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I. INTRODUCTION

In granting the motion for discretionary review of Appellant Northwest Farm Credit Services, FLCA (“FCS”), this Court has already found that the “superior court committed obvious error that renders future proceedings useless”. Ruling Granting Discretionary Review at Page 2.

FCS seeks reversal of the Order Denying Writ of Execution entered November 20, 2008 (hereinafter the “Order on Appeal”) entered by the Honorable Douglas Goelz, Judge Pro Tem, Pacific County Superior Court, in the case of Respondent James J. O’Hagan, et al, v. Kenyon Kelley, et al, Pacific County Cause No. 94-2-00298-0, along with parts of previous orders entered by the superior court in the proceeding below which in any way imply that Respondent O’Hagan can continue to attempt engage FCS in what has been protracted and frivolous litigation. (Mr. O’Hagan is referred to hereinafter by his name or as “Respondent.”)

A United States Bankruptcy Court order has avoided the lien of Respondent’s judgment against the subject property. A state court judgment of foreclosure in favor of FCS has determined the priority of FCS’ lien in said property over the avoided lien of Respondent. As a result, under the full faith and credit clause, federal law and the common law doctrines of res judicata and collateral estoppel, Respondent has no

legal basis: (1) to continue to attempt to execute against the subject real property in which FCS has a superior interest; or (2) to continue to attempt to engage FCS in protracted and frivolous litigation over the superiority of FCS's interest in the subject property.

II. ASSIGNMENTS OF ERROR

1. The Superior Court committed error in the Order on Appeal by ordering that once Respondent complied with the execution statutes, then "the issue of the validity of any alleged superior lien on the property at issue may be litigated". (CP 404)

2. The Superior Court committed error by ordering on October 9, 2008, in the Supplemental Order Regarding Northwest Farm Credit Services that "...this order shall not be interpreted to limit, in any way, the Plaintiff's right to foreclose on Defendant's property or to obtain a writ of execution on Defendant's property". (CP 306-307)

3. The Superior Court committed error in its Memorandum Decision dated September 12, 2008, (CP 208-210) by stating that "RCW 6.32.270. NWFS is a proper entity to be made a party pursuant to this statute. They have the right to sell property from which Mr. O'Hagan seeks to satisfy his judgment. The court rejects the argument by NWFS

that O'Hagan cannot foreclose on the subject property at all. Nothing in the Bankruptcy Code mandates this result and it is contrary to RCW 6.13.110(3) and Miller v. Coltian (sic), 110 Wash.App. 883 (2002)". (CP 209)

III. STATEMENT OF ISSUES

1. Did the trial court err in the above referenced orders by not giving full faith and credit to the final non-appealable order of the United States Bankruptcy Court for the Western District of Washington ("Bankruptcy Court") which specifically voided Respondent O'Hagan's judgment lien on the Kelley Property? (CP 179-181)

2. Did the trial court err in the Order on Appeal by not giving res judicata and collateral estoppel effect to the Bankruptcy Court's orders and the judgment of foreclosure entered in Appellant FCS' Foreclosure Case?

IV. STATEMENT OF FACTS

A. Original Proceedings in this Case.

The issues on appeal involve real property located in Pacific County, Washington, the "Kelley Property." In 1994, respondent James

J. O'Hagan brought the above entitled action against his next door neighbor, respondent Kenyon K. Kelley ("Kelley"), as well as several other defendants, under Pacific County Cause No. 94-2-00298-0. James J. O'Hagan and Rebecca O'Hagan obtained a verdict against Kelley and Stella Jean Kelley (sometimes referred to collectively herein as the "Kelleys") in this case on or about February 11, 2000, (See CP 2) and a judgment was entered on June 30, 2000. (CP 1-3) FCS was not a party to this case. Mr. O'Hagan did not file a lis pendens against the Kelley Property or attach the Kelley Property prior to the 1996 FCS loan described below. (CP 156)

B. FCS' Foreclosure Case.

On January 26, 1996, FCS refinanced a 1990 loan to the Kelleys by FCS' predecessor in interest which was secured by the Kelley Property. (CP 156, 140) The 1996 refinance, in the original principal amount of \$164,700.00, was also secured by the Kelley Property, (CP 140) and predated the O'Hagan judgment by more than four years. FCS brought a mortgage foreclosure action entitled FCS v. Kenyon K. Kelley and James J. O'Hagan, et al, which was filed on October 18, 2001, under Pacific County Cause No. 01-2-00332-3, ("FCS Foreclosure Case"). (CP 121). A Judgment and Decree of Foreclosure in rem in favor of FCS was

entered on April 8, 2002. (CP 121, 128-134) The Judgment and Decree of Foreclosure provided, inter alia, that:

