

**FILED**  
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STATE OF WASHINGTON

84044-0

No. \_\_\_\_\_  
Court of Appeals No. 61671-4-I

IN THE SUPREME COURT FOR THE  
STATE OF WASHINGTON

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BANK OF AMERICA, N.A., a national bank association,  
Respondent/Petitioner,

v.

J'AMY LYN OWENS, an unmarried person,  
Appellant,

KENNETH TREIGER, a married person as to his separate estate,  
Appellant/Respondent,

SHULKIN HUTTON, INC., P.S., a Washington professional service  
corporation; and EDMUND JOHN WOOD,  
Defendants.

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PETITION FOR REVIEW

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STATE OF WASHINGTON

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## I. INTRODUCTION

This Court should accept review. The Court of Appeals' decision in this case has rendered a nullity the clear and unambiguous intent of the Washington State Legislature that "[t]he **clerk may not enter a judgment, and a judgment does not take effect**, until the judgment has a summary in compliance with this section." RCW 4.64.030(3). By holding that an interlocutory order entered in a dissolution action without the required summary was still somehow an effective judgment creating an automatic judgment lien against the wife's separate homestead property, the Court of Appeals has: (1) obliterated the bright line rule created by the legislature which requires that a judgment have a summary before it can "take effect"; and (2) created considerable confusion relating to when an "order" can be considered a "judgment." Since it was enacted in 1994, the legislature's bright line rule has been relied upon by title companies and any other party dealing with litigants to determine: (1) whether judgment liens have attached to a litigant's real property; and (2) the scope and extent of said liens. Now, under the Court of Appeals' decision, anyone dealing with a party to litigation: (1) will be forced to review every order entered in the particular litigation to determine if it could possibly be interpreted as a judgment; and (2) will not be able to

rely on the execution docket kept by the clerk as intended by the legislature.

This Court should further accept review and reaffirm its longstanding bright line rule that liens imposed by dissolution courts in connection with property distributions between spouses are imposed by express order and not otherwise. The published decision of the Court of Appeals in this case is in direct conflict with its prior decision in *Kshensky v. Pioneer National Title Insurance Co.*, 22 Wn. App. 817, 592 P.2d 667 (Division I 1979), *review denied*, 92 Wn.2d 1025 (1979). As in *Kshensky*, the dissolution decree at issue here only awarded the husband personal property “proceeds” from the future sale of the wife’s separate real property homestead and did not award the husband an express lien in the wife’s separate real property pending its sale.

## **II. IDENTITY OF PETITIONER**

Petitioner Bank of America, N.A. (“Bank of America”) seeks review of the decision designated in Section III. Bank of America was the Respondent before Division One of the Court of Appeals and the Plaintiff before the trial court.

## **III. DECISION OF THE COURT OF APPEALS**

On November 16, 2009, Division One of the Court of Appeals reversed Judge Canova’s decision granting summary judgment in favor of

Bank of America. This Court should grant review of the Court of Appeals' published decision, a copy of which is attached to this Petition for Review at Appendix A.

#### **IV. ISSUES PRESENTED FOR REVIEW**

Petitioner requests that the Supreme Court review whether the Court of Appeals erred by:

1. Holding that a supplemental divorce decree awarding the husband personal property proceeds from the future sale of the wife's separate real property homestead automatically created a judgment lien against the wife's separate real property under RCW 4.56.190 prior to sale.

2. Holding that a supplemental divorce decree awarding the husband personal property proceeds from the future sale of the wife's separate real property homestead automatically created a lien against the wife's separate homestead when no lien in favor of the husband against the wife's separate homestead prior to sale was expressly provided for in the decree.

3. Holding that a supplemental divorce decree awarding separate personal property of the wife to the husband somehow created an equitable lien in the nature of an owelty against the wife's separate real property homestead.

4. Holding that a 2006 interlocutory order in the dissolution action regarding a proposed sale of real property which never occurred was somehow a “judgment” because it was “a final order in the matter” which “fully and finally disposes of the matter at hand, the dissolution of the parties” when the dissolution action was in fact far from over when the 2006 interlocutory order was entered.

5. Holding that an interlocutory order without the judgment summary required by RCW 4.64.030, and not entered on the superior court’s execution docket, somehow still created a judgment lien against the wife’s separate real property homestead in spite of the plain language of RCW 4.64.030(3) which provides in pertinent part that: “[t]he **clerk may not enter a judgment, and a judgment does not take effect**, until the judgment has a summary in compliance with this section.” (Emphasis added).

6. Holding that the plain language of RCW 4.64.030(3) which provides in pertinent part that “[t]he **clerk may not enter a judgment, and a judgment does not take effect**, until the judgment has a summary in compliance with this section” does not modify the language of RCW 4.64.030(1) or RCW 6.01.020. (Emphasis added).

7. Holding that the plain language of RCW 4.64.030(3) which provides in pertinent part that “[t]he **clerk may not enter a judgment,**

**and a judgment does not take effect**, until the judgment has a summary in compliance with this section” applies “at most to judgments for attorney fees.” (Emphasis added).

## V. STATEMENT OF THE CASE

This appeal arises from a declaratory judgment action between J’Amy Lyn Owens (“Owens”), Appellant/Respondent Kenneth Treiger (“Treiger”), Respondent/Petitioner Bank of America, and two other parties who are not part of this appeal, to determine the amount and priority of claims by the parties in certain funds held in trust from the sale of Owens’ separate real property located at 10263 Maplewood Place Southwest, Seattle, WA 98146 (the “Maplewood Property”). Clerk’s Papers (CP) 285-86. Under the terms of the Agreement Regarding Closing of Sale and Holding of Net Proceeds in Trust (“Trust Agreement”), the parties agreed to allow the sale of the Maplewood Property to close and to release any and all claim they may have to the title or to a lien on the title to the Maplewood Property in consideration of the following:

In consideration for the releases requested by Chicago Title, the interests asserted by Owens, Treiger, Shulkin and Bank of America against the Property shall attach to the Net Sale Proceeds (held by the Trustee, in trust) as though the Net Proceeds were the Property in the same manner, date and priority as they attached to the Property at the time of the closing of the Pending Sale.

CP 51 (emphasis added). Bank of America was an existing separate creditor of Owens at the time of the dissolution action between Owens and Treiger and obtained a pre-judgment writ of attachment against the interest of Owens in the Maplewood Property. *See* CP 66-73.

After briefing and argument on three cross motions for summary judgment brought by Bank of America, Treiger and Owens, the trial court entered an Order Granting Bank of America's Motion for Summary Judgment finding and concluding in pertinent part:

- (a) that this action is controlled by the terms of the Trust Agreement executed by the parties prior to the filing of this declaratory action;
- (b) that at the time of her purchase of the Maplewood Property J' Amy Lyn Owens ("Owens") was single and that under the terms of the Trust Agreement, the parties agreed that the Maplewood Property was her separate estate;
- (c) that appellant Kenneth Treiger ("Treiger") was not awarded a lien on the Maplewood Property in the Supplemental Decree entered in the Marital Dissolution Proceeding but a disbursement of one-half the proceeds from the sale of the Maplewood Property, after payment of all encumbrances which had attached to it prior to its sale; and
- (d) that only judgments entered in favor of Treiger on the Execution Docket in the Marital Dissolution Proceeding attached as liens to the Maplewood Property under RCW 6.13.090 prior to Bank of America's attachment of the Maplewood Property.

*See* CP 284-96.

Disagreeing with the trial court's decision below as to the character and priority of interests which attached to the Maplewood Property, Treiger appealed. The Court of Appeals reversed the decision of the trial court.

## VI. ARGUMENT

The Court of Appeals correctly concluded that the Maplewood Property was the separate property of Owens. However, the Court of Appeals erred in finding that the Supplemental Decree of Dissolution ("Supplemental Decree"), CP 74-82, automatically created a lien on the Maplewood Property in favor of Treiger for one half of the unliquidated future sale proceeds. The Supplemental Decree did not: (1) impose a money judgment against Owens regarding the sale proceeds; or (2) expressly create a lien on the Maplewood Property pending its sale. In a broad sweep, without substantive analysis, and ignoring its own precedent and long standing precedent of this Court, the Court of Appeals ruled that a dissolution decree automatically attaches as a lien on real property regardless of the substance of the document itself.

Second, by holding that an interlocutory order without the judgment summary required by RCW 4.64.030(3) (and which as a result was not entered by the clerk in the superior court's execution docket) somehow still created a judgment lien, the Court of Appeals' decision

obliterates the mandate of RCW 4.64.030(3) that a judgment may not be entered and shall not take effect until it has a judgment summary in compliance with that section. This Court should accept review under RAP 13.4(b).

**A. The Court of Appeals' Decision is in Direct Conflict with its Decision in *Kshensky v. Pioneer National Title Insurance Co.***

In *Kshensky*, the Court of Appeals held that an award of “proceeds” from the future sale of real property in the context of a divorce decree “means moneys actually received by the seller” and does not attach as a lien on the seller’s real property. 22 Wn. App. 817, 820, 592 P.2d 667 (1979), *review denied*, 92 Wn.2d 1025 (1979). That rule should apply equally here as there is no substantial difference between the language in the decree in *Kshensky* and the language in the decree in this case. Rather than following its own precedent, the majority ignores the application of *Kshensky* all together.

In *Kshensky*, a dissolution decree awarded the parties’ residence to the wife and granted the husband “a lien on the proceeds of such sale in a sum equal to one-half of the total sales price in excess of \$14,250.00.” *Id.* at 818. The wife sold the house 12 years after the divorce and failed to pay the husband one half of the proceeds as ordered under the parties’ decree. In his suit against the wife, the purchaser of the house, its lender

and title insurer, the husband argued he had a lien on the house by virtue of the dissolution decree. In affirming the trial court's decision to dismiss the purchaser and title insurance company, the court held that "[t]he lien language in the decree did not purport to be a lien on the property . . . and cannot be construed as such." *Id.* at 820 (emphasis added) (internal citation omitted). The court further stated in *Kshensky* that:

The husband's lien was by its terms limited to the Proceeds of any such sale, if the home was ever sold. "Proceeds of sale" in this context mean moneys actually received by the seller.

