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Court of Appeals
Division III
State of Washington

No. 314359

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

IN RE RAPID SETTLEMENTS, LTD.'S APPLICATION FOR
APPROVAL OF TRANSFER OF STRUCTURED SETTLEMENT
PAYMENT RIGHTS

RSL-3B-IL, LTD. and E. JOHN GORMAN,

Appellants,

v.

SYMETRA LIFE INSURANCE COMPANY and
SYMETRA ASSIGNED BENEFITS SERVICE COMPANY,

Respondents.

REPLY BRIEF OF APPELLANTS
RSL-3B-IL, LTD. AND E. JOHN GORMAN

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MAY IT PLEASE THE COURT:

Symetra Life Insurance Company and Symetra Assigned Benefits Service Company (“Symetra”) implausibly attempt to make the legal principles governing contempt work in their favor. Those legal principles make it clear the trial court held RSL-3B-IL, Ltd. (“RSL-3B”) and its Texas counsel E. John Gorman (“Gorman”) in criminal contempt. The trial court punished RSL-3B and Gorman for actions they took in the past and bound them to a fatally defective purge clause. RSL-3B and Gorman could never undo these past acts that gave rise to punitive sanctions. Due process attached in this criminal contempt proceeding, but the trial court deprived RSL-3B and Gorman of those safeguards. The Court should vacate the order of contempt that issued on January 10, 2013 (the “Contempt Order”).

ARGUMENT IN REPLY

A. Symetra Mislabels The Sanctions As Remedial

In derogation of Washington law, Symetra unilaterally tries to turn a punitive sanction ordered by the trial court into a remedial one. *See* Symetra’s Brief at 12-15. This Court, rather than Symetra, is tasked with classifying a sanction as punitive or remedial as a matter of law in accordance with the contempt statutes. *See In re Pers. Restraint of King*, 110 Wn.2d 793, 798 (1988); *In re Marriage of Didier*, 134 Wn. App. 490,

500-02 (2006). Statutory construction calls for *de novo* review, thereby denying Symetra an authoritative say in the matter. *See Diaz v. State*, 175 Wn.2d 457, 462 (2012). On the issue of contempt, Symetra lacks the ability to alchemize lead into gold.

No discretion in turn protects the trial court when it comes to applying the legal principles that govern contempt. *See Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 833 (2007). This Court must “look to the substance of the proceeding and the character of the relief that the proceeding will afford” in differentiating between punitive and remedial sanctions. *In re Pers. Restraint of King*, 110 Wn.2d at 799. The context of the sanction therefore renders immaterial the trial court’s attempt to characterize the relief it awarded Symetra as “remedial.” (CP 525)

B. The Criminal Sanctions Here Punish Past Acts

Symetra misapprehends Washington law that substantively distinguishes between civil (remedial) and criminal (punitive) contempt. *See In re Dependency of A.K.*, 162 Wn.2d 632, 645-46 (2007). Washington courts have long adhered to this “well-recognized distinction between criminal and civil contempt proceedings and any judgment rendered thereon.” *In re Marriage of Didier*, 134 Wn. App. at 501. In this dichotomy, criminal contempt looks strictly to punish contumacious behavior that occurred in the past, while civil contempt looks to remedy

disobedient behavior by coercing the contemnor to comply with a court's order right away or in the future. *Id.*; accord *Int'l Union, UMWA v. Bagwell*, 512 U.S. 821, 826-30 (1994).

The triggering mechanisms codified by state statute embody the differences between punitive and remedial sanctions. “Punitive sanction” means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” RCW § 7.21.010(2); see *In re Interest of M.B.*, 101 Wn. App. 425, 438 (2000), *review denied*, 142 Wn.2d 1027 (2001). “Remedial sanction” means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.” RCW § 7.21.010(3); see *In re Interest of M.B.*, 101 Wn. App. at 438.

The clear language of the Contempt Order punishes RSL-3B and Gorman for allegedly committing past acts that took place outside the courtroom, giving rise to “indirect contempt.” See *In re Dependency of A.K.*, 162 Wn.2d at 645-46; accord *Bagwell*, 512 U.S. at 826-30 & n.2. To subject RSL-3B and Gorman to liability for indirect contempt requires notice, a hearing, supporting evidence, and detailed fact findings. See *Bagwell*, 512 U.S. at 827-31; *In re Dependency of A.K.*, 162 Wn.2d at 646 n.4. The trial court must make “specific findings” in the Contempt Order

to justify contempt. *See State v. Hobble*, 126 Wn.2d 283, 295 (1995); *State v. Plese*, 134 Wn. 443, 449 (1925). The Contempt Order, however, lacks any such findings.

