

No. 43282-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KITSAP BANK, a Washington Financial Institution,
Respondent,

v.

BANK OF AMERICA, a Washington Financial Institution;
CHARLENA M. LANTERNO,

Respondents,

and

GAIL DENLEY, as Personal Representative of the
CONSOLIDATED ESTATES OF HELEN M. CORRELL AND
JAMES F. CORRELL,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BANK OF AMERICA

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP COUNTY
THE HONORABLE LEILA MILLS

BRIEF OF APPELLANT

SMITH GOODFRIEND, P.S.

By: Howard M. Goodfriend
WSBA No. 14355

1109 First Avenue, Suite 500
Seattle, WA 98101
(206) 624-0974

LASHER HOLZAPFEL
SPERRY & EBBERSON, PLLC

By: Robert J. Henry
WSBA No. 6171

601 Union St., Suite 2600
Seattle WA 98101
(206) 624-1230

Attorneys for Appellant

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I. INTRODUCTION

This was an action brought by Kitsap Bank to resolve disputed ownership of funds between a personal representative and the designated "Pay on Death" beneficiary following the account holder's death. Shortly before 94-year-old Helen Correll's death, she purportedly changed her survivorship beneficiary from her brother to her banker at Chase Bank, who delivered a signature card and a \$400,000 check to Kitsap Bank for deposit. The Chase Bank check purported to bear Ms. Correll's signature, but a handwriting expert could not verify the signature and someone else had filled in the rest of the check.

On summary judgment, the trial court held that the PR's claim to the funds was time barred under the "Super Will" statute, RCW 11.11.070(3), and that she failed to raise a triable issue of undue influence. The trial court then awarded attorney fees under RCW 11.96A.150, even though the action was brought by Kitsap Bank under RCW 30.22.210 and no party had pled a claim under TEDRA or Title 11. Gail Denley, personal representative of Helen Correll's estate, appeals.

II. ASSIGNMENTS OF ERROR

A. The trial court erred in entering its Order Granting Defendant Charlena M. Lanterno's Motion for Summary Judgment. (CP 200-03) (App. A)

B. The trial court erred in entering its judgment for attorney fees. (CP 281-83) (App. B)

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Did the trial court err in applying the statute of limitations in RCW 11.11.070(3), the "Super Will" statute, to a claim by a personal representative to recover non-probate assets on behalf of the estate where there is no Super Will at issue?

B. Is there a presumption of undue influence sufficient to defeat a motion for summary judgment against a personal representative seeking to recover funds from a \$400,000 check that was written on a 94-year old woman's account, hand delivered by her banker, and deposited in another account in which the banker was named as a Pay on Death Beneficiary?

C. Did the trial court err in awarding attorney fees under TEDRA where the case was brought under the Financial Institution

Individual Account Deposit Act, RCW 30.22.210, and no party asserted any claim under TEDRA?

IV. STATEMENT OF THE CASE

A. Statement of Facts.

Helen Correll died on February 23, 2011, at the age of 94. (CP 8) Shortly before her death she executed a Last Will and Testament, prepared by Kitsap County lawyer John Mitchell on January 6, 2011. (CP 80-84) Mr. Mitchell also prepared a power of attorney on behalf of Ms. Correll, identifying respondent Charlena Lanterno as her attorney in fact. (CP 80, 85-89)

Lanterno served as Ms. Correll's banker at Washington Mutual, later Chase Bank, where Ms. Correll maintained her accounts. (CP 94) Ms. Correll also banked at Kitsap Bank in Silverdale Washington, where she maintained a survivorship account designating her brother Blaine Wiseman as the beneficiary upon her death. (CP 92) In November 2010, Ms. Correll called Kitsap Bank stating that she wanted to leave funds to her friends. (CP 93)

In December 2010, Kitsap Bank received what purported to be handwritten instructions from Helen Correll to remove her brother from her account and instead name Lanterno as the

survivorship beneficiary on the account. (CP 95, 100) No one saw Ms. Correll write or sign the letter, which arrived at the bank by mail. (CP 95) A handwriting expert could not determine whether the signature on the letter was that of Helen Correll. (CP 164)

