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No. 65109-9

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

SQUIRRELS NEST II LLC,

Appellant,

vs.

FISHER BROADCASTING - SEATTLE TV LLC, d/b/a KOMO TV,

Respondent.

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

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I. INTRODUCTION

Plaintiffs¹ acquired King County real property from Kaley in a sale that closed *after* Fisher² obtained a judgment against Kaley in King County Superior Court. Clear and consistent statutes and case law for more than 100 years give Fisher's judgment lien priority over Plaintiffs' later deed. But Plaintiffs, or rather, their title insurance company, contend: (A) that the Supreme Court has silently overruled this priority; and (B) that the statute, as written, violates due process. Neither assertion is correct. In addition, (C) Plaintiffs' agent – their title insurer – had actual knowledge of facts that would lead a reasonable person to inquire further into the status of Fisher's lawsuit against Kaley and so discover Fisher's prior judgment lien. As a result, even under Plaintiffs' theory, Plaintiffs do not qualify for priority. Finally, (D) Plaintiffs' equitable theories cannot overturn Fisher's clear statutory priority, and, in any event, Plaintiffs do not meet the prerequisites for relief under those theories.

¹ Plaintiff Squirrel Nest II LLC, the Appellant here, is the successor in interest to Lionel and Celia Heathcote, who purchased the property from Kaley. CP 183-84. The Heathcotes quitclaimed the Property to their newly created LLC, Squirrels Nest, on July 6, 2009. *Id.*; CP 152-54. Because the distinction between the Heathcotes and Squirrel Nest is immaterial to the issues presented here, "Plaintiffs" will refer to both.

² "Fisher" is Defendant Fisher Broadcasting – Seattle TV LLC, the Respondent here.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Issue Pertaining to Appellant's Assignment of Error # 1:

For over 100 years, Washington statutes and cases have decreed that a judgment lien is effective upon entry of judgment in the Superior Court of the county where the judgment debtor's real property is located. In *Sablefish*,³ the Washington Supreme Court held that a judgment lien is not a real property conveyance and therefore is not subject to the recording requirements that apply to conveyances; the judgment itself provides constructive notice of the lien. When the Washington Supreme Court later ruled in *Ellingsen*⁴ that conveyances must be recorded to impart constructive notice, did it silently overrule *Sablefish* and reverse longstanding Washington law that judgment lien priority commences as soon as the judgment is filed?

B. Issue Pertaining to Appellant's Assignment of Error # 2:

When Fisher's judgment was entered and became a lien on Kaley's King County real property, Plaintiffs had no legal interest in the property. Due process entitles a person who holds a legally protected property interest to actual notice of a proceeding that might be adversely affected that interest.

³ *Intermediate Credit Bank of Spokane v. Sablefish*, 111 Wn.2d 219, 758 P.2d 494 (1988)

⁴ *Ellingsen v. Franklin County*, 117 Wn.2d 24, 810 P.2d 910 (1991)

Does the doctrine that entry of judgment in the Superior Court imparts constructive notice of the resulting judgment lien violate due process as to parties who acquire their interest in the lien property after the lien has commenced?

**C. Issue Providing Alternative Ground to Affirm
Notwithstanding Appellant's Assignments of Error # 1 and # 2:**

A purchaser has constructive notice of all facts that a reasonable person would inquire about given the facts actually known. Old Republic National Title Insurance ("ORT") was hired to investigate and insure title for Plaintiffs. ORT had actual knowledge of the Fisher lawsuit that should have led it to inquire further and discover Fisher's judgment lien before Plaintiffs' purchase closed. In light of ORT's actual knowledge, did the trial court err in granting Fisher's judgment lien priority over Plaintiffs' subsequent purchase?

**D. Issues Pertaining to Appellant's Assignments of Error # 3
and # 4:**

Should the court overturn Fisher's statutory judgment lien priority for the benefit of ORT based on equitable principles where: the statutory priority of judgment liens on property within the same county is well known and longstanding, ORT was hired to investigate and insure title, ORT searched the county court records and obtained actual knowledge of Fisher's

pending lawsuit, but ORT did not inquire whether judgment had been entered before Plaintiffs' purchase closed?

III. RESTATEMENT OF THE CASE

A. Fisher Obtained a Valid Judgment Against Kaley on January 26, 2009.

Fisher sued Kaley because Kaley failed to perform a residential remodel offered by KOMO-TV as a contest prize on a local television show, *Northwest Afternoon*. See CP 23-25. An Issaquah grandmother who was raising two disabled grandchildren won the prize. Kaley contracted with Fisher to remodel her home. But Kaley's work was so shoddy that he left the home in worse condition than before, and broke the furnace. Fisher stepped in to help the grandmother, bought her a new furnace, had the home repaired, and then sued Kaley to recoup its losses ("the Fisher Lawsuit"). *Id.*

Fisher filed the Fisher Lawsuit in King County Superior Court on December 11, 2008 and personally served it on December 15, 2008. CP 23, 33-34. Kaley did not appear or defend the case. CP 34. Fisher obtained judgment by default ("the Judgment" or "the Kaley Judgment") on January 26, 2009. CP 30-35. The Judgment was filed with the King County Superior Court clerk that same day. CP 30, 37, 40.

B. Plaintiffs' Purchase of the Property Closed on January 28, 2009.

Plaintiffs bought an investment condo located in King County (“the Property” or “the Kaley Property”) from Kaley on January 28, 2009. CP 43.⁵ ORT was hired to investigate and insure Plaintiffs’ title. CP 115-44. ORT was paid \$758.84. CP 128.⁶ ORT insured the Plaintiffs’ title against “Covered Risks if the event creating the risk exists of the Policy Date.” CP 116. “Covered Risks” included the risk that “Someone else has a lien on Your Title, including a ... judgment,” and “Policy Date,” was defined as “January 28, 2009 at 3:31 p.m.” *Id.*; CP 119.

Before issuing the title insurance policy, ORT searched for litigation against Kaley, presumably to learn whether there were any judgment liens on the Property. CP 130-32. In the course of the search,

⁵ The HUD-1 Settlement Statement is dated January 27, 2009, and prorates taxes as of that date, but the conditions of closing were not fulfilled until at least January 28 when ORT recorded the deed. *See* CP 43-97. The escrow instructions specifically state that recording was “necessary to complete the transaction.” CP 86-87. In any event, whether the transaction closed on the 27th or 28th, there is no dispute that the Kaley Judgment was entered before the transaction closed and Plaintiffs took title to the Kaley Property. CP 156.

⁶ The certified HUD-1 indicates the fee was \$895. CP 96.

