70225-4

No. 87455-7

SUPREME COURT
OF THE STATE OF WASHINGTON

BANK OF AMERICA, N.A., a national association,

Respondent,
v.

KENNETH TREIGER,
a married person as to his separate estate,

Appellant,

J'AMY LYN OWENS, an unmarried person, SHULKIN, HUTTON, INC., P.S. a Washington professional service corporation; and EDMUND JOHN WOOD,

Defendants.

BRIEF OF APPELLANT

SMITH GOODFRIEND, P.S.

By: Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. No. 34515

1109 First Avenue, Suite 500
Seattle, WA 98101
(206) 624-0974

Attorneys for Appellant Kenneth Treiger

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I. INTRODUCTION

This is the second appeal of an order granting priority to respondent Bank of America's lien against sale proceeds over a Supplemental Decree of Dissolution awarding one-half of those proceeds to appellant Kenneth Treiger. In the first appeal, the Supreme Court reversed an order granting priority to the Bank's lien, holding that Treiger had priority because his interest was secured seven months before the Bank secured a prejudgment writ of attachment against only Treiger's former wife's interest in the proceeds, who was the sole debtor to the Bank. *Bank of America, N.A. v. Owens*, 173 Wn.2d 40, 50, ¶ 19, 266 P.3d 211 (2011) (Appendix A).

On remand, the trial court once again granted priority to the Bank, based on the Bank's purported *in rem* claim against Treiger's interest in the sale proceeds – a claim that the trial court had rejected when it refused to grant the Bank a prejudgment writ of attachment on Treiger's interest in the proceeds, in a decision the Bank never appealed. The trial court improperly allowed the Bank to satisfy the former wife's separate debt from Treiger's award even though the Bank earlier failed to secure a prejudgment writ of attachment against Treiger's interest in the proceeds. The trial

court's decision is inconsistent with the Supreme Court's mandate, as well as with other decisions holding that absent proof of fraud, a creditor cannot satisfy a debt from assets awarded to the debtor's former spouse in a decree entered prior to the creditor reducing its claim to judgment. This Court should once again reverse and order the trial court to enter judgment for Treiger against the Bank.

II. ASSIGNMENT OF ERROR

The trial court erred in entering its Order for Summary Judgment *In Rem* on remand from the Supreme Court's decision in *Bank of America, N.A. v. Owens*, 173 Wn.2d 40, 266 P.3d 211 (2011).

III. STATEMENT OF ISSUES

1. In the earlier appeal, the Supreme Court reversed the trial court's decision granting priority to the Bank's lien against the proceeds of the Maplewood property over a supplemental decree of dissolution ordering the property sold and awarding Treiger one-half of the net proceeds. On remand, did the trial court err in granting the Bank's purported *in rem* claim against the proceeds awarded to Treiger and allowing the Bank to satisfy its lien from the proceeds of sale before Treiger?

2. On remand, the trial court reinstated its earlier judgment based on the Bank's *in rem* claim, which the Bank had asserted before the trial court entered its first judgment. In the appeal of the first judgment, should the Bank have raised the *in rem* claim as an alternate ground for affirming the trial court's decision granting priority to the Bank over Treiger, instead of waiting until the Supreme Court reversed and the matter was remanded to the trial court?

3. Only Treiger's former wife is obligated to the Bank for an unsecured debt that she personally guaranteed. After Treiger and his former wife's marriage was dissolved, Treiger's bankruptcy estate paid the Bank nearly $100,000 to discharge the community and Treiger from any obligation to the Bank. Did the trial court err by allowing the Bank to satisfy the former wife's obligation from the proceeds awarded to Treiger in the dissolution action based on the Bank's purported *in rem* claim?

IV. STATEMENT OF FACTS

This dispute over priority between the Bank and Treiger has been the subject of a previous appeal, and this statement of facts is largely supported by citation to the numbered paragraphs in the Supreme Court's decision in *Bank of America, N.A. v. Owens*, 173

Wn.2d 40, 266 P.3d 211 (2011), which is attached as Appendix A to this brief. Further support is provided by the Clerk's Papers, which are referenced by Volume I (I CP) and Volume II (II CP). Volume I is the Clerk's Papers from the earlier appeal, Cause no. 84044-0, which have been transferred to this appeal. Volume II is the additional Clerk's Papers designated for this appeal.

A. Owens Personally Guaranteed Two Notes To The Bank While She Was Married To Treiger.

Appellant Kenneth Treiger (Treiger/husband) and J'Amy Lynn Owens (Owens/wife) were married on July 4, 1997. (I CP 84; Appendix A ¶ 3) Owens (but not Treiger) executed promissory notes in favor of respondent Bank of America ("the Bank") in October 1998 and in May 2000, personally guaranteeing loans from the Bank to a business partially owned by Owens. (I CP 148; II CP 9-21; Appendix A ¶ 3)

Treiger and Owens separated in June 2000, less than three years after they married and a month after Owens signed the second guarantee to the Bank. (I CP 84, II CP 17-21; Appendix A ¶ 3) On February 22, 2001, Treiger filed a petition to dissolve their marriage. (I CP 84; Appendix A ¶ 3)

B. Treiger Filed For Bankruptcy. His Marriage To Owens Was Dissolved. Treiger's Bankruptcy Estate Partially Paid Owens' Debt To The Bank And Treiger And The Community Were Discharged From Any Further Obligation To The Bank.

On January 30, 2002, while the marital dissolution action was pending, Treiger filed for bankruptcy. (I CP 136, 179; Appendix A ¶ 3) Owens filed her own bankruptcy action less than a month later. (I CP 179; Appendix A ¶ 3) On June 19, 2002, while both bankruptcy actions were pending, the dissolution court dissolved the Treiger/Owens marriage, expressly reserving property and debt issues until the bankruptcy proceedings were concluded. (I CP 84; Appendix A ¶ 3) The bankruptcy court subsequently dismissed Owens' bankruptcy petition. (I CP 225, II CP 146; Appendix A ¶ 4)

The Bank filed proofs of claim for Owens' notes in Treiger's bankruptcy action in December 2003, describing the notes as "unsecured nonpriority claims" and a "community obligation of the marital community of Kenneth Treiger and J'Amy Lyn Owens." (I CP 137; II CP 72-73, 83-84) The Bank's proofs of claim acknowledged that a "claim is unsecured if there is no collateral or lien on property of the debtor securing the lien." (II CP 72, 83)

Treiger's bankruptcy estate paid over $95,000 to the Bank towards the debt it alleged Owens owed. (I CP 137, 200; II CP 101) All community debt and any separate debts of Treiger, including any obligation to the Bank, was discharged when Treiger's bankruptcy was closed in August 2004. (I CP 137, 173-74; II CP 100-02)

C. After Treiger's Bankruptcy Discharged Any Community Debt To The Bank, The Dissolution Court Ordered Real Property Sold And Awarded Treiger One-Half Of The Net Proceeds.

