66725-4 66725-4

No. 66725-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

SPARK NETWORKS, PLC,

Respondent,

v.

WILL KNEDLIK,

Judgment Debtor,

and

ANNA GIOVANNINI,

Appellant.

Filed 9.22-11

REPLY BRIEF OF APPELLANT

(Corrected)

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I. INTRODUCTION

Respondent Spark Networks, PLC's decision through legal counsel to use just over half of its opportunity to present an opening brief, pursuant to Rule of Appellate Procedure 10.4, is most significant for what it thereby omits from its comments on Appellant Anna Giovannini's briefing herein.

Careful discussions of core facts and of controlling law – central to legal circumstances of a particular parcel of real estate located in Bellevue, Washington, examined in Appellant's opening brief – are thus completely disregarded by Respondent, substantively, while being repeatedly treated with disparagement, gratuitously, *e.g.*, "Giovannini's long and convoluted argument concerning judicial estoppel" (at its 18) and averredly "long and meandering arguments" *vis-à-vis* adverse possession (at its 27), *inter alia.*

Rather than genuine analyses of relevant factual-and-legal issues – *i.e.* regarding the particular real property in Bellevue now before this court and respecting derivative legal consequences – Respondent would, instead, confuse that specific real estate, *via* conflation, with another parcel located in Kirkland, which was before Division I previously, even though law that is dispositive herein is as distinct as geographical locations are disparate, since a federal court judgment controls in this matter that was not involved in a much different legal circumstance reviewed by this court, earlier, and since neither ignoring nor insulting can abolish preclusive effects thereof.

II. ARGUMENT

Beyond Respondent's entirely systematic avoidance of key factual-and-legal issues addressed in Appellant's briefing to the extent allowed by cited court rule, its counsel repeatedly engage in sleights-of-hand in order to misrepresent those four legal matters that are purportedly so addressed.

Chief among Respondent's several misdirections aimed at the court is a series of misrepresentations about preclusive effects of interrelated *res judicata* and collateral estoppel principles (which also overlap with pivotal elements of judicial estoppel under the legal circumstances at issue herein).

In particular, Respondent falsely asserts that "**Giovannini Cannot Raise Her Arguments Relating to Res Judicata and Claim Preclusion for the First Time on Appeal**" (bolding in the original at its 30) with utter disregard for presentation of the prior federal judgment to the trial court by identification thereof, both in briefing filed below, and also through copies of that federal judgment and of supporting documentation by the Chapter 7 Trustee informing it (as also supplied to this court through copies thereof attached to the Opening Brief of Appellant as its Appendices A and B).

Worse still is falsification to this court by legal counsel that Appellant's "sole support of these claims is a pleading (not a court order or judgment) filed in Knedlik's 1997 Bankruptcy entitled 'Revised Statement of Trustee Concerning Investigation as to Possible Assets.' CP 14." (*Ibid.*)

Clearly, even taking this patent misrepresentation by Respondent's counsel at face value, their "CP 14" citation to documentation presented to the trial court, below, gives the lie to its false claim that Appellant is now seeking to "**Raise Her Arguments Relating to Res Judicata and Claim Preclusion for the First Time on Appeal**" (with bolding in the original).

Further, Respondent's "sole support of these claims" falsification is not only given the lie, but also thereby squarely made out as a direct lie, by the indisputable legal reality that the formal "Discharge of Debtor" granted to Judgment Debtor, in the form supplied to the trial court at CP 17 and attached as Appendix A to Respondent's opening brief, is a federal judgment (as was explicated, therein, with the following comment and with citation: "The U.S. Supreme Court has determined that in circumstances such as those at issue below, and now herein, disregard for *res judicata* effects of a discharge order, as a judgment, thus 'render[s] judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects [to be] nullities,' *Kalb v. Feuerstein*, 308 U.S. 433, 439 [1940])."

