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SUPREME COURT
STATE OF WASHINGTON

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No. 84044-0

Court of Appeals No. 61671-4-I

CLERK

IN THE SUPREME COURT FOR THE
STATE OF WASHINGTON

BANK OF AMERICA, N.A., a national bank association,

Petitioner,

v.

KENNETH TREIGER, a married person as to his separate estate,

Respondent,

J'AMY LYN OWENS, an unmarried person,
SHULKIN HUTTON, INC., P.S., a Washington professional service
corporation; and EDMUND JOHN WOOD,
Defendants.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. INTRODUCTION

This appeal arises from a dispute in a declaratory judgment action filed by Bank of America, N.A. (“Bank of America”) to determine the amount and priority of lien claims on a parcel of separate real property (the “Maplewood Property”) owned by J’Amy Lyn Owens (“Owens”). The claims of Bank of America against Owens’ separate real property originate from her separate liability under certain guaranties of loans made by Bank of America to her business. Owens’ separate liability to Bank of America arose prior to her dissolution from Respondent Kenneth Trieiger (“Trieiger”). Trieiger’s claims against Owens’ separate property arose later and directly from their dissolution action.

The Court of Appeals decision below reversed the decision of the trial court, and incorrectly held that: (1) a supplemental divorce decree (“Supplemental Decree”), which awarded the husband unliquidated personal property proceeds from the future sale of the wife’s separate real property, created an automatic statutory judgment lien on the wife’s separate real property; and (2) an interlocutory “order” from the dissolution action that did not contain a judgment summary as mandated by the legislature was still an “effective” judgment which created an automatic judgment lien against the wife’s separate property when it was delivered to the clerk for filing.

In its decision, the Court of Appeals ignored well established precedent that: (1) “[i]f no fixed amount is due and owing as of the date of the decree, no statutory [judgment] lien results,” *Northern Commercial Co. v. E.J. Hermann Co., Inc.*, 22 Wn. App 963, 968, 593 P.2d 1332 (1979); and (2) any equitable liens granted by dissolution courts must be imposed by “express order and not otherwise.” *Seattle Brewing & Malting Co. v. Alley*, 59 Wash. 168, 170, 109 P. 600 (1910).

The Court of Appeals also ignored the clear and unambiguous intent of the 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). In its decision, the Court of Appeals: (1) obliterated the bright-line rule created by the legislature that requires that a judgment have a summary before it can “take effect”; and (2) created considerable confusion relating to when an “order” is a “judgment.” Prior to the decision below, this 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 real property; and (2) the scope and extent of said liens. Now, under the Court of Appeals’ decision, it will be necessary for title companies to review every order entered in a particular litigation to determine if it could possibly be interpreted as a judgment. Importantly, parties will not be able

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

This Court should reverse the decision of the Court of Appeals and affirm the decision of the trial court.

II. ARGUMENT

A. **The Supplemental Decree Did Not Provide Treiger with a Statutory or Equitable Lien on the Maplewood Property.**

The Court of Appeals correctly concluded that the Maplewood Property was the separate property of Owens. However, without any analysis of the actual language of the decree itself, the Court of Appeals held that the Supplemental Decree was a “judgment” that created an automatic statutory lien on the Maplewood Property for one-half of the proceeds from its future sale commencing on the date the decree was entered. *Bank of America, N.A. v. Owens*, 153 Wn. App. 115, 124-25, 221 P.3d 917 (2009). The Court of Appeals erred in holding that the award of non-liquidated future sale proceeds to Treiger automatically attached as a statutory judgment lien on Owens’ separate real property. The decree did not impose a money judgment in a liquidated amount then due and owing against Owens regarding the future sale proceeds.

1. **The Court of Appeals Erred in Holding that the Supplemental Decree Created an Automatic Statutory Judgment Lien on Owens’ Separate Real Property.**

A decree of dissolution is a “judgment.” RCW 26.09.010(5). Not every “judgment,” however, 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*” RCW 4.56.200(1) provides that “[t]he lien of judgments upon the real estate of the *judgment debtor* shall commence . . . at the time of entry or filing thereof.”

