

65706-2

65706-2

NO. 65706-2

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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UMPQUA BANK,

Appellant,

v.

BINGO INVESTMENTS, LLC, a Washington limited liability company;  
FRANCES P. GRAHAM and JOHN DOE GRAHAM and the marital  
community composed thereby; DAVID S. BINGHAM and SHARON G.  
BINGHAM and the marital community composed thereby; SCOTT F.  
BINGHAM and KELLY BINGHAM and the marital community composed  
thereby; CHRISTOPHER G. BINGHAM and CHERISH BINGHAM and  
the marital community composed thereby; and BINGO DEVELOPMENT,  
LLC, a Washington limited liability company,

Judgment Debtors,

RAYMOND JAMES FINANCIAL SERVICES, INC.,

Respondent.

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APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND OVERVIEW .....	1
II. ASSIGNMENTS OF ERROR / ISSUES TO BE DECIDED.....	4
III. STATEMENT OF THE CASE.....	4
A. THE UNDERLYING JUDGMENT .....	4
B. THE GARNISHMENT ACTION.....	5
C. RAYMOND JAMES' MOTION TO VACATE .....	12
IV. ARGUMENT.....	15
A. STANDARD OF REVIEW .....	15
B. UMPQUA COMPLIED WITH THE GARNISHMENT STATUTE.....	17
C. IT WAS AN ABUSE OF DISCRETION TO VACATE THE JUDGMENT/PAY ORDER DUE TO A HARMLESS PROCEDURAL ERROR.....	20
1. The Commissioner's Second Minute Order was the Sole Reason the Judgment/Pay Order was Vacated. ....	20
2. Umpqua's Failure to Comply with the Commissioner's Second Minute Order was a Harmless Procedural Error That Did Not Support Vacation. ....	21
V. CONCLUSION.....	26

TABLE OF AUTHORITIES

Page(s)

**STATE CASES**

*Cotton v. City of Elma*,  
100 Wn. App. 685 (2000) .....22

*Eagle Pacific Ins. Co. v Christensen Moto Yacht Corp.*,  
85 Wn. App. 695 (1997), *aff'd in part and remanded in part on  
other grounds*, 135 Wn.2d 894 (1998).....22

*Jones v. Home Care of Washington Inc.*,  
152 Wn. App. 674 (2009) .....16

*Mitchell v. Washington Inst. of Pub. Policy*,  
153 Wn. App. 803 (2009) .....16

**STATE STATUTES**

RCW 4.36.240 .....3, 17, 22, 26

RCW 4.72 .....26

RCW 6.27.190 .....5

RCW 6.27.200 .....19

RCW 6.27.250(1)(a) ..... passim

RCW 6.27 *et seq.* ..... passim

**RULES**

CR 60(b).....3, 12, 22

RAP 9.2.....1

## **I. INTRODUCTION AND OVERVIEW**

This dispute arose out of supplemental proceedings, in which Plaintiff/Appellant Umpqua Bank (“Umpqua”) sought to collect on its judgment of over \$23 Million by issuing various writs of garnishment. (CP 1; 504 [Il. 5-6]). Garnishee Defendant/Respondent Raymond James Financial Services, Inc. (“Raymond James”) was one of the many financial institutions that were served writs of garnishment. (CP 504 [Il. 5-6]; 538-545). In its Answers to Umpqua’s writs, Raymond James represented that it held significant amounts of monies belonging to certain judgment debtors. (CP 24-29). The judgment debtors never filed exemption claims in response to Raymond James’ Answers, and neither the judgment debtors nor Umpqua ever sought to controvert Raymond James’ Answers. (CP 528 [Il. 13-16]; 671 [Il. 8-14]).<sup>1</sup> Accordingly, Umpqua sought a judgment against garnishee Raymond James once all of the preconditions for a garnishee judgment had been met pursuant to the garnishment statute. *See* RCW 6.27.250(1)(a). (CP 24-29; 35-40; 515 [Il. 23-25]; 528 [Il. 13-14]; 671 [Il. 8-14]).

Umpqua sought its judgment against garnishee Raymond James through the Ex Parte Department because all the preconditions for a

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<sup>1</sup> CP 661-713 represents the transcript of the hearing on April 9, 2010. This is the same hearing that was transcribed as the designated Verbatim Report of Proceeding pursuant to RAP 9.2.

garnishee judgment had been met (which made issuance of the judgment mandatory) and because the garnishment statute did not require Umpqua to provide anyone notice prior to receiving its judgment in these circumstances. RCW 6.27.250(1)(a); (CP 24-29; 35-40; 515 [Il. 23-25]; 528 [Il. 13-14]; 529 [¶ 7]; 671 [Il. 8-14]). Unfortunately, the Commissioner ultimately refused to enter Umpqua's judgment due to the Commissioner's mistaken belief that exemptions and controversions were pending against Raymond James' Answers. In its Minute Order, the Commissioner provided in part that Umpqua's proposed judgment be "[r]esubmit[ted] only with notice to opposing parties..." (CP 87). In response to the Commissioner's confusing order (and Umpqua's belief that it complied with the Commissioner's order by providing appropriate notice in those garnishment actions having exemptions and/or controversions), Umpqua's counsel submitted all the relevant documents, along with an explanation of its failed attempts in the Ex Parte Department, to the assigned trial judge, who ultimately (and properly) entered Umpqua's judgment against garnishee Raymond James. (CP 530 [¶ 12]; 592-93; 88-90; CP 696 [Il. 11-17]).

