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No. 91391-9

RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

LG ELECTRONICS, INC.; KONINKLIJKE PHILIPS ELECTRONICS
N.V. A/K/A ROYAL PHILIPS ELECTRONICS N.V.; PHILIPS
ELECTRONICS INDUSTRIES (TAIWAN), LTD.; SAMSUNG SDI CO.,
LTD. F/K/A SAMSUNG DISPLAY DEVICE CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI MEXICO S.A. DE C.V.;
SAMSUNG SDI BRASIL, LTDA.; SHENZHEN SAMSUNG SDI CO.,
LTD.; TIANJIN SAMSUNG SDI CO., LTD.; SAMSUNG SDI
(MALAYSIA) SDN. BHD.; PANASONIC CORPORATION F/K/A
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; HITACHI
DISPLAYS, LTD. (N/K/A JAPAN DISPLAY INC.); HITACHI
ELECTRONIC DEVICES (USA), INC.; HITACHI ASIA, LTD.,

Defendants/Petitioners.

Filed *E*
Washington State Supreme Court

AUG 25 2015

Ronald R. Carpenter
Clerk *RJC*

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

George M. Ahrend
WSBA #25160
16 Basin St. SW
Ephrata, WA 98823
(509) 764-9000

Bryan P. Harnetiaux
WSBA #5169
517 E. 17th Ave.
Spokane, WA 99203
(509) 624-3890
OID #91108

On Behalf of
Washington State Association for Justice Foundation

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation has an interest in the rights of persons seeking legal redress under the civil justice system, including an interest in the interpretation and application of procedural laws governing the resolution of challenges to personal jurisdiction.

II. INTRODUCTION AND STATEMENT OF THE CASE

This review presents the Court with an opportunity to address issues regarding the procedure for resolving CR 12(b)(2) motions to dismiss for lack of personal jurisdiction. The Attorney General (AG) filed this suit on behalf of the State of Washington and as *parens patriae* for Washington residents (State), alleging violations of the Consumer Protection Act, Ch. 19.86 RCW (CPA), against LG Electronics, Inc., and a number of other foreign corporate entities alleged to be participants in a conspiracy to fix prices for cathode ray tubes (CRTs), a display technology used in televisions, computer monitors and other applications.

On motions under CR 12(b)(2), the superior court dismissed the claims against certain of these defendants (LG et al.) for lack of personal jurisdiction.

The underlying facts are drawn from the Court of Appeals opinion, the briefing of the parties, and the complaint. See State v. LG Electronics, Inc., 185 Wn. App. 394, 341 P.3d 346 (2015) (hereafter LG), *review granted*, 183 Wn. 2d 1002 (2015); State Br. at 4-7; LG et al. Br. at 6-15; LG et al. Pet. for Rev. at 2-4; State Ans. to Pet. for Rev. at 2-4; LG et al. Supp. Br. at 2-3; State Supp. Br. at 2-5; CP 1-29 (complaint).

For purposes of this amicus brief, the following facts are relevant. The AG brought suit under the authority conferred by RCW 19.86.080 for an alleged conspiracy in restraint of trade in violation of RCW 19.86.030. The complaint alleged personal jurisdiction over the defendants on the following grounds:

The Attorney General claimed that the defendants manufactured, sold, and/or distributed CRT products, directly or indirectly, to customers throughout the United States and, specifically, in Washington. He further alleged that the actions of the defendants were intended to and did have a direct, substantial, and reasonably foreseeable effect on United States domestic import trade and commerce, and on import trade and commerce into and within Washington. Indeed, he averred that the defendants' alleged conspiracy to fix prices affected billions of dollars in United States commerce and damaged a large number of Washington State agencies and residents.

LG, 185 Wn. App. at 400; see also CP 1-29 (complaint).

