

FILED  
Court of Appeals  
Division III  
State of Washington  
4/10/2018 4:49 PM

NO. 349187

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

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FIRESIDE BANK f/k/a FIRESIDE THRIFT CO.  
(CAVALRY INVESTMENTS, LLC – Appellant of Record)

Appellant,

vs.

JOHN W. ASKINS and LISA D. ASKINS,

Respondents.

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**APPELLANT’S REPLY BRIEF**

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## I. INTRODUCTION

In the ruling at issue on appeal, the trial court found that Appellant Cavalry Investments, LLC “violated RCW 19.16.250(21) by attempting to collect, *through applications for writs of garnishment*, amounts of money greater than allowed by law.” CP 427 (emphasis supplied).

Despite the clear declarative language of the trial court’s ruling as quoted above—the undisputed record reflects that the trial court never identified a single application for writ of garnishment that sought an improper or unauthorized account. Similarly, the trial court never made a factual determination as what amount was due under the Judgment at any given point in time. (“I haven’t done the math,” the Judge acknowledged.)

The trial court’s failing in these two respects is detailed in Cavalry’s opening brief. By their response brief, Respondents John W. Askins and Lisa D. Askins now confirm that there is no competent evidence to support the challenged trial court ruling.

In short, the Askins do not identify any application for writ of garnishment by which Cavalry sought attorney’s fees and costs other than as allowed by statute. Likewise, the Askins do not identify competent reflecting the amount Cavalry was legally entitled to collect under the Judgment as of the relevant date for any application for writ of garnishment.

Because there is no such record evidence, the Askins' response brief offers a lengthy discussion of and general pronouncements about debt collection and the debt-buying industry. Insofar as the Askins purport to address what is at issue in this case, their substantive arguments are entirely tangential. The Askins misconstrue Cavalry's argument regarding CR 60. And their response brief otherwise relies upon two "amortization" documents that are both factually and legally irrelevant.

The amortization documents are not applications for writs of garnishment. Moreover, the amortization documents do not reflect the amounts Cavalry sought by any garnishment writ nor do they state the amounts that Cavalry was entitled to collect under the Judgment at any point in time.

Finally, in recognition that the record evidence does not support a finding of any wrongdoing by Cavalry, the Askins now argue that Cavalry somehow "assumed" liability for alleged statutory violations by Fireside Bank, Cavalry's predecessor-in-interest regarding Judgment. There is no factual support for this new argument and it is also legally infirm.

## II. ARGUMENT

### A. **The Askins' Failure to Identify Any Evidence Necessary to Support the Trial Court's Ruling Confirms This Court Should Reverse.**

The Askins' Response is most telling for what it does not say.

Although the Askins assert in conclusory headings that Cavalry “attempted to collect amounts it was not entitled to” and that Cavalry collected or attempted “to collect” “excessive attorney fees and costs”, these assertions are not supported by any competent or relevant evidence.<sup>1</sup>

#### 1. **The Askins Cannot Identify Any Application for Writ of Garnishment By Which Cavalry Sought Unauthorized Attorney's Fees or Costs.**

As discussed in Cavalry's Opening Brief, Cavalry did not attempt to collect any attorney's fees or costs other than what it was statutorily entitled to collect.<sup>2</sup> Cavalry obtained five writs of garnishment, each of which reflects that Cavalry (a) sought only the \$300 attorney's fee for each writ as allowed by statute, and (b) estimated costs in compliance with RCW 6.27.090(2).<sup>3</sup> CP 317-321; CP 325-329; CP 342-346; CP 354-358; CP 359-363.

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<sup>1</sup> Respondents' Response Brief, filed March 8, 2018 (“Response”) at 15, 26, 27.

<sup>2</sup> “Opening Brief” means Appellant's Amended Brief, filed January 16, 2018. *See* Opening Brief at 22-24.

<sup>3</sup> The Askins state that before June 7, 2012, the statute limited the attorney fee to a maximum of \$250.00. *See* Response at 26. This is irrelevant.