Thus, 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 did not award Treiger a liquidated money judgment against Owens with respect to the future sale proceeds from the Maplewood Property. A liquidated money judgment against Owens was provided for in the Supplemental Decree in the aggregate amount of \$27,501.42 with Owens listed as the “judgment debtor” in the judgment summary for this total amount. CP 15-16. This

money judgment was entered on the execution docket in the amount of \$27,501.42 and attached to Owens' homestead real property when it was recorded. CP 92.

In addition, the Supplemental Decree provided that Treiger be awarded:

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.

CP 75 (emphasis added).

This was an award of future personal property in an undetermined amount to be disbursed at an undetermined time.¹ Any amounts owed to Treiger from Owens under this provision in the Supplemental Decree were not liquidated or due until the sale of the Maplewood Property. As such, an automatic statutory judgment lien for a future unliquidated amount did not attach against Owens' separate real property upon the entry of the Supplemental Decree. To secure this future award, the Supplemental Decree would have needed to provide for an express lien, which it did not do. As Division II of the Court of Appeals has correctly held:

¹ There is no automatic statutory judgment lien against personal property. *See* RCW 4.56.190 ("Personal property of the judgment debtor shall be held only from the time it is actually levied upon.") (emphasis added).

[A] statutory judgment lien will arise only from the date of the decree, and will only act to secure an amount which is fixed by the court as due and owing from the date of the decree. If no fixed amount is due and owing as of the date of the decree, no statutory lien results. (Where such installment payments are decreed, a statutory lien does not arise until a further judgment is entered which determines the amount of the unpaid installments.) *Swanson v. Graham*, 27 Wn.2d 590, 179 P.2d 288 (1947).

Northern Commercial Co., 22 Wn. App at 968. Further, this Court held in

Swanson v. Graham:

At the time a judgment providing for future payments of alimony installments is entered, there is no debt due. There is nothing to secure. There is nothing for which a lien could come into being. (The situation would be different, of course, if the judgment provided for alimony in a lump sum.) As the installments accrue and are unpaid, they become judgments. But such judgments do not become statutory liens. In order to create a statutory lien there must be a judgment for a specific amount and it must be entered. Immediately upon its being entered, in order to secure its collection, the defendant's real property is encumbered. It is then impressed with the lien.

27 Wn.2d at 597 (emphasis added).

2. The Supplemental Decree Did Not Award Treiger an Equitable Lien on the Maplewood Property.

Washington courts have long held that equitable liens imposed by dissolution courts are imposed by “express order and not otherwise.” *Seattle Brewing & Malting Co. v. Talley*, 59 Wash. at 170. See also *Northern Commercial Co.*, 22 Wn. App 963 (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). Obviously, this substantive legal requirement is to ensure certainty and clarity for parties when dealing with interests in real property.

In this case, the judgment summary of the Supplemental Decree contained the tax parcel number of the Maplewood Property but the actual substantive terms of the decree itself did not award Treiger an express lien against the Maplewood Property.

RCW 4.64.030(2)(b) provides in pertinent part:

If the judgment provides for the award of any right, title, or interest in real property, the first page must also include an abbreviated legal description of the property in which the right, title, or interest was awarded by the judgment or the assessor's property tax parcel or account number . . .

(Emphasis added.)

Thus, the actual substantive terms of the judgment itself must expressly provide for the award of a right, title or interest in the real property. The requirement that the judgment summary identify the real property is an additional step, insufficient in and of itself, to create the right, title or interest. The inclusion of the tax parcel number in the judgment summary of the Supplemental Decree cannot cure the failure of

the decree to actually grant Treiger an express lien on the Maplewood Property.

3. ***Kshensky v. Pioneer Nat'l Title Ins. Co.* is Instructive.**

Kshensky v. Pioneer Nat'l Title Ins. Co., 22 Wn. App. 817, 592 P.2d 667 (1979), *review denied*, 92 Wn.2d 1025 (1979), is instructive. As in this case, *Kshensky* involved a divorce decree wherein the husband was awarded future proceeds upon the sale of real property awarded to the wife. The Court of Appeals held there that an award of “proceeds” from the future sale of real property in the context of a divorce decree “means money actually received by the seller” and does not attach as a lien on the seller’s real property. *Id.* at 820. This rule should apply equally here as there is no functional difference between the language in the decree in *Kshensky* and the language in the decree in this case.

