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No. 54017-3-1

COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

JOY SHEPHERD,

Appellant,

v.

UNITED COLLECTION SERVICE, INC.,

Respondent.

APPELLANT'S REPLY BRIEF

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[Signature]

ORIGINAL

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I. INTRODUCTION.

The attempt by United to extend the judgment in 1996 was void. United Collection Service, Inc. (“United”) argues that the revival of the Judgment and the 2002 Amendments to RCW 6.17.020 were valid.

Joy Shepherd’s (“Shepherd”) response is as follows:

1. The Judgment expired in 1996 pursuant to RCW 6.17.020, RCW 4.56.210, and the subsequent ruling of the Court of Appeals in *J.D. Tan, L.L.C. v. Summers*, 107 Wn. App. 266, 26 P. 3d 1006 (2001). RCW 4.56.210 is a statute of duration that provides for expiration of the judgment lien if it is not properly renewed. The statute further provides that no further suit, action, or other proceeding shall ever be had on any judgment rendered in this state. The extension of the Judgment by United, a collections agency and not the original judgment creditor, in 1996 was void *ab initio*.

2. The 2002 amendments to RCW 6.17.020, which provide for retroactive effect, attempts to overrule *J.D. Tan, L.L.C. v. Summers* and violates the constitutional doctrine of separation of powers.

3. Shepherd acquired a vested right in being free from suit after the judgment expired. To apply the 2002 amendments to RCW 6.17.020 retroactively is unconstitutional because it impairs her vested rights.

II. REPLY ARGUMENT

A. THE EXTENSION OF THE JUDGMENT IN 1996 WAS VOID AND CANNOT BE REVIVED.

RCW 6.17.020 as it was enacted in 1996 allowed only the original judgment creditor to extend the judgment. This was the express holding of

the Court in *J.D. Tan, L.L.C. v. Summers, Id.* at 269. United was not the original judgment creditor and the extension of the judgment in 1996 was not valid. RCW 4.56.210 expressly provides that once the limitation period for the judgment has run, the judgment lien shall cease to exist and no further court proceedings may be had to enforce the judgment. This statute is a statute of duration, which is sometimes referred to as a nonclaim statute. *See, Hazel v. Van Beek*, 135 Wn. 2d 45, 65, 954 P.2d 1301 (1998).

RCW 4.56.210 contains very strong language regarding the finality of the judgment: “The Judgment ...shall cease to be a lien or charge” and “No suit, action or other proceeding shall ever be had on any judgment rendered in this state...” *See, WASHINGTON PRACTICE: Judgments, Exemptions, Section 7.8.* There is a conflict between the 2002 Amendments which provide retroactive effect in subsection (8) to RCW 6.17.020 and RCW 4.56.210 which provides for the cessation of the judgment in 1996. The pertinent portions of RCW 4.56.210 are set forth below:

Cessation of lien -- Extension prohibited -- Exception.

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of **any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.**

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020. (Emphasis Supplied).

1. Nature of the Judgment Lien under RCW 4.56.210.

"A judgment lien is born by statute, and dies by statute, RCW 4.56.210." *See, Grub v. Fogle's Garage, Inc.*, 5 Wash. App. 840, 843, 491 P.2d 258 (1971). The *Grub* court held that "when the judgment expires the ancillary proceedings ..., expire with it." *Id.* at 843. The special nature of this statute was aptly described in the *Grub*:

The lien here in question may not be invoked outside of the period during which it is conferred by the statute. This is not because of a statute of limitations that would be overcome by Rem. Rev. Stat., § 167, but because, outside of the terms of the statute creating the lien, no lien exists.

Discussing the nature of a predecessor statute containing essentially the same language in *Roche v. McDonald*, 136 Wash. 322, 239 P. 1015, 44 A.L.R. 444 (1925), the court said, at page 326:

This statute, we think, is not a mere statute of limitation affecting a remedy only. It is more than that. It not only makes a judgment cease to be a "charge against the person or estate of the judgment debtor" after six years from the rendering of the judgment, but also in terms expressly takes away all right of renewal of or action upon the judgment looking to the continuation of its duration or that of the demand on which it rests, for a longer period than six years from the date of its rendition.

