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Case No. 69566-5

**COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON**

KAREN V. AGARS,

Petitioner/Appellant,

and

ROLLAND M. WATERS,

Respondent/Respondent,

And

CRAY, INC.,

Garnishee,

FILED APPEALS DIV 1
COURT OF APPEALS
STATE OF WASHINGTON
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APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

This case stems from the parties' dissolution proceedings. In the course of those proceedings, the court entered a Judgment against respondent Rolland Waters. CP at 18. Later, the parties executed a CR2A Agreement which was ultimately incorporated into this Decree of Dissolution, while retaining its enforceability as a contract. CP at 453.

At its heart, this case concerns a simple matter of law: did the parties' CR2A Agreement, which did not reference the Judgment, somehow incorporate it so as to satisfy it? CP at 38. According to Mr. Waters, it did. CP at 38. Ms. Agars argued that the absence of any mention of the Judgment in the Agreement reflected the fact that the parties reached no Agreement regarding it and, therefore, the Judgment remained in place. CP 119 through 124.

Subsequent to entry of the parties' Decree of Dissolution, Ms. Agars sought to collect the Judgment by obtaining a Writ of Garnishment. CP at 15. Mr. Waters subsequently filed motions to quash the Writ and for entry of sanctions against Ms. Agars. CP at 18. Mr. Waters' motion for sanctions was based on Ms. Agars' 'activities' having no connection to the Writ and documents not filed by Ms. Agars in connection with the garnishment proceeding. CP at 41 though 45.

B. ASSIGNMENTS OF ERROR.

Regarding the Order Quashing Garnishment, Entering Satisfaction of Judgment, and Imposing Fees, Costs and Terms entered on October 17, 2012:

1. The court erred in granting Mr. Waters' Motion to Quash Garnishment and Satisfaction of Judgment and Imposition of Terms and deeming that the underlying Judgment entered on June 7, 2006, was satisfied.
2. The court erred in finding that the parties' CR2A Agreement "incorporated all of the claims of the parties, including the Judgment" and that the Judgment was satisfied thereby.
3. The court erred in finding that the Judgment entered against Mr. Waters on June 7, 2007 did not serve as a legal basis for the issuance of a Writ of Garnishment.
4. The court erred in imposing CR 11 sanctions against Ms. Agars and in failing to (a) identify any specific document signed by her which served as the basis for entering CR 11 sanctions and (b) how any such document violated that rule.

Regarding the Order and Judgment entered on November 6, 2012:

1. The court erred in finding that Mr. Waters' attorney fees and costs of \$7,127.05 were reasonable and necessary and in entering a Judgment in that amount in his favor against Ms. Agars.
2. The court erred in finding that Ms. Agars "filed" a wrongful Writ of Garnishment against Mr. Waters and in imposing CR 11 sanctions against Ms. Agars without (a) identifying any specific document signed by her, or her attorney, which served as the basis for entering sanctions and (b) stating findings as to how any such document violated CR 11.
3. The court erred in finding that the said Writ of Garnishment was not well grounded in fact and was not warranted by existing law.

4. The court erred in finding that Ms. Agars' conduct in this case constituted procedural harassment and (unduly) increased Mr. Waters' legal costs.
5. The court erred in failing to state the specific dollar amount of sanctions entered against the petitioner pursuant to CR 11.
6. The court erred in ordering that Mr. Waters' attorney fees and legal costs "shall continue to accrue after judgment, through collection, appeal, or bankruptcy."

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the Judgment entered against Mr. Waters on June 7, 2007 a "claim," rather than a property, of Ms. Agars', such that the parties contracted to satisfy it when they agreed to mutually release each other from "all claims by the other party" in their CR2A Agreement?

2. Did the Judgment, which was entered against Mr. Waters after the parties separated, fall within the scope of the parties' CR2A Agreement, which was a "complete and final settlement of all their marital and property rights and obligations?"

3. Was the Judgment entered against Mr. Waters on June 7, 2007 "incorporated" into the parties' CR2A Agreement such that the parties contracted to satisfy it, when that agreement neither referenced the said Judgment, nor provided that any writing of any kind was incorporated into it?

4. Did the court err when, pursuant to CR 11, it entered sanctions against Ms. Agars, when (1) the record does not support the entry of such sanctions; (2) the court failed to identify the filing that violated CR 11; and (3) the court failed to state how any filing signed by Ms. Agars or her attorney violated CR 11?

5. Did the court err when it ordered that the respondent's legal fees and costs "shall continue to accrue after judgment, through collection, appeal, or bankruptcy?"

D. STATEMENT OF THE CASE

1. BACKGROUND

On June 7, 2006, the court awarded a Judgment in the amount of \$5,000 in favor of the petitioner, Karen Agars, and against the respondent, Rolland Waters, in the parties' then pending dissolution case. CP at 18 through 23. No Satisfaction of Judgment ever was filed with respect to this Judgment. On January 29, 2007, the parties entered into a Separation Contract and CR2A Agreement (referred to henceforth alternately as the 'CR2A Agreement', the 'Separation Contract' and simply as the 'Agreement'). The CR2A Agreement did not make any provision regarding the Judgment. CP at 453.

On March 9, 2012, the undersigned received an email message from Mr. Waters, in which he stated he believed that the Judgment had been satisfied. CP at 136. Mr. Waters did not supply any proof of the alleged satisfaction. On April 13, 2012, the undersigned sent an email message to David Owens, Mr. Waters' attorney, in which he noted that there were two cases involving the parties which had been filed in King County (cause numbers 05-3-00290-9 and 10-3-06533-8) but that he had represented Ms. Agars only in cause no. 05-3-00290-9, the parties' dissolution case. CP at 136. The undersigned subsequently learned that the Judgment in question was the Judgment entered in June 2006 in the dissolution case. CP at 137.

On April 25, 2012, the undersigned sent another email message to Mr. Owens informing him that, after reviewing the file, he found no proof that the Judgment had been satisfied and invited him to supply evidence that it had been. He also indicated to Mr. Owens that his next step would be securing a Writ in order to attach enough of Mr. Waters' salary to pay off the Judgment. CP at 137.

On June 7, 2012, the undersigned filed a Certification in Support of Issuance of Writ of Garnishment which represented, in pertinent part, that Ms. Agars/judgment creditor had an unsatisfied judgment, entered on June 7, 2006, in the principal amount of \$5,000. CP at 15.

Mr. Waters filed his Motion to Quash Writ of Garnishment in August 2012. CP at 26. With respect to this Motion, the only issue before the trial court pertaining to the Writ of Garnishment was whether the underlying Judgment had been in some way satisfied by the execution of the parties' CR2A agreement. CP at 39. However, Mr. Waters also moved the court to enter CR 11 sanctions against Ms. Agars. CP at 39. Mr. Water's motion for sanctions was notable for the following reasons:

- a. The Writ of Garnishment was issued on the basis of two documents: Certification of Counsel in Support of Issuance of Writ of Garnishment (CP at 15) and the Declaration of Mailing dated June 13, 2012 (CP at 24). Neither of these documents was signed by Ms. Agars, nor did either of them appear to be the subject of the motion.
- b. It did not identify which document or documents Mr. Waters alleged were subject to sanctions, leaving counsel to guess as to which of the various documents in the record, or presented by Mr. Waters, were at issue. CP at 48 and 49.

It is also notable that Mr. Waters' Motion addressed the legal basis for his motion to quash the Writ beginning on its eighth page. CP at 44. Most of the text of the motion is devoted to false, irrelevant, and/or hearsay allegations concerning the activities of Ms. Agars, Mr. Waters' bank, and of DSHS, as well as documents Ms. Agars filed in other cases, all subsequent to the execution of the Agreement. CP at 41 through 44. (This 'evidence' apparently served as the basis for Mr. Waters' motion for sanctions.) Arguably, none of these activities has any bearing on whether

Mr. Waters had in any way been released from his obligation to pay the Judgment.

