

NO. 45925-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

**Douglas S. Radabaugh and Shirley Radabaugh,
Appellants (Defendants)**

v.

**Heritage Restoration, Inc.,
Respondent (Plaintiff)**

APPELLANTS RADABAUGHS' REPLY BRIEF

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. RESTATEMENT AND SUMMARY OF KEY FACTS	2
III. SUMMARY OF KEY ARGUMENT.....	5
IV. ARGUMENT	7
A. Whether Legal or Equitable, Heritage’s Claim was Discharged	7
B. The Held Funds Were Exempt Assets of the Radabaughs.....	10
C. Revision of the Judgment is Untimely.....	11
D. Heritage is Not Entitled to Fees on Appeal.....	12
V. CONCLUSION	14

TABLE OF AUTHORITIES

	Page
<i>Table of Cases:</i>	
<u>Hein v. Chrysler Corp.</u> , 45 Wn.2d 586, 595, 277 P.2d 708 (1954)	8
<u>Ketner Bros., Inc. v. Nichols</u> , 52 Wn.2d 353, 357, 324 P.2d 1093 (1958).....	10
<u>Sorenson v. Pyeatt</u> , 158 Wn.2d 523 at 531, 146 P.3d 1172 (2006)	8
 <i>Other Authorities:</i>	
11 U.S.C. §101(5)	6, 9, 14
11 U.S.C. §101(12)	6, 9, 14
11 U.S.C. §524(a)(1)	5, 8, 12, 14
11 U.S.C. §524(a)(2)	5, 12, 14

I. INTRODUCTION

The question of the case is “Whether a judgment creditor with a pure money judgment can avoid a bankruptcy discharge by obtaining an order of the Trial Court, post-bankruptcy, reforming the Findings of Fact and Conclusions of Law to include a supplementary equitable claim for payment?” The answer is “no.” A bankruptcy discharge voids the prior money judgment. It makes no difference whether the money judgment was based in law or equity. It makes no difference whether the post-bankruptcy order applied to funds in the possession of the bankruptcy debtors or in the possession of a third party. Bankruptcy discharges debts and preserves exempt assets of the bankruptcy debtor. It was error for the Trial Court to deprive the Appellants of the relief they properly sought and received in bankruptcy court.

The Respondent’s Response does not address this question. Rather, the Respondents assert that because the judgment was arguably based on an equitable right to payment, rather than a legal right, the bankruptcy discharge does not apply. That argument is erroneous. Bankruptcy discharges apply to all claims for payment, whether based in law or equity. Second, Respondents assert that because the property was held by the court clerk, the Trial Court had the power to distribute it however the Trial Court wanted. That is also erroneous. The Trial Court was obligated to distribute the money to its true owner – and the money belonged to the Radabaughs. Finally, the Respondents argue that the Appellants lost their right to challenge the Trial Court’s post-

bankruptcy order reforming the judgment because Appellants did not appeal the original Findings and Conclusions and Judgment. Appellants chose not to appeal the original Findings and Conclusions and Judgment because they chose, instead, to obtain bankruptcy protection from their operation. This protection voided the original judgment. Therefore, it was error for the Trial Court to attempt to reform the Judgment post-bankruptcy because the Judgment no longer existed to be reformed, having been discharged in bankruptcy.

II. RESTATEMENT AND SUMMARY OF KEY FACTS

1. Following trial on a home repair construction dispute, the Trial Court entered Findings of Fact and Conclusions of Law in support of a pure money judgment in favor of Heritage Restoration for a net value of the price payment it sought from the Radabaughs. (CP 34-47.) This money judgment was for the principal amount of \$20,600. (CP 48-50.) That amount was calculated based on the Court's Findings that: Heritage's work was worth \$24,350; the Radabaughs were entitled to an offset of \$3,750 (CP 34-47; CP 48-50.); and no money had been paid to Heritage by the Radabaughs or by a third party (such as the Radabaugh's insurance provider) on Radabaugh's account (CP 34-47, especially ll. 25-26 of CP 39). Therefore, although there was money from the Radabaugh's insurance provider that had been paid into the registry of the court, the Trial Court's Findings establish that this money had not been paid to

