

Case Number: 43992-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WALENTYNA PIATEK and EUGENIUSZ ANTONI PIATEK, wife and
husband; and STANISLAW PIATEK, an unmarried individual,

Appellants,

v.

RENATA ANNA PIATEK, an unmarried individual,

Appellee.

APPELLANTS' BRIEF

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INTRODUCTION

Appellee (“Ms. Piatek”) filed a Writ of Execution with the court below seeking to levy upon Appellants (“Mr. Piatek”) Washington Racketeer Influenced Corrupt Organizations Act (“WARICO”) claims against her in King County Superior Court, case no. 12-2-04294-2. Mr. Piatek opposed Ms. Piatek’s Writ by filing a Motion to Quash with the trial court. In contravention of applicable case law, public policy, and standard judicial protocol, Judge Roseanne Buckner denied that Motion. Ms. Piatek then purchased Mr. Piatek’s WARICO claims at a Sheriff’s sale. As the owner of those claims, and without having to litigate on the merit of those claims, Ms. Piatek was ultimately able to voluntarily dismiss Mr. Piatek’s WARICO action against her.

The trial court’s decision to deny Mr. Piatek’s Motion to Quash is insupportable and unsustainable where relevant case law and principles of due process and public policy all mandate that Ms. Piatek should have been barred from purchasing Mr. Piatek’s WARICO claims through the execution of an unrelated judgment.

ASSIGNMENTS OF ERROR

A. Did the trial court err by denying Mr. Piatek’s Motion to Quash Ms. Piatek’s Writ of Execution upon his WARICO claims in an unrelated case.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Where Washington courts generally prohibit Defendants from purchasing causes of action against them through the execution of unrelated judgments, did the trial court err by denying Mr. Piatek's Motion to Quash?

B. Did the trial court erroneously apply applicable case law, ignore due process and public policy concerns, and commit prejudicial error by denying Mr. Piatek's Motion to Quash?

STATEMENT OF THE CASE

On November 19, 2010, the trial court entered a judgment in favor of Ms. Piatek for approximately \$91,000 (now approximately \$183,000 with interest).¹ (CP 375-379). In satisfaction of that judgment, Mr. Piatek offered Ms. Piatek a developed parcel of land he owns in Poland worth approximately 800,000 Polish zlotych, or \$250,000 USD. (CP 321-348). Ms. Piatek never replied to Mr. Piatek's offer. *Id.* Mr. Piatek offered Ms. Piatek this parcel well before Ms. Piatek filed the Writ of Execution at issue on this appeal. *Id.*

On February 2, 2012, pursuant to RCW 9a.82, *et seq.*, Washington's Criminal Profiteering Act, Mr. Piatek filed suit against Ms. Piatek and her boyfriend, John Glowczyk, in King County Superior Court.

¹ Mr. Piatek appeared *pro se* in the proceedings below.

(CP 17-107). Mr. Piatek alleged that, beginning in 2005, Ms. Piatek and her boyfriend, John Glowczyk, had committed various criminal and fraudulent acts against Mr. Piatek and his wife, Magdalena Siudy, and asserted damages of approximately USD \$6.5 million. (CP 17-107). On April 26, 2012, Ms. Piatek moved to dismiss Mr. Piatek's WARICO claims for failure to state a claim for relief under CR 12(b)(6). (CP 4). On May 24, 2012, after hearing the parties' oral arguments, the King County Court denied Ms. Piatek's Motion to Dismiss. *Id.*

On July 20, 2012, pursuant to her 2010 judgment against Mr. Piatek, Ms. Piatek sought and obtained from the trial court a Writ of Execution to levy upon the WARICO claims pending against her in King County Superior Court. (367-386). Mr. Piatek then filed a Motion to Quash Ms. Piatek's Writ of Execution with the trial court. (CP 3-107). On August 24, 2012, the court below denied Mr. Piatek's Motion to Quash. (CP 351-352). A sheriff's sale then took place in King County at Ms. Piatek purchased Mr. Piatek's WARICO claims for \$35,000. (CP 353). Thereafter, Ms. Piatek voluntarily dismissed all of those claims, disposing of Mr. Piatek's entire lawsuit against her on October 3, 2012. (CP 390-400).

