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Division I
State of Washington

73495-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

NIKOLAY BELIKOV, a married individual,

Respondent,

v.

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

Appellants.

SECOND AMENDED BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	<i>Page</i>
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	1
III. STATEMENT OF THE CASE.....	3
1. Parties.....	3
2. Judgment and Appeal.....	3
3. Receivership.....	4
4. Order Authorizing Dismissal of Appeal.	6
5. Appellate Proceedings.	7
6. Transfer of Residence Property without Homestead Exemption.....	7
IV. SUMMARY OF ARGUMENT	8
V. ARGUMENT	9
1. This Court’s Exclusive Appellate Authority.....	9
2. Receiver’s Authority.....	10
3. Public Policy.	15
4. The Huhses’ Right to Appeal is Not Estate “Property.”	16
5. Additional Impacts of Forced Dismissal of Appeal.....	17
6. Trial Court Rulings and Determinations.....	17
7. Homestead Exemption	21
VI. CONCLUSION.....	22

TABLE OF AUTHORITIES

CASES	Page(s)
<i>City of Chula Vista v. Gutierrez</i> , 207 Cal. App. 4th 681, 143 Cal. Rptr. 3d 689 (2012).....	12
<i>Community Nat. Bank v. Medical Ben. Adm'rs</i> , LLC, 626 N.W.2d 340, 242 Wis.2d 626, 2001 WI App 98 (Wis.App. 2001).....	13
<i>County of Oakland by Kuhn v. City of Detroit</i> , 784 F.Supp. 1275 (E.D.Mich.,1992).....	12
<i>Eller Industries, Inc. v. Indian Motorcycle Mfg., Inc.</i> , 929 F.Supp. 369 (D.Colo.,1995).....	12
<i>Fleet Nat. Bank v. H & D Entertainment, Inc.</i> , 926 F.Supp. 226 (D.Mass. 1996).....	13
<i>Fullerton v. Second Judicial Dist. Court In & For Cty. of Washoe</i> , 111 Nev. 391, 892 P.2d 935 (1995).....	13
<i>In re Am. Bridge Products, Inc.</i> , 328 B.R. 274 (Bankr. D. Mass. 2005) <i>aff'd in part</i> , <i>rev'd in part and remanded</i> , 398 B.R. 724 (D. Mass. 2009) <i>vacated</i> , 599 F.3d 1 (1st Cir. 2010).....	13
<i>INF Ent., Inc. v. Donnellon</i> , 133 Ohio App. 3d 787, 729 N.E.2d 1221 (1999).....	11
<i>Martin v. Luster</i> , 85 F.2d 833 (7th Cir.1936).....	13
<i>Phelan v. Middle States Oil Corp.</i> , 154 F.2d 978 (2d Cir.1946).....	13
<i>Scavenius v. Manchester Port Dist.</i> , 2 Wn. App. 126, 467 P.2d 372 (1970).....	18

<i>Security Pacific National Bank v. Geernaert</i> , 245 Cal.Rptr. 712, 199 Cal.App.3d 1425 (Cal.App. 5 Dist.,1988).....	12, 13
<i>Shannon v. Superior Court</i> , 266 Cal.Rptr. 242, 217 Cal.App.3d 986 (Cal.App. 5 Dist.,1990).....	11
<i>Suleiman v. Lasher</i> , 48 Wn.App. 373, 739 P.2d 712 (1987).....	11, 14
<i>Webster v. Rodrick</i> , 64 Wn. 2d 814, 394 P.2d 689 (1964).....	21

STATUTES

RCW 2.06.030	10
RCW 6.13.030	21
RCW 6.13.070	3, 21
RCW 6.15.010	5
RCW 6.17.060	21
RCW 7.60	4
RCW 7.60.005 - 7.60.300	4
RCW 7.60.005(9).....	16
RCW 7.60.025	2, 4, 8
RCW 7.60.060(e).....	16
RCW 7.60.100	5
RCW 7.60.210	5

