

NO. 35506-0-II  
COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

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MATTHEW SKINNER, an individual,  
Appellant-Cross Respondent,

v.

GARY D. HOLGATE and JUDY HOLGATE,  
individually and the marital community composed thereof;  
ADAM HOLGATE and JANE DOE HOLGATE,  
individually and the marital community composed thereof;  
WESTLANDS RESOURCES CORPORATION,  
a Washington corporation;  
WESTLANDS HOLDING COMPANY, INC.,

Respondents-Cross-Appellants.

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REPLY BRIEF OF CROSS-APPELLANTS

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A. INTRODUCTION

An equitable award of costs and reasonable attorney fees to the Holgates is available and warranted. Skinner attempts to rewrite history and suggests that the bankruptcy court's subsequent discovery of his undisclosed claim in May 2004 somehow absolves Skinner of his original misconduct – he filed an improper complaint in February 2004.

When a party abuses the legal system and files an obviously improper pleading, case law supports an award of costs and reasonable attorney fees to the opposing party. The trial court erroneously concluded that Skinner only defrauded the bankruptcy court and not the superior court. An award of costs and reasonable attorney fees for the Holgates was warranted and should have been entered.

B. ARGUMENT

(1) Skinner's Fraudulent Actions Rise to the Level of Bad Faith Under *Hsu Ying Li*

Skinner distinguishes *Hsu Ying Li v. Tang*, 87 Wn.2d 796, 557 P.2d 342 (1976), based on the *type* of bad faith sanctioned in that case: “There is no allegation or argument that Skinner breached his duties to his partner or the partnership.” Appellant reply br. at 13. Indeed, Holgate does not allege any breach of partnership duties by Skinner. Holgate cites *Hsu Ying Li* simply as an example of the level of egregious conduct that may warrant an

equitable award of attorney fees, even when no attorney fee statute or contract provision applies.

*Hsu Ying Li* informs this case because the misconduct of the respondent in that case is less egregious than Skinner's misconduct here. This is clear from the *Hsu Ying Li* court's finding that "Respondent's negligent breach of his fiduciary duty to petitioner is tantamount to constructive fraud." *Id.* at 800.

Compare the *Hsu Ying Li* finding with the finding of the trial court here, that Skinner's conduct was not merely tantamount to constructive fraud, but was an *actual* fraud:

It really appears to me that the fraud was being committed at bankruptcy, not in the bringing of this lawsuit, and so I don't know what that has to do with attorney's fees.

RP (10/06/2006):9. The trial court did not specify the nature of the fraud, but the obvious choice is fraud on the court, defined as "a lawyer's or party's misconduct so serious that it undermines the integrity of the proceeding." BLACK'S LAW DICTIONARY 686 (8th ed. 2004).

The trial court erred; Skinner's complaint seriously undermined the integrity of both the superior court proceeding and the bankruptcy court proceeding. This is an implicit finding, because the trial court applied judicial estoppel to Skinner's claim, and judicial estoppel is only

available when a party offends the integrity of the judicial proceedings in that particular court, here, the superior court.

Skinner argues that equity does not merit an award of attorney fees to the Holgates because there are “too many disputed questions of fact about Skinner’s intent to award attorney fees on the basis of bad faith.” Appellant reply br. at 13-14. But the trial court was not equivocal about Skinner’s *intent*: to perpetrate fraud. The court was only unclear as to whether Skinner intended to perpetrate the fraud in the bankruptcy court or in the superior court. RP (10/06/2006):9.

Contrary to the trial court’s assumption, Skinner defrauded not only the bankruptcy court in failing to disclose his claims, but also the superior court when he signed and filed an obviously improper complaint.

(2) An Equitable Award of Attorney Fees As a Sanction Against Skinner Is Appropriate

Skinner argues that *In re Pearsall-Stipek*, 136 Wn.2d 255, 961 P.2d 343 (1998) supports the trial court’s denial of attorney fees. Appellant reply br. at 13-14.

But the *Pearsall-Stipek* court specifically distinguished between the statutory award of attorney fees specifically at issue in that case, and an award of attorney fees in equity or under CR 11. *Pearsall-Stipek*, 136 Wn.2d at 267. The court concluded that the recall statute, which had to be

construed in favor of the petitioning citizen, prohibited an award of attorney fees against the citizen when the petition was legally meritless, but brought in good faith. *Id.* at 266. However, the court reiterated the long-standing rule that CR 11 and equitable considerations give courts the power to award attorney fees against a party who signs an obviously improper pleading or otherwise abuses the integrity of legal process. *Id.* at 267.

