

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
CLERK'S OFFICE  
Sep 15, 2016, 1:04 pm  
RECEIVED ELECTRONICALLY

Court of Appeals No. 73434-2-I

No. 93530-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

PER and MELODY WESTERDAL,

*Defendants/Petitioners,*

v.

NAME INTELLIGENCE, INC., JAY WESTERDAL,  
AND WESTERDALCORP, LLC,

*Defendants/Respondents.*

---

**AMENDED PETITION FOR REVIEW**

---

Marc S. Stern, WSBA No. 8194  
1825 NW 65<sup>th</sup> St.  
Seattle, WA 98117  
(206) 448-7996  
office@hutzbah.com  
Attorney for Petitioners

 ORIGINAL

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES. . . . . iii

    FEDERAL CASES. . . . . iii

    STATE CASES. . . . . iii

    STATE STATUTES. . . . . iv

1. INTRODUCTION. . . . . 1

2. IDENTITY OF THE PETITIONERS. . . . . 2

3. COURT OF APPEALS DECISION. . . . . 2

4. ISSUES PRESENTED FOR REVIEW. . . . . 2

    4.1    When there are allegations that the debtor has engaged in inequitable and unlawful conduct that has affected the receivership administration, is it proper to reward the debtor with a dismissal of the case to his benefit and at the expense of his creditors?. . . . . 2

    4.2    When the receivership is solvent, there are properly filed creditor claims and the ability to pay those claims, is it error to direct the Receiver to close the case without paying creditors without the consent of the creditors? . . . . 2

    4.3    When creditors have, pursuant to a guaranty, paid claims of the principal, are they subrogated to the rights of the principal in a receivership?. . . . . 3

    4.4    Did the Court of Appeals err when it interpreted RCW 7.60.210(4) to require both the filing of a claim and its allowance when the statute requires only filing of a claim? . . . . . 3

5. STATEMENT OF THE CASE. . . . . 3

|   |           |
|---|-----------|
| 6. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.....  | 7         |
| 6.1 <u>The Decision of the Court of Appeals is a question of first impression that presents substantial questions of public interest in how Receiverships should be administered and should be reviewed by the Supreme Court.....</u> | <u>7</u>  |
| 6.2 <u>The Court of Appeals erred when it approved the closing of the General Receivership without addressing creditor claims. It also erred when it imposed an additional step to determine whether a claim is “allowed.”.....</u>   | <u>8</u>  |
| 6.3 <u>The Court of Appeals erred when it authorized dismissal when there were allowed claims awaiting payment..</u>  | <u>9</u>  |
| 6.4 <u>The Court of Appeals erred by failing to give effect to the subrogation of Per and Melody’s payments to Bero.....</u>  | <u>11</u> |
| 6.5 <u>The Court of Appeals erred when it ignored the trial court’s abdication of its responsibility to regulate the actions of parties involved in a case before it..</u>  | <u>14</u> |
| 6.6 <u>Per and Melody were significantly damaged by the Court of Appeals’ failure to specify the factors that must be considered by a trial court in its exercise of discretion....</u>   | <u>16</u> |
| 6.7 <u>The decision of the Court of Appeals invites abuse.....</u>  | <u>18</u> |
| 7. CONCLUSION.....  | <u>19</u> |
| 8. DECLARATION OF SERVICE.....  | <u>21</u> |
| 9. APPENDIX.....  | <u>22</u> |

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*In re Harker*, 181 B.R. 326 (Bankr. E.D. Tenn. 1995)..... 17

*In re Hopper*, 404 B.R. 302 (Bankr. N.D. Ill. 2009).. . . . . 17

*Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007)..... 17

*Sherwood Partners, Incorporated v. Lycos, Incorporated*, 394 F.3d 1198  
(9th Cir. 2005). . . . . 16

**STATE CASES**

*Bero v. Name Intelligence, Inc.*, \_\_\_ *Wn. App.* \_\_\_, \_\_\_ P.3d \_\_\_, 2016  
WL 3982897 (Wash. Ct. App. July 25, 2016)..... 2

*Blanchard v. Golden Age Brewing Company*, 188 Wash. 396, 63 P.2d 397  
(1936)..... 17

*Columbia Community Bank v. Newman Park, LLC*, 177 Wash. 2d 566,  
304 P.3d 472 (Wash. 2013). . . . . 13

*J.D. O'Malley and Company v. Lewis*, 176 Wash. 194, 28 P.2d 283 (1934)  
. . . . . 12

*Mahler v. Szucs*, 135 Wash. 2d 398, 957 P.2d 632 (Wash. 1998).... 12, 13

*Ross v. Jones*, 174 Wash. 205, 24 P.2d 622 (1933). . . . . 12

**FEDERAL STATUTES**

11 U.S.C. § 1129(b)(1)..... 16

**STATE STATUTES**

RCW 7.08.030. .... 16

RCW 7.60..... 7

RCW 7.60.015. .... 7

RCW 7.60.055. .... 14

RCW 7.60.055(1)..... 14, 15

RCW 7.60.130(2)..... 4, 5, 6

RCW 7.60.210. .... 7

RCW 7.60.210(4)..... 3, 4, 9

RCW 7.60.220. .... 7, 10

RCW 7.60.220(1)..... 8, 10, 11

RCW 7.60.290(5)..... 10

## 1. INTRODUCTION

Receivership proceedings work only if the parties in interest, the debtor in particular, are prevented from gaming the system and using it toward their own, self-serving purposes. The essential components in protecting the integrity of such a proceeding are: 1) a disinterested administrator; 2) proper supervision by the court; and 3) fulfillment of the debtors' affirmative obligations. Only the first of these components was present in this case.

The question at the heart of this appeal is, "Do the means matter?" Per and Melody Westerdal believe they do. The means are the mechanism by which courts protect their integrity and ensure that disputes are administered in accordance with the applicable statutory framework as well as settled principles of law and equity. The judiciary is constructed on means, and articulated in evidentiary and procedural rules in order to ensure that disputes are resolved justly and premised on truth. Process is important.

The Court of Appeals, like the trial court, erred when it focused on the end over the means. In the face of serious allegations of misconduct, the trial court terminated the Receivership, and the Court of Appeals shirked its responsibility.

## 2. IDENTITY OF THE PETITIONERS

Petitioners, Per and Melody Westerdal,<sup>1</sup> claimants in the General Receivership, ask this Court to accept review of the Court of Appeals' decision terminating review designated in Part 3.

## 3. COURT OF APPEALS DECISION

Per and Melody seek review of the Court of Appeals' decision in *Bero v. Name Intelligence, Inc.*, \_\_\_ Wn. App \_\_\_, \_\_\_ P.3d \_\_\_, 2016 WL 3982897 (Wash. Ct. App. July 25, 2016). The opinion was ordered published when entered.

## 4. ISSUES PRESENTED FOR REVIEW

Pursuant to RAP 13.4(b)(1), this Court should grant review on the following issues:

- 4.1 When there are allegations that the debtor has engaged in inequitable and unlawful conduct that has affected the receivership administration, is it proper to reward the debtor with a dismissal of the case to his benefit and at the expense of his creditors?
- 4.2 When the receivership is solvent, there are properly filed creditor claims and the ability to pay those claims, is it error to direct the Receiver to close the case without paying creditors without the consent of the creditors?

---

<sup>1</sup> Petitioners Per and Melody Westerdal hereafter are referred to as "Per" or "Per and Melody."

- 4.3 When creditors have, pursuant to a guaranty, paid claims of the principal, are they subrogated to the rights of the principal in a receivership?
- 4.4 Did the Court of Appeals err when it interpreted RCW 7.60.210(4) to require both the filing of a claim and its allowance when the statute requires only filing of a claim?

## 5. STATEMENT OF THE CASE

This appeal stems from the termination of a general receivership that was commenced on July 31, 2014 in King County Superior Court by Judge Schubert (CP 204-228) and dismissed by Judge Kessler on March 23, 2015. CP 908-909. The parties agreed to appointment of a receiver in a comprehensive Settlement Agreement that included pledging of collateral owned in part by Per and Melody who also executed a guaranty in Bero's favor.

Resource Transition Consultants ("RTC") was appointed general receiver. ("Receivership Order"). CP 204-228

The property that vested in the Receiver included "all of [Jay's] stock ownership, voting, membership and management rights in Name Intelligence and Westerdalcorp." CP 211, ¶2.6. The Receiver's authority was bolstered by an injunction prohibiting Jay from "obstructing, delaying, or interfering with Receiver taking any action purporting to transfer, encumber or dispose of the Property or any portion of it." CP 215, ¶2.25.

