

No. 296725

FILED

Superior Court No. 00-204021-5

NOV 30 2011

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

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STATE OF WASHINGTON
By: _____

A & W FARMS, WILLIAM GUHLKE, and ALEX GUHLKE,

Respondents,

v.

SUNSHINE LEND LEASE, INC., a Nevada Corporation, RAYMOND
COOK, JR., and ARLENE B COOK,

Appellants,

v.

HARD ROCK CONTROL, a West Indies limited liability company,
ELDEN SORENSEN, and ADELINE JOHNSON,

Appellants.

RESPONDENTS' BRIEF IN OPPOSITION TO
APPELLANT RAYMOND E. COOK, JR.'S OPENING BRIEF

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I. INTRODUCTION.

Appellant Raymond E. Cook, Jr. ("Mr. Cook") is an adjudicated fraud. Two Spokane County Superior Court judges have made that determination in separate trials related to this case. In 2001, respondents A&W Farms, William Guhlke, and Alex Guhlke (the "Guhlkes") obtained a money judgment for fraud and attorney fees against Mr. Cook in the amount of \$121,204 plus pre-judgment interest. The judgment, which was entered after a three-day bench trial, stemmed from his fraudulent failure to pay and account for timber harvested from the Guhlkes' property. The Superior Court also entered a second money judgment against Mr. Cook in the amount of \$14,563, which was an attorney fee sanction for Mr. Cook's failure to testify truthfully during pre-judgment garnishment writ of attachment proceedings. Both money judgments remain unpaid, and they have been restated.

The Guhlkes commenced supplemental proceedings in an effort to collect on their judgments back in 2002. They discovered that Mr. Cook had purchased a 60-acre ranch in Stevens County in April 1999, but for some odd reason recorded it in his mother-in-law's name at closing – during a time when Mr. Cook faced upwards of \$1 million in creditors and

debt collection efforts against him.¹ The Guhlkes then filed a complaint to set aside this sham transaction as part of the supplemental proceeding. Thereafter, they spent years in an effort to discover information, garnish Mr. Cook's assets, and execute on their money judgments, but Mr. Cook is skilled at evading service and hiding assets. Finally, in August 2010 the Guhlkes brought their fraudulent transfer case to trial against Mr. Cook and his co-conspirator Adeline Johnson and prevailed. After three days of testimony and considering an overwhelming amount of evidence, Judge Tara Eitzen had no problem setting aside the act of putting title in the name of a strawperson as a fraudulent transfer. The Court's Opinion is based on clear, cogent, and convincing evidence of fraud and deceit.

Mr. Cook raises three technical legal arguments for why the Court's Opinion should be reversed, but he challenges none of the court's factual findings, credibility determinations, or legal conclusions.² Mr.

¹ As explained below and in the Court's Opinion, over the next 20 months the ranch property was subsequently transferred twice to insiders for no consideration.

² Mr. Cook *does* argue that "[t]here was no evidence tracing Raymond Cook's assets to the property short of the \$30,000 which was paid through an earnest money agreement." Cook App. Br. at 9. That statement is totally false. The evidence establishing that Mr. Cook *bought* this property through funds loaned to him personally from Adeline Johnson in a loan transaction that they both tried to conceal is addressed below. The record supports that finding. The loan is further explained in Respondents' Brief in Opposition to Appellant Adeline Johnson's Opening Brief.

Cook argues that the Spokane County Superior Court lacked subject matter jurisdiction to adjudicate title to real property that is located in another county, but the supplemental proceeding statute under RCW 6.32.270 expressly provides the court with such authority. Mr. Cook also argues that the statute of limitations barred the Guhlkes' complaint to set aside the fraudulent transfers. But in making that argument, Mr. Cook cites an unrelated docket entry from 2007 and erroneously asserts that it was *that event* that *initiated* the supplemental proceeding. Mr. Cook is wrong. The complaint to set aside the fraudulent transfers in this supplemental proceeding was filed in March 2002, within three years of the initial April 1999 closing and well within the limitations period. Finally, Mr. Cook urges that the trial court judge inappropriately admitted evidence in secret, and that his due process rights were violated. Again, Mr. Cook is mistaken. The sealed documents he is referring to were filed a year prior to the fraudulent transfer trial and had nothing to do with the real property at issue. At the time when the documents were sealed back in 2009, the Guhlkes were attempting to obtain bank account information for possible garnishment, and Mr. Cook's rights were not compromised.

Considering the overwhelming evidence of fraud that has been ongoing for the past 12 years, Mr. Cook's technical legal arguments should be rejected. The Court's Opinion should be affirmed.

II. ASSIGNMENTS OF ERROR.

The Guhlkes do not assign any error to the rulings of the trial court and request that the findings and ruling be upheld.

III. STATEMENT OF THE CASE.

The underlying action ancillary to this supplemental proceeding was filed on July 12, 2000. CP 1-6. In their initial complaint, the Guhlkes alleged claims for fraud, breach of contract, and timber trespass in connection with Mr. Cook's failure to pay for timber harvested from their property. *Id.* Mr. Cook filed an Answer on September 26, 2000. CP 7-15. Mr. Cook did not challenge or raise the issue of venue in his answer. *Id.* On May 18, 2001, prior to trial, the Superior Court entered a money judgment in favor of the Guhlkes in the amount of \$14,563 plus post-judgment interest, which represented attorney fee sanctions against Mr. Cook for his failure to testify truthfully in connection with pre-judgment writ of garnishment proceedings. CP 1333-1336.

