

71007-9

71007-9

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
N
2014 JAN -8 PM 2:46

COURT OF APPEALS NO. 71007-9-I

KING COUNTY SUPERIOR COURT NOS. 09-3-07405-8 SEA
13-2-03411-5 SEA

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

AHMAD ABDEL-WAHED,

Appellant,

and

NANCY A. GASS,

Respondent.

OPENING BRIEF OF APPELLANT

C. Nelson Berry III
WSBA No. 8851
Attorney for Appellant

Berry & Beckett, P.L.L.P.
1708 Bellevue Avenue
Seattle, Washington 98122
(206) 441-5444

ORIGINAL

Table of Contents

Table of Authorities.....i

Statement of the Case.....1

Argument.....7

 1. The Lower Court Lacked Jurisdiction to Impose
 A Constructive Trust.....7

 2. No Judgment Lien Ever Attached
 To The Appellant's Homestead Property.....8

 3. The Lower Court Had No Legal Authority
 To Disregard The Appellant's Homestead
 Exemption.....12

Conclusion.....17

Certificate of Service.....18

Table of Authorities

Cases

State Cases

Algona v. Sharp,
30 Wash.App. 837, 638 P.2d 627 (1982).....17

Baker v. Baker,
149 Wash.App. 208, 202 P.3d 983 (2009).....11

Brown v. Manos,
140 Wash. 525, 250 P. 36(1926).....9, 14, 15

<i>Byam v. Albright</i> , 94 Wash. 108, 116, 162 P.10 (1916).....	15
<i>Chelan Cy. Deputy Sheriffs' Ass'n v. Chelan Cy.</i> , 109 Wash.2d 282, 745 P.2d 1 (1987).....	7
<i>Christensen v. Christgard, Inc.</i> , 35 Wash. App. 626, 688 P.2d 1301 (1983).....	10, 11, 16
<i>Federal Intermediate Credit Bank of Spokane v. O/S Sablefish</i> , 111 Wash.2d 219, 758 P.2d 494 (1988).....	10
<i>Hartley v. Liberty Park Assocs.</i> , 54 Wash.App. 434, 774 P.2d 40 at 42 (1989).....	6
<i>Hemenway v. Miller</i> , 116 Wash.2d 725, 731, 807 P.2d 863 (1991).....	7
<i>In re Dependency of Schermer</i> , 161 Wash.2d 927, 169 P.3d 452(2007).....	15
<i>In re Estate of Feas</i> , 30 Wash. 51, 70 P. 270 (1902).....	17
<i>In re Marriage of Hardt</i> , 39 Wn.App. 493, 693 P.2d 1386 (1985).....	7
<i>Matter of Deal</i> , 85 Wash.App. 580, 933 P.2d 1084 (1997).....	10
<i>Pinebrook Homeowners Ass'n v. Owen</i> , 48 Wash.App. 424, 739 P.2d 110 (1987).....	13, 15
<i>Tellevik v. Real Property Known as 6717 100th Street S.W. Located in Pierce County</i> , 83 Wash.App. 366, 921 P.2d 1088(1996).....	8
<i>Webster v. Rodrick</i> , 64 Wn.2d 814, 819, 394 P.2d 689 (1964).....	12, 13, 14, 16,17

<i>Wentworth v. McDonald</i> , 78 Wash. 546, 139 P. 503 (1914).....	8
<i>Wilson Sporting Goods Co. v. Pedersen</i> , 76 Wash. App. 300, 886 P.2d 203(1994).....	11

Federal Cases

<i>In re Catholic Bishop of Spokane</i> , 329 B.R. 304 (Bkrcty.E.D.Wash. 2005).....	14, 15
<i>Committee of Tort Litigants v. Catholic Diocese of Spokane</i> , 364 B.R. 81, 46 Bankr.Ct.Dec. 200 (E.D.Wash. 2006).....	14
<i>In re DeLavern</i> , 337 B.R. 239 (Bkrcty. W.D. Wash. 2005).....	10
<i>In re Gitts</i> , 116 B.R. 174 (9th Cir. BAP (Wash. 1990).....	11
<i>In Re Stone</i> , 119 B.R. 222 (Bkrcty. E.D. Wash. 1990).....	6

Statutes

RCW 6.12.090.....	16, 17
RCW 6.13.010(1).	9
RCW 6.13.030.....	10
RCW 6.13.040.....	10
RCW 6.13.070(1).....	9, 10
RCW 6.13.080.....	15
RCW 6.13.080(1).....	5

RCW 6.13.080(4).....5
RCW 6.13.090.....11
RCW 19.86.050.....17
RCW 21.20.140.....16
RCW 62A.2–314.....17

Other Authority

Washington Constitution Article XIX, § 1.....8, 9

Statement of the Case

The parties arbitrated the issues in their dissolution proceeding with Harry Slusher, who issued his rulings on April 24, 2010 and May 30, 2010. Those rulings were incorporated into the Findings of Fact and Conclusions of Law, and the Decree of Dissolution which were drafted by Ms. Gass' attorney and entered on August 24, 2010. CP 274-300.