Mr. Waters claimed his purpose in presenting those materials was to attack Ms. Agars' credibility. CP at 49. This alleged purpose begs the question: credibility as to what? The Writ was obtained on the basis of the Judgment and there is no dispute that it was entered. Ms. Agars' truth-telling ability was not at issue when the Writ was obtained: the Judgment spoke for itself. CP at 15. Ms. Agars contends that Mr. Waters' motion for sanctions was nothing but an *ad hominem* attack on her, intended to prejudice the trial court against her.

Ms. Agars moved the court to enter CR 11 sanction against Mr. Waters for filing a baseless motion for CR 11 sanctions; the court failed to rule on her motion. CP at 107.

Mr. Water's motions originally (mistakenly) were noted to be heard on September 5, 2012 before the King County Superior Court Ex Parte Department. CP at 28 and 180. The Ex Parte Department declined to hear them. CP at 180. Mr. Waters subsequently noted his motions before the Chief Civil Department after revising and re-filing them. CP at 36. They were heard on October 17, 2012. CP at 175. Please note that, due to Mr. Waters' mistake in noting his motions before the wrong

department, unnecessary fees were incurred by both parties. CP at 150 and 155.

The trial court granted Mr. Waters' motion to quash the Writ of Garnishment, finding that it was "obtained without legal basis." CP at 175. The trial court also entered sanctions against Ms. Agars. However, the court did not enter findings specifying the basis of its order for CR 11 sanctions. CP at 175 through 178 and 395 through 397.

2. THE COURT ERRED IN QUASHING THE WRIT OF GARNISHMENT

a. STANDARD OF REVIEW

The parties' CR2A Agreement is a contract and should be analyzed in accordance with contract law. Paragraph 31 of the Agreement provides as follows (CP at 463 and 464):

Independent Status as Contract. Notwithstanding that the provisions of this contract may be included and merged into a decree of dissolution or legal separation, if one is obtained, it is also the intention of the parties that this contract retain its status independently as a contract between the parties, each party to enforce their rights as they arise from this contract by contract law, as well as those remedies available for the enforcement of judgment and marital law, specifically including the use of the contempt power of the court, in the event a decree of dissolution or legal separation is granted.

The general rule is that an appellate court will review *de novo* a trial court's rulings where the record consists only of affidavits, memoranda of law, and other documentary evidence.

An appellate court stands in the same position as the trial court where the record consists only of affidavits, memoranda, and other documentary evidence.

Koenig v. Thurston County, 155 Wash. App. 398, 403, 229 P.3d 910, 914, 2010 WL 1309617 (2010) *aff'd in part, rev'd in part*, 175 Wash. 2d 837, 287 P.3d 523, 41 Media L. Rep. 1019, 2012 WL 4458400 (2012)

[W]here the record both at trial and on appeal consists entirely of written and graphic material - documents, reports, maps, charts, official data and the like - and the trial court has not seen nor heard testimony requiring it to assess the credibility or competency of witnesses, and to weigh the evidence, nor reconcile conflicting evidence, then on appeal a court of review stands in the same position as the trial court in looking at the facts of the case and should review the record *de novo*.

Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wash.2d 243, 252, 258, 884 P.2d 592 (1994) (PAWS II). Under such circumstances, the reviewing court is not bound by the trial court's findings on disputed factual issues. Smith v. Skagit County, 75 Wash. 2d 715, 719, 453 P.2d 832, 835 (1969) holding modified by State v. Post, 118 Wash. 2d 596, 826 P.2d 172, 60 USLW 2635, 1992 WL 45527 (1992).

The trial court's interpretation of the language of a contract is a

question of law we review *de novo*. 224 Westlake, LLC v. Engstrom Properties, LLC, 169 Wash. App. 700, 716, 281 P.3d 693, 703, (Div.1; 2012).

In reviewing an issue *de novo*, the reviewing court determines the correct law and applies it to the facts as found below.

Tift v. Profl Nursing Services, Inc., 76 Wash. App. 577, 583, 886 P.2d 1158, 1162, 131 Lab. Cas. P 58038, 2 Wage & Hour Cas. 2d (BNA) 989, 1995 WL 14053 (Div. 1; 1995).

In the instant case, all evidence was in the form of declarations and documentation. No oral testimony was presented. This being the case, the appellate court independently reviews the record.

b. THE JUDGMENT WAS MS. AGARS' SEPARATE PROPERTY

The Judgment awarded against Mr. Waters and in favor of Ms. Agars was entered after the parties separated and, as such, it was her separate property. RCW 26.16.140. In re Marriage of Griswold, 112 Wash.App. 333, 340, 341, 48 P.3d 1018 (Div. 3), reconsideration denied, review denied 148 Wash.2d 1023, 66 P.3d 637 (2002). This fact is not in dispute. RP at 9.

**c. THE JUDGMENT WAS NOT “INCORPORATED” INTO
THE CR2A AGREEMENT**

The trial court found, in pertinent part, that the “CR2A Agreement incorporated all of the claims of the parties, including the Judgment.” CP at 176.

“Incorporation may be accomplished by either expressly setting forth the terms to be incorporated in express language in an agreement or by incorporating it by reference.” 20 Wash. Prac., Fam. And Community Prop. L. § 34.18 citing In re Marriage of Yearout, 41 Wn.App. 897, 707 P.2d 1367 (1985).

In the instant case, the Judgment was not incorporated in the CR2A Agreement by either means. The Judgment, itself, is not referenced in the CR2A. In that Mr. Waters did not argue that the Judgment was incorporated into the Agreement “by reference” and did not brief the court on the doctrine of incorporation by reference, nor ask the court to enter findings corresponding to the elements of that doctrine, the court may conclude that Mr. Waters contended that the Judgment was expressly incorporated into the Agreement. In that the court found that the Judgment was a “claim” and that the Agreement provided that the parties mutually released each other from any ‘claims,’ it is clear that the trial

court found that the parties expressly contracted to release Mr. Waters from the Judgment. This was an error of law.

d. THE JUDGMENT WAS NOT A ‘CLAIM’

In his Motion to Quash Writ of Garnishment, Mr. Waters argued that, by omitting any reference to the Judgment entered against him, the CR2A Agreement released him from the obligation to pay it when he submitted this argument. CP at 46.

Rather than identify specific provisions in the Agreement which expressly operated to release him from the Judgment, Mr. Waters set forth various provisions in the Agreement which, in one manner or another, addressed the scope of the Agreement. CP at 44 through 47. He contended that the scope of the Agreement was “all-inclusive,” (CP at 45), “comprehensive” (CP at 46), and “complete and final” (CP at 45) with respect to addressing the parties’ property. Apparently, his argument is that the ‘gestalt’ of the CR2A Agreement released him from his obligation to pay the Judgment. RP at 7.

After hearing Mr. Waters’ Motion, the court entered an order finding (1) that Ms. Agars “has obtained [a] Writ of Garnishment without legal basis” and (2) that the “CR2A Agreement incorporated all of the claims of the parties, including the Judgment.” CP at 176.

The parties' CR2A Agreement provides in paragraph 18, in part, as follows (CP at 459):

All disclosed property not otherwise awarded or assigned in this agreement, whether acquired before the relationship, during the relationship or during any period of separation, shall be, and remain, the sole property of the party in whose possession or control it presently is, free and clear of any claim on the part of the other...Except as defined in this agreement, each party is hereby released from any and all claims by the other party for injuries, losses, known or unknown, foreseen and unforeseen, which have accrued up to the date of execution of this agreement, arising out of the marriage or any other relationship between the parties.

The court's finding that the "CR2A Agreement incorporated all of the "claims of the parties, including the Judgment," appears to have been based on this provision.

However, the court erred in treating the Judgment as a 'claim.' A Judgment is an asset that one owns. Unlike a claim, it may be assigned.

A judgment is a valuable asset. The judgment creditor may sell or assign it like any other valuable right. The assignment of the judgment carries to the assignee all the rights to enforce collection of the judgment that the judgment creditor enjoys.

4 Wash. Prac., Rules Practice CR 54 (5th ed.)

A 'claim' is the basis for a suit. One presents claims to the court in pleadings, i.e., in a complaint and an answer; a reply to a counterclaim; and an answer to a cross claim. CR 7 and CR 12(b). Thus, one of the basic defenses one may plead in a civil case is that it "fail[s] to state a

claim upon which relief can be granted.” CR 12(b).