The Guhlkes presented their case during a three-day bench trial in July 2001, after which the court entered judgment against Mr. Cook and his corporation, Sunshine Lend & Lease, Inc., in the amount of \$121,204. CP 24-27. Mr. Cook appealed the judgment and lost, although the case was remanded for further findings. *A & W Farms v. Sunshine Lend &*

Lease, Inc., 2003 Wash. App. LEXIS 1363, *1-2 (July 3, 2003),
reconsideration denied, 2003 Wash. App. LEXIS 2511 (Oct. 24, 2003).

On remand, the trial court judge amended his findings and conclusions to acknowledge evidence of a *prior* instance of fraud involving Mr. Cook that the Guhlkes had presented evidence about during trial. CP 175-183. Specifically, the underlying trial on the Guhlkes' claims for fraud and breach of contract involved Mr. Cook's failure to pay for volume harvested during 2000. However, on remand, the trial court amended its findings of fact and conclusions of law to acknowledge evidence of fraud regarding an *earlier* 1997 timber harvest that Mr. Cook and his other company, Deer Park Transfer, Inc., had perpetrated on the Guhlkes. CP 178; Ex. P1 at 4 ¶¶ 18-18.2. That fact was used to support Mr. Cook's lack of present intent to fully perform under the 2000 timber contract when he entered into it. *Id.*

The trial court's Amended Findings of Fact and Conclusions of Law also found that Mr. Cook had attempted to perpetrate a fraud upon the court during trial by altering three \$10,000 checks written to his mother-in-law, appellant Adeline Johnson, which were deliberately modified and introduced into evidence at trial. CP 178; Ex. P1 at 4 ¶ 18. In its amended findings, the trial court further found that Mr. Cook had spoiled evidence, engaged in clear and unequivocal attempts to hide

documents, and refused to cooperate and engaged in stonewalling and obfuscation during discovery. CP 180-81; Ex. P1 at 6 ¶¶ 27, 30(2)-(3).

While the appeal of the underlying case was pending, the Guhlkes instituted this supplemental proceeding in an effort to collect. On February 21, 2002, the Guhlkes initiated this supplemental proceeding by filing several motions for judgment debtor and third party examinations. CP 28-56. As part of their collection efforts, the Guhlkes discovered that in April 1999, Mr. Cook had purchased a 60-acre ranch in Stevens County for \$230,000, but for some reason he recorded title in the name of Adeline Johnson. CP 1226. The Guhlkes learned that Mr. Cook and his wife were the parties that had signed the original earnest money agreement binding themselves to purchase the property in 1998, RP 63; Ex. P3-4, 7, and that they had been living on the property. As of trial in 2010, they continued to live there as they had, rent-free, for the prior 12 years. RP 65.

The Guhlkes further discovered that on December 24, 2001, less than two years after the 1999 closing, purported record owner Adeline Johnson transferred the ranch property to an offshore company in the West Indies named Hard Rock Control, LLC. Ex. P8; RP 247. During her post-judgment debtor examination on March 4, 2002, Ms. Johnson admitted that the sale price was only a fraction of the initial \$230,000 purchase price – \$100,000 – that she was *never* paid by the seller, and she had no

idea where the money was. RP 247-248. In light of that information, the Guhlkes filed motions in the supplemental proceeding to join and depose not only Mr. Cook and Ms. Johnson, but the manager of the supposed West Indies LLC, Elden Sorensen, as well. CP 28-56.

The Guhlkes filed their initial Complaint to Set Aside Fraudulent Transfers as part of the supplemental proceeding on March 12, 2002. CP 70-77. In the complaint, the Guhlkes sought to set aside under the Uniform Fraudulent Transfer Act, RCW §§ 19.40.011-.903, Mr. Cook's act of purchasing the ranch in Stevens County in April 1999 but ostensibly deeding it in the name of his mother-in-law to deceive creditors. *Id.* At this time, Mr. Cook faced upwards of \$1 million in creditors, and he had already admitted to fraudulently transferring other pieces of real property to his parents during this same time period.³ Exs. P2-3, 10, 19; CP 1227-1228, 1231-1233; RP 121-137. The Guhlkes also sought to set aside two subsequent transfers of this same ranch: the second transfer mentioned above from Ms. Johnson to Hard Rock Control, LLC on December 24, 2001, for no consideration, *see* Ex. P8, and a third purported transfer for

³ At trial, Mr. Cook denied even knowing what the term "fraudulent transfer" meant until he was impeached with his prior testimony during a Chapter 341 hearing. In his testimony, Mr. Cook admitted to the judge under oath to having orchestrated prior fraudulent transfers, and he even explained to the bankruptcy judge why the conveyances qualified as fraudulent transfers. RP 129-137.

no consideration conveying the property from the off-shore LLC organized in the West Indies tax haven to its manager, Elden Sorensen, individually on January 23, 2002. *Id.*; Ex. P9.

At the time the Complaint to Set Aside Fraudulent Transfers was filed in the supplemental proceeding, the Guhlkes also recorded *lis pendens* notice with the Stevens County recorder's office to prevent further fraudulent transfer of the property pending trial on the issue of Mr. Cook's ownership. Ex. P35; CP 1227. Mr. Cook answered the fraudulent transfer complaint on August 22, 2002. CP 125-128. In his Answer, Mr. Cook did not challenge venue or raise any defense to the supplemental proceeding on the basis that it was commenced and was occurring in Spokane County Superior Court. *Id.*

In the meantime, Mr. Cook's appeal of the underlying judgments was proceeding before the Washington Court of Appeals and was not concluded following remand until well into 2004. CP 139-161, 175-183. Even though the fraudulent transfer complaint was pending and the *lis pendens* notice prevented further transfer of the property, the Guhlkes had extreme difficulty serving Mr. Cook. Although Mr. Cook had answered

the fraudulent transfer complaint, for years he evaded service of document requests and notices of his judgment debtor exam.⁴

Mr. Cook lived on the ranch property down a private road that had locked, gated access to the main public road, in a home that was nearly a half a mile from the main road. RP 74. The area is in rural northeast Washington. The trial court noted that since the underlying judgment was entered on the Guhlkes' fraud claim back in 2001, Mr. Cook had "evaded personal service approximately 20 times and refused to provide responses to subpoenas duces tecum." CP 1227 n.7. The court found that the Guhlkes had "made significant efforts during this time to identify assets of Cook," but they were "never able to execute on the judgment due to extraordinary efforts by Defendant over a number of years to avoid supplemental proceedings and execution." CP 1227.

