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**THE SUPREME COURT OF THE STATE OF WASHINGTON**

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SPARK NETWORKS, PLC,

Respondent,

v.

WILL KNEDLIK,

Appellant,

and

ANNA GIOVANNINI,

Appellant.

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2010 JAN 29 AM 11:21

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**APPELLANTS' REPLY BRIEF**

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## I. INTRODUCTION

Opening briefs filed in this appeal demonstrate the factual-and-legal *bollix* yielded both by repeated disregard for structures explicitly designed for “Enforcement of judgments” in this state pursuant to Title 6, Revised Code of Washington, following our state Legislature’s 99-page omnibus enactment to recalibrate previous statutory constructs through Chapter 442, Laws of 1987, in response to notice as to questionable constitutional status of earlier legislation for fulfilling minimum obligations owed to this state’s citizens to guarantee core due process rights and central property interests, under the U.S. Constitution, as the U.S. Supreme Court identified through *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975), and also by judicial impositions of *fiat* substitutions for mandatory policies of this state thus legislated by the policymaking branch of state government.

While dimensions of the factual-and-legal jumble now before this Honorable Court have been extended appreciably by repeated overreaching by Respondent Spark Networks PLC and while enormous harm so imposed has been exacerbated greatly by repeated sidestepping of mandatory statutory obligations – as documented by prior briefing and more fully below – the complete reach of such circumventions and the entire measure of such peril devolve, ultimately, from neglect for mandatory policies being piled, one upon another, into a resulting barrier against constitutional protections.

As a consequence of serial actions and of resulting circumstances – due to repeated disregard for mandatory statutory requirements for lawful “Enforcement of judgments” in this state through Title 6 – not only have federal constitutionally protected due process rights and property interests been violated, but the chain of judicial impositions of *fiat* substitutions for mandatory policies of this state has thereby precluded development of key factual-and-legal bases dispositive of Appellant Anna Giovannini’s constitutional rights, as a mortgagee initially, and as a mortgagee-in-possession currently, including indisputable matters of public record in respect to her payments of taxes, on the mortgaged property at issue herein, so as to have thus created liens legally **unextinguishable** under the decisional law of the Washington State Supreme Court, and likewise dispositive of Appellant Will Knedlik’s constitutional rights as a mortgagor pursuant to continuing mortgagor-mortgagee relations under the applicable controlling state law.

As outlined hereinafter, not only has Respondent Spark specifically recognized the indisputable facts of Appellant Giovannini’s payments of state taxes on real estate at issue herein through its counsel, but documents it placed before this Honorable Court, in its own designation of the record, evidence both its recognition of and also its reliance on such payments, in open court, in order to prevail below, and thereby establish the law-of-the-case herein requiring reversals of both of two summary judgments below.

## II. DISCUSSION

The decisional law of this state dispositive herein is both entirely straightforward, and also wholly clear, and its application to factual-and-legal circumstances of this appeal requires reversals, as a matter of law, of the trial court's entries both of a summary judgment for Respondent Spark and also of a partial summary judgment against Appellant Giovannini.

In particular, as the Opening Brief of Appellants documents at page 27 to page 30, our state Supreme Court simply could not be more explicit in determining that Appellant Giovannini holds an **unextinguishable** tax lien documented both through submissions to the trial court, in her sworn testimony pursuant to her statutory Affidavit of Ownership (CP 7) and in documentation of property-tax payments evidenced on the record (CP 189-199), and also as matters of public record, subject to judicial notice, under circumstances of this case demonstrating her large **unextinguishable** lien.

Indeed, the Washington State Supreme Court's decisions demonstrate, repeatedly, that more-than-\$150,000 in state property taxes paid on and for the real estate at issue herein by Appellant Giovannini from 1995 to 2008 – in order thereby to protect her first-lien position therein – are by law **unextinguishable**, upon an absolute basis, due to the state's own lien.