Property included the domain name “holiday.com” and a pre-receivership brokerage agreement with domain auction company Breathe Luxury to sell holiday.com at the “World Travel Market,” an international trade show held annually for the travel industry and produced by Reed Expo. CP 289, ¶2.1. Prior to the appointment of the Receiver, Jay set the auction reserve price for holiday.com at \$5.1 million. CP 290, ¶2.4. The auction was set to take place November 5, 2014. *Id.*

The Receiver assumed the Breathe Luxury agreement. The sale would substantially benefit the Receivership estate, and rejection would result in damage because rejection constitutes a breach. *See* RCW 7.60.130(2). The auction was to proceed as contracted.

Jay had other plans. On November 3, 2014 – two days before the scheduled auction – Jay sent a letter to Breathe Luxury and Reed Expo resulting in a cancellation of the auction at the World Travel Market.

Jay’s letter stated that Breathe Luxury would need to negotiate a new agreement with the Receiver, while simultaneously suggesting the futility of doing so: “I think I have satisfied what I think RTC is responsible for collecting and I don’t think they would agree to a sale at this time.” *Id.*

Jay concluded the letter with a demand that Breathe Luxury “cease all efforts to sell our domain name and to remove the domain as publicly listed for sale unless you have a valid agreement.” He also threatened legal action. *Id.* The auction went forward in another venue, but the advertising was lost and the reserve was not met.

The estate was damaged by Jay’s actions. *Id.* It lost a unique opportunity to sell the holiday.com domain name and was subject to a damage claim by Breathe Luxury. Per and Melody also were harmed because they have an ownership interest in holiday.com that they wanted monetized.

Jay paid off the Bero portion of the judgment with funds from an undisclosed source. Jay filed a disclosure under seal. Jay received in excess of \$1 million as an advance for services he promised to furnish in the future. The declaration was signed by Jay. No one has ever been able to verify the veracity of Jay's statement that the source of the \$1 million was for Jay’s future services. No declaration by the source was ever filed. Per and Melody were (and remain) concerned that holiday.com was bound up in, or likely to be affected by, the transaction.

Per and Melody subsequently moved the trial court for an order directing the Receiver to liquidate holiday.com. CP 591-92. Jay opposed

the motion (CP 766-788) and filed a motion to terminate the receivership. CP 597-613.

A prior attempt to terminate was denied by Judge Schubert,<sup>2</sup> but this time, with a new judge, the Debtors' motion was granted. The trial court ordered that the Receivership be terminated notwithstanding: (a) a surplus of funds available for distribution; (b) serious and unaddressed misconduct by the Debtors and, potentially, the Debtors' conflicted counsel; (c) Per's subrogation rights; and (d) the presumptively valid claim filed by Per. CP 908-909. To the trial court, Per and Melody's rights would be sufficiently protected if they simply filed a separate lawsuit. *Id.*

As directed, the Receiver moved to approve his final account, distribute remaining funds to the Debtor, and terminate the Receivership. At the same time, Per asked the trial court to reconsider its decision to terminate the Receivership. Accompanying the motion to reconsider was evidence obtained regarding a transfer of holiday.com. CP 928-937. The trial court was unmoved and denied reconsideration. CP 986-987.

////

---

<sup>2</sup> Judge Schubert was rotated to the mental illness calendar and did not retain jurisdiction.

## 6. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### 6.1 The Decision of the Court of Appeals is a question of first impression that presents substantial questions of public interest in how Receiverships should be administered and should be reviewed by the Supreme Court.

To date, the Receivership statute has not been interpreted by any appellate court. The decision of the Court below presents troubling issues for trial courts trying to determine how the statute should be implemented.

Washington receivership law, codified at RCW 7.60, provides for two different types of receiverships: general and custodial. A custodial receivership is limited; it is established for the purpose of taking control of a specific asset or group of assets. RCW 7.60.015.

A general receivership places *all assets* of the debtor in the hands of the receiver and provides a manner to liquidate all the assets for payment of creditors. RCW 7.60.015. A critical distinction between general and custodial receiverships is that in a general receivership there is a claims process for other creditors of the debtor. RCW 7.60.210; RCW 7.60.220. Creditors file claims to be paid by property administered by the receiver.

In this case, RTC was appointed a general receiver pursuant to the express terms agreed to by Jay, Per, and Bero, and as ordered by the trial

court. CP 204-228. Following appointment, the Receiver mailed Notice of the Receivership to all known creditors at the addresses provided by Jay.

The notice to Per and Melody was sent to an incorrect address while they were out of state. Nevertheless, upon learning of the Receivership, they contacted the Receiver and submitted a claim. Their claim was later amended when they retained counsel, Marc S. Stern. An Amended Proof of Claim was filed on December 10, 2014. The amount of their claim was \$1,613,417.13.

6.2 The Court of Appeals erred when it approved the closing of the General Receivership without addressing creditor claims. It also erred when it imposed an additional step to determine whether a claim is “allowed.”

The plain language of RCW 7.60.220(1) precludes termination of the Receivership. RCW 7.60.220(1) provides in pertinent part:

Claims properly served upon the general receiver and not disallowed by the court are entitled to share in distributions from the estate in accordance with the priorities provided for by this chapter or otherwise by law.

There was approximately \$68,000 cash available to pay creditor claims when the trial court terminated the Receivership. This does not include unliquidated assets. Per and Melody’s claim was properly served and was not disallowed by the trial court. Absent disallowance of their claim, they were “entitled to share in distribution from” the funds held by

the Receiver.

The Court of Appeals' ruling, at p. 8, ignores the mandate of RCW 7.60.210(4). Per acquired a statutorily vested right in the funds held by the Receiver by filing a claim:

(4) A claim, executed and served in accordance with this section, constitutes prima facie evidence of the validity and amount of the claim.

RCWA § 7.60.210 (West).

That right could only be terminated by disallowance. The Court of Appeals ignored the statute and committed clear error when it imposed an additional step, allowance of the claim by the Receiver or the Court.

Pursuant to the statute, and in actual practice, this never happens. Claims are deemed allowed when filed unless there is an objection and the objection is sustained. Here, the Receiver announced that he was allowing the claim and Jay filed an objection. That objection was never heard. The trial court punted, and the Court of Appeals grafted in a procedural step that is not present in the statute.

6.3 The Court of Appeals erred when it authorized dismissal when there were allowed claims awaiting payment.

The Court of Appeals erred as a matter of law by allowing termination of the Receivership in derogation of the mandatory terms of

RCW 7.60.220(1). Properly understood, RCW 7.60.220(1) imposes a limitation on the court's termination authority set forth in RCW 7.60.290(5) when a general receivership is ordered, as was done in this case. This point is underscored by the mandatory language of RCW 7.60.220(1) (allowed claims "are entitled to share in distributions") compared to the permissive language of RCW 7.60.290(5) ("the court has the power" to terminate a receivership). The Court of Appeals completely ignored the requirements of RCW 7.60.220 when it ruled that the issue was discretionary and failed to define the term of discretion.

Authority to dismiss a receivership conferred by RCW 7.60.290(5) is subject to statutory provisions regarding claims. Foremost among these is RCW 7.60.220(1), which states: "Claims properly served upon the general receiver and *not disallowed by the court are entitled to share in distributions* from the estate" in accordance with priorities set forth by statute, but not relevant here. (Emphasis added.)

No objection to Per and Melody's claim was ever heard. The trial court ignored the legitimacy of Per and Melody's claim, as well as their statutory protection, and allowed all of the property of the estate to re-vest with Jay. The statutory language is not equivocal and it affords no discretion. It plainly requires the trial court to rule affirmatively that a

claim is disallowed; unless and until it does so, the claim is allowed and the claimant is entitled to share in estate distribution.

Removing any doubt that might linger is the placement of the language requiring affirmative disallowance of claims, which immediately follows the subsection's language authorizing receivers and parties in interest to object to claims. Structured as it is, RCW 7.60.220(1) permits objections, then requires that they be sustained. The first was present in the proceedings below; the latter was not. The trial court expressly stated:

The court's March 27 order [terminating the Receivership] does not address the merits of any outstanding claims which may be pursued by separate causes of action.

CP 987. Moreover, Respondents acknowledge that Per and Melody had a claim in the Receivership, which they admit having paid down while the Receivership was still pending.

6.4 The Court of Appeals erred by failing to give effect to the subrogation of Per and Melody's payments to Bero.

Per and Melody executed a guaranty as part of the global Settlement Agreement with Bero and Jay. They were parties to the Settlement Agreement, and the Settlement Agreement was the basis for the appointment of a general receiver.

When Jay defaulted on his obligations, including his alleged attempts to sell property collateralized by the Settlement Agreement without Bero's knowledge or consent, Per and Melody's liability was triggered. Per and Melody satisfied their guaranty obligation, giving rise to their right of subrogation.