It simply tells us that no judgment can be rendered extending the period of duration of a judgment, or of the claim or demand upon which it rests, beyond the period of six years following its rendition. We have given full force and effect to this statute. *Burman v.*

Douglas, 78 Wash. 394, 139 P. 41. Id. at 842
-243.

There is an important distinction between a statute which simply limits the remedy, and a statute, such as RCW 4.56.210, that not only bars the remedy but also extinguishes the right to the thing or property in question. In the one case the right is extinguished, while in the other the right still exists but the remedy is taken away." Here, upon expiration of the ten year period in 1996, the "right", which is the judgment, ceased to exist pursuant to RCW 4.56.210. This appeal does not involve the extension of the "remedy".

The decision of the Washington Supreme Court in *Lane v. Department of Labor and Industries*, 21 Wn. 2d 420, 425, 151 P.2d 440 (1944) contains an often cited discussion of the distinction between statutes of limitation and a statutes of non-claim. The opinion provides a detailed discussion of retroactive effect of legislative amendments to statutes. The majority opinion describes the nature of a statute that creates a "right" versus a statute of limitation:

There are two types of statutes which the courts had to apply. One of them is the statute which either by its plain terms or by the construction given it by the court makes the limitation of time inhere in the right or obligation rather than the remedy. It is sometimes referred to as a statute of nonclaim, and, strictly speaking, is not a statute of limitations at all. In its usual form the statute creates some right or obligation and a time is fixed within which the right must be asserted or the obligation sought to be enforced, or the same will be barred. ***When the limitation period expires, the right or obligation is extinguished and cannot be revived by a subsequent statute***

enlarging the time limitation. Illustrations of nonclaim statutes in this state are those providing for liens of laborers and materialmen, claims against estates of deceased persons, and claims for damages against municipal corporations. ("Emphasis Supplied") Id.

The Court cites in *Bellevue School District No. 405 v. Brazier Construction Co.*, 103 Wn. 2d 111, 117-118, 691 P.2d 178 (1984) classified RCW 4.56 as an example of a nonclaim statute:

Illustrations of nonclaim statutes in this state are those providing for liens of laborers and materialmen (RCW Title 60), **liens of judgments (RCW 4.56)**, claims against estates of deceased persons (RCW 11.40), and claims for damages against municipal corporations (RCW 36.45).

Inherent in the nature of these nonclaim statutes is the creation of a right and an obligation to assert the right within a fixed time period or the right sought to be enforced will be barred. **The "rights" created by nonclaim provisions are statutory rights that ordinarily would not exist without the existence of the nonclaim provision. The "obligation" is generally a duty to file a claim with the particular entity prior to the lapse of the statutory time period or the claim is barred.** In *Hutton v. State*, 25 Wash. 2d 402, 407, 171 P.2d 248 (1946), this court addressed the differing nature of judgment liens from statutes of limitation which permit their operation against the State.

A statute creating a lien right for a definite length of time only, is something that is in addition to the cause of action or substantive right in question and is not a statute of limitations, because it does not exist outside of the period during which it is conferred.

The court held that the statutory grant of the lien provided in express terms the period of its existence. **It is only by force of the statute that the lien exists and the duration of the lien is an integral part of the statute creating it. Those statutes which create a substantive right unknown to the common law and in which time is made an inherent element of the right so created, are not statutes of limitation.** *Hutton*, at 405-06. (Emphasis supplied) Id. at 117-188.

A nonclaim statute differs from a statute of limitation as it does more than extinguish the ability to seek a remedy; it creates and destroys the underlying right. It is a substantive right and not merely a procedural remedy.