For example, five months after the fraudulent transfer complaint was filed, on August 21, 2002, the Superior Court issued an order finding that notwithstanding his efforts at avoiding service, Mr. Cook *had* been properly served with the Guhlkes' subpoena duces tecum. CP 1337-1430. The court found that despite proper service, Mr. Cook had failed to

⁴ Mr. Cook's years of efforts to evade service in the supplemental proceeding is important in this Statement of the Case in light of his assertion that virtually "no activity" occurred in the supplemental proceeding between 2002-2007. Cook App. Br. at 2, 10.

respond with documents, failed to attend his judgment debtor examination, and that he and his wife were in contempt of court. *Id.* The court issued bench warrants for their arrest. *Id.* In the Court's Opinion, the court noted that despite proper service of this subpoena duces tecum, Mr. Cook waited nearly *eight years* to respond to it by producing the requested documents. CP 1227. The court found that "[t]en days before the trial [in August 2010] several documents that had not been seen before, and which are suspect, were produced." CP 1227 n.7. Mr. Cook had no explanation for his failure to comply at trial. RP 111-114.

Difficulty in serving Mr. Cook with papers in the supplemental proceeding was also due to his claimed extensive travel schedule abroad. Despite contending he had no means of support or income since 2000, *see* CP 246-247; RP 171, Mr. Cook "volunteered" his time during these years to a company (discussed in the Argument section below) known as Ranch Hand Tractors. As part of his often full-time "volunteering," the company sent him on business trips abroad several times annually. During 2005 and 2006, Mr. Cook made business trips to the Pacific Rim lasting 30-days at least three times annually. RP 172-173. During 2007 and 2008, his "volunteer" efforts increased and required that he travel to the Pacific Rim for month-long trips four times each year. *Id.* As a result, few docket

entries appear between 2005 and 2007 in the supplemental proceeding, despite the pendency of the fraudulent transfer complaint.

On March 16, 2007, the Guhlkes were able to serve and obtain the testimony of Mr. Cook's son, Josh Cook, who was also involved with Ranch Hand Tractors. CP 187-199. But it was not until the following year on July 21, 2008, that the Guhlkes finally succeeded in serving Mr. Cook with an amended subpoena duces tecum and document request, which required him to appear on July 29, 2008, for a debtor examination. Service was made by the Stevens County Sheriff's Office by posting service documents on the locked, gated entrance to Mr. Cook's ranch near his "Private Property No Trespassing" sign. CP 1341-1350. Mr. Cook failed to appear for the examination.

On August 18, 2008, the Guhlkes filed an affidavit and motion for Mr. Cook to appear at a show cause hearing and respond to their request for a finding of contempt and a bench warrant against him due to his failure to appear and respond. CP 200-215. On September 18, 2008, the Superior Court again ordered Mr. Cook to appear and be examined regarding his interest in real and personal property at a hearing on October 9, 2008, and to produce all documents responsive to the previously served subpoena duces tecum and requests for production. CP 223-225. Once again, to serve Mr. Cook, the Stevens County Sheriff's Office posted the

order on the locked gate to his ranch property. CP 1351-1352. Mr. Cook again failed to appear.

Not to be dissuaded, on March 13, 2009, the Guhlkes filed another supporting affidavit, CP 1356-1379, and another motion for a bench warrant and sanctions against Mr. Cook. CP 1353-1355. In their motion, the Guhlkes sought an order requiring Mr. Cook to appear and be examined and produce documents responsive to multiple prior requests for information about his several "trusts," tax information, and his interest in real property. *Id.* On March 16, 2009, Mr. Cook finally filed a *pro se* declaration with the trial court, explaining that he had been traveling outside of Washington "a great deal," and that *had* he "been served" or *had* he "known about the hearings and proceedings," he "most certainly would have been there." CP 1380-1382 (emphasis added). Mr. Cook further explained in his declaration that he had been *pro se* since 2002. *Id.* In fact, Mr. Cook had been represented by his prior counsel, attorney Dale Russell, as late as July 18, 2009. CP 201.

On May 22, 2009 the Superior Court once again ordered Mr. Cook to appear for a hearing on July 24, 2009, to be examined regarding his interest in real and personal property, and to finally produce responsive documents. CP 265-267. In the order, the court noted that Mr. Cook had failed to appear for the prior hearing, and he had failed to provide

responses to the Guhlkes' multiple document requests. *Id.* Thereafter, Mr. Cook finally appeared through his current counsel. CP 268.

Notwithstanding all of these efforts to avoid service, the fraudulent transfer complaint remained on file in the supplemental proceeding, and Mr. Cook's Answer had been pending since August 22, 2002, placing ownership of the ranch squarely at issue. CP 125-128.

