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CASE NO. 72605-6-I

COURT OF APPEALS DIVISION ONE OF THE STATE OF
WASHINGTON

DONALD F. WOLPH and TERESA A. WOLPH, husband and
wife,

Appellants,

v.

LINDA JEAN SAPP, as Personal Representative of the Estate of
Barbara Priscilla Harrington, deceased,

Respondent.

Appellants' Opening Brief

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I. ASSIGNMENTS OF ERROR

- A. The trial court erred in granting summary judgment because when viewing the contract in light of the relevant contextual evidence there is more than one reasonable inference.**
- B. The trial court erred when it ruled that Woph's claim was discharged in bankruptcy.**
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- D. The trial court erred when it ruled that Harrington lacked the mental capacity to contract.**
- E. The trial court erred when it ruled that Wolph's claim was untimely filed pursuant to RCW 11.40.051.**
- F. The trial court erred when it ruled that Wolph's claim was quieted because it was time barred by both RCW 11.40.051 and RCW 4.16.040.**

II. INTRODUCTION AND ISSUES RELATED TO ASSIGNMENT OF ERROR

The underlying case was brought to enforce an obligation on a promissory note dated October 24, 1984 between Donald Wolph and his mother, Barbara Harrington, for the sale of the subject property for \$15,000. CP-194-95. Harrington stopped making payments in 2000, but Wolph did not foreclose or bring an action to collect the debt.

Wolph argues that the contextual evidence shows the parties intended the debt to be paid in full, but that Harrington would receive a

forbearance during her lifetime if she fell behind in payments. Their intentions are clear when viewed in light of the circumstances surrounding the contract formation and both parties' subsequent acts and conduct. Finally, Wolph argues that Harrington's reaffirmed the debt in her 2003 bankruptcy proceeding and in her 2009 handwritten letter attached to her will, which takes the debt outside the running of the statute of limitations. CP-41-43, 88.

III. STATEMENT OF CASE

Donald Wolph and his mother, Barbara Harrington, purchased the property that is the subject of this lawsuit in 1972 with a loan guaranteed by Wolph. CP-188. Prior to their purchasing the subject property, Wolph lived on and made repairs to a different property in which Harrington had some form of ownership. CP-180. When that property was sold, Harrington received reimbursement for Wolph's repairs. Instead of reimbursing Wolph, both he and Harrington decided to use the reimbursement funds as a down payment for the subject property. *Id.* Shortly thereafter, Harrington and the entire family, other than her daughter, Linda Sapp, moved into the house situated on the subject property. Wolph frequently assisted Harrington with monthly payments on the mortgage or other financial obligations she could not meet. *Id.*

Wolph subdivided the property into two (2) lots, so Harrington could sell the existing house because its maintenance was burdensome, even with Wolph's assistance. CP-181. Harrington moved to Ravensdale around 1977. She sold the lot on which the house was situated, and bought a new house and a country store in Ravensdale with the proceeds. CP-189-90. Even though Wolph had an ownership interest in the property, he received no share of the proceeds. CP 191-92.

After the sale, Harrington released her interest in the remaining lot. Wolph built a full sized basement to situate a modular home, but shortly after its completion, he married and moved to Seattle. CP-181.

Some years later, Harrington sold the house and the country store in Ravensdale and sought Wolph's help because she had no place to live. *Id.* Wolph agreed to sell Harrington the remaining lot, improved with the full sized basement, but was concerned his mother may sell this house as well and find herself in a similar situation. CP-182, 193. Wolph relayed his concern to his mother and proposed he include a conditional provision limiting her ability to convey or encumber the property. CP-193. Harrington acknowledged that such a provision was necessary it was eventually included in the agreement. CP-194-195.

