SUPREME COURT NO. 90850-8
COURT OF APPEALS NO.: 70423-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

JUDY HA,

Petitioner,

v.

SIGNAL ELECTRIC, INC., a Washington corporation,

Respondent.

ANSWER TO PETITION FOR REVIEW

Steven G. Wraith, WSBA No. 17364
Of Attorneys for Signal Electric, Inc.

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street, Suite 1800
Seattle, WA 98101-3929
(206) 624-7990

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Page(s)

I. INTRODUCTION

On October 28, 2010, Judy Ha, was crossing a well-lit intersection on First Avenue South. Juanita Mars, who was driving southbound while extremely intoxicated, failed to stop and crashed into Ms. Ha. Responding officers determined Ms. Mars' blood alcohol content was more than three times the legal driving limit. Ms. Mars pleaded guilty to reckless driving. She admitted she was drunk and caused substantial bodily harm to Ms. Ha.

On February 24, 2012, despite Ms. Mars' clear responsibility for Ms. Ha's injuries, Ms. Ha sued AEG Live Northwest, LLC d/b/a Showbox SODO ("Showbox SODO"), the City of Seattle, and Signal Electric, Inc. ("Signal Electric"), as well as Ms. Mars. Signal Electric had filed for Chapter 11 bankruptcy almost a year earlier. After obtaining relief from the automatic stay in Signal Electric's bankruptcy action, Ms. Ha's counsel asked Signal Electric's bankruptcy attorney, J. Todd Tracy, who was not Signal Electric's general counsel, to accept service of process on Signal Electric's behalf in the personal injury action.

Signal Electric had retained Mr. Tracy to represent it in bankruptcy. Rather than requesting approval from Signal Electric's registered agent, Bernell Guthmiller, or its president, Jerry Kittelson, Mr. Tracy discussed the acceptance of service with Louise Tieman of vcfo Washington Inc. ("vcfo"). Mr. Guthmiller was in poor health at the time,

so Mr. Tracy believed it would be best to waive service. He mistakenly concluded Ms. Tieman agreed with him. However, Ms. Tieman was not a Signal Electric employee and had no authority to waive service of process.

After accepting service, Mr. Tracy forwarded the summons and complaint to Ms. Tieman – not Mr. Kittelson or Mr. Guthmiller. Mr. Tracy never appeared as Signal Electric's counsel of record. He did not prepare or file any pleadings. Since Signal Electric had no attorney to represent it in the personal injury action, and did not know of the litigation, it did not defend against Ms. Ha's claims. Accordingly, Ms. Ha obtained a default order against Signal Electric on August 28, 2012, which was reduced to a $2.2 million default judgment on January 11, 2013. Ms. Ha voluntarily dismissed her claims against the other defendants.

Soon after Signal Electric first learned of Ms. Ha's action at the end of February 2013, its defense counsel entered a notice of appearance on April 3, 2013 and prepared a motion to vacate the same month, which was not filed until the beginning of May 2013 to accommodate Ms. Ha's deposition of Ms. Tieman.

The trial court vacated Ms. Ha's default order and judgment on May 20, 2013. Division One of the Court of Appeals affirmed vacation of the default order and judgment on July 14, 2014.

II. STATEMENT OF THE CASE

A. Signal Electric petitions for bankruptcy protection under Chapter 11 of the United States Code.

On February 23, 2011, Signal Electric, Inc. decided to seek bankruptcy protection and retained counsel for this purpose. CP 325. On March 2, 2011, Signal Electric applied to the bankruptcy court for permission to employ Mr. Tracy as its bankruptcy attorney. CP 357-61. All actions that Signal Electric sought to have approved during its employment of Mr. Tracy as its bankruptcy attorney were "subject to the control of, and further order of the Court," so that Signal Electric could perform its duties as a debtor-in-possession. CP 358. No language in Signal Electric's request regarding its employment of Mr. Tracy asked that he be retained for any other matter or otherwise expanded the scope or terms of its corporate resolution authorizing Mr. Tracy's retention. *Id.* The scope of Mr. Tracy's representation was expressed in its original authorization: Signal Electric would "employ the firm of Crocker Law Group PLLC to represent [Signal Electric] in [its] Chapter 11 case." CP 360-61.