"All right, title claim or interest of the defendants James J. O'Hgan (sic) and Rebecca Lynn O'Hgan (sic),is declared to be inferior and subordinate to plaintiff's mortgage lien and security interest and the same are hereby forever foreclosed, except only for the right of statutory redemption allowed by law."

(CP 131)

Mr. O'Hagan was a party defendant to this case. He appeared, contested the case, and did not appeal FCS' Judgment and Decree of Foreclosure.

(CP 417) The subject property has not been sold at Sheriff's Sale at this time. (CP 121)

C. Kelley Bankruptcy Proceedings.

Kelley filed Chapter 12 Bankruptcy in the U.S. Bankruptcy Court for the Western District of Washington on July 14, 2000, which was later accepted under Chapter 13, and which case was converted to a Chapter 7 Bankruptcy on October 5, 2000, under Case No. 00-35769 ("Kelley Bankruptcy"). (CP 141-142) A Stipulation and Order Granting FCS Relief From Stay was entered in the Kelley Bankruptcy on April 18, 2001, allowing FCS to bring its Foreclosure Case in Pacific County, as referenced above. (CP 142)

On September 21, 2001, in the Kelley Bankruptcy, Judge Snyder entered an Order to Void Liens and Abandon Property, pursuant to 11 USC sec. 522(f)(1)(A), which specifically avoided the O'Hagan Judgment lien against the Kelley property. (CP 142, 179-181)

Also in the Kelley Bankruptcy, after a trial, on March 26, 2002, (under Adversary Proceeding No. A01-4031) Judge Snyder entered an order under 11 USC sec. 727(a), which denied Kenyon C. Kelley's bankruptcy discharge. (CP 182)

In December, 2004, Mr. O'Hagan, through his then counsel, brought a motion to vacate the Order to Void Liens and Abandon Property. (CP 122-123) Hearing on this motion was held on December 9, 2004, before Judge Snyder, and said motion was opposed by the debtor at the time of the hearing. Judge Snyder denied said motion without prejudice. (CP 142, 183-184)

In December, 2005, Mr. O'Hagan brought substantially the same motion a second time, entitled James J. O'Hagan's FRCP 60 Motion and Memorandum to Vacate Order Avoiding Judicial Lien. (CP 123) Hearing on this motion was held on December 6, 2005, before Judge Brandt, who denied said motion. (CP 185-186)

Mr. O'Hagan brought the same motion to vacate a third time, entitled Petition to Reopen Creditor's FRCP 60 Motion. (CP 123) This third motion to vacate the order avoiding Mr. O'Hagan's judgment lien was denied on February 7, 2007, by Judge Brandt. (CP 168¹)

D. O'Hagan's Adversary Proceeding Against FCS in the Kelley Bankruptcy.

In a separate adversary proceeding in the Kelley Bankruptcy, Mr. O'Hagan sued FCS over its interest in Kelley's Ocean Spray crop accounts, in O'Hagan v. Northwest Farm Credit Services, FLCA, et al, Case No. 04-04253-PHB. (CP 121) Mr. O'Hagan also made numerous other claims against FCS within that case, amended his complaint several times, and joined several other defendants. (CP 121) Upon motion for summary judgment, on February 8, 2005, the Honorable Judge Snyder ruled that FCS had a valid security interest in said crop accounts, and that Mr. O'Hagan's other numerous claims against FCS had no merit. (CP 135-164) Judge Snyder entered a lengthy ruling discussing and denying Mr. O'Hagan's claims against FCS on February 8, 2005. (CP 135-164) Mr.

1 Exhibits G and O of the Declaration of Counsel in Support of motion of Northwest Farm Credit Services, FLCA, for an Order Quashing the Summons Filed on May 8, 2008, for Dismissal, and For Other Relief, Clerk's Papers 120-188, were inadvertently switched. Exhibit G, CP 168, is the Order on Motion to Reopen, dated February 7, 2007, which denied Mr. O'Hagan's third motion to vacate the order voiding his lien against the Kelley Property.

