

No. 35567-1-II  
COURT OF APPEALS,  
DIVISION II  
OF THE STATE OF WASHINGTON

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TCAP CORPORATION, f/k/a TRANSAMERICAN CAPITAL  
CORPORATION,

Respondent,

v.

GEORGE GERVIN and JOYCE GERVIN,

Appellants.

401 GROUP, a Washington limited partnership,

An Interested Party.

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SUPPLEMENTAL BRIEF OF APPELLANTS

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## A. INTRODUCTION

This is a case of a judgment creditor waiting until the last minute to obtain a writ of execution, then fumbling in its efforts to carry through on that execution and taking its eye off the clock as the time remaining in the life of the judgment lien ticked away. It is a case of a superior court not caring for the result, and stepping in to revive a judgment lien that had expired and no longer had any force or vitality, granting relief that even the creditor had not requested. It is a case where most of the legal questions involved have been answered by the Supreme Court in a manner contrary to the view of the law and the legal standards reflected in the rulings of the superior court.

Reversal of the superior court in this case is needed in order to affirm that the courts may not engraft new exceptions on the statutorily-prescribed time for the expiration of a judgment lien, and may not retroactively revive an expired judgment lien in derogation of the judgment debtor's substantive right in the cessation of the lien. Furthermore, reversal of the superior court is needed to ensure that the single narrow exception that allows the time under a judgment lien to be equitably tolled is not broadened to permit equitable relief where execution fails not because of improper actions by the debtor but rather because the creditor sat on its rights.

## **B. ASSIGNMENTS OF ERROR**

### **Assignments of Error**

No. 1: The superior court erred in reviving, extending and enforcing a judgment lien that had expired and no longer existed.

No. 2: The superior court erred in equitably tolling a statutory judgment lien that had expired at a time when no injunctive relief prevented execution and while the plaintiff merely sat on its rights under the lien.

### **Issues Pertaining to Assignments of Error**

No. 1: Did the superior court abuse its discretion by reviving, extending and enforcing the expired judgment lien based on the erroneous view of the law that the courts may engraft non-statutory exceptions onto the judgment lien statute? (Assignment of Error No. 1.)

No. 2: Did the superior court abuse its discretion by reviving, extending and enforcing the expired judgment lien based on the erroneous view of the law that the judgment lien statute does not grant substantive rights? (Assignment of Error No. 1.)

No. 3: Did the superior court abuse its discretion by applying an incorrect legal standard whereby it invoked equity to overcome the statutory limitations under which the Pierce County sheriff operated, which were not caused by the defendants? (Assignment of Error No. 2.)

No. 4: Did the superior court abuse its discretion by applying an incorrect legal standard whereby it invoked equity without requiring the plaintiff to have exercised due diligence in pursuing its rights? (Assignment of Error No. 2.)

**C. STATEMENT OF THE CASE**

**1. PROCEDURE BELOW**

In addition to the procedures described in the initial brief of Appellants George and Joyce Gervin (the Gervins), Brief of Appellants, pp. 2-3 (May 21, 2007), the following procedures below are noted:

*Order Reviving the Judgment Lien.* On February 27, 2007, the Pierce County sheriff filed a return on the writ of execution. CP at 296-303. On March 8, 2007, Respondent Cadles of Grassy Meadows II, L.L.C. (Cadles) filed a motion to set aside the sheriff's return on the writ, or, in the alternative, for issuance of a new writ of execution. CP at 352-363. On March 16 and March 30, 2007, the motion came before the Hon. Kathryn J. Nelson, who heard oral argument thereon, then sua sponte issued an order that revived the judgment lien for a period of 21 days. CP at 549-550.

*Order Extending the Duration of the Revived Judgment Lien.* On April 5, 2007, Cadles filed a motion for reconsideration of the March 30 order, seeking to have the judgment lien extended for additional time.

CP at 551-558. On April 20, 2007, the motion came before Judge Nelson, who heard oral argument thereon, and stated from the bench that she would reconsider her March 20 order and extend the duration of the judgment lien to May 25, 2007. RP (4/20/2007), p. 16, lines 13-20. On May 11, 2007, Judge Nelson entered findings and conclusions and an order extending the duration of the judgment lien to May 25, 2007; the order was entered nunc pro tunc, retroactive to April 20, 2007. CP at 636-647.

*Order Denying Motion to Quash Writ of Execution.* On April 6, 2007, Cadles obtained issuance of a writ of execution. CP at 561-563. On May 10, 2007, the Gervins filed a motion to quash the writ of execution. CP at 604-615. On May 18, 2007, the superior court denied the Gervins' motion to quash. CP at 678-679.

On May 21, 2007, the Gervins filed a notice of appeal to the Court of Appeals with respect to the superior court's orders entered on March 30 (reviving the judgment lien for 21 days), May 11 (extending the duration of the judgment lien to May 25), and May 18 (denying the motion to quash the writ of execution). CP at 680-697. This Court consolidated the Gervins' appeal with their earlier appeal from the superior court's November 9, 2006 order. Clerk's Letter to Counsel (June 5, 2007).

## **2. RELEVANT FACTS**

In addition to the procedures below described in the Gervins' initial brief, Brief of Appellants, pp. 3-4 (May 21, 2007), the following facts are relevant:

On November 9, 2006, the U.S. District Court for the Western District of Texas entered an order staying the writ of execution for 30 days. CP at 297. On December 8, 2006, this Court of Appeals entered an order staying the writ of execution through December 22, 2006. CP at 297. On January 5, 2007, the superior court entered an order staying the writ of execution for 14 days. CP at 297. Finally, on January 22, 2007, this Court of Appeals entered an order staying the writ of execution for 14 days. Ruling on Motions (Jan. 22, 2007).

On February 27, 2007, the Pierce County sheriff filed a return on the writ of execution due to the fact that the time to execute on the writ had expired. CP at 296-303. The relevant facts thereafter are described in the above statement of the procedure below.

### **D. SUMMARY OF ARGUMENT**

A judgment lien is a creature of statute. Its duration is fixed by the legislature, and the courts are obliged to give effect to the statutorily-prescribed time for expiration of a judgment lien. In reviving, extending and enforcing an expired statutory judgment lien, the superior court

engrafted a judicially-created exception to the statute, and deprived the Gervins of their substantive right in the cessation of the lien, contrary to the law. In doing so, the superior court based its decisions on erroneous views of the law, and committed abuses of discretion.

In reviving, extending and enforcing the expired judgment lien, the superior court invoked equity. However, equity allows for relief against the expiration of a judgment lien only where the lien will expire during the time when an injunction, obtained by the defendant in blatant abuse of the court system, prevented execution under the lien. It does not allow for relief where, as here, the lien expired at a time when no court order prevented execution. In addition, equity does not afford relief to a plaintiff, such as Cadles, who failed to exercise due diligence to pursue its rights. In invoking equity to revive, extend and enforce a judgment lien that had expired at time when no court order prevented execution under the lien, and despite the lack of any effort by Cadles to execute before the lien expired, the superior court applied incorrect legal standards, and committed abuses of discretion.

#### **E. ARGUMENT**

##### **1. THE SUPERIOR COURT ERRED IN REVIVING, EXTENDING AND ENFORCING A JUDGMENT LIEN THAT HAD EXPIRED AND NO LONGER EXISTED**

**a. The superior court's decisions to revive, extend and enforce the expired judgment lien are based on the erroneous view of the law that the courts may engraft non-statutory exceptions onto the judgment lien statute.**

As the Gervins argued below, the statutory judgment lien expired beyond resuscitation. CP at 307-309. Nevertheless, on March 30, 2007, the superior court entered an order holding "that the judgment lien is extended for a period of twenty-one (21) days from the date of entry of this order." CP at 549-550. On May 11, 2007, it entered an order further extending the judgment lien to May 25, 2007. CP at 646. On May 18, 2007, it denied the Gervins' motion to quash a writ of execution that had issued after the judgment lien had expired. CP at 678-679.

