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No. 35567-1-II
COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

TCAP CORPORATION, f/k/a TRANSAMERICAN CAPITAL CORPORATION,

Respondent,

v.

GEORGE GERVIN and JOYCE GERVIN,

Appellants.

401 GROUP, a Washington limited partnership,

An Interested Party.

FILED
COURT OF APPEALS
DIVISION II
07 MAY 21 PM 2:19
STATE OF WASHINGTON
BY DEPUTY

BRIEF OF APPELLANTS

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ORIGINAL

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A. ASSIGNMENTS OF ERROR

Assignments of Error

No. 1: The Superior Court erred in approving a writ of execution that directed the sheriff to sell a partner's entire interest in a limited partnership.

No. 2: The Superior Court erred in equitably tolling the 10-year statutory life-span of the judgment lien.

No. 3: The Superior Court erred in extending the duration of the judgment contrary to statutory standards and procedures.

Issues Pertaining to Assignments of Error

No. 1: Does RCW 25.10.410 authorize foreclosure of a partnership interest in a limited partnership? (Assignment of Error No. 1.)

No. 2: Does the foreclosure remedy under RCW 25.05.215(2) supplement the charging order authority under RCW 25.10.410? (Assignment of Error No. 1.)

No. 3: Does RCW 25.05.215(2) authorize foreclosure of a partner's non-transferable interest in a partnership? (Assignment of Error No. 1.)

No. 4: May the statutory life-span of a judgment lien that expires during the time when its enforcement was enjoined be equitably tolled

where the injunctive relief did no injury to the judgment creditor's rights? (Assignment of Error No. 2.)

No. 5: May the statutory life-span of a judgment lien that expires during a time when its enforcement was enjoined be equitably tolled where it was not a blatant abuse of the court system for the judgment debtor to obtain the injunctive relief? (Assignment of Error No. 2.)

No. 6: Does RCW 6.17.020(3) authorize a court to extend the duration of the judgment where the judgment creditor did not apply for an extension within 90 days before expiration of the original judgment? (Assignment of Error No. 3.)

No. 7: Does RCW 6.17.020(7) preclude enforcement of a judgment lien on a foreign judgment after the foreign judgment expires under the laws of the originating jurisdiction? (Assignment of Error No. 3.)

B. STATEMENT OF THE CASE

1. PROCEDURE BELOW

On October 31, 2006, Appellants George Gervin and Joyce Gervin filed with the Superior Court a Motion to Quash Writ of Execution and Dismiss These Proceedings. CP at 30-35. On November 9, 2006, the motion came before the Hon. Kathryn J. Nelson, who heard oral argument thereon, and entered an Order denying the motion. CP at 275. On

November 9, 2006, Appellants filed a Notice of Appeal to Court of Appeals. CP at 276-278.

2. RELEVANT FACTS

On February 27, 1989, an Agreed Judgment was entered in the District Court of Collin County, Texas, 219th Judicial District in which a civil money judgment was rendered against George Gervin. CP at 2-3. On October 17, 1996, a certified copy of this judgment was filed with the Superior Court of Washington for Pierce County. CP at 1-3.

An Order Charging Partnership Interest was entered by the Superior Court on December 6, 1996, charging the partnership interest of George Gervin in the 401 Group, a Washington limited partnership, with payment of the judgment in favor of plaintiff. CP at 4-5. On October 22, 2004, the Superior Court entered an Order Directing Sale of Partnership Interest, ordering the issuance of a writ of execution directing the Pierce County Sheriff to sell George Gervin's ownership interest in the 401 Group at public sale. CP at 6-7.

On August 1, 2006, a Writ of Execution was obtained from the Clerk of the Superior Court, directing the Pierce County Sheriff to satisfy the judgment out of George Gervin's entire interest in the 401 Group. CP at 19-21. On August 21, 2006, the Sheriff issued a Sheriff's Notice of Sale of Personal Property scheduling the sale for September 28, 2006. CP

at 65-66. On September 27, 2006, the U.S. District Court for the Western District of Texas entered an Order Granting Appellant's Emergency Motion to Stay State Court Writ of Execution Sale, ordering the writ of execution stayed for 45 days from the date of the order. CP at 72-73.

On October 31, 2006, Appellants George Gervin and Joyce Gervin filed with the Superior Court a Motion to Quash Writ of Execution and Dismiss These Proceedings. CP at 30-35. On November 9, 2006, the motion came before the Hon. Kathryn J. Nelson, who heard oral argument thereon, and entered an Order denying the motion. CP at 275. On November 9, 2006, Appellants filed a Notice of Appeal to Court of Appeals. CP at 276-278.

