

Court of Appeals No. 347893  
Walla Walla County Sup. Ct. No. 16-2-00215-4



**IN THE  
COURT OF APPEALS  
FOR THE STATE OF WASHINGTON**

**FILED**

**DIVISION III**

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MAY 24 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**BANNER BANK;**  
*Respondent / Plaintiff*

— vs. —

**RUNNING MC RANCH, a Washington partnership;**  
**JESSE MCCAWE and KATE MCCAWE, husband and wife;**  
*Petitioners / Defendants*

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**ON REQUEST FOR APPEAL FROM THE SUPERIOR COURT OF  
WASHINGTON IN AND FOR THE COUNTY OF WALLA WALLA**

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**APPELLANTS' REPLY BRIEF**

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## SUMMARY OF REPLY

The certification requirements of C.R. 54(b) are a matter of well-settled law and it is beyond dispute that they were not met in this case.

Aside from the lack of any “express determination” in the judgment or other order that there existed “no just reason for delay” for entry of a judgment, there were also no written findings supporting that such a determination was ever actually made or considered.

Seemingly acknowledging the lack of any express determination, Banner Bank appears to argue that the Superior Court’s “Letter Decision” supports the entry of the JUDGMENT AGAINST DEFENDANTS RUNNING MC RANCH AND MCCAWS (hereinafter “JUDGMENT”) because it contains language which Banner Bank contends could constitute those “written findings” required by C.R. 54(b).

However, *none* of the Superior Court’s decisions or JUDGMENT contain any reference whatsoever to the considerations of those factors attendant in a C.R. 54(b) determination and, aside from the point that C.R. 54(b) certifications must be “express” rather than “inferred”, there simply is no reasonable basis from which to conclude that the Court ever weighed or considered the relative necessity of an interim judgment, as opposed to

merely an order granting partial summary judgment, being entered prior to the resolve of all the claims against all parties.<sup>1</sup>

Banner Bank goes on to argue that, even in the event it is determined that the Court's JUDGMENT (Clerk's Papers ("CP") 199-201) did not comply with the provisions of C.R. 54(b), then the Appellants should be determined to lack any right to appeal the entry of the judgment because it was not "final" for purposes of appeal.

In doing so, Banner Bank ultimately criticizes the Appellants for not designating their appeal as seeking "discretionary review" given the Appellants position that a final judgment should not have entered due to the lack of C.R. 54(b) certification.

While facially this argument might appear reasonable, it ultimately asks the Court ignore the reality that the JUDGMENT *was* actually entered and entered into the Walla Walla Superior Court Clerk's execution docket, an act which carried all the force, weight, and finality that any other judgment would have under normal circumstances.

That is to say, a judgment *was* actually entered and, while it is certainly argued that the judgment should not have been entered due to the

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<sup>1</sup> Aside from the point that "findings" within a summary judgment order are deemed superfluous on appeal, no such "findings" or any other written expression is at all related to C.R. 54(b) or in the nature of those factors which might be properly considered thereunder.

lack of adherence to C.R. 54(b), the legal argument that it should not have been entered does not mean that the judgment was not, *in fact*, entered, albeit prematurely.

To deny the Appellants the right to appeal the existing JUDGMENT is to effectively require that the Appellants instead suffer with the existence of the JUDGMENT, as it listed in the Clerk's execution docket, until the balance of claims against the remaining parties are resolved. Subjecting the Appellants to an existing judgment without the immediate right to appeal would be to deny them any adequate remedy.

#### **RESTATEMENT OF ASSIGNMENTS OF ERROR**

In its briefing, Banner Bank criticizes the Appellants for failing to denominate a specific section in their brief entitled "Assignment of Errors". This criticism is accepted to some degree insofar as the Appellants did not specifically delineate a section so entitled.

However, the Appellants' table of contents *did*, up front, provide succinct, substantive headings clearly identifying those specific issues for which the Appellants contend that the Superior Court committed error. To that end, Banner Bank readily and correctly identified those very issues and did itself provide a corresponding response.<sup>2</sup>

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At page 15 of BRIEF OF RESPONDENT, BANNER BANK, the Appellee writes:

To concisely reiterate those issues raised, and to re-state them as exactly was stated in the headings, the Appellants have claimed error as to the proceedings below as follows:

1. The Judgment Does Not Adhere to the Requirements of C.R. 54(b) and Should Not Be Considered a Final Judgment.
2. The Judgment Should Be Vacated for Irregularity as to the Timing of its Entry Which Was Prejudicial to Appellants.
3. The Entry of Judgment Should be Deemed to Have Lacked Any Legal Effect.

