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No. 1020236

THE SUPREME COURT FOR
THE STATE OF WASHINGTON

MOHAMMAD HAMID VIDA,

Appellant,

v.

YONG PARK & SANG PARK,

Respondents.

WASHINGTON STATE COURT OF APPEALS, DIVISION I
Case Number: 83831-8-1

SNOHOMISH COUNTY SUPERIOR COURT
Cause Number: 21-2-01143-31

APPELLANT'S ANSWER TO RESPONDENTS' PETITION FOR REVIEW TO THE SUPREME COURT

Edward C. Chung, Esq.
WSBA # 34292
Attorney for Appellant

CHUNG, MALHAS & MANTEL, PLLC
1037 NE 65th Street, Suite 80171
Seattle, Washington 98115
Phone: (206) 264-8999 ♦ Facsimile: (206) 264-9098
E-mail: Echung@cmmlawfirm.com ♦ Website: www.cmmlawfirm.com

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I. IDENTITY OF APPELLANT

Appellant, Hamid Vida by and through his counsel of record, respectfully requests this Court deny review of the March 27, 2023 unpublished opinion of the Court of Appeals. This decision overturned the Snohomish County Superior Court's denial of Appellant's Petition for *Trial De Novo*.

II. ANSWER TO ISSUES PRESENTED ON REVIEW AND ADDITIONAL ISSUES FOR CONSIDERATION

1. The decision of the Court of Appeals is not in conflict the Court of Appeals decision in *Corona v. Boeing Co*., 111 Wn. App. 1, 6–7, 46 P.3d 253, 256 (2002).

2. The decision by the Court of Appeals is reversible on alternative legal grounds not presented by Respondent in their Petition for Supreme Court Review because the Superior Court improperly applied Mandatory Arbitration Rule 7.1 from 2011. Those rules are no longer applicable as the superior court mandatory arbitration rules were renamed the Superior Court Civil Arbitration Rules Effective December 3, 2019 and amended wherein a request for *trial de novo* is timely if filed "or" served before the 20 day period.

III. STATEMENT OF THE CASE

The Parties in the above captioned matter engaged in litigation before the Snohomish County Superior Court. Per Washington State's Mandatory Arbitration Rules ("MAR") and RCW 7.06 the Appellant, Mr. Mohammad

Hamid Vida (hereinafter referred to as Mr. Vida) and Respondents, Yong Park and Sang Park (hereinafter referred to as the "Parks") were assigned to arbitration. On November 12, 2021 the arbitrator, *via* U.S. Fist Class Mail, filed and served his arbitral award ruling with the Snohomish County Superior Court and upon the parties' respective counsel of record.

Under Washington State Supreme Court precedent, *Seto v. Am. Elevator, Inc*., 159 Wn. 2d 767 (Wash. 2007), held that "The 20–day period for requesting a *trial de novo* does not begin until proof of completed service is filed, along with the award. When service is by U.S. mail, service is ***presumed*** to be complete on the third day of delivery. *See*, CR 6. Mr. Vida, representing himself ***pro se***, filed an affidavit with his Petition for Trial De Novo attesting that mailing was made on December 1, 2021 complied with this timeline despite it being post-marked at a later date by the U.S. Post Office. That aside, the Parks argue untimely service because it had a post mark stamp of December 4, 2021.

However, this argument, adopted by the lower court, is erroneous in consideration that actual service, as opposed to mere presumption, was timely received by the Parks' counsel of record on Monday, December 6, 2021. *See*, CP #42, Kallenbach Declaration at 5. ["My office actually received the Request on the afternoon of December 6, 2021."]. In other words, even assuming that there was a postmark stamp of Saturday, December 4, 2021,

Defendants actually received the notice of trial de novo within the procedural timeframe.

The Superior Court in denying Appellant's *Petition for Trial De Novo* was briefed and applied the wrong Mandatory Arbitration Rules from 2007. The Superior Court Mandatory Arbitration Rules were renamed the Superior Court Civil Arbitration Rules effective December 3, 2019. *See*, Official Advance Sheet No. 3, Dec. 3, 2019. SCCAR 7.1 was amended effective December 3, 2019. In consideration of the foregoing, Mr. Vida had strictly and substantially complied in both timely filing and timely serving his Request for Trial De Novo wherein this matter should be remanded back to the trial court for trial setting.

