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DIVISION III

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STATE OF WASHINGTON

BY  \_\_\_\_\_  
DEPUTY

**NO. 39775-7-II**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II**

---

Paul J. Rutledge, Plaintiff

vs.

Susan E. Beck, Defendant; and Bryan Chushcoff, Appellant

---

Ryan Thomas and Julie Thomas, husband and wife, Respondents

vs.

Paul J. Rutledge, Plaintiff; and Susan E. Beck, Defendant

---

**APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY**

---

**THE HONORABLE BRUCE HILYER AND DONALD THOMPSON, JUDGE PRO TEM**

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**REPLY BRIEF OF APPELLANT**

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**REPLY BRIEF OF APPELLANT**

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**B. REPLY TO RESPONDENT THOMAS INTRODUCTION AND STATEMENT OF THE  
CASE**

**Respondent does not contest Appellant's statement of facts.**

It appears neither plaintiff Rutledge nor defendant Beck intends to file a brief in this appeal. Accordingly, this brief replies only to the Amended Brief of Respondents filed by

Third Party Plaintiff Thomas (hereinafter "Respondent"<sup>1</sup>). It is telling that Respondent does not take issue with any material fact asserted in Appellant's Brief. So we see the following facts are undisputed by Respondent and determinative of the outcome of this appeal:

- 1) Appellant's deeds of trust were valid. Both deed of trusts were in writing, in correct form, for valid and genuine consideration, properly recorded and secured by the subject realty.
- 2) The notes and the deeds of trust were entered into with a person with capacity to so contract.
- 3) The notes that the deeds of trust secure remain unpaid.
- 4) Appellant's first deed of trust recorded in 2005 predated the recording of Respondents' lis pendens in July 2007.
- 5) Appellant's 2005 deed of trust provides that it is

for the purpose of securing performance of each agreement of grantor herein contained, . . . , and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

CP 87.

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<sup>1</sup> It seems more clear to refer to Thomases as Respondent than by the term "Third Party Plaintiff." Since neither plaintiff Rutledge nor defendant Beck has filed a brief in this appeal, those parties will be referred to as "plaintiff" or "defendant" respectively.

was litigation pending. But that litigation was between plaintiff and defendant. Respondent did not file their complaint until July 2007.

- b. Next, Respondent points out that King County Judge Bruce Hilyer served as the visiting judge in this matter “after this Court suggested that a visiting judge was appropriate in light of the involvement of Judge Chushcoff, the current Presiding Judge of Pierce County Superior Court.” Respondent’s Brief, p. 1. This too has no bearing on the correct resolution of this matter. But coupled with the first statement about him presiding over the case in 2001, it appears to be a suggestion that Judge Chushcoff has done something improper or it is an attempt by Respondent to bias this court against Appellant. This is sharp practice indeed and there has been no misconduct by Judge Chushcoff. Indeed, in the first appeal between plaintiff Rutledge and Defendant Beck at page 20 of the Brief of Respondent of May 2005 (No. 32504-7-II) Mr. Kram writing on behalf of Mr. Rutledge stated:

Bryan Chushcoff is an able and experienced trial judge . . . but he is now Ms. Beck’s son-in-law. This familial relationship arose after entry of the May, 2001, order [Agreed Judgment] and neither party claims otherwise . . .

(Emphasis added.) Here we see that Mr. Rutledge and Mr. Kram know of the relationship and also know that it did not exist at the time of the Agreed Judgment in May 2001. That relationship had no bearing on Judge

Chushcoff's opinions or actions taken while he was the judge of the case since it did not exist at the time and he had not yet met his wife.

- c. Later, Respondent claims that Appellant's appeal was evidently "prompted much more by vindictiveness and bad blood than by a rational assessment of its legal merit." Respondent's Brief, p. 17. Appellant is motivated to prosecute this appeal in order to vindicate his legal rights. Nothing in the record suggests otherwise. Respondent does not cite in the record to support this outlandish claim.

