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COURT OF APPEALS DIV 1
STATE OF WASHINGTON

COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION ONE

DEBORAH J. PIMENTEL,

Plaintiff and Appellant,

NO. 72046-5

v.

**APPELLANT'S OPENING
BRIEF**

GORDON LUND, Individually and dba
LUND HANDYMAN SERVICES;
AMERICAN CONTRACTORS' INDEMNITY
COMPANY, et al.,

Defendants and Respondents.

_____ /

Deborah J. Pimentel, Appellant
32606 6th Avenue SW
Federal Way, WA 98023
253 878 5967
In Pro Per

Yusen & Friedrich
215 NE 40th Street, Suite C-3
Seattle, WA 98105
206 545 2123
Attorneys for Respondent
American Contractors' Indemnity Company

Gordon Lund
26725 191st Place SE
Covington, WA 98042
253 631 4437
Defendant, *In Pro Per*

BRIEF OF DEBORAH J. PIMENTEL, APPELLANT

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A. ASSIGNMENT OF ERROR

1. The trial court erred in entering the order of May 2, 2014, granting defendant ACIC's Motion to Strike plaintiff Pimentel 's Request for *Trial de Novo*, Dismissing ACIC and Granting ACIC attorney's fees therefor.

Issues Pertaining to Assignments of Error

Is a party entitled to three extra days in which to file a Request for Trial de Novo after arbitration if the arbitration award is served by mail? **ANSWER: YES**

B. STATEMENT OF THE CASE

On March 4, 2014, Allen Hendricks, the Arbitrator in this matter, filed and served by mail his Decision. **(CP 17)** On March 26, 2014, Pimentel filed her Request for *Trial de Novo* along with Proof of Service by Mail dated March 25, 2014. **(CP 18)**

On April 21, 2014, American Contractors' Indemnity Company (ACIC) filed and served a Motion to Strike Request for *Trial de Novo* and Motion to Dismiss. **(CP 42)** After a Hearing and Oral Argument, ACIC's motions were granted on May 2, 2014 **(CP 29)** and Attorney's Fees therefor were granted on May 29, 2014. **(CP 44)** The Motion to Dismiss was granted on the grounds that the Request for *Trial de Novo* was not filed within 20 days from the filing date of the Arbitrator's Decision.

C. SUMMARY OF ARGUMENT

In the present case, the Arbitrator mailed his Award with Proof of Service on March 4, 2014. Service was not complete until March 7, 2014. Plaintiff had until 20 days thereafter to file and serve the Request for Trial de Novo, or March 27, 2014; because Pimentel filed her Request for Trial de Novo on March 26, 2014, it was timely

1 filed and Pimentel's Request for Trial de Novo should have been granted and ACIC's
2 Motion To Dismiss should have been denied.

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4 **D. ARGUMENT**

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6 Under the Mandatory Arbitration Rules, all pleadings and other papers are
7 to be served in accordance with Superior Court Civil Rule (CR) 5 after a case is
8 assigned to an arbitrator. MAR 1.3(b)(2). CR 5 provides that service on an attorney or
9 party shall be made by personal delivery or mail. CR 5(b)(1). The rule provides that
10 proof of service by mail "may be by written acknowledgment of service, by affidavit of
11 the person who mailed the papers, or by the certificate of an attorney." CR 5(b)(2)(B).
12 Proof of service by mail is not deemed complete until the third day after mailing. CR
13 5(b)(2)(A). CR 6(e) states that three days shall be added to the prescribed period in
14 which a party must act.
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19 **RULE 1.3**
20 **RELATIONSHIP TO SUPERIOR COURT JURISDICTION**
21 **AND OTHER RULES**

22 (a) Superior Court Jurisdiction. A case filed in the superior court
23 remains under the jurisdiction of the superior court in all stages of the
24 proceeding, including arbitration. Except for the authority expressly given
25 to the arbitrator by these rules, all issues shall be determined by the
26 court.

27 (b) Which Rules Apply.

28

(2) **Service.** After a case is assigned to an arbitrator, all pleadings
and other papers shall be served in accordance with CR 5 and filed with the
arbitrator.