O'Hagan's adversary case was fully dismissed on December 22, 2005, by order entitled Judgment of Dismissal as to All Claims and All Parties. (CP 165-166)

Among other things, in his ruling cited above (CP 135-164), Judge Snyder decided:

Lastly, the Plaintiff has cited no authority that the Defendant has a duty to protect the Plaintiff in circumstances as presented to this Court. There is no evidence of record that would establish that the Defendant knowingly conspired with the Debtor in this case to deprive the Plaintiff of property rights to which he was entitled. [Emphasis added.]

(CP 154, lines 23-25, and CP155, lines 1-4.)

In summary, the Defendant is granted summary judgment as to the validity of its security agreement in the Ocean Spray crop accounts subject to the Trustee's compromise, any alleged fraudulent transfer claim that the Plaintiff may have against the Defendant for the 1996 loan or that the Defendant intentionally reduced the value of the real property securing the 1996 loan causing the loss complained of. [Emphasis added.]

(CP 159, lines 2-9.)

Mr. O'Hagan's appeal of the dismissal of his adversary proceeding against FCS to the U. S. District Court was dismissed with prejudice. (CP 167) On December 22, 2006, Mr. O'Hagan moved in the Bankruptcy Court to "reopen" the adversary proceeding and vacate the judgment of

dismissal, which motion was denied. (CP 170-171, 187-188) His appeal to the U. S. District court of the denial of his motion to vacate was dismissed. (CP 169-177)

E. Recent Proceedings Leading to Order on Appeal.

Despite the fact that Mr. O'Hagan's judgment lien was voided as against the Kelley Property by the Bankruptcy Court, and despite the fact that Mr. O'Hagan's numerous claims against FCS were dismissed by the Bankruptcy Court, on May 7, 2008, Mr. O'Hagan issued a Summons to FCS pursuant to RCW 6.32.270. (CP 124-125) FCS was served with the subject summons on May 12, 2008, which stated that "The matters before the court that may concern you include the property located in Grayland Washington held in Kenyon K. Kelley's name." (CP 124)

RCW 6.32.270 is one of the provisions of the supplemental proceeding statute found in Chapter 6.32 RCW. In essence, it gives a court the power (post judgment) to adjudicate claims of third parties in real and personal property of a judgment debtor. This can include parties who (like FCS in this case) were not parties in the underlying action prior to entry of judgment. The statute applies in circumstances where:

...a judgment debtor may have an interest in or title to any real property, and such interest or title is disclaimed by the judgment debtor or disputed by another person, or it

appears that the judgment debtor may own or have a right of possession to any personal property, and such ownership or right of possession is substantially disputed by another person....

RCW 6.32.270.

FCS filed a Motion to Quash Summons, for Dismissal and for Other Relief on July 15, 2008. (CP 108-109, 110-119, 120-188) The hearing on said motion was held on July 28, 2008, before the Honorable Douglas E. Goelz, Judge Pro Tem. At the same hearing on July 28, 2008, Judge Goelz' heard Mr. O'Hagan's motion for reconsideration or relief under CR 60 in the FCS Foreclosure case. (See CP 208-210, 372-374) Said motion sought to vacate FCS' Judgment and Decree of Foreclosure entered in the FCS Foreclosure case.

Judge Goelz issued his combined Memorandum Opinion on September 12, 2008, wherein he ruled on the motions heard on July 28, 2008. (CP 208-210)

Hearing on presentation of orders was held on October 3, 2008. On October 9, 2008, Judge Goelz issued four orders in this matter:
1) Order Quashing Summons Issued to Northwest Farm Credit Services, FLCA, Filed on May 8, 2008, for Dismissal, and for Other Relief (CP 301-303); 2) Order on Motion for Reconsideration (CP 305); 3) Order on

Motion (CP 304); and 4) Supplemental Order Regarding Northwest Farm Credit Services. (CP 306-307) In the Supplemental Order Regarding Northwest Farm Credit Services, the Court found that "...any further pleadings directed at Northwest Farm Credit Services requiring a response would constitute an abuse of process..... However, this order shall not be interpreted to limit, in any way, the Plaintiff's right to foreclose on Defendant's property or to obtain a writ of execution on Defendant's property (sic)". (CP 306-307)