*Id.* at 820 (emphasis added) (citing *Long-Bell Lumber Co. v. Nat'l Bank of Com.*, 35 Wn.2d 522, 536, 214 P.2d 183 (1950)). In a footnote the *Kshensky* court discussed a way in which the husband could have attached and levied the proceeds stating in pertinent part:

The proceeds of the sale could have been levied on as personal property had the sales transaction been known to the husband. RCW 4.56.190.

*Id.* at 821 n.3.

The Court of Appeals erred in determining that the award of unliquidated future sale proceeds to Treiger automatically attached as a lien on the Maplewood Property when the Supplemental Decree did not: (1) impose a money judgment against Owens regarding the sale proceeds; or (2) expressly create a lien on the Maplewood Property pending its sale.

Like in *Kshensky*, the Supplemental Decree in this case provided Treiger with an award of future personal property. The Court of Appeals' decision here is in direct conflict with *Kshensky* and should be reviewed by this Court.

**B. The Court of Appeals' Decision Contravenes Precedent of the Supreme Court holding that Liens Created By Dissolution Decrees are by Express Order and Not Otherwise.**

The longstanding rule in Washington is that liens granted by dissolution courts are imposed by "express order and not otherwise." *Seattle Brewing & Malting Co. v. Alley*, 59 Wash. 168, 170, 109 P. 600 (1910); see also *Northern Com. Co. v. E.J. Hermann Co., Inc.*, 22 Wn. App. 963, 593 P.2d 1332 (Div. II 1979) (dissolution decree awarded an express and specific lien on community property to secure the payment of a property settlement in the sum of \$49,292.86); *In re Marriage of Wintermute*, 70 Wn. App. 741, 855 P.2d 1186 (Div. II 1993) (dissolution decree awarded an express and specific lien in favor of the husband in the amount of \$12,000 on the family home awarded to wife).

The Court of Appeals supports its decision in this case by citing to *Hartley v. Liberty Park Assoc.*, 54 Wn. App. 434, 774 P.2d 40 (1989) as a "case almost directly on point." Opinion, p. 15. The Court of Appeals fails to reconcile, however, that the dissolution decree in *Hartley* awarded the couple's family home to the wife, subject to an express lien in favor of

the husband “in the amount of Forty Thousand Dollars (\$40,000.00) payable upon sale of the property, or twenty-four (24) months from the date of entry of the Decree of Dissolution, whichever is sooner’ . . . .” *Id.* at 435 (quoting decree). In its decision, the *Hartley* court further noted that the trial court:

[D]etermined that the family home could not be appropriately divided, so it awarded the Issaquah property to Patricia, and gave Michel a money award of \$40,000 to equalize the distribution. The court’s authority for the compensation is the “time honored doctrine of owelty.”

*Id.* at 438 (emphasis added) (internal citations omitted).

As such the express lien in favor of the husband in *Hartley* was in the nature of an owelty lien for purposes of equalization of the partition of jointly owned community property. In this case, the Supplemental Decree awarded the husband personal property proceeds from the future sale of the wife’s separate real property. Given it was the future separate property of the wife which was awarded to the husband, the doctrine of owelty is simply not applicable as the award was in no way an equalization for an unequal partition of community property. The Court of Appeals misapplied the law. An owelty lien was not awarded in this case and the decision in *Hartley* is inapposite.

**C. The Court of Appeals Decision will Cause Confusion and Uncertainty as to Effect of Dissolution Decrees on Real Property.**

This Court should accept review of the Courts of Appeals' decision because the issue of whether a dissolution decree, regardless of its actual content, can somehow automatically create a judgment lien on real property affects a substantial public interest. Without an analysis of the substance of the Supplemental Decree, the Court of Appeals held that the decree "gave Treiger a judgment lien as a matter of law on one-half the proceeds of the sale of the Maplewood Property." Opinion, p. 4. This was error.

First, as noted above in the discussion regarding *Kshensky*, the award of "one half the proceeds of sale" is an award of personal property to which judgment liens do not automatically attach. Rather, RCW 4.56.190 specifically provides that "Personal property of the judgment debtor shall be held only from the time it is actually levied upon. (Emphasis added).

Next, not every judgment automatically attaches as a lien on real property when entered or recorded. RCW 4.56.190 provides that "[t]he real estate of any *judgment debtor* . . . shall be held and bound to satisfy any *judgment* . . ."

Whether a party is a “judgment debtor” or a “judgment creditor” is significant because it affects the party’s rights under RCW 4.56.190 and Title 6. For instance, a writ of garnishment may only be issued for the benefit of a *judgment creditor*, RCW 6.27.020. Further, only a *judgment debtor* (or a third party who has information regarding a *judgment debtor*) may be required to appear at a supplemental proceeding. RCW 6.32.010, .030; *see also* RCW 6.13.090 (judgment becomes a lien on homestead when recorded by a *judgment creditor*).

In this case, the Supplemental Decree awarded Treiger a money judgment against Owens totaling \$27,501.42, with Owens listed as the “judgment debtor” in the judgment summary for this total amount. CP 15. This money judgment was entered in the amount of \$27,501.42, on the execution docket and attached to Owens’ homestead property when it was recorded. CP 92. The judgment summary of the decree also contained the tax parcel number of the Maplewood Property but the decree did not award Treiger an express lien against the Maplewood Property. Rather, Treiger was awarded personal property consisting of one half of the sale proceeds of the Maplewood Property arising at some undetermined point in the future. CP 15-24. Most importantly, the decree did not impose a money judgment against Owens regarding the sale proceeds and thus a

judgment lien did not automatically attach to her separate real property regarding said sale proceeds upon entry of the Supplemental Decree.

**D. The Court of Appeals' Decision Renders the Requirement to Provide a Judgment Summary a Nullity.**

In its published decision, the Court of Appeals holds that an interlocutory order entered in the dissolution action after the Supplemental Decree (which did not contain a judgment summary as required by RCW 4.64.030 and thus was not entered by the clerk in the execution docket) still somehow created an automatic judgment lien on the Maplewood Property. The Court of Appeals' published decision obliterates the legislative mandate of RCW 4.64.030(3) that a judgment may not be "entered" and "**does not take effect**, until the judgment has a summary in compliance with this section." (Emphasis added).

This is an issue of substantial public interest as the requirements of RCW 4.64.030 have been relied upon for many years by title companies and any other party dealing with litigants to determine: (1) whether judgment liens have attached to a litigant's real property; and (2) the scope and extent of said liens.

Devoid of a judgment summary and titled "Order Regarding Closing of Sale of Real Property Located at 10263 Maplewood Pl. S.W., Seattle and Distribution of Proceeds," CP 130, the Court of Appeals held

that the order referred to as “Document 1376” is a “judgment” which attached as a judgment lien to the Maplewood Property. The Court of Appeals held that Document 1376 is a “final order in the matter” and that it “fully and finally disposes of the matter at hand, the dissolution of the parties.” Opinion, p. 12.

The Court of Appeals is simply incorrect. Document 1376 was an interlocutory order entered in Treiger and Owens’ dissolution action and related to a proposed sale of the Maplewood Property to Evan Cole. CP 130. The sale of the Maplewood Property to Evan Cole was never consummated, and Document 1376 entered in August 2006 was far from the “final order” entered in the dissolution action. *See* CP 92 (the execution docket in the dissolution action lists four separate additional judgments entered after Document 1376). The Maplewood Property was ultimately sold to Ashton J. Palmer and Kristina Royce in May 2007, several months after the entry of Document 1376. CP 50.

Now, in the wake of the Court of Appeals’ published decision, anyone dealing with a party to litigation: (1) will be forced to review every order entered in the case to determine if it could possibly be interpreted as a “judgment”; and (2) will not be able to rely on the execution docket kept by the court clerk as was intended by the legislature.

Judgment summaries are necessary for the entry and effectiveness of judgments, for listing of judgments on the execution docket, and to facilitate lien and title searches on real property. If the summary requirement is abrogated, court clerks will have a difficult time determining whether “orders” are in fact “judgments” in entering items onto the execution docket. Moreover it will cause substantial confusion and uncertainty in title searches and lead to increased litigation and costs to determine parties’ rights with respect to real property. The legislature amended RCW 4.64.030 in 1994 and 1997 to prevent this confusion and uncertainty, but the Court of Appeals’ decision has now reintroduced it. Accordingly, this Court should accept review.

**E. The Court of Appeals Decision is Contrary to the Legislative History of RCW 4.64.030.**

In its decision, the Court of Appeals concludes that RCW 4.64.030(3) “contradicts” both RCW 6.01.020 and RCW 4.64.030(1), but then declines to engage in any type of statutory construction analysis to resolve the contradictions. Opinion, p.13. This Court should accept review to conduct a statutory construction analysis of the apparent conflict between RCW 4.64.030(3) and RCW 6.01.020. In conducting a statutory construction analysis, this Court would find that the legislative mandate currently found in RCW 4.64.030(3) supersedes RCW 6.01.020 and

should be enforced for public policy reasons. The mandate of a judgment summary has a significant practical effect for both court administration and in facilitating and creating certainty in title searches and interests in real property.

When two statutes conflict, the relevant rules of statutory construction are:

Where two statutes dealing with the same subject matter are in apparent conflict, established rules of statutory construction require giving preference to the more specific statute, and to the latter adopted statute.

*ETCO, Inc. v. Department of Labor and Indus.*, 66 Wn. App. 302, 306, 831 P.2d 1133 (1992) (emphasis added) (footnotes omitted) (citing *Estate of Little*, 106 Wn.2d 269, 284, 721 P.2d 950 (1986)).

In 1994, the Washington State Legislature unanimously amended RCW 4.64.030 to add language that “The clerk may not sign or file a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section.” Laws of 1994, ch. 185, § 2 (emphasis added); see Appendix B. At the time the above quoted language was added by the legislature, RCW 4.64.030 consisted of only two paragraphs and had not yet been split into its current subsections, which occurred in 1999. However, contrary to the decision of the Court of

Appeals, the additional language enacted in 1994 clearly was intended to modify the first sentence of the statute (now found at RCW 4.64.030(1)).

