73495-4

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No. 73495-4-I
King County Superior Court Case No. 12-2-23972-0 SEA

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a Russian closed joint stock company; and R-AMTECH INTERNATIONAL, INC.,

Respondents,

v.

MARYANN HUHS and ROY E. HUHS, JR. and the marital community thereof,

Appellants.

RESPONDENTS' RESPONSE TO SECOND AMENDED BRIEF OF APPELLANTS

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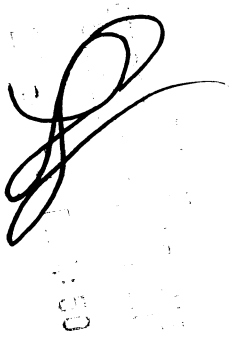

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I. INTRODUCTION

The two trial court orders at issue in this consolidated appeal, a June 1, 2015 Order Granting Receiver's Motion to Compromise ("Settlement Order") and a July 30, 2015 Order Granting Receiver's Motion to Release and Record Deeds of Trust ("Order Releasing Deeds"), should be affirmed for several, independent reasons.

First, the Settlement Order appeal is moot. The Appellants'[1] primary objective in challenging that order—to restore an underlying appeal of the judgments against them—is precluded by RAP 12.7 and entry of the mandate in that appeal. Without this essential element of the settlement, a return to the pre-settlement status quo is impossible. Even if reinstatement were possible, implementation of the ten-point global settlement is almost complete and reversal of the Settlement Order is not possible without subjecting Respondents Nikolay Belikov and R-Amtech International, Inc. ("R-Amtech") and a third party to irreparable harm.

Second, the Settlement Order was a proper exercise of the trial court's discretion and the receiver's authority to accomplish a global settlement that resulted *inter alia* in dismissal of protracted litigation and permanent discharge of over $4 million of non-dischargeable debt burdening the Huhses.

Third, the homestead issue that the Huhses raise in connection with the trial court's release of deeds used to secure a temporary stay of the

[1] Appellants/Defendants are a married couple, Maryann Huhs and Roy E. "Al" Huhs, Jr., collectively the "Huhses."

Settlement Order is both untimely and meritless. If they had wanted to assert their homestead exemption as a ground for opposing the Settlement Order, they should have raised that issue at that time. Shortly after that, the Huhses offered the Mercer Island property as security to this Court without any reservation of homestead. Having failed to raise the issue, and having offered the property unconditionally as security, they have waived it. The belated Declaration of Homestead they filed has no effect because they no longer owned the property when they filed it. Respondents respectfully ask this Court to reject the Huhses' appeal of the Settlement Order and the Order Releasing Deeds.

II. RESTATEMENT OF ISSUES

1) Is this consolidated appeal moot, because final mandate was issued in the Huhses' appeal of the judgments, and because the other settlement terms have been fully implemented such that it is impossible to return the parties to the pre-settlement status quo?
2) Where a court order grants a general receiver exclusive control over all of the judgment debtors' real and personal property, wherever located, and the judgment debtors did not appeal that order, did the trial court abuse its discretion in approving the receiver's motion to enter into a global settlement where, among other terms, it dismissed an appeal and relieved the

appealing parties of more than $4 million in non-dischargeable judgment debt at a substantial discount?

3) Can a judgment debtor challenge a settlement based upon a claimed homestead exemption, where they failed to raise their homestead issue in connection with the trial court's consideration of that settlement?

4) Where judgment debtors offer the deed to their primary residence as temporary security for a stay of a trial court order, and quit claim their interest in the property, may they challenge the later release of that deed upon the lifting of the stay by filing alleging homestead?

III. RESTATEMENT OF THE CASE

A. Procedural background: The trial court finds that the Huhses committed fraud and enters judgments against them.

The provenance of this appeal is a fraud and breach of fiduciary duty case that proceeded to a four-week bench trial held before the Honorable Helen Halpert and resulted in a 32-page Memorandum Opinion finding in favor of Plaintiff Nikolay Belikov on almost all claims. (CP 340-72). The trial court found *inter alia* that Belikov is the sole owner of R-Amtech and removed the Huhses as officers and directors of that company. (CP 348-52, 370). The trial court found that the Huhses committed fraud against Belikov, breached their fiduciary duties to him, unjustly enriched themselves at Belikov's expense, and converted his property, by secretly transferring R-Amtech's intellectual property rights

to a Nevada company they solely controlled and transferring R-Amtech's monetary assets and securities to their personal and family trust accounts. (CP 355-60, 370). The trial court found that the Huhses attempted to cover up their misdeeds by falsifying and altering corporate records. (CP 362). The court also confirmed that Defendant Al Huhs served as Belikov's attorney and violated RPC 1.8(c) by drafting documents for a gift extracted by the Huhses from Belikov of a million-dollar vacation house at the Suncadia Resort in Cle Elum, Washington, and required the Huhses to return that house to Belikov. (CP 362-64, 371). The trial court also awarded two monetary judgments against the Huhses: (1) Amended Judgment entered on August 12, 2014 in the amount of $3,112,329.00 (in favor of R-Amtech) (CP 429) and Judgment entered on September 10, 2014 in the amount of $919,317.25 (in favor of Belikov) for attorneys' fees and costs associated with the Huhses' egregious breach of their fiduciary duties. (CP 449-52). The Huhses appealed the judgments to this Court in Case No. 72334-1-I.

The Huhses posted no cash or supersedeas bond. As noted in this Court's Commissioner's Ruling Denying an Emergency Stay and an Injunction (6-12-2015), the Huhses instead sought from the trial court a stay of the Amended Judgment under RAP 8.1(b) and offered to deposit to the court registry the deeds to: (1) the Suncadia house (which they had been ordered in the Amended Judgment to transfer); and (2) their $1.1 to $1.2 million Mercer Island house (whose value is far below the $4 million

in monetary judgments against them).[2] The trial court denied the stay. (CP 436-38). The Huhses did not appeal that order or further seek a stay.

B. The trial court appoints a receiver for the Huhses after finding that they had hidden and wasted assets to avoid judgment enforcement.

