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Nos. 99465-0
99466-8

SUPREME COURT
OF THE STATE OF WASHINGTON

TEN BRIDGES LLC,
an Oregon limited liability company,

Petitioner,

v.

TERESIA GUANDAI and MIDAS MULLIGAN, LLC, et al.,

Respondents.

TEN BRIDGES LLC,
an Oregon limited liability company,

Petitioner,

v.

YUKIKO ASANO and MADRONA LISA, LLC, et al.,

Respondents.

MEMORANDUM OF *AMICUS CURIAE* ANGELO CALFO
IN SUPPORT OF REVIEW

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A. INTRODUCTION

The opinions of Division I of the Court of Appeals in these two cases purport to construe RCW 63.29.350, (*see* Appendix), amended in 2012 by the Legislature, as a matter of first impression. They do so without adhering to the text of the statute, a cardinal principle of this Court’s long-standing approach to statutory interpretation.

Division I’s interpretation of the statute results in its application in circumstances plainly not envisioned by the Legislature. This Court should grant review to definitively interpret RCW 63.29.350. RAP 13.4(b)(4).

B. IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus is Angelo Calfo, who represented Ten Bridges LLC in response to a related inquiry by the Washington State Attorney General. He is therefore both aware the issues raised by the decision of Division I and interested in the outcome of the pending petitions.

C. STATEMENT OF THE CASE

Amicus adopts Division I’s recitation of the facts, as supplemented by the discussion of the facts in the petitions for review and answers thereto.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

(1) Firms Like Ten Bridges Perform a Socially Useful Service

Petitioner Ten Bridges LLC (“Ten Bridges”) has done an admirable job of explaining in its two petitions precisely how Division I’s opinion

conflicts with the language of RCW 63.29.350, case law construing its predecessor statute, and its legislative history. *Amicus* will repeat that argument only to the extent it bears directly on whether this Court should grant review of the petitions.

Firms like Ten Bridges perform a socially useful service of alerting beneficiaries to the existence of unclaimed property, rather than permitting such property to escheat to the State. The decisions of Division I endanger the ability of Ten Bridges, and others like it, to perform that valuable service despite conflicting rulings from both this Court and Division I.

This Court upheld the constitutionality of the predecessor statute to RCW 63.29.350 in *Int'l Tracers of America v. Hard*, 89 Wn.2d 140, 570 P.2d 131 (1977), *appeal dismissed*, 435 U.S. 1004 (1978). This Court there noted: “The statute was carefully confined to apply only in cases of fees for locating or purporting to locate property which he knows has been reported or paid or delivered to (the Department of Revenue) pursuant to this chapter.” *Id.* at 148.

Thereafter, in 1983, the Legislature enacted the Uniform Unclaimed Property Act. RCW 63.29.350 was a part of that enactment; rather than adopt the Uniform Act provision, the statute largely mirrored the language of the predecessor statute this Court construed in *International Tracers*. Notably, the Act *nowhere* prohibited the type of transaction at issue here,

and regulated the fee available to private firms once unclaimed property was delivered or paid to DOR.

This Court also construed RCW 63.29.350 in *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995). There, this Court carefully analyzed so-called heir hunter agreements. It specifically declined to find such agreements universally to be unconscionable, illegal, or against public policy, and therefore unenforceable because “such agreements may be beneficial rather than harmful in some cases.” *Id.* at 139. The Court noted that RCW 63.29.350 is not the Uniform Act’s provision on such agreements. *Id.* at 138. It further concluded:

By its terms it applies only to property reported, paid or delivered to the Department of Revenue. We are unable to discern legislative intent that this policy should extend beyond the statute’s terms. Moreover, we are not inclined to invalidate all such agreements involving fees over 5 percent on property not falling within the terms of the statute, because in some cases heir hunters may provide the only means by which those entitled to unclaimed property might learn of their entitlement.

Id. at 139. This Court specifically held that the statute was inapplicable where property was not reported or paid or delivered to DOR. *Id.* at 138.

There is considerable irony that subsequent to the filing of its two opinions here, Division I only recently filed its opinion in *JP Morgan Chase Bank, NA v. Madrona Lisa, LLC*, __ Wn. App. 2d __, 481 P.3d 1114 (2021), in which it allowed Madrona Lisa, LLC, a firm that performed services

similar to those of *Ten Bridges*,¹ to redeem certain real property after a sheriff's sale as the successor in interest to the interest of the parents of a decedent who died intestate. That decision is entirely consistent with this Court's prior interpretation of RCW 63.29.350, and inconsistent with the two Division I decisions at issue here.

Review is merited to resolve these conflicts. RAP 13.4(b)(1), (2).