After the 1994 amendment, RCW 4.64.030 read as follows:

The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

On the first page of each judgment which provides for the payment of money, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment. If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. This information is included in the judgment to assist the county clerk in his or her record-keeping function. *The clerk may not sign or file a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary.*

Laws of 1994, ch. 185, § 2 (emphasis in original indicating new text); RCW 4.64.030 (1994) (emphasis added); *see* Appendix B. This new language providing that a judgment would not take “effect” until a judgment has a summary modified the entire statute. It was not limited in meaning and scope to what later became RCW 4.64.030(3) because that subsection did not yet exist when the language was added.

RCW 4.64.030 was amended again in 1997 in pertinent part as follows:

The clerk may not (~~sign or file~~) enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section.

Laws of 1997, ch. 358, § 5 (emphasis in original indicating new text);  
RCW 4.64.030 (1997); *see* Appendix C.

Both the 1994 and 1997 amendments to RCW 4.64.030 clearly contradict RCW 6.01.020, which provides in pertinent part that a “judgment of a superior court is entered when it is delivered to the clerk’s office for filing.” However, RCW 6.01.020 was enacted by the legislature in 1987, prior to the amendments of RCW 4.64.030 referenced above. Laws of 1987, ch. 442, § 102. As such, RCW 4.64.030 is both the most recent and the more specific expression of the legislature relating to when judgments are to be entered and deemed effective.

**F. The Court of Appeals’ Decision Also Conflicts with Its Holding in *Kim v. Lee*.**

In *Kim v. Lee*, 102 Wn. App. 586, 9 P.3d 245 (2000), *reversed on other grounds*, 145 Wn.2d 79, 31 P.3d 665 (2001), Division One of the Court of Appeals examined whether under RCW 4.64.030, a judgment summary could commence on the first page of the judgment and carry

over onto the second and still be an effective judgment. In the course of its discussion of RCW 4.64.030, the *Kim* court stated:

RCW 4.64.030(2)(a) **mandates** that a succinct information summary shall appear “[o]n the first page of each judgment.” The statute further provides that **“a judgment does not take effect until the judgment has a summary in compliance with this section.”**

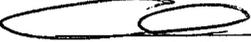
*Id.* at 590 (emphasis added). The *Kim* court referred to RCW 4.64.030 as a “mandate” and presumed that a judgment completely devoid of a summary was not effective. The Court of Appeals discussion of RCW 4.64.030 in this case is in direct conflict with its prior decision in *Kim*.

## VII. CONCLUSION

The criterion set forth in RAP 13.4(b) calls for this Court’s review of the Court of Appeals’ published decision. In addition to conflicting with prior decisions of the Court of Appeals and this Court, the decision reintroduces substantial confusion and uncertainty for title searches which will lead to increased litigation and costs to determine parties’ rights with respect to real property. Review should be accepted.

DATED this 16th day of December, 2009.

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## APPENDIX

Appendix A:

Published Opinion, No.61671-4-I  
November 16, 2009

Appendix B:

Laws of 1994, ch. 185

Appendix C:

Laws of 1997, ch. 358

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

BANK OF AMERICA, N.A., ) a national association, )	No. 61671-4-1
Respondent, )	DIVISION ONE
v. )	PUBLISHED OPINION
J'AMY LYN OWENS, an unmarried ) person, )	
Appellant, )	
KENNETH TREIGER, a married ) person as to his separate estate, )	
Appellant, )	
SHULKIN HUTTON, INC., P.S., a ) Washington professional service ) corporation; and EDMUND JOHN ) WOOD, )	FILED: November 16, 2009
Defendants. )	

GROSSE, J. — A decree of dissolution is a judgment. A judgment creates a lien against real estate when the judgment is entered. Here, the supplemental decree gave Kenneth Treiger a lien for one-half of the proceeds of the sale of the property, less costs and the outstanding mortgage. In addition to entering and filing the judgment, Treiger recorded it before Bank of America obtained its judgment. Accordingly, the trial court erred in failing to give Treiger's lien priority over the Bank's lien.

**FACTS**

This appeal is from the order entered in a declaratory judgment action

*Appendix A*

filed, pursuant to an agreement referred to as the "trust agreement," by appellant Kenneth Treiger, respondent Bank of America (the Bank), Treiger's former wife J'Amy Lyn Owens, and two other parties who are not parties to this appeal. The parties filed the action to determine the amount and priority of the parties' claims to certain funds held in trust from the sale of real property, referred to as the "Maplewood property."

Treiger and Owens were married in July 1997 and separated on June 1, 2000. On June 26, 2000, Treiger and Owens purchased the Maplewood property as husband and wife. They filed for dissolution in February 2001.

In January 2002, during the pendency of the dissolution action but before entry of a decree of dissolution, Treiger filed a chapter 13 bankruptcy petition, which was converted to a chapter 7 bankruptcy in April 2002. In February 2002, Owens filed a separate chapter 11 bankruptcy petition.

The bankruptcy court in Treiger's case lifted the stay to allow the parties' dissolution action to proceed in superior court. The superior court entered a decree of dissolution on June 19, 2002 and reserved property and debt issues until the bankruptcy proceedings concluded.

In an adversary proceeding against Owens, Treiger's chapter 7 trustee obtained a bankruptcy court ruling that the Maplewood property was community property and therefore property of Treiger's bankruptcy estate.

While the parties were married, Owens, as part owner of a business called "The Retail Group," executed a promissory note and borrowing agreement

in favor of the Bank. The Retail Group defaulted under the note and agreement, and the Bank filed a claim in Treiger's bankruptcy action.

In April 2004, nearly two years after entry of the decree of dissolution, Treiger's trustee and Owens entered a settlement agreement in which the trustee agreed to convey his entire interest in the Maplewood property to Owens, subject to all liens of record against the property, in exchange for \$215,000 from Owens. By trustee's quitclaim deed dated April 29, 2004, the trustee conveyed all of the bankruptcy estate's interest in the Maplewood property to Owens, "a single individual."

Treiger's chapter 7 case was closed in March 2005. Owens' chapter 11 case was dismissed in July 2005.

Treiger and Owens returned to state court to distribute the property in the dissolution. On May 9, 2006, the superior court entered a supplemental decree of dissolution, dividing their assets and liabilities. In the supplemental decree, the court ordered that the Maplewood property be sold and that Treiger be awarded one-half of the proceeds of the sale of the property. The court also ordered specified amounts to be deducted from Owens' share of the proceeds of the sale and awarded to Treiger. The supplemental decree contains a judgment summary identifying the Maplewood property by the assessor's property tax parcel or account number and identifying the money judgments awarded to Treiger.

On October 27, 2006, Treiger recorded a number of documents entitled

"orders" or "decrees" that had been entered in the dissolution proceeding, including the supplemental decree. Treiger recorded the following documents on October 27, 2006:

1. "Order on Pre-Trial Motion" entered on March 21, 2006 and recorded under King County Auditor's Number 20061027001370 (Document 1370).

2. "Order on Attorney's Fees" entered on March 29, 2006 and recorded under King County Auditor's Number 20061027001371 (Document 1371).

3. "Supplemental Decree of Dissolution" entered on May 9, 2006 and recorded under King County Auditor's Number 20061027001372 (Supplemental Decree).

4. "Order on Motion for Attorney Fees" entered on June 9, 2006 and recorded under King County Auditor's Number 20061027001373 (Document 1373).

5. "Order on Show Cause Re Contempt/Judgment" entered on June 12, 2006 and recorded under King County Auditor's Number 20061027001374 (Document 1374).

6. "Order Requiring Appellant to File Complete Report of Proceedings" entered on July 18, 2006 and recorded under King County Auditor's Number 20061027001375 (Document 1375).

7. "Order Regarding Closing of Sale of Real Property Located at 10263 Maplewood Pl. S.W., Seattle and Distribution of Proceeds" entered on August 28, 2006 and recorded under King County Auditor's Number 20061027001376 (Document 1376).

In July 2006, the Bank filed an action against Owens, seeking payment of the debt she guaranteed. In November 2006, the Bank amended its complaint to add a claim "in rem" against any separate property of Owens awarded to Treiger. The trial court awarded the Bank judgment in the amount of \$593,519.24. The Bank moved for a prejudgment writ of attachment on the

Maplewood property. The trial court granted the Bank's motion and directed the issuance of a prejudgment writ of attachment on the Maplewood property against only Owens' interest in the property. A writ of attachment issued in accordance with the court's order and was recorded on December 20, 2006.

The Maplewood property was sold in May 2007. Because of the conflicting claims against the property or its proceeds, the title company would not insure the pending sale unless the parties with the claims entered an agreement allowing the sale to close. Accordingly, Owens, Treiger, the Bank, the title insurance company, Owens' attorney, and the trustee entered an "Agreement Regarding Closing of Sale and Holding of Net Proceeds in Trust" (the trust agreement). In the trust agreement, the parties agreed to execute the necessary documents to allow the sale to close and the title company to insure the purchasers' title. The parties also agreed that any of them could file a declaratory judgment action, naming the other parties as defendants and seeking a declaration regarding the priority and extent of the claims asserted by Owens, Treiger, the Bank, and Owens' attorney in the net sale proceeds held in trust by the trustee. The trust agreement recites: "Owens, as her separate estate, is the owner of the Property."