Misrepresentation of what was squarely presented to the trial court, both by mischaracterizing the Chapter 7 Trustee's official report informing the federal judgment presented to the trial court, and also by omitting that judgment altogether through a direct lie to this Division I, illustrates *modus operandi* of Respondent's counsel, but it does not avoid preclusive effects.

Nor does repeating this misstatement of legally dispositive reality again by the Opening Brief of Respondent, in a more forcefully inaccurate fashion, render some truth from earlier falsehood that Appellant provided "merely a pleading" to the trial court in a second falsified claim that "the document relied upon by Giovannini in support of her arguments is not a judgment or order of any court" (emphasis in the original at its 32).

Not only is the formal report of the official Chapter 7 Trustee **not** "merely a pleading" of the parties in an involuntary bankruptcy action, but the Discharge of Debtor that it informs is the **judgment** that Respondent's legal counsel denies having been presented to, and therefore clearly before, the trial court (despite its rather obvious presence there through CP 17).

Indeed, black-letter principles of bankruptcy jurisprudence simply could not be clearer that "An order of discharge is a judgment entitled to the same presumptions attaching to any other judgment. It is conclusive evidence of all facts appearing in the record or properly inferable therefrom. The debtor may collaterally attack a judgment rendered in another court that disregards the injunction." *Cowan's Bankruptcy Law and Practice*, §5.2 at 61, citing *In re Fernandez-Lopez*, 37 B.R. 664 (B.A.P. 9th Cir. 1984), which in turn, at 669, cites *Kalb v. Feuerstein* as its legal authority.

Simply stated, Respondent can through its counsel mischaracterize the formal report of the official Chapter 7 Trustee that informs the federal

judgment presented to the trial court, below, and it can even attempt to lie to this court through omission of that federal judgment, herein, but such intentional misconduct cannot create jurisdiction where **none** could exist due to preclusive effects of a discharge order, as a judgment, that "render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities," *Kalb v. Feuerstein*, 308 U.S. at 439.

In reality, as is made entirely clear by Judge Cowan's treatise, by the Bankruptcy Appellate Panel of the 9th Circuit and by the U.S. Supreme Court, the error made by the trial court below, as misled by Respondent's legal counsel therein, and the error invited in this court by those attorneys, once again, would simply engender further legal action in order to enforce the injunctive element of a judgment squarely presented below (despite its falsified denials in writing) and herein (despite its repeated lie as to same), thereby extending litigation through such means rather than concluding it.

While Respondent can through its counsel falsely claim both that there is "not a court order or judgment" (at its 30) and also that there is "not a judgment or order of any court" (at its 32), as it has twice asserted to this court, and while it can falsely claim that there is only the formal report of the official Chapter 7 Trustee informing the federal judgment issued on December 11, 1998 in the form set forth at CP 17 below and in Appendix A to Respondent's opening brief, which is comprehensible be-

cause and only because it has been so falsified to this Division I, these lies can neither remove the federal judgment from materials presented to the trial court in briefing and in documents, nor their preclusive effects herein.

Disregard by Respondent for *res judicata* and for preclusive effects of collateral estoppel, and defiance by Respondent for injunctive elements of the Discharge of Debtor issued in Appellant's involuntary bankruptcy action against a Judgment Debtor common both to Respondent as a much-belated junior creditor and also to Appellant as a long-preexisting creditor, especially when taken together, generate other legal-and-logical absurdities underlying equally patent factual-and-legal errors of Respondent regarding interrelated issues of judicial estoppel in the trial court and here once again.

Simply put, Respondent's rather-brief and far-too-casual briefing is focused on issues **not** before the court herein – given prior determinations that certain debts owed to Appellant by the Judgment Debtor common to both parties are time barred so as to preclude collections pursuant to mortgage law of this state – apparently in order thereby to leverage improperly from them, and hence in order thus to falsely frame this appeal as follows:

> Like Giovannini's claims to hold adverse interests in the Rose Point Lane Property [in Kirkland], Giovannini's similar claims regarding the Bel-Red Property [in Bellevue] are equally baseless and untenable. (Opening Brief of Respondent at its 10).

