

89717-4

No. 70225-4-I

SUPREME COURT
OF THE STATE OF WASHINGTON

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

Petitioner,

v.

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

Respondent,

and

J'AMY LYN OWENS, an unmarried person; SHULKIN HUTTON, INC.,
P.S., a Washington professional service corporation; EDMUND JOHN
WOOD; and IN REM AGAINST ANY AND ALL SEPARATE
PROPERTY OF J'AMY LYN OWENS AWARDED TO KENNETH
TREIGER;

Defendants.

PETITION FOR REVIEW

SCHWEET LINDE & COULSON, PLLC

Thomas S. Linde, WSBA #14426
Zachary E. Davies, WSBA #41794
575 South Michigan Street
Seattle, WA 98108
(206) 275-1010

FILED
JAN -2 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

Attorneys for Petitioner Bank of America, N.A.

61 13 110
13
13

TABLE OF CONTENTS

A. IDENTITY OF PETITIONER.....	5
B. COURT OF APPEALS DECISION	5
C. ISSUES PRESENTED FOR REVIEW	5
D. STATEMENT OF THE CASE.....	5
E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED	9
1. The Court of Appeals Erroneously Held that Divorce Courts Can Constitutionally Award Separate Property from One Spouse to Another Free and Clear of Existing Equitable Claims of Creditors.	10
2. The Decision of the Court of Appeals Regarding Bank of America’s Obligation to Appeal a Favorable Ruling of Mootness Conflicts with Another Decision of the Court of Appeals.	16
3. The Decision of the Court of Appeals Holding that the Trial Court’s Ruling on the Preserved In Rem Claim Violated the Law of the Case Doctrine Conflicts with this Court’s Decisions.	18
F. CONCLUSION	20
G. APPENDIX.....	A-1

TABLE OF AUTHORITIES

Table of Cases

<i>Arneson v. Arneson</i> , 38 Wn.2d 99, 227 P.2d 1016 (1951)	11, 12, 15
<i>Baffin Land Corp. v. Monticello Motor Inn, Inc.</i> , 70 Wn.2d 893, 425 P.2d 623 (1967).....	12
<i>Birkenwald Distrib. Co. v. Heublein, Inc.</i> , 55 Wn. App. 1, 776 P.2d 721 (1989).....	16
<i>Brost v. L.A.N.D., Inc.</i> , 37 Wn. App. 372, 680 P.2d 453 (1984)	11
<i>Capital Nat’l Bank of Olympia v. Johns</i> , 170 Wash. 250, 16 P.2d 452 (1932).....	12

<i>Coal. on Gov't Spying v. King County Dep't of Pub. Safety</i> , 59 Wn. App. 856, 801 P.2d 1009 (1990).....	17, 18
<i>Dizard & Getty v. Damson</i> , 63 Wn.2d 526, 387 P.2d 964 (1964).....	12
<i>Farrow v. Ostrom</i> , 16 Wn.2d 547, 133 P.2d 974 (1943).....	12, 15
<i>Harp v. Am. Sur. Co. of N.Y.</i> , 50 Wn.2d 365, 368, 311 P.2d 988 (1957).	19
<i>In re Bush</i> , 164 Wn.2d 697, 193 P.3d 103 (2008)	11
<i>In re Marriage of McKean</i> , 110 Wn. App. 191, 38 P.3d 1053 (2002)	12
<i>In re Marriage of Rockwell</i> , 157 Wn. App. 449, 453, 238 P.3d 1184 (2010).....	18
<i>In re Marriage of Soriano</i> , 44 Wn. App. 420, 722 P.2d 132 (1986)	12
<i>McLean v. Burginger</i> , 100 Wash. 570, 171 P. 518 (1918)	12
<i>Monroe v. Winn</i> , 19 Wn.2d 462, 142 P.2d 1022 (1943).....	19, 20
<i>Reyher v. State Farm Mut. Auto. Ins. Co.</i> , 171 P.3d 1263 (Colo. Ct. App. 2007)	19
<i>S. Tool & Supply, Inc. v. Beerman Precision Inc.</i> , 818 So. 2d 256 (La. Ct. App. 2002)	19
<i>Soundgarden v. Eikenberry</i> , 123 Wn.2d 750, 871 P.2d 1050 (1994).....	11
<i>Spokane Research & Def. Fund v. City of Spokane</i> , 155 Wn.2d 89, 117 P.3d 1117 (2005).....	17
<i>State v. Gaines</i> , 121 Wn. App. 687, 90 P.3d 1095 (2004).....	14
<i>State v. Handley</i> , 115 Wn.2d 275, 796 P.2d 1266 (1990)	14
<i>State v. Schwab</i> , 134 Wn. App. 635, 141 P.3d 658 (2006).....	18
<i>State v. Simmons</i> , 152 Wn.2d 450, 98 P.3d 789 (2004).....	14
<i>Valentine v. Portland Timber & Land Holding Co.</i> , 15 Wn. App. 124, 547 P.2d 912 (1976).....	11
<i>Watters v. Doud</i> , 95 Wn.2d 835, 631 P.2d 369 (1981).....	12

Constitutional Provisions

U.S. Const. art. I, § 10, cl. 1 16
U.S. Const. amend. XIV § 1 10, 14
Const. art. I, § 3 10
Const. art. I, § 12 14
Const. art. I, § 23 16

Statutes

Chapter 19.40 RCW 13
RCW 26.09.080 10, 14, 16
RCW 26.16.010 13
RCW 26.16.050 13
RCW 26.16.120 13

Regulations and Rules

CR 54(b) 18
RAP 2.4(a) 16
RAP 2.5(a) 16, 17

Other Authorities

G. Osborne, *Mortgages* § 321 (2d ed. 1970) 11

A. IDENTITY OF PETITIONER

Petitioner Bank of America, N.A. (Bank of America) asks this Court to accept review of the Court of Appeals' published opinion terminating review designated in Part B of this Petition.

B. COURT OF APPEALS DECISION

Bank of America requests review of the decision filed October 14, 2013. A copy of the opinion is in the Appendix at pages A-2 through -14.

C. ISSUES PRESENTED FOR REVIEW

1. Does a divorce court have the power to award the separate property of Spouse A to Spouse B free and clear of the equitable claims of Spouse A's creditors existing at the time of the award?
2. Is a claim that has been ruled moot by the trial court deemed abandoned if it is not raised or argued on appeal?
3. Did the trial court contravene the mandate of this Court or violate the law of the case doctrine by ruling on a preserved claim that had not been addressed on appeal?