OTHER AUTHORITIES

RAP 8.3 and 17.77

RAP 17.4(b)7

RAP 18.9(c)10, 18

RPC 1.8(a).....19

RPC 1.8(c).....17, 19, 20

I. INTRODUCTION

Defendants/judgment debtors/appellants Roy E. Huhs, Jr. and Maryann Huhs (collectively, “the Huhses”) appeal the trial court’s June 1, 2015 order authorizing a receiver, whom the trial court appointed to take possession and administer the assets of the Huhses’ estate, to dismiss the Huhses’ appeal of the trial court’s judgment. The trial court exceeded its authority in issuing that order, which deprived the Huhses of their statutory right to pursue a defensive appeal. The Huhses also appeal the trial court’s July 30, 2015 order which granted the receiver’s motion to transfer to plaintiff/judgment creditor/respondent Nikolay E. Belikov (“Belikov”) the Huhses’ real property, used as their primary residence, in satisfaction of Belikov’s judgment without enforcing the Huhses’ Constitutional right to a homestead exemption.

II. ASSIGNMENTS OF ERROR

1) The trial court erred by enforcing, over the Huhses’ objection, a “settlement agreement” between a receiver and Belikov pursuant to which the receiver dismissed the Huhses’ defensive appeal in “settlement” of Belikov’s judgment.

2) The trial court erred by refusing to enforce the Huhses’ Constitutional right to a homestead exemption on their residence property

when it granted the receiver's motion to transfer ownership of the residence property to Belikov.¹

Issues Pertaining to Assignments of Error

1) Belikov obtained a judgment against the Huhses; moved the trial court under RCW 7.60.025 for appointment of his selected receiver; and then entered into a "settlement agreement" with his receiver against the Huhses' wishes which included dismissal of their appeal of the judgment Belikov had obtained against them. The trial court granted the receiver's motion to enforce the "settlement agreement" over the Huhses' objection; the receiver moved this Court to dismiss the Appeal; and this Court dismissed the Appeal. Did the trial court err in granting that motion? (Assignment of Error 1)

2) A stated basis for the trial court's authorizing the receiver to dismiss the Huhses' appeal was that the appeal has no merit, i.e., as the trial court put it in its order, "[t]here 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." Did the trial court exceed its authority in directing the dismissal of an appeal based on its own conclusions about the appeal's likelihood of success? (Assignment of Error 1)

3) A stated basis for the trial court's authorizing the receiver to dismiss the Huhses' appeal was that a defensive appeal is an item of "property" over which a receiver has control and may dismiss in settlement of a judgment. Did the trial court err in depriving the Huhses of their statutory right to an appeal by authorizing the receiver to dismiss it as an item of estate property the receiver purportedly controls? (Assignment of Error 1)

4) The receiver disregarded the Huhses' interests and wishes by entering into the settlement agreement with Belikov, and by transferring to Belikov the Huhses' residence property without consideration of the Huhses' Constitutional right to a homestead exemption. By doing so, did the receiver violate his fiduciary obligations as a court agent? (Assignments of Error 1 and 2)

¹ Should the trial court's order dismissing the underlying appeal be reversed, then this aspect of the current appeal would be moot.

5) The trial court granted the receiver's motion to release and record ownership of the Huhses' residence property without consideration of the Huhses' Constitutional right to a homestead exemption, even though the receiver did not oppose the homestead exemption. Did the trial court err by issuing an order that deprives the Huhses of their Constitutional right? (Assignment of Error 2).

III. STATEMENT OF THE CASE

1. Parties.

Belikov is a Russian citizen. CP 378. He resides in Costa Rica. CP 380. The Huhses, a married couple, are residents of Washington. CP 576. Washington corporation and judgment creditor R-Amtech International, Inc. ("R-Amtech") is not a party to this appeal. At times material, the Huhses owned and resided at their home located at 5625 84th Avenue, S.E.; Mercer Island, Washington ("the Mercer Island Property"). CP 1379. The Huhses have claimed a homestead exemption on the Mercer Island Property pursuant to RCW 6.13.070. CP 1430.

2. Judgment and Appeal.

On August 12 and September 10, 2014, following a trial to the bench, the trial court entered judgments awarding Belikov ownership of R-Amtech and \$900,000 in attorneys' fees against the Huhses; and an award in favor of R-Amtech against the Huhses of \$3,112,329.00 in damages. CP 428-432; 449-452. The Huhses appealed the judgment to

this Court (“the Appeal”)². CP 419-420. The Appeal was entirely defensive, as the Huhses did not seek to recover any damages from Belikov in it. The Appeal was fully briefed, but as explained below, this Court has dismissed it.