Almost two months after the judgment was entered, Raymond James – who claimed and continues to claim no interest in the garnished monies – moved to vacate Umpqua's judgment against it based on various

grounds enumerated under CR 60(b). (CP 126-138; 138 [ll. 8-10]). The trial court granted Raymond James' motion and vacated Umpqua's judgment solely because of Umpqua's alleged failure to comply with the Commissioner's Minute Order by not providing the "opposing parties" (i.e., Raymond James) notice before resubmitting its judgment to the trial court (although, during the oral ruling on the vacation motion, the trial court itself acknowledged that the Commissioner's Minute Order was "erroneous", confirming that notice was not actually required). (CP 87; 717-18; CP 708 [ll. 11-12]).

Vacating Umpqua's judgment due to its alleged failure to comply with the Commissioner's Minute Order was an abuse of discretion because, as a statutory matter, a court cannot reverse a judgment because of a procedural error that did not affect the substantial rights of the adverse party (i.e., a harmless procedural error). RCW 4.36.240. And clearly, Umpqua's failure to provide Raymond James notice of the judgment was harmless because nothing – no statute, no case law, nothing – besides the Commissioner's Minute Order required Umpqua to provide such notice to Raymond James (or to any other party). Raymond James did not discover the Minute Order until after the judgment was entered against it, so it certainly could not have been and was not relying upon it. (CP 451 [ll. 2-3]). In fact, at the trial court level, Raymond James itself could not point

to any harm it suffered as a direct result of Umpqua's alleged failure to comply with the Commissioner's Minute Order. Accordingly, Raymond James' rights were not affected by Umpqua's failure to provide it notice, and as a result, the trial court abused its discretion when it vacated Umpqua's judgment against garnishee Raymond James.

## **II. ASSIGNMENTS OF ERROR / ISSUES TO BE DECIDED**

Umpqua assigns error to the following:

1. To the Order Granting Raymond James' Motion to Vacate Judgment, entered May 24, 2010 ("Order Vacating Judgment"). (CP 717-18).

2. To the Order Denying Plaintiffs' Motion for Reconsideration Pursuant to CR 59(a)(8) and (9), entered June 18, 2010. (CP 797-98).

The issue to be decided relating to these assignments of error:

1. Did the trial court abuse its discretion when it vacated Umpqua's Judgment and Order to Pay against garnishee Raymond James because of a harmless procedural error?

## **III. STATEMENT OF THE CASE**

### **A. THE UNDERLYING JUDGMENT**

On June 19, 2009, Umpqua obtained a judgment against Bingo Investments, LLC, Frances P. Graham, David S. Bingham and Sharon G.

Bingham and their marital community, Scott F. Bingham and Kelly Bingham and their marital community, Christopher G. Bingham and Cherish Bingham and their marital community, and Bingo Development, LLC (collectively, the “Judgment Debtors”), jointly and severally, for \$23,290,953.14. (CP 1-5). Thereafter, Umpqua began collection procedures, which included serving writs of garnishment on many, many financial institutions of the Judgment Debtors. (CP 504 [ll. 5-6]).

**B. THE GARNISHMENT ACTION**

On October 21, 2009, Umpqua obtained and served two writs of garnishment on Raymond James – one writ regarding Judgment Debtors David and Sharon Bingham (a married couple), and another writ regarding Judgment Debtors Scott and Kelly Bingham (a married couple) (collectively, the “Garnishment Action”). (CP 538-45; 546; 548). In response to Umpqua’s writs, Raymond James prepared two Answers on November 5, 2009.<sup>2</sup> In its Answers, Raymond James admitted that on the date the writ was served (October 21, 2009), it held an account for Sharon Bingham with a balance of \$105,545.43, and held an account for Scott Bingham with a balance of \$304,826.13, and, although these accounts were allegedly security for an unnamed lender, Raymond James

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<sup>2</sup> The Answers Raymond James filed did not comply with the statutory-required form, which Umpqua had provided to Raymond James when it had the writs served. (*Compare* CP 24-29 *with* RCW 6.27.190; CP 41-46; 707 [ll. 9-15])

represented that it had given the alleged secured lender notice of Umpqua's writs and no "secured lender" presented itself then or shortly thereafter. (CP 450 [ll. 19]; 546-49).