LG and certain other defendants challenged the exercise of personal jurisdiction over them by Washington courts under the general long-arm statute, RCW 4.28.185, and the CPA long-arm provision, RCW 19.86.160. They contended that jurisdiction was improper because they merely sold CRTs and CRT products outside of the State of Washington to third parties who, in turn, incorporated them into finished products that were sold or distributed for sale within the state. Before any discovery occurred in this case, these defendants filed motions to dismiss pursuant to CR 12(b)(2). See LG, 185 Wn. App. at 401.¹ The motions were accompanied by affidavits or declarations from some of the defendants stating that they had never sold CRTs or CRT products in Washington, nor had they conducted any other business in the state. See id. These defendants argued that they are entitled to have these affidavits taken into account in resolving the motions to dismiss. See id. at 405 & n.13.

In opposition to the motions, the State argued that under CR 12(b)(2) the jurisdictional motion should be resolved based solely on the allegations of the complaint. However, to the extent the superior court was inclined to consider the defendants' affidavits, the State requested an opportunity to conduct discovery. See LG at 401.

¹ LG et al. contend that the State had access to "millions of pages of documents," which were apparently produced outside of discovery. LG et al. Br. at 3.

The superior court granted LG et al.'s motions to dismiss, denied the State's request to conduct discovery, and certified the issue for immediate review pursuant to CR 54(b). See LG at 401-02.² In so doing, the superior court was careful to note that it was not treating the motion to dismiss as one for summary judgment. See id. at 406-07 n.14.

The Court of Appeals reversed, holding that, before discovery has occurred, jurisdictional motions under CR 12(b)(2) should be resolved based on the pleadings alone. See LG at 403-09. The court concluded that the defendants' litigation strategy of submitting affidavits and declarations in conjunction with CR 12(b)(2) motions, while simultaneously resisting the State's request for discovery, was untenable. See id. at 405, 408. As to the merits of the motions, the court upheld the exercise of personal jurisdiction over these defendants under the long-arm statutes, finding that the allegations of the State's complaint satisfied federal due process requirements. See id. at 409-25.

This Court accepted LG et al.'s petition for review.

² The defendants who were dismissed under CR 12(b)(2), and are now petitioners before this Court, are identified in the Court of Appeals opinion below, i.e., Koninklijke Philips Electronics N.V., Philips Electronics Industries (Taiwan), Ltd., Panasonic Corporation, Hitachi Displays, Ltd., Hitachi Asia, Ltd., Hitachi Electronic Devices (USA), Inc., LG Electronics, Inc., Samsung SDI America, Inc., Samsung SDI Co., Ltd., Samsung SDI (Malaysia) SDN. BHD., Samsung SDI Mexico S.A. DE C.v., Samsung SDI Brasil LTDA., Shenzhen Samsung SDI Co., Ltd., and Tianjin Samsung SDI Co., Ltd. See LG, 185 Wn. App. at 401 & n.6.

III. ISSUE PRESENTED

What is the proper procedure for resolving motions to dismiss for lack of personal jurisdiction under CR 12(b)(2)? More particularly, is the plaintiff entitled to rely on the allegations of the complaint, or must the court consider uncontested affidavits submitted by the defendant?

See LG et al. Pet. for Rev. at 2 (issue 2); State Ans. to Pet. for Rev. at 2 (issue 2).³

IV. SUMMARY OF ARGUMENT

LG et al. chose to seek dismissal for lack of personal jurisdiction under CR 12(b)(2), not CR 56, and the Court of Appeals correctly held that this issue is resolved by determining whether a prima facie case of jurisdiction is established based solely on the allegations of the complaint. Under CR 12(b)(2), a court treats the allegations of the complaint as true for purposes of determining whether jurisdiction exists. Unlike a motion to dismiss for failure to state a claim under CR 12(b)(6), a defendant may not convert a jurisdictional motion under CR 12(b)(2) into summary judgment under CR 56 by submitting affidavits or other matters outside the pleadings in support of the motion. Treating a CR 12(b)(2) motion like summary judgment is inconsistent with Washington's notice pleading

³ There are two other issues before the Court, involving whether the exercise of personal jurisdiction here comports with federal due process requirements, and, if not, whether under these circumstances LG et al. may recover attorney fees and costs pursuant to RCW 4.28.185 or 19.86.080. See LG et al. Pet. for Rev at 2 (issue 1); State Ans. to Pet. for Rev. at 2 (issues 1 & 3). These issues are not addressed in this amicus curiae brief.

standard and the goal of resolving cases on the merits. Moreover, resolving jurisdictional disputes without providing an opportunity for discovery would undermine the constitutional right of access to courts under Wash. Const. Art. I § 10.