C. No Way Exists To Purge The Punitive Fines

The *nature* of the contempt sanction defines its substance as punitive or remedial. *In re Interest of M.B.*, 101 Wn. App. at 438-39, 444-45, 447. According to the Supreme Court, “[t]he dichotomy between coercive and punitive imprisonment has been extended to the fine context.” *Bagwell*, 512 U.S. at 829. On January 10, 2013, the trial court assessed fines against RSL-3B and Gorman for allegedly failing to comply with the TRO that expired on August 31, 2012. *See id.* at 828-30 (drawing a distinction between coercive and punitive fines). These fines sought to compel RSL-3B and Gorman to undo certain acts that had already taken place months before the Contempt Order issued.

The fine against RSL-3B came in the form of an award of attorney’s fees totaling over \$47,000. (CP 526) Acting under Section 7.21.030(1)(b), the trial court fined Gorman \$1,000 as “a one-time forfeiture” payable to Symetra. (CP 526) Notably, the trial court made neither fine conditional on complying with the TRO’s terms. Nor did the trial court set a date by which RSL-3B and Gorman could pay their fines in the future so they could comply with the TRO and avoid contempt.

As worded, the Contempt Order assesses fixed fines as punitive sanctions that offer no opportunity for RSL-3B and Gorman to purge the alleged contempt. *See Bagwell*, 512 U.S. at 828-30; *State v. John*, 69 Wn. App. 615, 619 (1993). RSL-3B and Gorman could never undo the acts that lay at the TRO's heart – to take no action in the “Harris County District Court Case No. 2010-41653” while the TRO remained in effect. The filings and hearings in the Texas state court action occurred about five months before the Contempt Order issued. Neither RSL-3B nor Gorman can go back in time to August 2012 to be able to comply with the TRO or the Contempt Order whereby they cease litigating the case.

By analogy, a truant “child cannot perform his or her obligations by going to school yesterday.” *In re Interest of M.B.*, 101 Wn. App. at 448. The so-called purge clause in the Contempt Order gives RSL-3B and Gorman no “get out of jail free card” for specific conduct that violated the TRO, such as advocating for relief at two hearings in the Texas state court action. (*See VRP* at 3, 7-9) No way exists for RSL-3B and Gorman to undo retroactively their past acts in “Harris County District Court Case No. 2010-41653,” making the contempt punitive. *See In re Interest of M.B.*, 101 Wn. App. at 448. (*See CP 539*)

“A conditional sanction is remedial if the contemnor has the ability to purge the contempt and avoid sanction by immediately complying with

a condition.” *In re Interest of J.L.*, 140 Wn. App. 438, 446 (2007). In other words, “[p]urge conditions are valid only if they are in the contemnor’s capacity to immediately purge.” *In re Interest of Silva*, 166 Wn.2d 133, 142 n.5 (2009). While conceding this legal principle in its brief, Symetra avoids the very conduct it identified for the trial court as contumacious. Symetra’s Brief at 7-8, 13. (*See* CP 227; VRP at 3, 7-9)

Symetra complained below that RSL-3B and Gorman filed papers, requested relief, and attended two hearings in the Texas state court case in defiance of the TRO. (CP 227; VRP at 3, 7-9) The trial court found that RSL-3B and Gorman “disobeyed” the TRO largely by opposing Symetra’s motion to continue a hearing set by RSL-3B, appearing at two hearings, and seeking to lift the abatement order in the “Harris County District Court Case No. 2010-41653.” (CP 525) To use the phrase coined by *In re Interest of M.B.*, RSL-3B and Gorman can never correct the past by going to school yesterday. The Contempt Order lacks a purge condition that enables RSL-3B and Gorman to “unring the bell” and therefore imposes punitive sanctions. (*See* CP 539)

D. The Trial Court Awards Symetra Excessive Fees

Rather than compensatory, the determinate monetary sanctions in the Contempt Oder are punitive. “Where a fine is not compensatory, it is civil only if the contemnor is afforded the opportunity to purge.” *Bagwell*,

512 U.S. at 829. The trial court attached no purge conditions to the fines that would excuse those finite acts that occurred in the “Harris County District Court Case No. 2010-41653” while the TRO existed. As *Bagwell* holds, “a ‘flat, unconditional fine’ totaling even as little as \$50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance.” *Id.*

The excessive fine levied against RSL-3B did far more than merely compensate Symetra for “bringing the motion for contempt in Benton County as well as [reimbursing] those fees and costs incurred in the Texas court action while the TRO was in place.” Symetra’s Brief at 17. (*See* VRP at 4) The billing records submitted by Symetra belie this claim, revealing numerous and substantial charges made by its Washington and Texas counsel *that occurred after the TRO expired on August 31, 2012.* (CP 364-449) *See Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148-49 (9th Cir. 1983).