D. STATEMENT OF THE CASE

In October 1998, while married to Respondent Kenneth Treiger, Defendant J'Amy Lyn Owens personally guaranteed two commercial loans from Bank of America's predecessor to her company The Retail Group, Inc. (II CP 3-5, 38-40, 44-45.) In June 2000, Treiger and Owens purchased Seattle real property (Maplewood). (II CP 410.) In February 2001, they filed for divorce. (II CP 410.) In January 2002, Owens failed to

honor her guaranties after her defunct company defaulted on its debt. (II CP 5-7.) In early 2002, during the pendency of the dissolution action, each spouse filed a separate bankruptcy petition. (II CP 410.) In April 2004, Maplewood became Owens's separate property after she bought out the interest in it held by the trustee of Treiger's bankruptcy estate. (II CP 410-12.) Eventually, Treiger's debts were discharged in bankruptcy, but Owens's debts were not, due to the dismissal of her bankruptcy case. (II CP 106, 108, 411.) In May 2006, the divorce court entered a supplemental decree that ordered the sale of Maplewood and awarded half of the net proceeds of that sale to Treiger. (II CP 411.)

In July 2006, Bank of America sued Owens for breaching her guaranties. (II CP 3-21.) In November 2006, Bank of America amended its Complaint to assert an in rem claim against any and all separate property of Owens awarded to Treiger in their dissolution action, including any interest in Maplewood. (II CP 32-50.) In December 2006, Bank of America attached Owens's interest in Maplewood. (II CP 411.) After Maplewood sold in May 2007, the net proceeds of the sale were placed into a trust account pending a declaratory judgment regarding the priority and extent of claims asserted against the proceeds by Owens, Treiger, Bank of America, and Owens's attorney, Defendant Shulkin Hutton, Inc., P.S. (I CP 147, II CP 411-12.) Bank of America then brought an action for

a declaratory judgment. (II CP 196-207, 354.) In December 2007, judgment was entered against Owens for \$593,519.24 in the first lawsuit. (II CP 533-36.). In the declaratory action, Bank of America and Treiger both moved for summary judgment. In April 2008, the trial court granted Bank of America's Motion and denied Treiger's. (I CP 284-296.)

In May 2008, the trial court entered an Order disbursing the Maplewood proceeds. (II CP 515-18.) The Order expressly rules that Bank of America's in rem claim was moot due to the ruling on lien priority:

Bank of America's *in rem* claim against any and all separate property of J'Amy Lyn Owens awarded to Kenneth Treiger alleged in Bank of America's Amended Complaint under cause number 06-2-23098[]-1 SEA, consolidated herein, has not been adjudicated but is rendered moot by entry of the Order Granting Bank of America's Motion for Summary Judgment. Bank of America's *in rem* claim will be hereafter preserved and tolled in the event of an appeal of this Court's Order Granting Bank of America's Motion for Summary Judgment.

(II CP 518.) Treiger then appealed without assigning error to the trial court's ruling that the in rem claim was moot. (I CP 297-303, II CP 412, 414.) In November 2009, the Court of Appeals reversed the trial court's ruling on lien priority, holding that Treiger's supplemental decree had priority over Bank of America's writ of attachment. (II CP 407-20.) In October 2011, this Court affirmed in part and reversed in part, agreeing with the lien priority of the Court of Appeals, albeit on a different ground.

(II CP 347.) The Court's sole direction to the trial court upon remand was contained in the final sentence of the majority opinion: "We remand this case to the superior court for further proceedings consistent with this opinion." (II CP 347.)

On remand, Bank of America moved for summary judgment on its preserved in rem claim, which was no longer moot due to the reversal of the trial court's ruling on lien priority. (I CP 303, II CP 208-64.) Treiger filed a Motion to Enter Judgment on Mandate and for Taxable Costs. (II CP 265-321.) In May 2012, the trial court granted Bank of America's Motion and denied Treiger's. (II CP 455-60.) The court entered judgment for Bank of America in rem in the amount of \$308,990.37, which is the portion of the Maplewood proceeds disbursed to Bank of America in May 2008 with priority over Treiger's claims, based on its status as an existing separate creditor of Owens at the time of the May 2006 award of her separate property to Treiger. (II CP 457.) The trial court also expressly reallocated the May 2008 disbursements "in accordance with the Supreme Court's ruling in this case" (II CP 457.)

In June 2012, Treiger appealed the trial court's ruling on the in rem claim. (II CP 451-54.) He also moved this Court to recall its Mandate, alleging that the trial court had "refused to follow this Court's mandate, entering a judgment for the Bank identical in effect to the one reversed by

this Court” (Mot. to Recall Mandate and for Fees 1-2.) Treiger’s mandate recall motion was unanimously denied by this Court. (Order, July 12, 2012, Case No. 84044-0.) In April 2013, this Court denied direct review. (Order, April 4, 2013, Case No. 87455-7). On October 14, 2013, the Court of Appeals reversed the trial court’s Order granting summary judgment to Bank of America on its in rem claim and remanded for entry of judgment in favor of Treiger. (Appendix at A-2 to -14.)

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review for three reasons. First, in contravention of well settled case law and both the Washington and U.S. Constitutions, the Court of Appeals has held that a divorce court may deprive a creditor of its equitable claim against a spouse’s separate property by awarding the property to the other spouse free and clear of the equitable claims of the first spouse’s existing separate creditors. This ruling violates the constitutional rights of creditors by: (1) allowing divorce courts to strip creditors’ rights through contested property dissolutions without notice to and participation of those creditors, and (2) providing a windfall to the awarded spouse that existing law prohibits the spouse from obtaining through voluntary transfers and agreements.

Second, the Court of Appeals ruled that Bank of America abandoned its in rem claim by not raising it on appeal, even though it

obtained a favorable ruling of mootness. This ruling conflicts with Washington case law indicating that a ruling of mootness fully disposes of a claim and is properly appealed from by the party aggrieved by the ruling, not by the party whom it favors.

Finally, in deciding that the trial court thwarted the direction of this Court in adjudicating the preserved in rem claim after remand, the Court of Appeals comes into conflict with this Court's unanimous refusal to recall the Mandate. Moreover, this decision conflicts with case law holding that a trial court does not err, after remand, by exercising its discretion in adjudicating a claim that has not been addressed on appeal.

1. The Court of Appeals Erroneously Held that Divorce Courts Can Constitutionally Award Separate Property from One Spouse to Another Free and Clear of Existing Equitable Claims of Creditors.