V. ARGUMENT

A. **When A Defendant Seeks Dismissal For Lack Of Personal Jurisdiction Under CR 12(b)(2), Rather Than The Summary Judgment Rule, CR 56, The Allegations Of The Complaint Must Be Taken As True, And The Motion Should Be Resolved Based Solely On These Allegations.**

CR 12(b) provides:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) *lack of jurisdiction over the person*, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the pleader may assert at the trial any defense in law or fact to that claim for relief. *If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all*

parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(Emphasis added.)⁴

Motions to dismiss for lack of personal jurisdiction under CR 12(b)(2) are based on allegations of the complaint. See FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 180 Wn. 2d 954, 963, 331 P.3d 29 (2014) (stating “[a]t this stage of litigation, the allegations of the complaint establish sufficient minimum contacts to survive a CR 12(b)(2) motion”; brackets added); see also LG, 185 Wn. App. at 406 (collecting cases).⁵ This approach to CR 12(b)(2) motions is

⁴ The current version of CR 12 is reproduced in the Appendix.

⁵ The Court of Appeals notes that two of its decisions involve consideration of matters outside the pleadings on a motion under CR 12(b)(2). See LG at 406-07 n.14 (discussing Access Road Builders v. Christenson Elec. Contracting Eng’g Co., 19 Wn. App. 477, 576 P.2d 71 (1978); Puget Sound Bulb Exch. v. Metal Bldgs. Insulation Inc., 9 Wn. App. 284, 513 P.2d 102, *review denied*, 82 Wn. 2d 1013 (1973), *cert. denied sub nom. Hamilton Mfg. Co. v. Metal Bldgs. Insulation Inc.*, 415 U.S. 921 (1974)). The court also notes that a third case involves treatment of a motion to dismiss as a summary judgment motion. See LG at 406-07 n.14 (discussing Carrigan v. California Horse Racing Board, 60 Wn. App. 79, 802 P.2d 813 (1990), *review denied*, 117 Wn. 2d 1002 (1991)).

The first two cases appear to be distinguishable from this case, where the only affidavits were submitted by defendants. In Access Road Builders, 19 Wn. App. at 478-79, and Puget Sound Bulb Exch., 9 Wn. App. at 291, *both parties* submitted affidavits. In Carrigan, 60 Wn. App. at 83 & n.3, the opinion is unclear whether matters outside the pleadings that were considered by the court involved submissions by each party.

The recent decision of this Court in Failla v. FixtureOne Corp., 177 Wn. App. 813, 312 P.3d 1005 (2013), *rev’d*, 181 Wn. 2d 642, 648 & n.1, 656-57, 336 P.3d 1112 (2014), *cert. denied sub nom. Schultz v. Failla*, 135 S. Ct. 1904 (2015), does not hold otherwise. This Court characterizes the procedural posture as cross-motions for summary judgment, *see* 181 Wn. 2d at 648 & n.1, although the Court of Appeals states that the plaintiff “moved for summary judgment” on her claim, while the defendant “moved to dismiss for lack of personal jurisdiction under CR 12(b)(2),” and “[t]he parties agreed that the trial court would consider both motions concurrently,” 177 Wn. App. at 818-19. Neither opinion involves a standalone CR 12(b)(2) motion.