and did not belong to Heritage Restoration. If the Trial Court had found otherwise, then, in Findings of Fact and Conclusions of Law, the Trial Court would have held that the money belonged to Heritage and would have calculated it as a credit against the amount otherwise due to Heritage. (CP 34-47, especially Conclusion 13, l. 26, CP 46 to l. 9 of CP 47.) Further, the Findings of Fact and Conclusions of Law and the Judgment did not provide Heritage with any relief other than a recognition that the Radabaughs owed it a money debt. (CP 34-47.) That is, at the conclusion of trial, pre-bankruptcy, the Trial Court did not equitably order that the Radabaughs perform or abstain from performing any specific act, other than an act of payment of debt.

2. The Trial Court also held that neither party was the prevailing party and, therefore, neither party was entitled to attorney's fees. (Conclusion 15; ll. 16-18, CP 47.)

3. Neither party filed an appeal following trial. Rather, before Heritage Restoration sought disbursement of the Radabaugh money held in the registry of the court or otherwise sought to enforce the Judgment, the Radabaughs filed a Petition in Bankruptcy and sought a bankruptcy discharge of the Judgment and other debts. (CP 67-75; CO 100-108.) In the bankruptcy proceeding, Radabaugh's applied their miscellaneous bankruptcy exemption to the moneys held in the registry of court, reserving those funds to themselves and insulating

them from levy by any creditor, including Heritage Restoration. (See Trustee's Report of Distribution, CP 98-99.)

4. Heritage Restoration was a named creditor in the bankruptcy and was served with notice of bankruptcy. (CP 70; see also creditors matrices in bankruptcy (CP 93 and CP 98).) Further, Heritage Restoration actively participated in the bankruptcy proceeding, first filing an objection to the Radabaugh's exemption claim. (See docket no. 26 in bankruptcy (CP 96).)

5. The Radabaughs obtained a final discharge of debts in bankruptcy. The Radabaughs' exemption claims, including the exemption claim applying to the money in the court registry, were in place at the time of discharge. (See Trustee's Report of Distribution, CP 98-99.)

6. Following the bankruptcy discharge, Heritage Restoration filed a motion asking the Trial Court to disregard the Radabaugh's bankruptcy discharge and exemption claim and disburse the money held in the court registry to Heritage. To support this motion, Heritage Restoration asked the Trial Court to reform its Findings of Fact and Conclusions of Law to include new equitable claims, including an equitable claim that the money in the court registry had belonged to Heritage Restoration on a theory that it had been equitably paid to Heritage Restoration prior to entry of judgment and the filing

of the Radabaugh's Petition in Bankruptcy. (CP 51-60.) The Radabaughs' objected, asserting that (1) the bankruptcy discharge voided the prior judgment and a void judgment could not be reformed and reinstated and (2) under the terms of the prior judgment, and the Findings of Fact and Conclusions of Law, the money in the registry of the Court belonged to the Radabaughs, Heritage Restoration was an unsecured creditor, the Radabaugh's preserved their ownership of the funds in the court registry by exempting them in bankruptcy, and the entire Heritage Restoration judgment was discharged in bankruptcy, leaving none of it to be discharged by post-bankruptcy payment from the funds in the court registry. (CP 62-66; CP 109-113; CP 114-115.)

7. The Trial Court granted Heritage's motion, reformed the Judgment to retroactively reflect a pre-Judgment payment of the held funds to Heritage Restoration, and ordered disbursement of the held funds to Heritage Restoration. The Radabaughs appealed, raising the same arguments on appeal that they raised in opposition to Heritage's Motion for Disbursement. (CP 116-119.)

III. SUMMARY OF KEY ARGUMENT

A Chapter 7 discharge “voids any judgment” against the Debtor. 11 U.S.C. §524(a)(1) and also bars any attempt to recover any pre-bankruptcy debt owed by the debtor. 11 U.S.C. §524(a)(2). A "debt" is defined as any liability

on a "claim". 11 U.S.C. §101(12). A "claim" is defined in 11 U.S.C. §101(5) as including all legal remedies and some equitable remedies:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, *equitable*, secured, or unsecured; or

(B) *right to an equitable remedy for breach of performance if such breach gives rise to a right to payment*, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. §101(5) (emphasis added).