“[A] judgment replaces the claim sued on; the claim is established and merged with the judgment.” 4 Wash. Prac., Rules Practice CR 54 (5th ed.) (emphasis supplied) citing Currier v. Perry, 181 Wash. 565, 44 P.2d 184 (1935). “A judgment is the final determination of the rights of the parties in the action...” CR 54; RP at 15. In the instant case, the Judgment against Mr. Waters was not a ‘claim’ against him, which Mr. Agars might litigate; it was the court’s final determination that Mr. Waters must pay her the set amount (\$5,000 plus interest (CP at 19)).

Since a Judgment is not a claim, paragraph 18 of the Agreement is not authority for finding that the parties had contracted to release Mr. Waters from his obligation to pay the Judgment. Therefore, the court erred in finding that the Judgment was a claim and that it was “incorporated” into the Agreement.

Please note that, in his Motion, Mr. Waters’ sole citation to the text of Paragraph 18 was in a footnote, in support of a different part of the Agreement (Paragraph 32), regarding the alleged “all-inclusive” nature of the Agreement. CP at 46. In the footnote, Mr. Waters emphasized the terms “known and unknown, foreseen and unforeseen...” Mr. Waters did not explain why he emphasized these words, but one might conclude that he intended to establish that that paragraph applied to the Judgment. Mr.

Waters, himself, did not expressly argue that the Judgment was a claim of Ms. Agars against him.

If paragraph 18 of the Agreement applied with respect to the Judgment, it was the following provision of that paragraph which was applicable:

All disclosed property not otherwise awarded or assigned in this agreement...shall be, and remain, the sole property of the party in whose possession or control it presently is, free and clear of any claim on the part of the other...

This provision is addressed in detail, below.

**e. THE CR2A AGREEMENT WAS NOT “ALL INCLUSIVE”
IN THE SENSE OF INCORPORATING TERMS OUTSIDE ITS
EXPRESS PROVISIONS**

In his motion, Mr. Waters repeatedly stressed the “completeness and finality” of the Agreement. CP 44 through 47. Citing the introductory paragraph of the CR2A agreement, Mr. Waters stressed that the CR2A Agreement was “a complete and final agreement of all [of the parties’] marital property rights and obligations.” CP 45 and 454.

Contrary to Mr. Waters’ understanding, the Judgment against him was not a ‘marital property.’ As the Judgment was Ms. Agars’ separate, rather than “marital” property, it was outside the scope of the CR 2A Agreement. Being final by its nature (CR 54), there was no necessity to

include it in the CR2A Agreement nor to incorporate it into the parties' Decree of Dissolution. Miller v. Miller, 198 Wash. 32, 34, 86 P.2d 758, 759 (1939). The parties were free to address the status of the Judgment within a separation contract, but their failure to do so merely reflected the absence of any agreement to change the status quo.

Mr. Waters quoted paragraph 32 of the contract in its entirety, which stated as follows (emphasis supplied by Mr. Waters) (CP at 45 and 463):

This contract embodies all of the agreements of the parties concerning the disposition of property and property rights and all other issues between them. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied upon by either party with respect to the subject matter of this contract. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. This contract by its terms, nature and purpose, contemplates and intends that each and all of its parts are interdependent and common to one another and to the consideration and the contract is therefore "entire," rather than "severable."

The provision that the Agreement "embodies all of the agreements of the parties" means that the parties are not to be bound by any prior agreements. This meaning is made explicit by the two sentences that follow it. (Needless to say, neither party contends that the Judgment was an agreement.) These provisions do not mean that the parties have

reached an agreement as to all possible issues. For example, if the Agreement did not make provision for an asset or debt (the Judgment, for example) the Agreement did not embody anything as to that.

Mr. Waters' emphasis on the sentence beginning "All prior and contemporaneous conversations..." is confusing. As the parties had no "contemporaneous conversations, negotiations, possible and alleged agreements," etc., regarding the Judgment, this provision's relevance is wholly unclear.

Mr. Waters never stated which provisions of the CR2A Agreement applied to the Judgment. CP at 44 through 47. Presumably, a judgment obtained before entry of a Decree of Dissolution of Marriage would not simply 'disappear.' Ms. Agars' argument is that paragraph 18 of the Agreement applied to the Judgment. CP at 121 and 122. Paragraph 18 provides, in pertinent part, as follows (CP at 459):

All disclosed property not otherwise awarded or assigned in this agreement, whether acquired before the relationship, during the relationship or during any period of separation, shall be, and remain, the sole property of the party in whose possession or control it presently is, free and clear of any claim on the part of the other....

As the Judgment was a disclosed asset of Ms. Agars, this paragraph operates to award it to her, although doing so is superfluous. (Generally, the purpose of this paragraph is to maintain the *status quo* by

awarding assets and liabilities to the person in possession of them at the time the Agreement was executed, unless they explicitly agreed otherwise.)

Mr. Waters' response is that the Agreement satisfied the Judgment by failing to award it:

Nowhere within the CR2A Agreement or Decree of Dissolution is there any provision contemplating that the June 7, 2006 Judgment for attorney fees was intended to remain standing. CP at 46.

Mr. Waters had the concept of incorporation backwards. His argument amounts to the contention that the Judgment was incorporated into the CR2A Agreement by the failure to expressly provide for its existence to be affirmed. Judgments are final by their nature. CR 54. It is not a judgment's existence which requires affirmation, but its satisfaction.

In support of his argument, Mr. Waters urged the court to find that the "CR2A Agreement expressly provides that such fees were waived" and quoted paragraph 12 of the Agreement which provided as follows (CP at 46):

Attorney Fees Waived. Neither party shall pay any attorney fees or costs to or for the benefit of the other party.

The issue is not whether fees were waived, but whether the Judgment was incorporated so as to be satisfied. A Judgment "for fees" is

a Judgment, not “fees.” The Agreement did not provide that it incorporated, waived, or satisfied any judgment. Ms. Agars did not obtain the Writ on the basis of a claim attorney fees; she obtained it on the basis of an unsatisfied Judgment. CP at 15.

In support of his position that the Agreement was “comprehensive,” Mr. Waters also cited to Paragraph 6 of the Agreement, which provides as follows (CP at 456):

Except as otherwise specifically provided herein, the table of assets and liabilities attached hereto is approved and agreed to by the parties as the final distribution of assets and liabilities listed therein...

In his motion, Mr. Waters cited this passage with emphasis on the term “final distribution,” only. The “attached table of assets and liabilities” was the agreed final distribution of assets and liabilities “listed therein.” The passage excluded from its application assets or liabilities not listed, such as the Judgment.

**f. THE TABLE OF ASSETS AND LIABILITIES WAS NOT
“ALL INCLUSIVE”**

Mr. Waters contended that the table of assets and liabilities attached to the Agreement was “all inclusive as to any and all obligations arising out of the dissolution proceedings.” (CP at 45 and 46; emphasis supplied.) His assertion is explicitly contradicted by paragraph 18 of the

Agreement, which provided for the award of assets not listed in the table, as established above. CP at 459.

The court should note that the express purpose of the table was to facilitate the provisions in the Agreement for “distribut[ing] the assets and liabilities” listed in it, not to provide for an “all inclusive list of the parties’ obligations arising out of the dissolution proceedings.” CP at 456. The court should also note that conspicuously absent from the table are any of the parties’ separate assets and liabilities, including the parties’ separate bank accounts, credit card accounts, as well as the Judgment. CP at 467. There is no basis for concluding that either the table, or the Agreement as a whole, was “all inclusive” as to anything.

g. THE JUDGMENT WAS NOT A “REIMBURSEMENT”

The table attached to the Agreement is composed of two major sections: the first section addresses the parties’ community assets and debts; and the second section addresses “Reimbursements owed outside the division of community property.” (CP at 467; emphasis in the original.)