When Signal Electric asked permission to employ Mr. Tracy as its bankruptcy counsel, it requested he be allowed to undertake the ordinary work performed in connection with a bankruptcy, including the defense of actions commenced against Signal Electric "in conjunction as appropriate

with special litigation counsel." CP 358. Further, although Signal Electric requested that Mr. Tracy be allowed to prepare necessary filings on Signal Electric's behalf, including answers, such answers were explicitly "in connection with the administration of this [Chapter 11] case." *Id.*

No agreement, corporate authorization, or communication by Signal Electric to the bankruptcy court or Ms. Ha, authorized Mr. Tracy to act as Signal Electric's general counsel or to undertake its defense in another matter. Indeed, both Mr. Kittelson, who retained Mr. Tracy, (CP 320) and Mr. Tracy himself, agreed that Mr. Tracy was only and solely retained to represent Signal Electric in its bankruptcy. CP 286-87.

B. Signal Electric sets up an interim operating team during the pendency of its Chapter 11 bankruptcy.

During its bankruptcy, Signal Electric conducted its business through Mr. Kittelson, who was authorized to appear in all bankruptcy proceedings and to perfect its bankruptcy estate. CP 325. Mr. Guthmiller was Signal Electric's registered agent and consulted with Mr. Tracy on real property sales and settlements with creditors. *See e.g.*, CP 395. Signal Electric also retained Ms. Tieman of vcfo as its financial advisor. CP 289. Ms. Tieman was not an employee of Signal Electric. CP 303.

C. A drunk driver recklessly causes Ms. Ha's injuries.

On October 28, 2011, Juanita Mars drove into a crowd of pedestrians who were crossing a well-lit intersection on First Avenue

South. CP 248. Vehicles traveling both northbound and southbound stopped for the group. *Id.* The group had crossed both the northbound lanes and the inside southbound lane when Ms. Mars approached the intersection in the outside southbound lane. *Id.* Ms. Mars did not slow initially, but applied "heavy braking" just before slamming into five members of the group, including Ms. Ha. CP 248.

Ms. Mars' truck was littered with beer cans, including some empty cans and some cans with partially consumed contents. CP 250.

A police officer responding to the scene conducted a field sobriety test on Ms. Mars. CP 249. The officer determined she was significantly impaired due to her alcohol consumption. *Id.* A blood draw taken from Ms. Mars roughly two-hours after the accident showed her blood ethanol content was more than three times the legal limit. CP 249.

Ms. Mars pleaded guilty to the charge of reckless driving and admitted:

> I drove a motor vehicle while under the influence of alcohol, and caused substantial bodily harm to Judy Ha. I was drink [sic] and driving on 1st Ave when I hit Ms. Ha.

CP 243.

Ms. Mars further stated under oath, after reviewing her final "Statement of Defendant on Plea of Guilty":

> I knew I was drinking to excess and was not focusing on my driving and failed to slow while approaching an intersection with a large group of pedestrians and ignored the waving of a construction worker.

CP 263.

D. Ms. Ha's personal injury claim against Signal Electric articulates no factual basis for her claim against it.

Shortly after Ms. Mars pleaded guilty, on February 24, 2012, Ms. Ha filed suit in King County superior court for damages related to her personal injuries. CP 4, 15-16, and 94. Ms. Ha's complaint alleged that Signal Electric had created an unstated condition, breached its duty of care in an unexplained manner, and failed to ensure compliance with unidentified laws, rules and regulations. CP 6, 17-18 and 97-98. The complaint did not articulate a causal connection between the alleged breaches and Ms. Mars' drunken driving. CP 18. Nor did the complaint identify how Signal Electric's alleged breach independently caused Ms. Ha injury. *Id.* Ms. Ha's March 1, 2012 amended Complaint presented the same claims against Signal Electric, adding no facts supporting her allegations against it. *See* CP 12-20 and 97.

