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SUPREME COURT NO. 91979-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a
Russian closed joint stock company

Plaintiffs/Respondents,

v.

MARYANN HUHS and ROY E. HUHS, JR., and the marital community
thereof; R-AMTECH INTERNATIONAL, INC., a Washington
corporation; TECHNO-TM, LLC, a Nevada limited liability company;
SUNCADIA PROPERTIES, LLC, a Nevada limited liability company,

Defendants/Appellants.

**RESPONDENTS' ANSWER TO
APPELLANTS' PETITION FOR REVIEW**

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I. IDENTITY OF RESPONDING PARTIES

Responding parties are Judgment Creditors Nikolay Belikov and R-Amtech International, Inc. (“R-Amtech”). Nikolay Belikov was a plaintiff in the trial court. R-Amtech was a nominal defendant until the trial court confirmed Mr. Belikov’s ownership of R-Amtech in a Judgment entered in August 2014.

II. COURT OF APPEALS DECISION

On August 29, 2016, in a consolidated appeal, the Washington State Court of Appeals, Division One, upheld two trial court orders, by: (1) dismissing as moot the Huhses’ appeal of a June 1, 2015 Order Granting Receiver’s Motion to Compromise Claim (“Order Approving Settlement”), which, among other terms and conditions, authorized a court-appointed receiver to move to dismiss with prejudice the pending appeal filed by Petitioners Maryann Huhs and Roy E. “Al” Huhs, Jr. (the “Huhses”), and (2) affirming a July 30, 2015 Order granting the receiver’s Motion to Release and Record Deeds of Trust (“Order Releasing Deed”), which authorized the court clerk to release the deed to the Huhses’ Mercer Island property that the Huhses had agreed would serve as security for a temporary stay of the Order Approving Settlement.

III. COUNTERSTATEMENT TO ASSIGNMENTS OF ERROR

1. Is any significant question of constitutional law or substantial public interest raised by the Court of Appeals’ decision that the Huhses’ appeal of the Order Approving Settlement was moot based upon

its inability to grant the Huhses' requested relief of reinstatement of their appeal where (i) the Huhses had raised the same legal arguments in opposition to the receiver's motion to dismiss their appeal of the Judgments, (ii), the Court of Appeals rejected those arguments, (iii) the Washington Supreme Court denied the Huhses' Petition for Review, and (iv) the mandate issued?

2. Should this Court deny the Petition for Review because the Court of Appeals' opinion concluded that the Huhses' appeal of the Order Approving Settlement was moot, and the Huhses do not challenge that conclusion?

3. Is any significant question of constitutional law or substantial public interest raised by the Court of Appeals' decision that the Huhses had not timely raised their homestead claim, where the Huhses did not assert any homestead rights in opposing the Order Approving Settlement and the Huhses voluntarily offered their Mercer Island house as security for a temporary stay of the Order Approving Settlement, without reserving any homestead claim?

IV. ANSWER TO STATEMENT OF THE CASE

A. Trial Court Proceedings.

The Huhses, who are husband and wife, committed fraud and breached their fiduciary duties to their former friend, employer, and client Plaintiff/Respondent Nikolay Belikov. (Court of Appeals August 29, 2016 Opinion at 2, Petitioners' Appendix 1 (hereinafter "Opinion.") The

Honorable Helen Halpert entered a 33-page Memorandum Opinion dated July 17, 2014 finding in favor of Belikov on almost all claims asserted against the Huhses, and awarded over \$4 million in judgments against the Huhses. (Commissioner's Ruling, Respondents' Appendix 1 at 2). Judge Halpert also awarded substantial non-monetary relief, confirming Belikov's sole ownership of R-Amtech, the Washington company that the Huhses had managed on his behalf and fraudulently claimed as their own company, returning to R-Amtech intellectual property rights the Huhses had improperly transferred to their own company, and returning to Belikov a million-dollar vacation house in Suncadia Resort in Cle Elum, Washington that he had bought the Huhses as a gift using documents improperly drafted by Al Huhs, his attorney in violation of RPC 18(c). *Id.*

The Huhses appealed the judgments against them to the Court of Appeals, Division One, but did not post a supersedeas bond. (Opinion, Petitioners' Appendix 1 at 2). The Judgment Creditors proceeded to execute upon the judgments; however, the Huhses intentionally wasted and dissipated non-exempt assets for the purpose of avoiding paying Belikov. As Commissioner Kanazawa observed:

[T]he Huhses took three post-judgment trips, including a 78-day international cruise costing \$58,000. Asked whether he considered paying towards the judgments, Al Huhs said: "No way."

(Commissioner's Ruling, Respondents' Appendix 1 at 3.)

As a result of this misconduct, the King County Superior Court Chief Civil Judge, the Honorable Mariane Spearman, granted in January

2015 the Judgment Creditors' motion and appointed a general receiver for the Huhses, with exclusive control over all of their personal and real property. (Petitioners' Appendix 3.) The Receivership Order provides that the receiver shall have all of the rights, powers and duties conferred by RCW 7.60.005–7.60.300, with exclusive control over the Judgment Debtors' "Property," defined as "real and personal property of Judgment Debtors wherever located. . . ." (*Id.*, ¶ 1.3). The Receiver shall have the exclusive power and authority to possess, manage and control the Property, and to "exercise all powers available to Judgment Debtors and their agents, in their capacities as owners of the Property." (*Id.*, ¶¶ 2.1, 2.5). The Huhses incorrectly suggest that the receivership was ordered because of their purported indigency. (Petition at 3, 6.) They fail to mention that the receivership was ordered due to their continuing post-trial misconduct. *Id.*

The Huhses did not appeal the Receivership Order. (Commissioner's Ruling, Appendix 1 at 8.) The Judgment Creditors and the Receiver later reached a global settlement of all claims, including a contemplated full satisfaction of the judgments at a substantial discount (\$3 million) to the Huhses, dismissal of their appeal of the judgments, transfer of certain real estate to Belikov (the Huhses' Mercer Island home and a vacant Suncadia lot), and Belikov's retention of Suncadia, R-Amtech, and R-Amtech's licensing rights. (Petitioners' Appendix 2.)

B. The Court of Appeals and Washington Supreme Court Have Rejected the Huhses' Arguments Multiple Times.

After Judge Spearman approved the global settlement on June 1, 2015 as "fair and equitable" to the parties (Petitioners' Appendix 2), Belikov and the Receiver entered into a Stipulation and asked the Court of Appeals to dismiss the Huhses' appeal under RAP 18.2. (Receiver's Motion to Dismiss, Respondents' Appendix 2). The Huhses opposed dismissal on grounds they raise here, *i.e.*, that the Receiver lacked authority to dismiss the appeal. (Respondents' Appendix 3.) The Court of Appeals received briefing from both sides and on July 7, 2015, unanimously granted dismissal under RAP 18.2, which provides for voluntary withdrawal of review only with the appellate court's approval. (Respondents' Appendix 4.) Petitioners' assertions that the receiver could "direct the Court of Appeals to dismiss a judgment," and that the Court of Appeal's dismissal was "at the trial court's direction" are at odds with RAP 18.2 and the record. (Petition at 2, 8.)

The Huhses also asked the Court of Appeals to stay enforcement of the Order Approving Settlement pending appeal and offered to use the deed to their house at Mercer Island as temporary security while the Court of Appeals considered their request. (Respondents' Appendix 5.) On July 7, 2015, the Court of Appeals unanimously denied their request for a stay and lifted the temporary stay secured by the Mercer Island house deed, which was held in the King County Superior Court Clerk's Office, to the receiver. (Respondents' Appendix 6.)

Both July 7, 2015 decisions of the Court of Appeals came to this Court for review. *See* Case Nos. 91970-4 and 91979-8. Additionally, in response to the Huhses' emergency motion asking this Court to "temporarily stay lower court rulings, with the title to the Mercer Island Property remaining in the trial court's custody as adequate security," in a Ruling dated July 29, 2015, Commissioner Narda Pierce denied the Huhses' request. (Respondents' Appendix 7.)

Accordingly, this is the third time that the Huhses have sought review in the Washington Supreme Court of their claims that the receiver lacked authority to enter into the global settlement.¹ On September 30, 2015, Department II of this Court denied the Huhses' Petition for Review in Case No. 91979-8, which related to the Court of Appeals' dismissal of the Judgments appeal. In that Petition for Review, the Huhses made the same arguments regarding the receiver's lack of authority to dismiss the Huhses' appeal that they make here. On September 30, 2015, Department II of this Court denied the Huhses' Motion to Modify the Commissioner's Ruling and Motion for Discretionary Review in Case No. 91970-4, which related to denial of the stay of lower court rulings pending appeal of the Order Approving Settlement. The Court of Appeals issued the mandate in appeal of the Judgments (Court of Appeals Case No. 72334-1-I) on October 30, 2015.

¹ The Huhses also sought direct review of the Order Releasing Deed in Case No. 92032-0, however they subsequently agreed to have that appeal transferred to the Court of Appeals.

V. ARGUMENT

Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; (3) If a significant question of law under the Constitution of the State of Washington or of the United State is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b). The Huhses argue that this case warrants review due to “substantial public interests and constitutional issues.” (Petition at 6.) The Huhses’ arguments should be rejected.

A. The Court of Appeals Decided This Case on Mootness.

Absent from the Huhses’ Petition is any discussion on the question of mootness, which formed the basis of the Court of Appeals decision rejecting the Huhses’ challenge to the Order Approving Settlement. As the Court of Appeals stated, “[t]he relief requested by the Huhses, reinstatement of their appeal in cause no. 72334-1-I, is no longer possible” because “the issuance of the mandate deprived this court of the power to change, modify, or undo the order dismissing the appeal.” (Opinion at 5.) The Court of Appeals correctly and properly concluded that the Huhses’ claims for reinstatement of their appeal, was impossible. As a result, the settlement could not be undone, and therefore the appeal was moot. A

claim is moot when the court can no longer provide effective relief.
Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984).

Since the Huhses raise no challenge to the Court of Appeals' mootness determination, they have essentially conceded that reinstatement of their underlying appeal is not possible. Having made this concession, there is no reason for this Court to grant the Huhses' Petition to render what would essentially be an advisory opinion on the Huhses' moot arguments regarding the scope of the receiver's authority. This Court faces the same restrictions as the Court of Appeals on re-opening an appeal after mandate has issued. Because mandate was issued over a year ago, changing the outcome of that appeal is barred by RAP 12.7(a).

The Court of Appeals' opinion also observed that it could reconsider identical legal issues in a subsequent appeal of the same case "where the holding of the prior appeal is clearly erroneous and the application of the doctrine would result in a manifest injustice." (Opinion at 6, citing *Folson v. County of Spokane*, 111 Wn.2d 256, 264, 759 P.2d 1196 (1988)). In this case, the Court of Appeals concluded that dismissal of the Huhses' appeal "was neither clearly erroneous nor manifestly unjust." (Opinion at 6.) Having made no challenge to the Court of Appeals' conclusions on these points, the Huhses must accept that there is no reason for this Court to grant review. The mootness of the Huhses' appeal of the Order Approving Settlement means that this Court would never reach the receivership authority issues raised in the Huhses' Petition.

B. No Substantial Public Interests or Constitutional Issues Are Implicated.

Even if the Huhses' appeal were not moot and otherwise unsupported (*e.g.*, Opinion at 6), a fundamental flaw in the Huhses' Petition is the false premise that substantial public interests and constitutional issues are at stake. It is the Huhses' actions in flouting the legal consequences of the fraud and related judgments that caused the trial court to impose a receivership, not the mere existence of a plaintiff with an enforceable judgment. (Receivership Order, Petitioners' Appendix 2.). The Huhses then opted not to appeal that order. (Commissioner's Ruling, Appendix 1 at 4.) It is improper for the Huhses to attempt to raise these challenges to the Receivership Order for the first time on appeal. This Court may decline to consider an issue raised for the first time on appeal. *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 299, 38 P.3d 1024 (2002) (appellate court may decline review of issue not presented to trial court); RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court.")