After the proceeds from the sale of the Maplewood property were placed in trust pursuant to the trust agreement, the Bank filed a declaratory judgment action to determine the priority of the parties' claims to the funds and the amount of those claims. On cross motions for summary judgment brought by Owens,

Treiger, and the Bank, the trial court concluded that the matter was controlled by the trust agreement in which the parties agreed that the Maplewood property was Owens' separate estate. The court also concluded that apart from the money judgments, the supplemental decree did not grant Treiger a lien or other interest in the Maplewood property, but rather awarded him half of the proceeds from the sale of the property, "which is one-half of the monies received by Owens as the seller of the Maplewood [p]roperty after payment of all encumbrances including deeds of trust and recorded liens which attached to the Maplewood [p]roperty prior to the sale on May 20, 2007." The court ordered distribution of the net proceeds from the sale of the Maplewood property in the following order:

- (1) payment of Owens' \$40,000 homestead exemption;
- (2) payment to Treiger of the four judgments he recorded on October 27, 2006 (documents 1371, 1373, 1374, and the money judgments awarded in the supplemental decree);
- (3) payment on the Bank's judgment lien which attached to the property pursuant to the prejudgment writ of attachment;
- (4) payment to Treiger of other judgments entered and recorded after the Bank recorded its writ of attachment; and
- (5) payment of any remaining amount held in trust to Treiger and Owens in accordance with the supplemental decree of dissolution or any other order entered in the dissolution proceeding.

Treiger appeals, arguing that the trial court erred by determining that the Maplewood property was Owens' separate property and by granting the Bank's prejudgment writ of attachment priority over documents 1370, 1375, and 1376.

ANALYSIS

Characterization of the Maplewood Property

Treiger argues that the trial court erred not only by finding that the trust agreement governed the character of the Maplewood property but by characterizing the property after Owens purchased it from the bankruptcy estate as Owens' separate property. We disagree.

Central to Treiger's arguments is his allegation that the Maplewood property was community property even after his bankruptcy trustee quitclaimed the property to Owens. However, the character of property as community or separate is determined as of the date of its acquisition. Here, Owens acquired the Maplewood property after the entry of the decree of dissolution. Because Owens acquired the property outside of the marriage, it is her separate property.<sup>1</sup> Further, the conveyance by Treiger's bankruptcy trustee of the bankruptcy estate's entire interest to Owens by quitclaim deed vested title in Owens as her separate property.<sup>2</sup> Accordingly, the recital in the trust agreement that the Maplewood property is Owen's separate property is not, as Treiger argues, false. The trial court did not err by determining that the trust agreement

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<sup>1</sup> See RCW 26.16.010, .030.

<sup>2</sup> RCW 26.16.050 (allowing a spouse to convey to the other spouse his or her interest in community real property and providing that such conveyance operates to divest such real property from claims as community property and to vest the property in the grantee as separate property); see also In re Monaghan's Estate, 198 Wash. 253, 255, 88 P.2d 403 (1939) ("The rule is that, when one spouse deeds a community interest in property to the other, the property becomes the separate property of the grantee spouse unless there is clear and convincing evidence that such was not the intention of the parties."). We find no such clear and convincing evidence of a contrary intent here.

correctly characterized the Maplewood property as Owens' separate property.

Supplemental Decree of Dissolution

Treiger challenges the trial court's conclusion that, apart from the money judgments against Owens specified in the supplemental decree, the decree did not grant Treiger a lien or other interest in the Maplewood property. We agree that the court's conclusion in this regard was error.

RCW 26.09.010(5) specifically provides that the term "[dissolution] decree" includes the term "judgment." "A judgment creates a lien against real estate in each county where the judgment is recorded."<sup>3</sup> Indeed, RCW 4.56.190 and .200 are quite specific. Subsection 190 provides:

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 supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered.

Subsection 200 further provides:

The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) Judgments . . . of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof.<sup>4</sup>

Moreover, the filing of the judgment constitutes constructive notice to third parties who deal with the judgment debtor with respect to the real property to

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<sup>3</sup> See BNC Mortgage, Inc. v. Tax Pros, Inc., 111 Wn. App. 238, 246, 46 P.3d 812 (2002); see also RCW 6.13.090.

<sup>4</sup> See BNC Mortgage, Inc., 111 Wn. App. at 246; see also RCW 6.13.090.

which the lien attaches.<sup>5</sup>

Here, the supplemental decree granted Treiger, as his separate property, one-half the proceeds of the sale of the Maplewood property. The supplemental decree is a judgment that created a lien. Treiger's lien commenced on the date the supplemental decree was entered—May 9, 2006. While Treiger recorded the supplemental decree on October 27, 2006, this was not necessary.<sup>6</sup> The filing of the decree provided constructive notice to any subsequent purchaser.<sup>7</sup> The supplemental decree contained a reference to the assessor's property tax parcel or account number, as required by RCW 4.64.030(2)(b).<sup>8</sup> Given the foregoing, the supplemental decree gave Treiger a judgment lien as a matter of law on one-half of the proceeds of the sale of the Maplewood property, after payment of the costs of sale and the outstanding mortgage, as outlined in that decree. Because Treiger's judgment lien was prior in time to the Bank's prejudgment writ of attachment, Treiger's lien was entitled to priority over the Bank's interest.<sup>9</sup> The trial court erred by failing to grant Treiger's lien priority.

#### Other Orders

The trial court determined that to the extent the supplemental decree

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<sup>5</sup> Hartley v. Liberty Park Assocs., 54 Wn. App. 434, 438, 774 P.2d 40 (1989); see also 28 Marjorie Dick Rombauer, *Washington Practice: Creditors' Remedies—Debtors' Relief* § 7.7, at 88-89 (1998).

§ 7.7.

<sup>6</sup> See Hartley, 54 Wn. App. at 438-39 (citing O/S Sablefish, 111 Wn.2d at 226-227).

<sup>7</sup> See Hartley, 54 Wn. App. at 439.

<sup>8</sup> RCW 4.64.030(2)(b).

<sup>9</sup> See BNC Mortgage, Inc., 111 Wn. App. at 246 ("The lien first in time is the lien first in right.").

awarded Treiger money judgments for past due child support, an Internal Revenue Service refund, and prior attorney fee awards, the supplemental decree had priority over the Bank's prejudgment writ of attachment. The trial court also gave priority to Treiger's liens as reflected in documents 1371 (order awarding attorney fees), 1373 (order awarding attorney fees), and 1374 (contempt order) over the Bank's prejudgment writ of attachment. The Bank agreed below that these documents are judgments that attached as liens against the Maplewood property on October 27, 2006 when they were recorded, and are ahead in priority of the Bank's lien which attached on December 20, 2006 when the Bank recorded its attachment levy. However, Treiger argues that the trial court also erred in not giving priority to documents 1370 (order on pretrial motion), 1375 (order requiring appellant to file complete report of proceedings), and 1376 (order regarding closing of the sale of the Maplewood property priority over the Bank's lien). We disagree.

Not every order is a judgment. 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."<sup>10</sup> An order is "[e]very direction of a court or judge, made or entered in writing, not included in a judgment."<sup>11</sup> A final judgment "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."<sup>12</sup> A final judgment concludes the action by resolving the plaintiff's

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<sup>10</sup> CR 54(a).

<sup>11</sup> CR 54(b).

<sup>12</sup> Catlin v. United States, 324 U.S. 229, 233, 65 S. Ct. 631, 89 L. Ed. 911 (1945).

entitlement to the requested relief.<sup>13</sup>

Document 1370 is an order entered on a pretrial motion regarding Owens' failure to appear at trial and produce documents in response to a subpoena. This document did not resolve the litigation on the merits and did not determine Treiger's entitlement to relief.<sup>14</sup> It is an order, not a judgment. Document 1375 is an order directing Owens to arrange for the transcription of the report of trial proceedings and to file a supplemental statement of arrangements. Again, this document is an order, not a judgment. These orders did not create liens, and the trial court did not err by failing to give them priority over the Bank's lien.<sup>15</sup>

Document 1376 is an order that was entered prior to closing the sale of the Maplewood property. The order re-recites the award of the proceeds of the sale of Maplewood property as set out in the supplemental decree, except at the time this order was entered, the parties had a buyer and a sale price, so the order is more specific as to the amounts to be awarded than the supplemental decree. The order also recaps various prior awards of attorney fees and contempt judgments that were embodied in orders Treiger recorded before the Bank recorded its lien. In the order, the court also awards Treiger \$6,151, representing his financial loss in the form of interest on his share of the sale

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<sup>13</sup> Purse Seine Vessel Owners v. State, 92 Wn. App. 381, 387, 966 P.2d 928 (1998).

<sup>14</sup> Treiger was the plaintiff in the action in which this order was entered; Owens was the defendant.

<sup>15</sup> Treiger's reliance on In re Deal, 85 Wn. App. 580, 582, 933 P.2d 1084 (1997) is misplaced. The issue we face here, namely whether the documents purporting to create liens are in fact judgments, was not present in Deal. In that case, there was no question that the documents were judgments.

proceeds because the property was not timely listed due to Owens' contempt and also awards him \$10,000 as sanctions for Owens' contempt of court orders from June 27 through July 21, 2006.

It seems evident that, by its terms, document 1376 is a judgment. It is the final order in the matter. It fully and finally disposes of the matter at hand, the dissolution of the parties. And, in recording it with the county auditor, Treiger treated it as such. The problem in this case arises because it does not appear on the execution document and the Bank claims this renders it unenforceable. While we have disposed of the argument that Treiger does not have a lien for one-half the sale proceeds, there remains the question of the priority of the other items specifically awarded in 1376. They are not insubstantial.

The Bank's argument puts at issue the meaning and scope to be given to RCW 4.64.030(3), which provides:

If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary.<sup>[16]</sup>

This language, if read to modify all of RCW 4.64.030, contradicts the directive of subsection (1) of the same section:

The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

It also appears to contradict RCW 6.01.020:

For purposes of this title and RCW 4.56.190 and 4.56.210, a

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<sup>16</sup> (Emphasis added.)

judgment of a superior court is entered when it is delivered to the clerk's office for filing. A judgment of a district court of this state is entered on the date of the entry of the judgment in the docket of the court. A judgment of a small claims department of a district court of this state is entered on the date of the entry in the docket of that department.

