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SEP 30 2016

WASHINGTON STATE  
SUPREME COURT

Washington Court of Appeals (Div. 1) No. 73495-4-I  
King County Superior Court Cause No. 12-2-23972-0 SEA

93651-0

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SUPREME COURT OF THE STATE OF WASHINGTON

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NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a  
Russian closed joint stock company,

Plaintiffs/Respondents,

v.

MARYANN HUHS and ROY E. HUHS, JR., and the marital community  
thereof; R-AMTECH INTERNATIONAL, INC., a Washington  
corporation; TECHNO-TM, LLC, a Nevada limited liability company;  
SUNCADIA PROPERTIES, LLC, a Nevada limited liability company,

Defendants/Appellants.

FILED  
Sep 28 2016  
Court of Appeals  
Division I  
State of Washington

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**DEFENDANTS/APPELLANTS ROY E. HUHS, JR. AND  
MARYANN HUHS'  
PETITION FOR REVIEW  
OF COURT OF APPEALS' RULING AFFIRMING TRIAL  
COURT'S ORDER GRANTING RECEIVER'S MOTION TO  
COMPROMISE CLAIM**

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DEFENDANTS/APPELLANTS' PETITION FOR  
REVIEW

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## I. INTRODUCTION

Does a judgment debtor have any rights in an involuntary receivership? Here, judgment debtors were denied their most fundamental of rights, including a right to appeal the judgment that forced them into receivership, and their constitutionally-guaranteed homestead exemption. This Court should accept review to address unresolved questions of receivership law.

## II. IDENTITY OF PETITIONERS AND CITATION TO COURT OF APPEALS DECISION

Defendants/judgment debtors/appellants the Huhses petition the Court, pursuant to RAP 13.4, for review of the Court of Appeals' Ruling dated August 29, 2016<sup>1</sup>. That Ruling affirmed the trial court's Order Granting Receiver's Motion to Compromise Claim dated June 1, 2015 (the "Order Authorizing Dismissal of Appeal").<sup>2</sup>

The Order Authorizing Dismissal of Appeal allowed a receiver to dismiss the Huhses' defensive appeal,<sup>3</sup> over the Huhses' objections, of the trial court's judgment ("the Appeal"), as if it were an item of receivership estate property, in settlement of the judgment the trial court awarded

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<sup>1</sup> Appendix 1.

<sup>2</sup> Appendix 2.

<sup>3</sup> The term "defensive appeal" is used as opposed to an appeal wherein an appellant seeks recovery of assets in the appellate courts after losing at trial. The Huhses' appeal sought only to demonstrate error in the judgment against them, and to have that judgment reversed.

plaintiff/respondent Nikolay E. Belikov (“Belikov”). It also refused to enforce the Huhses’ constitutional right to a homestead exemption.

### **III. ISSUES PRESENTED FOR REVIEW**

A) May an RCW 7.60.025 receiver, with the authority of a trial court’s order, direct the Court of Appeals to dismiss a judgment debtor’s defensive appeal over the judgment debtor’s objections?

B) May a trial court deny judgment debtors in receivership their constitutionally guaranteed right to a homestead exemption when a receiver enters into a settlement with a judgment creditor over the judgment debtor’s objections?

### **IV. STATEMENT OF THE CASE**

#### **1. Trial Court Judgment, Receivership and Appeal**

On August 12 and September 10, 2014, the trial court entered judgments awarding Belikov \$900,000 in attorneys’ fees against the Huhses, and ownership of defendant/judgment creditor R-Amtech International, Inc. (“R-Amtech”); an award in favor of R-Amtech against the Huhses of \$3,112,329.00 in damages; and other damages awards.

The Huhses appealed the judgment to the Court of Appeals. The Appeal was entirely defensive, as the Huhses did not seek to recover any damages in it. Having insufficient financial resources, the Huhses were unable to post supersedeas security pursuant to RAP 8.1. Belikov

commenced enforcement proceedings. On Belikov's motion, the trial court placed the Huhses in involuntary receivership under RCW 7.60.025, with the appointment of Belikov's selected receiver.

Belikov drafted, and the trial court signed without edit, the Order Appointing General Receiver dated January 23, 2015 ("the Receivership Order").<sup>4</sup> The Receivership Order provides that Belikov is ultimately responsible for the receiver's fees and receivership costs.<sup>5</sup> Only Belikov and R-Amtech filed RCW 7.60.210 proofs of claim in the receivership.

## **2. Receiver's and Belikov's "Settlement" of Belikov's Judgment and Receiver's Motion to Enforce Compromise**

Belikov and the receiver then entered into a "settlement agreement" whereby Belikov's judgment against the Huhses would be "settled" in exchange for the receiver, on behalf of the Huhses, dismissing the Appeal, and transferring ownership of the Huhses' real property consisting of their home ("the Mercer Island Property") to Belikov.

The receiver filed with the trial court General Receiver's Motion for Order Authorizing Compromise of Claim dated April 9, 2015, seeking court authority for the receiver to accept Belikov's proposed settlement.<sup>6</sup> The premise of the Receiver's Motion was that acceptance of settlement

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<sup>4</sup> Appendix 3.

<sup>5</sup> *Id.*, at 11, para. 2.35.

<sup>6</sup> General Receiver's Motion for Order Authorizing Compromise of Claim, Appendix 4, at 5.

terms Belikov proposed are in the best interests of the receivership estate, as the Appeal has no merit, i.e., that “[t]he Receiver, as the holder of the Huhses’ claims on appeal, ... has determined that “the likelihood of a successful appeal and re-trial is small...”<sup>7</sup>

The trial court granted the Receiver’s Motion by the Order Authorizing Dismissal of Appeal<sup>8</sup> over the Huhses’ opposition, ruling as follows:

The Receiver has reviewed the issues that the Debtors have raised on appeal, and has concluded that even if the result was a re-trial to a jury, it is unlikely that the outcome would be any different given the Huhs’ damaging testimony during their first trial that would be offered against them in a subsequent trial.<sup>9</sup>

The Order Authorizing Dismissal of Appeal approved Belikov’s settlement terms, and authorized the receiver to dismiss the Appeal regardless of the Huhses’ wishes to continue with it. The Huhses appealed the Order Authorizing Dismissal of Appeal to the Court of Appeals.<sup>10</sup>

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<sup>7</sup> *Id.* at 9. The receiver, in league with Belikov’s attorneys, makes this self-serving conclusion without the benefit of experienced, disinterested appellate counsel, having never obtained the opinion of independent counsel regarding the strengths and weaknesses of the Appeal.

<sup>8</sup> Appendix 2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Appellate proceedings in this matter have been complex. Briefly, the Huhses sought to stay enforcement of the Order Authorizing Dismissal of Appeal to the Court of Appeals by way of an emergency RAP 17.4(b) motion. The Court of Appeals’ Commissioner denied the motion on the ground the Huhses had not posted supersedeas security in the amount of the full judgment. In response to the Huhses’ second RAP 17.4(b) motion, the Commissioner determined that the Huhses could post the Mercer Island Property as adequate supersedeas security pending the Court of Appeals’ ruling on the motion to stay enforcement, and directed the Huhses to deposit with the trial court the title to that



### **3. Transfer of Property Ownership and Courts' Non-Enforcement of Homestead Exemption**

The receiver filed with the trial court Receiver's Motion for Order to Release and Record Deeds of Trust ("Receiver's Motion to Transfer Mercer Island Property"). That motion asked the trial court to release to the receiver the deed to the Mercer Island Property, which the Court of Appeals' Commissioner had ordered the Huhses to deposit with the trial court, so that the receiver could record it.

The Huhses opposed the Receiver's Motion to Transfer Mercer Island Property on several grounds, one of which was that it ignored the Huhses' right to a \$125,000 homestead exemption. Neither the receiver nor Belikov submitted to the trial court any argument as to why the homestead exemption should not apply. Nonetheless, the trial court granted Receiver's Motion to Transfer Mercer Island Property without application or other consideration of the homestead exemption.

The Court of Appeals affirmed the trial court's order by its August 29, 2016 Ruling.

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property. Commissioner's Notation Ruling dated June 17, 2015, Appendix 5. The Huhses did so. On July 7, 2015, the Court of Appeals concurrently denied (without substantive analysis in the Ruling) the Huhses' RAP 17.7 motion to stay enforcement of the Order Authorizing Dismissal of Appeal and granted Belikov's RAP 18.2 Motion to Dismiss Appeal. The Huhses sought this Court's review of the Court of Appeals' denial of the RAP 17.7 motion, but review was denied.

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## V. ARGUMENT

This petition seeks review of lower court rulings which address two primary issues of law that have received little or no judicial attention in Washington. In summary, this Court should clarify the scope of a receiver's authority to bargain away (1) a judgment debtor's right to a defensive appeal; and (2) a judgment debtor's constitutionally guaranteed right to a homestead exemption.

### 1. Acceptance of Review

This Court should accept review based on substantial public interests and constitutional issues. The lower court rulings empower a plaintiff who obtained judgments against impecunious defendants to force his judgment debtors into involuntary receivership, and then force them to dismiss their defensive appeal of the plaintiff's judgment, with loss of their homestead exemption, as part of a court-ordered settlement in the receivership. Absent contrary law, these and future similar rulings could enable and encourage powerful litigants to follow Belikov's and the receiver's actions. Future judgment debtors could be deprived of their appellate and homestead rights through receiverships.

The underlying record demonstrates there is a dearth of Washington law issued in the last several decades governing the purpose and scope of receivership. Receiverships and homestead exemption

claims arise with sufficient frequency that the Court's attention to them is warranted.

**i. Appellate Courts' Exclusive Appellate Authority**

A forced settlement depriving the Huhses of their right to a defensive appeal, i.e., an appeal to *avoid* liability by reversing a judgment, would deprive the Huhses of due process. Under RCW 2.06.030, the appellate "court shall have exclusive appellate jurisdiction in all cases except [irrelevant exceptions]." By issuing the Order Authorizing Dismissal of Appeal, the trial court effectively reviewed the propriety of its own judgment, and issued a final determination that it was without merit.

A receiver's power to dismiss an appeal against the wishes of a judgment debtor whose property he administers; and the Court of Appeals' denial of the Huhses' right to appeal, are issues of substantial public interest that this Court should consider. They apparently have not been addressed in Washington jurisprudence to date.

Homestead is a constitutionally guaranteed right. A receiver's capacity to bargain that right away, as the lower courts would have it, is contrary to the precepts of our Constitution.

This matter presents the Court with an opportunity to define the nature and extent of receivership powers in a particularly compelling

context. Minimal Washington law evaluates the powers of receivers. The Court of Appeals' dismissal of the Appeal at the trial court's direction, with loss of the Huhses' right to a homestead exemption, is a violation of the Huhses' right to due process, and is an issue of substantial public interest. It therefore is a basis for the Court to accept review under RAP 13.4(b)(3) and (4).

**ii. Appellate Authority**

Public policy should be considered before courts empower a judgment creditor to impose involuntary receivership on a judgment debtor, and then force dismissal of the judgment debtor's defensive appeal as part of a forced "settlement." A trial court has determined that an appeal should be dismissed on the basis it has no merit. The contemplated dismissal was directed by a receiver in an involuntary receivership created, financed, and controlled by the judgment creditor.

Appeal is the exclusive domain of courts of appeal, and one that should be fastidiously protected to preserve the system's integrity. If trial courts, through their agents (receivers), may dismiss appeals based on unilateral conclusions an appellant's "best interests," appellants lose the protection of the appellate system, and courts of appeal are usurped of their authority. This Court should accept review to avoid such

circumstances, and to protect a substantial public interest, under RAP 13.4(b)(4).

## **2. The Huhses' Right to Appeal is Not Estate "Property"**

The trial court did not properly give the receiver control of the Huhses' defensive appeal as "Property" of the estate. If the Appeal is not "Property," then the receiver may not use it as a settlement bargaining chip, because it would not be within his control. Appeal of the judgment is not within the Order Authorizing Dismissal of Appeal's definition of "Property." RCW 7.60.005(9) defines the term as follows:

"Property" includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired. "Property" includes any proceeds, products, offspring, rents, or profits of or from property in the estate. ...