E. Ms. Ha's counsel asks Signal Electric's bankruptcy attorney to accept service in the personal injury litigation on Signal Electric's behalf.

When Ms. Ha filed her Amended Complaint for Damages, litigation against Signal Electric was subject to a stay under Chapter 11.

CP 327. Ms. Ha petitioned the bankruptcy court to lift the litigation stay on April 16, 2012. *Id.* The court granted relief from the stay, provided it was "for the sole purpose of establishing debtor's liability for the automobile versus pedestrian accident at issue in the State Action." CP 355. The stay was lifted only as to insurance proceeds that might be available to satisfy the judgment and not as to Signal Electric's assets. *Id.*

Rather than attempting service on Signal Electric, Ms. Ha's counsel approached Mr. Tracy, and asked him to accept service of process in the personal injury litigation on Signal Electric's behalf. CP 286 ¶ 3. Mr. Tracy had not entered a Notice of Appearance indicating that he was representing Signal Electric in the personal injury litigation when he was requested to accept service. *See* CP 286-87.

F. Mr. Tracy concludes he should agree to accept service, without seeking Signal Electric's approval to do so.

Mr. Tracy spoke with Ms. Tieman about whether he should accept service of process from Ms. Ha on Signal Electric's behalf. CP 287 ¶¶ 5-8; CP 290 ¶ 8. Because Mr. Guthmiller was ill at the time, Mr. Tracy and Ms. Tieman concluded it was in Mr. Guthmiller's best interest for Mr. Tracy to accept service. CP 287 ¶ 8. However, Mr. Tracy never confirmed this decision with Mr. Kittelson, who had retained him. CP 320 ¶ 5. Mr. Tracy only spoke with Ms. Tieman about accepting service, but she did not have authority to authorize acceptance of service. CP 290 ¶ 8.

Ms. Tieman's authorization to act on behalf of Signal Electric was expressly limited to the terms of her engagement letter and incorporated by reference into the bankruptcy order approving her employment. CP 289 ¶ 3. Ms. Tieman's engagement letter specifically states, "vcfo is not a law firm and its services do not constitute legal advice." CP 290 ¶ 4. Furthermore, "[n]either vcfo nor any of its employees or contractors is permitted to take titles or other internal roles in [Signal Electric's] organization nor shall vcfo be an authorized signatory for [Signal Electric] for any purpose . . ." CP 290 ¶ 5.

Mr. Tracy mistakenly interpreted Ms. Tieman's opinion regarding Mr. Guthmiller's poor health as authorization to execute the acceptance of service. CP 287 ¶ 7. But, Ms. Tieman did not intend to allow Mr. Tracy to accept service and lacked any authority to agree that he could. CP 290 ¶ 6. Mr. Tracy's time records do not demonstrate that either Mr. Kittelson or Mr. Guthmiller, were contacted by Mr. Tracy before he accepted service and waived service of process on Signal Electric's behalf. CP 450.

G. Ms. Ha's personal injury suit is not transmitted to Signal Electric's president or registered agent.

After accepting service of on July 11, 2012, Mr. Tracy forwarded Ms. Ha's summons and complaint to Ms. Tieman, rather than Mr. Kittelson or Mr. Guthmiller. CP 478; CP 450; CP 291 ¶ 10. Ms. Tieman then sent the papers to Alaska National Insurance, which she

believed was Signal Electric's insurer at the time of the accident. CP 291-94. Alaska National insurance did not respond. *Id.*

Because Signal Electric's registered agent and president had not received notice of the litigation from its bankruptcy attorney, Signal Electric did not appear or answer Ms. Ha's complaint. CP 329. Although Signal Electric had never indicated Mr. Tracy was its counsel for the personal injury litigation, Ms. Ha's counsel kept up a string of email communications with Mr. Tracy. *See e.g.,* CP 328-29. Mr. Tracy was unresponsive to these communications. *Id.*

H. Ms. Ha pursues a default against Signal Electric.

On August 16, 2012, Ms. Ha filed an unopposed motion for default against Signal Electric, which was granted on August 28, 2012. CP 493. Even though Mr. Tracy still had not appeared on behalf of Signal Electric in the personal injury action, Ms. Ha's counsel forwarded the unopposed default to his attention. CP 329. Default in hand, Ms. Ha dismissed all other parties to her original action, without developing any evidence against them or otherwise conducting any discovery. CP 330 ¶ 21. Ms. Ha's default was reduced to judgment on January 29, 2013. CP 103.