In August 2010, the Guhlkes presented their fraudulent transfer case to Judge Tara Eitzen during a three-day bench trial. The case proceeded on the allegations in the Guhlkes' Amended Complaint to Set Aside Fraudulent Transfers filed April 5, 2010. CP 489-498. Following trial, the court issued a 10-page Opinion that found for the Guhlkes in all respects. CP 1225-1234.

Of significance, the court found that Mr. Cook had negotiated the purchase of the ranch in 1998, paid the \$230,000 purchase price with either his own money, or money that was loaned to him in a documented loan from Adeline Johnson, but the two co-conspirators recorded the property fraudulently in Ms. Johnson's name to deceive Mr. Cook's creditors. CP 1225-1234. Both Mr. Cook and Ms. Johnson had testified untruthfully under oath in an effort to conceal the loan between them under which Mr. Cook borrowed the purchase price from Ms. Johnson. CP 1225-1234; RP 96-102, 227-230; Exs. P4, P10-P11, D101-D102,

D107. Based on clear, cogent, and convincing evidence of fraud and deceit, the court entered judgment quieting title to the ranch in the name of Mr. Cook. CP 1234; CP 1267-70. The court also entered an order enjoining any further transfer or waste of the property pending execution of the Guhlkes' judgments. CP 1390-1392. This appeal followed.

IV. SUMMARY OF ARGUMENT.

Mr. Cook's lack of subject matter jurisdiction argument should be rejected, as it was similarly rejected by the trial court. Mr. Cook's arguments are grounded on completely unsupported facts, evidence, and statements of law. The trial court had subject matter jurisdiction to adjudicate the judgment debtor Raymond E. Cook, Jr.'s interest in the real property at issue, and the Guhlkes, as creditors seeking to collect on their judgment for fraud against Mr. Cook, did not abandon their claims.

First, Mr. Cook incorrectly asserts that the Guhlkes waited "five years" after judgment to institute supplemental proceedings challenging the ownership of real property on Dead Medicine Road in Stevens County. Opening Brief of Appellants Raymond and Arlene Cook ("Cook App. Br.") at 2. That assertion is wrong. The trial court docket shows that the Guhlkes filed a post-trial amended complaint in aid of supplemental proceedings to set aside a series of fraudulent transfers in March 2002. CP 70-77. That was within one year after judgment was entered in this case

in August 2001, *see* CP 24-27, and just months after the second fraudulent transfer of the property occurred on December 24, 2001. Ex. P8. Delay in bringing the fraudulent transfer complaint to trial was due both to a pending appeal and remand of the underlying judgment that ended well into 2004, and because of Mr. Cook's own evasiveness in resisting discovery and service during the supplemental proceeding.

Second, Mr. Cook fails to correctly interpret the relevant statute that applies when ownership of real property by a judgment debtor is at issue in a supplemental proceeding. RCW 6.32.270 provides that disputes over the judgment debtor's title to real property may be adjudicated through a supplemental proceeding to the main action in the county where judgment is entered. Mr. Cook's argument that title must be challenged in the county where the real property is located – and only in that county – ignores the plain language of RCW 6.32.270.

Third, the principle that supplemental proceedings are considered supplement to (and not separate from) the underlying proceeding in the county where judgment is entered is well-settled. *See Molander v. Ranquist-Mathwig, Inc.*, 44 Wash.App. 53, 722 P.2d 103 (1986); *Allen v. American Land Research*, 95 Wash.2d 841, 850, 631 P.2d 930, 936 (1981). To adjudicate the judgment debtor's ownership interest in real property under RCW 6.32.270, the judgment creditor is not required to

transfer the underlying action or file the supplemental proceeding to the county where the judgment debtor resides or the real property is located.

Fourth, there is no conflict between RCW 4.12.010 stating that quiet title actions regarding title to real property shall be commenced in the county in which the property lies, and RCW 6.32.270 regarding adjudication of a judgment debtor's title to real property through a supplemental proceeding. Under Washington's rules of statutory construction, the more specific statute, RCW 6.32.270, controls the more general. That construction makes abundant sense. Otherwise, the language of RCW 6.32.270 would be meaningless.

Fifth, even if Mr. Cook did once have a right to transfer venue as part of the supplemental proceeding so that trial on the Guhlkes' complaint to set aside fraudulent transfers would be held in the county where the real property is located, that right was waived when Mr. Cook answered the complaint and failed to raise such a defense. CR 12(h)(1).

Finally, Mr. Cook's argument that "secret proceedings" were held is inaccurate and completely irrelevant. The *ex parte* order that the Guhlkes' obtained during the continuing supplemental proceeding was unrelated to the asset at issue during the fraudulent transfer trial – Mr. Cook's ownership interest in real property fraudulently titled in his mother-in-law's name. The *ex parte* order was obtained a year prior to

trial pursuant to CR 45(b)(2), it involved bank account information for purposes of potential garnishment, and Mr. Cook's "secrecy" argument is without merit.