Treiger and Owens returned to state court on March 21, 2006, to resolve the property and liability issues of the marriage. (II CP 146; Appendix A ¶ 5) One of the disputed issues at trial was the characterization and distribution the "Maplewood property," which Treiger and Owens had purchased as "husband and wife" prior to the dissolution of their marriage. (I CP 84-86, 179, 269) The bankruptcy court had previously concluded that the Maplewood property was community property, and thus property of Treiger's bankruptcy estate. (I CP 179-81; Appendix A ¶ 4) After the marriage was dissolved, but before any property of the marriage was distributed, Owens entered into an agreement with the trustee in Treiger's bankruptcy to purchase the Maplewood property out of Treiger's bankruptcy estate in exchange for $215,000. (I CP 137,

186-89; Appendix A ¶ 4) This payment was used to partially satisfy community debts, including the debt to the Bank. (*See* I CP 137, 186-89)

In the dissolution action, Owens alleged that the Maplewood property was now her separate property as a result of her purchase of the property out of Treiger's bankruptcy estate. (*See* I CP 88-89) The dissolution court concluded that the bankruptcy action did not affect the dissolution court's ability to resolve the parties' rights to the Maplewood property (I CP 88-89), and that the bankruptcy court's determination that the Maplewood property was community property was *res judicata*. (I CP 84) The dissolution court ordered the parties to sell the Maplewood property (I CP 20) and awarded Treiger one-half of the net proceeds from the sale of the Maplewood property. (I CP 16, 22; Appendix A ¶ 5)

The supplemental dissolution decree expressly defined "net proceeds" as the proceeds from the sale less the costs of sale and the outstanding mortgage. (I CP 21) The decree also provided that any "lawsuits against the wife or liens or encumbrances against the property for wife's debts" would be paid from the wife's share of the proceeds:

> If the parties are unable to clear title due to lawsuits against wife or liens or encumbrances against the property for wife's debts, wife's share of the property (after the payment to husband of the amounts due to him) shall be placed in escrow to be held available to plaintiff or creditor, provided that the funds shall not be set aside unless plaintiff or creditor execute documents clearing lis pendens, mechanics liens or any other cloud.

(I CP 22) The supplemental decree of dissolution dividing the marital estate was entered on May 9, 2006. (I CP 15-24; Appendix A ¶ 5)

D. The Bank Filed An Action Against Owens And *In Rem* Against Any Property Awarded To Treiger For The Remaining Balance Owens Owed After Payment From Treiger's Bankruptcy Estate. The Bank Obtained A Prejudgment Writ Of Attachment Only Against Owens' Interest.

On July 18, 2006, two months after the supplemental decree of dissolution was entered, the Bank sued Owens, seeking payment from her separately for the unsecured amounts still owed under the Promissory Note and Borrowing Agreement after Treiger's bankruptcy discharged the community and Treiger's obligations. (I CP 138; II CP 3; Appendix A ¶ 9) On November 9, 2006, the Bank amended its complaint to add a claim "*in rem* against any and all separate property of J'Amy Lyn Owens awarded to Kenneth Treiger." (I CP 138; II CP 32)

At the same time, the Bank sought a prejudgment writ of attachment against the Maplewood property. (I CP 63; II CP 51) In its motion, the Bank stated that "the purpose of the prejudgment writ of attachment [ ] is to secure a lien on the separate real property of J'Amy Owens [the Maplewood property] and *in rem* against any interest in said separate property awarded to Kenneth Treiger [ ] so that such property might be levied upon in satisfaction of the debt after judgment has been obtained by plaintiff." (II CP 52)

The superior court granted the Bank's request *only* for a writ against Owens' interest. (I CP 63; Appendix A ¶ 9) In its "Order Directing Issuance of Prejudgment Writ Of Attachment On Real Property Against Interest In Property Held By J'Amy Lyn Owens Only," the court granted the Bank's request for a prejudgment writ of attachment in the amount of $351,413.55 *only* against "the defendant J'Amy Owens' interest (including any and all rights to proceeds) in that certain real property commonly known as 10623 Maplewood Place SW, Seattle." (I CP 63-65, 68-70)

The court refused the Bank's request to attach Treiger's interest in the Maplewood property and its proceeds. (*See* I CP 63-65) The Bank's prejudgment writ of $351,422.55 attached only

"J'Amy Lyn Owens' interest (including any and all rights to proceeds)" in the Maplewood property. (I CP 63-65, 68-70)

The Bank's prejudgment writ of attachment only against Owens' interest in the Maplewood proceeds was recorded on December 20, 2006. (I CP 63-65, 66-73) The Bank has never sought review of this ruling.

E. The Trial Court Ordered That The Bank's Prejudgment Writ Had Priority Over The Earlier Decree Awarding Treiger One-Half The Proceeds.

The Maplewood property sold in May 2007. (I CP 135; Appendix A ¶ 10) On May 20, 2007, $1,114,054.83 in proceeds were wired to the trustee pursuant. (I CP 147; Appendix A ¶ 10) On December 14, 2007, the court entered a judgment in the collection action in favor of the Bank against Owens in the amount of $593,519.24, representing the principal owed, accrued interest, and attorney fees of $57,228.09. (I CP 58-61, 148; Appendix A ¶ 9) The same day the Bank judgment was entered, both Treiger and the Bank filed motions asking the court to determine the priority of their respective judgments and liens over the other party. (I CP 135, 144; Appendix A ¶ 11)

The trial court, King County Superior Court Gregory Canova, held that "[a]part from the money judgments against Owens

specified in the judgment summary contained [in] the Supplemental Dissolution Decree, said decree did not grant Treiger a lien or other interest in the Maplewood Property." (CL 6, I CP 294) The trial court refused to pay Treiger his one-half of the "net proceeds," as ordered by the dissolution court, before several other disbursements, including to the Bank. (I CP 294-96; *see* Appendix A ¶ 11) As a result of the trial court's decision, the Bank received nearly $700,000, towards a loan of less than $500,000 that Owens alone had personally guaranteed. (*See* I CP 148, 200, 302) Because the trial court granted priority to the Bank ahead of Treiger's interest in one-half of the net proceeds as defined by the dissolution court, Treiger received only $516,149.84, instead of $749,566.46 from the proceeds of sale that the dissolution court intended. (*See* I CP 250, 294-95)

F. The Supreme Court Reversed Because The Dissolution Decree Gave Treiger An Equitable Lien In The Proceeds That Had Priority Over The Bank's Later-Filed Prejudgment Writ. The Trial Court Ignored The Mandate On Remand.

Treiger appealed. (I CP 283, 297; Appendix A ¶ 11) The Supreme Court reversed the trial court, holding that the Supplemental Decree "created an equitable lien on the Maplewood property in favor of Treiger for one-half of the net proceeds of its

sale. Because the Supplemental Decree was entered and recorded prior to the Bank's prejudgment writ of attachment, Treiger's lien has priority," Treiger was entitled "to one-half of the proceeds of the Maplewood property sale before satisfaction of Bank of America's lien." (Appendix A ¶¶ 29, 30)

On remand, the trial court denied Treiger's motion asking the trial court to enter a judgment consistent with the Court's decision that reflected Treiger's priority interest in the Maplewood proceeds over the Bank's claims. (II CP 265, 457) The trial court granted the Bank's motion for a "judgment *in rem* in the amount of $308,990.37, as an existing separate creditor of Ms. Owens at the time of the divorce court awarding a portion of her separate property to Mr. Treiger." (II CP 457) In direct contradiction to this Court's decision, the trial court ruled that "Bank of America's *in rem* judgment is superior to the claims of Mr. Treiger therein" and allowed the Bank to satisfy its "*in rem* judgment" from Treiger's one-half of the proceeds of sale. (II CP 457)

Treiger once again appeals.

V. ARGUMENT

A. The Trial Court Did Not Comply With The Supreme Court Mandate Granting Treiger Priority In The Maplewood Proceeds Over The Bank.

The trial court failed to comply with the mandate of the Supreme Court, that the supplemental decree entitled Treiger to one-half of the proceeds of the Maplewood property sale *before* the Bank's lien was satisfied. *Bank of America, N.A. v. Owens*, 173 Wn.2d 40, 54-55, ¶¶ 29-30, 266 P.3d 211 (2011). Instead, the trial court's order on remand confirms its earlier ruling, *which the Supreme Court reversed*, giving the Bank priority over Treiger in the Maplewood proceeds.

"Where a cause is reversed and remanded by the appellate court, with directions as to the further proceedings of the trial court, it is out of the power of the lower court to open the cause and have a new trial. It must, and can only, proceed to carry into execution the mandate of the superior court." *State v. Superior Court for Cowlitz County*, 71 Wash. 354, 357, 128 P. 648 (1912) (*citations and quotations omitted*). In this case, to "carry into execution the mandate" of the Supreme Court, the trial court was required to give priority to Treiger's liens, and to allow Treiger to satisfy his liens before, and without any claim from, the Bank. The

trial court could not ignore the Supreme Court's mandate holding that Treiger had priority over the Bank in the Maplewood proceeds.