C. SUMMARY OF ARGUMENT

This appeal arises out of Respondent's efforts to foreclose on George Gervin's partnership interest in a limited partnership after the expiration of the statutory life-span of the judgment lien. On August 1, 2006, Respondent obtained issuance of a writ of execution that directed the Pierce County sheriff to foreclose on George Gervin's partnership interest in a limited partnership, CP at 19-21, despite the fact that the Washington Uniform Limited Partnership Act (WULPA) does not authorize foreclosure on a partnership interest in a limited partnership. A sheriff's sale was scheduled for September 28, 2006. CP at 65. On

September 27, the writ of execution was stayed for 45 days by order of the U.S. District Court for the Western District of Texas. CP at 72-73. The judgment lien expired by statute on October 17, 2006. On November 9, 2006, the Superior Court entered an order denying the Gervins' motion to quash the writ of execution. CP at 275. The Superior Court's order is erroneous for several reasons.

First, the Superior Court erroneously construed WULPA as authorizing foreclosure on a partnership interest in a limited partnership. WULPA does not authorize foreclosure. Instead, under WULPA a creditor is limited to receiving the partner's economic benefits from the partnership (e.g., the partner's share of profits and losses, distributions, etc.).

Second, to the extent the Superior Court construed WRUPA's foreclosure remedy as supplementing WULPA's charging order authority, it erred because WULPA provides for the rights of judgment creditors with respect to a partnership interest in a limited partnership held by a judgment debtor, and these rights do not include the authority to foreclose on the partnership interest.

Third, even if the foreclosure remedy under the Washington Revised Uniform Partnership Act (WRUPA) supplements WULPA's charging order provision, which is doubtful, it is limited to foreclosure of a

partner's transferable interest in the partnership.

Fourth, the Superior Court erroneously invoked equity to toll the expiration of the statutory life-span of the judgment lien, which had expired during the time when the writ of execution was stayed by a federal court. Equitable tolling of the statutory life-span of a judgment lien is permissible only if the judgment creditor's rights were injured by the injunctive relief. In this case, the judgment creditor suffered no such injury because, as discussed above, WULPA does not authorize the foreclosure on George Gervin's partnership interest in a limited partnership, which was the action sought under the writ of execution.

Fifth, the Superior Court erred in equitably tolling the expiration of the judgment lien because equitable tolling is only permissible if the judgment debtor blatantly abused the court system in obtaining the injunctive relief. In this case, George Gervin applied to the federal court for temporary injunctive relief because that court was considering cross-appeals from an order of the bankruptcy court directly affecting the respective rights of the parties herein to the partnership interest subject to foreclosure under the writ of execution. Foreclosure under the writ of execution potentially would render the federal court's decision on the appeal worthless and of no practical effect.

Sixth, the Superior Court erred because it added time to the life-

span of the judgment lien, notwithstanding that the Respondent did not apply for such additional time as required under RCW 6.17.020(3).

Seventh, the Superior Court erred because it enforced a judgment lien on a foreign judgment that had expired under the laws of the originating state, Texas, contrary to the requirements of RCW 6.17.020(7).

For each of these reasons, the Superior Court's order of November 9, 2006, denying the Gervins' motion to quash the writ of execution, is in error. Therefore, the Gervins respectfully request that this Court reverse the Superior Court's order, and remand the matter to the Superior Court with instructions to dismiss under RCW 6.32.150.

D. ARGUMENT

1. THE SUPERIOR COURT ERRED IN APPROVING A WRIT OF EXECUTION THAT DIRECTED THE SHERIFF TO SELL A PARTNER'S ENTIRE INTEREST IN A LIMITED PARTNERSHIP

a. RCW 25.10.410 does not authorize foreclosure of a partnership interest in a limited partnership.

The Superior Court held that "the scope of the writ of execution is not overly broad because it complied with the Washington Limited Partnership Act, RCW ch. 25.10." CP at 275. The Superior Court erred in construing the Washington Uniform Limited Partnership Act (WULPA), ch. 25.10 RCW, to permit the foreclosure of a partnership interest in a

limited partnership. Its construction of the statute is subject to de novo review by the Court of Appeals. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 642, 151 P.3d 990 (2007).