3. Receivership.

Shortly after entry of his and R-Amtech’s judgments, Belikov commenced enforcement proceedings against the Huhses. On his motion, the trial court placed the Huhses in involuntary receivership under RCW 7.60.025, with the appointment of Belikov’s selected receiver, Matthew D. Green (“Receiver Green”). The Court’s Order Appointing General Receiver dated January 23, 2015 (“the Receivership Order”), which Belikov drafted and the trial court signed without edit, tracks the requirements of RCW 7.60. CP 872-886. The Receivership Order provides that Belikov is ultimately responsible for the costs and receiver’s fees incurred by the receivership. CP 882.

Generally, the Receivership Order provides that the “Receiver shall have the rights, powers and duties conferred by, and Receivership shall be administered in accordance with, RCW 7.60.005 - 7.60.300. Receiver shall comply with all applicable state and federal laws.” CP 880.

² Case No. 72334-1.

The Receivership Order provides that “[t]he receivership property consists of real and personal property of Judgment Debtors wherever located (collectively, the “Property”), including, but not limited to, the following real and personal property ...” CP 873. The succeeding definitional examples of “Property” do not include the Huhses’ right to defend through complete litigation, including a defensive appeal, the judgment against them. The Receivership Order does not give Receiver Green any powers beyond control of the Huhses’ “Property.”

No creditor of the Huhses, other than Belikov seeking to enforce his judgment and that of R-Amtech (which Belikov has been adjudged to own), filed a claim in the receivership pursuant to RCW 7.60.210. CP 1103.

On January 29, 2015, Receiver Green seized and placed into storage virtually all of the Huhses’ personal belongings. As Receiver Green did not honor the Huhses’ RCW 6.15.010 exemption claims, the trial court appointed a referee to attend to the same. CP 89-91. Receiver Green did not file any RCW 7.60.100 monthly operating reports, and did not arrange for the payment of any taxes. CP 1105-1106.

Virtually all motion practice before the trial court regarding the receivership was undertaken not by Receiver Green, but by Belikov. CP 98. Receiver Green has never consulted with the Huhses or their attorney

regarding the Huhses' interests, requests, positions, or arguments in the receivership. Belikov proposed settlement terms to Receiver Green by way of a letter dated February 12, 2015. CP 318-325. The Huhses first saw this as an attachment to Receiver Green's Motion for Order Authorizing Compromise of Claims ("Receiver Green's Motion"). CP 1093-1100.

4. Order Authorizing Dismissal of Appeal.

On April 9, 2015, Receiver Green filed Receiver Green's Motion seeking trial court authority for Receiver Green to accept Belikov's settlement proposal to Receiver Green. The premise of Receiver Green's Motion was that the settlement terms Belikov proposed are in the best interests of the Huhses and their estate, as the Appeal has no merit, i.e., that "[t]he Receiver, as the holder of the Huhses' claims on appeal," ... has determined that "the likelihood of a successful appeal and re-trial is small..." CP 949. The Huhses resisted the "settlement" in response to Receiver Green's Motion. CP 92-105.

The trial court granted Receiver Green's Motion by its Order Granting Receiver's Motion to Compromise Claim dated June 1, 2015 (the "Order Authorizing Dismissal of Appeal"). CP 314-325. In its Order Authorizing Dismissal of Appeal, the trial court ruled as follows:

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 to a jury, it is unlikely that the outcome would be any different given the Huhs' damaging testimony during their first trial that would 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.

7. The proposed settlement offer is fair and equitable to both sides and should be approved.

5. Appellate Proceedings.

On July 7, 2015, this Court denied Defendants/Judgment Debtors/Appellants Roy E. Huhs, Jr. and Maryann Huhs' RAP 17.4(b) Emergency Motion Pursuant to RAP 8.3 and 17.7 to Modify Commissioner's Ruling regarding the Order Authorizing Dismissal of Appeal. Concurrently, it issued its Order Lifting Stay and Granting Motion to Dismiss Appeal. The Supreme Court denied the Huhses' petition for review of those orders.³

6. Transfer of Residence Property without Homestead Exemption

After the Huhses' attempts to block enforcement of the Order Authorizing Dismissal of Appeal had been exhausted, Receiver Green filed with the trial court Receiver's Motion for Order to Release and

³ Supreme Court Case No. 91979-8.