Belikov and R-Amtech filed a motion seeking appointment of a general receiver after the Huhses admitted that they were willfully dissipating their personal assets to avoid enforcement and had no intention of satisfying the judgments. (CP 572-83). Evidence collected in connection with supplemental proceedings of the Huhses included the following:

- After judgment was entered, they took three separate trips:
  - They embarked on a 78-day Pacific Rim cruise that cost $58,000 (CP 574-75, 770-71);
  - They went in August 2014 to Costa Rica and Panama to see friends and investigate possible retirement destinations (CP 574-575, 758-61);
  - The drove to Chicago, Illinois, to deliver personal property they were "selling" to avoid exposing it to collection (CP 574-75, 765-66, 769-70);
- The Huhses opened "internet" bank accounts for the express purpose of avoiding garnishment (CP 577-78, 782-88);
- After the Memorandum Opinion was issued, the Huhses traded in two fully paid cars, a 2010 Toyota Prius and a 2010 Lexus SUV, in exchange for two new cars on three-year leases, where the trade-in

[2] Respondents respectfully request this Court to take judicial notice of the prior pleadings, rulings, and other documents entered in the court file for this appeal under Case No. 73495-4.

values were sufficient to prepay the lease payments (CP 578-79, 793-98);

- The Huhses spent on themselves or hid the proceeds of a $503,000 real estate sale consummated in June 2014. (CP 577-78, 786-87). As part of their garnishment avoidance scheme, they converted bank deposits to cashier's checks made payable to themselves, to be used when they needed to pay bills. (CP 578, 790-91).

Asked whether he considered paying towards the judgments, Al Huhs testified: "No way." (CP 574, 770).

On January 23, 2015, Chief Civil Judge Mariane Spearman appointed Matthew Green as general receiver for the Huhses' property. ("Receivership Order") (CP 872-86). Judge Spearman found that the appointment of a receiver for the Huhses was necessary because the Huhses had intentionally dissipated assets to prevent collection of the judgments and would continue to waste, sell, and secret assets if a receiver was not appointed. (Receivership Order, ¶ 1.11) (CP 874). While the Huhses opposed at oral argument the motion to appoint the receiver, they filed no written response, did not object to the provisions or wording of the proposed order signed by the trial court, and did not object to the selection or qualifications of the proposed receiver. (CP 867-69). They did not challenge the scope of the proposed order. (*Id.*). The Huhses did not appeal the Receivership Order.

The Receivership Order provides that the receiver shall have all of the rights, powers and duties conferred by RCW 7.60.005–7.60.300, with exclusive control over the Huhses' "Property," defined as "real and personal property of Judgment Debtors [Huhses] wherever located. . . ."

(Receivership Order, ¶ 1.3) (CP 873). Receiver shall have the exclusive power and authority to take possession and manage and control the Property, and to "exercise all powers available to Judgment Debtors and their agents, in their capacities as owners of the Property." (*Id.*, ¶¶ 2.1, 2.5) (CP 876-77).

C. The trial court approves a comprehensive settlement.

This litigation has cost both sides millions of dollars. Even after the judgments were entered, the Huhses' continued litigious conduct (*e.g.*, three separate failed exemption motions regarding property seized by the receiver) continued to generate substantial attorney's fees. (*See generally* CP 887-90, 906-07, 908-20, 937-38, 1101-13, 1326-28.). To bring this protracted litigation to an end, Belikov and R-Amtech made an offer to substantially discount the amount of the judgments, which the receiver ultimately accepted.

In broad outline, the settlement provides that Belikov forfeits more than $5 million in judgments against the Huhses ($4 million monetary judgments and return of the Suncadia house valued at $1 million), in exchange for real estate worth about $2 million. (Settlement Order, ¶ 5) (CP 315). Additionally, the settlement requires dismissal of the Huhses' appeal of the judgments, then pending under Court of Appeals Case No. 72334-1. (Settlement Order, Ex. A) (CP 319). Under the agreed settlement, over $4 million in monetary judgments against the Huhses, valid for up to 20 years and wholly or largely non-dischargeable in bankruptcy because of the findings of fraud, would be satisfied in full for a

fraction of that value. (CP 318-25). In total, the settlement consisted of ten separate points that fully addressed all outstanding legal issues between Belikov and the Huhses. (CP 319-20).

The Huhses objected to the proposed settlement, focusing almost exclusively on the settlement term that proposed dismissal of their appeal, to the exclusion of the other settlement terms that included return of their personal property, transfer of a vacant lot at Suncadia and their Mercer Island home, and discharge of $4 million in monetary judgments against them. (CP 1114-29). The gravamen of the Huhses' opposition was their argument that the right to appeal an adverse judgment is not "Property" within the meaning of the Receivership Order or RCW 7.60.005(9) and that the receiver lacked authority to enter into a settlement that included a dismissal of the Huhses' appeal. (CP 1123-24). They did not challenge the settlement on the basis of the homestead rights they now assert for the first time on appeal. (*Id.*). Instead, the Huhses' objection to the settlement was fixated on the prospect of success in reversing the Judgments.

D. The Huhses appeal and offer the Mercer Island property without reservation of homestead as security for a temporary stay.

Judge Spearman heard argument on the motion to approve the settlement, took the issue under advisement and then, on June 1, 2015, approved the settlement, finding that it is "fair and equitable to both sides and should be approved." (Settlement Order, ¶ 7) (CP 316). On June 3, 2015, the Huhses appealed the Settlement Order. (CP 326-39). The

Huhses simultaneously filed on June 3, 2015 an emergency motion to stay the Settlement Order and enjoin dismissal of their appeal. (*See* Defendants/Judgment Debtors/ Appellants Roy E. Huhs, Jr. and Maryann Huhs' **Emergency Motion** Pursuant to RAP 17.4(b) For Relief Pursuant to RAP 8.3). This motion again failed to offer any security. (*Id.*) On June 12, 2015, Commissioner Kanazawa denied the Huhses' emergency motion for a stay, noting that the Huhses were effectively seeking a belated challenge of the trial court's denial of a stay in the first appeal and that the Huhses had not disclosed their prior RAP 8.1(b) motion or the trial court's denial of that motion. Commissioner's Ruling Denying an Emergency Stay and an Injunction (6-12-2015) at n.2 and 8-9.

