

NO. 45925-6-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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**Douglas S. Radabaugh and Shirley Radabaugh,  
Appellants (Defendants)**

v.

**Heritage Restoration, Inc.,  
Respondent (Plaintiff)**

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**APPELLANTS RADABAUGHS' OPENING BRIEF**

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Ben D. Cushman  
Cushman Law Offices, P.S.  
924 Capitol Way South  
Olympia, WA 98501  
360/534-9183

Attorney for Appellants

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## I. INTRODUCTION

This case presents a single question – whether a judgment creditor with an ordinary breach of contract judgment can avoid a debtor’s Chapter 11 bankruptcy discharge by obtaining an order of the Trial Court, two years after entry of judgment, reforming the Findings of Fact and Conclusions of Law to include a supplementary equitable claim for payment. Such a process is error. It is untimely and extra-procedural. Even if not, the process involves the application of equity where equity should not apply due to the applicability of an adequate remedy at law. Finally, such a process, if allowed, would circumvent the entirety bankruptcy of and would apply to do so in almost all bankruptcy cases. Fortunately, bankruptcy law itself forecloses this process by discharging equitable claims for payment along with other legally recognized debts. The Court erred in allowing such circumvention of bankruptcy law. This Court should reverse the Trial Court and remand this matter with direction that the Trial Court direct that Heritage Restoration refund to the court registry the funds that were erroneously disbursed to it and with further direction that those funds should be properly disbursed to the Radabaughs as Radabaugh money protected by a claim of exemption in bankruptcy.

## II. ASSIGNMENTS OF ERROR

### *Assignments of Error*

1. The Trial Court Erred in Disbursing Money Held in the Registry of Court to Respondent Heritage Restoration based on a Judgment Heritage Restoration had Obtained Against the Appellants Radabaugh when the Radaughs had Filed for and Obtained a Bankruptcy Discharge of Debts, Using one of their Property Exemptions to Secure the Money in Court, in a Bankruptcy Proceeding in which Heritage Restoration had Filed a Creditor's Claim Based on Its Judgment.

2. The Trial Court Erred in Reforming the Judgment in Favor of Heritage Restoration to Include an Equitable Claim for Payment for the Purpose of Allowing Enforcement of a Judgment Otherwise Void By Operation of a Bankruptcy Discharge.

### *Issues Pertaining to Assignments of Error*

1. Is it proper for a Trial Court to modify a judgment, following discharge of the judgment in bankruptcy, more than two years after issuance of the judgment, to reframe a legal award of damages as an equitable award for the purpose of circumventing the bankruptcy discharge of the judgment debtors?

2. Is it proper for a Trial Court to modify a judgment awarding damages to include equitable relief when the money damage judgment is a

sufficient recovery as a matter of law and, therefore, the judgment creditor sought and obtained complete and sufficient legal relief without resort to equity?

3. Is it proper for a Trial Court to disregard a bankruptcy discharge to pay a judgment based on an equitable right to payment of money when the Bankruptcy Code at 11 U.S.C. §101(5)(8)(A)&(B) specifically provides that such equitable claims are discharged along with purely legal claims to payment of debt?

4. Is it proper for Trial Court to disburse money belonging to a judgment debtor in partial payment of a judgment that has been discharged in bankruptcy prior to the disbursement?

### **III. STATEMENT OF THE CASE**

This case arises from a construction contract to repair insured water damage relating to a roof leak at the Radabaugh residence. The leak was severe, causing water damage on the walls and ceilings in many rooms throughout the Radabaugh house. The Radabaughs filed an insurance claim, received an insurance payout to conduct repairs, and hired Heritage Restoration to perform the repair work. (CP 4-22; CP 23-25.)

The Radabaughs were unhappy with the quality of Heritage Restoration's work, which fell short of the final result they understood Heritage Restoration to have promised. (CP 23-25.) They withheld money

from Heritage Restoration based on this claim. Heritage Restoration sued for breach of contract and, in the alternative, some equitable remedies (such as quantum meruit) seeking an equitable basis for payment in the event there was a legal defect in its contract claim. (CP 4-22.)