Record Deeds of Trust. CP 1344-47 (“Receiver’s Motion to Transfer Mercer Island Property”). That motion asked the trial court to release to Receiver Green the deed to the Mercer Island Property, which this Court’s Commissioner had ordered the Huhses to deposit with the trial court, so that Receiver Green could record it. CP 1344-45.⁴

The Huhses opposed Receiver’s Motion to Transfer Mercer Island Property on several grounds, one of which was that it ignored the Huhses’ right to a \$125,000 homestead exemption. CP 1378-1384. Neither Receiver Green nor Belikov submitted to the trial court any argument as to why the homestead exemption should not apply. Nonetheless, the trial court granted Receiver’s Motion to Transfer Mercer Island Property without application or other consideration of the homestead exemption. CP 1449-1451.

IV. SUMMARY OF ARGUMENT

A trial court exceeds its authority by authorizing a receiver to dismiss a pending appeal of its own judgment over the appellants’ wishes, especially when the basis for doing so is its ruling that the pending appeal has no merit. An RCW 7.60.025 receiver exceeds his authority, and breaches his fiduciary obligations, by refusing to consider the best

⁴ Receiver’s Motion to Transfer Mercer Island Property also asked the trial court to authorize the recording of a deed to other property which the Huhses owned. As that property was not their primary residence, it is not a subject of this part of the appeal.

interests and wishes of the owners of property he administers, as they are parties with interests in the subject property. The Order Authorizing Dismissal of Appeal disregards fundamental legal precepts such as the parameters of a receiver's authority; the Court of Appeals' inherent and exclusive authority over a trial court to determine the merits of an appeal; the Huhses' statutory right to appeal; and what constitutes an item of property a receiver may take control of and bargain settlement with. It should be reversed accordingly.

The trial court erred by transferring to Belikov ownership of the Mercer Island Property without consideration of the Huhses' Constitutional right to a homestead exemption, especially in light of Receiver Green's and Belikov's non-opposition to its applicability.

V. ARGUMENT

1. This Court's Exclusive Appellate Authority.

A forced settlement depriving the Huhses of their right to a defensive appeal, i.e., an appeal to avoid liability by reversing a judgment, would deprive the Huhses of due process. Receiver Green essentially asked the trial court to consider the propriety of its own judgment, and issue a final determination of whether an appeal of it has merit. The trial court should have declined that request. By issuing the Order Authorizing Dismissal of Appeal, the trial court effectively reviewed its own judgment

to determine it was without merit. Per RCW 2.06.030, entitled, **General powers and authority--Transfers of cases--Appellate jurisdiction, exceptions—Appeals**, the appellate “court shall have exclusive appellate jurisdiction in all cases except [irrelevant exceptions].” The trial court may not review its own decisions and determine whether they have merit.

Belikov, in whose sole interests Receiver Green has been operating, conceded the Appeal has merit by failing to move to dismiss it in accordance with RAP 18.9(c). A motion under that appellate rule would have placed before the proper tribunal, this Court, the question of whether the Huhses’ appeal has threshold merit.

2. Receiver’s Authority.

Neither Belikov, Receiver Green nor the trial court was free to disregard the parameters and legal concepts of receivership, such as a receiver’s obligation, as a fiduciary, an officer of the Court and the Court’s agent, to attend to the best interests of all concerned, including the Huhses. “A receiver is also said not to be an agent of any party to the action, but instead is a fiduciary who, as an officer and representative of the court, acts for the benefit of all persons interested in the property [citations omitted]. Under this view, a receiver is the court’s agent, not that of the parties [citations omitted].”⁵

⁵ AMJUR RECEIVERS § 87.

