

71338-8

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No. 71338-8-I

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

STEPHANIE DRUXMAN,

Appellant,

v.

SNOWDON ASSOCIATION, LLC,

Respondent.

REPLY BRIEF OF APPELLANT STEPHANIE DRUXMAN

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I. INTRODUCTION

This court can rule in Ms. Druxman's favor based on either of two arguments. First, because the trial court lacked personal jurisdiction over Ms. Druxman, it lacked the authority to require her to take action by paying money into the court registry or filing a declaration, and therefore it lacked the authority to enter a writ of restitution against her for failing to take such action. Second, the statutory language of RCW 59.18.055 and RCW 59.18.375 do not permit the two statutes to be used in concert. This second argument was separated into two subsections in Ms. Druxman's opening brief, subsections D and E, but it will be addressed as one argument in this document.

In her opening brief, Ms. Druxman argued that the standard of review is de novo and that the Residential Landlord/Tenant Act should be construed in favor of the tenant. These two arguments were not contested by Snowdon.

II. STATEMENT OF THE CASE

Snowdon disputes Ms. Druxman's claim that she was "defaulted." Brief of Respondent at 1. Whether the order issuing the writ of restitution is labeled a default order is irrelevant because the parties agree on the material facts. Ms. Druxman filed a notice of appearance in response to Snowdon's summons and complaint, as authorized by RCW 59.18.365.

Ms. Druxman neither deposited money into the court registry nor filed a declaration claiming that she did not owe the rent alleged due. Snowdon obtained the writ of restitution pursuant to RCW 59.18.375 because Ms. Druxman did not deposit money into the court registry or file a declaration.

III. ARGUMENT

A. The Court did not Have Personal Jurisdiction Over Ms. Druxman.

Snowdon's response does not appear to dispute Ms. Druxman's argument that the court obtained only limited in rem jurisdiction over the property and not personal jurisdiction over Ms. Druxman when Snowdon used the alternative service procedure of RCW 59.18.055. In fact, Snowdon cites to a case in which this court distinguished between in rem and personal jurisdiction. Brief of Respondent at 5, citing, *In re City of Lynnwood*, 118 Wn.App.674, 77 P.3d 378 (Div.I, 2003). In *City of Lynnwood*, the court found that because it had not obtained personal jurisdiction over the South Snohomish County Public Facilities District (PFD) it lacked jurisdiction "to order the PFD to take any action . . ." *Id.* at 680.

The same is true here. Because the court lacked personal jurisdiction over Ms. Druxman, it lacked jurisdiction to require her to take action by paying money into the court registry or by filing a declaration claiming that she did not owe rent. If the court had no authority to require

Ms. Druxman to take action with respect to the rent alleged owed by Snowdon, it necessarily follows that the court lacked authority to enter a writ of restitution against her for inaction with respect to the rent allegedly owed.

The remainder of Snowdon's jurisdictional arguments apply to the validity of service by mail. Ms. Druxman is not contesting the constitutionality of RCW 59.18.055 or whether a landlord can properly serve a tenant by mail. Rather Ms. Druxman is simply asking that the jurisdictional limitations of the statute be enforced. That is, because RCW 59.18.055 clearly states that such an alternative method of service does not grant the court jurisdiction over the tenant, when a landlord avails itself of this statute the court may not require that the tenant take any specific action or be penalized for failing to take such action.

Here, Snowdon is attempting to have its cake and eat it too. On the one hand, Snowdon is attempting to take advantage of a circumscribed process where Snowdon is not required to accomplish personal service. On the other hand, Snowdon is acting as if the court has obtained personal jurisdiction by requiring that Ms. Druxman pay money into the court registry or file a declaration.

B. RCW 59.18.055 and RCW 59.18.375 May Not be Used in Concert.

RCW 59.18.055 does not authorize service of the Requirements Document by mail. Similarly, RCW 59.18.375 does not permit a landlord

to serve the Requirements Document by the alternative means described in RCW 59.18.055. Snowdon argues that “[i]t is only common sense that the statute be interpreted to allow delivery by posting and mailing when such form of delivery is allowed for the summons and complaint.” Brief of Respondent at 2. First, common sense does not dictate such an outcome because service of the summons and complaint by alternative means does not grant the court personal jurisdiction over the tenant whereas the court would have to have personal jurisdiction over the tenant in order to require the tenant to take action. Second, Snowdon is appealing to “common sense” because the text of the statutes in question does not permit the outcome Snowdon is seeking.

As Snowdon acknowledges, “delivery” is the key term in RCW 59.18.375, as subsection 7 of the statute requires that the landlord “deliver” notice to the tenant. Snowdon contends that the language in CR 5(b)(1), “[s]ervice upon the attorney or service upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address . . .” supports service by mail. Brief of Respondent at 3-4, quoting CR 5(b)(1). However, this sentence distinguishes between *delivering* a copy and *mailing* a copy using the disjunctive “or.” The rule then defines “delivery” as personal service. RCW 59.18.375(7) states that the landlord must “deliver” the Requirements Document to the tenant. Therefore, the statute requires personal service of the Requirements Document.

As articulated above, a plain reading of the statute requires personal service of the Requirements Document. However, even if the court finds ambiguity with respect to how the statute can be interpreted, such ambiguity should be resolved in favor of the tenant. *Housing Authority of the City of Seattle v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952 (Div. I, 1999).

The remainder of Snowdon's arguments address the adequacy of service by mail and whether Ms. Druxman received the Requirements Document. Ms. Druxman has never claimed she did not receive the Requirements Document. She concedes that service by mail gives the court in rem jurisdiction over the property. However, Ms. Druxman argues the statutory language does not support Snowdon's requested outcome and that the court never obtained personal jurisdiction over her and therefore the court could not require that she take any specific action with respect to the rent alleged owed by Snowdon nor issue a writ of restitution against her for failing to take such action.

IV. CONCLUSION

Ms. Druxman requests that this court uphold the statutory text of RCW 59.18.055 and RCW 59.18.375 by holding that these statutes may not be used in concert. Ms. Druxman requests further that this court find that the trial court did not obtain personal jurisdiction over Ms. Druxman and therefore was not able to require her to take action by depositing

money into the court registry or filing a declaration. For these reasons, Ms. Druxman asks this court to quash the writ of restitution, vacate the default judgment, and remand this case to the trial court for further proceedings.

DATE: May 12, 2014.

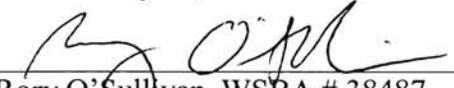


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I certify that today I caused a copy of this Brief of Appellant to be served on the following people in the manner indicated below:

Raymond Walters 9728 Greenwood Ave N. Ste A Seattle, WA 98103-3054 rjwalters634@gmail.com <i>Attorney for Snowdon Association, LLC</i>	<input type="checkbox"/> U.S. mail, first-class postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> By legal messenger <input checked="" type="checkbox"/> By email, per prior consent
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DATE: May 12, 2014.



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