In *Mahler v. Szucs*, 135 Wash. 2d 398, 957 P.2d 632 (Wash 1998), the court discussed subrogation at some length and is worth repeating:

[Subrogation] applies in cases involving multiple claims upon the same property, suretyship, joint debtors, parties to bills and notes, the administration of estates, and contracts of insurance. Subrogation is favored in Washington law. "Subrogation is always liberally allowed in the interests of justice and equity." *J.D. O'Malley & Co. v. Lewis*, 176 Wash. 194, 201, 28 P.2d 283 (1934).

There are, in effect, two features to subrogation. The first is the right to reimbursement. The second is the mechanism for the enforcement of the right. The right to reimbursement may arise by operation of law, termed legal or equitable subrogation, or by contract, called conventional subrogation. *Ross v. Jones*, 174 Wash. 205, 216, 24 P.2d 622 (1933).

The more troublesome question is the precise enforcement mechanism for the subrogee's right of reimbursement. Considerable imprecision on this question is present in case law on subrogation. By virtue of payments made to a subrogor stemming from the actions of a third party, a subrogee has a right of reimbursement under general subrogation principles. That reimbursement may be enforced as a type of lien against any recovery the subrogor secures from the third party. Alternatively, the subrogee,

standing in the shoes of its subrogor, may pursue an action in the subrogor's name against the third party to enforce the reimbursement right.

*Mahler* at 640 (*rev'd* on other grounds). *See also, Columbia Community Bank v. Newman Park, LLC*, 177 Wash. 2d 566, 304 P.3d 472 (Wash. 2013) (where third party pays debt, party is subrogated to lender's interest thus preventing windfall to debtor).

As applied here, the only "troublesome question" is the one before this Court: Did the Court of Appeals err in approving the termination of the Receivership when claims had not been administered?

Prior to termination, Per and Melody had the right to step into Bero's shoes because they had claims in the Receivership estate to that portion of Jay's liability to Bero that they paid pursuant to the guaranty. The Order Appointing Receiver provides in part at ¶2.52:

This Receivership Order shall terminate only upon payment in full of all amounts due the Receiver and satisfaction in full of all amounts due under the Judgment, including any advances made by Plaintiff as provided for herein.

As a creditor entitled to subrogation rights and a party, Per and Melody had standing to enforce the terms of the Order. Until they were paid, the provisions were unfulfilled, and their rights were ignored.

Bero, himself, may well have been satisfied, but because that satisfaction depended in part on the contribution of Per and Melody, ¶2.52's requirement that "all amounts due under the Judgment" be fully satisfied was not met.

6.5 The Court of Appeals erred when it ignored the trial court's abdication of its responsibility to regulate the actions of parties involved in a case before it.

Trial courts are conferred with expansive authority in Receiverships and Assignments for the Benefit of Creditors by RCW 7.60.055, which in part provides:

Except as otherwise provided for by this chapter, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive jurisdiction over actions in which a state agency is a party and in which a statute expressly vests jurisdiction or venue elsewhere.

RCW 7.60.055(1). The authority provided by RCW 7.60.055(1) is recited verbatim in the Receivership Order. CP 210, ¶2.2.

The Receivership property within the trial court's control included property in which Per and Melody have an ownership interest. Their claim is premised in part on Jay's interference with the Receiver's liquidation of assets and the consequent diminution of the value of the property partially owned by Per and Melody.

The Receiver assumed the executory contract with Breathe Luxury for the sale of the domain name holiday.com at a previously scheduled auction. CP 289, ¶2.2. Jay interfered with the sale. CP 304:8-9; CP 307. Jay threatened legal action against Breathe Luxury and Reed Expo, the producer of the show where the auction was to take place. *Id.* As a result, the auction had to be moved. The \$5.1 million reserve price set by Jay was not met. CP 290, ¶2.4.

Jay's interference with the Receiver's administration is precisely why statutes such as RCW 7.60.055(1) are enacted. Rather than reverse the trial court for abusing its discretion, the Court of Appeals shrugged. Bero had been paid and Per and Melody could bring a separate lawsuit. "No harm – No Foul." However there was harm.

Instead of a speedy distribution of funds on hand, Per and Melody are forced to commence a new lawsuit. The original lawsuit that started

this included Per and Melody. They were parties. They paid actual cash and had a claim in this proceeding.

With authority comes responsibility. The trial court was responsible for the orderly administration of the Receivership. It abdicated that responsibility when it approved dismissal. Review is necessary because the Court of Appeals ignored the facts and did not articulate the standards for judicial administration of receiverships.

6.6 Per and Melody were significantly damaged by the Court of Appeals' failure to specify the factors that must be considered by a trial court in its exercise of discretion.

Collective proceedings,<sup>3</sup> of which a general receivership is one, are prosecuted for the benefit of unsecured creditors. When ranking priorities in such proceedings, debtors are last in line. If this case were an assignment for the benefit of creditors – a close analogy given the Debtors' prior agreement to the general receivership – the Debtors' consent would be irrevocable. *See* RCW 7.08.030. Similarly, the Bankruptcy Code imposes an absolute priority rule on chapter 11 debtors, permitting them to take nothing if unsecured creditors are not paid in full. 11 U.S.C. § 1129(b)(1).

---

<sup>3</sup> "Collective proceedings" means proceedings which are brought by a class representative on behalf of persons whose claims raise common issues and which may be instituted as a group action or a representative action; Cap 520.fm - Europa Aug 1, 2012. *See, Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1208 (9th Cir. 2005) (D.W. NELSON Dissent).

Chapter 13 debtors may not voluntarily dismiss their cases if they acted in bad faith. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007). Before dismissing a chapter 7 case at the Debtors' request, courts should require that no prejudice to creditors will result from the dismissal. *See In re Hopper*, 404 B.R. 302 (Bankr. N.D. Ill. 2009).

Prejudice is found where dismissal results in the loss of assets available for distribution to creditors. *Id.*, citing *In re Harker*, 181 B.R. 326, 328 (Bankr. E.D. Tenn. 1995).

The Court of Appeals turned this settled, foundational principal on its head, to Per and Melody's prejudice, when it failed to direct the trial court to determine whether or not prejudice would occur. The Court of Appeals stripped out of the receivership law the statutory provisions intended to benefit creditors. In finding this determination a matter of discretion, without setting forth the factors to be considered in determining whether that discretion was abused, the Court below created a vacuum.

It is a legal determination of what elements must be considered in order to determine what discretion is. *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936). This is vastly different from determining whether discretion was abused. Here, the Court of Appeals stepped over well-settled precedent to simply determine the trial court had

not abused its discretion. Unfortunately, the Court of Appeals did not set forth the criteria for determining how discretion should be exercised.

In rendering its decision, the Court considered only the wording of the statute. It then took a giant leap and found that the dismissal was proper because it was discretionary. It failed to articulate the factors and determine exactly what the court should consider before terminating a receivership.

Review should be accepted so this Court can articulate the standards for the exercise of discretion in receivership proceedings.

6.7 The decision of the Court of Appeals invites abuse.

When Washington's receivership statute was revised more than ten years ago, the declared purpose of the revision was:

. . . to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein.<sup>4</sup>

That intent was thwarted in this case, with the trial court's assistance. Per and Melody's interests, and the statutes that protected them, were of no consequence to the trial court. Neither was the evidence that Jay was continuing to dissipate assets to Per and Melody's detriment

---

<sup>4</sup> S.B. 6189-S Digest (2004), Appendix, p. 1.

at the time the Receivership was terminated. In stark contrast, the Respondents took for themselves whatever benefit the Receivership offered without accepting the burdens, and the trial court rewarded their conduct by giving them the approximately \$68,000 on hand when the Receivership terminated.

The decision of the Court of Appeals is an invitation to abuse. Resort to speculative hypotheticals is unnecessary because the facts of this case comprise a textbook scenario of a bad faith debtor putting the good offices of a court to unseemly purposes. Reversal of the Court of Appeals' decision upholding the order terminating the Receivership is required.

## 7. CONCLUSION

The Court of Appeals erred when it cast aside the rights of Per and Melody Westerdal. It showed no regard for their ownership interest in Receivership property or documented evidence of Jay's interference with that ownership interest.

The Court of Appeals further erred when it affirmed termination of the Receivership absent disallowance of filed claims in direct contradiction of statutory mandate.

If allowed to stand, the Court of Appeals' termination of the Receivership invites abuse. The Court expressed not one iota of concern

about what can only charitably be described as questionable behavior by Jay.

This Court should grant review and ultimately reverse the Court of Appeals.