The facts of this case are unique and unlikely to replicate themselves the course of receivership practice. The limited case law in this area is a reflection that these scenarios are few and far between. As these cases reflect, the public interest is not crying out for guidance on these issues because they occur so rarely and are unlikely to occur again.

The Huhses' argument that this Court's review is necessary to protect the appellate system from trial courts that "may dismiss appeals

based on unilateral conclusions” borders on frivolous. The Court of Appeals retains authority to decide on its own whether an appeal may be dismissed under RAP 18.2. There is no trial court decision here that even suggested, let alone directed, that it had the authority to dismiss an appeal.

The Huhses also assert that rights to pursue an appeal are not “Property” within the meaning of RCW 7.60.005(9). In making this argument, they fail to state any claim that public interests or Constitutional interests are at stake. Thus, this Court should deny review because this issue does not meet the criteria of RAP 13.4. Furthermore, the Huhses’ assertion is incorrect as a matter of law. As Judgment Creditors have argued to this Court and the Court of Appeals, an appeal is a form of personal property and should be treated like a chose in action, which is unquestionably a form of personal property. *Meltzer v. Wendell-West*, 7 Wn. App. 90, 497 P.2d 1348 (1972). To read into the definition of “Property” an exception for an appeal would unreasonably tie the hands of receivers in administering estate property. The Huhses cite no legal authority that supports their assertion. The limited authority available in this area supports a receiver’s right to compromise claims. *See Spencer v. Alki Point Transp. Co.*, 53 Wash. 77, 83, 101 P. 509 (1909) (receiver may compromise claims against the Estate), cited in Commissioner’s Ruling, Appendix 1 at 11; *In re Croft*, 737 F.3d 372, 376-77, 378 (5th Cir. 2013) (defensive appeal rights are property of debtor’s Estate and saleable by bankruptcy trustee); *In re Mozer*, 302 B.R. 892, 895-96 (C.D. Cal. 2003) (same).

C. The Court of Appeals Correctly Decided That the Huhses Did Not Timely Assert Their Homestead Claim.

The only issue not previously brought to this Court was the Huhses' homestead claim. They first raised their homestead issue to the trial court in connection with the receiver's motion asking the trial court to authorize the court clerk to perform the ministerial act of releasing the Mercer Island house deed. (Opinion at 4.) It was never raised in connection with the Huhses' opposition to the receiver's motion for court approval of the global settlement (*see* Judgment Debtors' Response to General Receiver's Motion for Order Authorizing Compromise of Claim, Appendix 3). After failing to mention homestead in connection with the receiver's motion to approve the settlement, the Huhses again remained silent on the question of homestead when they offered the Mercer Island house deed as security for a temporary stay. (Defendant/Judgment Debtors/Appellants Roy E. Huhs, Jr. and Maryann Huhs' Second Emergency Motion Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3, Appendix 5.) The Huhses' attempt to take back their security after their stay request was denied does not raise any significant constitutional or public interest issues.

The Huhses' Petition contains multiple misstatements of the record regarding their claimed homestead rights. For example:

- "It [the Order Authorizing Dismissal of Appeal] also refused to enforce the Huhses' constitutional right to a homestead exemption." Petition at 2. This statement is incorrect. The

Huhses did not raise the homestead issue when opposing the dismissal of their appeal. Consequently, the Order Approving Settlement makes no mention of the homestead exemption. The Huhses should not be permitted to raise it now. *Sorrel*, 110 Wn. App. at 299; RAP 2.5(a)

- “May a trial court deny judgment debtors in receivership their constitutionally guaranteed right to a homestead exemption when a receiver enters into a settlement with a judgment creditor over the judgment debtor’s objections?” Petition at 2. As stated above, the Huhses never raised any homestead rights in their opposition to the receiver’s motion to approve the settlement. (Appendix 3.) It therefore cannot be said that the trial court *denied* their homestead rights *when* the receiver entered into the settlement. *Id.*
- “The Huhses raised homestead in earlier trial court motion practice.” Petition at 13, n.18. In addition to lacking any citation to the record, this statement is simply wrong and contrary to the Opinion’s finding that the Huhses *had not* previously raised homestead.

The Court of Appeals’ decision rejecting the Huhses’ homestead claim is correct. The Order Approving Settlement included as one of its terms that the Huhses would transfer two real estate parcels—the Mercer Island house and a vacant lot at Suncadia—to Belikov in exchange for a full discharge of judgment debt and other consideration. (Petitioners

Appendix 2 at 7.) The Court of Appeals affirmatively found that the Huhses “did not raise a claim of homestead when the transfer of the house to Belikov was included as a term of the settlement authorized by the trial court.” (Opinion at 7.) After confirming that the order authorizing the settlement was “valid,” the Court of Appeals stated, “[t]he trial court had no obligation to require Belikov to remit \$125,000 to the Huhses when signing a ministerial order to carry out the term of the settlement that required transfer of the house.” (Opinion at 7.)

The Huhses could have raised their claimed homestead rights in connection with their request for a stay of the Order Approving Settlement in the Court of Appeals, but they did not. Instead, as the Court of Appeals stated, they said nothing as they “agreed to have the house serve as security for a temporary stay of the order authorizing settlement---....” (Opinion at 7.) They continue to offer no explanation as to why the value of the house as security or the value to Belikov of the settlement should be diminished by \$125,000. When presented with two obvious opportunities to assert their homestead claim, the Huhses were silent, relying on other defenses to oppose the settlement and seeking to utilize the full value of the Mercer Island house to their benefit when it was useful to do so. They cite no authority to support their position that parties may rest on their rights silently, withholding certain arguments from their pleadings, and then assert those rights after a trial court has rendered rulings in reliance on the record before it. The law is to the contrary. *Sorrel*, 110 Wn. App. at 299.

The Huhses cite to *Sweet v. O'Leary*, 88 Wn. App. 199, 201, 944 P.2d 414 (1997). But as the Court of Appeals stated, *Sweet* is “factually far removed from the present case.” (Opinion at 7.) *Sweet* involved recovery of the value of homestead after a creditor recovered proceeds from a non-judicial foreclosure of a deed of trust, and the Court of Appeals rejected the creditor’s argument that the homeowner “gave up all homestead rights forever” by granting a deed of trust on the debtor’s homestead property. *Sweet*, 88 Wn. App. at 203. The reservation of homestead rights is not “automatic” such that a party may neglect to raise it in multiple court filings and then spring it on the opposing party to reduce the value of a settlement. *In re Boston’s Estate*, 80 Wn.2d 70, 75, 491 P.2d 1033 (1971), cited by the Huhses, in fact supports the Court of Appeals’ decision. Even in *Boston’s Estate*, the Washington Supreme Court stated that it may find a waiver of homestead rights even without an express written document. Unlike the appellant in *Boston’s Estate*, the Huhses were not unsuspecting and uninformed litigants, unaware of what homestead rights actually were. They were represented by active, private counsel, and well aware of their ability to claim homestead chose not to do so in a timely manner. The Huhses instead opted to knowingly offer their Mercer Island property without homestead to maximize its value as collateral and with it the chances that their security offering would be accepted as security in consideration of their stay request. After the security was accepted and their stay request was ultimately denied, the Huhses attempted to take back their unconditional offering by arguing

homestead. The Huhuses' sharp tactics raise no constitutional issues. It is well established that "even constitutional rights can be waived by failing to utilize the machinery available for asserting them." *Henriksen v. Lyons*, 33 Wn. App. 123, 128, 652 P.2d 18, 21 (1982). That is precisely what happened here.

VI. CONCLUSION

Based upon the foregoing, Respondents respectfully request this Court deny Petitioners' Petition for Review.

DATED this 28th day of October, 2016.

Respectfully,

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CERTIFICATE OF SERVICE

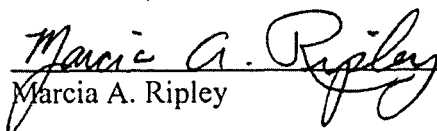
The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused this pleading to be filed with the Supreme Court and via email service by consent of parties on the following:

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DATED this 28th day of October, 2016.



Marcia A. Ripley

APPENDIX 1

FACTS

This case involves disputes related to a claim of breach of fiduciary duties and the ownership of R-Amtech International, Inc. (R-Amtech), an abbreviated title for Russian-American Technologies.

In July 2014, after a 4-week bench trial from May to June 2014, Judge Helen Halpert issued a 32-page memorandum opinion in favor of plaintiff Nikolay Belikov on almost all of his claims against the Huhses. The trial court found that Belikov is the legal owner of R-Amtech. The court pointed out that Belikov founded R-Amtech with his money, and all but \$1,000 (stock purchase by Maryann Huhs) of the millions of dollars invested in the company came from him. The court found that the Huhses committed fraud against Belikov, breached their fiduciary duties to him, converted his property by secretly transferring R-Amtech's intellectual property assets to a Nevada company they solely controlled and transferring R-Amtech's monetary assets and securities to their personal and family trust accounts. The court found that the Huhses unjustly enriched themselves at Belikov's expense. The court further found that Al Huhs served as Belikov's attorney and violated RPC 1.8(c) by drafting documents for a gift from Belikov to the Huhses of a million-dollar vacation home in Suncadia in Cle Elum, Washington.

In August 2014, the trial court entered a judgment for R-Amtech (as owned solely by Belikov) against the Huhses in the amount of \$3,112,329, with 5.25% annual interest accruing about \$450 per day. The judgment required the Huhses to return the Suncadia property to Belikov. In September 2014, the court awarded Belikov attorney fees and costs in the amount of \$919,317.25, with 5.25% annual interest accruing about \$130 per day. The Huhses appealed the judgments to this Court (No. 72334-1).

In August 2014, the Huhses filed in the trial court an unsuccessful RAP 8.1(b) motion to stay enforcement of the judgment. They sought a stay without posting a supersedeas bond or cash. Instead, they offered to deposit into the court registry the deeds to the Suncadia house, which the judgment required them to return to Belikov, and their Mercer Island house valued at about \$1.1 to 1.2 million.¹ The trial court denied a stay, and the Hushes did not seek a stay in this Court.²

In January 2015, Belikov filed a motion to appoint a general receiver. In support of his motion, he provided, among other things, transcripts of the Huhses' testimony during supplemental proceedings, which showed they had been spending a significant amount of money with no intent to satisfy the judgments. For example, the Huhses took three post-judgment trips, including a 78-day international cruise costing \$58,000. Asked whether he considered paying towards the judgments, Al Huhs said: "No way."³ Belikov argued that the Huhses had intentionally wasted money, disbursed personal property to friends and family, and used cash, checks, and internet bank accounts to avoid garnishment of hundreds of thousands of dollars obtained through a last-minute property sale on the eve of the adverse judgment. He argued that a receiver was necessary to preserve the Huhses' remaining assets to satisfy the judgments.

On January 23, 2015, Chief Civil Judge Mariane Spearman granted Belikov's motion and appointed Matthew Green as general receiver for the Huhses' property. In the order appointing a receiver, the court found that since the entry of the judgments,

¹ Declaration of Maureen L. Mitchell (attached to respondents' response to the Huhses' emergency motion) at 1-2 ¶ 4.

² Ex. C to declaration of Mitchell (order denying defendants' RAP 8.1(b) motion to stay enforcement of judgment). In their current motion for an emergency stay in this Court, the Huhses did not disclose their prior RAP 8.1(b) motion or the trial court's denial of that motion.