2. An Expired Judgment Cannot Be Revived.

The retroactive application of RCW 6.17.020(3) to allow collection agencies to renew judgments was provided by the 2002 Amendments which added a new subsection (8), set forth below:

(8) The chapter 261, Laws of 2002 amendments to this section *apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.* (“Emphasis Supplied”)

The Judgment was not “currently in effect” on June 13, 2002. In addition, the Judgment was not “extended” because under *J.D. Tan* and the 1996 version of RCW 6.17.020(3), only the original judgment creditor could “extend” the judgment. The Court in *J.D. Tan v. Summers* expressly ruled that a collection agency could not extend the judgment under RCW

4.56.210 as it existed before the 2002 amendments. *Id.* at 269. No further suit or legal action could be brought to enforce the judgment after August 21, 1996 pursuant to RCW 4.56.210. The judgment lien ceased to exist after that date. The 1996 extension by United was null and void under *J.D. Tan*. This appeal could be decided on this basis alone, as this construction would avoid a constitutional challenge to the retroactive effect of the 2002 Amendments.

In summary, the original extension of the judgment was invalid in 1996 under RCW 6.17.020(3). RCW 4.56.210 provides that the judgment lien expired on August 21, 1996 and no further action could be prosecuted to enforce this Judgment. The order of the trial court should be reversed.

B. THE LEGISLATURE IN THE 2002 AMENDMENTS TO RCW 6.17.020 VIOLATED THE DOCTRINE OF SEPARATION OF POWERS.

United states that the text of RCW 6.17.020, as written in 1996, was not ambiguous. This was the holding of the Court in *J.D. Tan L.L.C. v. Summers*, *Id.* at 269. United in its brief on page 19 asserts that the 2002 amendments are remedial in nature. Shepherd contends that the amendments are a material change of the law. The amendment of an unambiguous statute usually indicates a material change of law. *See, Vita Food Prods., Inc. v. State*, 91 Wn. 2d 132, 134, 587 P.2d 535 (1978). In *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 462- 463, 832 P.2d 1303 (1992), the court stated:

Where ambiguity is lacking in statutory language, this court presumes an amendment to the statute constitutes a substantive change in the law, and the amendment presumptively

is not retroactively applied. *See Overton*, 96 Wash. 2d at 557.

The purpose of the amendments in 2002 was to allow collection agencies to extend judgments. This provided a substantive change in the law. The 2002 amendments which provide retroactive effect to allow assignees (collection agencies) to renew judgments after June 9, 1994 attempted to overrule *J.D. Tan*. The enactment of RCW 6.17.020(8) in 2002 violates the doctrine of separation of powers.

RCW 6.17.020(3) as amended in 2002 should be construed to apply prospectively despite the legislative intent set forth in RCW 6.17.020(8) that the statute apply to all judgments rendered after June 9, 1994. The 2002 amendment attempts to overrule *J.D. Tan* that provides the existing judicial interpretation for the former RCW 6.17.020. The amendments to RCW 6.17.020 in 2002 are not clarifying, and because they expressly contravene the Court of Appeal's construction of the statute in *J. D. Tan*, the separation of powers doctrine prevents the amendments from being retroactively applied to Shepherd.

The decision of the Court of Appeals in *In re Personal Restraint of Stewart*, 115 Wn. App. 319, 75 P.3d 521 (2003) provides express authority for not applying RCW 6.17.030 to allow collection agencies to extend judgments retroactively. The issue in *Stewart* was stated as:

The issue we must decide is whether the amendments to RCW 9.94.728(2) (subsections (c) and (d)) have retroactive effect to serious violent offenders and sex offenders sentenced under the SRA statutory scheme in effect prior to 1992. We hold that the amendments cannot have retroactive application because the amendatory act

contravenes this court's judicial construction of the statutory scheme in effect prior to 1992 and retroactive application of the amendments violates the separation of powers doctrine. *Id.* at 231.