On October 9, 2008, Judge Goelz also entered an order denying Mr. O'Hagan's motion to vacate FCS' Judgment and Decree of Foreclosure in the FCS Foreclosure Case. (CP 372-374)

Despite the Supplemental Order Regarding Northwest Farm Credit Services (CP 306-307), on October 13, 2008, Mr. O'Hagan filed his Plaintiffs Motion by Declaration for Action on Writ of Execution, Vacation of Orders, Change of Venue & Entry of Judgment Derived from Judgment Creditor's Response to NWFCS Memorandum in Limited Opposition For Turnover Order on Judgment Debtors Property, which was set for hearing on October 30, 2008, the "October Motion." (CP 308-366) The hearing on this motion was later continued to November 17, 2008. (Verbatim Report of Proceedings, November 17, 2008--Hearing on

Plaintiff's Motion by Declaration for Action on Writ of Execution, Vacation of Orders, page 1)

In this pleading and motion, Mr. O'Hagan cites numerous sections of CR 59, CR 60 and CR 62 as legal grounds for the relief he sought, however, the crux of his argument was that counsel for FCS engaged in fraudulent arguments to the bankruptcy court and other fraudulent acts with the intention of delaying Mr. O'Hagan from collecting on his judgment. (See CP 308-325) There were no factual bases or legal argument presented in these motions which supported modification of the prior orders of Judge Goelz.

For example, the Court should take note of a sampling of Mr. O'Hagan's arguments that appear in his October 9, 2008, brief where he states as follows:

"Since it took (sic) over 2 months for the court to enter its memorandum opinion and its opinion was so far from its oral ruling **it is almost as if Mr. Benson somehow got the court to change its mind somewhere in between.** If that is so it would be a serious act to defraud on Mr. Benson's part. Before the court gets angry with me for saying this I would just like the court to explain to me why its Memorandum Opinion was so far from its oral opinion." (CP 312) [Emphasis added.]

....

"My experience with the civil court system has led me to know exactly why we have suicide bombers and

terrorists in our world today. These individuals who are willing to sacrifice their own life to make a point have to believe with every ounce of their soul that they could never get their arguments or grief's [sic] heard in a civil court in a civil manner that is free from corruption. I believe that no person would sacrifice their own life if they truly believed the civil courts were not corrupt and they could have their arguments and grief's [sic] presented to an independent jury of their peers." (CP 315) [Emphasis added.]

The above statements not only provide no support for modification of any prior orders, they are clearly improper.

Prior to the hearing on the October Motion, on November 6, 2008, Mr. O'Hagan filed a Notice of Appeal to the Court of Appeals, Division II, which was assigned case No. 38503-1-II. (CP 371-395) Mr. O'Hagan appealed three of Judge Goelz' orders entered on October 9, 2008: 1) Order Quashing Summons Issued to Northwest Farm Credit Services, FLCA, Filed on May 8, 2008, for Dismissal, and for Other Relief (CP 375-377); 2) Order on Motion (CP 378); and 3) in the FCS Foreclosure Case, the Order Denying Defendant James J. O'Hagan's Motion for Reconsideration or Relief Under CR 60. (CP 372-374)

The hearing on the October Motion was held on November 17, 2008, at which time Judge Goelz stated that he would not rule on Mr. O'Hagan's motion due to Mr. O'Hagan's pending appeal to the Court of

Appeals. (Verbatim Report of Proceedings, November 17, 2008–Hearing on Plaintiff’s Motion by Declaration for Action on Writ of Execution, Vacation of Orders, page 7, lines 7-19, page 21, lines 10-18)

On November 20, 2008, Judge Goelz entered an Order Denying Writ of Execution, (the “Order on Appeal”). (CP 404) The full text of the Order on Appeal is as follows:

Petitioner’s application for Writ of Execution is denied.

The Petitioner has failed to comply with RCW 6.17.100 and RCW 6.17.110. In addition, because the land in question is subject to a homestead exemption, the Plaintiff must comply with RCW 6.13.090 - 6.13.100 and RCW 6.13.110-6.13.190.

Once these statutes are complied with, the issue of the validity of any alleged superior lien on the property at issue may be litigated.

