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NO. 82294-8

SUPREME COURT
OF THE STATE OF WASHINGTON

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JAMIE SESSOM and STACY RAY SESSOM, husband and wife,

Respondent,

v.

GORDON H. RINKE and JANE DOE RINKE, husband and wife,

Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR.

1. The Trial Court erred in denying Rinke's Motion to Vacate Judgment Creditor's Extension of Lien as Void Ab Initio.
[CP 120; RP July 25, 2008, Page 7.]
2. The Trial Court erred in concluding that: Based on the plain language of the statute, RCW 6.17.020(3), which allows for a ten-year extension of a judgment lien, the provision was intended by the Legislature to be both remedial and retroactive. [Conclusion of Law #1, CP 118, RP July 25, 2008, Pages 2-3.]
3. The Trial Court erred in concluding that: RCW 6.17.020(3) applies to all cases where a judgment has been rendered, and does not limit the extension of a judgment to judgments rendered after June 9, 1994. [Conclusion of Law #2, CP 119, RP July 25, 2008, Page 3.]
4. The Trial Court erred in concluding that: Retroactive application of RCW 6.17.020(3) to judgments entered before June 9, 1994, does not affect a substantive right. [Conclusion of Law #3, CP 119, RP July 25, 2008, Pages 6-7.]

5. The Trial Court erred in relying on State v. Morgan - Division III, and Summers v. Department of Revenue - Division I in determining whether or not retroactive application of RCW 6.17.020 affects a substantive right of debtor. (Conclusions of Law #4, CP 119, RP July 25, 2008, Page 3.)¹
6. The Trial Court erred by concluding that: In Shepherd, it was the actual cessation of the lien that was the substantive right of the debtor. (Conclusion of Law #6, CP 119, RP July 25, 2008, Pages 5-6.)²
7. The Trial Court erred by concluding that: The facts in the instant case are distinguishable from Shepherd because the right to enforce the lien never ceased through the passage of time, unlike in Shepherd, where the debtor acquired a substantive right in the actual cessation of the lien. (Conclusion of Law #7, CP 119, RP July 25, 2008, Page 5.)

¹ State v. Morgan, 107 Wn. App. 153 (2001) - Division III (review denied State v. Morgan, 145 Wn.2d 1024, 41 P.3d 484 (Wash. Feb 05, 2002) (Table, NO. 71620-0) (distinguished by State v. Jaime, 120 Wn. App. 1037, not reported in P.3rd, (2004) Division III); and Summers v. Department of Revenue, 140 Wn. App. 87 (2001) - Division I (review denied Department of Revenue v. Summers, 144 Wn.2d 1004, 29 P.3d 718 (Wash. Jul 10, 2001) (Table, NO. 70810-0).

² The Conclusions of Law mistakenly referred to the case as State v. Shepherd. The case briefed and argued was American Discount Corporation v. Shepherd, 160 Wn.2d, 156 P.3rd 858 (1993).

8. The Trial Court erred by concluding that: In the instant case, no substantive right attached to the debtor, because it is not until there is a cessation of the lien that a substantive right would attach. (Conclusion of Law #8, CP 120, RP July 25, 2008, Pages 6-7.)

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Does the language of RCW 6.17.020(3) demonstrate an intention on the part of the Legislature to retroactively apply the provision to judgments rendered prior to June 9, 1994, the effective date of enactment? (Assignment of Error #1, 2, 3, 5.)
2. Even if the Legislature intended RCW 6.17.020(3) to be retroactive, can the provision be applied retroactively if doing so affects/impairs a substantive right of the debtor? (Assignment of Error #1, 3, 4, 5, 6, 7, 8.)
3. When does a judgment debtor's substantive right to cessation of the enforcement or collection of a judgment attach, and does retroactive application of RCW 6.17.020(3) affect a debtor's substantive rights? (Assignment of Error #1, 4, 5, 6, 7, 8.)

III. STATEMENT OF THE CASE.

(A) Essential Question Presented – Does the retroactive application of a statute extending time for execution on a lien adversely affect a debtor’s substantive right to cessation of a lien?

At the time of entry of the original 1989 default judgment in this case, a judgment automatically expired ten years after entry. Extension of liens was expressly prohibited by statute.

In 1994, almost five years after entry of the default judgment, the Legislature amended RCW 6.17.020 to permit extension of judgment liens for an additional ten years.

The essential question of this case is whether a 1994 statutory amendment to RCW 6.17.020, permitting extension of a judgment lien for an additional ten years, can be given retroactive effect to a judgment entered in 1989 without adversely affecting the debtor’s substantive right to cessation of a lien?

(B) Overview of the Case – Motion to Void Extension of Judgment.

Appellant (hereinafter referred to as “Rinke”) filed a motion and memorandum in the Trial Court seeking to void a 1999 extension of a 1989 judgment on the grounds that subsection (3) of RCW 6.17.020, enacted in 1994, could not be applied retroactively to extend time for collection or enforcement of the 1989 judgment for an additional ten years because doing so adversely

affected Rinke's substantive right to cessation of a lien.³ [CP 35-36, and CP 37-90.]

The Trial Court denied Rinke's motion [CP 117-120], concluding that retroactive application of RCW 6.17.020(3) did not affect Rinke's substantive right to cessation of the lien because it is not until there is a cessation of the lien that a substantive right would attach. [CP 119, Lines 4&5; RP July 25, 2008, Page 5.]

(C) Relevant Facts of the Case Are Undisputed.

On September 20, 1989, a default judgment, in the amount of \$29,083.90 plus interest, in a civil matter, was entered against Rinke in favor of Respondents, Jamie Sessom and Stacy Ray Sessom (hereinafter referred to as "Sessom"). [CP 12-13.]

In 1989, at the time the original judgment was entered, RCW 6.17.020 and RCW 4.56.210 limited collection on, or enforcement of, a judgment to a period of ten years. [CP 60-63, CP 64-65.]

In 1994, the legislature amended RCW 6.17.020 by adding a new section (3), which permitted extension of the time for collection or enforcement of a judgment for an additional ten-year period. [CP 60-62.]

³ In 1989 when the original judgment was entered, RCW 4.56.210 provided, in part, that "... No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years." [CP 64-65.]

On June 24, 1999, Sessom obtained a ten-year extension of the 1989 judgment pursuant to RCW 6.17.020(3). [CP 22, 24, 25-26.]

On January 14, 2008, Gordon Rinke's mother, Regina Rinke, died having executed a Last Will and Testament, which designated Gordon as a beneficiary of her estate. [CP 28.]

(D) Trial Court Concluded That RCW 6.17.020(3) Was Intended by the Legislature to Be Retroactive and That Retroactive Application Did Not Affect A Substantive Right.

The Trial Court denied Rinke's motion to void the 1999 extension of the judgment. [CP 120.] The Court concluded that, based on the plain language of RCW 6.17.020(3), the provision was intended by the Legislature to be both remedial and retroactive. [CP 118, RP July 25, 2008, Pages 2-3.]

The Court also concluded that RCW 6.17.020(3) applies to all cases where a judgment has been rendered: that the statute does not limit the extension of a judgment to judgments rendered after June 9, 1994, the effective date of subsection (3). [CP 119, RP July 25, 2008, Page 3.]

The Court further concluded that retroactive application of RCW 6.17.020(3) to a judgment entered before June 9, 1994, does not affect a debtor's substantive right; reasoning that it is not until there is a cessation of the lien that a substantive right attaches. [CP 120, RP July 25, 2008, Pages 6-7.]

(E) Procedural History.

On April 19, 1999, Sessom filed a Summons and Complaint for Personal Injuries [CP 1-5], and subsequently filed an Amended Summons and Complaint on May 5, 1989. [CP 7-11.]

On September 20, 1989, a default judgment, in the amount of \$29,083.90, plus interest, was entered against Rinke in favor of Sessom. [CP 12-13.]

On June 24, 1999, Sessom obtained a ten-year extension of the 1989 judgment pursuant to RCW 6.17.020(3). [CP 22, 24, 25-26.]

On May 30, 2008, Rinke filed a Motion (and Memorandum in Support of Motion) to Vacate Judgment Creditor's Extension of Lien as Void Ab Initio (Rinke's Motion). [CP 35-36, CP 37-90.]

On May 30, 2008, Sessom filed a Motion (and Memorandum in Support of Motion) for Judicial Assignment to Satisfy Judgment and to Convert the Non-Intervention Probate to a Court Supervised Probate (Sessom's Motion). [CP 34, CP 27-33.]⁴ Sessom's Memorandum was also its response to Rinke's motion to vacate the lien. [CP 27-33.]