This definition cannot be interpreted to include the right to litigate through defensive appeal a claim *against* the property of the estate. No authority holds appeal of an adverse judgment as property of an estate. RCW 7.60.060(e) is stated in terms of a receiver's "power to assert rights, claims, or choses in action," but not defenses to claims.

## **3. Homestead Exemption**

Article XIX, §1, of the Washington Constitution states: "The legislature shall protect by law from forced sale a certain portion of the

homestead and other property of all heads of families.” As this Court has held:

The homestead exemption statutes are based upon Art. 19, § 1 of the state constitution. We have held in a plethora of decisions that the homestead statutes are favored in the law and should be liberally construed. [citation omitted]. They do not protect the rights of creditors; they are in derogation of such rights. [citation omitted].<sup>11</sup>

Under no circumstances should conveyance to Belikov of the Mercer Island Property be allowed without his prior payment to the Huhses of \$125,000.00, representing their homestead exemption. Per RCW 6.13.070, “...the homestead is exempt from attachment *and from execution* or forced sale *for the debts of the owner* up to the amount specified in RCW 6.13.030 [emphasis added].” The term “execution,” per RCW 6.17.060, includes the circumstances of the trial court’s Order Authorizing Dismissal of Appeal:

There shall be three kinds of executions: First, against the property of the judgment debtor; second, *for the delivery of the possession of real or personal property* or such delivery with damages for withholding the same; and third, *commanding the enforcement of or obedience to any other order of the court* [emphasis added].

The Huhses are guaranteed a homestead exemption. Typically in judgment enforcement proceedings, a forced sale of the property would occur, with the first \$125,000.00 of sales proceeds being transferred to the

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<sup>11</sup> *Webster v. Rodrick*, 64 Wn.2d 814, 816, 394 P.2d 689 (1964).

judgment debtor. The unorthodox mechanism of a forced “settlement,” executed by a receiver with a judgment creditor at the judgment creditor’s instance, should not be allowed to subvert the purpose of the homestead exemption, or deprive the judgment debtor of constitutional and statutory rights. As the “settlement agreement” contemplates transfer to Belikov of the Mercer Island Property, as opposed to an execution sale of that property, the only workable approach to enforcement of the homestead exemption is Belikov’s direct payment of it to the Huhses.

Belikov did not reply to or otherwise address in any way the Huhses’ homestead claim in trial court proceedings. Thus, all arguments he presented to the Court of Appeals should have been barred under RAP 2.5(a), and are unsupported by the record on appeal. “Failure to raise an issue before the trial court generally precludes a party from raising it on appeal.”<sup>12</sup>

Belikov argued to the Court of Appeals that the Huhses “failed to timely raise a right to homestead to the trial court, and they failed to that [sic] establish that their Declaration of Homestead is valid.” This is factually inaccurate and legally irrelevant. The Huhses need not do either to enjoy this constitutional right. Regarding the homestead statute, RCW

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<sup>12</sup> *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983) citing *Seattle-First Nat’l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 240, 588 P.2d 1308 (1978) and RAP 2.5(a).

6.13.040, “[s]ince 1981, homestead protection is ‘automatic’ and protects property owners from the time the real property is occupied as a principal residence.”<sup>13</sup> A homestead declaration is not at all necessary in these circumstances, RCW 6.13.040 requiring them only in instances wherein “the homestead is unimproved or improved land that is not yet occupied as a homestead” and “if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home.”<sup>14</sup> As this Court has held:

Homestead allowance enjoys a high priority under Washington law, as it does in other jurisdictions. [citations omitted] We have noted in past decisions that such award allowances give an absolute right. [citations omitted] ... ***Absent the most clear and explicit language confirming a voluntary relinquishment of the award as a known right, a waiver will not be found.*** [citations omitted, emphasis added].<sup>15</sup>

#### 4. Court of Appeals’ Ruling

The Court of Appeals’ Ruling makes no substantive analysis of the issues presented herein, and affirms the trial court based on erroneous procedural determinations.

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<sup>13</sup> *Sweet v. O’Leary*, 88 Wn. App. 199, 201, 944 P.2d 414 (1997).

<sup>14</sup> The Huhses filed a homestead declaration in this instance only to have a document to show the trial court of their firm intention to claim homestead.

<sup>15</sup> *In re Boston’s Estate*, 80 Wn.2d 70, 75, 491 P.2d 1033 (1971).



### **i. Homestead Exemption**

Again, this Court has ruled that “[a]bsent the most clear and explicit language confirming a voluntary relinquishment of the award as a known right, a waiver [of the homestead entitlement] will not be found.”<sup>16</sup> The Court of Appeals’ ruling is erroneous on its face, as it finds an implicit waiver under circumstances not addressed by the parties in briefing nor opposed by the receiver in Belikov in trial court proceedings.

The Court of Appeals effectively ruled that the Huhses “waived” this right by not raising it “until after the Huhses had already agreed to have the house serve as security for the temporary stay of the order authorizing settlement – a settlement that included transfer of the Mercer Island house to Belikov as one of its terms.”<sup>17</sup> In other words, the Court of Appeals concluded the Huhses waived their right to a homestead exemption by not asserting it when posting supersedeas security with the trial court.

Even were it accurate that the Huhses first addressed the homestead issue with the trial court at that point,<sup>18</sup> the Court of Appeals’ ruling raises questions about waiver of constitutional rights that merit this

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<sup>16</sup> *In re Boston's Estate*, 80 Wn.2d 70, 75, 491 P.2d 1033 (1971).

<sup>17</sup> Appendix 1 at 7. This is not accurate. The Huhses raised the issue to the trial court on a number of occasions in motion practice well prior to their compliance with the Commissioner’s supersedeas requirement.

<sup>18</sup> Again, it is not. The Huhses raised homestead in earlier trial court motion practice.

Court's attention. This Court's decisions regarding enforcement of the homestead exemption in the context of a constitutional right have not been revisited in recent memory.

## **ii. Improper Dismissal of Defensive Appeal**

The Court of Appeals concluded that its ruling in response to an emergency RAP 17.4(b) motion had dispositive effect as to the Huhses' entire appeal. This approach eliminated the Huhses' right to monitor and protest the receiver's actions through motion practice by placing them at risk of their entire appeal being dismissed based on a motion ruling. Far different standards and considerations apply to a request for emergency relief under RAP 17.4(b) as compared to the substantive analysis an underlying appeal would require.

The Court of Appeals seems to have treated the Huhses' emergency motion as a "Motion in Brief," which RAP 17.4(d) contemplates as a motion heard within full appellate briefing to obviate consideration of the case on the merits.<sup>19</sup> While the Huhses raised some of the same points in their RAP 17.4(b) motion, they did not fully brief the issues to the extent needed and appropriate for a substantive appeal. The Court of Appeals' adoption of its Commissioner's Ruling on an

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<sup>19</sup> "A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits." RAP 17.4(d).

emergency motion is no substitute for a complete appellate analysis, and should not serve as such.

## VI. CONCLUSION

This matter presents an opportunity for the Court to address matters that affect the public interest in a variety of ways, and which have not been the subject of recent judicial attention. For the reasons presented above, the Huhses respectfully petition the Court for review of the Court of Appeals' Ruling.

DATED this 28th day of September, 2016.



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**CERTIFICATE OF SERVICE**

I hereby certify that I am a legal assistant at Foster Pepper PLLC and that on September 28, 2016, I filed this pleading with the Supreme Court and have served this via E-mail service by consent of parties and

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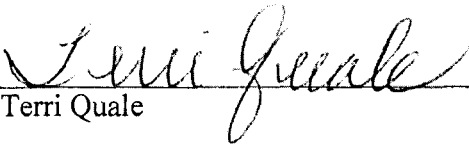
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DEFENDANTS/APPELLANTS' PETITION FOR  
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I certify under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on September 28, 2016.

  
Terri Quale

DEFENDANTS/APPELLANTS' PETITION FOR  
REVIEW - 17

# **APPENDIX 1**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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

Respondents, )

v. )

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

Appellants, )

TECHNO-TM, LLC, a Nevada limited )  
liability company; SUNCADIA )  
PROPERTIES, LLC, a Nevada limited )  
liability company, )

Defendants. )

No. 73495-4-I  
(consolidated w/74230-2-I)

DIVISION ONE

UNPUBLISHED OPINION

FILED: August 29, 2016

2015 AUG 29 AM 9:58  
COURT OF APPEALS  
STATE OF WASHINGTON

BECKER, J. — Judgment debtors whose property has been placed in receivership are attempting to pursue arguments that this court rejected when dismissing their earlier appeal over a year ago. We decline to revisit those arguments and instead dismiss them as moot. We affirm the order granting the receiver's motion to transfer a residence as part of a settlement with the creditors.

The debtors are appellants Maryann Huhs and Roy "Al" Huhs. The

creditors are respondents Nikolay Belikov and his company R-Amtech International Inc. (hereafter "Belikov"). Respondents obtained a judgment totaling more than 4 million dollars against the Huhses on August 12, 2014. The judgments related to acts of fraud and breaches of fiduciary duty. On August 26, 2014, the Huhses filed a notice appealing the money judgment. Belikov v. Huhs, cause no. 72334-1-I. They did not post a bond for supersedeas.

The Huhses began to dissipate their assets and made it clear they had no intention of satisfying the money judgment. The trial court put their property, including a Mercer Island house, into a receivership to prevent further depletion. The receivership order was issued on January 23, 2015. It defined the property in broad terms and granted the receiver broad authority.

Belikov proposed a settlement. The terms of settlement required, among other things, that the Huhses' pending appeal be dismissed and the Mercer Island house be transferred to Belikov. The receiver moved for permission to accept the settlement on behalf of the receivership estate. The Huhses opposed the motion. Concluding that the terms of the settlement were fair and equitable, the trial court authorized the proposed settlement, including the term that required dismissal of the Huhses' pending appeal. The order authorizing the settlement was issued on June 1, 2015.

On June 2, 2015, the Huhses filed another appeal, cause no. 73495-4-I, to challenge the order authorizing settlement. The next day, they filed an emergency motion seeking to stay the order authorizing settlement and to enjoin dismissal of their pending appeal of the money judgment in cause no. 72334-1-I.



No. 73495-4-I/3

They did not offer any security. A commissioner of this court denied the motion on June 12, 2015.

On June 16, 2015, the receiver and Belikov moved to dismiss the Huhses' pending appeal in cause no. 72334-1-I as a step in carrying out the trial court's order authorizing the settlement.

On June 17, 2015, the Huhses filed a second emergency motion seeking a stay to permit them to move to modify the commissioner's ruling denying a stay of the order authorizing settlement. The emergency motion was filed in cause no. 73495-4-I. This time, the Huhses offered to post security by having the deed to the Mercer Island house deposited in the court registry. On the same date, our commissioner granted this motion on condition that the deed be deposited in the trial court registry and that the Huhses expeditiously file the motion to modify and at the same file an answer to the motion to dismiss.

These conditions were met. The receiver deposited the deed into the trial court registry. On June 19, 2015, the Huhses moved to modify the ruling denying a stay. In the same filing, they responded to the motion to dismiss their appeal from the money judgment, cause no. 72334-1-I. This filing is docketed in cause no. 73495-4-I.

In resisting the motion to dismiss, the Huhses argued that their right to appeal was not a form of property the receiver was empowered to compromise. They also argued that by authorizing dismissal of their appeal, the trial court in effect had reviewed the propriety of its own judgment, thereby usurping this court's appellate authority. They argued that the settlement should be reversed

No. 73495-4-1/4

as a matter of public policy and that the receiver breached fiduciary duties he owed to them.

On July 7, 2015, after reviewing those arguments and Belikov's response, this court issued an order denying the motion to modify and lifting the temporary stay of the order authorizing settlement. On the same date, this court issued an order dismissing the Huhses' appeal in cause no. 72334-1-1. On September 30, 2015, the Supreme Court denied the Huhses' petition for review of the order dismissing that appeal. The mandate issued on October 30, 2015, terminating review of the money judgment.