Respectfully submitted this September 15, 2016.

s/ Marc S. Stern  
Marc S. Stern, WSBA #8194  
Attorney for Petitioners  
Per and Melody Westerdal

## 8. DECLARATION OF SERVICE

The undersigned declares under penalty of perjury of the laws of the State of Washington that on September 15, 2016, I served a copy of this document on all parties by email per agreement as follows:

Dillon E. Jackson  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101-3299  
jackd@foster.com  
*Attorney for Resource Transition Consultants, Receiver*

Howard M. Goodfriend  
Smith Goodfriend  
1619 8th Ave. North  
Seattle, WA 98109  
howard@washingtonappeals.com  
*Attorney for Name Intelligence, Inc., et al., Respondents*

Dated at Seattle, Washington this 15<sup>th</sup> day of September, 2016.

*s/ Tanya Bainter*  
Tanya Bainter, Legal Assistant

9. APPENDIX

1. S.B. 6189-S Digest (2004)..... Appendix, p. 1
2. Copies of relevant statutes..... Appendix, pp. 2-13

**SB 6189-S - DIGEST**

(DIGEST AS ENACTED)

Declares that the purpose of this act is to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein.  
Repeals numerous provisions.

VETO MESSAGE ON SB 6189-S

March 26, 2004

To the Honorable President and Members,  
The Senate of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 47 (40), 47 (41) and 47 (42), Substitute Senate Bill No. 6189 entitled:

"AN ACT Relating to receiverships;"

This bill develops a body of statutes to govern receivership proceedings and consolidates these laws into one chapter.

In creating this chapter, it was necessary to repeal duplicative or inconsistent statutes. These statutes are repealed in section 47. Section 47 (40) repeals RCW 24.03.310; section 47 (41) repeals RCW 24.03.315; and section 47 (42) repeals RCW 24.03.320. All three statutes deal with foreign corporations, and have no connection with receivership proceedings. These statutes were included in error, as the statutes that were meant to be repealed are RCW 24.06.310, RCW 24.06.315, and RCW 24.06.320.

For these reasons, I have vetoed sections 47 (40), 47 (41) and 47 (42) of Substitute Senate Bill No. 6189.

With the exception of sections 47 (40), 47 (41) and 47 (42), Substitute Senate Bill No. 6189 is approved.

Respectfully submitted,  
Gary Locke  
Governor

Assignment—Procedure—Creditor's selection of new assignee.

(1) An assignment under this chapter must be in substantially the following form:

ASSIGNMENT

THIS ASSIGNMENT is made this . . . . day of . . . . ., . . . . ., by and between . . . . ., with a principal place of business at . . . . . (hereinafter "assignor"), and . . . . ., whose address is . . . . . (hereinafter "assignee").

WHEREAS, the assignor has been engaged in the business of . . . .

. . . .

WHEREAS, the assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay debts as they become due, and is desirous of providing for the payment of debts, so far as it is possible by an assignment of all property for that purpose.

NOW, THEREFORE, the assignor, in consideration of the assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over, unto the assignee, and the assignee's successors and assigns, all of assignor's property, except such property as is exempt by law from levy and sale under an execution (and then only to the extent of such exemption), including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, general intangibles, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims, and demands belonging to the assignor, wherever such property may be located (hereinafter collectively the "estate"), which property is, to the best knowledge and belief of the assignor, fully and accurately set forth on Schedule B annexed hereto.

By making this assignment, the assignor consents to the appointment of the assignee as a general receiver with respect to the assignee's property in accordance with chapter 7.60 RCW.

The assignee shall take possession and administer the estate, and shall liquidate the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as and to the extent they may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and disbursements, all of the debts and liabilities now due from the assignor, including interest on such debts and liabilities in full, according to their priority as established by law, and on a pro rata basis within each class.

In the event that all debts and liabilities are paid in full, the remainder of the estate shall be returned to the assignor.

To accomplish the purposes of this assignment, the assignor hereby irrevocably appoints the assignee as the assignor's true and lawful attorney-in-fact, with full power and authority to do all acts and things which may be necessary to execute and fulfill the assignment hereby created, to the same extent as such acts and things might be done by assignor in the absence of this assignment, including but not limited to the power to demand and recover from all persons all property of the estate; to sue for the recovery of such property; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances, and to grant and convey any or all of the real or personal property of the estate pursuant thereto; and to appoint one or more attorneys to assist the assignee in carrying out the assignee's duties hereunder.

The assignor hereby authorizes the assignee to sign the name of the assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the assignor, or to sign the name of the assignor to any instrument in writing, whenever it shall be necessary to do so, to carry out the purposes of this assignment.

The assignor declares, under penalty of perjury under the laws of the state of Washington, that the attached list of creditors and of the property of the assignor is true and complete to the best of the assignor's knowledge.

The assignment shall be signed by the assignor and duly acknowledged in the same manner as conveyances of real property before a notary public of this state, and shall include an acceptance of the assignment by the assignee in substantially the following form:

The assignee hereby accepts the trust created by the foregoing assignment, and agrees faithfully and without delay to carry out the assignee's duties under the foregoing assignment.

|                |                |
|----------------|----------------|
| ....           | ....           |
| Assignor       | Assignee       |
| Dated: . . . . | Dated: . . . . |

(2) The assignor shall annex to such assignment schedules in the form provided for by RCW 7.60.090(3) in the case of general receiverships, setting forth the creditors and the property of the assignor.

(3) Every assignment shall be effective when a petition to appoint the assignee as receiver has been filed by the assignor, by the assignee, or by any creditor of the assignor with the clerk of the superior court in the county of the assignor's residence if the assignor is an individual or a marital community, or in the county of the assignor's principal place of business or registered office within this state if the assignor is any other person. A petition shall set forth the name and address of the assignor and the name and address of the assignee, and shall include a copy of the assignment and the schedules affixed thereto, and a request that the court fix the amount of the receiver's bond to be filed with the clerk of the court.

(4) A person to whom a general assignment of property for the benefit of creditors has been made shall be appointed as general receiver with respect to the assignor's property by the superior court upon the filing of a petition under subsection (3) of this section. Except as provided for by subsection (5) of this section, following the assignee's appointment as general receiver, all proceedings involving the administration of the assignor's property and the claims of the assignee's creditors shall be governed by the provisions of chapter 7.60 RCW applicable to general receiverships and court rules applicable thereto.

(5) Upon motion of two or more creditors of the assignor served and filed at any time within thirty days following the date upon which notice is mailed to all known creditors under RCW 7.60.200, it shall be the duty of the court to direct the clerk of the court to order a meeting of the creditors of the assignor, to determine whether a person other than the assignee named in the assignment should be appointed as general receiver with respect to the property of the assignor; and thereupon the clerk of the court shall immediately give notice to all the creditors identified in the schedules affixed to the assignment to meet at the clerk's office or at such other location within the county as the clerk may specify, at a time stated not to exceed fifteen days from the date of such notice, to determine whether a person other than the assignee named in the assignment should be appointed as general receiver with respect to the property of the assignor. The assignor's creditors may appear in person or by proxy at the meeting, and a majority in both number and value of claims of the creditors attending or represented at the meeting may select a person other than the assignee named in the assignment to serve as general receiver with respect to the assignor's property, whereupon the court shall appoint the selected person as receiver under subsection (4) of this section if a receiver has not already been appointed, and shall appoint the person to replace the original assignee as receiver if the appointment already has been made, unless the court determines upon good cause shown that the appointment as receiver of the person selected by the creditors would not be in the best interests of creditors in general, in which event the court shall appoint or substitute as the receiver a person selected by the court other than the original assignee. If at least one-third of the number or amount of claims represented in person or by proxy at the meeting of creditors vote for the appointment as receiver of a person or persons other than the assignee named in the assignment, then the court upon motion of any creditor served and filed within ten days following the meeting shall appoint as receiver a person selected by the court other than the original assignee, discharging the original assignee if the

person previously was appointed as receiver. A creditor may not vote at any meeting of creditors called for the purpose of determining whether a person other than the assignee named in the assignment should be appointed as receiver, until the creditor has presented to the clerk, who presides at the meeting, a proof of claim in accordance with RCW 7.60.210.

(6) From the time a motion is made to elect a new assignee in accordance with subsection (5) of this section, and until either the meeting of creditors occurs without a selection of a new assignee, or until the court enters an order appointing as receiver a person other than the original assignee if the creditors vote to select a new assignee at that meeting, no property of the assignor, except perishable property, may be sold or disposed of by the assignee, whether or not the assignee has been appointed as receiver; but the same shall be safely and securely kept until then.

[ 2004 c 165 § 37; 1890 p 83 § 3; RRS § 1088. Formerly RCW 7.08.030 and 7.08.040.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.015

Types of receivers.