That is, a bankruptcy discharge voids any creditor right against the debtor that amounts to a right to payment of money, whether it presents as a legal right to payment or as an equitable right to money. If the ultimate recovery is monetary, the claim is dischargeable in bankruptcy.

Here, following trial, the Trial Court awarded Heritage Restoration damages and entered a pure money judgment in favor of Heritage. Rather than appeal, the Radabaughs sought and received bankruptcy protection and obtained a complete discharge of the debt it owed to Heritage Restoration. As a matter of law, this discharge both voided the judgment Heritage Restoration had obtained and barred Heritage from pursuing the debt on other theories, including new equitably theories beyond those in the original Findings of Fact and Conclusions of Law.

Despite this, the Trial Court disregarded the bankruptcy discharge and reformed its prior Judgment to include new equitable theories for payment.

Based on these new theories, the Trial Court ordered that exempt assets of the Radabaughs, which the Radabaughs had expressly preserved through their bankruptcy, be paid to Heritage Restoration. This was error for multiple reasons. First, it was the improper payment of a discharged, pre-bankruptcy debt. Second, it was the unlawful seizure of exempt assets of the Radabaughs. Finally, it was the improper post-bankruptcy modification of a Judgment that had been voided by operation of the bankruptcy discharge and which was, therefore, no longer in lawful existence to be reformed.

IV. ARGUMENT

A. Whether Legal or Equitable, Heritage's Claim Was Discharged.

Heritage argues that its award under original Conclusions of Law and Judgment was based quantum meruit and therefore based on the Trial Court's equitable jurisdiction. This is consistent with the Trial Court's characterization of the award. (CP 46-47; CP 48-50.)

However, the award is arguably a purely legal award for breach of contract damages when we consider the Findings of Fact and Conclusions of Law as a whole. The Trial Court concluded that Heritage completed its contract work and was entitled to its contract price. (Conclusions 3 and 9; CP 45-46.) The Trial Court ruled that Heritage Restoration's primary contractual failure was a failure to timely invoice the Radabaughs. (Conclusions 5, 6, and 7; CP 45-46.) However, the Court did not expressly rule that submission of

such an invoice was a strict condition precedent to the Radabaughs duty to pay. Therefore, although the Court characterized its decision as an equitable decision to award Heritage Restoration a money judgment based on quantum meruit, that judgment was ultimately for the amount the Trial Court determined to be the contract price. The Judgment, therefore, is effectively identical to a judgment at law. As judgments at law are preferred over judgments in equity when there is an adequate remedy at law, the Judgment may be properly characterized as a judgment at law, as a matter of law, and the Trial Court's mischaracterization of its Judgment can be disregarded on review. Sorenson v. Pyeatt, 158 Wn.2d 523 at 531, 146 P.3d 1172 (2006); Hein v. Chrysler Corp., 45 Wn.2d 586 at 595, 277 P.2d 708 (1954).

However, this distinction (between a judgment in quantum meruit and a judgment for breach of contract) is a distinction without a difference here. Whether the original Judgment was based in law (for breach of contract) or under an equitable theory of quantum meruit, it was a judgment for payment of money only. Therefore, whether based in law or in equity, it was discharged in bankruptcy.

Once a discharge is obtained under Chapter 7, the discharge "voids any judgment" against the Debtor. 11 U.S.C. §524(a)(1). The discharge also acts as an injunction to recover against any debt owed by the debtor. 11 U.S.C. §524(a)(2). A "debt" is defined as any liability on a "claim". 11 U.S.C.

§101(12). A "claim" is defined in 11 U.S.C. §101(5) as including all legal remedies and some equitable remedies:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, *equitable*, secured, or unsecured; or

(B) *right to an equitable remedy for breach of performance if such breach gives rise to a right to payment*, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. §101(5) (emphasis added).

Any claim for payment of money is a claim and therefore is a dischargeable debt, whether based in law or in equity. If the ultimate recovery is monetary, the claim is dischargeable in bankruptcy.