The Judgment was not listed as an asset or a debt. The lines in the table pertaining to reimbursements were left blank. The court may conclude that the purpose of this section of the table is to show the amount

each party owes the other in the form of reimbursements, such as would arise as result of one party's post-separation payment of the marital community's expenses or the other party's post-separation expense.

Arguably, a judgment debtor satisfies a Judgment by *paying* the Judgment, not "reimbursing" it.

Mr. Waters' argument appears to be that, after considering the best way to express their alleged intention to satisfy the Judgment, the parties decided to do so not by stating as much, but by leaving a blank line in the Agreement. Such an argument is absurd.

h. THE CR2A AGREEMENT WAS NOT AMBIGUOUS

Both parties point solely to the provisions of the Agreement as evidence of their intent. CP 45, 51, and 121 through 124. There is no ambiguity in its terms. Mr. Waters did not allege any. The trial court did not find that the Agreement was ambiguous in any way.

The meanings of the words "claim," "reimbursement," and "attorney fees" are not ambiguous as used in the Agreement. Ambiguity exists in a contract provision when, reading the contract as a whole, two or more reasonable and fair interpretations are possible. Tewell, Thorpe & Findlay, Inc., P.S. v. Continental Cas. Co., 64 Wash. App. 571, 575, 825 P.2d 724 (Div. 1; 1992). If only one reasonable meaning can be attributed

to the contract, that meaning will necessarily reflect the parties' intent. However, a contract provision is not considered ambiguous simply because the parties to the contract suggest opposing meanings. Dice v. City of Montesano, 131 Wash. App. 675, 684, 128 P.3d 1253 (Div. 2 2006), review denied, 158 Wash. 2d 1017, 149 P.3d 377 (2006). The court will not read ambiguity into a contract where it can be reasonably avoided by reading the contract as a whole. Dice, 131 Wash. App. at 685.

In the instant case, Mr. Waters did not expressly contend that the CR2A Agreement referred to the Judgment by use of the words "claim," "reimbursement," or "attorney fees." Mr. Waters may argue that any or all of these terms referred to the Judgment. However, for the reasons established above, such use of these terms would be unreasonable.

i. MR. WATERS' DECLARATIONS CONTAINED NO MEANINGFUL EVIDENCE

Mr. Waters presented declarations, prepared in August 2012 and signed by his former attorney, David Owens, and himself, in which they each asserted that the intent of the parties was that the Judgment be considered satisfied. CP 51, 52, and 97. The purpose of these documents was to support his motion for sanctions. These declarations are subjective and evidence of nothing other than Mr. Waters' desire that the court rule in his favor.

Washington courts follow the objective manifestation theory by which the court will impute to a person an intention corresponding to the reasonable meaning of his words and acts. Under this theory, the unexpressed, subjective intentions of the parties are irrelevant. Instead, the mutual assent of the parties is to be determined from their outward manifestations.

Olson v. The Bon, Inc., 144 Wash. App. 627, 633-34, 183 P.3d 359, 362-63, 2008 WL 2098030 (Div. 3; 2008) (internal citations omitted).

Mr. Waters presented no evidence regarding the intent of the parties dating from the time the agreement was prepared and signed.

j. THE COURT’S RULING WAS BASED ON SPECULATION AND AN ERRONEOUS APPLICATION OF LAW

At the hearing on October 17, 2012, the trial judge stated as follows (RP at 21):

I’m sure that somebody just forgot to cross the “t” and dot an “i,” when – when doing the final documents, because it is – it is absolutely clear from the... four corners of the written agreement that everything was taken care of.

This statement reflects the court’s recognition that, within the four corners of the agreement, ‘something’ was missing. That ‘something,’ - the proverbial dot on the “i” - was, in fact, any evidence whatsoever within the Agreement that the parties agreed to release Mr. Waters from the Judgment. The court’s statement also indicates that its decision was based on the text of the Agreement and not on extrinsic factors.

The trial judge also listed other reasons for the court's decision. She remarked that the Judgment Summary was not on the first page of the Order, leading to reduced notice "that they would need to have gone back and change that." RP at 22. This reasoning supports the proposition that at least one of the parties had forgotten about the Judgment at the time the CR2A Agreement was signed and, therefore, did not reach an agreement as to it. Notably, Mr. Waters did not argue that he was not notified of the Judgment.

The court found that "It's pretty darn clear Ms. Agars never thought that she was owed any money" because she did not list the Judgment in her bankruptcy petition or attempt to collect it earlier in time. RP at 22. The court's finding in this regard is purely speculative. If Ms. Agars' failure to attempt to collect the Judgment earlier in time than she did is evidence that she (mistakenly) believed the Judgment was satisfied, then it stands to reason that her attempt to collect the Judgment is evidence that she believed it was not satisfied. But, whether the Judgment was satisfied depends on the terms of the Agreement, not Ms. Agars' or Mr. Waters' alleged beliefs.

It is true that Mr. Waters reminded Ms. Agars that the Judgment had not been satisfied, as the court noted. RP at 22. This act did not absolve Mr. Waters of his obligation to pay the Judgment.

No authority supports the proposition that a judgment is satisfied due to a Judgment Creditor's forgetfulness or mistaken beliefs. The applicable statute of limitations, RCW 4.16.020, provides that a Judgment is enforceable for ten years from the time it is entered, and that deadline may be extended pursuant to RCW 6.17.020. That statute is not applicable in this case.

3. THE PARTIES' CROSS-MOTIONS FOR SANCTIONS

Mr. Waters made numerous allegations against Ms. Agars regarding her "behavior" subsequent to the execution of the Agreement. CP at 49. Ms. Agars' counsel objected to the presentation of all these documents as irrelevant. RP at 11; CP at 107. After the court found that Ms. Agars had violated CR 11, but before it identified specifically by which document or how CR 11 was violated, Ms. Agars responded to the substance of these allegations, showing them to be irrelevant as well as either false or misleading. CP at 207.

Mr. Waters' stated purpose for bringing his CR 11 Motion was to persuade the court that Ms. Agars' credibility was an issue and that she deserved none. CP at 49. However, Ms. Agars' credibility was not relied on to obtain the Judgment. No event which occurred, nor document which was filed, subsequent to the execution of the Agreement, bears on the

interpretation of it. Both parties relied exclusively on the (undisputed) text of the Agreement to support of their arguments regarding its interpretation. CP at 45-47.

In his “Strict Reply in Support of Motion to Quash Garnishment and for Satisfaction of Judgment and Imposition of Terms,” Mr. Waters argued that the rules of evidence provided authority to present materials regarding the “discussion of the actual facts giving rise to the said Agreement.” CP at 159. However, the materials he presented had no bearing on the Agreement or any facts giving rise to it. They regarded alleged events and activities which occurred after the CR2A Agreement was executed.

With reference to the court’s oral decision, it is clear that its entry of CR 11 sanctions against Ms. Agars was not based on the documents presented by Mr. Waters. Rather, the sanctions were entered on the basis of the court’s finding that Ms. Agars acted in bad faith by obtaining the Writ. RP at 22-23. The Certification in Support of Issuance of Writ of Garnishment (CP at 15) is the only document filed in support of obtaining the Writ. The record does not support the findings required for entry of CR 11 sanctions as to this filing, nor for any other filing presented to the court, as will be established below.

a. CR 11

CR 11 provides in pertinent part as follows:

The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief....If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

The court may enter CR 11 sanctions when a “pleading, motion, and legal memorandum” signed by an attorney or party is found to be either (1) “not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts,” or (2) “the paper was filed for an improper purpose.” McNeil v. Powers, 123 Wn.App. 577, 97 P.3d 760 (Div. 3; 2004).

b. THE STANDARD OF REVIEW

Ordinarily, a trial court's entry of CR 11 sanctions is reviewed for an abuse of discretion.

Attorney fees under either CR 11 or RCW 4.84.185 are discretionary with the trial judge. Our inquiry is "whether the court's conclusion was the product of an exercise of discretion that was manifestly unreasonable or based on untenable grounds or reasons."

Skimming v. Boxer, 119 Wash. App. 748, 754, 82 P.3d 707, 710, (Div. 3; 2004) (internal citations omitted).