The Askins do not and cannot rebut this record evidence. Indeed, the Askins make no mention of any of Cavalry’s applications for writs of garnishment. *See* Response at 26-27. This is because those applications, all of which are in the trial court’s docket and in the record before this Court, are dispositive. They conclusively establish that—contrary to the trial court’s ruling—Cavalry never “attempt[ed] to collect, through applications for writs of garnishment” any unauthorized attorney’s fees or costs. RCW 6.27.090(2); CP 317-321; CP 325-329; CP 342-346; CP 354-358; CP 359-363.

**2. The Askins Cannot Identify Any Relevant Evidence Regarding the Amount Cavalry Was Entitled to Collect Under the Judgment.**

The Askins’ Response is also silent regarding evidence showing how much Cavalry was legally entitled to collect under the Judgment at the time of each application for writ of garnishment. Without such an evidentiary record, the trial court’s finding that Cavalry “attempt[ed] to collect, through applications for writs of garnishment, amounts of money greater than allowed by law” cannot be upheld. *See* Opening Brief at 26-28. It is undisputed that the Askins did not provide any such accounting to

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Cavalry filed its first garnishment writ application on April 4, 2013, at which time the statutory maximum was \$300. RCW 6.27.090(2).

the trial court and the trial court did not undertake any independent calculation or determination in this respect. RP 13:13-14, RP 14:15.

**B. The Amortizations are Both Factually and Legally Irrelevant.**

Because the Askins cannot point to any evidence showing that Cavalry sought to collect more than it was entitled to collect through any of its five garnishment writ applications, they instead focus on two account statements. Neither supports affirming the trial court.

**1. Cavalry's Last Application for Writ of Garnishment in August 2015.**

On August 3, 2015, Cavalry filed an application for writ of garnishment, by which it attempted to collect on the Judgment, and the statutory attorney's fee and costs for that writ. CP 359-363 ("August Writ"). Cavalry did not collect any amounts under the August Writ, which was released in November 2015. *See* Opening Brief at Appendix C; CP 364-365. And Cavalry did not seek any further writs of garnishment.

**2. The April 2016 Amortization.**

Between November 2015 and April 2016, the Askins' counsel corresponded with Cavalry's counsel regarding his assertion that the Judgment may have been satisfied given the periodic garnishment of Mr. Askins wages over the course of several years. CP 369-381, CP 419-423.

In November 2015, the Askins' counsel sent a letter to Cavalry's counsel, in which he wrote:

While the amount garnished exceeds the total judgment amount, it is unclear if interest, costs, fees and principle [sic] total a sum greater than the amount previously garnished, and, if not, what the remaining principle balance should be. I have requested a complete copy of the court file and intend to do a full accounting of the prior garnishment to answer these questions.

CP 374.

His stated intention aside, the Askins' counsel did not do and did not submit to the trial court any accounting regarding (a) the Judgment balance, *i.e.*, whether "interest, costs, fees and principal total a sum greater than the amount previously garnished;" or (b) the amount that Cavalry was entitled to collect under the Judgment at any point in time. CP 369, CP 374-375.

In April 2016, following further correspondence between counsel, Cavalry's counsel provided the Askins' counsel with an email explanation and internal account statement regarding the Judgment and related activity for the time period September 2007 – March 2012.<sup>4</sup> CP 369-70, CP 372 (April 2016 amortization), CP 419, CP 422-423. He also provided the Askins' counsel with court documents. CP 419-423.<sup>5</sup>

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<sup>4</sup> This time period pre-dated Cavalry's acquisition of the Judgment. CP 422. *See also* Opening Brief at Appendix C (Sub No. 139).

<sup>5</sup> The Askins did not provide or identify any of those court documents below. CP 369-381; CP 419-426.

Neither the email from Cavalry's counsel nor the April 2016 amortization includes a statement of the then-current Judgment balance. CP 372; CP 422-423. There are no entries for any activity by Cavalry and there is no discussion or statement of balance amounts for times when Cavalry sought to collect on the Judgment. *Id.* There is no demand for payment. *Id.* And there is no list of prospective required payment amounts. *Id.*

The Askins' counsel responded by inquiring whether Cavalry would enter a satisfaction of the Judgment.<sup>6</sup> CP 381. There was no further correspondence between Cavalry's counsel and the Askins' counsel. Mr. Askins filed his Motion for Order to Show Cause a few months later. CP 382-402 ("Show Cause Motion").