Unlike other forms of equitable relief, which are performative (either requiring some performance (such as an order of specific performance or a writ of mandamus or certiori) or prohibiting some action (such as an injunction or a writ of prohibition), awards in quantum meruit are purely monetary. That is, like a judgment at law, an award in quantum meruit establishes a debt but does not require any performance other than payment of the debt. Therefore, judgments based in quantum meruit, such as the original Judgment here (as characterized by Heritage Restoration) are dischargeable in bankruptcy under 11 U.S.C. §101(5)(A)(B), and this Judgment was discharged in the Radabaughs' bankruptcy.

B. The Held Funds Were Exempt Assets of the Radabaughs

The funds in the court registry were the proceeds of a casualty loss payment to the Radabaughs by the insurance company arising from an insured loss. Thus, the money is belongs to the Radabaughs. Ketner Bros., Inc. v. Nichols, 52 Wn.2d 353, 357, 324 P.2d 1093 (1958) (insurance proceeds belong to the insured).

The money was subject to garnishment and levy by creditors, along with all other Radabaugh money, prior to the Radabaugh's protecting it through a bankruptcy exemption. However, the money was not seized or garnished by any creditor, including Heritage Restoration, prior to the Radabaughs filing for bankruptcy protection and claiming the funds as exempt property. Therefore, the money passed through the Radabaughs' bankruptcy as exempt property and belonged to the Radabaughs, free of all creditor claims (including that of Heritage Restoration) at the conclusion of the bankruptcy. (See Trustee's Report of Distribution, CP 98-99.)

After completion of the Radabaugh bankruptcy, Heritage Restoration claimed that the funds belonged to it either as funds that it had been actually paid prior to the entry of Judgment or funds that it had been equitably paid prior to entry of that Judgment. The problem is that this claim is inconsistent with the Judgment and the Findings of Fact and Conclusions of Law issued by the Trial Court in October, 2011. The Trial Court specifically found that no payment had been made to Heritage Restoration, including the amount paid

into the registry of court, and therefore granted Heritage Restoration a money Judgment for the entire amount it was owed for its work, without any credit for amounts paid. (CP 34-47, especially ll. 25-26 of CP 39.) Heritage did not appeal or otherwise challenge the Judgment and the Findings of Fact and Conclusions of Law before the Judgment was discharged in the Radabaughs' bankruptcy.

C. Revision of the Judgment is Untimely

The Judgment and the Findings of Fact and Conclusions of Law issued by the Trial Court in October, 2011 did not include any performative equitable remedies in favor of Heritage Restoration and did not assign or otherwise adjudicate the ownership of the funds held in the court registry in favor of Heritage Restoration. Rather, the Judgment and the Findings of Fact and Conclusions of Law issued by the Trial Court established that Heritage was owed \$20,600, calculated based on a quantum meruit value of the work of \$24,350 for its work, less offsets of \$3,750 and the further finding that no money had been paid by the Radabaughs or on the Radabaugh's account. (CP 34-47, especially ll. 25-26 of CP 39).

Heritage Restoration did not appeal Judgment and the Findings of Fact and Conclusions of Law and did not seek relief from the Judgment, under CR 59 or CR 60. Rather, more than two years after issuance of the judgment, and after the Judgment had been discharged in bankruptcy, Heritage Restoration

asked the Court to reform the judgment to reflect that the moneys held in the Court registry had been paid to and received by Heritage Restoration prior to the judgment and thus ceased to be Radabaugh money. This was an untimely attempt to reform and reinstate a discharged judgment.

Once a discharge is obtained under Chapter 7, the discharge “voids any judgment” against the Debtor. 11 U.S.C. §524(a)(1). Therefore, even if some process allowed Heritage Restoration to seek to reform this Judgment, it could not do so here. The Judgment had ceased to exist as a matter of law. A nonexistent Judgment cannot be reformed.

Further, a Judgment that was dischargeable and discharged in bankruptcy cannot be reconceived after-the-fact as a judgment that could have survived bankruptcy. A Chapter 7 discharge does not just operate to void any judgment (11 U.S.C. §524(a)(1)), is also acts an injunction against any attempt to collect payment on a pre-bankruptcy claim (11 U.S.C. §524(a)(2).) Therefore, even if the Judgment were subject to reform after it was voided through discharge, the motion to reform the judgment was barred by operation of the bankruptcy stay and should not have been entertained, let alone granted, by the Trial Court.

