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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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NO. 66871-4

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SEAWEST SERVICES ASSOCIATION,

Respondent/Plaintiff,

v.

JIM COPENHAVER AND SUZANNE COPENHAVER,

Appellants/Defendants,

and

BANK OF AMERICA, BRANCH # 37103, OAK HARBOR/IN-STORE,

Garnishee Defendant.

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OPENING BRIEF OF APPELLANTS

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## I. INTRODUCTION

This appeal concerns the application of the garnishment statute to the earnings of a judgment debtor that have been deposited into the debtor's checking account. Following the issuance of a writ garnishing the debtors' joint checking account, the debtors filed an exemption claim relying on the plain language of the garnishment statute excluding the compensation a debtor receives for personal services. The exemption claim was supported by uncontested proof that the account contained exclusively the husband debtor's earnings as a physician. Most of these earnings already had been deemed exempt by the court in a garnishment from the debtor's employer.

Despite the plain language of the statute excluding compensation the debtor receives for personal earnings from garnishment of a branch bank account, the lower court ruled that the debtors' bank account was subject to garnishment in its entirety. The court also awarded attorneys' fees under a statute requiring lack of good faith in asserting the exemption. The court's rulings were in error and this Court should reverse.

## II. ASSIGNMENTS OF ERROR

1. The Island County Superior Court (Churchill, J.) erred in ruling that the earnings contained in Appellants Copenhavers' personal checking account (Bank of America Account No. 96081534) are subject to garnishment and ordering the contents therein to be paid to Respondent Seawest. CP 11-14.

2. The trial court erred in finding that Appellants Copenhavers' exemption claim was made in bad faith and awarding Respondent Seawest's attorneys' fees. CP 15-16.

## III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err in ruling that earnings that it previously ruled to be "exempt" from wage garnishment under RCW 6.27.150 lose their protection when deposited into the judgment debtors' checking account? (Assignment of Error No. 1)

2. Did the trial court err in ruling that earnings contained in appellants' personal checking account are subject to garnishment despite the plain language of RCW 6.27.080(3) excluding "compensation payable for personal services?" (Assignment of Error No. 1).

3. Did the trial court err in finding that the Copenhavers' exemption claim was made in bad faith, where there was no argument or evidence of bad faith and where the claim presented a statutory question of first impression supported by the statute's plain language? (Assignment of Error No. 2).

#### IV. STATEMENT OF THE CASE

The subject appeal is ancillary to the principal suit between Plaintiff/Respondent Seawest Services Association ("Seawest") and Defendants/Appellants Jim and Suzanne Copenhaver ("Copenhavers"). The principal suit is currently under review by this Court (Court of Appeals, Division I, Cause No. 65577-9) and concerns the parties' relative rights and responsibilities arising out of an easement for a well, water line and pollution control setback located on the Copenhavers' property. The trial court ordered the Copenhavers to pay \$4,257.26 in principal judgment, \$141.90 in interest, and \$91,567.05 in attorneys' fees. The Copenhavers appealed the lower court's ruling and the parties have fully briefed the issues on appeal. Oral argument in the principal suit has not yet been scheduled.

On September 24, 2010, Seawest began the process of garnishing Dr. Copenhaver's wages by filing an application and affidavit for a writ of garnishment against PhyAmerica, a military contractor which employed Dr. Copenhaver as a primary care physician serving the Naval Air Station at Oak Harbor. CP 160-64; 165-66. The Copenhavers did not oppose this garnishment. The court entered an order that Seawest was entitled to garnish the "nonexempt" earnings of Mr. Copenhaver from PhyAmerica. CP 158. Subsequent orders dated January 10, 2011 and January 24, 2011 similarly specified that the garnishment was for a "nonexempt" amount of Mr. Copenhaver's earnings. CP 155, 153. Pursuant to RCW 6.27.150(1)(b), 75 percent of Mr. Copenhaver's earnings are exempt. The remaining 25 percent (plus costs pursuant to statute) were paid to Seawest in partial satisfaction of the underlying judgment.