On July 21, 2015, the receiver filed a motion to release the Mercer Island deed from the trial court registry for recording of the transfer to Belikov. On July 27, 2015, the Huhses recorded a declaration of homestead which designated the Mercer Island house as homestead property. The next day, they opposed the motion to release the deed, citing their assertion of rights under Washington's homestead laws. This was the first occasion that the Huhses mentioned a claim of homestead.

On July 30, 2015, the trial court granted the receiver's motion to release the deed to Belikov. The Huhses filed a separate appeal from that order, cause no. 74230-2-1. That appeal has been consolidated with the appeal from the order authorizing settlement, cause no. 73495-4-1. We heard oral argument on July 26, 2016, and now address both appeals.

The Huhses contend the trial court committed reversible error by authorizing the receiver to accept Belikov's settlement offer, particularly the term

of settlement that required dismissal of their appeal from the money judgment, cause no. 72334-1-I. The Huhses ask to have that appeal reinstated.

The claims made by the Huhses pertaining to the dismissal of their appeal from the money judgment are moot. A claim is moot when the court can no longer provide effective relief. Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). The relief requested by the Huhses, reinstatement of their appeal in cause no. 72334-1-I, is no longer possible. That appeal was dismissed by this court's order of July 7, 2015. The mandate has issued. Under RAP 12.7(a), the issuance of the mandate deprived this court of the power to change, modify, or undo the order dismissing the appeal.

**(a) Court of Appeals.** The Court of Appeals loses the power to change or modify its decision (1) upon issuance of a mandate in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9, (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals, or (3) upon issuance of a certificate of finality as provided in rule 12.5(e) and rule 16.15(e).

**(d) Special Rule for Law of the Case.** The appellate court retains the power to change a decision as provided in rule 2.5(c)(2).

RAP 12.7(a), (d).

The Huhses claim that the appeal may be reinstated under RAP 12.7(d). That subsection provides an exception for law of the case review through RAP 2.5(c)(2), which provides as follows:

**(c) Law of the Case Doctrine Restricted.** The following provisions apply if the same case is again before the appellate court following a remand:

**(2) Prior Appellate Court Decision.** The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would

best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

We will assume for the sake of argument that if this court committed error in dismissing the appeal in cause no. 72334-1-1, we have the authority to correct the error by reversing the order authorizing settlement.

Where there has been a determination of applicable law in a prior appeal, the law of the case doctrine ordinarily precludes redeciding the same legal issues in a subsequent appeal. The law of the case doctrine is discretionary, not mandatory. Folsom v. County of Spokane, 111 Wn.2d 256, 263-64, 759 P.2d 1196 (1988). Reconsideration of identical legal issues in a subsequent appeal of the same case will be granted where the holding of the prior appeal is clearly erroneous and the application of the doctrine would result in a manifest injustice. Folsom, 111 Wn.2d at 264.

In their briefing opposing the motion to dismiss their appeal from the money judgment, the Huhses made the same arguments that they are making in the present appeal of the order authorizing settlement. This court necessarily rejected those arguments when a panel of three judges granted the motion to dismiss on July 7, 2015. There is no reason for this court to revisit those arguments. The dismissal of the appeal was neither clearly erroneous nor manifestly unjust. Because this court has already considered and rejected the arguments the Huhses are presently making in cause no. 73495-4-1 against the order authorizing settlement, that appeal is moot and will be dismissed.

In the consolidated appeal involving the claim of homestead, cause no. 74230-2-1, the Huhses assign error to the order granting the receiver's Motion to

Release and Record Deeds of Trust, issued on July 30, 2015. The Huhses contend that the trial court erred by granting this motion without requiring Belikov to pay them \$125,000 for their homestead exemption. They argue that the conveyance of the Mercer Island house to Belikov is a form of execution for the debts of the owner from which a homestead is exempt under RCW 6.13.070.

This argument was not raised in the trial court until after the Huhses had already agreed to have the house serve as security for a temporary stay of the order authorizing settlement—a settlement that included transfer of the Mercer Island house to Belikov as one of its terms. The Huhses have not explained why the value of the house as security or the value to Belikov of the settlement should now be diminished by \$125,000. In their reply brief, the Huhses contend that homestead protection is “automatic,” citing Sweet v. O’Leary, 88 Wn. App. 199, 201, 944 P.2d 414 (1997). Sweet is factually far removed from the present case. The Huhses did not raise a claim of homestead when the transfer of the house to Belikov was included as a term of the settlement authorized by the trial court. As discussed above, the order authorizing the settlement is valid. The trial court had no obligation to require Belikov to remit \$125,000 to the Huhses when signing a ministerial order to carry out the term of the settlement that required transfer of the house.

Both parties seek to supplement the record on appeal. Evidence may be taken under RAP 9.11 in extraordinary cases if additional proof “is needed to fairly resolve the issues on review.” E. Fork Hillis Rural Ass’n v. Clark County, 92 Wn. App. 838, 845, 965 P.2d 650 (1998), quoting RAP 9.11(a). Additional

No. 73495-4-1/8

facts are not necessary to resolve this appeal. The RAP 9.11 motions are denied.

The appeal in cause no. 73495-4 is dismissed as moot. In cause no. 74230-2-1, the order granting the receiver's Motion to Release and Record Deeds of Trust is affirmed.

Becker, J.

WE CONCUR:

Trickey, A W

Dunne, J.

# **APPENDIX 2**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

NIKOLAY BELIKOV; and TECHNO-TM ZAO,

Plaintiffs,

vs.

MARYANN HUHS and ROY E. HUHS, JR.; R-AMTECH INTERNATIONAL, INC.; TECHNO-TM, LLC; and SUNCADIA PROPERTIES, LLC,

Defendants.

No. 12-2-23972-0 SEA

**ORDER GRANTING  
RECEIVER'S MOTION TO  
COMPROMISE CLAIM**

THIS MATTER was before the Court on the Receiver's Motion to Authorize Compromise of Claim. The Court has considered the following documents filed in support of, and in opposition to, the motion:

1. General Receiver's Motion for Order Authorizing Compromise of Claim;
2. Declaration of Matthew D. Green In Support of General Receiver;s Motion for Order Authorizing Compromise of Claim and attached exhibits;
3. Judgment Debtor's Response;
4. Judgment Creditor's Reply;
5. Receiver's Reply;
6. Supplemental Declaration of Matthew D. Green and attached exhibits.

King County Superior Court  
516 3rd Avenue, Room C203  
Seattle, Washington 98104  
(206) 477-1647



1           Based on a review of the pleadings, the court file and the oral argument  
2 of counsel, the Court makes the following findings:

- 3           1. The judgments entered in favor of R-Amtech International, Inc. and Nikolay  
4           Belikov against the Debtors in 2014 total \$4,031,646.25 and are accruing interest  
5           at 5.25% or \$579.89 per day.
- 6           2. The Debtors filed their appeal brief on January 26, 2015, asserting, among other  
7           issues, that the trial court erred in vacating Belikov's jury demand.
- 8           3. The Receiver has reviewed the issues that the Debtors have raised on appeal, and  
9           has concluded that even if the result was a re-trial to a jury, it was unlikely that the  
10          outcome would be any different given the Huhs' damaging testimony during their  
11          first trial that would likely be offered against them in a subsequent trial.
- 12          4. There would be considerable cost and delay to the Estate in pursuing an appeal of  
13          the trial court's ruling and would unlikely result in any tangible benefit to the  
14          Debtors.
- 15          5. In return for \$2 million in real property, Mr. Belikov has offered to satisfy \$5  
16          million in Judgments against the Debtors. At trial, Mr. Belikov was awarded the  
17          \$4 million Judgment as well as the Suncadia property valued at approximately \$1  
18          million. In return for an additional \$1 million in real property (the Debtor's  
19          Mercer Island home valued at \$900,000 and a vacant lot next to the Suncadia  
20          property valued at \$100,000), the Debtors would be relieved of \$5 million in debt,  
21          a discount of \$3 million.
- 22          6. As part of the settlement agreement, the Debtors would keep all their personal  
23          property from their Mercer Island house. This issue has been the source of  
24          considerable litigation ultimately resulting in the appointment of a Referee to assist  
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King County Superior Court  
516 3rd Avenue, Room C203  
Seattle, Washington 98104  
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the court in determining what property of the Debtors should be exempt from attachment.

7. The proposed settlement offer is fair and equitable to both sides and should be approved.

Based on the above findings, IT IS HEREBY ORDERED that the Receiver's Motion to Authorize Compromise of Claim is GRANTED upon the terms outlined in the February 12, 2015 letter which is attached as Exhibit A to this Order.

DATED this 1<sup>st</sup> day of June, 2015.



---

The Honorable Mariane C. Spearman  
Chief Civil Judge

King County Superior Court  
516 3rd Avenue, Room C203  
Seattle, Washington 98104  
(206) 477-1647

# EXHIBIT A



**SUMMIT**  
LAW GROUP

a professional limited liability company

LAWRENCE C. LOCKER  
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February 12, 2015

*Via Email and U.S. Mail*

Kevin P. Hanchett, Esq.  
Lasher Holzapfel Sperry & Ebberson, PLLC  
601 Union Street, Suite 2600  
Seattle, WA 98101-4000

Re: *Belikov, et al. v. Huhs, et al.*

Dear Kevin:

I write to convey a settlement offer on behalf of our client Nikolay Belikov. We would appreciate your conveying this offer to Matt Green, the court-appointed general Receiver for judgment debtors Roy E. ("Al") and Maryann Huhs. As you know, Mr. Belikov obtained judgments in favor of himself and on behalf of his company R-Amtech International, Inc., against the Huhses. In addition to establishing his sole ownership of R-Amtech and voiding the Huhses' attempt to transfer the licensing rights to the company's technology to themselves, the trial court (Honorable Helen Halpert) entered judgment in favor of Mr. Belikov and R-Amtech requiring the Huhses to return a residence at the Suncadia resort to Mr. Belikov. The trial court also awarded two monetary judgments against the Huhses, one for \$3,112,329 and the other for attorneys' fees and costs of \$919,317.25, for a total direct monetary judgment amount against the Huhses, before post-judgment interest, of \$4,031,646. The trial court's detailed findings expressly determined that, among other misconduct, the Huhses committed intentional fraud. This finding renders the judgments non-dischargeable in bankruptcy.

In the current receivership proceeding, all of the assets of the Huhses will be liquidated for the benefit of their creditors, subject to any exemption rights that they may have. Unlike a bankruptcy, despite having their assets liquidated, the debts of the Huhses are not discharged in the receivership and the Belikov judgment will continue to be valid for up to 20 years.

Kevin P. Hanchett, Esq.  
February 12, 2015  
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My understanding is that the Receiver may have already reviewed the judgments (attached hereto as Exhibit 1), Judge's Halpert's Memorandum Opinion (attached hereto as Exhibit 2), and the Findings of Fact and Conclusions of Law (attached hereto as Exhibit 3). But for the Receiver's convenience, we are sending those documents together with this letter, along with the Huhses' opening appeal brief (attached hereto as Exhibit 4). Our opening appeal brief has not yet been completed; it is due on April 13, 2015.

We propose a settlement that will lift the burden of this non-dischargeable judgment of more than \$5 million off the Huhses' shoulders (\$4 million monetary judgment and \$1 million Suncadia residence), in exchange for real property already granted to Mr. Belikov by the court, valued at approximately \$1 million, plus additional real property controlled by the Receiver, valued at \$1 million. The Receiver would dismiss the Huhses' appeal, and a mutual release of all claims would be signed. We believe the Huhses' chances of prevailing on the appeal are extremely small, and the chances of Mr. Belikov collecting all of the more than \$4 million monetary portions of the judgment are similarly remote, at least in the near term. Mr. Belikov wishes to preserve his and the Receivership Estate's assets by putting an end to the incurrence of additional attorneys' fees in further litigation. As their post-trial conduct confirms, the Huhses are litigious, have no intent to pay a judgment and have been, as the court found, dishonest with respect to disclosure of their assets. Their repeated legal defeats have not curbed their appetite for further litigation activity. Their recent unsuccessful attempt to oppose even our request for additional time to file our opening brief after we agreed to a similar extension for them is one of many examples of their wasteful litigious activities. This activity depletes resources otherwise available to satisfy the judgments and requires Mr. Belikov to spend substantial additional fees simply to protect his judgments from waste by the Huhses.