During pendency of the case, the Radabaughs paid a portion of their insurance proceeds into the Registry of Court. The source of this money was a payment to the Radabaughs, by their insurance company, for the covered casualty loss caused by the roof leak. (CP 29-33; CP 68.)

The case proceeded to trial. The Trial Court determined that there was no legal defect in Heritage Restoration's Contract claim and ruled that the Radabaughs had breached the contract by failing to pay Heritage Restoration. Heritage Restoration received a money judgment against the Radabaughs based on Findings of Fact and Conclusions of Law prepared by Heritage Restoration's Counsel and approved and issued by the Trial Court. This judgment, and these Findings and Conclusions, provided Heritage with a money judgment award of breach of contract damages, but did not provide any equitable relief. Further, this judgment did not address the money held in court. Specifically, the judgment did not determine that the money held in Court belonged to Heritage Restoration, which would have resulted in a partial credit against the amount the Trial Court found to be presently due and owed. (CP 34-47; CP 48-50.)

Probably because it recognized that this legal award of damages was sufficient as a matter of law, Heritage Restoration did not appeal the judgment within thirty days of its issuance. Heritage Restoration also did not seek reconsideration or revision of the judgment to include equitable claims or to address the issue of how to disburse the money held in court.

Thereafter, unable to pay the judgment, the Radabaughs filed for bankruptcy protection. (CP 61; CP 67-75.) Heritage Restoration filed a claim in bankruptcy as a creditor of the Radabaughs. That claim was based entirely on the judgment it had received. Heritage Restoration did not file an adversarial proceeding or otherwise seek additional or further relief in the bankruptcy court. (CP 67-75.) The Radabaughs, however, used one of their few exemptions to protect the money held in court from creditor claims, including that of Heritage Restoration. The Radabaughs received a discharge of debts, including the debt represented by the judgment in favor of Heritage Restoration. (CP 67-75.)

After conclusion of the bankruptcy proceedings, with a discharge of the debts (including the Heritage Restoration judgment), Heritage Restoration filed a motion to have the Radabaugh insurance proceeds in the court registry disbursed to Heritage Restoration. (CP 51-60.) Knowing that its legal claim to payment had been discharged in bankruptcy, Heritage Restoration argued that it was equitably entitled to payment of the money in court and that this equitable right to payment, unlike the legal right to payment recognized in the



judgment, had not been discharged in the bankruptcy. Heritage Restoration requested that the Court issue an order making new findings of fact and conclusions of law to reform the judgment to include a claim for equitable right of payment and then to disburse the money held in the court registry on this basis. The Trial Court granted this motion, signed such an order, and disbursed the money to Heritage Restoration, over the Radabaughs' objection. (CP 116-119.) The Radabaughs appealed. (CP 120-125.)

## **VI. SUMMARY OF ARGUMENT**

For the Trial Court's decision to be upheld, the Heritage Restoration request for payment (including their request for payment of moneys paid by the Radabaughs' insurance company into the registry of court) must not be a "claim." Heritage Restoration must assert this, and did assert this after the Radabaughs' bankruptcy discharge, even though Heritage Restoration made a claim in the Radabaugh bankruptcy based on its judgment against the Radabaughs.

To support this position, Heritage Restoration recast its request as an equitable lien on money held by the Court. Heritage then argued that because it was making an equitable demand, it was not making a claim for or seeking recovery of a discharged debt in violation of the letter and purpose of the

Bankruptcy Code. The Trial Court accepted this argument. That was error for three reasons.