Receiver Green has persistently acted at Belikov's behest and control, to serve the interests only of Belikov. However, Receiver Green's fiduciary duties extend also to the Huhses, the owners of the estate he administers. As our Supreme Court has ruled, "[a receiver] is not the agent or representative of either party to the action, but is uniformly regarded as an officer of the court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest."⁶ Receiver Green did not even show the Huhses Belikov's letter offering settlement. He clearly had no concern for their interests in accepting it.

Courts across the country are widely in accord with a receiver's fiduciary status. "A receiver is not an agent of any party to the action, but instead is a fiduciary who, as an officer and representative of the court, acts for the benefit of all persons interested in the property [citations omitted]."⁷ "The receiver acts in a fiduciary capacity...."⁸ "A receiver appointed by the court becomes a fiduciary of the court and any person interested in the estate of which he has been made a receiver. As to third parties, the receiver is the fiduciary agent of the court with limited powers

⁶ *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).

⁷ *Shannon v. Superior Court*, 266 Cal.Rptr. 242, 245-46, 217 Cal.App.3d 986, 992 (Cal.App. 5 Dist.,1990).

⁸ *INF Ent., Inc. v. Donnellon*, 133 Ohio App. 3d 787, 789, 729 N.E.2d 1221, 1222 (1999).

which are defined by the order of his appointment.”⁹ “A receiver is an agent and officer of the court, and is under the control and supervision of the court. [citation omitted] The receiver is also a fiduciary who must act for the benefit of all parties interested in the property. [citation omitted].”¹⁰ “A receiver is an officer or representative of the court appointed to manage property that is the subject of litigation. [citations omitted] The receiver is not an agent of either party to the action. The receiver represents all persons interested in the property. [citations omitted] In other words, a receiver acts as a fiduciary on behalf of both parties as a representative and officer of the court.”¹¹ “[A] Receiver is a fiduciary of this Court and of all claimants or persons interested in the estate.”¹²

That fiduciary status extends not just to judgment creditors, but equally to the administered property’s owners, here, the Huhses. As the Wisconsin Court of Appeals, citing precedents from the Second Circuit, Seventh Circuit and California, has held, “... a receiver has a fiduciary duty to all parties with an interest in the receivership estate, *including the*

⁹ *County of Oakland by Kuhn v. City of Detroit*, 784 F.Supp. 1275, 1286 (E.D.Mich.,1992)

¹⁰ *City of Chula Vista v. Gutierrez*, 207 Cal. App. 4th 681, 685, 143 Cal. Rptr. 3d 689, 691 (2012).

¹¹ *Security Pacific National Bank v. Geernaert*, 245 Cal.Rptr. 712, 716, 199 Cal.App.3d 1425, 1431-32 (Cal.App. 5 Dist.,1988)

¹² *Eller Industries, Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F.Supp. 369, 372 (D.Colo.,1995).

insolvent debtor and all its creditors.”¹³ As a bankruptcy court, as well as the U.S. District Court for the District of Massachusetts, citing Clark, Treatise on the Law and Practice of Receivers, 3rd Ed., I, § 11(a) and other authority, have held, “[i]t is axiomatic that receivers are bound by fiduciary obligations to the court appointing them *and to the estates they serve*.”¹⁴ “In addition, a receiver must act for the benefit of all persons interested in the property.”¹⁵

These obligations are not to be taken lightly. Per the Second Circuit Court of Appeals:

Having in mind such cases as *Crites, Inc., v. Prudential Co.*, 322 U.S. 408, 64 S.Ct. 1075, 1079, 88 L.Ed. 1356, and others cited below, we think the general principles applicable here are as follows: A receiver, as ‘an officer or arm of the court,’ is a trustee with the highest kind of fiduciary obligations. He owes a duty of strict impartiality, of ‘undivided loyalty,’ to all persons interested in the receivership estate, and must not ‘dilute’ that loyalty. He is ‘bound to act fairly and openly with respect to every aspect of the proceedings before the court.’¹⁶

¹³ *Community Nat. Bank v. Medical Ben. Adm’rs, LLC*, 626 N.W.2d 340, 343-44, 242 Wis.2d 626, 634, 2001 WI App 98, ¶ 8 (Wis.App. 2001), citing *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991 (2d Cir.1946); *Martin v. Luster*, 85 F.2d 833, 843 (7th Cir.1936); *Security Pac. Nat’l. Bank v. Geernaert*, 199 Cal.App.3d 1425, 245 Cal.Rptr. 712, 716 (1988) (emphasis added).