The terms of the proposed settlement agreement are as follows:

1. The trial court's rulings determining Nikolay Belikov to be the sole owner of R-Amtech International, Inc. and removing the Huhses as officers and directors of that company would stand.
2. The trial court's ruling that the transfer of the licensing rights to R-Amtech's technology to the Huhses' company for \$1,000 was fraudulent and *ultra vires* and ordering that the licensing rights be returned to R-Amtech would stand.

Kevin P. Hanchett, Esq.  
February 12, 2015  
Page 3

3. The trial court's order requiring the Huhses to return the Suncadia house at 51 Blackberry Court, Cle Elum, Washington, to Mr. Belikov would stand.
4. The trial court's determination that the Huhses were entitled to keep their Costa Rica condominium, known as *Mezzaluna Doce*, would stand. The Huhses have sold the condo and sequestered funds from it, and perhaps other funds, in Costa Rica. They would keep those funds.
5. The Receiver would dismiss the legal action in Costa Rica which the Huhses have commenced or plan to commence against Mr. Belikov, and release all rights or claims to date against Mr. Belikov.
6. The Receiver would transfer to Mr. Belikov the Huhses Mercer Island house (valued at approximately \$900,000) and transfer to Mr. Belikov a vacant lot (valued at approximately \$100,000) the Receivership Estate controls which is adjacent to Mr. Belikov's Suncadia house at 51 Blackberry Court, Cle Elum, Washington. The Receiver would agree to Mr. Belikov's ownership of the Blackberry Court house and its contents (valued at approximately \$1,000,000).<sup>1</sup>
7. The Huhses' personal property, including the furnishings of their Mercer Island house, their two cars in custody of the Receiver, and artwork from their house that remains in our possession would be returned to them.
8. The Huhses could retain their car in Costa Rica and all other personal property in that country.
9. A full satisfaction of judgment would be entered for the judgments against the Huhses.
10. The Receiver would dismiss with prejudice the Huhses' appeal of the judgments and *lis pendens* ruling.

On balance, Mr. Belikov would be releasing more than \$5 million in non-dischargeable judgments against the Huhses and the Receivership Estate, in exchange for approximately \$2 million in real property. We have assigned the value of the

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<sup>1</sup> Our market analysis and offers received for the house suggest it is worth approximately \$900,000. But we provide a higher number for purposes of this analysis.

Kevin P. Hanchett, Esq.  
February 12, 2015  
Page 4

Huhses' appeal on R-Amtech ownership and technology issues as effectively zero given their extremely low chances of success on both the appeal and retrial on those issues (discussed below). This solution would allow the Huhses to avoid decades of judgment enforcement on the proceeds from their employment and any assets they acquire. The settlement would also allow Mr. Belikov to minimize the substantial amount of additional attorneys' fees forced on him by the Huhses' litigious behavior, and avoid years of additional judgment enforcement efforts. These numbers indicate that the settlement proposal is very favorable to the Receivership Estate and to someone in the Huhses' position.

Although there are a number of ways a settlement can be analyzed, the same conclusion follows under an alternative, risk-adjusted analysis, even with generous assumptions weighted in the Huhses' favor. For example, if we start with the average reversal rate for defendant-appealed bench trials of 9% (*see Court Statistics Project*, 14 National Center for State Courts v.1 (2007) at 4), the risk-weighted value of what the Huhses are receiving under this settlement greatly exceeds what they are giving up. The Huhses would be receiving a risk-adjusted value of \$4,550,000, which is the 91% average affirmance rate multiplied by the \$5 million non-dischargeable judgments that would be released. By contrast, the Huhses would be giving up a risk-adjusted value of \$1,360,000, which in addition to the value of their Mercer Island house and vacant Suncadia lot, is the 9% average reversal rate times the value of the claims they lost and that are on appeal:

R-Amtech value <sup>2</sup>	$\$3,000,000 \times .09 =$	\$270,000
Suncadia residence	$\$1,000,000 \times .09 =$	\$90,000
Mercer Island house value (no discount)		\$900,000
Suncadia vacant lot (no discount)		<u>\$100,000</u>
Total		\$1,360,000

The difference is a risk-adjusted gain to the Huhses of \$3,190,000. The actual risk-adjusted gain to the Huhses is higher than this \$3,190,000 because, as discussed below, the Huhses' chance of securing a reversal is far less than the average 9%

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<sup>2</sup> R-Amtech's sole source of income are royalties from a licensee of its technology, Fireaway. Mr. Belikov's counsel have negotiated the basic terms of and are close to completing a new license agreement between R-Amtech and Fireaway. The anticipated revenue stream from that license is approximately \$3,000,000. We can provide more details on the license and anticipated royalty stream to the Receiver if that would be helpful.

Kevin P. Hanchett, Esq.  
February 12, 2015  
Page 5

reversal rate used for the calculation, and because that calculation does not incorporate the risks and costs to the Huhses of a retrial following a reversal. Nevertheless, these numbers make it apparent that in pure economic terms the Receivership Estate and the Huhses gain a great deal by this proposed settlement.

Based on our past negotiations and interactions with the Huhses' counsel, we believe that similar settlement proposals we made with the Huhses failed because of the Huhses' psychological attachment to and unrealistic hopes in their appeal. The Huhses have thus far chosen to proceed at every turn with costly litigation, while hiding and depleting assets available to satisfy a judgment that they have testified they have no intention of paying, in whole or part. Exhibit 5 (Roy "Al" Huhs 12/18/14 Dep. at 85:25-86:19). The Huhses pursue continued litigation as a means of gambling at Mr. Belikov's expense and further reducing their ability to pay the non-dischargeable judgment.

A receiver's fresh and unbiased perspective can be especially useful here. The Huhses' objectively low odds of obtaining a reversal on appeal are further reduced by the record here. Judge Halpert's factual findings on fraud and breach of fiduciary duty are thorough, well supported by the evidence, and well reasoned. They were made after a month-long trial, for which she cleared her calendar. She had extensive briefing, and even gave the Huhses extra time to put on their case, which reduced the amount of time allowed for plaintiff's witnesses. Exhibit 6 (6/4/14 VRP at 3:23-4:18). The trial record included extensive evidence that the Huhses falsified documents purporting to prove their claims to R-Amtech, among other false statements and fraudulent conduct.

Judge Halpert's decisions are subject to review under the abuse-of-discretion standard, an extremely high bar for any appellant and one the Huhses cannot meet because Judge Halpert's credibility findings against them are well supported and the Huhses have not challenged those findings on appeal. A finding of fact that has not been challenged will be considered a verity on appeal. *Expert Drywall, Inc. v. Brain*, 17 Wn. App. 529, 537, 564 P.2d 803 (1977). Al Huhs's admissions during cross-examination at trial that he falsified accounting records and corporate minutes on ownership are unusual and strong evidence supporting Judge Halpert's rulings on R-Amtech ownership, even if they were challenged. For example, confronted with metadata, Al Huhs admitted to creating and backdating shareholder meeting minutes, some more than a decade earlier (Exhibit 7); admitted that he manipulated the accounting records by removing "from Belikov" on Belikov's initial deposit to purchase stock (Exhibit 8); and admitted that he created at least one key board meeting minute 5 years after it occurred (Exhibit 9). The unchallenged evidence falsification



Kevin P. Hanchett, Esq.  
February 12, 2015  
Page 6

and credibility findings made against the Huhses include the following findings of fact:

No. 13: “. . . Maryann and Al Huhs decided to use this opportunity to completely take over R-Amtech, by falsifying corporate records and duping Fireaway into believing it was contracting with a Belikov-owned firm. . . . Al Huhs falsified corporate records to indicate that the transfer [of licensing rights from R-Amtech to the Huhses’ company for \$1,000] was ratified by the R-Amtech board in 2007.”

No. 20: “. . . Up until Al Huhs changed the general ledger of R-Amtech’s Quickbooks accounting system on February 17, 2012, using the name of former employee Cindy Verdugo, the books reflected Mr. Belikov’s ownership interest. . . .” (Emphasis added.)

No. 27: “The court is satisfied that the December 28, 2007 board meeting [authorizing transfer of R-Amtech licensing rights to the Huhses’ company for \$1,000] and the various shareholder meetings never took place and that the minutes were created as part of a scheme to defraud Mr. Belikov. . . .”

No. 30: “. . . In December 2003, Maryann Huhs drafted a letter to the Costa Rican Tourism Institute describing Mr. Belikov as the beneficial owner of R-Amtech. (Exhibit 610) Although the signed version has been lost, at her deposition, Maryann Huhs admitted signing the letter. Her testimony to the contrary at trial is not credible.” [Footnote omitted.]

No. 49: “Fireaway and Maryann Huhs continued communicating regarding ownership of the patents. Ultimately, on May 8, 2012, Mr. Lavin met with Maryann and Al Huhs at their home to review the corporate documents in an effort to resolve ownership. . . . At trial, Al Huhs admitted that he did not create the December 2007 board minutes until January 18, 2012. Al Huhs admitted that he created and backdated the shareholder meeting minutes on May 6, 2012, two days before the meeting with Mr. Lavin.”

No. 50: “. . . [C]orporate documents were created by Al Huhs in an attempt to perpetrate the theft of R-Amtech and its assets and to dupe Fireaway [licensee of R-Amtech’s patented technology]. . . .”

No. 75: “. . . Maryann and Al Huhs diverted assets and altered company accounting data and board and shareholder minutes to perpetuate the hijacking of R-Amtech. . . .”

Kevin P. Hanchett, Esq.  
February 12, 2015  
Page 7

These unchallenged fact findings are verities on appeal and demonstrate the futility and wasted resources of the Huhses' appeal.

Even if the Huhses could somehow manage to show an error, they would then face the additional appellate obstacle of having to show that any error under the difficult abuse-of-discretion standard was not harmless but material to the outcome of the case. Again, the fulsome fact and credibility determinations and Al Huhs's falsification of evidence make a showing of materiality a practical impossibility. The Huhses face these same demanding appellate standards in any challenge to Judge Halpert's well-reasoned evidentiary rulings and decision to proceed with a bench trial.

While slightly less elevated, the appellate obstacles to overturn the Suncadia property ruling are equally daunting. Even if a *de novo* standard of review applies to the Court's RPC 1.8(c) ruling, the Court of Appeals will agree that Judge Halpert—a respected former law professor who committed a substantial amount of time and attention to this issue—was correct, especially in light of the public policy concerns over lawyer misconduct and the recent *LK Operating* case<sup>3</sup> issued by the Washington Supreme Court, upholding rescission of a transaction between a lawyer and client that violated the public policy of RPC 1.8. Average success rates on appeal are in the range of 9% (*supra*), but even on this issue the odds are significantly lower than that. Even if the Huhses did beat steep odds and prevail on the RPC 1.8(c) issue, the Huhses would lose the Suncadia property anyway, to satisfy part of the \$4 million monetary judgment against them.

Moreover, even if the Huhses were to somehow obtain a remand for a new trial (the core relief requested re R-Amtech findings), where would that get them? First, it is apparent that the Huhses do not have another million dollars to spend on a second trial in a case Judge Halpert described as "remarkably complicated." Exhibit 2 at 30:19. The only possibility of their financing a second trial would be for them to sell their Mercer Island house—an unwise choice considering that they can, via this offer, use that property in settlement to wipe out the \$4 million non-dischargeable judgment against them. Second, the portion of the case that might be remanded for a trial before a jury is unclear and likely to be very limited. Juries cannot try equitable issues. Some of the trial court's decisions—such as on ownership of R-Amtech and removal of the Huhses as officers and directors of R-Amtech—are so clearly equitable as to remain in place even if an appellate court were to decide that other issues should be remanded for trial by a jury. Arguably all of the Court's material decisions can flow from equity claims pled by Mr. Belikov, none of which would be tried to a jury.

