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No. 665677

THE COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

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MARGARET ANN BOSSIE, *Appellant (s)*,

v.

BANK OF AMERICA, *Respondent.*

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SUPPLEMENT BRIEF OF APPELLANT(S)

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COURT OF APPEALS DIV I  
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2012 FEB 16 PM 2:26

**TABLE OF AUTHORITIES**

**Table of Cases**

***Washington Cases***

Moore v. Wentz, 11 Wash App. 796.....3  
Fox v. Sunmaster Prods., 115 Wn.2d 498, 798 P.2d 808 (1990).....4  
State v. Ramer, 151 Wnd.2d 106, 86 P.3d 132 (2004).....4

***Other Cases***

*(None)*

**Constitutional Provisions**

*(None)*

**Statutes**

11 USC 524.....5

**Regulations and Rules**

Rules of Appellate Procedures 2.4(a),(b).....3,4

**Other Authorities**

*(None)*

## A. ARGUMENT

By order of the court, the appellant submits this supplement brief addressing the issue of whether this appeal is moot, since Appellant did not appeal the final order of judgment but rather the revision order entered by the King County Superior Court

### 1. BOSSIE'S APPEAL IS NOT MOOT, AS THE REVISION ORDER IS APPEALABLE

In its brief Bank of America cites to Moore v. Wentz, 11 Wash App. 796, for the proposition that this court would not have jurisdiction to review the 'Judgment' even if Bossie sought one. The Moore case does not address this issue at all, but rather deals with application of CR 6 and CR 59. As such, Bank of America's reliance on this case is misplaced.

The issue really centers on whether the revision order is appealable and whether a subsequent order, which is more akin to a supplemental proceeding and a mere a corollary to the dispositive order, render the dispositive order moot. Clearly this cannot be the case.

If the dispositive order that is the focus of this appeal is overturned, the subsequent order which flows from it becomes null and void. The Rules of Appellate Procedure appear to address this issue in RAP 2.4(a) and (b). RAP 2.4(a) clearly designates that the appellate court will "review the decision or parts of the decision designated in the notice of appeal" and not limit the review to just a final order. In fact, any

appealable order is subject to appellate review. In Fox v. Sunmaster Prods., 115 Wn.2d 498, 798 P.2d 808 (1990), the court determined that the court may review any appealable order.

Additionally, RAP 2.4(b) expressly permits the appellate court to review any earlier order or ruling, "including an appealable order," regardless whether it is designated in the notice of appeal, if it prejudicially affects the decision designated in the notice. Depending upon the nature of the case and the relationship between the parties' claims, a partial summary judgment order can prejudicially affect every order entered thereafter, and often will plainly so affect the judgment that ultimately disposes of the case. *Id.* at 505.

Clearly, the subject to this appeal is an appealable order and it prejudicially affects the entire case, as it is the dispositive order in this case. Respondent's subsequent order does not alter the ruling entered by the judge on revision, but rather is of supplemental nature.

Additionally, Respondent's subsequent order of judgment was obtained ex parte before the King County Commissioner. Thus, the question arises whether the subsequent Commissioner's order would even be appealable in light of a judge's revision order. The Washington State Supreme Court in State v. Ramer, 151 Wnd.2d 106, 86 P.3d 132 (2004), held that once a judge enters a revision the appeal must flow from that order.

Once the superior court makes a decision on revision, "the appeal is from the superior court's decision, not the commissioner's." *State v. Hoffman*, 115 Wn. App. 91, 101, 60 P.3d 1261 (2003). *Id.* at 113.

Again, the judge's order is proper order to appeal in this case as the commissioner's rulings are not an appealable order once the judge entered his order for revision.

Respondent obtained a judgment which flowed from the order subject to this appeal. Clearly, Appellant filed a timely appeal from the order revising the Commissioner's order. The subsequent entry of judgment will have no effect if the order on appeals is reversed and therefore Bossie's appeal is not moot.

### **B. CONCLUSION**

Bank of America's order of judgment is merely a corollary to the order of revision. As such, the order of revision is an appealable order and its reversal would render Respondent's judgment void. Accordingly, Ms. Bossie's appeal is not moot.

**Dated this 15<sup>th</sup> day of February, 2012**

Respectfully Submitted by:  
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