### **3. The July 2016 Statement.**

The second account statement the Askins rely upon is a document that Cavalry's counsel attached as an exhibit to its opposition to the Show Cause Motion. CP 407-412 (July 2016 amortization).

The underlying Judgment provides for "[p]ost-judgment simple interest at the rate of 18.95% per annum." CP 13. In contrast, the July

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<sup>6</sup> The Askins' counsel previously asserted that "it is clear to me that the underlying judgment is fully satisfied," but he did not provide any accounting to support his statement. CP 378. As noted above, neither Respondents nor their counsel ever did an accounting. RP 7:18, RP 7:20-21; RP 7:25.

2016 amortization, however, purports to reflect balance amounts over time *if post-judgment interest were calculated at 12% per annum starting in May 2012*. CP 412. Cavalry’s counsel submitted the July 2016 amortization to support the argument that even if a *lower* interest rate applied, a balance would still be owing under the Judgment despite periodic garnishments over time. *Id.*

The July 2016 amortization does not reflect or purport to reflect the amount Cavalry was legally entitled to collect under the Judgment at the relevant time of any of its five garnishment writ applications. *Id.*

**4. The April 2016 Amortization Does Not Show That Cavalry Collected or Attempted to Collect Unauthorized Attorney’s Fees or Costs.**

The Askins argue the April 2016 amortization shows that Cavalry attempted to collect unlawful garnishment attorneys’ fees and costs. *See* Response at 26-27. More specifically, the Askins claim that the “face” of the April 2016 Amortization shows “twelve instances of attorney fees of \$643 were *internally* assessed on each writ, \$393.00 more than the statutory maximum garnishment attorney fees.” *Id.* at p. 26 (emphasis supplied).<sup>7</sup> This argument fails.

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<sup>7</sup> *N.b.* the passive verb construction—“were [] assessed”—fails to make clear that the April 2016 Amortization only purports to show collection activity by Fireside, *before* the Judgment was assigned to Cavalry. CP 297; CP 372.

First, the April 2016 amortization has nothing to do with any of the five applications for writ of garnishment filed by Cavalry. The actual applications in the record show that Cavalry only attempted to collect garnishment costs and the statutory attorney's fees as authorized by law. CP 317-321; CP 325-329; CP 342-346; CP 354-358; CP 359-363.

Second, the \$643 line item in the April 2016 amortization is the total of the attorney fees and costs awarded by the court in the underlying Judgment. CP 13, CP 372.<sup>8</sup> This breakdown is reflected in each of Fireside's garnishment applications, which show the components of the Judgment, as well as post-judgment interest. CP 15-19, CP 23-27, CP 58-62, CP 72-76, CP 93-97, CP 122-126, CP 136-140, CP 158-162, CP 180-184, CP 213-217, CP 236-240, CP 249-253, CP 268-272, and CP 281-285.

Third, the column in the April 2016 amortization labeled "costs expended" indicates the costs (\$30 or \$35, depending upon the writ) and

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<sup>8</sup> Each of Fireside's garnishment writs included a breakout of the several elements of the underlying Judgment – the balance, pre-judgment interest, post-judgment interest at a rate of 18%, and the \$643 in combined attorney's fee (\$368) and costs (\$275) awarded in the Judgment. *Compare* CP 12-14 *with* CP 15-19, CP 23-27, CP 58-62, CP 72-76, CP 93-97, CP 122-126, CP 136-140, CP 158-162, CP 180-184, CP 213-217, CP 236-240, CP 249-253, CP 268-272, and CP 281-285. The \$643 stated in the 2016 Amortization reflects that piece of the underlying Judgment. CP 372. The "principal balance" column shows \$7,754.39, which is the principal amount of the Judgment, the \$643 in attorney's fees and costs (labeled "attorney fees"), and any pre-judgment and post-judgment interest which were all part of the Judgment. CP 12-14; CP 372.

\$250 statutory attorney's fee for each of Fireside's writ applications. CP 15-19, CP 23-27, CP 58-62, CP 72-76, CP 93-97, CP 122-126, CP 136-140, CP 158-162, CP 180-184, CP 213-217, CP 236-240, CP 249-253, CP 268-272, and CP 281-285; CP 372.