³ Ex. G to declaration of Mitchell (motion to appoint a general receiver) at 3, quoting Al Huhs' testimony at supplemental proceeding of December 18, 2014 at 86.

the Huhses had “intentionally dissipated and/or wasted non-exempt assets with the express purpose of preventing collection” of the judgments.⁴ The court found there was reason to believe the Huhses would “continue to waste, sell, and secret collectible assets” if a receiver was not appointed.⁵ The order authorized the receiver to take possession of and exclusive control over the Huhses’ “property,” defined as their real and personal property “wherever located.”⁶ “Receiver shall have the exclusive power and authority to manage, operate, maintain, secure, market, license, lease, sell, repair, and control the Property; exercise all powers available to Judgment Debtors and their agents, in their capacities as owners of the Property; and to do all things permitted pursuant to RCW 7.60.060[.]”⁷ The order prohibited the Huhses from obstructing, delaying, or interfering with the receiver in the performance of his duties or from taking any action purporting to transfer, encumber, or dispose of the property or any portion of it. The Huhses did not appeal the January 2015 order appointing a receiver.

In February, March, and April 2015, the Huhses filed motions to enforce exemptions from execution. In May 2015, the trial court appointed a referee to determine their claimed exemptions. Judge Spearman noted that the receiver had been “unable to carry out his duties due to the need to first resolve the [Huhses’] claims that certain property is exempt from seizure pursuant to RCW 6.15.010.”⁸

Meanwhile, Belikov offered to settle all of his and R-Amtech’s claims against the Huhses. The proposed settlement terms were as follows:

1. The trial court’s rulings determining [Belikov] to be the sole owner of

⁴ Order appointing general receiver at 3 ¶ 1.11.

⁵ Order appointing general receiver at 3 ¶ 1.12.

⁶ Order appointing general receiver at 2 ¶ 1.3, 5 ¶ 2.1, 6 ¶ 2.5.

⁷ Order appointing general receiver at 6 ¶ 2.5,

⁸ Order appointing referee at 2.

[R-Amtech] and removing the Huhses as officers and directors of that company would stand.

2. The trial court's ruling that the transfer of the licensing rights to R-Amtech's technology to the Huhses' company for \$1,000 was fraudulent and *ultra vires* and ordering that the licensing rights be returned to R-Amtech would stand.
3. The trial court's order requiring the Huhses to return [the Suncadia property] to [Belikov] would stand.
4. The trial court's determination that the Huhses were entitled to keep their Costa Rica condominium, known as *Mezzaluna Doce*, would stand. The Huhses have sold the condo and sequestered funds from it, and perhaps other funds, in Costa Rica. They would keep those funds.
5. The Receiver would dismiss the legal action in Costa Rica which the Huhses have commenced or plan to commence against [Belikov], and release all rights or claims to date against [Belikov].
6. The Receiver would transfer to [Belikov] the Huhses Mercer Island house (valued at approximately \$900,000) and transfer to [Belikov] a vacant lot (valued at approximately \$100,000) the Receivership Estate controls which is adjacent to [Belikov's Suncadia property]. The Receiver would agree to [Belikov's] ownership of the [Suncadia property] and its contents (valued at approximately \$1,000,000).
7. The Huhses' personal property, including the furnishings of their Mercer Island house, their two cars in custody of the Receiver, and artwork from their house that remains in our possession would be returned to them.
8. The Huhses could retain their car in Costa Rica and all other personal property in that country.
9. A full satisfaction of judgment would be entered for the judgments against the Huhses.
10. The Receiver would dismiss with prejudice the Huhses' appeal of the judgments and *lis pendens* ruling.⁹

⁹ Exhibit A to the order granting receiver's motion to compromise claim (February 12, 2015 letter) at 2-3.

In April 2015, the receiver filed a motion to authorize a compromise of claim pursuant to RCW 7.60.055 and .060. The receiver explained that under the terms of the proposed settlement, Belikov would receive about \$2 million in real and personal property and waive about \$3 million in money owed by the receivership estate. The receiver stated that dismissal of the Huhses' appeal would relieve a significant strain on estate resources. The receiver stated that, based on his review of the Huhses' opening brief on appeal and their trial testimony, the proposed reduction in Belikov's claims "far exceeds the value to the estate of moving forward with the appeal."¹⁰ The Huhses opposed the motion, arguing that their right to appeal is not "property" of their estate.

On June 1, 2015, after reviewing the parties' briefing and hearing oral argument, the trial court issued an order granting the receiver's motion. Judge Spearman concluded that the proposed settlement offer was "fair and equitable to both sides and should be approved."¹¹ In the order, the court made the following findings:

1. The judgments entered in favor of [R-Amtech and Belikov] against the Debtors in 2014 total \$4,031,646.25 and are accruing interest at 5.25% or \$579.89 per day.
2. The Debtors filed their appeal brief on January 26, 2015, asserting, among other issues, that the trial court erred in vacating Belikov's jury demand.
3. The Receiver has reviewed the issues that the Debtors have raised on appeal, and has concluded that even if the result was a re-trial, it was unlikely that the outcome would be any different given the [Huhses'] damaging testimony during their first trial that would likely be offered against them in a subsequent trial.
4. There would be considerable cost and delay to the Estate in pursuing an appeal of the trial court's ruling and would unlikely result in any tangible benefit to the Debtors.

¹⁰ Exhibit 5 to the Huhses' emergency motion for a stay (receiver's motion for order authorizing compromise of claim) at 5.

¹¹ Order granting receiver's motion to compromise claim at 3 ¶ 7.

5. In return for \$2 million in real property, [Belikov] has offered to satisfy \$5 million in Judgments against the Debtors. At trial, [Belikov] was awarded the \$4 million Judgment as well as the Suncadia property valued at approximately \$1 million. In return for an additional \$1 million in real property (the Debtor's Mercer Island home valued at \$900,000 and a vacant lot next to the Suncadia property valued at \$100,000), the Debtors would be relieved of \$5 million in debt, a discount of \$3 million.
6. As part of the settlement agreement, the Debtors would keep all their personal property from their Mercer Island house. This issue has been the source of considerable litigation ultimately resulting in the appointment of a Referee to assist the court in determining what property of the Debtors should be exempt from attachment.
7. The proposed settlement offer is fair and equitable to both sides and should be approved.¹²

On June 3, 2015, the Huhses filed a notice of appeal from the order granting the receiver's motion to compromise claim. They also filed an emergency motion to stay the order and enjoin "any activity by or before the trial court intended to prevent or hinder this Court's appellate review of the trial court's judgment" in No. 72334-1.¹³ As directed by this Court, the receiver and Belikov each filed a response to the Huhses' emergency motion, and the Huhses filed a reply brief in support of their motion.

DECISION

The Huhses seek an emergency stay and an injunction under RAP 8.3. Under the rule, this Court has discretion to issue orders, including an injunction, to ensure effective and equitable review. As explained below, their motion is denied.

A "trial court's judgment is presumed valid, and *unless the judgment is*

¹² Order granting receiver's motion to compromise claim at 2-3.

¹³ Emergency motion at 2.

superseded, a judgment creditor has specific authority to execute on that judgment.”¹⁴ RAP 8.3 was initially designed to grant the appellate court the authority to stay enforcement of a judgment other than a money judgment or a judgment affecting property.”¹⁵ “That authority is now expressly found in RAP 8.1(b)(3), leaving RAP 8.3 to cover other, miscellaneous situations in which an appellate court might be called upon to enter orders needed to insure effective and equitable review.”¹⁶

The Huhses essentially seek to stay enforcement of the judgments on appeal (No. 72334-1), which have not been stayed because they refused to post a supersedeas bond or cash. They sought approval of alternate security for a stay under RAP 8.1(b)(4), which the trial court denied. The Huhses did not seek review of that denial.¹⁷ The court then appointed a receiver in enforcing the judgments, finding the Huhses had “intentionally dissipated and/or wasted non-exempt assets with the express purpose of preventing collection” of the judgments and there was reason to believe they would “continue to waste, sell, and secret collectible assets” if a receiver was not appointed.¹⁸ As the court explained, it appointed the receiver “to take possession and control of the seized property *with the ultimate goal of selling it to satisfy the outstanding judgment*.”¹⁹ The Huhses did not appeal the order appointing a receiver. The court then authorized the receiver to compromise claim, which decision the Huhses now seek to stay. It appears that their current emergency motion is a belated attempt to challenge

¹⁴ Spahi v. Hughes-Northwest, Inc., 107 Wn. App. 763, 769, 27 P.3d 1233 (2001) (emphasis added).

¹⁵ 2A KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE, RAP 8.2, at 616 (7th ed. 2011) (“WASHINGTON PRACTICE”).

¹⁶ WASHINGTON PRACTICE at 616.

¹⁷ Under RAP 8.1(h), a “party may object to a supersedeas decision of the trial court by motion in the appellate court.”

¹⁸ Order appointing general receiver at 3 ¶¶ 1.11, 1.12.

¹⁹ Order appointing referee at 2 (emphasis added).

the trial court's prior denial of a stay with their proposed alternate security.

In any event, the trial court's decision authorizing the receiver to compromise claim is a decision that affects rights to property. A stay of such a decision, or any other type of a judgment or decision, generally requires a supersedeas bond or cash or alternate security approved by the trial court:

A trial court decision may be enforced pending appeal or review unless stayed pursuant to the provisions of this rule. Any party to a review proceeding has the right to stay enforcement of a money judgment, or a decision affecting real, personal or intellectual property, pending review. Stay of a decision in other civil cases is a matter of discretion.

- (1) *Money Judgment.* Except when prohibited by statute, a party may stay enforcement of a money judgment by filing in the trial court a supersedeas bond or cash, or by alternate security approved by the trial court pursuant to subsection (b)(4).
- (2) *Decision Affecting Property.* Except where prohibited by statute, a party may obtain a stay of enforcement of a decision affecting rights to possession, ownership or use of real property, or of tangible personal property, or of intangible personal property, by filing in the trial court a supersedeas bond or cash, or by alternate security approved by the trial court pursuant to subsection (b)(4).
- (3) *Other Civil Cases.* Except where prohibited by statute, in other civil cases, including cases involving equitable relief ordered by the trial court, the appellate court has authority, before or after acceptance of review, to stay enforcement of the trial court decision upon such terms as are just. The appellate court ordinarily will condition such relief from enforcement of the trial court decision on the furnishing of a supersedeas bond, cash or other security. In evaluating whether to stay enforcement of such a decision, the appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed. The party seeking such relief should use the motion procedure provided in Title 17.
- (4) *Alternate Security.* Upon motion of a party, or stipulation, the trial court or appellate court may authorize a party to post security other than a bond or cash, may authorize the establishment of an account consisting of cash or other assets held by a party, its counsel, or a non-party, or may authorize

any other reasonable means of securing enforcement of a judgment. The effect of doing so is equivalent to the filing of a supersedeas bond or cash with the Superior Court.²⁰

The purpose of requiring a supersedeas bond or cash is to ensure that the judgment debtor's ability to satisfy the judgment will not be impaired pending appeal.²¹ Thus, when a party seeks to stay enforcement of a decision that affects rights to property, the "supersedeas amount shall be the amount of any money judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review."²² "Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review."²³

Even under RAP 8.3, this Court, in granting a stay, "will ordinarily condition the order on furnishing a bond or other security."²⁴ Under RAP 8.3, this Court may stay a trial court order if the moving party demonstrates a debatable issue on appeal and a need for a stay after considering "the equities of the situation."²⁵

In light of the circumstances of this case, and considering the equities of the situation, I conclude a stay is not warranted without the Huhses posting a supersedeas bond or cash to preserve their ability to satisfy the judgments pending review.

