Case No. 102322-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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

KEITH WELCH

Defendant/Appellant,

v.

CHRIS WALDEN

Plaintiff/Respondent.

PETITION FOR REVIEW

Keith Welch, Defendant/Appellant
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UNPUBLISHED OPINION OF THE COURT OF APPEALS

I. IDENTITY OF PETITIONER

Petitioner, Keith Welch, *pro se*, a Defendant in the trial court, and an Appellant at the Court of Appeals, Division I, asks this Court to accept review of the Unpublished Opinion designated in Part II below.

II. CITATION TO COURT OF APPEALS DECISION

Appellant and Co-Defendant, Keith Welch, hereinafter ("Welch"), petitions this Court to review the Unpublished Opinion of the Court of Appeals, Division I, in the matter of *Chris Walden v. Keith Welch, Brandon Welch, et al.*, No. 83114-3-I, filed on July 31, 2023, which affirmed the Skagit County Superior Court's Order, pursuant to RCW 59.12. A copy of the Unpublished Opinion of the Court of Appeals, Division I, is attached as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

Whether this Court should accept review pursuant to RAP 13.4(b) where the Opinion of the Court of Appeals, Division I, is predicated upon a version of the facts that is its own creation based upon its assumptions and/or unsupported conclusions, that are in conflict with a published decision of the Court of Appeals?

Whether this Court should accept review pursuant to RAP 13.4(b) where the Opinion of the Court of Appeals, Division I, is entirely unsupported by Washington statutes and case law, and includes citation to a statute that does not apply to this case?

Whether this Court should accept review pursuant to RAP 13.4(b) where the Court of Appeals, Division I, is in statutory conflict with a although unpublished decision, that may have nonbinding authority, if identified as such, may accord such precedent or persuasive statutory value as the court deems appropriate, pursuant to GR 14.1?

Whether this Court should accept review pursuant to RAP 13.4(b) where the Opinion of the Court of Appeals, Division I, is in conflict with a decision of this Court and involves an issue of substantial public interest?

IV. STATEMENT OF THE CASE

The Court of Appeals, Division I, hereinafter ("Court of Appeals") Opinion, never responds or denies the existence or the validity of Welch's Statute of Frauds and Part Performance legal issues, which Welch had raised *pro se*, in his trial court pleadings, and Opening Brief. The Court of Appeals, failure to refute these legal issues should be treated as an admission of material fact that precluded judgment.

The Court of Appeals, Opinion, did not rely upon any statute or case law that supports its conclusions as to the alleged proper service against the parties of interest, Keith Welch, and Brandon Welch, hereinafter ("Keith, and Brandon Welch"). The Court of Appeals, completely ignored significant evidence that expressly contradicts statutory service of process of Chris Walden's, hereinafter ("Walden") ***Second*** "Amended" Summons and Complaint. Walden's assertions that Keith, and Brandon Welch were

properly served pursuant to RCW 59.12, makes it clear that there is still a genuine issues of material fact that precluded judgment.

The Court of Appeals, predicated its Opinion, entirely upon an erroneous determination that there was competent and uncontroverted "evidence" that Walden's attorney properly served all parties of interest, Keith, and Brandon Welch, a copy of Walden's ***Second*** "Amended" Summons, and Complaint, for unlawful detainer under RCW 61.24.060(1), rather than under a landlord-tenant agreement.

The contents of contradictory evidence that the Court of Appeals, relied exclusively upon was the conclusory "open court" testimony of Walden's attorney, Mr. Trickler, while at the same time, ignoring the actual facts of Welch's "open court" testimony.

The Court of Appeals, found Walden's attorney Mr. Trickler's testimony sufficient to create an issue of fact, despite it lacking any foundation and being based on speculation. *Id.* RAP 13.4(b)(2).

The Court of Appeals, reach all of its conclusions to deny Welch relief, in direct contravention of Washington law. This in, and of itself, creates a question of fact, sufficient for review.

Welch respectfully disagree with the Court of Appeals, Opinion, with regard to these issues, as they are in conflict with other Opinions, with the Court of Appeals, and this Court. This Court should accept review to correct these conflicting error of law issues. RAP 13.4(b)(2).

V. ARGUMENT

A. Walden's ***Original*** Complaint, Asserted that He, Keith Welch, and Brandon Welch, had a Residential Rental Agreement, and that Keith Welch and Brandon Welch, Failed to Pay Rent.

This case evolved from an acquisition arrangement between acquaintances *Chris Walden*, and the original owners, *Keith Welch,* and *Brandon Welch.* This case was never about a rental breach, or an acquisition based on a previous foreclosure. Nevertheless, the acquisition arrangement, went from good to bad, right after Walden purportedly obtained title, and then immediately move to file a fabricated rental breach suit, then to honor the previous arrangement set forth.

Nevertheless, the Court of Appeals, found that Walden's fabricated rental breach suit, against Keith and Brandon Welch, for failing to pay rent, was "*erroneously"* asserted by Walden. In other words, the Court of Appeals assertion was that Walden just made a simple mistake, or that Walden's rental breach suit was just an accident when Walden fraudulent filed the wrong information. This opinion, of course, is factually incorrect, and entirely unsupported, and a complete misrepresentation of the facts presented to the trial court.

Excerpts of Walden's ***"Original"*** Complaint for Unlawful Detainer, dated April 23, 2021, against ***both*** Keith Welch, and Brandon Welch.

> COMES NOW the Plaintiff, by and through the Law Office of Rob W. Trickler PLLC, and for cause of action alleges as follows:

I.

Christopher Walden, as landlord, **rented to** Keith Welch and Brandon Welch the premises located at 857 Tinas Coma Lane, Burlington, Skagit County, Washington.

II.

Keith Welch and Brandon Welch are in **possession** of the subject premises.

III.

Plaintiff and Defendants entered into a residential rental agreement for said **Defendants** occupancy of the premises. The rental agreement obligates the **Defendants** to pay monthly rent payable in advance, and to additional terms detailed below.

IV.

The **Defendants** are in arrears for rent for March 2021. Rent shall continue to accrue in accordance with the rental agreement/lease during the pendency of this case. *See* CP 3, 4.

