks to enforce was entered on October 19, 2012. CP 242-243. (Amended Judgment, dated Oct. 19, 2012). Mrs. Louie filed her Motion to Vacate Default Judgment on November 1, 2012. Because her Motion came less than one month after entry of the Judgment that

Owl Transfer seeks to enforce, she is not barred by the one-year limit on raising Rule 60(b)(1) reasons, nor *in arguendo*, does any RCW 4.28.200 time bar prevent her from challenging a default judgment obtained by publication.

1.2. Mrs. Louie's raised "other reasons," under CR 60(b)(11), for setting aside the default judgment that do not contain a time bar.

Mrs. Louie challenged the default judgment under CR 60(b)(11), any other reason justifying relief from the operation of the judgment, which does not contain any time bar. Although Mrs. Louie did not raise fraud or misconduct of Owl Transfer Building as a reason for setting aside the default, CR 60(b)(4) clearly contemplates that that is a valid reason. Here, Owl Transfer Building failed to use due diligence in obtaining personal service on Mrs. Louie and co-defendant Hua Yuen Group: (1) it sought Mrs. Louie at an outdated address when it could have determined her then- and still-current home address from the public record (CP 9); (2) it attempted service at the home of a Mr. Wah *Shuck* Louie, who is not known to Mrs. Louie, likely because it erroneously conflated Mrs. Wah Louie with her husband, Mr. Kwong Louie (CP 9); and (3) it attempted service on Hua Yuen Group by serving Mrs. Louie, who was not a person authorized to receive service on the corporation's behalf (CP 9). While Mrs. Louie

does not allege that Owl Transfer Building obtained its Order of Publication by defrauding the Court through false attempts at personal service, Owl Transfer Building nonetheless failed to attempt personal service with the due diligence required before seeking service by publication. Accordingly, the default judgment, and the underlying Order to Authorize Service by Publication, should be set aside.

1.3. The Court should set aside the default judgment in equity because of Owl Transfer Building's failure to attempt personal service with due diligence.

For the same reasons, the Court should equitably set aside the default judgment regardless of the operation of a time bar under CR 60(b) or RCW 4.28.200, if any. Courts disfavor default judgments and prefer to determine cases on their merits rather than by default. *Griggs v. Averbek Realty Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979). In reviewing an entry of default, the Court's principle inquiry should be whether the default judgment is just and equitable. *Id.* at 581-82.

In *Trinity Universal Ins. Co. of Kansas v. Ohio Casualty Ins. Co.*, 298 P.3d 99 (Div. 1 March 18, 2013), the Court stated that the Plaintiff's procedural advantage by waiting to collect on a default judgment was not deceptive or unfair. However, unlike *Trinity*, where the plaintiffs' attempts at personal service were unchallenged, the

inequity of the present situation is that Owl Transfer Group failed to pursue personal service with due diligence. Only because of its shoddy attempts was it able to convince a court, in an *ex parte* setting, to authorize it to publish service, which is “not, as a practical matter, an effective means of notifying a party of the pendency of a lawsuit.” *Caouette v. Martinez*, 71 Wn. App. 69, 75, 856 P.2d 725 (1993). It would therefore be inequitable for the Court to reward Owl Transfer Building for its inadequate attempts at personal service by barring Mrs. Louie’s reopening of the case.

2. CONCLUSION

First, Mrs. Louie’s Motion was timely because it came within one year of entry of the judgment that Owl Transfer Building sought to enforce.

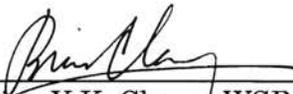
Second, Mrs. Louie raised “other reasons,” per CR 60(b)(11), which are not subject to any time bar. Specifically, because Owl Transfer Building failed to attempt personal service on Mrs. Louie and Hua Yuen Group with due diligence, the default judgment that resulted should be voided.

Third, in equity, the Court should not reward Owl Transfer Building’s failure at attempting personal service diligently by barring Mrs. Louie from reopening the case.

Fourth, Mrs. Louie, as an individual guarantor of the commercial lease entered between the Owl Transfer Building and Hua Yuen International Trading Group who had never played any role in the latter entity, should be given a day in court and a chance to at least investigate the allegations raised in the Complaint. Mrs. Louie could not contest those allegations without first being able to investigate them. Only after the default judgment is vacated would she able to do that.

For the foregoing reasons, Mrs. Louie respectfully requests that the Court reverse the trial court's decision.

Respectfully submitted this 31st day of July, 2013.



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