

NO. 90033-7

SUPREME COURT OF THE STATE OF WASHINGTON

[Court of Appeals No. ~~68721-1-1~~]

68727-1

ROBERT K. HALL, a single man, and  
DAYLIGHT PROPERTIES, LLC,  
a Washington limited liability company,

Respondents,

vs.

MATTHEW FEIGENBAUM,

Petitioner.

**FILED**  
MAR 20 2014  
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RESPONDENTS HALL/DAYLIGHT  
PROPERTIES, LLC'S RESPONSE TO  
PETITION FOR REVIEW

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## I. STATEMENT OF THE CASE

This matter involves a commercial tenancy. The tenant Appellant Matthew Feigenbaum is an attorney (Feigenbaum).<sup>1</sup> He entered into a written commercial lease (Lease) with Respondent Robert Hall (Hall).<sup>2</sup> The Lease was to operate a bar in the basement area of Hall's building (Premises).<sup>3</sup> The Lease required Feigenbaum to pay rent each month and provided that all notices to Feigenbaum were to be mailed to the Premises unless Feigenbaum designated some other address in writing.<sup>4</sup> Feigenbaum never designated any other address.<sup>5</sup>

Feigenbaum ceased doing business at the Premises in 2008. Feigenbaum failed to pay rent in the fall of 2010, as he had many times before.<sup>6</sup> Hall initiated an unlawful detainer action undertaking the following steps:

- Notice to Pay Rent posted and mailed to Nov. 5, 2010

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<sup>1</sup> Verbatim Report of Proceedings (VR), December 22, 2010, page 12. Take notice of Feigenbaum's clear understanding of the law as set forth in the Memorandum handwritten by him and filed on January 21, 2011.

<sup>2</sup> Clerk's Papers (CP) 1167-1175, and CP 728-36, Exhibit 1 to Affidavit of Robert Hall in Support of Summary Judgment dated October 6, 2011.

<sup>3</sup> When the Lease was signed, Robert Hall owned the building personally. During the period of the Lease, Hall contributed it to a limited liability company, Daylight Properties, LLC. Hall is the sole owner of the LLC. The reference to either and both will simply be to "Hall." CP 723.

<sup>4</sup> CP 1172, Paragraph 30 of the Lease.

<sup>5</sup> CP 725. The Court of Appeals noted that Feigenbaum had not sent any notice regarding a change of address. *Slip Opinion*, page 7.

<sup>6</sup> CP 724-5, Affidavit of Robert Hall in Support of Summary Judgment dated October 6, 2011.

- Premises<sup>7</sup>
- Eviction Summons and Complaint filed<sup>8</sup> Dec. 1, 2010
  - 6 attempts for personal service<sup>9</sup> Dec. 1-2, 2010
  - Court entered Order allowing service by posting and mailing<sup>10</sup> Dec. 6, 2010
  - Mailing of pleadings to Premises and residence<sup>11</sup> Dec. 6, 2010
  - Posting at residence and Premises Dec. 7, 2010
  - Feigenbaum received pleadings in the mail<sup>12</sup> Dec. 9, 2010
  - First Show Cause hearing Dec. 17, 2010
  - Feigenbaum personally served in court<sup>13</sup> Dec. 17, 2010
  - Continuance granted to Feigenbaum<sup>14</sup> Dec. 17, 2010
  - Second return date<sup>15</sup> Dec. 21, 2010
  - Second Show Cause hearing<sup>16</sup> Dec. 22, 2010
  - Date court ordered past due rent must be paid Dec. 27, 2010
  - Tenant failed to pay January rent Jan. 5, 2011
  - Order Granting Writ of Restitution Jan. 7, 2011

Feigenbaum has made no effort to pay rent during the three plus years since this action has been litigated.

In January of 2011, the court heard all of Feigenbaum's arguments regarding the validity of the 3 Day Notice, service via

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<sup>7</sup> CP 1176-78, Notice to Pay Rent or Vacate/Affidavit of Posting and Mailing, Exhibit C to the Complaint.