The trial court did not have discretion to re-order the lien priorities under *National Bank of Washington v. Equity Investors*, 83 Wn.2d 435, 442-43, 518 P.2d 1072 (1974). In *National Bank*, the trial court had determined the priorities of three lien holders: the Bank, MacDonald, and Columbia. Columbia appealed, asserting that its lien had priority over the Bank's. The Supreme Court agreed that Columbia's "materialman's lien is superior to the bank's lien for later advances, and accordingly reverse[d]." *National Bank*, 83 Wn.2d at 438 (*quoting its earlier decision at* 81 Wn.2d 886, 927, 506 P.2d 20 (1973)).

On remand from the first appeal, the trial court in *National Bank* nevertheless gave MacDonald's lien priority over Columbia's, based on MacDonald's claim that since Columbia had not appealed the trial court's earlier ruling that MacDonald was prior to Columbia, it was now the "law of the case." The Supreme Court reversed again, holding that MacDonald could not "thwart the direction of this court that Columbia be paid in full from the proceeds of the foreclosure sale." *National Bank*, 83 Wn.2d at 442. The Court held that its earlier decision clearly "intended Columbia's

lien claim for materials furnished to be satisfied in full from the proceeds of the foreclosure sale prior to the Bank's lien claim." *National Bank*, 83 Wn.2d at 442.

National Bank controls here. The trial court had no discretion on remand to enter an order that in effect reinstated the judgment that the Supreme Court had reversed. The Bank cannot thwart the Supreme Court's clear direction that Treiger be paid in full from the Maplewood proceeds before the Bank's lien was satisfied.

B. The Trial Court On Remand Did Not Have Authority To Consider The Bank's *In Rem* Claim That The Bank Failed To Raise As An Alternate Ground To Affirm In The Earlier Appeal.

The Supreme Court held that the Supplemental Decree of Dissolution "entitled Kenneth Treiger to one-half of the proceeds of the Maplewood property before satisfaction of Bank of America's lien," and remanded "to the superior court for further proceedings consistent with this opinion." 173 Wn.2d at 54-55 (Appendix A ¶¶ 29, 30). The trial court's discretion on remand was limited to allowing Treiger to satisfy his liens before, and without any claim from, the Bank. The trial court could not consider a different ground on which to reinstate its earlier ruling that the Supreme

Court already reversed, to allow the Bank to take from the proceeds before Treiger.

In determining the trial court's authority on remand, a distinction is made "between what the superior court was obligated to do without the exercise of any discretion and the area within which it could exercise its discretion." *Marriage of McCausland*, 129 Wn. App. 390, 399, ¶ 16, 118 P.3d 944 (2005), *overruled on other grounds*, 159 Wn.2d 607, 152 P.3d 1013 (2007). The trial court had no discretion to ignore the Supreme Court's mandate and order the same relief that the Supreme Court had previously reversed.

In *McCausland*, Division Two reversed the trial court's decision after an earlier appeal because the trial court failed to adhere to the mandate on remand, instead entering an order that had the effect of reinstating its earlier ruling. Division Two held that in a second appeal "the remand did not open all other possible dissolution-related issues nor could the trial court ignore our specific holdings and directions on remand." *McCausland*, 129 Wn. App. at 400, ¶ 18; *see also Coy v. Raabe*, 77 Wn.2d 322, 325, 462 P.2d 214 (1969) (affirming the trial court's decision on remand

refusing to grant an offset to the judgment directed by the Supreme Court that was not addressed in the earlier decision).

Like the trial court on remand in *McCausland*, the trial court here improperly entered an order that in effect reinstated its earlier ruling and gave the Bank priority over Treiger in the Maplewood proceeds. While the appellate court's use of the word "reconsider" in its mandate in *McCausland* may have created a question whether the trial court had some discretion on remand in that case, no such doubt was possible here. The Supreme Court here did not direct the trial court to "reconsider" anything on remand. Instead, the Supreme Court clearly remanded with directions to the trial court to act "consistent with this opinion." 173 Wn.2d at 55 (Appendix A ¶ 29).

Remand from the Supreme Court was not an opportunity for the Bank to raise a different ground to support the trial court's earlier decision. If the Bank believed that its *in rem* claim was a basis for it to take from Treiger's interest to satisfy Owens' separate debt, the Bank was required to raise this issue in the original appeal as an alternate basis for affirmance. *See* RAP 2.5(a) ("a party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently

developed to fairly consider the ground"); *see also LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975) ("A judgment that is correct can be sustained on any theory within the pleadings and the proof."); *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994) (appellate court may affirm on any basis supported by the record).

Alternatively, the Bank should have sought cross-review of the trial court's decision. *LK Operating, LLC v. Collection Group, LLC*, 168 Wn. App. 862, 279 P.3d 448, 287 P.3d 628 (2012). In *LKO*, the trial court rescinded a business agreement between two companies after concluding that a lawyer represented both sides at the same time and therefore violated RPC 1.7. As here, the trial court's order recited that the defendants' alternate claim (that RPC 1.8 justified rescission) was "moot," because of its ruling under RPC 1.7.

The party seeking enforcement of the agreement in *LKO* appealed, arguing that the remedy of rescission cannot be based on a violation of RPC 1.7. The party seeking rescission cross-appealed, arguing that even if rescission could not be based on a violation of RPC 1.7, it was appropriate under RPC 1.8, which prohibits lawyers from entering into business agreements with their clients. Division

III held that RPC 1.7 could not be the basis for the remedy of rescission, but affirmed because rescission was appropriate under RPC 1.8, as argued by respondent. *LKO*, 168 Wn. App. at 876, 881, ¶¶ 33, 42; *see also Marriage of Katare*, 125 Wn. App. 813, 826, 831, 105 P.3d 44 (2004) (holding in father's appeal that travel restrictions could not be imposed without a finding under RCW 26.09.191, but holding in mother's cross-appeal that there was a basis for .191 findings that would warrant travel restrictions), *rev. denied*, 155 Wn.2d 1005 (2005).

The Bank was doubly obligated to raise the issue on cross-appeal in the first appeal here because, unlike in *LKO*, where the trial court had not decided the issue, the Bank had actually lost on the claim it attempted to resurrect on remand. The trial court had expressly rejected the Bank's request for a prejudgment writ of attachment against Trieger's interest in the Maplewood proceeds based on the same *in rem* claim that the Bank prevailed on on remand. (I CP 63-65) If the Bank wished to pursue Treiger's interest in the Maplewood proceeds on the basis of its *in rem* claim, it should have sought review of the trial court's decision denying it a prejudgment writ of attachment of Treiger's interest on the basis of its purported *in rem* claim. *See* RAP 2.4(b), RAP 5.2(f).

The Bank could not "lay in wait" and, after suffering a reversal on appeal, raise on remand a supposedly new reason it should have prevailed. To sanction such litigation practices would encourage, not discourage, "piecemeal multiple appeals." *See Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 380, 46 P.3d 789 (2002) (discussing discretionary review), *cert. denied*, 540 U.S. 1149 (2004); *Fox v. Sunmaster Products, Inc.*, 115 Wn.2d 498, 505, 798 P.2d 808 (1990) (discouraging "multiple and perhaps unnecessary appeals in multi-party and multi-claim cases"). The trial court on remand did not have authority to reinstate its decision based on an *in rem* claim that the Bank failed to raise as an alternate ground to affirm in the earlier appeal.

C. An Unsecured Separate Creditor Cannot Satisfy A Post-Decree Judgment From Assets Awarded To The Debtor's Former Spouse.