On November 21, 2008, Judge Goelz entered a Voluntary Disqualification of Judge. (CP 405)

On December 30, 2008, Mr. O’Hagan filed his Notice to Withdraw Appeal and Continuing Affidavit of Prejudice With Cause, regarding his appeal under Court of Appeals Case No. 38503-1-II. (CP 409-414) Mr. O’Hagan’s appeal was dismissed by this Court via a Ruling Dismissing Appeal entered on January 15, 2009.

FCS has not sold the subject property at Sheriff's Sale. (CP 121) The reasons are because of environmental concerns, the value of the property, and because of Mr. O'Hagan's litigiousness. (CP 293) Although there is no obligation or duty for FCS to sell the property at Sheriff's sale, there is no question that any efforts by FCS to do so would be met by further litigation and claims by Mr. O'Hagan.

V. ARGUMENT

A. Standard of Review.

Interpretation of the Order on Appeal is a question of law for this Court. See *Gimlett v. Gimlett*, 95 Wn.2d 699, 629 P.2d 450, (1981), “[A] reviewing court seeks to ascertain the intention of the court entering the original decree by using general rules of construction applicable to statutes, contracts and other writings.” [Citations omitted.] 95 Wn.2d at pages 704-705; and *Callan v. Callan*, 2 Wn. App. 446, 468 P.2d 456, (1970) “The interpretation or construction of findings, conclusions and judgments presents a question of law for the court.” [Citations omitted] 2 Wn. App. at page 448. The standard of review of a question of law is de novo. *Draper Machine Works, Inc., v. Department of Natural Resources*, 117 Wn.2d 306, 815 P.2d 770 (1991).

B. The Trial Court Erred By Not Giving Full Faith and Credit to the Bankruptcy Court Order Which Voided Respondent's Judgment Lien on the Kelley Property.

Full faith and credit must be given and the doctrines of collateral estoppel and res judicata must be applied to the orders, rulings and judgments referenced herein, to wit: (1) the Order to Void Liens and Abandon Property, which remains in effect; (CP 179-181) (2) the order and ruling dismissing with prejudice Respondent's claims against FCS; (CP 165-166, 135-164) and 3) the Judgment and Decree of Foreclosure in FCS' Foreclosure Case. (CP 128-134)

Article 4 sec. 1 of the U. S. Constitution states:

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Furthermore, in *Stoll v. Gottlieb*, 305 U.S. 165, at 170, 59 S. Ct. 134, 83 L. Ed. 104, (1938), the U. S. Supreme Court noted that Congress enacted a statute that:

"...is broader than the authority granted by Article 4, section 1, of the Constitution...."

305 U.S. at 170

The statute referred to in *Stoll* was 28 USC sec. 687, which has been recodified as 28 USC sec. 1738, and states as follows:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 USC sec. 1738

It is axiomatic that if Respondent O'Hagan has no judgment lien against the Kelley Property under the Bankruptcy Court's Order to Void Liens and Abandon Property, Respondent is not entitled to a Writ of Execution against it. In addition, the Bankruptcy Court's order avoiding Respondent's judgment lien against the Kelley Property renders moot any

litigation about the superiority of FCS' mortgage lien over Respondent's judgment, i.e., if Respondent has no judgment lien against the Kelley Property, then there is no justiciable issue before the Superior Court regarding FCS.

The Order to Void Liens and Abandon Property entered by the Bankruptcy Court was presented to and filed with the Superior Court below as Exhibit K to the Declaration of Counsel in Support of Motion of Northwest Farm Credit Services, FLCA, for an Order Quashing the Summons Filed on May 8, 2008, for Dismissal, and for Other Relief. (CP 122-123, 179-181)², It specifically states:

ORDERED that the judicial lien(s) of James J. O'Hagan and Rebecca L. O'Hagan, arising from that certain judgment dated June 30, 2000 rendered in the Superior Court of Pacific County under Cause No. 94-2-00298-0, including but not limited to the judicial and/or statutory lien created by said judgment, and by the "Notice of Interest Arising from Judgment Awarded by Pacific County Superior Court of the State of Washington" filed by O'Haganbe and are hereby declared void under Section 522(f)(a) of the Bankruptcy Code. [Emphasis added.]

2 RCW 5.44.010 states that "The records and proceedings of any court of the United States....shall be admissible in evidence in all cases in this state when duly certified by the attestation of the clerk....having charge of the records of such court, with the seal of such court annexed."