**C. ARGUMENT OF COUNSEL – Appellant's Argument in Reply to Amended Brief of Respondents Thomas.**

**1. Respondent does not dispute that Appellant was never served. The trial court lacked personal jurisdiction to terminate Appellant's deeds of trust.**

Just as Respondent fails to take issue with any material fact asserted by Appellant, Respondent fails to address many of the legal arguments raised in Appellant's Brief. Most fundamentally, Appellant asserted that without proper service of process, Superior Court had no jurisdiction to vacate Appellant's Deeds of Trust. Brief of Appellant, p. 17-20. As noted above, it is not disputed that the Order Compelling Sale, Appointing Attorney and Granting Other Relief dated March 27, 2008 and the Order on Show Cause Re: Contempt/Judgment dated June 24, 2008 that purports to vacate Appellant's deeds of trust were entered without service of process on Appellant. "When a court lacks personal jurisdiction over a party, any judgment entered against

that party is void.” *State v. Breazeale*, 144 Wn.2d 829, 841, 31 P.3d 1155 (2001).

Respondent’s Brief does not challenge Appellant’s claim that the court lacked personal jurisdiction over Appellant when terminating his deeds of trust. The lack of personal jurisdiction standing alone is sufficient reason to grant Appellant’s appeal.

**2. Defendant Beck encumbered the real property by executing deeds of trust to Appellant.**

Respondent’s primary argument makes the astonishing claim that “Judge Chushcoff’s deeds of trust were never effective to encumber the property itself. . .” Brief of Respondent, p. 9. Respondent says that the legal authority for this is the authority provided by Appellant, to-wit:

An encumbrance purportedly placed on the whole property is valid as to the cotenant who executed it, and will be held good as to the part allotted to that cotenant in any subsequent partition. If there is a judicial sale of the premises to a stranger, the mortgage follows the mortgagor’s interest in the proceeds, and does not affect the title of the purchaser.

Any cotenant may encumber his or her separate interest without consent, and without affecting the interests, of other tenants.

(Emphasis added.) 20 Am.Jur.2d *Cotenancy and Joint Ownership*, §102. Brief of Appellant, p. 25. The emphasized language above plainly says that an encumbrance placed by a cotenant on property is valid. But despite this plain language, Respondent somehow reads this to say that the deeds of trust executed by defendant Beck “did not

encumber the real property." (Emphasis in original.) Brief of Respondent, p. 8. Why is this? Well, Respondent's logic here leaves much to be desired.

Respondents' claim is: "[a]t best, these deeds of trust only encumbered Susan Beck's undivided interest as a tenant in common in the property . . ." *Id.* pp. 8-9. The obvious riposte is that an undivided interest of a tenant in common in realty IS an interest in real property and an encumbrance of real property – like Appellant's deeds of trust – is also an interest in real property. This is basic. "A 'deed of trust' is a conveyance of an interest in real property to secure a debt." 54A Am.Jur.2d *Mortgages* §1; *see, generally*, RCW 61.24. Yet Respondent claims otherwise against all law, plain English and logic and without real explanation. This is not persuasive. To adopt the Respondent's unconventional argument would turn real estate financing in Washington State upside down.<sup>2</sup> Respondent's novel argument was not made to the trial court and is invented here to avoid the conclusive implications of the trial court's lack of jurisdiction over Appellant.

Rather, the argument before the trial court by plaintiff and by Respondent was always that Ms. Beck, as a co-tenant, could not encumber the property without consent of the other co-tenant, Rutledge. No legal authority was offered to support this claim.

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<sup>2</sup> If Appellant's deeds of trust did not encumber the real property, why would the title insurance company need to have it cleared? As plaintiff's counsel put it, "[t]he title company requires that the [Appellant's] deed of trust be set aside to complete the sale." CP 75.

As we see from the authority quoted above, this is false: "A cotenant may encumber his or her separate interest without consent . . ."

**3. Respondent's filing a lis pendens does not give them any substantive rights in the sale proceeds to Beck.**

Respondent states that Appellant "misstates the law in claiming that a lis pendens is purely to give notice to protect third parties that there is a suit involving the real property. Here Thomas got the realty. A lis pendens does not give Thomas any interest in the proceeds of the sale. ... Brief of Appellant, p. 23." Brief of Respondent, p. 11.