As the Court stated in *Childs v. Smith*, 51 Wash. 457 (1909), at 461: “When appellant made the [tax and assessment] payments, he was

equitably subrogated to the rights and liens held by the county and state.” One year later, in *Childs v. Smith*, 58 Wash. 148 (1910), based on citations to earlier decisions involving mortgagees who prevented “the paramount lien of the taxes from destroying the value” of real estate (at 149), the high court specified that “[s]uch liens are not like liens which may be barred by time, or where the statute may be tolled to the prejudice of the owner of the land” (at 150), noting that “[i]f the taxes had not been paid by the lien claimants in this case, the land would no doubt have been lost to respondents long ago by delinquent tax foreclosure” (151), as is the exact case in this appeal, with King County’s tax foreclosure action clearly evidencing that situation, herein, until Appellant Giovannini paid \$35,354 to end King County’s foreclosure action, in 2000, not just as a matter of valid judicial logic, as expressed exactly 100 years ago, but as a matter of actual foreclosure litigation thus factually documented precisely one decade heretofore.

Further, for well over a century, that court has instructed that in the circumstances of this appeal – with payments of over \$150,000 in state property taxes having created equitable subrogation of all governmental tax liens in favor of Appellant Giovannini – “before the plaintiff can maintain this action, he must pay or tender the amount of the taxes paid by defendants, with legal interest from the time of payment,” *Denman v. Steinbach*, 29 Wash. 179, 184 (1902), as a condition precedent before Respon-

dent Spark could commence its actions below so as to interplead Appellant Giovannini, with failure to comply with this long-standing obligation as to her subrogated rights thus appearing to be legally fatal, *sui generis*, and further creating a legal situation wherein she, as the mortgagee, is entitled to have had the trial court act “to ascertain the amount of the general taxes, and assessments not barred, with [all applicable] interest thereon from the respective dates of payment, to decree the appellant an equitable lien on the land therefore, to enter a judgment foreclosing the same, and to award him [or her] an order of sale to enforce payment” as the law of this state for more than a century now. *Childs v. Smith*, 51 Wash. 457, 462 (1909).

While details with regard to Department 30’s obligations in these matters and their implementations as one-or-more conditions precedent do not appear to be fully defined by the decisional law of this state, as noted by the Opening Brief of Appellants at page 29, doubt simply cannot exist that the trial court could not grant a full summary judgment to Respondent Spark, was required to grant partial summary judgment to Appellant Giovannini at least for all property taxes paid on the real estate at issue and for interest thereon at the statutory rate, and thus entered *ultra vires* orders that constitute abuse of discretion (especially given presumptions operating in favor of nonmoving parties in circumstances of every summary judgment).

Thus, the trial court must be reversed at least as to tax payments.

Supreme Court decisions have also repeatedly indicated that failure by trial courts to provide for equitable subrogation of tax liens is reversible error, as stated in *Hemen v. Rinehart*, 45 Wash. 1, 8 (1906), wherein reversal therein was explicitly indicated as being made upon that specific basis.

Again, however, decisional law does not appear to have indicated precisely **how** trial courts are to establish tax reimbursements, as a precondition, and exactly **how** interest applies at the legal rate as *Denman* states, and this appeal affords opportunity for this Honorable Court to clarify said *lacunae* in the course of reversing patent errors below as to these matters.

Equally important and likewise dispositive, the fact of payments of property taxes by Appellant Giovannini, on real estate at issue herein, year after year – pursuant to her specific contractual right to pay such taxes and to make other advances to preserve property interests at issue herein, at her sole option, under terms of the note and deed of trust in standard form that create the first-lien position that she purchased from a third party – is likely the best evidence possible of ongoing mortgagor-mortgagee relations that, thereby, tolled a running of applicable statutes of limitation, year by year, under likewise long-established law of this state with respect to mortgages.

In particular, well over a full century ago, this state’s high court squarely determined “[c]oncerning the statute of limitations,” based on its direct reliance on Judge Leonard “Jones, in his valuable treatise on Mort-

gages, that, so long as the relation of mortgagor and mortgagee exists, the statute does not commence to run in favor of either the mortgagor or the mortgagee,” *Krutz v. Gardner*, 25 Wash. 396, 402 (1901), as the case here.

Neither legally nor logically can any reasonable arguments suggest that annual payments of property taxes made pursuant to contractual rights squarely established by mortgage documents, in standard form, authorizing tax payments do not evidence, *sui generis*, ongoing mortgagor-mortgagee relations so extended, year by year, through those property taxes thus paid, particularly since our state Supreme Court has been completely explicit in stating that such payments of property taxes create **unextinguishable** liens with every tax payment by a mortgagee on behalf of his or her mortgagor.