Excerpts of Walden's ***Second*** "Amended" Complaint for Unlawful Detainer, dated July 8, 2021, against ***both*** Keith Welch, and Brandon Welch.

COMES NOW the Plaintiff, by and through the Law Office of Rob W. Trickler PLLC, and for cause of action alleges as follows:

I.

Christopher Walden, is the owner of the premises located at 857 Tinas Coma Lane, Burlington, Skagit County, Washington by virtue of a special warranty deed executed November 2020 (See attached exhibit A incorporated as part of this complaint).

II.

Keith Welch and Brandon Welch are the "prior owners" of the situs and are in possession of the subject premises

III.

Plaintiff and Defendants *"never"* entered into any residential agreement.

IV.

This unlawful detainer is the appropriate action to obtain a writ of restitution in a post foreclosure sale pursuant to RCW 61.24.060(1) (see exhibit B) which provides in part that the new owner shall use the summary proceeding provided for

> in chapter 59.12 as against the prior owners or occupants after at least 20 days. *See* CP 93, 94.

The Court of Appeals, erred in finding that Walden statutorily serve Keith ***and*** Brandon Welch, (the "Defendants") *separately*, a copy of his ***Second*** "Amended" Summons and Complaint.

The Court of Appeals, erred in finding that on June 9, 2021, *just* Keith Welch, appeared *pro se,* but in actuality *"both"* Keith and Brandon Welch, appeared *pro se,* and had answered to Walden's *"abandoned"* fabricated RCW 59.18 rental breach, ***Original*** Summons and Complaint, adamantly denying the existence of a rental agreement.

Additionally, the Court of Appeals, choice to ignore the *actual* undisputed facts, to what Mr. Welch stated at the trial court hearing on July 30, 2021, *(also, the Court of Appeals, ignored these undisputed facts in Mr. Welch's trial court pleadings)*, as follows:

> MR. WELCH: Nevertheless, Your Honor, also too, **both my son, Brandon, and I, have never been served with this particular amended suit nor did David -- Mr. Day and I have an arrangement. Neither Brandon nor I would have him accept service.** And he knew I was kind of working side by – you know, he chimed in helping me because Tom took off -- was -- who would have been here instead. But he's – he's up climbing a mountain right now for the -- another week, unavailable. So, David graciously chimed in to help. But, you know, I'd already been involved in this before David got involved.

07-30-2021, Verbatim Report of Proceedings, pp. 11:15-25; pp. 12:1-4.

The Court of Appeals, chose to believe the words of Walden's attorney and ignore the *actual* undisputed facts.

With regard to Court of Appeals assertion that Mr. Day, ***"did not respond,"*** was due impart to the fact, that he knew his Limited "Notice of Appearance," was clear and *specific,* with regard to ***"who"*** he was representing, and the date of the representation, which was at the time, the July 9, 2021, "abandoned" RCW 59.18 rental breach case.

Excerpts of Mr. Day's , July 8, 2021, Limited Notice of Appearance, as follows:

> "Counsel's appearance in this matter shall be limited in scope to responding to *"the"* Motion for Order to Show Cause and appearing for ***"Keith Welch"*** at the hearing "*noted"* for Hearing on Show Cause . . .
>
> Counsel's representation of ***"Keith Welch"*** shall terminate at the conclusion of the hearing on the proceedings for eviction and related possession.
>
> This Notice of Appearance does ***not*** authorize the undersigned attorney to ***"accept service"*** of any other pleading in this matter, except those related to the Motion for Order to Show Cause.

Nothing in Mr. Days' notice stated that he had the authority to *personally* accept "service of process" of Walden's ***Second*** "Amended" Summons and Complaint, for ***"both"*** Keith and Brandon Welch. In fact, Mr. Day never agreed to accept service of any kind, because he knew he was without statutory authority under Chapter 59.12 RCW to waive personal service upon Keith and Brandon Welch, *via* a fax or email, the copy of Walden's ***Second*** "Amended" Summons and Complaint.

All Mr. Day, agreed to, on July 9, 2021, at the cancelled Show Cause hearing, was, to *informally* agree to Walden's ***Second*** "Amended" Summons and Complaint, *not* to *formally* accept "service of process" for Keith or Brandon Welch, as follows:

Excerpt of Mr. Day, at the July 9, 2021, cancelled Show Cause hearing, as follows:

> MR. DAY: -- "Also for the record, Mr. Trickler, wanted to do some amendments and so forth, and I am agreeing on the record to the amendment of the pleadings. *See* 07-09-2021, *Verbatim Report of Proceedings.*

The Court of Appeals, Opinion, misrepresented the facts, with regard to Walden's attorney testimony in open court, declaring that he and Mr. Day had a purported ***"verbal agreement"*** that [Day] would accept service of the Amended Complaint" and that Day would "take those by fax . . . or e[-]mail."

Additionally, Walden's attorney testified in open court that he was apparently unaware that RCW 59.12's service statute required *personal* service upon *all* parties to Walden's action, as follows:

> MR. TRICKLER: -- Counsel. So, if I -- I don't even – you know, I don't know of any precedent that would require me, when there's a notice of appearance by an attorney, to also send everything to the -- to the *"defendant,"* Your Honor.

07-30-2021, Verbatim Report of Proceedings, pp. 13:10-13.

For the record, Walden's attorney's open court testimony only references ***"one"*** defendant.

The Court of Appeal, Opinion of Walden's attorney's testimony, with regard to the purported ***"verbal agreement"*** with Mr. Day, is speculative, non-statutory, and lacking any foundation or evidence, therefore, not admissible.

Because Walden's attorney's testimony, is entirely unsupported, and a complete misrepresentation of the facts presented to the trial court, it should have been stricken by the Court of Appeal.

Furthermore, with regard to precedent, Walden's attorney was required under the statute to personally serve *all* parties to his suit, a copy of Walden's ***Second*** "Amended" Summons and Complaint, to effectuate service.