Even if the earlier mandate from the appellate courts and the Bank's failure to preserve this claimed alternate ground for affirmance did not prevent the trial court from considering the Bank's *in rem* claim on remand, the trial court erred on the merits in allowing the Bank to satisfy its separate judgment against Owens from property awarded to Treiger in the dissolution action. Here,

only Owens was obligated to the Bank. Both Treiger and the community were discharged from any obligation to the Bank. When Treiger was awarded one-half of the net proceeds from the future sale of the Maplewood property, the Bank was an unsecured creditor of Owens, having not yet obtained a prejudgment writ of attachment or judgment. Under these circumstances, the Bank could not "claw back" the proceeds awarded to Treiger even if the Maplewood property was Owens' separate property. *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 586, 599 P.2d 1289 (1979).

In *Griggs*, a creditor sought to recover monies owed from a husband and wife who divorced before a judgment was entered. A default judgment was subsequently entered against each spouse individually, but not against the community. The wife successfully vacated the default judgment against her, and then prevailed in a trial on the merits. Subsequently, the creditor sought to enforce the default judgment against the husband by executing on community property distributed to the wife under the divorce decree. The trial court granted the wife an order restraining execution on her property.

The Supreme Court affirmed, holding that the creditor was barred from collecting on the ex-husband's debt from former community property awarded to his former wife, who was not obligated to the creditor. The Court stated that "when the community creditors have not obtained, *during the existence of the marriage,* a judgment against one or both of the spouses, or against the community, and when a former spouse, after termination of the marriage, prevails on the merits, then property distributed to that former spouse-even though previously community property-cannot be used to satisfy a judgment against the other former spouse." *Griggs*, 92 Wn.2d at 586 (emphasis added).

Likewise here, the Bank did not obtain a judgment against Owens or any other perfected interest in her property prior to Treiger's interest vesting in the Maplewood proceeds in the supplemental decree. This is fatal to the Bank's *in rem* claims. Treiger was indisputably not liable to the Bank, because any obligation of the community or Treiger separately was discharged in Treiger's bankruptcy. The trial court erred in nevertheless allowing the Bank to satisfy its later judgment against Owens with property awarded to Treiger – the net proceeds of sale of the Maplewood property. Under *Griggs*, the trial court should have denied the

Bank's motion to "claw back" property awarded to Treiger in his dissolution action with Owens because the Bank did not earlier secure a judgment against Owens.

The Bank's only authorities for its claimed *in rem* interest in the Maplewood proceeds awarded to Treiger consider *community* liabilities. *See, e.g.*, *Farrow v. Ostrom*, 16 Wn.2d 547, 133 P.2d 974 (1943); *see also Watters v. Doud*, 95 Wn.2d 835, 840, 631 P.2d 369 (1981) (community creditor can pursue community property awarded to one spouse in a divorce decree up to its value at the time that the property was awarded to the spouse); *Capital National Bank of Olympia v. Johns*, 170 Wash. 250, 256, 16 P.2d 452 (1932) (former wife and the community assets awarded to her in divorce decree remained liable to a bank from which the former husband obtained a community loan during the marriage). In *Farrow*, *Watters*, and *Capital National Bank*, the spouse from whom the creditor was seeking to satisfy a debt was also liable to the creditor. Treiger and the community, however, were not liable to the Bank. In allowing the Bank to take proceeds awarded to Treiger in the dissolution action to satisfy the unsecured debt owed to it only by Owens, the trial court improperly relied on cases where the

community owed the obligation, and it was *community* property awarded to one spouse that was used to satisfy the obligation.

In *Farrow*, for instance, the community was liable to the plaintiff for injuries caused by the husband in a car accident that occurred while he was married to the wife. The plaintiff sued the husband and the "marital community" before the husband's divorce from the wife was final, and the plaintiff obtained a judgment against the husband and the community less than a month after the decree was entered. The Court held that the plaintiff could pursue an equitable claim against the community property awarded to the wife. *Farrow*, 16 Wn.2d at 555-56.

The Supreme Court in *Farrow* reasoned that the plaintiff was not required to perfect her judgment against the community property before the divorce decree was entered because the wife's claim and the plaintiff's claim were "against different things." 16 Wn.2d at 553. The wife's "claim relates to her husband's community interest in the property only, while [the plaintiff]'s relates not only to that, but also to the community interest of [the wife] herself." *Farrow*, 16 Wn.2d at 553.

Here, however, both Treiger's claim and the Bank's claim were against the "same" thing – Owens' interest in the Maplewood

property. Under the Supreme Court's reasoning in both *Griggs* and *Farrow*, the trial court should have denied the Bank's motion to satisfy its judgment against property awarded to Treiger when it failed to secure a judgment against Owens before the net proceeds were awarded to Treiger. Because neither the community nor Treiger was liable to the Bank by the time the Bank filed its action against Owens on her unsecured obligation, the trial court erred in allowing the Bank to satisfy its judgment with property awarded to Treiger, and Treiger's interest in the Maplewood proceeds was superior to the Bank's because the Bank failed to secure a judgment against Owens before the supplemental decree was entered.

The trial court in this case could not void the award of the Maplewood proceeds to Treiger to satisfy Owens' unsecured obligation to the Bank absent an allegation of fraud, which Bank has never made (nor could it, under these facts). *See* RCW 19.40.071(a)(1) (allowing the trial court to void a fraudulent transfer of property "to the extent necessary to satisfy the creditor's claim"); *see, e.g.*, *Clayton v. Wilson*, 168 Wn.2d 57, 68-71 ¶¶ 21-29, 227 P.3d 278 (2010) (discussing fraudulent transfer in context of dissolution property settlement); *Watters v. Doud*, 95 Wn.2d at 840 ("creditors can also, using traditional remedies, have a

property settlement agreement set aside by proving the divorce was an attempt to defraud them"). Even were there a basis for claiming a fraudulent transfer, the four-year statute of limitation for the Bank's claim under RCW 19.40.091 has long since passed.

Under the facts of this case, the issue between the parties was whether the Bank secured its interest against the Maplewood proceeds before Treiger did. That issue was resolved *against the Bank* in the previous appeal. Belatedly claiming the Bank's interest was *in rem* cannot have the effect of changing the Bank's unsecured loan into one secured by the Maplewood property. As the Supreme Court held in the earlier appeal, Treiger had priority in the proceeds and the Bank could not take from the proceeds before Treiger.

VI. CONCLUSION

The trial court erred in allowing the Bank to satisfy its judgment against Owens from assets awarded to Treiger in the supplemental decree of dissolution that was entered before the Bank perfected its claim against Owens. This Court should reverse and remand with directions to the trial court to award Treiger his one-half of the Maplewood proceeds free from any claim by the Bank.

Dated this 11th day of December, 2012.

SMITH GOODFRIEND, P.S.

By: _____

Catherine W. Smith, WSBA No. 9542
Valerie A. Villacin, WSBA No. No. 34515

Attorneys for Appellant Kenneth Treiger

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 11, 2012, I arranged for service of the foregoing Brief of Appellant, to the Court and the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	___ Facsimile ___ Messenger X U.S. Mail ___ E-Mail
Jerome Shulkin Shulkin Hutton Inc., P.S. 7900 SE 28th St, Suite 302 Mercer Island, WA 98040	___ Facsimile ___ Messenger X U.S. Mail X E- Mail
Jerry R. Kimball Law Office of Jerry R. Kimball 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101	___ Facsimile ___ Messenger ___ U.S. Mail X E- Mail
Edmond John Wood Wood & Jones PS 303 N 67th Street Seattle, WA 98103-5209	___ Facsimile ___ Messenger X U.S. Mail X E- Mail
Cynthia B. Whitaker Attorney at Law 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101-3100	___ Facsimile ___ Messenger ___ U.S. Mail X E- Mail
Thomas S. Linde Schweet Rieke & Linde PLLC 575 S Michigan Street Mercer Island, WA 98108-3316	___ Facsimile ___ Messenger X U.S. Mail X E-Mail

DATED at Seattle, Washington this 11th day of December, 2012.