First, after the Court has issued its judgment and has adjudicated the dispute between the parties as a pure legal dispute giving rise to a pure legal judgment, which judgment Heritage Restoration did not appeal, it is too late for Heritage Restoration to attempt to recast their theory and request as an equitable petition rather than a legal claim. Second, Heritage Restoration's claim is not properly equitable at all, as Heritage Restoration's Complaint only sought monetary recovery of an alleged debt on various legal theories (including the classic legal theory of breach of contract, on which it ultimately prevailed) and as the legal recovery allowed by those theories is sufficient as a matter of law. Finally, even if Heritage Restoration's claim were equitable (or could be retroactively recast as equitable), it would nonetheless be an equitable right to payment of money and therefore a claim that is and was dischargeable in the Radabaugh bankruptcy.

## V. ARGUMENT

### A. Revision of the Judgment is Untimely

The Judgment and the Findings of Fact and Conclusions of Law issued by the Trial Court in October, 2011 did not include any equitable remedies in favor of Heritage Restoration and did not assign or otherwise adjudicate the

ownership of the funds held in the court registry in favor of Heritage Restoration. Faced with those omissions, Heritage Restoration has several proper remedies. First, within ten days of their issuance, Heritage Restoration could have filed a Motion for Reconsideration under CR 59(h) and Thurston County LCR 59, seeking supplementation and revision of the Judgment and the Findings of Fact and Conclusions of Law. Second, within thirty days of the issuance of judgment, Heritage Restoration could have appealed the Judgment and the Findings of Fact and Conclusions of Law. Finally, Heritage Restoration could have sought relief from the Judgment under CR 60 within one year of judgment or may have petitioned the Court to reopen the record, allowing for new testimony and new Findings of Fact and Conclusions of Law, under CR 59(g).

However, Heritage Restoration did none of these things. Rather, more than two years after issuance of the judgment, Heritage Restoration sought and received an order allowing disbursement of the moneys held in the registry of court along with the addition of new Findings of Fact and Conclusions of Law to support the post-trial equitable theory of the case Heritage Restoration's counsel presented as a way to avoid the effects of the Radabaughs bankruptcy. There was no proper process provided by any available rule, or followed by Heritage Restoration, allowing supplementation or modification of the Judgment and the Findings of Fact and Conclusions of Law on these terms.

Nonetheless, the Court granted the motion and issued the order. This was error.

Further, once a discharge is obtained under Chapter 7, the discharge “voids any judgment” against the Debtor. 11 U.S.C. §524(a)(1). Therefore, even if Heritage Restoration could return to Court more than a year after receiving its judgment and ask the Court to make new findings and rulings to convert the legal remedies provided in the judgment to equitable ones, it could not do so here. The Radabaugh’s discharged this debt, and this judgment, in bankruptcy. After the discharge, there was no judgment to revise, even if such untimely revision were proper.

**B. Heritage Restoration’s Claim is Legal Not Equitable.**

Following the issuance of the judgment against them, the Radabaughs sought bankruptcy protection, as is their right under the U.S. Bankruptcy Code (11 U.S.C.). Because the judgment was a money judgment based on purely legal grounds (breach of contract), the judgment was dischargeable in bankruptcy. Heritage Restoration had the right to file a bankruptcy claim, and it did so, but it did not have the right to enforce the judgment outside of or despite the Radabaugh bankruptcy.

The Heritage judgment was not paid in full in the bankruptcy. Therefore, the unpaid portion of the Radabaughs’ debt to Heritage Restoration was discharged. This would have and should have resulted in the voiding the

judgment Heritage Restoration had received against the Radabaughs without further payment.

However, as a general rule, equitable obligations, unlike legal obligations, are not discharged in bankruptcy. (There is a critical and applicable exception to that rule applying to equitable rights of payment, which are dischargeable. However, that issue is addressed below.) Therefore, in an effort to resuscitate its judgment and to be paid an additional amount from moneys the Radabaughs had received from their insurance company and tendered into the registry of court, Heritage Restoration filed a motion asking the Trial Court to reform the judgment to include a claim for "equitable assignment of funds" and then disburse the Radabaugh funds held by the Court as an equitable remedy. This was an improper use of equitable powers to provide the equitable equivalent of a legal remedy when the legal remedy is sufficient as a matter of law.