ORT learned about the Fisher Lawsuit. CP 132.⁷ This was on January 15, 2009 – thirteen days before the Kaley Judgment. *Id.* Thus, prior to issuing the insurance policy, ORT knew about the Fisher Lawsuit, that it had been filed in King County Superior Court on December 11, 2008, and that attorney Judy Endejan was the attorney of record for Fisher. *Id.* At that time, Kaley had not appeared in the lawsuit, was in default, and under CR 55 could have a judgment entered against him at any time without notice. *See* CP 37.

In the thirteen days that elapsed between January 15, 2009 and January 28, 2009, ORT did not tell Plaintiffs or their realtor about the Kaley Lawsuit. CP 142. Nor is there any evidence that ORT followed up on the status of the Kaley Lawsuit before Plaintiffs' purchase closed.

C. Plaintiffs' Title Insurer, ORT, Steps In.

When Plaintiffs learned about the judgment, they tendered the matter to ORT, which acknowledged coverage and hired attorneys to represent both its interests *and* the Plaintiffs' interests. CP 146-50. This lawsuit was then brought in Plaintiffs' names to quiet title. CP 1-5; *see also* CP 123 (requiring Plaintiffs to allow ORT to bring suit in their name.

⁷ The Fisher Lawsuit was one of four lawsuits against Saeed Kaley pending in King County Superior Court. CP 132.

D. The Trial Court Granted Fisher's Motion for Summary Judgment.

The parties filed cross-motions for summary judgment. On February 23, 2010, the Trial Court granted Fisher's motion for summary judgment and denied Plaintiffs' motion. CP 244-46. The Trial Court ruled (CP 245):

The Defendant Fisher's Motion for Summary Judgment is GRANTED pursuant to CR 56. The Plaintiffs Complaint is DISMISSED WITH PREJUDICE, and pursuant to RCW 4.56.200, Defendant shall be awarded judgment against Plaintiff that its judgment lien against Plaintiff's real property legally described as *Unit 827, Building 8, Laurel Park, a condominium* is valid and enforceable. It is further ordered Plaintiff's Motion for Summary Judgment is Denied.

IV. ARGUMENT

A. Fisher's Judgment Lien on the Kaley Property Took Effect Immediately upon Entry of the Kaley Judgment and Has Priority Over Kaley's Later Conveyance to Plaintiffs.

1. Fisher's Judgment Lien on Kaley's King County Real Property Commenced As Soon As the Kaley Judgment Was Entered in King County Superior Court.

Judgment liens are created by RCW 4.56.190. That statute provides, in pertinent part:

The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy ... any judgment of the ... superior court ... of this state, and every such judgment

shall be a lien thereupon to commence as provided in RCW 4.56.200.

Under RCW 4.56.200, a superior court judgment becomes a lien on the judgment debtor's real property located in the same county as the court that entered the judgment as soon as the judgment is entered:

The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) ... judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof.

And RCW 6.01.020 decrees that for the purpose of the foregoing judgment lien statutes, "a judgment of a superior court is entered when it is delivered to the clerk's office for filing." Thus, Fisher's judgment lien on Kaley's King County real property commenced as soon as the Kaley Judgment was filed with the King County Superior Court clerk – on January 26, 2009.⁸

⁸ RCW 4.56.190 does not apply to exempt property. RCW 6.13.090 requires recording for a judgment lien to commence against the value of homestead property in excess of the homestead. Because Plaintiffs purchased the Kaley Property as an investment, there is no dispute that the Property is not exempt, and RCW 4.56.190-200 controls.

2. Once Commenced, Judgment Liens Have Priority Over Subsequent Conveyances.

For over 100 years, the Washington courts have consistently interpreted the judgment lien statutes to give judgment liens priority over later conveyances of real property subject to the lien. That means that once a superior court judgment is entered, the judgment debtor's property located in the same county cannot be conveyed free of the lien, *regardless of whether the judgment is recorded with the county auditor*. E.g., *Young v. Davis*, 50 Wash. 504, 97 Pac. 506 (1908).

In *Young*, a subsequent purchaser for value contended that he had taken the property without notice of a judicial foreclosure because no lis pendens, no judgment, no certificate of sale, and no sheriff's deed had been recorded with the county auditor. *Id.* at 506. The court disagreed, holding that entry of the judgment was sufficient to impart constructive notice on subsequent purchasers. *Id.* As the court stated (*id.* [emphasis added]):

Since the act of March 3, 1893 ..., a judgment of the superior court has been a lien upon the real property of the judgment debtor in the county where the judgment is rendered *from the date of its entry*, and this being so, it is of course *constructive notice to any one purchasing such real property*.

The Washington Supreme Court reiterated this holding in *Intermediate Credit Bank of Spokane v. Sablefish*, 111 Wn.2d 219, 758

P.2d 494 (1988) (“*Sablefish*”). In *Sablefish*, real property purchasers argued that a judgment lien against their property was invalid because they were not aware of it and their title insurer did not tell them about it. The court rejected this argument, and reaffirmed *Young*. *Id.* at 224. Interpreting RCW 4.56.190-200 in the context of a federal district court judgment entered in the county where the real property was located (which, like a superior court judgment, attaches to real property within the county immediately upon entry), the court held (*id.* at 222-23 [original emphasis omitted; additional emphasis added]):

A judgment lien on real estate is created by RCW 4.56.200 and when entered by a federal district court, commences upon real property in the county where the judgment is entered from the date of entry. ***Such entry serves as constructive notice to purchasers that a judgment lien has attached to a judgment debtor’s property.*** While a judgment may also be separately filed for record in the county auditor’s office, such recording is not necessary for the lien to be effective against purchasers of the property to which a lien has attached.

Like Plaintiffs here, the *Sablefish* purchasers argued that while the judgment lien was effective against the judgment debtor from the time the judgment was entered, the judgment itself did not give constructive notice of the lien to subsequent purchasers for value. *Id.* at 223. The purchasers relied on RCW 65.08.070, which makes an unrecorded conveyance void against subsequent purchasers for value. The *Sablefish* court specifically

rejected that argument, holding that a judgment lien is not a “conveyance.” *Id.* at 225-26. Further, because the judgment lien statutes contain no separate recording requirement to impart constructive notice within the county, the court refused to read a recording requirement into those statutes. *Id.* at 225. Instead, the court held that under RCW 4.56.190-200, “[o]nce a money judgment becomes a lien ..., it is constructive notice to anyone who purchases a judgment debtor’s property.” *Id.* at 227; *accord*, *Hartley v. Liberty Park Assocs.*, 54 Wn. App. 434, 438, 774 P.2d 40 (1989) (judgment lien attached on date divorce decree was filed, and filing “provided constructive notice to any subsequent purchaser or mortgagee”); *see also Shumate v. Ashley*, 46 Wn.2d 156, 157, 278 P.2d 787 (1955) (“The clerk’s file is the court record. It is notice to the world of what it contains and all interested persons have access to it.”); RCW 2.08.030 (“superior courts are courts of record”).

