

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/1/2024 4:03 PM  
BY ERIN L. LENNON  
CLERK

Supreme Court No. \_\_\_\_\_

Case #: 1030185

SUPREME COURT  
OF THE STATE OF WASHINGTON

-----  
No. 85105-5-I

WASHINGTON STATE COURT OF APPEALS  
DIVISION I

---

In the Receivership of:  
CASTLE WALLS LLC.

JOHANSEN CONSTRUCTION COMPANY,  
LLC,

*Petitioner,*

v.

REVITALIZATION PARTNERS, LLC,

*Respondent/Receiver.*

---

**PETITION FOR REVIEW**

---

Michael B. King, WSBA No. 14405  
Gregory M. Miller, WSBA No. 14459  
James E. Lobsenz, WSBA No. 8787  
John R. Welch, WSBA No. 26649

CARNEY BADLEY SPELLMAN, P.S.  
701 Fifth Avenue, Suite 3600  
Seattle, Washington 98104  
Telephone: (206) 622-8020

*Attorneys for Johansen Construction Company, LLC*

## TABLE OF CONTENTS

	<u>Page</u>
APPENDIX .....	v
TABLE OF AUTHORITIES .....	vi
A. Identity of Petitioner and Decision Below. ....	1
B. Issues Presented for Review.....	2
1. <u>Fundamental Elements of Receivership Law:</u> Did the Court of Appeals err in concluding that a 2004 recodification of receivership statutes abrogated this Court’s prior decisions ( <i>Morse Electro Products Corp. v.</i> <i>Beneficial Industrial Loan Co.</i> , 90 Wn.2d 195, 198, 579 P.2d 1341 (1978), <i>Roebings</i> <i>Sons Co. v. Frederickson Logging &amp;</i> <i>Timber Co.</i> , 153 Wash. 580, 585, 280 P. 93 (1929), and <i>Western Electric Co., Inc. v.</i> <i>Norway Pacific Constr. &amp; Drydock Co.</i> , 124 Wash. 49, 213 P. 686 (1923)), recognizing that a Receiver stands in the shoes of its insolvent and therefore cannot exercise authority over property in which its insolvent had no lawful interest? RAP 13.4(b)(1), (4).....	2
2. <u>Receivership Turnover Statute And</u> <u>Receiver’s Authority:</u> If the insolvent stole funds, does a court err if it allows a Receiver, who merely “stands in the shoes of its insolvent,” to effectively steal the money a second time via the turnover statute, RCW 7.60.070? RAP 13.4(b)(4). ....	2

3. Applicable Law For Receiverships: Does a Receiver have any authority over property which the insolvent obtained by stealing it? When deciding whether the property was obtained improperly, by fraud, theft or larceny, given the command of RCW 7.60.060(2)(b) “to comply with state law” must the court apply the definitions provided by the Washington criminal code and Washington case law? Or may a court apply federal bankruptcy law to let the Receiver repeat the insolvent’s theft to the benefit of the insolvent’s secured creditor? RAP 13.4(b)(4)..... 2

C. Statement of the Case. .... 3

1. General contractor Johansen sent joint checks to its subcontractor Castle Walls, to pay Castle Walls and its supplier Automatic Wilbert. The checks required the signature of both Castle Walls and Automatic Gilbert. Castle Walls misappropriated all the money sent by Johansen by fraudulently tendering the checks to its bank without Automatic Gilbert’s signature and then -- after its bank erroneously deposited the funds into Castle Walls account – converting all of the funds to its own use, leaving Automatic Gilbert unpaid the money it was owed. After Automatic Gilbert placed a lien on the Project, Johansen terminated Castle Walls for breach of contract and successfully

**Page**

completed the Project after obtaining a release of Automatic Gilbert’s lien. .... 3

2. Castle Walls assigned all its property to Realization Partners, LLC, which was subsequently appointed the Receiver to Castle Walls by the Superior Court. The automatic stay was entered on July 29, 2022. Castle Walls’ bank, confronted by Johansen’s bank after discovery of the fraud with having deposited the checks into Castle Walls’ account without the required signature of Automatic Gilbert, belatedly reversed the deposits and returned Johansen’s monies to Johansen..... 7

3. The Receiver’s demand for turnover by Johansen of “accounts receivable” allegedly due Castle Walls under the Subcontract as “Estate Property” ignored the fraudulent negotiation of the joint checks and the earlier termination of Castle Walls. .... 8

4. Superior Court proceedings..... 9

5. Court of Appeals decision. .... 12

D. Why This Court Should Grant Review. .... 15

1. The scope of and limitations on receiverships under long-established Washington law. .... 15

2. Review should be granted per RAP 13.4(b)(1) & (4) to decide whether the Court of Appeals erred in determining the

**Page**

legislature changed long-standing law on receiverships in its 2004 recodification such that this Court’s cases holding a receiver “stands in the shoes” of the insolvent were overruled, permitting disregard of those decisions and of an insolvent’s contract rights on the date of the assignment..... 17

3. Review is appropriate under RAP 13.4(b)(4) to confirm what constitutes property of a receivership estate under RCW 7.60.005(9) and is therefore subject to the summary turnover statute, and whether state law or federal bankruptcy law governs, particularly where property is obtained by theft or fraud..... 23

E. Conclusion. .... 26

## APPENDIX

Page(s)

**Appendix:** Court of Appeals Decision (4/1/24) .....A-1 to A-21

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Washington Cases</b>	
<i>Bank of the West v. Wes-Con Dev't. Co., Inc.</i> , 15 Wn. App. 238, 548 P.2d 563 (1976) .....	21, 25
<i>Frye &amp; Co. v. Boltman</i> , 182 Wash. 447, 47 P.2d 839 (1935).....	21, 25
<i>In re Receivership of Applied Restoration</i> , ___ Wn. App.2d ___, 539 P.3d 837 (2023), <i>petition for review pending</i> , No. 102883-1 .....	11, 13, 14
<i>In re the Receivership of Castle Walls, LLC</i> , __ Wn. App.2d __, 545 P.3d 816 (2024) .....	<i>passim</i>
<i>Morse Electro Prods. Corp. v. Beneficial Indus. Loan Co.</i> , 90 Wn.2d 195, 579 P.2d 1341 (1978) .2, 14, 15, 16, 17, 18, 20	
<i>Roebblings Sons Co. v. Frederickson Logging &amp; Timber Co.</i> , 153 Wash. 580, 280 P. 93 (1929) .....	2, 17, 18, 20
<i>St. John Medical Center v. State ex rel. Dept. of Social and Health Services</i> , 110 Wn. App. 51, 38 P.3d 383 (2002). .....	23
<i>State v. Hermann</i> , 138 Wn. App. 596, 158 P.3d 96 (2007) .....	21, 25
<i>State v. Mermis</i> , 105 Wn. App.738, 20 P.3d 1044 (2001) .....	21, 25

**Page(s)**

*Walton v. Severson*,  
100 Wn.2d 446, 670 P.2d 639 (1983) ..... 18, 20

*Western Electric Co., Inc. v. Norway Pacific  
Constr. & Drydock Co.*, 124 Wash. 49, 213 P.  
686 (1923) ..... 2, 17, 18, 20

**Constitutional Provisions, Statutes and Court Rules**

2004 Laws, ch. 165, § 1 ..... 19-20

Final Bill Report, SSB 6189, available at  
<https://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Bill%20Reports/Senate/6189-S.FBR.pdf?q=20240428014438> (last viewed  
4/28/24)..... 15, 16, 19, 20

RAP 13.4(b)(1) ..... 2, 17, 18

RAP 13.4(b)(4) ..... 2, 17, 19, 23, 26

RAP 18.17 ..... 26

RCW 7.08.030 ..... 16

RCW 7.60.005(9) ..... 16, 23

RCW 7.60.025 ..... 16

RCW 7.60.060(2)(b)..... 2, 24

RCW 7.60.070 ..... 2, 9, 10, 13

RCW 7.60.110 ..... 14

RCW 10.79.050 ..... 21, 25



**Page(s)**

**Other Authorities**

65 AM. JUR. 2D RECEIVERS § 5, “Purpose and  
Objective of Receiverships,” (2024 update) ..... 15

**A. Identity of Petitioner and Decision Below.**

Petitioner Johansen Construction Company, LLC (“Johansen”), seeks review of Division One’s April 1, 2024, decision affirming an order that Johansen turnover \$228,863.83 to Respondent Revitalization Partners, LLC, the appointed receiver (“Receiver”) for the insolvent, Castle Walls, LLC, and awarding fees. *In re Receivership of Castle Walls, LLC*, \_\_\_ Wn. App.2d \_\_\_, 545 P.3d 816 (2024) (App. 1-21) (“Decision”).

The Receiver sought summary turnover of funds sent to Johansen alleged to be property of the Castle Walls receivership estate. Johansen argued the Receiver had no right to the money because it “stands in the shoes” of the insolvent who had no contract right to the money since it breached and did not do the work, and because it stole the money by depositing joint checks with only one signature. The trial court ordered payment to the Receiver and awarded fees. Johansen appealed and superseded the judgment. The Court of Appeals affirmed.