<sup>8</sup> CP 1158.

<sup>9</sup> CP 1126-1137.

<sup>10</sup> CP 1119-1125, Order Allowing Service by Posting and Mailing and Declaration in Support of Motion.

<sup>11</sup> CP 1114-1118, Declarations of Posting and Declaration of Mailing.

<sup>12</sup> VR December 17, 2010, page 3, line 21-25 and CP 1107. Declaration of Matthew Feigenbaum. Somehow he "missed" the copy posted to his residence.

<sup>13</sup> CP 1391-93, Declaration of Service filed December 20, 2010; VR December 17, 2010, pages 9-10.

<sup>14</sup> VR December 17, 2010, page 7, lines 11-18 and pages 8-9.

<sup>15</sup> VR December 17, 2010, pages 8-9.

<sup>16</sup> VR December 22, 2010, pages 17-18 and pages 24-25.

mail and posting, and all other issues related to jurisdiction. The court made specific findings in its oral ruling.<sup>17</sup> Based upon those findings, the court denied his motion to dismiss.<sup>18</sup>

Feigenbaum failed to answer the Complaint and an Order of Default was entered along with a judgment.<sup>19</sup> A Writ of Attachment was entered (along with a bond). At the execution sale, Feigenbaum paid over \$60,000 for the personal property covered by the Writ of Attachment/Judgment. Recognize, Feigenbaum had more than enough money to pay all the amounts due and to cure the Lease. Instead he made the strategic move to buy at the execution sale and promote the litigation.

Six months after the inception of the case, Feigenbaum hired an attorney who had the default set aside, obtained a return of all the money paid to satisfy the Writ of Attachment, and had the matter continued. Even after the return of the money, Feigenbaum never paid or attempted to pay any of the outstanding rent. Feigenbaum never disputed that he had failed to pay rent and that he breached the Lease.

In response to one of the motions to dismiss regarding

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<sup>17</sup> VR January 21, 2011.

<sup>18</sup> VR January 21, 2011, pages 15-16, pages 18-19, page 21.

<sup>19</sup> CP 1036-7, Order of Default and Judgment.

jurisdictional/procedural matters, the court entered an Order on September 1, 2011 denying the motions.<sup>20</sup> **Feigenbaum did not appeal that order.** In that order, the court confirmed in writing the procedural history and made specific findings of fact. That Order is attached as Appendix A for easy clarification of the undisputed case timeline and details.<sup>21</sup>

To mitigate its damages, Hall re-let the Premises as of August 30, 2011. Hall did so only after the Writ was issued and the 30 day period to set aside had passed,<sup>22</sup> and Feigenbaum had again asserted and lost all of his claims regarding jurisdiction. The new monthly rental amount was for less than what Feigenbaum paid under his lease.<sup>23</sup>

After the re-letting of the premises, Feigenbaum affirmatively requested the court to determine if the matter had been converted to a general civil action.<sup>24</sup> Over Hall's objection,<sup>25</sup> the court did

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<sup>20</sup> CP 760-765.

<sup>21</sup> Feigenbaum then filed for a Motion for Discretionary Review with the Court of Appeals naming a variety of issues. That motion was denied by the Court of Appeals and litigation again continued in the Trial Court.

<sup>22</sup> RCW 59.12.190.

<sup>23</sup> CP 687-722, Affidavit of Kane Hall in Support of Summary Judgment and exhibits.

<sup>24</sup> CP 278-323, Declaration of M. Evans in Support of Request for Clarification of Case Status.

