

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Supreme Court No. 93823-7

(Court of Appeals Division I, No. 73956-5-1)

**FILED**  
E NOV 14 2016  
WASHINGTON STATE  
SUPREME COURT

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Shanghai Commercial Bank Limited,

*Respondent,*

v.

Kung Da Chang and Michelle Chen,

*Petitioners.*

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PETITION FOR REVIEW BY  
THE WASHINGTON STATE SUPREME COURT

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STATE OF WASHINGTON  
COURT OF APPEALS DIVISION I  
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## I. INTRODUCTION AND IDENTITY OF PETITIONERS

Petitioners Kung Da (“KD”) Chang and Michelle Chen seek review of a Court of Appeals decision affirming that their community property may be used to satisfy a 2011 judgment Shanghai Commercial Bank Limited (“SCB”) obtained in Hong Kong solely against KD Chang and recognized in Washington.

This matter presents an issue of first impression regarding whether Washington caselaw governs whether or not a foreign judgment obtained solely against one spouse is a community obligation or if the Uniform Foreign-Country Money Judgments Recognition Act, RCW 6.40A, *et seq*, requires a conflicts-of-law analysis to determine if Washington law or the foreign law governs the issue.

In 2011, SCB obtained a \$9 Million judgment against KD Chang in Hong Kong. Neither Michelle Chen nor the marital community were named in the Hong Kong lawsuit or the judgment. SCB subsequently filed a petition for recognition of the Hong Kong judgment in Washington under the Uniform Foreign-Country Money Judgments Recognition Act, RCW 6.40A, *et seq*. Following a motion for summary judgment, the trial court entered an order recognizing the Hong Kong judgment and entered a Washington judgment against KD Chang.

SCB then filed a second motion for summary judgment

seeking to use KD Chang and Michelle Chen's community property to satisfy the Washington judgment against KD Chang. The trial court ruled that Hong Kong law, not Washington law, applied in determining whether or not KD Chang and Michelle Chen's community property could be used to satisfy the judgment. The Court of Appeals affirmed, ruling that under a conflicts-of-law analysis, Hong Kong law applied and that all but Michelle Chen's separate property could be used to satisfy the judgment.

## **II. COURT OF APPEALS DECISION**

Petitioner seeks review of the decision filed by Division I of the Court of Appeals on September 12, 2016, affirming the Superior Court's order granting summary judgment in favor of Respondent. A copy of the decision is included in the Appendix.

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

1. Whether the Court of Appeals decision raises issue of substantial public interest.

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

### **A. FACTUAL BACKGROUND.**

Clark Chang is the 97-year-old father of Petitioner KD Chang. In 2004, Clark Chang, who was into his late-80s at the time, transferred his financial accounts with Respondent SCB in New York to SCB in Hong Kong. Clark Chang's SCB Hong Kong

accounts were maintained in KD Chang's name because he trusted that KD Chang would distribute the funds fairly between himself and his siblings should Clark Chang pass away. When Clark Chang's SCB Hong Kong accounts were opened, the value of his account portfolio exceeded \$20 Million.<sup>1</sup>

Although the SCB accounts were maintained in KD Chang's name, Clark Chang was the sole beneficiary of the accounts and the only person authorized to make decisions on the accounts. Clark Chang did not gift the funds to KD Chang and KD Chang had no authority to access the funds in the accounts, unless his father passed away. SCB knew this and Clark Chang's investment advisor at SCB, Daniel Chan, looked solely to Clark Chang for instructions on the account. Daniel Chan only contacted KD Chang when he needed KD Chang's signature.<sup>2</sup>

After Clark Chang's SCB Hong Kong accounts were opened, Daniel Chan began recommending to Clark Chang that he invest in Equity Linked Notes ("ELNs"). Daniel Chan did not inform Clark Chang that ELNs were very high-risk investments and that they were only suitable for sophisticated investors. Daniel Chan also recommended that Clark Chang invest in a variety of other

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<sup>1</sup> CP 208-209 (Decl. of Clark Chang at ¶¶ 3-4) and CP 288-289 Decl. of KD Chang at ¶ 4).

<sup>2</sup> CP 209 (Decl. of Clark Chang at ¶¶ 3-4) and CP 288-289 Decl. of KD Chang at ¶ 4).

high-risk investments, but again failed to disclose the dangers of those investments. Unaware that the investments were very high-risk and trusting that Daniel Chan would only recommend suitable investments, Clark Chang followed Daniel Chan's advice.<sup>3</sup>

In early-2007, Daniel Chan left SCB to work for the Bank of East Asia ("BEA"). By that time, Daniel Chan had more than \$20 Million of Clark Chang's portfolio at SCB invested in high-risk ELNs. When he left SCB, Daniel Chan asked Clark Chang to transfer his investment portfolio to BEA so that Daniel Chan could continue to manage the portfolio. Clark Chang agreed to follow Daniel Chan to BEA.<sup>4</sup>

After Clark Chang transferred his accounts to BEA, Daniel Chan arranged for Clark Chang to receive lending facilities from BEA. Daniel Chan then recommended that Clark Chang use the funds obtained through the lending facilities to acquire additional ELNs and other high-risk investment products. Just as before, Daniel Chan failed to explain to Clark Chang that this was an extremely high-risk proposal that could result in huge losses and expose Clark Chang to massive liabilities. Unaware of the dangers, Clark Chang agreed to take out lending facilities through BEA and to allow Daniel Chan to use the funds to acquire additional

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<sup>3</sup> CP 209 (Decl. of Clark Chang at ¶ 3-4). See also CP 314-319 at ¶¶ 25-41.