The means at common law by which a judgment creditor of a partner enforced his claim against the judgment debtor's interest in the partnership has been described as "[o]ne of the most artificial and confusing procedures of the common law". J. Gordon Gose, *The Charging Order Under the Uniform Partnership Act*, 28 Wash. L. Rev. 1 (1953). Professor Gose quotes Lord Justice Lindley of the English Court of Appeal:

> When a creditor obtained a judgment against one partner and he wanted to obtain the benefit of that judgment against the share of that partner in the firm, the first thing was to issue a *fi. fa.*, and the sheriff went down to the partnership place of business, seized everything, stopped the business, drove the solvent partners wild, and caused the execution creditor to bring an action in Chancery in order to get an injunction to take an account and pay over that which was due by the execution debtor. A more clumsy method of proceeding could hardly have grown up.

Gose, *The Charging Order*, *supra*, at 1. In the United States, reform of this "clumsy method" eventually took the form of the charging order.

The Uniform Partnership Act (1914) defined a partner's interest in the partnership as "his share of the profits and surplus, and the same in personal property." It provided that upon application by a judgment

creditor, a competent court –

> – may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

Finally, it expressly contemplated the remedy of foreclosure, and provided that the partnership interest "may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution ...." Gose, *The Charging Order*, *supra*, at 4.

Unforturnately, the Uniform Partnership Act did not provide the clarity and certainty that may have been desired. After all was said and done, it did not "contain[] a detailed statement of the procedure for obtaining or the consequences which result from a charging order." Gose, *The Charging Order*, *supra*, at 5. To this day, there remains a degree of confusion and uncertainty.

A partnership interest may be sold on execution only "to the extent permitted by Title 25 RCW". RCW 6.32.085. Nothing in WULPA provides for foreclosure of a partnership interest. WULPA authorizes a court to grant a charging order to a partner's judgment creditor, and

provides that "[t]o the extent so charged, the judgment creditor has *only* the rights of an assignee of the partnership interest." RCW 25.10.410 (emphasis added). An assignee's rights are limited to the rights "to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled ...." RCW 25.10.400(1)(c). In other words, an assignee has the right to enjoy the economic benefits to which the assignor would otherwise be entitled, to the extent those benefits are assigned. "An assignment of a partnership interest does not ... entitle the assignee to become or to exercise any rights or powers of a partner". RCW 25.10.400(1)(b).

Nothing in WULPA gives an assignee the right to strictly foreclose on, or obtain a court-ordered sale of, a judgment debtor's partnership interest in a limited partnership. Therefore, the Superior Court erred in reading the statute to authorize the forced sale of George Gervin's partnership interest.

b. The foreclosure remedy under RCW 25.05.215(2) does not supplement the charging order authority under RCW 25.10.410, which already provides for the rights of a judgment creditor with respect to the partnership interest of a judgment debtor in a limited partnership.

Under Title 25 RCW, the only provision for foreclosure of a partnership interest is found in the Washington Revised Uniform Partnership Act (WRUPA), ch. 25.05 RCW. WRUPA expressly authorizes a court to order foreclosure of a partner's transferable interest in the partnership. RCW 25.05.215(2). However, WRUPA only applies to limited partnerships in a "case not provided for" under WULPA. RCW 25.10.660. It has been observed that "it is not always clear whether a matter is a 'case not provided for' by the limited partnership statute." Elizabeth S. Miller, *Linkage and Delinkage: A Funny Thing Happened to Limited Partnerships When the Revised Uniform Partnership Act Came Along*, 37 Suffolk U. L. Rev. 891, 899 (2004).

With respect to foreclosure, Professor Miller observes: "Courts dealing with charging orders in the limited partnership context have reached different conclusions with regard to whether the charging order provisions of the UPA supplement those in RULPA." Miller, *Linkage and Delinkage*, *supra*, 37 Suffolk U. L. Rev. at 899. "A number of courts have concluded that the UPA charging order provisions supplement the RULPA charging order provisions, i.e., that they address a case "not provided for" in RULPA in a manner that is "not inconsistent" with RULPA. Thus, these courts have concluded that a judgment creditor may obtain foreclosure on a charged interest in a limited partnership." Miller,

Linkage and Delinkage, *supra*, 37 Suffolk U. L. Rev. at 900.

The first of these cases is *Centurion Corp. v. Crocker National Bank*, 208 Cal.App.3d 1, 255 Cal. Rptr. 794 (Cal. Ct. App. 1989). In *Centurion Corp.*, Crocker National Bank obtained an order charging Jon Perroton's interest in a limited partnership with payment of an unsatisfied judgment. Thereafter, Crocker obtained an order of sale of Perroton's interest. Approximately 15 months later, Perroton moved to void the order of sale, which motion was denied. *Id.* at 795-96. Perroton did not contest the validity of the charging order, but argued that California partnership law did not give the court authority to order the sale of a judgment debtor's partnership interest in a limited partnership. *Id.* at 797. The court of appeals cited various provisions of the Uniform Partnership Act relating to charging orders and foreclosures, as well as the provision of the Uniform Limited Partnership Act authorizing charging orders with respect to limited partnerships, and held that "a court may authorize sale of the debtor partner's partnership interest ...." *Id.* at 798. However, *Centurion Corp. v. Crocker National Bank* does not discuss the basis on which it applied the Uniform Partnership Act's foreclosure remedy to the Uniform Limited Partnership Act's charging order authority. The other cases cited by Professor Miller are more explicit on this point.