Respondent then goes on to claim that IF the sum paid to Chushcoff was first applied to his first deed of trust, then Chushcoff's second deed of trust would come after Respondent's lis pendens was filed. In so doing, Respondent does not explain two things: a) how their litigation entitled them to an interest in the PROCEEDS paid to Beck by the sale; and b) how the future advances clause in Appellant's first deed of trust affects the Respondent's claim to the sale proceeds.

*a) The Thomas litigation did not give them any special rights to the sale proceeds.*

Respondent attempts to make equivalent their general creditor claim against Beck with Chushcoff's secured claim to the sales proceeds. After all, if Respondent did not owe Beck all the money that they paid to purchase the property, why did Thomas pay it? And once paid, the sale proceeds is the property of Beck. Respondent may have a claim as a general creditor against her but the claim is secondary to Chushcoff's claim in

the sales proceeds because Chushcoff had a security interest in Beck's real property that was sold to generate the money.

Indeed, Chushcoff should have been paid prior to the closing of the sale in return for a release of his deeds of trust. In the ordinary course of business, lending money secured by a deed of trust does not lead one into litigation with anyone other than the borrower. For example, it did not require litigation to extinguish the security interest of the first position security holder, Countrywide Financial, when the sale of the property did take place. It is important to understand that no one – not Mr. Rutledge, not Mr. Kram, not the Thomases or their counsel and not the escrow company – ever requested pay off information from Judge Chushcoff or JB Properties in order to close the sale to the purchasers. And plaintiff knew that Judge Chushcoff claimed that his deed of trust was limited to Ms. Beck's interest in the real property.<sup>3</sup> In this case no effort was made at consensual resolution of Chushcoff's deed of trust; rather, the litigation that resulted was caused by the unorthodox actions taken by Mr. Rutledge's counsel, Peter Kram, described in Appellant's Brief at pp 11-15.

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<sup>3</sup> In August 2006, in a deposition requested and conducted by Mr. Kram taken in Ms. Beck's Chapter 13 bankruptcy proceedings, Judge Chushcoff informed Mr. Kram that his deed of trust was limited to Ms. Beck's interest in the realty. Two years later, Mr. Kram would cite this fact in attempting to persuade Judge Thompson to sign an order terminating his interest in the property. ("I've brought the testimony that Mr. Chushcoff gave in the bankruptcy proceedings when we took this deposition. His testimony is, it only affects Susan Beck's interest." Report of Proceedings of June 24, 2008 p. 9. CP 145.

b) *The future advances clause in the 2005 deed of trust predates the Thomas lis pendens. It secures the entire sum owed by Beck to Chushcoff.*

Respondent has not provided the entire quote from Appellant's Brief on the effect of Respondent's lis pendens. The quote continued:

A lis pendens does not confer any right, title or interest in real property; it confers no substantive rights.

"Lis pendens" is a common-law and statutory doctrine which has the effect of providing constructive notice to the world of an alleged claim of a lien or an interest in property. Lis pendens is fundamentally procedural because it provides a different, more adequate method of notice, without conferring any additional substantive right.

(Emphasis added.) 51 Am.Jur.2d *Lis Pendens* § 1. It helps to assure the court of jurisdiction of the property and prevent endless litigation of real property titles. But that is all that it does."

Brief of Appellant, p. 23. For the effect of a lis pendens Respondent quotes RCW 4.28.320 which provides, in pertinent part, as follows:

. . . . From the time of the filing [of a lis pendens] only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action.

RCW 4.28.320 does not contradict Appellant. That statute clearly does not give the party filing a lis pendens any substantive right. The statute just provides that the claim of a subsequent party is subject to the pending litigation. Respondents'

substantive rights flow from their Real Estate Purchase and Sale Agreement with Rutledge and Beck that was the basis for their breach of contract claim.