When Kitsap Bank's representative April Ihde called her, Ms. Correll directed Kitsap Bank to remove her brother Blaine as beneficiary, describing Lanterno as a "close friend." (CP 94) Ihde then called Lanterno at Chase Bank. (CP 94) Lanterno delivered a signature card to Kitsap Bank, effecting the change in survivorship beneficiary. No one saw Ms. Correll sign the card. (CP 95)

Lanterno also delivered a \$400,000 check written on Ms. Correll's Chase Bank account to Kitsap Bank. (CP 70, 168) Someone other than Ms. Correll filled in all but the signature line on the \$400,000 check. (CP 164) A handwriting expert could not verify that the signature on the check was that of Ms. Correll. (CP 164) Of that \$400,000, \$365,000 went into the checking account to which Lanterno was the named beneficiary. (CP 172)

Helen Correll, died on February 23, 2011, less than two months later. (CP 8) Lanterno obtained a cashier's check from

Kitsap Bank, transferring \$400,000 to her personal account at Bank of America. (CP 15, 96)

B. Procedural History.

On March 25, 2011, Helen Correll's niece, Blaine Wiseman's daughter, Gail Denley, was appointed personal representative in a probate proceeding filed in Kitsap County Superior Court. (CP 8, 81) In the course of collecting the assets of the estate, Ms. Denley learned that Kitsap Bank had already disbursed the entire contents of Ms. Correll's checking account, more than \$400,000, to Lanterno, who had physically delivered a \$400,000 Chase Bank check to Kitsap Bank just two months before Ms. Correll died. Ms. Denley asked Kitsap Bank to investigate what appeared to be an unauthorized disbursement of Ms. Correll's funds. (CP 9)

Kitsap Bank commenced the instant civil action in Kitsap County Superior Court on April 21, 2011. (CP 14-17) Kitsap Bank cited RCW 30.22.210, the Financial Institution Individual Account Deposit Act, asking for a judicial determination of the true ownership of the contents of Ms. Correll's checking account and to enjoin the transfer or withdrawal of those funds until authorized by the court. (CP 16)

By agreement of all the parties, the superior court entered an order on April 25, 2011, freezing the money in Lanterno's Bank of America account until further order of the Court. (CP 19-36) Lanterno answered, seeking dismissal of the Bank's complaint but no affirmative relief, (CP 37-42), then moved for summary judgment. (CP 49-67) The personal representative asserted cross claims against Lanterno, alleging undue influence and financial exploitation and, in a counterclaim, asked for an order directing Kitsap Bank to disburse the funds to the PR. (CP 204-10)

On March 30, 2012, Kitsap County Superior Court Judge Leila Mills granted summary judgment, ordering the funds be disbursed to Ms. Lanterno. (CP 200-03)¹ Applying the six month statute of limitations for claims under a Super Will, RCW 11.11.070(3), the trial court dismissed the personal representative's undue influence claim as time barred:

¹ The trial court granted the PR's motion to strike several paragraphs of Lanterno's declaration in support of summary judgment under the Deadman's Statute, RCW 5.60.030. (CP 130-31, 196-198)

MR. HENRY: Point of clarification, Your Honor. Is it Your Honor's finding that the Super Will statute, RCW 11.11, applies to this case?

THE COURT: What I'm finding is that under the analysis presented by Mr. King -- I'm getting the names mixed up here -- but under the analysis presented, I'm finding that there is a finding that this case is time barred under 11.11.070. So I am applying 11.11.070.

(3/30 RP 4-5) The trial court also held that the personal representative failed to provide "a satisfactory showing or any basis to believe that there is undue influence here." (3/30 RP 3)

The trial court then awarded attorney fees to Lanterno under RCW 11.96A.150, rejecting the personal representative's argument that this was not a TEDRA action and that no statute allowed an amount of attorney fees. (CP 281-83) See (CP 267-71) The personal representative timely filed the instant appeal and posted supersedeas. (CP 211, 279-80, 284)² The money remains at Bank of America during the pendency of the appeal.