In *Kshensky*, the dissolution decree awarded the parties’ residence to the wife and granted the husband an unliquidated “ ‘lien on the proceeds of such sale in the sum equal to one-half of the total sales price in excess of \$14,250.00.’ ” *Id.* at 818 (quoting the dissolution decree). 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 lawsuit against the wife, the purchaser of the house, his lender, and their title insurer, the husband argued he had a lien on the real property 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 [real] 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. *Long-Bell Lumber Co. v. National Bank of Commerce*, 35 Wn.2d 522, 536, 214 P.2d 183 (1950). See *Black's Law Dictionary* 1369 (4th Ed. 1968).

Id. at 820 (emphasis added). 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. It should also be noted that under the Uniform Commercial Code, adopted subsequent to the entry of the divorce decree in this case, financing statements can be filed to protect proceeds on disposition of collateral. RCW 62A.9-306.

Id. at 821 fn3.

Similar to *Kshensky*, the Supplemental Decree in this case provided Treiger with an unliquidated award of future sale proceeds, but not: (1) an express lien on the Maplewood Property, or (2) a liquidated and fully due money judgment against Owens regarding the sale proceeds. However, in its majority decision, the Court of Appeals simply ignores its

prior decision in *Kshensky*. The concurrence below attempts to distinguish *Kshensky* based on dicta that the purchaser of the property in *Kshensky* was also a bona fide purchaser (due to the fact that the decree in *Kshensky* was not recorded). *Owens*, 153 Wn. App. at 135 (Cox, J., concurring). The concurrence makes a distinction without a difference. The recording of the decree in this case has no legal significance.

A document is recorded to provide notice. However, this case is not and has never been about notice. Rather, this case is about the actual substance of the Supplemental Decree and the other recorded documents. It is in this respect that the Court of Appeals made certain fundamental errors. The mere act of recording a document cannot somehow elevate that document beyond the substance of the document itself. The recording of the decree in *Kshensky* would not have changed the result in that case, as recording would not change the substantive fact that the decree, like the one here, did not award the husband an equitable lien on the subject real estate.

Further, the concurrence attempts to distinguish *Kshensky* on the basis that “the court did not rule on the question whether the divorce decree in that case created a judgment lien, by operation of law . . .” *Owens*, 153 Wn. App. at 135. Again, given that it was undisputed that the award in *Kshensky* was both unliquidated and not due when the decree

was entered, no automatic statutory judgment lien could attach when the decree in *Kshensky* was entered. See *Swanson*, 27 Wn.2d at 597; *Northern Commercial Co.*, 22 Wn. App 963. As such, the *Kshensky* court would have had no need to even address the question.

In this case, the trial court correctly found, apart from the liquidated money judgments due in the total amount of \$27,501.42, the Supplemental Decree did not award Treiger a lien or other interest in the Maplewood Property. CP 293. The fact that the Supplemental Decree was recorded did not and cannot change the substance and legal effect of the document. The decision of the Court of Appeals should be reversed.

B. The Doctrine of Owelty is Inapplicable in this Case as There is No Partition of Jointly Held Property.

The Court of Appeals attempts to buttress its analysis by relying heavily on *Hartley v. Liberty Park Associates*, 54 Wn. App. 434, 774 P.2d 40 (1989), describing it as a case “almost directly on point.” *Owens*, 153 Wn. App. at 130. Despite citation to the *Hartley* case throughout the Court of Appeals’ decision, a comparison of *Hartley* and *Owens* reveals fundamental distinctions on which each case pivots.

The *Hartley* court was presented with the question of whether the husband’s express lien on formerly jointly owned property was senior to a deed of trust executed by the wife after entry of the dissolution decree.

The dissolution decree entered by the superior court awarded the wife the family home “subject to [husband’s] ‘lien in the amount of Forty Thousand Dollars (\$40,000.00) payable upon the sale of property, or twenty four (24) months from the date of entry of the Decree of Dissolution, whichever is sooner.’ ” *Hartley*, 54 Wn. App. at 435 (quoting language from the parties’ decree of dissolution).