After receiving Raymond James' Answers admitting possession of the Judgment Debtors' property, Umpqua stayed any further acts in the Garnishment Action until after the Judgment Debtors received their statutory-allotted time to file an exemption or controversion if they so desired. Ultimately, the Judgment Debtors failed to file any exemptions or controversions in this Garnishment Action. (CP 528 [ll. 10-14]; 546-49).

Umpqua also did not file any controversions in this Garnishment Action for two reasons. First, it had no reason to believe the account balances listed in Raymond James' Answers were incorrect. Second, although Umpqua was not provided documentation proving the referenced lender's alleged perfected security interest in the garnished accounts at that time, it believed that if the alleged secured lender truly had a perfected security interest, then, after it received notice of Umpqua's writs, it would have timely moved to intervene to formally prove and protect its alleged perfected security interest, or at the very least, would have contacted Umpqua's counsel to informally do the same. (CP 528 [¶ 5]). Neither happened and Umpqua was unaware who or if an actual secured lender even existed. (CP 122 [¶¶ 4-6]).

Because Umpqua never heard from the alleged secured lender, Umpqua properly sought judgment against Raymond James based on the amounts admittedly held by it, which were owned by the Judgment Debtors. Pursuing a judgment was the result of Umpqua doubting that a third-party lender truly had a perfected security interest in the garnished accounts. Umpqua initially became suspicious of the alleged perfected security interest when the Judgment Debtors failed to claim an exemption in this Garnishment Action, which is something the Judgment Debtors did in another garnishment action in this case to protect another actual secured party's interests in garnished funds. Umpqua thought it was suspicious that the Judgment Debtors would protect one of their secured lenders but not the other. On the other hand, Umpqua also thought this may have been a simple oversight by the Judgment Debtors, and therefore, continued to withhold acting. Then, when Umpqua never heard from the alleged secured lender even after it had been on notice of Umpqua's writs for over two months, Umpqua came to the conclusion that the alleged perfected security interest was invalid for some reason – whether because it never was created in the first place, never was properly perfected, or was subsequently released, Umpqua did not know – but the combination of the Judgment Debtors' and the alleged secured lender's inactions for several months ultimately led Umpqua to properly proceed to seek a judgment

against Raymond James based on the answers provided that were neither controverted nor related to any exemption claim, by the Judgment Debtors. (CP 30-34; 529 [¶ 6]).

On January 26, 2010, Umpqua presented a Judgment and Order to Pay directed at the garnished accounts held by Raymond James (“Judgment/Pay Order”). Umpqua presented the Judgment/Pay Order to the Ex Parte Department because neither notice nor a hearing were required under the garnishment statute (*See RCW 6.27 et seq.*). (CP 529 [¶ 7]).<sup>3</sup> Along with the Judgment/Pay Order, Umpqua also presented a declaration by Dana Rognier, declaring, among other things, that the required return or affidavits showing service on or mailing to the appropriate Judgment Debtors had been filed with the Court and that there were no pending exemptions or controversions regarding the Answers underlying the Judgment/Pay Order.<sup>4</sup> (CP 91-93).

Later in the day on January 26th, Umpqua’s counsel received an initial Minute Order from the Commissioner stating that the Judgment/Pay Order was denied for the sole reason that Umpqua did not provide a copy

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<sup>3</sup> At this time, Umpqua also presented Judgments and Orders to Pay regarding answers in other garnishment actions that also had no exemptions or controversions pending. In other words, on January 26, 2010, Umpqua presented to the court, ex parte, Judgments and Orders to Pay for all the garnishee answers that had no exemptions or controversions. (CP 92-93 [¶ 7]; 550). However, these additional Judgments and Orders to Pay are not at issue in this appeal and were issued and ultimately paid.

<sup>4</sup> The Rognier declaration also attached copies of service slips in order to provide the Court with documents supporting Umpqua’s claimed costs listed on the face of the Judgment/Pay Order. (CP 93 [¶ 9]).

of the garnishee's Answers. (CP 86). It should be noted that these Answers were on file and electronically available for the Commissioner to review. (CP 529 [¶ 10]). In response, Umpqua filed a second declaration of Ms. Rognier that attached copies of Raymond James' Answers. (CP 61 [¶¶ 4-5]; 69-72) and resubmitted its request for a Judgment/Pay Order.

Not until the next day, on January 27th, did Umpqua's counsel receive a second Minute Order from the Commissioner stating that the Judgment/Pay Order was again being denied, but this time for alleged exemptions and controversions (which made no sense since no such exemptions or controversions existed in this Garnishment Action, although such proceedings were at issue in other garnishment actions under the same cause number):

Given the controversions and exemption claims I think this needs to be presented in person and with notice to the opposing party. *I have no time to figure out what the status of the litigation is but it is clear a hearing is to be set before Judge Dubuque.* As well the Garnishment statute is not clear regarding the filing of a controversion upon pending answers to writs of garnishment but they do contemplate a hearing to determine the issue so the signing of a judgment against the garnishee defendant does not seem called for under the statutes.