Respondents finally get to the point when they claim that as the Thomas lis pendens was recorded July 17, 2007 and "Judge Chushcofff's second loan for \$80,000 and the second deed of trust occurred in October 2007. Clearly, under RCW 4.28.320, Judge Chushcofff's second loan and deed of trust were subject to the Thomas claims . . . ." Brief of Respondent, p. 12. There are three problems with this analysis each of which is fatal to Respondent's position even if Respondent could somehow evade the problem of the court's lack of jurisdiction over Appellant. It is important to note that Thomas in no way attempts to account for Chushcofff's first deed of trust. Doing so leads to the correct resolution of the issue.

First, the 2005 promissory note/loan and the 2007 promissory note/loan were BOTH secured by the 2005 deed of trust. Here is what Appellant said:

Appellant's deed of trust against the property dated and recorded February 3, 2005 predates the Thomas lis pendens. Appellant's first deed of trust secured advances or loans even if made at a later date and subsequent promissory notes stated that they were secured by BOTH deed of trusts. CP 94. The 2005 deed of trust states on its face that it is

for the purpose of securing performance of each agreement of grantor herein contained, and payment of the sum of Fifty Thousand Dollars (\$50,000.00) in accordance with the terms of a Note of even date, payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or

assigns, together with interest thereon at such rate as shall be agreed upon.

(Emphasis added.) CP 87.

The effect of this “future advances” clause is to relate back to the original deed of trust the security for the loans; this is expressly authorized by Washington statute. RCW 60.04.226 “provides that a recorded mortgage or deed of trust is prior to all subsequently recorded liens, mortgages, deeds of trust, and other encumbrances “to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory.” (Emphasis added.) 18 WA Practice *Real Estate* §17.16.<sup>4</sup>

(Emphasis in original.) Brief of Appellant, pp. 23-24. These facts wholly dispose of Respondent’s claim that somehow the filing of their lis pendens had any effect upon the amount due from Beck to Chushcoff under the first deed of trust; a security interest recorded more than 2 years before the filing of Respondent’s lis pendens.

Second, Respondent would have the payment received by Appellant on Beck’s account wholly applied to the first note/deed of trust. But there is no evidence in the record (or otherwise) that the payment was so applied. Applying the payment to the second deed of trust leaves the balance due only against the first deed of trust.

Third, more fundamentally, since a lis pendens does not provide Respondent any substantive rights, Respondent’s litigation did not give Respondent any claim to the sale

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<sup>4</sup> RCW 65.08.070 has the effect of giving priority among competing liens to the one first recorded. As we have seen, the Thomas lis pendens does not confer a substantive right and is not therefore “a competing lien” even if it had been recorded earlier which, of course, it was not.

proceeds owing to Beck. As to that, Beck was free to encumber her interest to anyone. Judge Thompson's order of September 12, 2008 stated that \$10,000 "should be retained in Mr. Kram's trust acct. to pay any statutory costs and to cover possible rental value of property post-sale to Thomas." (Emphasis added.) CP 19. The accrual of post-sale debt is, by definition, not something owed by Beck to Thomas at the time of the sale. Because Appellant had a valid security interest in Beck's interest in the real property equal to what Thomas owed Beck at the time of the sale, that same amount was due to Appellant and to no one else. If the superior court had not wrongfully invalidated Appellant's deeds of trust this sum would have been paid to Appellant.

#### **4. Appellant did not participate in a prior appeal.**

Respondent asserts that "Judge Chushcoff, who actually filed motions in and participated in the second appeal [filed by defendant Beck], is barred" from "relitigating" an appeal of the Order Compelling Sale, Appointing Attorney and Granting Other Relief dated March 27, 2008. Brief of Respondent, p. 13. Respondent is careful to avoid saying how Chushcoff's motions amounted to "participating" in defendant Beck's appeal. And, in nearly the same breath, Respondent goes on to criticize Appellant for NOT participating. Specifically, Respondent says: "Judge Chushcoff clearly could have and should have intervened in that appeal . . ." *Id.* p. 13-14. Here Respondent admits Appellant was NOT a party to the prior appeal and did not participate. Which is it?