The April 2016 amortization is not a statement of "excessive" attorney's fees and costs. CP 372; *see* Section II(C), *infra*. It reflects only the breakout of attorney's fees and costs as awarded by the trial court in the underlying Judgment, and the statutory attorney's fee and costs incurred for garnishment writ application by Fireside. CP 12-14; CP 372.

The Askins also argue that the April 2016 amortization "demanded" excessive attorney fees and costs "that were not awarded in any garnishment judgment. *See* Response at 27. But the April 2016 amortization does not "demand" anything. CP 372. As discussed above and as conceded by the Askins, it was an *internal* account statement provided by Cavalry's counsel to the Askins' counsel in an effort to show how a balance could still be owing under the Judgment at the time it was assigned to Cavalry—*i.e.*, that the Judgment it had not been fully satisfied as the Askins' counsel suggested. CP 372, CP 422-432.

The fact that the April 2016 amortization contains a column showing \$643 as awarded in the underlying Judgment for attorney's fees and costs separately from the Judgment principal and accrued interests,

and separate from the “costs expended” for each garnishment writ (which includes the \$250 statutory attorney’s fee and \$30 or \$35 for costs, depending upon the writ) is not a “demand” by *Cavalry* for excessive attorney’s fees or costs.<sup>9</sup> And, again, the April 2016 amortization concerns a time period prior to Cavalry’s acquisition of the Judgment and, in any event, it is not a demand or an effort to collect any amount.

**5. The Amortizations Do Not Show That Cavalry Attempted to Collect More than It Was Entitled to Collect Under the Judgment.**

In their Response, the Askins tacitly acknowledge that the trial court’s ruling cannot be affirmed—*i.e.*, that one cannot determine whether Cavalry attempted to or collected more than it was legally entitled to collect through any of its garnishment writ applications—unless there is evidence of the amount Cavalry *was legally entitled to collect under the Judgment* at the time of any of its garnishment writ applications. The Askins’ concession in this respect is reflected by their comparison of the amounts sought in each of Cavalry’s garnishment writ applications with the amounts listed in the July 2016 amortization. *See* Response at 27-30.

But this comparative analysis is irrelevant. The July 2016 amortization does not state the amounts that Cavalry was legally entitled

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<sup>9</sup> CP 12-14; CP 372; CP 15-19, CP 23-27, CP 58-62, CP 72-76, CP 93-97, CP 122-126, CP 136-140, CP 158-162, CP 180-184, CP 213-217, CP 236-240, CP 249-253, CP 268-272, and CP 281-285.

to collect under the Judgment at any point in time. CP 412. Instead, it shows purported balance entries if interest were calculated at 12% since May 2012, rather than at the 18.95% rate provided for by the Judgment. CP 12-14; CP 412. Accordingly, whether Cavalry's applications for writs of garnishment sought more than the purported balances stated in the July 2016 Amortization is irrelevant. What matters is the total balance and post-judgment interest rate awarded by the Judgment and the resulting balances and accounting over time based upon the document collection efforts and garnishments. We know the former (*see* CP 12-14), but there was no record of the latter presented to the trial court and the Askins cannot construct a substitute record based upon an inapposite internal accounting.

In short, nothing in the July 2016 amortization shows that Cavalry attempted to collect more than it was entitled to collect under the Judgment with interest accruing at the Judgment rate. CP 412.

**C. The April 2016 amortization Is Not an “Attempt to Collect a Debt.”<sup>10</sup>**

Regardless of whether the April 2016 amortization is mathematically accurate in all respects, or whether it contains errors or improperly categorized fees or costs, it nonetheless cannot support the trial court’s ruling because (a) it is not an application for writ of garnishment, and (b) it is not an “attempt to collect a debt”. *See* Opening Brief at 28-31 and Appendix A. The authority cited and relied upon by the Askins does not hold otherwise.