Initially, unlike the case here, the divorce decree in *Hartley* by its terms expressly awarded the husband a lien in a liquidated amount. The *Hartley* court then applied the equitable doctrine of owelty to hold that the later executed but first recorded deed of trust was subordinate to the husband’s prior but unrecorded express liquidated lien. *Hartley*, 54 Wn. App. at 437-39. “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 . . .” *Hartley*, 54 Wn. App. at 438 (emphasis added). “An award of owelty will become a lien on the partitioned property as established in RCW 4.56.190.” *Hartley*, 54 Wn. App. at 438 (emphasis added). Thus, the husband’s specific lien in the liquidated amount of \$40,000 on the former family home was a judgment lien created by virtue of the doctrine of owelty applied when the divorce court partitioned the jointly held real property between the spouses.

It is well established that partition is the means employed to end a joint ownership co-tenancy and to dispose of co-tenants interests in land. *See generally* chapter RCW 7.52; 17 Wash. Prac., Real Estate § 1.32. However, at the time of the Supplemental Decree, Owens and Treiger were not co-tenants or joint owners of the Maplewood Property and, thus, no partition occurred. The Court of Appeals correctly determined that the Maplewood Property was the separate property of Owens at the time the Supplemental Decree was entered. *Owens*, 153 Wn. App. at 122-23. As such, with no partition of jointly owned property before the divorce court, the doctrine of owelty is simply inapplicable to this case, and the Court of Appeal's reliance upon *Hartley* in its decision is misplaced.

C. The Court of Appeals Erred in Holding that Document 1376 (CP 130-34) was a Judgment Which Attached as a Lien to the Maplewood Property.

The Court of Appeals' conclusion that "[n]ot every order is a judgment" is correct, and the court properly determined that documents 1370, CP 121-24, and 1375, CP 125-28, were not judgments and did not attach as liens to the Maplewood Property. *Owens*, 153 Wn. App. at 126. The Court of Appeals' analysis unravels, however, in its determination that document 1376, titled "Order Regarding Closing of Sale of Real Property at 10263 Maplewood Pl. S.W., Seattle and Distribution of Proceeds," CP 129-34 (emphasis added), was somehow a "final order in

the matter” and that it “fully and finally disposes of the matter at hand, the dissolution of the parties.” *Owens*, 153 Wn. App. at 127. These conclusions are simply incorrect.

Under the Civil Rules, 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.” CR 54(a)(1). In contrast, an order is “[e]very direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.” CR 54(a)(2). Moreover, by statute, judgments are processed differently from orders. RCW 4.64.030(1) requires that “[t]he clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amounts to be recovered, the relief granted, or other determination of the action.” Furthermore, “[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) (emphasis added).

Document 1376 is not a judgment. This document is an interlocutory order entered in the dissolution action in August 2006 relating 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 between Treiger and

Owens. *See* CP 92 (the execution docket in the dissolution action establishes that four separate judgments were entered in said action after the entry of 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. Document 1376 did not contain a judgment summary, or in any way purport to be a final determination of the rights of the parties in the action, and was not entered on the execution docket by the court clerk. *See* CP 92, 130-34.

By erroneously finding that Document 1376 was somehow a judgment that attached as a lien to the Maplewood Property, the Court of Appeals: (1) ignored its own conclusion that a “final judgment ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment,’ ” *Owens*, 153 Wn. App. at 126; and (2) eviscerated the requirement of RCW 4.64.030(3) that each judgment must contain a judgment summary starting on the first page of the judgment, before it can take effect and be entered by the court clerk.

Judgment summaries are necessary to provide certainty regarding the entry and effectiveness of judgments, the listing of judgments on the execution docket, and to facilitate lien and title searches on real property. If the judgment summary requirement is abrogated by the decision below, court clerks will once again be required to attempt to determine whether

“orders” are in fact “judgments” when entering items onto the execution docket. The legislature amended RCW 4.64.030 in 1994 and 1997 to prevent this confusion and uncertainty, but the decision of the Court of Appeals has now reintroduced it.