Thus, the superior court revived, extended and enforced a statutory judgment lien that had expired under RCW 4.56.210, and which no longer had any force or effect. Indeed, the superior court was aware that the lien had expired, as shown by the following exchange between the court and counsel for Cadles:

THE COURT: How are you going to get the new writ?

MR. ALLEN: The judgment lien survives. We still have a judgment lien.

THE COURT: Why does it still survive?

MR. ALLEN: Why does it still survive?

THE COURT: Yes.

MR. ALLEN: Your Honor, let me pose a question to you. What happens if –

THE COURT: Why haven't you renewed the judgment lien before now?

MR. ALLEN: Because it was a 10-year lien.

THE COURT: Which expired in 2006.

MR. ALLEN: Because we had a sale scheduled, Your Honor, as this court is aware.

THE COURT: I know. I know that it was tolled under Hanson.

MR. ALLEN: Correct.

THE COURT: Wouldn't it have been prudent to –

MR. ALLEN: We can't renew it. Under the Foreign Judgment Act we can't renew it. It is a tendered judgment.

RP (3/16/2007), p. 12, line 13 – p. 13, line 9.

RCW 4.56.210(1) provides that once the statutory life of the lien expires, there may no longer be any "proceeding ... by which the lien shall be extended or continued in force for any greater or longer period than ten years." At that point, the judgment ceases to be a lien or charge against the judgment debtor, and the judgment lien is extinguished. *American Discount Corp. v. Shepherd*, 160 Wn.2d 93, 100, 156 P.3d 858 (2007).

Nevertheless, on March 30, 2007, the superior court revived the judgment lien for a new 21-day term. CP at 549-550. It did so in order

“that the plaintiff would be accorded an equitable period to complete the sale of George Gervin’s partnership interest in the 401 Group ....” CP at 646. However, RCW 4.56.210 does not allow a judgment lien to be revived in order to provide an equitable period to complete a sale, and the courts do not have the power to create such an exception. As the Supreme Court has stated:

The legislature can, of course, fix the duration of a judgment lien at such a length of time as suits its pleasure; it can prescribe the time of its commencement and its ending, and make these hinge on the happening of particular events. And when it has done this in language clear and unmistakable, as it has in the statute before us, there is no room for construction, and the courts can do nothing else than give the statute effect.

*Hazel v. Van Beek*, 135 Wn.2d 45, 61, 954 P.2d 1301 (1998) (quoting *Whitworth v. McKee*, 32 Wash. 83, 89, 72 P. 1046 (1903)).

The superior court’s order engrafts an exception onto RCW 4.56.210, an exception allowing an expired judgment lien to be revived whenever the court believes that equity should allow the plaintiff more time to complete a sale. However, the courts may not write new exceptions into the statute. *Hazel v. Van Beek*, 135 Wn.2d at 64. The superior court acted on an erroneous view of the law. Therefore, it committed an abuse of discretion. *Matheson v. Gregoire*, 139 Wn. App. 624, 161 P.3d 486, 492 (Div. 2 2007).

The judgment lien is a statutory lien, not an equitable lien. *Hazel v. Van Beek*, 135 Wn.2d at 60. “A judgment lien is born by statute, RCW 4.56.190, and dies by statute, RCW 4.56.210.” *Id.* at 61 (quoting *Grub v. Fogle’s Garage, Inc.*, 5 Wn.App. 840, 843, 491 P.2d 258 (Div. 3 1971)). A lien on personal property commences when the property is levied upon. RCW 4.56.190. In the case of a foreign judgment (such as here), the lien expires ten years after the foreign judgment is filed in this state. RCW 4.56.210(1) and RCW 6.17.020(1).

In this case, the foreign judgment was filed in this state on October 17, 1996. CP at 1-3. A foreign judgment, once filed, “has the same effect ... as a judgment of a superior court of this state and may be enforced, extended, or satisfied in like manner.” RCW 6.36.025(1). Therefore, execution could be had for the enforcement of the foreign judgment in this case at any time within ten years after October 17, 1996. RCW 6.17.020(1).

On November 9, 2006, the superior court held that the statutory duration of the judgment lien was extended due to a federal court order that stayed the writ of execution. CP at 275; RP (11/9/2006), p. 37, line 23 – p. 38, line 1. The court relied upon *Hensen v. Peter*, 95 Wash. 628, 164 P. 512 (1917), the only case in which equitable tolling has been applied to a statutory judgment lien. *Hazel v. Van Beek*, 135 Wn.2d at 61.

In *Hensen*, the court tolled the running of a judgment lien where the lien's statutory expiration occurred while an injunction (which was subsequently dissolved) was in effect. *Hensen v. Peter*, 95 Wash. at 630. In this case, the superior court applied *Hensen* because a federal court order, issued on September 27, 2006, had stayed the writ of execution for 45 days. CP at 275. This was 21 days before the October 17, 2006 statutory expiration of the judgment lien. All court-ordered stays of the writ of execution expired by February 5, 2007.<sup>1</sup>

Tolling a statutory period merely suspends the running of that period temporarily; it does not rewind the clock. *Castro v. Stanwood Sch. Dist. No. 401*, 151 Wn.2d 221, 225, 86 P.3d 1166 (2004) (holding that a statutory tolling provision "temporarily stops, but then resumes, the period of time within which the plaintiff must file suit."). Therefore, even if the superior court properly invoked *Hensen* in its November 9, 2006 order,<sup>2</sup> by no later than February 5, 2007,<sup>3</sup> the clock began to run again.

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<sup>1</sup> The last court order staying the writ of execution was a 14-day stay entered by this Court on January 22, 2007. Ruling on Motions (Jan. 22, 2007). Therefore, as of February 5, 2007, no court order stayed the writ of execution.

<sup>2</sup> As part of this appeal, the Gervins argue that the superior court's November 9, 2006 order was reversible error. See, Brief of Appellant (May 21, 2007).

<sup>3</sup> In December 2006 and January 2007, there were periods of time in which no court order stayed the writ of execution – most significantly a 14-day period from December 22, 2006 to January 5, 2007. CP at 293-295. As the superior court said to counsel for Cadles: "[Y]ou were not under a stay on December 22<sup>nd</sup> through January 5<sup>th</sup>. A judicial stay. You weren't." RP (3/16/2007), p. 16, lines 16-17. No reason appears why these 14 days should not be deducted from the 21 days remaining in the statutory life span of the

Therefore, the 21 days remaining on the clock expired no later than February 26, 2007.

The superior court's March 30, 2007 order was entered more than five months after the expiration of the statutory life of the judgment lien on October 17, 2006. It was entered more than one month after the 21 days remaining on the clock ran when there was no court-ordered barrier to execution on the judgment. In other words, as the superior court recognized in the colloquy referenced above, the judgment lien had expired.

Even if equitably tolled, the time in which execution may be had does not exceed a cumulative period of ten years.<sup>4</sup> The superior court's revival of the judgment lien, and order extending the lien to May 25, 2007, gave the lien an effective cumulative life nearly two months longer than the life span authorized by statute.

The statutorily-prescribed life span of a judgment lien is not a normal statute of limitations. It creates a substantive right in the judgment

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judgment lien. However, the result does not change if one waits until the expiration of the final stay, on February 5, 2007, before resuming the ticking of the clock.