First, *Allen v. LaSalle Bank*, 629 F.3d 364 (3rd Cir. 2011) (*see* Response at 18) concerned a loan payoff quote sent to a consumer’s attorney while a mortgage foreclosure action was pending. The issue before the court was whether that communication was *per se* not covered by the FDCPA because it was made to a consumer’s attorney rather than to the consumer directly. *Id.* The *Allen* court recognized a circuit split on

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<sup>10</sup> In their Response, the Askins argue that the April 2016 Amortization was an attempt to collect a debt; they make no such argument regarding the July 2016 Amortization. *See* Response at pp. 18-25. The Askins also sometimes refer to an April 2017 Amortization. *E.g.* Response at pp. 18, 22. But they cite the April 2016 Amortization and the record does not contain any 2017 account statement. Cavalry assumes the references to an April 2017 amortization are typos, intended to refer to the April 2016 Amortization. The Askins also incorrectly refer to an August 2016 writ of garnishment. Response at p. 22. There was no August 2016 garnishment writ. *See, e.g.*, Opening Brief at Appendix C. Cavalry assumes this is also a typo, and the Askins intended to refer to the August 2015 writ of garnishment. CP 359-363.

this issue. *Id.* at 366. The Ninth Circuit, for example, “has concluded that because an attorney will protect a consumer from a debt collector’s behavior, statements made only to a consumer’s attorney are not actionable per se.” *Id.* (citing *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 934-39 (9th Cir. 2007) (holding “communications directed only to the debtor’s attorney, and unaccompanied by any threat to contact the debtor, are not actionable” under the FDCPA)).

The *Allen* court declined to adopt a *per se* rule and instead remanded to the trial court for a factual determination regarding how much the creditor was entitled to collect under the mortgage. 629 F.3d at 369. Such factual evidence is necessary to determine whether the creditor had attempted to collect more than it was entitled to collect through the payoff quote. The court expressly stated that it was making no finding or opinion on whether the plaintiff had a viable claim based on the amounts set forth in the payoff quote. *Id.*

Here, the April 2016 amortization purports to collection activity and balances only through March 2012, and it was not given to the Askins’ counsel when any court action to collect was pending. CP 372; CP 422-423. The April 2016 amortization is not analogous to the payoff quote in *Allen*. If this Court looks to Ninth Circuit rather than the Third Circuit for apposite guidance regarding FDCPA issues and analysis, then

the April 2016 Amortization is *per se* not an actionable attempt to collect a debt because it was a communication to the Askins' attorney, rather than to the Askins. *Guerrero*, 499 F.3d at 934-39.<sup>11</sup>

Second, in *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169 (6th Cir. 2011), there were two different activities were at issue: (1) the filing of a motion for default judgment before the debtor had missed the deadline for answering the complaint; and (2) incorrect statements made by the creditor's law firm to the debtor in response to the debtor's inquiry about the balance owed on the debt. The trial court granted summary judgment to the defendants, finding neither activity constituted an attempt to collect a debt. *Id.* at 171.

The Sixth Circuit reversed the trial court regarding the premature filing of a motion for default judgment, but affirmed as to the law firm's incorrect statements regarding the account balance. *Id.* In doing so, the court focused on the fact that the law firm had made those statements *in response to inquiries by the debtor*: “[b]ut for us the decisive point is that Leikin made the balance statements only after Grden called and asked for

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<sup>11</sup> Moreover, even if this Court were follow *Allen*, then it should remand to the trial court for a factual determination as to how much Cavalry was entitled to collect under the Judgment and by statute at any given point in time. 629 F.3d at 369. In this respect, the April 2016 amortization is irrelevant because it does not demand any payment. It is a statement of purported activity from September 2007 through March 2012—*i.e.*, a date four years prior to the amortization.

them.” *Id.* at 173. The “animating purpose” of making these statements was to respond to the debtor’s inquiry, not to induce payment, even though a lawsuit to collect on the debt was pending. *Id.* at 171, 173.

So, too, here. Cavalry’s counsel provided the April 2016 amortization and transmittal email description to the Askins’ counsel in response to his requests for information about the account at a time when there was no operative writ of garnishment or any pending application. CP 364; CP 372; CP 422-432; *see also* Opening Brief at Appendix C. As in *Grden*, the animating purpose behind providing that information was to respond to counsel’s inquiries. *Id.* Under *Grden*, the April 2016 amortization is not an attempt to collect a debt.