Seawest also sought to collect on its judgment from the Copenhavers' bank accounts. It filed an application and affidavit for a writ of garnishment against the garnishee defendant, Bank of America, Branch #37103, Oak Harbor/In-Store ("Bank of America") on January 11, 2011. CP 119-51. The application and affidavit for the writ was filed against the Bank of America branch because Seawest believed the branch

“has in its possession or under its control personal property or effects belonging to Jim and Suzanne Copenhaver which are not exempted from garnishment by any state or federal law.” CP 120 (Application for Writ at p. 2).

In response to Seawest’s application to garnish the Copenhavers’ bank accounts, the Copenhavers filed an Exemption Claim pursuant to RCW 6.27.160. CP 110-14 (Exemption Claim). Through counsel, the Copenhavers responded on the form provided to them by Seawest. CP 110-12. The Copenhavers marked an “x” in the preprinted box appearing on the form next to language stating, “No money other than from above payments have been deposited in the account.” CP 111. The Copenhavers were making reference to the account containing only earnings of Mr. Copenhaver, and they attached a statement to the form that explained the application of RCW 6.27.080(3). CP 113.

In the statement, the Copenhavers acknowledged that the subject Bank of America branch contained two of the Copenhavers’ bank accounts, Account No. 5311188640 and Account No. 96081534. CP 113. Account No. 5311188640 (“custodial account”) was established by Mrs. Copenhaver as a custodial account for the savings earned by one of

their four minor children, Jeremy Copenhaver. *Id.* The custodial account consisted entirely of funds earned by Jeremy Copenhaver and the Copenhavers stated that such funds were not the property of Jim or Suzanne Copenhaver. *Id.*

Account No. 96081534 (“checking account”) was used by the Copenhavers to deposit Mr. Copenhaver’s earnings. CP 113. The Copenhavers stated that the account consisted “entirely of earnings of Dr. Copenhaver, including earnings that have already been garnished” and referenced RCW 6.27.080(3) which excluded “compensation payable for personal services.” *Id.*<sup>1</sup>

Seawest objected to the Copenhavers’ exemption claim and moved for an order garnishing all of the contents of the Copenhavers’ checking account along with an award of attorneys’ fees for relying upon RCW 6.27.080 in purportedly bad faith. CP 53-70; 71-72. The statute governing claims of exemption authorizes an award of costs to the

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<sup>1</sup> The account contained “exempt” earnings from PhyAmerica along with earnings from Mr. Copenhaver’s other employer, Professional Performance Development Group. CP 41, 43. Seawest had not obtained an order garnishing Mr. Copenhaver’s earnings from Professional Performance Development Group (PPDG). PPDG also contracts out physician services.

prevailing party, but only allows an award of “an attorney’s fee to the prevailing party if the court concludes that the exemption claim or the objection to the claim was not made in good faith.” RCW 6.27.160(2).

The Copenhavers responded by filing copies of their account bank statements, pay stubs, and declarations from Jim and Suzanne Copenhaver supporting application of the statutory exemption for compensation for personal services. CP 44-50; 40-41; 42-43. The pay stubs corresponded with deposit amounts showing on the Copenhavers’ checking account statement.<sup>2</sup> CP 48-50. The statute places the burden upon the defendant to prove “any claimed exemption, including the obligation to provide sufficient documentation to identify the source and amount of any claimed exempt funds.” RCW 6.27.160(2). Seawest did not contest any of the Copenhavers’ evidence and did not argue that the checking account contained any funds other than Mr. Copenhaver’s earnings. Seawest did

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<sup>2</sup> The difference between the earnings of Mr. Copenhaver from PhyAmerica and the amount deposited was explained by Mrs. Copenhaver, who declared that she withdrew the difference in cash for personal use and deposited the balance. CP 41. Although Mrs. Copenhaver recalled withdrawing \$1,000.00, *id.*, the actual difference between the pay stub and the amount deposited was \$800.00. CP 48-49.

not identify any argument or action by the Copenhavers that was made in bad faith, and offered no argument supporting its claim for bad faith attorneys' fees.