The parties agreed Harrington would pay a total of \$15,000 for the lot as follows: \$3,500 as a down payment, with a \$500 credit for a note

she held against Wolph; \$5,000 as a conditional credit against the purchase price immediately; and repayment of the balance (\$6,500) with interest at 12% per annum at a monthly payment of \$105.31. The \$5,000 conditional credit would be cancelled and added to the principal if Harrington sold sublet, subdivided, conveyed or altered the title, or attempt to, within ten (10) years of the sale. CP-194-95. The agreement was reduced to writing, negotiated and approved by Harrington's attorney, John Astle, on October 24, 1984. CP-194-96.

Wolph applied the credit immediately and reduced the purchase price to \$10,000. Harrington paid \$3,500 down and the balance (\$6,500) was due and payable pursuant to the terms of a promissory note. CP-197-99. This was and is the only debt Harrington owed Wolph at the time of her death or at any time prior to her death. CP 183, para. 14.

After closing, Harrington bought a mobile home and moved it onto the lot with the foundation.

Thereafter, Harrington made period, partial payments on the obligation, until 2000. CP-101-24, 177. Harrington filed for bankruptcy in 2003, but acknowledged and reaffirmed the debt due and owing to Wolph in her bankruptcy schedules. CP-88 Chapter 7 Individual Debtor's Statement of Intention. In a letter to his sister, Anna Harrington, Wolph indicated he had made sure all the family members knew he would not

foreclose his mother's interest in the property or leave her homeless. CP 207-08. Wolph allowed his mother and sister to continue living on the property from 2000 until sometime in 2011 when Harrington moved to nearby care facility. Wolph had told his mother he would not protest or start any foreclosure action while she lived in the home without payment. CP-193, 183-184.

Upon Harrington's death in 2012, Wolph contacted both Linda Sapp and Anna Harrington, the then co-personal representatives of the estate, and asked for a copy of the will. CP-186. When both were nonresponsive, he obtained a copy through his attorney. In another legal proceeding involving the will, PR Sapp proclaimed in open court that the heirs would not pass the property through probate, but would let the King County Liens foreclose. CP-186. Wolph relied on that statement and did not file a claim against the estate until he learned, through his attorney, who searched the court records, the PR did pass the property through probate. Wolph immediately filed a claim against the estate. CP-156. The PR denied the claim and Wolph filed the underlying complaint on rejected creditor's claim and for declaratory relief against the PR and Harrington's estate. He also commenced a non-judicial foreclosure. CP-165-68. The defendants countersued to quiet title and for an injunction to stay the sale of the property until this case was decided. CP-19-21. Defendants moved

for summary judgment arguing Wolph's claims were barred by the statute of limitations and no acknowledgement was made to toll its running, his claim was discharged by bankruptcy, and Harrington lacked the capacity to acknowledge any debt at the time she wrote the letter attached to her will. CP-23-31. The trial court granted summary judgment. CP-210-11.

IV. ARGUMENT

A. APPLYING THE CONTEXT RULE, A JURY COULD CONCLUDE THE PARTIES INTENDED TO CREATE A FORBEARANCE DURING HARRINGTON'S LIFETIME, BUT FOR WOLPH TO COLLECT, AND HARRINGTON TO PAY, THE ENTIRE DEBT.

i. Standard of Review

This court reviews summary judgment motion de novo. *Benjamin v. Washington State Bar Ass'n*, 138 Wn.2d 506, 515, 980 P.2d 742 (1999). Summary judgment is only appropriate if there are no genuine issues of material fact and "the moving party is entitled to judgment as a matter of law." *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993); CR 56(c). All reasonable inferences should be construed in the light most favorable to the nonmoving party. *Id.* "The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion." *Id.* citing *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)

When interpreting a contract, summary judgment is inappropriate if “the parties' written contract, viewed in light of the parties' other objective manifestations, has two or more reasonable but competing meanings.” *Go2Net, Inc. v. C I Host, Inc.*, 115 Wn. App. 73, 83, 60 P.3d 1245 (2003) citing *Hall v. Custom Craft Fixtures, Inc.*, 87 Wn. App. 1, 10, 937 P.2d 1143 (1997). Interpreting the provisions of a contract is only a question of law when the interpretation does not depend on the use of extrinsic evidence or there is only one reasonable inference from the extrinsic evidence. *Wilkinson v. Chiwawa Cmty. Ass'n*, 180 Wn.2d 241, 265, 327 P.3d 614 (2014). Otherwise, it is a question of fact that should be determined by a trier of fact. *Id.*