<sup>4</sup> CP 209 (Decl. of Clark Chang at ¶ 6-7). See also CP 319-322 at ¶¶ 42-55.

investments for Clark Chang's portfolio.<sup>5</sup>

During the next year, Daniel Chan used more than \$15 Million in funds obtained through BEA lending facilities to acquire high-risk investments for Clark Chang's portfolio. At the same time, many of these high-risk investments were failing and Clark Chang's overall portfolio was suffering significant losses.<sup>6</sup>

In March 2008, Daniel Chan informed Clark Chang that he would be leaving BEA and returning to SCB. Clark Chang was unaware that his portfolio had suffered millions of dollars in losses and he did not know the extent Daniel Chan had used BEA lending facilities to acquire high-risk investments in his portfolio. So, Clark Chang again agreed keep Daniel Chan as his investment advisor and to transfer his accounts back to SCB.<sup>7</sup>

Unbeknownst to Clark Chang, BEA would only allow Clark Chang's account portfolio to be transferred over to SCB if Clark Chang repaid the \$15 Million in loans obtained through BEA lending facilities. Therefore, Daniel Chan arranged a \$16 Million credit lending facility for Clark Chang through SCB, which Daniel Chan then used to repay the BEA lending facilities. The value of

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<sup>5</sup> CP 209 (Decl. of Clark Chang at ¶ 7). See also CP 321-322 at ¶¶ 47-55 and CP 324-326 at ¶¶ 59-67.

<sup>6</sup> CP 210 (Decl. of Clark Chang at ¶ 8, and 10-11). See also CP 330-333 at ¶¶ 80-90.

<sup>7</sup> CP 210 (Decl. of Clark Chang at ¶ 8, and 10-11). See also CP 330-333 at ¶¶ 80-90.



Clark Chang's portfolio would be used as collateral for the SCB lending facility. At the time of the repayment to BEA, Clark Chang's portfolio was worth several million dollars less than what Daniel Chan told Clark Chang it was worth and the actual value barely covered the SCB lending facility.<sup>8</sup>

Clark Chang's new accounts at SCB were again maintained in KD Chang's name. The SCB credit facility was also in KD Chang's name. Around March 14, 2008, SCB sent the credit facility agreement (the "Facility Letter") and four other agreements to KD Chang at his father's address in Shanghai. Clark Chang called KD Chang and informed KD Chang that he was sending the documents to him in Seattle and that KD needed to sign the documents and return them to him as soon as possible. KD Chang received the documents, signed them, and then mailed them back to his father in Shanghai.<sup>9</sup>

In October 2008, Daniel Chan contacted Clark Chang and informed Clark Chang that he needed to transfer funds into his account at BEA because of a shortfall. The "shortfall" was, in fact, a \$2 million margin call by BEA. Daniel Chan did not inform Clark Chang what had caused the shortfall in Clark Chang's BEA account. Clark Chang informed Daniel Chan that he did not have

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<sup>8</sup> CP 210 (Decl. of Clark Chang at ¶¶ 10-11)

<sup>9</sup> CP 210 (Decl. of Clark Chang at ¶ 9) and CP 289 (Decl. of KD Chang at ¶ 5.

the funds to pay BEA.<sup>10</sup>

Later that same October, Daniel Chan informed Clark Chang that now SCB was requesting additional collateral to secure his accounts. Clark Chang then realized that Daniel Chan had been misleading him about his investment accounts and he refused to provide SCB with further collateral.<sup>11</sup>

On or about November 5, 2008, SCB's counsel in Hong Kong contacted KD Chang and Clark Chang via letter demanding repayment of the SCB lending facility. The demand letter to Clark Chang stated, "We act for Shanghai Commercial Bank Limited with whom you maintain an account in the name of Kung Da Chang, but which you are the principal and you at all times operated the accounts as an authorized signatory".<sup>12</sup> At the time, Clark Chang's SCB portfolio had a negative account value exceeding \$5 million. The portfolio continued to decline in value over the next couple of months.<sup>13</sup>

#### 1. The Hong Kong Lawsuits.

On March 21, 2009, SCB instituted Hong Kong High Court Action 806/2009 ("HCA 806") against Clark Chang and KD Chang

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<sup>10</sup> CP 210 (Decl. of Clark Chang at ¶ 12). See also CP 338-340 at 113-123.

<sup>11</sup> CP 210-211 (Decl. of Clark Chang at ¶ 13). See also CP 338-340 at 113-123.