However, there may not be a conflict because RCW 6.01.020 provides that a judgment is entered when it is delivered to the clerk, not when it is filed. This provision is entirely consistent with the specifics of chapter 4.56 RCW discussed previously, and indeed, is consistent with RCW 4.64.030(1) that directs the clerk to enter all judgments in the execution docket as directed by the court.<sup>17</sup>

As discussed above, a judgment becomes a lien upon entry or filing, and while RCW 4.64.030 clouds the requirements of when the clerk must act to file it, it does not directly contradict other statutory provisions making clear that a judgment becomes a lien upon its entry. In the case of document 1376, that occurred before the bank obtained and filed its writ of attachment. Moreover, document 1376 was recorded before the writ of attachment. Hence, there is no question of constructive notice to the Bank.

Because we need not decide this question in this appeal, we will not engage in an analysis of the rules of statutory construction or the interesting legislative history of RCW 4.64.030. We note, however, that construing subsection (3)'s dictate that a judgment does not take effect until the judgment has a summary to apply at most to judgments for attorney fees, will suffice to avoid most questions.

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<sup>17</sup> The execution docket is what was commonly known as the "judgment rolls" or the "big gray books" that have been replaced by technology.

We believe that the Bank's position is contradicted by statute and by the case law. In Kim v. Lee,<sup>18</sup> the court held that in circumstances where strict compliance is impossible, substantial compliance is sufficient. Of significance to the Kim court was the fact that the judgment was in "actual compliance with the substantive purpose of [the statute]" which is to facilitate lien and title searches.<sup>19</sup> As the court explained:

Strict compliance with legislatively mandated procedures is not always required. Washington courts have long upheld actions taken in substantial compliance with statutory requirements, albeit with procedural imperfections. Substantial compliance requires "actual compliance in respect to the substance essential to every reasonable objective of [the] statute." We apply the doctrine of substantial compliance where appropriate because the distinct preference of modern procedural rules is to allow cases to proceed to a hearing on the merits in the absence of serious prejudice to other parties.<sup>[20]</sup>

The legislative history supports the Kim position. The legislative history documents indicate that the amendments to RCW 4.64.030 were done at the urging of court clerks to "make[] their job[s] easier."<sup>21</sup>

In Federal Intermediate Credit Bank v. O/S Sablefish, the court stated the issue as

ISSUE ONE. Can a judgment creditor enforce a judgment lien commenced pursuant to RCW 4.56.190-.200 against real property purchased from the judgment debtor by a purchaser for value without actual notice of the judgment, when the judgment was not

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<sup>18</sup> 102 Wn. App. 586, 9 P.3d 245 (2000), rev'd on other grounds by 145 Wn.2d 79, 31 P.3d 665 (2001).

<sup>19</sup> Kim, 102 Wn. App. at 592.

<sup>20</sup> Kim, 102 Wn. App. at 591 (internal footnotes omitted).

<sup>21</sup> E.S.B. 5449, 53rd Leg., Reg. Sess. (Wash. 1994) is the bill that added the language that eventually became subsection (3) of RCW 4.64.030. H.B. 1232, 56th Leg., Reg. Sess. (Wash. 1999) is the bill that added subsection (2)(b), regarding judgments awarding an interest in real property.

recorded with the county auditor at the time of sale?<sup>[22]</sup>

The court concluded:

CONCLUSION: A judgment lien on real estate is created by RCW 4.56.200 and when entered by a federal district court, commences upon real property in the county where the judgment is entered from the date of entry. Such entry serves as constructive notice to purchasers that a judgment lien has attached to a judgment debtor's property. While a judgment may also be separately filed for record in the county auditor's office, such recording is not necessary for the lien to be effective against purchasers of the property to which a lien has attached.<sup>[23]</sup>

This holding was reiterated in Hartley v. Liberty Park Associates,<sup>24</sup> a case almost directly on point. The Hartley court stated:

A sum of money paid in the case of partition of unequal proportions for the purpose of equalizing the portions is an owelty, and may be allowed as a lien on the excessive allotment if payment cannot be made at once. See Von Herberg [v. Von Herberg], 6 Wn.2d 100, 121, 106 P.2d 737 (1940)]; 4 G. Thompson, Real Property § 1827 (1979 repl.); 59A Am. Jur. 2d Partition §§ 2, 257, 258 (1987). A judgment for owelty is an equitable lien in the nature of a vendor's lien, which will prevail over a declaration of homestead. Adams [v. Rowe], 39 Wn.2d 446, 448-49, 236 P.2d 355 (1951)]; see also 4 G. Thompson, supra; 59A Am. Jur. 2d, supra at § 258. An award of owelty will become a lien on the partitioned property as established in RCW 4.56.190.

The Issaquah property is located in King County, and the decree of dissolution was filed in King County Superior Court. Pursuant to RCW 4.56.200(1), a judgment lien attached to the Issaquah property on March 30, 1984, the date the decree was filed. The filing of the decree provided constructive notice to any subsequent purchaser or mortgagee that the Issaquah property was encumbered by Michael's lien for \$40,000 plus interest. O/S Sablefish, 111 Wn.2d at 223-25. While Michael could also have filed the decree as a lien in the county auditor's office, such recording was not necessary for the lien to be effective against purchasers of the property. O/S Sablefish, 111 Wn.2d at 226-27.

<sup>22</sup> 111 Wn.2d 219, 222, 758 P.2d 494, 496 (1988)

<sup>23</sup> O/S Sablefish, 111 Wn.2d at 222-23.

<sup>24</sup> 54 Wn. App. 434, 774 P.2d 40 (1989).

Thus, Liberty Park had constructive notice of Michael's lien, and its deed of trust is subordinate to Michael's lien.<sup>[25]</sup>

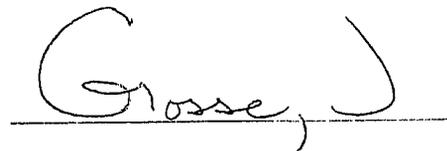
This lien was apparently not filed as it does not appear in the execution docket. It was, however, entered and it was recorded. Hence, it was effective against the Bank's subsequent writ.

Summary

A decree of dissolution is a judgment. Judgments become liens on real property when entered or filed. Even if we regard the supplemental decree here as essentially an equitable lien in the nature of an owelty, it is, nevertheless, a lien. Court orders may be judgments if they are final and dispose of all claims. In this case, the final order, document 1376, was a judgment, and while it may not have been filed, it was entered and it was recorded and thus put the Bank on notice, effectively placing the Bank's writ in a subordinate position.

Owens' interest in the property was encumbered by all the judgments entered in this matter and the parties agreed to a process to determine priority. To the extent that the trial court determined that Treiger did not have an interest that "attached" prior to sale, it erred.

We reverse and remand for entry of judgment consistent with this opinion.

A handwritten signature in cursive script, reading "Grosse, J.", is written over a horizontal line.

WE CONCUR:

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<sup>25</sup> Hartley, 54 Wn. App. at 438-39.

No. 61671-4-I / 17

Ajid, J.

**Treiger/Owens v. Bank of America, N.A., et al, No. 61671-4-I**

Cox, J.—(concurring) I agree that the Maplewood property was the separate property of Owens at the time she signed the Agreement Regarding Closing of Sale and Holding of Net Proceeds in Trust (“trust agreement”). The trial court properly rejected her claim to the contrary. I also agree that the supplemental dissolution decree is a judgment that created a lien against the Maplewood real estate on May 9, 2006, the date of entry of that decree. I write separately to support reversal of this portion of the trial court’s decision in order to clarify why Bank of America’s claim to priority over this judgment lien is untenable. Lastly, because we need not reach the bank’s argument that the failure of Document 1376 to comply with RCW 4.64.030 affects the lien priorities in this case, I believe it is unnecessary to address that issue.

Our statutes make clear that a dissolution decree is a judgment.<sup>1</sup> Our statutes and case law also make clear that, upon entry, judgments become liens against the excess value over any homestead exemption of real property of the judgment debtor in the county where the judgment is entered.<sup>2</sup> A judgment lien constitutes constructive notice to all who deal with the real property subject to the lien.<sup>3</sup>

Here, the trial court entered its supplemental decree on May 9, 2006. The

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<sup>1</sup> RCW 26.09.010(5).

<sup>2</sup> RCW 4.56.190 and .200; 6.13.090; BNC Mortgage, Inc. v. Tax Pros, Inc., 111 Wn. App. 238, 246, 46 P.3d 812 (2002).

<sup>3</sup> Hartley v. Liberty Park Assocs., 54 Wn. App. 434, 438, 774 P.2d 40 (1989); see also 28 Marjorie Dick Rombauer, *Washington Practice: Creditors’ Remedies—Debtors’ Relief* § 7.7, at 88-89 (1998).

No. 61671-4-1/2 (concurring)

decree expressly awarded to Treiger:

One half proceeds of the sale of the real property located at 10263 Maplewood Place Southwest, Seattle, Washington, which has a gross value of at least \$1,116,000 and one encumbrance with an approximate balance of \$469,982.<sup>[4]</sup>

Accordingly, this decree created a judgment lien against Owens' real property—Maplewood—located in King County, Washington. That lien secures her obligation to pay Treiger one-half of the net proceeds of the sale of her property to the extent those proceeds exceed her claim of homestead. It follows that this judgment lien gave constructive notice to the bank of Treiger's interest in the real estate. More specifically, this May 2006 judgment lien established the priority of his lien over the bank's later lien, which was created by the recording of the prejudgment writ of attachment in the King County Auditor's Office on December 20, 2006.

The bank does not address the judgment lien statutes in its briefing. Rather, it focuses on the above-quoted language of the supplemental decree awarding Treiger "proceeds of the sale of real property." Seizing on that language, the bank characterizes Treiger's interest as nothing more than "an award of personal property," not "an express lien against the Maplewood property."<sup>5</sup> The implication is that Treiger only has an interest in personal property, not in the Maplewood real estate.<sup>6</sup> In making this argument, the bank

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<sup>4</sup>Clerk's Papers at 75.

<sup>5</sup> Brief of Respondent Bank of America, N.A. at 26.

<sup>6</sup> See Kshensky v. Pioneer Nat'l Title Ins. Co., 22 Wn. App. 817, 821 n.3, 592 P.2d 667 (1979) (suggesting that the proceeds of sale of a former marital residence was personal property that could be the subject of a levy under RCW 4.56.190 or could be secured by the filing of a financing statement under the Uniform Commercial Code).