To prove the point, Symetra’s *verified* legal bills document sizeable amounts charged by its Washington counsel in moving to remand the underlying case from the *Washington federal court* to the trial court *after* the TRO expired. (CP 428-39) Symetra fails to prove how these and other significant charges proximately relate to the TRO or to enforcing that order *via* contempt. *See In re Gen. Motors Corp.*, 110 F.3d 1003,

1015-16, 1018-19 (4th Cir.), *cert. denied sub nom. Butler v. Gen. Motors Corp.*, 522 U.S. 814 (1997). Because the Contempt Order lacks this “specific” causal nexus, the trial court levied punitive fines. *See id.*

Above all, FinServ Casualty Corp. (“FinServ”), and not RSL-3B, removed the underlying case to the Washington federal court. (CP 269) Symetra concedes that the TRO issued before FinServ ever became a party in the trial court, such that the TRO could never apply to FinServ. (VRP at 7-8) Nor does the TRO even name FinServ or purport to restrain it. *See Chase Nat’l Bank v. Norwalk*, 291 U.S. 431, 436-37 (1934) (injunction does not apply to a nonparty).

Second, the TRO fails to cover trial court proceedings that were already taking place in Washington as opposed to Harris County, Texas. FinServ removed the underlying case to a federal court that sits in Washington, not in Texas. Plus, the TRO explicitly “enjoined” RSL-3B alone “from initiating any other lawsuits.” (CP 526) The case below has been pending since 2004, which fails to fit the plain and ordinary meaning of the word “initiating” used by the trial court in the TRO.

Third, the TRO expired on August 31, 2012, but the trial court awarded fees that Symetra incurred afterward in the Texas litigation. Symetra’s legal fees accrued after it removed the Texas state court case to the U.S. District Court for the Southern District of Texas on September

12, 2012. (CP 365-68, 372-73) The billing statements verified by Symetra's Texas counsel confirm that the legal services and charges spanned the **post-TRO** period from September 4, 2012 to December 4, 2012. (CP 371-79) These records refute Symetra's representation to the Court that it incurred "those fees and costs . . . in the Texas court action *while the TRO was in place.*" Symetra's Brief at 17 (emphasis added). By going beyond the TRO's lifetime, these attorney's fees can never be compensatory. *See Shuffler*, 720 F.2d at 1148-49.

E. The Contempt Order Expands The TRO's Reach

Symetra fails to explain just how far the TRO and the Contempt Order reached in the Texas state court litigation. The TRO commanded RSL-3B to strike "any and all pending motions" in "Harris County District Court Case No. 2010-41653" no matter what party filed them or when. (CP 135) The scope of this mandatory provision extended to motions and pleadings that RSL-3B filed *before* Symetra served the TRO *on the night of August 20, 2012.* (*See* CP 137) In this circumstance, the Contempt Order punishes RSL-3B and its Texas counsel Gorman for actions they took in advance of the TRO. *See Bagwell*, 512 U.S. at 826-30, 834-37.

By mandating that RSL-3B strike "any and all pending motions," the TRO goes well beyond its own four corners and its expiration date. This dragnet clause encompasses motions filed by RSL-3B after the TRO

ended. The Contempt Order in turn purports to punish conduct to which the TRO never could apply. The purge clause offers no relief from this oppressive sanction.

The TRO similarly purports to bind two parties it never applied to in the first place – FinServ and A.M.Y. Property & Casualty Corp. (“A.M.Y.”). FinServ and A.M.Y. filed their own “motions” and other papers in the “Harris County District Court Case No. 2010-41653” before the TRO issued and afterward. The TRO would force RSL-3B and Gorman in particular to “strike” the “pending motions” filed by FinServ and A.M.Y. A literal reading of the TRO impermissibly puts FinServ and A.M.Y. at risk. *See Chase Nat’l Bank*, 291 U.S. at 436-37 (injunction does not apply to a nonparty).