This Court should review the decision of the Court of Appeals because its construction of a divorce court's powers under RCW 26.09.080 raises significant questions of law involving the Due Process Clause, Equal Protection Clause, and the Contract Clause. First, the decision below implicates the Due Process Clause, which prohibits the deprivation of property without due process of law. U.S. Const. amend. XIV § 1; Const. art. I, § 3. Before a court can extinguish a person's property interest in an action, the Due Process Clause requires joinder of that person in the action. *See Brost v. L.A.N.D., Inc.*, 37 Wn. App. 372,

374, 680 P.2d 453 (1984) (citing *Valentine v. Portland Timber & Land Holding Co.*, 15 Wn. App. 124, 128, 547 P.2d 912 (1976); G. Osborne, *Mortgages* § 321 (2d ed. 1970)). “At a bare minimum, procedural due process ‘requires notice and an opportunity to be heard.’” *In re Bush*, 164 Wn.2d 697, 704-05, 193 P.3d 103 (2008) (quoting *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 768, 871 P.2d 1050 (1994)).

A basic tenet of divorce law is that only the spouses are parties to the proceeding; their creditors are not. A court presiding over a dissolution has no jurisdiction over the creditors of the spouses and thus has no ability to modify the rights of those creditors. As this Court recognized in *Arneson v. Arneson*, 38 Wn.2d 99, 227 P.2d 1016 (1951), this rule protects the rights of creditors under the Due Process Clause. In *Arneson*, a divorce court decreed that certain real property be sold and that the proceeds be applied to taxes, existing liens, with the remainder prorated to creditors in the amounts of their respective claims. *Id.* at 100. In reversing the decree, the Court emphasized this important principle:

[The parties’] several interests in the property are, of course, determined, *as between themselves*, by the decree, and are subject to the burdens imposed upon them therein for purposes within the scope of the divorce act. As to the common law rules of jurisdiction, we know of none which empowers the court to encroach upon civil rights simply because persons are parties to a divorce action.

Id. at 101. In other words, a dissolution decree is binding on the spouses, whose rights it determines, but it cannot bind creditors. Because creditors have no opportunity to be heard in dissolution proceedings, Washington courts have long held that a divorce court lacks the power to strip their existing equitable claims from property awards between spouses. See *Watters v. Doud*, 95 Wn.2d 835, 631 P.2d 369 (1981); *Baffin Land Corp. v. Monticello Motor Inn, Inc.*, 70 Wn.2d 893, 425 P.2d 623 (1967); *Dizard & Getty v. Damson*, 63 Wn.2d 526, 387 P.2d 964 (1964); *Farrow v. Ostrom*, 16 Wn.2d 547, 133 P.2d 974 (1943); *Capital Nat'l Bank of Olympia v. Johns*, 170 Wash. 250, 16 P.2d 452 (1932); *McLean v. Burginger*, 100 Wash. 570, 171 P. 518 (1918); *In re Marriage of McKean*, 110 Wn. App. 191, 38 P.3d 1053 (2002); *In re Marriage of Soriano*, 44 Wn. App. 420, 722 P.2d 132 (1986). It is also well settled in Washington jurisprudence that a creditor with an equitable claim on the property of a spouse has a superior interest in the property than does the former spouse awarded that property by a divorce court, even if the claim is unliquidated and unsecured at the time of the property award. *Watters*, 95 Wn.2d 835; *Farrow*, 16 Wn.2d 547.

Spouses may not divest property during their marriage to the detriment of their creditors. A spouse's separate property is his or hers to manage "in the same manner as though he or she were unmarried." RCW

26.16.010. Should Spouse A fraudulently transfer separate property to Spouse B (or another non-spouse insider), an aggrieved creditor can avoid the transfer under the Uniform Fraudulent Transfer Act. Chapter 19.40 RCW. Likewise, as to their community property, spouses may not “affect any existing equity in favor of creditors” or “derogate from the right of creditors” through conveyance of property or the creation of community property agreements. RCW 26.16.050, .120. The Court of Appeals’ ruling encourages collusive divorces by empowering divorce courts to strip separate creditors of their equitable claims against separate property awarded a non-labile spouse. Creditors, not proper parties in a dissolution proceeding, will be left without redress.

Aside from these policy concerns, this Court’s review is justified by the plain error made by the Court of Appeals regarding when the respective claims of the parties to the separate Maplewood proceeds arose. Bank of America’s equitable claim against Owens’s separate property arose in 2002 when she breached her guaranty to pay the debt owed to Bank of America by her company. Bank of America later secured this equitable claim by obtaining a writ of attachment, but the equitable claim existed well before the writ attached. Thus, the Court of Appeals incorrectly held that Treiger’s equitable lien on the Maplewood proceeds arose before Bank of America’s equitable claim on those proceeds arose.

Bank of America's equitable claim arose in 2002 and any separate property of Owens awarded to Treiger in 2006 by the divorce court was subject to Bank of America's pre-existing equitable claim.

The court that dissolved the marriage of Owens and Treiger did not have jurisdiction over Bank of America or the power to deprive it of its existing equitable claim against Owens's separate property awarded to Treiger. The Court of Appeals, in ruling in favor of Treiger on the in rem claim, has given RCW 26.09.080 an unreasonable construction which flies in the face of nearly a century of Washington case law and tramples on Bank of America's right, under both the federal and state constitutions, to due process of law.

Second, the ruling below causes RCW 26.09.080 to violate the equal protection clauses of the federal and state constitutions, which prohibit unjust discrimination between similarly situated persons. U.S. Const. amend. XIV § 1; Const. art. I, § 12. The application of a law violates these clauses when the application creates an arbitrary classification. *State v. Simmons*, 152 Wn.2d 450, 458, 98 P.3d 789 (2004). Moreover, "[a] valid law, administered in a manner that unjustly discriminates between similarly situated persons, violates equal protection." *State v. Gaines*, 121 Wn. App. 687, 705, 90 P.3d 1095 (2004) (citing *State v. Handley*, 115 Wn.2d 275, 289, 796 P.2d 1266 (1990)).

Whether the principles enunciated in the cases involving community creditors against property awarded in divorce apply to separate creditors is a matter of first impression. Under the decision below, the principles in favor of community creditors do not apply to separate creditors. (Appendix A-14.) Thus, a separate creditor like Bank of America can be deprived of its equitable claim on separate property awarded to another spouse in a dissolution proceeding, but a community creditor is protected from such deprivation under the line of Washington cases discussed above. The Court of Appeals' opinion has created an arbitrary classification: creditors with equitable claims on community property and creditors with equitable claims on separate property. The former enjoy the protections of cases such as *Farrow* and *Arneson*, while the latter are subject to the deprivation of their property interests without notice or hearing.