Victoria K. Isaksen

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173 Wash.2d 40, 266 P.3d 211
(Cite as: 173 Wash.2d 40, 266 P.3d 211)

H

Supreme Court of Washington,
En Banc.
BANK OF AMERICA, N.A., a national, association, Petitioner,
v.
J'Amy Lyn OWENS, an unmarried person, Defendant,
Kenneth Treiger, a married person as to his separate estate, Respondent,
Shulkin, Hutton, Inc., P.S., a Washington professional corporation; and Edmund John Wood, Defendants.

No. 84044–0.
Argued Jan. 11, 2011.
Decided Oct. 27, 2011.

Background: Lender who obtained prejudgment writ of attachment on real property that was subject of dissolution proceeding brought action for declaratory judgment to determine priority of liens on proceeds from sale of real property. The Superior Court, King County, Gregory P. Canova, J., ordered distribution of proceeds from sale of home. Husband appealed. The Court of Appeals, 153 Wash.App. 115, 221 P.3d 917, affirmed in part and reversed in part. Lender petitioned for and was granted review.

Holdings: The Supreme Court, Owens, J., held that:
(1) supplemental decree of dissolution created equitable lien in favor of husband for one-half of net proceeds from sale of real property;
(2) order awarding husband $3,200 in attorney fees and sanctions, even if judgment, was incorporated into decree of dissolution, and thus, was not separate judgment lien on proceeds;
(3) order awarding husband $3,750 in attorney fees in divorce on finding of husband's need for fees and wife's ability to pay was judgment that created statutory lien on proceeds; and
(4) order which set out with specificity how proceeds from sale of real property would be distributed was judgment that created statutory lien on proceeds.

So ordered; remanded.

J.M. Johnson, J., filed opinion dissenting in part.

West Headnotes

[1] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases
A grant of summary judgment is reviewed de novo.

[2] Appeal and Error 30 ⚿934(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In general. Most Cited Cases
On appeal from summary judgment, the appellate court views the facts and all reasonable inferences in the light most favorable to the nonmoving parties.

[3] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In general. Most Cited Cases

The proper interpretation of a statute is a question of law, which the appellate court reviews de novo.

[4] Divorce 134 ⚿1037

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(F) Enforcement of Judgment or Decree in General
134k1037 k. Liens. Most Cited Cases

Supplemental decree of dissolution created equitable lien in favor of husband for one-half of net proceeds from sale of real property and, therefore, because it was recorded prior to lender's prejudgment writ of attachment, husband's lien took priority over lender's lien. West's RCWA 4.56.190.

[5] Judgment 228 ⚿762

228 Judgment
228XV Lien
228k761 Judgments Which Create Liens
228k762 k. In general. Most Cited Cases

In order for a judgment to create a statutory lien, the monetary award must be for a sum certain. West's RCWA 4.56.190.

[6] Liens 239 ⚿7

239 Liens
239k7 k. Equitable liens. Most Cited Cases

Where a statutory lien is unavailable, a court may also create an equitable lien.

[7] Judgment 228 ⚿762

228 Judgment
228XV Lien
228k761 Judgments Which Create Liens
228k762 k. In general. Most Cited Cases

A judgment creating an equitable lien on real property must be express, and in order to be "express," the court must fasten the debt to real property that is before the court and specifically identified.

[8] Judgment 228 ⚿762

228 Judgment
228XV Lien
228k761 Judgments Which Create Liens
228k762 k. In general. Most Cited Cases

In determining whether the trial court created an equitable lien on a parcel of real estate, the appellate court looks to the actual language of the judgment, reads in its context and entirety, and while helpful, the term "lien" is not required where the court's intent is clear. West's RCWA 4.56.190.

[9] Costs 102 ⚿283

102 Costs
102XIII Remedies for Collection
102k283 k. Lien and enforcement thereof. Most Cited Cases

Order awarding husband $3,200 in attorney fees and sanctions based on wife's failure to appear in response to subpoena in context of divorce proceedings, even if judgment, was incorporated into decree of dissolution, and thus, was not separate judgment lien on real estate apart from decree, for purposes of action to determine priority of liens on proceeds from of sale real property. West's RCWA 4.56.190.

[10] Divorce 134 ⚿1179

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(H) Counsel Fees, Costs, and Expenses
134k1179 k. Enforcement and contempt. Most Cited Cases

Order awarding husband $3,750 in attorney fees in context of divorce upon finding of husband's need for fees and wife's ability to pay was judgment that created statutory lien on proceeds of sale of

real property, for purposes of determining lien priority, in lender's action for declaratory judgment to determine lien property, even though it lacked judgment summary and was not entered in execution docket. West's RCWA 4.56.190, 4.64.030.

[11] Divorce 134 ⚿1037

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(F) Enforcement of Judgment or Decree in General
134k1037 k. Liens. Most Cited Cases

Order issued in context of dissolution proceedings which set out with specificity how proceeds from sale of real property would be distributed based on awards, which also included prior judgments, sanctions for contempt, and attorney fees and costs, was judgment that created statutory lien on proceeds of sale for sums certain stated in judgment, for purposes of determining priority of lien, in lender's action for declaratory judgment to determine lien priority, even if order did not contain judgment summary. West's RCWA 4.64.030.

[12] Statutes 361 ⚿188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited

In determining the plain meaning of a statute, the court considers the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.

[13] Statutes 361 ⚿223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In general. Most Cited Cases

When interpreting a statute, the court will attempt to harmonize apparently contradictory statutes prior to resorting to canons of construction that give preference to one statute over another.

[14] Statutes 361 ⚿212.6

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.6 k. Words used. Most Cited Cases

Where similar words are used in different parts of the same statute, the court will presume the words are given the same meaning.

****212** Thomas Scott Linde, Schweet Rieke & Linde PLLC, Katie a Axtell, Bishop White Marshall & Weibel, P.S., Seattle, WA, for Petitioner.

Edmund John Wood, Wood & Jones, PS, Seattle, WA, for Defendant.

Jerry Richard Kimball, Attorney at Law, Catherine Wright Smith, Valerie A. Villacin, Smith Goodfriend, PS, Seattle, WA, for Respondent.

Robert Walton Sargeant, Daniel W. Ferm, Williams, Kastner & Gibbs, PLLC, Larry Eugene Leggett, Attorney at Law, Seattle, WA, amicus counsel for Washington Land Title Association.

OWENS, J.

***43** ¶ 1 As part of the distribution of property following the dissolution of Kenneth Treiger and J'Amy Lyn ***44** Owens' marriage, a home belonging to Owens (the Maplewood property) was sold, and, pursuant to a trust agreement, the proceeds were deposited in a trust account. Bank of America NA (the Bank), which had obtained a writ of attachment on the Maplewood property, filed this declaratory

judgment action to determine each party's rights to the proceeds.

¶ 2 There are two issues before us on review. First, we are called upon to determine whether the "Supplemental Decree of Dissolution" (Supplemental Decree) established a lien on the Maplewood property in favor of Treiger. Second, we must determine**213 whether various documents are valid judgments. We conclude that the Supplemental Decree established an equitable lien on the Maplewood property in favor of Treiger in the amount of one-half of the proceeds of the court-ordered sale of the property. We further conclude that Documents 1375 and 1376 [FN1] are valid judgments entitling Treiger to further awards but that Document 1370 was properly not given separate effect. Accordingly, we affirm in part and reverse in part the decision of the Court of Appeals.

FN1. The document numbers used in this opinion consist of the last four digits of the number used by the King County auditor to record documents filed by Treiger.

FACTS

¶ 3 In July 1997, Treiger and Owens married. During their marriage, Owens personally guaranteed a promissory note and borrowing agreement for The Retail Group, a business of which she was a part owner. Treiger and Owens separated on June 1, 2000, and, in February 2001, they filed for dissolution of their marriage in King County Superior Court. In the winter of 2002, first Treiger and then Owens filed for bankruptcy. On June 19, 2002, the superior court entered a decree of dissolution but reserved final resolution of the property and debt issues until the conclusion of the bankruptcy proceedings.

