

Case Number: 43992-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WALENTYNA PIATEK and EUGENIUSZ ANTONI PIATEK, wife and
husband; and STANISLAW PIATEK, an unmarried individual,

Appellants,

v.

RENATA ANNA PIATEK, an unmarried individual,

Appellee.

APPELLANT'S REPLY BRIEF

Daniel P. Harris
Charles P. Moure
Attorneys for Appellant, Stan Piatek

Harris & Moure, pllc
600 Stewart Street, Suite 1200
Seattle, WA 98101
Tel. (206) 224-5657
Fax (206) 224-5659
E-mail: firm@harrismoure.com

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
I. ARGUMENT AND AUTHORITIES.....	1
A. Prior litigation between the parties and Appellee’s past judgments against Stan Piatek are immaterial to Appellee’s ability to improperly execute on Mr. Piatek’s King County lawsuit	1
B. The proceedings below should be reviewed de novo.....	2
C. While a Court <i>may</i> permit a party to execute its judgment on a legal cause of action, case law, due process, and public policy in Washington dictate that the Court <i>should</i> abstain from such action.....	4
D. Appellee is not entitled to any attorney’s fees should she prevail on this appeal.....	5
II. CONCLUSION.....	6

TABLES OF AUTHORITIES

Page(s)

Washington Cases

Commanda v. Cary,
143 Wn.2d 651 (Wash. 2001).....2

MP Med. Inc. v. Wegman,
151 Wn. App. 409, 213 P.3d 931 (2009).....4

Paglia v. Breskovich,
11 Wn. App. 142, 522 P.2d 511 (1974).....4

Rainer View Court Homeowners Ass'n, Inc. v. Zenker,
157 Wn.App. 710, 238 P.3d 1217 (2010).....3

Other Jurisdictions

Cusano v. Klein,
485 Fed. Appx. 175 (9th Cir. Cal. 2012).....3

United States v. Chen,
99 F.3d 1495, 1499 (9th Cir. Cal. 1996).....3

Rules and Regulations

RCW 7.16, *et seq.*.....2

A. The Previous Litigation Between the Parties and Appellee's Past Judgments Against Mr. Piatek Are Irrelevant to the Main Issue on Appeal.

The central issue on appeal is neither about the history of litigation between the parties nor Appellee's past judgments against Mr. Piatek, but is instead based upon whether the Court below acted improperly by permitting Appellee to purchase Mr. Piatek's King County lawsuit through the execution of an entirely unrelated judgment. In her Response, Appellee expends nine pages of her twenty-four page brief explaining to this Court the lengthy history of litigation between the parties, all of which is irrelevant to the main issue on appeal (Appellee's Response Brief, pp. 1-9). The Polish Court has made clear to the parties multiple times that it will ultimately determine their rights to the property accumulated between them since 2005, and that, as part of the Division of the Estates, it will also determine the validity of and corresponding set-offs (if any) stemming from all subsequent judgments between the parties, including those judgments obtained abroad. (CP 25-26).

Moreover, Appellee's list of judgments against Mr. Piatek is suspect at best given the fact that Appellee obtained those judgments through fraudulent activity and by repeatedly disobeying multiple Polish Court orders relative to the Division of the Estates, ultimately giving rise

to Mr. Piatek's King County WARICO lawsuit.¹ In turn, when determining whether the lower Court acted improperly by denying Mr. Piatek's motion to quash, this Court should ignore the previous litigation between the parties and Appellee's ill-gotten past judgments against Mr. Piatek.

B. The Lower Court's Denial of Mr. Piatek's Motion to Quash Should be Reviewed De Novo.

The denial of a motion to quash a writ of Sheriff's sale on an unrelated cause of action should be reviewed de novo. In support of her contention that this Court should review the lower Court's action for an abuse of discretion, Appellee cites to cases having nothing to do with the applicable standard of review for the paramount issue on appeal in this case.

Appellee first relies on *Commanda*, a consolidated criminal law appeal in which Defendants were charged with driving under the influence of intoxicants. *Commanda v. Cary*, 143 Wn.2d 651 (Wash. 2001). The writs and quashing at issue in that case were based on the extraordinary writs set forth in RCW 7.16 *et seq.*, namely writs of certiorari, mandamus, and prohibition certiorari in the criminal context. RCW 7.16, *et seq.* Appellee then cites to *Cusano v. Klein*, an unpublished opinion from 2012, out of California, based on three consolidated appeals

¹ Mr. Piatek's WARICO suit against Appellee sets forth in voluminous detail Appellee's strategy to improperly obtain falsely inflated monetary judgments from various courts in the U.S., Poland, and Australia. (CP 17-107).

dealing with a lengthy royalty battle between the parties. *Cusano v. Klein*, 485 Fed. Appx. 175 (9th Cir. Cal. 2012). In that case, the Appellate Court reviewed the trial Court's denial of Cusano's *motion for reconsideration* of the trial Court's order allowing Klein to execute on one hundred percent of Cusano's royalties for an abuse of discretion. (emphasis added) *Id.* at 178. Appellee also incorrectly relies on *United States v. Chen*, a case based upon the trial Court's quashing of a grand jury subpoena, not upon a party's ability to execute their judgment by attaching a lawsuit. *United States v. Chen*, 99 F.3d 1495, 1499 (9th Cir. Cal. 1996).

The case law cited by Appellee apprises this Court of the specific standards of review for various types of writs unrelated to levies upon causes of action. Appellee ultimately fails to adequately address the standard of review applicable here. As there is scant case law on the subject, whether an unrelated judgment can be used to eviscerate a legal action, thereby depriving a party of any litigation on the merits of their claims, requires an analysis by the lower Court of applicable case law and considerations of due process and public policy. The foregoing conclusions of law are reviewed de novo. *See Rainier View Court Homeowners Ass'n, Inc. v. Zenker*, 157 Wn.App. 710, 719, 238 P.3d 1217 (2010). As a result, where the lower Court failed to properly interpret relevant case law and deviated from traditional notions of due process

and standard judicial protocol and public policy, this Court should review the lower Court's failure to grant Mr. Piatek's Motion to Quash under a de novo standard.