(2) Division I Misconstrued RCW 63.29.350, Contrary to This Court's Rulings on the Predecessor Statute

This case is classically one of statutory interpretation. In analyzing statutory provisions, this Court employs well-developed construction principles and tools.² The central goal of statutory interpretation is to carry out legislative intent. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). *See also, State v. Brown*, 194 Wn.2d 972, 454 P.3d 870, 871-72 (2019) (setting out this Court's traditional statutory interpretation protocol).

In Washington, any statutory construction begins by looking at *the words of the statute*. This Court in *Federal Home Loan Bank of Seattle v. Credit Suisse Sec. (USA) LLC*, 194 Wn.2d 253, 258, 449 P.3d 1019 (2019) reaffirmed that the "bedrock principle of statutory interpretation" is the

¹ *Madrona Lisa, LLC* is a party in Cause No. 99466-8.

² Division I's opinions did not address these principles in any detail.

statute's "plain language."

In *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002), this Court held that in discerning the plain meaning of a statute, courts are not confined to the text of the statute alone, but may also examine the context of the Legislature's enactment, looking to other statutes relevant to the Legislature's product. Washington law has also long recognized that in addressing the plain meaning of a statute, sequential drafts of the enacting legislation as well as iterations of the enacted statute over time are relevant to the courts' construction of a statute's meaning. *See, e.g., Spokane Cty. Health Dist. v. Brockett*, 120 Wn.2d 140, 153, 839 P.2d 324 (1992) (sequential drafts of bill); *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 470, 139 P.3d 1078 (2006) (same); *In re Marriage of Little*, 96 Wn.2d 183, 189, 634 P.2d 498 (1981) (review entire sequence of all statutes relevant to a subject matter).

In legislating, the Legislature is presumed to be aware of its own enactments in similar areas. *ATU Legislative Council of Wash. State v. State*, 145 Wn.2d 544, 552, 40 P.3d 656 (2002). Here, the Legislature must be deemed to be aware of prior judicial interpretations of RCW 63.29.350.

This Court has narrowly interpreted RCW 63.29.350 or its predecessor in two decisions. The Legislature is presumed to be aware of those decisions. *Nothing* in the language of the 2010 amendment evidences

an intent to regulate the transaction at issue here. Rather, the language of the statute evidences a legislative intent only to regulate property *in government hands*; after 2010, that meant property in a county's hands, as well as DOR's. The bill report for the 2010 legislation is unmistakable in that regard. *See* Appendix. The 2010 Legislature did not choose to expand the regulatory scope of RCW 63.29.350 beyond property in government hands, as Division I has done.

Had Division I correctly applied these statutory construction principles, it would have discerned that neither the plain language of RCW 63.29.350, nor its legislative history support its interpretation. Division I's decision contravenes decisions of this Court in *International Tracers* and *Nelson*. Review is merited. RAP 13.4(b)(1).

(3) Division I's Misconstruction of RCW 63.29.350 Is An Issue of First Impression, Which Is Particularly Appropriate for this Court's Review

Review is also appropriate in this case under RAP 13.4(b)(4) because this case involves this Court's ultimate interpretation of a statute as a matter of first impression.

This Court has not construed RCW 63.29.350 since its amendment. It is thus a case of first impression for this Court.

Issues of first impression are uniquely suited to review by this Court. First impression statutory interpretation questions, for example, are often

the subject of review by this Court either under RAP 4.2(a)(4) or RAP 13.4(b)(4). *E.g.*, *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982) (first impression of 1981 tort reform legislation); *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009) (whether a city's response to a Public Records Act request was sufficient to trigger the PRA's statute of limitations); *Birrueta v. Dep't of Labor & Indus.*, 186 Wn.2d 537, 379 P.3d 120 (2016) (interpretation of statute addressing repayment of industrial insurance benefits); *Plein v. USAA Cas. Ins. Co.*, 195 Wn.2d 677, 463 P.3d 728 (2020) (application of RPC 1.9).

Moreover, beyond the fact that this is a case of first impression for this Court, the participation of both *amici curiae* and the Attorney General at Division I only further reinforces the fact that review is appropriate here. Their participation documents that an important issue of public policy is at stake that this Court should definitely address. Review is merited. RAP 13.4(b)(4).

E. CONCLUSION

For the reasons stated above and in the two petitions for review, *Amicus* asks that the Court grant review. This Court should grant review to provide its definitive construction of RCW 63.29.350. Division I's opinions improperly expand the scope of the statute's application in defiance of the

statutory language, past construction by this Court of the predecessor statute to RCW 63.29.350, and the legislative history of the 2010 amendments to the statute. Review is necessary. RAP 13.4(b).