<sup>4</sup> The judgment was filed on October 17, 1996. CP at 1-3. Therefore, on September 27, 2006, when the federal court stayed the writ of execution, CP at 297, a total of 9 years, 11 months and 10 days had run on the statutory life span of the lien. Under the superior court's November 9, 2006 order, the running of the lien's life span was tolled while the writ of execution was subject to court-ordered stays. CP at 275. Once the stays were no longer in effect, the running of the 21 remaining days resumed. At the end, however, the lien had an effective life of ten years. In other words, during the period of equitable tolling, the life of the lien is temporarily suspended, only to resume again when the period of tolling is complete.

debtor for the cessation of the lien. *American Discount Corp. v. Shepherd*, 160 Wn.2d at 99. The superior court's March 30, 2007 order reviving the expired judgment lien, contrary to the statutorily-prescribed cessation of the lien, was error and an abuse of discretion. The court compounded its error in its May 11, 2007 order further extending the duration of the revived lien, and its May 18, 2007 order denying a motion to quash a writ of execution issued under the revived and extended lien.

**b. The superior court's decisions to revive, extend and enforce the expired judgment lien are based on the erroneous view of the law that the judgment lien statute does not grant substantive rights.**

If, prior to the expiration of the judgment lien in this case, the judgment lien statute had provided for judicial revival of an expired judgment lien, a court would be able to revive a lien in accordance with whatever standards and procedures were statutorily prescribed. However, even the legislature may not retroactively revive a judgment lien that has already expired. *American Discount Corp. v. Shepherd*, 160 Wn.2d at 99-100. This is because the judgment debtor has a substantive right in the cessation of the lien once the ten-year statutory period has lapsed. *Id.* On the day after the Supreme Court issued this decision, the Gervins argued this point to the superior court. RP (4/20/2007), p. 9, line 19 – page 10, line 19.

In retroactively reviving a judgment lien that had already expired, the superior court took an action that is beyond the power even of the legislature. It did so in derogation of the Gervins' substantive rights, and with no authority under law. Thus, its decisions were based on an erroneous view of the law. For this reason also, the superior court's March 30, 2007 order reviving the expired judgment lien was error and an abuse of discretion. *Matheson v. Gregoire*, 161 P.3d at 492. Again, the court compounded its error in its May 11, 2007 order further extending the duration of the revived lien, and its May 18, 2007 order denying a motion to quash a writ of execution issued under the revived and extended lien.

**2. THE SUPERIOR COURT ERRED IN EQUITABLY  
TOLLING A STATUTORY JUDGMENT LIEN THAT HAD  
EXPIRED AT A TIME WHEN NO INJUNCTIVE RELIEF  
PREVENTED EXECUTION AND WHILE THE PLAINTIFF  
MERELY SAT ON ITS RIGHTS**

**a. The superior court applied an incorrect legal standard in invoking equity to overcome the statutory limitations under which the Pierce County sheriff operated, which were not caused by the defendants.**

As the Gervins argued in their motion to quash the writ of execution, the superior court has no equitable power to revive a judgment

lien that expired at a time when no injunction was in force preventing its enforcement. CP at 610-611.

This case does not meet the narrow standard adopted under *Hensen*. Indeed, *Hensen* “has extremely limited application.” *Weyerhaeuser Pulp Empl. Fed. Credit Union v. Damewood*, 11 Wn.App. 12, 16, 521 P.2d 953 (Div. 2 1974). For one thing, *Hensen* applies only if the judgment debtor procures judicial assistance (i.e., an injunction) that is in effect when the judgment lien expires. *Hensen v. Peter*, 95 Wash. at 630 (describing the issue before the Court as “[t]he effect of an injunction which is subsequently dissolved, on the lien upon real estate of a judgment which expires by limitation during the time the injunction is kept in force ....”). “All of those cases discussed by *Hensen* held the creditors could still enforce the judgment because the debtors’ injunctions prevented the creditors from meeting the deadline.” *Hazel v. Van Beek*, 135 Wn.2d at 62.

The rationale underlying *Hensen* is to protect a creditor from losing its rights because a judgment lien expires during the pendency of a injunction improperly procured by the debtor. *Hensen v. Peter*, 95 Wash. at 637. “Absent a defendant’s blatant abuse of the court system, thereby injuring the rights of the plaintiff, no equitable relief can be provided.” *Hazel v. Van Beek*, 135 Wn.2d at 63.

Here, from February 5, 2007 onward, no injunction prevented Cadles from having execution on the judgment. At that point, what stood in Cadles' way was RCW 6.17.120, which requires the sheriff to file a return of the writ of execution within 60 days of its issuance. On December 22, 2006, this Court's initial stay of the writ of execution expired, and at that time no new stay was issued. CP at 297. According to the sheriff's counsel:

There were three days remaining on the writ at that point, given the 60-day requirement of the statute. Effectively nothing happened. We have no court orders. Nothing was communicated to us that there was any judicial cessation of the time. Because of that, the writ effectively terminated shortly around the Christmas time. I'll say the 26<sup>th</sup> or 27<sup>th</sup>, building in some time because of judicial days off.

RP (3/16/2007), p. 8, lines 2-9.

In conclusions of law issued as part of its May 11, 2007 order, the superior court determined that "Plaintiff had no control over the Sheriff's refusal to act outside the statutory Writ Return period, and acted reasonably to clarify the matter with this Court, when the judgment debtor chose not to post a bond that would further stay the execution and collection of the judgment debt." CP at 646.

The *Hensen* standard, where it applies, is that the running of time in the life of a judgment lien may be tolled if the judgment debtor has procured an injunction that is in effect when the judgment lien would

expire. Here, that was not the case. Cadles itself admitted that its “efforts have been thwarted now, *not by the Gervins*, but by the Pierce County Sheriff’s unilateral and arbitrary decision.” CP at 360 (emphasis added).

As the superior court found, at this point the Gervins had *not* posted a bond that would further stay the execution and collection of the judgment debt. CP at 646. Therefore, the standard under *Hensen* is not met. Instead, the standard applied by the superior court was to extend the duration of an expired lien where the judgment creditor was unable to complete execution due to the statutory limitations on the sheriff. *Id.* This being an incorrect legal standard, the superior court’s decision was based on untenable reasons and constitutes an abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

**b. The superior court applied an incorrect legal standard in invoking equity without requiring the plaintiff to have exercised due diligence in pursuing its rights.**

“The doctrine of equitable tolling ... cannot afford relief to a plaintiff if the plaintiff has not exercised due diligence in pursuing one’s rights.” *Hazel v. Van Beek*, 135 Wn.2d at 61.

On February 27, 2007, the Pierce County sheriff returned the writ of execution, unsatisfied, because “the time to execute on the writ has expired.” CP at 297. On March 8, 2007, Cadles filed a motion asking the

superior court to set aside the sheriff's return of the writ. CP at 352-363. However, as the Gervins argued to the superior court, the sheriff acted properly in returning the writ after the expiration of the statutory 60-day period for execution. CP at 405-406. The sheriff filed a memorandum with the court making similar points. CP at 382-383. Further, the Gervins argued to the court that Cadles had no right to equitable relief because it had not exercised due diligence in pursuing its rights. CP at 408-409. As the superior court acknowledged, after December 14, 2006, Cadles did not do all that it could to pursue its rights. CP at 645.

Cadles says that as late as February 4 it was unaware that the writ of execution had expired: "The sheriff never told us back in – on February 4<sup>th</sup> that the writ had expired. Had the sheriff done that on that date we would have acted differently." RP (3/16/2007), p. 11, lines 3-6. However, the facts show otherwise. Specifically, on February 2, 2007, counsel for Cadles received an email from the sheriff's department stating: "I am assuming that the Writ of Execution has expired." CP at 381.