In response to Respondents filing on June 16, 2015 an RAP 18.2 motion to dismiss the appeal in Case No. 72334-1 based on the Settlement Order, on June 17, 2015, the Huhses filed a second emergency motion in this appeal (No. 73495-4), seeking a temporary stay pending resolution of their then-anticipated motion to modify Commissioner Kanazawa's June 12, 2015 ruling denying the stay. (*See* Defendants/Judgment Debtors/Appellants Roy E. Huhs, Jr. and Maryann Huhs' Second **Emergency Motion** Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3 (6-17-2015)). This time the Huhses offered to post security, "by depositing into the Court's registry the title to their home in Mercer Island (the "Mercer Island Property") . . ." (*Id.* at 2). They offered the property as security without reserving any right of homestead. (*Id.*)

That day, Commissioner Kanazawa granted a temporary stay of the June 12 ruling on the condition that the Huhses file, by June 19, 2015 (1) an emergency motion to modify the June 12 ruling in this case (No. 73495-4), (2) an answer to the motion to dismiss in action No. 72334-1, and (3) also, by June 19, 2015, deposit into the superior court registry title to their Mercer Island house as security for the temporary stay. (Commissioner's Notation Ruling dated June 17, 2015 ("Commissioner's 6/17/15 Ruling"), at 2.)[3]

The Huhses complied with these conditions. The receiver, without objection from the Huhses, deposited the deed into the trial court registry. (CP 1341-43). On June 19, 2015, the Huhses filed a motion to modify the Commissioner's ruling and again offered the Mercer Island property as security, without reservation of homestead: "proper supersedeas amount . . . should be limited to . . . the Huhses' Mercer Island home, and which the Huhses will post [citing to Commissioner's June 17, 2015 ruling]." (*See* Defendants/Judgment Debtors/Appellants Roy E. Huhs, Jr. and Maryann Huhs' RAP 17.4(b) **Emergency Motion** Pursuant to RAP 8.3 and 17.7 to Modify Commissioner's Ruling; and Response to Respondents' RAP 18.2 Motion to Dismissal [sic] Appeal (06-19-2015) at 12.)

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[3] On June 22, 2015, in response to Respondents' request, the Commissioner by notation ruling clarified the mechanics of the third condition of the June 17 ruling, by directing the receiver, instead of the Huhses, to sign and deposit a deed to the Mercer Island house into the registry of the trial court. Commissioner's Notation Ruling dated June 22, 2015 ("Commissioner's 6/22/15 Ruling") at 2.

E. After the temporary stay is lifted, the Huhses assert homestead rights in the property they offered as security.

This Court denied the motion to modify, and lifted the temporary stay, on July 7, 2015. On the same day, this Court issued an order dismissing the related appeal (No. 72334-1). The receiver filed a motion, on July 21, 2015, to release the deed to the Mercer Island house for recording. (CP 1344). The Huhses filed a Declaration of Homestead on July 27, 2015, and on the same day opposed the motion to release the deed on the basis of their alleged homestead rights. (CP 1430, 1379).

On July 30, 2015, the trial court granted the receiver's motion to release and record the deed. (CP 1449-51). The Huhses appealed that order, initially through a requested direct appeal to the Supreme Court. (CP 1452-58). Upon transfer of that appeal to this Court under Case No. 74230-2, the parties agreed to consolidate that appeal with the Settlement Order appeal. (*See* November 6, 2015 letters from Court Administrator/Clerk Richard D. Johnson to counsel).

F. The settlement has been almost entirely implemented since entry of the Settlement Order.

Since entry of the Settlement Order, eight of the ten settlement terms have been fully implemented.[4] As explained more fully in the

[4] *See generally* Declaration of Maureen L. Mitchell Concerning Completion of the June 1, 2015 Settlement Order ("Mitchell Decl.") and Declaration of Matthew Green ("Green Decl.") Concerning Completion of the June 1, 2015 Settlement Order, filed herewith in this appeal. References to either of these declarations in this Brief indicate newly-introduced facts for the purpose of presenting Respondents' argument that this appeal is moot. Many of these events have occurred since entry of the Settlement Order and without need for trial court involvement and are therefore not reflected in Clerk's Papers. Respondents have filed a motion to supplement the record under RAP 9.11 and

argument section on mootness, the Huhses' appeal of the judgments against them have been dismissed and, following the Washington Supreme Court's denial of the Huhses' petition to review that decision, mandate was issued. (Green Decl., ¶ 6). The trial court's decisions that Belikov owns R-Amtech, and R-Amtech owns the licensing rights to its technologies, have been implemented. (Mitchell Decl., ¶¶ 3,4). R-Amtech has resumed business, signed a new license, and collected royalties under that license. (*Id.*) The receiver has transferred the Huhses' properties to Belikov, and Belikov has paid maintenance, taxes and upkeep on those properties. (Green Decl., ¶ 3; Mitchell Decl., ¶¶ 5, 8). The parties have waived or requested dismissal of their claims against each other in Costa Rica. (Green Decl., ¶ 2; Mitchell Decl., ¶ 7). The Huhses have taken possession of the substantial amounts of personal property given to them under the settlement, property that had been in the custody of the receiver. (Green Decl., ¶ 4). Once the receiver and Belikov obtain confirmation that the court in Costa Rica has dismissed the Huhses' action in Costa Rica, which is expectedly shortly, Belikov and R-Amtech will file a satisfaction of judgment and the remaining two settlement terms will be completed. (Mitchell Decl., ¶¶ 7, 10).

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intend to rely upon these facts only to the extent the Court admits them pursuant to that motion.

IV. LEGAL AUTHORITY

A. This appeal is moot.

"A case is moot if a court can no longer provide effective relief." *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 193 (1984) (citations omitted); *In re Detention of H.N.*, 188 Wn. App. 744, 355 P.3d 294 (2015). This Court cannot grant effective relief because the terms of the settlement order on appeal were not stayed and have been implemented. It is not possible to restore the parties to the pre-settlement status quo. This appeal is moot.

An appellate court may, in its discretion, review a moot issue on appeal only if it involves matters of continuing and substantial public interest, and is likely to reoccur. *State v. Ross*, 152 Wn.2d 220, 228, 95 P.3d 1225 (2004) (citations omitted); *Sorensen v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). No matters of public interest are involved in this case. This appeal arises out of unique facts involving a settlement entered by a receiver appointed for highly litigious judgment debtors found, in an order not appealed, to have wasted and secreted assets to avoid judgment enforcement. (CP 874-75). The Huhses refuse to acknowledge the role of their misdeeds in creating a basis for imposing the receivership in the first place. Their public policy concerns about empowering plaintiffs to force "impecunious defendants" into receivership are misplaced. (Appellants' Second Am. Br., at 15-16). It is well-established that receivership is an "extraordinary" remedy, imposed "only when it clearly appears that a necessity exists. . . ." *State ex rel. Panos v.*

Superior Court for King County, 188 Wash. 382, 384, 62 P.2d 1098 (1936). It is also well-established that failure to post a supersedeas bond does not deprive a judgment debtor of the right to review of the proceeding that led to a judgment or decree. *Ryan v. Plath*, 18 Wn.2d 839, 856, 140 P.2d 968 (1943). A settlement that included dismissal of the Huhses' appeal without their consent would not have been possible if not for the Huhses' overt contempt for the legal process. Based upon the unique facts of this case that required the trial court to appoint a receiver, the Huhses lost the right to control their property, including decision-making authority over their appeal of the judgments against them. And the receivership decision was not appealed. Cases such as this one are not common. This case does not rise to level of public interest, much less a continuing and substantial one.