Here, the contract between Wolph and Harrington depends on the use of extrinsic evidence. The parties made several other objective manifestations, including Wolph's letter to Harrington, Harrington's bankruptcy documents and her handwritten letter attached to her will. CP-41-43, 53, 88. In light of these manifestations, there are at least two reasonable competing meanings. As argued in detail below, when the extrinsic evidence is construed in the light most favorable to Wolph, one reasonable interpretation is that both parties always intended Wolph to be paid in full, but understood he would not collect while Harrington was still alive and living on the property.

ii. The Context Rule

“The touchstone of contract interpretation is the parties' ‘intent.’” *Go2Net*, 115 Wn. App. at 83–84 quoting *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996). The Washington Supreme Court expressly rejected the “plain meaning rule” in favor of the “context rule.” *Berg v. Hudesman*, 115 Wn.2d 657, 678, 801 P.2d 222 (1990). In doing so, it held that evidence of the circumstances surrounding the contract creation is admissible regardless of any ambiguity or unambiguity. *Id.* In other words, the context rule applies to all contracts. *Tjart v. Smith Barney, Inc.*, 107 Wn. App. 885, 895, 28 P.3d 823 (Ct. App. Div. 1 2001).

The context rule does not conflict with Washington's objective manifestation theory of contracts, but aids it. Under the objective manifestation theory, courts look for the parties' intent as objectively manifested rather than their unexpressed subjective intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Thus, the court considers only what the parties wrote, giving words in a contract their ordinary, usual, and popular meaning unless the agreement as a whole clearly demonstrates a contrary intent. *Id.* at 504. The context rule furthers

this goal because it disregards any inquiry about whether the term is ambiguous or unambiguous and helps the court interpret contract terms more accurately. *See Brogan & Anensen, LLC v. Lamphiear*, 165 Wn.2d 773, 775, 202 P.3d 960 (2009). Ambiguous terms are interpreted only after the relevant evidence is admitted, and even then are interpreted in light of that evidence. *Berg*, 115 Wn.2d at 667-68.

Relevant evidence may include: (1) the subject matter and objective of the contract; (2) all circumstances surrounding its formation (3) the subsequent acts and conduct of the parties; (4) the reasonableness of the respective interpretations advocated by the parties; (5) statements made by the parties in preliminary negotiations; and (6) usage of trade and course of dealings. *Id.*

Washington courts have consistently ruled in favor of admission. *Day v. Santorsola*, 118 Wn.App. 746, 756, 76 P.3d 1190, 1197 (Ct. App. Div. 1, 2003) (extrinsic evidence showing the way the Committee interpreted and applied the covenants during its review process was admissible when the restrictive covenant did not specify); *Miller v. Kenny*, 180 Wn. App. 772, 325 P.3d 278 (Ct. App. Div. 1, 2014) (testimony from the drafter was admissible to show his intent in drafting a settlement agreement.);

Lokan & Assocs., Inc. v. Am. Beef Processing, LLC, 177 Wn. App. 490, 311 P.3d 1285, 1289-90 (Ct. App. Div. 1 2013) (whether parties intended availability of funds as a condition precedent to any payment obligation or as a timeframe for payment was construed in light the parties' actions during negotiation and formation); *Carpenter v. Remtech, Inc.*, 154 Wn. App. 619, 624-25, 226 P.3d 159 (Ct. App. Div. 3 2010) (circumstances surrounding signing of indemnity agreement and conduct of the parties was relevant to determine its scope); *Washington Prof'l Real Estate LLC v. Young*, 163 Wn. App. 800, 260 P.3d 991 (Ct. App. Div. 3 2011), review denied, 173 Wn. 2d 1017, 272 P.3d 247 (2012) (evidence of the interaction between the real estate broker and real estate company were admissible to prove the meaning of a tail provision).

