No. 43451-2-II, CONS with 43751-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FIRST-CITIZENS BANK & TRUST COMPANY, a Washington Financial Institution,

Respondent / Cross Appellant,

v.

ROBERT R. HARRISON & TIFFANY J. HARRISON, husband and wife and the marital community comprised thereof,

Appellants / Cross Respondents.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE STEPHANIE A. AREND

REPLY BRIEF OF RESPONDENT / CROSS APPELLANT

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I. INTRODUCTION

Mr. and Mrs. Harrison defaulted on the promissory note for a $105,000 line of credit, to which First Citizens is the successor-in-interest. Because of the Harrisons' default, First Citizens brought a successful breach of contract claim against the Harrisons that resulted in First Citizens obtaining a valid judgment against the Harrisons for the outstanding principal balance on the line of credit, late fees, interest, and reasonable attorney fees and costs.[1]

Mr. and Mrs. Harrison attempted to thwart First Citizens' ability to collect on its valid judgment by making bald assertions that funds in their personal bank accounts at private banks were exempt from garnishment under 25. U.S.C. §410. This exemption claim must fail, however, because even assuming the funds in the Harrisons' personal accounts at Banner Bank, Key Bank, and Fife Commercial Bank are lease proceeds from Indian trust land, those funds lost any protection that they had under 25

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[1] The Harrisons initially appealed the trial court's summary resolution of the breach of contract issue in First Citizens' favor. Thereafter, First Citizens filed an appeal of its own regarding the trial court's denial of its objection to the Harrisons' exemption claim in post-summary judgment garnishment proceedings and, later, First Citizens moved to consolidate these two related appeals. After the parties filed their opening briefs in the consolidated appeals, the Harrisons voluntarily withdrew their appeal of the trial court's summary judgment resolution of First Citizens' breach of contract claim. Thus, the only issue remaining is whether the trial court correctly denied First Citizens' objection to the Harrisons' exemption claim in the garnishment proceedings.

For consistency, however, First Citizens continues to refer to the volume of Clerk's Papers filed under case number 43451-2-II as "CP" and the volume of Clerk's Papers filed under case number 43751.1-II as "2 CP."

U.S.C. §410 and became subject to garnishment when they were distributed to the Harrisons and deposited into their personal joint, community property accounts at private banks. Accordingly, this court should reverse the trial court's order denying its objection to the Harrisons' exemption claim in the garnishment proceedings.

II. ARGUMENT

The Harrisons argue that 25 U.S.C. §410 forever exempts from garnishment all money that accrues from the sale or lease of Indian trust lands, without regard to whether that money has been distributed to an individual Indian and deposited into his or her personal account at a private bank. Br. of Appellants/Cross Respondents at 3. The Harrisons' construction of 25 U.S.C. §410 is excessively broad and, even under such a broad construction, that statute does not support the Harrisons' claimed exemption from garnishment.

25 U.S.C. §410 is part of the Indian Allotment Act, which globally governs the relationship between the United States and Indians allocating benefits and responsibilities related to Indian land allocated to Indians and held in trust by the government. 25 U.S.C. §334 *et seq.*; *see also Jordan v. O'Brien*, 69 S.D. 230, 232-33, 9 NW2d 146 (1943). Within that specific statutory context, 25 U.S.C. §410 does exempt money accruing from the sale or lease of Indian trust lands from garnishment under certain

circumstances, but that exemption is not unlimited and the statute does not assert that the exemption endures after such money has been deposited into the Indian's private bank account. It states:

> No money accruing from any lease or sale of lands held in Trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.

25 U.S.C. §410.

Even under the plain language of this statute, the protection from garnishment is not unlimited, as the Secretary of the Interior has the discretion to allow a creditor to reach sale or lease proceeds from an Indian's trust land. 25 U.S.C. §410. Importantly, however, the plan language of the statute does not specify that its protection of money accruing from the sale or lease of Indian trust land is perpetual in duration.

Because the plain language of 25 U.S.C. §410 is silent on whether its protection of money from the sale or lease of Indian trust land endures after such money is deposited into an Indian's personal account at a private bank, the analysis here cannot end with the statute's plain language. Instead, we must look to applicable case law. Although the precise issue presented in this appeal is an issue of first impression, the Washington State Supreme Court's analysis in *Anthis v. Copeland*, 173 Wn.2d 752, 760-65, 270 P.3d 574 (2012), applies.

The *Anthis* court was tasked with resolving a parallel issue to the issue presented in this appeal: whether the statutory protection from garnishment for pension benefits under the state's Law Enforcement Officers' and Firefighters' (LEOFF) Retirement System continued even after the state had distributed those pension funds to the individual beneficiaries and those beneficiaries had deposited those funds into their personal accounts at private banks. *Id.* The LEOFF statute at issue in *Anthis* states:

> Subject to subsections (2) and (3) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall be unassignable.

RCW 41.26.053(1); *Anthis*, 173 Wn.2d at 756. Because the plain language of this statute is silent on whether the statutory exemption of LEOFF payments continued after being deposited into a private bank account, the *Anthis* court considered several similar state and federal statutes and case law interpreting those statutes. 173 Wn.2d at 752-65.

After conducting its detailed analysis, the *Anthis* court noted that, in the garnishment context, "[b]oth federal and state cases generally

indicate that statutorily exempt funds, whatever their predistribution nature, may be garnished after they come into the personal possession of the beneficiary, including deposit into a personal account, *unless the legislature provides some express language to the contrary*." 173 Wn.2d at 763 (emphasis added).