No. 61671-4-1/3 (concurring)

heavily relies on Kshensky v. Pioneer National Title Insurance Co.<sup>7</sup>

There, Estera Kshensky and Ignac Kshensky were divorced in 1964.<sup>8</sup> The divorce decree awarded their Seattle residence to Ms. Kshensky as her sole and separate property.<sup>9</sup> The decree also stated that Mr. Kshensky had a lien on half of the proceeds of any sale of the residence in excess of \$14,250, the price they had paid for the residence in 1958, provided he was living at the time of the sale.<sup>1</sup>

In 1977, Ms. Kshensky sold the residence to John Herrin for \$61,000.<sup>11</sup> Herrin had no knowledge of the lien created by the 1964 divorce decree.<sup>12</sup> Pioneer National Title Insurance Company provided title insurance to Herrin, insuring him against unknown liens against the property.<sup>13</sup> Ms. Kshensky kept all the proceeds of the sale to Herrin and apparently left the country.<sup>14</sup>

Upon learning of the sale, Mr. Kshensky sued Herrin, Pioneer National Title Insurance Company, and others.<sup>15</sup> The trial court granted the defendants' summary judgment motion, dismissing the action.<sup>16</sup>

On appeal, Mr. Kshensky argued that Herrin was obligated to pay him one-

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<sup>7</sup> 22 Wn. App. 817, 592 P.2d 667 (1979).

<sup>8</sup> Id. at 818.

<sup>9</sup> Id.

<sup>1</sup> Id. at 818 n.2 ("In the event [Ms. Kshensky] shall sell the above mentioned property at any future time for a total sales price in excess of \$14,250.00, then [Mr. Kshensky] shall be entitled to a lien on the proceeds of such sale in a sum equal to one-half of the total sales price in excess of \$14,250.00.").

<sup>11</sup> Id. at 819.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

No. 61671-4-1/4 (concurring)

half of the proceeds of the sale above the \$14,250 threshold amount based on the lien created by the language in the divorce decree.<sup>17</sup> This court disagreed, concluding that the lien of that decree attached only to the proceeds of sale and that Herrin was without notice of the lien and, thus, a bona fide purchaser of the real estate.<sup>18</sup>

Kshensky is distinguishable from this case both on the facts and the law. First, the Kshensky court did not consider or discuss the judgment lien statutes and case law that we have addressed in these opinions. Thus, that court did not rule on the question whether the divorce decree in that case created a judgment lien, by operation of law, against the real estate described in that decree. In contrast, we hold that the decree in this case created a judgment lien against the Maplewood real estate on the date of entry of the decree, May 9, 2006. Treiger, as a judgment lien creditor of Owens, has a fully perfected right to payment from the proceeds of sale of the real estate prior to payment of the bank's later recorded lien.

Second, the purchaser of the property in Kshensky was a bona fide purchaser. Herrin had no notice of the lien created by the decree.<sup>19</sup> Unlike Herrin, Bank of America is not entitled to the status of a bona fide purchaser for two reasons. The first reason is that it had constructive notice of Treiger's judgment lien against Maplewood from May 9, 2006, the date of entry of the supplemental decree. The second reason is that the bank had further

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<sup>17</sup> Id. at 819-20.

<sup>18</sup> Id. at 820-21.

<sup>19</sup> Id. at 819, 821.

No. 61671-4-1/5 (concurring)

constructive notice of that judgment lien because Treiger **recorded** the supplemental decree in the King County Auditor's Office on October 27, 2006. That supplemental decree was of record in the auditor's office prior to the time the bank recorded its writ of attachment against Maplewood on December 20, 2006. Either the trial court's entry of judgment on May 9, 2006, or the recording of the supplemental decree in the auditor's office on October 27, 2006, was sufficient to establish priority of Treiger's interest in Maplewood over the bank's later-recorded writ of attachment. In short, the bank's reliance on Kshensky is misplaced.

The lead opinion in this case observes "While Treiger recorded the supplemental decree on October 27, 2006, this was not necessary." This is true. Nevertheless, the recording of the supplemental decree in the auditor's office on October 27, 2006 is an independent reason why we reverse the trial court's decision that the bank's writ of attachment has priority over Treiger's right to receive his share of the net proceeds of the sale of Maplewood.

Finally, the bank argues that the Order Regarding Closing of Sale of Real Property, Etc., which the court entered on August 28, 2006 (Document 1376), does not comply with the provisions of RCW 4.64.030.<sup>2</sup> Specifically, the document lacks the judgment summary on its face page that the plain language of the statute requires.<sup>21</sup> Based on this defect, the bank claims that it is entitled

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<sup>2</sup> Brief of Respondent Bank of America, N.A. at 31-34 (citing RCW 4.64.030(3) ("The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section.")).

<sup>21</sup> See RCW 4.64.030 (form of judgment summary).

No. 61671-4-1/6 (concurring)

to priority over this judgment.

As the lead opinion correctly observes, this order is a judgment that Treiger also recorded prior to December 20, 2006, the date the bank recorded its writ of attachment. Thus, the bank presumably had constructive notice of its contents, notwithstanding the failure of the document to comply with the plain words of the statute. Because the failure of the document to comply with the statute is irrelevant to the outcome in this case, there is no need to address the bank's argument that the absence of the judgment summary affects lien priority. Accordingly, I express no opinion on this issue.

Based on this analysis, I agree to reverse and remand for entry of judgment in favor of Treiger.

Cox, J.

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5449

Chapter 185, Laws of 1994

53rd Legislature  
1994 Regular Session

COURT JUDGMENTS--PROVISIONS REVISED

EFFECTIVE DATE: 6/9/94

Passed by the Senate March 9, 1994  
YEAS 45 NAYS 0

JOEL PRITCHARD  
President of the Senate

Passed by the House March 9, 1994  
YEAS 97 NAYS 0

BRIAN EBERSOLE  
Speaker of the  
House of Representatives

Approved March 30, 1994

MIKE LOWRY  
Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SENATE BILL 5449 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN  
Secretary

FILED

March 30, 1994 - 1:35 p.m.

Secretary of State  
State of Washington

Appendix B

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ENGROSSED SENATE BILL 5449

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AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

State of Washington                      53rd Legislature                      1993 Regular Session

By Senator Hargrove

Read first time 01/29/93. Referred to Committee on Law & Justice.

1            AN ACT Relating to judgments; amending RCW 4.56.100, 4.64.030,  
2 6.21.110, 36.48.090, 7.40.080, 6.36.025, 6.36.035, and 6.36.045; and  
3 adding a new section to chapter 36.18 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            Sec. 1. RCW 4.56.100 and 1983 c 28 s 1 are each amended to read as  
6 follows:

7            (1) When any judgment for the payment of money only shall have been  
8 paid or satisfied, the clerk of the court in which such judgment was  
9 rendered shall note upon the record in the execution docket  
10 satisfaction thereof giving the date of such satisfaction upon either  
11 the payment to such clerk of the amount of such judgment, costs and  
12 interest and any accrued costs by reason of the issuance of any  
13 execution, or the filing with such clerk of a satisfaction entitled in  
14 such action and identifying the same executed by the judgment creditor  
15 or his attorney of record in such action or his assignee acknowledged  
16 as deeds are acknowledged. Every satisfaction of judgment and every  
17 partial satisfaction of judgment which provides for the payment of  
18 money shall clearly designate the judgment creditor and his or her  
19 attorney if any, the judgment debtor, the amount or type of

1 satisfaction, whether the satisfaction is full or partial, the cause  
2 number, and the date of entry of the judgment. A certificate by such  
3 clerk of the entry of such satisfaction by him may be filed in the  
4 office of the clerk of any county in which an abstract of such judgment  
5 has been filed. When so satisfied by the clerk or the filing of such  
6 certificate the lien of such judgment shall be discharged.

7 (2) The department of social and health services shall file a  
8 satisfaction of judgment for welfare fraud conviction if a person does  
9 not pay money through the clerk as required under subsection (1) of  
10 this section.

11 (3) The department of corrections shall file a satisfaction of  
12 judgment if a person does not pay money through the clerk's office as  
13 required under subsection (1) of this section.

14 **Sec. 2.** RCW 4.64.030 and 1987 c 442 s 1107 are each amended to  
15 read as follows:

16 The clerk shall enter all judgments in the execution docket,  
17 subject to the direction of the court and shall specify clearly the  
18 amount to be recovered, the relief granted, or other determination of  
19 the action.

20 On the first page of each judgment which provides for the payment  
21 of money, the following shall be succinctly summarized: The judgment  
22 creditor and the name of his or her attorney, the judgment debtor, the  
23 amount of the judgment, the interest owed to the date of the judgment,  
24 and the total of the taxable costs and attorney fees, if known at the  
25 time of the entry of the judgment. If the attorney fees and costs are  
26 not included in the judgment, they shall be summarized in the cost bill  
27 when filed. This information is included in the judgment to assist the  
28 county clerk in his or her record-keeping function. The clerk may not  
29 sign or file a judgment, and a judgment does not take effect, until the  
30 judgment has a summary in compliance with this section. The clerk is  
31 not liable for an incorrect summary.

32 **Sec. 3.** RCW 6.21.110 and 1987 c 442 s 611 are each amended to read  
33 as follows:

34 (1) Upon the return of any sale of real estate, the clerk: (a)  
35 Shall enter the cause, on which the execution or order of sale issued,  
36 by its title, on the motion docket, and mark opposite the same: "Sale  
37 of land for confirmation"; (b) shall mail notice of the filing of the

1 return of sale to all parties who have entered a written notice of  
2 appearance in the action and who have not had an order of default  
3 entered against them; (c) shall file proof of such mailing in the  
4 action; (d) shall apply the proceeds of the sale returned by the  
5 sheriff, or so much thereof as may be necessary, to satisfaction of the  
6 judgment, including interest as provided in the judgment, and shall pay  
7 any excess proceeds as provided in subsection (5) of this section by  
8 direction of court order; and (e) upon confirmation of the sale, shall  
9 deliver the original certificate of sale to the purchaser.