⁴ Probate of Regina Rinke, Gordon Rinke's mother.

On June 5, 2008, Rinke filed a Response to Sessom's Motion. This Response was also a reply brief to Sessom's arguments concerning Rinke's Motion to vacate. [CP 91-114.]

On June 26, 2008, the Trial Court heard oral arguments on Rinke's Motion. [RP June 6, 2008, Pages 1-22.] At the close of oral arguments, the court took Rinke's Motion under advisement to rule on it at a later date. [RP June 6, 2008, Pages 20-21.]

On July 25, 2008, the Trial Court heard oral arguments on Sessom's Motion [RP July 25, 2008, Page 7, Lines 11&12], and then denied Sessom's Motion for a judicial assignment and conversion of Regina Rinke's probate to a court supervised probate. An Order denying Sessom's motion was entered on that date. [CP 115-116.]⁵

On July 25, 2008, after documenting the Court's reasoning on the record, the Trial Court orally denied Rinke's Motion to vacate the lien [RP July 25, 2008, Pages 1-7.]⁶ The Court requested that written finding and conclusions be presented for entry at a later date. [RP July 25, 2008, Pages 6-7.]

⁵ Sessom did not appeal denial of its Motion for Judicial Assignment to Satisfy Judgment and to Convert the Non-Intervention Probate to a Court Supervised Probate. The Motion is, therefore, not a subject of this appeal. Because Sessom's Memorandum was actually both a Memorandum in support of its own motion as well as a response to Rinke's Motion, it was necessary to discuss the Sessom motion in explaining the procedural history.

⁶ RP July 25, 2008, is a partial Report of Proceeding [RP July 25, 2008, Page 7, Lines 11 &12.] The Report of Proceeding does not include subsequent argument on Sessom's Motion. [RP July 25, 2008, Page 7, Line 11&12.]

On September 19, 2008, Findings of Fact, Conclusions of Law, and Order Denying Rinke's Motion to Void Extension of Judgment was entered. [CP 117-120.]

On October 17, 2008, Rinke timely filed a Notice of Appeal to the Supreme Court. [CP 121-126.]

(F) Summary of Relevant Statutes - Lien Rights/Duration and Cessation.

1. Laws in Effect in 1989.

Former RCW 6.17.020 (execution statute), which was in effect in 1989, at the time of entry of the default judgment in this case; provided that a judgment creditor could "... have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment." RCW 6.17.020(1).

Former RCW 4.16.020(2) (actions to be commenced within ten years) prescribed that the period for the commencement of an action on a judgment was ten years.⁷

⁷ Statutes in effect at the time the judgment was entered, which gave rise to real property liens as a result of entered judgments, also limited action to ten years: Former RCW 4.56.190 (Lien of Judgment) provided that entry of a judgment gave rise to a judgment lien against judgment debtor's real estate for a period not to exceed ten years. Under former RCW 4.56.210 (Cessation of Lien), the judgment lien automatically ceased after the expiration of ten years from entry and the lien could not be extended or continue in force.

2. 1994 Amendments.

In 1994 (Laws 1994, Ch. 189), the Legislature amended RCW 6.17.020, to permit a judgment creditor to obtain a ten-year extension of the life of a judgment by adding a new Subsection 3 to RCW 6.17.020, which reads, in pertinent part as follows:

After June 9, 1994, a party in whose favor a judgment has been ... rendered ... may, within ninety days before the expiration of the original ten-year period, apply ... for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. RCW 6.17.020(3) (Emphasis added.)

In 1994, RCW 4.16.020(2) was amended to extend the ten-year time for commencement of an action on a judgment to an additional ten years if “the ten year period is extended in accordance with RCW 6.17.020(3).”⁸

IV. DE NOVO STANDARD OF REVIEW.

The relevant facts of this case are undisputed. The Trial Court’s findings, summarizing these undisputed facts, are not challenged on appeal.

The Trial Courts conclusions, based on its analysis of RCW 6.17.020(3), that the plain language of RCW 6.17.020(3) demonstrates that the Legislature intended the section to be retroactive and that

⁸ Similar changes were made to RCW 4.56.190 (Lien of Judgment) and 4.56.210 (Cessation of Lien) allowing for an extension of time if the ten year period was extended in accordance with RCW 6.17.020(3).

retroactive application of the statute does not affect Rinke's substantive right in cessation of the lien are questions of statutory review.

Questions of statutory review are questions of law that are reviewed de novo. Bostain v. Food Exp., Inc. 159 Wn.2d 700, at 708,153 P.3rd 846 (2007), certiorari denied by Food Exp., Inc. v. Bostain, 128 S.Ct. 661, 169 L.Ed.2d 512, 76 USLW 3169, 76 USLW 3271, 76 USLW 3274, 13 Wage & Hour Cas.2d (BNA) 160 (U.S.Wash. Nov 26, 2007) (NO. 07-402).

V. ARGUMENT.

(A) The language of RCW 6.17.020(3) does not demonstrate an intention on the part of the Legislature to retroactively apply the provision to judgments rendered prior to June 9, 1994, the effective date of enactment.

The Trial Court erred in concluding that the plain language of RCW 6.17.020(3), which allows for a ten-year extension of a judgment, was intended by the Legislature to be both remedial and retroactive. [RP July 25, 2008, Page 2; CP 124.]

RCW 6.17.020(3) provides, in relevant part, that *After June 9, 1994, a party in whose favor a judgment has been rendered may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years*

during which an execution, garnishment, or other legal process may be issued. RCW 6.17.020(3).

1. The State Supreme Court has already established that RCW 6.17.020(3) is prospective only.

The Washington State Supreme Court, in Hazel v. Van Beek, established that the Legislature explicitly made RCW 6.17.020(3) prospective only. Hazel v. Van Beek, 135 Wn.2d 45, at 64, 954 P.2d 1301 (1998). The Court, in Van Beek, while analyzing the issue of whether the life span of a judgment could be equitably tolled stated the following:

It would be improper for us to write new exceptions into RCW 4.56.210. If the Legislature intended for tolling, it could have provided for it; and, in fact, in 1994 the Legislature amended RCW 6.17.020(3), RCW 4.16.020 and RCW 4.56.190 to provide for a 10-year extension of the life of a judgment upon request of the creditor. Laws of 1994, Ch. 189, §§ 1-3. *The Legislature explicitly made the new exception prospective only.* RCW 6.17.020(3). With the Legislature having specifically addressed the manner by which a creditor can extend the life of a judgment, we will not interfere with the issue. Hazel v. Van Beek, at 64 (Emphasis added).

In the instant case, contrary to the Trial Court's conclusion [based on its reliance on the Court of Appeals decisions in State v. Morgan (2001) - Division III; and Summers v. Department of Revenue (2001) - Division] that RCW 6.17.020(3) can be retroactively applied if a lien had not yet expired; the State Supreme Court established in Hazel v. Van Beek that the Legislature made RCW 6.17.020(3) prospective only.⁹

⁹ State v. Morgan, 107 Wn. App. 153 (2001) - Division III (review denied State v. Morgan, 145 Wn.2d 1024, 41 P.3d 484 (Wash. Feb 05, 2002) (Table, NO. 71620-0) (distinguished

The State v. Morgan Division III Appellate Court, in a matter of first impression involving the question as to whether or not the Court had jurisdiction to retroactively extend time, pursuant to RCW 6.17.020(3), for execution of a judgment (imposing costs, victims assessments, and attorney's fees) against a criminal defendant; chose not to rely on the State Supreme Court's analysis in Van Beek, which established that RCW 6.17.020(3) could not be applied retroactively. State v. Morgan, 107 Wn. App. at 155, 157; Hazel v. Van Beek, 135 Wn.2d at 64.

Instead, Division III opted to cite Summers v. Dep't of Revenue a Division I opinion, which held that RCW 6.17.020(3) could be retroactively applied to a 1989 tax warrant extended in 1999. State v. Morgan 107 Wn. App. at 157, See Summers v. Dep't of Revenue at 92. In citing Summers, the Morgan Court stated that "A recent Division I case indicates that RCW 6.17.020(3) may apply to judgments rendered prior to the effective date of the statute. Id.