Had Cadles been diligent in pursuing its rights, it would have realized that the 60-day duration of the writ of execution either had expired or was about to expire. First, RCW 6.17.120 clearly states: "[T]he execution shall be returned with a report of proceedings under the writ within sixty days after its date to the clerk who issued it." This

requirement is not obscure or novel, but has been the law of this state since at least 1891. *See, Chase v. Cannon*, 47 F. 674, 675-76 (C.C.D. Wash. 1891) (“The law requires an execution to be returned within 60 days from its date. As to the writs referred to, the return-day has passed, and there is now no vitality in them; so that there is no process to be executed ....”) (cited at MARJORIE D. ROMBAUER, 28 WASH.PRAC.: CREDITORS’ REMEDIES – DEBTORS’ RELIEF § 7.45, n. 12 (1998)). Second, on January 6, 2007, counsel for Cadles was copied on a letter from the Gervins’ counsel to the sheriff’s counsel, raising the question of whether the 60-day statutory deadline for a return on the writ of execution had run. CP at 478-479. And, as mentioned above, on February 2, 2007, counsel for Cadles received an email from the sheriff’s department stating: “I am assuming that the Writ of Execution has expired.” CP at 381. Finally, on February 8, 2007, counsel for Cadles received an email from the sheriff’s department stating that “the Sheriff’s Legal Advisor is going to address the court regarding the life of the Writ of Execution.” CP at 380.

Despite these developments, Cadles took no action to pursue its rights. For example, although Cadles believed the writ of execution remained valid, CP at 381, it did not seek a writ of mandate to require the sheriff to conduct a sale, CP at 645. Cadles waited until after the judgment lien had expired, then asked the court to fix the problem by

setting aside the sheriff's return on the writ. However, as the superior court observed:

... I can't make you as a judgment creditor jump through all the hoops you need to jump through if you don't do them.

I don't see that I have any recourse. ... February 5<sup>th</sup> came and ... you felt comfortable in relying on the sheriff's refusal ... and didn't get a writ of mandamus.

RP (3/16/2007), p. 14, line 13 – p. 15, line 4.

The superior court did not grant the relief requested by Cadles. Instead, on March 30, 2007, it issued an order sua sponte reviving the expired judgment lien. CP at 549-550. In describing its order, the superior court claimed to be exercising its equitable powers. CP at 646. However, in doing so it failed to require that Cadles exercise due diligence in pursuing its rights. Thus, it failed to apply the correct legal standard, and committed an abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d at 46-47.

#### F. CONCLUSION

The superior court's view of the law is that the courts may engraft judicially-created exceptions on the statutorily-prescribed expiration of a judgment lien. The Supreme Court has determined otherwise. The superior court erred, and committed an abuse of discretion.

The superior court's view of the law is that it may revive an

expired statutory judgment lien, in derogation of the judgment debtor's substantive right to cessation of the lien. The Supreme Court has determined otherwise. The superior court erred, and committed an abuse of discretion.

The correct legal standard for granting equitable relief from the expiration of a statutory judgment lien requires that at the time the lien expires there is an injunction in effect preventing execution under the lien. In this case, the superior court granted Cadles equitable relief even though the lien expired at a time when no court order prevented execution under the lien. The superior court erred, and committed an abuse of discretion.

Finally, the correct legal standard for granting such equitable relief also requires that the plaintiff has exercised due diligence in pursuing its rights. In this case, the superior court granted Cadles equitable relief even though it did nothing to pursue its rights in the 21 days following the expiration of the last court-ordered stay. Again, the superior court erred, and committed an abuse of discretion.

DATED this 18<sup>th</sup> day of October, 2007.

THE GILLETT LAW FIRM

  
Michael B. Gillett  
Attorney for Appellants

**APPENDIX A  
EXCERPTS OF KEY PORTIONS OF THE RECORD**

- 1 - Sheriff's Return on Writ of Execution (February 27, 2007)**
- 2 - Order Reviving Judgment Lien (March 30, 2007)**
- 3 - Writ of Execution (April 6, 2007)**
- 4 - Order Extending Judgment Lien (May 11, 2007)**
- 5 - Order Denying Motion to Quash (May 18, 2007)**

75254

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
SHERIFF'S RETURN ON  
WRIT OF EXECUTION PERSONAL PROPERTY  
Cause No. 96-2-11938-1

TCAP CORPORATION FKA  
TRANSAMERICAN CAPITAL  
CORPORATION .

Plaintiff(s),

Vs.

GEORGE GERVIN, AND 401 GROUP, A  
WASHINGTON LIMITED PARTNERSHIP, AN  
INTERESTED PARTY,

Defendant(s).

Date of Execution: August 1, 2006

Date Received: August 1, 2006

I, Paul A. Pastor, Jr., Sheriff of Pierce County, State of Washington, do certify that the actions listed in this return have been taken by the Sheriff of Pierce County or his deputy with respect to the personal property described in the body of this return:

On August 21, 2006 I attached the following described personal property of the above named Defendant, to-wit:

PROPERTY: GEORGE GERVIN'S ENTIRE INTEREST IN THE 401 GROUP, A WASHINGTON LIMITED PARTNERSHIP (THE "401 GROUP") AND THE PROCEEDS THEREOF, INCLUDING BUT NOT LIMITED TO: (1) GEORGE GERVIN'S ENTIRE LIMITED PARTNERSHIP INTEREST IN THE 401 GROUP; (2) ALL PAST AND FUTURE DISTRIBUTIONS OWED TO GEORGE GERVIN BY THE 401 GROUP BY VIRTUE OF HIS PARTNERSHIP INTEREST INCLUDING ACCRUED DISTRIBUTIONS AND INTEREST CURRENTLY HELD BY PAN PACIFIC PROPERTIES, PROPERTY MANAGER FOR THE 401 GROUP; (3) ALL RIGHTS AND CLAIMS OF ANY KIND AND NATURE PAST AND FUTURE OF GEORGE GERVIN BASED UPON OR ARISING FROM OR IN CONNECTION WITH THE PARTNERSHIP AGREEMENT (AND ANY AMENDMENTS) OF THE 401 GROUP; AND (4) ALL CLAIMS OF GEORGE GERVIN AGAINST THE 401 GROUP AND ALL ITS PAST, PRESENT AND FUTURE PARTNERS, PRINCIPALS, AGENTS, SUCCESSORS AND ASSIGNS

Served the Writ of Execution, statutory exemptions, Sheriff's Notice of Sale of Personal Property:

On August 21, 2006 by depositing into the U.S. Mail by regular and certified mailing addressed to 401 GROUP, LLP, c/o Russ Francisco, Registered Agent at 116 WARREN AVE N, # A, SEATTLE, WASHINGTON 98109. Mailed by: Christine Eaves, Deputy.

On August 21, 2006 by depositing into the U.S. Mail by regular and certified mailing addressed to GEORGE GERVIN at 44 GERVIN PASS, SPRING BRANCH, TEXAS 78070 and

On August 21, 2006 by depositing into the U.S. Mail by regular and certified mailing addressed to GEORGE GERVIN at 15415 RIVERBEND, SAN ANTONIA, TEXAS 78247. Both mailed by: Christine Eaves, Deputy.

On August 21, 2006 by depositing into the U.S. Mail by regular and certified mailing addressed to PAN PACIFIC PROPERTIES C/O RUSS K. FRANCISCO, REG. AGENT at 116 WARREN AVE N, # A, SEATTLE, WASHINGTON 98109. Both mailed by: Christine Eaves, Deputy.