At any rate, to the extent any of these decisions are found to be inconsistent with FutureSelect, *supra*, they should be disapproved.

in keeping with the applicable notice pleading standard and the preference for resolving cases on the merits. See CR 8(a)(1) (requiring “a short and plain statement of the claim showing the pleader is entitled to relief”); Orwick v. Seattle, 103 Wn. 2d 249, 255-56, 692 P.2d 793 (1984) (providing complaint sufficient if it provides due process-type notice of plaintiff’s claim); McCurry v. Chevy Chase Bank, FSB, 169 Wn. 2d 96, 102-03, 233 P.3d 861 (2010) (rejecting federal “plausibility” pleading standard for CR 12(b)(6) motions, and suggesting that “such a drastic change in court procedure” should be accomplished through the rule-making process); Burnet v. Spokane Ambulance, 131 Wn. 2d 484, 498, 933 P.2d 1036 (1997) (favoring resolution of cases on the merits). Under CR 12(b)(2), if the complaint alleges a prima facie case supporting the exercise of personal jurisdiction, the motion must be denied. See FutureSelect, 180 Wn. 2d at 963.

In the absence of agreement or acquiescence by the parties, a court may not consider affidavits or other matters outside the pleadings when the motion to dismiss is based on CR 12(b)(2). See LG at 404-09. Unlike subsection (b)(6), there is no provision in CR 12 for converting a motion

under subsection (b)(2) to summary judgment under CR 56 by submitting affidavits or other matters outside the pleadings.⁶

LG et al. argue that in not taking into account the uncontested affidavits the Court of Appeals “erred ... by refusing defendants the opportunity to extricate themselves from unfounded claims of personal jurisdiction[.]” LG et al. Supp. Br. at 17 (ellipses & brackets added). However, these defendants had such an opportunity and could have filed a motion for summary judgment under CR 56.⁷ Nothing in the text of CR 56 prevented LG et al. from moving for summary judgment based on lack of personal jurisdiction before completion of discovery. Such a motion would normally require plaintiff to come forward with affidavits or other evidence creating a genuine issue of material fact. See Young v. Key Pharms., Inc., 112 Wn. 2d 216, 225-26, 770 P.2d 182 (1989).⁸ However, if

⁶ Notably, when a CR 12(b)(6) motion is converted, “all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.” CR 12(b).

⁷ The current version of CR 56 is reproduced in the Appendix. When there are genuine issues of material fact bearing on the exercise of personal jurisdiction, then an evidentiary hearing is required. See CR 56(c) (indicating summary judgment is only appropriate if there is no genuine issue of material fact). Similarly, CR 12(d) provides that “[t]he defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.” (Brackets added); see also CR 43(e)(1) (stating “[w]hen a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions”; brackets added).

⁸ But see Lewis v. Bours, 119 Wn. 2d 667, 670, 835 P.2d 221 (1992) (stating “[f]or purposes of determining jurisdiction under the long-arm statute, the plaintiff need only

discovery has not occurred, plaintiff can seek a continuance of summary judgment proceedings “to permit affidavits to be obtained or depositions to be taken or discovery to be had.” CR 56(f).⁹ Entitlement to this discovery is grounded in the constitutional right of access to courts, and the need for such discovery is especially critical when any of the material facts are in the exclusive possession of defendants. Cf. McCurry, 169 Wn. 2d at 102-03 (rejecting federal pleading standard in part because it would result in loss of “discovery and general access to the courts, particularly in cases where evidence is almost exclusively in the possession of defendants”; ellipses added). Of course, nothing would prevent a defendant who has unsuccessfully sought to dismiss a claim for lack of personal jurisdiction under CR 12(b)(2) based solely on the pleadings from later seeking dismissal on jurisdictional grounds after the completion of discovery under CR 56. See FutureSelect at 963 (stating defendant

show a prima facie case” based on “the allegations in the complaint,” despite the fact that the defendant brought the motion under CR 56; brackets added).

⁹ Notwithstanding the availability of CR 56(f) as a safety mechanism to address premature summary judgment motions regarding personal jurisdiction or any other issue, it may be appropriate for the Court to address the timing of Youngs-type summary judgment motions in relation to discovery under its rule-making function. The standard of review for denial of a continuance under CR 56(f) is unclear. Compare Folsom v. Burger King, 135 Wn. 2d 658, 663, 958 P.2d 301 (1998) (stating “[t]he de novo standard of review is used by an appellate court when reviewing *all* trial court rulings made in conjunction with a summary judgment motion”; brackets & emphasis added), with Pitzer v. Union Bank of California, 141 Wn. 2d 539, 556, 9 P.3d 805 (2000) (citing pre-Folsom case for the proposition that “[w]e review a trial court's denial of a CR 56(f) motion for abuse of discretion”). Otherwise, the timing of summary judgment with respect to discovery can be addressed by the parties in a motion under CR 16(a)(5).