Respondent's briefing relies on *Corona v. Boeing Co*., 111 Wn. App. 1, 6–7, 46 P.3d 253, 256 (2002), a case that does not even apply Superior Court Civil Arbitration Rules. Ergo, the Respondent's argument may disregarded and disposed of as meritless especially since such non-applicable precedent existed prior to the Superior Court Civil Arbitration Rules.

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IV. LEGAL ARGUMENT

C. THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT THE LOWER COURT ERRORED IN DISMISSING APPELLANT'S CASE FOR A PURPORTED UNTIMELY SERVICE OF A PETITION FOR TRIAL DE NOVO BECAUSE AS THE RECORD REFLECTS ON APPEAL AND RESPONDENTS CONCEDE IN THEIR BRIEFING, IT ERROENOUSLY APPLIED MANDATORY ARBITRATION RULE 7.1 FROM 2011. THOSE RULES ARE NO LONGER APPLICABLE AS THE SUPERIOR COURT MANDATORY ARBITRATION RULES WERE RENAMED THE SUPERIOR COURT CIVIL ARBITRATION RULES EFFECTIVE DECEMBER 3, 2019 AND AMENDED WHEREIN A REQUEST FOR TRIAL DE NOVO IS TIMELY OF FILED "**OR**" SERVED BEFORE THE 20 DAY PERIOD.

The Court of Appeals reversal was proper. Error by the Snohomish County Superior Court is both clear and unequivocal from the appellate record and from Respondents' briefing. The Superior Court Mandatory Arbitration Rules were renamed the Superior Court Civil Arbitration Rules effective December 3, 2019. *See*, Official Advance Sheet No. 3, Dec. 3, 2019. SCCAR 7.1 was amended effective December 3, 2019 as part of a large packet of amendments to what was then the MARs. *Id.*; Elizabeth A. Turner, *Washington Practice: Request for Trial de Novo* § 8, (8th ed. 2021). SCCAR 7.1, unlike MAR 7.1 provides:

> "(a) Service and Filing. Any aggrieved party not having waived the right to appeal may request a trial de novo in the superior court. Any request for a trial de novo must be filed with the clerk and served, in accordance with CR 5, upon all other parties appearing in the case within 20 days after the arbitrator files proof of service

> of the later of: (1) the award or (2) a decision on a timely request for costs or attorney fees. ***A request for a trial de novo is timely filed <u>OR</u> served if it is filed <u>OR</u> served after the award is announced but before the 20-day period begins to run***. The 20-day period within which to request a trial de novo may not be extended.
>
> *Id., emphasis added*.

The prior and obsolete language of MAR 7.1 that both the lower court and Respondent relied upon reads:

> Any request for a trial de novo must be filed with the clerk and served, in accordance with CR 5, upon all other parties appearing in the case within 20 days after the arbitrator files proof of service of the later of: (1) the award or (2) a decision on a timely request for costs or attorney fees.

While the application of the wrong governing law in itself raises due process concerns, more importantly for the case at bar is that it is undisputed that Appellant timely filed a Petition for Trial De Novo. Ergo, under SCCAR 7.1 when Appellant ***timely filed*** a Petition for Trial De Novo, he strictly complied with SCCAR 7.1 and effectively preserved jurisdiction of the superior court to move forward with a trial on the merits. Again, the language reads, "***a request for a trial de novo is timely filed <u>OR</u> served if it is filed <u>OR</u> served after the award is announced but before the 20-day period begins to run***. In short, Appellant complied with the letter of the law and this matter must be remanded to the lower court with an order to set a trial on the merits.

As previously briefed, SCCAR 7.1 does not mandate filing and service to preserve a request for *trial de novo*. That being said, Appellant filed a Request for Trial de Novo on December 1, 2021[1] wherein filing and service was satisfied. In consideration of SCCAR 7.1 amended language, as well as the fact that he filed a certificate of mailing, *trial de novo* filing and service was strictly complied with. This is predicated, in part on the express language contained in CR 5, as well as prior Washington State appellate authority. Turning to CR 5 (b) it states, in part the following:

> (B) **Proof of service by mail**. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, b**y *affidavit of the person who mailed the papers***...