<sup>25</sup> CP 343-4.

enter the order converting the case.<sup>26</sup>

The court then heard Hall's motion for summary judgment for award of damages. Feigenbaum did not file with the court any affidavits or declarations contesting the facts supporting summary judgment. The court found that there was no dispute as to any material fact and granted summary judgment, awarding the uncontested amount of damages set forth in Hall's materials.<sup>27</sup>

The court did deny Hall's request for double damages and did reduce the award of attorney's fees and costs. A final judgment was entered after over two and one-half years of litigation.<sup>28</sup>

Feigenbaum appealed a multiplicity of the Trial Court decisions to the Court of Appeals. The Court of Appeals upheld the Trial Court. Importantly, the Court of Appeals ruled that Feigenbaum waived a number of issues on appeal. That included the Trial Court's September 1, 2011 Order Denying Defendant's Motion to Vacate and to Dismiss for Lack of Jurisdiction and Certification for Appeal<sup>29</sup> ("9/1/11 Order" attached as Appendix A).

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<sup>26</sup> CP 257-59; VR January 20, 2012, page 3.

<sup>27</sup> CP 141-44, Order on Summary Judgment.

<sup>28</sup> CP 1188-1193.

<sup>29</sup> CP 760-765. That order was not listed in the Notice of Appeal and was not referenced in Appellant's Brief. Further, the Findings in that order were not assigned error in Appellant's Brief.

## II. ISSUES PRESENTED BY THE PETITION

### A. Sufficiency of Pre-Filing Notice.<sup>30</sup>

The Court of Appeals in this matter held that the Trial Court has subject matter jurisdiction based upon the Washington State Constitution. In doing so, Judge Leach followed the current decisions in Division One, Division Two and the Supreme Court. The court also ruled that the landlord, Respondent Hall, fulfilled the requirements of RCW 59.12.040 by mailing and posting the 3 Day Notice at the Premises as required by the Lease. The court further held that if there was a factual question regarding Notice compliance, there was substantial evidence in the record to support the Trial Court's determination. These decisions do not meet the requirements of RAP 13.4.

1. *No Conflict.* Petitioner's claim of conflict pursuant to RAP 13.4(b)(1) and (2) is seriously misplaced. The Court of Appeals made the legal determinations regarding jurisdiction exactly as had previous rulings by Division One, Division Two and the Supreme Court: superior courts have jurisdiction based upon the state Constitution and RCW 59.12, and such

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<sup>30</sup> Petitioner's Issue #1.

jurisdiction remains constant “regardless of procedural missteps”.<sup>31</sup>

The real issue is simply a factual one: *whether the trial court properly exercised its jurisdiction in light of the procedural issues.*<sup>32</sup>

But the consistency of this decision with prior decisions is undeniable.

2. *Hall Complied with RCW 59.12.040.* Through its Petition, Feigenbaum is asking the Supreme Court to address the factual issue of Hall’s compliance with the notice statute. Here there simply is nothing in the record to support reversal because, as both the Trial Court and Court of Appeals held, Hall did comply with the RCW 59.12.040 regarding delivery of the 3 Day Notice. First, Hall had the Notice mailed and posted at the Premises as **required by the Lease.**<sup>33</sup> Feigenbaum acknowledged that he did receive notice through the posting/ mailing to the Premises: he acknowledged receipt<sup>34</sup> and told the court that the Posting hurt his efforts to sell the business.<sup>35</sup> Second, Feigenbaum never provided Hall the required written change of address to receive notices

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<sup>31</sup> Slip Opinion at 5-6, *citing* Wn. Const. Art. IV, section 6; RCW 59.12.050; Christensen v. Ellsworth, 162 Wn.2d 365, 173 P.3d 228 (2007); Housing Authority of City of Seattle v. Bin, 163 Wn. App. 367, 260 P.3d 900 (2011); Tacoma Rescue Mission v. Stewart, 155 Wn. App. 250, 254, 228 P.3d 1289 (2010); MHM & F, LLC v. Pryor, 168 Wn. App. 451, 459, 277 P.3d 62 (2012).

<sup>32</sup> Christensen at 275; Bin at 374-5; Tacoma Rescue at 254, footnote 9.

<sup>33</sup> Lease, Paragraph 30. CP 1167-1175.