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<sup>3</sup> *LK Operating, LLC v. The Collection Group, LLC*, 181 Wn.2d 48, 331 P.3d 1147 (2014).

Kevin P. Hanchett, Esq.  
February 12, 2015  
Page 8

Third, whatever portion might be remanded for retrial, the Huhses are stuck with their sworn testimony from the first trial, including Maryann Huhs's repeated contradictions of her previously sworn deposition testimony, and Al Huhs's admissions that he falsified evidence—testimony that is especially damning whether in front of a judge or jury. In short, the record in any extremely unlikely retrial would insure identical findings, either by a judge in equity or by a judge and jury. Finally, the Huhses would need to file a motion and obtain a dismissal of the receivership before they would even have the right or control of further litigation. Because the Huhses' attorneys did not file any written objection to the motion to appoint a receiver, they do not have any meaningful appeal rights with regard to that order.

In summary, the proposal set forth in this offer essentially allows the Huhses to walk away from \$5 million in non-dischargeable debt, and begin to restore their net worth in exchange for giving up only \$2 million in real property, half of which has already been awarded to Mr. Belikov via well-supported findings by a respected judge after a long trial, and which is thus very likely to stay in Mr. Belikov's hands absent settlement. The offer also saves attorneys' fees, thereby preserving the assets of the Estate and Mr. Belikov. It presents the Huhses with an opportunity to avoid at least a decade of collection actions and get on their feet financially, while relieving Mr. Belikov of having to continue to spend substantial sums in response to the Huhses' continuing litigious behavior.

We have provided alternative analyses of our settlement proposal. While Mr. Belikov is certainly interested in the outcome of the Receiver's analysis, he believes the merit of the offer needs no posturing or argument, and has sought to provide an objective analysis. The Receiver will surely have his own analysis also. If we can provide the Receiver with any information or input to assist in that analysis we will do so upon request.

Please forward this letter to the Receiver, for his consideration.

Sincerely,

SUMMIT LAW GROUP PLLC

  
Lawrence C. Locker

Enclosures

# **APPENDIX 3**

The Honorable Mariane Spearman  
Chief Civil Department  
Civil Motion with Oral Argument  
January 23, 2015 at 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

NIKOLAY BELIKOV, a married  
individual; TECHNO-TM ZAO, a Russian  
closed joint stock company,

Plaintiffs,

v.

MARYANN HUHS and ROY E. HUHS,  
JR. and the marital community thereof; R-  
AMTECH INTERNATIONAL, INC., a  
Washington corporation; TECHNO-TM,  
LLC, a Nevada limited liability company;  
SUNCADIA PROPERTIES, LLC, a  
Nevada limited liability company,

Defendants.

NO. 12-2-23972-0 SEA

ORDER APPOINTING GENERAL  
RECEIVER

For good cause shown, and pursuant to RCW Chapter 7.60, the Court grants Nikolay Belikov and R-Amtech International Inc.'s Application for Appointment of General Receiver and makes the following findings and enters the following order:

I. FINDINGS

**The Receivership Property**

1.1 The Judgment Creditors in the underlying action are Nikolay Belikov and R-Amtech International, Inc. ("Judgment Creditors").

**ORIGINAL**

1           1.2    The Judgment Debtors are Maryann Huhs and Roy E. Huhs, Jr., husband and  
2 wife, and the marital community thereof (collectively "Judgment Debtors").

3           1.3    The receivership property consists of real and personal property of Judgment  
4 Debtors wherever located (collectively, the "Property"), including, but not limited to, the  
5 following real and personal property:

6                   1.3.1 All Judgment Debtors' right, title and interest of Judgment Debtors in  
7 Suncadia Properties, LLC;

8                   1.3.2 All Judgment Debtors' right, title and interest of Judgment Debtors in  
9 Mercer Properties, L.L.C.;

10                   1.3.3 All Judgment Debtors' right, title and interest of Judgment Debtors in  
11 Techno TM, L.L.C.;

12                   1.3.4 All Judgment Debtors' right, title and interest in 5625 84th Ave. SE,  
13 Mercer Island, Washington, ("Mercer Island Property") and all personal property  
14 therein;

15                   1.3.5 All Judgment Debtors' right, title and interest in personal property  
16 located in storage lockers at FCI Self Storage, 45727 SE 140th St., North Bend,  
17 Washington.

18                   1.3.6 All Judgment Debtors' right, title and interest in personal property in the  
19 possession of any third party;

20                   1.3.7 All of Debtor's stock, shares and membership interests in any other  
21 business entity, including Huhs Associates, Inc.

22                                   **Factual Basis for Granting A Receivership**

23           *Judgment Granted In Favor Of Nikolay Belikov And Attempts At Execution*

24           1.4    On August 4, 2014, this Court entered a money Judgment against Maryann Huhs  
25 and Roy E. Huhs, Jr. in favor of R-Amtech International, Inc. ("R-Amtech"). In addition to  
26 the monetary relief granted, the Judgment also awarded Nikolay Belikov all right, title and  
interest in R-Amtech International, Inc. Mr. Belikov is now the sole owner of R-Amtech

1 International, Inc. The money Judgment in favor of R-Amtech was amended on August 12,  
2 2012.

3 1.5 The Principal balance of the Judgment in favor of R-Amtech is \$3,112,329.00.

4 1.6 On September 10, 2014, this Court entered a money Judgment against Maryann  
5 Huhs and Roy E. Huhs, Jr. in favor of Nikolay Belikov for attorneys' fees and costs incurred  
6 in prosecuting the underlying matter .

7 1.7 The principal balance of the Judgment in favor of Nikolay Belikov is  
8 \$919,317.25.

9 1.8 These judgments remain unsatisfied as of the date of this order.

10 *Judgment Creditors have Taken Reasonable Steps To Collect The Judgment.*

11 1.9 Judgment Creditor has taken reasonable steps to collect the Judgment granted  
12 in their favor. The steps taken by Judgment Creditor include:

13 1.9.1 Garnishment of known bank accounts pursuant to RCW 6.27 *et seq.*

14 1.9.2 Execution upon Judgment Debtors' personal property located in the  
15 Mercer Island Property pursuant to 6.17 *et seq.*

16 1.9.3 Proceedings supplemental to execution pursuant to RCW 6.32 *et seq.*

17 1.10 To date, Judgment Creditors have not satisfied the judgment, and have not taken  
18 any meaningful steps toward collecting the amounts owed under the Judgment.

19 *Judgment Debtors' Systematic Plan To Hide Or Dissipate Exempt Assets*

20 1.11 Since the entry of the Judgment, the Judgment Debtors have intentionally  
21 dissipated and/or wasted non-exempt assets with the express purpose of preventing collection  
22 of the judgment by Judgment Debtors.

23 1.12 There is reason to believe that Judgment Debtors will continue to waste, sell,  
24 and secret collectible assets if a receiver is not appointed.

25 1.13 The Judgment Debtors were ordered to submit to supplemental proceedings by  
26 this Court, and produce documents, including but not limited to, all bank statements. The  
Judgment Debtors did not produce documents as ordered by this Court, specifically failing to

1 produce bank statements for Ally Bank, Concxus Credit Union, Bank of the Internet, and  
2 Washington Federal, Inc.

3 **Legal Basis for Appointment of Receiver Pursuant to RCW 7.60.025**

4 1.14 Grounds exist for the appointment of a receiver under RCW 7.60.025(1)(c) in  
5 order to give effect to this Court's Judgment.

6 1.15 Grounds exist for the appointment of a receiver under RCW 7.60.025(1)(e) to  
7 preserve or protect the Property, or prevent its transfer, because Judgment Debtors have sought  
8 to secret and sell property subject to execution for the express purpose of avoiding collection.

9 1.16 Grounds exist for the appointment of a receiver under RCW 7.60.025(1)(f),  
10 because Judgment Debtors did not submit to supplemental proceedings as ordered by failing  
11 to produce required documents.

12 1.17 Grounds exist for the appointment of a receiver under RCW 7.60.025(1)(nn)  
13 because a receiver is necessary to secure ample justice to the parties.

14 1.18 The appointment of a receiver for the Property is reasonably necessary, and  
15 other available remedies are inadequate or unavailable. The best interests of Plaintiff and the  
16 other creditors of Maryann and Roy E. Huhs, Jr., will be served by the appointment of a  
17 receiver under the terms provided for in this Order. Under the circumstances, the appointment  
18 of a receiver is necessary to secure ample justice and to safeguard the Property.

19 **The Receiver**

20 1.19 Matthew D. Green ("Receiver") has no separate interest in this action, and is  
21 eligible and qualified to act as a receiver of the Property under RCW 7.60.035.

22 **Notice**

23 1.20 Judgment Debtors were provided with good and sufficient notice of Judgment  
24 Creditors' application for this Order and such notice afforded Judgment Debtors a reasonable  
25 opportunity to object or be heard with respect to the matters that are the subject of this Order,  
26 and no other notice is required.



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**II. ORDER**

For good cause shown, the Court concludes that a general receiver should be appointed pursuant to Chapter 7.60, RCW. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

**Appointment of Receiver**

2.1 Matthew D. Green ("Receiver") is appointed as general receiver over Judgment Debtors, with authority to take possession and control of all property of Debtors, and to manage, operate, market, and sell the property, wherever located. Receiver is authorized to act by and through its officers, agents, and employees. Entry of this Order, countersigned by Receiver, evidences Receiver's acceptance of its rights and duties hereunder and constitutes administration of any required oath of office.

2.2 Pursuant to RCW 7.60.055, the Court has exclusive authority over Receiver, exclusive possession and right of control with respect to the Property with respect to which Receiver is appointed, wherever located, and exclusive jurisdiction to determine all controversies relating to the collection, preservation, application and distribution of the Property, and all claims against Receiver arising out of the exercise of Receiver's powers or the performance of Receiver's duties.

2.3 Within seven (7) calendar days following entry of this Order, Receiver shall execute and file with the Court either cash or a bond in the amount of Ten Thousand Dollars (\$10,000.00) with a surety authorized by the Washington Commissioner of Insurance to engage in the business of suretyship in the state of Washington, in favor of the Clerk of King County Superior Court, on the condition that Receiver will faithfully discharge the duties of Receiver in this action and obey the orders of the Court herein. Receiver is authorized to pay any premium or other fee of the surety providing such bond from the Debtors' assets, as an expense of Receiver.



1 against any person for unlawful detainer, the collection of rent, or for the collection of any  
2 sums now or hereafter owing on account of the Property.

3 2.8 Receiver shall establish and maintain such accounting, bookkeeping and record-  
4 keeping systems as Receiver determines to be advisable in Receiver's business judgment in  
5 connection with its operation and management of the Property, and in the management of the  
6 financial and business affairs related to the Property.

7 2.9 Receiver may establish bank accounts with any federally insured financial  
8 institution for the purpose of receiving and disbursing funds used for the development,  
9 management, maintenance, operation and sale of the Property.

10 2.10 Receiver is authorized to perform or contract for accounting, consulting and tax  
11 services with respect to the Property, as necessitated by this proceeding or as may be required  
12 by law in the performance of Receiver's duties.

13 2.11 Receiver is authorized to bring and prosecute actions for the collection of any  
14 sums now or hereafter owing on account of the Property.

15 2.12 Receiver, in the ordinary course of business and without further order of the  
16 Court, may contract for the purchase or acquisition of such goods, materials, services and  
17 supplies as Receiver deems necessary or appropriate to preserve, protect, market and sell the  
18 Property, or any portion of it. Receiver is authorized to pay when due for goods, materials,  
19 services and supplies furnished by others to the Property in the ordinary course of their  
20 business on a going-forward basis.

21 2.13 Receiver is authorized to make such repairs, replacements or alterations to the  
22 Property as Receiver determines to be prudent or necessary, but not to exceed \$10,000 or more  
23 without the approval of the Court after notice to all interested parties and an opportunity for  
24 hearing.

25 2.14 To the extent reasonably possible from the income generated by the Property,  
26 Receiver shall pay the operating expenses of the Property.

1           2.15   Until termination of the Receivership, Receiver shall file with the Court and  
2 serve upon the parties a monthly operating report, performed in the format determined  
3 adequate by Receiver, summarizing the status of management of the Property during the  
4 month.