I. Signal Electric moved expeditiously to set aside the default and default judgment once it learned of them.

Signal Electric learned of Ms. Ha's action and default judgment through its insurance company near the end of February 2013. CP 330

¶25. Defense counsel was retained and entered a notice of appearance roughly a month later on April 3, 2013. CP 214-15. Signal Electric's motion for vacation of the default judgment was ready for filing within 20 days of defense counsel's retention and only delayed at the request of Ms. Ha's counsel so that Ms. Tieman could be deposed. CP 229 ¶ 6. When the motion to vacate was filed, the statute of limitations on Ms. Ha's claim was set to expire on October 27, 2013. CP 219. The Hon. Monica Benton vacated on May 20, CP 543.

J. The Court of Appeals affirms the trial court's ruling vacating the default judgment

On July 14, 2014, Division One of the Court of Appeals affirmed the trial court's decision to vacate the default order and judgment order against Signal Electric. Court of Appeals Decision at 2. In doing so, the Court of Appeals held that the trial court did not abuse its discretion in granting the motion to vacate under CR 60(b)(1) because: (1) Signal Electric demonstrated a *prima facie* defense that Ms. Mars was the sole cause of Ms. Ha's injuries; (2) Signal Electric's failure to answer the Complaint was due to Mr. Tracy's and Ms. Tieman's mistakes, neither of whom were Signal Electric's general counsel or office employee; (3) Signal Electric acted with due diligence by moving to vacate two and a half months after receiving notice of the default order and judgment; and (4) the delay and additional litigation expenses resulting from vacating the

order and default judgment would not cause substantial hardship to Ms. Ha. *See id.*

III. ARGUMENT

RAP 13.4(b), which governs this Court's grant or denial of petitions for review, provides:

> **Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with the decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Because Ms. Ha's Petition sets forth no grounds justifying review under RAP 13.4(b), the Court should deny her Petition

A. The Court of Appeals decision affirming the trial court does not conflict with existing precedent because the trial court did not abuse its discretion in vacating Ms. Ha's default order and judgment.

Default judgments are generally disfavored. *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979). A court's principal inquiry in reviewing a default judgment is whether it is just and equitable. *Id.* at 581-82. Appellate courts review a trial court's ruling on a motion to vacate a default judgment for an abuse of discretion. *Showalter v. Wild Oats,* 124 Wn. App. 506, 510, 101 P.3d 867 (2004) (citing *In Re Estate of Stevens,* 94 Wn. App. 20, 29, 971 P.2d 58 (1999).

A ruling based on tenable grounds and within the bounds of reasonableness must be upheld. *Id.*

1. The Court of Appeals correctly held that Signal Electric's failure to respond to Ms. Ha's complaint was due to Mr. Tracy's and Ms. Tieman's mistake.

The Court of Appeals ruling that Signal Electric's failure to respond to Ms. Ha's complaint was the result of Mr. Tracy's and Ms. Teiman's mistake — justifying vacation of the default order and judgment under CR 60(b)(1) — does not conflict with either *TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.,* 140 Wn. App. 191, 212-213, 165 P.3d 1271 (2007) or *Brooks v. University City, Inc.,* 154 Wn. App. 474, 477-80, 225 P.3d 489 (2010). The Court of Appeals evaluated both *TMT* and *Brooks*, differentiated them from this case, and correctly held their holdings did not mandate finding that Signal Electric's failure to respond was not a mistake.