² The parties agreed and the trial court certified that all claims were resolved by the trial court's summary judgment. (CP 296-98)

V. ARGUMENT

A. **Standard of Review: This Court Reviews *De Novo* The Trial Court's Summary Judgment And Its Legal Conclusion That TEDRA Authorized An Award Of Attorney Fees.**

This court reviews the trial court's summary judgment *de novo*. ***Lybbert v. Grant County***, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000) (order granting summary judgment is reviewed *de novo*). Whether a party is entitled to an award of attorney fees is also an issue of law that is reviewed *de novo*. ***Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc.***, 160 Wn. App. 728, 739, 253 P.3d 101 (2011). See ***Lindsay v. Pacific Topsoils, Inc.***, 129 Wn. App. 672, 684, 120 P.3d 102 (2005) (reviewing *de novo* as a question of law whether statute authorizes an award of attorney fees), *rev. denied*, 157 Wn.2d 1011 (2006).

B. **The Trial Court Erroneously Held That The Personal Representative's Claim Was Time Barred Under The "Super Will" Statute.**

The trial court erred in holding that the claim of the PR was time barred under the Super Will statute, RCW 11.11.070(3). That statute applies only to a will that specifically names a beneficiary for non-probate assets. The Last Will and Testament of Helen Correll was not a "Super Will" because it did not purport to designate the

disposition of non-probate assets, such as the “pay on death” survivorship accounts at issue in this action. (CP 116-118, *see also* CP 114-15 (Declaration of John Mitchell, the Bremerton attorney who drafted the Will))

Before the enactment of RCW ch. 11.11, all probate assets passed under the decedent's will and all non-probate assets passed outside the will. *See* Comment, *Superwill to the Rescue? How Washington's Statute Falls Short of Being a Hero in the Field of Trust and Probate Law*, 74 Wash. L. Rev. 799, 807 (1999) (CP 136) Thomas, *Estate Planning 101 – Tools of the Trade* 8 (2010) (CP 102) In its 1998 session, the Washington Legislature for the first time allowed a testator to designate the beneficiary of a non-probate asset in his or her will. Laws 1998, Ch. 292. Such a will is now commonly referred to as a “Super Will.” The purpose of the new law was to “facilitate the power of testators to control the disposition of assets that pass outside their wills.” RCW 11.11.010(1)(a).

Not every will can be a Super Will. A Super Will must name beneficiaries for specific non-probate assets:

. . . upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will.

RCW 11.11.020(1) (emphasis added). Thus, in *Estate of Burks v. Kidd*, 124 Wn. App. 327, 331, 100 P.3d 328 (2004), *rev. denied*, 154 Wn.2d 1029 (2005), this court held that a will that did not identify specific bank accounts and did not designate specific beneficiaries was not a Super Will and did not create a "testamentary beneficiary" of a nonprobate asset.

The Legislature recognized there could be a conflict between the testamentary beneficiary named in a Super Will and a beneficiary for the same asset designated in some other manner, for example, a 401K retirement account whose beneficiary was the owner's spouse when the account was created, but is then left to a different beneficiary in a will. RCW 11.11.070 was written to resolve such disputes, authorizing "a testamentary beneficiary entitled to a nonprobate asset" to petition the probate court for an order declaring the testamentary beneficiary entitled to the nonprobate asset. RCW 11.11.070(2).

In the same statute, the Legislature required such a “testamentary beneficiary claiming a nonprobate asset” to file the petition within the earlier of one year after death or six months after the admission of the Super Will to probate:

(3) A testamentary beneficiary claiming a nonprobate asset who has not filed such a petition within the earlier of: (a) Six months from the date of admission of the will to probate; and (b) one year from the date of the owner’s death, shall be forever barred from making such a claim or commencing such an action.

RCW 11.11.070(3).

The Last Will and Testament of Helen Correll is a simple will that makes no attempt to designate a beneficiary for any non-probate asset. (CP 116-18) After payment of taxes and expenses, Ms. Correll’s will leaves the “rest, residue and remainder of my estate, both real and personal,” to her brother. (CP 118) As in ***Estate of Burks***, Ms. Correll’s residuary bequest “does not entitle the devisees or legatees to the owner’s nonprobate assets.” 124 Wn. App. at 331. Because the Last Will and Testament of Helen Correll was not a Super Will, and made no attempt to name a testamentary beneficiary for any nonprobate asset, the statute of limitations contained in RCW 11.11.070(3) is inapplicable to this case.