C. The Lower Court Failed to Properly Apply Applicable Case Law and Ignored Due Process and Public Policy When it Improperly Denied Mr. Piatek's Motion to Quash.

While a Court *may* allow a party to execute a judgment by levying on an unrelated cause of action, persuasive case law, due process, and public policy demonstrate that Courts in this State *should* refrain from allowing such executions where it deprives another party of litigation on the merits of their claims. *See, e.g., Paglia v. Breskovich*, 11 Wn. App. 142, 522 P.2d 511 (1974) (reversing lower Court's denial of motion to set aside sheriff's sale of debtor's un-liquidated claim because such a sale would destroy the debtor's ability to prosecute the action); *see also MP Med. Inc. v. Wegman*, 151 Wn. App. 409, 213 P.3d 931 (2009) (finding the lower Court should exercise its power to "prevent the grossly inequitable situation where one party destroys the opposing party's cause of action by becoming the owner of the cause of action under review"). Based on Appellee's actions relative to the execution at issue, it should be clear that her sole intent was not to collect on a judgment owed but, instead, to tactically evade threatening litigation with Mr. Piatek. The lower Court ignored relevant case law and Appellee's transparent litigation strategy by improperly allowing Appellee to execute her

judgment against Mr. Piatek through the purchase and eventual dismissal of his King County claims against her.

Despite the previous litigation between the parties², Mr. Piatek was entitled to litigate his WARICO claims against Appellee regardless of any claims by her that Mr. Piatek's lawsuit was meritless or valueless.³ Accordingly, this Court should ignore entirely Appellee's arguments that Mr. Piatek is not entitled to his day in court because he only offered to pay Appellee \$30,500 for his WARICO suit; principles of equity, alone, do not require that Mr. Piatek personally demonstrate the value of his claims by paying for them himself (Appellee's Reply Brief, pp. 11-12). With a misapplication of case law, and in violation of recognized due process rights and applicable public policy, the Superior Court denied Mr. Piatek his right to prosecute his claims against Appellee and its denial of Mr. Piatek's motion to quash should be reversed.

D. Mr. Piatek's Appeal is not Frivolous and Appellee Should not be Awarded any Attorney's Fees Should She Prevail on Appeal.

² Had Appellee obeyed the various Polish Court orders in the Division of the Estates, the litigation between the parties in the United States would have been greatly reduced. For example, after filing for divorce from Mr. Piatek in January 2005, Appellee subsequently filed for the same divorce from Mr. Piatek in King County Superior Court in the same month. (CP 21). Appellee requested that the King County Superior Court award her significant amounts of property belonging to the former couple located in the U.S. *Id.* The King County Court ultimately dismissed that divorce petition and request for property when Mr. Piatek and his counsel brought it to the Court's attention that Appellee had already filed for divorce in Poland and that the Polish Court would determine the couples' rights to their property located both in Poland and abroad. *Id.*

³ Despite Appellee's allegations in her Response that Mr. Piatek's WARICO claims were baseless or without value, the King County Superior Court refused to dismiss Mr. Piatek's lawsuit when challenged by Appellee with a CR 12(b)(6) motion. (CP 4).

Mr. Piatek's appeal is not frivolous; it is based on legitimate, good faith claims that the lower Court misapplied applicable Washington state case law in a significant departure from typical judicial protocol relative to this type of post-judgment execution. There are debatable issues in front of this Court, namely, whether a party can take away another party's ability to prosecute un-liquidated claims against them given the particular facts at issue. Appellee claims that Mr. Piatek's sole goal is to "harass" her through endless litigation. Given the fact that Appellee continues to defy Polish court orders in order to improperly obtain from various courts more and more property from Mr. Piatek, it is not far-fetched that Appellee is the main perpetrator of harassment. Ultimately, Appellee should not be awarded for her efforts to yet again "game the system" through a grant of attorney's fees by this Court should she prevail on this appeal.

II. CONCLUSION

For the reasons stated above, Appellant, Stan Piatek, respectfully requests this Court vacate the lower Court's decision to deny his motion to quash and that the Court also deny any request for attorney's fees by Appellee on this appeal.

HARRIS & MOURE, pllc

By /s/ Daniel P. Harris
Daniel P. Harris, WSBA # 16778
Charles P. Moure, WSBA #23701
Attorneys for Appellant, Stan Piatek

DATED this Wednesday, May 15, 2013.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Appellants Reply has been caused this Wednesday, May 15, 2013 via the Washington State Court of Appeals JIS-Link system and U.S. mail to counsel for Appellee:

Roger J. Kindley
Hana A. Kern
Ryan, Swanson & Cleveland, PLLC
1201 3rd Ave, Suite 3400
Seattle, WA 98101
kindley@ryanlaw.com
kern@ryanlaw.com

DATED this Wednesday, May 15, 2013 at Seattle, Washington.

/s/ Kristen Keller
Kristen Keller

HARRIS & MOURE, PLLC

May 15, 2013 - 4:49 PM

Transmittal Letter

Document Uploaded: 439921-Reply Brief.pdf

Case Name: Walentyna Piatek v. Renata Anna Piatek

Court of Appeals Case Number: 43992-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Hilary Bricken - Email: hilary@harrismoure.com

A copy of this document has been emailed to the following addresses:

hilary@harrismoure.com
dan@harrismoure.com
kindley@ryanlaw.com
kern@ryanlaw.com