Retroactivity of RCW 6.17.020(3) was not addressed in Summers. Summers raised two primary arguments: first, that the orders extending judgment were void under CR60(b)(5) because the superior court lacked authority to extend the life of a tax lien, and second, that that orders were

by State v. Jaime, 120 Wn. App. 1037, not reported in P.3rd, (2004) Division III); and Summers v. Department of Revenue, 104 Wn. App. 87 (2001) - Division I (review denied Department of Revenue v. Summers, 144 Wn.2d 1004, 29 P.3d 718 (Wash. Jul 10, 2001) (Table, NO. 70810-0).

obtained through an irregular procedure under CR 60(b)(1) and (11). Summers at 90. The Court analyzed the tax warrant statute finding that the filing of a tax warrant results in a perfected lien against all business property; and also results in a lien against all real and personal property of a taxpayer, “the same as a judgment in a civil case duly docketed in the office of the clerk.” Id. at 90. The Court then went on to set out the civil judgment statutes, including RCW 6.17.020(3). Id. at 90-92. The general issue addressed in Summers was whether statutes governing civil judgments applied to tax liens. Id. The issue of whether the tax warrant (or a judgment as in the instant case) could be retroactively extended under RCW 6.17.020(3) was not raised or discussed in the case. Id.

Summers did not address the issue presented by Rinke and decided by the Trial Court in this case; the Trial Court, therefore erred in relying on Summers in concluding that RCW 6.17.020(3) is retroactive and that retroactive application of the provision does not affect Rinke’s substantive right to cessation of the lien.

2. Had the legislature intended the statute to apply retroactively to judgments entered prior to June 9, 1994, either the statute or legislative history would have contained express language evidencing such intent.

Had the Legislature intended the provision to be retroactive to judgments entered prior to June 9, 1994 (the effective date of the

legislation); either the statute or the legislative history would have express language to that effect. Neither the statute nor the legislative history contained any express language making the RCW 6.17.020(3) amendment retroactive.

The Legislature did not evidence its intent to make the 1994 amendment to RCW 6.17.020 retroactive despite the fact that it has done so with similar amendments, which involve extension of prescribed periods in which to act on claims. For example, the historical notes to the 1980 amendments of RCW 4.16.020 (Actions to Be Commenced Within Ten Years), which extended the period prescribed for the commencement of actions, expressly stated that: “This act shall apply to all judgments which have not expired before June 12, 1980.” [CP 64; RCW 4.16.020, Historical and Statutory Notes (citing Laws 1980, Ch. 105, §7).

Another example of the Legislature evidencing a clear intent to retroactively apply a statute pertaining to judgments is found at RCW 6.17.020(8), which addressed the chapter 261, Laws of 2002 amendments to RCW 6.17.020. RCW 6.17.020(8) provides as follows:

The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

[RCW 6.17.020(8), CP 61.]

For purposes of statutory interpretation, if the Legislature uses language in one instance but different, dissimilar language in another, appellate courts conclude that the Legislature intended the difference. Seeber v. Public Disclosure Comm'n, 96 Wn.2d 135, 139, 634 P.2d 303 (1981).

The Legislature knows how to clearly state its intent as to the retroactivity of statutes affecting judgments if they are to be retroactive. The fact that the Legislature failed to provide any such intentional language in enacting RCW 6.17.020(3) shows that it did not intend the provision allowing ten-year extensions on judgments to be retroactive; the intent was to make the provision prospective only.

The Legislature failed to provide intentional language in the 1994 amendment as to retroactivity. The Van Beek Court determined that the 1994 amendment is prospective only. Therefore, judgments rendered after the June 9, 1994 enactment date may be extended for an additional ten years; judgments rendered prior to the enactment date may not be extended.

3. Because of the Legislature's silence on the issue of retroactivity of RCW 6.17.020(3), the presumption is that the provision is prospective only.

As a general rule, courts presume that statutes operate prospectively unless contrary legislative intent is express or implied. Burns v. Oliver, 131 Wn.2d 104, at 110 (1997).

As argued, there is no clear legislative intent expressed in the 1994 amendment of RCW 6.17.020, either express or implied, which would overcome the strong presumption in favor of prospective operation of statutes.

Furthermore, the Legislative history regarding the 1994 amendment to RCW 6.17.020 does not contain any language evidencing intent on the part of the Legislature to make the amendment retroactive. [See CP 52-58.]

The Trial Court erred in concluding that, based on the plain language of RCW 6.17.020(3), the provision was intended by the Legislature to be both remedial and retroactive. [CP 118.] The presumption is that the provision is prospective only. The State Supreme Court established that the provision was prospective only. The Legislature failed to provide intentional language in the provision demonstrating a retroactive intent. The Legislative history contains no evidence of intent to make the provision retroactive. The Trial Court erred: RCW 6.17.020(3) is prospective only.

(B) Even if the Legislature intended RCW 6.17.020(3) to be retroactive, the provision cannot be applied retroactively if doing so affects/impairs a substantive or vested right of the debtor.

Retroactive application of a statute is generally disfavored. American Discount Corporation v. Shepherd, 160 Wn.2d 93, at 99 (2007). A statute is presumed to apply prospectively unless it is remedial in nature or unless the legislature provides for retroactive application; a remedial statute is one which relates to practice, procedures, and remedies and can be applied retroactively when it does not affect a substantive or vested right. Id.

Courts disfavor retroactivity because of the unfairness of impairing a vested right or creating a new obligation with respect to past transactions. Burns, 131 Wn.2d at 110 [citing Landgraf v. USI Film Prods., 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 299 (1994)], (stating that a statute has a genuinely retroactive effect if it impairs rights a party possessed when he acted, increases his liability for past conduct, or imposes new duties with respect to completed transactions); In re Cascade Fixture Co., 8 Wn.2d at 272, 111 P.2d 991 (1941) (stating that retroactive legislation changing vested rights is not favored); Adcox v. Children's Orthopedic Hosp. & Medical Ctr., 123 Wn.2d 15, 30, 864 P.2d 921 (1993) (declining to apply a statute retroactively because it created a new civil penalty for non-complying hospitals).

A statute may not be given retroactive effect, regardless of the intention of the Legislature, where the effect would be to interfere with vested rights. Gillis v. King County , 42 Wn.2d 373, 376, 255 P.2d 546 (1953) (rehearing denied May 18, 1953); distinguished by Lawson v. State, 107 Wn.2d 444, 730 P.2d 1308 (1986).

The term ‘vested right’ is not easily defined and has been used by courts to express various meanings. Adams v. Ernst, 1 Wn.2d 254, 264-265, 99 P.2d 799 (1939). In analyzing the term substantive or vested right, the Gillis Court cited 2 Cooley, Constitutional Limitations, 8th Ed., 749 for the following definition:

First, it would seem that a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present laws: it must have become a title, legal or equitable, *to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another.* Gillis at 377. (Emphasis added.)

Rinke has a vested/substantive right to a legal exemption from a demand made by another, Sessom. At the time the original judgment was entered against Rinke in 1989, execution on a judgment was limited to ten years, RCW 6.17.020, as was the commencement of an action on a judgment was also limited to ten years. RCW 4.16.020(2). Statutes that gave rise to real property liens as a result of entered judgments, also limited action to ten years, RCW 4.56.190. A judgment lien automatically ceased after the expiration of ten years from entry and the lien could not

be extended or continue in force. RCW 4.56.210. When the original judgment was entered in 1989, the law was clear regarding the rights and obligations of creditors and debtors.

Sessom had ten years, and no longer, to collect on the judgment. Rinke had a vested right to be exempted from any future demand by Sessom at the expiration of ten years from entry of the original judgment, a vested right in the cessation of the lien. Extending the time for Sessom to collect on the Rinke judgment creates a new obligation on the part of Rinke with respect to past transactions with Sessom.

As argued in Rinke's Motion for Discretionary Review, had the Legislature enacted a provision reducing the time for a creditor to enforce or collect on a judgment, instead of extending the time, a contingent of creditors would have clamored to challenge retroactive application arguing they were denied their vested rights. Debtors also have vested rights and property interests.

It is certainly possible that the Legislature could amend the judgment statutes again, extending the time for collection for an additional ten years, or for twenty years. If the Trial Court's analysis is followed, a debtor with a judgment that has not yet expired, could find himself or herself subjected to collection efforts decades after a judgment is entered. Surely, Rinke's

interest in being exempted from the collection demands of a Sessom is a vested interest.

Regardless of the intent of the Legislature, RCW 6.17.020(3) cannot be applied retroactively because doing so would impair the substantive or vested right of debtors to cessation of a lien. A right which arises when the judgment is entered.

(C) A judgment debtor's substantive right to cessation of the enforcement or collection of a judgment attaches when the judgment is entered, and retroactive application of RCW 6.17.020(3) extending the judgment affects a debtor's substantive rights.

The Legislature created a substantive right when it provided for a ten-year cessation of a lien in RCW 4.56; therefore, retroactive application of RCW 6.17.020(3) directly affects the substantive right created by RCW 4.56.210. American Discount Corporation v. Shepherd, 160 Wn.2d 93, 99, 156 P.3rd 858 (1993).