Under *Sablefish*, therefore, the result in this case is crystal clear. As soon as Fisher’s judgment was entered on January 26, 2009, it constituted constructive notice of the judgment lien it created on Kaley’s King County property. Therefore, when Plaintiffs purchased the Property on January 28, 2009, they took subject to that judgment lien. Plaintiffs’ novel and unsupported arguments to the contrary are simply an attempt to avoid the clear priority of Fisher’s judgment lien, which had already

commenced in King County under RCW 4.56.200(1), and so “held and bound” the Kaley Property. RCW 4.56.190. When Plaintiffs later purchased the Property, they took it subject to the lien.

3. *Ellingsen* Did Not Change the Judgment Lien Priority Rules.

Plaintiffs assert that *Ellingsen v. Franklin County*, 117 Wn.2d 24, 810 P.2d 910 (1991) conflicts with *Sablefish* and, as a result, silently overrules it. But *Ellingsen* is not at all inconsistent with *Sablefish*. It did not involve (or even mention) the judgment lien statutes. Rather, in *Ellingsen*, the question was whether “recording and filing” a county road easement with the county engineer imparted constructive notice of the easement, notwithstanding the fact that it had not been recorded with the county auditor. *Id.* at 25.

In *Ellingsen*, an obscure 1908 road easement was tucked away in the Franklin County engineer’s office, but had never been recorded with the county auditor. *Id.* at 25-26. The county contended that “recording and filing” the easement in the county engineer’s office was sufficient to impart constructive notice because a statute provided that it was an “office of record” and required it to maintain such documents. *Id.* at 26. The court held that under RCW 65.08.070 (the statute the *Sablefish* court held does *not* apply to judgment liens), which provides that unrecorded

conveyances are void against subsequent purchasers for value, the plaintiffs took free of the easement. *Id.* at 26, 30. Based on the purpose of the county engineer statute, the lack of any legislative intent that compliance with that statute would impart constructive notice, the existence of a separate statutory notice system, and that system's explicit requirement to record such easements with the county auditor, the court held that compliance with the county engineer statute did not impart constructive notice. *Id.* at 26-30.

None of the factors the court relied on in *Ellingsen* applies here.

First, unlike the easement at issue in *Ellingsen*, there is no separate statutory notice system applicable to judgment liens. On the contrary, *Sablefish* specifically held that RCW 65.08.070, the controlling statute in *Ellingsen*, does *not* apply to judgment liens. As a result, the clear legislative statement in RCW 4.56.200(1) that entry of a judgment immediately creates a judgment lien on real property within the county should prompt a prospective purchase to investigate whether any such judgments exist. In contrast, the requirement of RCW 65.08.070 to record all conveyances with the county auditor means that a prospective purchaser would have no reason to investigate whether an easement, which – unlike a lien – is a conveyance, had been filed or recorded elsewhere.

Second, unlike the county engineer statute in *Ellingsen*, which failed to state that “recording and filing” with the county engineer would have any impact on title, the statutes that apply here – RCW 4.56.190-200 – are specifically aimed at real property encumbrances and priority. RCW 4.56.190 provides that a judgment debtor’s real property shall be “held and bound” from the date the judgment lien commences. And RCW 4.56.200 contains those commencement rules, *none of which involves recording the lien with the county auditor*. All that is required is filing the judgment with the clerk of the county where the debtor’s real property is located. RCW 4.56.200(1), the rule that applies here, provides that the judgment lien commences as soon as the judgment is entered. It does not involve an additional filing in another county to impart constructive notice of the lien because the Kaley Judgment was entered in the county where the Kaley Property is located.

RCW 6.17.020(6) confirms that the legislature intended RCW 4.56.190-200 to govern lien priority without any separate recording or notice requirements; it specifically identifies RCW chapter 4.56 as the statute that governs the “perfection” and “priority” of judgment liens. Thus, as the *Sablefish* court held, the lack of any extra filing requirement in RCW 4.56.200(1) shows that for liens within that subsection, the legislature intended the judgment alone to impart constructive notice of

the judgment lien. The *Ellingsen* court's statements requiring express legislative intent to impart constructive notice from publicly available documents do not undermine *Sablefish*, which *found that intent* in RCW 4.56.200(1).

Moreover, where the Washington Supreme Court has “expressed a clear rule of law,” it “will not – and should not – overrule it sub silentio.” *Lunsford v. Saberhagen Holdings*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009). This court should not, therefore, grant the Plaintiffs’ request that it read *Ellingsen* to silently overrule the *Sablefish* holding that entry of judgment imparts constructive notice of a judgment lien created under RCW 4.56.200(1).

Indeed, in the almost twenty years that have elapsed since *Ellingsen*, no court or other Washington authority has questioned the continued validity of *Sablefish*. On the contrary, it remains hornbook law in Washington that “entry of judgment or other step that commences the judgment lien also has the effect of imparting constructive notice to third parties who deal with the judgment debtor respecting the real property to which the lien attaches.” Rombauer, 28 WASH. PRAC. §7.7 at 89 (1998 ed.); *see also Pumilite v. Cromb Leasing*, 82 Wn. App. 767, 770-71, 919 P.2d 1256 (1996) (relying on *Sablefish* five years after *Ellingsen* to hold that judgments liens commence and impart constructive notice

immediately upon entry, and judgment debtor cannot thereafter transfer property free of the lien).

Under clear and longstanding authority, Fisher's judgment lien on Kaley's King County real property commenced immediately upon entry of the Kaley Judgment. From that day forward, it imparted constructive notice of the lien. As a result, when Plaintiffs acquired the Kaley Property two days later, they took subject to the lien. Neither *Ellingsen*, nor any other Washington authority, casts doubt on that result.

4. The Short TimeFrame Between the Judgment and Plaintiffs' Purchase Is Irrelevant.

Plaintiffs argue that the short window between entry of the Kaley Judgment and Plaintiffs' purchase should defeat Fisher's judgment lien priority. But the judgment lien statutes refute this argument. And the fact that it would have been easier to discover the Kaley Judgment once it was entered on SCOMIS does not mean that it was undiscoverable before that, or that entry of the judgment on SCOMIS or the execution docket was required to establish the lien.

RCW 4.56.200(1) expressly provides that a superior court judgment becomes a lien on real property located in the same county immediately upon entry of the judgment:

The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) ... judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof.

The statute mentions neither SCOMIS, nor the execution docket. On the contrary, the words “entry or filing” refer back to “judgments,” which is the subject of the phrase at issue. And RCW 6.01.020 decrees that for the purpose of the judgment lien statutes,⁹ “a judgment of a superior court is entered when it is *delivered* to the clerk's office for filing.” [Emphasis added]. There is no way to follow this legislative command and at the same time distinguish between judgments that have been entered on SCOMIS or the execution docket and those that have not.¹⁰

Plaintiffs rely on RCW 4.64.020, which requires jury verdicts to be entered on the execution docket, and provides that the priority of any resulting judgment lien relates back to the day after the verdict was so entered. But, in fact, that statute confirms the legislative intent that

⁹ RCW 6.01.020 explicitly refers back to RCW 4.56.190, which provides that a judgment shall be a lien upon the judgment debtor’s real estate, “to commence as provided in RCW 4.56.200.”