## B. Issues Presented for Review.

1. **Fundamental Elements of Receivership Law:** Did the Court of Appeals err in concluding that a 2004 recodification of receivership statutes abrogated this Court's prior decisions (*Morse Electro Products Corp. v. Beneficial Industrial Loan Co.*, 90 Wn.2d 195, 198, 579 P.2d 1341 (1978), *Roebblings Sons Co. v. Frederickson Logging & Timber Co.*, 153 Wash. 580, 585, 280 P. 93 (1929), and *Western Electric Co., Inc. v. Norway Pacific Constr. & Drydock Co.*, 124 Wash. 49, 213 P. 686 (1923)), recognizing that a Receiver stands in the shoes of its insolvent and therefore cannot exercise authority over property in which its insolvent had no lawful interest? RAP 13.4(b)(1), (4).
2. **Receivership Turnover Statute And Receiver's Authority:** If the insolvent stole funds, does a court err if it allows a Receiver, who merely "stands in the shoes of its insolvent," to effectively steal the money a second time via the turnover statute, RCW 7.60.070? RAP 13.4(b)(4).
3. **Applicable Law For Receiverships:** Does a Receiver have any authority over property which the insolvent obtained by stealing it? When deciding whether the property was obtained improperly, by fraud, theft or larceny, given the command of RCW 7.60.060(2)(b) "to comply with state law" must the court apply the definitions provided by the Washington criminal code and Washington case law? Or may a court apply federal bankruptcy law to let the Receiver repeat the insolvent's theft to the benefit of the insolvent's secured creditor? RAP 13.4(b)(4).

**C. Statement of the Case.**

- 1. General contractor Johansen sent joint checks to its subcontractor Castle Walls, to pay Castle Walls and its supplier Automatic Wilbert. The checks required the signature of both Castle Walls and Automatic Gilbert. Castle Walls misappropriated all the money sent by Johansen by fraudulently tendering the checks to its bank without Automatic Gilbert's signature and then -- after its bank erroneously deposited the funds into Castle Walls account -- converting all of the funds to its own use, leaving Automatic Gilbert unpaid the money it was owed. After Automatic Gilbert placed a lien on the Project, Johansen terminated Castle Walls for breach of contract and successfully completed the Project after obtaining a release of Automatic Gilbert's lien.**

In 2021, Johansen contracted for site improvement work on a private development project ("Project") and subcontracted with the now-insolvent, Castle Walls, to furnish and install retaining walls ("Subcontract").<sup>1</sup> Castle Walls in turn contracted with Automatic Wilbert Vault Co., Inc. ("Automatic Wilbert") to supply materials. CP 100 and cited declarations.

---

<sup>1</sup> See Johansen's trial brief, CP 100-108, and supporting declarations, and the Subcontract at CP 119-144.

Castle Walls eventually requested payment for work performed and, per the Subcontract, ultimately received three checks made out *jointly* to Castle Walls and Automatic Wilbert in November 2021 and February and March, 2022, totaling \$228,863.83. *Id.* Unbeknownst to Johansen, Castle Walls tendered each check to its bank “for deposit only” *without* Automatic Wilbert’s endorsement, *see* CP 146-148 (checks), and *without* otherwise paying Automatic Wilbert its share. CP 101; 114-115; 152-153 (lien). Castle Walls’ bank negotiated the checks rather than reject them for lack of the second signature. *See* CP 85 (Castle Walls bank statement belatedly noting “invalid endorsements” on 8/3/22, “deleting” the credits although the account was overdrawn).

Castle Walls requested a fourth payment on April 19 and provided Johansen with a waiver and “unconditional release of claims and liens”. CP 100; 114; 150 (release). Castle Walls certified it had been paid \$228,863.83 for labor, services, equipment, and material furnished to the Project through April

30, 2022; agreed to completely release any rights or claims against the Project through April 30; and further agreed to indemnify and defend Johansen from any claims from Castle Walls' failure to have satisfied its obligations. *Id.*

But Castle Walls never paid Automatic Wilbert its portion of the joint checks. Instead, it fraudulently converted all of the funds to its own use, by tendering the checks without Automatic's signature, CP 101; 114-115, and then withdrawing the funds when its bank failed to reject the improper tenders.

Consequently, on May 6, Automatic Wilbert recorded its lien for non-payment of \$127,574.75 for materials supplied to Castle Walls. CP 101; 152-153. When Johansen received the claim on May 12, it learned that Castle Walls had "failed to obtain Automatic Wilbert's endorsement and, instead, cashed the two-party checks, failed to pay Automatic Wilbert, and kept the funds for itself." CP 114-115. Johansen demanded that Castle Walls get the lien removed within two weeks without cost to Johansen or the Owner, and gave notice Castle Walls would be

charged for any costs and impacts from a failure to remove the lien, per the Subcontract. CP 155-156.

But Castle Walls took no steps to pay Automatic Wilbert or remove the lien. CP 115 ¶16. Johansen sent Castle Walls a Notice of Default giving it three days from receipt on June 10 to cure the default. CP 158-159;124 ¶Q (Subcontract). After no response and repeated calls, Johansen terminated the Subcontract for cause by letter notice dated July 22. CP 161; 124.

In the meantime, the Project needed to be completed. Johansen negotiated an agreement with and paid Automatic Wilbert to get the lien removed and allow the Project to resume after the lien claim stopped it. CP 102-03; 116; 163-167 (agreement). This required negotiating the price of the supplies and a commitment to expedite engineering, fabrication, and delivery. See CP 168.

Johansen thus filled the breach after Castle Walls' failure to ensure the Project was completed.

2. **Castle Walls assigned all its property to Realization Partners, LLC, which was subsequently appointed the Receiver to Castle Walls by the Superior Court. The automatic stay was entered on July 29, 2022. Castle Walls' bank, confronted by Johansen's bank after discovery of the fraud with having deposited the checks into Castle Walls' account without the required signature of Automatic Gilbert, belatedly reversed the deposits and returned Johansen's monies to Johansen.**

Castle Walls' assignment for the benefit of creditors was accepted by the Receiver on July 27, 2022. CP 1-7. Two days later the Receiver was appointed by the court, CP 20, putting the automatic stay in place a full week after Castle Walls was terminated.

Both the assignment and the appointment order specify that the Receiver received "all of assignor's property... including... contract rights". CP 5-6; 20 ¶A (Order).

The largest secured creditor is 1<sup>st</sup> Security Bank ("Bank") with secured claims over \$2,600,000. CP 8. 1<sup>st</sup> Security is also the bank that accepted the fraudulent tenders of the joint checks from Castle Walls, depositing the money from those checks into



Castle Walls' account even though they lacked the required signature from Automatic Wilbert.

As previously stated, the Bank reversed the amounts of the checks and debited Castle Walls' account when the Bank realized it had negotiated those checks without the required signature from Automatic Wilbert. Its return of money to Johansen's bank had to have been done out of the Bank's own funds, because the original monies had long since been withdrawn and spent by Castle Walls, as the Decision recognized. *See* Decision at 13, fn.6.

**3. The Receiver's demand for turnover by Johansen of "accounts receivable" allegedly due Castle Walls under the Subcontract as "Estate Property" ignored the fraudulent negotiation of the joint checks and the earlier termination of Castle Walls.**

On August 18, 2022, the Receiver's counsel and Johansen's counsel spoke regarding the Receiver's claim of its right to recover Castle Walls' equipment abandoned at the

Project site so that it could be sold at auction.<sup>2</sup> The Receiver first requested the funds as property of the receivership estate by email on August 31, 2022, because, it said, they represented “accounts receivable” due Castle Walls for invoices which had earlier been paid “but the deposits were reversed. As a result, the balance remains unpaid.” CP 89-90 (email).

Johansen declined, stating that, due to Castle Walls’ breaches of contract from fraudulently cashing the joint checks and failing to pay its supplier the Subcontract had been terminated, Johansen’s remedies accelerated, and when the Receiver “stepped into Castle Walls’ shoes” a week later it had no rights to “receivables” from Johansen under the Subcontract. CP 92 (email).

#### **4. Superior Court proceedings.**

The Receiver then filed for summary turnover of the funds under RCW 7.60.070, which presumes a moving receiver is

---

<sup>2</sup> CP 109-110, ¶2.

entitled to the property. CP 37-44. Ignoring the terms of the Subcontract and the pre-assignment termination, the Receiver asserted that because the payments had been reversed for invalid endorsement, Castle Walls' invoices "have reverted to being unpaid" so that "Johansen still owes the receivership estate" what it called "Owed Funds". CP 39.