A receiver must be either a general receiver or a custodial receiver. A receiver must be a general receiver if the receiver is appointed to take possession and control of all or substantially all of a person's property with authority to liquidate that property and, in the case of a business over which the receiver is appointed, wind up affairs. A receiver must be a custodial receiver if the receiver is appointed to take charge of limited or specific property of a person or is not given authority to liquidate property. The court shall specify in the order appointing a receiver whether the receiver is appointed as a general receiver or as a custodial receiver. When the sole basis for the appointment is the pendency of an action to foreclose upon a lien against real property, or the giving of a notice of a trustee's sale under RCW 61.24.040 or a notice of forfeiture under RCW 61.30.040, the court shall appoint the receiver as a custodial receiver. The court by order may convert either a general receivership or a custodial receivership into the other.

[ 2004 c 165 § 3.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.055

Powers of the court.

(1) Except as otherwise provided for by this chapter, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive jurisdiction over actions in which a state agency is a party and in which a statute expressly vests jurisdiction or venue elsewhere.

(2) For good cause shown, the court has the power to shorten or expand the time frames specified in this chapter.

[ 2011 c 34 § 2; 2004 c 165 § 7.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Powers and duties of receiver generally.

(1) A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order:

(a) The power to incur or pay expenses incidental to the receiver's preservation and use of the property with respect to which the appointment applies, and otherwise in the performance of the receiver's duties, including the power to pay obligations incurred prior to the receiver's appointment if and to the extent that payment is determined by the receiver to be prudent in order to preserve the value of property in the receiver's possession and the funds used for this purpose are not subject to any lien or right of setoff in favor of a creditor who has not consented to the payment and whose interest is not otherwise adequately protected;

(b) If the appointment applies to all or substantially all of the property of an operating business or any revenue-producing property of any person, to do all things which the owner of the business or property might do in the ordinary course of the operation of the business as a going concern or use of the property including, but not limited to, the purchase and sale of goods or services in the ordinary course of such business, and the incurring and payment of expenses of the business or property in the ordinary course;

(c) The power to assert any rights, claims, or choses in action of the person over whose property the receiver is appointed relating thereto, if and to the extent that the claims are themselves property within the scope of the appointment or relate to any property, to maintain in the receiver's name or in the name of such a person any action to enforce any right, claim, or chose in action, and to intervene in actions in which the person over whose property the receiver is appointed is a party for the purpose of exercising the powers under this subsection (1)(c);

(d) The power to intervene in any action in which a claim is asserted against the person over whose property the receiver is appointed relating thereto, for the purpose of prosecuting or defending the claim and requesting the transfer of venue of the action to the court. However, the court shall not transfer actions in which both a state agency is a party and as to which a statute expressly vests jurisdiction or venue elsewhere. This power is exercisable with court approval in the case of a liquidating receiver, and with or without court approval in the case of a general receiver;

(e) The power to assert rights, claims, or choses in action of the receiver arising out of transactions in which the receiver is a participant;

(f) The power to pursue in the name of the receiver any claim under chapter 19.40 RCW assertable by any creditor of the person over whose property the receiver is appointed, if pursuit of the claim is determined by the receiver to be appropriate;

(g) The power to seek and obtain advice or instruction from the court with respect to any course of action with respect to which the receiver is uncertain in the exercise of the receiver's powers or the discharge of the receiver's duties;

(h) The power to obtain appraisals with respect to property in the hands of the receiver;

(i) The power by subpoena to compel any person to submit to an examination under oath, in the manner of a deposition in a civil case, with respect to estate property or any other matter that may affect the administration of the receivership; and

(j) Other powers as may be conferred upon the receiver by the court or otherwise by statute or rule.

(2) A receiver has the following duties in addition to those specifically conferred by this chapter or otherwise by statute or court rule:

(a) The duty to notify all federal and state taxing and applicable regulatory agencies of the receiver's appointment in accordance with any applicable laws imposing this duty, including but not limited to 26 U.S.C. Sec. 6036 and RCW 51.14.073, 51.16.160, and 82.32.240, or any successor statutes;

(b) The duty to comply with state law;

(c) If the receiver is appointed with respect to any real property, the duty to file with the auditor of the county in which the real property is located, or the registrar of lands in accordance with RCW 65.12.600 in

the case of registered lands, a certified copy of the order of appointment, together with a legal description of the real property if one is not included in that order; and

(d) Other duties as the receiver may be directed to perform by the court or as may be provided for by statute or rule.

(3) The various powers and duties of a receiver provided for by this chapter may be expanded, modified, or limited by order of the court for good cause shown.

[ 2004 c 165 § 8.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.080

Duties of person over whose property the receiver is appointed.

The person over whose property the receiver is appointed shall:

- (1) Assist and cooperate fully with the receiver in the administration of the estate and the discharge of the receiver's duties, and comply with all orders of the court;
- (2) Supply to the receiver information necessary to enable the receiver to complete any schedules that the receiver may be required to file under RCW 7.60.090, and otherwise assist the receiver in the completion of the schedules;
- (3) Upon the receiver's appointment, deliver into the receiver's possession all of the property of the estate in the person's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and
- (4) Following the receiver's appointment, submit to examination by the receiver, or by any other person upon order of the court, under oath, concerning the acts, conduct, property, liabilities, and financial condition of that person or any matter relating to the receiver's administration of the estate.

When the person over whose property the receiver is appointed is an entity, each of the officers, directors, managers, members, partners, or other individuals exercising or having the power to exercise control over the affairs of the entity are subject to the requirements of this section.

[ 2004 c 165 § 10.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Executory contracts and unexpired leases.

(1) A general receiver may assume or reject any executory contract or unexpired lease of the person over whose property the receiver is appointed upon order of the court following notice to the other party to the contract or lease upon notice and a hearing. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the case. A general receiver's performance of an executory contract or unexpired lease prior to the court's authorization of its assumption or rejection shall not constitute an assumption of the contract or lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served upon the receiver in the manner provided for by RCW 7.60.210 within thirty days following the rejection.

(3) A general receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in the contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the person over whose property the receiver is appointed, or an assignment for the benefit of creditors by that person.

(4) A general receiver may not assume an executory contract or unexpired lease of the person over whose property the receiver is appointed without the consent of the other party to the contract or lease if:

(a) Applicable law would excuse a party, other than the person over whose property the receiver is appointed, from accepting performance from or rendering performance to anyone other than the person even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the person's duties;

(b) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the person over whose property the receiver is appointed, or to issue a security of the person; or

(c) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

(5) A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

(6) If the receiver rejects an executory contract or unexpired lease for:

(a) The sale of real property under which the person over whose property the receiver is appointed is the seller and the purchaser is in possession of the real property;

(b) The sale of a real property timeshare interest under which the person over whose property the receiver is appointed is the seller;

(c) The license of intellectual property rights under which the person over whose property the receiver is appointed is the licensor; or

(d) The lease of real property in which the person over whose property the receiver is appointed is the lessor;

then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which case the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and

RCW 7.60.210

Submission of claims in general receiverships.

(1) All claims, whether contingent, liquidated, unliquidated, or disputed, other than claims of creditors with security interests in or other liens against property of the estate, arising prior to the receiver's appointment, must be served in accordance with this chapter, and any claim not so filed is barred from participating in any distribution to creditors in any general receivership.

(2) Claims must be served by delivering the claim to the general receiver within thirty days from the date notice is given by mail under this section, unless the court reduces or extends the period for cause shown, except that a claim arising from the rejection of an executory contract or an unexpired lease of the person over whose property the receiver is appointed may be filed within thirty days after the rejection. Claims need not be filed. Claims must be served by state agencies on the general receiver within one hundred eighty days from the date notice is given by mail under this section.

(3) Claims must be in written form entitled "Proof of Claim," setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor's authorized agent. When a claim, or an interest in estate property of securing the claim, is based on a writing, the original or a copy of the writing must be included as a part of the proof of claim, together with evidence of perfection of any security interest or other lien asserted by the claimant.

(4) A claim, executed and served in accordance with this section, constitutes prima facie evidence of the validity and amount of the claim.

[ 2004 c 165 § 23.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.220

Objection to and allowance of claims.

(1) At any time prior to the entry of an order approving the general receiver's final report, the general receiver or any party in interest may file with the court an objection to a claim, which objection must be in writing and must set forth the grounds for the objection. A copy of the objection, together with notice of hearing, must be mailed to the creditor at least thirty days prior to the hearing. Claims properly served upon the general receiver and not disallowed by the court are entitled to share in distributions from the estate in accordance with the priorities provided for by this chapter or otherwise by law.

(2) Upon the request of a creditor, the general receiver, or any party in interest objecting to the creditor's claim, or upon order of the court, an objection is subject to mediation prior to adjudication of the objection, under the rules or orders adopted or issued with respect to mediations. However, state claims are not subject to mediation absent agreement of the state.

(3) Upon motion of the general receiver or other party in interest, the following claims may be estimated for purpose of allowance under this section under the rules or orders applicable to the estimation of claims under this subsection:

(a) Any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(b) Any right to payment arising from a right to an equitable remedy for breach of performance.