In enforcing the TRO, the Contempt Order violates due process by capturing FinServ and A.M.Y. or failing to rule them out. *See id.* The Contempt Order makes no exception for these two parties to the Texas state court litigation. Nor does the TRO or the Contempt Order limit its terms strictly to “any and all motions” filed only by RSL-3B.

On its face, the Contempt Order sanctions RSL-3B and Gorman for acts they committed in the past. Neither RSL-3B nor Gorman could unilaterally act on behalf of FinServ and A.M.Y. to “strike any and all” of their “pending motions.” The punishment meted out by the trial court

satisfies the statutory definition of criminal contempt. The trial court erroneously punished RSL-3B and Gorman only for their past disobedient behavior without affording them the full panoply of due process protections. See *Bagwell*, 512 U.S. at 826-30, 834-37; *In re Pers. Restraint of King*, 110 Wn.2d at 800; *In re Interest of M.B.*, 101 Wn. App. at 438, 447.

F. The Contempt Order Imposes Impossible Conditions

This Court must focus on “the original order” – here, the TRO – to be able to categorize the contempt sanctions as punitive or remedial. *In re Interest of M.B.*, 101 Wn. App. at 447-48. A remedial sanction must be able to coerce an act “yet in the person’s power to perform.” RCW § 7.21.010(3). A sanction turns punitive when that ability to comply with the original order no longer exists, thereby leaving only the power to punish for past disobedient acts. *State v. Buckley*, 83 Wn. App. 707, 711, 713-14 (1996); *In re Interest of M.B.*, 101 Wn. App. at 447-48. In its brief, Symetra never performs this necessary analysis despite drafting and submitting the TRO signed by the trial court, not to mention the Contempt Order.

Symetra avoids dissecting the TRO’s terms because the least bit of scrutiny exposes the Contempt Order as punitive. When the Contempt Order issued in January 2013, RSL-3B and Gorman could perform none of

the TRO's prohibitory or mandatory acts to the extent they related to the "Harris County District Court Case No. 2010-41653." (CP 135) Symetra removed the "Harris County District Court Case No. 2010-41653" to the Texas federal court on September 12, 2012. (CP 296, 300-01)

The TRO contains a prohibitory ruling and a mandatory one pertaining to the "Harris County District Court Case No. 2010-41653." As for the "prohibitory" part, the trial court "enjoined" RSL-3B "from taking any further action in Harris County District Court Case No. 2010-41653" and "from initiating any other lawsuits in any state" that might "undermin[e] Symetra's right to offset the payment due on September 2, 2012." (CP 135) The "mandatory" ruling "ordered" RSL-3B to take affirmative action by "striking any and all pending motions in that case," referring specifically *in the same sentence* to Harris County District Court Case No. 2010-41653. (CP 135)

The Contempt Order imposes a punitive sanction – one that implicates criminal due process protections – by "punishing disobedient past acts rather than attempting to coerce future compliance." *Buckley*, 83 Wn. App. at 711, 713-14. Neither RSL-3B nor Gorman can go back in time to the brief period the TRO existed and refrain "from taking any further action in Harris County District Court Case No. 2010-41653." (*See* CP 539) The Contempt Order affords RSL-3B and Gorman no

“opportunity to purge the contempt by performing the acts *required in the original order.*” *Id.* at 711, 713-14 (emphasis added). The trial court improperly subjected RSL-3B and Gorman to punitive sanctions despite labeling them as “remedial.” *See id.* at 713-14.

By the time the trial court signed the Contempt Order on January 10, 2013, Symetra had already offset against the annuity payment that came due on September 2, 2012. RSL-3B could “initiate” no “lawsuit” or perform any other act that would tend, as the TRO put it, to “undermin[e] Symetra’s right to offset the payment due on September 2, 2012.” (CP 135) Symetra obtained the relief it wanted from the trial court and executed on its judgment by taking the offset. The offset extinguished the judgment debt Symetra sought to collect *via* the litigation below, negating what the TRO and the Contempt Order sought to accomplish.

G. The Texas State Court Case No Longer Exists

Defying long-standing precedent to the contrary, Symetra pretends as though the “Harris County District Court Case No. 2010-41653” still exists in one form or another. *See* Symetra’s Brief at 15. The removal by Symetra, however, divested the “Harris County District Court Case No. 2010-41653” of jurisdiction over the suit and conferred jurisdiction on the Texas federal court. *See Iowa Cent. Ry. v. Bacon*, 236 U.S. 305, 310 (1915); *Steamship Co. v. Tugman*, 106 U.S. 118, 122 (1882). Symetra

never even mentions this authority cited by RSL-3B and Gorman in their brief, much less tries to refute or distinguish it.