Even if RCW 11.11.070 is considered sufficiently broad to govern claims to property that is not subject to a Super Will, a personal representative seeking to recover assets on behalf of the estate is not a “testamentary beneficiary claiming a nonprobate asset” under the plain language of RCW 11.11.070(3). See *In re Estate of Palmer*, 145 Wn. App. 249, 259 n.4, 187 P.3d 758 (2008) (personal representative claiming nonprobate assets is not a “testamentary beneficiary,” defined under RCW 11.11.010(10) as “a person named under the owner's will to receive a nonprobate asset.”). The trial court erred in applying RCW 11.11.070(3) to conclude that the PR’s claim to money in a financial institution was time-barred.

C. The Trial Court Erred In Granting Summary Judgment In The Face Of Material Issues Of Fact Indicating That Lanterno’s Receipt Of Funds Was The Result Of Undue Influence.

The trial court also erred in holding that the PR failed to make a “a satisfactory showing” of undue influence. (3/30 RP 3) Washington courts have consistently held that a presumption of undue influence can be raised “by showing certain suspicious facts and circumstances.” *In re Estate of Lint*, 135 Wn.2d 518, 535, 957 P.2d 755 (1998); *Dean v. Jordan*, 194 Wash. 661, 671-72, 79

P.2d 331 (1938). Just as a presumption can support summary judgment in favor of the party who benefits from the presumption, it may also defeat the opponent's summary judgment motion. See **London v. City of Seattle**, 93 Wn.2d 657, 662, 611 P.2d 781 (1980) (presumption may support summary judgment "in the absence of prima facie evidence to the contrary").

A party challenging a survivorship designation in a financial account can defeat the named beneficiary's motion for summary judgment by submitting evidence of undue influence based on the factors governing will contests:

(1) that the beneficiary occupied a fiduciary or confidential relation to the testator; (2) that the beneficiary actively participated in the preparation or procurement of the will; and (3) that the beneficiary received an unusually or unnaturally large part of the estate. Added to these may be other considerations, such as the age or condition of health and mental vigor of the testator, the nature or degree of relationship between the testator and the beneficiary, the opportunity for exerting an undue influence, and the naturalness or unnaturalness of the will.

Estate of Randmel v. Pounds, 38 Wn. App. 401, 405-06, 685 P.2d 638 (1984), quoting **Doty v. Anderson**, 17 Wn. App. 464, 467-68, 563 P.2d 1307 (1977). Accord, **Estate of Haviland**, 162 Wn. App. 548, 558-59, ¶¶ 24-25, 255 P.3d 854 (2011) (considering

age and health of decedent, confidential relationship and large share of estate transferred to beneficiary in setting aside will as product of undue influence.) “The weight of any of such facts will, of course, vary according to the circumstances of the particular case.” *Doty*, 17 Wn. App. at 468.

Here, there is no dispute that Lanterno occupied a position of confidence as Helen Correll’s banker, financial adviser and friend. Lanterno participated in the transaction by hand delivering the check for \$400,000 (no small amount of money), which ended up in her survivorship account. Ms. Correll was 94 years old at the time of this transaction and she made the change adding Lanterno as her beneficiary shortly before her death. These facts, standing alone, raise a presumption of undue influence.

In addition, the other circumstances, including those surrounding the transfer, and the authenticity of the signature and handwriting on the letter of instructions and the \$400,000 check to Kitsap Bank, also raise an inference of undue influence. Kitsap Bank had a document purporting to be handwritten instructions from Helen Correll to remove her brother as joint tenant on her checking account and replace him with her personal banker,

Charlena Lanterno. (CP 95, 100) While the letter appeared to be consistent with a prior telephone conversation between Ms. Correll and a Kitsap Bank representative, no one saw Ms. Correll write or sign the letter, and she did not deliver it to the bank; it arrived in the mail. (CP 95) After receipt of the letter, a new signature card was prepared for Helen Correll to sign, but no one saw her sign it. Lanterno delivered it to Kitsap Bank. (CP 95)

One day after Kitsap Bank changed Ms. Correll's bank account to add Charlena Lanterno as the Pay on Death Beneficiary, Ms. Lanterno delivered the \$400,000 check to Kitsap Bank for deposit into that same checking account. (CP 15, 96) Someone other than Ms. Correll filled in all but the signature line on the \$400,000 check from Chase Bank, where Ms. Lanterno worked. (CP 164)