However, as established above, matters of law are reviewed *de novo* by an appellate court. Likewise, the appellate court will review the record *de novo* where, as here, it stands in the same position as the trial court. This is so with respect to the review of CR 11 sanctions in particular.

The trial court in this case did not hear testimony, only argument from counsel. The documents in the record therefore provide the only evidence regarding whether the complaints had a factual and legal basis. The trial court was thus in no better position to evaluate the evidence than the appellate court.

Bryant v. Joseph Tree, Inc., 119 Wash. 2d 210, 222-23, 829 P.2d 1099, 1106, 1992 WL 110773 (1992).

In Bryant, the trial court failed to enter required findings serving as a basis for its entry of sanctions. Division I of the Court of Appeals, after

reviewing the records *de novo*, reversed the sanctions entered by the trial court. The Washington State Supreme Court affirmed the Court of Appeals' *de novo* review of the trial court's entry of sanctions. As in Bryant, in the instant case, the trial court failed to enter findings serving as the basis for its sanctions.

The Court of Appeals applies an objective standard to determine whether sanctions are merited for a bad faith filing of pleadings for an improper purpose or for filing pleadings that are not grounded in fact or warranted by law; the question is whether a reasonable attorney in a like circumstance could believe his or her actions to be factually and legally justified.

Skimming, 119 Wash. App. at 755; see also Roeber v. Dowty Aerospace Yakima, 116 Wash.App. 127, 142, 143, 64 P.3d 691, (Div. 3; 2003) review denied 150 Wash.2d 1016, 79 P.3d 446.

To award sanctions for a baseless filing, the court must evaluate “ ‘whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified’ ” and whether it is “ ‘patently clear that a claim has absolutely no chance of success.’ ” MacDonald v. Korum Ford, 80 Wash.App. 877, 912 P.2d 1052 (1996) (quoting Bryant, 119 Wash.2d at 220, 829 P.2d 1099; Oliveri v. Thompson, 803 F.2d 1265, 1275 (2d Cir.1986)).

In re Kelly v. Moesslang, 170 Wash. App. 722, 740, 287 P.3d 12 (2012).

An action could not be considered frivolous where the attorney provided a thorough analysis of pertinent case law and provided a basis for her claims.

Mueller v. Miller, 82 Wash. App. 236, 252, 917 P.2d 604, 612, 1996 WL

307285 (1996).

c. THE BURDEN OF PROOF

The burden was on Mr. Waters to show that it was “patently clear” that Ms. Agars’ claim, or claims, had “absolutely no chance of success.”

The burden is on the movant to justify the request for sanctions. Because CR 11 sanctions have a potential chilling effect, the trial court should impose sanctions “only when it is patently clear that a claim has absolutely no chance of success. The fact that a complaint does not prevail on its merits is not enough.

Bldg. Indus. Ass'n of Washington v. McCarthy, 152 Wash. App. 720, 745, 218 P.3d 196, 208, 2009 WL 3260630 (2009) (internal citation and quotation marks omitted).

It is unclear on what basis Mr. Waters believed he had a claim for CR 11 sanctions. Neither Mr. Waters, in his motion, nor the trial court, in its orders, specified any document or documents which formed a rational basis for their points of view.

An order imposing CR 11 sanctions must specify the offending conduct, explain the basis for the sanction imposed, and quantify any amounts awarded with reasonable precision. With respect to each violation, the trial court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an

improper purpose. Biggs v. Vail, 124 Wash. 2d 193, 201-02, 876 P.2d 448, 451-52, 1994 WL 320251 (1994).

In order to support an order for CR 11 sanctions, the order imposing such sanctions must (1) make explicit findings as to which filings violated CR 11, (2) state how such pleadings constituted a violation, and (3) impose an appropriate sanction relating specifically to the sanctionable conduct. Biggs, 124 Wash. 2d at 202. See also N. Coast Elec. Co. v. Selig, 136 Wash. App. 636, 649, 151 P.3d 211, 218 (Div. 1; 2007); Just Dirt, Inc. v. Knight Excavating, Inc., 138 Wash. App. 409, 157 P.3d 431 (Div. 2; 2007).

When the court fails to enter a finding as to a material fact, the appellate court should impute a finding against the party with the burden of proof unless there is undisputed evidence which an appellate court can hold compels a contrary finding. The court should construe the trial court's failure to enter specific findings as to the material facts necessary to support of its order for sanctions as a negative finding with respect to those facts. Xieng v. Peoples Nat. Bank of Washington, 120 Wash. 2d 512, 526, 844 P.2d 389, 396, 65 Fair Empl. Prac. Cas. (BNA) 1090, 1993 WL 10333 (1993); See Golberg v. Sanglier, 96 Wash.2d 874, 880, 639 P.2d 1347, 647 P.2d 489 (1982).

No finding as to a material fact constitutes a negative finding, unless there is undisputed evidence which an appellate court can hold compels a contrary finding.

Lobdell v. Sugar 'N Spice, Inc., 33 Wash. App. 881, 887, 658 P.2d 1267, 1269 (Div. 1; 1983).

After hearing Mr. Waters' Motions, the court found that Ms. Agars acted in bad faith, as she "knew that she wasn't entitled [to collect the Judgment]. RP at 23. As discussed above, the trial court's findings were based on the following facts:

1. Ms. Agars did not attempt to use the Judgment to offset debts that Mr. Waters alleged she owed him. RP at 22.
2. Ms. Agars did not list the Judgment in her bankruptcy petition. RP at 22;
3. Ms. Agars did not attempt to collect the Judgment until after she was reminded by Mr. Waters, about five years after it had been entered, that it had not been satisfied. RP at 22.

This court should note that Ms. Agars disputed Mr. Waters' claims that she owed him money. CP at 126 and 208. This being the case, Ms. Agars had no reason to request an offset.

The reason Ms. Agars failed to disclose the Judgment in her bankruptcy petition is a matter of speculation. Ms. Agars' actions are consistent with the possibility that she had forgotten about the Judgment. After Mr. Waters reminded her about it, she hired an attorney to collect it. CP at 119-21. Having conducted an investigation into the question of

whether the Judgment had been satisfied, and having concluded that it had not, Ms. Agars' attorney obtained a Writ of Garnishment. CP at 119-21. All of these actions were reasonable and taken in good faith.

This court should also note that the specific findings of the court (1) were not entered by the court in either of its written orders; and (2) the "facts" are a list of actions Ms. Agars did not take, not representations she made to the court.

Certainly, these facts do not support a finding that it was patently unreasonable for Ms. Agars to have believed, based on the advice of counsel, that the Judgment remained collectible.

d. NO DOCUMENTS FILED BY MS. AGARS, OR ON HER BEHALF, VIOLATED CR 11

A trial court's decision will be affirmed on appeal if it is sustainable on any theory within the pleadings and the proof. Bock v. State, 91 Wash. 2d 94, 586 P.2d 1173 (1978). However, the record does not support the entry of CR 11 sanctions against Ms. Agars on any theory or basis, as will be established below. There are two categories of documents which might be used to uphold the court's entry of CR 11 sanctions against Ms. Agars: (1) the Certification of Counsel in Support of Issuance of Writ filed by Ms. Agars' counsel; and (2) the documents

presented by Mr. Waters (which Ms. Agars did not file in the garnishment proceeding).

Regarding the Certification of Counsel in Support of Issuance of Writ (CP at 15), it is not a “pleading, motion, or legal memorandum.” CR 7(a) and 11. As such, it was not subject to CR 11. If the appellate court should decide that the Certification of Counsel in Support of Issuance of Writ is subject to CR 11, it is unclear that Ms. Agars may be sanctioned for its having been filed as she did not sign it. CR 11 provides, in pertinent part, as follows:

If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction...

However:

The sanctions rule allows sanctions against anyone who signs a document that is either not well-grounded in fact or warranted by law, or interposed for an improper purpose.