The court reiterated the legal standard for evaluating retroactive application of a statute:

The presumption against retroactive application of a statute or amendment is an essential thread in the mantle of protection that the law affords the individual citizen. This presumption is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. *fn40

The strong presumption that an amendment is prospective can be overcome only if it is shown that (1) the legislature intended the amendment to apply retroactively, (2) the amendment is curative, or (3) the amendment is remedial.*fn41 But, as a further restriction on the retroactive application of an amendment, it is well settled that these exceptions to the general rule of prospective application of an amendment apply only if such retroactive application does not violate any constitutional prohibition.*fn42 *Id.* at 332.

The statute in question in *Stewart* provided for express retroactive effect, similar to RCW 6.17.020(8). *Id.* at 332. The *Stewart* court explained that the retroactive provisions must not violate a constitutional prohibition:

The express legislative intent that the amendments apply retrospectively does not, however, compel the conclusion that the amendments may properly be retroactively applied. As stated, notwithstanding such express legislative intent, the general rule of prospective application of an amendment will apply where retroactive application violates a constitutional prohibition. *Id.* at 333.

The Court then found that the statutory amendment overruled a prior decision of the Court of Appeals, which is identical to the 2002 amendments overruling *J.D. Tan*:

Here, by contrast, the legislature is in effect attempting to overrule *Capello* by expressly stating that the amendments are retroactive. The intent of the legislature as expressed in Sections 1 and 3 of SB 6664 contravenes this court's construction in *Capello* of the statutory scheme in effect prior to 1992. *Id.* at. 334.

The court ruled that "this result violated the constitutional separation of powers doctrine because the legislative branch of government cannot retroactively overrule a judicial decision which authoritatively construes statutory language," *State v. Blilie*, 132 Wn.2d 484, 489, 939 P.2d 691 (1997); *State v. Wadsworth*, 139 Wn.2d 724, 735, 991 P.2d 80 (2000). *Id.* at 325.

The Court in *In Re Stewart* expressly held that Court of Appeal's decisions count as a statement of the law by the judiciary, explaining at length:

DOC argues that separation of powers principles are violated only if a legislative enactment contravenes the Supreme Court's, not the Court of Appeals', construction of the original statute. ...

The often-cited statement of the separation of powers principle pertaining to the judicial branch does not limit application of it to the Supreme Court, but rather refers to the judicial branch as a whole: " B]oth history and uncontradicted authority make clear that it is emphatically the province of the judicial branch to say what the law is' and to 'determine the purpose and meaning of statutes.'"*fn58 We find no authority for

the proposition that separation of powers concerns come into play only when an amendment contravenes the Supreme Court's construction of a statute, especially in light of the fact that the Court of Appeals' interpretation of the original statutes is the only one that exists.*fn59 The Supreme Court is, without question, the ultimate and final decision maker on the issue presented here. But, pursuant to the enabling legislation for the Court of Appeals, appeals from this court to the Supreme Court are solely within the Supreme Court's discretion to hear.*fn60 The Supreme Court declined to review our decision in *Capello* and has not otherwise addressed the issue presented in that case....

Moreover, in cases both prior and subsequent to *Brooks*,*fn61 the Supreme Court used language that can be interpreted to mean that the separation of powers analysis is not confined to whether an amendment contravenes the Supreme Court's construction of the statute, but rather includes whether it contravenes a construction by the Court of Appeals as well. For example, in *Barstad v. Stewart Title Guaranty Co., Inc.*, decided after *Brooks*, the Court stated: 'An amendment is curative and remedial if it clarifies or technically corrects an ambiguous statute without changing prior case law constructions of the statute.'*fn62 And, in *In re F.D. Processing, Inc.*, decided before *Brooks*, the court stated: 'Curative amendments will be given retroactive effect if they do not contravene any judicial construction of the statute.'*fn63 In *Tomlinson v. Clarke*, the Court stated: '**When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive.*fn64** "Any other result would make the legislature a court of last resort."*fn65. *Id.* at 335-337.