Johansen responded that the funds sought "are not due to Castle Walls, are not an asset or property of the Receivership estate, and the Receiver has no claim over the funds." CP 99. Johansen then elaborated on the contract-based reasons why Castle Walls – and thus the Receiver – had no right to one penny of the funds. CP 99-108. Johansen challenged the Receiver's refusal to acknowledge Castle Walls' pre-appointment termination, or the effect of the fraudulent negotiation of the three checks, or the express provision of RCW 7.60.070 barring summary turnover if there is a bona fide dispute. *Id.*

The Receiver asserted for the first time on reply that "Johansen caused [the funds] to be withdrawn from Castle

Walls’ bank account and for that account to be overdrawn in that amount on August 3, 2022, after the appointment of the Receiver on July 29, 2022,” CP 179, asserting that Johansen was a wrongdoer for “causing” the funds to be transferred after the appointment of the receiver. Its allegation that Johansen violated the automatic stay became the focus of its arguments from then on, citing a superior court commissioner’s decision in a different case in support.<sup>3</sup>

Johansen’s Amended Opening Brief (“AOB”) to the Court of Appeals, at pp. 20-28, details the oral arguments in the trial court and the Court is respectfully directed there. Of particular import is that the Receiver’s position ignores the effect of the Subcontract as if its provisions do not apply; under that analysis the Receiver did not take Castle Walls’ assets and contract rights

---

<sup>3</sup> The superior court decision was from *In re Receivership of Applied Restoration*, \_\_\_ Wn.App.2d \_\_\_, 539 P.3d 837 (2023), *petition for review pending*, No. 102883-1 (“*Applied Restoration*”). Johansen addresses this case in the discussion of the Court of Appeals decision, *infra*.

subject to its breaches or termination. Indeed, the Receiver expressly argued that the funds acquired by Castle Walls' negotiation of the joint checks "are not stolen funds" and that "[t]he receiver does not step into Castle Walls' shoes." RP 15, quoted at AOB 23, fn. 21.

The trial court's order requiring turnover of all the funds to the Receiver was filed the day after the hearing and had no rationale. CP 221-222. Nor did the court give an indication of its reasons for the ruling during the hearing. See RP 23-38. Johansen appealed and has superseded the judgment.

##### **5. Court of Appeals decision.**

Johansen's central focus on appeal remained on the core principle of receiverships, including the critical limit on a receiver's authority that receivers "stand in the shoes" of the insolvent, with no less but also no more property than the insolvent had at the time of assignment—as held by three of this Court's cases, which were cited at pages 24 and 33 of Johansen's Amended Opening Brief ("AOB") and which Johansen has cited

to this Court in its first Issue at p.2 of this Petition. Johansen also focused on the fact Castle Walls had no rights to any funds from the joint checks (wherever they might have been) because they were stolen by being deposited without the required second signature, and thus were not estate property. And because the Receiver had no rights in the funds, it could not seek them by turnover under RCW 7.60.070 since, at minimum, there was a bona fide dispute over ownership.

The Receiver's argument asserted Johansen was a "bad actor" (supposedly like the contractor in *Applied Restoration, supra* n. 4), who allegedly violated the automatic stay by "causing" the disputed funds to be sent to it from the Castle Walls account after entry of the stay.

Evidently embracing the Receiver's claim, the Decision charged Johansen with post-appointment misconduct involving a supposed effort to jump the line of creditors. *See, e.g.*, Decision

at 17,<sup>4</sup> 19. It thus placed Johansen in the same “bad-actor” category for which the Decision’s author, Judge Hazelrigg, had recently admonished the contractor in *In re Receivership of Applied Restoration, supra, petition for review pending*.<sup>5</sup>

The Decision disposed of the fundamental “standing in the shoes” issue, which is central to any claimed violation of the automatic stay by Johansen, by concluding that principle no longer need be followed because of the 2004 recodification of the receivership statutes:

While our Supreme Court has previously noted that “the receiver stands in the shoes of the insolvent,” this does not end the inquiry. *Morse Electro Prods. Corp. v. Beneficial Indus. Loan Co.*, 90 Wn.2d 195, 198, 579 P.2d

---

<sup>4</sup> Stating that Johansen “took no action [based on improperly endorsed checks] until three business days after the court appointed a receiver, roughly two-and-a-half months” after Johansen’s May 16 demand letter referencing the improper endorsement, that thus it was Johansen who acted on August 3.

<sup>5</sup> Whether *Applied Restoration* was correctly decided or not, it has overlapping issues with this case about a receiver’s authority and application of the automatic stay of RCW 7.60.110, along with material factual differences. If the Court grants review in *Applied Restoration* it should grant review herein and consider the cases together to fully explicate the authority of receivers and application of the stay in these different circumstances.

1341 (1978). Not only has the legislature amended the receivership statute in the decades since *Morse* was published, but the blind application of such a rule would require this court to ignore the specific circumstances of the case, the equitable powers of the court, and the relevant provisions of the current receivership statute.

Decision at 11 (emphasis added). The Decision does not point to any statutory provision which makes such a major change.

**D. Why This Court Should Grant Review.**

**1. The scope and limitations on receiverships under long-established Washington law.**

Receiverships developed within equity under the common law to address financial difficulties and failures. *See* 65 AM. JUR. 2D RECEIVERS § 5, “Purpose and Objective of Receiverships,” (2024 update) (footnotes omitted). Receiverships thus are intended to be a flexible tool, but subject to supervision of the superior courts. The Final Bill Report for SSB 6189, the 2004 legislation, noted receiverships’ origins in Washington before statehood:



**Background:** A receiver is a person appointed by a court to take charge, as the court’s own agent, over property of a party....Washington's current receivership chapter consists of five sections, most of which were originally enacted by the Territorial Legislature over 150 years ago.<sup>6</sup>

Receiverships are premised on a general assignment for the benefit of creditors to the proposed receiver of all the insolvent’s property per RCW 7.08.030, after which the superior court makes the formal appointment per RCW 7.60.025. “Property” includes all legal and equitable right, title and interests of the insolvent assignor. RCW 7.60.005(9).

For this reason it has long been said that the receiver “steps into the shoes” of the assignor-insolvent – the receiver gets no less *but also no more* property rights than what the assignor had.

This Court has repeatedly recognized the importance of this principle. *See Morse Electro Products Corp. v. Beneficial Industrial Loan Co.*, 90 Wn.2d 195, 198, 579 P.2d 1341 (1978),

---

<sup>6</sup> Final Bill Report, SSB 6189, available at <https://lawfilesexxt.leg.wa.gov/biennium/2003-04/Pdf/Bill%20Reports/Senate/6189-S.FBR.pdf?q=20240428014438> (viewed 4/28/24).

*Roblings Sons Co. v. Frederickson Logging & Timber Co.*, 153 Wash. 580, 585, 280 P. 93 (1929), and *Western Electric Co., Inc. v. Norway Pacific Constr. & Drydock Co.*, 124 Wash. 49, 60, 213 P. 686 (1923).

2. **Review should be granted per RAP 13.4(b)(1) & (4) to decide whether the Court of Appeals erred in determining the legislature changed long-standing law on receiverships in its 2004 recodification such that this Court's cases holding a receiver "stands in the shoes" of the insolvent were overruled, permitting disregard of those decisions and of an insolvent's contract rights on the date of the assignment.**

Review should be granted due to the Decision's conflict with this Court's decisions holding that a receiver, as an assignee of an insolvent, "stands in the shoes of the insolvent" and has no more rights than the assignor-insolvent. The Decision expressly disregards this Court's decisions in *Morse Electro Prods. Corp.*, *Roblings Sons Co. v. Frederickson Logging & Timber Co.*, and *Western Electric Co., Inc. v. Norway Pacific Constr. & Drydock*

Co., and without even mentioning *Roblings* or *Western Electric*.<sup>7</sup> It does so on the assertion that

application of such a rule would require this court to ignore the specific circumstances of the case, the equitable powers of the court, and the relevant provisions of the current receivership statute.

Decision at 11. This ruling was made without citing a single statute, circumstance, or equitable power that the “stand in the shoes” principle supposedly tramples.

By rejecting *Morse*, *Roblings*, and *Western Electric*, the Decision rejected the fundamental principle of assignment law on which receiverships and those decisions are based: that the assignee, including a receiver, obtains no more and no less than the rights of the assignor.<sup>8</sup> The conflict with this Court’s decisions alone is sufficient to grant review per RAP 13.4(b)(1).

---

<sup>7</sup> Remarkably, the Decision references only the *Morse* decision and not *Roblings* or *Western Electric* even though they were placed squarely before the court in the AOB at 24 and 33.

<sup>8</sup> *E.g.*, *Walton v. Severson*, 100 Wn.2d 446, 455, 670 P.2d 639 (1983) (“assignee who receives full title and interest stands in the shoes of his assignor”).

Plus, this ruling is wrong. The text and history of the 2004 legislation show no such change was intended, justifying review per RAP 13.4(b)(4) to clarify and explain the law of receiverships.

Neither the legislation nor the legislative reports suggest such a major change was made. The Final Bill Report for SSB 6189 characterized the bill as a consolidation and codification of receivership statutes, most of which dated to Territorial days over 150 years ago, to put all the related statutes in one chapter.<sup>9</sup> The Purpose section states:

The purpose of this act is to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein.

---

<sup>9</sup> See Final Bill Report SB 6189 quoted *supra*. Its summary of the bill states: “The rules generally governing receivership proceedings are consolidated into a single chapter...”