The Settlement Order that is the subject of this appeal requires the Huhses to convey $2 million in real estate to Belikov, dismiss their appeal of the judgments against them, and release all claims against Belikov. In exchange, they receive a $5 million reduction in largely non-dischargeable judgment debt (a discount of $3 million) and retain their personal property here and in Costa Rica. (CP 314-25). They are relieved completely of the more than $4 million in monetary judgments against them, which would otherwise be mostly non-dischargeable. (CP 319). More specifically, eight of the ten terms of the Settlement Order have been fully implemented, and the remaining two are near completion. Given the extent, cost, and effort involved in carrying out the settlement, there is no

way to put the parties back to where they were before the Settlement Order was entered.

1. The Huhses' appeal of the underlying judgments cannot be restored.

As reflected in the Huhses' attempt to mischaracterize the Settlement Order as an "Order Authorizing Dismissal of Appeal" (Appellants' Second Am. Br., at 6), the most significant settlement term to the Huhses is the tenth one—dismissing the Huhses' appeal of the judgments against them. (Case No. 72334-1-I). This Court can no longer undo that dismissal, which took effect on July 7, 2015. ("Mandate") (CP 1530)[5]. On October 30, 2015, this Court issued its mandate for that decision. (*Id.*). The mandate terminates review by this Court. (RAP 12.5). With this issuance of the mandate, this Court no longer has the power to change, modify or undo that dismissal:

> **RULE 12.7 FINALITY OF DECISION**
>
> **(a) Court of Appeals.** The Court of Appeals loses the power to change or modify its decision (1) upon issuance of mandate in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9. . . .

RAP 12.7, therefore, precludes the relief the Huhses seek. There are three exceptions permitting recall of a mandate, but none applies here. Those exceptions are to determine a trial court's compliance with an

[5] Respondents have filed and served Supplemental Clerk's Papers in support of this Brief, consisting of seven docket entries, and numbered them CP 1459 through 1540.

earlier decision of the appellate court, to correct an inadvertent mistake, or to remedy a fraud on the appellate court:

> **RULE 12.9. RECALL OF MANDATE OR CERTIFICATE OF FINALITY**
>
> **(a) To Require Compliance With Decision.** The appellate court may recall a mandate issued by it to determine if the trial court has complied with an earlier decision of the appellate court given in the same case. . . .
>
> **(b) To Correct Mistake or Remedy Fraud.** The appellate court may recall a mandate or certificate of finality issued by it to correct an inadvertent mistake or to modify a decision obtained by the fraud of a party or counsel in the appellate court.
>
> . . . .

The Huhses do not claim that one of these exceptions applies. They instead want an examination of the merits of their dismissed appeal. But that is not a proper basis for recalling a mandate. "We may not recall a mandate for the purpose of reexamining the case on its merits." *State v. Wade*, 133 Wn. App. 855, 868-69, 138 P.3d 168 (2006). "This court has authority to recall a mandate only to correct an inadvertent mistake, to modify a decision obtained by the fraud of a party or counsel, or to determine if the trial court has complied with our decision in the same case. RAP 12.9(a)-(b)." *Id.* at 868. "Improperly recalling a mandate 'deprive[s] the court of that stability which is necessary in the administration of justice." *State v. Wade*, 133 Wn. App. at 869 (quoting *Reeploeg v. Jensen,* 81 Wn.2d 541, 546, 503 P.2d 99 (1972) (additional citation omitted); *accord, Pybas v. Paolino*, 73 Wn. App. 393, 401, 869

P.2d 427 (1994) ("RAP 18.8(b), by limiting extension of time to file notice of appeal to those cases involving 'extraordinary circumstances and to prevent a gross miscarriage of justice,' expresses a public policy preference for finality of judicial decisions over the competing policy of reaching the merits in every case."). This goal resonates especially well under the facts of this expensive and protracted litigation, which calls out for a final resolution. Reopening the dismissed appeal would be a big step backwards. As the mandate reflects, the time for challenging the underlying judgments has ended.

In summary, even this Court's broad powers do not reach to reinstatement of the Huhses' dismissed appeal, and that missing component itself prevents a return to the pre-appeal status quo. But even if the merits appeal could be resurrected, the parties have carried out other terms of the settlement beyond the point of effective return, which also renders this appeal moot.

2. Under Belikov, R-Amtech has resumed business operations and licensed its technology to a third party.

The first two terms of the Settlement Order provide that the trial court's rulings (i) that Belikov is the sole owner of R-Amtech, and (ii) that the licensing rights to its patented technology remain in R-Amtech, would stand. (CP 319). The trial court found that the Huhses' attempt to transfer those licensing rights to their own company were fraudulent and invalid.

(CP 358-59, 397-98). These two items have been fully implemented.[6] In reliance on these rulings, as R-Amtech's President, Belikov has operated R-Amtech with himself as the sole shareholder, officer, and board member. (Mitchell Decl., ¶ 3). Belikov has hired accountants and lawyers to assist R-Amtech. (*Id.*) R-Amtech has obtained new bank accounts, and changed business addresses and registered agents. (*Id.*). R-Amtech has also filed a tax return since Belikov has been formally reinstated as its sole owner and effectuated other corporate filings. (*Id.*). Under Belikov, R-Amtech renegotiated a new license agreement with a third party, Fireaway. (Mitchell Decl., ¶ 4). The terms of the current R-Amtech license are materially different from those in the license that the Huhses had negotiated. (*Id.*).

Under the new license agreement, R-Amtech has collected substantial revenues from Fireaway. (*Id.*). Fireaway has relied on that license in conducting its operations and regularly provides Belikov, as the President of R-Amtech, with confidential financial information about its operations. (*Id.*). Belikov will visit Fireaway's headquarters and meet with its Chief Executive Officer in early 2016 to discuss the business relationship between R-Amtech and Fireaway. (*Id.*).

