

FILED
NOV - 2 2006

CLERK OF SUPREME COURT
STATE OF WASHINGTON

THE SUPREME COURT OF THE STATE OF WASHINGTON

AMERICAN DISCOUNT CORP.

Appellant

vs.

W. AUSTIN SHEPHERD, JR. et. ux.

Respondent

&

UNITED COLLECTION SERVICE, INC.

NO. 77974-1-I

RESPONDENT'S SUPPLEMENTAL
AUTHORITY ON THE BINDING
EFFECT OF THE COURT OF
APPEALS IN RESPONSE TO A
QUESTION RAISED DURING ORAL
ARGUMENT

06 NOV - 2 PM 8: 01
BY C. J. HEARITTT
CLERK OF SUPREME COURT
STATE OF WASHINGTON

At the oral argument of this matter on October 24, 2006, the Court inquired about binding effect of a Court of Appeals Decision on lower courts within the state. The following authority is offered with respect to this issue:

Washington law

Washington Constitution, Section 30 (providing for only One (1) Court of Appeals).

SECTION 30 COURT OF APPEALS.

(1) Authorization. In addition to the courts authorized in Section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute. (2) Jurisdiction. The jurisdiction of the court of appeals shall

be as provided by statute or by rules authorized by statute. (3) Review of Superior Court. Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute. (4) Judges. The number, manner of election, compensation, terms of office, removal and retirement of judges of the court of appeals shall be as provided by statute. (5) Administration and Procedure. The administration and procedures of the court of appeals shall be as provided by rules issued by the supreme court. (6) Conflicts. The provisions of this Section shall supersede any conflicting provisions in prior Sections of this article. [AMENDMENT 50, 1967 Senate Joint Resolution No. 6; see 1969 p 2975. Approved November 5, 1968.]

RCW 2.06.010, Court of Appeals established—Definitions

There is hereby established a Court of Appeals as a court of record.

RCW 2.06.030 General powers and authority--Transfers of cases--Appellate jurisdiction, exceptions --Appeal

The administration and procedures of the court shall be as provided by rules of the Supreme Court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

Legal treatises

Henry Campbell Black, M.A., HANDBOOK ON THE LAW OF JUDICIAL PRECEDENTS OR THE SCIENCE OF CASE LAW § 92, at 303 (1912) (noting that the common law rule is that inferior courts of a state should follow the decisions of the state intermediate appellate courts until the state court of last resort rules otherwise)

Decisions relating to the issue from other states

Lynch v. Universal Life Church, 775 F.2d 576, 580 (4th Cir. 1985) (stating that the decisions of the North Carolina Court of Appeals are binding upon trial courts statewide)

Cole v. Young, 817 F.2d 412, 416 (7th Cir. 1987) (interpreting Wisconsin state law and stating that officially published opinions of the Wisconsin Court of Appeals have precedential effect)

Bonanno v. Potthoff, 527 F. Supp. 561, 563 (N.D. Ill. 1981) (interpreting Illinois law and stating that Illinois trial courts must follow the appellate court decisions, and if appellate court decisions conflict, they must follow the court in their district)

Hunt v. Grissom, 157 So. 2d 682, 686 (Ala. Ct. App. 1963) (stating that "[s]o far as rules of decision laid down by the majority of Supreme Court require obedience, [the Court of Appeals] is a stare decisis court.")

State v. Wentz, 805 P.2d 962, 966 (Alaska 1991) (recognizing that a decision of the Court of Appeals binds lower courts)

Scappaticci v. Southwest Sav. & Loan Assoc., 662 P.2d 131, 136 (Ariz. 1983) (stating that a decision by the Arizona Court of Appeals has precedential effect)

Auto Equity Sales, Inc., v. Superior Court, 369 P.2d 937, 939 (Cal. 1962) (stating that "[u]nder the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction.")

Frazier v. Southern Ry. Co., 37 S.E.2d 774, 778 (Ga. 1946) (stating that "[d]ecisions by the Court of Appeals establish a precedent for that court and for the superior court, unless disapproved by the Supreme Court or made obsolete by subsequent statutory enactment.")

In re Hague, 315 N.W.2d 524, 532 (Mich. 1982) (stating that the trial judge is bound to follow decisions of panel of court of appeals until another panel of court of appeals or supreme court rules otherwise)

Exstrum v. Union Cas. & Life Ins. Co., 167 Neb. 150, 157-59, 91 N.W.2d 632, 636 (1958) (applying Illinois law and stating that a decision of an intermediate court must be accepted by the parties and by the courts of other states as formulating law of state where decision was rendered)

Mannillo v. Gorski, 241 A.2d 276, 282 (N.J. Super. Ct. Ch. Div. 1968) (stating that the decisions of the Appellate Division must be followed by inferior courts)

Ross Bicycles, Inc. v. Citibank, N.A., 539 N.Y.S.2d 906, 907 (N.Y. App. Div. 1989) (stating that "the doctrine of stare decisis requires that courts of original jurisdiction follow the decisions and precedents of the Appellate Division.")

Baker v. Aetna Cas. & Sur. Co., 454 A.2d 1092, 1098 (Pa. Super. Ct. 1982) (stating that a decision of the superior court is the law until it is overruled by the state supreme court)

State v. Menzies, 889 P.2d 393, 398-99 (Utah 1994), cert. denied, 115 S.Ct. 910 (1995) (stating that vertical stare decisis compels courts to strictly follow decisions rendered by a higher court, and under this mandate, lower courts are obliged to follow the holding of the higher court, as well as any judicial dicta that may be announced by a higher court)

Tart v. Commonwealth, 437 S.E.2d 219, 224 (Va. 1993) (holding that under the rule of stare decisis a decision by a panel of Court of Appeals is an established precedent)

Respectfully submitted this October 30, 2006

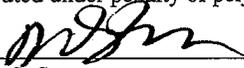


Marc S. Stern
WSBA 8194
Attorney for Joy Shepherd

CERTIFICATE OF SERVICE

On this day I deposited in the United States Mail, postage prepaid, a copy of the document to which this certificate is attached directed to W.D. Palmer, the attorney for the opposing side in this matter.

Executed under penalty of perjury this October 30, 2006



Marc S. Stern