5           2.16   Receiver, with reasonable promptness, shall provide to each of the parties such  
6 information concerning the financial and other affairs relating to the Property, or concerning  
7 Receiver's management and operation of the Property, as any party may reasonably request  
8 from Receiver in writing from time to time.

9           2.17   Receiver, in its discretion, may delegate performance of certain of Receiver's  
10 administrative, clerical and accounting duties and functions.

11           2.18   In the performance of Receiver's duties, Receiver may employ such persons or  
12 entities as Receiver deems appropriate, including attorneys and accountants, in connection  
13 with Receiver's management and operation of the Property. All such persons and entities,  
14 including any persons who may also be directors, officers or employees of any such entities,  
15 shall be subject to the management and direction of Receiver in connection with their  
16 performance of any duties associated with such employment by Receiver. Receiver shall be  
17 free at all times to terminate the employ of any such person or entity.

18           2.19   Receiver is authorized to acquire or renew, or seek reinstatement of, all  
19 governmental licenses, permits or other authorizations, relating to the Property either in  
20 Receiver's name or in the name of Defendants.

21           2.20   Receiver is authorized to review all existing insurance coverage with respect to  
22 the Property and to procure and/or maintain such insurance as Receiver deems to be necessary  
23 for preservation or protection of the Property. The Receiver shall not be responsible for claims  
24 arising from the lack of procurement or inability to obtain insurance.

25           2.21   Receiver shall cause to be paid when due, for periods after its appointment, all  
26 current taxes for which Receiver (in its role as Receiver) is or hereafter becomes obligated to  
pay. Nothing in this Order shall be construed as imposing any obligation on Receiver to file

1 tax returns on behalf of Defendants or to impose any liability on Receiver for any taxes, of any  
2 kind, which accrued prior to the date of the entry of this Order.

3 2.22 Receiver shall have the rights, powers and duties conferred by, and Receivership  
4 shall be administered in accordance with, RCW 7.60.005 – 7.60.300. Receiver shall comply  
5 with all applicable state and federal laws.

6 **Effect of the Receivership on Certain Parties**

7 2.23 Immediately upon entry of this Order, the agents, accountants, and attorneys of  
8 Judgment Debtors shall comply fully with RCW 7.60.080, and shall cooperate with Receiver  
9 in connection with Receiver's assumption and performance of its duties, so as to enable  
10 Receiver to assume and perform those duties without jeopardy to the Property. The agents,  
11 accountants, and attorneys of Judgment Debtors shall provide to Receiver, promptly upon  
12 request, all books, records (including but not limited to financial records), documents and other  
13 information relating to the Property, and shall promptly provide Receiver with access to the  
14 Property, and books, records, documents and information which Receiver at any time may  
15 request from any of them.

16 2.24 Immediately upon entry of this Order, the agents, accountants, and attorneys of  
17 Judgment Debtors, and every other person or entity in a position to exercise control over the  
18 Property, are hereby enjoined from obstructing, delaying, or interfering with Receiver in the  
19 performance of its duties or from taking any action purporting to transfer, encumber or dispose  
20 of the Property or any portion of it.

21 2.25 Immediately upon entry of this Order, the agents, accountants, and attorneys of  
22 Judgment Debtors, and every other person or entity in a position to exercise control over any  
23 Property, are hereby enjoined from destroying and not fully preserving any books and records  
24 relating to the Property.

25 2.26 Immediately upon entry of this Order, Judgment Debtors and their agents,  
26 accountants, and attorneys, and every other person or entity in a position to exercise control  
over the Property, shall have no further right to exercise such control.

1           2.27 Judgment Debtors and their agents or accountants, and any other directors,  
2 officers, shareholders, members, employees, agents, accounts and attorneys of any business  
3 entity in which Judgment Debtors own an interest, shall submit to examination by Receiver,  
4 under oath, concerning the acts, conduct, property, liabilities and financial condition of that  
5 person or any matter relating to Receiver's administration of the Property.

6           2.28 Judgment Debtors shall instruct all contractors, property managers, agents,  
7 tenants, licensees, or others now or hereafter in possession of any portion of the Property to  
8 make all rent and profits payments to Receiver or Receiver's designee until further order of  
9 this Court.

10          2.29 Judgment Debtors shall provide Receiver with immediate and ongoing full  
11 access to all books, records or documents relating to the Property.

12          2.30 Judgment Debtors shall refrain from advertising the Property for sale or  
13 providing tours of the Property to prospective purchasers without Receiver's consent.

14          2.31 All financial institutions, credit card processors, insurance agents or  
15 underwriters, utility providers, vendors, suppliers, tradesmen, materialmen, service providers,  
16 franchisors, taxing agencies, and all government agencies and departments are hereby ordered  
17 to take direction from Receiver as it relates to the accounts of Judgment Debtors and to  
18 surrender any and all funds held on deposit or apply said funds as directed by the Receiver.

19          2.32 Any utility company providing services to the Property, including gas,  
20 electricity, water, sewer, trash collection, telephone, communications or similar services, shall  
21 be prohibited from discontinuing service to the Property based upon unpaid bills incurred by  
22 Judgment Debtors. Further, such utilities shall transfer any deposits held by the utility to the  
23 exclusive control of Receiver and be prohibited from demanding that Receiver deposit  
24 additional funds in advance to maintain or secure such services.

25          2.33 Receiver may issue demand upon the U. S. Postal Service to grant exclusive  
26 possession and control of mail and instrumentalities thereof, including postal boxes, as may

1 have been used by Judgment Debtors, and may direct that certain mail related to the Property  
2 and its business be redirected to Receiver.

3 **Compensation of Receiver**

4 2.34 Receiver shall be compensated as follows:

5 2.34.1 The Receiver shall be paid a monthly fee in the amount of Six Thousand  
6 Dollars (\$6,000.00), payable in arrears on the first day of each subsequent month, with  
7 the first payment due the first day of the month after the month in which this Order is  
8 entered, provided that the monthly fee for the first payment shall be pro-rated on a daily  
9 basis for period between entry of this Order and the first day of the subsequent month.

10 2.34.2 A commission of two percent (2%) of the gross selling price of the  
11 Property of the receivership at the closing of the sale of the Property. All other fees  
12 and commissions payable to brokers, agents, auctioneers or parties who have acted as  
13 Receiver's agents and/or licensees in the sale of the Real Property shall be in addition  
14 to the commission paid to Receiver.

15 2.35 The fees and costs of the Receiver and its professionals shall be paid from the  
16 gross receipts derived from the Receivership Estate and shall be a first-priority lien on the  
17 receivership estate. If the assets are not sufficient to pay the Receiver's fees as presented,  
18 Judgment Creditor shall make Advances to the Receiver sufficient to pay such approved fees  
19 and costs in accordance with the provisions of this Order addressing Advances.

20 **Personal Liability of Receiver**

21 2.36 The personal liability of Receiver shall be governed by RCW 7.60.170.

22 **No Personal Obligation of Receiver**

23 2.37 No obligation incurred by Receiver in the performance of its duties and  
24 responsibilities, whether pursuant to any contract, by reason of any tort, or otherwise, shall be  
25 Receiver's obligation or the personal obligation of its principals or agents. Rather, the recourse  
26 of any person or entity to whom Receiver becomes obligated in connection with the  
performance of its duties and responsibilities shall be solely against the assets of the

1 receivership estate, and the receivership estate shall hold harmless and indemnify Receiver  
2 from any and all such obligations except to the extent they arise from Receiver's gross  
3 negligence, willful misconduct or fraud. Receiver shall have no obligation to advance its own  
4 funds to pay any costs and expenses of acting as Receiver.

5 **Rents, Income, Proceeds and Advances by Plaintiff**

6 2.38 Receiver may use rents,<sup>1</sup> income generated by or from the operation of the  
7 Property or the proceeds of the sale of the Property (collectively "Receivership Income") to  
8 pay the fees, cost and expenses of Receiver in the performance of its duties under this Order  
9 ("Receiver's Expenses"). To the extent Receivership Income exceeds such Receiver's  
10 Expenses, then Receiver shall pay them to Plaintiff for application to the Judgment. To the  
11 extent Receivership Income is not sufficient to fund such Receiver's Expenses, including fees  
12 and costs of his professionals, then Judgment Creditor may, without further order of the Court,  
13 advance funds to Receiver to cover such shortfalls ("Advances"), and any and all such  
14 Advances by Judgment Creditor to Receiver shall be added to the principal amount of the  
15 Judgment and paid out of the Property's Receivership Income and proceeds, or, at Judgment  
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17 \_\_\_\_\_  
18 <sup>1</sup> "Rents" are defined in the Deed of Trust at page 2 as follows:

19 All rents, issues and profits of the Property, all existing and future leases of the Property (including  
20 extensions, renewals and subleases) and all agreements for use and occupancy of the Property (all  
21 such leases and agreements whether written or oral are hereafter referred to as the "Leases"), and  
22 all guaranties of tenants' performance under the Leases, together with the immediate and  
23 continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits  
24 and other income of any nature now or hereafter due (including any income of any nature coming  
25 due during any redemption period) under the Leases or from or arising out of the Property including  
26 minimum rents, additional rents, percentage rents, parking or common area maintenance  
contributions, tax and insurance contributions, deficiency rents, forfeitures or liquidated damages  
following default in any Lease, all proceeds payable under any policy of insurance covering loss  
of rents or other income resulting from untenability caused by destruction or damage to the  
Property, all proceeds payable as a result of exercise of any option to purchase the Property, all  
proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency  
proceeding, and all proceeds from any rights and claims of any kind that Grantor may have against  
any tenant under the Leases or any occupants of the Property (all of the above are hereafter  
collectively referred to as the "Rents").



1 Creditor's election, charged against and paid out of the receivership, and shall be entitled to a  
2 first and paramount lien against the Property. Judgment Creditor, in his sole discretion, may  
3 choose not to make such Advances provided that Judgment Creditor immediately so advises  
4 Receiver in writing, in which case Receiver shall be permitted to resign as Receiver, upon  
5 fourteen (14) calendar days' notice to the parties in interest, provided that if Judgment Creditor  
6 moves for the appointment of a successor receiver within said 14 day period, the Receiver shall  
7 continue to serve until such time as the hearing on Judgment Creditor's motion.

8 2.39 To the extent Judgment Creditor elects to provide Advances, all such Advances  
9 shall be added to the Judgment.

10 2.40 All use of Receivership Income and all Advances made by Judgment Creditor  
11 to Receiver shall be repaid by Receiver from, and shall be secured by a first and paramount  
12 lien on the Property and on all Receivership Income, monies, property or proceeds arising by,  
13 from or as a result of the Property.

14 2.41 In accordance with RCW 7.60.150, Receiver, on order of the Court, following  
15 notice and a hearing, and on the conditions or terms that the Court considers just and proper,  
16 may abandon any estate property that is burdensome to Receiver or is of inconsequential value  
17 or benefit. Property that is abandoned shall no longer constitute property of the receivership  
18 estate.

19 2.42 Each of the procedures outlined above is hereby authorized by order of this  
20 Court, and, pursuant to RCW 7.60.170(3), no liability for Receiver will arise on account of  
21 any acts or omissions contemplated in this Order, whether such acts or omissions are  
22 undertaken by Receiver or any parties employed by Receiver, including Receiver's counsel.

### 23 General Provisions

24 2.43 Unless and until otherwise ordered by the Court, and except as otherwise  
25 expressly provided by this Order or by other order of this Court, Receiver is authorized to do  
26 all other things determined by Receiver to be reasonably necessary or incidental to the  
performance of Receiver's duties.

1           2.44 If Receiver is at any time uncertain as to the scope of its authority or as to any  
2 matter affecting or relating to the performance of its duties, Receiver may seek and obtain  
3 instructions from this Court with respect to such matters upon motion and notice to the parties.  
4 Upon fourteen (14) days' calendar notice to the parties in interest, and those with an interest  
5 in the Property that have filed with the Court a request for notice of the proceedings in this  
6 action, that the Receiver may elect to resign.