When Skinner signed filed his complaint in 2004, he was bound only to bring claims warranted by existing law or a reasonable modification, extension, or reversal thereof. CR 11(a). It is “well established” that a debtor is precluded from filing a legal claim that he knew of and did not disclose in prior bankruptcy proceedings. *Miller v. Campbell*, 137 Wn.2d 762, 155 P.3d 154, 158 (2007). This principle has been established for at least twenty years. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782-86 (9th Cir. 2001); *In re Coastal Plains, Inc.*, 179 F.3d 197, 208 (5th Cir. 1999), *cert. denied*, 528 U.S. 1117, 120 S. Ct. 936, 145 L.Ed.2d 814 (2000); *Payless Wholesale Distributors, Inc. v. Alberto Culver (P.R.) Inc.*, 989 F.2d 570, 572 (1st Cir.), *cert. denied*, 510 U.S. 931, 114 S. Ct. 344, 126 L.Ed.2d 309 (1993); *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir. 1992); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 419 (3rd Cir.), *cert. denied*, 488 U.S.

S. Ct. 495, 102 L.Ed.2d 532 (1988); *In re Galerie Des Monnaies of Geneva, Ltd.*, 55 B.R. 253 (N.Y. 1985).

Skinner cannot claim that the bankruptcy court's 2005 order remanding his case for proceedings in this court rendered his original complaint in 2004 retroactively legitimate. Skinner commenced his lawsuit long before the bankruptcy trustee discovered his deception; Skinner's argument that the trustee's abandonment "cured" his fraud was not available at the time Skinner filed his complaint. Skinner's state court claim was brought in flagrant violation of well established law, was contrary to CR 11, and offended the dignity of judicial system.

When Skinner signed and filed his complaint, he became subject to equitable sanctions, including payment of attorney fees to the Holgates. A CR 11 sanction in the form of an attorney fee award to the Holgates is appropriate and equitable in this case.

(3) An Award of Attorney Fees to the Holgates Is Also Appropriate Under RCW 25.05.250(9)

Skinner argues that RCW 25.05.250(9), which allows attorney fees for vexatious, arbitrary, or bad faith acts when a partner wrongfully dissociates, does not apply. First, he contends that the partnership automatically dissolved upon his dissociation. Appellant reply br. at 14. Second, Skinner claims that the statute of limitations in RCW 25.05.250(9)

expired before he filed suit, so the statute does not apply. Appellant reply br. at 15. Third, Skinner argues that because there was no determination on the merits, the trial court had no authority to award attorney fees under RCW 25.05.250(9).

Skinner is incorrect on all scores. Skinner's bankruptcy did not automatically dissolve the partnership and subject it to the "winding up" provisions of RCW 25.05.300. This was a partnership for a particular undertaking, which means that under RCW 25.05.300(2)(a), the remaining partner or partners could continue the partnership after Skinner's dissociation. The partnership activities carried on without Skinner, so his action falls under RCW 25.05.250(9).

Skinner's statute of limitations argument actually proves Holgate's case. If Skinner filed an obviously time-barred complaint under RCW 25.05.250(9),<sup>1</sup> then it would appear to be exactly the kind of bad faith, vexatious, and arbitrary action that would be subject to an award of attorney fees under the statute.

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<sup>1</sup> It is difficult to discern from Skinner's original complaint exactly what statute governs this issue. The complaint cites RCW 25.05.270 as the basis for Skinner's third cause of action. Although that statute brings Skinner's action under RUPA Article 7, not Article 8 as Skinner claims, that particular statute does not provide the cause of action that Skinner is claiming. It states: "Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business."

Finally, there is no support for Skinner's contention that RCW 25.05.250(9) only provides for fees when there has been a final determination on the merits. The entire attorney fee provision in that section states:

The court may assess reasonable attorneys' fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section.

RCW 25.05.250(9).

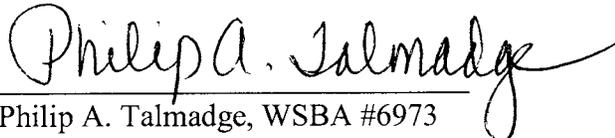
The Holgates are also entitled to an award of attorney fees under RCW 25.05.250(9) for Skinner's vexatious, arbitrary, and bad faith act in bringing this improper lawsuit.

#### C. CONCLUSION

The trial court's order denying costs and reasonable attorney fees to the Holgates should be reversed and remanded with instructions to enter an award of costs and attorney fees in their favor. This Court should also award costs, including reasonable attorney fees to the Holgates on appeal.

DATED this 5<sup>th</sup> day of June, 2007.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below I deposited in the U. S. mail a true and accurate copy of the following document: Reply Brief of Cross-Appellants, Cause No. 35506-0-II, to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 6, 2007, at Tukwila, Washington.



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