Prior to the hearing, Seawest stipulated to releasing the contents of the custodial account. *See* CP 45 at n.1. At the hearing, the court accepted the Copenhavers' proof that the checking account contained only Mr. Copenhaver's earnings but ruled in favor of Seawest and granted half of Seawest's requested attorneys' fees. CP 37-38. After additional briefing initiated by Seawest to clarify the court's decision regarding the award of attorneys' fees, *see* CP 29-35, the court entered an order garnishing all of the contents of the Copenhavers' checking account, finding that the Copenhavers' exemption claim was made in bad faith, and awarding Seawest \$687.50 in attorneys' fees. CP 11-14; 15-16. The Copenhavers timely appealed. CP 1-10.

## V. ARGUMENT

### A. Standard of Review

The garnishment process is governed by Chapter 6.27 RCW. The meaning of a statute is a question of law reviewed de novo. *State Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002);

*Bartel v. Zuckriegel*, 112 Wn. App. 55, 64, 47 P.3d 581 (2002). The “garnishment statute should be strictly construed against the party seeking the remedy[.]” *Watkins v. Peterson Enterprises, Inc.*, 137 Wn.2d 632, 646, 973 P.2d 1037 (1999); *see also, Dean v. Opdycke*, 151 Wash. 504, 509, 276 P. 545 (1929) (Applying “the rule of liberal construction of exemption statutes favorable [sic] to the debtor, [which is] adhered to by this court...”); *Lemagie v. Acme Stamp Works*, 98 Wash. 34, 40, 167 P. 60 (1917) (Overturning prior decision “not in consonance with the general rule of liberality in construing exemption statutes and allowance here and elsewhere.”).

Washington follows the “American rule” on attorneys’ fees, which provides that “attorney fees are not recoverable by the prevailing party as costs of litigation unless the recovery is permitted by contract, statute, or some recognized ground in equity.” *Leingang v. Pierce County Medical Bureau, Inc.*, 131 Wn.2d 133, 143, 930 P.2d 288 (1997). Whether a statute authorizes an award of attorney fees is a question of law reviewed *de novo*. *Togerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009). Where a fee award is discretionary the award of fees is reviewed for a manifest abuse of discretion. *Boeing Co. v. Sierracin*

*Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1987), *citing Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 595-96, 675 P.2d 193 (1983). A trial court abuses its discretion if its decision is based on “untenable grounds or for untenable reasons.” *In re Personal Restraint of Duncan*, 167 Wn.2d 398, 402, 219 P.3d 666 (2009) (internal quotes omitted). “A decision is based on untenable grounds if the trial court applies the wrong legal standard or relies on unsupported facts.” *Id.* at 403.

B. Only “Nonexempt” Earnings of a Judgment Debtor are Subject to Garnishment

Under the garnishment statute, a judgment debtor is entitled to claim an exemption from garnishment by submitting a declaration that explains the basis of the exemption. RCW 6.27.160. Included among the exemptions within the garnishment statute is the well-established statutory provision exempting a portion of the debtor’s earnings. Under RCW 6.27.150, for each week of such earnings, an amount shall be exempt from garnishment which is the greatest of either thirty times the federal minimum hourly wage or seventy-five percent of the disposable earnings of the defendant. RCW 6.27.150(1)(a)-(b).

In enacting RCW 6.27.150(1)(a)-(b), the Legislature balanced the

competing interests of the judgment debtor and the judgment creditor by allowing the creditor to make progress in collecting on a judgment, while also allowing the debtor the means to provide for daily needs and remain employable rather than becoming impoverished or bankrupt and unable to earn to pay off the debt. The statute is underlined by the enduring purpose of exemption statutes, which “has long been conceded to be of the beneficent public policy of preventing indigence and encouraging thrift.” *Lemagie v. Acme Stamp Works*, 98 Wash. 34, 41, 167 P. 60 (1917).