Posted Sheriff's Notice of Sale of Personal Property in three public places, to-wit: one at the Pierce County Sheriff's Department Peninsula Detachment, 6006 133<sup>rd</sup> St. NW, Gig Harbor, Washington on August 21, 2006. Posted by: ROGER D WARD. One in the 1<sup>st</sup> floor lobby and one in the 2<sup>nd</sup> floor hallway of the County-City Building, 930 Tacoma Ave. S., Tacoma, Washington on August 21, 2006. Posted by Christine A. Eaves.

On September 27, 2006, the U.S. District Court for the Western District of Texas, San Antonio Division stayed the Writ of Restitution for 45 days. On November 9, 2006, the same court stayed the writ for 30 days.

On November 14, 2006, the Sheriff's Department announced that the sale would be postponed to December 15, 2006 pursuant to above-mentioned stay order.

On December 8, 2006, the Washington Court of Appeals, Division I stayed the writ until December 22, 2006 to permit the appellants to bring the matter before Pierce County Superior Court.

On December 15, 2006, the Sheriff's Department announced a postponement of the sale and referenced a December 22, 2006 hearing in which the sale date was to be determined. The parties were unable to have their motion heard on December 22 because Judge Nelson was on recess.

On January 5, 2007, the Superior Court issued a stay for fourteen days until January 19, 2007. There has been no other action taken on this case and the time to execute on the writ has expired. Therefore, I am returning the writ to court unsatisfied.

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

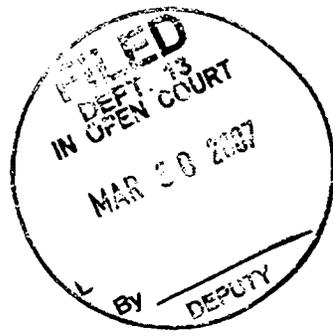
Dated at Tacoma, Washington: February 23, 2007.

PAUL A. PASTOR, JR  
PIERCE COUNTY SHERIFF

BY \_\_\_\_\_  
CHRISTINE A EAVES, DEPUTY

Copies:	\$96.00
Levy:	\$50.00
Postage:	\$20.00
Posting:	\$45.00

Postponements:	\$135.00
Return:	\$10.00
Service:	\$75.00
Total:	\$428.00



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a  
TRANSAMERICAN CAPITAL  
CORPORATION,  
  
Plaintiff,  
  
vs.  
  
GEORGE GERVIN,  
  
Defendant,  
  
401 GROUP, a Washington  
limited partnership  
  
An interested party

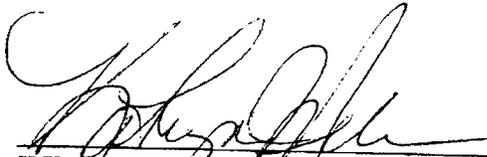
NO. 96-2-11938-1  
ORDER

THIS MATTER having come before the court upon the Motion of Cadles of Grassy Meadows II, L.L.C., which is the assignee of plaintiff TCAP Corporation, f/k/a/ Transamerican Capital Corporation (referred to herein as "Plaintiff"), and the court having considered the the records and files herein and being fully advised, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the judgment  
is extended for a period of  
twenty-one (21) days from the date

1 of entry of this order  
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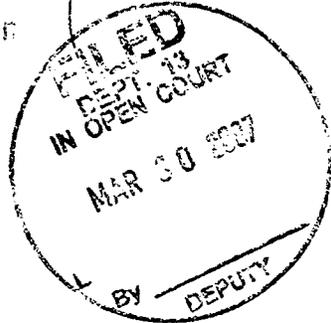
12 DONE IN OPEN COURT this 30 day of March, 2007.

13  
14  
15   
16 JUDGE/COURT COMMISSIONER

17 Kathryn J. Nelson

18 Presented by:

19   
20 CHRISTOPHER E. ALLEN, WSBA #20877  
21 Of Morton McGoldrick, P.S.  
22 Attorneys for Plaintiff



23 Approved as to form; notice  
of presentation waived

ORDER

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Morton  
McGoldrick  
A PROFESSIONAL SERVICE CORPORATION  
ATTORNEYS AT LAW

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P.O. Box 1533  
Tacoma, Washington 98401  
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Fax: (253) 272-4338



98-2-11938-1 27273187 WRE 04-06-07

FILED  
IN PIERCE COUNTY SUPERIOR COURT  
A.M. APR 06 2007 P.M.  
PIERCE COUNTY WASHINGTON  
BY KEVIN STOOK, County Clerk DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a  
TRANSAMERICAN CAPITAL  
CORPORATION,

NO. 96-2-11938-1

WRIT OF EXECUTION

Plaintiff,

vs.

GEORGE GERVIN,

Defendant,

401 GROUP, a Washington  
limited partnership

An interested party

TO THE STATE OF WASHINGTON

AND TO THE SHERIFF OF PIERCE COUNTY:

YOU ARE COMMANDED, in accordance with the order of this court entered on

October 22, 2004, to satisfy the judgment entered herein against defendant/judgment debtor George Gervin out of his personal property, consisting of his entire interest in the 401 Group, a Washington limited partnership (the "401 Group"), and the proceeds thereof, including but not limited to: (1) George Gervin's entire limited partnership interest in the 401 Group; (2) All past and future distributions owed to George Gervin by the 401 Group by virtue of his partnership

WRIT OF EXECUTION -1-

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file copy

1 interest including accrued distributions and interest currently held by Pan Pacific Properties,  
 2 property manager for the 401 Group; (3) All rights and claims of any kind and nature past and  
 3 future of George Gervin based upon or arising from or in connection with the partnership  
 4 agreement (and any amendments) of the 401 Group; and (4) All claims of George Gervin against  
 5 the 401 Group and all its past, present and future partners, principals, agents, successors and  
 6 assigns.

7 Nothing herein shall constitute a waiver of the position of Cadles of Grassy Meadows II,  
 8 LLC ("Cadles"), successor in interest to plaintiff TCAP Corporation f/k/a Transamerican Capital  
 9 Corporation, taken in that certain bankruptcy adversary action styled Joyce Gervin v. Cadles of  
 10 Grassy Meadows II, LLC v. George Gervin, Adv. No. 04-5138, pending before the U.S.

11 Bankruptcy Court for the Western District of Texas, San Antonio Division, as well as any  
 12 collateral proceedings and appeals relating thereto (the "Texas Bankruptcy Litigation"). Cadles  
 13 expressly reserves any and all rights with respect to the Texas Bankruptcy Litigation.

14 The judgment was entered in the Superior Court for the County of Pierce in favor of  
 15 Plaintiff TCAP Corporation f/k/a Transamerican Capital Corporation, against Defendant George  
 16 Gervin, on October 17, 1996, as follows:

17	Principal Amount of Judgment Entered on February 27, 1989 in the District Court for Collin County State of Texas.	\$353,347.86
18	Interest Accruing on Judgment at the rate of 10% per annum compounded annually pursuant to Texas Civil Statute 5069-1.05 for the period of February 28, 1989 through October 17, 1996. (Date of entry of foreign judgment).	\$335,227.16
19	Interest Accruing on Balance of Judgment and Accrued Interest (\$688,575.02) at the rate of 12% per annum for the period of October 17, 1996 through April 4, 2007	\$917,411.45
20		
21	<b>Total Amount Currently Owed</b>	<b>\$1,605,986.47</b>
22		
23		

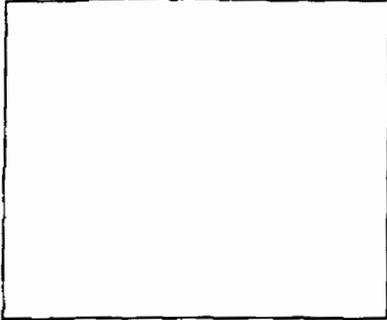
WRIT OF EXECUTION -2-  
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 Fax: (253) 272-4338

1 WITNESS the Honorable Thomas P. Larkin, Judge of the Superior Court for the County of  
2 Pierce, and the seal of the Court, this 6th day of April, 2007

3 Clerk Kevin Stock



4  
5 By /HW/

6 Deputy Clerk

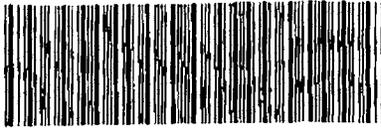
7 Judgment # 06-9-04733-9  
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WRIT OF EXECUTION -3-

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96-2-11938-1 27498855 FNFL 05-15-07



The Honorable Kathryn J. Nelson

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a  
TRANSAMERICAN CAPITAL  
CORPORATION,

Plaintiff,

vs.