The House Judiciary Committee’s Bill Analysis (2/19/02) summarizes that the bill: “Codifies, consolidates, and clarifies the various powers, duties, and procedures applicable to receivers and receiverships.” Bill reports are available at <https://app.leg.wa.gov/billsummary?BillNumber=6189&Year=2003&Initiative=false> (visited 4/28/24).

2004 Laws, ch. 165, § 1. The bill reports are in accord and show it passed unanimously.<sup>10</sup>

Until *this* Court or the legislature expressly says otherwise, the Receiver *did* step into Castle Walls' shoes; it had no less but no more lawful interest in any property than did Castle Walls on the date of assignment. *Morse Electro Products Corp.*, *supra*, 90 Wn.2d at 198; *Roblings Sons Co.*, 153 Wash. at 585; *Western Electric Co., Inc.*, 124 Wash. at 60. *Accord*, *Walton v. Severson*, 100 Wn.2d at 455.

As to the funds represented by the joint checks, because they were obtained fraudulently, long-settled Washington law holds that Castle Walls had *no lawful interest* in those funds at

---

<sup>10</sup> See the Final Bill Report, *supra*. The bill reports for SB 6189 (2003-04 Sessions), are available at <https://app.leg.wa.gov/billsummary?BillNumber=6189&Year=2003&Initiative=false> (last visited 4/28/24).

any time since “a thief does not take title to stolen property,”<sup>11</sup> assuming the funds were, in some fashion, still part of the Castle Walls bank account. But they weren’t. Which brings us to the next point on which the Decision errs.

Castle Walls’ “operating” bank account had a negative balance on August 1 before the “withdrawal” for invalid endorsement, *see* CP 85, and only \$3,478.84 on the date of assignment. CP 14 (property list ¶3). As the Decision recognized, the actual funds from those fraudulently negotiated checks had long since been sent out of that bank account.<sup>12</sup> If the

---

<sup>11</sup> *State v. Hermann*, 138 Wn.App. 596, 604, 158 P.3d 96 (2007) (“[A] thief does not take title to stolen property”); *State v. Mermis*, 105 Wn. App.738, 748, 20 P.3d 1044 (2001) (same); *Frye & Co. v. Boltman* 182 Wash. 447, 47 P.2d 839 (1935) (property obtained with forged check constituted larceny; no title had passed); RCW 10.79.050 (stolen property must be returned to the owner, ruling out good faith exceptions to holders of stolen property). *Accord, Bank of the West v. Wes-Con Dev’t. Co., Inc.*, 15 Wn. App. 238, 240, 548 P.2d 563 (1976) (“drawee bank may not debit a drawer’s account after paying a check with a forged payee’s endorsement.”).

<sup>12</sup> Decision at p. 13, fn. 6 (emphasis added):

(Footnote continued next page)

Receiver truly wanted *those* funds, it had to find to whom they had been disbursed shortly after Castle Walls' account was credited with them. Nothing in the record indicates any such attempt by the Receiver.

As pointed out repeatedly by Johansen in the trial court<sup>13</sup> and its appellate briefing,<sup>14</sup> the funds sent to Johansen after the Receiver was appointed were sent by Castle Walls' bank, 1<sup>st</sup> Security Bank. If anyone violated the automatic stay it was 1<sup>st</sup>

---

Here...the funds that Castle Walls deposited into its bank account had been spent by Castle Walls prior to the appointment of the receiver and thus, **there were no funds traceable from Johansen's payment to Castle Walls' bank account.**

This recognizes that whatever funds were sent to Johansen's account after July 29, 2022, were *not* Castle Walls' funds. Nor could Castle Walls or the Receiver have any right to them.

<sup>13</sup> *E.g.*, CP 107; RP 32-33 (“banking regulations require the banks to actually pay back amounts that are improperly transferred without proper endorsements on checks.... ***If there was any violation of the stay, it's the bank that did it, not Johansen.***”) (emphasis added).

<sup>14</sup> *E.g.*, AOB at 22-23; RB at 6, 13 (“If the Receiver has any complaint about the transmission of funds to Johansen, its complaint is with 1<sup>st</sup> Security Bank...not Johansen... an illegal transfer is void, as a matter of law.”).

Security for transferring funds on August 3, 2022, raising the question why the Receiver did not seek relief from the Bank.

**3. Review is appropriate under RAP 13.4(b)(4) to confirm what constitutes property of a receivership estate under RCW 7.60.005(9) and is therefore subject to the summary turnover statute, and whether state law or federal bankruptcy law governs, particularly where property is obtained by theft or fraud.**

Rather than use Washington law to construe the definition of estate property under RCW 7.60.005(9), and citing a 2002 Court of Appeals decision far beyond what that decision actually decided, the Decision embarked on an extended discussion of bankruptcy cases. Decision at 11-14.<sup>15</sup> But the receivership statutes do not invoke federal bankruptcy law or cases. Instead,

---

<sup>15</sup> The cited case does not support application of bankruptcy law here. While Division II did reference bankruptcy law as a possible source for guidance, it adopted the South Carolina courts' interpretation of "related to". See *St. John Medical Center v. State ex rel. Dept. of Social and Health Services*, 110 Wn.App. 51, 60, 38 P.3d 383 (2002). The decision thus does not in fact support the proposition that Washington courts should adopt bankruptcy law to define what constitutes "estate property" under our state law and receivership statutes.



in the context of defining the “Powers and duties of receiver generally,” the legislature specifically imposes on receivers (and thus on the judicial officers supervising them) “The duty to comply with state law”. RCW 7.60.060(2)(b) (emphasis added).

Not only is the citation of reliance on federal bankruptcy law suspect, so too is the Decision’s analysis at pages 12-13. It cites bankruptcy cases for the purpose of showing the insolvent has an interest in its *bank account* – something that Johansen does not dispute. What Johansen has disputed is whether the insolvent or the Receiver could have any legal or equitable interest in the *funds* sent to Johansen by Castle Walls’ bank, as to which Castle Walls could not have had a recognized legal or equitable interest under Washington law for at least two reasons: *first* the money actually sent to Johansen’s bank could only have been 1<sup>st</sup> Security Bank’s money since the account was overdrawn and there was no Castle Walls money to send; *second*, under settled Washington law, which *does* apply (RCW 7.60.060(2)(b)), Castle Walls never had any legal or equitable

interest in the funds it got from the joint checks (which are now gone) because they were fraudulently cashed and thus stolen – and so neither could the Receiver, standing in its shoes.<sup>16</sup>

Under the plain terms of the statutes, the automatic stay cannot reach anything that is not the insolvent's because the receiver takes *only* property that the insolvent has a legal or equitable interest in. But under settled Washington law, Castle Walls never had a lawful interest in the funds represented by the joint checks because it did not get the signature of the other party so that their deposit and negotiation were fraudulent and title never transferred to Castle Walls. *See* fn. 16. Further, as Johansen's reply brief explained at length and as discussed *supra*, footnote 16, the Washington decision of *Bank of the West*

---

<sup>16</sup> RCW 10.79.050 (stolen property must be returned to the owner); *Frye & Co. v. Boltman, supra*, (forged check constituted larceny, no title passed); *State v. Hermann*, 138 Wn. App. at 604, (no title to stolen property"); *State v. Mermis*, 105 Wn. App. at 748 (same).

and the principles related to theft and fraud apply, not federal bankruptcy law.

Review should be granted to clarify the authority of receivers under Washington law and whether Washington law or bankruptcy law applies to determine what constitutes estate property. RAP 13.4(b)(4).

**E. Conclusion.**

The Court should grant review for the reasons stated above and schedule argument.

This document contains 4,535 words, excluding the parts exempted from the word count by RAP 18.17.

Respectfully submitted this 1<sup>st</sup> day of May, 2024.

CARNEY BADLEY SPELLMAN, P.S.

By /s/ Michael B. King

Michael B. King, WSBA No. 14405

Gregory M. Miller, WSBA No. 14459

James E. Lobsenz, WSBA No. 8787

John R. Welch, WSBA No. 26649

*Attorneys for Johansen Construction Company,  
LLC*

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

<p><b>Attorneys for Receiver</b>                  John R. Knapp, P.C., WSBA No. 29343                  David C. Neu, WSBA No. 33143                  Miller Nash LLP                  2801 Alaskan Way, Suite 300                  Seattle, WA 98121                  (206) 624-8300  <i>Attorneys for Receiver Revitalization                  Partners, LLC</i>                  John.knapp@millernash.com                  David.neu@Millernash.com</p>	<p><input type="checkbox"/> U.S. Mail,                  postage prepaid  <input type="checkbox"/> Messenger  <input type="checkbox"/> email  <input checked="" type="checkbox"/> Other – via                  Portal</p>
<p>Attorneys for <i>Amicus Curiae</i> AGC and                  NUCA                  Brett M. Hill, WSBA No. 35427                  Ryanne S. Mathisen, WSBA No. 56000                  Ahlers, Cressman, &amp; Sleight PLLC                  1325 Fourth Avenue, Suite 1850                  Seattle, Washington 98101                  Telephone: (206) 287-9900                  Facsimile: (206) 934-1139                  Brett.hill@acslawyers.com                  Ryanne.mathisen@acslawyers.com</p>	<p><input type="checkbox"/> U.S. Mail,                  postage prepaid  <input type="checkbox"/> Messenger  <input type="checkbox"/> email  <input checked="" type="checkbox"/> Other – via                  Portal</p>

DATED this 1<sup>st</sup> day of May, 2024.