V. **ARGUMENT.**

A. **Standard of Review.**

The Court of Appeals reviews the question of whether a court has subject matter jurisdiction de novo. *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 729 (2009). Regarding Mr. Cook's assignment of error related to the denial of summary judgment based on the statute of limitations, the Court of Appeals engages in the same inquiry as the trial court. *Wilson Court Ltd. P'Ship v. Tony Maroni's*, 134 Wn.2d 692, 698 (1998). "All facts and reasonable inferences are considered in a light most favorable to the non-moving party, and all legal question are reviewed de novo." *Id.*

B. **Mr. Cook's Subject Matter Jurisdiction Argument is Without Merit.**

1. **The statutory basis for the fraudulent transfer claim is found in RCW 6.32.270, not RCW 4.12.010.**

Mr. Cook argues that the trial court in Spokane County lacked subject matter jurisdiction to determine whether he had any interest in real property in Stevens County because RCW 4.12.010 should control this case. Cook App. Br. at 4, 8-10. However, that statutory provision applies

to commencement of original *quiet title actions* and not supplemental proceedings to determine whether a judgment debtor has an unrecorded interest in real property in aid of enforcement of a money judgment. For purposes of executing on the assets of judgment debtor, the legislature specifically granted Washington courts with jurisdiction regarding "adjudication of title to property" under RCW 6.32.270, which provides:

[I]n any supplemental proceeding, where it appears to the Court that 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, the Court may, if the person or persons claiming adversely be a party to the proceeding, adjudicate the respective interests of the parties in such real or personal property, and may determine such property to be wholly or in part the property of the judgment debtor.

RCW 6.32.270 (emphases added).

Further, RCW 6.32.240, entitled "Proceedings, before whom instituted," explicitly provides the trial courts with jurisdiction over "special proceedings under this chapter [which] may be instituted and prosecuted before the superior or district *court of the county in which the judgment was entered or any judge thereof* or before the superior or district court of any county to the sheriff of which an execution has been issued or in which a transcript of said judgment has been filed in the office

of the clerk of said court or before any judge thereof." RCW 6.32.240 (emphasis added). Supplemental proceedings under RCW 6.32.270 are special in character, and the trial court has jurisdiction by statute under the supplemental jurisdiction title. *See Junkin v. Anderson*, 12 Wash.2d 58, 71, 120 P.2d 548, 554 (1941).

Thus, RCW 6.32.270 in combination with RCW 6.32.240 allows a Superior Court to adjudicate title to real property in a supplemental proceeding against a judgment debtor and other persons joined "claiming adversely" to the debtor, and the trial court in such a situation is not required to resort to RCW 4.12.010 for its jurisdiction. The Superior Court correctly adjudicated the Guhlkes' fraudulent transfer claims under RCW §§ 6.32.240, .270 and concluded, following trial, that Mr. Cook owned the real property, despite his and Adeline Johnson's shenanigans to conceal his ownership. CP 1225-1234. Mr. Cook's proposed interpretation of the trial court's jurisdiction is obviously flawed. RCW 6.32.270 states that "*In any supplemental proceeding . . . the court may adjudicate the respective interests of the parties in such real property.*" (emphasis added.)

Mr. Cook's construction of RCW 6.32.240, arguing that jurisdiction should be limited by actions to quiet title under RCW 4.12.010, nullifies the grant of jurisdiction in RCW 6.32.270 and

circumscribes the trial court's authority. His proposed construction is untenable because instead of harmonizing the statutes, he proposes to render a portion of one meaningless and allow a more general statute to prevail over a more specific grant of jurisdiction under RCW 6.32.270. The Court should reject that interpretation. *See AOL, LLC v. Washington State Dept. of Revenue*, 149 Wash.App. 533, 549 n.19, 205 P.3d 159, 167, n.19 (2009) ("Our reading of the these statutes comports with two well-settled principles of statutory construction: (1) read related statutes together to harmonize provisions and to give meaning to all language insofar as possible; and (2) specific statutes prevail over general statutes.").⁵

In summary, the Superior Court is a court of general jurisdiction. In adjudicating the judgment debtor's interest in real property, which he substantially disclaimed, the court was exercising special authority under RCW 6.32.240. The record owner Adeline Johnson was properly made a party to the proceeding, and the judgment debtor's lack of subject matter jurisdiction argument is without merit.

⁵ *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (Wash. 1956), cited by Mr. Cook, involved an *original* quiet title action and does not address jurisdiction in proceedings governed by RCW 6.32.270, making it inapplicable to this matter.

2. **The judgment debtor was properly before the trial court.**

The trial court ruled on multiple occasions that it was proper to examine the judgment debtor in Spokane county, which is the county where the fraud judgment was initially entered against him. That conclusion is supported by the cases. The Superior Court had continuing authority to determine whether Mr. Cook had an unrecorded ownership interest in real property situated in another county at trial during 2010.

Contrary to Mr. Cook's argument, RCW 6.32.190 does not deprive the trial court of jurisdiction over individuals who live outside the county where that same court has previously rendered judgment against that very individual. The statute does not prevent compelling attendance of a nonresident garnishee defendant *in proceedings in which the judgment debtor has appeared and answered*. *State v. Superior Court for King County*, 277 P. 850, 851-52, 152 Wash. 323, 327-27 (1929). As the Washington Supreme Court has explained:

Proceedings supplementary to execution are not a new suit or separate action. They are simply a step in aid of the satisfaction of the judgment of the court by proceedings ancillary to the judgment, the validity of which the debtor does not question.

New York authorities cited are not applicable. In that state a proceeding supplementary to execution is not a part of the original action, but independent thereof, while in this state the proceeding is auxiliary to the original action and a

continuance thereof. The provisions of the statutes of the two states are dissimilar.

Id.

In another Washington case, the defendant appealed a judgment against him and argued that supplemental proceedings were improper because he did not reside in that county. This Court disagreed, explaining:

Next Mr. Raugust states the court erred in requiring him to appear in Spokane County Superior Court for a hearing pursuant to RCW 6.32.190, when he neither resided nor maintained a business in Spokane County. *State ex. rel. McDowall v. King Cy. Superior Ct.*, 152 Wash. 323, 277 P. 850 (1929) determined that the examination of a judgment debtor is not an independent action, but is ancillary to and a continuation of the original action. *When Mr. Raugust did not challenge venue in the original action, he waived it.* CR 12(h)(1).