Claims subject to this subsection shall be allowed in the estimated amount thereof.

[ 2004 c 165 § 24.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.290

Termination of receivership.

(1) Upon distribution or disposition of all property of the estate, or the completion of the receiver's duties with respect to estate property, the receiver shall move the court to be discharged upon notice and a hearing.

(2) The receiver's final report and accounting setting forth all receipts and disbursements of the estate shall be annexed to the petition for discharge and filed with the court.

(3) Upon approval of the final report, the court shall discharge the receiver.

(4) The receiver's discharge releases the receiver from any further duties and responsibilities as receiver under this chapter.

(5) Upon motion of any party in interest, or upon the court's own motion, the court has the power to discharge the receiver and terminate the court's administration of the property over which the receiver was appointed. If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess against the person who procured the receiver's appointment (a) all of the receiver's fees and other costs of the receivership and (b) any other sanctions the court determines to be appropriate.

[ 2004 c 165 § 31.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

## OFFICE RECEPTIONIST, CLERK

---

**To:** Office  
**Cc:** 'howard@washingtonappeals.com'; 'dillon.jackson@foster.com'  
**Subject:** RE: Case # 93530-1 - Per and Melody Westerdal v. Name Intelligence, Inc., et al.

Received 9-15-16

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:

[http://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/clerks/](http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/)

Looking for the Rules of Appellate Procedure? Here's a link to them:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=app&set=RAP](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP)

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

**From:** Office [mailto:office@hutzbah.com]  
**Sent:** Thursday, September 15, 2016 12:45 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** 'howard@washingtonappeals.com' <howard@washingtonappeals.com>; 'dillon.jackson@foster.com' <dillon.jackson@foster.com>  
**Subject:** RE: Case # 93530-1 - Per and Melody Westerdal v. Name Intelligence, Inc., et al.

Attached for filing in the referenced case is Petitioners' Amended Petition for Review.

Tanya Bainter  
Legal Assistant

---

Marc S. Stern, WSBA No. 8194  
Attorney at Law  
1825 NW 65<sup>th</sup> St.  
Seattle, WA 98117  
206-448-7996  
206-297-8778 (fax)  
[office@hutzbah.com](mailto:office@hutzbah.com)

NOTICE: This e-mail may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this e-mail in error, please immediately notify us. Thank you for your cooperation.

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

|                                       |   |                      |
|---------------------------------------|---|----------------------|
| RAYMOND BERO, an individual,          | ) | No. 73434-2-1        |
|                                       | ) |                      |
| Plaintiff,                            | ) | (Consolidated with   |
|                                       | ) | No. 73536-5-1)       |
| v.                                    | ) |                      |
|                                       | ) | DIVISION ONE         |
| NAME INTELLIGENCE, INC., a            | ) |                      |
| Washington corporation; JAY           | ) |                      |
| WESTERDAL, an individual;             | ) |                      |
| WESTERDALCORP LLC, a                  | ) | PUBLISHED OPINION    |
| Washington limited liability company, | ) |                      |
|                                       | ) |                      |
| Respondents,                          | ) |                      |
|                                       | ) | FILED: July 25, 2016 |
| PER WESTERDAL and MELODY              | ) |                      |
| WESTERDAL, individually and the       | ) |                      |
| marital community composed thereof,   | ) |                      |
|                                       | ) |                      |
| Appellants,                           | ) |                      |
|                                       | ) |                      |
| JOHN AND JANE DOES 1-30,              | ) |                      |
|                                       | ) |                      |
| Defendants.                           | ) |                      |

FILED  
COURT OF APPEALS DIV. 1  
STATE OF WASHINGTON  
2016 JUL 25 AM 10:18

LEACH, J. — Per and Melody Westerdal appeal the trial court’s order terminating this receivership proceeding. They contend that the trial court should have first either disallowed or adjudicated their claim to 25 percent of a valuable receivership asset. Because the receivership had fulfilled its purpose and the trial court reasonably determined it would be wasteful and unnecessary to continue it, the trial court did not abuse its discretion terminating it. We affirm.

## FACTS

Jay Westerdal owns Name Intelligence Inc., a company that buys and sells Internet domain names. Raymond Bero, a former employee, sued Jay<sup>1</sup> and his companies, Name Intelligence and Westerdalcorp LLC. The parties settled in 2012.<sup>2</sup> As part of the settlement, Jay gave Bero a promissory note for \$2.5 million. Jay's parents, Per and Melody, guaranteed Jay's debt to Bero up to \$200,000. The next year, Bero sued Jay again, for breach of the settlement agreement. He alleged that Jay defaulted on his payments and attempted to sell domain names that Bero had an interest in. The trial court eventually entered a \$1.4 million judgment against Jay.

Jay did not pay the judgment. At Bero's request, in August 2014, the trial court placed Jay's companies and certain real and personal property in receivership. The primary purpose of the receivership was to protect Bero's security interests in Jay's assets. Later, in December 2014, Jay satisfied Bero's judgment against him.

---

<sup>1</sup> For clarity, Jay and his parents, Per and Melody, are referred to by their first names.

<sup>2</sup> Although Bero named Jay's parents, Per and Melody Westerdal, in the complaint, they were later dismissed.

Also during the receivership, Per and Melody asserted a \$350,000 secured claim, which included their guaranty payment to Bero and other loans. Jay paid Per and Melody this amount in full in December 2014.

Meanwhile, Jay had a brokerage agreement, made before the receivership, with Breathe Luxury Limited to auction off a high-priced domain name, "holiday.com." Jay and Breathe Luxury disagreed about how Breathe Luxury would conduct the auction. Jay wrote Breathe Luxury in November 2015, two days before the scheduled auction. His letter accused Breathe Luxury of breaching the brokerage agreement and declared the auction off. Breathe Luxury proceeded with the auction but did not receive a bid that met the reserve price.

In December 2014, after Jay had paid his secured debts to his parents and Bero, Per and Melody asserted an unsecured claim to 25 percent of holiday.com's eventual sale price.<sup>3</sup> The trial court denied without prejudice Per and Melody's motion to allow this claim. At a March 2015 hearing, the trial court determined that it did not need to decide this claim as part of the receivership, as the claim was not within the scope of the initial order and Per and Melody could assert it in a separate lawsuit. The trial court terminated the receivership.

---

<sup>3</sup> They also claimed that Jay owed them several other debts; altogether, they claimed over \$1.6 million, \$957,825 of it for holiday.com.

Per and Melody appeal the trial court's orders terminating the receivership and denying their motion for reconsideration.

## ANALYSIS

### Trial Court's Authority To Terminate Receivership

The parties disagree about how and whether chapter 7.60 RCW limits the trial court's ability to terminate a receivership. How much discretion chapter 7.60 RCW gives the trial court presents a question of statutory interpretation that this court reviews de novo.<sup>4</sup>

This court interprets a statute primarily "to ascertain and give effect to the intent of the legislature."<sup>5</sup> It begins "with the statute's plain language and ordinary meaning."<sup>6</sup> "Where the legislature has not defined a term, we may look to related statutes and dictionary definitions, as well as the statute's context, to determine the plain meaning of the term."<sup>7</sup>

Chapter 7.60 RCW gives the trial court broad discretion over receiverships.<sup>8</sup> For instance, the power to appoint a receiver is discretionary.<sup>9</sup>

---

<sup>4</sup> Bostain v. Food Express, Inc., 159 Wn.2d 700, 708, 153 P.3d 846 (2007).

<sup>5</sup> Cornu-Labat v. Hosp. Dist. No. 2, 177 Wn.2d 221, 231-32, 298 P.3d 741 (2013).

<sup>6</sup> Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999).

<sup>7</sup> Buchheit v. Geiger, 192 Wn. App. 691, 696, 368 P.3d 509 (2016).

<sup>8</sup> See, e.g., RCW 7.60.055; 18 WILLIAM B. STOEBOCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: TRANSACTIONS § 18.6, at 310 (2d ed. 2004).

The trial court appoints a receiver “as the court’s agent, and subject to the court’s direction, to take possession of, manage, or dispose of property of a person.”<sup>10</sup>

A general receiver thus has broad powers to manage the receivership property, liquidate assets, and satisfy creditors.<sup>11</sup>

Because receiverships are an “extraordinary remedy,” Washington courts employ them with caution.<sup>12</sup> Except in certain narrow, inapplicable circumstances, the trial court may appoint a receiver only when it finds that a receivership “is reasonably necessary and that other available remedies either are not available or are inadequate.”<sup>13</sup> Accordingly, Washington courts have long recognized that a receivership should terminate “as soon as practicable after its

---

<sup>9</sup> MONY Life Ins. Co. v. Cissne Family L.L.C., 135 Wn. App. 948, 952-53, 148 P.3d 1065 (2006).

