

# WASHINGTON CASE UPDATE

## Surprise Default Judgment, Now What?

From the desk of Kyle Riley: A company in bankruptcy was taken by complete surprise when it received notice of a default judgment of almost \$2.2 million against it. Read on to learn why the default judgment was vacated.

**Claims Pointer:** Default judgments can be vacated on a number of grounds, but CR 60(b)(1) provides an opportunity to vacate when (1) the moving party has evidence supporting a *prima facie* defense, (2) the failure to timely appear and answer was due to a mistake, inadvertence, surprise, or excusable neglect, (3) the defendant acted with due diligence after notice of the default judgment, and (4) the plaintiff will not suffer a substantial hardship if the default judgment is vacated.

case in point...

Ha v. Signal Electric, Inc., --- P.3d ----, No. 90723-1-1 (Wash.App. Div. 1 Jul. 14, 2014)

Judy Ha (Ha) sued Signal Electric and Juanita Mars (Mars), after Mars, who was driving while intoxicated, hit Ha as she walked across an intersection at night. At the time of the accident, Signal Electric was installing a new light at the intersection. The crosswalk was unmarked and void of traffic or pedestrian signals. Ha suffered serious injuries as a result of the accident.

When suit was initiated, Signal Electric was in Chapter 11 bankruptcy, which precluded collection efforts. Ha filed a motion with the bankruptcy court and received permission to continue suit against Signal Electric, but her collection efforts were limited to Signal Electric's insurance policy. Ha then contacted Signal Electric's bankruptcy counsel, J. Todd Tracy (Tracy), to see if Tracy would accept service on behalf of Signal Electric, as Signal Electric's registered agent was in poor health. Tracy conferred with Signal Electric's appointed bankruptcy financial advisor, Louise Tieman. The two agreed that Tracy should accept service and, once service was complete, Tracy forwarded the summons and complaint to Tieman. Tieman, believing that Alaska National Insurance (ANI) was Signal Electric's insurance carrier at the time of the accident, forwarded the pleadings on to ANI. In fact, Berkley North Pacific (BNP) was the appropriate insurance company. ANI never contacted Tieman or Signal Electric about the lawsuit.

Ha's attorney eventually contacted Tracy requesting an answer to Ha's complaint. When Tracy did not respond, Ha filed a motion for order of default against Signal Electric. The trial court granted Ha's motion for default and, a few months later, entered a default judgment against Signal Electric in Ha's favor for nearly \$2.2 million. Ha forwarded

the default judgment to Signal Electric and BNP's appointed defense counsel. At trial, Signal Electric argued that the default judgment was void under CR 60(b)(5), CR 60(b)(1), and CR 60(b)(11). The court granted Signal Electric's motion to vacate, but did not specify on what grounds. Ha appealed.

The Division One Washington Court of Appeals noted that default judgments are generally disfavored in Washington and that it could affirm the trial court on any grounds supported by the record. The court first considered Signal Electric's argument that the default judgment was void under CR 60(b)(5) for lack of personal jurisdiction. Although Tracy was not Signal Electric's general counsel, Tracy had express authority from Signal Electric to take any action necessary to protect and preserve Signal Electric's bankruptcy estate. In light of the broad authority given to Tracy, the court concluded that Tracy had authority to accept service of process. As such, the default judgment was not void under CR 60(b)(5) for lack of personal jurisdiction.

The court next turned to Signal Electric's argument that service was void under CR 60(b)(1). To succeed on a motion to vacate under CR 60(b)(1), the moving party must show: (1) that there is substantial evidence supporting a *prima facie* defense; (2) that the failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect; (3) that the defendant acted with due diligence after notice of the default judgment; and (4) that the plaintiff will not suffer a substantial hardship if the default judgment is vacated.

In addressing the first element, Signal Electric claimed that Mars was the sole cause of the accident. Signal Electric submitted evidence indicating that Mars was extremely drunk, in addition to Mars' own



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admission that she was not focusing on driving and failed to slow as she approached the intersection. The court reasoned that this evidence was enough to support Signal Electric's *prima facie* defense.

Regarding the second element, Signal Electric claimed that their failure to appear and answer was a mistake. Neither Tracy nor Tieman were general counsel or office employees. As such, the mistake was the result of a misunderstanding; Tieman had mistakenly forwarded the pleadings to the wrong insurance company. The facts satisfied the second element to vacate a default judgment under CR 60(b)(1).

Turning to the due diligence requirement, the court noted that what constitutes a reasonable time for filing a motion to vacate depends on the unique facts and circumstances of a case. Here, Signal Electric began collecting depositions immediately after they entered a special notice of appearance and shortly after receiving notice of the default judgment. According to the court, Signal Electric has acted diligently and within a reasonable timeframe.

Finally, the court determined that the delay in trying the case on its merits would not substantially prejudice Ha and that the possibility of bearing some expenses would not be viewed as a substantial hardship. Having met the requirements to vacate a default judgment under CR 60(b)(1), the Division One Washington Court of Appeals affirmed the trial court's decision to vacate the default judgment against Signal Electric.



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