GEORGE GERVIN,

Defendant,

401 GROUP, a Washington  
limited partnership

An interested party

NO. 96-2-11938-1

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AND ORDER

nunc pro tunc  
4/20/07

THIS MATTER having come before the court upon the Motion for Reconsideration by Cadles of Grassy Meadows II, L.L.C., which is the assignee of plaintiff TCAP Corporation, f/k/a/ Transamerican Capital Corporation (referred to herein as "Plaintiff"), in which Motion Plaintiff asked this Court to reconsider its Order entered on March 30, 2007, and extend the time period during which the judgment lien has been tolled in this case to allow plaintiff the ability to satisfy the statutory requirements to complete the sale of the partnership interest of Defendant,

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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1 George Gervin, in the 401 Group, a Washington Limited Partnership. The Court heard oral  
 2 argument of counsel for the plaintiff, Christopher E. Allen, and counsel for the defendants,  
 3 Michael Gillett. The Court considered the records and files herein, and did not consider facts  
 4 and circumstances outside of the record, and being fully advised, now, therefore, hereby makes  
 5 the following :

#### 6 FINDINGS OF FACT

7 1. On February 27, 1989, George Gervin executed an agreed judgment in favor of  
 8 TCAP Corporation in the principal amount of \$250,000.00. The judgment was recorded in the  
 9 District Court for Collin County, Texas. The judgment was subsequently recorded with the  
 10 Pierce County Superior Court in the state of Washington as a foreign judgment on October 17,  
 11 1996 (the "TCAP Lien").

12 2. On October 31, 1996, TCAP applied to this Court for an order charging the  
 13 Defendant's partnership interest in the 401 Group. The 401 Group is a Washington limited  
 14 partnership that was formed to own and operate an apartment complex located in Tacoma,  
 15 Washington (the "Partnership").

16 3. This Court granted TCAP's request and entered an order on December 6, 1996,  
 17 charging the partnership interest of George Gervin in the 401 Group in favor of the TCAP  
 18 Corporation.

19 4. On April 25, 1997, the defendants filed a petition under Chapter 13 of the U.S.  
 20 Bankruptcy Code in the U.S. Bankruptcy Court for the Western District of Texas under case No.  
 21 97-53032. That case was subsequently converted to a proceeding under Chapter 11 of the U.S.  
 22 Bankruptcy Code. The case was subsequently dismissed on February 17, 1998.

#### 23 FINDINGS OF FACT AND CONCLUSIONS OF LAW

-2-

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 McGoldrick**  
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1           5.       The defendants filed a petition for relief under Chapter 7 of the U.S. Bankruptcy  
2 Code on May 1, 1998 in the U.S. Bankruptcy Court for the Western District of Texas under case  
3 No. 98-52186. An order of discharge was granted on August 19, 1998.

4           6.       In the Chapter 7 Proceeding, the defendants filed an adversarial complaint to  
5 determine the validity, priority or extent of liens asserted by the Internal Revenue Service and  
6 TCAP under Adversary Proceeding Case No. 98-05059 (the "1998 Adversary"). On December  
7 2, 1998, the Court entered an order in the 1998 Adversary determining that the Plaintiff's  
8 judgment was discharged in the Chapter 7 Proceeding but that the TCAP Lien survived the  
9 bankruptcy proceeding (the "1998 Adversary Judgment"). The Bankruptcy Court also  
10 determined that the Federal tax liens were superior to the interest of the TCAP Lien.

11           7.       On March 8, 2000, the Internal Revenue Service filed a motion to intervene in this  
12 proceeding, and on April 6, 2000, filed a petition to remove this proceeding to Federal District  
13 Court. The Petition was granted and this case was removed to U.S. District Court of the Western  
14 District of Washington under case No. 05197 (the "Washington Federal District Court  
15 Proceeding"). In the Washington Federal District Court Proceeding, the Internal Revenue  
16 Service filed a motion for an order requesting disbursement of the funds that had been collected  
17 and held by the Partnership. That motion was granted and the funds were disbursed to the  
18 Internal Revenue Service. The Washington Federal District Court Proceeding was subsequently  
19 remanded back to Pierce County Superior Court.

20           8.       On June 9, 2000, the defendants filed a motion in the 1998 Adversary proceeding  
21 asking the court to set aside the 1998 Adversary Judgment. The Bankruptcy Court issued an  
22 order denying the motion on January 17, 2001.

23  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

-3-

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1           9.       Cadles of Grassy Meadows II, LLC, subsequently acquired all right, title and  
2 interest in the claims of TCAP Corporation, f/k/a Transamerican Corporation against George  
3 Gervin. On September 16, 2004, Cadles filed a motion with this Court seeking an order to  
4 foreclose upon the writ of attachment.

5           10.       On September 24, 2004, Joyce Gervin filed a second adversary complaint with the  
6 United States Bankruptcy Court in the Western District of Texas under Adversary No. 04-  
7 05138C (the "2004 Adversary"). Joyce Gervin sought, among other things, a declaratory ruling  
8 from the Bankruptcy Court that she owned a 50 percent partnership interest in George Gervin's  
9 50 percent partnership interest in the 401 Group, and that her interest was not subject to the  
10 TCAP Lien. Joyce Gervin also filed with the Bankruptcy Court a Motion for a Preliminary  
11 Injunction to enjoin Cadles from selling her claimed interest in the 401 Group. The Court granted  
12 her request for a preliminary injunction.

13           11.       On October 17, 2004, George Gervin filed a motion to intervene in the 2004  
14 Adversary Proceeding. George Gervin sought, among other things, a declaratory ruling from the  
15 Bankruptcy Court that his interest in the 401 Group was not subject to the TCAP Lien. George  
16 Gervin also filed a Motion for a Preliminary Injunction.

17           12.       On October 22, 2004, this Court granted Cadle's request and entered an order  
18 authorizing the sale of George Gervin's partnership interest in the 401 Group.

19           13.       On November 18, 2004, the Bankruptcy Court granted George Gervin's Motion  
20 for a Preliminary Injunction as referenced in paragraph 11 above. On May 18, 2005, an order  
21 was entered denying George Gervin's motion for summary judgment. At the same time, the  
22 injunction issued by the Bankruptcy Court on November 18, 2004 was dissolved. The  
23

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

-4-

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1 Bankruptcy Court ruled that Cadles was entitled to proceed with the foreclosure of George  
 2 Gervin's partnership interest in the 401 Group. That decision was appealed by George Gervin to  
 3 the Federal District Court for the Western District of Texas under Case No. 5:05-cv-01100-  
 4 WRF.

5 14. On August 1, 2006, this Court issued a Praecipe and Writ of Execution of  
 6 Personal Property instructing the Pierce County Sheriff to sell George Gervin's partnership  
 7 interest in the 401 Group. The Pierce County Sheriff scheduled the sale date for September 28,  
 8 2006.