Further, although the Huhses argue that the general receiver lacks authority to

²⁰ RAP 8.1(b) (emphasis added).

²¹ Lampson Universal Rigging, Inc. v. Wash. Pub. Power Supply Sys., 105 Wn.2d 376, 378, 715 P.2d 1131 (1986).

²² RAP 8.1(c)(2).

²³ RAP 8.1(c)(2).

²⁴ RAP 8.3.

²⁵ Confederated Tribes of Chehalis Reservation v. Johnson, 135 Wn.2d 734, 759, 958 P.2d 260 (1998).

compromise claim, there appears to be authority to the contrary: "The court appointing a receiver may authorize him to compromise claims and suits against the estate if best for the interest of all parties concerned."²⁶ Also, in the non-appealed order appointing a general receiver, the trial court authorized the receiver to take exclusive control over the Huhses' real and personal property wherever located and "exercise all powers available to [the Huhses] and their agents, in their capacities as owners of the Property[.]"²⁷

Although the Huhses argue that the trial court's decision authorizes dismissal of the appeal in No. 72334-1, voluntary dismissal of appeal requires this Court's approval under RAP 18.2. Although the Huhses may present a debatable issue on appeal, their argument is not so compelling as to warrant a departure from the general rule that requires a supersedeas bond or cash to stay a trial court decision.

CONCLUSION

A stay of the trial court's decision requires a supersedeas bond or cash under RAP 8.1(b) or RAP 8.3. Therefore, it is

ORDERED that the Huhses' emergency motion for a stay and an injunction is denied.

Done this 12th day of June, 2015.

Masako Hanazawa
Court Commissioner

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 JUN 12 PM 4:04

²⁶ Spencer v. Alki Point Transp. Co., 53 Wash. 77, 83, 101 P. 509 (1909) (quoting 23 Am. & Eng. Enc. Law § 1080); see also 65 Am. Jur. 2d Receivers § 158 (2d ed. updated in May 2015) ("The court that appoints a receiver also has power to compromise claims of the debtor against third persons. Some authority describes a receiver as the real party in interest as to a cause of action and the one with the right to sue and concomitant right to settle any claim or potential claim.").

²⁷ Order appointing general receiver at 2 ¶ 1.3, 5 ¶ 2.1, 6 ¶ 2.5.

APPENDIX 2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

NIKOLAY BELIKOV, a married
individual; R-AMTECH
INTERNATIONAL, INC.,

Respondents,

v.

MARYANN HUHS and ROY E.
HUHS, JR., and the marital
community thereof,

Appellants.

NO. 72334-1-I

RESPONDENTS' RAP 18.2
MOTION TO DISMISS APPEAL

I. IDENTITY OF THE MOVING PARTY

Respondents Nikolay Belikov ("Belikov"), and R-Amtech International Inc.¹ file this motion under RAP 18.2 to dismiss this appeal on the basis of a stipulation of the parties.

II. STATEMENT OF THE RELIEF SOUGHT

Respondents and the Receiver for the Appellants seek an order under RAP 18.2 dismissing this appeal with prejudice, based on a court-approved global settlement. A stipulation and proposed order of dismissal is being filed with this motion, along with a declaration from the Receiver, Matthew Green.

¹ R-Amtech International, Inc. is a Respondent and Nominal Appellant.

III. FACTS RELEVANT TO MOTION

This appeal was filed by Maryann Huhs and Roy E. (“Al”) Huhs Jr. from judgments entered against them in the Superior Court (King County Case No. 12-2-23972-0 SEA), requiring them, among other things, to pay money judgments of \$3,112,329, and \$919,317.25 in attorneys’ fees and costs, and return to Belikov real property known as the Suncadia residence, valued at \$1 million.²

A General Receiver was later appointed for the Huhses in that Superior Court action. The Huhses did not appeal the order appointing the Receiver. The Receiver was granted exclusive control over “real and personal property of Judgment Debtors wherever located. . . .” and authorized to “exercise all powers available to [the Huhses] and their agents, in their capacities as owners of the Property[.]”³

The Receiver accepted a settlement offer from the Respondents. On June 1, 2015, the Superior Court approved and ordered that settlement. Among other terms, the settlement relieves the Huhses of \$5 million in judgment debt, a discount of \$3 million,⁴ and requires that the Receiver dismiss this appeal with prejudice.⁵

² See Order Granting Receiver’s Motion to Compromise Claim (“Compromise Order”), at pg. 2, Ex. 2 to Declaration of Matthew Green (“Green Decl.”); Order Appointing General Receiver at pg. 3, ¶¶ 1.5, 1.6, Green Decl., Ex. 1.

³ Order Appointing General Receiver at pg. 2, ¶ 1.3, pg. 5, ¶ 2.1, pg. 6, ¶ 2.5, Green Decl., Ex. 1.

⁴ Compromise Order at pg. 2, ¶ 5, Green Decl. Ex. 2.

⁵ *Id.*, and Ex. A thereto at pg. 3.

The Huhses filed an emergency motion with this Court (Case No. 73495-4-I) to stay the Compromise Order and enjoin dismissal of this appeal pending their appeal of the order approving the settlement. The motion was denied, on June 12, 2015, by Commissioner Kanazawa, for failure to post a supersedeas bond or cash to preserve the ability to satisfy the judgments pending review.⁶

The Huhses have stated their intention to file a motion to modify the Commissioner's ruling denying their emergency stay motion and to seek a temporary stay from the Commissioner pending review by Judges of this Court, but have not posted a supersedeas bond or cash to preserve their ability to satisfy the judgments pending review.⁷

The Respondents and the Receiver for the Appellants hereby stipulate and move this Court under RAP 18.2 to dismiss this appeal with prejudice and without fees or costs to any party.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 18.2 authorizes dismissal of an appeal, before oral argument, based on a stipulation of the parties:

The appellate court on motion may, in its discretion, dismiss review of a case on stipulation of all parties . . . if the motion is made before oral argument on the merits.

⁶ Commissioner's Ruling Denying an Emergency Stay and Injunction (No. 73495-4-I, June 12, 2015).

⁷ Green Decl., ¶ 5.

This dismissal is being sought, before oral argument, on stipulation by the Respondents and the Receiver for the Appellants, to implement one of the required terms of the court-approved settlement.⁸ As an order in a receivership proceeding, the order approving the settlement is not subject to an automatic stay and is effective immediately.⁹ The Huhses' emergency motion to stay that order approving the settlement was denied because the Huhses failed to post a supersedeas bond or cash to preserve their ability to satisfy the judgments pending appeal.¹⁰ As of the date of this motion and stipulation, the Huhses have not posted the required supersedeas bond or cash.¹¹ This appeal should be dismissed.

V. CONCLUSION

The dismissal with prejudice of this appeal is one material term to a court-approved settlement under which the Huhses are relieved of \$5 million in judgment debt. The global settlement provides substantial benefits to the Huhses, including full satisfaction of judgment at a discount of \$3 million. Based upon the accompanying stipulation and the trial

⁸ Compromise Order and Ex. A thereto at pg. 3, Green Decl., Ex. 2.

⁹ CR 62(a) provides in relevant part:

(a) Automatic Stays.

... Unless otherwise ordered by the trial court or appellate court, an interlocutory or final judgment in an action for an injunction or in a receivership proceeding shall not be stayed during the period after its entry and until appellate review is accepted or during the pendency of appellate review.

¹⁰ Commissioner's Ruling Denying an Emergency Stay and Injunction (No. 73495-4-I, June 12, 2015).


¹¹ Green Decl., ¶ 5.

court's order approving settlement, this appeal should be dismissed, with prejudice.

DATED this 16th day of June, 2015.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By 

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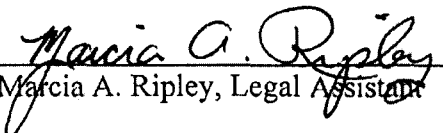
Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused to be served a copy of the foregoing document via hand delivery on the following:

Steven W. Block
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
sblock@foster.com

DATED this 16th day of June, 2015.



Marcia A. Ripley, Legal Assistant

APPENDIX 3

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SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

NIKOLAY BELIKOV, a married individual;
TECHNO-TM ZAO, a Russian closed joint
stock company,

Plaintiffs,

v.

MARYANN HUHS and ROY E. HUHS, JR.,
and the marital community thereof; R-
AMTECH INTERNATIONAL, INC., a
Washington corporation; TECHNO-TM, LLC,
a Nevada limited liability company;
SUNCADIA PROPERTIES, LLC, a Nevada
limited liability company,

Defendants.

No. 12-2-23972-0 SEA

The Honorable Mariane Spearman

JUDGMENT DEBTORS' RESPONSE TO
GENERAL RECEIVER'S MOTION FOR
ORDER AUTHORIZING COMPROMISE
OF CLAIM

JUDGMENT DEBTORS' RESPONSE TO GENERAL
RECEIVER'S MOTION FOR ORDER AUTHORIZING
COMPROMISE OF CLAIM

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I. INTRODUCTION

The Huhses' right to appeal an adverse judgment against them is not "property of their estate" over which the Receiver may take control, and it is neither within the Receiver's nor this Court's power to deny the Huhses their right to appeal that judgment. While a forced settlement based on dismissal of the appeal would benefit Belikov, the collective best interests of the estate, which the Receiver is obligated by law to serve, patently would not be served by dismissal of the appeal in favor of a settlement benefiting a single creditor.

This motion demonstrates conclusively that the Receiver is abusing his power in favor of, and at the direction of, Belikov for tactical reasons, and not fulfilling his statutory obligations as the Court's agent. It should be denied with the Court's admonishment to the Receiver that he perform his duties in accordance with the Order that appointed him.

II. FACTUAL BACKGROUND

Proceedings

Belikov and R-Amtech obtained a large judgment against the Huhses, and the Huhses timely filed appeal of such judgment with the Washington Court of Appeals, Division I.¹ In accordance with RPC 1.5(f)(2) and other provisions of law, the Huhses prepaid their attorneys all legal fees for the appeal. The appeal has been fully briefed, and is awaiting only oral argument. Except for a few hours of attorney time to prepare for and attend the appellate oral argument, no attorney fees could be avoided for the appeal from this point forward.

A summary of the points raised in the appeal, including a brief analysis as to why the Huhses are likely to prevail in it, is presented below. Significantly, Belikov did not move to dismiss the appeal as frivolous in accordance with provisions of RAP 18.9(c), or otherwise make

¹ Pending under No. 72334-1.

1 mention in his appellate briefing that the Huhses' positions were so nonmeritorious as to not
2 warrant review. This failure to move the Court of Appeals to dismiss is a concession that the
3 appeal has merit, and a demonstration that the Receiver's argument to the contrary herein is
4 merely a tactical device aimed at convincing this Court to disregard the appeal's propriety.

5
6 ***Summary of Appeal***

7 The judgment resulted from several instances of reversible error which the Court may
8 review in depth by accessing the lengthy appellate briefing through the Court of Appeals. For
9 purposes of space conservation, a brief summary of the most cogent errors is as follows:

10 1. The trial court erroneously denied the Huhses their Constitutional right to a jury
11 trial by ruling that the matter sounds primarily in equity. This denial was improper because
12 (1) this case's issues as presented in pleadings and at trial are overwhelmingly questions of law;
13 (2) the judgment itself was based overwhelmingly on legal concepts; (3) Belikov presented few,
14 if any, viable theories in equity; and (4) the factors set forth in *Scavenius v. Manchester Port*
15 *Dist.*² weigh heavily in favor of a jury trial.