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[6] As discussed above in Section III.F, details regarding the status of settlement implementation are located in two declarations of Maureen L. Mitchell and Matthew Green submitted in tandem with an RAP 9.11 Motion to Supplement the Record. References to these declarations in this section on mootness are relied upon only to the extent admitted by this Court.

In sum, R-Amtech and Belikov have relied on the judgments and settlement and substantially changed their positions as a result.[7] In the event of a different ultimate ruling on ownership or licensing rights, there would be a loss of stability, and a great deal of wasted effort and expense. Fireaway's operations would be destabilized and uncertain. Belikov's substantial relicensing efforts and other work and expenses in conducting R-Amtech's business would be lost to him and difficult or impossible to quantify and recover from the Huhses. Similarly, it would be costly and difficult to reverse the tax and corporate filings and other decisions of R-Amtech under Belikov.

3. The Huhses have taken their personal property.

Settlement points four, seven, and eight allow the Huhses to keep various items of their property. (CP 320). These points have been implemented. Point four provides that the trial court's ruling that the Huhses may keep the condominium in Costa Rica (CP 401-02) will stand, and that the Huhses are entitled to keep the proceeds from the sale of that condominium, which they have sequestered there. (CP 320). The Huhses in fact sold the condominium and retained the proceeds, which were not executed on or seized by the receiver. (CP 320, 578; Mitchell Decl., ¶ 10;

[7] The Huhses contend incorrectly that R-Amtech is not a party to this appeal (Appellants' Second Am. Br., at 3). In fact, R-Amtech is a party, responding to the Huhses' effort to undo the Settlement in which R-Amtech is a participant. R-Amtech would suffer irreparable harm if the Settlement Order were reversed. Among other things, R-Amtech's efforts to enforce its $3.12 million judgment have been suspended since the settlement and R-Amtech has incurred ongoing, and ultimately unrecoverable, expenses in implementing and defending the settlement.

Green Decl., ¶ 4). Settlement points seven and eight permit the Huhses to retain their personal property from their Mercer Island house, their two cars, and their car and property in Costa Rica. (CP 320). The Huhses have taken possession of this personal property. (Green Decl., ¶ 4). Neither the receiver nor the judgment creditors have attempted to take possession of the property since the entry of the Settlement Order. (Green Decl., ¶ 4; Mitchell Decl., ¶ 10).

The Huhses have accepted this property and in all likelihood done what they have done before and put it out of the reach of Belikov and the receiver. (CP 320). Previously, much of this property was in the custody of the receiver after he determined the Huhses to be a flight risk. (Green Decl., ¶ 4). In the event of a reversal of the Settlement Order, this property will be unrecoverable. Belikov and R-Amtech will have lost valuable judgment enforcement time in the process. The Huhses have claimed to have little other nonexempt personal property that can be applied toward satisfaction of the judgments. (Mitchell Decl., ¶ 9).

4. Belikov and the Huhses have ended their litigation against each other in Costa Rica.

The fifth settlement point is that the receiver would dismiss any legal action by the Huhses against Belikov in Costa Rica, and that the receiver would provide a general release of all claims to date that the Huhses may have against Belikov. (CP 320). The receiver has provided Belikov with a written, general release of claims. (Mitchell Decl., ¶ 7, Ex. A). The dismissal of the Huhses' Costa Rica action is near

completion. (*Id.*). Faced with a motion for contempt, the Huhses sent a letter to their lawyer in Costa Rica requesting dismissal of the two related private actions they filed there against him. (CP 1513-34; CP 1535-36; CP 1540). (Green Decl., ¶ 2). At the time of this writing, the receiver and Belikov were awaiting confirmation that the court there has dismissed those actions. (*Id.;* Mitchell Decl., ¶ 7). Once that confirmation is received, Belikov and R-Amtech will promptly file a satisfaction of judgment, and point nine—the other outstanding settlement item—will be fully satisfied. (Mitchell Decl., ¶ 10). Additionally, in reliance on the fifth settlement point, Belikov declined an opportunity to reopen his case against the Huhses in Costa Rica to recover that condominium under provisions of Costa Rican law.[8] (CP 1524).

5. The Huhses' real estate has been transferred to Belikov, and he has been paying to maintain the properties.

The third and sixth settlement points concern the transfer of the Huhses' real estate to Belikov and have been completed. The third point confirms that the trial court's decision requiring the Huhses to transfer the house in Suncadia, Cle Elum, Washington to Belikov, will stand. (CP 320). The sixth item requires the receiver to transfer the Huhses' Mercer Island house and a vacant lot in Suncadia to Belikov. (*Id.*). These three properties have been transferred to Belikov and recorded. (Green

[8] Judge Halpert denied Belikov's request to rescind the Costa Rica condominium gift under Washington's RPC 1.8, however she did not address whether the Huhses held valid title to that condominium under Costa Rican law. (CP 401-02).

Decl., ¶ 3; Mitchell Decl., ¶ 5). Belikov has been paying insurance, taxes, utilities, and maintenance on the properties. (Mitchell Decl., ¶¶ 5, 8).

In summary, eight of the ten settlement points have been completed. Legal claims have been dismissed and waived, business operations and licensing arrangements with a third party have begun, assets have changed hands and potentially been disposed of, judgment enforcement efforts against the Huhses ceased and provided them an opportunity to further dissipate and secret assets, and non-recoverable expenses have been incurred to maintain real property formerly owned by the Huhses. Completion of the remaining two settlement points, dismissal of the Costa Rica action and the filing of a satisfaction of judgment, is anticipated shortly. There is no way to effectively and equitably put the parties back in the position they were before the Settlement Order was entered, especially given the final dismissal of the Huhses' underlying appeal. Reversal of the Settlement Order would result in irreparable harm to Belikov and R-Amtech. For these reasons, this appeal should be dismissed as moot.

B. The trial court properly approved the receiver's motion to compromise claim with the June 1, 2015 Settlement Order.

1. The trial court's exercise of discretion in approving the settlement should not be disturbed.

The trial court's order to approve the receiver's motion to compromise claim is reviewed for abuse of discretion. *Ferree v. Fleetham*, 7 Wn. App. 767, 772, 502 P.2d 490 (1972) (appeal addressed

trial judge's exercise of judicial discretion in conducting a receiver's sale of real property); *Werlinger v. Warner*, 126 Wn. App. 342, 349, 109 P.3d 22, 26 (2005). A court may approve a settlement if it is "fair and equitable." *In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986) (court determines whether settlement was reasonable, given circumstances of the case).