The relevant portion of RCW 4.56.210 provides:

... [A]fter the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years. Id.

The Shepherd Court, analyzing a 2002 amendment to RCW 6.17.020, which allowed assignees to extend an assigned judgment for an additional ten-year period, found that the provision was intended by the

Legislature to be retroactive. Id. The Court held that even if the provision was intended to be retroactive it could not be applied retroactively if doing so affects a substantive right. Id. The retroactive application of the provision affected the debtor's substantial or vest right to cessation of the lien; therefore, the Court found that the assignee's judgment expired because the amendment could not be applied retroactively, and the extension of the lien was void. Id.

Rinke acknowledged in briefing and oral argument that some facts were distinguishable from Shepherd. [CP 43-44; RP June 6, 2008, Pages 6-7, 16-20.] Rinke relied on Shepherd primarily for the Court's analysis of a debtor's substantial or vested right to cessation of a lien and for the holding that a statute cannot be retroactively applied if it impairs a substantive right. Although the provisions analyzed in Shepherd and Rinke were not identical, both cases addressed amendments to RCW 6.17.020 and both cases addressed the questions of affecting or impairing substantive or vested rights and retroactive application of statutes.

In relying on Shepherd, Rinke's arguments were primarily focused on the issue of Rinke's substantive right to cessation of a lien [CP 41-44; RP June 6, 2008, Pages 6-8, 16-20.] Rinke acknowledged in oral argument that it did not have the same facts as Shepherd, but that it was relating to the same underlying constitutional issue; the property right

issue, the right to rely on the fact that the 1989 judgment and any lien arising from the judgment would be enforceable for no more than ten years as provided by the laws in place when the judgment was entered. [RP June 6, 2008; Page 8.]

In analyzing Shepherd, the Trial Court concluded that it was the actual cessation of the lien that was the substantive right of a debtor (as opposed to the substantive right arising when the judgment was entered); and, concluded that the right to enforce the lien never ceased through the passage of time in Rinke, therefore, no substantive right in cessation of the lien attached to Rinke. [Conclusion of Law #6, CP 119, RP July 25, 2008, Pages 5-6; Conclusion of Law #7, CP 119, RP July 25, 2008. Page 5.]

The Trial Court erred in concluding that the substantive right to cessation of a lien attaches at the point of cessation of the lien and erred in concluding that Rinke did not have a substantive right.

As argued, at the time the judgment was entered, Sessom had ten years, and no longer, to collect on the judgment. Rinke had a vested right to be exempted from any future demand by Sessom at the expiration of ten years from entry of the original judgment, a vested right in the cessation of the lien. Extending the time for Sessom to collect on the Rinke judgment, beyond the statutory limit in place at the time the judgment was entered creates a new obligation on the part of Rinke with respect to past

transactions with Sessom. Rinke's property rights are adversely affected by a retroactive extension of the judgment.

The debtor's substantive right attaches when a judgment is entered. A debtor must be afforded some certainty regarding the future life of the obligation arising at a point in time in order to utilize and protect his or her property interests. The judgment statutes provided that certainty when the Rinke obligation arose, the judgment and Sessom's right to collect on the judgment expired in ten years.¹⁰

The Trial Court erred in concluding that it was the actual cessation of the lien that is the substantive right of a debtor, and in concluding that no substantive right in cessation of the lien attached to Rinke. Sessom had ten years, and no longer, to collect on the judgment. Rinke had a vested right to be exempted from any future demand by Sessom at the expiration of ten years from entry of the original judgment, a vested right in the cessation of the lien. Extending the time for collection creates a new obligation on the part of Rinke.

VI. ATTORNEY'S FEES.

Rinke is entitled to an award of attorney's fees as necessary expenses incurred to void the extension of the judgment. As argued in

¹⁰ It should be noted that petitioning for the extension of a lien requires no statutory notice to debtors.

this brief, the judgment was wrongfully extended and was void. As reflected in the record, Sessom sought to collect on the void judgment. [CP 33, CP 34.]

This Court has previously held that in cases of wrongful attachment or garnishment, fees are recoverable as special damages. Rorvig v. Douglas, 123 Wn.2d 854, 862, 873 P.2d 492 (1994); James v. Cannell, 135 Wash. 80, 84, 237 P. 8 (1925). A case of a wrongful extension of a lien is analogous to a wrongful attachment or garnishment and fees should, therefore be awarded.

VII. CONCLUSION/RELIEF REQUESTED.

Denial of Rinke's motion to void the extension of the judgment was error by the Trial Court.

RCW 6.17.020(3) is prospective only. The Legislature did not explicitly state, or infer, any intention that the provision enacted in 1994 was to be retroactive. Even if the Legislature had intended the provision to apply retroactively, it cannot, as doing so affects a vested right.

The judgment lien and the right to enforce the judgment were extinguished in 1999, ten years after entry of the original judgment. The lien extension is therefore void.

Rinke requests that this Court reverse the Trial Court's order denying Rinke's motion to vacate the extension of the lien as void ab

initio; and requests an award, on the grounds argued herein, for attorney's fees and costs incurred at the trial court level and on appeal.

Dated: January 28, 2009.

Respectfully submitted by:



EILEEN M. SCHOCK, WSBA #24937
SANCHEZ, MITCHELL & SCHOCK
Attorneys for Appellant

APPENDIX

- (a) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING MOTION TO VOID EXTENSION OF JUDGMENT, KITSAP COUNTY SUPERIOR COURT, SEPTEMBER 29, 2008.
- (b) VERBATIM REPORT OF PROCEEDINGS, KITSAP COUNTY SUPERIOR COURT, JUNE 6, 2008.
- (c) VERBATIM REPORT OF PROCEEDINGS, KITSAP COUNTY SUPERIOR COURT, JULY 25, 2008.
- (d) RCW 4.16.020.
- (e) RCW 4.56.210.
- (f) RCW 6.17.020.

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SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

JAMIE SESSOM and STACY RAY
SESSOM, husband and wife

Plaintiffs,

GORDON H. RINKE and JANE DOE
RINKE, husband and wife,

Defendants

NO. 89-2-00764-1
99-9-02075-5

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER DENYING MOTION
TO VOID EXTENSION OF JUDGMENT

THIS MATTER having come on regularly before the above-entitled Court, upon the Motion of GORDON H. RINKE and JANE DOE RINKE to Vacate Judgment Creditor's Extension of Lien as Void Ab Initio, the Court having reviewed the files and records herein, and having heard arguments of counsels, NOW THEREFORE

THE COURT FINDS:

1. On September 20, 1989, a Default Judgment was entered against GORDON H. RINKE and JANE DOE RINKE in favor of JAMIE SESSOM and

Findings of Fact, Conclusions of Law, and Order Denying
Motion to Void Extension of Judgment - Page 1 of 4
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SANCHEZ, PAULSON, MITCHELL & SCHOCK
Attorneys at Law
4110 Kitsap Way, Suite 200
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STACY RAY SESSOM for the sum of \$29,083.90 plus interest at the rate of 12 percent per annum from the date of entry.

- 2. In 1989, RCW 6.17.020 provided that a judgment creditor had ten years to enforce a judgment lien.
- 3. Under the lien statute existing in 1989, the ten-year lien would have expired in 1999.
- 4. In 1994, the legislature amended RCW 6.17.020, by adding a new section (3), which allowed for an extension of time for creditors to enforce a judgment for an additional ten-year period.
- 5. On June 24, 1999, Plaintiff obtained a ten year extension of the lien pursuant to RCW 6.17.020(3).
- 6. The issue presented to the Court in this matter was whether the statutory amendment passed in 1994, allowing for extension of a judgment lien for an additional ten-year period, be given retroactive effect to a judgment entered in 1989; or whether the extension of the judgment should be vacated as void ab initio.

THE COURT CONCLUDES:

- 1. Based on the plain language of the statute, RCW 6.17.020 (3), which allows for a ten year extension of a judgment lien, the provision was intended by the Legislature to be both remedial and retroactive.