10 (2) The judgment creditor or successful purchaser at the sheriff's  
11 sale is entitled to an order confirming the sale at any time after  
12 twenty days have elapsed from the mailing of the notice of the filing  
13 of the sheriff's return, on motion with notice given to all parties who  
14 have entered a written notice of appearance in the action and who have  
15 not had an order of default entered against them, unless the judgment  
16 debtor, or in case of the judgment debtor's death, the representative,  
17 or any nondefaulting party to whom notice was sent shall file  
18 objections to confirmation with the clerk within twenty days after the  
19 mailing of the notice of the filing of such return.

20 (3) If objections to confirmation are filed, the court shall  
21 nevertheless allow the order confirming the sale, unless on the hearing  
22 of the motion, it shall satisfactorily appear that there were  
23 substantial irregularities in the proceedings concerning the sale, to  
24 the probable loss or injury of the party objecting. In the latter  
25 case, the court shall disallow the motion and direct that the property  
26 be resold, in whole or in part, as the case may be, as upon an  
27 execution received as of that date.

28 (4) Upon a resale, the bid of the purchaser at the former sale  
29 shall be deemed to be renewed and continue in force, and no bid shall  
30 be taken, except for a greater amount. If on resale the property sells  
31 for a greater amount to any person other than the former purchaser, the  
32 clerk shall first repay to the former purchaser out of the proceeds of  
33 the resale the amount of the former purchaser's bid together with  
34 interest as is provided in the judgment.

35 (5) If, after the satisfaction of the judgment, there be any  
36 proceeds of the sale remaining, the clerk shall pay such proceeds to  
37 the judgment debtor, or the judgment debtor's representative, as the  
38 case may be, before the order is made upon the motion to confirm the  
39 sale only if the party files with the clerk a waiver of all objections

1 made or to be made to the proceedings concerning the sale; otherwise  
2 the excess proceeds shall remain in the custody of the clerk until the  
3 sale of the property has been disposed of; but if the sale be  
4 confirmed, such excess proceeds shall be paid to the judgment debtor or  
5 representative as a matter of course.

6 (6) The purchaser shall file the original certificate of sale for  
7 record with the recording officer in the county in which the property  
8 is located.

9 Sec. 4. RCW 36.48.090 and 1987 c 363 s 4 are each amended to read  
10 as follows:

11 Whenever the clerk of the superior court has funds held in trust  
12 for any litigant or for any purpose, they shall be deposited in a  
13 separate fund designated "clerk's trust fund," and shall not be  
14 commingled with any public funds. However, in the case of child  
15 support payments, the clerk may send the checks or drafts directly to  
16 the recipient or endorse the instrument to the recipient and the clerk  
17 is not required to deposit such funds. In processing child support  
18 payments, the clerk shall comply with RCW 26.09.120. The clerk may  
19 invest the funds in any of the investments authorized by RCW 36.29.020.  
20 The clerk shall place the income from such investments in the county  
21 current expense fund to be used by the county for general county  
22 purposes unless: (1) The funds being held in trust in a particular  
23 matter are two thousand dollars or more, and (2) a litigant in the  
24 matter has filed a written request that such investment be made of the  
25 funds being held in trust ((and the income be paid to the  
26 beneficiary)). Interest income accrued from the date of filing of the  
27 written request for investment shall be paid to the beneficiary. In  
28 such an event, any income from such investment shall be paid to the  
29 beneficiary of such trust upon the termination thereof: PROVIDED, That  
30 five percent of the income shall be deducted by the clerk as an  
31 investment service fee and placed in the county current expense fund to  
32 be used by the county for general county purposes.

33 In any matter where funds are held in the clerk's trust fund, any  
34 litigant who is not represented by an attorney and who has appeared in  
35 matters where the funds held are two thousand dollars or more shall  
36 receive written notice of the provisions of this section from the  
37 clerk.

1       **Sec. 5.** RCW 7.40.080 and 1957 c 51 s 9 are each amended to read as  
2 follows:

3       No injunction or restraining order shall be granted until the party  
4 asking it shall enter into a bond, in such a sum as shall be fixed by  
5 the court or judge granting the order, with surety to the satisfaction  
6 of the clerk of the superior court, to the adverse party affected  
7 thereby, conditioned to pay all damages and costs which may accrue by  
8 reason of the injunction or restraining order. The sureties shall, if  
9 required by the clerk, justify as provided by law, and until they so  
10 justify, the clerk shall be responsible for their sufficiency. The  
11 court in its sound discretion may waive the required bond in situations  
12 in which a person's health or life would be jeopardized.

13       **Sec. 6.** RCW 6.36.025 and 1977 ex.s. c 45 s 1 are each amended to  
14 read as follows:

15       (1) A copy of any foreign judgment authenticated in accordance with  
16 the act of congress or the statutes of this state may be filed in the  
17 office of the clerk of any superior court of any county of this state.  
18 The clerk shall treat the foreign judgment in the same manner as a  
19 judgment of the superior court of this state. A judgment so filed has  
20 the same effect and is subject to the same procedures, defenses, set-  
21 offs, counterclaims, cross-complaints, and proceedings for reopening,  
22 vacating, or staying as a judgment of a superior court of this state  
23 and may be enforced or satisfied in like manner.

24       (2) Alternatively, a copy of any foreign judgment (a) authenticated  
25 in accordance with the act of congress or the statutes of this state,  
26 and (b) within the civil jurisdiction and venue of the district court  
27 as provided in RCW 3.66.020, 3.66.030, and 3.66.040, may be filed in  
28 the office of the clerk of any district court of this state. The clerk  
29 shall treat the foreign judgment in the same manner as a judgment of  
30 the district court of this state. A judgment so filed has the same  
31 effect and is subject to the same procedures, defenses, set-offs,  
32 counterclaims, cross-complaints, and proceedings for reopening,  
33 vacating, or staying as a judgment of a district court of this state,  
34 and may be enforced or satisfied in like manner.

35       **Sec. 7.** RCW 6.36.035 and 1979 c 97 s 1 are each amended to read as  
36 follows:

1 (1) At the time of the filing of the foreign judgment, the judgment  
2 creditor or the judgment creditor's lawyer shall make and file with the  
3 clerk of court an affidavit setting forth the name and last known post  
4 office address of the judgment debtor, and the judgment creditor.

5 (2) Promptly upon the filing of the foreign judgment and the  
6 affidavit, the clerk shall mail notice of the filing of the foreign  
7 judgment to the judgment debtor at the address given and shall make a  
8 note of the mailing in the docket. The notice shall include the name  
9 and post office address of the judgment creditor and the judgment  
10 creditor's lawyer if any in this state. In addition, the judgment  
11 creditor may mail a notice of the filing of the judgment to the  
12 judgment debtor and may file proof of mailing with the clerk. Lack of  
13 notice of filing by the clerk shall not affect the enforcement  
14 proceedings if proof of mailing by the judgment creditor has been  
15 filed.

16 (3) (a) No execution or other process for enforcement of a foreign  
17 judgment filed ((hereunder)) in the office of the clerk of a superior  
18 court shall issue until ten days after the date the judgment is filed,  
19 or until ten days after mailing the notice of filing, whether mailed by  
20 the clerk or judgment creditor, whichever is later.

21 (b) No execution or other process for enforcement of a foreign  
22 judgment filed in the office of the clerk of a district court shall  
23 issue until fourteen days after the date the judgment is filed, or  
24 until fourteen days after mailing the notice of filing, whether mailed  
25 by the clerk or judgment creditor, whichever is later.

26 **Sec. 8.** RCW 6.36.045 and 1977 ex.s. c 45 s 3 are each amended to  
27 read as follows:

28 (1) (a) If the judgment debtor shows the superior court of any  
29 county that an appeal from the foreign judgment is pending or will be  
30 taken, or that a stay of execution has been granted, the court shall  
31 stay enforcement of the foreign judgment until the appeal is concluded,  
32 the time for appeal expires, or the stay of execution expires or is  
33 vacated, upon proof that the judgment debtor has furnished the security  
34 for the satisfaction of the judgment required by the state in which it  
35 was rendered.

36 ~~((+2))~~ (b) If the judgment debtor shows the superior court of any  
37 county any ground upon which enforcement of a judgment of a superior  
38 court of any county of this state would be stayed, the court shall stay

1 enforcement of the foreign judgment for an appropriate period, upon  
2 requiring the same security for satisfaction of the judgment which is  
3 required in this state.

4 (2)(a) If the judgment debtor shows the district court that an  
5 appeal from the foreign judgment is pending or will be taken, or that  
6 a stay of execution has been granted, the court shall stay enforcement  
7 of the foreign judgment until the appeal is concluded, the time for  
8 appeal expires, or the stay of execution expires or is vacated, upon  
9 proof that the judgment debtor has furnished the security for the  
10 satisfaction of the judgment required by the state in which it was  
11 rendered.

12 (b) If the judgment debtor shows the district court any ground upon  
13 which enforcement of a judgment of a district court of this state would  
14 be stayed, the court shall stay enforcement of the foreign judgment for  
15 an appropriate period, upon requiring the same security for  
16 satisfaction of the judgment which is required in this state.

17 NEW SECTION. Sec. 9. A new section is added to chapter 36.18 RCW  
18 to read as follows:

19 Superior court clerks may contract with collection agencies or may  
20 use county collection services for the collection of unpaid court  
21 obligations. The costs for the agencies or county services shall be  
22 paid by the debtor. Collection may not be initiated with respect to a  
23 criminal offender who is under the supervision of the department of  
24 corrections without the prior agreement of the department.

25 Any contract with a collection agency shall be awarded only after  
26 competitive bidding. Factors that a court clerk shall consider in  
27 awarding a collection contract include but are not limited to: (1) A  
28 collection agency's history and reputation in the community; and (2)  
29 the agency's access to a local data base that may increase the  
30 efficiency of its collections.

31 The servicing of an unpaid court obligation does not constitute  
32 assignment of a debt, and no contract with a collection agency may  
33 remove the court's control over unpaid obligations owed to the court.