There is no rational basis for this disparate treatment. A separate asset subject to a separate debt should be treated identically to a community asset subject to a community debt. In each case, any existing equitable claims by a creditor against the asset travel with the asset when it is awarded to a non-liable spouse in a dissolution decree. The statute itself does not distinguish between community and separate property; either can be awarded to either spouse if the equities of the case demand it.

RCW 26.09.080. While the statute is constitutional is on its face, the Court of Appeals' application of it here violates the Equal Protection Clause.

Finally, the ruling implicates the Contracts Clause because it holds that a divorce court may impair the contractual rights of creditors. U.S. Const. art. I, § 10, cl. 1; Const. art. I, § 23. "[E]ven minimal impairment of contractual expectations violates the contract clause where there is no real exercise of police power to justify the impairment." *Birkenwald Distrib. Co. v. Heublein, Inc.*, 55 Wn. App. 1, 9, 776 P.2d 721 (1989). Bank of America's contractual rights have been drastically impaired by the Court of Appeals' application of RCW 26.09.080. Pursuant to the ruling below, the divorce court's award of Owens's separate property to Treiger decimated Bank of America's right to collect the debt owed by Owens from the separate property awarded. This impairment is not supported by a valid exercise of the police power.

2. The Decision of the Court of Appeals Regarding Bank of America's Obligation to Appeal a Favorable Ruling of Mootness Conflicts with Another Decision of the Court of Appeals.

The Court of Appeals also erred in holding that Bank of America abandoned its in rem claim by not raising it in the first appeal. The scope of review is determined by the appellant. RAP 2.4(a). A respondent may ask the appellate court to review acts which may prejudice it if repeated upon remand, but there is no obligation to do so. *Id.* Nor did RAP 2.5(a)

require Bank of America to raise the in rem claim as an alternate ground for affirming the trial court's lien priority ruling. This rule is expressly permissive: "A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground." RAP 2.5(a).

Treiger, not Bank of America, was the appellant in the first appeal. The scope of review was limited to the issues raised by him. He did not appeal the trial court's ruling that the in rem claim was moot, as was his obligation if he was displeased with it. As such, it became a final, non-appealable order, and the law of the case. As the party who obtained the favorable mootness ruling, Bank of America had no obligation to urge that the ruling be reviewed on appeal.

The holding below regarding Bank of America's abandonment of its in rem claim conflicts with another decision of the Court of Appeals. *See Coal. on Gov't Spying v. King County Dep't of Pub. Safety*, 59 Wn. App. 856, 801 P.2d 1009 (1990), *overruled on other grounds by Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2005). In that case, the appellant, aggrieved by the trial court's ruling that a certain issue was moot, appealed that ruling. *Id.* at 865-66. The Court of Appeals agreed with the appellant that the issue was not moot and reversed. *Id.* at 866. That decision is in direct conflict with the decision of

the Court of Appeals in this case, which improperly put the burden of appealing the mootness ruling on Bank of America, which was not aggrieved by it. In addition, *Coalition on Government Spying* demonstrates that: (1) for the purposes of CR 54(b), the mootness ruling fully and substantively disposed of the in rem claim prior to the first appeal; (2) Treiger could have appealed the ruling; (3) his failure to do so resulted in the ruling becoming the law of the case; and (4) the in rem claim was not abandoned, but was instead properly preserved for later determination in the event the trial court was later reversed.

3. The Decision of the Court of Appeals Holding that the Trial Court's Ruling on the Preserved In Rem Claim Violated the Law of the Case Doctrine Conflicts with this Court's Decisions.

The trial court strictly followed this Court's Mandate when it used its discretion to adjudicate the preserved in rem claim upon remand. "[T]he language 'we remand for further proceedings' signals [the appellate] court's expectation that the trial court will exercise its discretion to decide any issue necessary to resolve the case." *In re Marriage of Rockwell*, 157 Wn. App. 449, 453, 238 P.3d 1184 (2010) (citing *State v. Schwab*, 134 Wn. App. 635, 645, 141 P.3d 658 (2006)). This type of remand is distinguished from the type in which the appellate court directs the trial court to do a specific act, such as enter a judgment in a certain amount or enter a specific order. *Harp v. Am. Sur. Co. of N.Y.*, 50 Wn.2d

365, 368, 311 P.2d 988 (1957). This Court ordered the trial court to exercise its discretion in further proceedings following the remand. It did not direct the trial court to enter a judgment in favor of Treiger. Had this Court wished the trial court to simply enter judgment for him, it easily could have directed this specific result. Instead, correctly recognizing that the preserved in rem claim was no longer moot due to the reversal of the lien priority ruling, this Court omitted any such specific direction to the trial court. Accordingly, the trial court properly exercised its discretion in resolving the preserved claim, which was never before the Court.

After reversal and remand, a ruling against the successful appellant on an issue closely related to the overturned ruling does not constitute noncompliance with the mandate. *Monroe v. Winn*, 19 Wn.2d 462, 463-65, 142 P.2d 1022 (1943) (trial court properly awarded fees from trust estate after this Court ruled that parties could not recover fees from another party); *see also Reyher v. State Farm Mut. Auto. Ins. Co.*, 171 P.3d 1263, 1267 (Colo. Ct. App. 2007) (trial court adjudicated issue of class certification rendered moot by grant of summary judgment to defendant after reversal of summary judgment ruling); *S. Tool & Supply, Inc. v. Beerman Precision Inc.*, 818 So. 2d 256, 257 (La. Ct. App. 2002) (trial court considered formerly moot second ground for dismissal of case after appellate court reversed dismissal based on first ground). In concluding

that the trial court thwarted this Court's direction on remand, the Court of Appeals came into conflict with two separate decisions of this Court.

First, its decision conflicts with *Monroe*, in which this Court held, in a similar situation, that the trial court properly exercised its discretion on remand to resolve an issue that this Court had not addressed. 19 Wn.2d at 465 ("The question . . . was not before us and was a question that would have to be heard and determined by the trial court when the case again came before it."). Second, this Court has already decided that the trial court did not disobey the Mandate. Treiger argued in his Motion to Recall the Mandate that the trial court willfully disregarded the Court's direction. This Court flatly rejected that argument when it unanimously denied his Motion. In ruling that the trial court thwarted the direction of this Court, after this Court had already held that the trial court did no such thing, the Court of Appeals ignored the law of the case.

F. CONCLUSION

This Court should accept review for the reasons articulated above and reverse the decision of the Court of Appeals filed October 14, 2013.

Dated this 13th day of November, 2013.