Pursuant to RCW 59.12.040, Walden was required to deliver a ***separate*** copy of his ***Second*** "Amended" Summons and Complaint, to ***both*** Keith and Brandon Welch. And since Walden's attorney only delivered ***"one"*** copy of Walden's ***Second*** "Amended" Summons and Complaint, to an unauthorized attorney, Mr. Day, and since Walden's attorney declares that he didn't need to personally serve the "defendant," *i.e.,* Keith or Brandon Welch, the trial court lacked subject matter jurisdiction over the case.

Walden has yet to explain to *any* court why he didn't have to, comply with RCW 59.12.040(1), and *personally* serve ***all*** named parties to Walden's ***Second*** "Amended" Summons and Complaint. *See Scanlan v. Townsend,* 181 Wn.2d 838, 847, 336 P.3d 1155 (2014).

Because the statute must be strictly construed in favor of the person intitled to, this Court must construe the statute in favor of Keith and Brandon Welch and hold that because neither Keith or Brandon Welch were statutorily served a copy of Walden's ***Second*** "Amended" Summons and Complaint, it did not comply with RCW 59.12.040(1). Specifically, Walden did not "deliv[er] a copy *personally* to the person or person(s) entitled thereto," both Keith, and the Co-Claimant and named Defendant, Brandon. *See Culpeper v. Jordan,* 151 Wash. App. 1026 (Wash. Ct. App. 2009); *Homeowners Solutions, LLC v. Nguyen,* 148 Wn. App. 545, (2009); *Laffranchi v. Lim,* 146 Wn. App. 376, 383, 190 P.3d 97 (2008); *Christensen v. Ellsworth, 162 Wn.2d 365, 372, 173 P.3d 228 (2007); Housing Authority of the City of Everett v. Terry,* 114 Wn. 2d 558, 789 P. 2d 445 (1990).

The Court of Appeals, erred in finding Walden's attorney's testimony sufficient to create an issue of fact, and is entirely unsupported by Washington statutes and case law, and includes citation to a statute that does not apply to this case. This Court should accept review to correct these conflicting error of law issues. RAP 13.4(b)(2).

B. Walden's *Second* "Amended" Summons and Complaint Took the Place of the Original *"Abandoned"* Complaint, Thereby, Statutorily Requiring *Personal* Service of Process of Walden's New Complaint.

On July 8, 2021, Mr. day's first day on the job, although limited, was also on the date that Walden "abandoned" his Original Complaint, *void ab initio,* and filed his ***Second*** *"*Amended" Summons and Complaint to become

the ***Original*** Complaint.

Under RCW 59.12, this legally required Walden to statutorily *Personal* serve Keith and Brandon Welch a *copy* of his ***Second*** "Amended" Summons and Complaint. *See* also CR 15.

Additionally, pursuant to CR 15, Walden was statutorily required to either obtain from the trial court leave to amend or obtain in writing from Keith and Brandon Welch's approval to amend, or waive service of process, of Walden's ***Second*** "Amended" Summons and Complaint.

Additionally, an attorney may *not*, surrender a substantial right of a client without special authority granted by the client. *See Graves v. P.J. Taggares Co.,* 94 Wn.2d 298, 303, 616 P.2d 1223 (1980). An attorney needs the client's express authority to accept service of process. To exercise such a power would be to act rather as an agent, or attorney in fact, than as an attorney of the court, and to give effect to it, therefore, there must needs be a special authority for it." *See Ashcraft v. Powers,* 22 Wash. 440, 443, 61 P. 161 (1900).

Nevertheless, pursuant to the statutory service criteria under the unlawful detainer statute, Chapter 59.12 RCW, Mr. Day never had the statutory authority to accept service of Walden's new Summons and Complaint, on behalf of Keith or Brandon Welch.

The Court of Appeals, Opinion, erred concerning this specific improper service of process issue. Therefore, this Court should accept

review to correct this conflicting error of law issue. RAP 13.4(b)(2).

C. Improper Service of Walden's *Second* "Amended" Summons and Complaint on Opposing Counsel.

The Court of Appeals, Opinion, erred in asserting that: *"Day had authority to accept service of the amended complaint on Welch's behalf."* This assertion is entirely unsupported by anything more than its assumptions. Furthermore, the Court of Appeals, Opinion, pertaining to this issue does not meet the statutory service criteria under the unlawful detainer statute, Chapter 59.12 RCW. The Court of Appeals, *simply* stated that: *"A party must serve an opposing party with "every pleading subsequent to the original complaint."* CR 5(a), and that "this rule applies to amended complaints." *See Will v. Frontier Contractors, Inc.,* 121 Wn. App. 119, 126, 89 P.3d 242 (2004).

Nevertheless, the aforementioned case cited by the Court of Appeals, *Will v. Frontier Contractors, Inc.,* (2004), as controlling, is in actuality contradictory.

D. *Will v. Frontier Contractors, Inc.*, (2004).

CR 15(a) states: "a party must "***effect***" service on the *"**other**"* party for "***every*** pleading subsequent to the original complaint." CR 5(a). Amended complaints are pleadings within this rule. *See Sutton v. Hirvonen,* 113 Wash.2d 1, 6-7, 775 P.2d 448 (1989).

Will knew he was statutorily required to file a motion with the trial court to "leave to amend" his original complaint.

Excerpts from Walden's attorney, to Mr. Day, requesting a continuance until July 23, 2021, along with asking the trial court for "Leave to Amend" his Amended RCW 59.12 Complaint, as follows:

> From: Rob Trickler [mailto:rob@tricklerlaw.com]
> Sent: Friday, July 09, 2021, 7:13 AM
> To: David Day david@fairhavenlegal.com
> Cc: Reception
> Subject: Re: Walden v Welch
>
> I'm just getting this as I was out of the office for a house fire unfortunately. Next Friday does not work for me and **I would prefer the 23rd** if that works for you. I have responses to a discovery request that I intended to deliver today as they are due tomorrow I believe or thus Monday. Do you want those and if so can I email them? **Also, I intend to ask the court for leave to amend the complaint** to reflect its post foreclosure not tenancy…
>
> Rob W Trickler

It is noteworthy that Walden's attorney denied this fact in open court at the July 30, 2021, hearing. *See 07-30-2021, Verbatim Report of Proceedings*, pp. 12:18-21.