<sup>34</sup> CP 1107.

<sup>35</sup> VR December 22, 2010, pages12-13.

anywhere else.<sup>36</sup> Finally, Hall did not know the address of Feigenbaum's residence.<sup>37</sup> As such, the procedure followed fulfilled the statutory requirements as confirmed by the Court of Appeals.

Petitioner's attempt to assert that Hall did know of Feigenbaum's address mischaracterizes statements made in open court.<sup>38</sup> What counsel actually stated to the court is that in a **prior eviction action**, Hall had learned of the Young Street address when he hired the process server. But the attempts at the Young Street address in the prior actions were unsuccessful.<sup>39</sup> This left Hall with the only conclusion possible – that Young Street was not a reliable place for notice.

Hall's compliance with RCW 59.12.040 is supported by substantial evidence in the record and an issue not suitable for review.

3. *Feigenbaum Received Due Process.* Regardless of all of the foregoing, Feigenbaum did receive the full measure of due process intended by the statute.

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<sup>36</sup> *Slip Opinion*, page 8. CP 725.

<sup>37</sup> CP 725.

<sup>38</sup> Petition for Review, page 9.

<sup>39</sup> CP 292-3.

*“The purpose of the notice is to provide the tenant with ‘at least one opportunity to correct a breach before forfeiture of a lease under the accelerated restitution provisions of RCW 59.12.’”<sup>40</sup>*

Feigenbaum received six different opportunities to correct the breach prior to the second Show Cause hearing.<sup>41</sup> But even after all that, Feigenbaum was then given yet another opportunity to cure in open court on December 20<sup>th</sup>. Over objection by Hall, the court gave Feigenbaum five more days to post the past due rent. In light of this record, there is no basis for Feigenbaum to assert that the lack of mailing the 3 Day Notice to the residence deprived him of due process.

4. *No Basis to Grant the Petition on RAP*

13.4(b)(1) or (2). There is no actual conflict pursuant to RAP 13.4(b)(1) or (2) for this case follows the current decisions on point. The factual issue that Petitioner is truly seeking review of is supported by substantial evidence in the record. This is not a matter appropriate for review.

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<sup>40</sup> Christensen, *supra* at 372.

<sup>41</sup> After the posting of the Premises of the 3 Day Notice; when the Summons and Complaint were posted at his residence on December 7<sup>th</sup>; when he received the Summons and Complaint on December 9<sup>th</sup>; prior to the first return date of December 16<sup>th</sup>; when he was served in open court on the 17<sup>th</sup>; and prior to the second return date of December 20<sup>th</sup>.

B. Sufficiency of Service of Process.<sup>42</sup>

The Court of Appeals held that the actual receipt of the Summons and Complaint by Feigenbaum on December 9<sup>th</sup> met the statutory requirements of RCW 59.12.070, rejecting all of Petitioner's claims about sufficiency of service. Petitioner presents no basis that this decision is in error or somehow in conflict pursuant to RAP 13.4(b)(1) or (2).

1. *Petitioner Waived this Issue on Appeal.* The issue regarding the sufficiency of the effort to locate Feigenbaum prior to the issuance of the Order Authorizing Service of Process by Mail was **waived** by Feigenbaum: he failed to appeal the 9/1/11 Order in which the following finding was made: "*Plaintiff conducted a diligent search for defendant before securing an order authorizing service by mail.*"<sup>43</sup> This waiver was confirmed by the Court of Appeals.<sup>44</sup>

2. *Claims Moot because of Actual Timely Service.*  
All claims by the Petitioner about the propriety of the Order Authorizing Service of Process by Mail are moot. Feigenbaum

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<sup>42</sup> Petitioner's Issue #2.

<sup>43</sup> CP 673.