United argues that this “case involves the amendment of an unambiguous statute which was not subject to interpretation.” Respondent’s Brief, Pg. 15. The doctrine of separation of powers applies to retroactive amendments to both ambiguous and non-ambiguous statutes that overrule prior decisions of the judiciary. The Court in *In Re Stewart* stated that the statute that was being amended was unambiguous, which is similar to RCW 6.17.020:

In any event, *Overton* did not present the situation that is presented here, namely, **a legislative amendment that squarely contravenes the judicial construction of the unambiguous statute it amended.** (Emphasis Supplied) Id. at 339.

There is no basis for United’s assertion that the original statute must be ambiguous for the doctrine of separation of powers to apply.

United argues that the amendment was procedural as it was similar to an amendment to the statute of limitations. See Respondent’s Brief, Pg. 18. This amendment to RCW 6.17.020, a nonclaim statute, changed a substantive right. This was not a procedural amendment.

The decision of the Court of Appeals in *J.D. Tan* was the existing law of this State, and the 2002 amendments “squarely contravened” this decision. The 2002 Legislation favored collection agencies and directly conflicts with the *J.D. Tan* decision for Judgments extended after June 9, 1994.

**C. SHEPHERD HAD A VESTED RIGHT IN BEING FREE FROM
SUIT AFTER THE ORIGINAL JUDGMENT EXPIRED.**

United argues that the 2002 Legislative Amendments to RCW 6.17.020 were remedial in nature. See Pg. 15 of Respondent's Brief. However, remedial amendments, along with other types of amendments, cannot be applied retroactively if they run afoul of constitutional protections. See for example *McGee Guest Home, Inc. v. Department of Social and Health Services of the State of Washington*, 142 Wn. 2d 316, 324-325, 12 P.3d 144 (2000) where the court stated:

Generally, statutory amendments apply prospectively. *Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 181, 930 P.2d 307 (1997). However, an amendment will be applied retroactively if, '(1) the legislature so intended; (2) it is 'curative'; or (3) it is remedial, *provided, however, such retroactive application does not run afoul of any constitutional prohibition.*' *State v. Cruz*, 139 Wn.2d 186, 191, 985 P.2d 384 (1999) (citing *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 460, 832 P.2d 1303 (1992)). (Emphasis Supplied).

In *Real Progress Inc. v. City of Seattle*, 91 Wn. App. 833, 841, 963 P.2d 890 (1998) the court considered the text of a statute which expressly provided for retroactive effect, which is the same situation as the 2002 Amendments to RCW 6.17.020(8), and stated:

Even where there is a clear indication that the Legislature intended a retroactive application, "[a] statute may not be given retroactive effect . . . where the effect would be to interfere with vested rights." *Gillis v. King County*, 42 Wn.2d 373, 376, 255 P.2d 546 (1953). *Id.* at 840-841.

United succinctly states the central issues in this appeal on page 19 of its brief:

Shepherd claims that the judgment has expired and asks the court to find that she has a vested right not to have the judgment extended and argues that the retroactive application of the 2002 amendment is an unconstitutional interference with that right.

United submits that the judgment had not expired prior to the 2002 amendments. It argues that the judgment still existed, only the right of the judgment creditor to obtain a writ of execution was limited.

United cites numerous cases in support of the proposition that the underlying obligation does not expire; only the judgment expires. While this is true in certain situations, such as the right of setoff, it is not proper in this case due to the express statutory language in RCW 4.56.210 that provides for the cessation of the judgment lien and no further prosecution on an expired judgment. Both RCW 6.17.020 and RCW 4.56.210 address "judgments" and do not involve "underlying obligations." Shepherd has acquired a vested right to be free from suit by the expiration of the judgment pursuant to RCW 4.56.210 in 1996.

1. Nature Of Shepherd's Vested Right To Be Free From Suit.

A vested right involves "more than . . . a mere expectation"; the right must have become "a title, legal or equitable, to the present or future enjoyment of property". *Miebach v. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d 1074 (1984). The present set of facts support the court's acknowledgment of a vested right for Shepherd in relying upon the judgment as being expired. Shepherd had clear title to her residence once

the judgment expired. To revive this judgment will impair the title to her property.