Washington courts have long interpreted the garnishment statute to allow a judgment creditor to garnish only a “nonexempt” amount of the debtor’s earnings. *See Bour v. Johnson*, 122 Wn.2d 829, 831, 864 P.2d 380 (1993) (acknowledging that 25 percent of debtor’s wages was nonexempt under RCW 6.27.150(1)(b)). In 1917, the supreme court explained that the statutory exemptions for “wages or salary” for personal services “are explicit [and] need no construction[.]” *Lemagie*, 98 Wash. at 37. In *Rock v. Abrashin*, 154 Wash. 51, 55, 280 P. 740 (1929), the court reaffirmed that only “surplus earnings over these exemptions were subject to garnishment.” Subsequent decisions have followed the same long-standing rule. *See, Watkins v. Peterson Enterprises, Inc.*, 137 Wn.2d 632,

642, 973 P.2d 1037 (1999) (quoting statutory provision mandating reduction of garnishment judgment to amount of “any nonexempt funds or property which was actually in the possession of the garnishee ...plus the cumulative amount of the “nonexempt earnings...”); *Baker v. Teachers Ins. & Annuities College Retirement Equity Funds (TIAA-CREF)*, 91 Wn.2d 482, 588 P.2d 1164 (1979) (holding 75 percent of retirement pay as “earnings” exempt from garnishment).

The garnishment procedure is also defined by statute and is consistent with RCW 6.27.150(1) in protecting exempt earnings. The form of garnishment writ specified by RCW 6.27.100 includes language that the defendant “is entitled to receive amounts that are exempt from garnishment under federal and state law.” Thus the employer must still “pay the exempt amounts to the defendant[.]” *Id.* Under current law, the exemption is the greater of thirty times the federal minimum hourly wage or “[s]eventy-five percent of the disposable earnings of the defendant[.]” RCW 6.27.150(1).

The writs Seawest served upon Mr. Copenhaver’s employer PhyAmerica conformed with RCW 6.27.100 by adopting the language called for in the statute:

If, at the time this writ was served, you owed the Defendants any earnings (that is wages, salary, commission, bonus, or other compensation for personal services or any periodic payments pursuant to a nongovernmental pension or retirement program), the Defendants are entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the Defendants on the day you would customarily pay the compensation or other period payment. As more fully explained in the answer, the basic exempt amount is the greater of seventy-five percent of disposable earnings or a minimum amount determined by reference to the employees pay period to be calculated as provided in the answer.

CP 162. Pursuant to RCW 6.27.150, the court properly applied the statutory limitation on garnishment by ordering that the only earnings garnished were “nonexempt” earnings. CP 158. Subsequent orders garnishing earnings from employer PhyAmerica contained similar language. CP 155, 153.

The trial court apparently believed that statutorily exempt earnings lose their protection after they are paid to the judgment debtor and deposited into the debtor’s checking account.<sup>3</sup> But the court’s ruling that

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<sup>3</sup> The Copenhavers clarified the court’s ruling on this point: “I would like to clarify that – that what you’re ordering is that all funds received, compensation received for personal services are subject to garnish – garnishment whether those funds have been already garnished or

exempt earnings somehow lose their exempt status is inconsistent with the statutory scheme. A judgment debtor claiming an exemption “bears the burden of proving any claimed exemption, including the obligation to provide sufficient documentation to identify the *source* and amount of any claimed exempt funds.” RCW 6.27.160(2) (emphasis added). There would be no point in requiring the judgment debtor to identify and document the source of the funds claimed to be exempt if the source was irrelevant.

The Legislature clearly intended that exempt funds would remain exempt *if* the debtor could provide documentation tracing the exempt character of the funds in question. The Copenhavers submitted uncontested proof that they had deposited Mr. Copenhaver’s exempt earnings from PhyAmerica into their checking account after the nonexempt portion had been paid to Seawest. CP 40-50. Allowing the exempt earnings to be seized from the checking account nullifies the statutory scheme for claiming an exemption, specifically the provision requiring the judgment debtor to document the source of the claimed

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not.” CP 38. The court responded flatly, “Yes.” *Id.*

exempt funds. Courts do not construe statutes to render them ineffective or to lead to absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (“a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results”) quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003) (Madsen, J., dissenting). Instead courts strive to harmonize a statutory scheme, see *State v. Chapman*, 140 Wn.2d 436, 452, 998 P.2d 282 (2000), a task readily accomplished here by holding that exempt earnings remain exempt when the defendant satisfactorily establishes their exempt source. The court’s decision garnishing these “exempt” earnings that already have been the subject of a wage garnishment was in error.