(CP 179-180)³

As already noted by this Court in its Ruling Granting Discretionary

Review:

The full faith and credit clause requires court judgments to have the same credit, validity and effect in every other court of the United States as the state where it was pronounced. U.S. Const. Art. 4, § 1.

Ruling Granting Discretionary Review at Page 8.

It is well settled that United States Bankruptcy Court orders and judgments are binding upon the state courts of the United States. *Stoll v. Gottlieb*, 305 U.S. 165, 59 S. Ct. 134, 83 L. Ed. 104, (1938). As the U.S. Supreme Court made clear in *Stoll*, not only are federal judgments entitled to full faith and credit in state courts, the doctrines of res judicata and collateral estoppel also apply to them. The U. S. Supreme Court stated in *Stoll*:

The Congress enacted, as one of the earlier statutes, provisions for giving effect to the judicial proceedings of

3 The correct cite to the applicable section of 11 USC sec. 522, is 11 USC sec. 522(f)(1)(A), which states in its entirety:

“(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5);....”

the courts. This has long had its present form. [FN5 omitted.] This statute is broader than the authority granted by Article 4, section 1, of the Constitution, U.S.C.A. Const. art. 4, s 1, to prescribe the manner of proof and the effect of the judicial proceedings of states. Under it the judgments and decrees of the Federal court in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances. [FN6 omitted.] But where the judgment or decree of the Federal court determines a right under a Federal statute, that decision is final until reversed in an appellate court, or modified or set aside in the court of its rendition. [FN7 omitted.]

305 U.S. at page 170.

After a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the pleas of res judicata is made has not the power to inquire again into that jurisdictional fact.

305 U. S. at page 172.

By not giving full faith and credit to the Bankruptcy Court 's Order to Void Liens and Abandon Property, the trial court committed obvious error. Because he has no lien against it, Respondent is not entitled to issuance of a writ of execution against the Kelley Property and the Order on Appeal which suggests that Respondent can obtain such a writ should be reversed. (CP 404)

C. The Trial Court Erred in the Order on Appeal by Not Giving Collateral Estoppel Effect to the Bankruptcy Court's Order to Void Liens and Abandon Property.

In the Order on Appeal, the trial court implied and in one of its previous orders, the trial court had held that “this order shall not be interpreted to limit, in any way, the Plaintiff’s right to foreclose on Defendant’s property or to obtain a writ of execution on Defendant’s property”. (CP 307) In so doing, the trial court erred by both: 1) not giving full and credit to the bankruptcy court’s order; and 2) not giving collateral estoppel effect to it. In *Nielson v. Spanaway Gen. Med. Clinic*, 135 Wn.2d 255, 956 P.2d 312 (1998), the Washington State Supreme Court has stated the following regarding the doctrine of collateral estoppel:

Like the doctrine of res judicata which bars relitigation of a claim once it has been decided, the doctrine of collateral estoppel, or issue preclusion, prevents relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case. *Hanson v. City of Snohomish*, 121 Wash.2d 552, 561, 852 P.2d 295 (1993); *Rains v. State*, 100 Wash.2d 660, 665, 674 P.2d 165 (1983)...

The purpose of the doctrine is to promote the policy of ending disputes. *McDaniels v. Carlson*, 108 Wash.2d 299, 303, 738 P.2d 254 (1987); *Beagles v. Seattle-First Nat'l Bank*, 25 Wash.App. 925, 929, 610 P.2d 962 (1980). See also Philip A. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 Wash. L. Rev. 805, 806 (1985) (collateral estoppel “limits the vexation and harassment of other parties; lessens the overcrowding of

court calendars, thereby freeing the courts for use by others; and, by providing for finality in adjudications, encourages respect for judicial decisions”).

135 Wn.2d at 262. [Emphasis added.]

For collateral estoppel to apply, the party asserting the doctrine must establish: “...(1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice.” [Citations omitted.] *Id.*, at 263.

All four elements are established here. First, the issues are identical as both proceedings relate to the ability of Respondent to execute against the Kelley Property. Second, the Order to Void Liens and Abandon Property was a final judgment on the merits entered when Respondent was represented by counsel in the Kelley Bankruptcy and with full opportunity to litigate the merits of the relief sought. Third, Respondent was the party against whom the motion to void liens was sought and whose judgment lien was in fact avoided against the Kelley Property. Finally, the Order to Void Lien and Abandon Property is a final order and application of collateral estoppel by the state court does not work an injustice. As noted

above, Respondent has on three prior occasions unsuccessfully sought in the bankruptcy court to vacate the Order to Void Liens and Abandon Property.