The TRO and the Contempt Order both specifically refer to the Texas *state court* litigation that proceeded in a Harris County court as Case No. 2010-41653. (CP 135, 525-26) The trial court emphatically limited the scope of these orders to the state court case alone, never mentioning the action removed by Symetra to the Texas federal court. The removal to the Texas federal court occurred four months before the trial court issued the Contempt Order on January 10, 2013. Significantly, the Contempt Order fails to say anything about requiring RSL-3B and Gorman to take any action in the Texas federal court case.

Nor can the trial court sanction RSL-3B and Gorman for prosecuting the Texas federal court case as one of the plaintiffs. *See Donovan v. City of Dallas*, 377 U.S. 408, 412-14 (1964). The trial court lacked the “power to take away this federal right by contempt proceedings or otherwise.” *Id.* at 413-14. The trial court erred by awarding attorney’s fees incurred by Symetra in Texas federal court, thereby punishing RSL-3B for pursuing its rights as a plaintiff in that court. *See id.* at 412-14.

H. The Fines Fail To Compensate Symetra For Any Loss

Without making any detailed findings of fact, the trial court ordered RSL-3B to pay Symetra “its costs and attorney’s fees.” (CP 526)

Section 7.21.030(3) restricts the trial court to “order[ing] a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney’s fees.” Under the *de novo* standard of review, this Court construes Section 7.21.030(3) as a matter of law without affording the trial court any deference. *See Diaz*, 175 Wn.2d at 462.

The Contempt Order exceeds the express limitation set by Section 7.21.030(3) by giving Symetra more than the statute allows. The trial court purports to award attorney’s fees and costs incurred by Symetra “in bringing this motion for contempt and all costs and attorney’s fees incurred by Symetra in the Harris County, Texas action between August 20, 2012, when the Court’s Temporary Restraining Order was served on [RSL-3B], and the date of this Order of Contempt.” (CP 526) In reality, Symetra reaps a windfall, recovering fees it incurred in the Washington and Texas federal court cases after the TRO expired. Neither of these federal cases involved “this motion for contempt.”

Diverging from Section 7.21.030(3), the trial court made no finding that Symetra suffered any actual losses caused by RSL-3B. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947). A compensatory fine “must of course be based upon evidence of

complainant's actual loss." *Id.* at 304. The trial court can never "make a noncompensatory fine civil simply by requiring it to be paid to the complainant instead of to the court." *Law v. NCAA*, 134 F.3d 1438, 1443 (10th Cir. 1998).

Nor does the trial court award Symetra any kind of actual damages, particularly because Symetra had already taken its offset against the annuity payment and suffered no loss. (VPR at 15) The Contempt Order instead levies determinate and unconditional fines on RSL-3B and Gorman without making the "threshold finding" that they can purge themselves of contempt. *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 933-34 (2005), *review denied*, 156 Wn.2d 1032 (2006). Because RSL-3B and Gorman could not comply with the TRO by undoing the past, a criminal sanction resulted. *Law*, 134 F.3d at 1443.

"If monetary assessment of a specific amount is neither compensatory nor conditioned on the occurrence of future violation of court orders, it raises a presumption that the fine is punitive in nature. Such a fine cannot be imposed as part of a civil proceeding in which the alleged contemnor's due process rights have not been observed." *In re Kave*, 760 F.2d 343, 351-52 (1st Cir. 1985). Thus, the trial court erred by imposing criminal sanctions without affording RSL-3B and Gorman their constitutional rights.

I. No Personal Jurisdiction Lies Over Gorman

Symetra fails to find any way the trial court could exercise personal jurisdiction over Gorman. Symetra's Brief at 16. Implying that Gorman submitted himself to the trial court's jurisdiction, Symetra says Gorman "was admitted *pro hac vice* for the purposes of this very case."

Id. The record cite Symetra uses to support this claim relies on no evidence at all, only its own argument in support of the motion for contempt. (*See* CP 229)

Even worse, Symetra concedes in that motion that this Court admitted Gorman *pro hac vice* for the sole purpose of appearing at oral argument in the previous appeal. (CP 229) Being admitted *pro hac vice* to this Court to make a one-time appearance at oral argument hardly establishes minimum contacts with the state. Symetra has come forward with no proof that would enable the trial court to exercise personal jurisdiction over Gorman.