¹⁰ Jurisdictions that require some sort of docketing or indexing of a judgment before a judgment lien commences rely on statutes that, unlike Washington’s, explicitly require docketing or indexing as a prerequisite to commencement of the lien. *See, e.g., First American Title Co. v. Howe*, 281 N.W.2d 605, 606 (S. Dak. 1979); *In re Fleishman-Wilson*, 72 B.R. 30, 31 (D. S. C. 1987).

judgment liens are entitled to priority immediately upon entry of the judgment. RCW 4.64.020 provides, in pertinent part:

(1) The clerk on the return of a verdict shall forthwith enter it in the execution docket ...; such entry shall be indexed in the record index and shall conform as near as may be to entries of judgments required to be made in the execution docket.

(2) Beginning at eight o'clock a.m. the day after the entry of a verdict as herein provided, it shall be notice to all the world of the rendition thereof, and any person subsequently acquiring title to or a lien upon the real property of the party or parties against whom the verdict is returned shall be deemed to have acquired such title or lien with notice, and such title or lien shall be subject and inferior to any judgment afterwards entered on the verdict.

Plaintiffs assert that because RCW 4.64.020 includes the statement that entry of the verdict on the execution docket is “notice to all the world” that it has been rendered, the lack of that specific language in the judgment lien statutes means that entry of the judgment does not impart constructive notice, and, therefore, a subsequent purchaser takes free of the judgment. On the contrary, however, the reference in RCW 4.64.020(2) to “any judgment afterwards *entered* on the verdict” corroborates the legislative intent shown in RCW 4.56.200(1), and consistently upheld by the Washington Supreme Court, that once a judgment is entered, the resulting judgment lien has priority from that date. [Emphasis added].

RCW 4.64.020 provides extra protection for judgment creditors whose judgment results from a jury verdict by allowing those liens to date back to the verdict. Rombauer, 28 WASH. PRAC. § 7.6 at 88 (1998 ed.) (“If a judgment is entered on the basis of a verdict, the judgment lien may effectively date back to an earlier time.”). Plaintiffs’ argument perverts this *extra* protection under RCW 4.64.020 into *no* protection for other judgment creditors. But nothing in RCW 4.64.020 undermines the clear directive in the judgment lien statutes that judgment liens commence so as to “hold and bind” the judgment debtor’s real property from the date the judgment is filed with the county clerk of the Superior Court where the property is located. RCW 4.56.190-200. In fact, unlike RCW 4.64.020, which relates to verdicts, RCW 4.64.030, the statute that requires the clerk to enter *judgments* in the execution docket, does *not* make that entry a prerequisite to constructive notice of the judgment. That is because, under clear, longstanding, and consistent Washington law, entry of the judgment itself has already imparted that notice.

Finally, the fact that it would have been easier to discover the Kaley Judgment once it was entered on SCOMIS does not mean that it was undiscoverable before that or that the date the judgment was included in SCOMIS is even relevant. As previously discussed, the Washington Supreme Court has consistently held, for more than 100 years, that entry

of the judgment imparts constructive notice of the judgment lien. While the advent of electronic docketing and information retrieval makes it easier to do a preliminary investigation, it does not preclude any additional investigation necessary to confirm whether a judgment has been entered such that a lien has commenced under RCW 4.56.190-200. “The superior courts are courts of record, and shall be always open, except on nonjudicial days.” RCW 2.08.030; *accord*, Wash. Const., Art. 4, § 11; Wash. Const., Art. 4, § 6, Amend. 87; CR 77(d). There is no evidence that ORT could not have discovered the Kaley Judgment by contacting the King County Superior Court Clerk to inquire about the status of the litigation against Kaley before the sale to Plaintiffs closed.¹¹

Plaintiffs would add to RCW 4.56.190-200 an additional prerequisite to commencement of a judgment lien – that the judgment be available on SCOMIS or entered on the execution docket. But courts may not add words to a statute where the legislature has chosen not to include

¹¹ Plaintiffs submitted evidence that until a judgment is input to SCOMIS, “the public *may not* have access to that information.” CP 187 [emphasis added]. But Plaintiffs have submitted no evidence that ORT even tried to find out whether or not the Fisher Lawsuit had resulted in a judgment against Kaley between January 15, 2009 and the Plaintiffs’ closing date. And the statement that the public “may not” have access implies that even for judgments not yet included in SCOMIS, the public *may* have access to information through nonelectronic means.

them. *E.g., Restaurant Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Nothing in the judgment lien statutes supports Plaintiffs' argument that a judgment lien cannot commence so as to bind the judgment debtor's property until it is available on SCOMIS or indexed into the execution docket. On the contrary, the statutes unambiguously refute that argument.

The legislative direction that a judgment imparts constructive notice of the lien on property within the county is found in RCW 4.56.190, which provides that the judgment debtor's real property is to be "held and bound" to satisfy the judgment from the date it commences, and RCW 4.56.200(1), which provides that the lien commences as soon as the judgment is entered. There is nothing unclear about the judgment lien statutes; they should and do prompt persons of ordinary prudence to search for judgments in the Superior Court of the county where the real property is located. In fact, ORT did just that, and located several lawsuits against Kaley, including the Fisher Lawsuit. CP 132. The problem is that ORT did not follow up on what it found.

The legislature provided clear rules as to the commencement and effect of judgment liens that have been consistently interpreted for over 100 years. Judgment creditors and third parties know or can easily determine when the judgment lien commenced so as to bind the judgment

debtor's property because it is the date that the judgment was entered (or filed with the county clerk of the Superior Court where the property is located). RCW 4.56.190-200. The date is docketed and easily ascertainable. *See, e.g.*, CP 37-41. The date a judgment is input into SCOMIS is not. *Id.* The Plaintiffs' argument would make it *more difficult* to ascertain judgment lien priorities because it would subordinate statutory priority rules to information management systems and title company convenience.¹² Advances in technology and changes in court information management systems do not and should not alter the longstanding judgment lien priority rules set forth in RCW 4.56.190-200, as consistently interpreted by the Washington courts.