STANDARD OF REVIEW

The trial court failed to properly interpret and apply relevant case law in the proceedings below regarding the ability of Defendants to

eliminate causes of action against them by executing of unrelated judgments. Conclusions of law are reviewed de novo on appeal. *See Rainier View Court Homeowners Ass'n, Inc. v. Zenker*, 157 Wn.App. 710, 719, 238 P.3d 1217 (2010). As a result, the trial court's decision to deny Mr. Piatek's Motion to Quash should be reviewed de novo by the appellate court.

ARGUMENTS AND AUTHORITY

Review by this Court is warranted where the trial court issued a written decision affecting Mr. Piatek's substantial right to pursue his WARICO claims against Ms. Piatek (in case no. 12-2-04294-2), effectively discontinuing that action. RAP 2.2(a)(3).

By misapplying the relevant law and by denying Mr. Piatek's Motion to Quash, the trial court condoned Ms. Piatek's circumvention of the judicial process through her purchase and dismissal of Mr. Piatek's WARICO claims. The denial of Mr. Piatek's Motion to Quash allowed for a drastic change in the status quo, and substantially limited Mr. Piatek's right to his day in court against Ms. Piatek. Similarly, the trial court substantially departed from the accepted and usual course of judicial proceedings by authorizing Ms. Piatek's Writ of Execution on Mr. Piatek's WARICO claims, an unusual and inequitable procedural tactic which inevitably led to the termination of a cause of action outside the trial court's own purview.

1. Defendants May Not Execute Judgments Through the Sale of a Causes of Action Against Them.

The trial court erred and significantly departed from Washington precedent by allowing Ms. Piatek to purchase Mr. Piatek's claims against her, which led to the dismissal of those claims by Ms. Piatek. In fact, Washington courts do not support the use of writs of execution to purchase and control a separate lawsuit against the judgment creditor. *See, e.g., Paglia v. Breskovich*, 11 Wn. App. 142, 522 P.2d 511 (1974) (reversing trial court's denial of motion to set aside sheriff's sale of debtor's unliquidated claim because such a sale would destroy the debtor's ability to prosecute the action); *see also MP Med. Inc. v. Wegman*, 151 Wn. App. 409, 213 P.3d 931 (2009) (finding the trial court should exercise its power to "prevent the grossly inequitable situation where one party destroys the opposing party's cause of action by becoming the owner of the cause of action under review").

Washington courts have routinely rejected the ownership and control of both ends of a lawsuit by a single party where that party strong-armed its way into both positions via a writ of execution and levy upon property. Washington courts should exercise their inherent supervisory powers to prevent that situation from arising. *See Paglia* at 145; *accord MP Med. Inc.* 151 Wn. App. at 417. This sentiment is also shared outside of Washington. *See, e.g., Donan v. Dolce Vita Sa, Inc.*, 992 So.2d 859, 861 (Fla. Dist. Ct. App. 4th Dist. 2008) (citing *Paglia* in finding that the trial court did not abuse its discretion in quashing the sheriff's sale because the plaintiff "would then be able to dismiss [defendant's] case against him without [defendant] ever having its...claim resolved on the

merits.”); *Criswell v. Ginsberg & Foreman*, 843 S.W.2d 304, 306 (Tex. Ct. App. 1992) (“When a judgment debtor’s cause of action against his judgment creditor is turned over to the judgment creditor, the judgment becomes the holder of a cause of action against himself. The judgment creditor becomes both plaintiff and defendant. Under such circumstances, any justiciable controversy is extinguished. Thus, the judgment debtor is forever deprived of his day in court on that cause of action without receiving any value in return for it.”).