In *Madison Hills Limited Partnership II v. Madison Hills, Inc.*, 35

Conn. App. 81, 644 A.2d 363 (Conn. App. Ct. 1994), a limited partnership obtained a judgment against its general partner. The limited partner moved for a charging order to be entered against the general partner, and also moved for immediate strict foreclosure of the partnership interest. The trial court granted the motion, except that it allowed a period of time for redemption of the property interest before foreclosure. *Id.* at 365-66. The appellate court observed that under the Uniform Limited Partnership Act, "[j]udgment creditors of a partner in a limited partnership can obtain a charging order against the partnership interest." *Id.* at 367. However, it concluded that the Act "does not ... provide a means to enforce the charging order." *Id.*

> Although §34-30 provides that the charging creditor has the rights of an assignee; and assignees have a right to the partner's distribution; neither §34-30 nor §34-27 provides a method for the assignee to enforce that right. A charging order alone provides little comfort to the charging creditor.

Id. at 368 (citations omitted). By an express provision of the Uniform Partnership Act, its provisions apply to limited partnerships to the extent they are not inconsistent with the Uniform Limited Partnership Act. *Id.* at 366. The court concluded that only the Uniform Partnership Act "contains a means of enforcing a charging order. Thus, §34-30 relies on rather than conflicts with §34-66." *Id.* at 368. The other two cases cited by Professor Miller in which the foreclosure remedy under the Uniform Partnership Act

was applied to a partnership interest in a limited partnership follow essentially the same logic. *See, Baybank v. Catamount Construction, Inc.*, 693 A.2d 1163 (N.H. 1997), and *Lauer Construction, Inc. v. Schrift*, 123 Md.App. 112, 716 A.2d 1096 (Md. Ct. Spec. App. 1998).

Each of the foregoing cases is distinguishable from the situation presented in the present matter because they deal with the circumstances under which a provision of the Uniform Partnership Act applies to limited partnerships. In 1998, the Washington Legislature repealed the Uniform Partnership Act and replaced it with the Washington Revised Uniform Partnership Act (WRUPA). Laws of 1998, ch. 103, § 1308.

The case of *Givens v. Nat'l Loan Investors L.P.*, 724 So.2d 610 (Fla. Dist. Ct. App. 1998) examines the issue in the context of the Revised Uniform Partnership Act, which was adopted in Florida in 1995. 1995 Fla. Laws ch. 95-242 (Fla. Stat. § 620.81001 et seq.). A significant difference between the original and revised acts is that is that the original Uniform Partnership Act, as mentioned above, "exports its provisions into [the applicable limited partnership statute] unless stopped by an 'inconsistency' in the limited partnership statute." Miller, *Linkage and Delinkage*, *supra*, 37 Suffolk U. L. Rev. at 893. This provision is not found in the Revised Uniform Partnership Act. Instead, the export of provision from the revised act into the limited partnership statute is

governed by a more limited provision. In the words of the Washington Uniform Limited Partnership Act: "In any case not provided for in this chapter, the provisions of the Washington revised uniform partnership act ... govern." RCW 25.10.660.

Therefore, in Washington, which has adopted the Revised Uniform Partnership Act, the question is not whether a WRUPA provision is "not inconsistent with" WULPA, but whether WULPA "provides for" the case at hand. If WULPA provides for a given case, there is no authority to supplement WULPA's provision with WRUPA.

Although *Givens v. Nat'l Loan Investors L.P.* does not expressly discuss Florida's corollary to RCW 25.10.660, its analysis appears more consistent with that statute than do cases decided under the "not inconsistent with" standard of the original Uniform Partnership Act.