Respectfully submitted,



Thomas S. Linde, WSBA #14426
Zachary E. Davies, WSBA #41794
Attorneys for Petitioner Bank of America, N.A.

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BANK OF AMERICA, N.A., a national association,)	No. 70225-4-1
)	
Respondent,)	DIVISION ONE
)	
v.)	PUBLISHED OPINION
)	
J'AMY LYN OWENS, an unmarried person; SHULKIN HUTTON, INC., P.S., a Washington professional service corporation; and EDMUND JOHN WOOD,)	
)	
Defendants,)	
)	
KENNETH TREIGER, a married person as to his separate estate,)	
)	
Appellant.)	FILED: October 14, 2013

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2013 OCT 14 AM 11:23

GROSSE, J. — An appellate court's mandate is the law of the case and binding on the lower court and must be followed. Here, both this court and the Supreme Court held that appellant Kenneth Treiger's lien on the real property at issue had priority over Bank of America's lien.¹ On remand, the trial court had no authority to revisit the Bank's in rem claim that the trial court "preserved and tolled" when it rendered summary judgment in favor of the Bank on its other claim. The in rem claim was not raised on review of the summary judgment and the claim was, therefore, abandoned. The trial court had no authority to ignore the Supreme Court's mandate on remand. Accordingly, we reverse the summary judgment and remand with directions that the trial court enter judgment consistent with the Supreme Court's opinion and mandate.

¹ Bank of America, N.A. v. Owens, 153 Wn. App. 115, 221 P.3d 917 (2009); Bank of America, N.A. v. Owens, 173 Wn.2d 40, 266 P.3d 211 (2011).

FACTS

Kenneth Treiger and J'Amy Lyn Owens married in July 1997. Treiger and Owens separated on June 1, 2000 and filed for dissolution in February 2001.

In January 2002, during the pendency of the dissolution action but before entry of a decree of dissolution, Treiger filed a chapter 13 bankruptcy petition, which was converted to a chapter 7 bankruptcy in April 2002. In February 2002, Owens filed a separate chapter 11 bankruptcy petition.

The bankruptcy court in Treiger's case lifted the stay to allow the parties' dissolution action to proceed in superior court. The superior court entered a decree of dissolution on June 19, 2002 and reserved property and debt issues until the bankruptcy proceedings concluded.

Between the date of separation and the entry of a decree of dissolution, Treiger and Owens purchased real property referred to as the "Maplewood property" as husband and wife. The bankruptcy court determined that this property was community property and therefore property of Treiger's bankruptcy estate.

While the parties were married, Owens, as part owner of a business called The Retail Group, executed a promissory note and borrowing agreement in favor of Bank of America, N.A. (the Bank). The Retail Group defaulted under the note and agreement, and the Bank filed a claim in Treiger's bankruptcy action.

In April 2004, nearly two years after entry of the decree of dissolution, Treiger's trustee and Owens entered into a settlement agreement in which the trustee agreed to convey his entire interest in the Maplewood property to Owens, subject to all liens of record against the property, in exchange for \$215,000 from

Owens. By trustee's quitclaim deed dated April 29, 2004, the trustee conveyed all of the bankruptcy estate's interest in the Maplewood property to Owens, "a single individual." The Maplewood property thus became Owens' separate property.

Treiger's chapter 7 case was closed in March 2005 and any obligation he owed to the Bank was discharged. Owens' chapter 11 case was dismissed in July 2005.

Treiger and Owens then returned to superior court to complete the property distribution in their dissolution action. In May 2006, the superior court entered a supplemental decree of dissolution (Supplemental Decree), dividing their assets and liabilities. In the Supplemental Decree, the court ordered that the Maplewood property be sold and that Treiger be awarded one-half of the net proceeds of the sale. The court also entered several orders awarding Treiger varying amounts of fees and sanctions for Owens' intransigence during the dissolution proceedings. Treiger recorded the Supplemental Decree as well as other orders pertaining to fees and sanctions on October 27, 2006.

Meanwhile, in July 2006, the Bank filed an action against Owens, seeking payment of the debt she guaranteed. In November 2006, the Bank amended its complaint to add a claim in rem against any separate property of Owens awarded to Treiger. The Bank moved for a prejudgment writ of attachment on the Maplewood property. The trial court granted the Bank's motion and directed the issuance of a prejudgment writ of attachment on the Maplewood property against only Owens' interest in the property. A writ of attachment issued in accordance

No. 70225-4-1 / 4

with the court's order and was recorded on December 20, 2006. On December 14, 2007, the Bank obtained a judgment in the amount of \$593,519.24.

The bankruptcy, dissolution, and debt collection proceedings gave rise to several conflicting claims that complicated the sale of the Maplewood property by preventing the parties from obtaining title insurance. The Bank, Treiger, Owens, Owens' attorney, and an independent trustee entered into an agreement (Trust Agreement) to obtain title insurance and facilitate the sale of the Maplewood property. In the Trust Agreement, the parties agreed that any of them could file a declaratory judgment action, naming the other parties as defendants and seeking a declaration regarding the priority and extent of the claims asserted by Owens, Treiger, the Bank, and Owens' attorney in the net sale proceeds held in trust by the trustee. The Trust Agreement provides: "Owens, as her separate estate, is the owner of the Property."

The Maplewood property sold in May 2007. On May 20, 2007, pursuant to the Trust Agreement, the title insurance company wired the net proceeds of the sale (\$1,114,054.83) to the specified trust account.

Upon deposit of the net proceeds into the trust account, the Bank filed a declaratory judgment action to determine the priority of the parties' interest in the funds held in trust. On cross motions for summary judgment brought by Owens, Treiger, and the Bank, the trial court granted the Bank's motion and concluded that the matter was controlled by the Trust Agreement in which the parties agreed that the Maplewood property was Owens' separate estate. The court also concluded that apart from the money judgments, the Supplemental Decree did not grant Treiger a lien or other interest in the Maplewood property, but rather

awarded him half of the proceeds from the sale of the property, "which is one-half of the monies received by Owens as the seller of the Maplewood [p]roperty . . . prior to the sale on May 20, 2007."

The court ordered distribution of the net proceeds of the sale of the Maplewood property in the following order:

- (1) payment of Owens' \$40,000 homestead exemption;
- (2) payment to Treiger of four [money] judgments he recorded on October 27, 2006 . . .;
- (3) payment on the Bank's judgment lien which attached to the property pursuant to the prejudgment writ of attachment;
- (4) payment to Treiger of other judgments entered and recorded after the Bank recorded its writ of attachment; and
- (5) payment of any remaining amount held in trust to Treiger and Owens in accordance with the supplemental decree of dissolution or any other order entered in the dissolution proceeding.