<sup>12</sup> CP 211 and 214-215 (Decl. of Clark Chang at ¶ 14 and Clark Chang Exhibit 1) and CP 289 (Decl. of KD Chang at ¶ 6). See also CP 340-341 at ¶¶ 124-125.

<sup>13</sup> CP 211 (Decl. of Clark Chang at ¶ 15). See also CP 338-343 at ¶¶ 113-137.

for breach of the Facility Letter.<sup>14</sup> On September 24, 2009, KD Chang filed his Defence and Counterclaim to HCA 806 and later filed an Amended Defence and Counterclaim.<sup>15</sup> On the same date, Clark Chang and KD Chang brought action HCA 1996/2009 (“HCA 1996”) against SCB and BEA based on the fraudulent activities of Daniel Chan while managing Clark Chang’s investment portfolio at SCB and BEA.<sup>16</sup> The claims asserted by Clark Chang and KD Chang in HCA 1996 were identical to the counterclaims asserted by KD Chang in HCA 806.<sup>17</sup> SCB subsequently amended its claims in HCA 806 to include KD Chang only.<sup>18</sup>

Hong Kong allows defendants to make applications for security for costs, including attorney fees, prior to the verdict against foreign plaintiffs to ensure any judgment in their favor is secure. SCB subsequently filed a motion and obtained an award for security for costs in the amount of \$838,000 cash against Clark Chang and KD Chang to be paid into the Court within 14 days.<sup>19</sup>

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<sup>14</sup> CP 211 (Decl. of Clark Chang at ¶ 16) and CP 289 and 295-304 (Decl. of KD Chang at ¶ 7 and KD Chang Exhibit 1).

<sup>15</sup> CP 211 (Decl. of Clark Chang at ¶ 17) and CP 289 (Decl. of KD Chang at ¶ 8).

<sup>16</sup> CP 211 (Decl. of Clark Chang at ¶ 18) and CP 289-290 (Decl. of KD Chang at ¶ 9).

<sup>17</sup> CP 211 (Decl. of Clark Chang at ¶ 19) and CP 290 (Decl. of KD Chang at ¶ 10).

<sup>18</sup> CP 290 (Decl. of KD Chang at ¶ 11).

<sup>19</sup> CP 290 and 500-514 (Decl. of KD Chang at ¶ 12 and KD Chang Exhibit 5).

Clark Chang and KD Chang were not able to make the \$838,000 cash payment for the security for costs awarded in HCA 1996.<sup>20</sup>

Since Clark Chang and KD Chang were not able to pay the security for costs, the Hong Kong Court issued an order dismissing the claims of KD Chang and Clark Chang in HCA 1996 on June 21, 2011. KD Chang and Clark Chang did not defend SCB's claims against them in HCA 806 and HCA 1996. As a result, on June 28, 2011, SCB obtained two identical \$9 Million judgments on the same set of facts.<sup>21</sup>

## **2. KD Chang and Michelle Chen's Marital Community.**

KD Chang moved to Washington State in 1989 where he was employed by Microsoft for several years.<sup>22</sup> Michelle Chen moved to Washington State in 1993. The following year, KD Chang and Michelle Chen were married. KD Chang and Michelle Chen have resided in Washington since moving to the state.<sup>23</sup>

Michelle Chen was unaware that Clark Chang's SCB and BEA accounts were opened under KD Chang's name. She was also unaware that KD Chang had signed multi-million dollar lending facilities with both BEA and SCB for the benefit of his

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<sup>20</sup> CP 211 (Decl. of Clark Chang at ¶ 20) and CP 290 (Decl. of KD Chang at ¶ 13).

<sup>21</sup> CP 211 (Decl. of Clark Chang at ¶ 20) and CP 290 and 516-523 (Decl. of KD Chang at ¶ 15 and KD Chang Exhibits 6 and 7).

<sup>22</sup> CP 290 (Decl. of KD Chang at ¶ 16).

<sup>23</sup> CP 290 (Decl. of KD Chang at ¶ 17) and CP 206-207 (Decl. of Michelle Chen at ¶ 5).

father. It was not until after SCB filed its lawsuit against Clark Chang and KD Chang that Michelle Chen finally learned of the lending facilities signed by KD Chang. Michelle Chen was not named as a defendant in any of the Hong Kong lawsuits filed by SCB against Clark Chang and KD Chang.<sup>24</sup>

#### **B. Procedural History**

On June 20, 2012, pursuant to RCW 6.40A, *et seq*, SCB filed a Petition for Recognition of and Enforcement of Foreign-Country Judgment (the “Petition”) in King County Superior Court (Case No. 12-2-21293-7 SEA).<sup>25</sup> The Petition sought recognition of the \$9 Million judgment obtained against KD Chang in Hong Kong HCA 806 (the “Hong Kong Judgment”).<sup>26</sup> KD Chang subsequently filed counterclaims against SCB that arose out of the fraudulent activities of SCB employee Daniel Chan while managing KD Chang’s father’s investment portfolios at SCB and at the Bank of East Asia (“BEA”).<sup>27</sup>

On May 10, 2013, SCB filed a motion for summary judgment on the issues of recognition and enforcement of the Hong Kong Judgment against KD Chang and whether or not the Hong Kong

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<sup>24</sup> CP 290 (Decl. of KD Chang at ¶ 18) and CP 207 (Decl. of Michelle Chen at ¶ 6).