Passed the Senate March 9, 1994.

Passed the House March 9, 1994.

Approved by the Governor March 30, 1994.

Filed in Office of Secretary of State March 30, 1994.

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5144

Chapter 358, Laws of 1997

55th Legislature  
1997 Regular Session

ADMINISTRATION OF COUNTY CLERKS' OFFICES--MODIFICATIONS

EFFECTIVE DATE: 7/27/97

Passed by the Senate April 19, 1997  
YEAS 46 NAYS 0

BRAD OWEN  
President of the Senate

Passed by the House April 14, 1997  
YEAS 95 NAYS 0

CLYDE BALLARD  
Speaker of the  
House of Representatives

Approved May 14, 1997

GARY LOCKE  
Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5144 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL  
Secretary

FILED

May 14, 1997 - 2:21 p.m.

Secretary of State  
State of Washington

Appendix C

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SUBSTITUTE SENATE BILL 5144

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AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington                      55th Legislature                      1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senator Roach)

Read first time 02/12/97.

1            AN ACT Relating to the administration of county clerks' offices;  
2 amending RCW 6.36.035, 7.68.290, 4.56.100, 4.64.030, 4.64.060, and  
3 5.44.010; reenacting and amending RCW 4.64.120; and repealing RCW  
4 4.64.070.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 6.36.035 and 1994 c 185 s 7 are each amended to read  
7 as follows:

8            (1) At the time of the filing of the foreign judgment, the judgment  
9 creditor or the judgment creditor's lawyer shall make and file with the  
10 clerk of court an affidavit setting forth the name and last known post  
11 office address of the judgment debtor, and the judgment creditor.

12            (2) Promptly upon the filing of the foreign judgment and the  
13 affidavit, the ~~((clerk))~~ judgment creditor shall mail notice of the  
14 filing of the foreign judgment to the judgment debtor at the address  
15 given ~~((and shall make a note of the mailing in the docket))~~. The  
16 notice shall include the name and post office address of the judgment  
17 creditor and the judgment creditor's lawyer if any in this state. In  
18 addition, the judgment creditor ~~((may mail a notice of the filing of  
19 the judgment to the judgment debtor and may))~~ shall file proof of

1 mailing with the clerk. (~~Lack of notice of filing by the clerk shall~~  
2 ~~not affect the enforcement proceedings if proof of mailing by the~~  
3 ~~judgment creditor has been filed.~~)

4 (3) (a) No execution or other process for enforcement of a foreign  
5 judgment filed in the office of the clerk of a superior court shall  
6 (~~issue until ten days after the date the judgment is filed, or~~) be  
7 allowed until ten days after (~~mailing the notice of filing, whether~~  
8 ~~mailed by the clerk or~~) the proof of mailing has been filed with the  
9 clerk by the judgment creditor(~~(, whichever is later)~~).

10 (b) No execution or other process for enforcement of a foreign  
11 judgment filed in the office of the clerk of a district court shall  
12 (~~issue until fourteen days after the date the judgment is filed, or~~)  
13 be allowed until fourteen days after (~~mailing the notice of filing,~~  
14 ~~whether mailed by the clerk or~~) the proof of mailing has been filed  
15 with the clerk by the judgment creditor(~~(, whichever is later)~~).

16 **Sec. 2.** RCW 4.64.120 and 1987 c 442 s 1111 and 1987 c 202 s 119  
17 are each reenacted and amended to read as follows:

18 It shall be the duty of the county clerk to enter in the execution  
19 docket any duly certified transcript of a judgment of a district court  
20 of this state and any duly certified abstract of any judgment of any  
21 court mentioned in RCW 4.56.200, filed in the county clerk's office,  
22 and to index the same in the same manner as judgments originally  
23 rendered in the superior court for the county of which he or she is  
24 clerk. Jurisdiction over the judgment, including modification to or  
25 vacation of the original judgment, transfers to the superior court.  
26 The superior court may, in its discretion, remand the cause to district  
27 court for determination of any motion to vacate or modify the original  
28 judgment.

29 **Sec. 3.** RCW 7.68.290 and 1987 c 281 s 2 are each amended to read  
30 as follows:

31 If a defendant has paid restitution pursuant to court order under  
32 RCW 9.92.060, 9.94A.140, 9.94A.142, 9.95.210, or 9A.20.030 and the  
33 victim entitled to restitution cannot be found or has died, the clerk  
34 of the court shall deposit with the county treasurer the amount of  
35 restitution unable to be paid to the victim. The county treasurer  
36 shall monthly transmit the money to the state treasurer for deposit as  
37 provided in RCW 43.08.250. Moneys deposited under this section shall

1 be used to compensate victims of crimes through the crime victims  
2 compensation fund.

3       **Sec. 4.** RCW 4.56.100 and 1994 c 185 s 1 are each amended to read  
4 as follows:

5       (1) When any judgment for the payment of money only shall have been  
6 paid or satisfied, the clerk of the court in which such judgment was  
7 rendered shall note upon the record in the execution docket  
8 satisfaction thereof giving the date of such satisfaction upon either  
9 the payment to such clerk of the amount of such judgment, costs and  
10 interest and any accrued costs by reason of the issuance of any  
11 execution, or the filing with such clerk of a satisfaction entitled in  
12 such action and identifying the same executed by the judgment creditor  
13 or his or her attorney of record in such action or his or her assignee  
14 acknowledged as deeds are acknowledged. The clerk has the authority to  
15 note the satisfaction of judgments for criminal and juvenile legal  
16 financial obligations when the clerk's record indicates payment in full  
17 or as directed by the court. Every satisfaction of judgment and every  
18 partial satisfaction of judgment which provides for the payment of  
19 money shall clearly designate the judgment creditor and his or her  
20 attorney if any, the judgment debtor, the amount or type of  
21 satisfaction, whether the satisfaction is full or partial, the cause  
22 number, and the date of entry of the judgment. A certificate by such  
23 clerk of the entry of such satisfaction by him or her may be filed in  
24 the office of the clerk of any county in which an abstract of such  
25 judgment has been filed. When so satisfied by the clerk or the filing  
26 of such certificate the lien of such judgment shall be discharged.

27       (2) The department of social and health services shall file a  
28 satisfaction of judgment for welfare fraud conviction if a person does  
29 not pay money through the clerk as required under subsection (1) of  
30 this section.

31       (3) The department of corrections shall file a satisfaction of  
32 judgment if a person does not pay money through the clerk's office as  
33 required under subsection (1) of this section.

34       **Sec. 5.** RCW 4.64.030 and 1995 c 149 s 1 are each amended to read  
35 as follows:

36       The clerk shall enter all judgments in the execution docket,  
37 subject to the direction of the court and shall specify clearly the

1 amount to be recovered, the relief granted, or other determination of  
2 the action.

3 On the first page of each judgment which provides for the payment  
4 of money, including judgments in rem, mandates of judgments, and  
5 judgments on garnishments, the following shall be succinctly  
6 summarized: The judgment creditor and the name of his or her attorney,  
7 the judgment debtor, the amount of the judgment, the interest owed to  
8 the date of the judgment, and the total of the taxable costs and  
9 attorney fees, if known at the time of the entry of the judgment. If  
10 the attorney fees and costs are not included in the judgment, they  
11 shall be summarized in the cost bill when filed. (~~This information is~~  
12 ~~included in the judgment to assist the county clerk in his or her~~  
13 ~~record-keeping function.~~) The clerk may not (~~sign or file~~) enter a  
14 judgment, and a judgment does not take effect, until the judgment has  
15 a summary in compliance with this section. The clerk is not liable for  
16 an incorrect summary.

17 **Sec. 6.** RCW 4.64.060 and 1987 c 442 s 1105 are each amended to  
18 read as follows:

19 Every county clerk shall keep in the clerk's office a record, to be  
20 called the execution docket, which shall be a public record and open  
21 during the usual business hours to all persons desirous of inspecting  
22 it. The record must be indexed both directly and inversely, and  
23 include all judgments, abstracts, and transcripts of judgments in the  
24 clerk's office. The index must refer to each party against whom the  
25 judgment is rendered or whose property is affected by the judgment.

26 **Sec. 7.** RCW 5.44.010 and Code 1881 s 430 are each amended to read  
27 as follows:

28 The records and proceedings of any court of the United States, or  
29 any state or territory, shall be admissible in evidence in all cases in  
30 this state when duly (~~authenticated~~) certified by the attestation of  
31 the clerk, prothonotary or other officer having charge of the records  
32 of such court, with the seal of such court annexed.

33 NEW SECTION. **Sec. 8.** RCW 4.64.070 and 1987 c 442 s 1106, 1935 c  
34 22 s 1, & 1929 c 60 s 5 are each repealed.

Passed the Senate April 19, 1997.  
Passed the House April 14, 1997.  
Approved by the Governor May 14, 1997.  
Filed in Office of Secretary of State May 14, 1997.

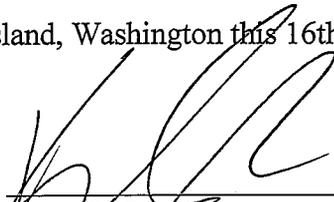
## DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following true and correct:

That on December 16, 2009, I arranged for service of the Petition for Review of Respondent Bank of America, N.A., to the court and counsel for the parties to this action as follows:

Office of the Clerk Court of Appeals, Division 1 One Union Square 600 University Street Seattle, WA 98101	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Jerome Shulkin Shulkin Hutton, Inc., P.S. 7525 SE 24 <sup>th</sup> Street, Suite 330 Mercer Island, WA 98024	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Jerry R. Kimball Attorney At Law Law Office of Jerry R. Kimball 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Edmond John Wood Wood & Jones, P.S. 303 N. 67 <sup>th</sup> St. Seattle, WA 98103-5209	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Cynthia B. Whitaker Attorney at Law 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101-3100	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Catherine W. Smith Edwards, Sieh, Smith & Goodfriend, P.S. 500 Watermark Tower 1109 First Avenue Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

DATED AT Mercer Island, Washington this 16th day of December, 2009.



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Karen L. Linde