¹⁴ *Fleet Nat. Bank v. H & D Entertainment, Inc.*, 926 F.Supp. 226, 240 (D.Mass. 1996). Also citing *Powell v. Maryland Trust Co.*, 125 F.2d 260, 261 (4th Cir.), *cert. denied*, 316 U.S. 671, 62 S.Ct. 1046, 86 L.Ed. 1746 (1942); *In re Am. Bridge Products, Inc.*, 328 B.R. 274, 323 (Bankr. D. Mass. 2005) *aff’d in part, rev’d in part and remanded*, 398 B.R. 724 (D. Mass. 2009) *vacated*, 599 F.3d 1 (1st Cir. 2010) (emphasis added).

¹⁵ *Fullerton v. Second Judicial Dist. Court In & For Cty. of Washoe*, 111 Nev. 391, 400, 892 P.2d 935, 941 (1995).

¹⁶ *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991 (C.A.2 1946)

Receiver Green's acting only for Belikov's benefit, and disregarding the Huhses' interests, is a derogation of his duties as a receiver as, again, "the general rule is that a receiver is not the exclusive agent or representative of either party to the suit in which he is appointed, and the receiver is not appointed for the benefit of any party, nor does he receive his authority from either party."¹⁷ Were Receiver Green at all concerned with the Huhses' rights, or with maximizing and preserving the estate's size and integrity, he would be eager to allow the fully briefed appeal to move forward. If the appeal fails, Belikov and the estate will be in the same, if not better, position, as all legal issues will be finally resolved.

Receiver Green represented to the trial court that the settlement Belikov proposed is in the Huhses' best interests, i.e., that they would benefit from a settlement of Belikov's \$4.1 million judgment by dismissal of the Appeal and transfer to Belikov of real estate worth a small fraction of that amount. Again, Receiver Green stated, "...as the holder of the Huhses' claims on appeal, ... has determined that "the likelihood of a successful appeal and re-trial is small..." The impression Receiver Green sought to create was that Belikov was altruistically sacrificing his

¹⁷ *Suleiman v. Lasher*, 48 Wn.App. at 378.

entitlement to obtain from the Huhses enormous value in favor of dismissal of a nonmeritorious appeal plus a small acquisition of property.

However, the Huhses have no significant assets other than their home. The fact Belikov agreed to accept their real estate in satisfaction of his judgment demonstrates Receiver Green, despite extreme efforts, uncovered no other significant assets. Thus, Belikov stands nothing to gain, and never stood anything to gain, by way of judgment enforcement other than the Huhses' home. That is all he ever could be able to recover. Clearly, the scheme was intended to have the Appeal dismissed, and all of the Huhses' property of any value transferred to Belikov.

3. Public Policy.

A precedent empowering plaintiffs who obtain judgments against impecunious defendants to force their judgment debtors into involuntary receivership, and then force them to dismiss their defensive appeals as part of court-ordered "settlements" in the receivership, would enable and encourage powerful litigants to follow Belikov's actions. We would see future judgment debtors deprived of their appellate rights through receiverships.

The analysis might differ slightly if the Huhses were in voluntary receivership or bankruptcy, in which case they would have knowingly relinquished certain rights in favor of the "fresh start" liquidation is

designed for. Here, receivership was imposed on the Huhses by a single, powerful creditor strictly as a judgment enforcement mechanism.

A precedent of this nature should be avoided.

4. The Huhses' Right to Appeal is Not Estate "Property."

The trial court did not properly give to Receiver Green control of the Huhses' defensive appeal as "Property" of the estate. If the Appeal is not "Property," then Receiver Green could not properly use it as a settlement bargaining chip, because it would not be within his control.

Again, appeal of Belikov's judgment is not within the Order Authorizing Dismissal of Appeal's definition of "Property." RCW 7.60.005(9) defines the term as follows:

"Property" includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a 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. ...