The Court of Appeals acknowledged that *TMT* held that a failure to respond to a properly served summons and complaint is not excusable under CR 60(b)(1) when the failure results from a breakdown of **internal office procedure**. Court of Appeals Decision at 12. In *TMT,* TMT served its amended complaint and summons on Petco's registered agent, who forwarded them to a legal assistant in the office of Petco's general counsel. However, the legal assistant never notified Petco's general

counsel of the dispute, which ultimately resulted in a default order and judgment for TMT. Unlike TMT, here the mistake warranting vacation of the default order and judgment was not the result of a breakdown of internal office procedure. Neither Mr. Tracy nor Ms. Tieman was a Signal Electric employee: they were retained only for its bankruptcy proceeding. As such, their mistakes preventing Signal Electric from receiving notice of Ms. Ha's suit were not a breakdown of internal office procedures. Thus, the Court of Appeals correctly held that *TMT* did not apply.

The Court of Appeals also differentiated *Brooks* from these facts. In *Brooks,* the registered agent of the defendant, ICT, mistakenly forwarded Brooks' summons and default order to an ICT employee, albeit the wrong one. Thus, at least one ICT employee had notice of Brooks' suit against it. Unlike the defendant in *Brooks,* **no** Signal Electric employee received timely notice of Ms. Ha's suit. Thus, Signal Electric's failure to respond to Ms. Ha's suit was not a breakdown of Signal Electric's internal office procedure precluding vacation of the default order and judgment under *TMT* or *Brooks.* The Court of Appeals correctly evaluated *TMT* and *Brooks* and held they did not govern these facts.

2. The Court of Appeals correctly held that the Supreme Court's ruling in *Haller v. Wallis,* did not preclude vacation of Ms. Ha's default order and default judgment.

In an effort to obtain review by the Court, Ms. Ha attempts to

manufacture a non-existent conflict between the Court of Appeals decision in this case and the this Court's ruling in *Haller v. Wallis,* 89 Wn.2d 539, 573 P.2d 1302 (1978). The Court should not abide Ms. Ha's efforts because *Haller* involves vacation of a consent judgment and is inapplicable to default judgments.

In *Haller,* the trial court refused to vacate a consent judgment approving the settlement of a child's personal injury action after attorneys for the minor child and her mother, consented to judgment over the mother's objections. *Id.* at 540-42. The Supreme Court affirmed the trial court's refusal to vacate the consent judgment, holding that a motion to vacate a consent judgment may not be set aside for excusable neglect absent a showing of fraud or mutual mistake. *Id.* at 544, 546. In so holding, the Court distinguished vacating consent judgments from vacating default judgments, stating

> "Since a judgment approving a settlement differs from a judgment by default in that both parties have appeared before the court and have sought its approval of their agreement disposing of the case, different equitable factors must be considered when the court is asked to vacate such a judgment." *Id.* at 544.

In *Haller,* the Court explicitly recognized that vacating consent judgments differs from vacating default judgments. That difference is borne out in subsequent case law. *See Showalter v. Wild Oats,* 124 Wn. App. 506, 101 P.3d 867 (2004) (affirming the vacation of a default

judgment where misunderstanding between paralegal for defendant store and store manager resulted in a failure to timely respond to plaintiff's complaint). *Haller,* on its face, does not apply to default judgments. Thus, there is no conflict between the Court of Appeals decision and *Haller* warranting review by this Court.

3. The Court of Appeals ruling that Signal Electric acted with due diligence is consistent with existing precedent.

Ms. Ha incorrectly contends that the Court of Appeals ruling that Signal Electric acted with due diligence conflicts with *In re Estate of Stevens,* 94 Wn. App. 20, 35, 971 P.2d 58 (1999) and *Gutz v. Johnson,* 128 Wn. App. 901, 117 P.3d 390 (2005). In *Stevens,* Division Two of the Court of Appeals, **in dicta,** stated that a beneficiary to trust proceeds did not act with due diligence in bringing a motion to set aside a default order where the beneficiary: (1) received notice of the default order on July 21, 1997; (2) did not file a notice of appearance until over two months later; and (3) did not move to vacate the default order until 80 days after receiving notice. *Stevens,* 94 Wn. App. at 35. Notably, the beneficiary moving to vacate the default order had contemporaneous notice of all proceedings. *Id.* at 25-28.