(3) **Time.** Time shall be computed in accordance with CR 6(a) and (e).
(Emphasis added.)

1 **RULE CR 5** provides in pertinent part:

2 **SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

3 (b)(2) Service by Mail.

4 (A) How made. If service is made by mail, the papers shall be deposited
5 in the post office addressed to the person on whom they are being served,
6 with the postage prepaid. The service shall be deemed complete upon the
7 third day following the day upon which they are placed in the mail, unless
8 the third day falls on a Saturday, Sunday or legal holiday, in which event
9 service shall be deemed complete on the first day other than a Saturday,
10 Sunday or legal holiday, following the third day. (Emphasis added.)

11 **RULE CR 6(e)** provides:

12 "Additional Time After Service by Mail. Whenever a party has the
13 right or is required to do some act or take some proceedings within a
14 prescribed period after the service of a notice or other paper upon him and
15 the notice or paper is served upon him by mail, 3 days shall be added to
16 the prescribed period." (Emphasis added.)

17 In **Brackman v. City of Lake Forest Park**, the Court stated:

18 "First, the City argues that proof of service by mailing under CR 5(b)(2)(B)
19 does not apply to the filing requirements under MAR 7.1(a). We disagree. MAR
20 1.3(b)(2) states, "After a case is assigned to an arbitrator, all pleadings and other
21 papers shall be served in accordance with CR 5 and filed with the arbitrator." CR
22 5 states that service on an attorney or party shall be made by personal delivery
23 or mail. CR 5(b)(1). CR 5(b)(2)(B) addresses the requirement for proof of service
24 by mail. CR 5(b)(2)(B) states, in pertinent part: 'Proof of service of all papers
25 permitted to be mailed may be by written acknowledgment of service, by affidavit
26 of the person who mailed the papers, or by certificate of an attorney.'" [262 P.3d
27 116, 119 (Wash. Ct. App. 2011)]

28 **RULE MAR 7.1** provides in pertinent part:

REQUEST FOR TRIAL de NOVO

(a) Service and Filing. Any aggrieved party not having waived the right to
appeal may request a trial de novo in the superior. Any request for a
trial de novo must be filed with the clerk and served, in accordance
with CR 5, upon all other parties appearing in the case within 20 days
after the arbitrator files proof of service of the later of: (1) the award or
(2) a decision on a timely request for costs or attorney fees. A request

1 for a trial de novo is timely filed or served if it is filed or served after the
2 award is announced but before the 20-day period begins to run. The
3 20-day period within which to request a trial de novo may not be
4 extended.

5 **RCW 7.06.050**, from which **MAR 7.1** is derived, states in pertinent part:

6 (1) Following a hearing as prescribed by court rule, the arbitrator shall file
7 his or her decision and award with the clerk of the superior court,
8 together with proof of service thereof on the parties. Within twenty days
9 after such filing, any aggrieved party may file with the clerk a written
10 notice of appeal and request for a trial de novo in the superior court on
11 all issues of law and fact. Such trial de novo shall thereupon be held,
12 including a right to jury, if demanded.

13 In **Alvarez v. Banach**, 153 Wash.2d 834, 837-838, 109 P.3d 402 (2005),
14 the Court held that the requirements of CR 5 govern proof of service under MAR 7.1
15 and that CR 5(b)(2)(B), which adds three days to the time period in which one must act,
16 applies to proof of service by mail.

17 In **Seto v. American Elevator**, 159 Wash.2d 767, 776, 154 P.3d 189 (2007) the
18 Washington Supreme Court, *En Banc*, held that the 20-day period to request a *trial de*
19 *novo* begins once service of the arbitration award is complete, *i.e.* **upon the third day**
20 **after mailing when the service is by mail.** In so holding the Court stated:

21 “Requiring completion of service before the 20-day period begins also
22 serves to prevent the injustice that Seto pointed out: to rule otherwise would give
23 people served personally longer to appeal than people served by mail. Allowing
24 service by mail affords a convenience to the server; it should not penalize the
25 party receiving service by mail by shortening the period for response. This
26 concern is reflected in Superior Court Civil Rule (CR) 6(e), **which provides**
27 **three additional days for responses to papers served by mail.** . . . Having
28 concluded that service must be complete before the 20-day period begins, we
next address when service should be considered complete. MAR 1.3(b)(1)
provides that the MAR, rather than the CR, governs arbitration procedure after a
case has been assigned to an arbitrator, “except where an arbitration rule states
that a civil rule applies.” MAR 1.3(b)(2) requires: “After a case is assigned to an
arbitrator, all pleadings and other papers shall be served in accordance with CR
5 and filed with the arbitrator.” Service requirements, such as acceptable forms
of service, are not addressed anywhere else in the MAR. Presumably, then, the

1 drafters of the MAR intended MAR 1.3(b)(2) to apply to all documents requiring
2 service under the MAR, regardless of whether filed by a party or by the arbitrator.
3 Therefore, service of an arbitration award is governed by CR 5. (Emphasis
4 added.)

5 The Seto Court then stated, "CR 5(b)(2) provides for service by mail. It
6 describes both how service by mail must be made and permissible forms of proof of
7 service by mail. It also specifically provides:

8 **'The service shall be deemed complete upon the third day following**
9 **the day upon which they are placed in the mail, unless the third day**
10 **falls on a Saturday, Sunday or legal holiday, in which event service**
11 **shall be deemed complete on the first day other than a Saturday,**
12 **Sunday or legal holiday, following the third day.'**

13 Thus, there is a presumption that service by mail is not complete until the
14 third day after mailing. **Jones v. Stebbins**, 122 Wash.2d 471, 477, 860 P.2d
15 1009 (1993)."

16 In stating its decision the Seto Court said "In this case, under the CR 5(b)(2)
17 presumption, the 20 days for filing a request for a trial de novo **would not have started**
18 **to run until May 1, 2004, three days after the arbitrator mailed the award** [on April
19 28, 2004]. Thus, the 20 days Seto had to file a request for a trial de novo began on
20 May 1 and ended on May 21. Because Seto filed that request, properly served, on
21 May 19, his request was timely." (*Ibid.*) (emphasis added.)

22 In the present case, the Arbitrator mailed his Award with Proof of Service on
23 March 4, 2014. Service was not complete until March 7, 2014. Plaintiff had until 20
24 days thereafter to file and serve the Request for Trial de Novo, or March 27, 2014;
25 because Pimentel filed her Request for Trial de Novo on March 26, 2014, it was

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1 timely filed and Pimentel's Request for Trial de Novo should have been granted and
2 ACIC's Motion To Dismiss should have been denied.

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4 **E. CONCLUSION**

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6 The lower Court erred when it granted ACIC's Motion to Strike Pimentel's
7 Request for Trial de Novo, entered a Dismissal of the Action and entered a Judgment of
8 attorney's fees therefor. The Court's decision should be reversed, the matter should be
9 reinstated and Appellant's Motion for Trial de Novo granted.

10
11 October 17, 2014

12
13 Respectfully submitted,

14 
15
16 Deborah J. Pimentel
17 Appellant In Pro Per

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2 **APPELLATE COURT OF WASHINGTON**
3 **DIVISION ONE**

4 No. **72046-5**

5 **CERTIFICATE OF SERVICE**

6 Deborah J. Pimentel,

7 Appellant,

8 vs.

9 ACIC,

10 Respondents.

11 **CERTIFICATE OF SERVICE**

12 I certify under penalty of perjury under the laws of the State of Washington that, on the
13 date stated below, I did the following:

14 On the 18th day of October, 2014, I mailed by regular U.S. Mail, postage
15 prepaid, a true copy of the Appellant's Opening Brief as follows:

16 Yusen & Friedrich, 215 NE 40th Street, Suite C-3, Seattle, WA 98105;

17 Gordon Lund, 26725 191st Place SE, Covington, WA 98042;

18 Dated this 18th day of October, 2014, in Federal Way, WA.

19 /s Deborah J. Pimentel
20 (Signature)