9 15. On September 7, 2006, Joyce Gervin filed a motion with this Court asking this  
 10 court to set aside from the sale a 10% interest in the 401 Group that she claimed to have received  
 11 from Pat Healey. This Court denied that motion.

12 16. On September 13, 2006, George Gervin filed a motion to reopen his Chapter 7  
 13 Bankruptcy Case so that he could file a Motion seeking to have Cadles held in contempt arguing  
 14 that the foreclosure sale violated the discharge injunction. At a hearing on September 18, 2006,  
 15 the Bankruptcy Court denied George Gervin's request. George Gervin also asked the  
 16 Bankruptcy Court to enter an order to stay the Sheriff's Sale. That motion was also denied by the  
 17 Bankruptcy Court.

18 17. On September 25, 2006, George Gervin filed a motion with this Court on  
 19 shortened time to amend the Writ of Execution. The motion was to be heard on September 27,  
 20 2006 a day before the scheduled Sheriff's sale.

21 18. On September 25, 2006, George Gervin filed an Emergency Motion for Stay  
 22 Pending Appeal to Stop September 28, 2006 State Court Writ of Execution with the United  
 23

FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW

-5-

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1 States District Court for the Western District of Texas. The court granted George Gervin's  
 2 request, and entered an order staying the sale for a period of 45 days. This stay benefited only  
 3 the defendant George Gervin and stayed the proper execution of a non renewable (Texas foreign)  
 4 judgment beyond ten years.

5 19. There was also a hearing on September 27, 2006, in this Court. At that hearing,  
 6 counsel for George Gervin withdrew the motion to amend the Writ of Execution informing the  
 7 court that the issue had become moot because of the ruling earlier that morning by the United  
 8 States District Court for the Western District of Texas staying the Sheriff's sale.

9 20 The Pierce County Sheriff rescheduled the sale of George Gervin's partnership  
 10 interest for November 14, 2006.

11 21. On October 31, 2006, the defendants filed a motion with this Court seeking to  
 12 quash the writ of attachment. That motion was argued before this Court on November 9, 2006.  
 13 This Court denied the motion finding that it had authority to exercise its equitable powers to  
 14 extend the duration of the TCAP Lien. In so ruling, this Court relied upon the decision of *Hensen*  
 15 *v. Peters* 95 Wash. 628 (1917), "due to what this Court sees as abuse of process and prejudice  
 16 during the current stay."

17 22. On November 9, 2006, Judge Ferguson for the United States District Court for the  
 18 Western District of Texas entered an order extending the stay issued on September 28, 2006 for  
 19 an additional period of thirty days.

20 23. The Pierce County Sheriff rescheduled the sale of George Gervin's partnership  
 21 interest for December 15, 2006.  
 22  
 23

FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW

-6-

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1           24.     On November 9, 2006, the defendants filed an appeal of this Court's November  
2 9<sup>th</sup> Order. The defendants also filed a motion with Division II of the Court of Appeals seeking a  
3 stay of the writ. The Court of Appeals denied Gervin's motion ruling that the determination of  
4 the amount of the bond or the adequacy of alternate security is the prerogative of the superior  
5 court. The Court of Appeals did grant the defendants a stay of the writ of execution until  
6 December 22, 2006, preventing the regularly scheduled sheriff's sale on December 15, 2006.

7           25.     On December 14, 2006, the defendants filed a motion with this Court for an order  
8 approving alternate security for a stay of enforcement of the writ of execution. The hearing on  
9 the motion was scheduled for December 22, 2006. This Court, however, was at recess until  
10 January 5, 2007. The parties agreed to continue the hearing on the motion until January 5, 2007..

11           On December 19, 2006, Cadles attorney send an email to the Pierce County Sheriff stating: Last  
12 week I sent you an email in which I explained that we had filed a motion to schedule the date of  
13 the Gervin Sheriff Sale. The motion was originally to be argued this Friday, and we had asked  
14 the Court to schedule the date of the sale for Friday, December 29, 2006. We recently learned  
15 that the presiding judge, Judge Nelson, will be on recess until Friday, January 5, 2007.

16           Accordingly, all of her motions have been continued. Accordingly, the Gervins' attorney and I  
17 have agreed to continue the motions until January 5. Please see the attached letter. This means  
18 that any sale cannot occur until after that date." At the same time, Cadles attorney sent a letter to  
19 the Gervins' attorney stating: "This letter will confirm our recent conversation in which we  
20 agreed not to schedule an emergency hearing this Friday, and instead will allow Judge Nelson to  
21 hear the pending motions on January 5, 2007, when she returns from her vacation. I am sending  
22 a copy of this letter to the Pierce County Sheriff's Office to inform them that our motion for an

23  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

-7-

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**Morton  
McGoldrick**  
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1 order scheduling the date of the Sheriff's sale has been continued until January 5, 2007.

2 Accordingly, any sale cannot occur until after that date." A copy of the letter was provided to the  
3 Pierce County Sheriff.

4 26. On December 14, 2006, plaintiff filed a motion with this Court seeking an order  
5 scheduling the sale of George Gervin's partnership interest. The hearing on the motion was  
6 scheduled for December 22, 2006. This Court, however, was at recess until January 5, 2007.

7 27. On January 5, 2006, this Court denied the defendants' motion for an order  
8 approving alternate security for a stay of enforcement of the writ of execution and set the  
9 supersedeas bond in the amount of \$100,000.00. This Court also refused to schedule a date for  
10 the sale of George Gervin's partnership interest. The Court did, however, stay enforcement of the  
11 writ of execution for a period of 14 days.

12 28. On January 8, 2007, the defendants filed a motion with the Court of Appeals  
13 seeking to modify this Court's January 5<sup>th</sup> order. In a letter ruling dated January 22, 2007, The  
14 Court of Appeals denied the defendants' motion, but did stay enforcement of the writ of  
15 execution for a period of 14 days. This stay benefited only defendant George Gervin in that it  
16 gave him 14 days after the decision to post the \$100,000 bond that would further stay the  
17 judgment's execution. This gave him after motion and decision by the Court of Appeals, the  
18 same 14 day period equitably given by this Court previously on January 5, 2007, but now the  
19 choice to post the supercedeas bond extended for 14 days beyond January 22, 2007.

20 29. Prior to the expiration of the stay given to Gervin by the Court of Appeals, on  
21 February 2, Christine Eaves, who is the legal assistant to the Pierce County Sheriff, sent an email  
22 to counsel of Cadles, in which she stated:" I haven't heard anything about this matter in the last  
23

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

-8-

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**Morton  
McGoldrick**  
A PROFESSIONAL SERVICE CORPORATION  
ATTORNEYS AT LAW

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Taconia, Washington 98401  
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1 month but I am assuming that the Writ of Execution has expired. Please let me know. Thanks.  
 2 Christine." On February 5, 2007, upon the expiration of the stay, Cadles contacted the Pierce  
 3 County Sheriff to schedule the sale of George Gervin's partnership interest. In an email dated  
 4 February 8, 2007, Christine Eaves stated that Craig Adams would be addressing this Court to  
 5 discuss the writ of execution. Carole Kendall, Cadles' account representative, contacted Mr.  
 6 Adams and was informed that he would be filing a motion with this Court seeking direction. The  
 7 motion was never filed, and on or about February 23, 2007, the Pierce County Sheriff returned  
 8 the writ unsatisfied.

9 30. On March 8, 2007, plaintiff filed a motion for this Court to set aside the Pierce  
 10 County Sheriff's Return of the writ of execution, or, in the alternative, for this Court to issue a  
 11 new writ of execution directing the sale of George Gervin's partnership interest. The hearing on  
 12 plaintiff's motion was scheduled for March 16, 2007.