This best evidence of ongoing relations between a mortgagor and a mortgagee herein documents the impossibility for all statutes of limitation applicable to the mortgage at issue herein to have expired, as a matter of law, at any time prior to the point at which Appellant Giovannini initially exercised her right to become a mortgagee-in-possession, began to make her personal residence in the real estate at issue herein, thereafter moved her voting registration to her thus-established personal residence there, on April 3, 2006, and later started voting from that location, repeatedly, as is documentable again as matters of public record, subject to judicial notice, but for failures to conform trial court acts with specific Title 6 obligations.

While mortgagee-in-possession status by Appellant Giovannini in the real estate as issue herein, since no-later-than-April 3, 2006, so defeats Respondent Spark's assertions that all statutes of limitation expired in an additional respect, factually and legally, the primary error of the trial court devolves from its failures to accept dispositive law of this state applicable to the facts in evidence before the court (notwithstanding Department 30's refusal to hear her oral argument and submissions thereby, as to matters of public record, squarely evidencing ongoing mortgagor-mortgagee relations both through facts of public record, *sui generis*, and also through ordinary inferences deriving therefrom in her favor to a defeat summary judgment prosecuted against her in order to extinguish her **nonextinguishable** lien).

Of central importance for proper dispositions of this appeal – as to both Department 30's denial of Appellant Giovannini's motion for partial summary judgment to establish validity of her first-lien and other junior priorities, as superior to Judgment Creditor's much-inferior lien position, and also its granting of that creditor's motion for full summary judgment – is long-established state law as to mortgages, as to mortgagor-mortgagee relations and as to mortgagees-in-possession, as well as to the indisputable fact that **no** statute-of-limitation bar arises, under the circumstances herein, due to judicially stated mortgage law of this state respecting her first-lien position, her junior-lien priorities or her liens for all property taxes and any

assessment arising from her payment of them from 1995 to 2008, including but not limited to her payment of \$35,354 in order to prevent litigation by King County from foreclosing on real estate at issue for taxes, in 2000, as is indicated by copies of pleadings and of her \$35,354 check (CP 189-199).

Especially significant for proper resolution of this appeal – given Respondent Spark’s averments of a statute-of-limitation bar on Appellant Giovannini’s first-lien position of public record as to its creation and as to its repeated defenses through payment of property taxes, purchases of two large junior liens both superior to its much-inferior judgment position and other affirmative actions – is the well-established law of this state squarely on point, under the explicit jurisprudence of our state for more than a full century, contrary to its assertions of a disqualifying legal bar from repose.

The starting point for the core error of Department 30, in accepting Respondent Spark’s self-serving distortions of the statute-of-limitation bar asserted as applicable to the first-lien position at issue herein, is that such misstatements of fact and of law ignore the legal impacts on repose within this state when relations between Appellant Giovannini, as mortgagee, and Appellant Knedlik, as mortgagor, are indisputably continuing, which such sidestepping of the core fact of those circumstances in view below was not only done inaccurately, and rather flagrantly so contrary to a central, long-established precept of mortgage law in this state, but these falsified claims

by Respondent Spark were made as a complete stranger to the contractual mortgagor-mortgagee relationship ongoing between said parties, *i.e.* were made falsely by a self-interested creditor of one contracting party with no rights in or to more-than-\$1 million in cash advanced as loans made by the other contracting party from early 1995 to this date (and, therefore, with no legitimate interest therein under explicit black letter law here, with no other interest of any kind as to the mortgage at issue except its *modus operandi* in order to seek unjust enrichment at the expense of mortgagee, and with no act to repay **unextinguishable** property tax liens with statutory interest).

As noted above, the state Supreme Court has explicitly held for a full century, “[c]oncerning the statute of limitations,” that, “so long as the relation of mortgagor and mortgagee exists, the statute does not commence to run in favor of either the mortgagor or the mortgagee” (*Krutz* at 402).