When the \$400,000 check was delivered to Kitsap Bank on December 15, 2010, most of it (\$365,000) was deposited in the checking account to which Ms. Lanterno had just been added as beneficiary. Ms. Correll did not send a deposit slip with the check. Her contact at Kitsap Bank, April Ihde, did not have phone contact with Ms. Correll and does not know why the \$400,000 was split in

the manner it was for deposit into different Kitsap Bank accounts.
(CP 95, 101-09, 172)

Handwriting expert Timothy Nishimura could not “conclusively determine” that the cursive writing and the signature on the letter of instruction “are the genuine handwriting of Helen M. Correll” and could neither identify “Ms. Correll . . . as the writer of the questioned document nor can she be excluded.” (CP 163-64) Nishimura also stated that it is not possible to determine from the photocopy of the \$400,000 check whether the signature is a genuine signature of Helen Correll or a forgery because “[t]he poor copy quality of the check precludes a definitive examination.” (CP 164)

Mr. Nishimura’s opinion creates the inference that someone else may have written both the check and the letter. The PR as the non-moving party was entitled to the benefit of that inference. “However complex and intricate plaintiff’s problem of proof at the time of trial may be, plaintiff at this stage of the proceeding is entitled to all favorable inferences that may be deduced from the varying affidavits.” *Estate of Randmel*, 38 Wn. App. at 405 (quotation omitted).

Lanterno was more than a close friend of the decedent. She was the deceased's banker at Chase Bank, where Ms. Correll had at least \$400,000 on deposit. Ms. Lanterno certainly had a confidential relationship, if not a fiduciary relationship, with the deceased. Ms. Lanterno was directly involved with the paperwork naming her as the POD beneficiary, and delivered the signature card and the \$400,000 check (written by a person unknown) from Chase Bank to Kitsap Bank. The fact that a person other than Ms. Correll wrote the date, the amount (\$400,000) and the payee (Kitsap Bank) on the check, that Lanterno, who was Ms. Correll's banker, brought the check to Kitsap Bank, that the money ended up in an account payable to Lanterno without a deposit slip and that the signatures on both the letter of instruction and the check may not be genuine, all give rise to an inference that the Lanterno did not procure these funds with Ms. Correll's knowledge and consent.

The issue of undue influence is a highly factual inquiry. Given the inference of undue influence here, this court should reverse and remand for trial.

D. The Trial Court Did Not Have Authority To Award Attorney Fees Under TEDRA In This Non-TEDRA Case.

The trial court lacked authority to award attorney fees to Lanterno under RCW 11.96A.150 because this case was not brought under the Trust and Estate Dispute Resolution Act (“TEDRA”). Even if this court affirms dismissal of the PR’s claims, it should reverse the trial court’s unauthorized fee award in favor of Lanterno. (CP 281-83)

Kitsap Bank brought this action under RCW 30.22.210, the Financial Institution Individual Account Deposit Act, which authorizes a Bank to obtain a court order to resolve a dispute regarding ownership of funds on deposit. (CP 14-18, 111-12) Save for Lanterno’s request for fees, (CP 42) no party invoked TEDRA or asserted a claim under the probate code, Title 11 RCW. There is no provision in RCW 30.22.210 for an award of attorney fees to a prevailing party in disputes involving the right to funds on deposit in financial institutions.

“Washington courts do not award attorney fees unless expressly authorized by contract, statute, or recognized equitable exception.” *Pierce County v. State*, 159 Wn.2d 16, 50, 148 P.3d 1002 (2006); *In re Guardianship of Matthews*, 156 Wn. App. 201,

212, ¶ 23, 232 P.3d 1140 (2010). The sole basis for Lanterno's claim for fees is RCW 11.96A.150, the TEDRA fee shifting provision:

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters.

RCW 11.96A.150.

This statute is inapplicable because this was not an action "governed by TEDRA" or "by this title [11]" of the RCW. Neither the complaint filed by the Bank, nor the answer filed by Lanterno pleads a claim under TEDRA. (CP 14-18, 37-42) In fact, the Lanterno answer contained no claims against anyone – no counterclaims against the Bank and no cross claims against appellant Denley or the Estate of Helen Correll. Thus, no party to

the action pleaded any claim which would bring the case under TEDRA.