This Minute Order went on to state that the Judgment/Pay Order be “[r]esubmit[ted] only with notice to opposing parties...” (CP 87) (emphasis added). This Minute Order was only provided to Umpqua's

counsel; Raymond James did not learn about its existence until after the Judgment/Pay Order against Raymond James was entered, thus Raymond James was not expecting any notice since its submission of the answers some two months earlier. (CP 451).

In response to this second Minute Order and the Commissioner's confusion with this Garnishment Action in general, Umpqua's counsel wrote an explanatory letter to the assigned trial judge, Judge DuBuque, explaining its failed attempts to have the Judgment/Pay Order entered with the Ex Parte Department and notifying the trial judge about the Commissioner's obvious confusion in this matter and its reticence to actually review the submissions before him. Umpqua's counsel further explained that the proposed Judgment/Pay Order was unrelated to the pending exemption and controversion proceedings that were before the trial court in the cause number at issue (but regarding separate garnishment actions). Attached to this letter was, as Umpqua's counsel testified to the Court, all the relevant documents referenced therein. (CP 488-89; 530 [¶ 12]).<sup>5</sup> Thereafter, the trial court, after considering the entire record and the statute governing entry of garnishee judgments, entered the Judgment/Pay Order on January 28, 2010. (CP 88-90).

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<sup>5</sup> Umpqua's counsel believes that he attached all the relevant documents to his letter to the trial judge. However, even if he is mistaken, all such documents were readily available to the trial judge through the court's file. (CP 530 [¶ 12]).

The day after the Judgment/Pay Order was entered, Umpqua's counsel sent a letter to Raymond James notifying it of the Judgment/Pay Order. A copy of the Judgment/Pay Order was also enclosed in the letter. (CP 597-600). Thereafter, the alleged secured lender, who was referenced in Raymond James' Answers, finally took action. On or around February 11, 2010, the alleged secured lender<sup>6</sup> sent a letter to Raymond James that stated "Raymond James should not have allowed a judgment to be entered" and requested that Raymond James "file pleadings to quash the judgment." This letter also requested that Raymond James withhold disbursement of the funds to Umpqua (in direct violation of the Judgment/Order to Pay). The alleged secured lender further represented that it was in the process of preparing pleadings to intervene in the Garnishment Action and to quash the Judgment/Pay Order. (CP 601). Obviously, Raymond James did not think much of these allegations and requests at the time, as Raymond James took no immediate action. (CP 530 [ll. 23-25]).

Almost two weeks after its letter, on February 24, 2010, the alleged secured lender filed a Motion to Intervene in this Garnishment Action ("Intervention Motion"). (CP 119-20). This Intervention Motion came over three months after the alleged secured lender was notified of

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<sup>6</sup>The alleged secured lender ended up being Frontier Bank (now defunct and known as Union Bank). (CP 601; 773 [ll. 13-16]).

Umpqua's writs, and almost one month after the Judgment/Pay Order was entered (CP 88-89; 119-20; 122 [¶ 4]). Ultimately, the Intervention Motion was denied due to its obvious untimeliness; the alleged secured lender's subsequent Reconsideration Motion was also denied. (CP 124-25; 484-85).

**C. RAYMOND JAMES' MOTION TO VACATE**

Only after the alleged secured lender's Intervention Motion was denied, did Raymond James finally take any action by filing a Motion to Vacate Judgment ("Motion to Vacate") on March 22, 2010, almost two months after the Judgment/Pay Order was entered. (CP 88-90; 124-26). In its Motion to Vacate, Raymond James requested that the Court vacate the Judgment/Pay Order for various reasons enumerated under CR 60(b). (CP 126-38). Raymond James further expressed that if the Court granted its Motion to Vacate (which it ultimately did), then Raymond James would immediately file an interpleader action to give the alleged secured lender an opportunity to formally prove its alleged security interest. (CP 128 [ll. 8-11]; 717-19). In other words, Raymond James was disclaiming any interests in the garnished funds.

Although vigorously disputed by Umpqua, ultimately, the trial court granted Raymond James' Motion to Vacate and vacated the Judgment/Pay Order. (CP 502-29; 717-19; 720-29; 788-92). During the

show cause hearing on this matter, however, the trial court agreed largely with Umpqua's arguments against Raymond James' Motion to Vacate.<sup>7</sup> (CP 671-72 [ll. 23-1]; 676 [ll. 11-13]; 678 [ll. 14-17]; 702 [ll. 12-14]; CP 707-08 [ll. 9-11; 23-5]). Yet, the trial court ultimately vacated Umpqua's Judgment/Pay Order solely because of Umpqua's alleged failure to comply with the Commissioner's second Minute Order, although the trial court agreed that the Minute Order was an "erroneous determination":

The order of the commissioner is the only thing that gives me pause. It's my assessment that the commissioner looked at the volume of this litigation and made an erroneous determination. But be that as it may, that's what the commissioner said needed to be done...