For example, the language in the Employee Retirement Income Security Act (ERISA) does not exempt funds from garnishment after such funds have been deposited into the personal accounts of the payees because the statutory language provides simply: "each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." *Anthis*, 173 Wn.2d at 761. Conversely, the language of the Social Security Act and the World War Veterans' Act did exempt funds from garnishment even after distribution because their statutory language explicitly provides that each respectively protects "moneys paid or payable" and funds "either before or after receipt by the beneficiary." *Anthis*, 173 Wn.2d at 760-61.

Accordingly, because the LEOFF exemption statute did not explicitly state that the exemption endured after funds had been distributed to the beneficiary and deposited into a private bank account, the *Anthis* court declined to read language into the statute that the legislature had omitted. 173 Wn.2d at 765. Instead, even acknowledging the principle

that courts broadly construe statutes, the *Anthis* court held that funds paid under the LEOFF Retirement System were not exempt from garnishment after the payee deposited those funds into a private bank account because the statutory language did not explicitly provide that heightened protection. 173 Wn.2d at 765.

Here, as in *Anthis*, the statute within the Indian Allotment Act that exempts money accrued from the sale or lease of Indian trust lands from garnishment is silent on whether that exemption continues after funds are deposited into an individual Indian's personal account held at a private bank. *See* 25 U.S.C. §410. Moreover, even more striking than in *Anthis*, the funds derived from leases of the Indian land held in trust for Mrs. Harrison's benefit were deposited into her personal accounts at private banks that she held jointly with her husband, a person for whom those lands were not held in trust. 2 CP at 1-18, 153-69.

This court should adhere to the *Anthis* court's recent analysis. Thus, because Congress' choice not to include language specifying that the garnishment exemption for proceeds from the sale or lease of Indian trust land is perpetual and endures even after deposited by an individual Indian into his or her personal account held at a private bank, this court should not read that language into the statute.

Such a conclusion is further supported by the few decisions addressing 25 U.S.C. §410. Of these few decisions, only one addresses a situation like the one presented here, where moneys from the sale or lease of Indian trust land have already been deposited into the Indian's personal account at a private bank: *Purnel v. Purnel*, 52 Cal.App.4th 527, 538-41, 60 Cal.Reptr.2d 667 (1997).

Although not dispositive to the *Purnel* court's resolution of the case, the court explained the application of 25 U.S.C. §410 to funds held in personal bank accounts in great detail. 52 Cal.App.4th at 539-41. In that discussion, the court stated:

> Once [Purnel] has received payment of the rental income from lease of her Indian Trust Allotment lands, it loses its 'Indian' character. Money is fungible. When [Purnel] bought her Porsche and her BMW, she did not spend 'Indian' money. She spent the legal tender [that] all individuals or persons spend in the United States to acquire goods and property. [Purnel] could, if she chooses to be obstinate, instruct the Bureau of Indian Affairs just to let the payments of her rental income 'ride' so to speak. . . . However, the very act of postponing withdrawal of her funds derived from the rental income would itself demonstrate a concession, once such, that they would no longer be protected from legal processes to which all persons' property is amenable.
> . . . .
> Certainly, once the rental income [from Purnel's Indian trust lands] was deposited in a bank account outside Indian Country, the money involved lost its identity as immune Indian property. As a result, it was and is clearly available to [Purnel] to honor the court's [judgment].

52 Cal.App.4th at 539-41.

Here, just as in *Purnel*, Mrs. Harrison had deposited the rental proceeds from her Indian trust land into three personal accounts, held jointly with her husband, at Fife Commercial Bank, Key Bank, and Banner Bank. 2 CP at 1-18, 153-69; RP (July 24, 2012) at 7. Every other case addressing 25 U.S.C. §410 is distinguishable and should not control because the moneys accruing from the sale or lease of Indian trust lands had not yet reached the hands of the individual Indian. *See Law Offices of Vincent Vitale, P.C. v. Tabbytite*, 942 P.2d 1141, 1144 (1997) (moneys from condemnation sale of Indian trust land interpleaded and held in court registry and never received by individual Indian owner of those funds or deposited into her personal bank account)[2]; *see also Estate of Prieto*, 243 Cal.App.2d 79, 84-85, 52 Cal.Rptr. 80 (1966); *Taylor v. Grant*, 220 Or 114, 349 P.2d 282, 285 (1960).

Consequently, as in *Anthis* and *Purnel*, once Mrs. Harrison deposited the money at issue here into her personal accounts at private banks that she held jointly with her husband, any statutory exemption from garnishment that those funds had previously enjoyed under 25 U.S.C. §410 was lost and the Harrisons' exemption claim was not made in good faith under RCW 6.27.160(2).

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[2] Interestingly, after the Alaska Supreme Court issued its opinion, Ms. Tabbytite deposited these proceeds from the sale of her Indian trust land into her IIM account, ostensibly to ensure those funds were protected by 25 U.S.C. §410. *See* 36 IBIA 177 (2001); 45 IBIA 10 (2007).

III. CONCLUSION

This court should conclude that the proceeds from Mrs. Harrison's lease of her Indian trust land lost their exemption when she deposited those funds into her personal accounts at a private bank held outside of Indian Country and jointly with her husband. Accordingly, this court should reverse the trial court's order denying First Citizens' objection to the Harrisons' exemption claim in the garnishment proceedings and allow First Citizens to begin to recover on its judgment against the Harrisons. In accordance with RAP 18.1, RCW 6.27.160(2), and the contractual terms of the underlying promissory note, this court should further grant First Citizens' request for its reasonable attorney fees and costs on appeal.

RESPECTFULLY SUBMITTED this 10th day of June 2013.

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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I mailed, or caused to be mailed, a copy of the foregoing **REPLY BRIEF OF RESPONDENT/CROSS APPELLANT**, postage prepaid, via U.S. mail and via e-mail on the 10 day of June 2013 to the following:

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