<sup>44</sup> *Slip Opinion*, page 4. See Brief of Respondent pages 6-7 where this specific issue is noted as waived. The waiver explains why there is not a specific discussion by the Court of Appeals regarding the adequacy of Hall's due diligence.

admitted he received the Summons and Complaint via mail on December 9<sup>th</sup>.<sup>45</sup> All of the technical claims asserted by Feigenbaum are simply irrelevant and pointless because the procedures required by the order worked.<sup>46</sup>

3. *No Conflict with Longview Fiber<sup>47</sup> or Charbonneau.*<sup>48</sup> The Courts of Appeal in Longview Fiber and Charbonneau both held that alternative service is appropriate only if the plaintiff exercised reasonable diligence to obtain actual service.<sup>49</sup> The courts in both then reviewed the specific circumstances and made factual determinations whether or not there was a “diligent search”/“reasonable effort” undertaken by the plaintiffs.

The Trial Court undertook exactly the same analysis here — Hall was required to establish through multiple hearings the specific facts establishing reasonable effort/due diligence.<sup>50</sup>

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<sup>45</sup>CP 1107. Receipt was not less than 7 days prior to the Show Cause hearing — RCW 59.12.070.

<sup>46</sup> Petitioner fails to disclose to this court that there was **actual personal service** of the Summons and Complaint made directly upon Petitioner Feigenbaum in open court on December 17, 2010. CP 1391-93, Declaration of Service filed on December 20, 2010, VR December 17, 2010, pages 9-10.

<sup>47</sup> Longview Fiber v. Stokes, 52 Wn. App. 241, 758 P.2d 1006 (1998).

<sup>48</sup> Charbonneau Excavating Inc. v. Turnip Seed, 118 Wn. App. 358, 75 P.3d 1013 (2003), *rev den*, 151 Wn.2d 1020 (2004).

<sup>49</sup> Charbonneau used the phrase “reasonable diligence” (at 364), whereas Longview Fiber used “reasonable effort” (at 245).

<sup>50</sup> There is no reference to this issue in the Slip Opinion for the Court of Appeals confirmed the issue had been waived by Feigenbaum. The outcome before the Trial Court is different from the two prior decisions reported because of the significant factual distinction between the effort undertaken by Hall and the effort

4. *Substantial Evidence Supports Finding of Due*

*Diligence.* The record supporting due diligence is clear.<sup>51</sup> The Trial Court's observations are telling:

*THE COURT: A car at the residence, lights on, nobody answering the door, six attempts to serve. That's probably why the court issued that because it appeared to the court that whoever was there was avoiding.*<sup>52</sup>

Upon this record, the Trial Court made the specific finding that due diligence was shown.<sup>53</sup>

5. *No Basis Pursuant to RAP 13.4(b)(2).* The

Petitioner is again putting a false cloak of "conflict" over an issue that is just factual and fully supported by the record. Issues not appropriate for review.

C. Lack of Bond Harmless Error.<sup>54</sup>

The Trial Court did not require that Hall post a bond for either the issuance of the Writ or the issuance of the Injunction. The Court of Appeals held that such failure **was error**, but that it

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of the plaintiffs in Longview Fiber and Charbonneau.

<sup>51</sup> The rented Premises were empty, Hall hired a professional legal service company to locate Feigenbaum's home (which they did), and that company located Feigenbaum's actual residence and then made six attempts at service at the location. The attempts at service were at a house that was occupied, but no one responded to the knocks. CP 1126-1137, six Declarations of Attempted Service.

<sup>52</sup> VR January 21, 2011, page 8.

<sup>53</sup> CP 673.

<sup>54</sup> Petitioner's Issues #3 and #4.

was harmless error because Feigenbaum failed to demonstrate any prejudice.

1. *No Showing of Prejudice.* Petitioner

Feigenbaum's Petition is simply deficient:

- he cannot and does not assign error to the finding of error for lack of bond; and
- he does not and cannot produce even an argument that there is something in the record whereby he suffered any prejudice through the error; and
- he does not produce any support for the implicit claim that failure to obtain a bond requires dismissal.