13 31. On March 8, 2007, the defendants filed an application to dismiss the TCAP Lien.  
 14 The hearing on the motion was scheduled for March 16, 2007.

15 32. On March 16, 2007, this Court continued the hearing to March 30, 2007, to allow  
 16 the parties to provide additional briefing on the issue of whether the continuance of the hearing  
 17 on the motions filed by the parties on December 14, 2006, from December 22, 2006, to January  
 18 5, 2007, was binding upon the Pierce County Sheriff.

19 33. On March 30, 2007, this Court entered an Order extending the duration of the  
 20 TCAP Lien for a period of 21 days.

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 FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW

-9-

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1 judgment and sheriff's sale to provide judgment debtor with an opportunity to ask for alternative  
2 security and have time to post the \$100,000 supercedeas bond.

3 5. Plaintiff had no control over the Sheriff's refusal to act outside the statutory Writ  
4 Return period, and acted reasonably to clarify the matter with this Court, when the judgment  
5 debtor chose not to post a bond that would further stay the execution and collection of the  
6 judgment debt.

7 6. It was the intent of this Court's order, dated March 30, 2007, that by extending the  
8 TCAP Lien for a period of twenty-one (21) days, that the plaintiff would be accorded an  
9 equitable period to complete the sale of George Gervin's partnership interest in the 401 Group, in  
10 the same way that equity provided to the judgment debtor time to make choices and decisions  
11 regarding his rights. The Court was mistaken at first with respect to the requisite period needed,  
12 and plaintiff is unable under statute to complete the sale in the equitable period specified.

13 *KGM* 7. *as mentioned* *can* Subsequent stays by this Court, and again by the Washington State Court of  
14 Appeals, Division II, equitably stayed for the judgment debtor's benefit the execution of the  
15 judgment and sheriff's sale to provide judgment debtor with an opportunity to ask for alternative  
16 security and have time to post the \$100,000 supercedeas bond.

17 *KGM* ~~8.~~ *It is therefore ordered by the Court:*  
18 The term of the TCAP Lien is hereby extended for a period of time through May  
19 25, 2007, the date that the Pierce County Sheriff has scheduled the sale of George Gervin's  
20 partnership interest in the 401 Group.

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23  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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1  
2 *nunc pro tunc*  
DONE IN OPEN COURT this ~~15~~ day of ~~May~~ 2007.  
3 *20<sup>th</sup> April*

4  
5 *Kathryn Nelson*  
6 JUDGE KATHRYN V. NELSON

7 Presented by:

8 *Christopher E. Allen*

9 CHRISTOPHER E. ALLEN, WSBA #20877  
10 Of Morton McGoldrick, P.S.  
11 Attorneys for Plaintiff



12 ~~Approved as to form:~~ *Copy received*

13 *Michael Gillette*  
14 MICHAEL GILLETTE, WSBA #11038  
15 Attorney for Defendants

16  
17  
18  
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20  
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22  
23 FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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McGoldrick**  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a  
TRANSAMERICAN CAPITAL  
CORPORATION,

NO. 96-2-11938-1

ORDER

Plaintiff,

vs.

GEORGE GERVIN,

Defendant,

401 GROUP, a Washington  
limited partnership

An interested party

THIS MATTER having come before the court upon the Defendants' Motion for an order quashing the ~~writ~~<sup>writ</sup> of execution, and the court having considered the records and files herein and being fully advised, now, therefore, it is hereby

~~ORDERED, ADJUDGED AND DECREED~~ *That this Court*  
*finds that foreclosure is authorized*  
*under the Washington Uniform Limited*  
*Partnership Act because the foreclosure*

ORDER

-1-

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McGoldrick**  
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Fax: (253) 272-4338

1 remedy provided by RCW 25.05.215  
2 supplements the charging order  
3 provisions of RCW 25.10.410.

4  
5 It is therefore ordered that Defendant's  
6 motion is hereby denied.

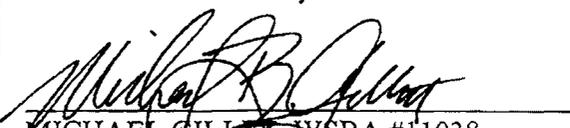
7  
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11 DONE IN OPEN COURT this 18 day of May, 2007.

12  
13  
14   
15 JUDGE/COURT COMMISSIONER  
16 Kathryn J. Nelson

17   
18 CHRISTOPHER E. ALLEN, WSBA #20877  
19 Of Morton McGoldrick, P.S.  
20 Attorneys for Plaintiff

21  
22 

23 Approved as to form:

24   
25 MICHAEL GILLEY, WSBA #11038  
26 Attorney for Defendants

**APPENDIX B**  
**CITED PROVISIONS OF REVISED CODE OF WASHINGTON**

**RCW 4.56.190. Lien of judgment**

The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3). As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon.

**RCW 4.56.210. Cessation of lien--Extension prohibited--Exception**

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after \*the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after \*the effective date of this act shall contain the birth date of the youngest child for whom support is ordered.

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

**RCW 6.17.020. Execution authorized within ten years--Exceptions--  
Fee-- Recoverable cost**

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order granting the application shall contain an updated judgment summary as provided in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or 6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020 (2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

**RCW 6.17.120. Sheriff's duty on receiving writ--Order of executing writs**

The sheriff or other officer shall indorse upon the writ of execution in ink, the day, hour, and minute when the writ first came into his or her hands, and the execution shall be returned with a report of proceedings under the writ within sixty days after its date to the clerk who issued it. When there are several writs of execution or of execution and attachment against the same debtor, they shall be executed in the order in which they were received by the sheriff.

**RCW 6.36.025. Filing of foreign judgment--Authorized--Effect**

(1) A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any superior court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, staying, or extending as a judgment of a superior court of this state and may be enforced, extended, or satisfied in like manner.

(2) Alternatively, a copy of any foreign judgment (a) authenticated in accordance with the act of congress or the statutes of this state, and (b) within the civil jurisdiction and venue of the district court as provided in RCW 3.66.020, 3.66.030, and 3.66.040, may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, staying, transcribing, or extending as a judgment of a district court of this state, and may be enforced, transcribed, extended, or satisfied in like manner.

(3) The lien of any judgment filed under subsection (1) or (2) of this section shall be governed by chapter 4.56 RCW and RCW 6.17.020.

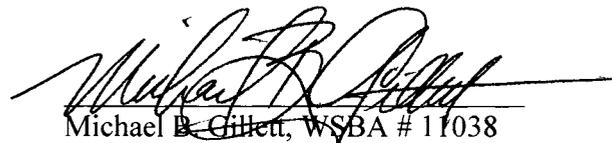
Declaration of Service

FILED  
BY \_\_\_\_\_  
CLERK OF COURT  
SUPERIOR COURT  
COUNTY OF KING  
WASHINGTON  
OCT 20 2007

I, MICHAEL B. GILLETT, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am the attorney-of-record for Appellants George Gervin and Joyce Gervin in the above-entitled matter. I am over 18 years of age, knowledgeable of the matters stated herein, and competent to testify as to the same. On this day, I caused to be served on the persons indicated below the Supplemental Brief of Appellants, via ABC Legal Services:

***Attorney for Respondent:***  
Christopher Eller Allen  
Morton McGoldrick, P.S.  
820 A Street, Suite 600  
Tacoma, WA 98402  
Email: ceallen@bvmm.com

SIGNED this 19<sup>th</sup> day of October, 2007 at Seattle, Washington.



Michael B. Gillett, WSBA # 11038  
Attorney for Appellants  
6327 Ravenna Avenue, N.E.  
Seattle, Washington 98115-7027  
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