16
17 2. The trial court erred as a matter of law and substantial evidence by refusing to
18 apply the statute of limitations and holding Belikov's action time barred. The judgment's
19 primary determination is that Belikov owns R-Amtech. However, Belikov, by his own
20 testimony, (1) was at all times since its inception chairman of R-Amtech's board of directors; (2)
21 attended board meetings regularly through 2005; (3) sent and received communications over
22 many years wherein Maryann Huhs was stated to be R-Amtech's sole owner; (4) had tens of
23 millions of dollars in investment and financial expectations in R-Amtech; and yet (5) never once
24 discussed his purported ownership of R-Amtech with either Maryann Huhs or his and
25

26 ² 2 Wn. App. 126, 129-130, 467 P.2d 372, 374 (1970).

1 R-Amtech's lawyer, John Huhs. Under these circumstances, Belikov was on inquiry notice that
2 he did not own R-Amtech, and that Maryann Huhs was acting as R-Amtech's sole owner, many
3 years longer than the statute of limitations allows, even considering the discovery rule.

4 3. The trial court concluded that "it is clear [Belikov] had his own reasons for not
5 wanting record ownership of R-Amtech" from the time of its formation in January 1996, and that
6 he made an "unwise attempt to avoid record ownership." Based on these desires, intentions and
7 directions of Belikov, full ownership of R-Amtech was vested in Maryann Huhs in 1998, a fact
8 that always was well known and never challenged by Belikov. The trial court erred in ruling that
9 Belikov owns R-Amtech in law, as there was no showing he ever gave consideration for the
10 purchase of its stock. The trial court further erred by ruling that Belikov owns R-Amtech in
11 equity, a concept equity does not recognize, and could not recognize given legal requirements,
12 *inter alia*, that formalized lists of shareholders be provided to the IRS; shareholders; government
13 agencies in certain circumstances; and when shareholder liability is at issue.

14 4. The trial court erred by ruling that Al Huhs violated RPC 1.8(c) by drafting
15 documents related to Belikov's gift to the Huhses of real estate referred to as "the Suncadia
16 Property," and by rescinding that gift as a civil remedy. Al Huhs, an attorney, did not draft any
17 document on Belikov's behalf effecting the gift. He also did not influence Belikov into making
18 the gift (indeed, Al Huhs did not know about the gift until months after Belikov agreed to make
19 it), which is the concern of RPC 1.8(c).

20 5. RPC 1.8(a), under certain circumstances, can serve as the basis for a court to
21 refuse to enforce a contract governing a lawyer-client business transaction when the client is
22 denied a pre-contract opportunity to consult with separate counsel. This concept is based on
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1 public policy considerations. However, RPC 1.8(c), proscribing a lawyer from drafting an
2 instrument on behalf of a client giving the lawyer a substantial gift from a client, cannot be, and
3 has never been held by any court based on the ABA Model Rules to be, a basis to rescind a
4 client-to-lawyer gift. The trial court erred by applying principles governing lawyer-client
5 business transactions under RPC 1.8(a) to allegations under RPC 1.8(c), and ruling that (1) RPC
6 1.8(c) can be the basis to rescind a client-to-lawyer gift without any suggestion of solicitation or
7 undue influence; (2) Al Huhs drafted an instrument on Belikov's behalf that had the legal effect
8 of giving Al Huhs a real estate gift from Belikov as proscribed by RPC 1.8(c); and (3) Belikov's
9 action to rescind his 2007 gift to the Huhses is not time barred.

11 *Court's Order Appointing General Receiver*

12 When the Huhses proved unable to secure the judgment pending appeal, Belikov
13 commenced enforcement of it, first himself, and later through his motion to place the Huhses in
14 receivership, with the appointment of his selected receiver, Matthew D. Green. The Court's
15 Order Appointing General Receiver dated January 13, 2015 ("the Order"), which Belikov drafted
16 and the Court signed without edit, tracks the requirements of RCW 7.60. It defines certain
17 pivotal terms, and imposes on the Receiver obligations as required by statute and case law.

18 Specifically, the Order provides that "[t]he receivership property consists of real and
19 personal property of Judgment Debtors wherever located (collectively, the "Property"),
20 including, but not limited to, the following real and personal property ..."³ The succeeding
21 definitional examples of "Property" do not include the Huhses' right to defend through complete
22 litigation, including appeal, an adverse judgment against them. The Order does not give the
23 Receiver any powers beyond control of the Huhses' "Property."
24
25

26 ³ Order, p. 2, para 1.3.

1 The Order further provides that “[u]nder the circumstances, the appointment of a receiver
2 is necessary to secure ample justice and to safeguard the Property.”⁴

3 The Order directs the Receiver to “file with the Court and serve upon the parties a
4 monthly operating report, performed in the format determined adequate by Receiver,
5 summarizing the status of management of the Property during the month”⁵; and to “cause to be
6 paid when due, for periods after its appointment, all current taxes for which Receiver (in its role
7 as Receiver) is or hereafter becomes obligated to Pay.”⁶

9 Generally, the Order provides that the “Receiver shall have the rights, powers and duties
10 conferred by, and Receivership shall be administered in accordance with, RCW 7.60.005 -
11 7.60.300. Receiver shall comply with all applicable state and federal laws.”⁷

12 ***Receiver’s Misfeasance Since Appointment***

13 On January 29, 2015, the Receiver seized and placed into storage with Western Van
14 Lines virtually all of the Huhses’ personal belongings, as well as two automobiles, owned by
15 Toyota, which the Huhses lease. The Receiver has not honored any of the Huhses’ statutory
16 exemption claims, forcing the Court to appoint a referee to attend to the same. The Receiver has
17 taken no step toward liquidation by auction of property the Huhses do not claim as exempt,
18 allowing it to sit in storage, accumulating over \$14,000 in storage charges (rivaling the value of
19 the seized property itself), which the Receiver has failed to pay. On information and belief, the
20 Receiver has not taken any step under paragraph 2.38 of the Order to obtain funds from Belikov
21 to pay these charges, or in the event such was not possible, to resign as Receiver.
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25 ⁴ Order, p. 4, para 1.18.

⁵ Order, p. 8, para 2.15.

26 ⁶ Order, p. 8, para 2.21.

⁷ Order, p. 9, para 2.22.

1 In violation of paragraph 2.15 of the Order, the Receiver has not filed any monthly
2 operating reports, despite representing to the Court during oral argument on March 31, 2015 that
3 he would file his first monthly report "by the end of the week." In violation of paragraph 2.21 of
4 the Order, he also has made no arrangements for the payment of taxes.

5
6 While this motion appears on the Receiver's pleading paper, it clearly is at Belikov's
7 direction, and for Belikov's sole benefit. All other motion practice related to the receivership has
8 been undertaken by Belikov himself (though his two law firms).

9 Put simply, the Receiver, in coordination with Belikov, has subverted and abused the
10 receivership process into a mechanism to torment the Huhses and deprive them of their rights.
11 Until this motion, the rights he sought to deprive them of have been statutory exemption rights.
12 Now, Belikov and the Receiver seek to deprive the Huhses of due process.

13 14 III. ISSUES

15 May the Receiver force the Huhses to settle Belikov's judgment with terms that would
16 include the dismissal of the appeal of Belikov's judgment?

17 IV. EVIDENCE

18 Pleadings and materials on file with the Court.

19 V. AUTHORITY

20 *This Motion is Conceptually and Legally Defective*

21
22 The Receiver would have this Court order a settlement of Belikov's and R-Amtech's
23 judgment, a term of which would be dismissal of the Huhses' pending appeal, on the ground the
24 Huhses' appeal of this Court's judgment purportedly is without merit. That position is
25 conceptually illogical, and disregards fundamental legal precepts.
26

1 First, a forced settlement depriving the Huhses of their right to appeal, in this instance, an
2 appeal to *avoid* liability and reverse a judgment that diminishes the value of their estate – which
3 the Receiver is obliged under the Order to “safeguard” – would deprive the Huhses of due
4 process. The Receiver is acting at Belikov’s behest and control, to serve the interests only of
5 Belikov. However, the Receiver’s duties extend also to the Huhses, who undeniably have an
6 interest in the property of their estate. “[The receiver] is not the agent or representative of either
7 party to the action, but is uniformly regarded as an officer of the court, exercising his functions
8 in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in
9 interest.”⁸ The Receiver’s acting only for Belikov’s benefit, and disregarding the Huhses’
10 interests, is a derogation of his duties as a receiver, as “the general rule is that a receiver is not
11 the exclusive agent or representative of either party to the suit in which he is appointed, and the
12 receiver is not appointed for the benefit of any party, nor does he receive his authority from
13 either party.”⁹ The Order itself, which Belikov drafted, provides: “Grounds exist for the
14 appointment of a receiver under RCW 7.60.025(1)(nn) because a receiver is necessary to secure
15 ample justice *to the parties* [emphasis added].”¹⁰ Were the Receiver at all concerned with the
16 Huhses’ rights, or with maximizing and preserving the estate’s size and integrity, he would be
17 eager to allow the fully briefed appeal to move forward. If the appeal fails, Belikov and the
18 estate will be in the same, if not better, position, as all legal issues will be resolved. If it
19 succeeds, the estate’s value will be higher. As the Order also provides: “Receiver shall be a
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24

25 ⁸ *Suleiman v. Lasher*, 48 Wn.App. 373, 379, 739 P.2d 712 (1987) citing *Gloyd v. Rutherford*, 62 Wn.2d 59, 60–61,
380 P.2d 867 (1963).

26 ⁹ *Id.* at 378.

¹⁰ Order, p. 4, para 1.17.

1 “general receiver” as defined in RCW 7.60.015, with exclusive control over the Property *and the*
2 *duty to preserve and protect it* [emphasis added]...¹¹

3 Second, an order directing settlement based on forced dismissal of the Huhses’ appeal
4 would invite further appeal, which would place identical and concurrent issues before the Court
5 of Appeals as to the substantive merit of the Huhses’ position. Either by way of the pending
6 appeal, or by way of an emergency appellate motion to vacate an order directing dismissal of the
7 appeal (derived from this motion), the Court of Appeals will consider the merits of the Huhses’
8 motion. Again, if the appeal fails, Belikov and the estate will be in the same, if not better,
9 position as if this motion were granted.
10

11 Third, Belikov, in whose sole interests the Receiver clearly is operating, has conceded the
12 Huhses’ appeal has merit by failing to move to dismiss it in accordance with the procedures
13 established by RAP 18.9(c). A motion under that appellate rule would place before the proper
14 tribunal the same question of whether the Huhses’ appeal has threshold merit as the Receiver
15 asks the Court to decide in this motion. Belikov and the Receiver essentially ask this Court to
16 consider the propriety of its own judgment, and issue a final determination of whether an appeal
17 of it has merit. This approach, if accepted by the Court, would deny the Huhses the due process
18 of appellate review. It is conceptually illogical.
19

20 Fourth, a precedent empowering plaintiffs who obtain judgments against impecunious
21 defendants to force their judgment debtors into receivership, and then force them to dismiss their
22 defensive appeals as part of court-ordered settlements in the receivership, would enable and
23 encourage powerful litigants to follow Belikov’s actions. We would see future judgment debtors
24 deprived of their appellate rights through receiverships. The analysis might differ slightly if the
25

26 ¹¹ Order, p. 5, para 2.4.