The court's order also states that the court had not adjudicated the Bank's in rem claim because it was rendered moot by its decision in the declaratory judgment action. The order further provides that the Bank's in rem claim would be preserved and tolled in the event the court's decision on the priority of the parties' liens was appealed.

Treiger appealed the order granting the Bank's motion for summary judgment. Neither the issue of the trial court's handling of the Bank's in rem claim, nor the merits of that claim, was raised on appeal. This court determined that the Supplemental Decree created a lien on one-half of the net proceeds of the sale of the Maplewood property and held that the trial court erred in failing to grant priority to Treiger's lien.²

² This court also ruled on the trial court's determinations as to whether the documents Treiger recorded constituted judgments. This issue is not relevant to the present appeal.

Treiger and the Bank petitioned for review in the Supreme Court. The Supreme Court granted review and, again, no issue regarding the Bank's in rem claim was raised. The Supreme Court, affirming this court, held that the Supplemental Decree established an equitable lien on the Maplewood property in favor of Treiger in the amount of one-half of the net proceeds of the court-ordered sale of the property.³ The court stated:

In the present case, the Supplemental Decree created an equitable lien on the Maplewood property. The Supplemental Decree's award to Treiger of one-half of the net proceeds of the sale of the Maplewood property did not include a sum certain. As such, it did not create a statutory lien for that award. However, the Supplemental Decree specifically identified the Maplewood property, including its tax parcel number, and fastened Treiger's award to that property. As a result, the Supplemental Decree created an equitable lien on the Maplewood property in favor of Treiger for one-half of the net proceeds of its sale. Because the Supplemental Decree was entered and recorded prior to the Bank's prejudgment writ of attachment, Treiger's lien has priority.^[4]

As to this issue, the court "remand[ed] this case to the superior court for further proceedings consistent with this opinion."⁵

On remand, the Bank moved for summary judgment on its in rem claim against the separate property of Owens awarded to Treiger in the Supplemental Decree. Treiger moved for the entry of judgment on the mandate. The superior court granted the Bank's motion and awarded it an in rem judgment of \$308,990.37 and denied Treiger's motion for entry of judgment on remand. The court also ruled that the Bank's judgment was superior to Treiger's claim and

³ The Supreme Court's disposition of the other issue on appeal, regarding whether certain documents Treiger recorded constituted judgments, is not relevant to this appeal.

⁴ Owens, 173 Wn.2d at 50.

⁵ Owens, 173 Wn.2d at 55.

allowed the Bank to satisfy the judgment from Treiger's half of the net proceeds from the sale of the Maplewood property.

Treiger appealed directly to the Supreme Court and also moved to recall the mandate, arguing that the trial court failed to comply with the Supreme Court's earlier decision. The court denied the motion to recall the mandate and transferred the appeal to this court.

ANALYSIS

A motion for summary judgment may be granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.⁶ We review summary judgment orders de novo, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party.⁷

Treiger argues that the trial court failed on remand to comply with the Supreme Court's mandate granting him priority over the Bank in the proceeds of the sale of the Maplewood property. He argues that the court's determination that his lien has priority over the Bank's lien is the law of the case. The Bank argues that because the Supreme Court did not specifically direct the entry of judgment in favor of Treiger on remand, the Supreme Court "implicitly directed" the trial court to exercise its discretion in resolving the Bank's preserved in rem claim. We agree with Treiger.

An appellate court's mandate is binding on the lower court and must be strictly followed.⁸ While a remand "for further proceedings" "signals this court's expectation that the trial court will exercise its discretion to decide any issue

⁶ CR 56(c).

⁷ Lam v. Global Med. Svs., 127 Wn. App. 657, 661 n.4, 111 P.3d 1258 (2005).

⁸ McCausland v. McCausland, 129 Wn. App. 390, 399, 118 P.3d 944 (2005), overruled on other grounds, 159 Wn.2d 607 (2007).

necessary to resolve the case,”⁹ the trial court cannot ignore the appellate court's specific holdings and directions on remand.¹⁰ Also, RAP 12.2 provides in part: “Upon issuance of the mandate of the appellate court as provided in rule 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court.” These principles embody the law of the case doctrine. Under that doctrine, “once there is an appellate holding enunciating a principle of law, that holding will be followed in later stages of the same litigation.”¹¹ The law of the case doctrine binds the parties, the trial court, and subsequent appellate courts to the holdings of an appellate court in a prior appeal until such holdings are authoritatively overruled.¹²

Humphrey Industries, Ltd. v. Clay Street Associates, LLC¹³ is instructive. In that case, the Supreme Court reversed the trial court's award of attorney fees against Humphrey, holding that the record did not establish that Humphrey's actions under the dissenter's rights provisions of the Washington Limited Liability Company Act (LLC Act), chapter 25.15 RCW, were arbitrary, vexatious, and not in good faith. The court also remanded with directions that the trial court determine whether Humphrey was entitled to an award of attorney fees on the ground that the LLC failed to substantially comply with the LLC Act. On remand, the trial court awarded Humphrey fees based on the LLC's failure to

⁹ In re Marriage of Rockwell, 157 Wn. App. 449, 453, 238 P.3d 1184 (2010).

¹⁰ McCausland, 129 Wn. App. at 400.

¹¹ State v. Schwab, 134 Wn. App. 635, 644, 141 P.3d 658 (2006).

¹² Humphrey Indus., Ltd. v. Clay Street Assocs., LLC, 176 Wn.2d 662, 669, 295 P.3d 231 (2013) (quoting Greene v. Rothschild, 68 Wn.2d 1, 10, 414 P.2d 1013 (1966)).

¹³ 176 Wn.2d 662, 295 P.3d 231 (2013).

substantially comply with the LLC Act. The trial court also reinstated a portion of the fees against Humphrey that the Supreme Court had reversed. Humphrey appealed directly to the Supreme Court. The court stated: "Because we held that Humphrey's conduct did not meet the standard to support a fee award under RCW 25.15.480(2)(b), that conclusion became the law of the case and the trial court erred by failing to apply that holding on remand."¹⁴ The Supreme Court held that the trial court had no authority on remand to reconsider a fee award against Humphrey and, accordingly, reversed the fees the trial court awarded on remand against Humphrey.

Similarly, the Supreme Court's holding that Treiger's equitable lien for one-half of the net proceeds from the sale of the Maplewood property had priority over the Bank's lien became the law of the case. The trial court had no authority to ignore this holding on remand. But, in its order denying Treiger's motion to enter judgment on the mandate and granting the Bank's motion for summary judgment on its in rem claim, the trial court did just that. Under the law of the case doctrine, this was error.