D. Heritage is Not Entitled to Fees on Appeal

Heritage Restoration asserts a right to fees on appeal under a term in the original contract entitling Heritage to attorney's fees if it prevails on a

collection claim made under the contract. Heritage Restoration is not entitled to fees under this clause, even if it prevails on this appeal.

First, this appeal is not a collection claim. Rather, this appeal is a claim by the Radabaughs seeking reimbursement of overpayments, not a claim by Heritage seeking to collect unpaid money. Following the bankruptcy discharge, there was no debt owed to Heritage Restoration. Further, the bankruptcy stay operates to enjoin any collection action, meaning that if this were a collection action by Heritage, it would be an unlawful one, made in violation of the bankruptcy stay.

Rather, this case is analogous to a case in which a person pays a disputed debt and then seeks reimbursement. People often pay such claims, under protest and a reservation of rights, specifically to avoid the application of clauses providing for a recovery of collection costs and fees. To rule that this case is a collection case, entitling Heritage Restoration to attorney's fees, would be to rule that debtors who pay their bills in full could still be subject to collection costs if they challenge the validity of the debt and seek reimbursement.

Finally, Heritage's claim for fees is prohibited by the Trial Court's original Conclusions of Law. The Trial Court ruled that neither party was the prevailing party on Heritage's original collection action and, therefore, neither party was entitled to recover attorney's fees. Heritage Restoration did not appeal this ruling. Therefore, it is too late for Heritage to assert a claim that it

is entitled to fees as the prevailing party on a collection action under the contract.

Rather, this appeal arises from supplemental proceedings on a judgment that did not include an award of attorney's fees or a basis to award attorney's fees on supplemental proceedings. Because there is no basis to award fees to Heritage in enforcing the Judgment, there is no basis to award fees to Heritage in defending the enforcement of the Judgment.

V. CONCLUSION

The Trial Court erred in issuing an order disbursing to Heritage Restoration exempt money of the Radabaughs, which had been secured to the Radabaughs through the Radabaughs' bankruptcy process by application of an exemption. A Chapter 7 discharge "voids any judgment" against the Debtor. 11 U.S.C. §524(a)(1) and bars any attempt to recover any pre-bankruptcy debt owed by the debtor. 11 U.S.C. §524(a)(2). Further, this discharge applies to both legal and equitable awards of money, provided the equitable claim discharged is (as here) a claim for payment of money rather than a performative equitable order. 11 U.S.C. §101(12); 11 U.S.C. §101(5). If the Judgment requires that the Judgment debtor pay money, it is discharged; if it includes some equitable order that the debtor act or refrain from acting in some way that does not involve payment of money (which is not the case here) that performative equitable relief is not discharged. This Judgment was discharged.

The Trial Court failed to properly recognize the Radabaughs' bankruptcy discharge and exemption claim. Rather, the Trial Court erroneously granted Heritage Restoration's motion seeking to reform and resuscitate the discharged judgment, to recharacterize the funds held in court as funds that had been paid to Heritage Restoration prior to the Judgment, and, based on this procedural and legal revisionism, disbursed the held funds to Heritage Restoration. This was reversible error, and this Court should reverse the Trial Court and remand this matter with direction that the Trial Court order Heritage Restoration to refund to the court registry and with further order that those funds be disbursed to the Radabaughs or, alternatively to grant the Radabaughs a judgment against Heritage Restoration for the liquidated amount of the funds wrongfully disbursed to Heritage.

SUBMITTED this 8th day of September, 2014.

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Attorney for Appellants Radabaugh

CERTIFICATE OF SERVICE

I certify that on the date signed below, I caused the foregoing document to be filed with this Court, and served upon Respondent's attorney via legal messenger.

DECLARED UNDER PENALTY OF PERJURY ACCORDING TO
THE LAWS OF THE STATE OF WASHINGTON.

Dated this 8th day of September, 2014, in Olympia, Washington.

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