In her motion for a fee award (CP 236) and in oral argument (4/13 RP 11-13), Lanterno argued that this court's decision in *In re Estate of Frank*, 146 Wn. App. 309, 189 P.3d 834 (2008), *rev. denied*, 165 Wn.2d 1030 (2009), supported a fee award because the trial court has "broad discretion" to award attorney fees under TEDRA. But *Frank* was a TEDRA action, commenced when "the Foundation filed petitions in both Kenneth's and Catherine's probates under the Trust and Estate Dispute Resolution Act (TEDRA)." *Estate of Frank*, 146 Wn. App. at 318, ¶ 16.

By contrast, no party in the instant case filed a TEDRA petition nor invoked any other section of Title 11 RCW. The Trust and Estate Dispute Resolution Act, RCW 11.96A *et seq.*, contains specific requirements to commence a TEDRA action or proceeding. First, a party must file a TEDRA petition with the Court:

(1) A judicial proceeding under RCW 11.96A.090 is to be commenced by filing a petition with the court.

RCW 11.96A.100(1). Second, the TEDRA petition and a Summons in substantially the form set out in the statute must be served in accordance with the court rules. RCW 11.96A.100(2). Here, there

was no TEDRA petition and no summons. In the absence of a TEDRA summons and petition, TEDRA has not been invoked and the trial court does have authority over the dispute under TEDRA.

This action was filed under a banking statute, RCW 30.22.210, by Kitsap Bank. (CP 16, 111-12) If the Legislature had intended attorney fees to be available in an action involving a dispute over the ownership of funds held in a financial institution, it would have logically included such a provision in RCW ch. 30.22. See *Trachtenburg v. Dept. of Corrections*, 122 Wn. App. 491, 496-98, 93 P.3d 217 (court lacks authority under RCW ch. 49.48, authorizing fees when employee recovers wages, to award fees in disciplinary dispute brought before State Personnel Appeals Board), *rev. denied*, 103 P.3d 801 (2004); *Pennsylvania Life Ins. Co. v. Employment Sec. Dept.*, 97 Wn.2d 412, 417, 645 P.2d 693 (1982) (reversing fee award to employer in employment security case where statute limits fees to prevailing employees).

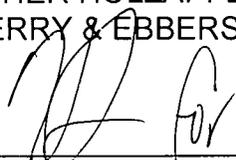
The trial court lacked authority to award attorney fees. Regardless of its disposition of the merits, this court should reverse the award of attorney fees under TEDRA in this non-TEDRA case.

VI. CONCLUSION

The trial court erred in dismissing the personal representative's claim to these funds, ostensibly placed by Helen Correll in a survivorship account benefiting her personal banker shortly before Ms. Correll's death. The action was not time barred under the Super Will statute and the circumstances raise a triable inference of undue influence. At a minimum, the court should reverse the fee award in favor of Lanterno in this action that was not brought under TEDRA.

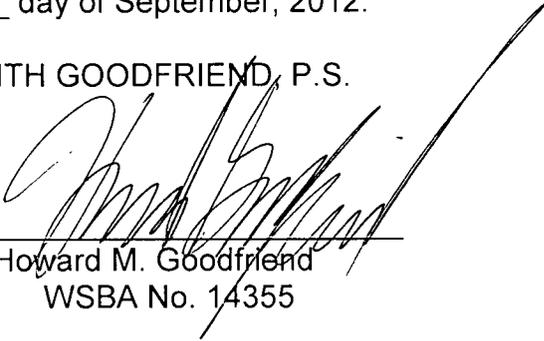
Respectfully submitted this 26th day of September, 2012.

LASHER HOLZAPFEL
SPERRY & EBBERSON, PLLC

By: 

Robert J. Henry
WSBA No. 6171

SMITH GOODFRIEND, P.S.

By: 

Howard M. Goodfriend
WSBA No. 14355

601 Union St., Suite 2600
Seattle WA 98101
(206) 624-1230

1109 First Avenue, Suite 500
Seattle, WA 98101-2988
(206) 624-0974

Attorneys for Appellant

DECLARATION OF SERVICE

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

That on September 26, 2012, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	_____ Facsimile _____ Messenger <input checked="" type="checkbox"/> U.S. Mail _____ E-Mail
Brian M. King Davies Pearson PC 920 Fawcett Avenue Tacoma, WA 98402-5697	_____ Facsimile _____ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Tracy E. DiGiovanni Shiers Law Firm 600 Kitsap St Ste 202 Port Orchard, WA 98366-5397	_____ Facsimile _____ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Robert J. Henry Lasher Holzapfel Sperry & Ebberson 601 Union St., Suite 2600 Seattle, WA 98101	_____ Facsimile _____ Messenger _____ U.S. Mail <input checked="" type="checkbox"/> E-Mail

FILED
 COURT OF APPEALS
 DIVISION II
 2012 SEP 27 PM 1:05
 STATE OF WASHINGTON
 BY _____ DEPUTY CLERK

DATED at Seattle, Washington this 26th day of September, 2012.