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2. RCW 6.17.030 (3) applies to all cases where a judgment has been rendered, the statute does not limit the extension of a judgment to judgments rendered after June 9, 1994.
3. Retroactive application of RCW 6.17.030 (3) to judgments entered before June 9, 1994, does not affect a substantive right.
4. The Court's conclusion that retroactive application of RCW 6.17.020 (3) does not affect the substantive right is based on the two Washington Appellate Court decisions: *State v. Morgan*, 107 Wn.App. 153 (2001) and *Summers v. Department of Revenue*, 140 Wn.App. 87 (2001).
5. *State v. Shepherd*, 160 Wash.2d, 1993, is distinguishable from this case. The judgment in *Shepherd* had expired because the extension was made by an assignee, not the judgment creditor. The question in *Shepherd* was whether an expired judgment could be revived by a retroactive amendment.
6. In *Shepherd*, the cessation of the lien allowing for enforcement of the judgment had occurred. It was the actual succession of the lien that was the substantive right of the debtor.
7. The facts in the instant case are distinguishable from *Shepherd* because the right to enforce the lien never ceased through the passage of time, unlike in *Shepherd*, where the debtor acquired a substantive right in the actual cessation of the lien.

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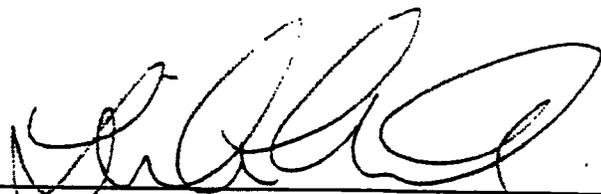
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8. In the instant case, no substantive right is attached to the debtor, because it is not until there is a cessation of the lien that a substantive right would attach.

IT IS THEREFORE ORDERED THAT;

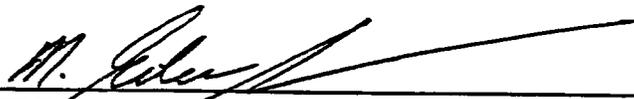
The Motion of GORDON H. RINKE and JANE DOE RINKE to Vacate Judgment Creditor's Extension of Lien as Void Ab Initio is denied.

DONE IN OPEN COURT this 19th day of September, 2008.



JUDGE LEILA MILLS

Presented by:



EILEEN M. SCHOCK, WSBA #24937
of SANCHEZ, PAULSON, MITCHELL & SCHOCK
Attorneys for Defendants

Copy Received; Approved as to Form:

MESENBRINK LAW OFFICE, P.S., INC.



DRAKE D. MESENBRINK, WSBA #16711

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON.

IN AND FOR THE COUNTY OF KITSAP

JAMIE SESSOM, et ux,)
)
Plaintiffs,)
)
vs.)
)
GORDON H. RINKE, et al,)
)
Defendants.)

NO. 89-2-00764-1
SUPREME COURT
CASE NO. 82294-8

COPY

VERBATIM REPORT OF PROCEEDINGS

June 6, 2008

Honorable Leila Mills
Department No. 2
Kitsap County Superior Court

APPEARANCES:

Drake Messenbrink, Attorney for Plaintiff

Eileen M. Schock, Attorney for Defendant Rinke

DEBBIE ZURN, CCR, RPR, CRR
OFFICIAL COURT REPORTER
KITSAP COUNTY SUPERIOR COURT
614 DIVISION STREET
PORT ORCHARD, WA. 98366
(360) 337-7140

1 THE COURT: Sessom. All right.

2 First of all I do feel I should make a disclosure on
3 this case, just so that there is -- to make sure there
4 are no issues concerning me hearing it. I did review the
5 materials, and I'm seeing that we are really referring to
6 judgment or judgments entered some time ago. And that
7 was when Mr. Messenbrink was with the Smith O'Hare firm.

8 MR. MESSENBRINK: Yes.

9 THE COURT: And I do want to just let it be
10 known that currently Mr. Smith is one of my co-chairs on
11 my re-election campaign committee. And albeit that I
12 know you're bringing this now as your own law office, I
13 did want to make that disclosure because the underlying
14 judgment was when Mr. Messenbrink was with Smith and
15 O'Hare. I believe I can hear this without any prejudice
16 or any bias. But I do want to give you that opportunity,
17 Miss Schock, to have this sent to a different judge if
18 you have any concerns at all. And you wouldn't have to
19 exercise an affidavit of prejudice on that.

20 MS. SCHOCK: I have no objection to you hearing
21 it.

22 THE COURT: So with that, I'm presuming Mr.
23 Messenbrink, do you have any concerns?

24 MR. MESSENBRINK: I've been away from that firm
25 for eight years, and have had no contact at all with Rick

1 for the last eight years.

2 THE COURT: All right. So with that, let's hear
3 the motion. Miss Schock.

4 MS. SCHOCK: I have one question, Your Honor.
5 Since we have pleadings in both courtrooms, I know that
6 you've received the motion, and I would assume the
7 memorandum in support of. Did you also receive the
8 response that was filed yesterday?

9 THE COURT: I've got the memorandum in support
10 of motion. And I also --

11 MS. SCHOCK: I actually filed a response to Mr.
12 Messenbrink's motion.

13 THE COURT: I did not receive that actually, no,
14 not in bench copies.

15 MS. SCHOCK: The only reason I raise that, in
16 Mr. Messenbrink's motion regarding the probate matter, he
17 makes arguments -- I think he makes all of his arguments,
18 and I don't know if you've reviewed that are or not. So
19 this might be a little bit difficult. Mr. Messenbrink in
20 his motion and memorandum for the probate court has made
21 his arguments regarding this matter.

22 THE COURT: I did not see that in there.

23 MR. MESSENBRINK: Didn't you say that Judge
24 Haberly was going to hear the probate issue?

25 THE COURT: I'm hearing that your arguments on

1 the civil matter are included in the probate material.

2 MR. MESSENBRINK: I included them in both.

3 THE COURT: So --

4 MR. MESSENBRINK: I understood you were only
5 going to hear the issue as to the motion to vacate.

6 MS. SCHOCK: I just wanted to be sure all the
7 materials are in front of you. I did a response, which I
8 also filed in both matters. I'm assuming you've had a
9 chance to review my response?

10 THE COURT: I have not reviewed the response.
11 But can you cover that in your oral argument?

12 MS. SCHOCK: I can. And I didn't want to do
13 that too much if you already had a chance to do that.

14 So, Your Honor, I'm representing Gordon Rinke and his
15 spouse. And the issue here this morning is whether or
16 not a 1994 statutory amendment to RCW 6.17.020, which
17 permits statutory extensions on liens, judgment liens for
18 an additional ten years. So the background facts that
19 Rinke feels are relevant to this matter are pretty basic.

20 The first one is that there was a personal injury
21 action in 1989 where Miss Sessom was the plaintiff.
22 There was a judgment, default judgment taken against Mr.
23 Rinke, my client, in 1989. And a judgment was entered
24 against him in -- that was September of 1989. In June of
25 1999 Miss Sessom, through her attorney, filed for an

1 extension on the lien for an additional ten years under
2 RCW 6.17.020.

3 The other facts that are relevant are what the laws
4 were in effect in 1989 as compared to subsequent to when
5 the lien was entered. So the time the lien was entered
6 under 6.17.020, which is the statute setting out the time
7 for enforcing a judgment lien, the judgment lien was only
8 in effect for ten years. And RCW 4.16.020, the time to
9 commence an action on a judgment was also limited to ten
10 years. So that was a law in effect in '89.

11 In 1994 the legislature enacted a provision in RCW
12 6.17.020(3), which extended the time to enforce a
13 judgment for an additional ten years. And the language
14 of that statute, that relevant part is that after June
15 9th, 1994, a party in his favor judgment had been
16 rendered, could extend a judgment. RCW 4.16.020 added
17 similar language that if you extended it under 6.17.020,
18 you could also extend it -- you could commence an action
19 within ten years.

20 So the issue here is can that '94 amendment to the
21 judgment lien limitation of ten years be extended to a
22 judgment that was entered five years prior to the
23 subsequent amendment? And Rinke's position is that the
24 answer to that question is no. And the reason for that
25 is that the amendment itself is prospective only for a

1 number of reasons.

2 One is that the State Supreme Court has found in the
3 *Beck* case, cited in the materials, that the statute is
4 prospective only. The second reason is that there's a
5 presumption by the courts that a statute is only
6 prospective, and is not retroactive. And the reason for
7 that presumption is that the court disfavors retroactive
8 application because of unfairness. It impairs, the
9 statute impairs a right or increases a liability of past
10 acts of an actor, or creates new duties, there's an
11 inherent unfairness. So we're looking at considerations
12 of fairness in this case.

13 And so a statute is prospective only, looking
14 forward, unless it's remedial. And the State Supreme
15 Court in *Shepherd* has found that this is a substantive
16 right, the right has been created by the legislature, it
17 was in 1989, for a statute -- excuse me, for an execution
18 to be limited to ten years. And in *Shepherd* the court
19 found under some different facts, which I could talk
20 about in a minute, that the impact on the judgment debtor
21 was that it impaired a substantive right, therefore a
22 lien extension could not -- excuse me, I'm not expressing
23 this as clearly as I'd like to. I'm going to back go
24 back.