In short, Respondent's judgment lien against the Kelley Property was voided as a result of the final order of the bankruptcy court. The trial court committed obvious error below in holding that a writ of execution could issue under said judgment.

D. The Trial Court Erred in the Order on Appeal by Not Giving Res Judicata and Collateral Estoppel Effect to the Judgment of Foreclosure Entered in Appellant FCS' Foreclosure Case.

In the Order on Appeal, the trial court stated that once Respondent complied with the execution statutes, then "the issue of the validity of any alleged superior lien on the property at issue may be litigated." (CP 404) As this Court has already found, this was obvious error

In addition to the fact that the Order on Appeal fails to give full faith and credit to the Bankruptcy Court's Order to Void Liens and Abandon Property, (CP 179-181), the superiority of FCS' lien of mortgage and judgment over Respondent's judgment lien had already been established in prior proceedings before the Superior Court, rendering further proceedings regarding priority useless. (CP 121, 128-134)

FCS' Judgment and Decree of Foreclosure entered on April 8, 2002, in FCS' Foreclosure Case established that its lien of mortgage and resulting judgment were valid, superior and prior to Respondent's judgment. (CP see 131) There was no appeal by Respondent.

Mr. O'Hagan also moved to vacate or reconsider the FCS Judgment and Decree of Foreclosure in the FCS Foreclosure Case, which motion was denied. (CP 208-210, 372-374) Mr. O'Hagan failed to appeal that order.

As such, FCS's Judgment and Decree of Foreclosure is entitled to res judicata and collateral estoppel effect in this proceeding. The principles of res judicata were set forth by the Washington Supreme Court in *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 887 P.2d 898 (1995):

Res judicata refers to the preclusive effect of judgments, including the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action. (citations omitted). It is designed to "prevent re-litigation of already determined causes and curtail multiplicity of actions and harassment in the courts". (citations omitted). For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, and (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made. [Citations omitted.]

Under the principles of res judicata, a judgment is binding upon parties to the litigation and persons in privity with those parties. [Citations omitted.]

125 Wn.2d at 763-64

See also *Rains v. State*, 100 Wn.2d 660, 674 P.2d 165 (1983) (judgment in federal court dismissing constitutional claims against state was res judicata as to same claim subsequently made in state court).

Previously, in its prior Order Quashing Summons Issued to Northwest Farm Credit Services, FLCA, Filed on May 8, 2008, for Dismissal, and for Other Relief, the Superior Court specifically found in pertinent part that:

...1) making FCS a party, or joining FCS as a party to this proceeding under RCW 6.32.270 would be a useless act; 2) all of the Petitioner's (Plaintiff James J. O'Hagan's) claims against FCS were fully litigated in Federal Bankruptcy Court in an adversarial proceeding brought by Plaintiff, all of which were denied; 3) Plaintiff presented all the evidence in the adversary proceeding which he now seeks to submit to State Court; 4) Plaintiff seeks a second bite at the same apple and the law does not allow it; and 5) based on the doctrines of res judicata and collateral estoppel, Plaintiff may not now summon FCS or join FCS as a party.

(CP 302)

Further, in the Supplemental Order Regarding Northwest Farm Credit Services, the Superior Court found:

The Court finds the Plaintiff has no surviving cause of action against Northwest Farm Credit Services. The Court further finds any further pleadings directed at Northwest

Farm Credit Services requiring a response would constitute an abuse of process.

(CP 306)

Finally, the Superior Court in FCS' Foreclosure Case also denied Respondent's motion to reconsider or vacate FCS's judgment under CR 60 by holding in its Order Denying Defendant James J. O'Hagan's Motion for Reconsideration or Relief Under CR 60, as follows:

Defendant O'Hagan's motion for Reconsideration or for Relief from judgment is denied with prejudice; and 2) All motions by Mr. O'Hagan which may be pending, which in any manner seek to challenge to the validity of Plaintiff's judgment are denied with prejudice.

(CP 373)

Based on these prior orders, it is clear that the Superior Court erred by subsequently entering the Order on Appeal which inconsistently states the following:

Once these statutes are complied with, the issue of the validity of any alleged superior lien on the property at issue may be litigated.