<sup>10</sup> RCW 7.60.005(10).

<sup>11</sup> RCW 7.60.015. The statute defines “general receiver” as one “appointed to take possession and control of all or substantially all of a person’s property with authority to liquidate that property and, in the case of a business over which the receiver is appointed, wind up affairs.”

<sup>12</sup> Gahagan v. Wisner, 139 Wash. 664, 667, 247 P. 965 (1926); King County Dep’t of Cmty. & Human Servs. v. Nw. Defs. Ass’n, 118 Wn. App. 117, 127, 75 P.3d 583 (2003) (“A court acting in equity must act with restraint.”); RCW 7.60.025(1).

<sup>13</sup> RCW 7.60.025(1); Nw. Defs. Ass’n, 118 Wn. App. at 126. Those narrow circumstances are where a statute requires a receiver, a state agent seeks a receiver, or a party seeks a receivership with respect to real property under RCW 7.60.025(1)(b)(ii).

purposes have been accomplished.”<sup>14</sup> “[A] receivership is merely ancillary to the main cause of action; it is not an independent remedy.”<sup>15</sup>

Per and Melody do not contend that the statutory section on termination limits the trial court’s ability to terminate a receivership. Indeed, this argument would fail under the statute’s plain language. RCW 7.60.290(5) gives the trial court the “power to” terminate the receivership: “Upon motion of any party in interest, or upon the court’s own motion, the court has the power to discharge the receiver and terminate the court’s administration of the property over which the receiver was appointed.” By its terms, the section imposes no limit on the trial court’s power to terminate the receivership.<sup>16</sup> And the term “power to” itself, without any mandatory or limiting language, implies a broad grant of discretion.<sup>17</sup>

---

<sup>14</sup> Boothe v. Summit Coal Mining Co., 63 Wash. 630, 634, 116 P. 269 (1911) (quoting 34 CYCLOPEDIA OF LAW AND PROCEDURE 310 (1910)).

<sup>15</sup> Nw. Defs. Ass’n, 118 Wn. App. at 127-28.

<sup>16</sup> The rest of the subsection provides,

If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess against the person who procured the receiver’s appointment (a) all of the receiver’s fees and other costs of the receivership and (b) any other sanctions the court determines to be appropriate.

Contrary to Per and Melody’s suggestion, that sentence plainly applies only when the trial court determines a party wrongfully procured the appointment—which no one contends was the case here—and even then it confers a discretionary power on the trial court.

<sup>17</sup> Black’s Law Dictionary defines “power” as “[t]he ability to act or not act.” BLACK’S LAW DICTIONARY 1358 (10th ed. 2014).

No. 73434-2-I (consol. with  
No. 73536-5-I) / 7

Despite the plain language of RCW 7.60.290(5), Per and Melody argue that other sections of the receivership statute limit the trial court's power. In particular, they claim that RCW 7.60.220(1) prohibits the trial court from terminating a receivership until all properly served claims have either been satisfied or affirmatively disallowed. This subsection states that “[c]laims properly served upon the general receiver and not disallowed by the court are entitled to share in distributions from the estate in accordance with the priorities provided for by this chapter or otherwise by law.” Because they properly served their claim and the trial court did not disallow it, Per and Melody argue, they were “entitled to share in distributions from” the receivership assets. They contend they have a “statutorily vested right” that is terminable only when the court disallows their claim.

As with RCW 7.60.290(5), no court appears to have interpreted RCW 7.60.220(1). As neither the statute nor case law defines “entitle,” a court looks “to extrinsic aids, such as dictionaries, to find the word’s ordinary meaning.”<sup>18</sup> Black’s Law Dictionary defines “entitle” as “[t]o grant a legal right to or qualify for.”<sup>19</sup> Per and Melody claim that the legislature intended to give claimants a

---

<sup>18</sup> Dep’t of Labor & Indus. v. Kantor, 94 Wn. App. 764, 775, 973 P.2d 30 (1999) (interpreting “entitled” in Industrial Insurance Act, Title 51 RCW).

<sup>19</sup> BLACK’S, at 649. Webster’s Third New International Dictionary 758 (2002) defines it similarly.

“vested right” to distributions, provided the claimants properly served their claim and the trial court did not disallow it.<sup>20</sup> Under this interpretation, properly serving a claim that is not then disallowed would be both necessary and sufficient to receive a distribution.

Per and Melody’s proposed interpretation mandates distributions from receivership assets for every properly served claim the court does not disallow. This proposed interpretation conflicts with RCW 7.60.230, which states that the trial court must allow a claim before the receiver’s duty to distribute to the creditor becomes mandatory.<sup>21</sup> It also conflicts with the receiver’s discretionary powers of distribution.

We think a different interpretation is more practical and more consistent with the broad authority given to a general receiver to manage receivership property.<sup>22</sup> A claimant who becomes “entitled” by properly serving a claim, which the trial court does not then disallow, has taken steps necessary to qualify for, but not sufficient to receive, a distribution. This interpretation preserves the discretion of the trial court to manage the duration of the extraordinary remedy of

---

<sup>20</sup> They contend, “Structured as it is, RCW 7.60.220(1) permits objections then requires that they be sustained.”

<sup>21</sup> RCW 7.60.230(1) provides, “Allowed claims in a general receivership shall receive distribution under this chapter in the order of priority under (a) through (h) of this subsection.” (Emphasis added.)

<sup>22</sup> RCW 7.60.015.

receivership and to take into account such practical considerations as the ongoing cost of continuing it. This latter interpretation is consistent with the statutory scheme for receiverships, which gives the court broad discretion and provides a general receiver with broad authority to manage receivership property.<sup>23</sup>

In sum, because RCW 7.60.290(5) contains no language limiting the power it grants a trial court to terminate a receivership, the statute gives the trial court discretion when to terminate a receivership. This broad discretion comports with the policy of treating receiverships as an exceptional remedy.<sup>24</sup> It is also consistent with the law in other jurisdictions, as it appears that every jurisdiction to address the issue has left the decision to terminate a receivership to the trial court's sound discretion.<sup>25</sup> If the legislature intended chapter 7.60 RCW to mandate a trial court to decide all claims brought during a general receivership before terminating it, the legislature easily could have done so.

---

<sup>23</sup> RCW 7.60.015.

<sup>24</sup> See Gahagan, 139 Wash. at 667; RCW 7.60.025(1).

<sup>25</sup> See, e.g., Hill v. Hill, 460 S.W.3d 751, 763 (Tex. App. 2015), review denied, No. 15-0327 (Tex. Aug. 14, 2015); Fifth Third Bank v. Dayton Lodge, LLC, \_\_\_ Ohio App. 3d \_\_\_, 2013-Ohio-5755, 6 N.E.3d 638, at ¶ 52; Singer v. Goff, 334 Mich. 163, 167, 54 N.W.2d 290 (1952); United States v. Amodeo, 44 F.3d 141, 146 (2d Cir. 1995); Sec. & Exch. Comm'n v. An-Car Oil Co., 604 F.2d 114, 119 (1st Cir. 1979); see also 13 AM. JUR. 2d Business Trusts § 90 (2009) ("The termination of a receivership also lies within the judicial discretion of the court, in the exercise of which the court will consider the rights and interests of all parties concerned.").

Trial Court's Use of Discretion To Terminate Westerdal Receivership

Per and Melody contend that the trial court disregarded its prior order, misunderstood its statutory duties and authority, and erroneously thought that keeping the receivership would add unnecessary complexity and waste resources while terminating it would not prejudice Per and Melody. In short, Per and Melody assert that the trial court abused its discretion in terminating the receivership.

Per and Melody contend that the trial court's own receivership order limited its discretion to terminate the receivership.<sup>26</sup> Per and Melody cite no authority for the proposition that a trial court's own order can limit its statutory authority. Generally, this court will not consider arguments without supporting legal authority.<sup>27</sup> But we do not need to decide this question of law because, as discussed below, the trial court did comply with its prior order.

But we note that the trial court has inherent authority to interpret and enforce its order.<sup>28</sup> And because a receivership is an equitable remedy and the

---

<sup>26</sup> Paragraph 2.52 provided that receiverships "shall terminate only upon payment in full of all amounts due the Receiver and satisfaction in full of all amounts due under the [Bero] Judgment."

<sup>27</sup> RAP 10.3(a)(6); MONY Life Ins. Co., 135 Wn. App. at 954.

<sup>28</sup> See Allen v. Am. Land Research, 95 Wn.2d 841, 852, 631 P.2d 930 (1981) ("The superior court's inherent authority to enforce orders and fashion judgments is not dependent on the statutory grant.").

receiver serves at the direction of the trial court,<sup>29</sup> the court retains the authority to modify the order appointing the receiver in light of changed circumstances.<sup>30</sup> Per and Melody offer no reason why the trial court could not change its mind if its later decision conflicted with its original order.