 Victoria K. Isaksen

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DAVID W. PETERSON

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

KITSAP BANK, a Washington Financial
Institution,

Plaintiff,

vs.

BANK OF AMERICA, a Washington
Financial Institution; CHARLENA M.
LANTERNO; and GAIL DENLEY, as
Personal Representative of the
CONSOLIDATED ESTATES OF HELEN
M. CORRELL AND JAMES F.
CORRELL,

Defendants.

No. 11-2-00873-0

**ORDER GRANTING
DEFENDANT CHARLENA M.
LANTERNO'S MOTION FOR
SUMMARY JUDGMENT**

*Hearing Date: March 30, 2012
@ 9:00 a.m.*

THIS MATTER having come on regularly on the motion of Defendant Charlena
M. Lanterno for summary judgment; the parties appearing through their attorneys of

**ORDER GRANTING DEFENDANT CHARLENA M.
LANTERNO'S MOTION FOR SUMMARY
JUDGMENT**

Page 1 of 4

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DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT - P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500
TOLL-FREE (800) 439-1112
FAX (253) 572-3052

1 record, and the Court having reviewed the records and pleadings herein, including the
2 following:

- 3 1. Defendant Charlena M. Lanterno's Motion for Summary Judgment;
- 4 2. Declaration of Charlena M. Lanterno in Support of Motion for Summary
5 Judgment;
- 6 3. Declaration of Brian M. King in Support of Motion for Summary
7 Judgment;
- 8 4. Declaration of Mary Taylor (filed on April 20, 2011);
- 9 5. Response to Defendant Charlena Lanterno's Motion for Summary
10 Judgment;
- 11 6. Defendant Denley's Motion to Strike and Opposition to Summary
12 Judgment;
- 13 7. Declaration of Timothy P. Nishimura;
- 14 8. Declaration of Robert J. Henry in Opposition to Summary Judgment and
15 Motion to Strike;
- 16 9. Declaration of John F. Mitchell;
- 17 10. Defendant Charlena M. Lanterno's Reply in Support of Summary
18 Judgment;
- 19 11. Declaration of Susan L. Caulkins in Reply on Summary Judgment.

24 **ORDER GRANTING DEFENDANT CHARLENA M.**
25 **LANTERNO'S MOTION FOR SUMMARY**
26 **JUDGMENT**

Page 2 of 4

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ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
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1 And the court having heard the arguments of counsel, and being otherwise fully
2 advised in the premises, and finding that there are no genuine issues of material fact and
3 Defendant Charlena M. Lanterno is entitled to judgment in her favor as a matter of law,
4 now, therefore, it is

5 ORDERED that the Stipulation and Permanent Restraining Order is hereby
6 dissolved; it is further

7 ORDERED that Charlena M. Lanterno is the proper lawful owner of the funds
8 issued to her by Kitsap Bank in the principal amount of \$400,069.21; it is further

9 ORDERED that all claims against Ms. Lanterno are hereby dismissed with
10 prejudice; it is further

11 *the funds ~~are~~ must remain frozen as long as pending*
12 ORDERED that Charlena M. Lanterno is awarded pre-judgment interest at a rate
13 *the filing of a motion no later than April 6, 2012. If a motion*
14 of twelve percent (12%) per annum *is filed by April 6, 2012, the funds*
15 from April 25, 2011; it is further

16 ORDERED that Charlena M. Lanterno may file a motion in support of an award
17 of attorney fees and costs. *JK* *shall remain frozen pending the outcome of the hearing*