B. Imputing Constructive Notice Upon Entry of Judgment Does Not Violate Due Process.

Plaintiffs argue that under the circumstances of this case – where, at the time of Plaintiffs' purchase, the judgment had not yet been entered on the execution docket and was not yet available on SCOMIS – granting Fisher's judgment lien priority over the Plaintiffs' subsequent purchase

¹² ORT's behavior in searching for judgments against Kaley makes it clear that it knew that judgments against the property seller filed in the county where the property is located create judgment liens that affect a subsequent purchaser's title. *See* CP 132. The problem was not lack of notice; it was ORT's failure to follow through on the notice it obtained.

violates due process. Again, Plaintiffs are incorrect. None of the authorities Plaintiffs cite support their due process argument.

The due process cases that Plaintiffs cite hold that a party whose legally protected property interest may be adversely affected by a legal proceeding is entitled to notice reasonably calculated to actually inform the party of the proceeding. *Mullane v. Central Hannover Trust Co.*, 339 U.S. 306 (1950) (service of process by publication is insufficient if reasonable means of providing actual notice – *i.e.*, personal service or mailing – exist); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983) (publication and posting provide insufficient notice of tax sale to record owners of the property). These cases do not assist the Plaintiffs here because: (1) they had no legally protected interest in the Kaley Property when the Kaley Judgment was entered; (2) the Kaley Judgment would not have impaired their property interest if they had one because it attaches only to the judgment debtor's real property; and (3) Fisher would have had no reasonable means to provide actual notice to Plaintiffs because Plaintiffs had no record interest in the Property and were entirely unknown to Fisher.

Property interests are a matter of state substantive law. *E.g.*, *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). The Constitution does not create any particular property rights or priorities. *Id.* Rather, as described

by the U.S. Supreme Court in *Roth*, the parameters of those rights and entitlements are instead left to state law (*id.*):

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state-law rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Thus, the purpose of the due process clause is not to decide whose rights will have priority, or whose claims will succeed and whose will fail. Rather, the due process clause guaranties that a person claiming a legally protected property interest has a forum (such as this lawsuit provides) within which to assert that claim. *Id.* As the *Roth* court stated (*id.*):

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Plaintiffs complain that Washington law cannot constitutionally elevate the “legal fiction” of constructive notice to deprive Plaintiffs of their interest in the Kaley Property. But when the Kaley Judgment was entered, on January 26, 2009, Plaintiffs had no property interest in the Kaley Property at all – their sale had not closed. And by the time the sale

did close, even Plaintiffs admit that *Kaley's* interest in the Property was subject to Fisher's judgment lien. Indeed, the doctrine that Plaintiffs rely on – that a bona fide purchaser of real property for value without notice can acquire a greater property interest than the property's seller had – is no less a “legal fiction” than constructive notice. Whose “legal fiction” prevails is a proper subject of Washington substantive property law; the due process clause has no bearing on the issue.

The notion that imputing constructive notice of a judgment lien from a judgment violates due process is also untenable based on the nature of judgment liens. A judgment creditor's lien attaches only to whatever interest the debtor has in property; the lien does not give the creditor a greater interest than that held by the debtor. *Aberdeen Fed. Sav. & Loan Ass'n v. Empire Manufactured Homes, Inc.*, 36 Wn. App. 81, 84, 672 P.2d 409 (1983), *rev. denied*, 100 Wn.2d 1041 (1984). Because judgment liens do not affect preexisting third-party rights in the property subject to the lien, due process is not required to protect those rights.

Finally, it is not at all arbitrary to give judgment lien creditors priority over subsequent purchasers. Court files and court dockets are easily accessible public documents, whereas real property purchase and sale agreements are voluntary private transactions that do not generate a public record until they close and the deed is recorded. Thus, the only

party in this case who could have discovered the other's interest or potential interest in the Kaley Property in time to avoid this conflict was Plaintiffs. None of the cases cited by Plaintiffs requires actual notice to a party whose property interest has not yet arisen and whose existence is unknown and unknowable. There is no constitutional barrier to granting a judgment lien creditor priority over a subsequent purchaser.

C. **Because Plaintiffs' Agent, ORT, Had Actual Knowledge of the Fisher Lawsuit, Plaintiffs Had Constructive Notice of the Judgment, and Are Not Bona Fide Purchasers.**

Indeed, the facts in this case confirm that imputing constructive notice of the judgment lien upon entry of the judgment makes sense. Plaintiffs hired ORT to investigate and insure title. ORT did so, and learned of the Fisher Lawsuit, apparently as a result of its standard search procedures. The search disclosed that the Fisher Lawsuit had been filed in King County Superior Court on December 11, 2008, and that attorney Judy Endejan was the attorney of record for Fisher. CP 132.

Although ORT did not disclose this information to Plaintiffs or the listing agent, ORT was hired to investigate title, and was Plaintiffs' agent for that purpose. CP 139-40, 184. Indeed, one of the risks specifically covered in Plaintiffs' ORT policy is the risk that "Someone else has a lien on Your Title, including a ... judgment." CP 116. ORT's knowledge in

connection with this subject is therefore imputed to Plaintiffs. *See, e.g., Denaxas v. Sandstone Court*, 148 Wn.2d 654, 666, 63 P.2d 125 (2003) (agent’s knowledge within subject matter of agency is imputed to the principal); *State v. Parada*, 75 Wn. App. 224, 230-31, 877 P.2d 231 (1994) (“Under agency law, notice given to and knowledge acquired by an agent are imputed to its principal as a matter of law.”).

Actual knowledge of facts that would prompt a person of average prudence to make further inquiry is notice of everything such inquiry would have disclosed. *E.g., Miebach v. Colasurdo*, 102 Wn.2d 170, 175-76, 685 P.2d 1074 (1984); *Peterson v. Weist*, 48 Wash. 339, 341, 93 Pac. 519 (1908); *Levien v. Fiala*, 79 Wn. App. 294, 298-99, 902 P.2d 170 (1995).¹³ Here, a simple review of the Fisher Lawsuit would have disclosed that Kaley had not appeared, and was in default. As a result, under CR 55, judgment could be entered against Kaley in the Fisher

¹³ *See also* Garner, Black’s Law Dictionary (9th ed. 2009) at 1164: “**notice** ... A person has notice of a fact or condition if that person (1) has actual knowledge of it; (2) has received information about it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered as having been able to ascertain it by checking an official filing or recording.” “**constructive notice**” is notice “arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of , such as ... a pending lawsuit; notice presumed by law to have been acquired by a person and thus imputed to that person.”

Lawsuit at any time without notice. This should have prompted ORT to make further inquiry as to whether such a judgment had been entered before the Plaintiffs purchased the Kaley Property. Plaintiffs are therefore charged with notice of everything that inquiry would have revealed.

Plaintiffs argue that they are not charged with notice of the Kaley Judgment because it had not yet been entered in SCOMIS when their purchase closed. But ORT clearly knows the rules and risks associated with judgment liens, as reflected in the title insurance policy issued to Plaintiffs. CP 116.¹⁴ And the judgment was entered and filed with the Superior Court clerk before Plaintiffs' purchase closed. ORT could simply have requested an update on the Fisher Lawsuit, which it knew existed, from the Superior Court clerk. *See* RCW 2.08.030 (“superior courts are courts of record, and shall be always open, except on nonjudicial days”); *accord*, Wash. Const., Art. 4, § 11; Wash. Const., Art. 4, § 6, Amend. 87; CR 77(d).