1 Huhses were in voluntary receivership or bankruptcy, in which case they would have knowingly
2 relinquished certain rights in favor of the “fresh start” liquidation is designed for. Here,
3 receivership was imposed on the Huhses by a single, powerful creditor strictly as a judgment
4 enforcement mechanism. However, neither Belikov nor the Court is free to disregard the
5 parameters and legal concepts of receivership, such as a receiver’s obligation, as an officer of the
6 Court and the Court’s agent, to attend to the best interests of all concerned, including the Huhses.
7 “A receiver is also said not to be an agent of any party to the action, but instead is a fiduciary
8 who, as an officer and representative of the court, acts for the benefit of all persons interested in
9 the property [citations omitted]. Under this view, a receiver is the court’s agent, not that of the
10 parties [citations omitted].”¹²

11
12 ***The Huhses’ Right to Appeal an Adverse Judgment is Not Estate “Property”***

13
14 At issue is whether the Receiver properly takes control of the Huhses’ appeal of an
15 adverse verdict as “Property” of the estate. If the appeal is not “Property,” then the Receiver
16 may not use it as a settlement bargaining chip, because it would not be within his control. As
17 demonstrated above, the appeal of an adverse judgment is not within the Order’s definition of
18 “Property.” RCW 7.60.005(9) defines the term as follows:

19
20 “Property” includes all right, title, and interests, both legal and equitable, and
21 including any community property interest, in or with respect to any property of a
22 person with respect to which a receiver is appointed, regardless of the manner by
which the property has been or is acquired. “Property” includes any proceeds,
products, offspring, rents, or profits of or from property in the estate. . . .

23 This definition cannot be interpreted to include the right to fully litigate through appeal a claim
24 ***against*** the property of the estate. Not surprisingly, no authority suggests appeal of a judgment
25 is property of an estate. The Receiver cites RCW 7.60.060(1)(c), but that statute lists within the

26 ¹² AMJUR RECEIVERS § 87.

1 Receiver's powers only "(c) The power to assert any rights, claims, or choses in action [of the
2 debtor] ... *if and to the extent that the claims are themselves property within the scope of the*
3 *appointment or relate to any property*, to maintain in the receiver's name or in the name of [the
4 debtor] *any action to enforce any right, claim, or chose in action* ... [emphasis added]." The
5 Huhses' appeal of Belikov's judgment might arguably include assertion of "rights," but the
6 Huhses do not make claims of recovery from Belikov in the appeal, and no asserted rights or
7 claims "are themselves property within the scope of the appointment or relate to any property."
8 See also RCW 7.60.060(e), stated in terms of "the power to assert rights, claims, or choses in
9 action," but not defenses to claims. Clearly, if this statute were intended to empower the
10 Receiver to force a judgment debtor to relinquish defense of a claim against it, it could and
11 would have so stated. If Belikov or the Court had contemplated that the Receiver taking control
12 of the defensive appeal is an item of estate property, the Huhses would have opposed such aspect
13 of the proposed order before the Court signed it. The absence of any term including the Huhses'
14 right to pursue a defensive appeal demonstrates clearly what the Court and Belikov understood
15 the Receiver's intended powers to be.

16
17
18 ***The Receiver's Cited Precedents are Not Persuasive***

19 The Receiver's three cited precedents, at best, are so contextually ambiguous as to render
20 them useless to the analysis. *Gilbert v. Metzler*,¹³ is a one-page, unpublished, 6th Circuit opinion
21 appearing in a "Table of Decisions Without Reported Opinions." The opinion suggests several
22 relevant circumstances and offers no analysis save citation to *SEC v. Hardy*,¹⁴ which, in turn,
23 relies without analysis on the 1970 Arkansas state court decision in *SEC v. Arkansas Loan &*
24

25
26 ¹³ 68 F.3d 474 (6th Cir. 1995), cited in the Receiver's Motion at 7.

¹⁴ 803 F.2d 1034, 1037 (9th Cir. 1986).

1 *Thrift Corp.*,¹⁵ a decision that addressed settlement of a bankruptcy debtor's claim against
2 another party, and not settlement of a third party's claim against the debtor. Moreover, the
3 debtor in *Gilbert* had voluntarily declared bankruptcy as part of a tactic that appeared aimed at
4 delaying disposition. *Jones v. Free*¹⁶ is a 1967 Nevada case that addressed a receiver's
5 settlement of claims against the debtor which included dismissal of the debtor's counterclaims,
6 the facts and circumstances of which are not well defined (they may well be defensive in nature).
7 More importantly, the *Jones* receivership order apparently included a term authorizing the
8 receiver to compromise claims,¹⁷ and when the receiver sought a court order ratifying the
9 compromise, the court ruled that "neither appellants nor their counsel appeared at the hearing
10 and offered objection to it. They should not be heard to complain now."¹⁸ Lastly, *Hudson v.*
11 *Grand Deposit Mining Company*,¹⁹ is a 1972 Ninth Circuit decision which Belikov cites for the
12 quote "[n]owhere do appellants argue that the receiver was without authority to ... petition the
13 court for approval to compromise and settle the pending issues." First, the "pending issues" the
14 receiver settled related to a lease dispute in which both sides had competing claims and positions,
15 and not appeal of an adverse judgment which, if successful, would benefit the estate. Second,
16 the appellants' failure to argue the receiver was without authority does not equate to a ruling that
17 the receiver did have authority.
18
19
20

21 That these three cases are the best authority the Receiver could produce in support of his
22 motion speaks volumes as to the state of receivership jurisprudence on this issue; and the fact
23

24 ¹⁵ 427 F.2d 1171 (1970).

¹⁶ 83 Nev. 31, 422 P.2d 551 (Nev. 1967), cited in the Receiver's Motion at 7.

¹⁷ "If the receiver's order of appointment expressly authorizes the receiver to compromise such claims, then he must use his best discretion and best business judgment as to matters too small to present to the court." *Id.* at 555.

¹⁸ *Id.*

¹⁹ 458 F.2d 1202 (9th Cir. 1972), cited in the Receiver's Motion at 7.

1 that receivers who properly perform their functions have no need to seek court approval of
2 settlements involving judgment debtors being forced to relinquish their right to defensive
3 appeals. They would never contemplate doing such a thing.

4 VI. CONCLUSION

5 Belikov was free to enforce his judgment in the ordinary course, using the many tools
6 available to judgment creditors. Instead, he elected to force the Huhses into receivership. By
7 doing so, he subjected the Huhses, their estate, his selected Receiver, and himself to the rules and
8 concepts of receivership. He is not free to disregard them by controlling the Receiver's actions
9 in a way that benefit only himself, and harm the Huhses and their estate. As an officer of the
10 Court, the Receiver is not free to allow him to do so. The Court must enforce these concepts
11 here.

12 Belikov would not be harmed by an unsuccessful appeal. No estate assets would be lost
13 by its continuation or failure. True, he would be harmed by the appeal's success, but that is not a
14 right he is free to pursue in a receivership process. An order granting this motion would protect
15 Belikov from a potential reversal of the judgment, but harm the Huhses and their estate. The
16 Receiver is duty bound to protect the estate and the Huhses from such a result. This motion
17 shows derogation of that duty.

18 The right to a defensive appeal is not "property" of a receivership estate. If it were, a
19 receiver who is properly promoting the best interests of the estate he controls, including all
20 persons who have interests in it, would not consider relinquishing it when (1) the legal work
21 behind it has been completed and been paid for; (2) its success would tremendously benefit the
22 estate; and (3) its failure would not at all be to the detriment of the estate.

1 DATED this 19th day of May, 2015.

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JUDGMENT DEBTORS' RESPONSE TO GENERAL
RECEIVER'S MOTION FOR ORDER AUTHORIZING
COMPROMISE OF CLAIM - 13

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APPENDIX 4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

NIKOLAY BELIKOV, a married)
individual; TECHNO-TM ZAO, a)
Russian closed joint stock company,)
Respondents,)
v.)
MARYANN HUHS and ROY E. HUHS,)
JR., and the marital community thereof;)
R-AMTECH INTERNATIONAL, INC., a)
Washington corporation; TECHNO-TM,)
LLC, a Nevada limited liability company;)
and SUNCADIA PROPERTIES, LLC., a)
Nevada limited liability company,)
Appellants.)

No. 72334-1-I
ORDER LIFTING STAY AND
GRANTING MOTION
TO DISMISS APPEAL

Respondents, Nikolay Belikov and R-Amtech International, Inc., have filed a motion to dismiss this appeal under RAP 18.2 on the basis of a stipulation of the parties. Appellants Maryann and Roy Huhs have filed an answer, and respondents have filed a reply. We accept the stipulation and dismiss the appeal without an award of attorney fees or costs. The temporary stay entered June 17, 2015, is hereby lifted.

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2015 JUL -7 PM 4:17

Now, therefore, it is hereby

ORDERED that the temporary stay entered June 17, 2015, is lifted; and, it is further

ORDERED that the appeal is dismissed without award of attorney fees or costs.

Done this 7th day of July 2015.

COX, J.

Jau, J.

Dunne, J.

APPENDIX 5

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

NIKOLAY BELIKOV, a married
individual; TECHNO-TM ZAO, a
Russian closed joint stock company,

Plaintiffs/Respondents,

v.

MARYANN HUHS and ROY E.
HUHS, JR., and the marital
community thereof; R-AMTECH
INTERNATIONAL, INC., a
Washington corporation; TECHNO-
TM, LLC, a Nevada limited liability
company; SUNCADIA
PROPERTIES, LLC, a Nevada
limited liability company,

Defendants/Appellants.

NO. 73495-4-I

DEFENDANTS/JUDGMENT
DEBTORS/ APPELLANTS
ROY E. HUHS, JR. AND
MARYANN HUHS' SECOND
EMERGENCY MOTION
PURSUANT TO RAP 17.4(b)
FOR RELIEF PURSUANT TO
RAP 8.3

HUHSES' SECOND **EMERGENCY MOTION** PURSUANT
TO RAP 17.4(b) FOR RELIEF PURSUANT TO RAP 8.3 - 1

I. RELIEF REQUESTED

Defendants/judgment debtors/ appellants Roy E. Huhs, Jr. (“Al Huhs”) and Maryann Huhs (collectively, “the Huhses”) move, pursuant to RAP 8.3 and 17.4(b), for an emergency order temporarily staying enforcement of the trial court’s Order Granting Receiver’s Motion to Compromise Claim dated June 1, 2015 (the “Order Authorizing Dismissal of Appeal”); and enjoining any activity by the trial court hindering this Court’s appellate review of the trial court’s judgment pending under No. 72334-1 (“the Appeal”), until the judges of this Court have considered the Huhses’ forthcoming Motion Pursuant to RAP 17.7 to Modify Ruling¹ (“Huhses’ Motion to Modify”), which will seek modification of the Commissioner’s Ruling Denying an Emergency Stay and an Injunction dated June 12, 2015 (the “Commissioner’s Ruling”).

Alternatively, the Huhses move for a determination that they may post adequate supersedeas security by depositing into the Court’s registry the title to their home in Mercer Island (the “Mercer Island Property”), as such security is adequate under law governing supersedeas.

As a third alternative, the Huhses move to consolidate for consideration by the panel Respondents’ RAP 18.2 Motion to Dismiss Appeal (“Motion to Dismiss Appeal”), filed on June 16, 2015, with the

¹ The Huhses will file the Huhses’ Motion to Modify within 30 days of the Commissioner’s Ruling, or July 13, 2015, in accordance with RAP 17.7.

Huhses' Motion to Modify. As the Huhses' opposition to the Motion to Dismiss Appeal and the Huhses' Motion to Modify will address identical issues, consideration directly by the panel would be most efficient.

Absent one of these forms of relief, the Huhses might be denied their right under RAP 17.7 to have the Commissioner's Ruling reviewed *de novo* by the panel, or at a minimum, require more complex appellate motion practice to have an order dismissing the Appeal vacated by yet another RAP 17.7 motion to modify.