18 DONE IN OPEN COURT this _____ day of March, 2012.

19 LEILA MILL

20 JUDGE/COURT COMMISSIONER

21 Presented by:

22 DAVIES PEARSON, P.C.

23
24 ORDER GRANTING DEFENDANT CHARLENA M.
25 LANTERNO'S MOTION FOR SUMMARY
26 JUDGMENT

Page 3 of 4

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27 DAVIES PEARSON, P.C.
28 ATTORNEYS AT LAW
29 920 FAWCETT - P.O. BOX 1657
30 TACOMA, WASHINGTON 98401
31 TELEPHONE (253) 620-1500
32 TOLL-FREE (800) 439-1112
33 FAX (253) 572-3052

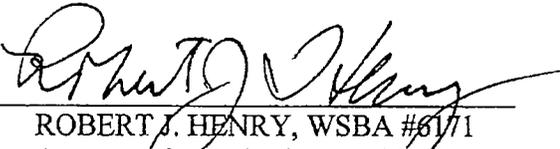
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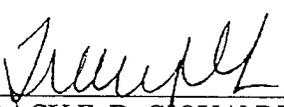
By: 
BRIAN M. KING, WSBA# 29197
Attorney for Defendant Charlena M. Lanterno

Copy Received, Approved as to Form:

LASHER HOLZAPFEL SPERRY & EBBERSON, PLLC

By: 
ROBERT J. HENRY, WSBA #6171
Attorneys for Defendant Gail Denley as
Personal Representative of the Consolidated
Estates of Helen and James Correll

SHIERS LAW FIRM

By: 
TRACY E. DeGIOVANNI, WSBA #18672
Attorneys for Plaintiff

**ORDER GRANTING DEFENDANT CHARLENA M.
LANTERNO'S MOTION FOR SUMMARY
JUDGMENT**

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ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
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Hon. Leila Mills

RECEIVED AND FILED
IN OPEN COURT
APR 13 2012
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

KITSAP BANK, a Washington Financial
Institution,

Plaintiff,

vs.

BANK OF AMERICA, a Washington
Financial Institution; CHARLENA M.
LANTERNO; and GAIL DENLEY, as
Personal Representative of the
CONSOLIDATED ESTATES OF HELEN
M. CORRELL AND JAMES F.
CORRELL,

Defendants.

No. 11-2-00873-0

~~(Proposed)~~
JUDGMENT

JUDGMENT SUMMARY:

1. Judgment Creditor: Charlena M. Lanterno

JUDGMENT
Page 1 of 3
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DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
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2. Judgment Debtors: Gail Denley as Personal Representative of the Consolidated Estates of Helen M. Correll and James F. Correll, and ~~Gail Denley in her personal capacity~~

3. Attorney's Fees: \$20,151.00

~~4. Costs: \$719.60~~

~~5. Pre-judgment interest on principal balance of \$400,069.21: \$~~

6. Attorney's Fees, ~~Costs, and pre-judgment interest~~, shall bear interest at 12% per annum from date of judgment until paid in full.

7. Attorney for Judgment Creditor: Davies Pearson, P.C.

It is hereby ORDERED, ADJUDGED AND DECREED that Defendant, CHARLENA M. LANTERNO be and hereby is granted judgment against Defendants, GAIL DENLEY, as Personal Representative of the CONSOLIDATED ESTATES OF HELEN M. CORRELL AND JAMES F. CORRELL, and ~~GAIL DENLEY in her personal capacity~~, in the amount of \$20,151.00 as attorney's fees, ~~plus costs and disbursements incurred herein in the amount of \$719.60, plus pre-judgment interest in the amount of \$~~, all which shall accrue interest at the rate of 12% per annum from the date of judgment until paid in full.

DONE IN OPEN COURT this 13 day of April, 2012.



JUDGE LEILA MILLS

JUDGMENT
Page 2 of 3
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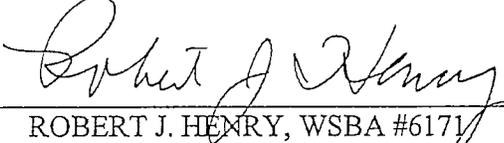
Presented by:

DAVIES PEARSON, P.C.

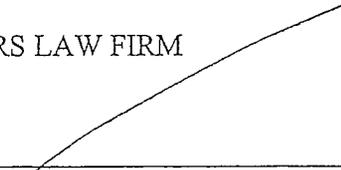
By: 
BRIAN M. KING, WSBA# 29197
Attorney for Defendant Charlena M. Lanterno

Copy Received, Approved as to Form:

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