25 In *Shepherd*, there was a 2002 amendment to the

1 statute, to the same statute, 6.17.020. In *Shepherd* the
2 amendment was a little bit different. The amendment was
3 allowing assignees to extend the judgment which had not
4 been previously allowed. So the Supreme Court in
5 *Shepherd* found that because allowing an assignee to do
6 that would impair a substantive right, that it could not
7 be done. So that lien extension was void and the
8 assignee could not take any further action on the lien.

9 So going back to the prospective versus retroactive.
10 The *Shepherd* court has already ruled that actions of this
11 sort, taking a lien extension and making it retroactive,
12 impairs a substantive right, and therefore cannot be
13 retroactive. Additionally the *Beck* court has said that
14 this action is prospective only.

15 Also looking at legislative intent, there's no clear
16 legislative intent here. I've provided copies of the
17 legislative intent showing that this statute is
18 retroactive. There's no express language, as there are
19 in other statutes, such as 6.17.020(8), which had to do
20 with a 2002 extension. There's language there that the
21 legislature has used, that the matter was clearly
22 retroactive. They specifically stated that.

23 But what *Shepherd* makes more interesting is even
24 though the legislature found the 2002 were specifically
25 retroactive, they still were not allowed to be applied

1 against the judgment debtor in that case, because it
2 affected a substantive right. So even if the legislature
3 infers or intends or specifically states that statute is
4 retroactive, if it impairs a substantive right it cannot
5 be retroactive. And that's the holding of *Shepherd*.

6 So *Shepherd* specifically states that a substantive
7 right created by the legislature when it provided for
8 cessation of lien in RCW 4.56 is a substantive right and
9 therefore the retroactive amendment of a statute
10 impairing that right cannot be permitted.

11 And our case, the Rinke case, parallels the
12 reasoning. We don't have the same facts as *Shepherd*.
13 We're not dealing with the 2002 statute relating to
14 assignees, but we're relating to the underlying same
15 constitutional issue, the property right issue, the
16 expectation that this lien would be in place for ten
17 years as the law provided at the time the lien was put
18 into place.

19 There are several lower case opinions that have --
20 which I've noted in my briefing. There's District 1 and
21 District 3 Court of Appeals opinions that have taken an
22 opposite position than this -- than I've cited in the
23 Supreme Court case. That is, these statutes -- the
24 statute is retroactive, basically. So there are two
25 appellate cases that I've noted.

1 I'd point out to the court that none of them were
2 addressing the issue on point. These cases did not bring
3 up whether or not the statute could be retroactive.

4 There was --

5 THE COURT: Which cases are you referring to?

6 MS. SCHOCK: I'm referring to *Summers v.*
7 *Department of Revenue*, which is a 2001 case. And *State*
8 *v. Morgan*. I think they're noted in a footnote in the
9 memorandum.

10 THE COURT: Okay.

11 And how is the *Morgan* case distinguishable?

12 MS. SCHOCK: Well, both *Summers* and *Morgan* are
13 distinguishable because both were decided before
14 *Shepherd*. And neither one of them addressed the issue of
15 substantive rights. Both of them look at the statute and
16 interpret the legislative intent as being retroactive.
17 They have no discussion of substantive rights being
18 affected, which the Supreme Court has found in a similar
19 case would be affected.

20 So they haven't considered that issue in *Morgan* or
21 *Summers*. So the fact that *Morgan* and *Summers*, something
22 needs to be retroactive because the legislature intended
23 them to, does not answer the question. Because the
24 answer to that is, even if the legislature intends
25 something to be retroactive, it can't be if it affects a

1 substantive right. So the whole issue here is -- I mean,
2 I've made arguments whether or not the legislature
3 intended it to be retroactive or not. Our position is
4 that it didn't. There's no clear language. There's
5 other examples when the legislature has made acts
6 retroactive, and I've cited those in both my memorandum
7 and my reply. We don't have that kind of language here.
8 We simply have language that says after the effective
9 date of the statute, then anyone with judgment can have
10 an extension. So there is no clear statutory language.
11 There is nothing to show this is what the legislature
12 intended. And even if it is, it impairs a substantive
13 right. And the Supreme Court has said that.

14 I'd like to spend a few minutes in response to Mr.
15 Messenbrink's materials. He cited a number of things in
16 support of his argument. The first one was argued that
17 CR 60 had a limitation of one year for us to bring this
18 cause of action, or to bring this motion for vacation of
19 the lien. I pointed out in responsive materials that
20 CR 60 allows a judgment to be vacated, and the one-year
21 limitation only applies to certain reasons which are
22 reasons one, two, and three under CR 60(b)(1), (2) and
23 (3), which are mistake, erroneous matters, problems with
24 the proceedings.

25 But our action for vacation of the lien is made

1 because the judgment is void. And item No. 5, under
2 CR 60 specifically allows for vacation of a judgment, if
3 the judgment is void. And it's not subject to any
4 one-year limitation. The only ones subject to one-year
5 limitation are reasons 1, 2 and 3.

6 Mr. Messenbrink also argues that the Chapter 261,
7 Laws of 2002, which relates to the -- a different -- this
8 is the assignee amendment, which is not at issue in our
9 case. He argues that because that was retroactive,
10 apparently his argument appears to be that the 1994
11 amendment was also retroactive.

12 I've already covered that pretty well in my argument.
13 The 1994 language is separate and distinct from 2002.
14 2002 language allowing assignees to extend judgments
15 which was subsequently found to be unconstitutional by
16 the State Supreme Court, provided for retroactive
17 application. And as I've already said, really doesn't
18 matter anyway because retroactive application is not
19 allowed if it affects a substantive right. So 2002
20 legislation is distinguishable from 1994. We don't have
21 the same retroactive language anywhere following the 1994
22 statute.

23 Also Mr. Messenbrink cites 4.56.210 which allows
24 extension for ten years of a statute, which is true, but
25 that's only if it's been validly extended under

1 6.17.020(3). And our entire argument is that that has
2 not happened.

3 Mr. Messenbrink also cites 4.72.020, which relates to
4 pleadings to vacate for a mistake, which doesn't apply to
5 this action, because it's pleadings to vacate for mistake
6 or omissions on the part of the clerk or irregularities
7 in the process. It has no application to this case. It
8 also has a limitation of one-year filing time. But it
9 doesn't apply to this case. We're not looking at
10 mistakes or omissions on the part of the clerk.

11 Mr. Messenbrink also cites CRLJ 60, which I'm not --
12 I guess bottom line, limited jurisdiction rules don't
13 apply.

14 So, just very quick summary. We're asking the court
15 to vacate this judgment. Mr. Rinke at the time this was
16 entered, the law was a ten-year limitation on execution
17 of judgments. These are creatures of statutes, the
18 judgments. There really is not another analysis, another
19 way to look at that. I don't know if Mr. Messenbrink is
20 going to argue for some equitable reasons because he
21 hasn't been able to collect. But if he does, it's really
22 not an issue. The issue is whether or not the statute is
23 retroactive.

24 THE COURT: Thank you.

25 Mr. Messenbrink.

1 MR. MESSENBURK: Well, Your Honor, I read these
2 cases entirely differently than Miss Schock. And I
3 believe she's missed the nut of these cases. And
4 particularly in *Shepherd*. The *Shepherd* case very clearly
5 says that this statute is retroactive.

6 And in the facts in the *Shepherd* case, that original
7 judgment was taken in '89, then they tried to renew it,
8 then it was renewed. And the nut of that case and the
9 *Miller* case and the *J.D. Tan* case are all exactly the
10 same. They all said that that statute can be applied
11 retroactively. However, in those cases the court didn't
12 allow retroactive application because, and only because,
13 the assignee was the one who extended the judgment. Had
14 the original judgment creditor, as in our case Miss
15 Sessom, renewed the judgment under 6.17, it would have
16 been appropriate and it would have been valid.

17 The substantive right that Miss Schock is talking
18 about that the *Shepherd* case is discussing only came
19 about because they ruled that since the assignee had
20 taken the extension, and that wasn't provided for in the
21 statute, that that judgment had lapsed at that point.
22 And then under RCW 4, which again I believe Miss Schock
23 is misinterpreting what I wrote, at least I hope I didn't
24 write it that bad, under RCW 4, that is where the
25 substantive right arose. Because again the assignee was

1 the one who attempted the extension. That wasn't
2 provided for in the statute. So the judgment lapsed.
3 And under RCW 4, it was void. And that was the
4 substantive right.