In Paragraph 13, the Arbitrator made the following award of the parties' community property (CP 292):

		<u>H</u>	<u>W</u>
IRA(w)	16849		16849
'06 Chrysler	7860		7860
'07 Toyota	18285	18285	
Smith Barney	7641		7641
Fidelity	107,787		107,787
Home	270,000	270,000	
401(k)	<u>223,200</u>	<u>37526</u>	<u>185,674</u>
	651622	325811	325811

No judgment was created by these pleadings. Nor did the court award a lien to the Ms. Gass against the home awarded to Mr. Abdel-Wahed.

As shown by the declaration of his physician Dr. Phillip Milam, Mr. Abdel-Wahed became seriously ill starting in the fall of 2010, shortly after the Decree was entered. CP 148-149. He

started having syncopal episodes, where he would lose consciousness for hours at a time. In the winter and early part of 2011, he continued passing out and was hospitalized. He became unable to work. In the fall of 2012, he was hospitalized again with pancreatitis and pseudomembranous colitis and was found to have developed acute renal failure with greater than 50% impairment of kidney function. CP 149.

He has been on an indefinite unpaid medical leave from his job at Microsoft ever since. He has remained very ill, and has only been able to work sporadically. CP 374.

Following the entry of the Decree of Dissolution, Ms. Gass delayed having the monies awarded to her transferred to her from these accounts for a considerable period of time. During that delay, stock values declined and stock options expired. By the time Ms. Gass sought to obtain possession of the monies she had been awarded, these investment accounts had lost considerable value just due to market forces. CP 374.

In the meantime, as a result of his inability to work and corresponding lack of income, Mr. Abdel-Wahed was unable to refinance the mortgage on the home which had been awarded to him in the Decree. He was unable to make all of the court-ordered

spousal maintenance payments in a timely way. And he was thus compelled to use some of the funds in those accounts which had been awarded to Ms. Gass to meet his living expenses. CP 374.

In response, Ms. Gass obtained judgments against the Mr. Abdel-Wahed totaling \$190,318.35 on August 8, 2012 for amounts she was owed, pursuant to the Decree of Dissolution, for unpaid maintenance, interest, and attorney fees.¹ CP 374. Due to Mr.

¹ According to the Ms. Gass, Mr. Abdel-Wahed withdrew \$31,603.55 from the Fidelity Account in April of 2010 before the Arbitrator issued his decision. He withdrew another \$29,910.53 in June of 2010 before the Decree was entered. CP 21, 99. During that same month, the account lost \$13,113.89 in investment value due to deteriorating stock market conditions. CP 99. When the Decree was entered, *each party was awarded \$107,787 from that account.* CP 292. But, that account never contained enough money on any relevant date to satisfy these awards, CP 99, even though the Arbitrator stated that he had used an old statement value because the “significant increase since then is considered Mr. Abdel-Wahed’s separate property.” CP 55. Mr. Abdel-Wahed did withdraw \$109,099.46 from that account in November 2010. By the time Ms. Gass garnished what was left in this account, more than a year later, the balance was only \$40,199. But her very judgment, CP 64-65, indicted that that sum was “subject to fluctuation due to market conditions”. Her judgment includes, and has Mr. Abdel-Wahed compensating her, for the market losses in this account that accrued from her delay, CP 374, and the deteriorating stock market conditions prior to the entry of the Decree, as well as whatever the Mr. Abdel-Wahed may have overpaid himself from this account. In addition, a Temporary Order entered on March 5, 2010 expressly permitted Ms. Gass to “draw against the investment accounts the reasonable and necessary costs for books and tuition and related fees to attend law school.” CP 116, 273. There is no evidence as to how much money she may have withdrawn from these accounts.