iii. Contextual evidence of Wolph's and Harrington's contract

Here, the objective of the contract, the context surrounding formation and the subsequent acts and conduct of the parties are crucial to interpreting the contract because the language of the contract does not fully express their intent. Both Wolph and Harrington intended that Wolph would not foreclose his mother's interest or charge any interest on the loan from 1993 forward, during her lifetime. CP-182-83. Both parties also

understood that Wolph intended to collect, and Harrington intended to pay, the entire debt. This is evidenced by three important events.

First, Wolph insisted on including a provision for charging late fees, although he also stated, in a letter to Harrington, "I am not intending to enforce this item at this time but it must be included." CP-53. He reiterated his intent to include, but not enforce, the late fee provision in another letter to Harrington and her attorney, John Astle, dated October 14, 1984. CP-196.

Wolph explained that he was concerned about preserving his rights against a third party who may acquire the contract by operation of law. CP-53. Harrington had lost her property in Ravensdale and Wolph wanted to make sure he could collect the entire debt, including late fees, from any third party who acquired the property, or upon Harrington's death. This is evidence the parties intended Wolph to collect the entire debt, but, unlike an agreement with a bank, Wolph would not foreclose if she made late payments.

Second, the contract between Wolph and Harrington reduced the purchase price for the property by \$5,000 if Harrington promised not to "sell(s), sublet(s), subdivide(s), convey(s) or alter(s) the title" to the property. CP-194. When she violated this provision, Wolph added the

credit to the principal, continued to not charge late fees and did not foreclose. *See* CP-169-178. His actions constituted a forbearance, not forgiveness.

Wolph inserted this provision to deter his mother from selling or losing the house and having her end up with no place to live in for her remaining years. It was a legitimate concern because she had lost her Ravensdale property years earlier. Wolph explained his and Harrington's intentions that his mother had a place to live for the rest of her life in a letter to Anna Harrington, requesting a copy of the will:

As you, Linda, Bonnie and Tim well know and as I advised your real estate people we were never paid off for the property, we promised mom that we would not foreclose on her if she didn't make the payments so that she would always have a place to live and as I had ownership of the land she could never sell it and loose another home.

CP-207-08.

Third, Harrington re-affirmed the debt on two separate occasions: during a bankruptcy proceeding and in a handwritten letter attached to her will. CP-53, 88. When Harrington filed a Chapter 7 bankruptcy petition on February 10, 2003, she re-affirmed all of her secured obligations, including the Wolph obligation, under penalty of perjury. CP-66 Signature Page for Petition; CP-73 Creditors Holding Secured Claims; CP-88 Chapter 7 Individual Debtor's Statement of Intention. Harrington's

reaffirmation was clearly voluntary and she was represented by counsel, Ruth Moen, at all material times during the bankruptcy proceeding. CP-66. Even though Harrington stopped making payments on the Wolph obligation in 2003, she re-affirmed it under 11 USC §524 (c), to preclude its discharge in the voluntary, Chapter 7 proceeding.

Harrington re-affirmed the debt again in a handwritten letter attached to her will. CP-41-43. As further evidence of the re-affirmation, Harrington excluded Wolph as a beneficiary in her will, executed in October of 2000, only months after she stopped making payments on her obligation to him. CP 169-178. This shows she intended repayment of the debt as his inheritance.

Wolph allowed his mother and sister to live in the house “rent free” for eleven years after the payments stopped, but exercised his contractual right to collect and foreclose at the earliest time after her death. CP-98, 165-68, 207-08

The defendant, Sapp, alleged that the letter Wolph wrote to Harrington stating he had no plans to foreclose, was a modification. CP-33, 53, 193. But, viewed in light of the relevant contextual evidence, including the absence of any integration or merger clause, that letter shows he intended to collect the full debt, but would give his mother a forbearance during her lifetime and would only foreclose and enforce the

late charge penalty in the event the contract was “turned over to someone else.” CP 53, 193.