5 In this case none of those facts exist. What we have
6 is a judgment that was properly taken in 1989, properly
7 extended by the judgment creditor under RCW 6 in 1999.
8 There's no facts showing that that was improper. It was
9 granted by Judge Kruse, a very learned judge. And that
10 statute absolutely applies retroactively. I've cited in
11 my materials several cases that all say the same thing,
12 and that is that there's retroactive application of this
13 statute. It's remedial.

14 And the only reason these other cases didn't allow it
15 was because of the assignee. It's because of that, that
16 I believe Miss Schock has simply missed the point, the
17 main nut of these cases.

18 So I'm here asking that the court allow our extension
19 and allow the judgment, and we be allowed to go forward
20 and collect on them.

21 As far as these other issues that Miss Schock raised
22 at the end, we had an agreement where we were going to
23 exchange documents a week ago Friday and set this on. I
24 was uncertain what her motions would be, if she was going
25 to go back and try to attack the original judgment. And

1 that's why I included those materials. She's indicated
2 today that's not her intent. I didn't know that at the
3 time. I did, in fact, send her correspondence and asked
4 her if that was going to be the case. And she said she
5 wouldn't commit to it. So that's why I added in those
6 other materials. But since we're talking about a very
7 narrow issue, this retroactive application, Your Honor,
8 doesn't need to be concerned about the rest of that. But
9 it's very clear in all of these cases it is retroactive.
10 It's only not retroactive if the assignee takes it.

11 The legislature then came back and amended section 8
12 only to include the word assignee. That's all they did
13 in section 8. Section 8 makes it clear that it was, in
14 fact, supposed to be retroactive. And the courts are
15 clearly on board with that. And so they inserted the
16 word assignee simply to clear up that issue.

17 THE COURT: That was since *Shepherd*.

18 MR. MESSENBRINK: That was per the *Shepherd*
19 case, yeah.

20 THE COURT: Miss Schock, would you like to
21 respond?

22 MS. SCHOCK: I would. I would like to start
23 with the last comment. If the court looks at 6.17.020,
24 you'll find that it added three new sections, and the
25 assignee language I believe was, I have it cited in my

1 materials, I don't have it right in front of me, but that
2 was added to another section. I can look at that very
3 quickly in my response. But the retroactive language of
4 the 2002 statutes in provision 8, that was a new
5 subsection added in 2002. It did not exist prior to
6 2002. So Mr. Messenbrink's argument that the legislature
7 intended in '94, extensions to be retroactive, I think a
8 reading of the history of the statute will show that
9 section 8 was not put into place until 2002.

10 So section 8 would clearly be retroactive if the
11 court -- if it's not challenged on some other level. But
12 the assignee language is not even in section 8. It was
13 added to one of the earlier sections. And I can probably
14 look that up.

15 THE COURT: I suppose, Miss Schock, I'm more
16 interested in whether the judgment had lapsed in the
17 *Shepherd* case, and hence the substantive right was an
18 issue in that case. Is that distinguishable from this
19 case? Because it appears the facts in this case are that
20 prior to any lapsing or any expiration of the judgment,
21 there was an extension. So is it the same situation of a
22 lapse of the judgment?

23 MS. SCHOCK: It's not a lapse of the judgment.
24 It's distinguishable. I'm not arguing today that the
25 extension was not properly extended. That's not the

1 issue. The issue is whether the 1994 extension of the
2 judgment can be retroactive, whether it was proper at the
3 time, or whether the lien should be made void and vacated
4 as of the time it was extended. Because it was not
5 properly extended. Because you cannot retroactively
6 extend the lien for ten years, because it affects a
7 substantive right.

8 So all the facts are distinguishable. What the
9 *Shepherd* court said is that the legislature created a
10 substantive right when it provided for cessation of a
11 lien in RCW 4.56, when it provided for cessation of a
12 lien in 4.56 in 1989. When the judgment in *Shepherd* was
13 entered, just like when the judgment was entered here in
14 1989, it was ten years. So although the facts are
15 different, the court has found that there's a substantive
16 right created by the legislature when it provided for a
17 ten-year cessation of lien in 4.56. I think that is the
18 nut of the *Shepherd* case. That there is a substantive
19 right. And the Supreme Court has articulated that
20 clearly.

21 And the other cases that have been cited have done
22 their analysis based on whether the legislature intended
23 the statute to be retroactive, which none of those cases
24 have gone up to the Supreme Court for -- to my knowledge
25 we haven't cited any. So this court and Division 2 is

1 not bound by those decisions. And those decisions are
2 not looking at the substantive right issue, in a
3 relatively new State Supreme Court case in 2007. So
4 these cases were decided prior to the *Shepherd* case.

5 THE COURT: Anything else, Mr. Messenbrink?

6 MR. MESSENBURK: I'll read you a passage from
7 the *Shepherd* case because again Miss Schock isn't quite
8 grasping this case. That court early on in the case says
9 that it was the express legislative intent that the
10 amendment be applied retroactively. Then further down
11 they state, "A statute is presumed to apply prospectively
12 unless it is remedial in nature, or unless the
13 legislature provides for retroactive application. A
14 remedial statute is one which relates to practice,
15 procedures and remedies, and can be applied retroactively
16 when it does not effect a substantive or vested right."

17 And again in the *Shepherd* case they found that there
18 was only a substantive right because the assignee had
19 taken the extension. And that's where you get into
20 RCW 4, which also down at the end, I don't have that in
21 front of me right this second, says something about
22 unless the judgment is extended under RCW 6.

23 So there wouldn't have been a substantive right at
24 all if it hadn't have been an assignee who had done the
25 extension. It would have been remedial and the court

1 would have allowed it. And you look at all of the
2 decisions, and that reasoning is the same in every
3 decision.

4 MS. SCHOCK: Your Honor, the substantive right
5 is not the right of the creditor. The substantive right
6 is the right of the debtor. And if the debtor has a
7 substantive right, if the court is correct -- if the
8 State Supreme Court is correct, that a substantive right
9 is created by 4.56, that cessation of a lien in 1989 was
10 to be ten years, then that's the right of the debtor.

11 The facts are different. But that same substantive
12 right issue was argued to the Supreme Court -- I mean,
13 the same argument is made that there's a substantive
14 right of the debtor to cessation of a lien in ten years.
15 And that the statute shouldn't be applied retroactively.

16 And Mr. Messenbrink doesn't -- the statute also says
17 notwithstanding the express intent of the legislature
18 that the amendment be applied retroactively. Amendment
19 cannot so be applied if it affects a substantive right.
20 And the legislature created such a substantive right when
21 it provided for cessation of a lien in 4.56. Thus,
22 retroactive application of 6.17.020(3) directly effects
23 the substantive right created by 4.56.210. And then the
24 court goes on to cite 4.56.210.

25 MR. MESSENBRINK: But the court, in citing that,

1 again points out that substantive right only arose
2 because in that case the extension was void because the
3 assignee took it.

4 MS. SCHOCK: There's no language where the court
5 says the substantive right only arose because of the
6 assignee. The court says the assignee cannot have this
7 extension because it impairs a substantive right of the
8 debtor created in a statute in 1989 that said liens
9 should be ten years.

10 I'm sorry that I don't have -- which is typical, I
11 don't have a case, I don't have a State Supreme Court
12 case that has Rinke versus Sessom facts. But I have a
13 case that has the analysis to decide Rinke versus Sessom,
14 which is that there's a substantive right created when
15 the legislature said these liens were ten years. And
16 that's the reasoning this court found that the 2002
17 statute couldn't be retroactive. And it's the same
18 reasoning that Rinke argues this court should use to find
19 that the 1999 extension of this lien shouldn't be
20 allowed.

21 THE COURT: Well, I really don't want to just
22 give this short shrift. I think because of the arguments
23 presented, I want to go back to the *Shepherd* case and
24 read it as closely as apparently both of you had, and
25 consider your arguments in that context, which effects

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what you're doing today on the other calendar.

So I would suggest I have an opportunity to look at this further. My goal would be to have a decision a week from today on my departmental calendar.

(The proceedings were adjourned.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

JAMIE SESSOM, et ux,)
)
 Plaintiffs,)
)
 vs.)
)
 GORDON H. RINKE, et al,)
)
 Defendants.)

NO. 89-2-00764-1

COPY

VERBATIM REPORT OF PROCEEDINGS

July 25, 2008

Honorable Leila Mills
Department No. 2
Kitsap County Superior Court

APPEARANCES:

Drake Messenbrink, Attorney for Plaintiff
Eileen M. Schock, Attorney for Defendant Reinke

DEBBIE ZURN, CCR, RPR, CRR
OFFICIAL COURT REPORTER
KITSAP COUNTY SUPERIOR COURT
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PORT ORCHARD, WA. 98366
(360) 337-7140

1 THE COURT: So this came on several weeks ago
2 concerning the existence of an extended judgment and
3 whether or not that should be determined void as a matter
4 of law.