Per and Melody argue the trial court erroneously treated paragraph 2.52 as requiring, rather than permitting, the trial court to terminate the receivership on fulfillment of certain conditions. But nothing in the trial court's memorandum on its order indicates that it thought paragraph 2.52 required it to terminate the receivership.<sup>31</sup> It viewed paragraph 2.52 the same way Per and Melody do, as only permitting termination once the purpose of paying "all amounts due under the [Bero] Judgment" was satisfied. The trial court determined the judgment had been satisfied. It did not terminate the receivership because it thought it had to. It terminated the receivership because it knew it could and determined that it had

---

<sup>29</sup> MONY Life Ins. Co., 135 Wn. App. at 953; RCW 7.60.005(10).

<sup>30</sup> See State ex rel. Bradford v. Stubblefield, 36 Wn.2d 664, 674, 220 P.2d 305 (1950) ("[A] court of equity has inherent power to modify or vacate a permanent preventive injunction where a change in circumstances demonstrates that the continuance of the injunction would be unjust or inequitable or no longer necessary.").

<sup>31</sup> The court said, "While one could parse the language of the court's July 2014 order . . . to argue that this does not mandate the termination 'upon payment in full,' the point of the receivership, set out in Bero's motion last July, was for the purpose set out in paragraph 2.52 . . . . That condition has been met."

good reason to—specifically, the complexity of the issues Per and Melody raised and the ongoing cost of continuing the receivership.

Per and Melody challenge both these premises. They dispute that the purpose of the receivership was satisfied. They assert that their claim should have been subrogated to Bero's and thus that "all amounts due under the Judgment" were not fully satisfied before termination as paragraph 2.52 required. Under the settlement agreement, Per and Melody guaranteed Jay's debts to Bero up to \$200,000.00. Jay then defaulted on his debt to Bero, triggering Per and Melody's liability. Per and Melody now contend that they "had the right to step into Bero's shoes" because Jay owes them the portion of his liability to Bero that Per and Melody "satisfied via the Guaranty." But Jay repaid that money to Per and Melody. Jay gave his mother a check for \$359,028.65 on December 3, 2014, in full satisfaction of the guaranty payment and other loans. Per and Melody acknowledge the payment. Still, Per and Melody claim that Jay's liability to them under the guaranty means the "requirement that 'all amounts due under the Judgment' be fully satisfied was not met." This misrepresents the record. Per and Melody's claim to 25 percent ownership in holiday.com is completely separate from Jay's liability under the guaranty.

Per and Melody further contend the trial court ignored its statutory authority in terminating the receivership without addressing their claim. They assert that because RCW 7.60.055 gives the trial court exclusive jurisdiction over all property "with respect to which the receiver is appointed," the trial court must adjudicate their claim within the receivership, since they could not bring it elsewhere during the receivership. But they do not explain why, with the receivership terminated, they cannot now bring their claim as a separate lawsuit in an appropriate court.

Per and Melody also contend that the trial court disregarded RCW 7.60.220(3), which allows the court to estimate an unliquidated claim when liquidation would "unduly delay the administration" of the receivership. Per and Melody contend the trial court should have at least considered estimation to eliminate the complexity of Per and Melody's claim. They offer no authority, however, that would require the trial court to estimate a claim when the claim is outside the purpose of the receivership and that purpose has already been fulfilled.

Thus, Per and Melody are wrong that the trial court misinterpreted its prior order.

Per and Melody also challenge the trial court's reasons for terminating the receivership, even if its purpose was satisfied. Contrary to the trial court, they contend that keeping the receiver would not add unnecessary complexity and waste resources and that ending the receivership would prejudice them.

We review the trial court's decision to terminate for an abuse of discretion. The trial court's reasoning with respect to complexity and waste is persuasive; Per and Melody's is not. The trial court cited the receivership's cost: \$6,000 per month for the receiver, with attorney fees of \$525 per hour. The receiver would also take a one percent commission from a sale of holiday.com. Per and Melody's response to these costs is, in short, that the parties could stop paying the receiver.

Per and Melody also assert that resolving their claim within the receivership would have several practical advantages: the trial court had Per and Melody's claim and Jay's response in front of it; it controlled assets that were central to the dispute under RCW 7.60.055(1); "[t]he Receiver was on hand, serving as an arm of the court"; and the trial court could estimate Per and Melody's claim under RCW 7.60.220(3). This court does not need to speculate about how much these perceived conveniences would actually benefit Per and Melody. The trial court could reasonably decide that other procedural obstacles

under the receivership statute counter these advantages: Jay has reserved the argument that the claim was time barred under RCW 7.60.210, to which Per and Melody's only defense is their unsupported statement that notice of the receivership went to the wrong address. And, under RCW 7.60.220(2), Per and Melody would still have to mediate the claim, which Jay requested, but Per and Melody have apparently refused to do.<sup>32</sup>

The trial court could also reasonably find unpersuasive Per and Melody's assertions that the termination of the receivership prejudices them. They point to three advantages that they contend the receivership statute offers them: that their claim was "deemed allowed absent affirmative disallowance by the trial court"; that the statute allows the trial court to estimate their claim, allowing for reductions in time and expense; and that RCW 7.60.210(4) provides a presumption that Per and Melody's claim was valid.<sup>33</sup> But these "protections" would not help resolve Per and Melody's claim. For instance, Per and Melody's argument based on the claim estimation provision, RCW 7.60.220(3), is circular. The purpose of that provision is to avoid "unduly delay[ing] the administration of

---

<sup>32</sup> "Upon the request of . . . any party in interest objecting to the creditor's claim, . . . an objection is subject to mediation prior to adjudication of the objection." RCW 7.60.220(2).

<sup>33</sup> Per and Melody contend Jay's objections fail to rebut the presumption in RCW 7.60.210(4). The parties dispute whether Jay caused holiday.com not to sell. Jay says it did not sell because it failed to meet minimum bid, but Per and Melody say it was because Jay interfered.

the case” by having to adjudicate unliquidated and potentially complex claims during the receivership. Per and Melody cannot then use this provision to justify prolonging the receivership for a claim that is unrelated to the case being administered. Whether or not the receiver estimates Per and Melody’s claim to 25 percent of holiday.com, that claim is unsecured and contested; they would still need discovery and trial to prove it.<sup>34</sup>

Further, the receivership had substantial assets. The trial court could reasonably conclude that ending the receivership would not impair Per and Melody’s ability to recover. Per and Melody claimed \$1.6 million for 25 percent of holiday.com and assorted other debts. The receivership assets totaled over \$34 million when it was terminated. Since a receivership’s primary purpose is to protect the debtor’s assets for creditors,<sup>35</sup> it has less utility when, as here, the debtor does not appear in danger of becoming insolvent. Had the receivership continued, the receiver would have none of the usual tasks of a receiver, such as managing assets, paying bills, or winding up companies; the receiver would have controlled those assets only while waiting for the parties to resolve an unrelated claim.

---

<sup>34</sup> The trial court and receiver each acknowledged this.

<sup>35</sup> See 65 AM. JUR. 2d Receivers § 182 (2011).

Finally, Per and Melody claim that the trial court's manner of interpretation invites abuse by ignoring serious allegations about Jay's misconduct that prejudice creditors. They contend that when there are serious allegations a debtor has engaged in inequitable and unlawful conduct that affected a receivership, it is improper to "reward" the debtor with dismissal of the case to his benefit and at the expense of creditors. But as discussed above, the receivership's purpose was to ensure satisfaction of Bero's judgment for breach of his settlement agreement with Jay. The receivership was ancillary to Bero's cause of action.<sup>36</sup> Whatever advantages the receivership may offer them, Per and Melody do not explain why the trial court could not reasonably decide that a separate lawsuit would provide a more appropriate setting for their claim.

The trial court here properly exercised its powers over the receiver: the receiver fulfilled the receivership's initial purpose, and the trial court reasonably determined that continuation of the receivership would be wasteful and inefficient. Per and Melody cite no authority that would warrant reversal of a trial court's termination of a receivership because not all creditor claims are resolved. Because the receivership's purpose was satisfied once the Bero judgment was paid in full and Per and Melody's guaranty satisfied, the trial court did not abuse its discretion in terminating it.

---

<sup>36</sup> See Nw. Defs. Ass'n, 118 Wn. App. at 127-28.

No. 73434-2-1 (consol. with  
No. 73536-5-1) / 18

CONCLUSION

Because the trial court had discretion to terminate the receivership and did not abuse that discretion, we affirm.

WE CONCUR:

Reach, J.

Trickey, ACJ

Spears, J.