In *Gutz,* Division II of the Court of Appeals cited *Stevens* for the proposition that "a party that has received notice of a default judgment and

does nothing for three months has failed to demonstrate due diligence." *Gutz,* 128 Wn. App. at 919. However, the court ultimately held the defendant exercised due diligence by appearing in the action nine days after learning of the default order and moving to vacate that order 79 days after receiving notice. *Id* at 919-20.

Here, the Court of Appeals ruling that Signal Electric exercised due diligence in moving to vacate Ms. Ha's default order and judgment is consistent with the "three-month rule" articulated in *Stevens* and *Gutz.* The first actual notice Signal Electric or its insurer received of Ms. Ha's default order and judgment was on February 25, 2013. CP 330. After receiving this notice, Signal Electric retained counsel and entered a Special Notice of Appearance roughly a month later on April 3, 2013. CP 214-15. Within 20 days, Signal Electric was prepared to file its Motion to Vacate, but postponed doing so until May 13, 2013 to accommodate Ms. Ha. CP 229. Thus, less than two months elapsed from the time Signal Electric received notice of the default order and judgment until it was prepared to move to vacate. This is substantially less time than the 80 days that elapsed in *Stevens,* the 79 days that elapsed in *Gutz*, and well under three months.

Accordingly, this Court should deny discretionary review because the Court of Appeals ruling that Signal Electric exercised due diligence in

moving to vacate the default order and judgment does not conflict with either *Stevens* or *Gutz*.

B. Ms. Ha's petition does not involve an issue of substantial public interest.

Ms. Ha wants to correct a perceived trial court error, affirmed by the Court of Appeals, which is not an acceptable criterion for review.

> RAP 13.4(b) says nothing in its criteria about correcting isolated instances of injustice. This is because the Supreme Court, in passing upon petitions for review, is not operating as a court of error. Rather, it is functioning as the highest policy-making judicial body of the state. ...
>
> The Supreme Court's view in evaluating petitions is global in nature. Consequently, the primary focus of a petition for review should be on why there is a compelling need to have the issue or issues presented decided generally. The significance of the issues must be shown to transcend the particular application of the law in question.

Wash. Appellate Prac. Deskbook § 27.11 (1998).

The fact-specific nature of cases involving default judgments militates against finding Ms. Ha's case involves an issue of substantial public interest warranting this Court's review. Moving to vacate a default judgment is akin to an equitable proceeding, in which the trial court has vast discretion to fashion a remedy that is just and reasonable given the case's facts and circumstances. *Calhoun v. Merritt,* 46 Wn. App. 616, 619, 731 P.2d 1094 (1986). "What is just and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all

situations regardless of the outcome." *Akhavuz v. Moody,* 178 Wn. App. 526, 534-35, 315 P.3d 572 (2013). Here, the Court of Appeals decision affirmed the trial court's discretionary ruling on a highly fact-specific issue and is of limited precedential value to subsequent cases. As such, the Court of Appeals decision does not involve an issue of substantial public interest warranting the Court's review.

Notwithstanding the limited scope and precedential value of the Court of Appeals decision, Ms. Ha attempts to expand the decision to conjure up an issue of substantial public interest in hopes of gaining review by this Court. Ms. Ha contends the Court of Appeals decision affirming the trial court's discretionary ruling vacating Ms. Ha's default order and judgment actually stands for the proposition that "an attorney's knowledge is not imputed to his client and an attorney's acts are not binding on his client, in the context of default proceedings." Petition for Review at 17. However, the Court of Appeals decision does not state either of these propositions. Because Ms. Ha's overly-expansive interpretation of the Court of Appeals decision misconstrues the court's holding as one contrary to agency principles in an attempt to create an issue of substantial public interest, the Court should deny review.