Appellants' OPENING BRIEF (filed herein on March 22<sup>nd</sup>, 2017) at page "ii".

Banner Bank's request that the appeal be "dismissed outright" as a consequence for failing to "assign error" is an excessive demand which is more likely intended to avoid any consideration and determination as to the merits of the parties' substantive arguments.

Banner Bank also argues, with apparent emphasis, that the appeal should be "dismissed outright" because the Appellants appended to their

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Having raised no assignment(s) of error, Appellants also fail to set forth any specific issue( s) presented in this appeal. Gleaning a statement of issues from their Table of Contents, Appellants appear to assert three primary legal issues for determination: 1. The Judgment is not a "final judgment" because it does not, itself, cite to CR 54(b ); 2. The Judgment should be vacated as prejudicial; and 3. Entry of the Judgment should be somehow deemed to have "lacked any legal effect." For the reasons and under the authority set forth herein, none of these issues raised by Appellants offer any sufficient or legitimate basis on which to prevail in this appeal.

NOTICE OF APPEAL (CP 205-211) a copy of the JUDGMENT itself as that which they intended to appeal, and did not also attach copies of the Superior Court's "Letter from Judge Lohrmann" (CP 193-195) and ORDER GRANTING PLAINTIFF BANNER BANK'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS MCCAWS AND RUNNING MC RANCH AND DENYING SUMMARY JUDGMENT AS TO DOUBLE J FARMS (CP 196-198).

Banner Bank's argument in this regard overlooks that the fundamental premise of the Appellants in this appeal is that the JUDGMENT *itself* should not have been entered and thus, was properly designated as the matter being appealed.

As the Appellants themselves designated the record to include each of those items referenced above, it is difficult to fathom any basis for concluding that any lack of "notice" was sufficiently provided, particularly as none of the documents in the underlying record contain any C.R. 54(b) certification or findings and, above all else, it was the entry of the judgment itself for which error is primary claimed.

**RESPONSE TO BANNER BANK'S  
STATEMENT OF THE CASE**

Though the matters appealed by the Appellants are procedural in nature, Banner Bank devotes considerable briefing to providing an in-depth account of the loan involved in the underlying case.

Because the exhaustive details as to the underlying loan are not pertinent to the matters raised by Appellants, and in the interests of economy, the Appellants will not seek to respond at length to Banner Bank's factual recitation in that regard.

Instead, suffice it to reiterate that, Banner Bank's COMPLAINT named three Defendants in a lawsuit seeking to collect upon a defaulted loan and, in doing so, sought ostensibly brought two primary claims for relief seeking: (1) a finding of liability against Running MC Ranch and Jesse and Kate McCaw as debtors and/or obligors under a promissory note and security documents; and (2) a finding of joint and several liability for the same obligation as against Double J. Farms, LLC, an entity wholly owned by Jesse and Kate McCaw, as it was claimed to be the "successor" to the other Defendants and their assets. *See generally* COMPLAINT, CP at 7-36.

In ruling upon a summary judgment motion filed by Banner Bank, and following oral argument of the parties on August 29<sup>th</sup>, 2017, the Superior Court entered its ORDER GRANTING PLAINTIFF BANNER BANK'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS MCCAWS AND RUNNING MC RANCH AND DENYING SUMMARY JUDGMENT AS TO DOUBLE J FARMS on September 7<sup>th</sup>, 2017, nine (9) days later, which, as its title suggests, granted summary judgment as to only two (2) of the three (3) Defendants. CP at 196-198. That same day, the Court also entered its

JUDGMENT AGAINST DEFENDANTS RUNNING MC RANCH AND MCCAWS.  
CP at 199-201.

Washington State Court's online case records reflect that the Clerk of the Walla Walla Superior Court entered the JUDGMENT into the "Execution Docket" on the day that it was signed, *i.e.*, September 7<sup>th</sup>, 2016. *See, e.g.*, "Appendix 1", *available at* <https://dw.courts.wa.gov/>.

### **LEGAL ANALYSIS**

#### **1. The Appellants Are Entitled to Appeal Entry of the Judgment Against them as a Matter of Right.**

The Rules of Appellate Procedure (RAP) entitle a party to appeal from a "final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs." RAP 2.2.

Though it strenuously argues that the "Judgment" entered in this case was and should be regarded as a final judgment, Banner Bank appears to argue in the alternative that, if it is deemed on appeal that the Superior Court's JUDGMENT did not meet the requirements of C.R. 54(b) then the JUDGMENT could not be a final judgment per se and the Appellants would, as a consequence, have no basis for appeal of the JUDGMENT "as a matter of right".