It is simply impossible to construct this purely factual issue into one appropriate for review by the Supreme Court.

2. *No Issue of Substantial Public Interest.* The issue that would be before the Court on petition is **not** whether a bond is required, just whether the failure was harmless error.<sup>55</sup> The Washington Reporters do not need this case to reiterate the standards of harmless error.

3. *No Conflict.* There is absolutely no conflict between the Court of Appeals' current decision and IBF cited by

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<sup>55</sup> *Slip Opinion*, page 11.

Feigenbaum.<sup>56</sup> Both held that the failure to obtain bonding is error.<sup>57</sup> Note that IBF did not address harmless error or hold that the failure to file a bond for the Writ requires reversal. The court in that matter vacated the Trial Court's order on another issue and discussion on this topic was just *dicta*.

4. *Error Harmless.* Feigenbaum presents nothing in the Petition even alleging prejudice. Consider the purpose of the bond and the facts before the Trial Court.

First, RCW 59.12.090 – Bond for the Writ is required to ensure that the Plaintiff prosecutes the case “*without delay.*” The record is replete with Feigenbaum's endless motions that delayed the prosecution of this matter.<sup>58</sup> There is nothing in the file to show that anyone other than Hall was damaged by the endless delay caused by Feigenbaum's strategy to delay.

Second, RCW 7.40.080 – Bond for Injunction is required to ensure that if the defendant is damaged by the injunction, there will be bond proceeds to cover the damages. There simply is no possible claim for damages by Feigenbaum. Feigenbaum had closed the business years before this case. During most of the

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<sup>56</sup> IBF v. Heuft, 141 Wn. App. 624, 174 P.3d 95 (2007).

<sup>57</sup> *Slip Opinion*, page 12; IBF at 12; RCW 7.40.080; RCW 59.12.090.

<sup>58</sup> This includes, but is not limited to, the multiple motions to continue the summary judgment matter and the interlocutory appeal.

lawsuit, all of the disputed property was kept safely under lock and key (and court order) in the Premises. Once the landlord Hall tried to re-let the Premises, he made agreements with Feigenbaum to have Petitioner remove the personal property. When Feigenbaum failed to do so, Hall had to bring a motion to compel Feigenbaum to remove the personal property from the Premises.<sup>59</sup>

The error was harmless.

5. *No Lack of Due Process.* The Petition does not even allege that Feigenbaum did not receive due process.<sup>60</sup> There were over eleven hearings held before the Trial Court, many of which addressed Feigenbaum's claims regarding the lack of a bond.<sup>61</sup> Through this barrage of pleadings and court appearances, Feigenbaum had ample access to due process to assert a basis for a bond (*i.e.*, complaints of actual damage).

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<sup>59</sup> CP 260-272, Motion for Removal of Personal Property and the supporting Memorandum and declarations.

<sup>60</sup> In fact, the Petition concedes that Feigenbaum objected and was allowed the appropriate due process to review his objections.

<sup>61</sup> There were at least three separate motions brought by Feigenbaum on the bond issue (CP 337, 390-1 and 991). The motion referenced in CP 991 was denied because Feigenbaum failed to show up to court. Yet in none of these did he provide evidence of any actual damages warranting either bond. And as noted by the Court of Appeals, the harmless nature of the error was based upon the lack of any showing of potential harm to the tenant, given that the tenant had closed the business, was not using the premises, and could show no potential damages.

### III. REQUEST FOR ATTORNEY'S FEES

The Lease provides for attorney's fees and costs to the prevailing party.<sup>62</sup> In the event Hall prevails regarding the Petition, Hall requests an award of attorney's fees and costs, pursuant to RAP 18.1.

### IV. CONCLUSION

Based upon the foregoing, the court is respectfully requested to deny Feigenbaum's Petition in this matter.

Respectfully submitted this 6 day of March, 2014.

BELCHER SWANSON LAW FIRM, P.L.L.C.