Abdel-Wahed's ill health, he was unable to respond, and all of these judgments were obtained by default. None of the judgments obtained by Ms. Gass were recorded. CP 374.²

Ms. Gass obtained an order forcibly removing Mr. Abdel-Wahed from his home on September 14, 2012. CP 5. Mr. Abdel-Wahed filed a Declaration of Homestead on September 28, 2012, CP 2, even though he had had an automatic homestead on the property from the time it became his home in June of 2000.

Ms. Gass then obtained an order from the Court on October 9, 2012, authorizing her to list and subsequently to sell Mr. Abdel-Wahed's home. CP 2.

On November 27, 2012, Ms. Gass released any judgment liens she may have had against Mr. Abdel-Wahed's homestead property. CP 406.

The home sold on November 30, 2012. From the net sale proceeds of \$175,074.08³, CP 93, Mr. Abdel-Wahed paid his unpaid maintenance obligation to Ms. Gass. CP 375, 412.

² Nonetheless, the validity of the judgments themselves is not at issue in this proceeding. The only issue is whether the lower court could impose a constructive trust on the net sale proceeds from the sale of Mr. Abdel-Wahed's home which are protected by the homestead statute.

Ms. Gass then filed a Complaint for Declaratory and Other Relief seeking a judgment declaring that the Mr. Abdel-Wahed's homestead exemption did not bar the execution of her judgment against the proceeds of the sale of his home, on the grounds that a homestead exemption is not available against judgments obtained on vendor's liens, pursuant to RCW 6.13.080(1)⁴, or against debts arising from obligations to pay maintenance, pursuant to RCW 6.13.080(4). CP 1-3.

The parties filed cross-motions for summary judgment. CP 8-119; 131-146; 148-149; 153-159; 211-267; 305-412. Shortly before the hearing, Ms. Gass also filed a Motion to Modify Property Division in Decree of Dissolution, pursuant to CR 60. CP 160-182.

The Honorable Dean Lum entered an Order on Cross-Motions for Summary Judgment, on September 18, 2013. CP 199-

³ The Arbitrator had previously valued Mr. Abdel-Wahed's interest at \$270,000. CP 292.

⁴ RCW 6.13.080 provides in pertinent part:

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, materialmen's or vendor's liens *arising out of and against the particular property claimed as a homestead.* (emphasis added).

202. The Court specifically found, as a matter of law, “that no vendor’s lien exists because the plaintiff [respondent] is not a purchaser of the property, and no owelty lien⁵ exists because the original Decree did not explicitly include language imposing such a lien”. CP 202.

No appeal was taken from these rulings.

The Court also denied the Motion to Modify Property Division in Decree, pursuant to CR 60. CP 197-198.

No appeal was taken from that ruling.

Nonetheless, even though such relief was not requested in Ms. Gass’s Complaint, the Court imposed a constructive trust on the net sale proceeds in the amount of” those funds awarded to plaintiff in the original Decree, consisting of \$50,400 in maintenance (which has now been paid) and \$96,760.35 for the investment assets that were not transferred to the plaintiff” .

The Court based its ruling on its conclusion that “the defendant intentionally and in bad faith “looted’ the investment

⁵ A lien awarded in a dissolution proceeding to equalize distribution of jointly held or community property is an owelty lien. In *In Re Stone*, 119 B.R. 222, 230-231 (Bkrtcy. E.D. Wash. 1990); *Hartley v. Liberty Park Assocs.*, 54 Wash.App. 434, at 438, 774 P.2d 40, 42 (1989).

accounts which were supposed to be transferred to plaintiff as part of the Decree⁶...[and] that the Homestead Statute exemption cannot be used to facilitate unjust enrichment or fraud, and the court in equity may impose a constructive trust.” CP 201.

Mr. Abdel-Wahed appeals this ruling.

Argument

1. The Lower Court Lacked Jurisdiction to Impose A Constructive Trust.

In this case, Ms. Gass never asked the Court to impose a constructive trust in her Complaint. In her Complaint, the Ms. Gass did not allege “unjust enrichment”. Nor did she ask the Court to impose a constructive trust on the net sale proceeds from Mr. Abdel-Wahed’s home.

Accordingly, the lower court lacked jurisdiction to grant such relief because it was beyond what was requested in the Complaint.

