

NO. 72146-1-I

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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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ALBERTA ACOSTA,

Plaintiff/Appellant,

vs.

PARC ENCHANTED PARKS, LLC,

Defendant/Respondent,

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**REPLY BRIEF OF APPELLANT ALBERTA ACOSTA**

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**A. INTRODUCTION**

Plaintiff-Appellant Alberta Acosta (“Acosta”) submits this reply brief to address certain arguments made by defendant-respondent Parc Enchanted Parks, LLC (“Parc”) in its response brief. This case has been consolidated with appellate case no. 72647-1-I.

**B. ARGUMENT**

**1. Parc’s Focus on Aspects of Acosta’s Counsel’s Conduct**

**Misses The Point**

Most of the issues in this case ultimately depend on whether CorpDirect Agents, Inc. (“CorpDirect”) was a registered agent for Parc at the time of service in September 2013. Parc’s efforts to shift the focus should be ignored.

For example, Parc’s focus on the date that the lawsuit was filed simply misses the point. Acosta has not disputed that the lawsuit was filed one day shy of the three year statute of limitations—but this fact is simply irrelevant to the key issue in this case, i.e. whether the correct entity was served. Despite this fact, Parc attempts to attach importance to the fact and even urges that an assignment of error be reformulated to include a reference to when the complaint was filed in relation to the statute of limitations. This is simply done to draw attention away from the issues that actually matter in this case.

Along these same lines, since Acosta does not contend that any timely service occurred after September 2013, Parc's discussion of what steps Acosta and/or her counsel took after that period are simply not relevant. Again, the key question in this case is whether CorpDirect was a registered agent of Parc at the time of service. Parc's focus on other issues are merely distractions and have no relevance in this matter.

2. **CorpDirect Was Not Served "Accidentally" in September 2013**

Parc has taken statements from a declaration filed by Acosta's initial counsel out of context, in an apparent attempt to argue that when the deputy sheriff delivered the summons and complaint to CorpDirect in September 2013, this was an accident and that the deputy had actually been instructed to serve some other registered agent. *See* Response Brief, p. 5 fn. 6, 16, 17, 32. However, this is incorrect and entirely speculative.

On April 18, 2014, Acosta's counsel filed a declaration stating in paragraph 3 that he had "attempted to serve the registered agent I received from the Secretary of State" within 90 days of filing the action. CP 36. That registered agent claimed they were not the registered agent for Parc. CP 36. The return of service for that registered agent was attached, and it

showed that CorpDirect was the registered agent that Acosta's counsel was referring to. CP 36, 38.<sup>1</sup>

Later, in paragraphs 4 and 5 of Acosta's counsel's declaration, he indicates that he made some follow up service efforts, which included contacting the Secretary of State *again* and getting some new registered agent information for Parc. He then engaged the Thurston County Sheriff's Office for process of service, which proceeded to serve an agent other than the one that he requested, but then served (presumably) National Registered Agents, Inc. ("NRAI"). However, this did not occur until more than 90 days had passed from the date of the filing of the complaint, so it did not really matter exactly when it occurred, since it would not constitute timely service. RCW 4.16.170.

Parc apparently takes a statement from paragraph 4 of Acosta's counsel's declaration out of context and interprets it to mean that the service on CorpDirect in September 2013 was accidental and that the deputy sheriff had been directed to serve a different registered agent. Response Brief, p. 16. However, that is inconsistent, with the earlier portions of the declaration. Acosta's counsel was pretty clearly discussing a mix-up regarding a subsequent service attempt in paragraph 4 – not the

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<sup>1</sup> See *United Pac. Ins. Co. v. Disc. Co.*, 15 Wn. App. 559, 561-562, 550 P.2d 699 (1976), delivery can be accomplished through a "clear attempt by the process server to yield possession and control of the documents."

September 2013 service on CorpDirect (discussed at paragraph 3 of his declaration).

**3. The Publicly Filed Documents Reflected that CorpDirect was Parc's Registered Agent; Information on the Secretary of State's Webpage / Database is Not Determinative**

As described in Acosta's opening and supplemental briefs, the public records filed by Parc reflect that CorpDirect was Parc's registered agent at the time of the service. In response, Parc primarily argues that since NRAI was listed as Parc's registered agent on a database and/or website maintained by the Secretary of State's office, this is somehow determinative that NRAI was Parc's registered agent in September 2013. The Secretary of State's database and/or website are referenced throughout Parc's Response Brief (see pp. 6, 10, 16, 17, 29, 30, and 32)

However, there is no authority for the proposition that the information on the Secretary of State's database or website is in any way determinative of who the registered agent is for a given company. In fact, the website contains a disclaimer explaining that the information on the website is not warranted to be accurate, reliable, timely, or correct. CP 201.

In fact, the disclaimer on the Secretary of State's webpage goes on to explain that documents filed with the Corporations Division are public

record. The public documents that are filed with the Secretary of State's office should be considered determinative of the identity of a company's registered agent. There could be no better evidence of the identity of a company's registered agent than documents signed and filed by the company. The Secretary of State's office can obviously make errors in entering and/or processing registered agent information (and as noted above, it does not warrant the reliability and correctness of the information on its website), so it would not make sense that a database or website maintained by the Secretary of State should be considered determinative. Notably, the Secretary of State is available for telephone inquiries from the public regarding the contents of public records, including information regarding the identity of registered agents. CP 146, 200.