C. The Garnishment Statute Excludes a Judgment Debtor’s Compensation for Personal Services which is Deposited into a Branch Bank Account

The preceding section of this brief establishes that Mr. Copenhaver’s earnings from PhyAmerica (which constituted the majority of the funds in the checking account) were exempt from garnishment pursuant to RCW 6.27.150 and 6.27.160. Because the other funds in the account also were proven by the Copenhavers to be Mr. Copenhaver’s earnings, the entire account was exempt pursuant to

RCW 6.27.080(3).

This statute contains an exemption when a writ of garnishment names a particular branch of a financial institution that maintains a bank account containing the debtor's earnings.<sup>4</sup> Under RCW 6.27.080(3), a "writ naming a branch as garnishee defendant shall be effective only to attach the deposits, accounts, credits, or other personal property of the defendant (*excluding compensation payable for personal services*) in the possession or control of the particular branch..." (emphasis added). The statute's plain language excludes "compensation payable for personal services." RCW 6.27.080(3) (second sentence).

The phrase "compensation payable for personal services" is defined within the garnishment chapter and used interchangeably with "earnings." Under RCW 6.27.010(1), "the term 'earnings' means compensation paid or payable to an individual for personal services,

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<sup>4</sup> The first sentence of RCW 6.27.080(3) applies to writs of garnishment naming financial institutions, while the second sentence applies to writs naming branches. Subsection (1) requires that the writ of garnishment directed to a bank that maintains branch offices "shall identify *either* a particular branch of the financial institution *or* the financial institution as the garnishee defendant." RCW 6.27.080(1) (emphasis added).

whether denominated as wages, salary, commission, bonus, or otherwise[.]” See also, *Bartel v. Zuckriegel*, 112 Wn. App. 55, 65, 47 P.3d 581 (2002) (Citing to RCW 6.27.010(1) for the proposition that earnings refers to compensation paid or payable to an individual for personal services).

In RCW 6.27.080, the Legislature decreed that *all* of the earnings of a judgment debtor are excluded from garnishment if they are deposited into a branch bank account. This statutory scheme thus requires the judgment creditor who wishes to access a debtor’s earnings to utilize the garnishment procedures *prior* to the debtor depositing those earnings into a bank account, i.e., by garnishing the wages directly from the employer. Seawest did so with respect to PhyAmerica (but did not obtain a garnishment judgment against Mr. Copenhaver’s second employer PPDG). As described in the preceding section, the Copenhavers submitted sufficient and uncontested proof that *all* of the funds in their checking account were Mr. Copenhaver’s earnings as a physician. The Copenhavers met their burden of proof under RCW 6.27.160(2) to establish the source of the funds. The entire checking account therefore was excluded from garnishment pursuant to RCW 6.27.080(3) (second

sentence).

Perhaps due to the unambiguous language exhibiting the intent of the Legislature to exempt earnings from garnishment of a branch bank account, it appears that an appellate court has not yet been asked to construe RCW 6.27.080(3). Washington Practice briefly discusses the provision. In *Creditors' Remedies, Debtors' Relief* § 8.34, the author states that if a branch of a financial institution is named as the garnishee, the “garnishment will reach only the deposits, accounts, credits, or other personal property of the principal defendant in the possession or control of that branch” but “will *not reach earnings*, even if the principal defendant is an employee of that branch.” 28 Wash. Prac. *Creditors' Remedies – Debtors' Relief* § 8.34.