*45 ¶ 4 Between the date of separation and the entry of a decree of dissolution, Owens purchased the Maplewood property. The bankruptcy court determined that this property was community property, and, in April 2004, the trustee of Treiger's estate executed a quitclaim deed to Owens in exchange for a payment $215,000. On March 21, 2005, Treiger's bankruptcy case was closed; on July 5, 2005, Owens' bankruptcy case was dismissed.

¶ 5 Following the conclusion of the bankruptcy cases, Owens and Treiger returned to King County Superior Court to complete the property distribution under the dissolution. During these proceedings, the court issued several orders relevant here. On March 21, 2006, the court entered the "Order on Pretrial Motion" (Document 1370), which awarded Treiger $3,200 in fees and sanctions based on Owens' failure to appear in response to a subpoena. On March 29, 2006, the court entered its "Order on Attorney's Fees" (Document 1371), awarding Treiger $1,429 in attorney fees and costs based on the necessity of bringing a motion in limine and a motion to compel. On May 9, 2006, the court entered the Supplemental Decree. The Supplemental Decree divided the property and liabilities, both community and separate, between the parties in a manner it determined to be fair and equitable. Two specific features of the Supplemental Decree are relevant here. First, it awards $27,501.42 to Treiger, which expressly includes the amounts listed in Documents 1370 and 1371. Second, the Supplemental Decree orders the sale of the Maplewood property and awards to Treiger "[o]ne half proceeds of the sale of the [Maplewood property]." Clerk's Papers (CP) at 16. An addendum, incorporated in the Supplemental Decree by reference, clarified that this was one-half of the net proceeds of the sale.

¶ 6 On June 9, 2006, through the "Order on Motion for Attorneys Fees" (Document 1373), Treiger was awarded $16,018 in attorney fees "in the form of a judgment" from Owens' share of proceeds from the sale of the Maplewood *46 property. CP at 27. Three days later, on June 12, 2006, the "Order on Show Cause Re Contempt/Judgment" (Document 1374) awarded Treiger an additional $5,778 from Owens' share of the proceeds of the sale of the Maplewood property based on her failure to comply with the commissioner's ruling that she stay in court until she signed the required pa-

perwork. The court also imposed a fine of $2,500 per day until Owens signed the listing agreement. On July 18, 2006, in its "Order Requiring Appellant to File Complete Report of Proceedings" (Document 1375), the court ordered Owens to make arrangements for a complete report of trial proceedings and, after determining Treiger's need and Owens' ability to pay, ordered Owens to pay Treiger $3,750 in attorney fees.

¶ 7 The final document from the dissolution proceedings that is relevant on review is ****214** the August 28, 2006, "Order Regarding Closing of Sale of Real Property Located at 10263 Maplewood Pl. S.W., Seattle and Distribution of Proceeds" (Document 1376). Document 1376 gave Treiger the authority to sign in place of Owens to close the sale on the Maplewood property. Further, it set forth a final determination of how the proceeds of the Maplewood property were to be disbursed. In doing so, it implemented the Supplemental Decree and various prior awards and granted Treiger additional awards of attorney fees and costs. Ultimately, the sale of the Maplewood property did not occur pursuant to the sale agreement referenced in Document 1376; the sale was completed to another buyer later in 2007.

¶ 8 On October 27, 2006, Treiger recorded seven orders from the dissolution proceedings with the King County auditor. In addition to recording the Supplemental Decree (i.e., Document 1372), Treiger also recorded Documents 1370, 1371, 1373, 1374, 1375, and 1376.

¶ 9 At some point prior to completion of the bankruptcy and dissolution proceedings, The Retail Group defaulted on its promissory note and borrowing agreement with the ***47** Bank. In July 2006, the Bank filed an action in King County Superior Court to collect on Owens' debt. On December 14, 2006, the court entered an order directing issuance of a prejudgment writ of attachment on Owens' interest in the Maplewood property. On December 19, 2006, the King County Superior Court clerk issued the writ of attachment, and the Bank recorded it on December 20, 2006. On December 14, 2007, the Bank obtained a judgment against Owens for $593,519.24.

¶ 10 The bankruptcy, dissolution, and debt collection proceedings gave rise to several conflicting claims that complicated the sale of the Maplewood property by preventing the parties from obtaining title insurance. The Bank, Treiger, Owens, Owens' attorney, and an independent trustee entered into an agreement (Trust Agreement) to obtain title insurance and facilitate the Maplewood property sale. The Maplewood property sold in May 2007. On May 20, 2007, pursuant to the Trust Agreement, the title insurance company wired the net proceeds of the sale ($1,114,054.83) to the specified trust account.

¶ 11 Upon deposit of the net proceeds into the trust account, the Bank filed this declaratory judgment action to determine the priority of the parties' interest in the funds held in trust. Owens, Treiger, and the Bank all filed motions for summary judgment. The trial court determined that the Supplemental Decree did not grant Treiger a lien or any other interest in the Maplewood property and granted the Bank's summary judgment motion, ordering the following distribution of the proceeds:

1. Payment of Owens' homestead exemption in the amount of $40,000;

2. Payment to Treiger of Documents 1371 ($1,429), Document 1373 ($16,081), Document 1374 ($8,278), and the money judgments included in the Supplemental Decree ($27,501.42), plus interest on each;

3. Payment of the Bank's judgment ($593,519.24), plus interest;

***48** 4. Payment to Treiger of four judgments entered in 2007 ($56,408.62);

5. Payment to Treiger and Owens of additional amounts in accordance with the Supplemental Decree.

Treiger appealed from the summary judgment order.

¶ 12 The Court of Appeals affirmed in part and reversed in part. *Bank of Am., NA v. Owens,* 153 Wash.App. 115, 131–32, 221 P.3d 917 (2009). The Court of Appeals determined that the Supplemental Decree created a lien on one-half of the net proceeds of the sale of the Maplewood property and held that the trial court erred in failing to grant priority to Treiger's lien. *Id.* at 124–25, 221 P.3d 917. The Court of Appeals further determined that the trial court erred in failing to recognize that Document 1376 is a judgment. *Id.* at 131, 221 P.3d 917. However, the Court of Appeals affirmed the trial court's determination that Documents 1370 and 1375 are not judgments.[FN2] *Id.* at 126, 221 P.3d 917.

> FN2. The Bank did not cross-appeal the trial court's determination that Documents 1371, 1373, and 1374 were judgments entitled to priority in the distribution of the net sale proceeds.

****215** ¶ 13 The Bank petitioned this court for review, and Treiger cross-petitioned. We granted review. *Bank of Am., NA v. Owens,* 168 Wash.2d 1039, 233 P.3d 888 (2010).

ISSUES

¶ 14 1. Did the Supplemental Decree establish a lien on the Maplewood property for Treiger's half of the net proceeds of its sale?

¶ 15 2. Are Documents 1370, 1375, and 1376 valid judgments?

ANALYSIS

I. *Standard of Review*

[1][2][3] ¶ 16 "A grant of summary judgment is reviewed de novo." ***49***Federal Way Sch. Dist. No. 210 v. State,* 167 Wash.2d 514, 523, 219 P.3d 941 (2009). "We view the facts and all reasonable inferences in the light most favorable to the nonmoving parties." *Id.* The proper interpretation of a statute is a question of law, which we review de novo. *In re Pers. Restraint of Cruze,* 169 Wash.2d 422, 426, 237 P.3d 274 (2010). A court should grant a motion for summary judgment if "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." CR 56(c); *Federal Way Sch. Dist.,* 167 Wash.2d at 523, 219 P.3d 941.