Eugster v. City of Spokane, 110 Wash.App. 212, 39 P.3d 380 (Div. 3; 2002), reconsideration denied, review denied 147 Wash.2d 1021, 60 P.3d 92. See also In re Cooke, 93 Wash.App. 526 at 529 (Div. 3; 1999) (“Rule 11 sanctions should be imposed directly on the party if the party is responsible for the frivolous filing.”)

There is some case law supporting the proposition that a court may enter sanctions against a party's attorney for filing a document signed by their client. See Suarez v. Newquist, 70 Wash. App. 827, 835, 855 P.2d 1200, 1205, (Div. 3; 1993).

However, the undersigned is not aware of any case law in which a party has been personally sanctioned for the filing of a document signed by their attorney.

Even if the Certification of Counsel in Support of Issuance of Garnishment is subject to CR 11, it did not violate the rule. In it, the undersigned contended that the Judgment was not satisfied. CP at 15. The parties do not dispute that no Satisfaction of Judgment was filed with respect to the Judgment and that the CR2A Agreement makes no mention of the Judgment. Certainly it was not "patently clear" that the Judgment had been satisfied; nor was it clear Ms. Agars would have "absolutely no chance of success" in collecting the Judgment. There can be little doubt that "a reasonable attorney in like circumstances could believe" that taking action to collect such a Judgment would be "factually and legally justified."

As established above, the court would have to find that Ms. Agars did not conduct an investigation into the facts and law underlying her request for the Writ before entering sanctions against her for the filing of

the Certification of Counsel in Support of Issuance of Garnishment.

However, in that she hired an attorney to litigate the case, it is unclear what basis the trial court would have for finding that she failed to investigate the legal basis of the obtaining the Writ.

The undersigned contends that the legal basis for obtaining the Writ was strong. The record shows that the undersigned conducted an investigation into whether the Judgment had been satisfied and correctly determined that it had not. CP at 119 through 121. The record does not support the entry of CR 11 sanctions and the court erred in entering them.

e. DOCUMENTS PRESENTED BY MR. WATERS DID NOT SUPPORT THE ENTRY OF SANCTIONS

Mr. Waters identified numerous documents in support his motion for entry of CR 11 sanctions against Mr. Agars. They are as follows:

1. Ms. Agars' Motion for Adjustment of Child Support (CP at 43, 55, and 88);
2. Ms. Agars' Bankruptcy Petition filed in Federal Court; (CP at 43, 44, and 418);
3. A letter sent to Mr. Waters by DSHS regarding his support obligation with respect to the parties' son, Gus Waters (CP at 42 and 83); and
4. A copy of a letter from his attorney to his bank regarding allegedly unauthorized funds transfers made from his bank account into Ms. Agars' bank account, as well as pertinent copies of his bank statements (CP at 425 through 452).

None of these documents were filed in the garnishment proceeding or even under the cause number of that case. All of these documents were

filed, prepared, and/or issued subsequent to the execution of the CR 2A Agreement and none of them concern any issue relevant to whether the parties had contracted to satisfy the Judgment.

The documents presented by Mr. Waters were supposed to support his contention that Ms. Agars had made false representations to the court which, according to Mr. Waters' attorney, were "astonishing in their audacity." CP at 49. The undersigned did not consider the substance of these allegations to be relevant to the adjudication of the garnishment matter as none of the documents presented by Mr. Waters had been filed in the garnishment matter and no court had entered a finding of fact supporting Mr. Waters' various allegations. CP at 126.

In its October 17 Order, the trial court found that Ms. Agars had violated CR 11, but did not identify any specific filing of hers which violated CR 11 and did not identify how any filing violated CR 11.

Responding to Mr. Waters' Motion for Order Approving Attorneys' Fees and Costs as Sanctions and Reducing to Judgment (CP at 178), Ms. Agars filed her Declaration (CP at 208) in which she addressed Mr. Waters' accusations.

One of the documents presented by Mr. Waters was Ms. Agars' Motion for Adjustment of Child Support. Mr. Waters complained that, in the said Motion, Ms. Agars "suggested" that she was entitled to an

increase in child support although she was not the custodial parent. CP at 55-56. However, Ms. Agars' Motion was, in effect, a request to be reimbursed by Mr. Waters for his portion of expenses incurred by her for the benefit of her son. CP at 210-11 and 294.

Ms. Agars' Motion for Adjustment of Child Support was signed by her and filed in King County Superior Court on October 27, 2010. CP at 90. The order denying her motion was entered on January 28, 2011. CP at 94. The court which adjudicated that motion declined to enter attorney fees, sanctions, or any findings of fact relative to fees or sanctions. CP at 92-94.

Moreover, Mr. Waters did not present any authority or argument supporting the trial court's authority to enter CR 11 sanctions against Ms. Agars for having filed a motion, ruled upon in another case, by another court, more than twenty months prior. Nor is there any evidence in the record showing that Ms. Agars was notified by Mr. Waters, or the court, that either of them perceived that her motion may have violated CR 11. This issue will be addressed in greater detail below.

Mr. Waters claimed, falsely, that the earlier court found Ms. Agars' Motions for Adequate Cause and Adjustment of Child Support (both filed in King County cause no. 10-3-06533-8) to have been filed in bad faith. CP at 53 and 91-94.

Regarding the transfers made from his bank account into Ms. Agars' bank account, Mr. Waters presented a letter from his attorney to his bank demanding that the bank correct its error. CP at 426-27. With respect to Mr. Waters' problems with his bank, Ms. Agars noted that the issue was with the bank, not with her. CP at 212.

With respect to DSHS's decision to collect child support from Mr. Waters during the summer of 2010, when Ms. Agars was the "on duty" parent under Idaho law, Ms. Agars stated that she truthfully explained the facts in her case to DSHS. CP at 208. Mr. Waters did not establish otherwise, nor did he establish that DSHS's collection of child support from him, presumably authorized by Idaho law, was in error. DSHS's decision apparently was based on the parties' parenting plan and order of child support, both entered by an Idaho court. CP at 69-74; 83-84; and 208-09.

The documents presented by Mr. Waters with respect to issues involving DSHS and his bank cannot be described as "pleading[s], motion[s], or legal memorand[a]," nor were they signed by Ms. Agars, nor filed in any court. Therefore, CR 11 provides no authority for the entry of sanctions in connection with them, regardless of the forum or court.

In her bankruptcy Petition, Ms. Agars represented that Mr. Waters owed her \$19,406. CP at 281. Ms. Agars' bankruptcy attorney, Reed

Gardner, advised her to make this representation. CP at 209. Please note that Mr. Gardner prepared and also signed the bankruptcy Petition. CP at 284. Mr. Gardner's advice apparently was based on his understanding that the parties' Order of Child Support, entered by an Idaho court, was entered in error and that, if the error were corrected, Ms. Agars might be entitled to collect funds from Mr. Waters totaling \$19,406. CP at 209. Mr. Waters did not establish, as a matter of fact or law, that Mr. Gardner's advice to Ms. Agars was incorrect, let alone in violation of the Federal CR 11.

Mr. Waters was not a party to Ms. Agars' bankruptcy proceeding and, therefore, had no standing in that case to move the court for sanctions under the federal rules. Mr. Waters presented no authority supporting a state court's entry of CR 11 sanctions against a party for representations made (1) in a document filed in a federal court; or (2) in a document filed in a case in which the moving party had no standing. Please note that no adverse action was taken by the Bankruptcy Court Trustee against Mr. Waters, Ms. Agars, or Ms. Agars' bankruptcy attorney.

Prior to bringing a motion for CR 11 sanctions, a party is supposed to give the other party notice of their perception that the rule may have been violated and an opportunity to mitigate the sanction by amending or withdrawing the offending paper. Biggs, 124 Wash. 2d at 199 and 200. With respect to Mr. Waters' contentions regarding Ms. Agars' alleged

violations of CR 11, there is no evidence in the record that Ms. Agars received any such notice. “Without... notice, CR 11 sanctions are unwarranted.” Biggs, 124 Wash. 2d at 198. Mr. Waters waived his claim for CR 11 sanctions against Ms. Agars by failing to notify her of his perception that she may have violated CR 11.