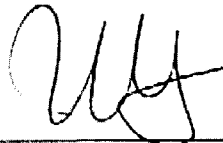
7           2.45 Receiver may compel by subpoena any person to submit to an examination  
8 under oath in the manner of a deposition in a civil case with respect to the Property or any  
9 other matter that may affect the administration of the receivership estate.

10           2.46 Upon entry of this Order, pursuant to RCW 7.60.110, commencement or  
11 continuation of any proceeding against Defendants is stayed; as well as enforcement of any  
12 judgment, any act to assess or recover any pre-receivership claim, any act to obtain possession  
13 of or exercise control over the Property, or to create, perfect, or enforce any lien against the  
14 Property.

15           2.47 This Order shall not operate as an automatic stay pursuant to RCW 7.60.110 as  
16 to Receiver.

17           2.48 This Receivership Order shall terminate only upon payment in full of all  
18 amounts due the Receiver and satisfaction in full of all amounts due under the Judgment,  
19 including any advances made by Judgment Creditor as provided for herein.

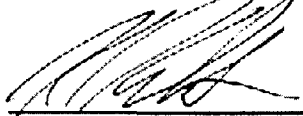
20  
21           ENTERED this 23<sup>rd</sup> day of January, 2015.

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25           \_\_\_\_\_  
26           THE HONORABLE MARIANE SPEARMAN  
                  KING COUNTY SUPERIOR COURT JUDGE

1 Presented by:

2 LASHER HOLZAPFEL  
3 SPERRY & EBBERSON, PLLC

4 

5 \_\_\_\_\_  
6 Kevin Hanchett, WSBA #16553  
7 Tyler J. Moore, WSBA #39598  
8 Attorneys for Judgment Creditors

9 Appointment as General Receiver is  
10 hereby accepted:

11 WILLIAMS KASTNER

12  
13 By 

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15 Matthew D. Green, WSBA #18046  
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# **APPENDIX 4**

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

NIKOLAY BELIKOV, a married individual;  
TECHNO-TM ZAO, a Russian closed joint  
stock company,

Plaintiffs,

v.

MARYANN HUHS and ROY E. HUHS, JR.  
and the marital community thereof; R-  
AMTECH INTERNATIONAL, INC., a  
Washington corporation; TECHNO-TM, LLC, a  
Nevada limited liability company; SUNCADIA  
PROPERTIES, LLC, a Nevada limited liability  
company,

Defendants.

NO. 12-2-23972-0 SEA

GENERAL RECEIVER'S MOTION  
FOR ORDER AUTHORIZING  
COMPROMISE OF CLAIM

I. RELIEF REQUESTED

Matthew D. Green (the "Receiver") is the general receiver for Maryann Huhs and Roy E. ("Al") Huhs, Jr., husband and wife, and the marital community thereof (the "Debtors"). The Receiver comes before the Court seeking an order authorizing the Receiver to compromise the claims of Nikolay Belikov ("Belikov") and his wholly owned company R-Amtech International, Inc. ("R-Amtech") against the Receivership estate for the purpose of satisfying

1 the Judgments entered in favor of them. The Receiver therefore moves the Court for an order  
2 approving the settlement of those claims pursuant to RCW 7.60.055 and 7.60.060.

3 **II. STATEMENT OF FACTS**

4 Belikov and R-Amtech are the primary creditors of the Receivership estate. The  
5 Huhses testified at their supplemental proceedings that their creditors other than Belikov and  
6 R-Amtech are credit card companies, and a secured debt against a vacant lot in the Suncadia  
7 resort, in Cle Elum, Washington. Declaration of Matthew D. Green In Support Of General  
8 Receiver's Motion For Order Authorizing Compromise of Claim ("Green Decl."), ¶3, 7. On or  
9 about February 12, 2015, counsel for Belikov made an offer of settlement to the Receiver.  
10 Green Decl., Ex. F. Belikov has agreed to take a significant discount on the amounts owed to  
11 him and R-Amtech to fully and finally settle all matters with the Huhses. *Id.*

12 The judgments against the Receivership Estate were awarded following a month-long  
13 trial in this Court. Green Decl., ¶2. On July 17, 2014, the Honorable Helen Halpert entered  
14 her Memorandum Opinion following the trial. Green Decl. Ex. E. In that Memorandum  
15 Opinion, the Court found in favor of Mr. Belikov on the majority of issues presented at trial.  
16 *Id.* Specifically, the Court found that the Huhses defrauded Mr. Belikov, breached their  
17 fiduciary duties to him, and took advantage of his trust to unjustly enrich themselves at Mr.  
18 Belikov's expense. *Id.* The Court also found that Al Huhs served as an attorney for Mr.  
19 Belikov and violated the Rules of Professional Conduct by drafting gift documents for a gift  
20 from Mr. Belikov to the Huhses of a residence in the Suncadia (the "Suncadia Property"). *Id.*  
21 The Memorandum Opinion declared Mr. Belikov to be the sole owner of R-Amtech, removed  
22 the Huhses from their involvement in R-Amtech, voided the transfer of R-Amtech's patented  
23 technology licensing rights to the Huhses' Nevada LLC, and ordered the Huhses to repay to R-  
24 Amtech the unauthorized dividends and licensing royalties diverted to the Nevada LLC. *Id.*

1 Additionally, the Court voided the transfer of the Suncadia property and awarded attorneys'  
2 fees and costs to Mr. Belikov. *Id.*

3 The Court entered Findings of Fact and Conclusions of Law and a Judgment on August  
4 4, 2014. Green Decl., Ex. B. R-Amtech holds a claim against the Receivership Estate based  
5 upon a judgment for \$3,112,329.00, plus interest accruing at a rate of 5.25% per annum  
6 (\$447.66 per diem). Green Decl., Ex. B. Belikov holds a claim against the Receivership Estate  
7 based upon a judgment for \$919,317.25, plus interest accruing at a rate of 5.25% per annum  
8 (\$132.23 per diem). Green Decl., Ex. C. In addition to the monetary awards, the Judgment  
9 granted Belikov sole control of R-Amtech, returned to R-Amtech its patented technology  
10 rights, and rescinded the transfer of the Suncadia Property. Green Decl., Ex. B. The Suncadia  
11 Property is valued at approximately \$1,000,000. Green Decl., ¶5. The total value of the  
12 judgment in favor of Belikov is over \$5,000,000 (including the transfer of the Suncadia  
13 Property), excluding the value of licensing rights returned to R-Amtech.<sup>1</sup> *Id.*

14 The Huhses have appealed the Judgment granted in favor of Belikov, but have not  
15 stayed its enforcement pending appeal. Green Decl., ¶3. Prior to the Court entering the Order  
16 Appointing Receiver, the Huhses did not make any voluntary payments towards the  
17 satisfaction of the Judgment. Green Decl., ¶2. Further, Mrs. Huhs testified that she has no  
18 plan to pay off the judgment, is not employed, and is not seeking employment. Declaration of  
19 Tyler J. Moore in Support of Plaintiff's Motion to Appoint a Receiver ("Moore Decl.") Ex. Q  
20 (Dkt. #533). When asked how he would pay the judgment Mr. Huhs said, "I can't" because  
21 "There's no assets and there's no non-exempt income." *Id.* Mr. Huhs further testified that he  
22

23  
24 <sup>1</sup> The calculation of the total judgment is \$4,031,646.25 in money judgments, and \$1,000,000 for the transfer of  
25 real property as determined by the trial court. The value of the R-Amtech licensing rights is unknown. However,  
the value of the rights in the settlement calculus results in no net recovery for Mr. Belikov, because that value  
recovered would need to be added to the value of the Judgment being satisfied. For example, if the licensing  
rights were valued, hypothetically, at \$3 million, then the settlement would result in the satisfaction of an \$8  
million judgment in favor of Mr. Belikov in exchange for money and property valued at \$5 million dollars.

1 is not exploring other work because, “[E]very dollar I make as long as this judgment continues  
2 and we don’t win on appeal will go to Belikov. I’m not going to go ahead and work for that.”

3 *Id.*

4 As a result of the Huhses’ conduct, on January 23, 2015, the Court appointed the  
5 undersigned as a General Receiver over the Huhses’ real and personal property, wherever  
6 located. Green Decl., Ex. A. Among other findings, the Court determined that:

7 1.10 To date, Judgment Creditors have not satisfied the judgment, and have not  
8 taken any meaningful steps toward collecting amounts owed under the  
9 Judgment.

10 1.11 Since the entry of the Judgment, the Judgment debtors have intentionally  
11 dissipated and/or wasted non-exempt assets with the express purpose of  
12 preventing collection of the judgment by Judgment Debtors.

13 1.12 There is reason to believe that Judgment Debtors will continue to waste,  
14 sell, and secret collectible assets if a receiver is not appointed.

15 1.15 . . . Judgment Debtors have sought to secret and sell property subject to  
16 execution for the express purpose of avoiding collection.

17 1.16 . . Judgment debtors did not submit to supplemental proceedings as  
18 ordered by failing to produce required documents.

19 *Id.*

20 On January 26, 2015, the Huhses filed their Brief of Appellant.<sup>2</sup> Green Decl., Ex. D.  
21 Based upon the Huhses’ Brief, the primary issues on appeal are: 1) the trial court’s vacation of  
22 Belikov’s jury demand; 2) Belikov’s ownership of R-Amtech; 3) the rescission of the transfer  
23 of the Suncadia Property to the Huhses; 4) the award of attorneys’ fees to Belikov; and 5) the  
24 release of a post-judgment lis-pendens recorded against the Suncadia Property. *Id.* The  
25 primary relief available to the Huhses on appeal is a trial to a jury of the issues already decided  
in favor of Belikov by Judge Halpert. *Id.*

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<sup>2</sup> The filing of the Brief of Appellant was a violation of the Order Appointing General Receiver (“Order Appointing Receiver”). However, that is not at issue in this motion.



1 Belikov has agreed to settle all of his and R-Amtech's claims against the Huhses  
2 Receivership Estate upon the following terms:

- 3 • The Receiver would dismiss with prejudice the appeal proceedings in *Belikov v.*  
4 *Huhs*;
- 5 • Belikov would remain the sole owner of R-Amtech, and R-Amtech would retain the  
6 licensing rights awarded by the trial court;
- 7 • The trial court's award of the Suncadia Property to Belikov would stand;
- 8 • The Receiver would transfer to Belikov the Huhses' Mercer Island home, the vacant  
9 lot located next to the Suncadia Property, and the Huhses' personal property located  
10 in the Suncadia Property;
- 11 • The Receiver will dismiss with prejudice any legal actions pending and release all  
12 claims that the Huhses may have against Belikov in Costa Rica;
- 13 • Personal property of the Receivership estate previously seized by the Receiver  
14 would be returned to the Huhses, subject to the claims of other creditors in the  
15 proceeding; and
- 16 • Belikov and R-Amtech will file full satisfactions of their judgments.

17 Green Decl., Ex. F. In all, Belikov will receive approximately \$2,000,000 in real and  
18 personal property, and will waive approximately \$3,000,000 in money owed by the  
19 Receivership Estate. *Id.* In addition to resolving Mr. Belikov's claim against the Estate, the  
20 dismissal of the Huhses' appeal will relieve a significant strain on Estate resources, and resolve  
21 the uncertainty of future litigation. Green Decl., ¶4.

22 The proposed compromised reduction in Belikov's claims far exceeds the value to the  
23 Estate of moving forward with the appeal. See Green Decl., Ex. F. The pending appeal of the  
24 trial court's ruling, at best, will result in a retrial of the issues at significant cost to the Estate.  
25 Green Decl., ¶3. Moreover, the Huhses' sworn testimony from the first trial would be used

1 against them in the unlikely event of a re-trial, creating a high likelihood of largely identical  
2 findings on retrial. For example, the Receiver has reviewed testimony where Maryann Hubs  
3 appears at trial to contradict her sworn deposition testimony that she signed a document  
4 acknowledging Mr. Belikov to be the beneficial owner of R-Amtech, and Al Huhs's appears to  
5 admit that he falsified evidence related to the Huhses' claims to own R-Amtech. *Id.*  
6 Consequently, there is little likelihood that a new trial would result in a substantially different  
7 result even if the case was tried to a jury. Thus a successful appeal would not be likely to add  
8 any tangible benefit to the Estate.

