

FILED  
COURT OF APPEALS  
DIVISION II  
2015 MAR 18 PM 2:29  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

46684-8-II

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

---

PUBLIC UTILITY COMMISSION OF OREGON,

Plaintiff/Respondent

v.

CERTAIN REAL PROPERTY in Pierce County, and the Owners  
Thereof and Parties Interested Therein including JOSEPH YE and  
JANICE LOU, husband and wife

Defendants/Appellants

and

STAN EFFERDING, an individual; and U.S. BANK  
NATIONAL ASSOCIATION,

Defendants.

---

RESPONDENT'S AMENDED RESPONSE BRIEF PER COURT  
ORDER DATED MARCH 13, 2015

---

1501 Dock Street  
Tacoma, Washington 98402  
Tacoma: (253) 627-1091

SMITH ALLING, P.S.  
Russell A. Knight  
Morgan K. Edrington  
Attorneys for Plaintiff/Respondent

**TABLE OF CONTENTS**

INTRODUCTION .....1

RESTATEMENT OF ISSUES .....2

STATEMENT OF FACTS .....2

A. Factual and Procedural History..... 2-5

ARGUMENT.....6

A. Standard of Review.....6

B. The Oregon Judgment is Against Stan Efferding..... 6-8

C. The Oregon Judgment, Domesticated in Washington,  
Is Given the Full Faith and Credit as if It Originated  
in Washington ..... 8-9

D. There Is No Equitable Reason to Modify the Oregon  
Judgment or Delay the Commission’s Foreclosure of  
Its Judgment Lien..... 10-11

CONCLUSION.....12

**TABLE OF AUTHORITIES**

**STATE CASES**

*Brown v. Garrett*, 175 Wn. App. 357, 367, 306  
P.3d 1014 (2013).....9

*Doe v. Dep't of Transp.*, 85 Wn. App. 143, 147  
931 P.2d 196 (1997).....6

*Heath v. Dodson*, 7 Wn.2d 667, 673, 110 P.2d 845 (1941).....11

*In re Estate of Tolson*, 89 Wn. App. 21, 30,  
947 P.2d 1242 (1997).....9

*Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264,  
271, 285 P.3d 854 (2012).....6

*Malo v. Anderson*, 62 Wn.2d 813, 817,  
284 P.2d 813 (1963)..... 10-11

*Nobl Park, LLC of Vancouver v. Shell Oil Co.*,  
122 Wn. App. 838, 95 P.3d 1265 (2004) (quoting  
*Underwriters Nat'l Assurance Co. v. N. Carolina  
Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S.  
691, 102 S. Ct. 1357, 71 L.Ed.2d 558 (1982))..... 8-9

*White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).....6

**STATUTES**

RCW 4.56.190 .....11

RCW 6.36.010(1).....9

RCW 6.36.025. ....9

RCW 6.36.025(1).....11

RCW 60.12 *et seq.* .....6

**RULE**

CR 56(c).....6

**MISCELLANEOUS**

U.S. Const. Art. IV, §1.....8

## I. INTRODUCTION

The analysis on this appeal is straightforward. Appellants ask a Washington Court to look beyond the face of a properly domesticated foreign judgment, and to find that the underlying foreign judgment originally entered in Oregon contains a defect so should not be enforced in Washington. Under the Uniform Enforcement of Foreign Judgments Act, Washington Courts must give foreign judgments the full faith and credit that is afforded a judgment that was originally entered in Washington. Therefore, the analysis of this case in any Washington Court must stop there as there is no jurisdiction to challenge the validity of the foreign judgment and it must be enforced.

To challenge the validity of the foreign judgment, a party must do so in the foreign jurisdiction. In this case, Appellants had exactly that opportunity. On petition by the Appellants, the Oregon court that entered the underlying judgment in this action re-opened the Oregon case, and denied Appellants' motion to modify the judgment. Accordingly, both the underlying Oregon judgment and the properly domesticated judgment in Washington remain enforceable. The Pierce County Superior Court properly granted Plaintiff's motion for summary judgment to enforce the judgment by foreclosing its judgment lien.