Both practitioners and judges who perceive a possible violation of CR 11 must bring it to the offending party's attention as soon as possible. Without such notice, CR 11 sanctions are unwarranted.

Biggs, 124 Wash. 2d at 198.

Mr. Waters also failed to move the court hearing Ms. Agars' Motion for Adjustment of Child Support for entry of such sanctions.

In Biggs, the trial court awarded the defendant \$25,000 in attorney fees under the frivolous lawsuit statute, RCW 4.84.185. The Court of Appeals affirmed the judgment. However, the Washington Supreme Court reversed the award of attorney fees, finding that the action as a whole must be frivolous in order for fees to be awarded under RCW 4.84.185. Biggs, 124 Wash. 2d 195-96.

Four months after the Supreme Court issued its Mandate in that case, the defendant filed a CR 11 motion for sanctions against the plaintiff. In Biggs, the CR 11 proceeding was presided over by E. Albert Morrison, the same judge which presided over the Biggs trial. In the Biggs CR 11

proceeding, the court entered sanctions against the plaintiff based on the plaintiff's complaint, the adjudication of which became final after the Supreme Court issued its Mandate.

The plaintiff appealed, arguing that the sanctions were inappropriate because, among other reasons, they were waived due to not being timely brought. Biggs, 124 Wash. 2d at 197. On appeal, the Washington Supreme court addressed the issue of the timeliness of the sanctions ordered against the plaintiff as follows:

Although we do not agree with [plaintiff's] theories regarding this case, his protests are well taken. Normally, such late entry of a CR 11 motion would be impermissible, since without prompt notice regarding a potential violation of the rule, the offending party is given no opportunity to mitigate the sanction by amending or withdrawing the offending paper. See Bryant, 119 Wash.2d at 228, 829 P.2d 1099 (Andersen, J., concurring in part, dissenting in part). Prompt notice of the possibility of sanctions fulfills the primary purpose of the rule, which is to deter litigation abuses.

.... Both practitioners and judges who perceive a possible violation of CR 11 must bring it to the offending party's attention as soon as possible. Without such notice, CR 11 sanctions are unwarranted.

The case at hand, however, differs from the usual situation in two crucial respects. First, [the plaintiff] was provided with general notice that sanctions were contemplated under RCW 4.84.185....The second distinguishing factor about this case is that these sanctions are being sought under former CR 11, which made the imposition of sanctions mandatory once a violation of the rule occurred. See former CR 11 (upon violation of the rule "the court ... shall impose ... an appropriate sanction").

Biggs, 124 Wash. 2d at 198-99 (internal citations omitted).

The exceptional circumstances which allowed the Washington Supreme Court in Biggs to enter sanctions do not apply in the instant case. Unlike in Biggs, (1) Ms. Agars did not receive any kind of notice that Mr. Waters would move the court for sanctions; (2) CR 11 sanctions are no longer mandatory; and (3) the trial court did not enter any specific findings supporting the entry of CR 11 sanctions and the record does not support the entry of any such findings.

f. CONCLUSION REGARDING THE ALLEGED BASES FOR SANCTIONS

In short, all of the documents presented by Mr. Waters in support of his motion for sanctions were, *ipso facto*, incapable of serving as a basis for sanctions in the garnishment proceeding. The appellate court may conclude that the trial court failed to enter findings that these documents violated CR 11 because the court had no basis for doing so.

If the appellate court rules in Ms. Agars' favor and reverses the trial court's finding that the Judgment was incorporated into the Writ, presumably it must also find that the Writ was not obtained in bad faith, on untenable grounds, or for an improper purpose.

However, even if it affirms the trial court's decision to quash the Writ, the appellate court should reverse the trial court's entry of sanctions

against Ms. Agars. It is clear that the record does not support the specific findings necessary to sustain CR 11 sanctions against her.

4. THE COURT LACKED AUTHORITY TO ENTER AN ORDER PROVIDING THAT THE RESPONDENT'S LEGAL FEES AND COSTS "SHALL CONTINUE TO ACCRUE AFTER JUDGMENT, THROUGH COLLECTION, APPEAL, OR BANKRUPTCY"

The Order dated November 9, 2012 provided, in pertinent part, that Mr. Waters' legal fees and costs "shall continue to accrue after judgment, through collection, appeal, or bankruptcy."

The Order was entered after hearing Mr. Waters' Motion for Order Approving Attorneys' Fees and Costs as Sanctions and Reducing to Judgment. This motion was heard without oral argument. Within that motion, Mr. Waters did not (1) request that any judgment entered "accrue after judgment, through collection, appeal, or bankruptcy"; (2) brief the court as to the grounds upon which the court might grant such relief; nor (3) provide notice that he would ask for such relief, all of which he was required to do. CR 6 and 7.

a. NO MOTION FOR SUCH RELIEF WAS BEFORE THE COURT

Insofar as the trial court entered this order on its own motion, it had no authority to do so given that it provided no notice or opportunity for the parties to be heard on the matter.

It is the general rule that the trial court, when it proceeds *sua sponte*, must give notice and an opportunity to be heard to both parties.

State v. Hawkins, 72 Wash.2d 565, 434 P.2d 584 (1967) citing 23 A.L.R.2d 852.

b. FEDERAL LAW PREEMPTS THE COURT'S AUTHORITY TO ENTER ORDERS PERTAINING TO THE DISCHARGABILITY OF A DEBT IN BANKRUPTCY

With respect to bankruptcy, federal district courts have exclusive original jurisdiction over the adjudication of bankruptcy petitions. 28 U.S.C.A. § 1334(a); Matter of Brady, Texas, Mun. Gas Corp., C.A.5 (Tex.), 936 F.2d 212, certiorari denied 112 S.Ct. 657, 502 U.S. 1013, 116 L.Ed.2d 748 (1991) (emphasis supplied).

The [federal] district court may refer jurisdiction of bankruptcy matters to the bankruptcy judges. This power has been exercised in both Washington Districts. The authority of the bankruptcy judge is, however, limited. The bankruptcy judge may hear and determine all bankruptcy cases and all "core proceedings" arising under the Code or arising in a bankruptcy case, and may enter appropriate orders and judgments in such matters.

28 Wash. Prac., Creditors' Remedies - Debtors' Relief § 9.12 (2d ed.)
(internal footnotes omitted); see 28 U.S.C.A. § 157(b)(1); In re George,
298 F.3d 1160 (9th Cir. 2002), opinion amended and superseded, 322 F.3d
586 (9th Cir. 2003); In re Cline, 282 B.R. 686 (W.D. Wash. 2002).

In general, a “core proceeding” in bankruptcy is one that “invokes
a substantive right provided by title 11 or ... a proceeding that, by
its nature, could arise only in the context of a bankruptcy case.”

In re Gruntz, 202 F.3d 1074, 1081, 43 Collier Bankr. Cas. 2d 921, 35
Bankr. Ct. Dec. 160, 00 Cal. Daily Op. Serv. 909, 2000 Daily Journal
D.A.R. 1337, 4 Cal. Bankr. Ct. Rep. 33, Bankr. L. Rep. P 78102, 2000
WL 124399 (9th Cir. 2000) citing Wood v. Wood (In re Wood), 825 F.2d
90, 97 (5th Cir.1987).

The definition of “core proceedings” includes but is not limited to
such matters as those concerning the administration of the
bankruptcy case, allowance or disallowance of claims,
counterclaims by the estate against persons filing claims, actions to
recover preferences or to set aside fraudulent conveyances,
determinations of dischargeability...

28 Wash. Prac., Creditors' Remedies - Debtors' Relief § 9.12 (2d ed.)
(emphasis supplied) citing In re Kennedy, 108 F.3d 1015 (9th Cir. 1997),
as amended, (Mar. 21, 1997); In re Green, 198 B.R. 564 (B.A.P. 9th Cir.
1996).

Debts not dischargeable in bankruptcy are set forth in 11 U.S.C. § 523. Such debts include debts arising from student loans, family support obligations, and from fraud, and others. However, none of the exceptions set forth in that statute apply to the Judgment entered against Ms. Agars on November 9, 2012. Therefore, the court's order conflicts with federal bankruptcy law, which would allow the Judgment to be discharged.