II. FACTUAL BACKGROUND

1. Judgment, Appeal and Receivership

On August 12 and September 10, 2014, the trial court entered judgment awarding judgment creditor/plaintiff/appellee Nikolay E. Belikov ("Belikov") \$900,000 in attorneys' fees against the Huhses, and ownership of defendant/judgment creditor R-Amtech International, Inc. ("R-Amtech"); and an award in favor of R-Amtech against the Huhses of \$3,112,329.00 in damages. The judgment also determines that Al Huhs violated RPC 1.8(c), and orders the Huhses to return to Belikov a real estate gift Belikov made to the Huhses. The Huhses timely filed appeal of the judgment with this Court.

Belikov moved the trial court to place the Huhses into involuntary receivership under RCW 7.60.025, with the appointment of his selected

**HUHSES' SECOND EMERGENCY MOTION PURSUANT
TO RAP 17.4(b) FOR RELIEF PURSUANT TO RAP 8.3 - 3**

receiver, Matthew D. Green (“Receiver Green”). The trial court issued its Order Appointing General Receiver on January 23, 2015.²

2. Receiver Green’s Malfeasance in Collusion with Belikov

The Commissioner’s Ruling recites several factual conclusions from Belikov’s response to the Huhses’ First RAP 8.3 Motion regarding various asserted acts by the Huhses as found by the trial court.³ While the Huhses dispute most of these findings as contextually inaccurate, incomplete, or contrary to substantial evidence, the more important point for purposes of the current motions is Receiver Green’s abject breach of his fiduciary duties to the Huhses and their estate; collusion with Belikov, who engaged and is paying him; and disregard of the neutrality he is sworn to uphold as the trial court’s agent.

On January 29, 2015, Receiver Green seized and placed into storage virtually all of the Huhses’ personal belongings, as well as two automobiles, owned by Toyota, which the Huhses lease. He has honored none of the Huhses’ statutory exemption claims,⁴ forcing the trial court to appoint a referee to attend to the same. He has taken no step toward liquidation by auction of property the Huhses do not claim as exempt,

² Copy attached as Exhibit 1 to the Declaration of Steven W. Block (the “Block Declaration”) filed in support of Huhses’ First RAP 8.3 Motion. The Block Declaration, including its exhibits, and the Huhses’ First RAP 8.3 Motion, are incorporated herein by this reference.

³ Commissioner’s Ruling at 2-4.

⁴ RCW 6.15.010.

allowing it to sit in storage, accumulating over \$14,000 in storage charges (rivaling the value of the seized property itself).

In violation of paragraphs 2.15 and 2.21 of the Order Appointing General Receiver, Receiver Green has filed no monthly operating reports or arranged for the payment of taxes.

As is the case before this Court, the vast majority of motion practice before the trial court regarding the receivership was undertaken not by Receiver Green, but by Belikov's attorneys in two law firms.

Receiver Green has never consulted with the Huhses or their attorney regarding the Huhses' interests, requests, positions, or arguments in any aspect of the receivership. The Huhses first saw Belikov's proposed settlement attached to Receiver Green's Motion to Authorize Compromise Claims when their counsel was served with the motion. This conduct is repugnant not only to Receiver Green's role as the trial court's agent, but to the entire body of law governing receivership.

Put simply, Receiver Green, at the direction of, in coordination with, and with remuneration from Belikov, has subverted and abused the receivership process into a mechanism to torment the Huhses and deprive them of their rights. Belikov's and Receiver Green's attempt to deprive the Huhses of their right to an appeal is only the latest step in this pernicious process. The equities favor the Huhses, as the circumstances

underlying Belikov's attempts, through Receiver Green, to dismiss the Appeal are based on a derogation of Receiver Green's obligations as an agent of the trial court. This motion should be considered in that context.

3. Receiver's Motion to Enforce Compromise

On April 9, 2015, Receiver Green filed General Receiver's Motion for Order Authorizing Compromise of Claim ("Receiver Green's Motion").⁵ That motion sought trial court authority for Receiver Green to accept a proposal from Belikov by which Belikov's and R-Amtech's judgments against the Huhses would be settled in exchange for (1) Receiver Green transferring ownership to Belikov of the Mercer Island Property; (2) the Huhses' dismissing actions they have pending against Belikov in Costa Rica; (3) and Receiver Green dismissing the Appeal.⁶

Over the Huhses' objections, the trial court granted Receiver Green's Motion by its Order Authorizing Dismissal of Appeal,⁷ and approved Belikov's proposed settlement terms. This authorizes Receiver Green to voluntarily dismiss the Appeal without regard to the Huhses'

⁵ Copy attached as Exhibit 5 to the Block Declaration.

⁶ Receiver Green's Motion at 5.

⁷ Copy attached as Exhibit 7 to the Block Declaration.

wishes to continue with it.⁸ Again, Receiver Green never even discussed his plan with the Huhses or their counsel.

4. Huhses' First RAP 8.3 Motion

On June 3, 2015, the Huhses filed with this Court Defendants/Judgment Debtors/ Appellants Roy E. Huhs, Jr. and Maryann Huhs' **Emergency Motion** Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3 ("the Huhses' First RAP 8.3 Motion"), arguing that the Order Authorizing Dismissal of Appeal improperly authorizes dismissal of the Appeal based on the trial court's conclusion that the appeal has no merit; and that a defensive appeal is not an item of property a receiver may seize and bargain settlement with.

The Commissioner's Ruling denied the Huhses' First RAP 8.3 Motion, stating that "the equities do not favor a stay without a supersedeas bond or cash to ensure their ability to satisfy the underlying judgments pending review."⁹ The Huhses will exercise their right under RAP 17.7 to ask the judges of this Court to modify the Commissioner's Ruling.

5. Receiver Green's RAP 18.2 Motion to Dismiss Appeal

On June 16, 2015, Receiver Green filed the Motion to Dismiss Appeal. The Huhses will oppose that motion, and ask that it be

⁸ The proposed settlement ignores the Huhses' entitlement to a homestead exemption; Al Huhs' interest in appealing the determination that he violated RPC 1.8(c); and other points.

⁹ Commissioner's Ruling at 1.

consolidated with the Huhses' First RAP 8.3 Motion for consideration directly by the panel. Both motions address substantially identical issues, and judicial efficiency would be promoted by a single motion proceeding.

III. GROUNDS FOR RELIEF

The Huhses are willing to proceed with posting supersedeas.¹⁰ However, supersedeas of the full value of the settlement the Order Authorizing Dismissal of Appeal compels, and which Belikov and Receiver Green Belikov seek to enforce, and not of the original judgment which the trial court, which Belikov and Receiver Green have abandoned, is adequate as a matter of law. Alternatively, the Huhses request an order temporarily staying enforcement of the Order Authorizing Dismissal of Appeal until the panel has reviewed the Commissioner's Ruling and the Motion to Dismiss Appeal; and/or deferral of the Motion to Dismiss Appeal for consideration by the panel concurrently with the Huhses' Motion to Modify.

1. RAP 8.3

RAP 8.3 provides: "... [T]he appellate court has authority to issue orders ... to insure effective and equitable review, including authority to grant injunctive or other relief to a party." Because the Order Authorizing Dismissal of Appeal would prevent "effective and equitable review," and

¹⁰ As pointed out in the Huhses' First RAP 8.3 Motion, Receiver Green already controls the Mercer Island Property, leaving Belikov fully secured.

immediately divest the Huhses of their rights, this Court may temporarily stay that trial court order and/or define parameters for supersedeas.

RAP 8.3 “authorizes an appellate court to stay a trial court order if the moving party can demonstrate that debatable issues are presented on appeal and that the stay is necessary to preserve the fruits of the appeal for the movant, after considering the equities of the situation [citations omitted].”¹¹ Receiver Green’s enforcement of the Order Authorizing Dismissal of Appeal would impose a severe inequity on the Huhses, as they would be deprived of their right to appeal.

2. Emergency Motion under RAP 17.4(b)

Exigent circumstances exist for this Court’s emergency consideration of this motion under RAP 17.4(b). If no form of the requested relief is granted, the Huhses might be denied their right under RAP 17.7 to have the panel review the Commissioner’s Ruling, as the Motion to Dismiss Appeal would be heard sooner than the panel can act. Thus, the Huhses cannot submit this motion within the ordinary scheduling parameters provided by RAP 17.4(a).

3. Amount of Supersedeas

Neither Belikov, Receiver Green, nor the trial court seeks to enforce the original trial court judgment. To the contrary, all three seek to

¹¹ *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 759, 958 P.2d 260 (1998).

have the judgment deemed satisfied, under terms Belikov himself devised, that would include transfer from the Huhses to Belikov of value far less than the judgment. Whether or not the Huhses' First RAP 8.3 Motion is ultimately denied, Belikov will not pursue recovery of the \$4.1 million R-Amtech and he were awarded. That sum no is longer at issue, and should be disregarded for current purposes.

As the Commissioner's Ruling specifies,¹² if the Order Authorizing Dismissal of Appeal is enforced, (1) certain judgment determinations "would stand"¹³; (2) the Receiver would dismiss legal action in Costa Rica the Huhses purportedly commenced against Belikov¹⁴; (3) the Huhses would transfer to Belikov the Mercer Island Property and a vacant lot currently under the Receiver's control¹⁵; (4) the Receiver would dismiss the Appeal¹⁶; and (5) personal property would be returned to the Huhses.¹⁷

In other words, Belikov would gain from the Huhses only the Mercer Island Property and the vacant lot.¹⁸ As a satisfaction of judgment

¹² Commissioner's Ruling at 4-5.

¹³ *Id.* at 4-5, paras. 1-4.

¹⁴ *Id.* at 5, para. 5. In fact, the Huhses have not commenced any legal action against Belikov in Costa Rica.

¹⁵ *Id.*, para. 6.

¹⁶ *Id.*, para. 10.

¹⁷ *Id.* at paras. 7-8.

¹⁸ As the Order Authorizing Dismissal of Appeal provides, the vacant lot already is under Receiver Green's control.

would be entered,¹⁹ he no longer would have any entitlement to pursue any recovery from the Huhses of any other aspect of the judgment.

The Commissioner's Ruling states that "the equities do not favor a stay without a supersedeas bond or cash to ensure their ability to satisfy the underlying judgments pending review."²⁰ However, the underlying judgment no longer is at issue from the appellee's own perspective. Rather, he actively is pursuing enforcement of a settlement that would satisfy the judgment in favor of his receipt only of the Mercer Island Property. The Huhses' First RAP 8.3 Motion is limited to preserving the Appeal, and not to reversing the judgment. If the panel ultimately denies it, that motion would have delayed transfer to Belikov only of the Mercer Island Property. Again, Belikov does not seek the full judgment; he seeks only dismissal of the Appeal and the Mercer Island Property.

The Commissioner's Ruling also states, "[t]he Huhses essentially seek to stay enforcement of the judgments on appeal (No. 72334-1), which have not been stayed because they refused to post a supersedeas bond or cash."²¹ Respectfully, this is inaccurate. By the motion at issue, the Huhses seek only to stay enforcement of a settlement which would consist of a transfer of property with value far less than the judgment.

¹⁹ *Id.* at para. 9.

²⁰ Commissioner's Ruling at 1.

²¹ *Id.* at 8.

The Commissioner's Ruling accurately states pertinent law as follows: "The purpose of requiring a supersedeas bond or cash is to ensure that the judgment debtor's ability to satisfy the judgment will not be impaired pending appeal."²² However, the original judgment amount no longer is at issue. Belikov's ability to realize the settlement he sought and obtained through the Order Authorizing Dismissal of Appeal would be fully protected by deposit of the Mercer Island Property's title with the Court's registry should the panel affirm the Commissioner's Ruling.