The trial court never admitted Gorman *pro hac vice* to participate in the proceedings below. If any such order existed, Symetra would have cited to it. (CP 542, 741) While Gorman may have set foot in the state once, he never set foot in Benton County. Absent any personal jurisdiction over Gorman, the trial court issued a void order holding him in contempt. *See State ex rel. Timm v. Trounce*, 5 Wn. 804, 805-06 (1893).

J. RSL-3B Challenged The Contempt Order Below

Abandoning the record, Symetra accuses RSL-3B and Gorman of presenting “entirely new arguments” on appeal in assailing the Contempt Order. Symetra’s Brief at 10. No “underlying facts” supposedly exist to support any of these arguments. *Id.* Symetra itemizes three issues it claims never came up below: the trial court found criminal, not civil, contempt, RSL-3B and Gorman could never perform the purge clause, and Symetra recovered unreasonable attorney’s fees. *Id.* Yet these three issues only ripened into a real controversy once the trial court signed the Contempt Order granting Symetra relief and fixing the terms of the purge clause.

RSL-3B argued against contempt at the contempt hearing as evidenced by the Verbatim Report of the Proceedings. RSL-3B stressed to the trial court the past nature of the acts Symetra identified as contumacious. (VRP at 5-9) “So at that time, the act which they complain of today had already taken place prior to this TRO being placed in effect.” The arguments made by RSL-3B at the hearing relied on “sworn statements denying what they [Symetra] are saying. And sworn statements saying that the actions that they allege that violated the TRO took place before the TRO was in effect.” (VPR at 6)

To punish past acts defines the very essence of criminal contempt, so RSL-3B did raise this point below. A declaration verified the facts supporting this ground for opposing contempt. (CP 292-303; VPR at 6, 17) RSL-3B also emphasized that it could never undo these past acts that “had already taken place” in a Texas state court action that had been “abated.” (VPR at 5-6)

In addition, RSL-3B advised the trial court that the Texas state court lost jurisdiction over the case when Symetra removed it to federal court. (VPR at 7) RSL-3B further pointed out that the Texas state court case involved FinServ and A.M.Y., two parties to which the TRO never applied. (VPR at 7-9, 12, 15) This argument explains why RSL-3B and Gorman could no longer perform the obligations dictated by the purge clause. (VPR at 7, 12-17) Nor did Symetra segregate the attorney’s fees it incurred (and recovered under the Contempt Order) in litigating with FinServ and A.M.Y. in either the Washington or Texas cases.

RSL-3B filed a host of papers making these same arguments and more in opposing contempt and challenging the Contempt Order. (CP 292-303, 455-65, 529-688, 689-704, 715-944) These filings included declarations verifying the facts and authenticating documents. (CP 300-03, 593-688, 696-704) The trial court could have treated one of these papers (the “Sur-Reply”) as a motion for new trial or a motion to alter or

amend the judgment since RSL-3B filed it the day after the Contempt Order issued. *See* CR 59(a), (e). What qualifies as a CR 60(b) motion further attacked the award of attorney's fees as unreasonable on specific grounds. (CP 690-93, 728-33) As a result, RSL-3B preserved error.

PRAYER FOR RELIEF

Symetra can do nothing to save a fatally defective order holding RSL-3B and Gorman in criminal contempt by imposing punitive sanctions. The TRO appears to represent a "complex" decree that mixes prohibitory and mandatory relief. *See Bagwell*, 512 U.S. at 834-37. Even when a contempt order imposes civil and criminal relief, however, "the criminal feature of the order is dominant and fixes its character." *Id.* at 836. Criminal due process therefore attached to the contempt proceedings, but the trial court deprived RSL-3B and Gorman of both their constitutional and statutory rights. U.S. CONST. amends. VI, XIV; RCW § 7.21.040. Thus, RSL-3B and Gorman pray for the same relief their opening brief requests.

DATED, this 23rd day of March, 2015.

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DECLARATION OF SERVICE

On the 23rd day of March, 2015, I caused to be served a true and correct copy of the within document (REPLY BRIEF OF APPELLANTS RSL-3B-IL, LTD AND E. JOHN GORMAN) to be served on all interested parties to this action as follows:

Medora A. Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, Washington 98104 Phone: (206) 223 1313 Facsimile: (206) 682 7100 Email: mmarisseau@karrtuttle.com Counsel for Plaintiffs	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Transmission <input checked="" type="checkbox"/> Via Electronic Mail
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AMBER PETERS,
Legal Assistant to George E. Telquist