## II. RESTATEMENT OF ISSUES

Did the trial court properly grant summary judgment allowing the Commission to foreclose a judgment lien where a valid judgment was recorded in Pierce County against the judgment debtor at the time the property sold? **Yes.**

## III. STATEMENT OF FACTS

### A. **FACTUAL AND PROCEDURAL HISTORY**

In 2003, Stan Efferding, in his individual capacity, began doing business in Oregon, selling phone service under a license issued by the Public Utility Commission of Oregon (the "Commission"). He initially did business under the d/b/a designation "Vilair." CP 8. In 2004, the Commission granted a name change request "from Stan Efferding, dba Vilair, to VCI Company." *Id.* Efferding's status with the Commission went from a sole proprietorship d/b/a "Vilair" to a sole proprietorship d/b/a "VCI Company. CP 215. Efferding remained personally liable. *Id.*

On September 1, 2005, Stan Efferding obtained real property located in Pierce County, Washington by warranty deed.

On September 26, 2007, an Order was entered in an administrative proceeding by the Commission finding that Efferding had submitted unearned rebates from the Commission by submitting duplicate billings for the same customers; submitting billings for customers serviced by other carriers; and submitting billings for customers with discontinued

service. CP 8-11. The Commission ordered that Stan Efferding repay \$203,391.97. *Id.*

Efferding failed to comply with the order. Accordingly, on August 27, 2010, the Commission registered the 2007 award in the Marion County Circuit Court pursuant to ORS 205.125 and ORS 205.126. CP 13. The Order specifically stated, “The court, being fully advised, hereby finds that pursuant to ORS 205.125 and ORS 205.126, the order issued by [the Commission] on September 26, 2007, has the attributes and effect of a judgment that has been entered in the register of the Marion County Circuit Court.” *Id.* The Circuit Court further ordered that the 2007 Order “shall be treated as though it is an Oregon circuit court judgment.” *Id.*

On October 8, 2010, the August 27, 2010 Order was filed as a foreign judgment in Pierce County Superior Court under Cause No. 10-2-13815-9. CP 15.

Also on October 8, 2010, a judgment summary was filed identifying the judgment debtor as “VCI Company f/k/a Stan Efferding”. CP 26. On October 20, 2010, an abstract of judgment was recorded against the real property owned by Efferding in Pierce County. It lists the each of the judgment including a line reading “Debtor: Efferding, Stan” CP 29 -30.

The judgment against Stan Efferding was properly domesticated in Pierce County and created a judgment lien on the real property owned by Stan Efferding in Pierce County.

On or about May 23, 2011 Efferding sold the real property to Appellants Joseph Ye and Janice Lou by statutory warranty deed, for the sum of \$1,490,000.00.

At closing, the Commission's judgment lien should have been paid out of the proceeds of the sale. However, despite the fact that the Commission had a properly-recorded judgment lien that attached to the property, and there was sufficient non-exception equity in the property to pay the judgment, the judgment was not satisfied either at the time of the sale at any time before the property was conveyed to Ye and Lou. Instead, Stan Efferding received the proceeds of the sale.

On July 17, 2013, the Commission brought an *in rem* action in Pierce County Superior Court against the property, the current owners Joseph Ye and Janice Lou, the current mortgage holder, and Stan Efferding, seeking to foreclose its judgment lien.

Joseph Ye and Janice Lou sought to dismiss the complaint based upon its allegation of a defect in the underlying judgment. CP 32-70. The motion to dismiss was denied, but the trial court stayed the Pierce County proceedings for three (3) months for Ye and Lou to have the opportunity

to raise the issue of an alleged defect in the judgment with the issuing court, Marion County, Oregon. CP 123-124.

During the stay, Ye and Lou moved the Marion County Circuit Court to reopen the case to allow their intervention in the Oregon case, and to vacate or set aside the underlying judgment in the Oregon case with respect to Defendant Stan Efferding. CP 211-13. The Marion County court reopened the Oregon case, and denied all of Ye and Lou's other requests on February 18, 2014. CP 173-74.

As a result, the Oregon judgment remained a valid and enforceable judgment against Stan Efferding in Oregon, as well as in Washington where the foreign judgment had been properly domesticated.

On June 27, 2014, after the Oregon Court denied Ye and Lou's request to modify the underlying judgment, the Commission brought a motion for summary judgment in the Washington action seeking dismissal of Ye and Lou's various defenses to allow the Commission to judicially foreclose its judgment lien. CP 125-150.