Banner Bank's argument in this regard inherently offers that this Court could only reach one of two conclusions, *i.e.*, that either a final judgment

was appropriately entered (the JUDGMENT having “impliedly” met the requirements of C.R. 54) or, alternatively, that the JUDGMENT was not properly entered and its improper entry would automatically “deem” the JUDGMENT as merely interlocutory in nature and correspondingly divest the Appellants of any right to appeal the same.

However, Banner Bank’s “either/or” rationalization in this regard presents the logical fallacy that only one of the two circumstances could be concluded. That is to say, just because the Superior Court failed to comply with the provisions of C.R. 54(b) does not mean that a “final judgment” was not actually entered anyway, albeit in error.

To elaborate on this point, it is not uncommon to hear attorneys and judges refer to “final” judgments with the intention of differentiating from a “non-final” or “interlocutory” judgment of sorts. Certainly it is recognized that RAP 2.2 speaks to “final judgments” which would lead the average to attorney to conclude that a “final judgment” is to be contrasted against some of type of non-final judgment, lest the term “final” be deemed redundant.

However, though the terminology might very well be innocently used in other contexts, the Wash. State Superior Court Rules of Civil Procedure do not actually offer any basis for such a distinction. That is, there is no

such thing as an “interlocutory judgment” if the Civil Rules are properly observed.

Instead, C.R. 54(a)(1) specifically defines the term “judgment” as follows:

A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58.

C.R. 54(a)(1) (emphasis added).

Thus, the term “judgment”, as defined by C.R. 54(a)(1), expressly contemplates that a “judgment” is in and of itself a “final” determination. As to all other determinations in a case, such are deemed merely an “order” which is defined by C.R. 54(a)(2) as follows:

Every direction of a court or judge, made or entered in writing, not included in judgment, is denominated an order.

Thus, C.R. 54(b) does not put to the Superior Court the option to determine whether its entry of a proposed “judgment” should be considered “interlocutory” or “final” in circumstances existing before all of the claims against all parties are resolved. Instead, C.R. 54(b) merely provides a certain procedure by which a Court *may* enter a “judgment”, as opposed to an “order or other form of decision” that is “subject to revision at any time *before* the entry of a judgment adjudicating all the claims and the rights and liability of all parties”. C.R. 54(b).

In other words, C.R. 54(b) provides the Superior Court with a mechanism by which it might decide to enter an actual “judgment” versus an interlocutory *order* indicating that a party is entitled to a judgment.

The Appellee appears to argue that, if this Court were to determine (as it should) that C.R. 54(b)’s requirements were not met, then this Court should flatly reject the appeal on its face because a “final judgment” had not been entered. This position is irrational for several reasons.

First, the lack of compliance with C.R. 54(b) is a central aspect of the Appellants’ claims to this Court, *i.e.*, that a judgment against them was erroneously entered in the first place.

Second, while of course the Appellants would agree that a “final judgment” should not be entered in circumstances where C.R. 54(b) applies and its requirements are not met, it is equally recognized that, notwithstanding the failure to comply with C.R. 54(b), a judgment, inherently final as all any “judgment” is defined to be, was in fact entered against them. For all practical purposes, a “judgment”, whether entered erroneously or not, remains a binding decision until it is corrected.<sup>3</sup>

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<sup>3</sup> “[T]he power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that is correct until set aside or corrected in a manner provided by law.” Freeman on Judgments, 5th Ed., s 357, p. 744. (citing *Robertson v. Commonwealth*, 181 Va. 520, 25 S.E.2d 352, 146 A.L.R. 966 (1943)).

It should also be recognized that the provisions of Wash. Rev. Code § 4.56 (concerning judgments generally), Wash. Rev. Code § 4.64 *et. seq.* (concerning entry of judgment generally), and Title 6 of the Wash. Rev. Code (concerning the enforcement of judgments generally), collectively offer no basis for making any distinction between a so-called “interlocutory” judgment versus “final” judgment.

Instead, as an example, Wash. Rev. Code § 4.56.190, explicitly provides that, upon entry of a “judgment” into the Clerk’s Execution Docket, the “real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the ... superior court....”

Thus, from a real-world perspective, the entry of the “Judgment” into the Clerk’s Execution Docket sends an unequivocal message and “actual notice” to all persons that an enforceable judgment, subject to execution, has been affirmatively entered and a judgment debtor is, from that point forward, effectively hindered in its access to credit or to deal with its own real property, the same having been rendered subject to an existing judgment of record.