In our case, Walden's attorney knew, that after he received Keith Welch and Brandon Welch's, response, to Walden's ***Original*** Summons and Complaint, he was statutorily required to file a CR 15(a) motion with the trial court, asking the court to "leave to amend," or request in "***writing***" from both Keith Welch and Brandon Welch, as named parties to the case, permission to amend. Because the trial court was without authority to rule without the filing of a CR 15(a) motion first, the Court of Appeals, erred in its Opinion, and should therefore, be reviewed. RAP 13.4(b)(2).

E. The Court of Appeals Asserted that Walden's Attorney E-mailed a Copy of Walden's *Second* "Amended" Summons and Complaint to Mr. Day on July 9, 2021.

The Court of Appeals will have you believe that Walden emailed or faxed a copy of his ***Second*** "Amended" Summons and Complaint to Mr. Day, was on July 9, 2021. The facts, are that Mr. Day, didn't receive an emailed copy of Walden's ***Second*** "Amended" Summons and Complaint until July 13, 2021.

Excerpts below are communication between Keith Welch and Mr. day, with regard to the "date" Walden's attorney sent *via* email or fax a copy of the *Second* Amended Summons and Complaint, on July 13, 2021; as follows:

> From: kpwjr@att.net
> To: david@fairhavenlegal.com
> Date: Tuesday, July 13, 2021, at 11:44 AM PDT
>
> David,
>
> Have you received anything from Walden's counsel.
>
> Take care,
>
> Keith
> (206)751-9927
>
> ---
>
> From: david@fairhavenlegal.com
> To: kpwjr@att.net
> Date: Tuesday, July 13, 2021, at 01:56 PM PDT
>
> I had an email this morning promising discovery and amendments to the complaint.
>
> David L. Day
> Attorney at Law
> 1023 S 3rd
> Mount Vernon, WA 98273
> 360-755-0611
>
> ---

From: david@fairhavenlegal.com
To: kpwjr@att.net
Date: Tuesday, July 13, 2021, at 02:13 PM PDT

Here's what I have so far. Will be able to discuss with you late morning tomorrow.

David L. Day
Attorney at Law
1023 S 3rd
Mount Vernon, WA 98273
360-755-0611

It is also noteworthy, neither Keith nor Brandon Welch, have *yet* to be statutorily served a copy of Walden's July 8, 2021, ***Second*** "Amended" Summons and Complaint, pursuant to RCW 59.12.

Walden's attorney sent *via* fax or email a copy of Walden's ***Second*** "Amended" Summons and Complaint, without the parties to the case agreeing.

In the conflicting case cited by the Court of Appeals, *Will v. Frontier Contractors, Inc.,* (2004), *Will* did *not* serve *Frontier,* but on December 26, 2002, *faxed* a copy of the same proposed complaint that he had served on *Frontier* on May 15, 2002. But, unless the parties agree in *writing* to the service of process, by fax or electronic mail, it does not comply with CR 5. *See Wallace v. Kuehner,* 111 Wash.App. 809, 823-24, 46 P.3d 823 (2002); *See Inman v. Netteland*, 95 Wash.App. 83, 89, 974P.2d 365 (1999).

Under the statutory service requirement pursuant to CR 5, both courts in the aforementioned cases held that, absent the parties' ***written*** stipulation agreeing to service of documents *via* fax, or electronic mail service is ineffective.

Furthermore, what constitutes service as required, and as further defined in CR 5(b), *via* a fax or email, is having had a <u>*written*</u> agreement.

Walden never presented <u>*any*</u> evidence that the parties or Mr. Day, agreed to sign a "service agreement," nor is there evidence of such a stipulation in the record that the parties or Mr. Day, executed an acceptance of service agreement before Walden's attorney, sent Mr. Day, a copy on July 13, 2021, of Walden's ***<u>Second</u>*** "Amended" Summons and Complaint, *via* a fax or email, as an effective method of service on Keith and Brandon Welch.

Therefore, concluding that Walden's ***<u>Second</u>*** "Amended" Summons and Complaint, did not satisfy the service requirements, therefore, Walden's service was ineffective.

F. *Sutey v. T26 Corp,* (2020).

With regard to the Court of Appeals, citing, *Sutey v. T26 Corp.,* 13 Wn. App. 2d 737, 749, 466 P.3d 1096 (2020), as controlling.

In this case, as in the other case cited by the Court of Appeals, the *Suteys* <u>*also*</u> moved for leave to amend their complaint. They explained, "Plaintiffs are required under CR 15(a) to obtain leave of court in order to file a second amended complaint." Eventually, *Suteys'* received *Bergin's* attorney Goetz, filed notice of appearance, but not before *Bergin* was personally served with a copy of the *Suteys'* amended complaint, and original summons and complaint, at the Ashworth address.

Based on the conflicting aforementioned case, cited by the Court of Appeals, as controlling, Walden was required under CR 15(a) to obtain leave of court.

Because the Court of Appeals, erred in not dismissing Walden's case, this Court should accept review to correct this error of law. RAP 13.4(b).

G. *Ha v. Signal Elec., Inc*. (2014)

With regard to the Court of Appeals, citing, *Ha v. Signal Elec., Inc.,* 182 Wn. App. 436, 447, 332 P.3d 991 (2014), as controlling.

In this case *Ha* sought and received ***written*** permission to proceed. Similar to a CR15 motion, *Ha*, filed a motion with the bankruptcy court seeking relief from the stay. The court granted *Ha's* motion and allowed her to proceed against *Signal Electric.* The court specified that "the stay is not lifted regarding collection or enforcement of judgment from *Signal Electric's* assets, except as to the proceeds of any applicable insurance policy that might satisfy a portion of Ms. *Ha's* claims, and any distribution made on Ms. *Ha's* claims in this bankruptcy." After obtaining relief from the bankruptcy stay, *Ha* asked *Tracy* if he would accept service of process on *Signal Electric's* behalf. The attorney agreed and executed an acceptance of service. On July 11, 2012, *Signal Electric's* bankruptcy attorney *Tracy,* executed an acceptance of service prepared by *Ha's* counsel. In it, *Tracy* claimed to be an attorney representing *Signal Electric,* in the personal injury lawsuit. *Tracy* verified that "**I have the "authority" to accept and/or**

waive service of process on its behalf." *Tracy* further agreed" "that delivery of the Summons and the Complaint to *Ha* constitutes proper service of process, and that service of process upon *Signal Electric* was completed on July 11, 2012." *Tracy* later explained, however, that he "did not intend to be signing as counsel for the Defendant, *Signal Electric, Inc.,* as Crocker Law Group PLLC is a firm that specializes in bankruptcy law, and not personal injury or construction matters."