In fact and in law, statutes of repose cannot be construed otherwise, since to do so, as the trial court nominally did upon reconsideration, would interpret the statute so as not only to interfere with contractual relations of parties, as to extensions of credit and as to acceptances of credit under contracts in the form of mortgages, but to distort statutes of repose to violate, thereby, the contract clauses of federal-and-state constitutions prohibiting interference through any state law having the legal effect of “impairing the Obligation of Contracts” under the U.S. Constitution, Article I, section 10.

In *Bode v. Rhodes*, 119 Wash. 98, 100 (1922), our state Supreme Court squarely determined that “[a]s long as the legal title remains in the mortgagor the relation of mortgagor and mortgagee exists and the mortgagee can safely deal with the original mortgagor.” In *Hess v. State Bank of Goldendale*, 130 Wash. 147, 153 (1924), the state’s high court identified a conflict between this repose standard and its earlier decision in *Raymond v. Bales*, 26 Wash. 493 (1901), and it then “elect[ed] to follow the doctrine of the *Bode* case, *supra*, to the effect that ‘as long as the legal title remains in the mortgagor the relation of mortgagor and mortgagee exists and the mortgagee can safely deal with the original mortgagor,’ and to overrule its opinion in *Raymond v. Bales, supra*” [capitalization change by the court].

In addition, while no reasonable doubt could exist as to this appeal that no applicable statute of limitation has begun to run as to real estate at issue herein, due to the mortgagor-and-mortgagee relations continued by each tax payment, our state Supreme Court has established with quotation from an Idaho case, in *Cordiner v. Dear*, 55 Wash. 479, 486 (1909), that:

"It is also the well-settled rule of courts that when there is doubt as to the time when the limitation commences to run, that construction should be given which is most favorable to the enforcement of the common-law rights of the citizen."

This backstop position thus precludes strangers to contractual transactions from the type of self-serving interference with contractual rights and other related expectations, in a mortgage, occurring herein for fully two years.

Further, the first lien at issue herein remains legally in effect not simply due to well-established state law that ongoing mortgagee-mortgagor relations toll repose statutes, nor merely due to also-patent case law that so “long as the legal title remains in the mortgagor the relation of mortgagor and mortgagee exists and the mortgagee can safely deal with the original mortgagor,” but also because of this Division’s clear statement that even the actual running of a “statute of limitations bars the remedy but does not extinguish the debt,” *Jordan v. Bergsma*, 63 Wn.App. 825, 828 (1992).

Still further, the deed of trust at issue here, as set out within CP 44 to 54, was originally compelled judicially by Hon. Warren Chan as a specific “additional property award [that] is and shall be deemed to be a judgment for owelty or lien in partition” (Decree of Dissolution signed on December 7, 1990 in King County Cause No. 88-3-04362-4 at page 3), and this decree of partition thus granted as a separate property award constitutes a permanent judicial partition nonextinguishable legally until paid.

State Supreme Court decisions also specify that when ordinary mortgagees become mortgagees-in-possession as Appellant did in the circumstances of this case – and did, in fact and in law, well before she first heard either of Respondent Spark or of its out-of-state judgment – then the “principle involved was decided adversely to [Judgment Creditor’s] contention in *Kurtz v. Gardner*, 25 Wash. 396, where it was held that, as long

as the relation of mortgagor and mortgagee exist, the statute does not commence to run in favor of either the mortgagor or the mortgagee,” *Catlin v. Murray*, 37 Wash. 164, 166 (1905), as litigation in which an individual, “the testimony shows, was placed in possession as mortgagee, and there having been no foreclosure, the action was not barred by the statute of limitations, and judgment is affirmed” (*Ibid*) years beyond the normal bar.

While *Catlin* does not make clear the precise circumstances or chronology as to establishment of debtor-in-possession status, evidence before Department 30 documents mortgagor’s explicit consent to debtor-in-possession status for mortgagee, on her demand, at any time after mid September, 1996 (as set forth in CP 14 to 20), as did later occur herein.

Furthermore, the mortgage at issue is in standard form and thus provides for mortgagee to make subsequent advances, as her prerogative, and her sworn statements in her Affidavit of Ownership and in her other declarations on her oath before Department 30 document her property-tax payments from 1995 to 2008, as do receipts for tax payments (CP 189-96), along with other monies advanced for insurance on and maintenance of the real estate at issue herein; and each such advance likewise further tolls the purported running of any-and-all applicable statutes of limitation, herein, again as the best evidence possible for ongoing mortgagor-mortgagee relation documented by actual advances of monies under terms of the contract.