In re Marriage of Hardt, 39 Wn.App. 493, 494-496, 693 P.2d 1386

⁶ Findings of Fact on summary judgment are not proper, are superfluous, and are not considered by the appellate court, *Hemenway v. Miller*, 116 Wash.2d 725, 731, 807 P.2d 863 (1991). A failure to assign error to them has no effect on the case. *Chelan Cy. Deputy Sheriffs' Ass'n v. Chelan Cy.*, 109 Wash.2d 282, 294 n. 6, 745 P.2d 1 (1987). In any event, whether the Defendant “looted” the investment accounts which were supposed to be transferred to plaintiff as part of the Decree intentionally or not, or in “good faith” or in “bad faith” is *immaterial* to whether he is entitled to the protections of the homestead statute.

(1985).

Instead, Ms. Gass only asked the Court below to declare that she had a vendor's lien or an owelty lien. CP 3. The Court ruled, as a matter of law, that Ms. Gass did not have either. CP 202.

No appeal was taken from that ruling.

2. No Judgment Lien Ever Attached To The Appellant's Homestead Property.

Washington Constitution Article XIX, § 1 states:

The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

The Legislature chose to extend homestead rights to situations involving "execution or forced sale for the debts of the owner." *Tellevik v. Real Property Known as 6717 100th Street S.W. Located in Pierce County*, 83 Wash.App. 366, 921 P.2d 1088 (1996); RCW 6.13.070(1). As the Court held in *Wentworth v. McDonald*, 78 Wash. 546, 548, 139 P. 503 (1914) reasoned in support of its holding that a homestead can only be abandoned in a formal way:

It is uniformly held that homestead and exemption laws are in subservience to the interest that the public has in the maintenance and protection of the home of the individual citizen. Recognizing that the sheet

of government is the home, the people of this state wisely ordained that the Legislature should protect from forced sale a certain portion of the homestead of all heads of families. Article 19, § 1, state Constitution.

The first Legislature of the state seemed to be satisfied with what had been done by the Legislatures of the territory. Section 342, Code 1881. In 1893, however, the country entered into an era of financial famine and enforced liquidation of which the courts may take such judicial notice as comes to all men from actual experiences. The Legislature of 1895, in its endeavor to further protect the debtor from the enforced extortions of creditors and make the home more secure, passed a new act which we have held to be a complete act in itself, except in so far as the time of selection is concerned.

In Washington, a "homestead consists of real or personal property that the owner uses as a residence" or "the dwelling house or the mobile home in which the owner resides or intends to reside.... Property included in the homestead must be actually intended or used as the principal home for the owner." RCW 6.13.010(1).

Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the homestead exemption of RCW 6.13.070 from and after the time the property is occupied, RCW 6.13.040, for up to \$125,000, RCW 6.13.030. The homestead may be selected at any time before sale. *Brown v. Manos*, 140 Wash. 525, 526, 250 P. 36(1926).

Mr. Abdel-Wahed thus had a homestead exemption in the amount of \$125,000, from the time he began occupying this property in 2002. RCW 6.13.030 and 6.13.040(1). He did not need to file a Declaration of Homestead. The fact that he filed a Declaration of Homestead after Ms. Gass obtained an order removing him from his home is not bad faith, but was done only to make clear that he intended to maintain this property as his homestead even though he had been forced out of the home.

The homestead lien statute, rather than the general lien statute, provides the proper means for a judgment creditor to obtain a lien against the value of homestead property in excess of the homestead exemption. *Matter of Deal*, 85 Wash.App. 580, 933 P.2d 1084 (1997).

Personal judgments, like those held by Ms. Gass, do not automatically become liens upon real property to which the homestead exemption applies. *In re DeLavern*, 337 B.R. 239 (Bkrtcy. W.D. Wash. 2005). Even if a judgment becomes a lien upon the debtor's property, the debtor may defeat an execution sale by filing a homestead declaration. *Federal Intermediate Credit Bank of Spokane v. O/S Sablefish*, 111 Wash.2d 219, 230, 758 P.2d 494 (1988); *Christensen v. Christgard, Inc.*, 35 Wash. App.

626, 629, 688 P.2d 1301 (1983).

Generally, a judgment in favor of the wife obtained in a dissolution proceeding cannot be executed against the husband's homestead, *Baker v. Baker*, 149 Wash.App. 208, 202 P.3d 983 (2009), even if the husband's conduct may be described as "wrongful". *Christensen v. Christgard, Inc.* 35 Wash.App. 626, 629, 668 P.2d 1301(1983).