Yet, the strawman's factual-and-legal logic, so averred, is of total illogic.

While several contradictory assertions spring from this propounded false identity – as a falsehood exploited as a framing device for simplistic illogic posited as legal argument – the lion's share of Respondent's feral averments, as made contrary to fact and to law, rest upon judicial estoppel as skewed by incessant repletion of claims that Appellant must have misled either the U.S. Bankruptcy Court or else the King County Superior Court.

Appellant's opening brief herein has again explicated a somewhat-subtle, but nonetheless quite-distinct, difference as to financial-disclosure requirements in the context of Chapter 13 filings regarding property held, personally, and respecting assets held in trust, as a trustee, for another (*cf.* 20-21), together with appropriate references to *In re Kirby* as the seminal case (9 B.R. 901, Bkrtcy. E.D. Pa., 1981) and to leading bankruptcy texts (including Judge Cowan's treatise and *Norton on Bankruptcy*). However, the briefing rests on two pillars requiring no analytic subtlety, whatsoever, because Respondent has succeeded previously in winding the relevant law around a legal axel whereby justice has been strangled and the gasps of the 88-year old woman being garroted has been covered up with name calling yet again exploited by Respondent's legal counsel to mask her expirations.

In particular, Appellant has documented from U.S. Supreme Court, Washington State Supreme Court and Division I decisions constituting the controlling law herein that, since the U.S. Bankruptcy Court **never** relied

on her financial disclosures, the *sine qua non* element for application of judicial estoppel, validly, cannot be met by Respondent, particularly as an legal interloper to a proceeding in which it has **no** legitimate interest, as a much-belated subsequent junior creditor, to a long-preexisting senior creditor, no matter how many times it feigns interest in court-system integrity (while acting at all times with respect to the Bel-Red property in violation of the injunctive component of the Discharge of Debtor as a federal judgment by suing on what the U.S. Supreme Court thus terms a legal nullity).

Additionally, Appellant has also clearly identified in her briefing in this appeal that she did not gain, **and could not have gained**, any benefit by not erroneously filing a Chapter 13 petition listing assets held in trust as her own: both because her personal assets, as disclosed, were far in excess of her total liabilities; and also because her creditors were all paid in full.

As noted in Appellant's opening brief, with this court finding that "state law provides the touchstone for determining whether a party has asserted clearly inconsistent positions supporting judicial estoppel" based on earlier-filed bankruptcy schedules, *Miller v. Campbell*, 137 Wn.App. 762, 772 (2007), its criteria for reviewing her Chapter 13 filing derive from the "logic, common sense, justice, policy, and precedent" mandated as bases for this state's entire jurisprudence as instructions for every court, here, by our state Supreme Court in *King v. State*, 84 Wn.2d 239, 250 (1974).

Clearly, when Appellant could and did gain nothing from the form of the Chapter 13 filing that she made because her disclosed personal assets exceeded her total personal debts, when all of her creditors were promptly paid in full, when no federal or state court has ever relied on that filing and when none could therefore have ever been misled, then all "logic, common sense, justice, policy, and precedent" that frames this state's jurisprudence, as required by our state Supreme Court, cuts against pages of patently self-interested caterwauling because a preexisting creditor attempts to protect the financial interests of her grandchildren in the Bel-Red property against a junior creditor with **no** possible interest therein that is not a legal nullity, and that does not violate the injunction inherent in the Discharge of Debtor that is the legal basis of her rights and that legally precludes its later claim.

In seeking any possible verbal hook upon which to hang some hat, Respondent quotes a bankruptcy-schedule provision clearly referencing an interest in a "trust" as a beneficiary (at its 12 in footnote 4) in order thus to distort the clear meaning of that requirement to throw more mud at Appellant in order to see if enough might stick to overcome all preclusive effects.

Likewise, Respondent's assertions of inequitable actions by Appellant against creditors of a Judgment Debtor in common to her, as a senior creditor, and to it, as a junior creditor, again yields a far larger appearance of inequity (in order to create a make weight) than any inequity (in reality).