Molander v. Raugust-Mathwig, Inc., 44 Wash.App. 53, 68, 722 P.2d 103, 112 (1986) (emphasis added); *see also Allen v. American Land Research*, 95 Wash.2d 841, 850, 631 P.2d 930, 936 (1981) ("We view the supplemental proceedings here as ancillary to the original suit. The Court had continuing jurisdiction over the parties here by virtue of the original summons, process and appearances in the action.").⁶

⁶ Mr. Cook claimed he was a resident of Spokane County during the initial trial in July 2001. RP 65-72. He should not be allowed to change counties to avoid the supplemental proceeding, particularly where he admitted to residing in the county where a fraud judgment was entered against him, and where he failed to object to venue in that county during either the original case or supplemental proceeding.

These cases interpreting whether a judgment debtor can be made to appear for supplemental proceedings in the county where a judgment was entered support the Guhlkes' interpretation that supplemental proceedings under RCW 6.32.270 to adjudicate the judgment debtor's interest in real property may *also* proceed in the county where the judgment was entered. The plain language of the statute supports that interpretation. Mr. Cook ignores the plain language and unreasonably insists that all actions affecting title to real property must be quiet title actions and may only be brought in the country where the real property is situated. That argument should be rejected.

3. Mr. Cook waived any change of venue.

Consistent with above quote from the *Molander* decision, Mr. Cook waived any venue argument when he appeared in the underlying timber trespass and fraud trial back in 2001 without objecting to venue in Spokane County. CP 7-15. CR 12(h)(1) provides that "[a] defense of . . . improper venue . . . is waived (A) if omitted from a motion in the circumstances described in section (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course."

Mr. Cook also failed to object to venue in his Answer to the fraudulent transfer complaint filed in the supplemental proceeding regarding ownership of the Stevens County property. CP 125-128. Thus, the trial court had jurisdiction pursuant RCW 6.32.270 to conduct a trial on the Guhlkes' claims to set aside a series of fraudulent transfers involving real property in Stevens County. To the extent Mr. Cook had grounds to object to venue or request a transfer of either the underlying case or the supplemental proceeding on this issue to Stevens County, he waived that challenge. CR 12(h)(1); *Molander*, 44 Wash.App. at 68.

C. **The Complaint to Set Aside Fraudulent Transfers Was Commenced Within the Limitations Period.**

Contrary to Mr. Cook's argument, the complaint in this supplemental proceeding to set aside fraudulent transfers was brought well within the limitations period as required under RCW 19.40.091. Mr. Cook argues that this "supplemental proceeding was instituted March 16, 2007," which he asserts is more than four years after the transfers of the property occurred on April 15, 1999 and December 24, 2001. Cook App. Br. at 10. Mr. Cook is wrong.⁷ The Guhlkes filed their claims to set aside fraudulent

⁷ Mr. Cook has changed attorneys and hired, terminated, and then rehired the same attorney during the course of this proceeding. Until shortly before the fraudulent transfer trial in August 2010, Mr. Cook and his wife were represented by attorney Dale Russell. Mr. Cook's current counsel

transfers in a complaint filed March 12, 2002, CP 70-77, which was amended on March 21, 2002, CP 98-103, and further amended on April 1, 2010 as a matter of housekeeping only – to attach a correct exhibit. CP 489-498. The initial 2002 filing of the fraudulent transfer complaint was well within four years of the real property transfers.⁸

During that time, the underlying judgment for fraud that was entered in 2001 was being appealed by Mr. Cook. *See A & W Farms v. Sunshine Lend & Lease, Inc.*, 2003 Wash. App. LEXIS 1363, *1-2 (July 3, 2003), *reconsideration denied*, 2003 Wash. App. LEXIS 2511 (Oct. 24, 2003). The case was eventually remanded back to Judge Bastine, who entered Amended Findings of Fact and Conclusions of Law supporting the fraud judgment. CP 175-183. Specifically, in April 2004, Judge Bastine entered a restated money judgment in favor of the Guhlkes that was supported by claims for fraud and breach of contract. *Id.*; *see also* CP 184-186. Thereafter, through 2009, the Guhlkes made countless attempts to serve Mr. Cook with a subpoena duces tecum, and numerous attempts at

has only been attorney of record for a relatively short time. As a result, this may explain some misunderstanding of the court docket.

⁸ Under CR 15(c), an amended complaint "relates back to the date of the original pleading." The rule pertaining to relation back of amendments and that leave for amendment shall be freely given when justice so requires means the rule is to be liberally applied. *Culpepper v. Snohomish County Dep't of Planning & Community Dev.*, 59 Wash.App. 166, 796 P.2d 1285 (1990), *review denied*, 116 Wn.2d 1008, 805 P.2d 813 (1991).

personal service were made by the Sheriff, which were either unsuccessful or, if successful, resulted in Mr. Cook failing to appear. *See* CP 1356-1379 (attaching affidavits, court order, subpoenas, document requests, and returns of service documenting prolonged efforts to serve Mr. Cook).⁹

At trial in 2010, Mr. Cook testified that during this time he was spending a significant portion of the year out of the country in Asia, RP 115, 171-173, and while at home, he lived nearly one-half mile beyond a locked gate in the ranch home that he had recorded in his mother-in-law's name. RP 74. Collection efforts thus were difficult to say the least.¹⁰

⁹ Those efforts were noted by Judge Tara Eitzen in her opinion following the fraudulent trial in 2010. CP 1227 n.7.