5 And the facts that were presented included the
6 following: The plaintiff, Sessom, obtained a judgment in
7 September of 1989. And that arose from the personal
8 injury action against Reinke. Under the statutes that
9 existed at that time, the ten-year lien would have
10 expired in September of 1999.

11 In 1994 the legislature passed a statute allowing for
12 extension of the time to enforce a judgment for an
13 additional ten years. In June of 1999 the plaintiff
14 obtained an extension of the lien pursuant to RCW
15 6.17.020.

16 So the issue for this court is whether the statutory
17 amendment that was passed in 1994 allowing for extension
18 of a judgment lien for an additional ten years be given
19 retroactive effect to a judgment entered in 1989. Should
20 the judgment creditor's extension be vacated as void ab
21 initio?

22 What I have determined in this case is as follows:
23 The statutory amendment allowing for extension of a
24 judgment was intended to be remedial and retroactive.
25 The plain language of the amendment under the statute

1 references that, "After June 9th, 1994, a party in whose
2 favor a judgment has been rendered may, within 90 days
3 before expiration of the original ten-year period, apply
4 for an order granting an additional ten years." That's
5 the end of the quote from the amended statute.

6 The statute applies to all cases where a judgment has
7 been rendered. There is no language limiting its
8 provision to judgments ordered after the date of June 9th
9 of 1994, but simply applied to instances where there has
10 been a judgment rendered. There is no other limiting
11 language.

12 The two Appellate Court decisions that have been
13 provided reference the amendment and demonstrate that the
14 amendment could be applied retroactively. Specifically
15 those cases are *State v. Morgan* and *Summers v. Department*
16 *of Revenue*. And those were discussed fairly extensively
17 when we were here during argument. I have determined,
18 based upon my review of the statute, as well as the
19 cases, that the amendment does not affect a substantive
20 right.

21 There has been much reference to the case of *State v.*
22 *Shepherd*, 160 Wn.2d., 1993. In that case the facts were
23 essentially as follows:

24 In August -- on August 21, 1986, a judgment was
25 entered in favor of American Discount Corporation against

1 Shepherd. Approximately a year later American Discount
2 assigned the judgment to United Collections, just prior
3 to the ten-year period elapsing in 1996. United, as the
4 assignees, obtained an extension of the judgment
5 extending to 2006, pursuant to RCW 6.17.020.

6 Under the facts of this case and according to the
7 laws that existed in 1996, the court held -- and I'm
8 still referring to that case of *Shepherd* -- 6.17.020
9 allowed execution on a judgment within a ten-year period,
10 and allowed extension of the judgment for another ten
11 years. Under the statute as it existed in 1996, only
12 judgment creditors as opposed to assignees could apply
13 for extension.

14 The court in that case, in *Shepherd*, acknowledged
15 that the text of the 2002 amendments expressly stated the
16 legislature's retroactive intent, and therefore the
17 legislature intended retroactive application.

18 In *Shepherd* the court determined that the judgment
19 had effectively expired because the extension was not
20 made by the judgment creditor. The question was then
21 whether an expired judgment could be revived by a
22 retroactive amendment. Such retroactive application is
23 generally disfavored.

24 The court acknowledged that even if there is express
25 legislative intent to apply it retroactively, it cannot

1 so apply the retroaction if it affects a substantive
2 right. And in that case the court determined the
3 legislature created a substantive right when it provided
4 for the cessation of a lien in chapter 4.56, thus
5 retroactive application of 6.17.020(3) directly affects
6 the substantive right.

7 In the situation in *Shepherd*, the cessation of the
8 lien allowing for enforcement of a judgment had occurred.
9 It was the cessation of the lien that was the substantive
10 right that could not be revived. The facts in our case,
11 in the instant case, are distinguishable from the
12 *Shepherd* case. The right to enforce the lien never
13 ceased through the passage of time, unlike the situation
14 in *Shepherd*. The actual cessation of the lien was the
15 substantive right acquired by the debtor.

16 There has been no authority presented in this case
17 that stands for the premise that the time allowed for a
18 creditor to bring an enforcement action, the ten-year
19 period, is in and of itself the substantive right
20 attributed to the debtor. At best, it is a potential
21 right that the debtor may realize if the ten years
22 passes, and if there is no collection on the debt, hence
23 allowing for cessation of the lien.

24 Once the time for execution expires, the debtor
25 acquires the substantive right as no suit or other

1 proceeding could be brought to enforce the judgment. As
2 applied to *Shepherd*, the time had expired for the
3 creditor in *Shepherd*. At that point, the substantive
4 right attached and there could be no suit or action to
5 enforce.

6 In the present instance, the extension of the
7 judgment occurred prior to the lapse of the judgment. As
8 stated in *Morgan*, and also acknowledged in *Shepherd*, in
9 the *Shepherd* dissent, the creditor is permitted to extend
10 under subsection 020, provided it is done prior to the
11 lapse of the first ten-year period. Again in the instant
12 case, the judgment never lapsed and therefore there was
13 never a cessation of the lien. As such, no substantive
14 right attached to the debtor. It is not until there is a
15 cessation of the lien that a substantive right would
16 attach.

17 And at the risk of repeating myself, at best, the
18 ten-year period is a time frame in which the debtor
19 enjoys the potential of never having the judgment
20 enforced. But because the ten years hadn't elapsed since
21 the time of the extension, the potential of the
22 substantive right being realized by cessation of the lien
23 never, in fact, materialized.

24 In conclusion, the legislature intended the
25 retroactive application of the extension statute. The

1 extension of the judgment does not affect a substantive
2 right, as there was no cessation of the lien. The lien
3 was still active when the extension was granted. There
4 didn't exist the substantive right occasioned by
5 cessation of the lien, as the ten years hadn't elapsed.
6 The extension was applied for in a timely fashion. The
7 extended lien therefore is not unconstitutional and the
8 extended lien is not void ab initio.

9 So that's my reasoning and ruling as to the legality
10 of the extended lien.

11 But we now have to address the issue of the probate
12 matters, which I haven't heard argument yet.

13 MR. MESSEBRINK: Before we leave this, would
14 you entertain a simple order denying the motion, or do
15 you want findings and conclusions?

16 THE COURT: Yes.

17 MR. MESSEBRINK: I need to draft those, then.

18 THE COURT: You may choose to have a transcript,
19 if you would like.

20 (The court's decision concluded.)
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RCW 4.16.020
Actions to be commenced within ten years — Exception.

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after July 23, 1989.

[2002 c 261 § 2; 1994 c 189 § 2; 1989 c 360 § 1; 1984 c 76 § 1; 1980 c 105 § 1; Code 1881 § 26; 1877 p 7 § 26; 1854 p 363 § 2; RRS § 156.]

Notes:

Application -- 1980 c 105: "This act shall apply to all judgments which have not expired before June 12, 1980." [1980 c 105 § 7.]

Adverse possession

limitation tolled when personal disability: RCW 7.28.090.

recovery of realty, limitation: RCW 7.28.050.

RCW 4.56.210**Cessation of lien — Extension prohibited — Exception.**

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after *the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after *the effective date of this act shall contain the birth date of the youngest child for whom support is ordered.

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

[1995 c 75 § 1; 1989 c 360 § 2; 1979 ex.s. c 236 § 1; 1929 c 60 § 7; RRS §§ 459, 460. Formerly RCW 4.56.210 and 4.56.220. Prior: 1897 c 39 §§ 1, 2.]

Notes:

*Reviser's note: This act [1989 c 360] has three effective dates. Sections 9, 10, and 16 are effective May 12, 1989, section 39 is effective July 1, 1990, and the remainder of this act is effective July 23, 1989.

Entry of judgments -- Superior court -- District court -- Small claims: RCW 6.01.020.

RCW 6.17.020**Execution authorized within ten years — Exceptions — Fee — Recoverable cost.**

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order granting the application shall contain an updated judgment summary as provided in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or 6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020 (2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

[2002 c 261 § 1; 1997 c 121 § 1; 1995 c 231 § 4; 1994 c 189 § 1; 1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1371 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior. 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]

Notes:

Rules of court: Cf. CR 58(b), 62(a), and 69(a); JCR 54.

Application -- 1980 c 105: See note following RCW 4.16.020.

Entry of judgment: RCW 6.01.020.