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SUPREME COURT  
STATE OF WASHINGTON  
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Division I  
State of Washington  
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Case No. 102322-7

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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**Court of Appeals Division I, Case No. 83114-3**

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KEITH WELCH

Defendant/Appellant

v.

CHRIS WALDEN

Plaintiff/Respondent

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**RESPONDENT'S ANSWER TO APPELLANT'S  
PETITION FOR REVIEW**

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Cr 70.1

## INTRODUCTION

The Court of Appeals properly affirmed the Skagit County Superior Court's ("Superior Court") order issuing a Writ of Restitution restoring the situs in question to Plaintiff Chris Walden ("Walden"). Walden respectfully requests the Court to either, 1) deny the Appellant's Petition for Review; or, 2) affirm the Court of Appeal's 31 July 2023 opinion.

## ISSUE STATEMENT

Whether the Supreme Court should accept the Petition to Review this case?

Whether the Court of Appeals properly affirmed the Superior Court's order issuing a Writ of Restitution restoring possession of the situs to Plaintiff Walden?

#### STATEMENT OF THE CASE

In 2003 Appellant Keith Welch ("Welch") bought the situs at 857 Tinas Coma Lane in Burlington. In October 2016, Welch defaulted on a deed of trust associated with the property. The trustee foreclosed on the property and in February 2017, sold it at a nonjudicial foreclosure sale. U.S. Bank bought the property at the trustee's sale.

Welch contested the validity of the Trustee's sale in Skagit County Superior Court, Case No. 13-2-00673-4 which Welch lost, and subsequently appealed to the Court of Appeals of Washington, Division 1. In that case, the Superior Court issued a directed verdict against Welch since there was "no evidence to support the claim". The Court of Appeals affirmed the decision, thereby upholding the validity of the Trustees' sale, *Welch v.*

*Quality Loan Servs., Inc.*, No. 79099-4-I, 2019 Wash. App. LEXIS 3021 (Ct. App. Dec. 2, 2019)).

Welch again contested the validity of the Trustee's sale before the U.S. District Court, Western District of Washington at Seattle, which case was dismissed with prejudice due to Welch's "inability to plead any set of facts which would entitle him to relief", *Welch v. US Bank Nat'l Ass'n*, No. C19-2083 MJP, 2020 U.S. Dist. (W.D. Wash. May 4, 2020)).

In November of 2020, U.S. Bank sold the property to Walden, who took title by special warranty deed. In December 2020, Walden posted and mailed three copies of a termination notice. At the time both Brandon Welch and Keith Welch were residing at the situs. Neither vacated. Walden then began an eviction proceeding against Welch.

Prior to this present case beginning Welch responded to Walden's notice of termination by filing his own action of adverse possession and quiet title in Skagit County Superior Court cause 21-2-00112-29. Walden counter claimed with an ejectment action. Walden won and was granted a writ. Welch

appealed that matter as well in 83427-4 where the Court of Appeals affirmed the lower court. That decision is also presently before this Honorable Court with a petition for review in case number 102323-5

Originally, in this present matter, service of the summons and complaint giving the Court *in rem* jurisdiction was perfected by posting and mailing pursuant to a court order allowing the same, on 27 May 2021 and court order that granted the right to do so entered 23 April 2021.

On 10 June 2021 Keith Welch entered a notice of appearance as an individual pro se (Cp 7). Brandon Welch has at no point in these proceedings entered a notice of appearance. On 11 June 2021 Keith Welch answered the complaint and Brandon Welch did not sign the answer (Cp 10).

Attorney David Day then entered a limited notice of appearance on behalf of Keith Welch only on 8 July 2021 (Cp 16). The next day 9 July 2021 Walden filed an amended summons and complaint (Cp 17, 18) and Day then filed an amended answer on 22 July 2021 on behalf of Keith Welch

only (Cp 19). That same day 22 July 2021 Welch then filed a second notice of appearance pro se (Cp 21).

## ARGUMENT

Appellant's arguments, while divided into thirteen separate statements, revolve around a few basic claims. First, a number of the claims of error seem to argue that Brandon Welch was not properly served with both the amended summons and complaint and various orders to show cause but the argument fails for several reasons.

Welch never argued to the Court of Appeals that the Court did not have *in rem* jurisdiction. At no point in the proceedings did Brandon Welch appear or answer, argue lack of *in personam* jurisdiction or *in rem* jurisdiction, or offer any argument. Brandon Welch did not appeal the Superior Court decision and Keith Welch does not represent Brandon Welch. Even if correct *arguendo* Keith Welch has no legal basis to argue that lack of *in personam* jurisdiction on Brandon Welch

somehow defeats the *in rem* jurisdiction over the situs. Welch has not offered any legal authority in this petition for review or to the Court of Appeals to support that position. Welch simply implies in a number of his thirteen assignments of error that there was a lack of *in personam* jurisdiction over Brandon, who never answered the complaint, never appeared and never appealed, and that somehow defeats the case against Keith with regard to the *in rem* jurisdiction and Walden's right to a writ. Everything that Welch offers as authority relates to *in personam* jurisdiction or inaccurately claims lack of subject matter jurisdiction, which was never at issue to either the Superior Court or the Court of Appeals.

Next Welch assigns error to the Court of Appeals for believing that the amended summons and complaints were emailed to Counsel Day but the fact is that was never contested at all in the course of either the Superior Court case or the Appeal. The Court of Appeals could not possibly have erred on an uncontested point. Welch never presented any argument or evidence that the amended documents never made it to Counsel Day.