The trial court's exercise of discretion in approving the settlement should not be disturbed. Contrary to Appellants' belief, no ruling on the merits of the appeal was made by either the receiver or the trial court. The receiver, with the trial court's approval, was simply doing what any rational litigant would do. He weighed the prospects, risks, and expense of continued litigation against the value of settlement, for both sides. In other words, the receiver was doing what the Huhses seem incapable of doing—assessing risk, and treating the judgments against the Huhses as real, and not something to be avoided by again hiding and wasting assets. And the trial court properly reviewed the settlement proposal as a whole and deemed it to be "fair and equitable to *both* sides." (CP 316) (emphasis added). The trial court properly understood and applied the correct legal standard for determining whether to grant the receiver's Motion. The fact that the Huhses objected to the settlement due to their unrealistic beliefs about the probability of success on appeal and in a potential re-trial does not demonstrate a breach of the receiver's duties.

The Huhses' reliance on RCW 2.06.030 and argument that the trial court ruled on the appeal of its own judgment is misplaced and

mischaracterizes the record. The receiver determined that the prospect of a successful appeal and *retrial* were remote in light of the Huhses' damaging testimony in the first trial that could be used against them in any retrial. (CP 945-46, 949). Two of many examples of this testimony include the Huhses' admissions that they falsified accounting records in 2012 to erase Belikov's name as a purchaser of stock in 1996, and that they falsified and backdated R-Amtech board and shareholder meeting minutes in their attempts to convince a third-party licensee that Maryann Huhs was R-Amtech's sole owner. (CP 348-49, 358-59, 362, 384, 397-400). Judge Halpert also entered extensive Findings of Fact and Conclusions of Law citing multiple sources of supporting evidence and making numerous credibility determinations against the Huhses and in favor of Belikov. (CP 376-406). After weighing the prospects of a successful outcome following retrial against the $3 million dollar discount and other items of relief, the receiver agreed to a settlement that included dismissal of the Huhses' appeal of the judgments. The Huhses were given a fresh start, and relieved completely of the $4 million in judgment debt against them, otherwise nondischargeable in bankruptcy due to their fraud.

2. The receivership estate includes the right to control a legal claim, including an appeal.

The Huhses' argument that the receiver's authority *does not* include control of their appeal of the judgments has no legal support. First, they do not address the estoppel effect of their decision not to appeal the Receivership Order. They cannot use this appeal to collaterally

challenge that order.[9] The order to appoint Matthew Green as general receiver was not appealed. Accordingly, that order is final and the Huhses may not collaterally attack it. *See Meryhew v. Gillingham*, 77 Wn. App. 752, 754-755, 893 P.2d 692 (1995) (affirming dismissal of Consumer Protection Act and disgorgement claims concerning fees charged to an estate as improper collateral attack because estate was closed).

Second, their lengthy recitation of general fiduciary principles applicable to receivers in Washington and other jurisdictions sheds no light on the issue presented here, which is whether judgment debtors subject to a general receivership may unilaterally block a receiver's proposed settlement that includes resolution of a pending appeal.

Third, and most significantly, courts in Washington and other jurisdictions have recognized a receiver's authority to compromise claims, including claims *against* the receivership estate. Neither Washington's receivership statute nor the Receivership Order carves out from that authority the ability to compromise a creditor claim, including dismissal of a defensive appeal in a settlement with the judgment holder. To the contrary, the language of the Receivership Order entrusts the receiver with broad authority over all of the Huhses real and personal property, wherever located. (CP 872-73, 875, 877-80). Furthermore, the receivership statute provides sufficient flexibility to exclude certain types of property from the receivership estate depending on case-specific

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[9] *Matter of Marriage of Brown*, 98 Wn. 2d 46, 51, 653 P.2d 602, 604 (1982) (confirming finality of decisions not appealed).

circumstances, but no such exclusions were included here. *See, e.g.,* RCW 7.60.025(4).[10] (CP 872-86). The Huhses raised no objections concerning the scope of the receivership. (CP 867-69). If they wanted appeal rights to be excluded from the scope of the receiver's authority, they should have requested such an exclusion and presented their reasons at the time the Receivership Order was considered. But they did not do so. Nor did they appeal the Receivership Order. They now effectively seek to belatedly challenge the Receivership Order. They also effectively seek to engraft onto the Receivership Order an exception for the right to litigate their appeal of Belikov's and R-Amtech's judgments. The law does not support their contention.

Washington receivership law holds that the receiver's authority includes claims against the receivership estate: "The court appointing a receiver may authorize him to compromise claims and suits against the estate if best for the interest of all parties concerned."[11] Further, Washington's receivership statute was based, in part, on Federal Rule of Bankruptcy Procedure 9019(a). The language of that rule and case law spanning over a century is in accord with *Spencer.*

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[10] RCW 7.60.025(4) provides: "The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located."

[11] *Spencer v. Alki Point Transp. Co.*, 53 Wash. 77, 83, 101 P. 509, 512 (1909) (quoting 23 Am. & Eng. Enc. Law § 1080), cited in Commissioner Kanazawa's June 12, 2015 ruling.

Bankruptcy Rule 9019(a) permits a bankruptcy court, upon the bankruptcy trustee's motion, to approve a compromise or settlement. The court has great latitude in approving compromises of claims and may approve a compromise if it is "fair and equitable." *In re Woodson,* 839 F.2d 610, 620 (9th Cir. 1988). Federal courts have addressed the very issue the Huhses raise here. The weight of authority is that defensive appellate rights of the debtor are property of the bankruptcy estate and may be compromised or sold by the bankruptcy trustee:

> While it is true that a judgment against the debtor is an obligation and has no value to the estate—and would therefore not be included in a list of property—the right to appeal that judgment has a quantifiable *value* to the debtor, and therefore constitutes property under Texas law. . . . Croft's defensive appellate rights are property under Texas law, and became part of the estate when he filed for bankruptcy.
>
> . . .
>
> The decision on whether to pursue the appeal or sell his defensive rights is now the exclusive province of the trustee.