The decision in National Bank of Washington v. Equity Investors¹⁵ also supports the conclusion that the trial court erred on remand. That case involved three liens: the MacDonald lien, the Columbia lien, and the Bank lien. The trial court initially ruled that the Bank lien was first in priority, the MacDonald lien second, and the Columbia lien third. Columbia appealed and assigned error to the priority of the Bank lien, but did not assign error to the priority of the MacDonald lien. The Supreme Court held that the Columbia lien was superior to

¹⁴ Humphrey, 176 Wn.2d at 670.

¹⁵ 83 Wn.2d 435, 518 P.2d 1072 (1974).

the Bank lien. On remand, MacDonald argued that because Columbia had not assigned error to the trial court's determination of the MacDonald lien's priority, the trial court's determination that the MacDonald lien had priority over the Columbia lien was the law of the case. The trial court ruled that the MacDonald lien was first in priority, the Columbia lien was second, and the Bank lien third. The Supreme Court reversed again, stating that it was clear that the court in the first appeal intended Columbia's lien claim to be satisfied in full from the proceeds of the foreclosure sale and that to put the MacDonald lien ahead of the Columbia lien in priority would "thwart the direction" of the court.¹⁶ Here, too, the trial court's ruling on remand thwarted the Supreme Court's direction that Treiger's lien be given priority.

Further, we question the trial court's authority to revisit on remand the Bank's in rem claim that the trial court "preserved and tolled" when it rendered its initial decision in the declaratory judgment action. Generally, a judgment is appealable as a matter of right only after the trial court disposes of all the claims of all the parties.¹⁷ A judgment that does not dispose of all the claims as to all the parties may be appealed only if the trial court makes the findings described in CR 54(b)¹⁸ and RAP 2.2(d).¹⁹ Strict compliance with CR 54(b) is required.²⁰

¹⁶ National Bank of Washington, 83 Wn.2d at 442.

¹⁷ See RAP 2.2(d).

¹⁸ CR 54(b) provides in relevant part:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment.

Because RAP 2.2(d) is virtually identical in substance to CR 54(b), strict compliance with the appellate rule is required as well.

Here, the trial court's "preserving and tolling" the Bank's in rem claim did not constitute "disposing" of that claim, as contemplated by CR 54(b) and RAP 2.2(d). Yet, the trial court made no express determination in its judgment nor did it enter findings of fact that there was no just reason for delay as is required to allow an appeal of a judgment disposing of less than all the claims to go forward without discretionary review being granted. It is far too late a stage in this protracted litigation to engage in the pointless exercise of assessing fault or blame on one party or the other for the procedural irregularities that have allowed this matter to proceed so far through the appellate process while the Bank's in rem claim remained undisposed below. We do conclude, however, that because review of the summary judgment in the declaratory judgment action was de novo, the Bank could and should have raised the in rem claim in the first appeal.

The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party.

¹⁹ RAP 2.2(d) provides:

In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

²⁰ Schiffman v. Hanson Excavating Co., Inc., 82 Wn.2d 681, 688-89, 513 P.2d 29 (1973).

Having failed to do so, the Bank abandoned that claim. The trial court erred by allowing the Bank to resurrect its in rem claim on remand, in effect allowing the Bank to sit on its in rem theory and raise it upon not prevailing on its initial theory. Doing so flies squarely in the face of of the indisputable policy against allowing piecemeal appeals.²¹

Substantively, the trial court was also incorrect in concluding that the Bank's in rem claim has priority over Treiger's lien. The Supplemental Decree created an equitable lien on the Maplewood property, which is the same "rem" against which the Bank asserts its in rem claim. Because Treiger's lien is first in time, it is first in right. And, although not exactly on point, the court's holding in Griggs v. Averback Realty, Inc.²² is persuasive:

[W]hen the community creditors have not obtained, during the existence of the marriage, a judgment against one or both of the spouses, or against the community, and when a former spouse, after termination of the marriage, prevails on the merits, then property distributed to that former spouse—even though previously community property—cannot be used to satisfy a judgment against the former spouse.

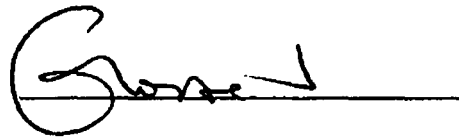
As in Griggs, the Bank did not obtain a judgment against one or both spouses during the existence of the marriage. Like the plaintiff's judgment in Griggs, the Bank's judgment was against only one spouse, namely Owens. And,

²¹ See, e.g., Minehart v. Morning Star Boys Ranch, Inc., 156 Wn. App. 457, 462, 232 P.3d 591 (2010) ("Piecemeal appeals of interlocutory orders must be avoided in the interests of speedy and economical disposition of judicial business.") (quoting Maybury v. City of Seattle, 53 Wn.2d 716, 721, 336 P.2d 878 (1959)); Wlasiuk v. Whirlpool Corp., 76 Wn. App. 250, 253, 884 P.2d 13 (1994) ("The policy served by requiring finality before appeal is to conserve appellate energy and eliminate delays caused by interlocutory appeals.").

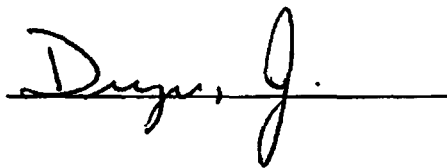
²² 92 Wn.2d 576, 586, 599 P.2d 1289 (1979).

Treiger can be said to have "prevailed" in that the Bank's claims against him and the marital community were discharged in bankruptcy.²³

We reverse the trial court's order granting the Bank's motion for summary judgment and remand for entry of a judgment consistent with the Supreme Court's opinion and mandate issued in this case.

A handwritten signature in cursive script, appearing to be "Groner", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to be "Dreyer, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to be "Appelwick, J.", written over a horizontal line.

²³ We recognize that the court in Griggs limited its holding to the facts before it. Nonetheless, the holding is instructive here and supports the conclusion that, substantively, the trial court erred. The cases on which the Bank relies, e.g., Farrow v. Ostrom, 16 Wn.2d 547, 133 P.2d 974 (1943); Watters v. Doud, 95 Wn.2d 835, 631 P.2d 369 (1981), are readily distinguishable on the ground that they involve a community debt, rather than a separate debt such as the debt at issue here.