I think that the only fair and appropriate thing to do in light of the way this litigation has proceeded is this. I will grant Raymond James' motion to vacate the judgment provided it

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<sup>7</sup> The following are excerpts from the trial court directed to Raymond James' counsel during the April 9, 2010 show-cause hearing: "[W]hy would [Umpqua] be required to controvert when they have no basis to say in good faith that that answer is inaccurate given the general nature of the answer itself?" "Can you show me where in the garnishment statute that you were entitled to receive notice of [Umpqua's] intent to get judgment." "I don't see in the statute any mechanism once [Raymond James] filed an answer saying yes, we're holding monies, but there is a security interest that requires [Umpqua] to go further." (CP 671-72 [ll. 23-1]; 676 [ll. 11-13]; 678 [ll. 14-17]). The following is an excerpt from the trial court directed to Umpqua's counsel during the show-cause hearing: "And you have not yet raised the fact that Raymond James' answer doesn't even comply with the statute." (CP 702 [ll. 12-14]). The following are excerpts from the trial court's oral ruling during the show-cause hearing: "Raymond James did not file an answer in accordance with the simple mechanisms or the procedure of the statute..." "I do not believe that the case law requires the creditor, when there is a simple statement that there is a secured creditor out here, that lender or secured creditor has been given notice of the existence of the garnishment, that they have to go searching through the records to find out whom that may be, especially when we have sophisticated financial institutions..." (CP 707-08 [ll. 9-11; 23-5]).

pays all of [Umpqua's] attorney fees that have been incurred relating to the garnishment on Raymond James...

This has caused unnecessary incurrence of attorneys fees by the failure of parties to act when they should have acted quickly. Frankly, on this record, I cannot say that that is a perfected security interest. So if you want to have your day in court, then you're going to have to pay for the monies that you have caused [Umpqua] to incur.

CP. 708-09 [ll. 11-11] (emphasis added). Thus, the trial court agreed to grant Raymond James' Motion to Vacate only if Raymond James paid all of Umpqua's attorney fees incurred in this Garnishment Action. The trial court based its decision on the fact that it was Raymond James' and the alleged secured lender's failure to timely act that caused Umpqua to expend unnecessary fees fighting both parties after-the-fact.

After Umpqua's attorney fees were paid, Raymond James submitted a proposed Order Granting Raymond James' Motion to Vacate Judgment ("Order Vacating Judgment"), which lacked findings of facts, conclusions of law, and a list of what the Court considered. (CP 656-57 [ll. 25-2]). Over Umpqua's objections, the trial court entered the Order Vacating Judgment as proposed, with the addition of a hand-written note indicating that "[t]he court's oral ruling, including it's recitation of the documents it considered is hereby incorporated by reference." The Order Vacating Judgment did specify, however, that it was being granted "for

the reasons set forth in the Court's oral rulings during the April 9, 2010 hearing in this matter." (CP 656-59; 717-19).

After the Order Vacating Judgment was entered, it became clear that Umpqua's Judgment/Pay Order was vacated solely because of Umpqua's alleged failure to comply with the Commissioner's second Minute Order (i.e., the only reason the trial court gave for the vacation during its oral ruling at the show cause hearing on April 9, 2010). (CP 718 [ll. 10-12]; Arg. 48). Based on this knowledge, Umpqua moved for reconsideration and argued, among other things, that its failure to comply with the Commissioner's Minute Order was harmless, and therefore, could not support vacation of its Judgment/Pay Order. (CP 720-29). The trial court denied Umpqua's Motion for Reconsideration, and this appeal followed. (CP 797-805). Since the denial of Umpqua's Motion for Reconsideration, Raymond James ultimately filed its interpleader action (as it represented it would in its Motion to Vacate), albeit nearly six months later and recently served Umpqua (i.e., mid-October) with the complaint-in-interpleader. (CP 138 [ll. 8]).

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

The standard of review by this Court is an abuse of discretion. A trial court abuses its discretion if its ruling is based on untenable grounds

or untenable reasons, or is manifestly unreasonable. *Mitchell v. Washington Inst. of Pub. Policy*, 153 Wn. App. 803, 821 (2009) (“We review a trial court’s decision on a motion to vacate under CR 60(b) for abuse of discretion.... ‘An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.’”) (internal citation omitted; citation omitted); *Jones v. Home Care of Washington Inc.*, 152 Wn. App. 674, 679 (2009) (“Reviewing courts apply an abuse of discretion standard when considering a trial court’s ruling on a CR 60(b) motion.... Discretion is abused where it is exercised on untenable grounds or for untenable reasons.”) (internal citation omitted; citation omitted).