The "logic, common sense, justice, policy, and precedent" that has been mandated by our state Supreme Court, as quintessential bases for this state's jurisprudence in *King v. State*, must give real pause for any serious judicial review of Respondent's self-serving insults as a very belated junior creditor to a long-standing senior creditor whose loans of at least many hundreds of thousands of dollars to their common debtor is in evidence, for her senior position, and whose hundreds of thousands of dollars more in property taxes are unextinguishable as a matter of state law under this state's jurisprudence to preserve her position as the senior creditor. While a senior creditor's rights to collect her valid debt from a debtor can be lost, under the law of the case herein, this does not allow any state court at any level to check "logic, common sense, justice, policy, and precedent" at the courthouse door, and a senior creditor owed millions of dollars, including unpaid interest, cannot logically be ascribed an inequity in pursuing funds, *sui generis*, and particularly in seeking precedence over a junior creditor.

Respondent's bald assertions that RCW 6.32.270 can validly apply in circumstances wherein rights in property nominally at issue pursuant to such state statutory law would involve recreation of rights as extinguished under federal law, previously, through a formal Discharge of Debtor – so as to preclude any possibility of any lawful interest either in such a debtor or in any subsequent creditor effectively claiming through such a debtor

by means of some act contrary to the inherent injunction in that discharge – simply do not engage in the substantive legal issue that was presented to this court by the Opening Brief of Appellant regarding this central matter.

However, Respondent's added emphasis inadvertently highlights the key defect in its position, at its 17, in stating that "[i]f ***any*** interests are to be adjudicated, ***all*** the respective interests should be adjudicated," since the point is that the common Judgment Debtor has had ***no*** lawful interest, ***nor*** any possibility of ***any*** lawful interest, in the Bel-Red property, since he accepted the benefits of a formal Discharge of Debtor, as informed by the official Chapter 7 Trustee's report as to that asset, on December 11, 1998.

Nor can Respondent's reference to previous use of RCW 6.32.270, in a separate collection matter not the subject of preclusive effects of the federal judgment at issue herein, create a legally valid means by which it can thereby bootstrap jurisdiction in a state court wherein **none** can exist, particularly when its actions both below, and also herein, all constitute its own violations of a federal injunction inherent in that Discharge of Debtor.

Likewise, given fundamentally different postures of this collection action, which violates a federal injunction, and prior enforcement actions, which did not appear to violate any federal injunction, Respondent errors, as a matter of law, in its casual assertion, at its 20, that judicial estoppel in that instance would be the law of the case herein so as to yield jurisdiction.

Respondent's prowling assertion of some undefined "unfair advantage" by Appellant over a junior creditor, at its 24, violates *King v. State* by the most basic logical error of begging-the-question, since it **assumes** that a senior creditor who has loaned large sums of money to a common debtor is a less legitimate creditor despite proof of her loans and of her nonextinguishable advances for property-tax payments documenting the opposite, even had she not obtained absolute rights in the Bel-Red property as a direct legal consequence of the Discharge of Debtor issued pursuant to the involuntary bankruptcy filed in order thus to protect her property interests.

While Respondent denies adverse possession for asserted failures to make out the necessary elements required, in a casually generic fashion, the state law previously briefed indicates that mechanisms evidencing the required elements overlap and rest on the particular circumstances in each instance, which in this case includes acknowledgement thereof by the U.S. Bankruptcy Court's official Chapter 7 Trustee, and which includes sworn statements by Appellant as to her having dispossessed the common debtor (*versus* the falsified assertion that "Knedlik voluntarily conveyed his interests in Blue Rapids to her" as is asserted by Respondent, falsely, at its 29).

Certainly on summary judgment, wherein all presumptions operate in favor of the nonmoving party, the trial court erred in this matter as well, even without regard to its lack of valid jurisdiction over the asset at issue .