Ms. Piatek is not and was not foreclosed from executing on her judgment against Mr. Piatek if other leviable property existed in the jurisdiction. Ms. Piatek’s Motion for Order for Writ of Personal [*sic*] Execution on Personal Property states that “[a]mong the personal property of Plaintiff Staislaw W. Piatek is intangible property located in King County...” (CP 367-386). Ms. Piatek expressly acknowledged to the trial court that other personal property belonging to Mr. Piatek existed in this jurisdiction which she could have executed upon to satisfy any judgments.

Ms. Piatek’s decision to pursue Mr. Piatek’s claims as the sole source of personal property was a cue to the trial court that Ms. Piatek had an ulterior intent to control and dismiss, or otherwise quash, Mr. Piatek’s WARICO claims without having to litigate those claims on their merit. Nonetheless, the trial court ignored this intent and allowed Ms. Piatek to proceed to the sheriff’s sale. This action by the lower court was in error and signified a marked departure from Washington precedent. Controlling authorities have consistently prevented Defendants from purchasing and

dismissing lawsuits against themselves, as the trial court should have done here.

2. Due Process and Public Policy Considerations Weigh Heavily Against Ms. Piatek's Writ of Execution Against Mr. Piatek's Claims.

a. The Trial Court's Decision to Allow Ms. Piatek to Execute on Her Writ Deprived Mr. Piatek of Due Process.

The trial court's failure to quash Ms. Piatek's Writ of Execution acted as a motion to dismiss Mr. Piatek's WARICO claims without allowing Mr. Piatek to have his day in court. The trial court's failure to quash Ms. Piatek's Writ amounts to a violation of Mr. Piatek's due process rights and contravenes current public policy in this state.

“The Fourteenth Amendment declares that no State shall ‘deprive any person of life, liberty, or property, without due process of law.’ This prohibition has regard not to matters of form, but to substance of right.” *Western Life Indem. Co. v. Rupp*, 235 U.S. 261, 273 (1914). Similarly, the Washington State Constitution provides that “no person shall be deprived of life, liberty, or property, without due process of the law.” Wash. Const. art. I, § 3. An interest or claim in a legal proceeding is a protected property right under both the United States and Washington constitutions. *See Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 485 (1988) (stating that the question of the protected status of a cause of action “‘was affirmatively settled by the *Mullane* case [*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)] itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.’”); *Putman v. Wenatchee*

Valley Med. Ctr., PS, 166 Wn.2d 974, 979 (2009) (affirming that “The people have a right of access to courts; indeed, it is ‘the bedrock foundation upon which rest all the people’s rights and obligations.’” (internal citation omitted)). *See also Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

Due process safeguards protect individuals only from deprivation by state actors. *Pope*, 485 U.S. at 485. However, the private use of challenged state procedures, made with the help of state officials, is state action for the purposes of the Fourteenth Amendment. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 933 (1982) (finding plaintiff’s efforts to secure a prejudgment writ of attachment, with the assistance of state officials qualified as “state action”). Here, Ms. Piatek enlisted the aid of the trial court and the King County Sheriff’s Office, giving rise to a finding of “state action.” Thus, the inquiry for the trial court should have been: what process is due Mr. Piatek before he may be deprived of his WARICO claims against Ms. Piatek? *See Zimmerman Brush*, 455 U.S. at 428. The trial court’s failure to ask this question was in error.

RCW 6.17.140 governs the sheriff’s procedures for executing a writ and satisfying a judgment. RCW 6.17.140(4) provides that after a judgment is satisfied, any property that remains in custody shall be returned to the judgment debtor. Given the position of the parties in the King County case, the trial court should have seen that, even if Defendant followed the procedures set forth in RCW 6.17 *et seq.* to the letter, injustice and a denial of due process would result for several reasons. First, Ms. Piatek sought to satisfy a judgment worth approximately

\$183,670.79. Mr. Piatek's WARICO claims against Ms. Piatek were unliquidated, but Mr. Piatek alleged damages of approximately \$6.5 million. It was not unforeseen that Ms. Piatek would be the highest bidder at the sheriff's sale of Mr. Piatek's claims and that, thereafter, she would substitute herself as plaintiff and dismiss the case. Ultimately, by failing to stop Ms. Piatek's Writ, the trial court erred by allowing Ms. Piatek to effectively nullify an entire lawsuit to satisfy a judgment representing a tiny portion of the value of Mr. Piatek's claims against her.