Shepherd has filed a motion to supplement the record with the Order of the King County Superior Court in this action requiring United to provide Countrywide Mortgage with notice of the execution sale. Shepherd refinanced her house with a loan that was later assigned to Countrywide Mortgage. She relied upon the clear title to property unencumbered by the 1986 Judgment and obtained a Deed of Trust. She had a vested right in being free from suit.

This right is identical to the bank's interest in *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 463, 832 P.2d 1303 (1992), where the court declined to apply a 1991 amendment to RCW 60.13.010 that would have retroactively impaired a bank's interest in collateral which became vested when the bank perfected its interest in 1989. Similarly, in *Miebach v. Colasurdo*, the court declined to apply a provision establishing notice requirements to property owners whose property was to be sold at a sheriff's sale. *Id.* at 181. The court declined to apply the provision retroactively because it would have impaired a right in the property which became vested when the sheriff sent an order of confirmation. *Id.* at 180-181. The court noted that even a remedial statute will not be applied retroactively if it affects a substantive or vested right. *Id.*

Shepherd also has an interest under the contracts clause. In *Caritas Services Inc. v. Department of Social and Health Services*, 123 Wn. 2d 391, 869 P.2d 28 (1994), the court declined to give the statute retroactive effect because of the impairment of contracts clause under the Federal and

State Constitutions. *Id.* at 412-414. Shepherd's contract with Countrywide Mortgage will be impaired under the contracts clause if RCW 6.17.020(3) is given retroactive application.

This vested right possessed by Shepherd has been described as the right to be free from suit. *See* for example *State v. Frawley*, 966 S.W.2d 405, 407 (1998) the court stated:

While statutes of limitation are generally seen as procedural in Missouri, they do create a substantive right which predominates in this case in that the limitations period has expired.

"Once the original statute of limitation expires and bars the plaintiff's action, the defendant has acquired a vested right to be free from suit, a right that is substantive in nature." *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. banc 1993). Thus, a procedural rule cannot override the substantive aspects of a statute of limitations. Furthermore, a change in the statute of limitations will not revive a cause of action which has already expired. *Michigan Dept. of Social Services ex rel. Father v. K.S.*, 875 S.W.2d 597, 601 (Mo.App. 1994).

Some cases prefer to state this point as a rule of construction, holding that changes in the statute of limitations are construed to apply only prospectively, in order to avoid constitutional problems. *See* for example, *McKellar v. McKellar*, 110 Nev. 200, 203, 871 P.2d 296, 298 (1994). A constitutional reading of the 2002 amendments to RCW 6.17.020(3) would be that it applies to all judgments which were extended by the original judgment creditor after 1994 and prior to June 13, 2002. Judgments extended by assignees (collection agencies) would not be

considered property extended under *J.D. Tan*. The statute can be read in this manner to avoid a constitutional challenge.

2. United Admits That Retroactive Application Is Not Proper Where a Vested Right is Present

United in its brief on page 23 admits that the retroactive application of RCW 6.17.250 might be unconstitutional with respect to a vested right or contractual right, stating:

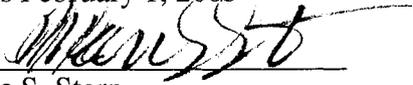
Shepherd raises the question as to what effect of applying the 2002 amendments retroactively would have on mortgages, deeds of trust, sales of real property, etc, made after the extension of a judgment by anyone other than the person in whose favor the judgment was entered and before the effective date of the 2002 amendments. United submits that in such cases retroactive application of the 2002 amendments might be unconstitutional to the extent the 2002 conflict with a vested right or contractual right, and the question should be considered on a case by case basis.

This is the exact situation that is present here as Shepherd is in danger of losing her residence. The 2002 Amendments to RCW 6.17.020 revived an expired judgment and violated a vested right of Shepherd.

III. CONCLUSION

In conclusion, an expired judgment cannot be revived by subsequent legislative amendment. On the basis of the foregoing, Shepherd respectfully requests that the Court reverse the trial court's decision and enter an order vacating the Order Extending Judgment.