II. *The Supplemental Decree Established a Lien in Favor of Treiger for One–Half of the Net Proceeds*

[4] ¶ 17 The Bank concedes, as it must, that the Supplemental Decree is a judgment. Suppl. Br. of Pet'r at 4 (citing RCW 26.09.010(5)). The Bank further concedes that the Supplemental Decree created a statutory lien on Owens' real estate, including the Maplewood property, in the amount of $27,501.42. However, the Bank contends that the award to Treiger of one-half of the net proceeds of the sale of the Maplewood property did not create a lien interest in the property because the amount was not a sum certain and the Supplemental Decree did not include an express lien. We hold that the Supplemental Decree created an equitable lien on the Maplewood property.

[5][6][7][8] ¶ 18 A judgment may create either a statutory lien or an equitable lien on the judgment debtor's property. Under RCW 4.56.190, "[t]he real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the ... superior court ... of this state." Our case law makes clear that, in order to create a statutory lien, the monetary award must be for a sum certain. *See, e.g., Swanson v. Graham,* 27 Wash.2d 590, 597, 179 P.2d 288 (1947) ("In order to create a statutory lien, there must be a judgment for a specific amount."). Where a statutory lien is unavailable, a court may also create an equitable lien. *Id.* at 599, 179 P.2d 288. Such an order must be express. ***50** *Seattle Brewing & Malting Co. v. Talley,* 59 Wash. 168, 170, 109 P. 600 (1910). In order to be express, the court must fasten the debt to real property that is before the court and specifically identified.

Swanson, 27 Wash.2d at 599, 179 P.2d 288; *cf. Philbrick v. Andrews,* 8 Wash. 7, 7, 9, 35 P. 358 (1894) (holding that an order imposing "a 'lien upon the property' " of a defendant did not create an equitable lien because it did not identify particular property). In determining whether the trial court created an equitable lien on a parcel of real estate, we look to the actual language of the judgment, read in its context and entirety. While helpful, the term "lien" is not required where the court's intent is clear.

¶ 19 In the present case, the Supplemental Decree created an equitable lien on the Maplewood property. The Supplemental Decree's award to Treiger of one-half of the net proceeds of the sale of the Maplewood property did not include a sum certain. As such, it did not create a statutory lien for that award.[FN3] However, the Supplemental Decree ****216** specifically identified the Maplewood property, including its tax parcel number, and fastened Treiger's award to that property. As a result, the Supplemental Decree created an equitable lien on the Maplewood property in favor of Treiger for one-half of the net proceeds of its sale. Because the Supplemental Decree was entered and recorded prior to the Bank's prejudgment writ of attachment, Treiger's lien has priority. *See Hollenbeck v. City of Seattle,* 136 Wash. 508, 514, 240 P. 916 (1925); *cf.* RCW 6.13.090 (requiring that a judgment be recorded in order to create a lien on the value of a homestead property).

> FN3. Had it created a statutory lien, there would be uncertainty. A statutory lien attaches to all of a judgment debtor's existing and later acquired real estate. RCW 4.56.190. Any purchaser of the judgment debtor's encumbered properties, other than the one ordered sold, would be unable to determine the amount of the lien on the property they sought to purchase until the property subject to the lien had been sold. *Cf. Swanson,* 27 Wash.2d at 598, 179 P.2d 288 (identifying uncertainty of persons dealing with the judgment debtor as a relevant concern).

***51** III. *Documents 1375 and 1376 Are Valid Judgments Entitled to Priority; Document 1370 Is Not*

¶ 20 The last issue before us concerns whether various documents are judgments. The Bank petitioned for review of the Court of Appeals conclusion that Document 1376 is a judgment; Treiger appeals from the Court of Appeals conclusion that Documents 1370 and 1375 are not judgments. We affirm the Court of Appeals with respect to Documents 1370 and 1376 and reverse with respect to Document 1375.

¶ 21 "A judgment is the final determination of the rights of the parties in the action." CR 54(a)(1). This definition has persisted, by statute and court rule, since territorial days. *Reif v. LaFollette,* 19 Wash.2d 366, 369, 142 P.2d 1015 (1943). A judgment must be in writing and signed by the judge, CR 54(a)(1), but "need not be in any particular form," *State ex rel. Lynch v. Pettijohn,* 34 Wash.2d 437, 446, 209 P.2d 320 (1949). Whether an order constitutes a judgment is determined by whether it finally disposes of a case and was intended to do so. *See id.; see also* 14A Karl B. Tegland, WASHINGTON PRACTICE: CIVIL PROCEDURE § 35:1, at 475–76 (2d ed.2009).

[9] ¶ 22 Regardless of whether Document 1370 is a judgment, it was incorporated into the Supplemental Decree. Treiger is not entitled to a double recovery on this award, even were it a judgment.[FN4] As such, the trial court appropriately declined to give Document 1370 separate effect.

> FN4. The same is true of Document 1371. The Supplemental Decree expressly incorporated the award set forth in Document 1371. The summary judgment order awards Treiger both amounts, an apparent double recovery. The Bank has not appealed from this error; in fact, it appears to have invited the error.

[10] ¶ 23 Document 1375 is a judgment. It awards Treiger $3,750 in attorney fees after finding that Treiger has need for his fees to be paid and that Owens has the ability to pay them. This is an award of temporary attorney fees or suit money, as authorized by RCW 26.12.190. We have long held ***52** that such an order is a final judgment. *State ex rel. Taylor v. Superior Court,* 151 Wash. 568, 572, 276 P. 866 (1929).

[11] ¶ 24 Document 1376 is also a judgment. Document 1376 sets forth, with specificity, a final determination of how proceeds from the sale of the Maplewood property are to be distributed.[FN5] The distribution largely recites the awards set forth in the Supplemental Decree: it defines those costs to be deducted from the gross proceeds to determine the net proceeds, awards Treiger his 50 percent of the net proceeds immediately, and then provides for the order of distribution from Owens' share of the net proceeds. Document 1376 also includes various awards from Owens' share of the net proceeds to Treiger, including prior judgments, sanctions for contempt, and attorney fees and costs. All remaining proceeds are payable to Owens, but must first "be placed in a blocked, interest bearing account" from which funds may only be released by court order. CP at 44. In other words, Document 1376 finally determines the rights of the parties to the ****217** proceeds of the Maplewood property and is a judgment.

> FN5. The specific sale contemplated by Document 1376 did not take place. However, the property later sold for $75,000 *more* than the sale contemplated by Document 1376, and Document 1376 did not rely upon specific dollar amounts. Thus, implementation of Document 1376 was not frustrated by the later sale.

¶ 25 The Bank argues that Documents 1375 and 1376 are not effective judgments because they lack the judgment summaries required by RCW 4.64.030. That statute provides, in relevant part, as follows:

> (1) The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.
>
> (2)(a) On the first page of each judgment which provides for the payment of money ... the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the ***53** taxable costs and attorney fees, if known at the time of the entry of the judgment....
>
> ....
>
> (3) If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. *The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section.*

RCW 4.64.030 (emphasis added). The Bank seizes upon the italicized portion of the statute to argue that a judgment that lacks a judgment summary is not a valid judgment and, as such, cannot create a lien. This requires that we interpret the statute.

[12][13] ¶ 26 When interpreting a statute, our objective is to give effect to the intent of the legislature. *Bowie v. Dep't of Revenue,* 171 Wash.2d 1, 10, 248 P.3d 504 (2011). We begin by attempting to discern the statute's plain meaning. *Id.* In determining the plain meaning of a statute, we consider "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Christensen v. Ellsworth,* 162 Wash.2d 365, 373, 173 P.3d 228 (2007). We attempt to harmonize apparently contradictory statutes prior to resorting to canons of construction that give preference to one statute over another. *See Wark v. Wash.*

Nat'l Guard, 87 Wash.2d 864, 867, 557 P.2d 844 (1976).