This definition cannot be interpreted to include the right to litigate through defensive appeal a claim *against* the property of the estate. No authority holds appeal of an adverse judgment as property of an estate. RCW 7.60.060(e) is stated in terms of a receiver's "power to assert rights, claims, or choses in action," but not defenses to claims. If this statute

were intended to empower a receiver to force a judgment debtor to relinquish defense of a claim against it, it could and would have so stated.

5. Additional Impacts of Forced Dismissal of Appeal.

Receiver Green's enforcement of the Order Authorizing Dismissal of Appeal would impact the Huhses' rights in addition to deprivation of their right to appeal. Examples of this are a finalized determination that Roy E. Huhs, Jr. violated RPC 1.8(c), which could result in bar sanctions or worse; and tax obligations the Huhses might be subject to based on settlement of the judgment at a documented value far below the judgment value. The potential negative impacts of the trial court's erroneous order would be far reaching if allowed to stand.

6. Trial Court Rulings and Determinations.

Per their persistent practice in related proceedings, Receiver Green and Belikov are expected to oppose this appeal by pointing to various trial court pronouncements that vilify the Huhses, such as findings of fraud, breach of fiduciary duty, etc. These are the very points at issue in the Appeal, and are irrelevant for purposes of determining whether the Huhses have a right to appeal. The nature of a trial court's decisions, including the harshness of its criticisms of a defendant/judgment debtor, has no bearing on whether those decisions may be appealed. Convicted

murderers enjoy a right to appeal despite and because of a trial court's vilifying rulings; so, too, should the Huhses.

A summary of points raised in the Appeal is presented below. Again, Belikov did not move this Court to dismiss the Appeal as frivolous per RAP 18.9(c), or otherwise make mention in his appellate briefing that the Huhses' positions were so nonmeritorious as to not warrant review.

1. The trial court erroneously denied the Huhses their Constitutional right to a jury trial by ruling that the matter sounds primarily in equity. This denial was improper because (1) this case's issues as presented in pleadings and at trial are overwhelmingly questions of law; (2) the judgment itself was based overwhelmingly on legal concepts; (3) Belikov presented few, if any, viable theories in equity; and (4) the factors set forth in *Scavenius v. Manchester Port Dist.*¹⁸ weigh heavily in favor of a jury trial.

2. The trial court erred by refusing to apply the statute of limitations and holding Belikov's action time barred. The judgment's primary determination is that Belikov owns R-Amtech. However, Belikov, by his own testimony, (1) was at all times since its inception chairman of R-Amtech's board of directors; (2) attended board meetings regularly through 2005; (3) sent and received communications over many years wherein Maryann Huhs was stated to be R-Amtech's sole owner; (4) had tens of millions of dollars in investment and financial expectations in R-Amtech; and yet (5) never once discussed his purported ownership of R-Amtech with either Maryann Huhs or his and R-Amtech's lawyer, John Huhs. Thus, Belikov was on inquiry notice that he did not own R-Amtech, and that Maryann Huhs was acting as R-Amtech's sole owner, many years longer than the statute of limitations allows, even considering the discovery rule.

3. The trial court concluded that "it is clear [Belikov] had his own reasons for not wanting record ownership of R-Amtech" from the time of its formation in January 1996, and that he made an "unwise

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

attempt to avoid record ownership.” Based on these desires, intentions and directions of Belikov, full ownership of R-Amtech was vested in Maryann Huhs in 1998, a fact that always was well known and never challenged by Belikov. The trial court erred in ruling that Belikov owns R-Amtech in law, as there was no showing he ever gave consideration for the purchase of its stock. The trial court further erred by ruling that Belikov owns R-Amtech in equity, a concept equity does not recognize, and could not recognize given legal requirements, inter alia, that formalized lists of shareholders be provided to the IRS; shareholders; government agencies in certain circumstances; and when shareholder liability is at issue.

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

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

The significance of the Appeal’s issues and substance is twofold.

First, Belikov’s hands throughout this matter have been and are unclean.

After declining for decades ownership of R-Amtech so as to avoid payment of taxes and government registration requirements, Belikov emerged to assert ownership of the corporation in equity. Now, he has joined forces with the receiver he selected, had appointed, and is compensating to deprive the Huhses of their right to appeal. Receiver Green, at Belikov's direction (as demonstrated by motion practice in the receivership being conducted by Belikov's attorneys), has subverted the receivership process by disregarding the Huhses' interests in favor solely of Belikov's.