<sup>25</sup> CP 1-5.

<sup>26</sup> *Id.*

<sup>27</sup> CP 24-52.

Judgment was enforceable against KD Chang and Michelle Chen's community property. The Court granted summary judgment on the issue of recognition and enforcement of the Hong Kong Judgment against KD Chang's separate property and left the community property issue for further proceedings.<sup>28</sup>

On July 2, 2015, SCB filed a second motion for summary judgment seeking enforcement of the Hong Kong Judgment against KD Chang and Michelle Chen's marital community property in Washington ("SCB's Second Motion for Summary Judgment").<sup>29</sup> SCB argued that Hong Kong law applies to enforcement of the Hong Kong Judgment and that, because Hong Kong is a non-community property jurisdiction, KD Chang and Michelle Chen's community property in Washington is subject to the Hong Kong Judgment. KD Chang and Michelle Chen argued that Washington law applies and that the Hong Kong Judgment is KD Chang's separate debt, unenforceable against the marital community.<sup>30</sup> The trial court determined Hong Kong law applied and granted SCB's Second Motion for Summary Judgment.<sup>31</sup>

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<sup>28</sup> KD Chang appealed the trial court's order granting summary judgment. The appellate court affirmed the trial court's order and KD Chang subsequently filed a petition for review with the Washington State Supreme Court, which was denied. KD Chang then filed a petition for writ of certiorari with the United States Supreme Court, which was also denied.

<sup>29</sup> CP 53-74.

<sup>30</sup> CP 184-205.

<sup>31</sup> CP 532-534.

KD Chang and Michelle Chen filed a motion to reconsider the trial court's order granting SCB's Second Motion for Summary Judgment, which the trial court subsequently denied.<sup>32</sup>

The Court of Appeals affirmed the trial court's order granting summary judgment on the community property issue, finding that Hong Kong applied and that KD Chang and Michelle Chen's community property may be used to satisfy the judgment.

## V. ARGUMENT

### A. Considerations for Granting Review.

The decision of the Court of Appeals raises significant issues of great public interest under RAP 13.4(b)(4) as discussed hereafter.

#### 1. **The Court of Appeals decision raises issues of substantial public interest.**

The Court of Appeals decision subjects the marital community property of KD Chang and Michelle Chen to collection for the enforcement of the Hong Kong Judgment obtained solely against KD Chang and subsequently recognized in Washington as a judgment solely against KD Chang. Despite the fact that Michelle Chen and the marital community were not parties to the underlying contract, parties to the Hong Kong proceedings, or named in the

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<sup>32</sup> CP 535-538 and 539.

Hong Kong Judgment, the Court of Appeals determined that Hong Kong law applies to the community property issue.

In this case, SCB originally sued KD Chang in Hong Kong for breach of the Facility Letter and obtained a Hong Kong judgment against him for \$9 Million. SCB then sought recognition of that Judgment in Washington under the Uniform Foreign-Country Money Judgments Recognition Act, RCW 6.40A, *et seq.* Rather than applying Washington law, as mandated by RCW 6.40A.060, to determine the scope the Judgment is enforceable with respect to KD Chang and Michelle Chen's marital community property, the Court of Appeals engaged in a conflict-of-law analysis to resolve the community property issue.

Relying on three Washington cases, Potlatch, Pacific States, and Pacific Gamble, the Court of Appeals determined that RCW 6.40A.060 required the court to engage in a conflicts-of-law analysis.<sup>33</sup> However, unlike this case, the three cases cited by the Court of Appeals did not involve enforcement of a foreign judgment. Each of those cases have the same fundamental difference from the case at hand, the husband and wife and their marital communities were sued in Washington on the original underlying

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<sup>33</sup> Appendix 1 at 6-12.



claim and the plaintiffs sought judgments against the marital communities. The Potlatch, Pacific States, and Pacific Gamble courts engaged in a conflicts-of-law analysis to determine if the marital community was liable on the original underlying claim.<sup>34</sup>

As noted above, though, SCB's underlying claim against KD Chang was already reduced to a Hong Kong Judgment and then SCB sought enforcement of that judgment in Washington. "Matters relating to the enforcement of judgments are governed by the law of the forum".<sup>35</sup> Therefore, Washington law must be applied to determine whether or not KD Chang and Michelle Chen's marital community property may be used to satisfy the Hong Kong Judgment. Under Washington law, a debt incurred by one spouse is presumptively a community obligation, but the presumption is rebuttable.<sup>36</sup>

Even if applicable, in its conflicts-of-law analysis, the Court of Appeals erroneously looked at the underlying transaction to determine that Hong Kong law applied. Under the "merger

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<sup>34</sup> Pacific States Cut Stone Co. v. Goble, 70 Wn.2d 907, 425 P.2d 631 (1967); Pac. Gamble Robinson Co. v. Lapp, 95 Wn.2d 341, 622 P.2d 850 (1980); Potlatch No. 1 Fed. Credit Union v. Kennedy, 76 Wn.2d 806, 459 P.2d 32 (1969).