9 This settlement allows for Belikov's claims against the Huhses to be fully and finally  
10 resolved at a significant discount without expending Estate resources on appellate practice and  
11 litigation. It will also result in significant reduction in uncertainty, time, and costs which  
12 would be associated with a lengthy appeals and retrial process. Finally, this complex litigation  
13 saga will be at an end, and the parties can go their separate ways.

### 14 III. EVIDENCE RELIED UPON

15 This Motion is based upon the Declaration of Matthew D. Green, and exhibits attached  
16 thereto, and the records and files in this case.

### 17 IV. STATEMENT OF ISSUES

18 Whether the Court should authorize the Receiver to compromise the claims of Belikov  
19 for the purpose of liquidating his claim.

### 20 V. LEGAL AUTHORITY

21 A. The Receiver controls and is authorized to dispose of any assets of the estate.

22 The Receiver was appointed as a general receiver under Chapter 7.60 RCW to  
23 administer the Debtors' assets. The Receiver has the power to assert or, in the alternative,  
24 decline to assert a claim relating to the Property. RCW 7.60.060(1)(c) provides that the  
25 Receiver has:

1 [t]he power to assert any rights, claims, or chases in action of the person over  
2 whose property the receiver is appointed relating thereto, if and to the extent  
3 that the claims are themselves property within the scope of the appointment or  
4 relate to any property, to maintain in the receiver's name or in the name of such  
5 a person any action to enforce any right, claim, or chose in action, and to  
6 intervene in actions in which the person over whose property the receiver is  
7 appointed is a party for the purpose of exercising the powers under this  
8 subsection (1)(c);

9 The Receiver is aware of only an unpublished Washington appellate decision approving  
10 a receiver's proposed settlement, which may not be cited under GR 14.1, but is not aware of  
11 any reported decision that interprets this statute and addresses the Receiver's right to  
12 compromise claims. However, courts in other jurisdictions have approved of a court-appointed  
13 receiver's right to settle and compromise claims. *See, e.g., Gilbert v. Metzler*, 68 F.3d 474 (6th  
14 Cir. 1995) (receiver appointed by federal district court following judgment against a married  
15 couple for fraud had authority to settle pending state court litigation involving the couple);  
16 *Jones v. Free*, 422 P.2d 551, 555 (Nev. 1967) (based on the receiver's powers under the  
17 Nevada receivership statute, which is similar to Washington's statute, court approved of a  
18 receiver's authority to settle and dismiss claims, despite the officers of the company placed in a  
19 receivership challenging the appointment of the receiver as well as his authority to enter into a  
20 settlement); *Hudson v. Grand Deposit Mining Co.*, 458 F.2d 1202, 1204 (9th Cir. 1972) (upon  
21 review of a settlement, without officially approving of receiver's authority, Court noted that  
22 "[n]owhere do appellants argue that the receiver was without authority to . . . petition the court  
23 for approval to compromise and settle the pending issues").

24 Washington's receivership statute was based, in part, on Federal Rule of Bankruptcy  
25 Procedure 9019(a). Therefore, that rule provides guidance in this matter.

Bankruptcy Rule 9019(a) permits a bankruptcy court, upon the bankruptcy trustee's  
motion and after notice and a hearing, 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

1 and equitable.” *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Rule 9019(a) requires that  
2 the court do more than merely “rubber stamp” compromises. *See In re Planned Protective*  
3 *Serv., Inc.*, 130 B.R. 94 (Bankr. C.D. Cal. 1991). Moreover, a court’s authority to approve a  
4 compromise or settlement extends to a bankruptcy trustee’s dismissal of a debtor’s appeal. *In*  
5 *re Richman*, 104 F.3d 654, 657 (4th Cir. 1997) (Court concluded that debtors lacked standing  
6 to seek reconsideration or to appeal Order unless they met the requirements for intervention,  
7 because the Chapter 7 trustee substituted for them in the action and controlled the claim). To  
8 determine whether a compromise is fair and equitable, the court should consider the probability  
9 of success in the litigation, the difficulties to be encountered in collection, the litigation’s  
10 complexity and its attendant expense, inconvenience and delay, and the paramount interest of  
11 the creditors with a proper deference to their reasonable views. *In re MGS Marketing*, 111  
12 B.R. 264 (B.A.P. 9th Cir. 1990); *In re A & C Properties*, 784 F.2d 1377 (9th Cir. 1986); *In re*  
13 *Woodson, supra*.

14 A compromise should be approved if the trustee establishes to the reasonable  
15 satisfaction of the court that it is prudent to eliminate the risk and delays of litigation to achieve  
16 certainty rather than litigate to the bitter end even when the amount obtained by a compromise  
17 is less than a possible ultimate recovery. *In re Central Ice Cream Co.*, 59 B.R. 476, 487-88  
18 (Bankr. N.D. Ill. 1985). The court does not have to decide the numerous questions of fact and  
19 law raised by objecting parties. *In re Heissinger Resources Ltd.*, 67 B.R. 378, 383 (C.D. Ill.  
20 1986). Rather, the court’s responsibility is to canvass the issues and see whether the  
21 compromise “falls below the lowest point in the range of reasonableness.” *Id.* (citing *In re*  
22 *W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)).

1 B. The proposed settlement in this case is fair and reasonable, considering all of the  
2 circumstances.

3 The Receiver, as the holder of the Huhuses' claims on appeal, has carefully evaluated  
4 Belikov's settlement offer. In addition to reviewing the offer, the Receiver has carefully  
5 reviewed the Memorandum Opinion, Judgments, supplemental proceedings transcripts,  
6 excerpts of trial testimony, Brief of Appellant, and also considered other pleadings and  
7 information concerning this case. The Receiver has considered the Huhuses' position on the  
8 relevant issues as well as the available relief from the Court of Appeals, primarily a retrial.  
9 Finally, the Receiver has taken into account the litigious actions of the Huhuses<sup>3</sup> - many of  
10 which are reflected in this court file - and the amount of attorneys' fees that will be expended  
11 by the Receivership Estate should the Receiver elect to continue with the appeal.

12 Based on the review of these documents, the Receiver believes that it is in the best  
13 interest of the Estate and its Creditors to accept the substantial discount offered by Belikov.  
14 The costs and delay of continuing with the appeal are a tremendous burden upon the Estate and  
15 the Estate's assets; however, the likelihood of a successful appeal and re-trial is small. The  
16 value to the Estate of the substantial discount outweighs the potential benefit of a successful  
17 appeal. In the short and long term, Belikov's offer significantly reduces the burden of the  
18 litigation on the Estate, and prevents the Estate from incurring unnecessary attorneys' fees and  
19 costs chasing an appeal with little likelihood of success. By compromising Belikov's claims  
20 the Estate's major creditor will be satisfied, and the costs of administering the remainder of the  
21 Estate will be greatly reduced. Further, the substantial discount offered by Belikov will free  
22 other assets to be liquidated to pay any remaining creditors who file claims. The Receiver

23 \_\_\_\_\_  
24 <sup>3</sup> The Huhuses incurred more than \$1.3 million in attorneys' fees and costs in this action through August 2014, and  
25 have paid an additional \$140,000 since August. Green Decl., ¶ 8. Since the Order Appointing Receiver was  
entered, the Huhuses' litigious actions have continued including filing an unsuccessful motion to enforce personal  
property exemptions before completing for the Receiver required schedules of creditors and property, required  
under RCW 7.60.080, 7.60.090. *Id.* The Receiver is concerned that continuing with the appeal given the Huhuses  
litigious nature will only create additional and unnecessary fees for the Estate.

1 believes it is in the best interest of the creditors to resolve Belikov's claims without incurring  
2 substantial costs on appeal and re-trial.

3 It is fair and equitable to all parties involved to resolve Belikov's claims upon the terms  
4 outlined above. The appeal of the trial court's ruling after a nearly month long trial has a slim  
5 chance at ultimate success, but it will cost the Estate a great deal to re-litigate the claims, to  
6 little or no advantage. The waste of Estate assets litigating these claims will be detrimental to  
7 the Estate's ability to pay its existing creditors including Belikov. The settlement offer is fair  
8 and reasonable to all parties involved, and is in the best interests of the creditors of the Estate.

9 **VI. CONCLUSION**

10 The Receiver respectfully asks the Court to authorize the compromise and liquidation  
11 of the Belikov claims pursuant to the terms contained in Exhibit F to the Green Decl.

12 DATED this 9th day of April, 2015.

13  
14 **s/Matthew D. Green.** WSBA #18046  
15 *Court Appointed General Receiver*  
16 WILLIAMS, KASTNER & GIBBS PLLC  
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22  
23  
24  
25

# **APPENDIX 5**

*The Court of Appeals*  
of the  
*State of Washington*

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

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June 17, 2015

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CASE #: 73495-4-I  
Techno-TM, LLC, Maryann Huhs & Roy E. Huhs, Jr., Apps. v. Nikolay Delikov & Techno-TM  
Zao, Resps.

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on June 17, 2015, regarding Appellant's Second Emergency Motion Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3:

By ruling of June 12, 2015, I denied an emergency motion filed by defendants judgment debtors Maryann and Roy Huhs in No. 73495-4-I that sought a stay of the trial court's order granting a receiver's motion to compromise claim. The order approving a compromise of claim will result in dismissal of the Huhses' currently pending appeal from the underlying judgments in No. 72334-1-I.

On June 16, 2015, the receiver and respondents Nikolay Belikov and R-Amtech



International, Inc. filed a motion to dismiss appeal on the basis of a stipulation of the parties in No. 72334-1. Today (June 17, 2015), the Huhses filed a second emergency motion for a stay in No. 72395-4, seeking a temporary stay pending their yet-to-be filed motion to modify my June 12, 2015 ruling. The Huhses did not file a motion to modify on an emergency basis. Instead, they state they will file a motion to modify within 30 days as allowed under RAP 17.7.

As I stated in my June 12, 2015 ruling, the trial court found, in its January 2015 *unappealed* order appointing a receiver, that since the entry of the judgments on appeal in No. 72334-1, the Huhses had “intentionally dissipated and/or wasted non-exempt assets with the express purpose of preventing collection” of the judgments and there was reason to believe the Huhses would “continue to waste, sell, and secret collectible asserts” if a receiver was not appointed.

A temporary stay is granted pending this Court’s decision on the Huhses’ motion to modify on condition that the Huhses file, by June 19, 2015, (1) an emergency motion to modify the June 12, 2015 ruling in No. 73495-4 and (2) an answer to the motion to dismiss in No. 72334-1 and (3) also by June 19, 2015, deposit into the superior court registry the title to their home in Mercer Island as security for the temporary stay. If the Huhses fail to do so, the temporary stay will be lifted by close of business on June 19, 2015 without further notice of this Court.

If the Huhses comply with the above conditions for a temporary stay, the receiver and Belikov, by June 23, 2015, (1) shall file a response to the Huhses’ emergency motion to modify in No. 72395-4 and (2) may file a reply in support of dismissal in No. 72334-1. Then, the Huhses may file a reply in support of their emergency motion to modify by June 24, 2015. The Huhses’ emergency motion to modify and the motion to dismiss will then be considered by a panel of judges. The temporary stay will be in effect until this Court determines the emergency motion to modify and the motion to dismiss.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

lls

**FOSTER PEPPER PLLC**

**September 28, 2016 - 11:42 AM**

**Transmittal Letter**

Document Uploaded: 734954-Petition for Review.pdf

Case Name: Belikov v. Huhs, et al.

Court of Appeals Case Number: 73495-4

Party Respresented: Petitioners Huhs

**Is this a Personal Restraint Petition?**  Yes  No

Trial Court County: \_\_\_\_ - Superior Court # \_\_\_\_

**The document being Filed is:**

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_
- Answer/Reply to Motion: \_\_\_\_
- Brief: \_\_\_\_
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_  
Hearing Date(s): \_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_

**Comments:**

No Comments were entered.

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