Nevertheless, *Ha* effected proper service of process on *Signal Electric* when *Tracy* formally accepted **"in writing,"** *Ha's* summons, and complaint.

With regard to the facts in the Walden suit, on June 9, 2021, Keith, and Brandon Welch, appeared exclusively *pro se,* in the *Chris Walden* v. *Keith Welch, Brandon Welch, et al.,* RCW 59.18, purported rental breach case.

On the morning of July 7, 2021, Welch contacted his attorney, Thomas Seguine, for consultation and advice, for the upcoming July 9, 2021, *(RCW 59.18, purported rental breach)* "Show Cause hearing," Mr. Seguine was able to assist but was unable to appear *(out of town)* for the hearing," but instead arranged for a colleague Mr. Day, to assist Welch with the hearing.

On the morning of July 8, 2021, Welch was contacted by Mr. Day, stating that he could assist Welch with the upcoming July 9, 2021, RCW

59.18, purported rental breach "Show Cause hearing."

On July 8, 2021, Welch met Mr. Day, for approximately 30 minutes, to discuss the case matter, in which Welch disputed the existence of the purported rental breach suit.

Later that morning Mr. Day, filed with the trial court a "Limited Notice of Appearance," designed exclusively for just the July 9, 2021, show cause hearing. Mr. days' notice was limited *specifically* to that hearing only.

Unlike in the *Ha v. Signal Elec., Inc.* (2014), case, Mr. Day ***never*** executed an "acceptance of service" prepared by Walden's attorney. Nor had he ***ever*** claimed to be an attorney representing ***both*** Keith and Brandon Welch, in this lawsuit.

Therefore, because the trial court pursuant to the improper service of Walden's ***Second*** "Amended" Summons and Complaint was without authority to rule, it should have been dismissed for lack of jurisdiction under unlawful detainer, Chapter 59.12 RCW.

Because the Court of Appeals, erred in not dismissing Walden's case, this Court should accept review to correct this error of law. RAP 13.4(b).

H. CR 70.1(b).

> CR 70.1 APPEARANCE BY ATTORNEY
> (b) **Notice of Limited Appearance**. 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.

Pursuant to CR 70.1(b), Mr. Day appeared on Welch's behalf in a limited capacity. Mr. Days' notice of appearance represented that he was only authorized to accept service of ***"specific"*** pleadings "related to the July 9, 2021. The July 9, 2021, Motion for Order to Show Cause," hearing, was ultimately abandoned, *void ab initio,* thereby, giving Walden's attorney plenty of time to properly serve on *all* named parties to Walden's new Summons and Complaint.

The Court of Appeals, assertion that Walden's ***Second*** Amended Summons and Complaint Related to his July 9, 2021, "Show Cause" Motion, still required under RCW 59.12, personal service of process on *all* named parties, to Walden's ***Second*** "Amended" Summons and Complaint.

Indeed, Mr. Days' notice of appearance, authorized him to except the July 9, 2021, Motion for Order to Show Cause, as the Court of Appeals opined, but Mr. Days' notice of appearance, did not grant Mr. Day the authority over *all* named parties to except service of process of Walden's ***Second*** "Amended" Summons and Complaint.

Additionally, even if, as the Court of Appeals opined, Walden's ***Second*** "Amended" Summons and Complaint, which alleged the facts and legal theory entitling Walden to the writ of restitution and judgment—the issues to be addressed at the July 9, 2021, Show Cause hearing, were unrelated and then "abandoned" before Mr. Day, received a copy *via* fax or email of Walden's ***Second*** "Amended" Summons and Complaint.

Therefore, concluding that Mr. Day, was without authority over all named parties to except service of process of Walden's ***Second*** "Amended" Summons and Complaint.

The Court of Appeals conflicting assertion that: "Walden's amended complaint related to his show cause motion," and that the alleged facts and legal theory are the same as the ***Original*** "Abandoned" Summons and Complaint, ignores the statutory requirements of proper service of process upon on all parties to Walden's ***Second*** "Amended" Summons and Complaint, first, pursuant to unlawful detainer statute, Chapter 59.12 RCW.

Additionally, nothing in the unlawful detainer statute RCW 59.12 states that a limited appearance attorney can accept personal service of process on behalf of its client, *via* fax or email, without written proof that his client was first served. *See* RCW 59.12.040.

The facts are clear, Mr. Day, did not receive a copy *via* fax or email of Walden's July 8, 2021, ***Second*** "Amended" Summons and Complaint, until July 13, 2021, which was well after the July 9, 2021, Show Cause hearing.

Furthermore, it would have been impossible for Mr. Day, to have been granted the authority to accept service on July 9, 2021, the day of the hearing, (*when he was just retained 12 hours earlier for the "original" show cause hearing)* regarding a new amended judicial proceeding, requesting a ruling or other determination, by the general court referencing a new and

specific statute, because the ***Second*** "Amended" Summons and Complaint was not available until July 13, 2021, therefore, the Court of Appeals CR 70.1(b) argument is fundamentally flawed because the facts upon which they rely are inaccurate.

Therefore, this Court should accept review to correct these conflicting error of law issues. RAP 13.4(b)(2).

I. Mr. Day, Was Never Retained to Except Service of Walden's *Second* "Amended" Summons and Complaint On Behalf of Keith Welch and Brandon Welch.

Keith Welch and Brandon Welch, were both named parties to Walden's ***"Original"*** and ***"Amended"*** action, as parties of interest. CR 19. Walden was statutorily required to serve a copy of Walden's ***Second*** "Amended" Summons and Complaint, upon *all* named parties of interest. CR 19. Because there is no record before the trial court that Walden or his attorney personally served a copy of Walden's ***Second*** "Amended" Summons and Complaint, upon all named parties of interest, the case was not permitted nor valid by statute and Rule 5(b) and should have been dismissed. CR 19.