<sup>35</sup> Huntington Nat. Bank v. Sproul, 116 N.M. 254, 258, 861 P.2d 935 (1993) (citing 46 Am.Jur.2d *Judgments* § 897 (1969)).

<sup>36</sup> Merritt v. Newkirk, 155 Wash. 517 (1930) (the presumption that a judgment is presumably a community obligation is rebuttable when the basis of the original judgment arises from a clearly separate obligation).

doctrine”, when a claim is reduced to a final money judgment, the original underlying claim merges into the judgment and the claim is extinguished.<sup>37</sup> The judgment creditor can then no longer maintain an action on the original claim and, instead, has a new cause of action on the judgment.<sup>38</sup> The underlying claim is irrelevant to an inquiry into enforceability.

In this case, the conflict of law is the extent community property may be used to satisfy a judgment obtained solely against one spouse. The applicable law is decided by determining which jurisdiction has the "most significant relationship" to the particular issue where the conflict exists.<sup>39</sup> As set forth in KD Chang and Michelle Chen’s Opening Brief, Washington law has the most significant relationship to the community property issue.

As such, this Court’s determination as to whether or not Washington law applies to the enforcement of a foreign judgment against one spouse on the community property issue or if RCW 6.40A.060 requires a conflicts-of-law analysis presents an issue of substantial public interest to spouses whose community property is

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<sup>37</sup> Caine & Weiner v. Barker, 42 Wn. App. 835, 837, 713 P.2d 1133 (1986). Woodcraft Constr. v. Hamilton, 56 Wn. App. 885, 888 (1990). See also Restatement (Second) of Judgments, § 18.

<sup>38</sup> Caine & Weiner v. Barker, 42 Wn. App. 835, 837, 713 P.2d 1133 (1986).

<sup>39</sup> Seizer v. Sessions, 132 Wn.2d at 648-650 (citing Pacific Gamble Robinson Co., 95 Wn.2d at 344-45).

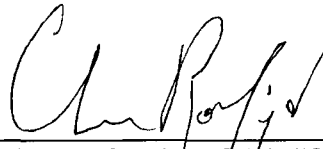
at stake for the separate debt of the other spouse and to creditors alike. A determination that Washington law applies to the enforcement of foreign judgments solely against one spouse provides certainty as to the extent of enforcement, while a conflicts-of-law analysis leaves the determination in the hands of the courts.

## VI. CONCLUSION

This case presents an issue of first impression and the opportunity for the Court to provide certainty in the enforcement of foreign judgments in Washington that were obtained solely against one spouse in another state or foreign country.

Respectfully submitted this 12<sup>th</sup> day of October, 2016.

ROSFJORD LAW PLLC



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Chris Rosfjord, WSBA #37668  
Attorney for Petitioners KD Chang and  
Michelle Chen

**APPENDIX TABLE OF CONTENTS**

Appendix 1. Court of Appeals Decision - Case No. 73596-5-I

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

SHANGHAI COMMERCIAL BANK	)	No. 73956-5-1
LIMITED, a banking corporation	)	
organized and existing under the	)	DIVISION ONE
Laws of Hong Kong Special	)	
Administrative Region, the People's	)	
Republic of China,	)	PUBLISHED OPINION
	)	
Respondents,	)	
	)	
v.	)	
	)	
KUNG DA CHANG and "JANE DOE"	)	
CHANG, husband and wife, and	)	
the marital community comprised	)	
thereof,	)	
	)	
Appellants.	)	FILED: September 12, 2016
_____		

LEACH, J. — Kung Da Chang and Michelle Chen appeal a trial court order allowing Shanghai Commercial Bank (Bank) to enforce a Hong Kong trial court judgment against their marital community. By statute, the Hong Kong judgment can be enforced to the same extent as a judgment rendered in Washington.<sup>1</sup> Thus, we apply the same conflict of laws principles used by Washington courts to determine the reach of a Washington judgment based on a debt one spouse incurred outside the state. Because Hong Kong has the most significant

<sup>1</sup> RCW 6.40A.020(1).

No. 73956-5-1/2

relationship with the underlying transaction, we apply Hong Kong law, which allows the Bank to collect its judgment from Chang and Chen's marital property. Therefore, we affirm.

## FACTS

This is the second appeal arising from the trial court's recognition of a Hong Kong trial court judgment against Chang. This court recounted the facts underlying the Hong Kong action in an unpublished opinion in the first appeal.<sup>2</sup> The only facts relevant here are those bearing on the choice-of-law issue.

Chang signed five documents with Shanghai Commercial Bank in March and April 2008. Those documents together created a credit agreement allowing Chang and his father to borrow money from the Bank. The Bank sent the documents to Chang at his father's Shanghai address. Chang's father mailed them to Chang in Seattle. Chang then signed the documents and returned them to his father in Shanghai.