Put differently, if the Huhses could secure the full \$4.1 million original judgment and did so now; and the panel affirmed the Commissioner's Ruling; then Belikov would not be entitled to collect the posted security. He would receive only the Mercer Island Property. Thus, requirement of \$4.1 million in security would be excessive and improper.

4. Temporary Stay

Alternatively, and perhaps most expediently, the Court should temporarily stay enforcement of the Order Authorizing Dismissal of the Appeal. The Huhses are unable to post security in the full amount of the judgment. They have a right under RAP 17.7 to have the panel review the Commissioner's Ruling, a right that is not contingent on the posting of security. If supersedeas by way of the Mercer Island Property's title is not

²² *Id.* at 10, citing *Lampson Universal Rigging, Inc. v. Wash. Pub. Power Supply Sys.*, 105 Wn.2d 376, 378, 715 P.2d 1131 (1986).

granted, then enforcement of the Order Authorizing Dismissal of Appeal by the Court granting the Motion to Dismiss Appeal would render the panel's RAP 17.7 review moot, at least as a procedural matter. "An appellant who makes a motion to modify pursuant to RAP 17.7 receives, as a matter of right, de novo review of the commissioner's ruling by a 3-judge panel."²³

The denial of a temporary stay would be tantamount to a denial of the Huhses' right to such *de novo* review. At a minimum, it would require additional motion practice to have an order dismissing appeal vacated.

5. Consolidation

If the Court will neither accept as adequate supersedeas the Mercer Island Property not grant a temporary stay, the Court should consolidate the Motion to Modify and the Motion to Dismissal Appeal for concurrent consideration by the panel. If the Court grants the Motion to Dismiss, then the Huhses certainly will move under RAP 17.7 to modify the order of dismissal, requiring yet another motion addressing the same substance as the Huhses' forthcoming Motion to Modify. This administrative complexity, as well as costs to the parties, could be avoided by deferring initial consideration of the Motion to Dismiss by the panel directly.

²³ *State v. Rolax*, 104 Wn.2d 129, 133, 702 P.2d 1185 (1985).

IV. CONCLUSION

The Commissioner's Ruling does not disagree with the Huhses' position regarding their right to appeal, but sets as a prerequisite to such appeal the filing of supersedeas. The Huhses are prepared to deposit adequate and proper security to secure the relief Belikov will receive if the Huhses' First RAP 8.3 Motion is denied. Alternatively, and perhaps most efficiently, a temporary stay of enforcement of the Order Authorizing Appeal would obviate consideration of that issue until the panel rules. In any event, the Appeal should not be dismissed until the panel rules. Thus, as a third alternative, the Motion to Modify should be consolidated with the Motion to Dismiss.

DATED this 17th day of June, 2015.

s/ Steven W. Block

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CERTIFICATE OF SERVICE

I hereby certify that I am a legal assistant at Foster Pepper PLLC and that on June 17, 2015, I filed this pleading with the Court of Appeals and have served this via E-mail service by consent of parties and Receiver:

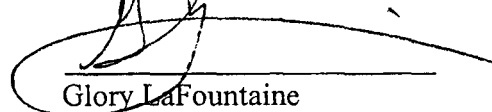
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on June 17, 2015.


Glory LaFontaine

HUHSES' SECOND EMERGENCY MOTION PURSUANT
TO RAP 17.4(b) FOR RELIEF PURSUANT TO RAP 8.3 - 15

APPENDIX 6

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

NIKOLAY BELIKOV, a married) No. 73495-4-1
individual; TECHNO-TM ZAO, a)
Russian closed joint stock company,) ORDER DENYING
Respondents,) EMERGENCY MOTION
v.) TO MODIFY AND LIFTING
MARYANN HUHS and ROY E. HUHS,) TEMPORARY STAY
JR., and the marital community thereof;)
R-AMTECH INTERNATIONAL, INC., a)
Washington corporation; TECHNO-TM,)
LLC, a Nevada limited liability company;)
and SUNCADIA PROPERTIES, LLC., a)
Nevada limited liability company,)
Appellants.)

Appellants Maryann and Roy Huhs have filed an emergency motion to modify the commissioner's June 12, 2015 ruling denying an emergency stay and injunction. Respondents have filed an answer, and appellants have filed a reply. We have considered the motion under RAP 17.7, 8.1(b), and 8.3, and have determined that it should be denied. The temporary stay entered June 17, 2015 is lifted. Now, therefore, it is hereby

ORDERED that the emergency motion to modify is denied; and it is further

ORDERED that the temporary stay entered June 17, 2015, is lifted.

Done this 7th day of July 2015.

COX, J.

Juan, J.

D. J.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 JUL -7 PM 2:17

APPENDIX 7

THE SUPREME COURT

STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE

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www.courts.wa.gov

July 29, 2015

LETTER SENT BY E-MAIL ONLY

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Hon. Richard Johnson, Clerk
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Kevin P. Hanchett
Tyler Joseph Moore
Lasher Holzapfel Sperry & Ebberson PLLC
601 Union Street, Suite 2600
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Re: Supreme Court No. 91970-4 - Nikolay Belikov, et al. v. Maryann Huhs and Roy E. Huhs,
et al.
Court of Appeals No. 73495-4-I

Clerk and Counsel:

Enclosed is a copy of the **RULING**, signed by the Supreme Court Commissioner on this date in the above entitled cause.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:wg

Enclosure as stated



Filed
Washington State Supreme Court

JUL 29 2015

Ronald R. Carpenter
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NIKOLAY BELIKOV, a married
individual; TECHNO-TM ZAO, a
Russian closed joint stock company,

Respondents,

v.

MARYANN HUHS and ROY E. HUHS,
JR., and the marital community thereof;

Petitioners,

R-AMTECH INTERNATIONAL, INC.,
a Washington corporation; TECHNO-
TM, LLC, a Nevada limited liability
company; and SUNCADIA
PROPERTIES, LLC, a Nevada limited
liability company,

Defendants.

NO. 91970-4

RULING

Petitioners Maryann and Roy Huhs are judgment debtors in King County Superior Court Case No. 12-2-23972-0. They appealed the judgment in Court of Appeals No. 72334-1-I, but did not post a supersedeas bond or cash to stay enforcement of the judgment pending review. *See* RAP 8.1(b)(1), (2). The superior court denied their request to post alternate security under RAP 8.1(b)(4). Thereafter, the superior court found that the Huhses had intentionally dissipated and/or wasted non-exempt assets with the express purpose of preventing collection of the judgment

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by the judgment creditors. Further, the court found reason to believe the Huhses would continue to waste, sell, and secret collectible assets unless a receiver was appointed. The court appointed a general receiver as defined in RCW 7.60.015 and entered an order providing the receiver with exclusive control over the receivership property, which consists of certain real and personal property of the Huhses.

In May 2015 the superior court granted the receiver's motion for an order authorizing him to compromise the claims of judgment creditor Nikolay Belikov and his wholly owned company R-Amtech International, Inc. (which the underlying judgment determined was owned by Mr. Belikov) against the receivership estate. In broad outline, the compromise involved Mr. Belikov and R-Amtech providing a satisfaction of the judgment in King County Superior Court Case No. 12-2-23972-0, including monetary awards of over \$4 million and the voiding of a purported gift of a Suncadia vacation home valued at approximately \$1 million, in exchange for the receiver's transfer to Mr. Belikov of the Huhses' Mercer Island home and a lot next to, and the personal property at, the Suncadia vacation home. Mr. Belikov would retain the Suncadia vacation home. The receiver summarized the proposal as waiving approximately \$3 million of the judgment in exchange for \$2 million in real and personal property (including the value of the Suncadia vacation home). Additionally, Mr. Belikov would remain the sole owner of R-Amtech and the licensing rights as awarded by the superior court, the receiver would return certain personal property previously seized to the Huhses, and the receiver would dismiss with prejudice any pending legal actions that the Huhses may have against Mr. Belikov in Costa Rica. And the receiver would dismiss with prejudice the appeal pending in Court of Appeals No. 72334-1-I. The receiver's motion for an order authorizing the compromise of the claim stated that the dismissal of the Huhses' appeal would relieve a significant strain on receivership estate resources.

The trial court approved the proposed compromise, and the Huhses filed a notice of appeal in Court of Appeals No. 73495-4-I along with an emergency motion for a stay. Commissioner Kanazawa denied the motion, concluding that a stay was not warranted without the Huhses posting a supersedeas bond or cash to preserve their ability to satisfy the judgments pending review. The commissioner required the receiver to deposit with the trial court a special warranty deed to the Mercer Island home pending the Court of Appeals decision on the Huhses' emergency motion to modify. The commissioner's ruling provided that upon the expiration of the stay, the deed shall be released to respondents' counsel on respondents' behalf for recording, unless the Court of Appeals directed otherwise in its decision on the Huhses' emergency motion to modify. On July 7, 2015, a panel of judges denied the emergency motion to modify the commissioner's ruling and further ordered the stay lifted. On July 24, 2015, the Huhses filed a notice of discretionary review to this court.

Also on July 7, 2015, a panel of judges entered an order in Court of Appeals No. 72334-1-I accepting the stipulation and dismissing the appeal. The Huhses have filed a petition for review of that decision in Supreme Court No. 91979-8.

Now before me for decision is the Huhses' emergency motion asking this court to "temporarily stay enforcement of the lower court rulings, with the title to the Mercer Island Property remaining the in trial court's custody as adequate security." They contend that if the lower court rulings are not temporarily stayed, Mr. Belikov will likely acquire ownership of the Huhses' home, evict them, and sell the home. And in support of the adequacy of security, they argue that in seeking to uphold the compromise, Mr. Belikov seeks from the Huhses only the Mercer Island home and a vacant lot in Suncadia, with the deed to the first in the trial court's custody and the lot

already under the receiver's control. Thus, they reason, Mr. Belikov would be fully protected while the matter is pending.

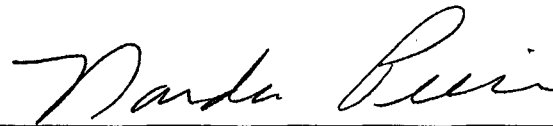
But this reasoning ignores the ongoing expenses depleting the receivership property, lost use in the interim of the Mercer Island property, and the litigation expenses that a compromise is designed to avoid.¹ It is evident that the alternate security the Huhses have proposed is not a means of securing either the benefit of the compromise entered by the receiver or enforcement of the underlying judgment if the Huhses were to succeed in their challenge to the compromise. This proposal is not a reasonable means of securing enforcement of a judgment. *See* RAP 8.1(b)(4). Alternate security should serve the purpose of ensuring a party's ability to obtain the benefit of a trial court order if it is upheld on appeal. *See Spahi v. Hughes-Nw., Inc.*, 107 Wn. App. 763, 769-70, 27 P.3d 1233 (2001).

Under other circumstances, I would solicit the views of the parties on what amount of bond, cash or other security that would be sufficient to provide adequate security for the full benefit of the trial court order if either review is denied or the order is eventually upheld on review. But here the Huhses have provided testimony in supplemental proceedings indicating a lack of financial resources and have not provided any indication that such a step would not be futile.

Therefore, the emergency motion to stay enforcement of the lower court rulings pending a decision on the petition for review in Supreme Court No. 91979-8 and/or the motion for discretionary review in this matter is denied. The motion for discretionary review is referred to a Department of the court to be decided on the same calendar as the petition for review in Supreme Court No. 91979-8. Any emergency motion to modify this ruling must be filed by August 10, 2015. The receiver is temporarily stayed from any actions to sell or convey the deed to the

¹ The Huhses state that they have prepaid for legal services for their appeals.

Mercer Island home pending the filing of an emergency motion to modify in accordance with this ruling and, if such motion is filed, pending resolution of the motion to modify.



COMMISSIONER

July 29, 2015