Third, *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380 (7th Cir. 2010) concerns the multi-factor analysis courts in the Seventh Circuit use to determine whether a communication was made in connection with the collection of a debt. Those factors include, for example, the nature of the parties’ relationship, whether the payment dates are prospective or retrospective, whether the communication warns of the consequences of missing a future payment, whether the communication contains a demand for payment or simply sets forth the debtor’s current account balance, and the purpose and context of the communication. *Id.* at 384-86. It is a fact-based inquiry. *Id.* at 386.

Considering those factors, the *Gburek* court found that allegations regarding the content and context of three letters from a loan servicer to a mortgagor were sufficient such that a trier of fact could find they were made in connection with the collection of a debt. *Id.* at 386-87. The letters offered to discuss repayment options, encouraged the mortgagor to contact the lender to discuss debt-settlement options, and asked to collect financial information for the purpose of evaluating foreclosure alternatives. *Id.*

In contrast, the April 2016 amortization only included purported historical balance information, did not contain any warning regarding the consequences of missing a future payment, contained only a statement of account for a historical period ending years earlier, contained no payment demand, and was provided to the Askins' attorney at his request. CP 372; CP 422-23. Under *Gburek*, the April 2016 amortization is not a communication made in connection with an attempt to collect a debt.

Finally, the remaining cases cited by the Askins regarding whether various "litigation activities" are attempts to collect a debt are inapposite. *See Response* at 18-25.<sup>12</sup> It is undisputed that the only litigation activity at

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<sup>12</sup> *In re Dubois*, 834 F.3d 522 (4th Cir. 2016) concerned whether filing a proof of claim in a bankruptcy proceeding constitutes an "attempt to collect a debt". *McCullough v. Johnson, Rodenburg & Lauinger LLC*, 637

issue here—Cavalry’s applications for garnishment writs—were attempts to collect a debt. That other types of court filings and submissions may, in some circumstances, constitute an attempt to collect a debt has no bearing on this case.

In short: none of the authority cited by the Askins supports finding the April 2016 amortization was an improper attempt to collect a debt under RCW 19.16.250(21) or otherwise.<sup>13</sup>

**D. Cavalry Did Not “Assume” Any Alleged Prior Statutory Violations by Fireside Bank.**

As a last resort, the Askins make two new arguments regarding alleged statutory violations by Fireside Bank. Response at 30-35.

Fireside Bank was the original Judgment Creditor before the Judgment was assigned to Cavalry. CP 297.

The Askins’ new arguments are premised on the unsupported assertion that Cavalry somehow “assumed liability” for Fireside Bank’s

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F.3d 939 (9th Cir. 2011) concerned requests for admission served in a collection action.

<sup>13</sup> The Askins also cite several cases supporting their assertion that attorneys acting on behalf of a creditor are also a “collection agency” under the WCAA. See Response at 23. This argument and law are irrelevant. The trial court’s ruling does not concern a violation finding against the law firm that represented Cavalry in the trial court. Cavalry makes no argument regarding the applicability of the WCAA to its attorneys. The other decision cited by the Askins, *Mabe v. G.C. Svcs. Ltd. Partnership*, 32 F.3d 86 (4th Cir. 1994), is likewise irrelevant. That case concerned whether child support payments are “debts” within the meaning of the FDCPA.

purported statutory violations because Cavalry accepted assignment of the Judgment. Response at 30-35. There is no evidence that Cavalry assumed any such liability, and the single case the Askins cite—*Puget Sound Nat'l Bank v. State Dep't of Revenue*, 123 Wn.2d 284, 292, 868 P.2d 127 (1994)—is inapposite.<sup>14</sup>

In *Kucheynik v. M.E.R.S., Inc.*, 2010 WL 5174540, \*4 (W.D.Wash. 2010), the plaintiff relied on *Puget Sound Nat'l Bank* to argue that the assignees of a note and deed of trust “stepped into the shoes of the original lender and assumed its rights and liabilities, including any violations of state and federal law.” Like the Askins here, the plaintiff asserted that the mere assignment of a contract automatically transfers to the assignee any and all statutory liability arising from prior conduct of the assignor. *Id.* The court rejected that argument, holding that *Puget Sound Nat'l Bank* does not stand for this proposition. “Under Washington contract law, an assignment of contract does not impose on the assignee the liabilities of the assignor unless the assignee assumes those liabilities.” *Id.*