Thirdly, in past case the Court of Appeals has heard, ruled upon, and ultimately determined, as part of an appeal, that the requirements of C.R. 54(b) had not been adhered to and thus the judgment, even though entered,

should be vacated. *See, e.g., Fluor Enterprises, Inc. v. Walter Const., Ltd.*, 141 Wash. App. 761 (2007).

**2. Rejecting the Appeal, Without Ruling that the Judgment Was Not Appropriately Entered and Should Not Have Been Entered, Would Effectively Undermine the Very Purposes of C.R. 54(b) in the First Place.**

As stated by the Court of Appeals in *Loeffelholz*:

[T]here are at least three clear reasons have been found to exist to delay the entry of any final judgment until all claims against all parties have been resolved: (1) to offset judgments favorable to each side before any enforcement activity takes place; (2) to preclude the disruptive effects of enforcement and appellate activity while trial court proceedings are still ongoing; and (3) to avoid a multiplicity of appeals.

*Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wash. App. 665, 694 (Div. 2 2004) (emphasis added).

With those principles in mind, a Superior Court should consider a number of factors:

In determining whether there is no just reason for delay, the trial court should consider the following five factors: (1) The relationship between the adjudicated and the unadjudicated claims, (2) whether questions which would be reviewed on appeal are still before the trial court for determination in the unadjudicated portion of the case, (3) whether it is likely that the need for review may be mooted by future developments in the trial court, (4) whether an immediate appeal will delay the trial of the unadjudicated matters without gaining any offsetting advantage in terms of the simplification and facilitation of that trial, and (5) the practical effects of allowing an immediate appeal.

*Gull Indus., Inc. v. State Farm Fire & Cas. Co.*, 181 Wash. App. 463, 480 (2014).

Though this appeal inherently raises the possibility of the “multiplicity of appeals”, the allowance of the existing JUDGMENT to stand and be enforced against some of the Appellants in the interests of “economy” are surely not the result intended by C.R. 54(b)’s underlying principles insofar as such a result would directly offend the corresponding principle that “disruptive enforcement activity” should be avoided until the case is fully resolved.

In the present case, the JUDGMENT entered by the Superior Court specifically provided: “ORDERED that Banner Bank is entitled to take any action at law, equity, or pursuant to its loan documents to enforce this Judgment and/or foreclose on its security interest in any of its collateral.”

On the same day that the JUDGMENT was entered, September 7<sup>th</sup>, 2016, the Walla Walla Superior Court Clerk filed the JUDGMENT in the Execution Docket.

Upon filing, per Wash. Rev. Code § 4.56.190, the judgment effectively encumbered the judgment debtor’s real property and their access to credit.

Thus, as of entry, and pursuant to the express terms of the JUDGMENT itself, an *enforceable* judgment, and the associated prejudices attributable thereto, existed.

On a practical level, the entry of judgment effectively put the McCaws in the position where they would be required to both respond to and cope with enforcement as against them personally, while also litigating with respect to the remaining Defendant (wholly-owned by the McCaws), Double J. Farms, LLC whose own assets may (or may not) have also been available to satisfy the judgment *if* the LLC's liability was also determined by the Superior Court, a matter of meaningful consequence.

However, the McCaws' realistic ability to effectively litigate such matters or to otherwise fully contemplate their options in rendering a satisfaction to the judgment was sincerely jeopardized in so far as they were put effectively put in that position where they were to operate on "separate fronts" insofar as they were subject to the enforcement of a judgment while many key matters were still left unresolved.

In sum, if the appealability of the JUDGMENT is argued to be premature, it must be correspondingly accepted then that the entry of a judgment, which by its own terms was subject to execution and which itself was filed into the execution docket, was likewise premature.

**3. That the Appellants Had "Plenty of Time" to Submit Their Own Proposed Orders for Consideration Prior to the Pre-Mature Entry of Judgment is an Invitation to Generally Disregard the Rules of Procedure.**

The Appellants have asserted that the Superior Court's entry of its JUDGMENT on September 7<sup>th</sup>, 2017, which was only nine (9) days

following the hearing on Banner Bank's summary judgment motion, was in error. This assertion is made as the Local Rule in effect at the time of the hearing specifically allowed the Appellants/Defendants fifteen (15) days to prepare and submit alternative orders for consideration and entry *after* the submission of amended materials from the Plaintiffs and this specific fifteen (15) day period was specifically discussed and affirmed to be applicable by the Judge as what would be followed in this case.