Moreover, constructive notice includes information that would have been revealed by asking appropriate questions. *See, e.g., Miebach v.*

¹⁴ Notably, although the title insurance policy defines “Public Records” as “records that give constructive notice of matters affecting Your Title according to the state statutes where the land is located” (CP 118), it does not limit coverage for judgment liens to those appearing in “Public Records” (CP 116).

Colasurdo, 102 Wn.2d at 177 (subsequent purchaser had constructive notice of defects in sheriff's sale because if he "had made a reasonably diligent inquiry, he would have discovered the Colasurdos were aware of neither the default judgment nor the sheriff's sale."); *Peterson v. Weist*, 48 Wash. at 341 (purchasers did not take free of continuing timber rights in excess of those stated in an earlier deed because they failed to inquire further); *c.f.*, *Cunningham v. Norw. Luth. Church*, 28 Wn.2d 953, 963, 184 P.2d 834 (1947) (owner whose deed did not correctly describe his property might have imparted constructive notice of his claim had he included his name on signs he posted on the property).

Here, the fact that the judgment was not yet on SCOMIS does not mean that ORT could not have discovered it. All ORT had to do was pick up the phone and call Judy Endejan, who it knew was Fisher's counsel of record in the Fisher Lawsuit. In fact, however, Plaintiffs have submitted no evidence that ORT even tried to find out whether or not the Fisher Lawsuit had resulted in a judgment against Kaley between January 15, 2009 and the Plaintiffs' closing date.

ORT's knowledge of the pending Fisher Lawsuit on January 15, 2009 gave it (and therefore Plaintiffs, for whom it investigated and insured title) both constructive notice that a judgment might be entered between that date and closing, and the means to verify whether or not that had

occurred. Therefore, even if Plaintiffs were correct that under the judgment lien statutes entry of the judgment alone did not provide or could not constitutionally provide such constructive notice, ORT's actual knowledge of the Fisher Lawsuit means that Plaintiffs are not bona fide purchasers entitled to take free of the judgment lien.

D. Plaintiffs' Equitable Theories Cannot Overturn Fisher's Clear Statutory Priority.

Equitable principles cannot establish a right to relief in derogation of statutory mandates. *Longview Fibre Co. v. Cowlitz County*, 114 Wn.2d 691, 699, 790 P.2d 149 (1990). In *Longview Fibre*, a taxpayer paid property taxes in two installments, protested the second installment, but failed to protest the first installment, as required under RCW 84.68.020. The Washington Supreme Court held against the taxpayer, ruling that “[w]hile the result we reach today is harsh because Longview Fibre would be entitled to a refund but for its failure to comply with the formal requirements of the protest statute, we will not give relief on equitable grounds in contravention of a statutory requirement.” *Id.* at 699.

Here, as in *Longview Fibre*, Plaintiffs rely on equity to overcome the statutory priority of Fisher's judgment lien. While the statutes are different, the overarching principle is the same as in *Longview Fibre*. The court must follow RCW 4.56.190-200, as it has been interpreted for over

100 years. Plaintiffs' equitable theories cannot avoid Fisher's statutory priority.

Moreover, Plaintiffs do not meet the prerequisites for relief under the equitable theories they rely on.

1. Plaintiffs' Have Failed to Show the Essential Elements Necessary to Support an Unjust Enrichment Claim.

Unjust enrichment is a quasi-contract theory requiring the satisfaction of three essential elements: (1) one party must have conferred a benefit to the other; (2) the party receiving the benefit must have knowledge of that benefit; and (3) the party receiving the benefit must accept or retain the benefit under circumstances that make it inequitable for the receiving party to retain the benefit without paying its value.

v. O'Brien, 150 Wn. App. 24, 36, 206 P.3d 682, *rev. denied*, 167 Wn.2d 1006 (2009). In this case, Fisher has no contractual or quasi-contractual relationship with Plaintiffs. Fisher lawfully obtained a valid money judgment against Kaley. Under RCW 4.56.200 the judgment became a lien against the Kaley Property while the Property was owned by Kaley and before Plaintiffs had any interest in it. Therefore, Fisher's judgment

lien was not a benefit *conferred by Plaintiffs*. The first element of unjust enrichment is not satisfied.¹⁵

The second element – knowledge of the benefit – is not satisfied either. Plaintiffs speculate that had it not been for Plaintiffs’ purchase, Fisher would have received nothing from the Property because there were two prior encumbrances. But Fisher obtained its judgment and judgment lien without any knowledge of Plaintiffs’ impending purchase. In fact, Fisher still does not know what, if any, benefit the Plaintiffs’ purchase conferred. There is no evidence in the record about how much the Property was worth when the Plaintiffs bought it. And any speculation that Fisher, as a junior lienor, would have received nothing because the bank agreed to a short sale is belied by the fact that Debra Starr, another junior lienor, did receive substantial sale proceeds. CP 111. Thus Fisher still does not know of any benefit conferred by Plaintiffs.

The third element of unjust enrichment – that retention of the conferred benefit be unjust under the circumstances – is also not satisfied. There is no evidence from which to determine what would have happened

¹⁵ Another reason the first element of unjust enrichment is not satisfied is that ORT, not Plaintiffs, will bear any loss occasioned by Fisher’s judgment lien. The equities as between Fisher and ORT are discussed below in the context of the comparative innocence doctrine.

had ORT followed up on the Fisher Lawsuit and brought the Kaley Judgment to Plaintiffs' attention. But it is indisputable that Plaintiffs could not have obtained the result they seek here – acquiring the Property free of Fisher's lien – without Fisher's consent.¹⁶ In any event, there is nothing inequitable about retaining and enforcing a judgment lien that has statutory priority and that could have been discovered by simple inquiry before Plaintiffs' purchase.

2. The Rule of Comparative Innocence Also Does Not Apply Here.

The rule of comparative innocence does not assist the Plaintiffs either. The Washington Supreme Court rejected an identical “innocent third party” argument in *Sablefish* when it ruled against two “innocent” (i.e. unknowing) purchasers. 111 Wn.2d at 222 –23.

Moreover, although Plaintiffs claim they could not have done anything to protect themselves from the Fisher judgment lien, in fact, they did. They, like most property purchasers, relied on a title company to search for liens and encumbrances and to insure against these risks. CP

¹⁶ See *Kim v. Lee*, 145 Wn.2d 79, 91, 31 P.3d 665 (2001) (“judgment creditors and other lienors rely on title insurers to prevent a debtor from conveying real property without first satisfying a perfected lien”).