An equitable remedy will not be fashioned if an adequate remedy at law exists. Sorenson v. Pyeatt, 158 Wn.2d 523 at 531, 146 P.3d 1172 (2006). "The true nature of a cause of action stated in a complaint must be determined by its allegations and the evidence offered in support of its prayer for relief, and not by the pleader's conclusions as to its nature nor the label he places upon it." Hein v. Chrysler Corp., 45 Wn.2d 586 at 595, 277 P.2d 708 (1954).

This was an ordinary breach of contract case. It was a case about payment of money. It was not a case about specific performance or some other

action or inaction of a party, apart from payment of money, that the Court was asked to order or prohibit. Heritage Restoration contended that it was entitled to be paid for work it performed for the Radabaughs. The Radabaughs contended that Heritage Restoration's work was defective and refused to pay for the work in full. The Trial Court heard the case, disagreed with the Radabaughs' contention that the work was defective, and awarded Heritage Restoration breach of contract damages.

As a matter of law, payment of the damages awarded by the Court would have been (uncontroversially) a sufficient remedy. As such damages are a legal remedy, it follows that Heritage Restoration had an adequate remedy at law. More, Heritage Restoration actually received this adequate remedy at law in the form of its original, unreformed judgment against the Radabaughs.

Heritage Restoration's position, which was essentially adopted by the Trial Court, is that because the Radabaugh Bankruptcy meant that Heritage Restoration did not receive actual payment, the judgment at law Heritage Restoration received against the Radabaughs did not, in retrospect, provide Heritage Restoration with an adequate remedy and, therefore, it should be reformed to include a new equitable remedy allowing Heritage Restoration to receive a disbursement of Radabaugh money held by the Court. This position is wrong. First, as argued below, equitable rights to payment, unlike equitable rights to action (or to prohibition of action) are dischargeable in bankruptcy. Second, if accepted, this theory would eviscerate the whole of bankruptcy law.

Bankruptcy operates to discharge, as if paid, unpaid debts that are otherwise due and owing. If a debtor has a means to avoid payment of the debt (or to pay the debt) short of bankruptcy, such a debtor generally resorts to that means rather than to bankruptcy. Thus, the debts that are discharged in bankruptcy are ordinarily righteous and owing. Heritage Restoration's argument, that it should be paid this obligation, despite the Radabaugh bankruptcy, because the Trial Court has ruled that the amount is lawfully owed is not unique, but would rather apply to almost every debt ever discharged by a bankruptcy court. The mere fact of nonpayment as a result of a bankruptcy discharge does not make an otherwise adequate legal remedy inadequate for purposes of equity. Such a ruling would circumvent the entirety of bankruptcy law.

**C. Heritage Restoration's Claim Was Discharged in Bankruptcy**

Once a discharge is obtained under Chapter 7, the discharge "voids any judgment" against the Debtor. 11 U.S.C. §524(a)(1). The discharge also acts as an injunction to recover against any debt owed by the debtor. 11 U.S.C. §524(a)(2). A "debt" is defined as any liability on a "claim". 11 U.S.C. §101(12). A "claim" is defined in 11 U.S.C. §101(5)(8) as including all legal remedies and some equitable remedies:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, *equitable*, secured, or unsecured; or

(B) *right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.*"

(emphasis added)

That is, any claim for payment of money is a claim and therefore is a dischargeable debt, whether or not it has been reduced to final judgment and whether or not it presents as a legal right to damages or other payment or as an equitable right to money. If the ultimate recovery is monetary, the claim is dischargeable in bankruptcy.

Here, whether conceived legally or equitably, Heritage Restoration's claim is a claim for payment of money owed by the Radabaughs. They have no other right to the proceeds of the Radabaughs' insurance pay-outs. Thus, whether conceived legally or equitably, Heritage Restoration's claim was discharged by the Radabaugh bankruptcy prior to disbursement of the Radabaugh insurance proceeds held by the Court.