Under Washington law a valid homestead exemption prevents an execution sale when the owner's equity in the property is less than or equal to homestead exemption amount. If the owner's equity exceeds the homestead exemption, the creditor must record the judgment pursuant to RCW 6.13.090 to obtain a lien on the excess value of the homestead. *Wilson Sporting Goods Co. v. Pedersen*, 76 Wash. App. 300, 304-305, 886 P.2d 203(1994) (quoting RCW 6.13.090); *In re Gitts*, 116 B.R. 174, 178 fn.6 (9th Cir. BAP (Wash. 1990).

But, in this case, no judgments were entered in favor of the wife in the dissolution proceeding. The judgments she obtained post-Decree were not recorded. So those judgments never became a lien against Mr. Abdel-Wahed's homestead.

Even so, on November 27, 2012, prior to the sale of Mr.

Abdel-Wahed's home, Ms. Gass released any judgment liens she may have had against his homestead. CP 406.

3. The Lower Court Had No Legal Authority To Disregard The Appellant's Homestead Exemption.

The cases relied upon by the court below to impose a constructive trust on net sale proceeds which are protected by the homestead exemption are inapposite.

In *Webster v. Rodrick*, 64 Wn.2d 814, 819, 394 P.2d 689 (1964), the Court reversed an order denying plaintiff's motion to declare defendants' homestead declaration invalid when the evidence showed that the defendant had purchased and improved the property in question with funds embezzled from the plaintiff, and thus possessed a vendor's lien.

But, in *Webster v. Rodrick*, 64 Wn.2d at 816-817, the Washington Supreme Court was careful to distinguish its holding from the factual situation, like that here, where the wrongfully obtained funds had *not* been used to purchase the homestead property:

We are aware of *Brown v. Manos*, 140 Wash. 525, 250 P. 36 (1926) (not cited by plaintiff). Therein plaintiff secured a judgment against defendant for the wrongful and fraudulent use of partnership funds. Although defendant's homestead exemption was upheld, the decision is not apposite because there was no showing

that the person claiming the homestead had purchased the property with funds stolen from the judgment creditor. Further, the record indicates that the property had been purchased by defendant long before the facts constituting the judgment creditor's cause of action arose.

As the Court in *Christensen v. Christgard, Inc.*, 35 Wash.

App. at 629, explained:

Although the exact parameters of the exemption are not identified in *Webster v. Rodrick*, it is clear that an equitable lien may be imposed when the homestead claimant acquired the funds to purchase his homestead by fraud.

The Courts in *Webster v. Rodrick, supra*, and *Christensen v. Christgard, Inc., supra*, are referring to a vendor's lien. But, in this case, the evidence is undisputed that the funds which Mr. Abdel-Wahed had wrongfully taken from the investment accounts which were supposed to be transferred to Ms. Gass were *not* used to purchase his homestead.

The homestead exemption is unavailable only if the funds used to purchase the home were obtained by fraud. *Pinebrook Homeowners Ass'n v. Owen*, 48 Wash.App. 424, 739 P.2d 110 (1987). They were not.

Ms. Gass' judgment(s) are based on events which happened, or did not happen, *after* the home had been awarded to

Mr. Abdel-Wahed in the Decree----namely, inadequate transfers of money from various accounts, unpaid maintenance (which has now been paid), interest and attorney fees. Due to Mr. Abdel-Wahed's ill health, all of Ms. Gass' judgments were obtained by default. Thus, as the court below found, there was no vendor's lien on Mr. Abdel-Wahed's homestead. CP 202.

In the absence of vendor's lien, the net sale proceeds from the sale of the Mr. Abdel-Wahed's homestead are exempt from execution up to \$125,000. *Brown v. Manos, supra*.

The other case relied upon by the court below, *In re Catholic Bishop of Spokane*, 329 B.R. 304 (Bkrcty.E.D.Wash. 2005) did not even involve a homestead exemption. *In re Catholic Bishop of Spokane*, 329 B.R. at 330-333 simply holds that no constructive or resulting trust exists for the benefit of individual parishioners in the assets of their religious organization which were acquired through the gifts of those parishioners which would shield those assets from the religious organization's judgment creditors.

On appeal, however, the Court in *Committee of Tort Litigants v. Catholic Diocese of Spokane*, 364 B.R. 81, 46 Bankr.Ct.Dec. 200 (E.D.Wash. 2006) reversed *In re Catholic Bishop of Spokane, supra*, in part, holding that questions of material fact existed

regarding whether the Diocese of Spokane was the unencumbered owner of the individual Parish properties and that the individual Parishes had failed to submit relevant and material evidence that the Parishes were, at a minimum, the beneficial owners of the real property on which their churches and schools stand, thereby precluding summary judgment on this issue.