¹⁰ Mr. Cook's efforts to evade service went far beyond those described above in the Statement of the Case. At trial in 2010, Mr. Cook testified that he had lived at the Stevens County ranch continuously for 12 years. RP 65. Yet, service by mail was unsuccessful with documents returned "unclaimed." CP 1384-1389. When the process server approached his wife, Arlene Cook, at the ranch on June 25, 2009, she said that he was not home, that she had no way to contact him, and she threatened the process server with a "loose bull running" on the property. *Id.* Moments later, Mr. Cook appeared at the door but refused to take the papers. *Id.* And two weeks earlier on June 11, 2009, when the Stevens County Sheriff's Office attempted service at the ranch, Mrs. Cook advised the Deputy that "Mr. Cook no longer lived at that location." CP 1383. Mrs. Cook also claimed that Mr. Cook was out of the country until July 24, 2009, yet he was personally served by the process server (inside the State of Washington) on June 25, 2009. CP 1384-1389. These are just a few examples of efforts to evade service during two months in 2009.

The much later March 16, 2007 date in the trial court docket that Mr. Cook *argues* is when the supplemental proceedings were commenced is simply *part* of the continuing supplemental proceeding – a motion to depose a third party. Specifically, the March 16, 2007 docket entry is a *motion* to conduct the deposition of Mr. Cook's son, Josh Cook, under RCW 6.32.030. CP 187-189. That statute provides that third parties may be brought in for examination under oath by the judgment creditor as part of the supplemental proceeding.

Thus, the fraudulent transfer complaint that was filed in this supplemental proceeding was brought in March 2002, well within the statutory time limit. Mr. Cook's reference to this March 16, 2007 docket entry and his insistence that the supplemental proceedings were commenced for the first time years later during 2007 is simply wrong.

D. The Trial Court Did Not Admit Evidence in Secret Ex Parte.

Finally, Mr. Cook complains that the Guhlkes inappropriately submitted evidence *ex parte* that was sealed, and in doing so violated GR 15(c) and Mr. Cook's due process rights because of this "secret" sealing. Cook App. Br. at 14-17. Mr. Cook's explanation of this event is inaccurate. The Guhlkes' *ex parte* motion had nothing to do with the asset at issue in the fraudulent transfer trial. The *ex parte* motion that was filed

in the supplemental proceeding was submitted a year earlier during 2009, and it had nothing to do with the real property at issue. As explained below, the motion was an attempt to learn about other banking assets.

On August 17, 2009, the Guhlkes filed an *ex parte* motion in aid of collection against Mr. Cook after they had attempted to collect on their judgment against him individually for fraud and it remained unpaid for nearly nine years. CP 278-282, 370-372. Based on evidence suggesting that Mr. Cook had – for the better part of a decade – continued to live in a manner to deceive creditors, the motion was filed *ex parte* and requested that the court allow service of a bank subpoena without notice to the other parties in this supplemental proceeding pursuant to CR 45(c) in order to prevent assets from being withdrawn before a garnishment could be successful. CP 283-369, 373-375. The Guhlkes' *ex parte* motion explained how Mr. Cook continued to live abundantly, in plain view, but beyond the reach of his creditors. *Id.*

In addition to living "rent-free" on the ranch Mr. Cook claimed belonged to his mother-in-law, Mr. Cook contended that he had no source of income, CP 241-242, despite "volunteering" his work for free to an LLC and sheltering himself behind the veil of a family trust. Mr. Cook was the President of an LLC named "Golden Opportunities and/or Ranch Hand Tractors, LLC." CP 283-369, Exs. 2 & 4 at 61:5-25. The manager

of this confusingly-named LLC was Golden Resources, Inc. *Id.* at Ex. 2. Mr. Cook was the president of Golden Resources, Inc. *Id.* at Ex. 3. The stock of Golden Resources, Inc. was owned by the Heritage Irrevocable Trust. *Id.*, Exs.4 at 61:17-18 & 5.

During a debtor examination on July 24, 2009, Mr. Cook testified that he rearranged the corporate form so that Ranch Hand Tractors is a dba of Golden Resources, Inc. *Id.*, Ex. 4 at 61:20-22. Mr. Cook testified that he was the President of Golden Resources dba Ranch Hand Tractors *id.*, Ex. 4 at 75:5-6, and that the company had no employees. *Id.*, Ex. 4, 28:17-25. Mr. Cook further testified that the only phone in his home on the ranch was a company phone paid for by the company *id.*, Ex. 4 at 19:21-24, that he and his wife made personal calls on the phone *id.*, Ex. 4 at 24:3-15, that Ranch Hand Tractors maintained an office in his house *id.*, Ex. 4 at 19:4-16, that Ranch Hand Tractors paid for his utilities *id.*, Ex. 4 at 18:17-25; 19:1-3, 10-12, his satellite internet connection *id.*, and the land line in the house. *Id.*, Ex. 4 at 19:10-12, 20-12. Mr. Cook explained that the corporation paid for these personal expenses in exchange for him "volunteering" his time working for the company. *Id.* at Ex. 4, 18:17-25; 19:1-3; 35:8-20. That entire agreement was presumptively an abuse of the corporate form to help Mr. Cook avoid creditors.