The Court granted the Commission's motion for summary judgment allowing the Commission to foreclose the judgment lien described in the complaint on the subject real property pursuant to RCW 4.56.190 and RCW 60.12 *et seq.* Ye and Lou appealed this order.

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

A trial court's decision granting summary judgment is reviewed de novo. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 271, 285 P.3d 854 (2012). Summary judgment is appropriate where there is no genuine issue of material fact, when viewed in the light most favorable to the nonmoving party, and the moving party is entitled to judgment as a matter of law. *Id.*, CR 56(c).

To create a genuine issue of material fact the nonmoving party must present more than speculation. *Doe v. Dep't of Transp.*, 85 Wn. App. 143, 147, 931 P.2d 196 (1997). Speculation or argumentative assertions that unresolved factual issues remain is insufficient to defeat summary judgment. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

##### **B. THE OREGON JUDGMENT IS AGAINST STAN EFFERDING.**

Stan Efferding is a judgment debtor on the 2010 Marion County Circuit Court Judgment. The 2007 Order, which forms the basis of the judgment, provides that Stan Efferding applied for a license to do business in his individual capacity with a d/b/a designation of "Vilair" and subsequently made a name change request of his d/b/a to "VCI Company." CP 8. Accordingly, he was referred to as VCI Company f/k/a Stan Efferding. CP 13.

The only Court Ye and Lou can petition to seek to modify this Judgment is the Marion County, Oregon Circuit Court. The most important fact of this appeal, and a fact that was omitted from Appellant's brief, is that Ye and Lou did petition Marion County, Oregon Circuit Court to modify the judgment, and the Oregon Court denied their request.

Ye and Lou's request was made of the Oregon Court after the Commission filed its action in Washington to foreclose its judgment lien against real property owned only by Stan Efferding. If the Oregon Court had intended its previous order not to be a judgment against Stan Efferding individually, it could have modified the judgment. The fact that the Oregon Court, with knowledge of the pending foreclosure of property previously owned by Stan Efferding based on the Oregon judgment, denied the request to modify the judgment, confirms the Oregon Judgment was properly entered against Stan Efferding, individually. This was consistent with every pleading in Oregon and Washington which distinguishes between Efferding's sole proprietorship VCI Company, and VCI Company, the Washington Corporation. VCI Company the Washington Corporation was listed separately as a defendant.

The manner in which the Oregon judgment was domesticated in Washington, the Washington judgment summary and Washington abstract

of judgment, are all consistent with the fact that the Oregon judgment was entered against Stan Efferding, individually.

**C. THE OREGON JUDGMENT, DOMESTICATED IN WASHINGTON, IS GIVEN THE FULL FAITH AND CREDIT AS IF IT ORIGINATED IN WASHINGTON.**

Once the Marion County Oregon Court confirmed the judgment was entered against Stan Efferding by denying Ye and Lou's motion to revise the judgment, Washington only has jurisdiction to enforce the judgment. Washington must give full faith and credit to the foreign judgment as if it originated in Washington.

Full faith and credit is a Constitutional requirement upon each state to the public acts, records, and judicial proceedings of every other state. U.S. Const. Art. IV, § 1. "This applies to court judgments in which 'the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced.'" *Nobl Park, LLC of Vancouver v. Shell Oil, Co.*, 122 Wn. App. 838, 95 P.3d 1265 (2004) (quoting *Underwriters Nat'l Assurance Co. v. N. Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 102 S. Ct. 1357, 71 L.Ed.2d 558 (1982)).

In Washington, the Uniform Enforcement of Foreign Judgments Act (UEFJA) "codifies the Full Faith and Credit Clause." *Brown v. Garrett*, 175 Wn. App. 357, 367, 306 P.3d 1014 (2013). The foreign

judgment filed in Washington becomes a registered foreign judgment that can be enforced in Washington. *Id.* RCW 6.36.025; RCW 6.36.010(1), (2). Only if the judgment was entered without jurisdiction or in violation of a constitutional right (such as notice and opportunity to be heard) may a party collaterally attack the judgment. *Brown*, 175 Wn. App. at 367. “Absent these grounds, ‘a court of this state must give full faith and credit to the foreign judgment and regard the issues thereby adjudged to be precluded in a Washington proceeding.’” *Id.* (quoting *In re Estate of Tolson*, 89 Wn. App. 21, 30, 947 P.2d 1242 (1997)).