#### **D. The Disbursement of Held Funds Was Improper**

The money in the court registry were the proceeds of a casualty loss payment to the Radabaughs by the insurance company arising from an insured loss (storm water damage). Further, that money had never been garnished, seized, ordered paid, or ordered disbursed to any other person (including Heritage) by any Court. Therefore, the money remained Radabaugh money.



*See Ketner Bros., Inc. v. Nichols*, 52 Wn.2d 353, 357, 324 P.2d 1093 (1958)

(insurance proceeds belong to the insured).

## VI. CONCLUSION

The Trial Court erred in issuing an order disbursing to Heritage Restoration exempt money of the Radabaughs, which had been secured to the Radabaughs through the Radabaughs' bankruptcy process by application of an exemption. This money had been held in Court, but remained the Radabaughs' money, as it was not garnished, seized, or previously adjudicated by court order (including the judgment in this case) prior to the Radabaughs obtaining a bankruptcy discharge of debts. In disbursing the money to Heritage Restoration, despite the Radabaughs' claim to it and despite the discharge of the Radabaughs' obligation to Heritage Restoration (which legally voided the judgment), the Court committed several reversible errors.

First, the Court accepted an untimely process not allowed by any court rule or statute when it reformed the Heritage Restoration judgment two years after its issuance. Further, that reformation occurred after the judgment was void by operation of bankruptcy, and therefore the Court lacked subject matter (the judgment) on which to act. The Trial Court's order purports to supplement a judgment that no longer exists and therefore operates on the void. A void document cannot be amended or supplemented, and any attempt to do

so is as fatally subject to the voidness of the underlying judgment as any other attempt to enforce or implement the judgment would be.

Second, although the Court's order purports to supplement its original judgment by adding an equitable claim, Heritage Restoration's claim is not properly equitable at all. Heritage Restoration claim is for a monetary recovery of an alleged debt. It received a judgment on those grounds. As a matter of law, a money judgment is an adequate legal remedy on a suit for debt. The possibility of avoiding the debt, and the judgment, through proper bankruptcy process does not change this. Bankruptcy just works that way, and in refusing to allow the bankruptcy process to work, the Trial Court has erroneously disregarded Federal Bankruptcy law.

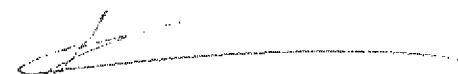
Finally, even if Heritage Restoration's claim were equitable, it was nonetheless dischargeable and discharged. 11 U.S.C. §101(5)(8) defines claims that can be discharged in bankruptcy as including both legal claims (money judgment claims) and equitable claims for payment. Heritage Restoration gains no defense from the Radabaugh bankruptcy discharge by the Trial Court's recasting its money judgment as an equitable right to payment.

The Trial Court erred by disbursing exempt money belonging to the Radabaughs, in circumvention of bankruptcy law. This Court should reverse the Trial Court and remand this matter with direction that the Trial Court order Heritage Restoration to refund to the court registry the funds that were

erroneously disbursed to it and with further direction that those funds should be properly disbursed to the Radabaughs.

SUBMITTED this 14<sup>th</sup> day of July, 2014.

CUSHMAN LAW OFFICES, P.S.



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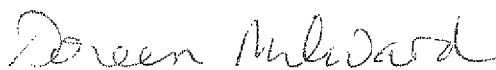
Ben D. Cushman, WSBA #26358  
Attorney for Appellants Radabaugh

CERTIFICATE OF SERVICE

I certify that on the date signed below, I caused the foregoing document to be filed with this Court, and served upon Respondent's attorney via legal messenger.

DECLARED UNDER PENALTY OF PERJURY ACCORDING TO  
THE LAWS OF THE STATE OF WASHINGTON.

Dated this 14<sup>th</sup> day of July, 2014, in Olympia, Washington.



---

Doreen Milward

**Attorney for Respondent Heritage  
Restoration, Inc.**

WSBA #37210

Trevor A. Zandell

Swanson Law Firm, PLLC

809 5th Avenue SE

Olympia, WA 98501

## CUSHMAN LAW OFFICES PS

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No Comments were entered.

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