In sum, *In re Catholic Bishop of Spokane*, 329 B.R. 304 (Bkrtcy.E.D.Wash. 2005) has no application or relevance to the facts in this case.

Homestead and exemption statutes are favored in the law and should be liberally construed. *In re Dependency of Schermer*, 161 Wash.2d 927, 953, 169 P.3d 452(2007); *Pinebrook Homeowners Ass'n v. Owen*, 48 Wash.App. 424, 427, 739 P.2d 110 (1987). The Legislature's intent should be broadly construed to implement the Constitutional mandate which underpin this statutory scheme. Statutory exceptions should be narrowly construed and limited.

The only exceptions to the exemption of the homestead prescribed by the act of 1895, are set forth in RCW 6.13.080. But, the judgment under which this sale was made was not for any of the debts mentioned in these exceptions, *Byam v. Albright*, 94

Wash. 108, 116, 162 P.10 (1916), except for the maintenance obligation which was satisfied.

No doubt, many judgment creditors have judgments based upon funds wrongfully obtained by their judgment debtors “intentionally” and in “bad faith”. But that does not permit them to execute on the exempt assets of their judgment debtors, including those protected by the homestead statute.

There is no legal authority which supports the lower court’s ruling that it could impose a constructive trust upon the net sale proceeds from Mr. Abdel-Wahed’s home which are protected by the homestead statute, even if he had acted “intentionally” and in “bad faith” in “looting” those portions of the investment accounts which had been awarded to Ms. Gass.

As the Court in *Christensen v. Christgard, Inc.*, 35 Wash. App. at 630-631, reasoned in its holding that the protections of the homestead statute apply, in the absence of evidence that the wrongfully acquired funds were used to purchase the homestead:

We do not read language in *Webster v. Rodrick* and the authorities there cited to support exemption of property from the protections of RCW 6.12.090 whenever the purchase funds were somehow “wrongfully” acquired. A debtor could acquire money “wrongfully” by such methods as sale of an unregistered security, see RCW 21.20.140, sale of a product which fails to comply

with an implied warranty of merchantability, see RCW 62A.2–314, entering an agreement not to use competing goods and services which substantially lessens competition, see RCW 19.86.050, or by violating other statutes or laws which do not entail the degree of intentional culpability found in embezzlement or common law fraud.

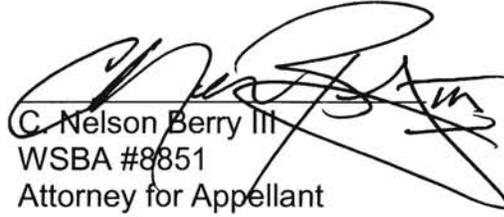
The homestead exemption is a shield to protect the claimant's dependents as well as the claimant in the enjoyment of a domicile, *Webster v. Rodrick, supra* ; *In re Estate of Feas*, 30 Wash. 51, 70 P. 270 (1902), and the homestead laws should be liberally construed in favor of the debtor. *Algona v. Sharp*, 30 Wash.App. 837, 638 P.2d 627 (1982). This decision is based upon a finding of common law fraud. If mere “wrongful” conduct is to remove the protections afforded by RCW 6.12.090, this determination should be made by the Legislature rather than the courts.

Until the Legislature makes such a determination, Mr. Abdel-Wahed’s homestead precludes Ms. Gass from executing her judgment against the balance of the net sale proceeds from his home. Ms. Gass may collect the balance of her judgment against Mr. Abdel-Wahed’s non-exempt assets.

CONCLUSION

For each of the foregoing reasons, the ruling of the court below must be reversed. This case should be remanded with directions to the lower court that Mr. Abdel-Wahed’s homestead exemption protects the balance of the net sale proceeds of his home from execution.

Respectfully submitted this 7th day of January, 2014.


C. Nelson Berry III
WSBA #8851
Attorney for Appellant

Certificate of Service

I certify that on the 7th day of January, 2014, I mailed a copy of the foregoing Opening Brief of Appellant to the attorney for the Petitioner/Plaintiff/Respondent, by first class mail, postage prepaid, to the following address:

O.W. Hollowell
PO Box 1041
Carnation, Washington 98014


C. Nelson Berry III
WSBA #8851
Attorney for Appellant