Furthermore, because Walden's ***Second*** "Amended" Summons and Complaint, was a unrelate case matter, that was not in connection with the previous or *specific* proceeding, Walden's ***Second*** "Amended" Summons and Complaint, was not permitted nor valid by the unlawful detainer statute RCW 59.12, and Rule 5(b). *See* also CR 19, and CR 70.1(b).

Because the Court of Appeals, erred in not dismissing Walden's case, this Court should accept review to correct this error of law. RAP 13.4(b).

J. Walden's Unlawful Detainer Action was Not Available in Accordance with the Case, *Selene v. Ward* (2017).

In order to apply the case *Selene RMOF II REO Acquisitions II LLC, v. Vanessa Ward,* 399 P. 3d 1118 - Wash: Supreme Court (2017), the sale must have complied with the statutory foreclosure rules:

Under RCW 61.24.060(1), to obtain possession of the property that it owned. RCW 59.12.032, provides:

> "An unlawful detainer action, commenced as a result of a trustee's sale under chapter 61.24 RCW, must comply with the requirements of RCW 61.24.040 [(**addressing service requirements**)] and RCW 61.24.060."

Thus, RCW 59.12.032, "authorizes the purchaser at a deed of trust foreclosure sale to bring an unlawful detainer action to evict the previous owner of the home, **provided the sale complied with the statutory foreclosure rules**."

The evidence is clear, US Bank NA, the purported lender ***never*** complied with the 2011 statutory **Foreclosure Fairness Act** ("FFA"), and RCW 61.24.031(1)(a)(b). *See* Appellant's trial court pleadings, CP 187-195, 197-217, and Opening Brief, Pgs. 41-43. *See also* Appendix A.

Additionally, Welch's trial court briefs, and Appellant Court briefs, directly relate to the "question of possession" and may be raised

in an unlawful detainer action. *See* *Cox v. Helenius,* 103 Wn.2d 383, 387, 693 P.2d 683 (1985).

A question of a material fact still exists with respect to proper notification of all the statutory pre-foreclosure notices pursuant to the 2011 ("FFA"), and RCW 61.24.031(1)(a)(b), statutes.

K. The Court of Appeals, Erred in Affording the Relief Requested; That is, a Writ of Restitution Under Chapter 59.12 RCW, Applying *Selene v. Ward* (2017).

The Court of Appeals, entertain the fiction that some other proceeding with respect to the foreclosure which was done seven and a half years ago was done properly. There's was no proof presented to the trial court of compliance with RCW 61.24.060(2) and (3). And that's required.

The "Affidavit of Mailing," the "Notice of Default," and the "Notice of Trustee Sale," did not comply with the requirements for an eviction proceeding.

Additionally, under the statute cited, requires that the foreclosure process be accomplished by the beneficiary or the trustee. *See* RCW 61.24.031. It doesn't allow a third party to administratively go through these steps. And it doesn't allow delegation.

Whether Walden was a bona fide purchaser for value and the impact of the Trustee's deed, together with knowledge of the trustee's sale, are all beyond the scope of an unlawful detainer action.

Therefore, the Court of Appeals erred in ruling that Walden could under *Selene*, proceed under the unlawful detainer statute, post-foreclosure, regardless of whether RCW 59.12.032 allows it or not. This Court should accept review to correct this error of law. RAP 13.4(b)(1),(2),(3),(4).

L. The Court of Appeals Erred with Regard to it Assertion that Welch did *Not* Raise Issues Pertaining to the "Affidavit of Mailing" and Several other Documents, with Trial Court.

The Court of Appeals cited *Roberson v. Perez,* 156 Wn.2d 33, 39, 123 P.3d 844 (2005), in support of refusing to review any claim of error with regard to the "Affidavit of Mailing" and several other documents, which the Court of Appeals assert that Welch did not raise in the trial court (quoting RAP 2.5(a)).

RAP 2.5(a) contains several express exceptions from its general prohibition against raising new issues on appeal, including the "failure to establish facts upon which relief can be granted." This exception is fitting inasmuch as "[a]ppeal is the first-time sufficiency of evidence may realistically be raised." See *State v. Hickman,* 135 Wn.2d 97, 103 n.3, 954 P.2d 900 (1998).

Furthermore, under RAP 2.5(a), the terms "failure to establish facts upon which relief can be granted" and "failure to state a claim"" are largely interchangeable. See 1 WASH. COURT RULES ANN. RAP 2.5 cmt. (a) at 640 (2d ed. 2004) ("Exception (2) uses the phrase 'failure to establish facts'

rather than the traditional 'failure to state a claim.' The former phrase more accurately expresses the meaning of the rule in modern practice.").

A party may raise failure to establish facts upon which relief can be granted for the first time in the appellate court. RAP 2.5(a)(2). See *Gross v. City of Lynnwood,* 90 Wn.2d 395, 400, 583 P.2d 1197 (1978). The Appellate Court have consistently stated that a new issue can be raised on appeal " 'when the question raised affects the right to maintain the action.'" See *Bennett v. Hardy,* 113 Wn.2d 912, 918, 784 P.2d 1258 (1990) (quoting *Maynard Inv. Co. v. McCann,* 77 Wn.2d 616, 621, 465 P.2d 657 (1970)); See also *Jones v. Stebbins,* 122 Wn.2d 471, 479, 860 P.2d 1009 (1993).

For the record, Welch raise in his trial court pleadings, and at the July 30, 2021, and August 27, 2021, hearings, the issues regarding the validity of the "Affidavit of Mailing," and several other documents. CP 179-186, CP 187-196.

M. The Trial Court Erred in Ruling in Favor of a Writ, Knowing That Not all Parties to the Action We're Served.

A final issue in this case is the enforcing of a writ of execution after an unlawful detainer judgment, to evict all parties to the action, and all persons in possession of the premises, that were named in the writ.