To this assertion, Banner Bank offers little retort other than to state that the Appellants had "plenty of time" regardless.

While Appellants' counsel surely does not advocate for a rigid application of procedure in most cases, the affordance of time by the procedural rules is of material consequence insofar as the litigants and their counsel, in this and most other cases, come to rely upon the time periods prescribed for action in fulfilling their objectives and strategies in a given case.

As a non-legal example, imagine that next year the Internal Revenue Service suddenly began taking enforcement action against those that had not filed a return as of March 1<sup>st</sup>. Most would agree that such would be preposterous as a taxpayer is given, by rule, until April 15<sup>th</sup> to file his or her tax return.

In the present case, as Appellants' counsel had in fact raised the issue and his objection concerning entry of judgment per C.R. 54(b) at the oral argument hearing on August 29<sup>th</sup>, 2016, he likewise fully anticipated to utilize the opportunity to submit to the Court orders which recognized and withheld entry of a judgment per C.R. 54(b).

Alternatively, counsel and the Defendants might very well have filed for bankruptcy prior to the entry of any order at all. However, the ability to assess and employ such typical strategies is wholly eviscerated where a Court artificially "cuts off" the time frame by which you may act and in which you have been induced to rely upon.

In sum, while Banner Bank argues that "plenty of time" was enjoyed, it is patently unfair to grant a party fifteen (15) days to consider and implement a strategy to only then unexpectedly ignore that procedure to abruptly enter a JUDGMENT in a mere nine (9) days. It is effectively the same as giving someone the proverbial "count to ten" to do something only to act on the "count of 1, 2, 10!". Such is simply not consistent with traditional notions of fair play.

#### **4. The Appellants Have Standing to Pursue this Appeal.**

Banner Bank argues that the Appellants have no standing in this appeal insofar as Appellants Jesse and Kate McCaw filed for bankruptcy

on September 13<sup>th</sup>, 2016 and were discharged on on January 25<sup>th</sup>, 2017.<sup>4</sup>

Banner Bank's arguments in this regard are erroneous in numerous respects.

**a. Appellant Running MC Ranch Has Standing in this Appeal.**

The parties do not dispute that Appellant Running MC Ranch is a general partnership existing in the State of Washington. COMPLAINT at ¶ 1.2, CP 7; and BRIEF OF RESPONDENT, BANNER BANK (filed herein) at pg. 1.

It is well-settled law that the provisions of the automatic stay only apply as to the debtor and not any other third parties. *Matter of Johns-Manville Corp.*, 99 Wash. 2d 193, 660 P.2d 271 (1983) (Automatic stay provisions of Bankruptcy Code did not mandate stay of state court proceedings as to joint and severally liable codefendants).

It is equally well-settled that “[a] partnership is an entity distinct from its partners.” Wash. Rev. Code § 25.05.050.

Thus, even if the automatic stay were deemed applicable to the debtors Jesse and Kate McCaw, such does not preclude the continuation of the lawsuit by Appellant Running MC Ranch as a separate entity.

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<sup>4</sup> Banner Bank appears to condemn the Appellants for not raising the issue of bankruptcy in their briefing, however, this criticism lacks any basis in fact insofar as the matter was briefed by the Appellants, up front, in their OPENING BRIEF.

That the beneficial of interest of Running MC Ranch was ever held by another during the interim is immaterial as, by way of analogy, a corporate entity does not lose standing in a lawsuit merely because its shares are bought and sold during the pendency of a lawsuit. Besides, as discussed in greater detail below, in this particular case, the trustee, on behalf of the estate, has abandoned any interest in Running MC Ranch to the debtors anyway.

**b. Standing as to Appellants Jesse and Kate McCaw.**

The appellants Jesse and Kate McCaw filed a voluntary petition for bankruptcy on September 13<sup>th</sup>, 2016, however, no automatic stay presently exists as a result of the McCaws receiving a discharge on January 25<sup>th</sup>, 2017.

Banner Bank argues that, because the McCaws filed for bankruptcy, all of their “legal and equitable” interests in this appeal were passed to this estate and thus they have no standing to pursue this appeal.

In making its argument, Banner Bank incorrectly relies on upon the holdings of cases which involve a bankruptcy debtor’s pursuit of a claim for affirmative relief, *e.g.*, claims for money, from a third party.

In those cases, it was held that the right to any such monetary relief claimed by the debtor was vested in the bankruptcy estate unless and until

it was subsequently abandoned by the estate. These cases are distinguishable from the present in two obvious respects.