In Hong Kong Action 806, the Bank obtained a money judgment against Chang for his unpaid debt under the credit agreement.<sup>3</sup>

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<sup>2</sup> Shanghai Commercial Bank Ltd. v. Chang, noted at 183 Wn. App. 1007, 2014 WL 4198391, at \*1-2 (2014), cert. denied, 135 S. Ct. 2847 (2015).

<sup>3</sup> The judgment is a combination of United States dollars, Hong Kong dollars, Japanese yen, interest on those amounts, and costs. Chang states the amount as \$9 million.

Chang and Chen have resided in Washington since before they married in 1994. Chen did not sign any of the five documents and was not aware Chang made the credit agreement. She was not a party to the Hong Kong lawsuit.

In June 2012, the Bank filed a petition under Washington's Uniform Foreign-Country Money Judgments Recognition Act<sup>4</sup> (Uniform Act) asking the King County Superior Court to recognize and enforce the Hong Kong judgment.<sup>5</sup> The trial court granted partial summary judgment recognizing the Hong Kong judgment, and this court affirmed.<sup>6</sup>

In August 2015, the trial court granted the Bank summary judgment on the rest of its request. It determined that Hong Kong law applied and thus allowed the Bank to collect its judgment from Chang and Chen's marital property. It later denied Chang's motion for reconsideration. Chang appeals.<sup>7</sup>

#### STANDARD OF REVIEW

We review the trial court's summary judgment decision de novo.<sup>8</sup> Summary judgment is proper if the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and

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<sup>4</sup> Ch. 6.40A RCW.

<sup>5</sup> See RCW 6.40A.050.

<sup>6</sup> Shanghai Commercial Bank, 2014 WL 4198391, at \*4.

<sup>7</sup> For clarity, we refer to Chang and Chen, in their capacity as appellants, as Chang. We intend no disrespect.

<sup>8</sup> Lahey v. Puget Sound Energy, Inc., 176 Wn.2d 909, 922, 296 P.3d 860 (2013).

that the moving party is entitled to summary judgment as a matter of law.<sup>9</sup> We must draw all reasonable inferences from the evidence in favor of the nonmoving party.<sup>10</sup> We review the denial of a motion for reconsideration for abuse of discretion.<sup>11</sup> Statutory interpretation is a question of law that we review de novo.<sup>12</sup>

### ANALYSIS

When one spouse, acting alone, incurs a debt, collection presents two distinct questions: What is the character of the debt, separate or community, and what property is available to satisfy it?<sup>13</sup> A debt characterized as separate can nonetheless be enforced against community property in some circumstances.<sup>14</sup>

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<sup>9</sup> Lakey, 176 Wn.2d at 922.

<sup>10</sup> Lakey, 176 Wn.2d at 922.

<sup>11</sup> Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

<sup>12</sup> U.S. Tobacco Sales & Mktg. Co. v. Dep't of Revenue, 96 Wn. App. 932, 938, 982 P.2d 652 (1999).

<sup>13</sup> Haley v. Highland, 142 Wn.2d 135, 147, 12 P.3d 119 (2000).

<sup>14</sup> See Pac. Gamble Robinson Co. v. Lapp, 95 Wn.2d 341, 349-50, 622 P.2d 850 (1980) (separate contract debt enforceable against community where law of state with most significant relationship to transaction would allow enforcement against that particular property); deElche v. Jacobsen, 95 Wn.2d 237, 246, 622 P.2d 835 (1980) (separate tort debt enforceable against community where separate property is insufficient); Komm v. Dep't of Soc. & Health Servs., 23 Wn. App. 593, 599, 597 P.2d 1372 (1979) (judgment against mother for child support enforceable against marital community). But see Colorado Nat'l Bank of Denver v. Merlino, 35 Wn. App. 610, 617, 668 P.2d 1304 (1983) (separate debt in real property transaction not enforceable against community).



This appeal turns on whether the Hong Kong judgment against Chang presents one of those circumstances.

Washington has adopted the Uniform Act. The act provides that Washington courts “shall recognize a foreign-country judgment” for money damages that is “final, conclusive, and enforceable” where rendered, unless one or more of the mandatory or discretionary grounds for nonrecognition applies.<sup>15</sup> This court held in the first appeal that the Hong Kong judgment is recognizable and enforceable in Washington.<sup>16</sup>

Under the Uniform Act, Chang may assert any defenses against enforcement of the Hong Kong judgment that he could assert against a Washington judgment. RCW 6.40A.060(2) provides that a recognized “foreign-country judgment is . . . [e]nforceable in the same manner and to the same extent as a judgment rendered in this state.” The legislature included RCW 6.40A.060(2) in the 2009 legislation adopting the updated Uniform Act. The drafters of that model legislation explained in their comments that, “once recognized, the foreign-country judgment has the same effect and is subject to the same procedures, defenses and proceedings . . . of a comparable court in

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<sup>15</sup> RCW 6.40A.020(1), .030.