Although RCW 6.17.140(4) mandates that any property or value in excess of satisfaction of the judgment be returned to the judgment debtor, Ms. Piatek opted to dismiss Mr. Piatek's claims. The execution on Mr. Piatek's claims allowed by the trial court essentially gutted his WARICO case against Ms. Piatek, all in violation of Mr. Piatek's due process rights.

Second, as a substituted plaintiff, Ms. Piatek not only voluntarily dismissed Mr. Piatek's claims against her, but she also voluntarily dismissed Mr. Piatek's same claims against Glowczyk, completely stripping Mr. Piatek of his day in court against that defendant.

Third, as the trial court should have seen when deciding whether to quash Ms. Piatek's Writ, the sheriff's sale provided Mr. Piatek with little protection for the actual value of his claims. As is often the case with mortgagees bidding in foreclosure sales, the judgment creditor will likely be the only bidder, practically guaranteeing a bargain price. *See Amphibious Partners LLC v. Redman*, 389 F. Appx. 762, 767 (10th Cir. 2010) (noting that "in all but the most unusual cases a public sale provides minimum procedural protections"). No incentive existed at the time of sale

for Ms. Piatek to pay a fair value for Mr. Piatek's claims, and thought Mr. Piatek could *and did* bid on the claims, he should not have been required to pay for the right to litigate his case against Ms. Piatek.

b. Public Policy Favors a Full and Fair Opportunity for Parties to Litigate Their Claims.

The American judicial system upholds a “deep-rooted historic tradition that everyone should have his own day in court.” *Taylor v. Sturgell*, 553 U.S. 880, 892-893 (2008). This is most obviously reflected in courts’ treatment of issue and claim preclusion, where the inquiry focuses on whether a party in a second forum had a “full and fair opportunity to litigate” the claims and issues in that lawsuit. *Taylor* at 892-893. The trial court should have looked to those principles for guidance when taking actions that would extinguish the right of a litigant to fully and fairly litigate the merits of their claim. Against well-founded notions of public policy, the trial court failed to follow applicable the case law and improperly elected not to quash Ms. Piatek’s Writ, which ultimately foreclosed Mr. Piatek’s ability to fully and fairly litigate his claim against Ms. Piatek and Glowczyk.

If Ms. Piatek wished to extinguish the WARICO claims, she should have been required to follow the rules of civil procedure to pursue either a motion to dismiss or motion for summary judgment. Abusing the extraordinary remedy of a writ of execution to circumvent normal means of eliminating lawsuits should not have been permitted in the trial court. The allowance and encouragement of such tactics creates a dangerous precedent for future litigants.

Writs of Execution are intended as means to collect a debt, not as a tactic for escaping litigation. By allowing Ms. Piatek's Writ to go forward, the trial court created a perverse set of incentives, encouraging defendants to avoid adjudication of claims on the merits, and urging defendants to secure judgments on small, unrelated claims, or even counterclaims, in hopes of eviscerating a plaintiff's central claims. Such a result cannot be called justice and, by denying Mr. Piatek's Motion to Quash, both the trial court's misinterpretation of current applicable law and its departure from regular judicial procedures warrant reversal by this Court.

CONCLUSION

For the reasons stated above, Appellant, Stan Piatek, respectfully requests this Court vacate the trial court's decision to deny his Motion to Quash, rendering void the King County Sheriff's sale in favor of Mr. Piatek, so that he may pursue the merits of his WARICO claims against Appellee, Ms. Piatek, in King County Superior Court.

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DATED this Thursday, March 14, 2013.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Appellants
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