DATED this 2nd day of April, 2021.

Respectfully submitted,

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APPENDIX

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2428

Chapter 29, Laws of 2010

61st Legislature
2010 Regular Session

UNCLAIMED PROPERTY--RECOVERY FEES

EFFECTIVE DATE: 06/10/10

Passed by the House February 10, 2010
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2010
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved March 12, 2010, 1:58 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2428** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 12, 2010

**Secretary of State
State of Washington**

HOUSE BILL 2428

Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell, Kelley, O'Brien, Bailey, and Ormsby; by request of Attorney General

Prefiled 12/07/09. Read first time 01/11/10. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to fees for locating surplus funds from county
2 governments, real estate property taxes, assessments, and other
3 government lien foreclosures or charges; amending RCW 63.29.350; and
4 reenacting and amending RCW 63.29.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 63.29.020 and 2005 c 502 s 3 and 2005 c 367 s 1 are
7 each reenacted and amended to read as follows:

8 (1) Except as otherwise provided by this chapter, all intangible
9 property, including any income or increment derived therefrom, less any
10 lawful charges, that is held, issued, or owing in the ordinary course
11 of the holder's business and has remained unclaimed by the owner for
12 more than three years after it became payable or distributable is
13 presumed abandoned.

14 (2) Property, with the exception of unredeemed Washington state
15 lottery tickets and unrepresented winning parimutuel tickets, is payable
16 and distributable for the purpose of this chapter notwithstanding the
17 owner's failure to make demand or to present any instrument or document
18 required to receive payment.

1 (3) This chapter does not apply to claims drafts issued by
2 insurance companies representing offers to settle claims unliquidated
3 in amount or settled by subsequent drafts or other means.

4 (4) This chapter does not apply to property covered by chapter
5 63.26 RCW.

6 (5) This chapter does not apply to used clothing, umbrellas, bags,
7 luggage, or other used personal effects if such property is disposed of
8 by the holder as follows:

9 (a) In the case of personal effects of negligible value, the
10 property is destroyed; or

11 (b) The property is donated to a bona fide charity.

12 (6) This chapter does not apply to a gift certificate subject to
13 the prohibition against expiration dates under RCW 19.240.020 or to a
14 gift certificate subject to RCW 19.240.030 through 19.240.060.
15 However, this chapter applies to gift certificates presumed abandoned
16 under RCW 63.29.110.

17 (7) Except as provided in RCW 63.29.350, this chapter does not
18 apply to excess proceeds held by counties, cities, towns, and other
19 municipal or quasi-municipal corporations from foreclosures for
20 delinquent property taxes, assessments, or other liens.

21 **Sec. 2.** RCW 63.29.350 and 1983 c 179 s 35 are each amended to read
22 as follows:

23 (1) It is unlawful for any person to seek or receive from any
24 person or contract with any person for any fee or compensation for
25 locating or purporting to locate any property which he knows has been
26 reported or paid or delivered to the department of revenue pursuant to
27 this chapter, or funds held by a county that are proceeds from a
28 foreclosure for delinquent property taxes, assessments, or other liens,
29 or, funds that are otherwise held by a county because of a person's
30 failure to claim funds held as reimbursement for unowed taxes, fees, or
31 other government charges, in excess of five percent of the value
32 thereof returned to such owner. Any person violating this section is
33 guilty of a misdemeanor and shall be fined not less than the amount of
34 the fee or charge he has sought or received or contracted for, and not
35 more than ten times such amount, or imprisoned for not more than thirty
36 days, or both.

1 (2) The legislature finds that the practices covered by this
2 section are matters vitally affecting the public interest for the
3 purpose of applying the consumer protection act, chapter 19.86 RCW.
4 Any violation of this section is not reasonable in relation to the
5 development and preservation of business. It is an unfair or deceptive
6 act in trade or commerce and an unfair method of competition for the
7 purpose of applying the consumer protection act, chapter 19.86 RCW.
8 Remedies provided by chapter 19.86 RCW are cumulative and not
9 exclusive.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

HOUSE BILL REPORT

HB 2428

As Passed Legislature

Title: An act relating to fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

Brief Description: Concerning fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

Sponsors: Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell, Kelley, O'Brien, Bailey and Ormsby; by request of Attorney General.

Brief History:

Committee Activity:

Local Government & Housing: 1/25/10, 1/27/10 [DP].

Floor Activity:

Passed House: 2/10/10, 96-0.

Passed Senate: 3/4/10, 47-0.

Passed Legislature.