“may renew its jurisdictional challenge after appropriate discovery has been conducted”).

As the Court of Appeals below recognized, the litigation strategy of LG et al. in submitting affidavits in support of its CR 12(b)(2) motion while balking at discovery is inconsistent with the right of access to courts under Wash. Const. Art. I § 10. See LG at 407 & n.17 (discussing Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn. 2d 974, 979, 216 P.3d 374 (2009)).¹⁰ The constitutional “right of access to courts ‘includes the right of discovery authorized by the civil rules.’” Putman, 166 Wn. 2d at 979 (quoting John Doe v. Puget Sound Blood Ctr., 117 Wn. 2d 772, 780, 819 P.2d 370, 374-76 (1991)). As this Court stated in John Doe:

Our constitution mandates that “[j]ustice in all cases shall be administered openly, and without unnecessary delay.” Const. art. 1, § 10. That justice which is to be administered openly is not an abstract theory of constitutional law, but rather is the bedrock foundation upon which rest all the people's rights and obligations. In the course of administering justice the courts protect those rights and enforce those obligations. Indeed, the very first enactment of our state constitution is the declaration that governments are established to protect and maintain individual rights. Const. art. 1, § 1. Const. art. 1, §§ 1–31 catalog those fundamental rights of our citizens.

¹⁰ Wash. Const. Art. I § 10 is reproduced in the Appendix. It is doubtful whether the right of access to courts applies to the State because it is the sovereign, not a citizen. See Wash. Const. Art. I § 1 (providing in part that “governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights”). However, the relevant rules that reflect and implement the right of access to courts do not distinguish between the State and citizens as litigants.

The drafters of our constitution placed such great importance upon rights that they provided: "A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government." Const. art. 1, § 32.

.....

The court rules recognize and implement the right of access. The discovery rules, specifically CR 26 and its companion rules, CR 27–37, grant a broad right of discovery which is subject to the relatively narrow restrictions of CR 26(c). This broad right of discovery is necessary to ensure access to the party seeking the discovery. It is common legal knowledge that extensive discovery is necessary to effectively pursue either a plaintiff's claim or a defendant's defense. Thus, the right of access as previously discussed is a general principle, implicated whenever a party seeks discovery. It justifies the limited nature of the exceptions to broad discovery found in CR 26(c). Plaintiff, as the party seeking discovery, therefore has a significant interest in receiving it.

117 Wn. 2d at 780-81, 782-83 (ellipses added).

LG et al. rely on federal precedent allowing matters outside the pleadings on a 12(b)(2) motion and attempt to distinguish the complaint allegation rule for resolution of disputes regarding personal jurisdiction stated in FutureSelect, supra, on grounds that the case does "not involve a defendant's affidavit that conflicted with an unsworn complaint." LG et al. Supp. Br. at 18-19 & n.9; accord LG Pet. for Rev. at 14-18. The Court should reject this federal precedent as unpersuasive.¹¹ Further, it should

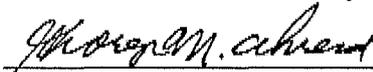
¹¹ LG et al. cite federal cases permitting consideration of matters outside the pleadings under the federal counterpart to CR 12(b)(2), but these cases can be explained by

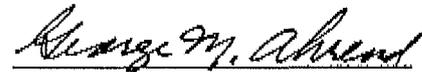
reject LG et al.'s attempt to distinguish FutureSelect, as incompatible with the constitutional right of access to courts and the standards for pleadings and motions to dismiss that reflect and implement this substantial right.

VI. CONCLUSION

The Court should adopt the interpretation of CR 12(b)(2) advanced in this brief in resolving the personal jurisdiction issue on review.

DATED this 10th day of August, 2015.