Whenever bankruptcy law conflicts with state law, the federal law will preempt the state law. U.S. Constitution, Art. VI, cl. 2; Miller v. Anckaitis, C.A.3 (Pa.) 1970, 436 F.2d 115, certiorari denied 91 S.Ct. 2203, 403 U.S. 910, 29 L.Ed.2d 688; In re Walker, 77 F.3d 322 (9th Cir. 1996).

[B]ankruptcy courts are empowered to avoid state judgments, see, e.g., 11 U.S.C. §§ 544, 547, 548, 549; to modify them, see, e.g., 11 U.S.C. §§ 1129, 1325; and to discharge them, see, e.g., 11 U.S.C. §§ 727, 1141, 1328. By statute, a post-petition state judgment is not binding on the bankruptcy court to establish the amount of a debt for bankruptcy purposes. See 11 U.S.C. § 109(e); Slack v. Wilshire Ins. Co. (In re Slack), 187 F.3d 1070, 1073 (9th Cir.1999), as amended 1999 WL 694990 (Sept. 9, 1999).

Thus, final judgments in state courts are not necessarily preclusive in United States bankruptcy courts. Indeed, the rule has long stood that “[a] state court judgment entered in a case that falls within the federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts.” Gonzales v. Parks (In re Gonzales), 830 F.2d 1033, 1036 (9th Cir.1987). The United States Supreme Court explained in Kalb v. Feuerstein, 308 U.S. 433, 438-39, 60 S.Ct. 343, 84 L.Ed. 370 (1940):

It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally.

In re Gruntz, 202 F.3d 1074, 1079-80, 43 Collier Bankr. Cas. 2d 921, 35 Bankr. Ct. Dec. 160, 00 Cal. Daily Op. Serv. 909, 2000 Daily Journal D.A.R. 1337, 4 Cal. Bankr. Ct. Rep. 33, Bankr. L. Rep. P 78102, 2000 WL 124399 (9th Cir. 2000).

c. THE APPELLATE COURT DECIDES WHETHER ATTORNEY FEES ACCRUE “THROUGH APPEAL”

With respect to the accrual of fees and costs through appeal, again, the trial court has no authority to grant such relief. The appellate court has sole authority to award attorney fees on appeal, as well as the authority to reduce or reverse the trial court’s award. RAP 2.2 and 18.1; MacKenzie v. Barthol, 142 Wash.App. 235, 173 P.3d 980 (Div. 3; 2007); Sharbono v. Universal Underwriters Ins. Co., 139 Wash.App. 383, 161 P.3d 406 (Div. 2; 2007), amended on denial of reconsideration, review denied 163 Wash.2d 1055, 187 P.3d 752.

For the reasons set forth above, the appellate court should conclude that granting such relief was an abuse of discretion and should be reversed.

5. REQUEST FOR ATTORNEY FEES AND OTHER RELIEF

Paragraph 19 of the CR2A Agreement provides for attorney's fees to be awarded to Ms. Agars in defending against Mr. Waters' motion. CP at 459. Also, RCW 6.27.230 provides for awarding attorney's fees to the prevailing party in a garnishment proceeding as follows:

Where the answer is controverted, the costs of the proceeding, including a reasonable compensation for attorney's fees, shall be awarded to the prevailing party: PROVIDED, that no costs or attorney's fees in such contest shall be taxable to the defendant in the event of a controversion by the plaintiff.

Presuming the appellate court reverses the trial court's rulings, it should also enter a Judgment against Mr. Waters in favor of Ms. Agars for her attorney fees below, as well as her attorney fees and costs on appeal on the basis of the Agreement, RCW 6.27.230, and RAP 18.1.

Ms. Agars requests the following relief:

- a. Reverse the following trial court orders:
 - i. Order Quashing Garnishment, Entering Satisfaction of Judgment, and Imposing Fees, Costs and Terms entered on October 17, 2012; and
 - ii. Order and Judgment entered on November 6, 2012;
- b. Remand this case for entry of a judgment against Mr. Waters and in favor of Ms. Agars for attorney fees accrued in the proceeding before the superior court; and

- c. Enter a judgment in favor of Ms. Agars and against Mr. Waters for her appellate attorney fees and costs.

Dated March 8, 2013


Matthew I. Cooper, WSEA No. 13100
Attorney for Appellant

APENDIX A: COURT RULES

CR 6. TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any superior court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 50(b), 52(b), 59(b), 59(d), and 60(b).

(c) Proceeding Not To Fail for Want of Judge or Session of Court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges or by the failure of a session of the court.

(d) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and

the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

CR 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions and Other Papers.

(1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) Form. The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) Signing. All motions shall be signed in accordance with rule 11.

(4) Identification of Evidence. When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

(5) Telephonic Argument. Oral argument on civil motions, including family law motions, may be heard by conference telephone call in the discretion of the court. The expense of the call shall be shared equally by the parties unless the court directs otherwise in the ruling or decision on the motion.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Security for Costs. [Reserved. See RCW 4.84.210 et seq.]

**CR 11. SIGNING AND DRAFTING OF PLEADINGS, MOTIONS,
AND LEGAL MEMORANDA; SANCTIONS**

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact ; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the

extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

RULE 12. DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve his answer within the following periods:

- (1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to rule 4;
- (2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);
- (3) Within 60 days after the service of the summons upon him if the summons is served upon him personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief

to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided

for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in section (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

RULE 54. JUDGMENT AND COSTS

(a) Definitions.

(1) Judgment. A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58.

(2) Order. Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs, Disbursements, Attorneys' Fees, and Expenses.

(1) Costs and Disbursements. Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).

(2) Attorneys' Fees and Expenses. Claims for attorneys' fees and expenses, other than costs and disbursements, shall be made by motion

unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

(e) Preparation of Order or Judgment. The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and his attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in subsection (f)(2).

(f) Presentation.

(1) Time. Judgments may be presented at the same time as the findings of fact and conclusions of law under rule 52.

(2) Notice of Presentation. No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:

(A) Emergency. An emergency is shown to exist.

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.

(C) After Verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court.

APENDIX B: WASHINGTON STATE STATUTES

**RCW 4.84.185. PREVAILING PARTY TO RECEIVE EXPENSES
FOR OPPOSING FRIVOLOUS ACTION OR DEFENSE**

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

6.27.230. CONTROVERSION--COSTS AND ATTORNEY'S FEES

Where the answer is controverted, the costs of the proceeding, including a reasonable compensation for attorney's fees, shall be awarded to the prevailing party: PROVIDED, That no costs or attorney's fees in such contest shall be taxable to the defendant in the event of a controversion by the plaintiff.

**RCW 26.16.140. EARNINGS AND ACCUMULATIONS OF
SPOUSES OR DOMESTIC PARTNERS LIVING APART, MINOR
CHILDREN**

When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse or domestic partner who has their custody or, if no custody award has been made, then the separate property of the spouse or domestic partner with whom said children are living.

APENDIX C: FEDERAL STATUTES

11 U.S.C. § 523. EXCEPTIONS TO DISCHARGE

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(1) for a tax or a customs duty--

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required--

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)(i) for purposes of subparagraph (A)--

(I) consumer debts owed to a single creditor and aggregating more than \$600¹ for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than \$875¹ that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph--

- (I) the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and
- (II) the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;
- (3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--
 - (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
 - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;
- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;
- (5) for a domestic support obligation;
- (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
- (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty--
 - (A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
 - (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;
- (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for--
 - (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
 - (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
 - (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;
- (9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

- (10)** that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;
- (11)** provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;
- (12)** for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;
- (13)** for any payment of an order of restitution issued under title 18, United States Code;
- (14)** incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);
- (14A)** incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);
- (14B)** incurred to pay fines or penalties imposed under Federal election law;
- (15)** to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;
- (16)** for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
- (17)** for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the

debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under--

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that--

(A) is for--

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from--

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

28 U.S.C.A. § 1334

§ 1334. BANKRUPTCY CASES AND PROCEEDINGS

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.