Welch's assigning error based on the failure to personally serve him and Brandon the amended summons and complaint fails first and foremost because under Cr5 there must be new or additional claims in the amended complaint to require personal service.

CR 5(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that *pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4.* (emphasis added).

In this case there is absolutely no new claims in the second amended complaint (Cp 17 and 18) that were not pled in the original summons and complaint (Cp 1 and 2). In fact there are fewer claims in the amended complaint. In both cases the prayer is for a writ of restitution under RCW 59.12.

Welch relies on Cr 5 and Cr 15 without acknowledging that both rules allow for the agreement of the parties to forego a court order and original service respectively.

CR 5...(7) Service by Other Means. Service under this rule may be made by delivering a copy by any other means, including facsimile, *or electronic means consented to in writing by the person served* or as authorized under local court rule. Service by facsimile or electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, holiday, or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter. *Service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery.* Service under this subsection is not effective if the party making service learns that the attempted service did not reach the person to be served. (emphasis added)

In the present case it was attorney for Welch, counsel David Day that put on the court record that the attorneys had agreed to amended summons and complaint and then the email from attorney for Walden, Counsel Rob Trickler memorialized that in an email without objection by Day at any point in these proceedings (verbatim report of proceedings of hearing on 07-09-2021).

CR 15(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may

so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by *written consent of the adverse party; and leave shall be freely given when justice so requires*. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. (emphasis added)

Again, in the present case it was attorney for Welch, counsel David Day that put on the court record that the attorneys had agreed to amended summons and complaint and then the email from attorney for Walden, Counsel Rob Trickler memorialized that in an email without objection by Day at any point in these proceedings (verbatim report of proceedings of hearing on 07-09-2021).

Also, Cr 1 requires that the rules be construed and administered to secure the just, speedy, and inexpensive determination of every action.

CR 1 These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Finally, also that Cr 2A allows for the parties to deviate from the requirement of the rules not only in writing but also by assenting to the same in open court as was done here as Welch points out on page 8 of his petition by citing to the verbatim report of proceedings of hearing on 07-09-2021.

CR 2A No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court *unless the same shall have been made and assented to in open court on the record*, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same. (emphasis added)

As noted, this was stated in open court by Counsel for Walch, and memorialized in writing after that by Counsel for Walden, and never disputed.

None of the case law that Welch relies on precludes the attorney of record from agreeing to allow and accept service of an amended complaint that did not add any new claims from the predecessor complaint, but only corrected the facts that led to the prayer for relief, especially when the jurisdiction is *in rem* and not *in personam* and arguably does not involve giving up rights of the represented in that regard and when one of the

Defendants made no notice of appearance or answer to the first complaint containing the all of the relief requested in the subsequent complaint. The Court of Appeals was correct in stating that the amended complaint related directly to the issues that were to be litigated at the show cause hearing to which Day had put in the notice of appearance for.

Cr 70.1... (b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneously with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and Rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, *including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders*. At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by Rule 71 (c)(1). (emphasis added).

Nor does RCW 59.12.040 matter as that relates to service of notices not a summons and complaint. Welch talks a great deal about service pursuant to RCW 59.12.040 relating to the service of the amended summons and complaint but that statute is only relevant to service of notices under RCW 59.12.030.

Finally, the arguments Welch attempts with respect to the position that Walden had to prove the validity of the trustee sale are not just wrong but also estopped. Welch made that argument in Skagit County Superior Court 21-2-00112-29 and lost it. Welch then made the same argument to the Court of Appeals in case number 83427-4 and lost again. Finally, Welch took the same argument to the U.S. District Court, Western District of Washington at Seattle, which case was dismissed with prejudice due to Welch's "inability to plead any set of facts which would entitle him to relief", *Welch v. US Bank Nat'l Ass'n*, No. C19-2083 MJP, 2020 U.S. Dist. (W.D. Wash. May 4, 2020)). Bottom line is that Welch does not get an infinite number of bites at the apple of this argument and this argument has long sense been barred.

## CONCLUSION

The Respondent Walden respectfully requests this Honorable Court deny Welch's Petition for Review or affirm the Court of Appeal's opinion upholding the Superior Court's

08/30/2021 decision ordering the issuance and execution of the Writ of Restitution restoring the possession of the situs to the Petitioner Walden. \*

### CERTIFICATE OF COMPLIANCE

I, Rob Trickler, hereby certify the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits) is 2391

28 November 2023

Respectfully submitted,

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**Rob Trickler Attorney for Walden**

**WSBA 37125**

## DECLARATION OF SERVICE

I, Rob Trickler, declare under the penalty of perjury of the laws of the State of Washington, and on this day, I caused a true and correct copy of this Respondent's Answer To Appellant's Petition For Review to be served to this Court electronically via the Appellate Courts Portal, and the party listed below via electronic mail and regular first class mail, postage pre-paid.

Keith Welch  
PO Box 1548  
Mukilteo, WA 98275  
[kpwjrl@worldnet.att.net](mailto:kpwjrl@worldnet.att.net)

Dated this 28th day of November, 2023, at Everett, Washington.

/s/ Rob Trickler  
Rob W. Trickler



**THE LAW OFFICE OF ROB W. TRICKLER PLLC**

**November 28, 2023 - 3:07 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 83114-3  
**Appellate Court Case Title:** Christopher Walden, Respondent v. Keith Welch, Appellant  
**Superior Court Case Number:** 21-2-00257-8

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Respondents Answer to Appellant's Petition for Review

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