George M. Ahrend


For Bryan P. Harnetiaux, WITH AUTHORITY

On Behalf of WSAJ Foundation

differences in *subject matter jurisdiction* between state and federal courts. LG et al. rely primarily on Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004), and Alexander v. Circus Circus Enters., Inc., 972 F.2d 261, 262 (9th Cir. 1992). See LG et al. Pet. for Rev. at 16-17; LG et al. Supp. Br. at 18-19.

The cases cited by LG et al. can be traced to the U.S. Supreme Court decision in McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 184 (1936), involving subject matter jurisdiction (jurisdictional amount in controversy). Schwarzenegger, 374 F.3d at 800, cites Caruth v. International Psychoanalytical Ass'n, 59 F.3d 126, 128 (9th Cir.1995), which cites Data Disc. Inc. v. Sys. Tech. Associates, Inc., 557 F.2d 1280, 1284 (9th Cir. 1977), which cites Taylor v. Portland Paramount Corp., 383 F.2d 634, 639 (9th Cir. 1967), which relies on McNutt. Schwarzenegger also cites Amba Marketing Systems, Inc. v. Jobar International, Inc., 351 F.2d 784, 787 (9th Cir.1977), which cites Taylor, which cites McNutt, Alexander, 972 F.2d at 262, cites Data Disc, which cites Taylor, which cites McNutt. The subject matter jurisdiction origin of these cases is significant because federal courts have limited subject matter jurisdiction, see Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994), whereas subject matter jurisdiction is presumed in state courts. See Willapa Power Co. v. Public Serv. Comm'n, 110 Wash. 193, 196, 188 Pac. 464 (1920). Plaintiffs must plead their way into federal court, whereas plaintiffs are presumed to be properly in state superior court unless they plead their way out. This fundamental difference finds expression in the respective pleading rules of federal and state courts. Compare Fed. R. Civ. P. 8(a)(1) (requiring "a short plain statement of the grounds for the court's jurisdiction") with CR 8 (lacking a specific jurisdictional pleading requirement). These differences undermine the persuasive value of federal precedent in interpreting and applying CR 12(b)(2). This Court should reaffirm its interpretation of CR 12(b)(2), and reject federal precedent to the contrary interpreting the federal counterpart. Cf. McCurry, *supra*.

APPENDIX

Wash. Const. Art. I § 10. Administration of Justice

Justice in all cases shall be administered openly, and without unnecessary delay.

Adopted 1889.

CR 12. DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve an answer within the following periods:

- (1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon the defendant pursuant to rule 4;
- (2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);
- (3) Within 60 days after the service of the summons upon the defendant if the summons is served upon the defendant personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.
- (4) Within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross claim against another party shall serve an answer thereto within 20 days after the service upon that other party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the pleader may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical

disposition of the action, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in section (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

[Amended effective January 1, 1972; January 1, 1980; September 18, 1992; April 28, 2015.]

CR 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in such part y's favor as to all or any part thereof.

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing. The moving party may file and serve any rebuttal documents not later than 5 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday. Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise. Confirmation of the hearing may be required by local rules. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that, for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court

shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Form of Order. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.

[Amended effective September 1, 1978; September 1, 1985; September 1, 1988; September 1, 1990; September 1, 1993; April 28, 2015.]

No. 91391-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

vs.

LG ELECTRONICS, INC.; KONINKLIJKE PHILIPS ELECTRONICS
N.V. A/K/A ROYAL PHILIPS ELECTRONICS N.V.; PHILIPS
ELECTRONICS INDUSTRIES (TAIWAN), LTD.; SAMSUNG SDI CO.,
LTD. F/K/A SAMSUNG DISPLAY DEVICE CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI MEXICO S.A. DE C.V.;
SAMSUNG SDI BRASIL, LTDA.; SHENZHEN SAMSUNG SDI CO.,
LTD.; TIANJIN SAMSUNG SDI CO., LTD.; SAMSUNG SDI
(MALAYSIA) SDN. BHD.; PANASONIC CORPORATION F/K/A
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; HITACHI
DISPLAYS, LTD. (N/K/A JAPAN DISPLAY INC.); HITACHI
ELECTRONIC DEVICES (USA), INC.; HITACHI ASIA, LTD.,

Petitioners.