These conditions were germane to the contract, were insisted upon by Wolph and provide the “context” in which the contract was formed. Wolph’s letter to Harrington, the subsequent Agreement Respecting Transfer of Title, and the deed of trust and promissory note comprised the totality of the contract because there was no integration or merger clause. CP-53, 194-96. Under the context rule, it is admissible to prove the parties’ intent in structuring the transaction as they did.

Wolph carried out the agreement as intended; he refrained from foreclosing on Harrington after she ceased payments under the contract in 2000. Now that she has passed, Wolph’s forbearance is lifted and he should be entitled to enforce the contract and receive payment in full under the contract.

B. WOLPH’S CLAIM WAS NOT DISCHARGED IN BANKRUPTCY BECAUSE HARRINGTON RE-AFFIRMED THE DEBT

Sapp argued that Wolph’s claim was discharged in Harrington’s May 13, 2003 Chapter 7 bankruptcy proceeding. CP-30. That statement is incorrect. Harrington, formally and pursuant to the U.S. Bankruptcy Code filed and signed the “Chapter 7 Individual Debtor’s Statement of

Intention.” CP-88. That document specifically names Woph and his wife as creditors and re-affirms the debt in compliance with the U.S.

Bankruptcy Code 11 U.S.C. §524(c). Sapp’s pleadings are in error.

C. HARRINGTON’S HANDWRITTEN LETTER ATTACHED TO HER WILL SATISFIES ALL THE ELEMENTS OF AN ACKNOWLEDGEMENT AND THEREFORE TOLLED THE STATUTE OF LIMITATIONS

Although RCW 4.16.040 requires an action upon a contract in writing must be brought within six years, RCW 4.16.280 revives a debt “contained in some writing signed by the party to be charged thereby.”

The statute of limitations is not a meritorious defense. Therefore, the law and the facts should not be strained in favor of dismissal on those grounds.

Hein v. Gravelle Farmer’s Elevator Co., 164 Wn. 309, 315, 2 P.2d 741 (1931); *Bain v. Wallace*, 167 Wn. 583, 588, 10 P.2d 226 (1932).

Neither RCW 4.16.280 nor any Washington case requires the acknowledgement of a debt to be direct, unqualified and/or unconditional. Here, the trial court strained the law and the facts to find the claim was barred by the statute of limitations.

A written acknowledgement must: (1) recognize the existence of the debt; (2) be communicated to the creditor or to another person with intent that it be communicated to the creditor; and (3) not indicate an intention not to pay. *Jewell v. Long*, 74 Wn. App. 854, 857, 876 P.2d 473

(Ct. App. Div. 2 1994) citing *Cannavina v. Poston*, 13 Wn.2d 182, 195, 124 P.2d 787 (1942). When deciding if an acknowledgement occurred, the courts favor inclusiveness rather than exclusiveness. *Cannavina*, 13 Wn. 2d at 199. (a letter stating that “*call it even for which I owe you*” was a sufficient acknowledgement to toll the statute of limitations). *Jewell* 74 Wn. App. at 857, (when the debtor delivered additional collateral as security she acknowledged the debt); *Fetty v. Wenger*, 110 Wn . App. 598, 600, 36 P.3d 1123 (Ct. App. Div. 1 2001), as amended on denial of reconsideration, (Mar. 27, 2002) (a client's letter requesting itemization of an attorney's fee restarted the statute of limitations).

Here, all the elements were met: (1) Harrington recognized the existence of the debt in her statement of intention during her 2003 bankruptcy proceeding and in a letter she prepared and signed in her own handwriting and attached to her will. CP-41, 88; (2) The 2003 re-affirmation was communicated to Wolph and the acknowledgement attached to her will was communicated her six children, including Wolph, and filed in the King County Superior Court, at her direction. CP-41-43; and (3) it did not indicate an intention not to pay. *Id.*

i. Existence of the debt

Acknowledging the exact amount Harrington agreed to pay for the lot is a clear and unequivocal intention on her part to keep the debt alive.