/s/ Elizabeth C. Fuhrmann  
Elizabeth C. Fuhrmann, Legal  
Assistant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Receivership of:

CASTLE WALLS, LLC.

JOHANSEN CONSTRUCTION  
COMPANY, LLC,

Appellant,

v.

REVITALIZATION PARTNERS, LLC,

Respondent.

No. 85105-5-I

DIVISION ONE

PUBLISHED OPINION

HAZELRIGG, A.C.J. — Johansen Construction Company LLC appeals the trial court’s revised order for turnover which required Johansen to pay \$228,863.88 to the court-appointed receiver, Revitalization Partners LLC, pursuant to the receivership statute, ch. 7.60 RCW. Because Johansen fails to show the trial court abused its discretion in revising the commissioner’s order for turnover of those funds, we affirm.

FACTS

On November 19, 2020, general contractor Johansen Construction Company entered into a subcontract agreement with Castle Walls LLC. Pursuant to the subcontract, Castle Walls agreed to construct a retaining wall for the “Proctor Willows” project (the project), which was owned by the Quadrant Corporation.

Under the terms of the subcontract with Johansen, Castle Walls was responsible for providing all supervision, materials, labor, supplies, and equipment. Castle Walls subcontracted with a supplier, Automatic Wilbert Vault Co. (AWVC), for block wall materials that it was to install on the project. Between September and December 2021, Castle Walls sent four invoices to Johansen; in total, Castle Walls requested \$228,863.84. Johansen paid those invoices in full with three checks: (1) \$82,108.21 issued on November 18, 2021; (2) \$79,826.22 issued on February 4, 2022; and (3) \$66,929.40 issued on March 18, 2022. Each check from Johansen contained the following language: "PAY TO THE ORDER OF Castle Walls, LLC. and Automatic Wilbert Vault Co., Inc." Castle Walls signed each of the checks and deposited the funds into its bank account without obtaining a signature from AWVC.<sup>1</sup>

On May 16, 2022, after receiving a claim of lien from AWVC based on nonpayment for block wall materials used in the project, Johansen sent a letter to Castle Walls in which it wrote that Castle Walls was past due on payments owed to AWVC in the amount of \$127,547.75. The letter also stated:

Joint [c]hecks issued to [Castle Walls] **and** AWVC by [Johansen] appear to have been deposited by [Castle Walls'] bank without proper endorsement by AWVC. While this issue may present specific issue for [Castle Walls'] [b]ank and result in potential violation of certain [b]anking [l]aws, it does not change [Castle Walls'] liability or duty to defend and indemnify the project [o]wner and/or [Johansen] from the AWVC [l]ien [c]laim.

On June 8, Johansen sent another letter in which it demanded that Castle Walls "remedy its default and pay AWVC in full for materials supplied to the [p]roject

<sup>1</sup> The checks were deposited on December 1, 2021, February 11 and March 25, 2022, respectively.

within three business days.” Johansen explained that, if Castle Walls failed to pay, the subcontract may be terminated and Castle Walls would be held responsible for “all expenses, costs and fees incurred to remedy the default and complete performance of the [s]ubcontract work.” Two weeks later, June 22, Johansen informed Castle Walls via e-mail and certified mail that it was terminating the subcontract for cause as Castle Walls had failed to pay AWVC in accordance with the subcontract and had not responded to Johansen’s “repeated requests, [or] return[ed] any phone calls or e[-]mails.”

On July 28, Castle Walls filed a petition in King County Superior Court for appointment of a general receiver pursuant to RCW 7.08.030 and requested that Revitalization Partners be assigned as general receiver over all Castle Walls’ assets. The following day, July 29, a commissioner of the court entered an order appointing Revitalization as the general receiver for Castle Walls. Under its plain language, “[i]mmediately upon entry” of the appointment order, any “person or entity in a position to exercise control over the [a]ssets [wa]s [t]hereby prohibited from obstructing, delaying, or interfering with the [r]eceiver in the performance of its duties or from taking any action purporting to transfer, encumber, or dispose of the [a]ssets or any portion of the [a]ssets.”

On August 3, Castle Walls’ bank reversed the three checks deposited into its business account based on an apparent determination that each one contained an “Invalid Endorsement [sic],” returning the total amount of \$228,863.83 to Johansen.<sup>2</sup> On August 31, after the deposits were reversed, Revitalization sent

<sup>2</sup> In support of its motion for turnover of the disputed funds, Revitalization included as an exhibit a copy of an August 2022 bank statement for a Castle Walls account that contains three



an e-mail to Johansen that requested the contractor return the \$228,863.83 by September 9, and explained the “funds will be deposited in the receiver’s account for distribution to creditors in accordance with orders of the court and the receivership statute.” Johansen refused to return the funds and stated that Castle Walls had cashed those checks without obtaining any endorsement by AWVC and without paying AWVC, which “resulted in Castle Walls being terminated for cause as of July 22, 2022.”

On November 16, Revitalization filed a motion for turnover of the disputed funds pursuant to RCW 7.60.005(9) and .060, and for attorney fees. On December 8, Johansen filed its response opposing the turnover motion and argued that the requested funds “are not due to Castle Walls, are not an asset or property of the [r]eceivership estate, and the [r]eceiver has no claim over the funds.” At the conclusion of the hearing on December 14, the commissioner granted Revitalization’s motion for turnover, in part, and issued a written order that required Johansen to pay \$101,289.08 into the court registry within 10 days. The commissioner did not award attorney fees.

On December 27, both parties filed motions for revision of the commissioner’s turnover order. Following a hearing on February 3, 2023, the trial

separate withdrawals on August 3, 2022. The first is in the amount of \$82,108.21 with a transaction description that reads, “Descriptive Withdrawal 12/1/22 DEP ADJ - CK # 25850 - Invalid Endorsement [sic].” This amount corresponds with the progress invoice Castle Walls submitted to Johansen in September 2021. The second withdrawal is listed as \$79,826.22 and the transaction description says, “Descriptive Withdrawal 2/11/22 DEP ADJ - CK # 26525 - Invalid Endorsement [sic].” The amount of this withdrawal matches the total of the progress invoices Castle Walls submitted to Johansen in October and November 2021. The third withdrawal amount is for \$66,929.40 with the transaction description listed as, “Descriptive Withdrawal 3/25/22 DEP ADJ - CK # 26865 - Invalid Endorsement [sic].” The amount of this third withdrawal is the same as that listed on the progress invoice from Castle Walls to Johansen in December 2021.

court granted Revitalization's motion for revision in full and ordered Johansen to pay Revitalization \$228,863.83. Pursuant to the revised order entered on February 6, if Johansen did not pay Revitalization within 30 days, Revitalization was entitled to present a judgment against Johansen in that amount plus interest. The trial court also awarded attorney fees and costs to Revitalization in accordance with LCR 7(b). On March 10, over 30 days after the trial court's order on revision was entered, Johansen had still not paid the \$228,863.83 and Revitalization moved for entry of judgment in that amount, plus interest. Johansen objected to Revitalization's proposed judgment and requested a continuance of the date for presentation of judgment. Ultimately, on April 13, 2023, the trial court entered judgment in favor of Revitalization and against Johansen for \$228,863.83. Further, pursuant to the revised turnover order, the trial court noted that Revitalization may apply for an award of attorney fees and costs.

Johansen timely appealed.

## ANALYSIS

### I. Statutory Framework for Receivership and Standard of Review

As “[c]hapter 7.60 RCW gives the trial court broad discretion over receiverships” and, “because a receivership is an equitable remedy,” this court reviews the trial court's decisions to both order turnover and enter judgment pursuant to a receivership under an abuse of discretion standard.<sup>3</sup> *Bero v. Name*

<sup>3</sup> Johansen contends the standard of review is de novo because the trial court did not make any findings of fact. For this proposition, it cites to RCW 2.24.050 and *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). Neither authority supports Johansen's contention and this court has already held the standard of review here is abuse of discretion.

*Intel., Inc.*, 195 Wn. App. 170, 175, 179, 381 P.3d 71 (2016); *In re Receivership of Applied Restoration, Inc.*, No. 84320-6-I, slip op. at 8 (Wash. Ct. App. Dec. 4, 2023), <https://www.courts.wa.gov/opinions/pdf/843206.pdf>. “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds” and the “trial court necessarily abuses its discretion if it applies the incorrect legal standard.” *Gillett v. Conner*, 132 Wn. App. 818, 822, 133 P.3d 960 (2006). Findings of fact and conclusions of law are not required in matters of equity and need not be included in the trial court’s receivership order. *MONY Life Ins. Co. v. Cissne Fam. LLC*, 135 Wn. App. 948, 952, 148 P.3d 1065 (2006) (citing *Clebanck v. Neely*, 163 Wash. 333, 335, 1 P.2d 239 (1931)).