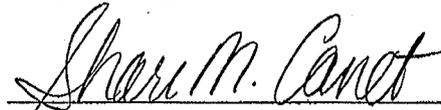
DECLARATION OF FACSIMILE FILING (GR-17)

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the person who received the foregoing facsimile transmission for filing.
2. My work address is Ahrend Law Firm PLLC, 16 Basin St. SW, Ephrata, Washington, 98823.
3. My work phone number is (509) 764-9000.
4. I received the document to which this is annexed via electronic transmission at (509) 464-6290.
5. I have examined the foregoing document entitled **BRIEF OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION**, determined that it consists of twenty-eight (28) pages (including any tables and appendices), including this Declaration, and it is complete and legible.

I certify under penalty of perjury under the laws of the State of Washington that the above is true and correct.

Signed at Ephrata, Washington: August 10, 2015.



Shari M. Canet, Paralegal

OFFICE RECEPTIONIST, CLERK

To: Shari Canet
Cc: "Robert Stewart"; "Aaron Streett"; "Mark Little"; "John Taladay"; "Erik Koons"; "Tiffany Gelott"; "David Lundsgaard"; "Hojoon Hwang"; "Laura Lin"; Jessica Barclay-Strobel; "William Temko"; "Laura Sullivan"; "Molly Terwilliger"; "Eliot Adelson"; "Timothy Snider"; "Aric Jarrett"; "David Yohai"; "Adam Hemlock"; "David Yolcut"; "Jeffrey Kessler"; "Eva Cole"; "Molly Donovan"; "David Kerwin"; "Peter Gonick"; "Larry Gangnes"; "John Neeleman"; "Gary Halling"; "James McGinnis"; "Michael Scarborough"; "Mathew Harrington"; "Bradford Axel"; "Lucius Lau"; "Dana Foster"; "Stewart Estes"; "Christopher Nicoll"; "Maggie Sweeney"; "John Kouris"; "Bryan Harnetiaux"; "George Ahrend"; "Malaika Eaton"; "Peter Vial"
Subject: RE: State v. LG Electronics, et al. (SC #91391-9)

Rec'd on 08/10/2015

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: Shari Canet [mailto:scanet@ahrendlaw.com]

Sent: Monday, August 10, 2015 4:17 PM

To: OFFICE RECEPTIONIST, CLERK

Cc: "Robert Stewart"; "Aaron Streett"; "Mark Little"; "John Taladay"; "Erik Koons"; "Tiffany Gelott"; "David Lundsgaard"; "Hojoon Hwang"; "Laura Lin"; Jessica Barclay-Strobel; "William Temko"; "Laura Sullivan"; "Molly Terwilliger"; "Eliot Adelson"; "Timothy Snider"; "Aric Jarrett"; "David Yohai"; "Adam Hemlock"; "David Yolcut"; "Jeffrey Kessler"; "Eva Cole"; "Molly Donovan"; "David Kerwin"; "Peter Gonick"; "Larry Gangnes"; "John Neeleman"; "Gary Halling"; "James McGinnis"; "Michael Scarborough"; "Mathew Harrington"; "Bradford Axel"; "Lucius Lau"; "Dana Foster"; "Stewart Estes"; "Christopher Nicoll"; "Maggie Sweeney"; "John Kouris"; "Bryan Harnetiaux"; "George Ahrend"; "Malaika Eaton"; "Peter Vial"

Subject: State v. LG Electronics, et al. (SC #91391-9)

Dear Mr. Carpenter:

On behalf of the WSAJ Foundation, a letter request to file an Amicus Curiae Brief and a proposed Amicus Curiae Brief are attached to this email for filing with the Court. Counsel for the parties and other Amicus Curiae are being served simultaneously by copy of this email, per prior arrangement.

Respectfully submitted,

--

Shari M. Canet, Paralegal

Ahrend Law Firm PLLC
16 Basin St. SW
Ephrata, WA 98823
(509) 764-9000 ext. 810
Fax (509) 464-6290

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