Nor do crucial facts and law applicable to Appellant Giovannini's payments of property taxes on the real estate at issue herein end with her sworn testimony through her Affidavit of Ownership and with her formal submission of proof of tax payments to the trial court – as each documents thereby her absolute legal rights to be “equitably subrogated to the rights and liens held by the county and state” and therefore legally to obtain the state's **unextinguishable** sovereign tax lien – since Respondent Spark has also squarely recognized the indisputable facts of Appellant Giovannini's payments of those taxes on real estate at issue herein through its counsel.

Indeed, documents before this Honorable Court herein pursuant to its own designation of the record evidence both its recognition of and also its reliance upon such payments, in open court, in order to prevail below.

In particular, the report of proceedings presented to this Honorable Court by Respondent Spark documents its counsel's then-prevailing claim:

MR. EHRLICHMAN: When we listen to the words that she speaks, that she truly believes and understands that Mr. Knedlik owns this property. For example, “I paid his taxes. I paid his insurance. I have liens against it.” These are all words that are consistent with somebody who is not claiming ownership of the real property, but instead is claiming something else. (CP 459)

Likewise, this open-court claim evidences both ongoing relations between a mortgagor and a mortgagee, and also specific reliance by mortgagee on her liens as has been her explicit right since decisions in *Bode* and in *Hess*.

In fact and in law, such recognition and said reliance in order so to prevail became the law-of-the-case, effectively and that thus-established effective law-of-the-case requires, in turn, reversal of subsequent summary judgments below because in-court statements of counsel bind Respondent Spark as to the dispositive effect of such acknowledgements as so made to the trial court pursuant to a cardinal rule of litigation, under the common law, that parties are bound by the conduct of their legal counsel, especially when speaking on their client's behalf, in open court, as established by the U.S. Supreme Court in *Oscanyan v. Arms Co.*, 103 U.S. 261, 263 (1880).<sup>1</sup>

With Respondent Spark engaged in similar dodging around this key legal issue, in its opening brief, as documented by its counsel's open-court statement to the trial court respecting property taxes quoted *supra*, obligations of RAP 10.3(c) require focus on its refusal to deal with core issues of black letter state law dispositive of nominal summary judgments below and on its substitution of deceptive attacks as to purportedly inconsistent statements made by Appellant Anna Giovannini as was required by black letter bankruptcy law (as analyzed by her Opening Brief at page 37 to page 43).

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<sup>1</sup>While this cardinal precept has applied in all American courts, for at least 130 years, law-of-the-case practices of individual states involve subsets of the principle that define elements of, but not the totality for, the doctrine. Given inchoate, protean and somewhat confusing outlines of "law of the case" in and for this state, as stated for example by our state Supreme Court in *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 113 (1992), the overarching 1880 precept is relied on, here, rather than law-of-the-case *per se*. Extended analysis of the precept is provided in *U.S. v. McKeon*, 738 F.2d 26 (1984).

This *modus operandi*, based on sleight of hand, is consistent with, but milder than, Respondent Spark's outright misrepresentations made to the trial court in several key regards in order to capitalize, below, on overreaching and on sidestepping of mandatory statutory obligations imposed by Title 6, including preparations of an order intended to and successfully able to prevent exercise of constitutionally protected due process rights, and of another directly contrary to its knowledge of Appellant Giovannini's purchase of a \$212,969 judgment lien superior to its very junior lien.

Respondent Spark's abuse of the trial court and of Appellant Giovannini, in the former, and its actual fraud on the trial court and on Appellant Giovannini, in the latter, are documented in papers presented here by its own designation of the record, including at CP 459 and at CP 350-353.

In particular, the "Order Denying Giovannini's Motion for 'Probable Validity' Finding Under RCW 6.19.030(2)" prepared by Respondent Spark for the trial court's signature, in Department 51, proposes to bootstrap results of that single-purpose hearing, statutorily designed as highly summary, in order to insulate results as granted by the court – in a form not authorized by requirements of the statute's mandatory terms – so as totally to preclude "the question of ownership" being raised as to quintessential actions for lawful "Enforcement of judgments" in this state, under Title 6, after and notwithstanding her right by statute to a jury trial on this issue,

which she had then requested in her sworn Affidavit on February 4, 2008 (wherein she had directly stated that “I demand a trial by jury as provided by RCW 6.32.270” as identified in CP at 11), and it prevented due process.