By 

DOUGLAS K. ROBERTSON, WSBA #16421  
Attorney for Respondent

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<sup>62</sup> Lease, Paragraph 23. CP 1167-1175.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 6<sup>th</sup> day of March, 2014, I caused a true and correct copy of the foregoing Respondents Hall/Daylight Properties LLC's Response to Petition for Review to be delivered in the manner indicated below to the following counsel of record:

**PARTY/COUNSEL**

**DELIVERY INSTRUCTIONS**

Mark S. Davidson Williams, Kastner & Gibbs PLLC 601 Union Street, Suite 4100 Seattle, WA 98101	<input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Certified Mail <input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By Email
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Dated this 6<sup>th</sup> day of March, 2014 at Bellingham, Washington.

*Kathie Street*  
Kathie Street

## APPENDIX A



1 2010 and allowed the Defendant to submit a written response to  
2 Plaintiffs' Summons and Complaint by that date.

3 2. On December 21, 2010, Defendant articulated his contest to  
4 jurisdiction by filing a Notice of Limited Appearance and Motion to  
5 Dismiss, together with a supporting Declaration. The parties presented  
6 argument at hearing on the matter on December 22, 2010.

7 Defendant's motion to dismiss was not granted and the Court ordered  
8 that Defendant pay uncontested amounts of Plaintiffs' claimed  
9 damages into the court registry as well as continuing monthly rents  
10 during the pendency of the case. Defendant was further orally ordered  
11 to file additional briefing on the jurisdictional issues by January 10,  
12 2011 for hearing on January 21, 2011. No written order was entered.

13  
14 3. After failing to make payment into the court registry for January rent,  
15 the Court issued an Order for Writ of Restitution ex parte on January 7,  
16 2011. Defendant had been previously advised in open court that the  
17 Plaintiff would be entitled to issuance of a writ of restitution if he failed  
18 to pay continuing rent into the court registry.

19  
20 4. Defendant failed to file briefing on jurisdictional issues by January 10,  
21 2011 and instead filed a Motion for Extension of Time on January 11,  
22 2011 requesting an extension to January 17, 2011. Defendant filed  
23 nothing by January 17. Plaintiffs filed their opposition on January 20,  
24 2011. Defendant filed a memorandum on January 21, 2011, the date  
25 of hearing. At hearing, the court orally denied Defendant's motion and  
26

27 ORDER DENYING DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION - 2

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1 found jurisdiction valid. No written order was entered.

2 5. Defendant failed to appear for trial setting on February 4, 2011.

3 Plaintiffs moved for an Order of Default and provided notice of hearing  
4 to the Defendant. At hearing on March 4, 2011, Defendant failed to  
5 appear and the Order of Default was entered by the court. Default  
6 Judgment was entered ex parte on March 14, 2011

7 6. On March 15, 2011, Defendant filed motions asking the court to set  
8 aside the Order of Default and to dismiss the matter based upon lack  
9 of jurisdiction. Defendant noted a hearing for April 1, 2011 but failed to  
10 confirm with the clerk who struck the hearing. Defendant re-noted the  
11 hearing for April 22, 2011 but failed to appear when the matter was  
12 timely called. The court entered Plaintiffs' proposed order denying  
13 dismissal based upon lack of jurisdiction. When the court calendar  
14 was completed, Defendant was present in the courtroom and inquired  
15 as to the status of this matter. The Court informed the Defendant that  
16 the matter was called at the start of the calendar, he was found not to  
17 be present and the Plaintiffs' proposed order was signed by the Court.  
18

19 7. A Praecipe for Execution was issued by the court clerk on April 1, 2011  
20 and Plaintiffs conducted an execution sale on Defendants' personal  
21 property on May 26, 2011. Defendant did not attempt to enjoin the  
22 sale but personally appeared and voluntarily bid at the sale.  
23

24 Defendant was the high bidder at the sale with a bid of \$60,001.00.

25 Defendant paid those sums and the Sheriff deposited the funds into  
26

27 ORDER DENYING DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION - 3

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1 the court registry.