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress (Refs & Annos)

U.S.C.A. Const. Art. I § 10, cl. 1

Section 10, Clause 1. Treaties, Letters of Marque and Reprisal; Coinage of Money; Bills of Credit; Gold and Silver as Legal Tender; Bills of Attainder; Ex Post Facto Laws; Impairment of Contracts; Title of Nobility

Currentness

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility

<This clause is displayed in six separate documents according to subject matter,>

<see USCA Const Art. I § 10, cl. 1-Treaties, Etc.>

<see USCA Const Art. I § 10, cl. 1-Coinage of Money>

<see USCA Const Art. I § 10, cl. 1-Bills of Credit>

<see USCA Const Art. I § 10, cl. 1-Legal Tender>

<see USCA Const Art. I § 10, cl. 1-Bills of Attainder, Etc.>

<see USCA Const Art. I § 10, cl. 1-Impairment of Contracts>

U.S.C.A. Const. Art. I § 10, cl. 1, USCA CONST Art. I § 10, cl. 1
Current through P.L. 113-47 approved 10-31-13

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Constitution of the United States
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENTXIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

§ 3. Personal Rights, WA CONST Art. 1, § 3

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 3

§ 3. Personal Rights

Currentness

No person shall be deprived of life, liberty, or property, without due process of law.

Credits

Adopted 1889.

Notes of Decisions (2038)

West's RCWA Const. Art. 1, § 3, WA CONST Art. 1, § 3

Current through amendments approved 11-6-2012

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 12

§ 12. Special Privileges and Immunities Prohibited

Currentness

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Credits

Adopted 1889.

Notes of Decisions (1135)

West's RCWA Const. Art. 1, § 12, WA CONST Art. 1, § 12
Current through amendments approved 11-6-2012

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 23

§ 23. Bill of Attainder, Ex Post Facto Law, Etc.

Currentness

No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Credits

Adopted 1889.

Notes of Decisions (418)

West's RCWA Const. Art. 1, § 23, WA CONST Art. 1, § 23

Current through amendments approved 11-6-2012

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated

Title 26. Domestic Relations (Refs & Annos)

Chapter 26.09. Dissolution Proceedings--Legal Separation (Refs & Annos)

West's RCWA 26.09.080

26.09.080. Disposition of property and liabilities--Factors

Effective: June 12, 2008

Currentness

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

Credits

[2008 c 6 § 1011, eff. June 12, 2008; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

Notes of Decisions (754)

West's RCWA 26.09.080, WA ST 26.09.080

Current with all 2013 Legislation

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated

Title 26. Domestic Relations (Refs & Annos)

Chapter 26.16. Husband and Wife--Rights and Liabilities--Community Property (Refs & Annos)

West's RCWA 26.16.010

26.16.010. Separate property of spouse

Effective: June 12, 2008

Currentness

Property and pecuniary rights owned by a spouse before marriage and that acquired by him or her afterwards by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his or her spouse, and he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same extent or in the same manner as though he or she were unmarried.

Credits

[2008 c 6 § 602, eff. June 12, 2008; Code 1881 § 2408; RRS § 6890. Prior: See Reviser's note below.]

Notes of Decisions (198)

West's RCWA 26.16.010, WA ST 26.16.010

Current with all 2013 Legislation

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated

Title 26. Domestic Relations (Refs & Annos)

Chapter 26.16. Husband and Wife--Rights and Liabilities--Community Property (Refs & Annos)

West's RCWA 26.16.050

26.16.050. Conveyances between spouses or domestic partners

Effective: June 12, 2008

Currentness

A spouse or domestic partner may give, grant, sell or convey directly to the other spouse or other domestic partner his or her community right, title, interest or estate in all or any portion of their community real property: And every deed made from one spouse to the other or one domestic partner to the other, shall operate to divest the real estate therein recited from any or every claim or demand as community property and shall vest the same in the grantee as separate property. The grantor in all such deeds, or the party releasing such community interest or estate shall sign, seal, execute and acknowledge the deed as a single person without the joinder therein of the married party or party to a state registered domestic partnership therein named as grantee: PROVIDED, HOWEVER, That the conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or conveyance. AND PROVIDED FURTHER, That any deeds of gift conveyances or releases of community estate by or between spouses or between domestic partners heretofore made but in which both spouses or both domestic partners have not joined as grantors, said deeds, where made in good faith and without intent to hinder, delay or defraud creditors, shall be and the same are hereby fully legalized as valid and binding.

Credits

[2008 c 6 § 605, eff. June 12, 2008; 1888 c 27 § 1; RRS § 10572.]

Notes of Decisions (90)

West's RCWA 26.16.050, WA ST 26.16.050

Current with all 2013 Legislation

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.16. Husband and Wife--Rights and Liabilities--Community Property (Refs & Annos)

West's RCWA 26.16.120

26.16.120. Agreements as to status

Effective: July 26, 2009
Currentness

Nothing contained in any of the provisions of *this chapter or in any law of this state, shall prevent both spouses or both domestic partners from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by both spouses or both domestic partners by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner. Such agreement shall not derogate from the right of creditors; nor be construed to curtail the powers of the superior court to set aside or cancel such agreement for fraud or under some other recognized head of equity jurisdiction, at the suit of either party; nor prevent the application of laws governing the community property and inheritance rights of slayers or abusers under chapter 11.84 RCW.

Credits

[2009 c 525 § 18, eff. July 26, 2009; 2008 c 6 § 612, eff. June 12, 2008; 1998 c 292 § 505; Code 1881 § 2416; RRS § 6894.]

Notes of Decisions (110)

West's RCWA 26.16.120, WA ST 26.16.120
Current with all 2013 Legislation

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.


DECLARATION OF SERVICE

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

On November 13, 2013, I arranged for filing and service of the foregoing Petition for Review to the Court and counsel for the parties to this action, as follows:

Court of Appeals of the State of Washington Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Jerome Shulkin Shulkin Hutton, Inc., P.S. 7900 Southeast 28th Street #302 Mercer Island, WA 98040	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Jerry R. Kimball Attorney At Law Law Office of Jerry R. Kimball 1200 5th Avenue #2020 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Edmond John Wood Wood & Jones, P.S. 303 North 67th Street Seattle, WA 98103	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Cynthia B. Whitaker Attorney at Law 1200 5th Avenue #2020 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Catherine W. Smith Valerie A. Villacin Smith Goodfriend, P.S. 1619 8th Avenue North Seattle, WA 98109	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email

Executed this 13th day of November, 2013, at Seattle, Washington.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a smaller loop and a horizontal stroke.

Thomas S. Linde
Attorney for Petitioner Bank of America, N.A.