Similarly, in *Steadman v. Green Tree Servicing, LLC*, 2015 WL 2085565, \*4 (W.D.Wash. 2015), the plaintiff argued that Green Tree assumed Bank of America’s liability for violations of consumer protection statutes through its accepting assignment of a loan contract. The court

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<sup>14</sup> *Puget Sound Nat'l Bank* held that an assignee had a right to sales tax refunds arising from defaulted automobile installment sales contracts.

rejected the argument because plaintiff identified no contractual agreement by Green Tree to assume statutory liabilities. *Id.* The fact of assignment alone was insufficient. *Id.* Therefore, to the extent any of plaintiff's claims for statutory violations were based on Bank of America's actions, they were not viable. *Id.*, n. 2 (citing cases holding an assignee cannot be liable for alleged statutory violations by the assignor simply because it is the assignee).

Here, there is no evidence whatsoever that Cavalry agreed to assume any purported statutory liability of Fireside Bank. The fact that Fireside Bank assigned the Judgment to Cavalry does not mean Cavalry somehow "assumed" alleged statutory violations by Fireside Bank. The Askins' new argument has no factual support at all; moreover, it was not asserted in the trial court and thus cannot be the basis of the trial court's ruling that Cavalry violated RCW 19.16.250(21) through "applications for writs of garnishment." *Kucheynik*, 2010 WL 5174540 at \*4; *Steadman*, 2015 WL 2085565 at \*4.<sup>15</sup>

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<sup>15</sup> The Askins also argue that Cavalry violated the statute by obtaining a judgment and order to pay in the amount of \$984.80 on January 16, 2013 because the July 2016 Amortization shows a lower balance on July 19, 2011 than Fireside Bank sought in its garnishment writ application of that date. Response at 30-32. There is no evidence that Cavalry's collection of \$984.80 exceeded what it was entitled to collect under the Judgment on January 16, 2013.

**E. The Askins Misconstrue Cavalry’s CR 60 Argument**

In its Opening Brief, Cavalry argued that unless the Askins brought a separate action for statutory violations, CR 60(b) governs relief from the Judgment. Under CR 60(b), the Askins have the burden to prove the Judgment had been satisfied—a burden the trial court erroneously shifted to Cavalry and which the record shows the Askins cannot meet. Opening Brief at 31-34.

In their Response, the Askins address arguments Cavalry did not make. Response at 36-40. Most importantly, they fail to address their burden of proof at all. *Id.*

**III. CONCLUSION**

The Askins argue that the trial court should not have the “impractical task” of determining if the Judgment had been satisfied based on “incomplete information.” Response at 39. This argument is a revealing admission. Not only is there no record evidence to support the trial court’s ruling, but—according to the Askins—there doesn’t have to be. This isn’t the law.

For the trial court to enter an order finding that Cavalry violated RCW 19.16.250(21) by attempting to collect, through applications for writs of garnishment, amounts of money greater than allowed by law,

there must be actual record evidence to support the finding. There is no such evidence here.

Cavalry respectfully ask this Court to reverse the trial court's rulings and to reinstate the Judgment in accordance with the law or, in the alternative, to remand for determination of the Judgment balance at the time relevant to each of Cavalry's garnishment writ applications based on an actual accounting reflecting the trial court's docket entries.

DATED: April 10, 2018.

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## CERTIFICATE OF SERVICE

On this date I caused a copy of the foregoing document to be served upon the attorneys of record listed below by U.S. Mail, postage prepaid, with a courtesy copy by email:

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I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 10<sup>th</sup> day of April 2018, at Seattle, Washington.

  
Gabriella Sanders

**SAVITT BRUCE & WILLEY LLP**

**April 10, 2018 - 4:49 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 34918-7  
**Appellate Court Case Title:** Fireside Bank, FKA Fireside Thrift, Co. v. John W. Askins & Lisa D. Askins  
**Superior Court Case Number:** 07-2-00204-7

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