While Department 51 modified the order proposed by Respondent Spark, crossing out “~~are hereafter barred from raising~~ the question of ownership,” the trial court nonetheless directed that “This ruling is binding on Will Knedlik and Anna Giovannini with respect to the question of ownership” in pivotal proceedings and failed to authorize the requested jury trial, which effectively destroyed due process rights as to valuable property interests as owner both in first-lien position through a court-imposed owelty and mortgage and also in the state’s **unextinguishable** sovereign tax lien, and which requires this Honorable Court to reverse its summary judgment.

Adverse legal effects of this overreaching and sidestepping of Title 6’s mandates continue to this day as reflected in its Opening Brief herein.

In further particular demonstrating Respondent Spark’s irrefutable fraud on the trial court and on Appellant Giovannini, the “Order Granting Judgment Creditor’s Motion for Summary Judgment, and Judgment Regarding Anna Giovannini’s Claimed Security Interests Pursuant to RCW 6.32.270” prepared by Respondent Spark for the trial court’s signature, in Department 30, proposes “certain findings of fact” including as follows:

165. Giovannini failed to pay the filing fee required by law to extend the Skagit Valley Judgment, Judgment No. 94-9-18037-7, within

ninety days prior to the date of lapse pursuant to RCW 6.17.020. (CP 171)

This claim was made falsely to the trial court, despite Respondent Spark's counsel having been previously provided with documentation of the Order Extending Judgment through a filing made under the Clerk's file number 74 (SCP \_\_\_ - \_\_\_), and Department 30 refused to amend the Order after another copy of that Order Extending was refiled in documentation of the falsity of the nominal finding through timely motion made for the trial court to reconsider its erroneous summary judgment below (CP 140-143).

While the trial court was clearly defrauded as to this matter, as documented by the only amendment to the proposed order below being alteration of "165" to "165" (with initials), it nonetheless thus abused discretion by failing to correct an order so presented to it, through documented fraud.

Further, Respondent Spark's sleight-of-hand continues as to this issue in briefing herein by asserting that RCW 6.17.020, establishing a filing fee without time of payment being specified, voids an Order Extending Judgment signed by the trial court (with no citation to judicial authority).

Still further, Respondent Spark boldly distorts what it terms "Giovannini's attempt to make a new argument in her motion for reconsideration claiming a tax lien" (at its page 2), after the trial court prevented at a summary judgment hearing identifications of her tax liens in the court re-

cord extending back to her initial Affidavit of Ownership (at CP 6-7), of public record subject to judicial notice, and as relied on by Respondent Spark's counsel in open court (quoted at page 14 *supra*), even though it is obvious that a trial court cannot afford all inferences operating in favor of the nonmoving party on a summary judgment motion if it refuses to listen.

Equally misleading is Respondent Spark's bald claim that a statute granting an additional right for the "record owner of real estate [who] may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate" pursuant to Chapter 124, Laws of 1937, thus voids validity of a purportedly "common law rule" earlier (as its full response to one case among the long-established law cited as to this state's decisional jurisprudence as to ongoing mortgagor-mortgagee relations in application as to other statutory provisions involved, therein, not just "common law").<sup>2</sup>

Respondent Spark's extended spinning out of theories of purported harm to the judiciary in fact fails to meet any of three criteria identified for judicial estoppel (at its page 20), particularly since Appellant Giovannini's Chapter 13 bankruptcy petition was not in any way benefitted and her one creditor was not harmed since her filing squarely identified substantially

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<sup>2</sup>Respondent Sparks gives even shorter shrift to indisputable facts as to Appellant Giovannini's current status as a mortgagee-in-possession, given her residence and voting registration in the real estate at issue from April, 2006, even though this fact is explanatory as to a purported conflict which it avers to constitute dueling theories as to her rights in and to the real estate at issue, *i.e.* since it explains her initial interests as a mortgagee and her later rights as mortgagee-in-possession. Indeed, its briefing is wholly silent thereon.