1. The Legislative History of RCW 4.64.030 is Contrary to the Court of Appeals’ Decision.

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. *Owens*, 153 Wn. App at 128-29. 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. Dept. of Labor and Indus., 66 Wn. App. 302, 306, 831 P.2d 1133 (citing *Estate of Little*, 106 Wn.2d 269, 284, 721 P.2d 950 (1986)) (emphasis added).

In 1994, the Washington State Legislature unanimously amended RCW 4.64.030 to add language that “[t]he 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. 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 (this 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). 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).

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.

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. By eviscerating the legislative mandate of RCW 4.64.030(3), the Court of Appeals

decision has destroyed the ability of title insurers and any other party to rely on the courts' execution dockets as a stable and consistent public record to determine whether judgment liens have attached to real property. Now, title insurers and others will be required to review every order entered in litigation and then attempt to determine if said order should be considered a judgment. The legislature amended RCW 4.64.030 in 1994 and 1997 to prevent this type of confusion and uncertainty, but the decision of the Court of Appeals has now reintroduced it. As such, the Court of Appeals decision should be reversed and the decision of the trial court affirmed.

2. The Unilateral Act of Recording an "Order" Does Not Somehow Make it a "Judgment" and Is Not Substantial Compliance with RCW 4.64.030.

As noted earlier, the Court of Appeals' decision has elevated *the act of recording* a document over the substance of the document itself. For example, in its finding that Document 1376, CP 130, was an effective "judgment," the Court of Appeals found it significant that "in recording it with the county auditor, Treiger treated it as such." *Owens*, 153 Wn. App. at 127. The mere unilateral act of a party in recording a document however cannot somehow elevate that document into something that it is not. Document 1376, along with Documents 1370 and 1375, referenced in Treiger's cross-petition are orders. The recording of these "orders" did

not somehow substantively transform them into effective “judgments” which then attached as automatic statutory liens to the Maplewood Property. In his briefs, Treiger consistently attempts to elevate “notice” over “substance” by suggesting that the substantive requirements of RCW 4.64.030 can somehow be complied with by a party’s unilateral recording of a non-compliant document. This argument simply ignores the express legislatively mandated role of the court clerk under RCW 4.64.030 in entering judgments in the execution docket and the express legislative mandate that every judgment have a judgment summary starting on the first page before it can take “effect” and be “entered” by the clerk. *See Kim v. Lee*, 102 Wn. App. 586, 590, 9 P.3d 245 (2000), *reversed on other grounds*, 145 Wn.2d 79, 31 P.3d 665 (2001). In short, Treigers’ unilateral act of recording an order cannot make it a judgment.

III. CONCLUSION

The decision of the Court of Appeals should be reversed and the decision of the trial court affirmed.

DATED this 1st day of October, 2010.

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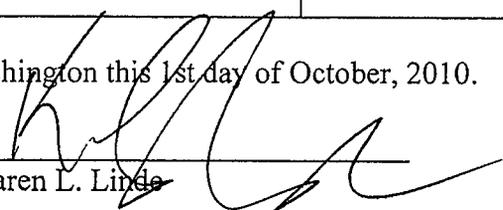
10 OCT -1 PM 4: 37 DECLARATION OF SERVICE

BY RONALD H. CARPENTER
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following true and correct:

That on October 1, 2010, I arranged for service of the Supplemental Brief of Petitioner Bank of America, N.A., to the Court and counsel for the parties to this action as follows:

Office of the Clerk Supreme Court of the State of Washington Temple of Justice P.O. Box 40929 Olympia, WA 98504	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E- Mail
Jerome Shulkin Shulkin Hutton, Inc., P.S. 7525 SE 24 th 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"/> E-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 type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
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Cynthia B. Whitaker Attorney at Law 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101-3100	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E- Mail
Catherine W. Smith Edwards, Sieh, Smith & Goodfriend, P.S. 500 Watermark Tower 1109 First Avenue Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E- Mail

DATED AT Seattle, Washington this 1st day of October, 2010.



Karen L. Linde

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