Moreover, none of the federal cases Ms. Ha claims contradict the Court of Appeals decision in this case actually deal with vacating a default

judgment for mistake, inadvertence, surprise, or excusable neglect under Fed. R. Civ. P. 60(b)(1), the federal counterpart to CR 60(b)(1). *In re Guzman,* BAP NO. CC-10-1013-HDMK, 2010 WL 6259994, (B.A.P. 9th Cir. 2010) and *Walsh v. Countrywide Home Loans, Inc.* 435 Fed. Appx. 607 (9th Cir. 2011) are unpublished federal decisions that do not involve default judgments. Nor does *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097 (9th Cir. 2006) involve a default judgment.

Although *Community Dental Services v. Tani,* 282 F.3d 1164 (9th Cir. 2002), discusses vacating a default judgment, it does so under Fed. R. Civ. P. 60(b)(6), the federal "catchall" provision akin to CR 60(b)(11). The subsection under which relief is sought is important because obtaining relief under Fed. R. Civ. P. 60(b)(6) requires a showing of "extraordinary circumstances" whereas CR 60(b)(1) does not. *See Latshaw,* 452 F.3d at 1103; *Barr v. MacGugan,* 119 Wn. App. 43, 78 P.3d 660 (2003). *Brown v. Cowlitz County,* No. C09-5090-RBL, 2010 WL 1608876 (W.D. Wash. Apr. 19, 2010) and *Lal v. State of California,* 610 F.3d 518 (9th Cir. 2010) also involve parties seeking relief under Fed. R. Civ. P. 60(b)(6) and do not involve default judgments. Thus, the Court of Appeals decision in this case is not "contrary to the approach taken by the vast majority of federal courts addressing the same issue" where none of the cases Ms. Ha cited involved vacating a default judgment for mistake, or excusable neglect

under the federal counterpart to CR 60(b)(1).

In short, the Court of Appeals decision in this case does hold not hold, as Ms. Ha contends, that "an attorney's knowledge is not imputed to his client and an attorney's acts are not binding on his client, in the context of default proceedings." The Court of Appeals held that vacating the default order and judgment was not an abuse of discretion where Signal Electric, its general counsel, and its insurer did not receive timely notice of Ms. Ha's suit because of a misunderstanding between Signal Electric's bankruptcy counsel and its financial advisor. This fact specific ruling does not involve a substantial issue of public interest and is not contradicted by the federal cases Ms. Ha cited. As such, this Court should deny review.

IV. CONCLUSION

Ms. Ha has not presented grounds under RAP 13.4 on which this Court should grant review. Accordingly, Signal Electric respectfully requests that Ms. Ha's Petition for Review be denied.

Respectfully submitted this 15th day of October, 2014.

LEE SMART, P.S., INC.

By: _____
Steven G. Wraith, WSBA No. 17364
Of Attorneys for Signal Electric

CERTIFICATE OF SERVICE

I certify under penalty of perjury and the laws of the State of Washington that on the date shown below I caused a copy of this Answer to Petition for Review to be served via legal messenger, to:

Mr. Douglas C. McDermott
McDermott Newman, PLLC
1001 4th Ave, Ste 3200
Seattle, WA 98154-1003

DATED this 15th day of October, 2014.

Vonnie Fredlund
Vonnie Fredlund, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Vonnie Fredlund
Subject: RE: Ha v. Signal Electric; Supreme Court No. 90850-8

Received 10-15-2014

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Vonnie Fredlund [mailto:vlw@leesmart.com]
Sent: Wednesday, October 15, 2014 11:14 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Ha v. Signal Electric; Supreme Court No. 90850-8

Attached for filing is the Answer to Petition for Review in the *Ha v. Signal Electric, Inc.* matter, Supreme Court No. 90850-8.

Being filed by:

Steven G. Wraith, WSBA No. 17364
Lee Smart, P.S., Inc.
701 Pike St, Ste 1800
Seattle, WA 98101
Email sgw@leesmart.com

Thank you.

Vonnie Fredlund | Legal Assistant to Steven G. Wraith, Dirk J. Muse, and Aaron P. Gilligan | VCard | Email

Lee Smart, P.S., Inc. | 1800 One Convention Place | 701 Pike St. | Seattle, WA 98101 | www.leesmart.com
Telephone 206.624.7990 | Toll-free 1.877.624.7990 | Fax 206.624.5944