As this court recently explained, “Receiverships are an equitable remedy, and trial courts are ‘accorded great flexibility in fashioning relief under their equitable powers.’” *Applied Restoration*, slip op. at 8 (quoting *Friend v. Friend*, 92 Wn. App. 799, 803, 964 P.2d 1219 (1998)). “These are not narrow powers.” *King County Dept of Cmty. & Hum. Servs. v. Nw. Defs. Ass’n*, 118 Wn. App. 117, 127, 75 P.3d 583 (2003). While equitable powers are to be exercised with restraint, courts “have wide latitude to respond to the particular circumstances presented.” *Id.*

A receiver is a “person *appointed by the court as the court’s agent*, and subject to the court’s direction, to take possession of, manage, or dispose of property of a person.” RCW 7.60.005(10) (emphasis added). General receivers are “appointed to take possession and control of all or substantially all of a person’s property with authority to liquidate that property and, in the case of a business over

which the receiver is appointed, wind up affairs.” RCW 7.60.015. Thus, a general receiver “has broad powers to manage the receivership property, liquidate assets, and satisfy creditors.” *Bero*, 195 Wn. App. at 175.

Pursuant to RCW 2.24.050, all commissioner rulings are subject to revision by the superior court. On a motion for revision, “the superior court reviews the commissioner’s decisions de novo based on the evidence and issues before the commissioner.” *In re Est. of Bernard*, 182 Wn. App. 692, 727-28, 332 P.3d 480 (2014). “Once the superior court makes a decision on revision, the appeal is from that decision.” *Faciszewski v. Brown*, 187 Wn.2d 308, 313 n.2, 386 P.3d 711 (2016). Thus, we review the superior court’s decision, not the commissioner’s ruling. *Bernard*, 182 Wn. App. at 728.

## II. Bona Fide Disputes and Procedural Requirements

Johansen first assigns error to the trial court’s revised order for turnover of the \$228,863.83 because “there was a bona fide dispute over whether [those funds] were assets of the [r]eivership [e]state.”<sup>4</sup> According to Johansen, due to this “bona fide dispute,” Revitalization was required to bring an adjunct proceeding under RCW 7.60.160 instead of moving for turnover pursuant to RCW 7.60.070. We disagree.

Under RCW 7.60.070, when a receiver demands turnover of estate property, “any person shall turn over any property over which the receiver has been

<sup>4</sup> On that same basis, Johansen assigns error to the trial court’s order requiring Johansen to pay the funds to Revitalization rather than placing them into the court registry.

appointed that is within the possession or control of that person unless otherwise ordered by the court for good cause shown.” This provision goes on to explain:

*A receiver by motion may seek to compel turnover of estate property unless there exists a bona fide dispute with respect to the existence or nature of the receiver’s interest in the property, in which case turnover shall be sought by means of an action under RCW 7.60.160. In the absence of a bona fide dispute with respect to the receiver’s right to possession of estate property, the failure to relinquish possession and control to the receiver shall be punishable as a contempt of the court.*

RCW 7.60.070 (emphasis added). Thus, the existence of a “bona fide dispute” is central to whether the receiver may seek to compel turnover under RCW 7.60.070 or whether the ownership of the property is to be determined in an adjunct proceeding under RCW 7.60.160.

Although Johansen dedicates a significant portion of briefing to its contention that Revitalization was required to bring an adjunct proceeding because of the assertion that there was a bona fide dispute over ownership of the funds, Johansen did not raise this argument before the commissioner or the trial court. Even assuming arguendo that there was a bona fide dispute as to these funds, nothing in the statute mandates that it is the sole responsibility of the receiver to either present such an issue or to initiate an adjunct proceeding on that basis. The language of RCW 7.60.160(1) is plain on its face: “The receiver has the right to sue and be sued in the receiver’s capacity as such.” Adjunct proceedings may be initiated “by or *against* the receiver.” RCW 7.60.160(2) (emphasis added). As the statute provides, any “action seeking to dispossess the receiver of any estate property or otherwise to interfere with the receiver’s management or control of any

estate property may not be maintained or continued unless permitted by order of the court obtained upon notice and a hearing.” RCW 7.60.160(1).

The plain language of the statute certainly envisions factual scenarios wherein a receiver may be presented with a challenge to a claim regarding an asset, by a creditor or a third party, which it may perceive as a bona fide dispute, triggering a requirement to initiate an adjunct proceeding under RCW 7.60.160 in order to litigate ownership. However, the mere fact that an adjunct proceeding is available demonstrates that the legislature did not intend for a receiver to be the final arbiter of whether a dispute is bona fide. Where, as here, the receiver clearly disagrees with a challenger to a claim over an asset, the plain language of the statute allows for the initiation of an adjunct proceeding “against a receiver” in order to establish that its dispute over the asset is bona fide. Briefing in the trial court and on appeal establishes that Revitalization did not consider the dispute over the funds to be bona fide as they had been credited to a bank account that was property of the receivership estate, and therefore subject to the stay, at the time of their removal.

Here, Johansen made a strategic decision against initiating an adjunct proceeding to litigate its claim of ownership over the funds. While it had the right to dispute the \$228,863.83 outside of the receivership case, Johansen chose to participate in the summary proceedings under RCW 7.60.070. Not once did it insist that an adjunct proceeding was required in order to determine ownership of the funds, effectively seeking a ruling on the question of whether the dispute it presented was in fact bona fide, nor did it move to initiate one. Instead, Johansen

waited until this appeal to argue that there was a bona fide dispute that necessitated a separate proceeding below. This court “will consider an issue raised for the first time on appeal if the claimed error is a manifest error affecting a constitutional right.” *Hiesterman v. Dep’t of Health*, 24 Wn. App. 2d 907, 913, 524 P.3d 693 (2022) (citing RAP 2.5(a)(3)). To satisfy RAP 2.5(a) and obtain review of an issue for the first time on appeal, “an appellant must show (1) the error is manifest, and (2) the error is truly of constitutional dimension.” *City of Seattle v. Long*, 198 Wn.2d 136, 155-56, 493 P.3d 94 (2021). Because Johansen does not even address RAP 2.5 in its opening brief, let alone attempt to establish that it could satisfy the two-part test required to raise an alleged error for the first time on appeal, we need not determine whether there was in fact a “bona fide dispute.”<sup>5</sup>

### III. Automatic Stay and Property of the Estate

Johansen next contends that the funds subject to the turnover order were not property of the estate pursuant to RCW 7.60.005(9) because they were not the property of Castle Walls. According to Johansen, the portion of the checks directed to AWVC was never property of Castle Walls and the portion directed to Castle Walls was no longer owed because Castle Walls breached the subcontract. Relying on the premise that “the [r]eceiver stands in the shoes of the debtor and

<sup>5</sup> In its reply brief, Johansen attempts to satisfy the standard under RAP 2.5 with its argument that the turnover order constituted an “unconstitutional taking.” However, this court “will not consider issues argued for the first time in the reply brief.” *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 78 n.20, 322 P.3d 6 (2014). Additionally, because Johansen’s “unconstitutional taking” argument was raised for the first time on appeal and Johansen fails to address RAP 2.5 until its reply brief, we do not reach the merits of that claim either. See *Hiesterman*, 24 Wn. App. 2d at 913; *Ainsworth*, 180 Wn. App. at 78 n.20.

has no more rights to the property than did the debtor,” Johansen concludes that Revitalization had no right to the funds here.

While our Supreme Court has previously noted that “the receiver stands in the shoes of the insolvent,” this does not end the inquiry. *Morse Electro Prods. Corp. v. Beneficial Indus. Loan Co.*, 90 Wn.2d 195, 198, 579 P.2d 1341 (1978). Not only has the legislature amended the receivership statute in the decades since *Morse* was published, but the blind application of such a rule would require this court to ignore the specific circumstances of the case, the equitable powers of the court, and the relevant provisions of the current receivership statute.

Pursuant to RCW 7.60.110(1)(c), the trial court’s appointment of a general receiver operates as an automatic stay, applicable to all persons, of “[a]ny act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property.” The estate is “the entirety of the property with respect to which a receiver’s appointment applies.” RCW 7.60.005(3). The property of the estate encompasses “all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired.” RCW 7.60.005(9). It also “includes any proceeds, products, offspring, rents, or profits of or from property in the estate.” *Id.*

As Washington case law on receiverships is limited and no case directly addresses “estate property” under RCW 7.60.005(9), we look to federal bankruptcy law for guidance. *St. John Med. Ctr. v. Dep’t of Soc. & Health Servs.*, 110 Wn.