In the instant case, Snohomish County Superior Court Form[2] Requesting a Trial De Novo contains such affidavit by the aggrieved party requesting for trial de novo. In *Carpenter v. Elway,* 97 Wash.App. 977, 987 n. 4 (1999) *review denied,* 141 Wash.2d 1005, 10 P.3d 403 (2000), that "CR 5(b)(2)(B) requires proof of service by mail in the form of a signed certificate of mailing." CR 5(b)(2)(B) enumerates three forms of proof of service: (1) written acknowledgement of service; (2) an affidavit of the person who mailed the papers; or (3) a certificate of an attorney.

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[1] CP 35

[2] *Id.*

Here, this Court held the second form-an affidavit (a sworn "certificate") sufficed. *See*, *Manius v. Boyd*, 111 Wash.App. 764 (2002); *see also*, *Terry v. City of Tacoma*, 109 Wn. App. 448 (2001).

Unless this Court engaged in reconstructive surgery of the procedural language, it is clear that the lower court errored and that the order of dismissal should be vacated and order issued to the lower court remanding that this case proceed forward with trial on the merits.

B. ASIDE FROM THE SUPERIOR COURT AND RESPONDENTS APPLYING THE WRONG RULES GOVERNING ARBITRATION IN WASHINGTON STATE SUPERIOR COURTS, THE RESPONDENTS REPLIANCE ON *CORONA V. BOEING CO*., 111 WN. APP. 1, 6–7, 46 P.3D 253, 256 (2002) IS MISPLACED AND DOES NOT PROVIDE COMPELLING GROUNDS FOR THE WASHINGTON STATE SUPREME COURT TO GRANT REVIEW.

Respondent's briefing relies on *Corona v. Boeing Co*., 111 Wn. App. 1, 6–7, 46 P.3d 253, 256 (2002), a case that does not even apply Superior Court Civil Arbitration Rules. Ergo, the Respondent's argument may disregarded and disposed of as meritless especially since such non-applicable precedent existed prior to the Superior Court Civil Arbitration Rules.

V. **CONCLUSION**

Based on the evidence contained within the court record, Appellant respectfully asks that this matter be remanded back to the trial court and the case be set for trial on the merits.

Pursuant to RAP 18.17 undersigned counsel certifies that the foregoing contains 1150 words (excluding Appendices; Title Sheet/Caption; Table of Contents/Authorities; Certificates of Compliance/Service; Signature Blocks; and Pictorial Images/Exhibits) in compliance with the Court of Appeal word limit and that Appellant respectfully submitted this Corrected Reply Brief on this 26th day of June 2023.

/s/ *Edward C. Chung*
Edward C. Chung, WSBA#34292
Attorney for Appellant, Mohammad Hamid Vida

CERTIFICATE OF SERVICE

I, Connie Hylton, a Paralegal providing legal services to the law firm of CHUNG, MALHAS & MANTEL, PLLC with a mailing address of 1037 NE 65th Street, Suite 80171, Seattle, Washington 98115, declare that on June 26, 2023 I caused copies of foregoing document be filed with the Washington State Court Supreme Court and served upon Respondents' counsel of record *via* the following means of electronic filing and service:

Dean G. Von Kallenbach DVK Law, P.S. P.O. Box 1362 Sequim, WA 98383 dean@dvklawfirm.com	☐ ☐ ☒ ☐ ☐	Legal Messenger Electronic Email COA Electronic Portal Facsimile First Class Mail
WILLIAMS, KASTNER & GIBBS, PLLC *c/o: Theresa Rava, Esq.* 601 Union Street, Suite 4100 Seattle, WA 98101 trava@williamskastner.com	☐ ☐ ☒ ☐ ☐	Legal Messenger Electronic Email COA Electronic Portal Facsimile First Class Mail

Respectfully submitted this 26th day of June 2023.

/s/ *Connie Hylton*
Connie Hylton, Paralegal

CHUNG, MALHAS & MANTEL, PLLC

June 26, 2023 - 4:12 PM

Transmittal Information

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Appellate Court Case Number:	102,023-6
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Superior Court Case Number:	21-2-01143-2

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Comments:

Sender Name: Edward Chung - Email: Echung@cmmlawfirm.com
Address:
1037 NE 65TH ST STE 80171
SEATTLE, WA, 98115
Phone: 206-264-8999

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