114-132. And that precaution paid off; ORT has agreed to indemnify Plaintiffs for any loss occasioned by the Fisher judgment lien. CP 146-47.

In applying the rule of comparative innocence, the court should allocate the loss based on the respective innocence and positions of the parties who would actually bear the loss. Here, the loss will be allocated to either Fisher or ORT. Thus, the question is who should bear the loss as between a judgment lienholder with statutory priority and a title insurer who contracted for a fee to investigate and insure title against the precise risk it now seeks to avoid in this litigation.

The Washington Supreme Court has already answered this question: “the loss should fall on the title company rather than the innocent judgment creditor.” *Kim v. Lee*, 145 Wn.2d 79, 91, 31 P.3d 665 (2001). In *Kim v. Lee*, as in this case, a title insurer failed to discover and communicate the existence of a judgment lien. The new mortgagee (the title company’s insured) and the title company asserted that the doctrine of equitable subrogation should allow the new mortgagee to step into the shoes of a previous mortgagee with priority over the judgment lien.¹⁷ The

¹⁷ Plaintiffs mention equitable subrogation in a footnote, but do not argue that the doctrine (which allows a refinancing mortgagee to step into the shoes of its predecessor and obtain its predecessor’s priority) applies to them. Nor did they assert or attempt to support an equitable subrogation theory below.

court disagreed, holding that “equitable subrogation should not apply in favor of a title company which guaranteed title while on constructive or actual notice of a prior judgment.” *Id.* at 92. In comparing the “innocence” of the judgment creditor with that of the title company, the court clearly found the judgment creditor more innocent. *Id.* at 91 (“legal remedies and equity suggest that the loss should fall on the title company rather than the innocent judgment creditor”).

ORT should not be permitted to avoid the *Kim v. Lee* result by prosecuting this action in the name of its insured instead of intervening, as the title company did in *Kim v. Lee*. It is a well-known maxim that equity regards substance rather than form. *See, e.g., S.P.C.S., Inc. v. Lockheed Shipbuilding & Constr. Co.*, 29 Wn. App. 930, 933-34, 631 P.2d 999, *rev. denied*, 96 Wn.2d 1019 (1981) (in determining whether right to jury exists, court looks to substance rather than form of action). Thus, a party who invokes the court’s equitable jurisdiction cannot complain that the court determines the equities based on who will actually benefit by the relief sought, not whose name is on the pleadings. Although ORT is not a named party here, it is undisputed that the benefit of any equitable relief obtained by Plaintiffs will flow directly and exclusively to ORT, who will otherwise have to compensate Plaintiffs for Fisher’s judgment lien. Therefore, the fact that this lawsuit is proceeding in Plaintiffs’ name

instead of ORT's does not change the equities upon which the *Kim* court relied.

Plaintiffs will likely argue that it is inappropriate for the court to consider Plaintiffs' title insurance. ER 411 explains when evidence of liability insurance is admissible and when it is inadmissible:

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

In the first place, ER 411 does not, by its terms, preclude evidence of title insurance because title insurance is not liability insurance. Title insurance indemnifies the purchaser of property against liens and other title defects that are not disclosed as exceptions to the policy; it does not depend on allegations that the purchaser or anyone else has acted negligently or wrongfully. Indeed, unlike other forms of insurance, it is the title insurer that controls the risk it is insuring against. *Stoebuck & Weaver*, 18 WASH. PRAC. §14.7 at 174 (2004 ed.). Moreover, Fisher is relying on evidence of ORT's investigation and policy for reasons that evidence of insurance is expressly made admissible in ER 411 – to show agency, ownership, and control. Thus, the ORT title policy and search results are admissible to show that ORT was hired to investigate and insure Plaintiffs' title, to show

what ORT learned within the scope of that investigation, to show on whose behalf the court's equitable jurisdiction is being invoked, and to show who should bear the consequences of ORT's failure to discover and report Fisher's prior judgment lien.

ORT should not be permitted to use its failure to notify Plaintiffs of the Fisher Lawsuit or inquire further into whether that lawsuit had resulted in a judgment before Plaintiffs' purchase closed to claim that ORT's insured is a bona fide purchaser and so deprive Fisher of its legitimate judgment lien on the Kaley Property. That theory would change title insurance from a valuable means of discovering and appropriately resolving title issues (which, as the Washington Supreme Court has noted,¹⁸ is relied on by judgment creditors and other lienors) to a means of eliminating prior liens. It would provide an incentive for title companies to avoid full inquiry and withhold information. In short, the existence and terms of Plaintiffs' title coverage are supremely relevant to the equitable relief that Plaintiffs seek.

V. CONCLUSION

For over 100 years, Washington statutes and cases have decreed that a judgment lien is effective upon entry of judgment in the Superior

¹⁸ *Kim v. Lee*, 145 Wn.2d 79 at 91

Court and has priority over later conveyances of real property located in the same county. It is also well established in Washington that judgment liens are not conveyances. Therefore, the Washington Supreme Court's decision in *Ellingsen* that real property conveyances must be recorded with the county auditor to impart constructive notice did not silently overrule the judgment lien priority granted by RCW 4.56.200(1), which commences upon entry of the judgment. Nor is there any authority – statutory or otherwise – to delay judgment lien priority until the judgment is included on SCOMIS or the execution docket.

The rule that entry of judgment in the Superior Court imparts constructive notice of the resulting judgment lien on property within the same county does not violate due process because it does not deprive anyone of a legally protected property interest that exists on the date of the judgment. In addition, even if the judgment has not yet been included on SCOMIS or the execution docket, sufficient information is available to allow subsequent purchasers to learn of the judgment through diligent inquiry.

Moreover, in this case, Plaintiffs' title insurer, ORT, had actual knowledge of the Fisher Lawsuit that should have led it to inquire further and discover Fisher's judgment lien before closing occurred. A purchaser has constructive notice of all facts that a reasonable person would inquire

about given the facts actually known. As a result, even if Plaintiffs were correct that under the judgment lien statutes entry of the judgment alone did not provide or could not constitutionally provide constructive notice of the Fisher lien, ORT's actual knowledge of the Fisher Lawsuit means that Plaintiffs are not bona fide purchasers entitled to take free of that lien.

Finally, the court should not overturn Fisher's statutory judgment lien priority for the benefit of ORT based on equitable principles. ORT was paid to investigate and insure Plaintiffs' title, and will indemnify Plaintiffs for any loss occasioned by the Fisher judgment lien. The statutory priority of judgment liens on property within the same county is well known and longstanding. ORT searched the county court records and obtained actual knowledge of Fisher's pending lawsuit, but ORT did not inquire further before Plaintiffs' purchase closed. Under those circumstances, the essential elements of the equitable theories relied on here are not met. ORT, not Fisher, should bear the consequences of the Plaintiffs' defective title. ORT should not be permitted to avoid its investigative and indemnification obligations by bringing this lawsuit in Plaintiffs' name, and asserting that Plaintiffs should prevail because they did not have notice or knowledge of a judgment that ORT was hired to and could have discovered.