App. 51, 60, 38 P.3d 383 (2002). Similar to the appointment of a receiver and the resulting estate, “filing for bankruptcy creates an estate which includes ‘all legal or equitable interests of the debtor in property as of the commencement of the case.’” *In re Castleman*, 75 F.4th 1052, 1056 (9th Cir. 2023) (quoting 11 U.S.C. § 541(a)(1)). As with RCW 7.60.005(9), the property of the estate in bankruptcy “also includes all ‘proceeds, product, offspring, rents, or profits of or from property of the estate.’” *Id.* (quoting 11 U.S.C. § 541(a)(6)). Numerous bankruptcy cases on which Revitalization relies hold that property of the estate includes the debtors’ interest in their bank accounts. See *In re Tumer Grain Merch., Inc.*, 557 B.R. 147, 150 (Bankr. E.D. Ark. 2016) (quoting 11 U.S.C. § 541(a)(1)) (“[A] debtor’s interest in a bank account on the petition date constitutes property of the debtor’s estate because property of the estate includes ‘all legal or equitable interests of the debtor in property as of the commencement of the case.’”); see also *In re Ruiz*, 455 B.R. 745, 749 n.13 (10th Cir. B.A.P. 2011) (“See, e.g., *In re Pyatt*, 486 F.3d 423, 427 (8th Cir. 2007) (“the funds transferred by the pre-petition checks are property of the estate’); *In re Brubaker*, 426 B.R. 902, 905 (Bankr. M.D. Fla. 2010), *aff’d*, 443 B.R. 176 (M.D. Fla. 2011) (‘both schools of thought agree that the funds are property of the estate’); *Yoon v. Minter-Higgins*, 399 B.R. 34, 42-44 (N.D. Ind. 2008) (holding money in the debtors’ bank account on the petition date became property of the estate); *In re Parsons*, No. 05-00321, 2006 WL 3354513, at \*1 (Bankr. S.D. Ind. Nov. 17, 2006) (‘Funds on deposit in a debtor’s checking account . . . on the petition date are property of the bankruptcy estate.’); *In re Schoonover*, No. 05-43662-7, 2006 WL 3093649, at \*2 (Bankr. D. Kan. Oct. 30, 2006) (‘This [c]ourt has located

eight decisions that address this issue. As a threshold matter, all eight decisions agree that the money in the checking account is property of the estate.’); *In re Spencer*, 362 B.R. 489, 491 (Bankr. D. Kan. 2006) (‘[T]he funds remained in the debtors’ possession and control at the date of the petition, were property of the estate, and were therefore subject to turnover.’); *In re Sawyer*, 324 B.R. 115, 121 (Bankr. D. Ariz. 2005) (‘Indeed, a review of [s]ection 541 provides that the collected funds in the [d]ebtor’s account became property of the bankruptcy estate either pursuant to [s]ection 541(a)(1) or (a)(2)[.]’); *In re Taylor*, 332 B.R. 609, 611 (Bankr. W.D. Mo. 2005) (‘property of the estate includes the funds in the account’); *In re Dybalski*, 316 B.R. 312, 316 (Bankr. S.D. Ind. 2004) (‘the [f]unds are property of the estate’)). Consistent with estate property in bankruptcy law, Revitalization insists that the funds in Castle Walls’ bank account constitute estate property under the receivership statute.<sup>6</sup>

Johansen points to a different bankruptcy case that it contends is more analogous to this situation, *In re Chapman*, 265 B.R. 796 (Bankr. N.D. Ill. 2001). In *Chapman*, United States Shippers Inc. (USSI) wrote a check for \$40,378.00, payable to Donnelly Transportation Inc., for services Donnelly performed for USSI. *Id.* at 819. The debtor, Chapman, a man who had no business relationship with

<sup>6</sup> Johansen states that merely “because money is in an account does not mean it belongs to the account holder.” In support of this assertion, it cites to *In re Marriage of Schwarz*, which explained that “[p]roperty *in the possession* of a married person is presumed to be community property ‘until the contrary is shown’ ” 192 Wn. App. 180, 189, 368 P 3d 173 (2016) (internal quotation marks omitted) (quoting *State ex rel. Marshall v. Superior Court*, 119 Wash. 631, 637, 206 P 362 (1922)). *Schwarz* noted that once a party establishes specific property is separate, the property “will retain that character as long as it can be traced or identified.” *Id.* at 190.

While Johansen’s statement is correct as to the cited cases, it falls short of addressing the circumstances at hand. Here, as Revitalization notes, the funds that Castle Walls deposited into its bank account had been spent by Castle Walls prior to the appointment of the receiver and thus, there were no funds traceable from Johansen’s payment to Castle Walls’ bank account.

USSI or Donnelly, and whose name did not appear anywhere on the check, endorsed the check and deposited it into his bank account. *Id.* Chapman also came into possession of two checks written by other individuals, the Smiths, who were refinancing their home, and those checks, which totaled approximately \$80,000.00, were payable to the IRS and a landscaping company. *Id.* at 820. Chapman added his name to those checks and deposited them into his bank account. *Id.* When Chapman's bank discovered all three checks were forged and unauthorized by each issuer, it restricted access to his account and returned the altered checks. *Id.* The court held that Chapman had no legal or equitable interest in the funds as "[p]roperty obtained by a debtor's fraud is not part of that debtor's estate." *Id.* at 821. Further, the court explained that the automatic stay could not have been violated because Chapman's bank returned the funds before he filed for bankruptcy protection. *Id.*

*Chapman* is distinguishable. Unlike Chapman, who had absolutely no affiliation with USSI, Donnelly, or the Smiths, obtained possession of their checks without authorization, and fraudulently altered the checks to place the funds into his bank account, Castle Walls was under contract with Johansen and Johansen sent the three checks to Castle Walls in response to invoices for work that Castle Walls had performed on the project pursuant to their subcontract. Moreover, unlike *Chapman*, an automatic stay under the receivership was in effect at the time that the funds were removed from Castle Walls' bank account which was then part of the receivership estate. Johansen explained that when it discovered that Castle Walls' supplier had not been paid, "Johansen pointed out to its bank that the

checks were cashed wrongfully because they weren't properly endorsed" and "the funds did go back to Johansen." While it is not disputed that Castle Walls did not obtain the endorsement of its supplier before depositing the checks in its account, Johansen acknowledged that, at the time of the payments, it owed Castle Walls \$101,289.08 for work completed on the project.

Johansen avers that, rather than bankruptcy law, this court should look to "the controlling authority on the effect of Castle Walls' cashing the two-party check with only one endorsement," which it contends is provided by *Bank of the West v. Wes-Con Development Co.*, 15 Wn. App. 238, 548 P.2d 563 (1976). There, a general contractor, subcontractor, and supplier were all engaged in a construction project. *Bank of the West*, 15 Wn. App. at 238. The general contractor issued a joint check to the subcontractor and its supplier, the subcontractor paid the supplier, but the supplier refused to endorse the check from the general contractor. *Id.* at 239. The subcontractor then forged the endorsement of the supplier and deposited the check into its bank. *Id.* The subcontractor's bank, Bank of the West, discovered that the check was fraudulently endorsed and returned the funds to the general contractor's bank, Bank of Everett. *Id.* Relying on articles 3 and 4 of the Uniform Commercial Code, the court explained that joint checks must be negotiated by all parties. *Id.* at 240. "Payment on a forged endorsement is a conversion" and "[a] forged endorsement is 'unauthorized' and wholly inoperative unless ratified." *Id.* (quoting former RCW 62A.1-201(43) (1965)).<sup>7</sup> Because the subcontractor deposited a check with a forged endorsement, and thus no

<sup>7</sup> The definition of "unauthorized signature" was moved from RCW 62A.1-201(43) to RCW 62A.1-201(41) when the statute was amended by the Laws of 2012, ch. 214, § 109.

negotiation occurred with the supplier as the other payee, the court held that Bank of the West could not charge the general contractor's account and that the Bank of Everett properly reccredited the funds to the general contractor. *Id.* at 240-41.

Johansen asserts that *Bank of the West* shows that Castle Walls' bank was required to return the funds to Johansen's bank because AWVC never endorsed the joint checks. While the holding does establish that a joint check must be endorsed by both payees under articles 3 and 4 of the UCC, that alone does not control the outcome of this case. *Bank of the West* did not deal with an automatic stay, which arises in bankruptcies and receiverships, but addressed a forged endorsement on a joint check, which is distinct from the incomplete endorsement here.

Further, while Johansen now attempts to rely on strict compliance with banking regulations as a basis to reverse the turnover orders, this argument by Johansen is undercut by the fact that the record before us contains at least two demand letters from Johansen to Castle Walls insisting that it pay AWVC what it was owed. The May 16, 2022 demand letter expressly notes the banking irregularities as to the checks and could be read as suggesting Johansen was willing to overlook noncompliance with the banking rules it now invokes as to the incomplete endorsement, so long as Castle Walls met its obligations under the subcontract and the lien was released:

Joint [c]hecks [checks 25850, 26525, 26865] issued to [Castle Walls] **and** AWVC by [Johansen] appear to have been deposited by [Castle Walls'] bank without proper endorsement by AWVC. While this issue may present specific issue for [Castle Walls'] [b]ank and result in potential violation of certain [b]anking [l]aws, it does not change

[Castle Walls'] liability or duty to defend and indemnify the project [o]wner and/or [Johansen] from the AWVC [l]ien [c]laim.