A trial court’s decision is based on untenable grounds or untenable reasons “if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.” *Mitchell*, 153 Wn. App. at 821-22 (citation omitted). A trial court’s decision is manifestly unreasonable when it “adopts a view ‘that no reasonable person would take,’ ...and arrives at a decision ‘outside the range of acceptable choices.’” *Id.*, at 822 (internal citation omitted; citation omitted). Here, the trial court’s decision to vacate Umpqua’s Judgment/Pay Order was an abuse of discretion because, as a matter of law, a judgment cannot be reversed because of a

harmless procedural error that did not affect the substantial rights of the adverse party. RCW 4.36.240.

**B. UMPQUA COMPLIED WITH THE GARNISHMENT STATUTE**

Umpqua complied with the garnishment statute when it sought and obtained its Judgment/Pay Order against garnishee Raymond James.

Pursuant to the garnishment statute, the Court shall enter a judgment for the plaintiff against a garnishee if it appears from the answer that (1) the garnishee was indebted to the defendant in any non-exempt amount; and (2) the required return or affidavit showing service on defendant has been filed:

If it appears from the answer of the garnishee or if it is otherwise made to appear that the garnishee was indebted to the defendant in any amount, not exempt, when the writ of garnishment was served, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee...

RCW 6.27.250(1)(a) (emphasis added).

All of the statutory preconditions were present when the trial court properly entered the Judgment/Pay Order. First, Raymond James was indebted to the Judgment Debtors in the amount disclosed in its Answers (i.e., \$105,545.43 and \$304,826.13, respectively). (CP 24-29). Second, such amounts were not exempt because the Judgment Debtors never filed

an exemption claim thereon. (CP 528 [ll. 12-14]). Third, prior to seeking the Judgment/Pay Order, Umpqua's counsel had filed the requisite return and affidavit showing mailings to Judgment Debtors Sharon Bingham and Scott Bingham (as was stated in Ms. Rognier's declaration submitted with the Judgment/Pay Order). (CP 35-40; 50 [¶ 3]). Accordingly, Umpqua properly proceeded to seek its Judgment/Pay Order against Raymond James ex parte, and the trial court properly entered the Judgment/Pay Order because the garnishment statute made such entering of a judgment mandatory. RCW 6.27.250(1)(a) ("...the court shall render judgment for the plaintiff against such garnishee...") (emphasis added).

The garnishment statute did not require Umpqua to notify Raymond James that it was seeking a Judgment/Pay Order in this Garnishment Action. As already stated above, there are enumerated preconditions that must be met before the Court is required to issue a judgment against a garnishee, and each of those preconditions were met. RCW 6.27.250(1)(a); (CP 24-29; 35-40; 528 [ll. 12-14]). As expressly recognized by the trial court, the garnishment statute does not require an additional notice to the garnishee as a precondition to the plaintiff receiving a garnishee judgment. RCW 6.27 *et seq.* In fact, the garnishment statute only requires notice to a garnishee if a default judgment (for the entire underlying judgment) is to be entered for a failure

to answer the writ. RCW 6.27.200.<sup>8</sup> Certainly, if the garnishment statute also meant to require notice to a garnishee before a judgment may be entered against it based on an answer, it would have expressly stated this requirement.<sup>9</sup>

Similarly, the garnishment statute also did not require Umpqua to notify Raymond James (or provide it with a copy) of the Rognier declarations filed in support of the Judgment/Pay Order. In fact, nothing in the garnishment statute even required Umpqua to file such declarations in the first place, yet another erroneous requirement made by the commissioner. RCW 6.27 *et seq.* Ms. Rognier's first declaration was mainly submitted for purposes of confirming that the preconditions under the statute had been met – i.e., no exemptions filed, affidavit/return filed (information accessible through the Court's docket).<sup>10</sup> (CP 49-51). Ms. Rognier's second declaration, which was requested by the Commissioner, consisted of Answers that had already been filed with the Court and were accessible to Raymond James and the Court. (CP 60-85; 86; 529-30

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<sup>8</sup> Raymond James' counsel even admitted to this fact at the April 9, 2010 hearing: "It is accurate that the statute only specifies notice if there's a default." (CP 676 [ll. 14-15]).

<sup>9</sup> Basically, Raymond James' notice was limited to receiving the actual writs. The trial court also pointed this out to Raymond James. (CP 678 [ll. 10-14]). Once the writs were served, Raymond James, a sophisticated financial institution, could have conducted its own due diligence, read the garnishment statute, and determined that Umpqua could proceed to get its Judgment/Pay Order entered against it without further notice to anyone.

<sup>10</sup> And the attached declarations of service were attached to support Umpqua's costs – a portion of the Judgment/Pay Order that was against the Judgment Debtors. (CP 51 [¶ 9]; 88-90).