The rule of law is that an eviction of ***any*** person named in the writ who claims a right to possession, or who claim to have been in possession of the premises on or ***before*** the date of the filing of the action, yet were

never statutorily served with a summons and complaint, that arose ***before*** the unlawful detainer action was commenced, violated the rights of such individual to procedural due process under the Fourteenth Amendment of the United States Constitution and under the Washington State's Constitution, Art. I § Sec. 3.

Therefore, since Walden's ***Second*** "Amended" Summons and Complaint, pursuant to Chapter 59.12 RCW, was *never* statutorily served pursuant to Chapter 59.12 RCW, the writ, under these statutory circumstances, was ineffective, and therefore, permanently barred.

VI. CONCLUSION

For all the foregoing reasons, Mr. Welch respectfully requests that the Supreme Court accept review, as this Opinion, and some other similar Opinions rendered by the Court of Appeals, Division I, pursuant to RAP 13.4(b), and correct the error of law in this case, and clarify the specific statutory service requirements pursuant to the UD Statute, mandated by the State of Washington Legislature, and this Court's decisions.

Respectfully submitted this 6th day of November, 2023.

/s/ Keith Welch
Keith Welch, Defendant/Appellant

VII. CERTIFICATE OF COMPLIANCE

The undersigned certifies that this 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, if any, contains 6,000 words, pursuant to this Court's ruling, in favor, allowing the undersigned to file an Amended Overlength Petition for Review.

Respectfully submitted this 6th day of November, 2023.

/s/ Keith Welch
Keith Welch, Defendant/Appellant

DECLARATION OF SERVICE

I, Keith Welch, certify under penalty of perjury under the laws of the State of Washington, that on the day I signed this declaration of service, I caused a copy of the Petition for Review, to be serve electronically *via* the Appellate Courts Portal, to this Court, and electronically mailed upon Counsel of record:

The Law Offices of Rob W. Trickler 2302 Rucker Ave Apt 4 Everett, WA 98201-2764 rob@tricklerlaw.com	

Signed at Mount Vernon, Washington, this 6th day of November, 2023.

/s/ Keith Welch
Keith Welch, Defendant/Appellant

Appendix A

FILED
7/31/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CHRISTOPHER WALDEN, Respondent, v. KEITH WELCH, BRANDON WELCH, and all other occupants, Appellants.	No. 83114-3-I UNPUBLISHED OPINION

BOWMAN, J. — Keith Welch appeals a writ of restitution evicting him from Christopher Walden's Burlington property. Welch argues that Walden improperly served his attorney with an amended complaint and that Walden had no grounds for an unlawful detainer claim under chapter 61.24 RCW. We affirm.

FACTS[1]

In 2003, Welch bought property at 857 Tinas Coma Lane in Burlington. In October 2016, he 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. Then, in November 2020, U.S. Bank sold the property to Walden, who took title by special warranty deed. At the time, Welch and his son, Brandon Welch, still lived at the property.

[1] We set out the underlying facts in the linked case, Welch v. Walden, No. 83427-4-I (Wash. Ct. App. July 31, 2023) (unpublished), and repeat them only as necessary.

In December 2020, Walden began an eviction proceeding against Welch. Walden posted three copies of a "Notice of Termination and Affidavit" at the property and mailed Welch a copy of the notice. But Welch did not vacate the property. So, on April 23, 2021, Walden sued for unlawful detainer and sought a writ of restitution to restore possession of the property to him. In his complaint, Walden erroneously asserted that he and Welch had a residential agreement and that Welch failed to pay rent.

Walden tried to serve Welch with the summons and complaint personally, but after five unsuccessful attempts, Walden moved to allow alternative service under RCW 59.18.055. The court granted his motion. Walden ultimately served Welch the summons for unlawful detainer, complaint for unlawful detainer, motion for order allowing alternative service, and order allowing alternative service by posting copies of the documents at the property and mailing copies to Welch by both regular and certified mail.

On June 9, 2021, Welch appeared pro se and answered the complaint. Walden then moved for an order to show cause "[w]hy a Writ of Restitution should not be issued restoring to [Walden] possession of the premises" and "[w]hy a Judgment should not be entered against [Welch] for rent owing, attorney fees, and costs, as requested in the Complaint for Unlawful Detainer."

On July 8, 2021, attorney David Day filed a limited notice of appearance on behalf of Welch. That notice says:

> Counsel's appearance in this matter shall be limited in scope to responding to the **Motion for Order to Show Cause** and appearing for Keith Welch at the hearing noted for Hearing on Show Cause . . . and any hearings thereafter relating to the right to

> possession of the premises. Counsel's representation of Keith Welch shall terminate at the conclusion of the hearing on the proceedings for eviction and related possession.
>
> This Notice of Appearance does not authorize the undersigned attorney to accept service of any other pleading in this matter, except those related to the Motion for Order to Show Cause.

The same day, Walden filed an amended complaint. He still alleged unlawful detainer but sought a writ of restitution under RCW 61.24.060(1)[2] rather than under a landlord-tenant agreement. Walden e-mailed a copy of the amended complaint to Day.

The next day, July 9, the court held a hearing on the motion to show cause. But at the beginning of the hearing, Walden told the court he amended his complaint, and Day agreed "on the record to the amendment of the pleadings." So, the court rescheduled the show cause hearing. Day answered the amended complaint on July 22, 2021.

The court held the show cause hearing on July 30, 2021. At that hearing, Welch told the court that he had "never been served with this particular amended suit" and that he would not have let Day accept service on his behalf. Day did not respond. But Walden's attorney explained that he and Day had "an agreement that [Day] would accept service of the Amended Complaint" and that Day would "take those by fax . . . or e[-]mail." Walden's attorney explained that he "sent it to Counsel . . . as agreed on." He told the court, "I don't know of any precedent that would require me, when there's a notice of appearance by an attorney, to also send everything to . . . the defendant."

[2] RCW 61.24.060(1) permits a purchaser at a nonjudicial foreclosure sale to pursue an unlawful detainer claim to obtain possession of the real property.

The court continued the show cause hearing to August 27, 2021, where Day argued against the writ of restitution on behalf of Welch. On August 30, 2021, the court issued a memorandum decision, ruling that Walden "is entitled to a writ of restitution." And on November 12, 2021, the court entered the writ but stayed the matter pending appeal.[3]

Welch appeals.