<sup>16</sup> Shanghai Commercial Bank, 2014 WL 4198391, at \*4.

the forum state, and can be enforced or satisfied in the same manner as such a judgment of the forum state.”<sup>17</sup>

When a spouse is not a party in a Washington lawsuit, that spouse can choose to wait and intervene at the time of execution to prove that the judgment cannot be collected from the marital community.<sup>18</sup> When this happens, the court looks to the facts supporting the judgment to determine its reach.<sup>19</sup> For this reason, we reject Chang’s claim that the facts supporting the Hong Kong judgment merged in the judgment and cannot be considered when deciding if it can be collected from the marital community.

To decide the reach of the Hong Kong judgment, we must examine the underlying facts, as we would for a judgment rendered in Washington. Here, Chang claims that because he did not incur the debt for the benefit of his marital community, the Bank cannot enforce that debt against the community’s assets.<sup>20</sup> But Chang skips a step in the correct analysis. When a Washington court bases its judgment on a debt one spouse incurred outside the state, Washington courts

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<sup>17</sup> UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 7 cmt. 3, 13 pt. 2 U.L.A. 39 (Supp. 2016). This court views official comments on uniform laws as persuasive authority. See Townsend v. Quadrant Corp., 153 Wn. App. 870, 879, 224 P.3d 818 (2009), aff’d on other grounds, 173 Wn.2d 451, 268 P.3d 917 (2012).

<sup>18</sup> Komm, 23 Wn. App. at 599.

<sup>19</sup> Komm, 23 Wn. App. at 599-600; see also Merritt v. Newkirk, 155 Wash. 517, 523-24, 285 P. 442 (1930).

<sup>20</sup> See Oil Heat Co. of Port Angeles, Inc. v. Sweeney, 26 Wn. App. 351, 355, 613 P.2d 169 (1980).

use a conflict of laws analysis to decide what law to apply to decide if the judgment can be collected from that spouse's marital community.<sup>21</sup> As required by RCW 6.40A.060(2), we use the same conflict of laws analysis to decide whether the Hong Kong judgment can be enforced against his and Chen's marital community.

Our conflict of laws analysis asks which jurisdiction "has the most significant relationship to the transaction and the parties under" seven principles:<sup>22</sup>

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,

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<sup>21</sup> See Pac. Gamble, 95 Wn.2d at 344; Pac. States Cut Stone Co. v. Goble, 70 Wn.2d 907, 908-09, 425 P.2d 631 (1967); Potlatch No. 1 Fed. Credit Union v. Kennedy, 76 Wn.2d 806, 808, 459 P.2d 32 (1969) (all applying conflict of laws analysis to determine whether to enforce a Washington judgment against community property); see also Colorado Nat'l Bank of Denver, 35 Wn. App. at 617 (indicating that if liability incurred in Colorado were for unsecured promissory note instead of real property agreement, it would be presumptively enforceable against the Washington community).

<sup>22</sup> RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 188(1) (AM. LAW INST. 1971), quoted in Mulcahy v. Farmers Ins. Co. of Wash., 152 Wn.2d 92, 100, 95 P.3d 313 (2004); Pac. States, 70 Wn.2d at 909; Potlatch, 76 Wn.2d at 813. This analysis applies both when determining whether the judgment is enforceable, which has already been decided in this case, and in deciding what property is available to satisfy the judgment, as we do here. Writing in dissent in Pacific Gamble, Justice Horowitz drew a distinction between these questions, but our courts' decisions have not. 95 Wn.2d at 351 (Horowitz, J., dissenting).

- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the law to be applied.<sup>[23]</sup>

When applying these principles, Washington courts consider five types of contact: the places of contracting, negotiation, and performance; the location of the subject matter of the contract; and “the domicil, residence, nationality, place of incorporation and place of business of the parties.”<sup>24</sup> We evaluate these contacts “according to their relative importance with respect to the particular issue.”<sup>25</sup>

Here, weighing these factors “according to their relative importance with respect to the particular issue”<sup>26</sup> of what property is available to pay the Bank’s judgment, we find that Hong Kong law has the most significant relationship to the enforcement of the Hong Kong judgment.

We look to the underlying transaction in performing this analysis.<sup>27</sup> The places of contracting, negotiation, and performance and the location of the

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<sup>23</sup> RESTATEMENT § 6(2). This test applies equally to the laws of a foreign country as to the laws of another state. Untersteiner v. Untersteiner, 32 Wn. App. 859, 862, 650 P.2d 256 (1982).

<sup>24</sup> RESTATEMENT § 188(2), quoted in Mulcahy, 152 Wn.2d at 101.

<sup>25</sup> RESTATEMENT § 188(2), quoted in Mulcahy, 152 Wn.2d at 101.

<sup>26</sup> RESTATEMENT § 188(2), quoted in Mulcahy, 152 Wn.2d at 101.

<sup>27</sup> See Pac. Gamble, 95 Wn.2d at 346 (“[T]hese contacts are guidelines indicating where the interests of particular states may touch the transaction.” (quoting Potlatch, 76 Wn.2d at 810)).

subject matter of the contract all favor Hong Kong.<sup>28</sup> And in light of these contacts, the justified expectations of the parties and the policies of Hong Kong and Washington indicate that Hong Kong has the most significant relationship to the issue here.