Brief Summary of Bill

- Prohibits a business which provides the service of matching specified unclaimed property held by counties, cities, and other municipalities with the owners of such property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.
- Establishes that a business that violates the fee limitation provisions of the Uniform Unclaimed Property Act is in violation of the state Consumer Protection Act.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 11 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fagan, Miloscia, Short, Springer, Upthegrove, White and Williams.

Staff: Thamas Osborn (786-7129).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Uniform Unclaimed Property Act.

Under the state Uniform Unclaimed Property Act (UUPA), a business that holds unclaimed intangible property must transfer it to the Department of Revenue (DOR) after a holding period set by statute. The holding period varies by type of property, but for most unclaimed property the period is three years. After the holding period has passed, the business in possession of the property must transfer it to the DOR.

Under the UUPA, the DOR's duty is to find the rightful owner of the property, if possible. One of the DOR's responsibilities is to place a notice by November 1 of each year in a newspaper of general circulation in each county which contains the last known address of an apparent owner of unclaimed property that is reported and turned over to the state in that year. If the DOR does not have any such address, then the notice must be published in the county in which the holder of the property has its principal place of business. The DOR is required to mail notices by September 1 of each year to apparent owners of unclaimed property that has been reported and turned over to the state in that year. The notice must contain the name and last known address of the person holding the property.

Under certain circumstances, counties, cities, and other municipal corporations are not subject to the UUPA, and are therefore exempt from the DOR reporting requirements regarding specified types of abandoned property. Such property includes certain canceled warrants, uncashed checks, excess proceeds from foreclosures pursuant to the enforcement of property tax delinquencies, and property tax overpayments or refunds. The local government may retain such property until notified by the owner but must provide a listing of such property to the DOR.

Businesses that match unclaimed property held by the DOR with the owner are known as "heir locators." These businesses are prohibited from charging the owner a fee of more than 5 percent of the property's value.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. The state Attorney General may bring an action to enforce the provisions of the CPA.

Under the CPA, a person may bring a civil court action if the person is injured in his or her business or property through: (1) unfair competition or practices; (2) contracts, combinations, or conspiracies in restraint of trade; (3) monopolies or attempted monopolies; (4) transactions and agreements not to use or deal in commodities or services of a competitor; or (5) acquisition of corporate stock by another corporation to lessen competition. Furthermore, a person may be considered injured if he or she refuses to accede to a proposal for an arrangement that, if consummated, would constitute one of these prohibited acts. The civil action may be to enjoin further violations, to recover actual damages, or both, together with the costs of the suit, including a reasonable attorney's fee. The court may, in its

discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

Summary of Bill:

The act eliminates the blanket exemption from the UUPA regulations as they apply to excess, unclaimed proceeds from property tax foreclosures, assessments, and liens held by counties, cities, and other municipalities. Specifically, the act prohibits businesses which provide the service of matching such unclaimed property with the owners of the property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.

A business that exceeds this fee limitation is in violation of the state CPA and is therefore subject to the remedies provided under the CPA.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is, essentially, a consumer protection bill that addresses a consumer protection problem stemming from the current wave of mortgage foreclosures. Following foreclosure proceedings, counties often receive excess funds from the foreclosure sale that should be reimbursed to the former home owners subject to such foreclosure. Unscrupulous individuals have set up businesses for assisting foreclosure victims in identifying and obtaining any funds due them and then charge unconscionable fees for doing so. The result has been the further victimization of those who have already lost their homes. This bill will help to remedy this problem by limiting the fees that can be charged by these businesses. It also provides remedies under the CPA.

(Opposed) None.

Persons Testifying: Representative Takko, prime sponsor; Jim Sugarman, Office of Attorney General; and Rose A. Bowman, Washington Association of County Treasurers.

Persons Signed In To Testify But Not Testifying: None.

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of *Memorandum of Amicus Curiae Angelo Calfo In Support of Review* in Supreme Court Cause Nos. 99465-0 and 99466-8 to the following:

Alexander Kleinberg, WSBA #34449 Eisenhower & Carlson, PLLC 1201 Pacific Avenue Ste 1200 Tacoma, WA 98402	Guy Beckett, WSBA #14939 Berry & Beckett, PLLP 1708 Bellevue Avenue Seattle, WA 98122
--	--

Patricia Army, WSBA #27418
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PO Box 1349
North Bend, WA 98045

Original E-filed with:
Supreme Court Clerk's Office

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

DATED: April 2, 2021, at Seattle, Washington.

/s/ Frankie Wylde _____
Frankie Wylde, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

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RAP 10.6 Motion for Leave to Submit Amicus Curiae Memorandum Memorandum of Amicus Curiae Angelo Calfo In Support of Review

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