ANALYSIS

Welch argues that the trial court erred by entering a writ of restitution because Walden improperly served the amended complaint and because Walden had no grounds for an unlawful detainer claim under chapter 61.24 RCW.

1. Service of Amended Complaint

Welch argues that Walden deficiently served the amended complaint because Day had no authority to receive service on his behalf. We disagree.

A party must serve an opposing party with "every pleading subsequent to the original complaint." CR 5(a). This rule applies to amended complaints. Will v. Frontier Contractors, Inc., 121 Wn. App. 119, 126, 89 P.3d 242 (2004). The plaintiff bears the initial burden to prove a prima facie case of sufficient service. Sutey v. T26 Corp., 13 Wn. App. 2d 737, 749, 466 P.3d 1096 (2020). The party challenging the sufficiency must then show by clear and convincing evidence that the service was improper. Id. We review proper service of a summons and complaint de novo. Id.

[3] The court conditioned the stay on Welch posting a supersedeas bond of $4,000 per month.

If a client authorizes an attorney to appear on their behalf, the attorney's acts are generally binding on the client. Ha v. Signal Elec., Inc., 182 Wn. App. 436, 447, 332 P.3d 991 (2014). But "an attorney's role may be limited to one or more individual proceedings" in an action. CR 70.1(b). And service under CR 5 on an attorney who has made a limited appearance for a party will be valid "only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared." CR 70.1(b).

Here, Day appeared on Welch's behalf in a limited capacity. Day's notice of appearance represented that he was only authorized to accept service of pleadings "related to the Motion for Order to Show Cause." But Walden's amended complaint related to his show cause motion. Indeed, the document alleged the facts and legal theory entitling Walden to the writ of restitution and judgment—the issues to be addressed at the show cause hearing. As a result, Day had authority to accept service of the amended complaint on Welch's behalf.[4]

2. Unlawful Detainer under Chapter 61.24 RCW

Welch also argues that an unlawful detainer action was "[n]ot [a]vailable" to Walden because he was not a party to the deed of trust. We disagree.

[4] Welch argues this case is like Ha, where we held that a lawyer cannot "surrender a substantial right of a client without special authority granted by the client." Ha, 182 Wn. App. at 447. But that case involved an attorney's authority to accept an original summons and complaint under RCW 4.28.080(9) and CR 4. Id. at 447-48. Welch cites no authority that the "substantial right" analysis in Ha applies to service of a "pleading subsequent to the original complaint" under CR 5(a). Regardless, we conclude Day had the authority to accept service of Walden's amended complaint.

Chapter 59.12 RCW governs actions for an unlawful detainer. Unlawful detainer is a summary proceeding for obtaining possession of real property. Fed. Nat'l Mortg. Ass'n v. Ndiaye, 188 Wn. App. 376, 382, 353 P.3d 644 (2015). RCW 61.24.060(1) entitles a purchaser at a trustee's sale the "right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW." And RCW 59.12.032 "authorizes the purchaser at a deed of trust foreclosure sale to bring an unlawful detainer action to evict the previous owner of the home, provided the sale complied with the statutory foreclosure rules." Ndiaye, 188 Wn. App. at 381. In other words, "[a]s a means to gain possession of real property, unlawful detainer is available to one who holds a title as a purchaser at a deed of trust foreclosure sale." Id. at 384.

Welch argues that because Walden was not an original party to the 2017 trustee's sale, he has no cause of action for unlawful detainer. But our Supreme Court rejected the same argument in Selene RMOF II REO Acquisitions II, LLC v. Ward, 189 Wn.2d 72, 80, 399 P.3d 1118 (2017). In that case, Selene bought property from a bank that had acquired it at a nonjudicial foreclosure sale. Selene, 189 Wn.2d at 75. After taking title by special warranty deed, Selene filed an unlawful detainer action under RCW 61.24.060, seeking to evict Ward, the former owner of the property. Id. at 74-75. Ward argued that Selene had no claim for unlawful detainer because the bank, not Selene, was the purchaser at the trustee's sale. Id. at 75. Our Supreme Court disagreed. Id. at 80. It concluded that the bank's purchase at the foreclosure sale "clearly included the right to pursue the unlawful detainer action." Id. And because the bank's

"subsequent transfer to Selene by special warranty deed conveyed [the bank]'s entire interest 'in fee simple,' " Selene received "all of [the bank]'s ownership rights," including the right to pursue an unlawful detainer action to recover possession of the property. Id.

Here, as in Selene, U.S. Bank's purchase of the property at the nonjudicial foreclosure sale included a right to pursue an unlawful detainer action. So, when Walden bought the property from U.S. Bank and took title by special warranty deed, he received U.S. Bank's entire interest, including the right to recover possession by unlawful detainer under chapter 61.24 RCW.

Welch argues that even if Selene applies, "the [trustee's] sale must have complied with the statutory foreclosure rules." According to Welch, the trustee never gave him proper notice of the trustee's sale under chapter 61.24 RCW. But an affidavit of mailing shows that "on **10/20/2016**, a copy of the Notice of Sale . . . was mailed [to the occupant at 857 Tinas Coma] in the ordinary course of business." The trustee's authorized agent sent the notice "by certified or registered mail and first class, with postage prepaid and then delivered to the United States Postal Service for delivery."[5] Welch does not explain why service by certified or registered mail does not amount to proper notice of sale. As a result, we reject his argument.

[5] Welch argues that the trial court erred by admitting the affidavit of mailing and several other documents at the show cause hearing because the affiants lacked personal knowledge of the events and the documents were not self-authenticating. But the documents show that the authorized agent for the trustee that commenced the trustee's sale swore to them, based on their personal knowledge. In any event, Welch improperly raised the arguments for the first time on appeal, so we do not address them. Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005) (we " 'may refuse to review any claim of error which was not raised in the trial court' ") (quoting RAP 2.5(a)).

Because Walden properly served Welch's attorney with the amended complaint and had grounds for an unlawful detainer claim under chapter 61.24 RCW, we affirm.

Bowman, J.

WE CONCUR:

Díaz, J.

Birk, J.

KEITH WELCH - FILING PRO SE

November 06, 2023 - 4:52 PM

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