The motions Appellant made in that appeal are identified in the Court of Appeals decision when it states: “[h]ere, J.B. Properties moved to intervene and also moved for an emergency stay. We denied both motions.”<sup>5</sup> Brief of Appellant, Appx. p.3, fn.3.

Appellant cannot be faulted for NOT intervening in the appeal when the court denied his motion to do so. Appellant never “participated” in the appeal because the Court of Appeals did not permit it.

Thus, we see that Respondent’s assertion that collateral estoppel or res judicata bars Appellant’s appeal is without merit. Moreover, Respondent’s argument was not accompanied by any explanation of what is required in this case to establish either doctrine.

The claim preclusion doctrine has four requirements: (1) the parties in the two successive proceedings are the same; (2) the prior proceeding ended in a final judgment; (3) a party in the second proceeding is attempting to litigate for the first time a matter that should have been raised in the earlier proceeding; and (4) application of the doctrine must not work an injustice. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 562 (1993); *Clark v. Baines*, 150 Wn.2d 905, 913 (2004).

These requirements are not met here. As we have seen, Appellant was not allowed to participate in Beck’s earlier appeal. Therefore, 1) the parties are not the

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<sup>5</sup> Recall, the deeds of trust in question were originally owned by JB Properties, Inc. and later assigned to Bryan Chushcoff. The assignment had not occurred at the time the motion to intervene was made in the Court of Appeals. CP 95.

same; and, 2) he is not trying to litigate a matter that he should have raised in the earlier proceeding as Appellant was not a participant in the earlier appeal.

In addition, Beck did not have a similar interest or standing in litigating issues related to vacating Appellant's deeds of trust. Accordingly, application of the doctrine of collateral estoppel/res judicata to Appellant here would be unjust even if it otherwise were applicable. For instance, had Beck claimed that vacating Appellant's deeds of trust was error and had she won on that issue, it would not have altered the outcome one iota as to Beck; her home would still have been sold. Likewise, Beck was in no position to argue superior court's lack of personal jurisdiction over Appellant.

**5. The "Acceptance Of Benefits" doctrine has no application to Appellant's appeal.**

Respondent argues that Appellant's appeal is barred by the acceptance of benefits rule set forth in RAP 2.5. Respondent's argument is flawed for a number of reasons and they have not fully quoted the rule. RAP 2.5(b)(1) and (2) provide, in pertinent part, as follows:

**(b) Acceptance of Benefits.**

(1) *Generally.* A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision . . .

(2) *Security.* If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of

the decision without losing the right to obtain review of that decision. A party that would otherwise lose the right to obtain review because of the acceptance of benefits shall be given a reasonable period of time to post security to prevent loss of review. The trial court making the decision shall fix the amount and type of security to be given by the party accepting the benefits.

(Emphasis added.)

Here, by its plain language the rule does not apply because Appellant did not appeal the September 12, 2008 ruling. Respondent recognizes this but still complains that the effect of Appellant's appeal would be to reverse the \$10,000 set aside for Respondent. A rule in derogation of the right to seek review of a trial court decision should be strictly construed and not expanded to encompass matters beyond the rule.

Moreover, RAP 2.5(b)(1)(i) notes that a party may accept the benefits of a trial court decision if that decision is subject to modification by the court making the decision. Such was the case here. Judge Thompson's order of September 12, 2008 stated that \$10,000 "should be retained in Mr. Kram's trust acct. to pay any statutory costs and to cover possible rental value of property post-sale to Thomas." (Emphasis added.) CP 19.

This order retaining \$10,000 was obviously not a final order but was security required by the court to assure payment of a possible future liability to Thomas. On its face it was subject to modification in the future. And the trial court did later modify the order for the money was paid to Respondent – not for lost rental value – but to pay Respondent's attorney fees. CP 53; CP 48.

On its face, the retention of the money was security determined by the trial court from the property of the Appellant for anything else due to Respondent. Keep in mind that by this time the \$10,000 was not really Beck's property because Beck had already pledged all of her interest in the proceeds from the sale to Appellant, so none of it would have ever gone to her. The money was either Appellant's or it was Respondent's. This conforms to the provision of RAP 2.5(b)(1)(ii) and (b)(2).