In re Croft, 737 F.3d 372, 376-77, 378 (5th Cir. 2013) (italics in original; footnote omitted). A federal court in California reached the same conclusion, finding that appellate rights are property under California law, and that "all of Debtor's appellate rights, including Defensive Appellate Rights, are saleable by the trustee." *In re Mozer*, 302 B.R. 892, 895-96 (C.D. Cal. 2003) (approving sale of debtors' rights to appeal a judgment to the holders of that judgment).

As the Fifth Circuit explained in *Croft*, settlement of a judgment debtor's appeal at a discount, is not, as the Huhses describe, part of a collusive process to block access to appellate courts, but a normal and rational part of the settlement process:

> The expected value of a defensive appeal is (1) the probability of success on appeal, multiplied by (2) the expected decrease in liability. The appeal certainly has value for the estate . . . The defensive appellate right is also of value to the judgment holder, who may be willing to pay some amount to the estate-essentially functioning as a settlement-to avoid (1) incurring additional litigation costs to enforce the judgment and (2) the risk of reversal. . . .

Croft, 737 F.3d at 377, n.2.

The federal court in *Mozer* took the same approach. It reversed the bankruptcy court's decision to approve sale of the defensive appellate rights, but not because of concerns over collusion or preserving appellate jurisdiction. Instead, it reversed the bankruptcy court's decision because the trustee in *Mozer* failed to do what the receiver in this case did—conduct a substantive evaluation of the value of trading the defensive appellate rights. *See Mozer*, 302 B.R. at 897-899. In contrast to *Mozer*, both the receiver and the trial court in this case undertook a serious, substantive analysis of the settlement, which included a $3 million discount on the otherwise non-dischargeable judgment debt against the Huhses, and determined that it was fair and equitable.

The only contrary federal decision we are aware of is a bankruptcy court decision, *In re Morales*, 403 B.R. 629 (N.D. Iowa 2009). It is

distinguishable because of its unusual procedural facts that may have raised fairness concerns not present here. In *Morales*, the parties agreed that the primary issue, which was certified for review by the Iowa Supreme Court, was "whether a small claims plaintiff [GE Money Bank] in Iowa can obtain a judgment without presenting any admissible evidence at the final trial, where the defendant denies the debt and appears to defend[.]" *Id.* at 630. The debtor was permitted to pursue that appeal. The court noted that a contrary holding "would effectively destroy any right to object to the claim." *Id* at 633. Here, by contrast, it is undisputed that the judgment being settled was entered after a fulsome, month-long trial and based on admissible evidence that was not challenged on appeal.

Multiple court decisions support the proposition that a judgment debtor's debt is intangible property that may be settled by a third party such as a receiver or trustee, yet the Huhses argue that that the definition of "Property" in RCW 7.60.005(9) cannot be interpreted to include a "defensive appeal." Their argument has no legal authority or support. Black's Law Dictionary defines "Personal property" as "Any movable or intangible thing that is subject to ownership and not classified as real property." Legal rights are a chose in action and considered intangible personal property. *Meltzer v. Wendell-West*, 7 Wn. App. 90, 497 P.2d 1348 (1972); *Loveman v. Hamilton*, 66 Ohio St. 2d 183, 185, 420 N.E.2d 1007, 1009 (1981). Thus, in addition to the court decisions supporting the view that appellate rights are "property" that may be compromised over a

debtor's objection, it is well-established that a claim is a type of intangible personal property.

C. The Huhses' unsupported personal attacks on the receiver are improper.

The Huhses claim that the receiver breached a fiduciary duty by settling over their objection, trading their homestead claim, and allegedly acting only on Belikov's behalf and not to their benefit. Many of their allegations lack citations to the record, are not true, or are otherwise improper (e.g. "Receiver Green has persistently acted at Belikov's behest and control, to serve the interests only of Belikov."). (Appellants' Second Am. Br., at 11). The Huhses' personal attacks on the receiver misconstrue the receiver's role, are factually unsupported, and are not well taken. The Huhses did not file a written objection to the appointment of a receiver. (CP 867-69). The Huhses' attacks also reflect a calculated disregard of the value of having been relieved of over $4 million in monetary debt and given a fresh start following a trial in which they were found to have committed fraud, falsified evidence, and gave testimony so damaging to themselves as to effectively eliminate the prospect of a different result in any retrial.

"The [receiver] is not the agent or representative of either party to the action, but is uniformly considered regarded as an officer of the court, exercising his functions in the interests of neither plaintiff nor defendant, but for the common benefit of all parties in interest." *Suleiman v. Lasher*, 48 Wn. App. 373, 379, 739 P.2d 712 (1987) (*quoting Gloyd v. Rutherford*,

62 Wn.2d 59, 60-61, 380 P.2d 867 (1963)). A receiver was appointed over the Huhses' property because the Huhses secreted and wasted assets for purposes of evading judgment enforcement. (CP 874-75). In other words, the Huhses demonstrated through their statements and conduct that they are incapable of playing by the rules and making decisions concerning their legal claims and other property. Contrary to the Huhses' contention, the receiver does not need their permission to settle. "[T]he receiver is not appointed for the benefit of any party, nor does he receive his authority from any party." *Suleiman*, 48 Wn. App. at 378. There would be little point in appointing a receiver if the rule were otherwise.

The Huhses' claim that the receiver acted in only in Belikov's interests and that the settlement is of no benefit to them is disingenuous because it ignores the obvious benefit the Huhses received. In addition to retaining almost all of their personal property, including three cars and proceeds from the sale of a condominium in Costa Rica, the Huhses were relieved of over $4 million of judgment debt. The receiver obtained for the Huhses a fresh start that they could not obtain through bankruptcy. The judgment debt could otherwise follow them for up to 20 years and attach, for example, to not only the three pieces of real property that Belikov received under the settlement, but also to substantial amounts of nonexempt personal property the Huhses obtained under the settlement, any gifts or inheritance, and to their future earnings. The settlement provides an obvious and substantial benefit to the Huhses.

The Huhses' statements reflect an illegitimate goal that the receiver, as a fiduciary to the court, cannot adopt. Namely, the Huhses see no benefit to the elimination of the judgments because they have no intention of satisfying them. They prefer to gamble on their future ability to again secret and waste assets and evade judgment collection. The Huhses do not include the discharge of the judgments in their settlement calculus because they do not see the judgments as real, to be satisfied to the best of their abilities, but instead as things to be evaded through any available means. This is why a receivership was imposed in the first place, and a reason why the settlement the receiver obtained for the Huhses, and which the trial court approved, should be upheld.