more assets than liabilities, and since it was shortly withdrawn after she so paid that one creditor in full (a pivotal fact that its spinning fails to notice, and that is indisputably misleading, since it creates, out of whole cloth and directly contrary to facts known from the Chapter 13 petition, a falsehood whereby “presumably they would have been subject to possible use by a bankruptcy court or trustee to satisfy her outstanding debts,” and whereby she could take advantage in bankruptcy court by disclaiming assets, at its page 22, rather than filing her petition properly as she was legally advised by a bankruptcy specialist, Warren Erickson, who represented her therein).

Most absurd is equitable subordination urged for Appellant Giovannini’s **unextinguishable** tax lien and for her first mortgage for misconduct while its counsel is repeatedly overreaching and sidestepping Title 6.<sup>3</sup>

With the quintessential fact of Appellant Giovannini’s payment of at least \$150,000 in property taxes both in the record and also a matter of public record subject to judicial notice, with decisional law of this state patent that her payments of property taxes are **unextinguishable** because of her acquisition of the state’s own “paramount” tax liens by an equitable subrogation thereby, and with long-established law explicit that as long as “legal title remains in the mortgagor [as Respondent Spark’s counsel insists to be a fact in his open-court statement quoted *supra* at page 14] the

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<sup>3</sup>Respondent Spark’s technical arguments about appealability for the writ of assistance appears to prove appealability in major concessions made within its arguments otherwise.

relation of mortgagor and mortgagee exists and the mortgagee can safely deal with the original mortgagor,” *inter alia*, questions must arise as to **how** summary judgments could have been entered below without abuse of discretion and **why** legally dispositive facts were disregarded repeatedly?

In fact, discretion has been abused, below, but standards for review of summary judgment, statutory interpretation and constitutional analysis are each *de novo* under authority as cited in the Opening Brief, previously, and thus less demanding than abuse of discretion or an intermediate level.

However, what is more important than standards for review herein is **how** and **why** our state Legislature’s 99-page omnibus enactment to recalibrate prior statutory constructs in 1987 – in response to notice of questionable constitutional status of earlier legislation for meeting minimum obligations owed to this state’s citizens to guarantee key due process rights and central property interests – was disregarded and **how** and **why** neglect of mandatory state law for “Enforcement of judgments,” under Title 6, has yielded not just *Bleak House* problems of concern to our state’s high court in *TCAP Corp. v. Gerwin*, 163 Wn.2d 645 (2008), but implications of true bumbling processes thereby providing support for Mr. Bumble’s infamous assertion, in *Oliver Twist*, that “the law is a ass—a idiot” (at Chapter 51).

Thus, circuit breakers established by our state’s policymakers in order to ensure constitutionally protected due process rights and property

interests were disregarded so as not only to prevent enjoyment of constitutional protections, but also to suppress statutorily granted opportunities for orderly development of facts to give the lie to frauds on the trial court and on Appellant Giovannini documented from court files and from matters of public record, herein, as disdained repeatedly by *fiat* substitutions for law.

From Department 51's *fiat* substitution for Title 6 requirements, in "binding on Will Knedlik and Anna Giovannini with respect to the question of ownership" in pivotal proceedings, and in failing to allow the jury trial as statutorily authorized and as formally requested (so as, effectively, to destroy due process rights as to valuable property interests), to Division I's endorsement of *fiat* substitutions for mandatory statutory structures for lawful "Enforcement of judgments" through Title 6 (so as, effectively, to preserve such destruction), through Department 30's reliance on previous abuses as foundations for refusing to recognize **unextinguishable** state tax liens and for making a finding of fact patently contrary to court records (so as, effectively, to complete prior destruction of constitutional guarantees).<sup>4</sup>

This appeal also documents the undeniable reality that Respondent Spark's in fact knew the legally dispositive factual information and, in law

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<sup>4</sup>While Department 51 erred in failing to conform to Title 6's direct requirements as explicitly mandated by our state's policymakers through Chapter 442, Laws of 1987, he neither refused to conduct hearings nor to hear oral arguments by Appellant Giovannini, as mortgagee and as mortgagee-in-possession, and by Appellant Knedlik, as mortgagor, either altogether or else effectively, as did Division 1 and Department 30 respectively.

alternated between relying on those legally dispositive facts (so as to make them the effective law-of-the-case herein) and riding roughshod over them (so as to document submissions below violating Civil Rule 11 obligations).