The Oregon Court had personal and subject matter jurisdiction. No party has argued to the contrary. Instead, Ye and Lou asked the Washington Court to modify an Oregon Judgment. Ye and Lou ask the Court to look past the face of the judgment and second guess the evidence supporting the judgment in Oregon. This is improper. The trial court properly acknowledged it lacked jurisdiction to change the Oregon judgment and granted the Commission’s motion for summary judgment as there are no issues Ye and Lou can raise in Washington. This Court should affirm the trial court.

**D. THERE IS NO EQUITABLE REASON TO MODIFY THE OREGON JUDGMENT OR DELAY THE COMMISSION'S FORECLOSURE OF ITS JUDGMENT LIEN.**

Ye and Lou argue that this Court, sitting in equity, should reverse summary judgment to require a trial in advance of the Commission's foreclosure of its judgment lien.

Ye and Lou rely on *Malo* to argue an equitable consideration can prevent enforcement of a judgment. *Malo v. Anderson*, 62 Wn.2d 813, 817, 284 P.2d 813 (1963). The facts of this case, however, do not substantiate any basis for equity to override the principals of execution on a judgment. Unlike in *Malo*, there is no allegation that the Commission has acted with unclean hands, or in such a way where equity should prohibit the foreclosure of the judgment lien. In *Malo*, the judgment creditor was formerly married to the judgment debtor. 62 Wn.2d at 814. During their divorce proceedings the husband was ordered to make monthly payments to satisfy a property distribution to the wife. *Id.* The wife reduced the unpaid amount to judgment and foreclosed on the property. She, however, did so with unclean hands.

She acquired a valuable property in satisfaction of a comparatively small claim. The manner in which she did so merits no stamp of judicial approval; she circumvented the terms of the divorce decree; she utilized statutes in an unauthorized manner; and, after delivery of the sheriff's deed, it may be a fortuitous circumstance, but she did not act until after the mortgage indebtedness had been paid.

Nor did she give appellant actual notice of her action, although, in absence of judicial acceleration, a reasonable person would not have anticipated premature execution sale to satisfy a claim neither payable nor impressing a lien.

62 Wn.2d at 816.

Unlike the foreclosed party in *Malo*, Efferding knew the judgment lien existed at the time he sold the property to Ye and Lou. The Commission will not receive anything more than the actual judgment balance at the time of foreclosure.

That the Commission has a proper judgment lien arises under RCW 4.56.190 and attaches to the property. The sale of the Property from the judgment debtor to Defendants Ye and Lou did not extinguish the judgment lien. *See Heath v. Dodson*, 7 Wn.2d 667, 673, 110 P.2d 845 (1941).

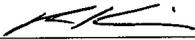
Ye and Lou further argue that equity and the UEFJA would allow Washington courts to reopen and reexamine the judgment. Brief at 14 (citing RCW 6.36.025(1)). This argument is misplaced and fails to acknowledge that Ye and Lou have already sought to reopen the case and reexamine the judgment in Oregon, which resulted in the Oregon Court denying their request to modify the judgment. Nothing in equity supports repeatedly re-litigating issues and defenses previously decided, or undermining the Oregon Circuit Court's rulings.

V. CONCLUSION

The Oregon judgment is against Stan Efferding individually, which is confirmed by the Oregon Court's denial of Ye and Lou's request to modify the judgment. The judgment was properly domesticated in Washington. Under the Uniform Enforcement of Foreign Judgments Act, Washington does not have jurisdiction to change the judgment and must enforce it. Accordingly, the trial court properly granted the Commission's motion for summary judgment allowing it to foreclose its judgment lien. For these reasons, Respondent respectfully requests this Court to affirm the decision of the trial court.

DATED this 18<sup>th</sup> day of March, 2015.

SMITH ALLING, P.S.

By   
\_\_\_\_\_  
Russell A. Knight, WSBA #40614  
Attorneys for Respondent