Griffin v. Lear, 123 Wn. 191, 199, 212 P.271 (1923). Harrington stated Wolph “agreed to take \$15,000 for his portion as King County went against two lots,”¹ and the referenced debt is the only debt by and between Harrington and Wolph which removes any uncertainty about which debt she was referring.

“Agreed to take” is in the past tense, but does not indicate, as a matter of law, that the debt was paid, as the defendant argued on summary judgment. Another equally reasonable interpretation is that it was Harrington’s intent to acknowledge she owed the debt. Because there are two reasonable, but competing interpretations, its interpretation should be determined by a trier of fact. *Go2Net*, 115 Wn. App. at 83.

ii. Communicated to the debtor

Harrington’s letter communicated to all the beneficiaries that she re-acknowledged the existence of the only debt she owed to Wolph. Sapp may argue that the intention to communicate the letter to the creditor is not present. But, that argument is misplaced. Harrington stated in the letter itself: “*Susan* (?) was witness to what I wrote to go with the will.” CP-41. That statement is evidence of her intention to publish the letter with her

¹ Appellant Wolph testified in his declaration that his mother’s “5” looks like a “7.” For that reason, the reference to that part of the writing will be as if it were a “5.” See: CP 182, footnote 1.

will so that whoever had an interest in the will would see the letter. In addition, the will was filed, at her direction. Upon filing, Harrington's letter became a public record and gave notice of the acknowledgement of the debt to the world.

iii. No Indication of an Intention Not to Pay

Because there is a rebuttable presumption that the writer intends to pay the debt, the writer does not have to expressly agree to pay it to toll the statute of limitations. *Cannavina*, 13 Wn. 2d at 195. Harrington's statement does not indicate an intention not to pay and it was the final statement she made regarding the debt due and owing Wolph.

In the light most favorable to the nonmoving party, all the elements were met and there was a valid acknowledgement, which tolled the statute of limitations. Therefore, the claim was timely and summary judgment was inappropriate.

D. HARRINGTON WAS PRESUMPTIVELY SANE AND NO CLEAR, COGENT, AND CONVINCING EVIDENCE WAS PRESENTED THAT SHE LACKED THE MENTAL CAPACITY TO CONTRACT

A party may void a contract as a result of a physical or mental condition, but merely showing that the party was of unsound mind or insane when it was made is insufficient. The proper inquiry is whether the person possesses sufficient mind or reason to enable him to comprehend

the nature, terms and effect of the contract in issue. This is a factual inquiry and the appropriate time at issue is when the transaction occurred, not when the contract is sought to be avoided. A party is presumed to be sane unless there is clear, cogent and convincing evidence otherwise. *Page v. Prudential Life Ins. Co. of Am.*, 12 Wn.2d 101, 109, 120 P.2d 527 (1942). *See also Harris v. Rivard*, 64 Wn.2d 173, 175, 390 P.2d 1004 (1964); *Johnson v. Perry*, 20 Wn. App. 696, 582 P.2d 886 (Ct. App. Div. 1 1978).

Mere weakness, imbecility of mind, eccentricity or partial dementia is sufficient; it must be a general mental derangement that prevents the party from comprehending the nature of the contract and from freely and intelligently consenting. *In re Gallagher's Estate*, 35 Wn. 2d 512, 519-20, 213 P.2d 621 (1950). Furthermore, the mental defect or derangement must directly affect the contract. *Id.* Sapp argues that Harrington lacked sufficient mental capacity to write the letter attached to her will. CP-33. As proof, she relies on a medical record stating Harrington's mental status is otherwise as of January 23, 2007, some five (5) years before her death in 2012 and some three (3) years before she wrote the letter, in December of 2009. CP-10-12, 59. That medical record also stated that Harrington was "able to relate distant and fairly recent, and immediate memory. She is directable. She is fluent in speech with

occasional paraphasic errors. Visual fields are full. Extraocular movements are intact. No evidence of nystagmus.” CP-59.