First, the Appellants are not pursuing a claim for affirmative relief against Banner Bank. Instead, the Appellants seek a determination, on appeal, that affirmative relief obtained *against* them, was improperly obtained in the first place, *i.e.*, the Judgment against the Appellants should be vacated because the formalities of C.R. 54(b) were not observed, expressly or in spirit.<sup>5</sup> A debtor's right to challenge a debt is not "property of the estate".

Second, even in Banner Bank's own briefing it is recognized that a debtor might very well have an interest in the "claim" if the bankruptcy estate, through the trustee, is deemed to have abandoned the same

Per 11 U.S.C. 554(c), all the property scheduled in the case has been "fully administered" aside from an ATV, and GMC Yukon, and certain bank accounts. *See* Appendix 2 hereto, Trustee's Form 1 – Individual Estate Property Record and Report (for period ending 03/31/2017) (Item Nos. 20 and 21), Case No. 16-02892-FLK7.

Thus, the debtor's interest in business entities, which were scheduled, fully administered, and which have never been sold or

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<sup>5</sup> As to the McCaw Appellants in particular, said debt to Banner Bank having been discharged, the Judgment should be vacated and not re-entered at any point thereafter.

transferred to a third party, are deemed to have been abandoned by the trustee to the debtor.

Finally, insofar as the automatic stay is concerned, Washington Courts have not allowed a creditor to use the existence of the “automatic stay” as a “sword” so to speak and no person, other than the debtor or trustee, have the right to assert that it be enforced:

The clear purpose of the legislative scheme involving the automatic stay is fully served by limiting its enforcement to the debtor and the trustee. The rights of creditors are fully protected in the administration of the bankruptcy estate. To allow the stay to be used to benefit an individual creditor where the debtor and the trustee have waived any objection to the action taken in violation of the stay, appears to be contrary to its primary purpose. The rule limiting enforcement of stay provisions to the debtor and trustee, thus, is consistent with the purpose of the stay.

*Woolworth v. Micol Land Co.*, 55 Wash. App. 671, 680 (Div. 1 1989).

The *Woolworth* Court cited a number of cases which also came to this conclusion:

In re Brooks, 79 B.R. 479, 481 (9th Cir. BAP 1987) (“Consequently, if the debtor or the trustee chooses not to invoke the protections of § 362, no other party may attack any acts in violation of the automatic stay.”); In re Stivers, 31 B.R. 735 (Bankr.N.D.Cal.1983) (“I conclude that the automatic stay operates in favor of debtors and estates (represented by trustees and debtors-in-possession) only and that it gives junior lienholders and other parties interested in the property affected by the automatic stay no substantive or procedural rights.”); In re Fuel Oil Supply & Terminaling, Inc., 30 B.R. 360, 362 (Bankr.N.D.Tex.1983) (“The

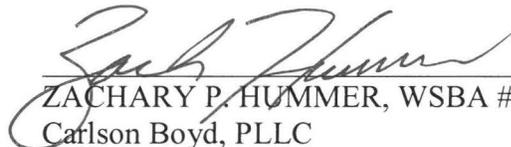
automatic stay is for the benefit of the debtor and if it chooses to ignore stay violations other parties cannot use such violations to their advantage”).

*Woolworth*, 55 Wash. App. 671, 680 (emphasis added).

### **CONCLUSION**

The Appellants would respectfully re-iterate their opening request that the Court of Appeals direct that the JUDGMENT be vacated and that it be deemed to have been unenforceable during its existence.

DATED this 22 day of May, 2017.

  
\_\_\_\_\_  
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# APPENDIX 1



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# Superior Court Judgment Record

**Directions:** Below is the judgment record for case - 16-2-00215-4  
The clerk is required by law to create a separate record of the judgment entered by the court in the case.

To get directions or information about a Court, view the **Washington Court Directory**.

Judgment Record Number	Name	Participant	File Date
16-9-00677-5	BANNER BANK	CREDITOR	09/07/2016
16-9-00677-5	HACKER & WILLIG, INC PS	ATTY CR	09/07/2016
16-9-00677-5	MCCAW, JESSE JAY	DEBTOR	09/07/2016
16-9-00677-5	MCCAW, KATE GARLAND H/W	DEBTOR	09/07/2016
16-9-00677-5	RUNNING MC RANCH	DEBTOR	09/07/2016
16-9-00677-5	WILLIG, ARNOLD M.	ATTY CR	09/07/2016

## About Judgment Records

### About Name List

**Judgment Records-** The clerk is required by law to create a separate record of the judgment entered by the court in the case.