2 8. Counsel appeared on behalf of Defendant on June 6, 2011, and on  
3 June 8, 2011, moved to set aside the default judgment, renewed  
4 Defendant's motion to set aside the order of default, and moved to  
5 dismiss all orders and writs for want of jurisdiction by submitting  
6 corresponding pleadings. The parties appeared for hearing on June  
7 24, 2011. At that hearing, the court granted Defendant's motions to  
8 vacate the order of default, default judgment and the sheriff's sale, and  
9 it ordered all funds still held in the court's registry be disbursed to  
10 Defendant. The court withheld ruling on Defendant's remaining  
11 motions regarding jurisdiction.  
12

13 9. As to the motions not ruled upon on June 24, 2011, Defendant re-  
14 noted the matter for hearing on August 12, 2011 whereupon this Order  
15 issues.  
16

17 The Court having further heard argument from Murphy Evans, attorney for  
18 defendant, and from Jeffery J. Solomon, attorney for plaintiffs. Based on the  
19 argument of counsel and the pleadings and files herein, the court makes the  
20 following findings:

21 1. Plaintiffs conducted a diligent search for defendant before securing  
22 an order authorizing service by mail.

23 2. Plaintiffs served the defendant with the 3-Day Notice to Pay or  
24 Vacate by posting the notice on the premises unlawfully held and mailing the  
25 notice to the defendant at the address of the premises unlawfully held. The  
26

27 ORDER DENYING DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION - 4

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1 plaintiffs did not mail the 3-Day Notice to Pay or Vacate to defendant's residence  
2 or attempt to serve the 3-Day Notice to Pay or Vacate at the defendant's  
3 residence.

4 3. Defendant was provided sufficient notice of the return date so as to  
5 respond to the Summons and Complaint served upon him.

6 Based upon the above findings, and the pleadings and files filed herein, IT  
7 IS HEREBY ORDERED, ADJUDGED AND DECREED:  
8

9 1. Defendant's motion to vacate all outstanding orders and writs,  
10 including the writ of restitution, is DENIED.

11 2. Defendant's motion to dismiss for lack of personal jurisdiction  
12 based upon improper service of process is DENIED.

13 3. Defendant's motion to dismiss for lack of subject matter jurisdiction  
14 based upon improper service of the pre-eviction notice and/or insufficient notice  
15 of the return date of the summons is DENIED.

16 4. Defendant's motion for costs and attorney's fees is DENIED.

17 5. The court certifies that this order involves controlling questions of  
18 law as to which there is a substantial ground for a difference of opinion and that  
19 immediate review of the order will materially advance the ultimate termination of  
20 the litigation.  
21

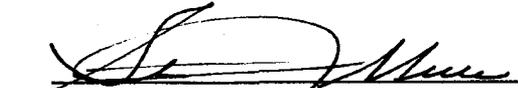
22 6. Plaintiffs' motions for trial setting and for entry of discovery order is  
23 DENIED pending the outcome of defendant's motion for discretionary review of  
24 this order to the Court of Appeals.  
25

26  
27 ORDER DENYING DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION - 5

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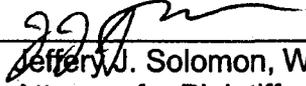
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1 DONE IN OPEN COURT THIS 1 day September, 2011.

2  
3   
4 Hon. Steven J. Mura

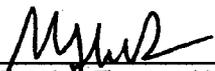
5 Presented by:

6 BELCHER SWANSON PLLC

7  
8 By:   
9 Jeffrey J. Solomon, WSBA #29722  
Attorney for Plaintiffs

10  
11 Copy Received;

12 BROWNLIE EVANS WOLF & LEE, LLP

13  
14 By:   
15 Murphy Evans, WSBA #26293  
Attorney for Defendant

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27 ORDER DENYING DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION - 6