Mr. Cook further stated in his deposition and during the August 2010 trial that he "volunteered" working for the corporation between 20-40 hours per week. RP 169-171. He denied any sort of compensation for this full-time "volunteering." *Id.* He also stated in his answer to requests for production of documents that he had no taxable income and had not filed a personal income tax return for any year after 2000. CP 283-369, Ex. 7. The Heritage Irrevocable Trust that owned Golden Resources, Inc.'s stock also owned the real property where the company maintained its principal place of business. *Id.*, Ex. 6. Mr. Cook and his wife Arlene Cook were grantors of the Heritage Irrevocable Trust and had personally guaranteed payment for over \$300,000 under a real estate contract to purchase the business property where Ranch Hand Tractors operated. *Id.*, Ex. 4 at 63:1-25, 64:1-17. Consequently, the Guhlkes asserted in their *ex parte* motion to issue the subpoena without notice under CR 45(c) that Mr. Cook appeared to be inappropriately using the corporation as an alter ego, and that grounds existed to disregard the corporate entity and treat the corporate assets as Mr. Cook's individual assets.¹¹

¹¹ To further explain Mr. Cook's financial "story," the Heritage Irrevocable Trust was established in the late 1990s by Mr. Cook and his wife at a time when he was defrauding the Guhlkes out of timber and being sued individually under personal guarantees by PetroCard Systems for \$84,451, RP 119-123, 174, 178-179; Pls.' Ex. 19 & Ex. A, and Inland Financial for \$620,000. RP 124-126. To fund this family trust, Mr. Cook

The Guhlkes had previously subpoenaed information about Mr. Cook and his business accounts, but upon notice, Mr. Cook withdrew funds from the accounts before garnishment. CP 283-369 ¶ 8. In their *ex parte* motion, the Guhlkes explained the need to determine whether funds from the corporations were being used by Mr. Cook for personal gain such that the accounts *could* be garnished. However, prior to garnishing the accounts, the Guhlkes, through counsel, sought to examine the bank records, if any, for the corporations and the trust. Bank records for one of the companies were at Bank of America. *Id.*, Ex. 4 at 60:1-12.

Earlier in the litigation prior to the underlying trial of timber trespass, fraud, and breach of contract, the Guhlkes had subpoenaed certain checks and established at trial that Mr. Cook had fraudulently altered checks. Mr. Cook had written the three \$10,000 checks to Adeline

transferred \$536,000 in business assets belonging to Deer Park Transfer, Inc. to himself personally, and then gifted the assets along with all of his and his wife's personal assets to a new company, Sunshine Lend and Lease, Inc., in exchange for its stock. RP 137-145, 300. Mr. Cook then donated all of the stock to the trust. RP 139-140, 179. This series of transactions took five minutes with his then-attorney, Dale Russell. *Id.* Curiously, Mr. Cook never read the trust instrument before signing it, and as of 2009 still claimed that he had never seen the trust instrument and did not know who the trustee was. RP 145. Deer Park Transfer, Inc. then filed for bankruptcy, RP 309-311; Ex. D114. Mr. Cook's feigned ignorance about either trust and his claimed "volunteering" made little sense given that he intended to retire on Deer Part Transfer's assets or ensure that they served as his children's inheritance, *id.*, especially given that he claimed he had no source of income since the year 2000. RP 145-146; CP 246-247.

Johnson but then altered them after they had been deposited and returned from the bank along with the bank statements for record keeping by Mr. Cook, the account holder.¹² Mr. Cook then offered the altered checks into evidence at trial, but the Guhlkes were prepared for such deceit, and Judge Bastine used the evidence to support the judgment for fraud. Ex. P1 ¶ 18.

Given all of the above evidence showing the great lengths Mr. Cook would go to in an effort to deceive and hide his means of livelihood, the Guhlkes sought an *ex parte* order to subpoena records from Bank of America without notice to the parties in the supplemental proceeding. CP 278-282. On August 24, 2009, and for "good cause shown," the court granted the Guhlkes' motion and allowed service of the subpoena without notice to Mr. Cook under CR 45." CP 278-375. The documents that were sealed consisted of the Guhlkes' motion and supporting affidavit of counsel, and the recipient of the subpoena was ordered "not to inform any of the defendants and account holders about the subpoena." *Id.* After serving the subpoena, no assets were garnished, and the judgments remain unsatisfied to this day.

¹² This was back in 1999/2000 prior to the digital age, when banks actually mailed monthly statements and returned the originals of all checks which had been negotiated each month to the account holder for record keeping. Mr. Cook took the liberty of altering those checks after they had been returned to him, but Judge Bastine caught him during the 2001 fraud trial. Ex. P1 ¶ 18.

Mr. Cook's "secrecy" argument is without merit. Under CR 45, the court had full authority to allow discovery of this banking information without the knowledge of Mr. Cook. The rule provides:

A subpoena commanding production of documents and things, or inspection of premises, without a command to appear for deposition, hearing or trial, shall be served on each party in the manner prescribed by rule 5(b). Such service shall be made no fewer than five days prior to service of the subpoena on the person named therein, *unless* the parties otherwise agree or *the court otherwise orders for good cause shown. A motion for such an order may be made ex parte.*

CR 45(b)(2). Moreover, the Guhlkes never garnished any of Mr. Cook's assets – from anyone, including Bank of America. Had the Guhlkes sought to do so, Washington's statutes governing garnishment procedures, notice, opportunities to object, and the ability to claim exempt property would have applied. Instead, no assets were uncovered, and the case went to trial on the Guhlkes' claims of fraudulent transfers regarding an entirely different real property asset a year later.

This issue is thus irrelevant to the appeal at hand. The fact that a subpoena was served on Bank of American was never raised at trial, and the entire matter is a non-issue. Mr. Cook cannot make a colorable claim that this event had any effect on the trial court judge who heard testimony and considered evidence of fraudulent transfers over a three-day trial that occurred a year later and involved real property in Stevens County.

VI. CONCLUSION.

For the reasons set forth above, the decision of the trial court should be upheld.

Dated this 28th day of November, 2011.

Respectfully Submitted,

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