### Disclaimer

**What is this website?** It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

### How can I obtain the complete court record?

You can contact the court in which the case was filed to view the court record or to order copies of court records.

### How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

### Can I find the outcome of a case on this website?

No. You must consult the local or appeals court record.

### How do I verify the information contained in the search results?

You must consult the court record to verify all information.

### Can I use the search results to find out someone's criminal record?

No. The Washington State Patrol (WSP) maintains state criminal history record information. Click [here](#) to order criminal history information.

**Where does the information come from?**

Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The search engine will update approximately twenty-four hours from the time the clerks enter the information. This website is maintained by the Administrative Office of the Court for the State of Washington.

**Do the government agencies that provide the information for this site and maintain this site:**

- ▶ **Guarantee that the information is accurate or complete?**  
NO
- ▶ **Guarantee that the information is in its most current form?**  
NO
- ▶ **Guarantee the identity of any person whose name appears on these pages?**  
NO
- ▶ **Assume any liability resulting from the release or use of the information?**  
NO

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S2



Courts Home | Search Case Records

Home | Summary Data & Reports | Resources & Links | Get Help



Search | Site Map | eService Center

## Superior Court Case Summary

**Court:** Walla Walla Superior  
**Case Number:** 16-9-00677-5

Sub	Docket Date	Docket Code	Docket Description	Misc Info
	09-07-2016	JUDGMENT	Judgment Banner Bank Is Awarded A Judgment Against Principal Judgment Shall Bear Interest At 12% Per Annum Attorney Fees Running Mc Ranch, Jesse J Mccaw, Kate G Mccaw In The Amount Of:	

## About Dockets

### About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

### Directions

Walla Walla Superior  
 Location: 315 W Main St, Fl 3  
 Walla Walla, WA 99362-2864

#### Map & Directions

#### Visit Website

509-524-2790[Dept. I Phone]  
 509-524-2795[Dept. II Phone]  
 509-524-2777[Dept. I Fax]  
 509-524-2788[Dept. II Fax]

### Disclaimer

**What is this website?** It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

#### How can I obtain the complete court record?

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#### How can I contact the court?

### Appendix 1 to Appellants Reply Brief

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NO
- ▶ **Assume any liability resulting from the release or use of the information?**  
NO

# APPENDIX 2

**Form 1**  
**Individual Estate Property Record and Report**  
**Asset Cases**

Page: 1

**Case No.:** 16-02892  
**Case Name:** MCCA W, JESSE JAY  
MCCA W-WAETJE, KATE GARLAND

**Trustee Name:** (670040) John D. Munding  
**Date Filed (f) or Converted (c):** 09/13/2016 (f)  
**§ 341(a) Meeting Date:** 11/15/2016  
**Claims Bar Date:**

**For Period Ending:** 03/31/2017

1 Ref. #	2 Asset Description (Scheduled And Unscheduled (u) Property)	3 Petition/ Unscheduled Values	4 Estimated Net Value (Value Determined By Trustee, Less Liens, Exemptions, and Other Costs)	5 Property Formally Abandoned OA=\$554(a) abandon.	6 Sale/Funds Received by the Estate	7 Asset Fully Administered (FA)/ Gross Value of Remaining Assets
1	1479 Spring Branch Road, Walla Walla, WA 99362, Walla Walla County Single-family home, Parcel No. 360607530011. Entire property value: \$600,000.00	600,000.00	0.00		0.00	FA
2	See Attachment "A" hereto Land Entire property value:	0.00	0.00		0.00	FA
3	2011 Dodge Ram, 131052 miles, Rear is flatbed bed fitted for farming-purposes. Entire property value: \$18,968.00	18,968.00	0.00		0.00	FA
4	2016 GMC YUKON, 20628 miles. Entire property value: \$51,650.00	51,650.00	10,913.96		0.00	51,650.00
5	2016 Trails West Sierra II, Horse trailer. Entire property value: \$16,804.00	16,804.00	0.00		0.00	FA
6	2006 Honda Foreman. Entire property value: \$2,000.00	2,000.00	2,000.00		0.00	2,000.00
7	Refrigerator, dishwasher, stove/micro, couches, chairs, tables, lamps, dressers, beds, tv stands, buffet, chest, kitchenware, decorations, linens, bbqs, racks	8,940.00	0.00		0.00	FA
8	televisions (4), computer (desktop), ipad, cannon camera, cell phones	800.00	0.00		0.00	FA
9	Books, media, pictures, keepsakes	100.00	0.00		0.00	FA
10	Saddle, skis, poles, golf clubs, other	2,750.00	0.00		0.00	FA
11	4 guns	650.00	0.00		0.00	FA
12	Kate Wardrobe/shoes, Jesse Wardrobe, childrens' clothing	4,000.00	0.00		0.00	FA
13	Wedding ring, diamond hoops, birthstone ring, miscellaneous	975.00	0.00		0.00	FA
14	Horses (2), Dogs (3)	1,500.00	0.00		0.00	FA
15	Lawn equipment (JD lawn mower, leaf blower, weed eater, misc. hand tools),	800.00	0.00		0.00	FA
16	Cash	100.00	0.00		0.00	FA
17	Checking account: Baker Boyer Bank	6,192.31	6,192.31		0.00	6,192.31