Sapp did produce a document dated July 18, 2007 that stated Harrington has “multi infarct dementia.” CP-60. However, there is no explanation, in any evidence produced by Sapp, about how the “multi infarct dementia” was diagnosed or how it had a direct bearing on the letter or her ability contract, as required by *In re Gallagher's Estate*, 35 Wn. 2d at 519-20.

Harrington’s medical records do not prove general mental derangement that would prevent the party from comprehending the nature of the contract. In addition, the document at issue is not a contract, but a voluntarily written letter containing the details of Harrington’s life and family. Therefore, the medical records proffered as proof she lacked the mental competency or capacity to contract are inappropriate. The letter does not make Harrington a party to any new contract or create rights and responsibilities under a contract. On its face, the letter is lucid and contains nothing that could be considered out of the ordinary.

The trial court was required to presume Harrington was sane and Sapp did not produce clear, cogent and convincing evidence to the contrary sufficient to rebut that presumption.

**E. RCW 11.40.051 CANNOT BAR WOLPH'S CLAIM
BECAUSE IT IS SECURED WITH THE
DECEDENT'S REAL PROPERTY AND
THEREFORE EXEMPT FROM THE CHAPTER'S
TIME CONSTRAINTS**

Without specifically stating so, the trial court agreed with Sapp that Wolph's claim was filed late under RCW 11.40.051, and was therefore barred, and granted summary judgment. But, Wolph's claim is exempt from chapter 11.40, by RCW 11.40.135 because it is secured with real property of the decedent. RCW 11.40.135 provides in relevant part:

If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.40.070.

Therefore, Wolph's claim was not untimely and summary judgment should not have been granted.

**F. WOLPH'S CLAIM SHOULD NOT HAVE BEEN
QUIETED BECAUSE IT WAS NOT TIME BARRED
BY RCW 11.40.051 OR RCW 4.16.040**

For all the reasons discussed above, Wolph's claim was timely and should not have been quieted.

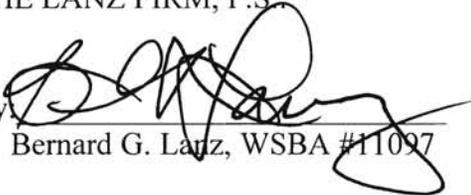
V. CONCLUSION

For the reasons set forth above, this court should reverse the trial court's order for summary judgment and remand the case for trial.

Date: January 12, 2015

THE LANZ FIRM, P.S.:

By:



Bernard G. Lanz, WSBA #11097

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COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

DONALD F. WOLPH and TERESA A.)
WOLPH, husband and wife,)
)
Appellants,)
)
v.)
)
LINDA JEAN SAPP, as Personal)
Representative of the Estate of Barbara)
Priscilla Harrington, deceased)
)
Respondent.)

Court of Appeals No. 72605-6-I
DECLARATION OF SERVICE:
APPELLANT'S OPENING BRIEF

[Handwritten signature]
JAN 12 PM 2:15
CLERK OF COURT
COURT OF APPEALS DIVISION I
SEATTLE, WA

I, Kathryn M. Daines, declare as follows: I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action. My business address is Suite 333, 216 1st Avenue South, Seattle, WA 98104.

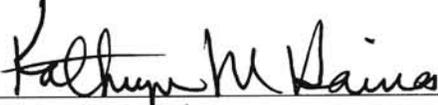
On the 13th day of January 2015, I caused true and correct copies of the "Appellant's Opening Brief" to be served via ABC Legal Messenger Service, Inc. on the following:

Brian J. Hanis
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I declare under penalty of perjury under the laws of the State of Washington that the
above is true and correct.

DATED this 12th day of January 2015.


Kathryn M. Daines