[14] ¶ 27 In the first subsection of RCW 4.64.030, the legislature states that "[t]he clerk shall enter all judgments *in the execution docket,* subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action." (Emphasis added.) This subsection makes clear that the legislature is using the term "enter" to mean placement of a judgment in a *specific* record. Importantly, this is different from the general usage of the term "entry of judgment." In general, the legislature uses this term to indicate the point at which the judgment is entered into the " 'official records of the ***54** court,' " Tegland, *supra,* § 35.6, at 480, and becomes effective. *See, e.g.,* RCW 6.01.020. In this respect, judgments are "entered," and take effect, upon delivery to the clerk's office. *Id.;* CR 58(b). In RCW 4.64.030, however, the legislature has used the term "enter" to mean the more specific act of recording the judgment in the execution docket. This is undeniably clear in RCW 4.64.030(1), and where similar words are used in different parts of the same statute we presume the words are given the same meaning. *Cowles Publ'g Co. v. State Patrol,* 109 Wash.2d 712, 722, 748 P.2d 597 (1988). Thus, when RCW 4.64.030(3) states that a "clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section," we read this together with RCW 4.64.030(1) to mean that a clerk may not enter a judgment *in the execution docket,* and the judgment does not take effect *for purposes of the execution docket,* until a proper summary exists.[FN6] This reading also reconciles RCW 4.64.030(3) with RCW 6.01.020 and CR 58(b), which provide that a judgment is entered upon delivery to the clerk's office.

FN6. The legislature might make the creation of a lien on a judgment debtor's real property contingent on entry of the judgment in the execution docket. It has not yet done so.

****218** ¶ 28 include judgme in the executio judgments and, liens on Owen certain awards t

¶ 29 We cree created, in favor of Treiger, an equitable lien against the Maplewood property in the amount of one-half of the net proceeds of its sale. We further conclude that Documents 1375 and 1376 are valid judgments that created statutory liens on Owens' ***55** real estate, including the Maplewood property, for the additional sum certain awards they contained. We remand this case to the superior court for further proceedings consistent with this opinion.

WE CONCUR: BARBARA A. MADSEN, Chief Justice, CHARLES W. JOHNSON, GERRY L. ALEXANDER, TOM CHAMBERS, MARY E. FAIRHURST, DEBRA L. STEPHENS and CHARLES K. WIGGINS, Justices.

J.M. JOHNSON, J. (dissenting in part).

¶ 30 I join the majority in holding the "Supplemental Decree of Dissolution" entitled Kenneth Treiger to one-half of the proceeds of the Maplewood property sale before satisfaction of Bank of America's lien. I dissent in part because I would also hold that under RCW 4.64.030(3), a judgment that fails to contain the summary required by RCW 4.64.030 lacks legal effect. Documents 1375 and 1376 do not comply.

¶ 31 As the majority accurately recognizes, a judgment is typically "entered" and effective from the time it is delivered to the clerk for filing. CR 58(b). The majority fails to acknowledge this general rule has specified exceptions. Under RCW 4.64.030(3), the effective date of a judgment is delayed if the written judgment does not contain a summary as required by the statute: "The clerk may

not enter a judgment, *and the judgment does not take effect,* until the judgment has a summary in compliance with this section." RCW 4.64.030(3) (emphasis added). The majority holds Documents 1375 and 1376, which lack the statutorily required summaries, are valid judgments in spite of the clear language of this statute. I dissent because honoring the statute's plain meaning requires holding Documents 1375 and 1376 never took effect as judgments.

¶ 32 In reaching its conclusion, the majority purports to follow established rules of statutory interpretation. Majority at 13. First and foremost, the process of statutory interpretation requires examination of the plain meaning of the text. ***56***Bowie v. Dep't of Revenue,* 171 Wash.2d 1, 10, 248 P.3d 504 (2011). The majority cites this proposition, and then adds language to the text of a statute adopted by the legislature. The majority concludes RCW 4.64.030(3) must be read as follows: "a clerk may not enter a judgment *in the execution docket,* and the judgment does not take effect *for purposes of the execution docket,* until a proper summary exists." Majority at 15. By adding language to the statute, the majority disregards the cardinal canon of statutory interpretation: "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). By its terms, RCW 4.64.030(3) provides that a judgment does not become effective until it contains the statutorily required summary. No additional text is needed to reach this conclusion, and only the legislature can amend the statute.

¶ 33 The majority focuses on RCW 4.64.030(1) , which provides: "The clerk shall enter all judgments *in the execution docket* subject to the direction of the court...." The majority claims a similar reference to the execution docket is necessary to interpret subsection (3). This reading may appear logical in relation to the directive, "the clerk may not enter a judgment ... until the judgment has a summary." RCW 4.64.030(3). This reading implies the clerk will not enter a judgment *in the execution docket* until it contains a summary. Yet, the majority's reasoning unravels as it continues: "... **and the judgment does not take effect **219** *for purposes of the execution docket,* until a proper summary exists." Majority at 15 (boldface added). This reading makes little conceptual sense.

¶ 34 The execution docket is a public record maintained by the county clerk that includes judgments, abstracts, and transcripts of judgments. RCW 4.64.060. The docket is kept open during business hours for members of the public who wish to inspect it. *Id.* Considering this context, the majority offers no explanation as to what "effect" a judgment may have in relation to the execution docket that is distinct from ***57** the binding effect of the judgment itself. A judgment "takes effect" when it disposes of a judicial action and determines the rights of the parties before the court. *See Reif v. LaFollette,* 19 Wash.2d 366, 369, 142 P.2d 1015 (1943) (quoting Rem.Rev.Stat. § 404). A judgment does not have a separate legal effect when placed on the execution docket for public inspection. Thus, the majority's reading renders the phrase "judgment does not take effect" in RCW 4.64.030(3) superfluous. It is a well-established canon of statutory construction that a court should avoid interpretations of a statute that render certain provisions superfluous. *See Whatcom County v. City of Bellingham,* 128 Wash.2d 537, 546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous."). The majority abandons this recognized guidepost of statutory interpretation.

¶ 35 The majority also asserts its reading reconciles RCW 4.64.030(3) with RCW 6.01.020. Majority at 15. In actuality, the majority's reading gives priority to the latter statute, a statute worded in terms more general than those of RCW 4.64.030(3). *See* RCW 6.01.020 ("a judgment of a superior court is entered when it is delivered to the

clerk's office for filing"). When facing a conflict, we should "give preference to the more specific and more recently enacted statute." *Tunstall v. Bergeson,* 141 Wash.2d 201, 211, 5 P.3d 691 (2000), *cert. denied,* 532 U.S. 920, 121 S.Ct. 1356, 149 L.Ed.2d 286 (2001). The majority's reading does just the opposite.

¶ 36 In the legislature's statutory scheme, chapter 6.01 RCW lays out general provisions and definitions. Among these provisions, RCW 6.01.020 generally describes what constitutes an entered judgment. With greater specificity than these general provisions, chapter 4.64 RCW promulgates the detailed requirements of entering a judgment. RCW 4.64.030 is among these provisions. Under our rules of construction, RCW 4.64.030(3) must receive interpretive priority over RCW 6.01.020 to carry out the legislature's ***58** intent. In enacting RCW 4.64.030(3), the legislature intended to provide a powerful incentive for the parties to submit accurate judgment summaries to assist the clerk's office in its filing responsibilities. *See* S.B. Rep. on Engrossed S.B. 5449, 53d Leg., Reg. Sess. (Wash.1994) (Representatives testified the new statutory provision was "important to the staffs of the court clerks" and would "help to assure that information disseminated by courts is accurate."). To give interpretive priority to RCW 6.01.020 would nullify the legislature's action in adopting the statutory scheme that includes RCW 4.64.030. Due to our preference for specific and recent statutes, we should afford interpretive priority to RCW 4.64.030(3).

¶ 37 As Documents 1375 and 1376 lacked the summaries required by RCW 4.64.030, they were not effective as judgments. In holding otherwise, the majority fails to give meaning to the plain language of RCW 4.64.030(3) and ignores time-honored canons of statutory construction. Because I would give greater deference to these canons and the intent of the legislature as evidenced by the language it adopted, I respectfully dissent.

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