(CP 404) [Emphasis added.]

As such, the Order on Appeal must be reversed.

E. *Robin L. Miller Construction v. Coltran* Does Not Support Respondent.

In his various pleadings, Respondent cites several times to the decision of Division I of the Court of Appeals in *Robin L. Miller Construction v. Coltran*, 110 Wn. App. 883, 43 P.3d 67 (2002). This decision was also cited along with RCW 6.13.110(3) by the Superior Court in its Memorandum Decision dated September 12, 2008. (CP 209)

At issue in *Miller Construction* was the question of whether after a first writ of execution under a judgment had been quashed, could the holder of the judgment obtain a second writ of execution against the same property. The question before the *Miller Construction* court was whether the holder of the judgment was barred by the doctrine of res judicata arising from the quashing of the first writ. In holding that the issuance of the second writ was not barred under the facts of that case, the *Miller Construction* court held that:

In short, res judicata or claim preclusion principles prevent a party from bringing the same cause of action against the same person for the same subject matter. *Kuhlman v. Thomas*, 78 Wash.App. 115, 120, 897 P.2d 365 (1995). An attempt to execute a judgment lien, however, is not a cause of action. Rather, it is an enforcement proceeding to collect upon a previously obtained judgment. RCW 6.17.020. Because an attempt to execute a judgment lien is not a cause of action, we find that res judicata principles do not apply to this case.

110 Wn. App. at 892 [Emphasis added.]

The decision of the court in *Miller Construction* is inapposite to this case and does not change the res judicata and collateral estoppel effect of matters which are determined in separate causes of action.

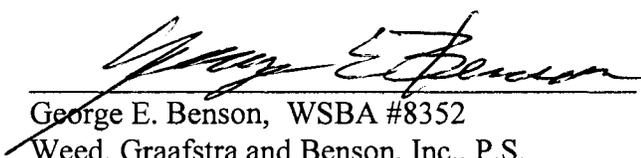
In this case, the avoidance of Respondent's judgment lien against the Kelley Property was entered by an order of the federal bankruptcy court in the Kelley Bankruptcy. (CP 179-181) This bankruptcy was a separate cause of action. Further, the priority of FCS' lien against the Kelley Property over Respondent's judgment lien was established in FCS' Foreclosure Case, another separate cause of action. (CP 121, 128-134) Unlike, *Miller Construction*, these rulings were all made in separate causes of action and are now all final and non-appealable.

In summary, *Miller Construction* is inapplicable to this case and does not: (1) support that Respondent can still continue to litigate his failed claims against FCS; or (2) stand for the proposition that the state court can simply ignore the final order of the federal bankruptcy court which avoided the lien of Respondent's judgment against the Kelley Property.

VI. CONCLUSION

Based on the foregoing, the Court of Appeals should reverse the Order on Appeal. This Court should grant the following relief by providing: that the judgment lien of Respondent in the Kelley Property was voided; and that under the full faith and credit clause, federal law and the common law doctrines of res judicata and collateral estoppel, Respondent has no legal basis: (1) to continue to attempt to execute against the subject real property in which FCS has a superior interest; or (2) to continue to attempt to engage FCS in protracted and frivolous litigation over the superiority of FCS's interest in the subject property.

Dated this 1st day of September, 2009.


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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on September 1, 2009, I arranged for service of the original Brief of Appellant Northwest Farm Credit Services, FLCA, by delivery to the Court on September 2, 2009, by ABC Messenger Service, addressed as follows:

Office of the Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

09 SEP -2 PM 1:44
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY
COURT OF APPEALS
DIVISION II

That on September 1, 2009, I arranged for service of a copy of the Brief of Appellant Northwest Farm Credit Services, FLCA, along with a copy of the Verbatim Report of Proceedings, November 17, 2008—Hearing on Plaintiff’s Motion by Declaration for Action on Writ of Execution, Vacation of Orders, to counsel and to the parties to this action by U. S. Mail, First Class (Priority Mail), postage prepaid, addressed as follows:

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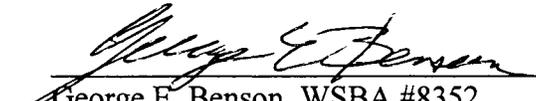
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