DATED this 4th day of August, 2010.

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APPENDIX OF STATUTES

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RCW 4.56.200

Commencement of lien on real estate.

The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) Judgments of the district court of the United States rendered or filed in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof;

(2) Judgments of the district court of the United States rendered in any county in this state other than that in which the real estate of the judgment debtor to be affected is situated, judgments of the supreme court of this state, judgments of the court of appeals of this state, and judgments of the superior court for any county other than that in which the real estate of the judgment debtor to be affected is situated, from the time of the filing of a duly certified abstract of such judgment with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, as provided in this act;

(3) Judgments of a district court of this state rendered or filed as a foreign judgment in a superior court in the county in which the real estate of the judgment debtor is situated, from the time of the filing of a duly certified transcript of the docket of the district court with the county clerk of the county in which such judgment was rendered or filed, and upon such filing said judgment shall become to all intents and purposes a judgment of the superior court for said county; and

(4) Judgments of a district court of this state rendered or filed in a superior court in any other county in this state than that in which the real estate of the judgment debtor to be affected is situated, a transcript of the docket of which has been filed with the county clerk of the county where such judgment was rendered or filed, from the time of filing, with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, of a duly certified abstract of the record of said judgment in the office of the county clerk of the county in which the certified transcript of the docket of said judgment of said district court was originally filed.

[2002 c 261 § 3; 1987 c 202 § 117; 1971 c 81 § 17; 1929 c 60 § 2; RRS § 445-1.]

NOTES:

Reviser's note: The words at the end of subsection (2) reading "as provided in this act" appeared in chapter 60, Laws of 1929 which is codified as RCW [4.56.090](#), [4.56.100](#), [4.56.190](#) through [4.56.210](#), [4.64.070](#), [4.64.090](#), [4.64.110](#), and [4.64.120](#).

Intent -- 1987 c 202: See note following RCW [2.04.190](#).

Entry of verdict in execution docket -- Effect -- Cessation of lien: RCW [4.64.020](#), [4.64.100](#).

RCW 4.64.020

Entry of verdict in execution docket -- Effect.

(1) The clerk on the return of a verdict shall forthwith enter it in the execution docket, specifying the amount, the names of the parties to the action, and the names of the party or parties against whom the verdict is rendered; such entry shall be indexed in the record index and shall conform as near as may be to entries of judgments required to be made in the execution docket.

(2) Beginning at eight o'clock a.m. the day after the entry of a verdict as herein provided, it shall be notice to all the world of the rendition thereof, and any person subsequently acquiring title to or a lien upon the real property of the party or parties against whom the verdict is returned shall be deemed to have acquired such title or lien with notice, and such title or lien shall be subject and inferior to any judgment afterwards entered on the verdict.

[1987 c 442 § 1109; 1927 c 176 § 1; 1921 c 65 § 2; RRS § 431-1.]

NOTES:

Rules of court: Cf. CR 58(b).

RCW 4.64.030

Entry of judgment -- Form of judgment summary.

(1) The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

(2)(a) On the first page of each judgment which provides for the payment of money, including foreign judgments, judgments in rem, mandates of judgments, and judgments on garnishments, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment, and in the entry of a foreign judgment, the filing and expiration dates of the judgment under the laws of the original jurisdiction.

(b) If the judgment provides for the award of any right, title, or interest in real property, the first page must also include an abbreviated legal description of the property in which the right, title, or interest was awarded by the judgment, including lot, block, plat, or section, township, and range, and reference to the judgment page number where the full legal description is included, if applicable; or the assessor's property tax parcel or account number, consistent with RCW 65.04.045(1) (f) and (g).

(c) If the judgment provides for damages arising from the ownership, maintenance, or use of a motor vehicle as specified in RCW 46.29.270, the first page of the judgment summary must clearly state that the judgment is awarded pursuant to RCW 46.29.270 and that the clerk must give notice to the department of licensing as outlined in RCW 46.29.310.

(3) If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary.

[2003 c 43 § 1; 2000 c 41 § 1; 1999 c 296 § 1; 1997 c 358 § 5; 1995 c 149 § 1; 1994 c 185 § 2; 1987 c 442 § 1107; 1984 c 128 § 6; 1983 c 28 § 2; Code 1881 § 305; 1877 p 62 § 309; 1869 p 75 § 307; RRS § 435.]

NOTES:

Rules of court: Cf. CR 58(a), CR 58(b), CR 78(e).

RCW 6.13.090

Judgment against homestead owner -- Lien on excess value of homestead property.

A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. However, if a judgment of a district court of this state has been transferred to a superior court, the judgment becomes a lien from the time of recording with such recording officer a duly certified abstract of the record of such judgment as it appears in the office of the clerk in which the transfer was originally filed. A department of revenue tax warrant filed pursuant to RCW 82.32.210 shall become a lien on the value of the homestead property in excess of the homestead exemption from the time of filing in superior court.

[2007 c 429 § 3; 1988 c 231 § 4; 1987 c 442 § 209; 1984 c 260 § 30. Formerly RCW 6.12.105.]

NOTES:

Severability -- 1988 c 231: See note following RCW 6.01.050.

Severability -- 1984 c 260: See RCW 26.18.900.

RCW 6.17.020

Execution authorized within ten years -- Exceptions -- Fee -- Recoverable cost.

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order granting the application shall contain an updated judgment summary as provided in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or *6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have

to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020 (2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

[2002 c 261 § 1; 1997 c 121 § 1; 1995 c 231 § 4; 1994 c 189 § 1; 1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior: 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]

NOTES:

Rules of court: Cf. CR 58(b), 62(a), and 69(a); JCR 54.

***Reviser's note:** Chapter 6.40 RCW was repealed in its entirety by chapter 363, Laws of 2009. Later enactment, see chapter 6.40A RCW.

Application -- 1980 c 105: See note following RCW 4.16.020.

Entry of judgment: RCW 6.01.020.

RCW 65.08.070

Real property conveyances to be recorded.

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.

[1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

NOTES:

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

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No. 65109-9

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

SQUIRRELS NEST II LLC,

Appellant,

vs.

FISHER BROADCASTING - SEATTLE TV LLC, d/b/a KOMO TV,

Respondent.

CERTIFICATE OF SERVICE

I. CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the State of Washington that on this day I caused to be served a true and correct copy of the ***Brief of Respondent*** and this Certificate of Service by the method indicated below, and addressed as follows:

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Attorneys for Appellant

DATED this 4th day of August, 2010, at Seattle, King County, Washington.


LAURIE J. FISHER