**Appendix 2 to Appellants' Reply Brief**

# Form 1

## Individual Estate Property Record and Report

### Asset Cases

Page: 2

Case No.: 16-02892

Case Name: MCCAW, JESSE JAY  
MCCAW-WAETJE, KATE GARLAND

Trustee Name: (670040) John D. Munding

Date Filed (f) or Converted (c): 09/13/2016 (f)

§ 341(a) Meeting Date: 11/15/2016

For Period Ending: 03/31/2017

Claims Bar Date:

1 Asset Description (Scheduled And Unscheduled (u) Property)	2 Petition/ Unscheduled Values	3 Estimated Net Value (Value Determined By Trustee, Less Liens, Exemptions, and Other Costs)	4 Property Formally Abandoned OA=§554(a) abandon.	5 Sale/Funds Received by the Estate	6 Asset Fully Administered (FA)/ Gross Value of Remaining Assets
Ref. #					
18	Checking account: Umpqua Bank	454.54	454.54	0.00	FA
19	Savings account: Baker Boyer Bank	401.00	401.00	0.00	FA
20	Running MC Ranch (General Partnership), 100% ownership	0.00	0.00	0.00	FA
21	Double J Farms, LLC (Washington LLC), 100% ownership	0.00	0.00	0.00	FA
22	4MC (General Partnership), 10% ownership	0.00	0.00	0.00	FA
23	IRA: Edward Jones (Roth IRA)	15,000.00	0.00	0.00	FA
24	All State (Paid through Bank loan): Debtors/Bank	0.00	0.00	0.00	FA
25	All State (Car insurance): Debtors	0.00	0.00	0.00	FA
26	Breach of contract/tort against Vargas Thompkins & Ass (CPAs)	(500,000.00)	0.00	0.00	FA
27	Accounts receivable or commissions you already earned	0.00	0.00	0.00	FA
28	Office equipment, furnishings and supplies	0.00	0.00	0.00	FA
29	Hairstyling tools, supplies, etc.	500.00	0.00	0.00	FA
30	Inventory	0.00	0.00	0.00	FA
31	Int. in partnerships or joint ventures: See attached	0.00	0.00	0.00	FA
32	Any business related property you did not already list	0.00	0.00	0.00	FA
33	See Attachment "B" re: Crops held by Running MC	0.00	0.00	0.00	FA
34	TV, ATV rack and equipment attached to Dodge Ram Truck	3,500.00	0.00	0.00	FA
35	Give specific 'mation	0.00	0.00	0.00	FA
36	Other property you did not already list	0.00	0.00	0.00	FA
<b>36</b>	<b>Assets Totals (Excluding unknown values)</b>	<b>\$236,084.85</b>	<b>\$19,961.81</b>	<b>\$0.00</b>	<b>\$59,842.31</b>

### Appendix 2 to Appellants' Reply Brief

**Form 1**  
**Individual Estate Property Record and Report**  
**Asset Cases**

Page: 3

**Case No.:** 16-02892

**Case Name:** MCCAWE, JESSE JAY  
MCCAWE-WAETJE, KATE GARLAND

**Trustee Name:** (670040) John D. Munding

**Date Filed (f) or Converted (c):** 09/13/2016 (f)

**§ 341(a) Meeting Date:** 11/15/2016

**For Period Ending:** 03/31/2017

**Claims Bar Date:**

**Major Activities Affecting Case Closing:**

11/23/16 - Application for Employment of JDM as attorney for the trustee  
12/1/16 - Order Approving Employment of Attorney for Trustee  
4/18/17 - Email received from Mr. Hummer with information. Trustee to review.

**Current Projected Date Of Final Report (TFR):** 03/31/2018

**Initial Projected Date Of Final Report (TFR):** 03/31/2018