III. CONCLUSION

By court rule, because Respondent avoids substantive discussion of these central factual-and-legal issues in its opening brief, RAP 10.3 directly precludes Appellant from analysis beyond her initial careful presentations.

However, as that review of relevant facts and of dispositive law has made clear through step-by-step examinations – disparaged by Respondent as a "long and convoluted argument concerning judicial estoppel" and as "long and meandering arguments" regarding adverse possession, *inter alia* – the trial court erred in several fundamental respects in granting summary judgment to Respondent based on entirely patent errors of law, both as to federal bankruptcy jurisprudence and also as to state equity standards, state statutes and state decisional law in definitive interpretation thereof by the Washington State Supreme Court and by this Division I, each of which is dispositive, herein, if applied correctly rather than without focus on judicial duties, as well as in denying partial summary judgment to Appellant, similarly dispositive, herein, if thus adjudged rightly instead of wrongly.

Central to these substantial, indeed egregious, errors were trial court failures to conform its analyses of facts and of law as proffered by Respondent and by Appellant to mandatory requirements for valid application of the doctrine of judicial estoppel in this state as legally established, highly explicitly, both by our state Supreme Court and also by this Division I, so

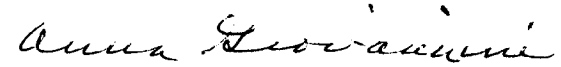
as to document, squarely, that all rights and all interests in the Bel-Red real property at issue herein legally held by Appellant are not subject to any legitimate challenge to those rights and interests due to the specific requirements for any valid imposition of judicial estoppel; further failures below to accept *res judicata* and preclusive effects of collateral estoppel legally controlling herein as matters of law such that every right and every interest in the real property at issue herein inheres, legally, in Appellant as direct legal consequences of the Discharge of Debtor granted by the U.S. Bankruptcy Court, on December 11, 1998, to a Judgment Debtor common to her as a preexisting senior creditor and to Respondent as a much-belated junior Judgment Creditor so as to have thereby cut off all of said Judgment Debtor's rights, interests and claims therein through her previous filing of an involuntary bankruptcy petition against him in order to affect such legal termination in the real property at issue herein; and yet further failures due to injudicious bootstrapping through misapplication of judicial estoppel from one legal context to another entirely different legal context and due to disregard for or suppressions of *res judicata* and collateral estoppel to reach nominal-but-nonexistent bases for equitable subordination without the showings required for legitimate exercise of that equitable power, *inter alia*, as has been more fully examined and explicated in the Opening Brief of Appellant as filed herein previously.

While abuse of discretion below is made out repeatedly therein, the first cause starts with a misrepresentation by legal counsel in open court in falsely asserting that "We're in exactly the same procedural posture this time, Your Honor" (VRP at 2), and ends with the trial court accepting its serial self-interested *ad hominem* attacks on an 88 year old woman *in lieu* of fulfillment of core judicial duties as has been briefed therein and herein.

Whether taken together or viewed separately, erroneous application of purported judicial estoppel, as imposed below, has yielded precisely what our state Supreme Court has indicated to be improper, in *Miller v. Campbell*, 164 Wn.2d 529 (2008) at 544, because Respondent, with no possibly lawful interest in property at issue herein, has exploited deceptive manipulation of the court below in order to encourage that court to grant its self-interested collection ends in the guise of its *faux* interest in the judicial system's integrity, even as it has thus undermined that core probity, while operating in violation of a federal injunction prohibiting its actions.

Dated this 19th day of September, 2011, and

Respectfully submitted,



Anna Giovannini, Appellant *pro se*

CERTIFICATE OF SERVICE

The undersigned Appellant Anna Giovannini hereby certifies on her oath, through her signature below, that her corrected Reply Brief of Appellant in this matter was filed with Division I of the Court of Appeals on September 22, 2011, and was also delivered on that day to local legal counsel for Respondent Spark Networks, PLC, Dorsey & Whitney LLP.

DATED this 22nd day of September, 2011.

Anna Giovannini

Anna Giovannini, *Pro Se*

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