D. The Huhses' attempt to argue the merits of their dismissed appeal is improper.

This Court should reject the Huhses' attempt to argue the merits of their dismissed appeal, under the false, straw argument that the trial court determined that their appeal lacked merit. The Huhses' appeal of the judgments has been dismissed and mandate has issued. (CP 1530). The issues of that appeal are not properly before this Court, and accordingly are not addressed here. The Huhses compound the error by basing their argument on the same version of facts rejected by the trial court. As one of many examples, the Huhses contest Belikov's ownership of R-Amtech by asserting that "there was no showing that he ever gave consideration for the purchase of his stock." (Appellants' Second Am. Br. at 19). But in fact, the trial court, based on the electronic accounting and other evidence,

including the Huhses' own testimony, found that Belikov made an initial contribution of $26,000 for his stock when he formed R-Amtech in 1996 and that Al Huhs deleted from corporate records the description of Belikov as the purchaser of the stock in 2012, after a dispute with Belikov had arisen, and that Belikov has invested millions of additional dollars in the company through assignment of Tetris royalties from his company Elorg. (CP 386, ¶ 28; CP 384, ¶ 20; CP 383-84, ¶ 19). The Huhses' arguments on the merits of the underlying appeal should not be considered.

E. The Huhses failed to timely raise a right to homestead to the trial court, and they failed to that establish that their Declaration of Homestead is valid.

This Court may decline to consider an issue raised for the first time on appeal. *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 299, 38 P.3d 1024 (2002) (appellate court may decline review of issue not presented to trial court); RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court.") "The homestead consists of real or personal property that the owner uses as a residence. . . . Property included in the homestead must be actually intended or used as the principal home of the debtor." RCW 6.13.010(1).

The Huhses' challenge to the receiver's authority over homestead rights fails because the Huhses never timely raised the issue before the trial court, and more fundamentally, because they relinquished any such

rights when they agreed to have the property posted as security for the temporary stay on appeal without reservation of any homestead.

The crux of the Huhses' homestead argument is that the settlement should not have been approved without a guarantee of them receiving payment of $125,000 for their homestead exemption. The Huhses opposed the receiver's proposed settlement, but they did so on the basis that it allegedly interfered with their appeal of the judgments, and not on the basis of homestead. (CP 93). Their failure to object to the settlement based upon their alleged homestead rights constitutes waiver. *See Brauhn v. Brauhn,* 10 Wn. App. 592, 597, 518 P.2d 1089, 1092 (1974) ("Even a due process right may be waived.").

The Huhses again remained silent with their homestead claim when they voluntarily offered to deposit in the court registry the deed to their Mercer Island house as security for a temporary stay of a Court of Appeals decision issued by Commissioner Kanazawa on June 12, 2015 that denied the Huhses a stay of enforcement and injunction pending appeal of the Settlement Order. (CP 1345-46; CP 1364-65). This Court lifted that temporary stay on July 7, 2015 in connection with its order denying the Huhses' emergency motion to modify Commissioner's Kanazawa's June 12, 2015 ruling. (CP 1371).

The first time the Huhses asked any court to address their homestead claim was in their Response to Receiver's Motion for Order to Release and Record Deeds of Trust dated July 28, 2015. (CP 1378). The purpose of the receiver's motion was to perform the ministerial act of

releasing the deed that the Huhses voluntarily offered as security for a temporary stay. The Huhses ignored the fact that the trial court decided to approve the settlement almost two months earlier. (CP 320).

In addition to being untimely, the Huhses' homestead exemption claim fails on the merits. Under RCW 6.13.040, a declaration of homestead may be used in lieu of actual residence to meet the principal-residence requirement under the statute by recording a declaration of the owner's intention to reside at the property. But the Huhses were not entitled to homestead on the Mercer Island property when they filed that homestead declaration on July 27, 2015. (CP 1430). By that time, the Huhses no longer owned the property since they had, through the receiver, transferred it to Belikov pursuant to the June 1, 2015 Settlement Order and the Commissioner's June 17, 2015 Notation Ruling. (CP 1344-45). Furthermore, even if, as the Huhses contend, their consent to trade homestead rights were required, that issue is of no consequence because the Huhses consented. They voluntarily relinquished whatever homestead rights they might otherwise assert when they twice offered the Mercer Island House to this Court as security for a stay without reservation or mention of any homestead rights. *See* Defendants/Judgment Debtors/Appellants Roy E. Huhs, Jr. and Maryann Huhs' Second **Emergency Motion** Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3 (6-17-2015); *see also*, Defendants/Judgment Debtors/Appellants Roy E. Huhs, Jr. and Maryann Huhs' RAP 17.4(b) **Emergency Motion** Pursuant to RAP 8.3 and 17.7 to Modify Commissioner's Ruling; and

Response to Respondents' RAP 18.2 Motion to Dismissal [sic] Appeal (06-19-2015). The Huhses complied with the conditions of the June 17, 2015 order to use the property as security for a temporary stay. It was only after their motion to modify was denied, and the stay was lifted by order of this Court dated July 7, 2015, that the Huhses attempted to reverse course and unilaterally withdraw part of their posted security, by filing their Declaration of Homestead, on July 27, 2015. By this time, of course, it was too late to do so. *See Sec. Sav. & Loan Ass'n v. Busch*, 84 Wn.2d 52, 56, 523 P.2d 1188 (1974) (a homestead claim was lost when the property was quitclaimed to a third party, and could not be revived by reacquiring the property). The Huhses' July 27, 2015 Declaration of Homestead is untimely and of no effect.

V. CONCLUSION

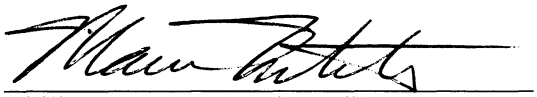
The Huhses' appeal of the Settlement Order should be dismissed as moot because the settlement terms have been implemented and there is no effective and equitable way to return the parties, and third-party licensee Fireaway, to the positions they were in before the settlement. Alternatively, the Settlement Order should be affirmed. The trial court correctly determined that the settlement was fair and equitable to both sides, a determination that is well within the trial court's discretion.

The Huhses' challenge to the Order Releasing Deeds on the basis of alleged homestead rights should be denied because it was not timely raised before the trial court, and because the Huhses previously posted that

property as security for a temporary stay in this appeal, and did so without reservation of homestead.

DATED this 6th day of January, 2016.

SUMMIT LAW GROUP PLLC

By 

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The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused to be served a copy of the foregoing document via email on the following:

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