The Copenhavers provided proof that the contents of their checking account consisted only of compensation Mr. Copenhaver received for personal services. Seawest did not contest this evidence, and the trial court accepted it. CP 38. The Copenhavers provided a current bank statement showing the contents and transactions of the account. CP 48. The statement detailed three deposits made by the Copenhavers, all of which consisted of Dr. Copenhavers' earnings. *Id.* The deposit of

\$8,864.50 was entirely compensation Dr. Copenhaver received from PhyAmerica for personal services. *Id.*; *see also*, CP 41, 43 (Declarations of Suzanne Copenhaver and Jim Copenhaver).<sup>5</sup>

Two smaller deposits, one totaling \$2,230.00 and another for \$1,792.64, were payments received by Dr. Copenhaver for personal services from a second employer, Professional Performance Development Group (PPDG). CP 48; 43. The Copenhavers established that these deposits consisted of compensation from PPDG by providing a pay stub for \$1,792.64 (an amount corresponding exactly to one of the deposits), CP 50, and stating under oath that the \$2,230.00 deposit was compensation for services.<sup>6</sup> CP 41, 43. This evidence also was uncontested. CP 38.

The lower court accepted that the account contained Dr. Copenhaver's wages, but erroneously concluded that the exemption

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<sup>5</sup> The pay stub from PhyAmerica shows that Dr. Copenhaver received \$9,664.50 in earnings. CP 49. Mrs. Copenhaver withdrew \$800 for personal use. See page 7, n.2.

<sup>6</sup> The Copenhavers were not able to find the check stub Dr. Copenhaver received from PPDG in the amount of \$2,230.00. CP 45, n.3. Seawest did not contest the Copenhavers' declarations that this deposit also was earnings.

applied only to bank employees. CP 38. The court apparently confused the first sentence in RCW 6.27.080(3) which applies to financial institutions with the second sentence that applies to branches of financial institutions.

The first sentence states that a “writ naming the financial institution as the garnishee defendant shall be effective only to attach to deposits of the defendant in the financial institution and compensation payable for personal services *due the defendant from the financial institution.*” RCW 6.27.080(3) (emphasis added). This sentence merely ensures that the earnings of a judgment debtor who happens to be employed by a financial institution are not exempt from a garnishment proceeding. The second sentence authorizes garnishment of the debtor’s deposits in a branch office of a financial institution but excludes compensation for personal services. This second sentence states that a writ “naming a *branch* as garnishee defendant shall be effective only to attach the deposits, accounts, credits or other personal property of the defendant (excluding compensation payable for personal services) in the possession or control of the particular branch[.]” *Id.* (emphasis added).

This sentence by its plain language excludes all of the account

holder's earnings, regardless of whether the account holder happens to be a bank employee.<sup>7</sup> The exclusion provision does not use the language of the first sentence applicable to writs directed to a financial institution, it does not incorporate by reference or even refer to that provision, and does not otherwise differentiate between sources of earnings in excluding them from garnishment directed to a branch.

Seawest named Bank of America "Branch #37103, Oak Harbor/In-Store" as the garnishee defendant. CP 119. The trial court made reference to the provision applying to a branch as garnishee defendant, but incorrectly relied on the portion of the statute that applies only where the financial institution is the garnishee defendant. The court stated that "Whenever [sic] it has in the second sentence of that paragraph where it starts out, 'A writ naming a branch' and then it has parentheses, 'excluding compensation for personal services' in my viewpoint that re- that refers back to compensation payable for personal services *due the Defendant from the financial institution.*" CP 38 (emphasis added).

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<sup>7</sup> Accordingly, the Washington Practice provision relied upon by Seawest, 28 Wash. Prac. Creditors' Remedies – Debtors' Relief § 8.34, states that a debtor's earnings are exempt under RCW 6.27.080(3) "even if the principal defendant is an employee of that branch." CP 57.

The court's conclusion that the exclusion in the second sentence of RCW 6.27.080(3) applies only to the earnings of an employee of the financial institution referenced in the first sentence is contrary to the structure of the statute and its plain language. Only the first sentence applying to a financial institution addresses an employer-employee relationship between the institution and the judgment debtor. The first sentence is inclusive, affirmatively providing for attachment of compensation "due the Defendant from the financial institution." CP 38 *quoting* RCW 6.27.080(3). The second sentence, however, applies to a different type of garnishment, a writ naming any branch of a financial institution, and is exclusive, allowing garnishment of a debtor's "deposits, accounts, credits, or other personal property (*excluding* compensation payable for personal services)." RCW 6.27.080(3) (emphasis added). The trial court erred when it confused the two provisions and applied the sentence allowing garnishment of the earnings of an employee of the financial institution. The court's decision ignores the Legislature's plain language that "compensation payable for personal services" contained in a branch bank account is excluded from the property that may be attached

pursuant to a garnishment writ. RCW 6.27.080(3). This court should reverse.