It is noteworthy that, while the May 2022 demand letter establishes that Johansen was well aware of the banking implications of the endorsement issue as of that date at the latest, it took no action as a result of this knowledge until three business days after the court appointed a receiver, roughly two-and-a-half months later.<sup>8</sup> When it entered its ruling on revision of the commissioner's turnover order, the trial court had before it evidence of Johansen's knowledge of the endorsement issue and the chronology of events with regard to the reversal of the deposits. More critically, even if we assume that Castle Walls' bank was required to return the funds and that the checks were invalid without AWVC's endorsement, those facts alone do not answer the question of whether the trial court erred in exercising its broad equitable powers in response to the particular circumstances of this case. See *King County*, 118 Wn. App. at 127 (explaining flexibility of court's equitable powers in receivership actions). Contrary to Johansen's contention, *Bank of the West* does not control the outcome of the trial court's order requiring turnover pursuant to the receivership statute.

Because the receivership statute broadly defines estate property to include "all right, title, and interests, both legal and equitable, . . . with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired," RCW 7.60.005(9), the

<sup>8</sup> The date the receiver was appointed, July 29, 2022, was a Friday. The deposits were reversed on Wednesday, August 3, 2022.

trial court did not err in concluding that the funds in Castle Walls' bank account at the time the receiver was appointed were property of the estate.<sup>9</sup>

Although the checks were not endorsed by AWVC when Castle Walls deposited them into its account, at the time Johansen made the progress payments to Castle Walls and AWVC, Johansen owed those funds to Castle Walls and AWVC. Further, the funds had been credited to Castle Walls' bank account well before the receiver was appointed, thus implicating the stay pursuant to the receivership statute and the broad equitable powers of the trial court as to remedies. Based on the circumstances here, the evidence provided the trial court with tenable grounds on which to grant the receiver's motion for revision and, thus,

<sup>9</sup> The Associated General Contractors of Washington (AGC) and National Utility Contractors Association of Washington (NUCA) filed a joint brief of amicus curiae in support of Johansen. In arguing that Castle Walls was not entitled to the funds that it deposited into its bank account, amici rely on a recent unpublished case from Division Two of this court, *Jennings v. Rasmussen*, No. 55966-8-II, slip op. (Wash. Ct. App. Nov. 29, 2022) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2055966-8-II%20Unpublished%20Opinion.pdf>, review denied, 1 Wn.3d 1013 (2023). This nonbinding case is cited pursuant to GR 14.1(a) only because it is relied upon by amici.

*Jennings* and *Rasmussen* were the only members of Green Collar Cannabis LLC. *Jennings*, slip op. at 1. *Jennings* sued *Rasmussen* and the trial court appointed a receiver over Green Collar and entered a preliminary injunction that prohibited *Rasmussen* from selling or transferring Green Collar assets. *Id.* at 5. Days before the court's orders went into effect *Rasmussen* transferred \$600,000.00 out of Green Collar's accounts, and shortly thereafter, the receiver moved for turnover of those funds. *Id.* at 7. When *Rasmussen* failed to return the funds, the trial court entered judgment against him for "willful and wrongful conversion." *Id.* at 10. Division Two affirmed and held that the receiver had authority to demand turnover of the \$600,000.00 as property of the estate, noted that the trial court found "no bona fide dispute" over the funds, and explained that *Rasmussen* had both a statutory and fiduciary obligation to cooperate. *Id.* at 15.

*Jennings* does not support Johansen's assertion that the absence of an express finding that there was no bona fide dispute as to the property at issue establishes that such a dispute existed. Rather, it exemplifies the inherent authority that the receiver has to demand return of estate property. Further undercutting Johansen's contention on this issue, findings of fact are not required in matters of equity. *MONY Life Ins.*, 135 Wn. App. at 952. Moreover, unlike *Rasmussen* who converted the Green Collar funds in violation of the operating agreement and his fiduciary duties, and refused to return them when the court ordered him to do so, Castle Walls simply deposited joint checks issued by Johansen for funds that were owed to Castle Walls and AWVC. Because the facts are materially distinguishable and *Jennings* does not offer any persuasive authority under these circumstances, we disregard amici's argument to the contrary.

the trial court did not abuse its discretion in requiring Johansen to turn over those funds.

Revitalization acknowledges that Johansen has suffered harm due to Castle Walls' insolvency, but further notes that so did all of Castle Walls' other unsecured creditors. Pursuant to RCW 7.60.210(1), all claims of unsecured creditors "arising prior to the receiver's appointment, must be served in accordance with this chapter, and any claim not so filed is barred from participating in any distribution to creditors in any general receivership." The priorities of claims and distribution thereof place general unsecured creditors last, entitling them to pro rata distribution after all other claims are paid. RCW 7.60.230(1)(h). Allowing Johansen to sidestep the distribution scheme and receive full payment for the funds at issue here is contrary to public policy and the clear intent of our legislature as expressed in the plain language of the receivership statute: to fairly distribute estate property to all of Castle Walls' creditors. Johansen has failed to demonstrate that reversal is required.<sup>10</sup>

#### IV. Attorney Fees

Finally, Johansen contends the trial court erred in awarding attorney fees to Revitalization and in denying its competing request for a fee award. Both parties seek fees on appeal.

<sup>10</sup> Johansen also assigns error to the entry of judgment in favor of Revitalization. Because this assignment of error rests on Johansen's arguments regarding the propriety of the underlying order on revision of the turnover, which are unavailing, the trial court's entry of judgment in favor of Revitalization was proper.



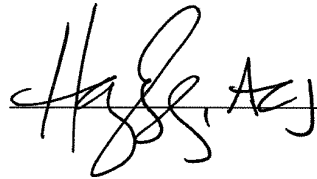
This court “appl[ies] a two-part standard of review to a trial court’s award or denial of attorney fees.” *Falcon Props., LLC v. Bowfits 1308, LLC*, 16 Wn. App. 2d 1, 11, 478 P.3d 134 (2020). First, “we review de novo whether there is a legal basis for awarding attorney fees by statute, under contract, or in equity.” *Id.* Second, “we review a discretionary decision to award or deny attorney fees and the reasonableness of any attorney fees award for an abuse of discretion.” *Id.*

Attorney fees may be awarded if “authorized by statute, contract, or recognized ground of equity.” *Gray v. Pierce County Hous. Auth.*, 123 Wn. App. 744, 759, 97 P.3d 26 (2004). Here, the subcontract provides, “If any dispute between contractor and subcontractor arises under this subcontract, the prevailing party in any litigation or arbitration shall be entitled to its reasonable attorneys[] fees.” (Some capitalization omitted.) This is a proper legal basis for the trial court’s fee award. Johansen offers no argument as to how the trial court abused its discretion in awarding fees apart from its position that it should have prevailed in those proceedings. Because neither the turnover order nor entry of judgment were erroneous, Johansen has failed to demonstrate error with regard to the fee award in the trial court.


As to attorney fees on appeal, “[w]e may award attorney fees under RAP 18.1(a) if applicable law grants to a party the right to recover reasonable attorney fees and if the party requests the fees as prescribed by RAP 18.1,” which requires the requesting party to devote a section of its opening brief to the issue. *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 493, 200 P.3d 683 (2009). Because Revitalization complied with RAP 18.1, prevailed at the trial court and on appeal,

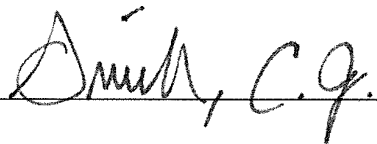
and the terms of the subcontract entitle it to an award of attorney fees, we grant its request for fees on appeal upon compliance with the procedural requirements of the RAP.

Affirmed.

 \_\_\_\_\_

WE CONCUR:

 \_\_\_\_\_

 \_\_\_\_\_

**CARNEY BADLEY SPELLMAN**

**May 01, 2024 - 4:03 PM**

**Filing Motion for Discretionary Review of Court of Appeals**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** In the Receivership of: Castle Walls LLC (851055)

**The following documents have been uploaded:**

- DCA\_Motion\_Discretionary\_Rvw\_of\_COA\_20240501160037SC992890\_9568.pdf  
This File Contains:  
Motion for Discretionary Review of Court of Appeals  
*The Original File Name was Petition for Review FINAL Corrected with Appendix.pdf*

**A copy of the uploaded files will be sent to:**

- Lobsenz@carneylaw.com
- auzree.hightower@acslawyers.com
- brett.hill@acslawyers.com
- david.neu@millernash.com
- edgar.rosales@millernash.com
- fuhrmann@carneylaw.com
- groth@carneylaw.com
- jensen@carneylaw.com
- john.knapp@millernash.com
- miller@carneylaw.com
- ryanne.mathisen@acslawyers.com
- saiden@carneylaw.com
- trang.nguyen@acslawyers.com
- welch@carneylaw.com

**Comments:**

Corrected to include Appendix.

---

Sender Name: Elizabeth Fuhrmann - Email: fuhrmann@carneylaw.com

**Filing on Behalf of:** Michael Barr King - Email: king@carneylaw.com (Alternate Email: )

Address:

701 5th Ave, Suite 3600

Seattle, WA, 98104

Phone: (206) 622-8020 EXT 149

**Note: The Filing Id is 20240501160037SC992890**