

Received  
Washington State Supreme Court

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Ronald R. Carpenter  
Clerk

SUPREME COURT CASE NO. 92212-8  
COURT OF APPEALS CASE NO. 72269-7-I

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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MARK HEINZIG and  
JANE DOE HEINZIG, and their marital community,  
*Petitioner,*

v.

SEOK HWANG and  
JANE/JOHN DOE HWANG, and their marital community,  
*Respondents.*

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RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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Jill Smith, WSBA #30645  
Michael J. Martucci, WSBA #48170  
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## **I. INTRODUCTION**

The petition of review before the Court in this matter should not be accepted for either of the reasons argued by Petitioner. Petitioner's first issue – whether service of process on the Secretary of State under RCW 46.64.040 requires strict compliance – does not meet any of the considerations governing acceptance of review set forth in RAP 13.4(b). Similarly, Petitioner's second issue – whether Respondent waived his defense of insufficient process through delay – also fails to meet any of the considerations in RAP 13.4(b). These two issues have long been resolved by this Court. As such, the petition for review should not be accepted.

## **II. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED**

### **A. Strict procedural compliance is required under RCW 46.64.040 to obtain substituted service on Washington's Secretary of State.**

This Court's law is already clear that “only strict procedural compliance with the requirements of RCW 46.64.040 will permit personal jurisdiction to be obtained over a nonresident defendant.” *Heinzig v. Hwang*, No. 72269-7-I, slip op. at 7 (Wash. App. June 29, 2015). Further, failure to notify a defendant that process has been served on the secretary of state (as plaintiff did here) “renders service on the secretary a nullity.”

*Id.*<sup>1</sup>

This Court has addressed these issues in *Martin v. Triol*, 121 Wn.2d 135, 144, 847 P.2d 471 (1993), as has the Court of Appeals in *Harvey v. Obermeit*, 163 Wn. App. 311, 318, 261 P.3d 671 (2011) and *Omaits v. Raber*, 56 Wn. App. 668, 670, 785 P.2d 462 (1990).

The Court of Appeals' holding below is not in conflict with either a decision from this Court or another decision from the Court of Appeals, nor does it address a significant question of law under Washington's Constitution or address a substantial public interest that this Court has not already resolved. As such, this section of the petition for review does not fall within RAP 13.4(b).

**B. Respondent/Defendant did not waive his defense of insufficient process through dilatory conduct.**

Petitioner also argues that, through defendant's delay in filing an answer, Respondent/Defendant waived his defense of insufficient process. As the Court of Appeals pointed out, thought, for such waiver to occur, "the defendant's actions must have caused prejudice to the plaintiff." *Id.* at 10 (citing *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 246-47,

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<sup>1</sup> Petitioner himself confirms this very fact in a portion of his Petition for Review when he concedes the following: "Thus, when the Secretary of State is served as the defendant's appointed agent, the defendant has been served, . . . (although that service is avoidable if plaintiff does not subsequently arrange for notice of that service). Petition for Review at 19.

178 P.3d 981 (2008). Here, Petitioner was not prejudiced by Respondent/Defendant's defense of insufficient process.

Petitioner contends that the deadline for Hwang's answer was August 6, 2013. This is incorrect. The Court of Appeals correctly concluded that "the period in which Hwang could have, had he chosen to do so, filed an answer began on June 11 and ended on August 15." *Heinzig*, No. 72269-7-I, slip op. at 10-11. The statute of limitations underlying Petitioner's claim was August 12, 2013. "Hwang could have raised a timely answer on or after the day on which the statutory limitation period expired." *Heinzig*, No. 72269-7-I, slip op. at 11-12.

In other words, Hwang could have filed a timely answer raising the defense of insufficient service of process on or after the day the statute of limitation expired, meaning Petitioner would have been unable to cure the underlying defect. As such, there could not possibly have been any prejudice to Petitioner resulting from the delay.

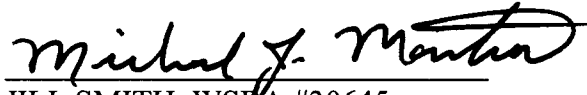
This petition for review does not fall within any of the considerations of RAP 13.4(b).

### **III. CONCLUSION**

There are no new, unsettled, or even interesting issues raised here. The Petition for Review before this Court should be denied.

DATED this 5th day of October 2015.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael J. Martucci". The signature is written in a cursive style with a horizontal line underneath it.

JILL SMITH, WSBA #30645

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Appellants,

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SEOK HWANG AND JANE/JOHJN DOE  
HWANG, and their marital community,


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No. 92212-8

CERTIFICATE OF SERVICE

I certify that on today's date I caused a copy of Respondents' Answer to  
Petition for Review to be served on: Gary Manca, Manca Law, PLLC, 108  
South Washington Street, #308, Seattle, WA 98104-3406, via U.S. Mail, First  
Class Postage, pre-paid.

DATED this 5th day of October, 2015.

  
Pam Robinson  
Paralegal to Jill Smith and  
Michael J. Martucci