D. There is no Basis to Support the Trial Court's Ruling that the Judgment Debtor's Exemption Claim was Made in "Bad Faith"

Under RCW 6.27.160(2), the court "shall award costs to the prevailing party and may also award an attorney's fee to the prevailing party if the court concludes that the exemption claim or the objection claim was not made in good faith." The trial court ruled that the Copenhavers' exemption claim was made in bad faith. CP 15-16. The court's decision was rendered without any legal or factual foundation.

Seawest offered no evidence or argument that the claim was not made in good faith. The Copenhavers relied upon plain statutory language. Their argument provides not only a tenable answer to a statutory question of first impression, it is the correct answer. Neither Seawest nor the court identified any aspect of the Copenhavers' exemption claim that constituted bad faith. The court erred in awarding fees to Seawest under a fee provision in RCW 6.27.160(2), which is plainly limited to bad faith litigation. CP 15-16.

A finding that a claim was not made in “good faith” is tantamount to a finding of “bad faith.” *In re Estate of Mumby*, 97 Wn. App. 385, 394-95, 982 P.2d 1219 (1999) (failure to disclose material facts was not in good faith and thus was “bad faith.”). Bad faith consists of “actual or constructive fraud” or conduct “not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.” *Id.* at 394 citing *Bentzen v. Demmons*, 68 Wn. App. 339, 349 n.8, 842 P.2d 1015 (1993) (internal quotes omitted); *see also*, *In re Contested Election of Schoessler*, 140 Wn.2d 368, 391, 998 P.2d 818 (2000) (conduct which is not in good faith consists of “falsifying information”). Good faith is a “state of mind” consisting in “honesty in belief or purpose” or the “absence of intent to defraud or seek unconscionable advantage.” Black’s Law Dictionary 713 (8<sup>th</sup> ed. 1999).

Seawest offered no argument or evidence that the Copenhavers’ exemption claim was not made in good faith. *See* CP 53-70. Seawest

identified no purported fraud, sinister motive, or false and misleading information attributed to the Copenhavers.<sup>8</sup>

The court even acknowledged the reasonableness of the Copenhavers' argument, compelling Seawest to move to clarify the court's original order. CP 29-35. The court stated, "I think there is somewhat of an argument as to whether or not the exempt monies that came out of wages could have been then garnished by the – when they're placed in a financial institution, could have been garnished that way." CP 38.

There is absolutely no basis to support the court's conclusion that the Copenhavers made their exemption claim in bad faith. This Court should reverse the lower court's decision awarding attorneys' fees against the Copenhavers.

## VI. CONCLUSION

For the reasons stated above, the Copenhavers respectfully request that this Court hold that earnings already held to be exempt in a wage

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<sup>8</sup> The Washington Practice provision Seawest relies upon supports the Copenhavers' contention that the garnishment statute does not reach a defendant's earnings contained in a bank account. *See* CP 57. The exemption applies "even if the principal defendant is an employee of the branch." 28 Wash. Prac. Creditors' Remedies – Debtors' Relief § 8.34.

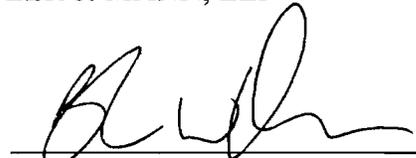
garnishment retain their exempt status in the debtors' checking account, that garnishment of earnings deposited into a branch bank account is precluded by the second sentence of RCW 6.27.080(3), reverse the lower court's judgment garnishing the Copenhavers' checking account which consisted entirely of earnings, and reverse the award of attorneys' fees against the Copenhavers.

DATED this 18<sup>TH</sup> day of August, 2011.

Respectfully submitted,

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28 DECLARATION OF SERVICE - 2

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