That Beck owed and secured to Appellant more than what was paid Appellant from her share of the sales proceeds is undisputed. Accordingly, regardless of the result of the review Appellant is entitled to at least the benefits of the trial court decision. This conforms to the provision of RAP 2.5(b)(1)(iii).

To the complaints of Respondent that Appellant did not appeal the September 12, 2008 decision of Judge Thompson it has to be pointed out that Respondent did not appeal it either and cannot seek review now. RAP 5.2(a) and (e). Yet Respondent asks this court to have Appellant "disgorge and pay to the Thomases \$16,625.11" from the \$99,401.38 that Respondent claims was "prematurely" paid to Appellant as a result of Judge Thompson's order. Brief of Respondent, p. 17. There is no merit to this request. Appellant does not owe anything to Respondent; he neither owed nor breached a duty to them. And because Respondent did not appeal the payment of funds to Appellant this court is unable to afford Respondent any relief from Judge Thompson's order.

It is ironic to hear Respondent complain about premature determinations in this case. Appellant's first declaration in this case dated June 23, 2008 opined, "the financial

interests of the all of the parties should be ascertained before a sale is completed.”

(Emphasis in original.) CP 13. Respondent did not support this effort then yet they complain now because it was not done.

#### **6. Respondent is not entitled to attorney fees.**

Respondent seeks an award of attorney fees. They do not rely on RAP 18.1 (providing for the award of fees when granted by applicable law). Rather, Respondent seeks an award of fees pursuant to RAP 18.9 on the ground that this appeal is frivolous. Respondent’s basis is the claim that Appellant’s appeal was evidently “prompted much more by vindictiveness and bad blood than by a rational assessment of its legal merit.” Respondent’s Brief, p. 17. There are two reasons why this does not provide a basis for sanctions. First is that Appellant is motivated to prosecute this appeal in order to vindicate his legal rights. Nothing in the record suggests otherwise. Respondent does not cite anything in the record to support their outlandish claim. Second, this is not the test for an award of sanctions. Respondent loosely claims “‘frivolous’ certainly means different things to different people.” *Id.* But in fact the term is a word of art with specific meaning identified in case law.

An appellate court may order a party to pay compensatory damages or terms for filing a frivolous appeal. RAP 18.9(a). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal. *Ramirez v. Dimond*, 70 Wash.App. 729, 855 P.2d 338 (1993). And we resolve all doubts to whether an appeal is frivolous in favor of the appellant. *Camer v. Seattle Sch. Dist. No. 1*, 52 Wash.App. 531, 762 P.2d 356 (1988).

*Lutz Tile, Inc. v. Krech*, 136 Wn.App. 899, 906 (2007). Appellant's appeal is clearly meritorious and, so, cannot be regarded as frivolous.

**D. CONCLUSION**

Appellant's deeds of trust were vested interests in realty that were vacated without legal authority and without notice. Appellant had a security interest in the proceeds of the sale that were paid to Beck. Respondents were no more than a general, unsecured creditor. Appellant was owed the funds that superior court paid to Respondent. This court should grant Appellant the relief requested in the Brief of Appellant at pp. 28-29.

**Dated:** February 4, 2010.

Respectfully submitted,



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**\* Reply Brief of Appellant**

**\* Designation of Clerk's Papers (Supplemental 2/4/10)**

**\* Declaration of Service**

on Paul Rutledge c/o Maureen J. Haugen; counsel for Thomas, William Spurr; and

Susan Beck, pro se, via U.S. Mail, postage prepaid, addressed as follows:

Paul Rutledge c/o Maureen J. Haugen 435 Ridgeland Drive Sharp Chapel, TN 37866	William Spurr Attorney at Law 1001 – 4 <sup>th</sup> Avenue, Ste. 3600 Seattle, WA 98154-1130	Susan E. Beck 7420 Rosedale St. NW Gig Harbor, WA 98335
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Tacoma, Washington, on February 5, 2010.

  
\_\_\_\_\_  
BRYAN CHUSHCOFF