Once again, the publicly filed documents reflect the following:

- On November 28, 2012, Parc filed an application to re-register with the Secretary of State, in which it identified CorpDirect as its registered agent. CP 146.
- On January 25, 2013, a Statement of Change For Registered Agent/Office was filed. The document was completed in a way that would reflect a change of registered office, rather than a change in registered agent. A cover letter confirms that the purpose of the form was to only change the registered office

address for CorpDirect– not to change the registered agent. CP 148-151; Appellant’s Brief, p. 11-13.

- On May 1, 2013, Parc files an Initial Report which clearly and unambiguously states that CorpDirect is Parc’s registered agent. CP 51.

Parc, an out-of-state LLC, chose to do business and maintain a registered agent in this state. It was required to make public filings identifying its registered agent. At the time of service, Parc was clearly representing to the public through its public filings that CorpDirect was its registered agent. But now Parc, in an attempt to evade liability, argues that the public documents should not be given their clear meaning. Parc basically argues that the content of its filings should be disregarded. Parc wants the Statement of Change for Registered Agent/Office form to be interpreted as a change of registered agent, rather than address, even though it is not completed that way. Parc then says that the cover letter to that form, which clearly indicates that the intent of the form is to change the registered office address (not the registered agent) ought to be ignored because it is “merely” a cover letter. Finally, Parc says that the Initial Statement filed in May 2013 identifying CorpDirect as the registered agent should be ignored, because it was a “mistake.” In other words, Parc wants the information contained in its publicly filed documents to be ignored by

the Court, and to have the Court rely on the Secretary of State's database and/or website for registered agent information. But since we have documents from Parc that clearly represent to the public that CorpDirect was its registered agent, CorpDirect should be considered its registered agent. Under the circumstances, there is no reason to rely upon a database or website as the public filings are available. If Parc did not intend for CorpDirect to continue to be its registered agent, it should have taken more care with regard what its public filings stated.

**4. Acosta's Motion to Set Aside the Judgment was Proper**

Parc argues that Acosta's motion to set aside the judgment in this case was improper as being, in reality, a motion for reconsideration.<sup>2</sup> This is not the case. Acosta brought the motion to set aside the judgment for reasons described in the court rules. Acosta pointed out that the judgment was obtained through multiple procedural irregularities, CR 60(b)(1), including the lack of a substantive hearing on the merits after the court indicated that such a hearing would be held. (The trial court had stated that a hearing would be held if Acosta provided evidence that CorpDirect was Parc's registered agent at the time of service. Acosta did so. *See* CP 44 and 50-51). Acosta also pointed out that her counsel had not been in a

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<sup>2</sup> Parc claims in a footnote that the motion did not comply with the show cause procedure in CR 60(b), but does not claim how it did not comply or why this was not raised with the trial court rather than for the first time on appeal. The motion was served on Parc with a show cause order.

position to effectively advocate for her to assure that a hearing be held and that a judgment not be entered against her, because of her counsel's involvement in an unforeseeable, fatal car accident. CR 60(b)(9) (describing "unavoidable casualty or misfortune preventing the party from prosecuting" as a basis for setting aside a judgment). *See also* CR 60(b)(11) (allowing relief from judgment for any other reason justifying it).

Parc claims that the lack of a hearing on the merits was harmless, arguing that such a hearing should not have changed the final result. Acosta disagrees. Had a hearing been held pursuant to the trial court's order, Acosta would have been able to point out multiple serious flaws in Parc's position, which was set out in Parc's reply shortly before the trial court entered judgment against Acosta. For example, as noted in Acosta's opening brief, at a hearing Acosta would have been able to point out to the court that Parc's position described in its reply was dependent on a doubtful interpretation of incomplete documentary evidence as well as impermissible, inadmissible hearsay. Opening Brief, p. 13. Acosta also would have been able to point out that there were factual questions regarding the relationship between CorpDirect and NRAI which should have precluded summary judgment. Opening Brief, pp. 14-15. Furthermore, Acosta also provided multiple declarations from Patrick

Reed from the Secretary of State's office to demonstrate that it would not be futile to set aside the judgment and have further argument regarding whether CorpDirect was a registered agent of Parc. Mr. Reed confirmed that public records reflected that CorpDirect was Parc's registered agent at the time of service and also submitted previously unprovided documentation which gave proper context to the Statement of Change For Registered Agent/Office form which was heavily relied on by Parc. CP 200. A hearing on the merits should have resulted in a different outcome. For these reasons, the failure to hold a hearing on the merits was reversible error and also represented a serious procedural irregularity which would justify setting aside the judgment.

**C. CONCLUSION**

The trial court erred in dismissing Acosta's claim and abused its discretion in denying Acosta's motion for relief from judgment. Accordingly, the judgment should be reversed.

Respectfully submitted, this 11th day of May, 2015.

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DECLARATION OF FILING AND SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

I arranged for filing and service of the foregoing Appellant's Reply Brief to the court (one original and one copy) and to respondent's counsel (one copy) as follows:

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By depositing the foregoing Appellant's Reply Brief, postage pre-paid, for mailing with the U.S. Post Office on this 11th day of May, 2015.

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