Respectfully Submitted this February 1, 2005



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APPENDIX

1. RCW 6.17.020 as amended by Chapter 261, Laws of 2002.

RCW 6.17.020

Execution authorized within ten years -- Exceptions -- Fee -- Recoverable cost.

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order granting the application shall contain an updated judgment summary as provided in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or 6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020 (2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

[2002 c 261 § 1; 1997 c 121 § 1; 1995 c 231 § 4; 1994 c 189 § 1; 1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior: 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]

2. RCW 6.17.020 as amended by Chapter 231, Laws of 1995.

3. RCW 4.56.210.

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after the^[fn*] effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after the^[fn*] effective date of this act shall contain the birth date of the youngest child for whom support is ordered.

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

^[fn*] Reviser's note: This act [1989 c 360] has three effective dates.

Sections 9, 10, and 16 are effective May 12, 1989, section 39 is effective July 1, 1990, and the remainder of this act is effective July 23, 1989. [1995 c 75 § 1; 1989 c 360 § 2; 1979 ex.s. c 236 § 1; 1929 c 60 § 7; RRS §§ 459, 460. Formerly RCW 4.56.210 and 4.56.220. Prior: 1897 c 39 §§ 1, 2.]

NOTES:

Entry of judgments - Superior court - District court - Small claims: RCW 6.01.020.

6.15.020

Note 1

tion of ERISA plans. In re Nelson, 9th Cir.BAP (Wash.)1995, 180 B.R. 584.

2. Employee benefit plan

Use of term "employee benefit plan" in Washington statute exempting qualifying employee benefit plans did not import ERISA definition of "employee benefit plan," so as to preclude exemption under

ENFORCEMENT OF JUDGMENTS

Washington statute for individual retirement accounts (IRAs) on ground that IRA was not exempt under ERISA; clearly, Washington legislature intended to craft its own definition of "employee benefit plan" without reference to ERISA definition. In re Nelson, 9th Cir.BAP (Wash.)1995, 180 B.R. 584.

CHAPTER 6.17

EXECUTIONS

Section

6.17.020. Execution authorized within ten years—Exceptions—Fee—Recoverable cost.

6.17.020. Execution authorized within ten years—Exceptions—Fee—Recoverable cost

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment.

(2) After July 23, 1989, a party who obtains a judgment or order of a court of record of any state, or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, may have an execution issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been rendered pursuant to subsection (1) or (4) of this section may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years during which an execution may be issued. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court. When application is made to the court to grant an additional ten years, the application shall be accompanied by a current and updated judgment summary as outlined in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence may execute the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190.

[1997 c 121 § 1; 1995 c 221 § 4; 1994 c 189 § 1; 1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior: 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]

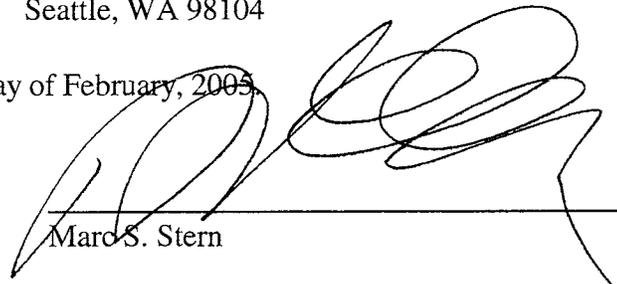
DECLARATION OF SERVICE

Marc S. Stern states as follows:

1. I am a citizen of the United States, over 18 years of age,
and am competent to testify hereto:
2. On February 2, 2005, I caused to be deposited in the United
States mail, first class, postage prepaid, a copy of the
Appellant's Reply Brief on Respondent's attorney,
addressed as follows:

W.D. Palmer, Sr.
615 Second Ave., Ste. 340
Seattle, WA 98104

DATED this 2nd day of February, 2005.



Marc S. Stern

FILED
COURT OF APPEALS DIV. #1
JAMES G. VAN HORN, III
2005 FEB -3 AM 9:18

