

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II
NO. 39719-6-II

CLARK COUNTY SUPERIOR COURT Case No. 09 2 00506 4

Ralla Klepak

Plaintiff,

v.

Thorsten Lundsgaarde

Respondent.

REPLY BRIEF

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INTRODUCTION

On August 18, 2009, without a trial, the Clark County Superior Court entered certain findings and conclusions. To the extent that the court determined that the March 14, 2006, Cook County, Illinois filing was enforceable in Washington, Dr. Lundsgaarde appealed.

Klepak argues that there was a Washington evidentiary hearing regarding enforceability of the March 14, 2006, Cook County, Illinois filing. She points to nothing in the record supporting that contention.

ARGUMENT

I. Amount of Klepak's Claim Not Undisputed.

Klepak asserts that it is undisputed that the sum of \$31,652.44 was the "uncontroverted amount" of Klepak's fees as of March 12, 2006, and that each party is responsible for 50% of that amount. (\$15,826.22). A careful review of CP 65 demonstrates this is not the case. Indeed, the sum of \$31,652.44 was interlineated in the document, with the sum of \$21,573.11 in the type-written form. No initials of Dr. Ludsgaarde or his lawyer, Audrey Gaynor, indicating consent to the \$10,000.00 change.

Notably, nothing about this document (CP 63-75) indicated Dr. Lundsgaarde was consenting to entry of judgment against him in favor of Klepak or anyone else. To the extent Klepak utilizes CP 63-75 to prove

that due process was met in entry of the “Agreed Order”, it is difficult to see how that could ever support an argument for a claim for judgment in excess of \$10,787.00 [50% of \$21,573.11].

II. Post January 28, 2009, Illinois Documents Irrelevant.

Klepak presents various papers filed in Illinois in the spring of 2009 to support the validity of the 2006 filing. (Appendix 5-7 of Klepak Response brief), however these documents were all created subsequent to the registration of the March 14, 2006, document (CP 4) in Washington; January 28, 2009. The fact that Judge Nancy Katz later (May 22, 2009) signed conclusory statements that Judge Lored-Rivera afforded due process to Dr. Lundsgaarde three years earlier are meaningless for the purpose of the issue on appeal. (CP 86-87).¹

III. The March 14, 2006, “Agreed Order” Not an Order, Decree or Judgment

The first issue before this court is whether the March 14, 2006, filing even constitutes an order, decree or judgment in the first place. RCW 6.36.010.

¹ The entire process whereby Klepak petitioned the Illinois court for “clarifying” orders itself violated Dr. Lundsgaarde due process rights in that the court refused to allow his to appear and be heard. (CP. 89-90). This refusal was apparently based on Dr. Lundsgaarde’s failure to pay the contested amounts owed to Klepak, resulting in a body attachment. (Cp. 34, 35 and 41).

Klepak argues that the March 14, 2006, filing was stamped with the judge's stamp and entered by the Clerk of the Court. (Response, P. 4). However, Klepak does not address the statutory requirements in Illinois for enforceability as follows:

If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall make a notation to that effect ***and the judgment becomes final only when the signed judgment is filed.*** If no such signed written judgment is to be filed, ***the judge or clerk shall forthwith make a notation of judgment and enter the judgment of record promptly,*** and the judgment is entered at the time it is entered of record.

ILCS S. Ct. Rule 272. (emphasis added)

Under this rule, the mere filing of a document with a file stamp only, and without the notation of a judge or clerk, is not effective to constitute a judgment. (CP 4) contains no judge's signature, no clerk's signature, no notation, no initials or anything else to substantiate it as an order, decree or judgment capable of recognition in Washington under RCW 6.36.010. This is contrasted with the order of March 14, 2006, (CP 63-75) which clearly has Judge Lored-Rivera's signature.

Based on the simple fact that the March 14, 2006 filing is not a judgment, decree or order, the Clark County Superior court erred in

determining it to be a judgment entitled to recognition under RCW 6.36 and given Full Faith and Credit.

IV. Due Process Violated.

Even if the court does not reverse on the grounds set forth above, the trial court erred by not conducting an evidentiary hearing into the alleged due process violations regarding the March 14, 2006, filing as was specifically requested by Dr. Lundsgaarde. (CP 14 “moves the court for entry of an order setting evidentiary hearing on the claims of due process violations”).

In that regard, Dr. Lundsgaarde stated that the “Agreed order” was not agreed and was *ex parte*. (CP 6). Indeed, a comparison between the language in CP 4 and CP 75 supports this contention. All Dr. Lundsgaarde consented to base on the typed language of CP 75 was that Ms. Klepak had a bill in the sum of \$21,573.11. To infer based solely on the language in CP 75 that he agreed to pay a disproportionate share of that sum –and indeed, to ***become a judgment debtor*** for any amount, is a step that the Clark County Superior Court should not have taken as a matter of law.

If, as Dr. Lundsgaarde, contends, the “Agreed Order” assessing him a \$15,826.22 judgment in favor of a non-party was done without his approval *ex parte*, without doubt this would be a due process violation

such that the judgment should not be enforced in Washington. *R.R. Gable, Inc. v. Burrows*, 32 Wn.App. 749, 649 P.2d 177 (1982).

Klepak attempts to distinguish *R.R. Gable, Inc. v. Burrows, supra*, since that case involved a default judgment taken against defendant, and in this proceeding, Lundsgaarde was the “initiating party.” This distinction is without merit. The principle behind *R.R. Gable, Inc. v. Burrows, supra*, is to determine if the sister state afforded a party due process. There, the California court, following its set policies and procedures did not accept defendant’s answer for filing. There was no question that the California court was following its set procedures, but, still the process, resulting in the default judgment, was constitutionally defective under Washington notions of due process. For this reason, when the plaintiff creditor registered its judgment here under the Uniform Enforcement of Foreign Judgments Act, the Washington court refused to enforce it. This was true even though, according to California law, the judgment was fully enforceable.

In this case, the same due process question is posed as was present in *R.R. Gable, Inc. v. Burrows, supra*. In that case, the defendant was effectively deprived of a right to a hearing, and a judgment was taken against him as a result. So too, here, when Ralla Klepak unilaterally filed the “Agreed Order” Dr. Lundsgaarde was deprived of his right to

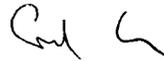
hearing—and, at least in Klepak’s view, a judgment was taken against him.

Indeed, the due process violation is even stronger with the case at bar than in *R.R. Gable, Inc. v. Burrows, supra*, in that the defendant certainly knew that the creditor had sued him. Here, there is absolutely nothing in the record to indicate that Dr. Lundsgaarde could have expected to be a judgment debtor as to anyone except Anna Benjakul (the opposing party). Klepak never sued him.

CONCLUSION

The Clark County Superior Court erred in refusing Dr. Lundsgaarde’s request for an evidentiary hearing as to whether his due process rights were violated by the ex parte procedure Klepak employed on March 14, 2006, to enter a judgment against him on her own behalf.

RESPECTFULLY SUBMITTED this 17th day of November,
2009.



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Of Attorneys for Appellant

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Certificate of Service

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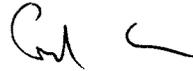
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CERTIFICATE OF SERVICE

I hereby certify that I served Respondent's Reply Brief on the following named person(s) on November 17, 2009, by mailing with postage prepaid; to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at their last-known address(es) indicated below:

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