The parties' reasonable expectations favor Hong Kong law. Chang asserts that Washington residents have a reasonable expectation that Washington law will apply to enforcement of contracts they sign. But Chang knew he was dealing with a Bank in Shanghai and that the documents included Hong Kong choice-of-law provisions. Conversely, the record contains no indication that the Bank knew it was dealing with Washington residents; the documents Chang signed were all addressed to his father's residence in Shanghai and he returned them to his father, not the Bank, after signing. Chang's father and his advisors used the borrowed money in Hong Kong to pay debt incurred there and having no connection to Washington.

The relative interests and policies of Washington and Hong Kong also favor Hong Kong. Chang asserts that Washington's policy is to shield community property from collection for a judgment arising from one spouse's debt obligations. "Washington has a general interest in protection of marital communities from the entirely separate debts of one spouse."<sup>29</sup> But the Supreme

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<sup>28</sup> As the Bank concedes, the residence of the parties "is a wash."

<sup>29</sup> Pac. Gamble, 95 Wn.2d at 347.

Court identified limitations of that interest. In Pacific Gamble Robinson Co. v. Lapp,<sup>30</sup> the court noted that the “state has no policy interest in” being “a sanctuary for fleeing debtors.” Washington thus lacks a strong public policy of protecting marital communities from the separate debts of one spouse. Although Chang and Chen are not “fleeing debtors,” the Supreme Court’s observation applies similarly when a debtor spouse lacks separate property and seeks to avoid all liability for a foreign debt by using this state’s community property law.<sup>31</sup>

On the other hand, Hong Kong, like Colorado in Pacific Gamble, has interests in “ensur[ing] the predictability of business relations” and preventing debtors from avoiding liability with the protection of foreign laws—at least when their foreign residency is unknown to the other party and the agreement requires the application of Hong Kong law.<sup>32</sup> We note that Washington also has a strong economic interest in preserving foreign trade relations,<sup>33</sup> an area where the enforcement of foreign-made contracts necessarily plays a substantial role.

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<sup>30</sup> 95 Wn.2d 341, 347, 622 P.2d 850 (1980).

<sup>31</sup> See Pac. Gamble, 95 Wn.2d at 347; see also deElche, 95 Wn.2d at 246 (community liable for separate tort debts where separate property is insufficient).

<sup>32</sup> Pac. Gamble, 95 Wn.2d at 347; see also Potlatch, 76 Wn.2d at 813.

<sup>33</sup> See Jon Talton, State Would Lose If We Turn Against Trade, SEATTLE TIMES, June 11, 2016, <http://www.seattletimes.com/business/state-would-lose-if-we-turn-against-trade/> [<https://perma.cc/K8WQ-454M>] (“Washington is the nation’s highest exporter per capita and one in three jobs are directly or indirectly tied to trade.”).

Weighing the competing policies of Washington and Hong Kong, the justified expectations of Chang, Chen, and the Bank, and the five types of contacts, we conclude that Hong Kong has the most significant relationship to the issue here.

Hong Kong law about the scope of collection presents an issue of "fact" that the trial court decided.<sup>34</sup> The Bank introduced expert testimony that Hong Kong law allows the judgment to be collected from property that, in Washington, would belong to Chang and Chen's community. Chang did not introduce contrary evidence and does not contest that his and Chen's community property would be subject to the judgment if Hong Kong law applies.

Applying Hong Kong law, then, we find that the same property that would be subject to payment of the judgment in Hong Kong, including Chang and Chen's community property, is subject to payment of the debt in Washington to the same extent, even if the property is characterized as "community" under Washington law.<sup>35</sup> Summary judgment for the Bank was therefore appropriate. We affirm.

Because we affirm the trial court judgment by applying Washington conflict of law principles, we do not decide if Chang, through the credit agreement's

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<sup>34</sup> See Byrne v. Cooper, 11 Wn. App. 549, 553-54, 523 P.2d 1216 (1974).

<sup>35</sup> See Pac. Gamble, 95 Wn.2d at 349-50.

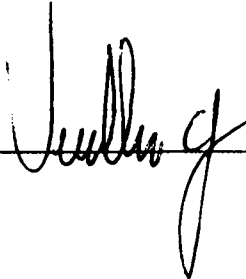
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choice-of-law provision, could bind Chen to Hong Kong law without her knowledge.

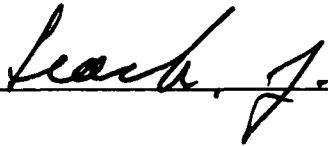
CONCLUSION

Because Hong Kong law has the most significant relationship to Chang's agreement with the Bank, and Hong Kong law allows collection of the judgment from property that, in Washington, belongs to Chang and Chen's marital community, we affirm.

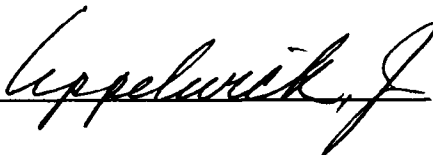
WE CONCUR:



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