Second, the trial court's observation that the Appeal, if successful, would lead to a new and expensive trial is inaccurate. Three of the four primary bases of appeal, i.e., (1) the statute of limitations; (2) unavailability in law or equity of the relief the trial court awarded; and (3) the civil damages award for violation of RPC 1.8(c), if successful, would result in reversals of all or portions of the judgment. Only one basis, the trial court's denial of a jury trial, would result in a new trial. Even if a new trial is granted (and the judgment not reversed outright), then Belikov would no longer have a judgment, and the receivership would necessarily end. In that event, there would be no concern about estate assets being expended inefficiently, as there would be no receivership estate.

7. Homestead Exemption

Article XIX, §1, of the Washington Constitution provides as follows: “The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.” As our Supreme Court has held:

The homestead exemption statutes are based upon Art. 19, § 1 of the state constitution. We have held in a plethora of decisions that the homestead statutes are favored in the law and should be liberally construed. [citation omitted]. They do not protect the rights of creditors; they are in derogation of such rights. [citation omitted].¹⁹

In the event the Court rules the trial court is empowered to dismiss an appeal under the circumstances presented, conveyance to Belikov of the Mercer Island Property should not be allowed without his prior payment to the Huhses of \$125,000.00, representing their homestead exemption. Per RCW, 6.13.070, “...the homestead is exempt from attachment *and from execution* or forced sale *for the debts of the owner* up to the amount specified in RCW 6.13.030 [emphasis added].” The term “execution,” per RCW 6.17.060, includes the circumstances of the trial court’s Order Authorizing Dismissal of Appeal:

There shall be three kinds of executions: First, against the property of the judgment debtor; second, *for the delivery of the possession of real or personal property* or such delivery with damages for withholding the same; and third,

¹⁹ *Webster v. Rodrick*, 64 Wn. 2d 814, 816, 394 P.2d 689 (1964).

commanding the enforcement of or obedience to any other order of the court [emphasis added].

The Huhses are guaranteed a homestead exemption. Typically in judgment enforcement proceedings, a forced sale of the property would occur, with the first \$125,000.00 of sales proceeds being transferred to the judgment debtor. The unorthodox mechanism of a forced “settlement,” executed by a receiver with a judgment creditor at the judgment creditor’s instance, should not be allowed to subvert the purpose of the homestead exemption, or deprive the Huhses of their entitlement to it. As the “settlement agreement” contemplates transfer to Belikov of the Mercer Island Property, as opposed to an execution sale of that property, the only workable approach to enforcement of the homestead exemption is Belikov’s direct payment of it to the Huhses.

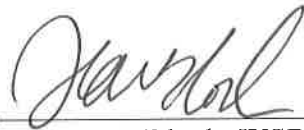
VI. CONCLUSION

The Huhses have a statutory right to appeal. This Court should not allow a trial court order, derived as a judgment creditor’s enforcement mechanism in coordination with the receiver he selected and had appointed, to deprive the Huhses of that right. No harm would come to Belikov or the receivership if the Appeal truly has no merit and fails accordingly. Extraordinary harm would come to the Huhses if they are

not allowed to proceed with the Appeal. The trial court's Order Authorizing Dismissal of Appeal should be reversed accordingly.

In any event, the Huhses should not be deprived of their Constitutional right to a homestead exemption by the nature of Belikov's enforcement actions. If the Order Authorizing Dismissal of Appeal is not reversed, Belikov should be ordered to pay the Huhses \$125,000 representing their homestead exemption.

DATED this 7th day of December, 2015.



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CERTIFICATE OF SERVICE

I hereby certify that I am a legal assistant at Foster Pepper PLLC and that on December 7, 2015, I filed this pleading with the Court of Appeals of the State of Washington and have served this via E-mail service by consent of parties and Receiver:

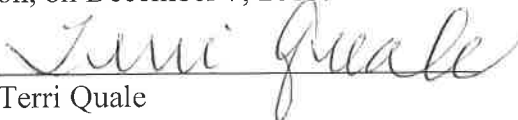
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on December 7, 2015.


Terri Quale