Substitution of a single-purpose outcome of a highly summary proceeding not intended to develop evidentiary information fully, pursuant to RCW 6.19.030, for ordinary development of evidence, pursuant to the jury right provided for by RCW 6.32.270, yields a poisoned fruit from the thus-judicially-enfeebled tree corruptive of everything, growing from it, which therefore requires reversals of both nominal summary judgments below.

### **III. CONCLUSION**

The core issues that define this appeal are both simple, and also straightforward, if Title 6's explicit-and-mandatory "shall" usages, and if its fully systematic statutory structure thus made out as this state's public policies by those words of the Legislature, are respected by state courts.

If the judiciary ignores repeated "shall" mandates and the resulting statutory structure established by our state's policymakers, then the *Bleak House* consequences will extend misfeasance by law court judges and by chancellors implicated by our state Supreme Court's recent unanimity, as to Title 6, in thus framing *TCAP Corp. v. Gerwin*, 163 Wn.2d 645 (2008).

Obviously, when required participation in a statutorily mandated summary "probable validity" hearing authorized for very limited purposes,

pursuant to RCW 6.19.030, is distorted in order nominally to cut off every substantive property interest without the trial and jury-trial rights provided statutorily by Title 6, then disregard, defiance or other misapplication as to statutory “shall” obligations raises distortions beyond failure as to comity, between co-equal branches of government, to actual constitutional defects.

This outcome is especially unacceptable after the 50<sup>th</sup> Legislature extensively restructured Title 6 – after preliminary work by several earlier Legislatures starting substantially with that of the 45<sup>th</sup> Legislature in 1977 – in order to ensure that rights, interests and other claims of debtors, creditors and other parties are balanced, including those of persons such as Appellant Giovannini with proprietary interests in properties through title, legal or equitable ownership, or possession, to be established by a full trial.

Unhappily, these distortions are what occurred in the trial court below, both due to disregard for central terms of Title 6 established by the state Legislature and also due to substitution of actions entirely contrary to squarely stated public policies, each in consequence of disregard for black letter law as to derogation of common law by statutory enactment, for fundamental rules of statutory interpretation, and for likewise basic matters.

Simply stated, Title 6’s fully systematic structure designed so as to ensure constitutional, orderly and prompt procedures for resolution of disputes as to “Enforcement of judgments” – both in a timely fashion and

also consistently with all due process and other constitutional rights of the owners of property subject to such judicial actions in this state – has been rendered unconstitutional, disorderly and delayed due to our state’s public policies being ignored at the urgings of an overreaching junior creditor in possession of a foreign judgment which cannot sustain judicial scrutiny, either herein or on remand, as applicable pursuant to RCW 6.36.025(1), and as identified by the court in *TCAP* by quotation therein (in its note 5).

Thus, such distortions require remand by this Honorable Court, together with instructions to ensure compliance with explicit statutory and long-standing decisional law, if not resolvable by the court directly herein.

In addition, judicial disregard for explicit terms of Title 6 have in turn yielded fertile soil for prevention of factual and legal development of evidence necessary for proper resolution of Appellant Giovannini’s costly and valuable rights, as mortgagee initially and as mortgagee in possession today, including but not limited to **unextinguishable** sovereign tax liens.

Hence, the trial court must be reversed due to ongoing relations between mortgagor and mortgagee and on other bases documented *supra*.

Dated this 29th day of January, 2010, and

Respectfully submitted,

  
Will Knedlik, Appellant *pro se*

  
Anna Giovannini, Appellant *pro se*

**CERTIFICATE OF SERVICE**

The undersigned Appellant hereby certifies on his oath, through his signature below, that Appellants' Reply Brief in this matter was filed with Division I of the Court of Appeals, on January 29, 2010, and was also delivered to legal counsel for Respondent, Dorsey & Whitney LLP, also on that said day.

DATED this 29<sup>th</sup> day of January, 2010.

  
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Will Knedlik, *Pro Se*

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