[¶ 10]). Overall, the Rognier declarations consisted mostly of information that was readily obtainable by simply viewing the docket/court file, and more importantly, the garnishment statute did not require such declarations to be filed, let alone provided to garnishee Raymond James.

Accordingly, it is clear that Umpqua followed the garnishment statute when it sought and obtained its Judgment/Pay Order against Raymond James.

**C. IT WAS AN ABUSE OF DISCRETION TO VACATE THE JUDGMENT/PAY ORDER DUE TO A HARMLESS PROCEDURAL ERROR**

1. The Commissioner's Second Minute Order was the Sole Reason the Judgment/Pay Order was Vacated.

Umpqua's alleged failure to comply with the Commissioner's second Minute Order was the sole reason Umpqua's Judgment/Pay Order was vacated. Pursuant to the Order Vacating Judgment, Umpqua's Judgment/Pay Order was vacated "for the reasons set forth in the Court's oral ruling during the April 9, 2010 hearing in this matter." (CP 718).

The trial court's oral ruling during the April 9, 2010 hearing was clear:

The order of the commissioner is the only thing that gives me pause. It's my assessment that the commissioner looked at the volume of this litigation and made an erroneous determination. But be that as it may, that's what the commissioner said needed to be done.

CP. 708 [ll. 11-12] (emphasis added). Thus, the Judgment/Pay Order was vacated solely because Umpqua did not provide Raymond James notice of

its Judgment/Pay Order prior to presenting it to the trial court, as was allegedly ordered by the Commissioner in the second Minute Order. (CP 87).

The trial court's oral ruling declaring the second Minute Order to be the only reason justifying vacation of the Judgment/Pay Order makes sense because, as explained in the preceding section, Umpqua always complied with the garnishment statute in this Garnishment Action. Thus, for purposes of this appeal only, Umpqua will concede that it failed to comply with the Commissioner's second Minute Order<sup>11</sup> – although such a failure did not support the vacation of Umpqua's Judgment/Pay Order.

2. Umpqua's Failure to Comply with the Commissioner's Second Minute Order was a Harmless Procedural Error That Did Not Support Vacation.

As a matter of law, it was an error to vacate the Judgment/Pay Order due to a harmless procedural error:

The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

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<sup>11</sup> As argued at the trial court level, Umpqua does not believe its actions were contrary to the Commissioner's Minute Order. (CP 724-25). First, Umpqua believed it complied with the Minute Order because it had provided the statutory required notice in the garnishment actions that actually had exemption claims and/or controversions filed. (CP 508 [n. 7]; 518 [n. 18]; 696 [ll. 11-17]; 724-25 [ll. 26-2]). Second, Umpqua believed it responded appropriately to the confusing and mistaken Minute Order by submitting the documents to the trial court judge, along with an explanation about its time in Ex Parte, to make the ultimately determination on what to do in this Garnishment Action. (CP 530 [¶ 12]; 725 [ll. 2-5]).

RCW 4.36.240 (emphasis added). In other words, if the aggrieved party cannot show that its substantial rights were impacted by the error or defect in the proceeding, vacation of a judgment shall not occur. Washington cases analyzing CR 60(b) motions to vacate support the proposition that a harmless procedural error does not support vacation. *Cf. Cotton v. City of Elma*, 100 Wn. App. 685, 691 (2000) (a party not receiving an order in time to seek reconsideration did not support a vacation because the party did not move for reconsideration when it received the order and the court neutralized any prejudice when it allowed the party to file additional documents to be reviewed on the merits); *Eagle Pacific Ins. Co. v Christensen Moto Yacht Corp.*, 85 Wn. App. 695, 708-09 (1997), *aff'd in part and remanded in part on other grounds*, 135 Wn.2d 894 (1998) (an ex parte contact with the judge did not support a vacation because the communication was for purposes of resolving a discrepancy between the amount requested in the complaint and the higher amount in the proposed judgment, the communication took place after the Court ruled, and the trial court ultimately awarded the lesser of the two amounts).

Here, the fact that Umpqua did not comply with the Commissioner's Minute Order was a harmless procedural error that did not support vacating the Judgment/Pay Order. It is true that upon improperly denying Umpqua's Judgment/Pay Order, the Commissioner

issued a Minute Order directing Umpqua to give notice to “opposing parties” upon re-presenting. (CP 87). The Minute Order, however, was the only authority that required Umpqua to give notice prior to seeking its Judgment/Pay Order in this Garnishment Action. The controlling garnishment statute did not require such notice (as explained in Section B above). RCW 6.27 *et seq.* Moreover, Raymond James did not expect or actually see this Minute Order prior to the Judgment/Pay Order being entered, so it certainly was not relying on notice being given before judgment entered against it. (CP 451 [¶ 6]). In other words, prior to discovering this Minute Order after the Judgment/Pay Order was entered, nothing (no statute, no common law, no administrative code, nothing) provided Raymond James with any reason to expect or believe that Umpqua would be providing any notice to anyone prior to seeking its Judgment/Pay Order in this Garnishment Action.

In fact, by entering Umpqua’s Judgment/Pay Order on January 28, 2010 without providing prior notice to Raymond James, the trial court actually put the parties in the position they should have been in had the Commissioner complied with Washington law as set forth in the garnishment statute. As already explained in a preceding Section, the garnishment statute required the court to enter the Judgment/Pay Order in this Garnishment Action. RCW 6.27.250(1)(a). More importantly, the

garnishment statute did not require Umpqua to provide notice to any parties prior to seeking its Judgment/Pay Order in this Garnishment Action. RCW 6.27 *et seq.* Thus, the Judgment/Pay Order should have been entered when Umpqua first presented it to the Commissioner (without notice to Raymond James) on January 26, 2010. RCW 6.27.250(1)(a); (CP 529 [¶ 7]). Thus, Raymond James' rights could not have affected by Umpqua's failure to comply with the Commissioner's later erroneous notice requirement.

Any argument by Raymond James that the Judgment/Pay Order is in and of itself a harm to Raymond James by virtue of it being a judgment against it is meritless. (CP 704 [Il. 15-21]). Raymond James has already disclaimed its interest to the garnished funds that are the subject to the Judgment/Pay Order. (CP 137 [Il. 8-11]). Thus, Raymond James' rights could not be substantial affected (or affected at all) by paying such funds, which it has no interest in, to Umpqua.

In fact, the only conceivable harm Raymond James may suffer in this Garnishment Action – an allegation of potential double liability vis-à-vis Umpqua and the alleged secured lender – was neither declared nor proven by Raymond James at the trial court level and is unsupportable under the record before this Court. Although Raymond James' attorneys asserted the possibility of double liability (CP 138 [Il. 2-3]; 780 [Il. 16-

18]), a Raymond James authorized agent never put in a declaration declaring that Raymond James' substantial rights would be affected. And even if Raymond James could suffer such an alleged harm, it was never actually proven – Raymond James failed to successfully show that the alleged secured lender actually had a perfected security interest in the garnished accounts. (CP 709 [ll. 7-9, trial court's oral ruling at April 9, 2010 hearing: "Frankly, on this record, I cannot say that that is a perfected security interest."])).

Moreover, even if Raymond James had properly declared and proved an exposure to double liability at the trial court level, Raymond James still could not link such harm to Umpqua's failure to comply with the Minute Order. In other words, any potential exposure was not a direct consequence of the alleged procedural error of Umpqua failing to comply with the Minute Order, but was only a direct consequence of Raymond James' and the alleged secured lender's failure to timely act in response to Umpqua's writs: Raymond James by failing to file the interpleader action prior to the Judgment/Pay Order being entered; or even informally contacting Umpqua's counsel prior to the Judgment/Pay Order being entered, and the alleged secured lender by failing to intervene or even informally contacting Umpqua's counsel prior to the Judgment/Pay Order being entered. (CP 122 [¶ 4]; 450 [ll. 24-26]; 529 [ll. 9-12]; 671 [ll. 15-

18]). Thus, any double liability exposure argument is a classic red herring.

Overall, the trial court abused its discretion when it vacated Umpqua's Judgment/Pay Order because of a harmless procedural error. RCW 4.36.240. Accordingly, this Court should reverse the Order Vacating Judgment and reinstate Umpqua's Judgment/Pay Order. If this Court finds it appropriate to reverse the Order Vacating Judgment, then Umpqua shall credit Raymond James with the attorney fees it has paid Umpqua to date against the Judgment/Pay Order as increased by statutory interest and the provisions of RCW 4.72.

#### **V. CONCLUSION**

The phrase that best sums up Umpqua's failure to comply with the Commissioner's Minute Order is – "no harm, no foul." Certainly Umpqua (and its counsel) never intended to disobey an order of the Commissioner, which was why the subsequent letter to the trial court judge attempted to explain the situation. Absent any malice (which obviously was not present), the failure to give Raymond James notice that it was neither statutorily entitled to nor expected is exactly the type of immaterial technical error that RCW 4.36.240 was enacted to protect against. Accordingly, the Order Vacating Judgment should be reversed and

Umpqua's Judgment/Pay Order against garnishee Raymond James should  
be reinstated less fees previously paid by Raymond James.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of October, 2010.

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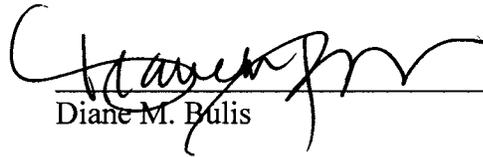
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Via messenger to the attorney as shown above, the last-known office address of the attorney on the date set forth below.

DATED this 22nd day of October, 2010.

  
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