In *Givens*, National Loan Investors obtained a charging order against Charles Givens' interest in two limited partnerships, and then applied for an order transferring Givens' interest in the partnerships to National for the purposes of liquidation. The trial court held that an execution sale of a limited partnership interest was allowed under Florida law. *Givens v. Nat'l Loan Investors L.P.*, 724 So.2d at 611. The court of appeals construed statutory language for a charging order against a limited partnership interest that is identical to RCW 25.10.410, and held:

> The straightforward language of the statute confers upon a judgment creditor the right to charge the limited partner's interest with payment of the unsatisfied amount of the judgment. The statute further provides that to the extent so charged the judgment creditor has "*only* the rights of an assignee of the partnership interest." Because the statute says that a judgment creditor has only the rights of an assignee of the partnership interest, it necessarily follows that the creditor may not resort to judicial foreclosure of the partnership interest. Nothing in the Revised Uniform Limited Partnership Act authorizes foreclosure of the charged interest and foreclosure is inconsistent with the statute's limitation upon the creditor's remedies.

Givens v. National Loan Investors L.P., 724 So.2d at 611 (emphasis by the court). As Professor Miller observes, the *Givens* court "concluded that the RULPA charging order provision 'means what it says'". Miller, *Linkage and Delinkage*, *supra*, 37 Suffolk U. L. Rev. at 900.

The plain language of RCW 25.10.660 appears to favor the analysis in *Givens*. RCW 25.10.660 does not say that WULPA incorporates those provisions of WRUPA that are "not inconsistent" with WULPA. It says that WRUPA applies to a "case not provided for" under WULPA. The rights of a judgment creditor of a partner of a limited partnership to obtain a charging order are expressly provided for under RCW 25.10.410, and they do not include the right to foreclose on the property.

Inasmuch as WULPA provides a means by which a judgment creditor may charge a partner's interest, it provides for such cases. The

mere fact that judgment creditors of partners in a general partnership have the additional remedy of judicial foreclosure does not change the fact that RCW 25.10.410 provides for charging a partnership interest in a limited partnership. Since the "case" is "provided for" under WULPA, the additional remedy of foreclosure under WRUPA is not available with respect to a limited partnership.

Furthermore, under WULPA, an assignee may not "exercise any rights or powers of a partner ...." RCW 25.10.400(1)(b). The partnership interest subject to the charging order is limited to the economic benefits under RCW 25.10.400(1)(c), and does not include other legal rights or powers the partner may hold. Thus, even if WULPA authorized foreclosure of a partnership interest in a limited partnership, the Superior Court erred in construing WULPA to permit the judgment creditor to receive the property described in the Writ of Execution – that is, Appellant's "entire limited partnership interest", CP at 19, including all of Appellant's "rights and claims of any kind and nature past and future ... based upon or arising from or in connection with the partnership agreement", and all of Appellant's claims against the partnership and "all its past, present and future partners, principals, agents, successors and assigns." CP at 20. The partnership interest subject to sale under the writ of execution exceeds the rights of an assignee under RCW 25.10.400.

Therefore, even if foreclosure is a permissible remedy, the Superior Court nevertheless erred in construing WULPA to permit the sale of all of Appellant's rights and powers as a partner.

c. RCW 25.05.215(2) does not authorize foreclosure of a partner's non-transferable interest in a partnership.

Even if, under RCW 25.10.660, WRUPA's remedy of foreclosure were held to supplement WULPA's charging order provision, foreclosure under WRUPA would be limited to "the judgment debtor's transferable interest in the partnership." RCW 25.05.215(2). "The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions." RCW 25.05.205. Therefore, even if the foreclosure remedy under WRUPA were available to the judgment creditor of a partner of a limited partnership, the interest that could be foreclosed upon is limited to the transferable interest.

However, the Writ of Execution orders the sale of more than George Gervin transferable interest. It directs the sheriff to sell George Gervins "entire interest in the 401 Group, ... including but not limited to" the following:

> (1) George Gervin's entire limited partnership interest in the 401 Group; (2) All past and future distributions owed to George Gervin by the 401 Group by virtue of his

> partnership interest including accrued distributions and interest currently held by Pan Pacific Properties, property manager for the 401 Group; (3) All rights and claims of any kind and nature past and future of George Gervin based upon or arising from or in connection with the partnership agreement (and any amendment) of the 401 Group; and (4) All claims of George Gervin against the 401 Group and all its past, present and future partners, principals, agents, successors and assigns.

CP at 19-20. As is apparent, only the second enumerated category appears to fit within the definition of transferable interest. Certainly, the third and fourth categories are outside that definition, and, thus, are non-transferable. Therefore, the Writ of Execution is overly broad, and directs the sheriff to sell property that is not subject to sale on execution. The Superior Court erred in holding otherwise, and denying the motion to quash the Writ of Execution.

2. THE SUPERIOR COURT ERRED IN EQUITABLY TOLLING THE 10-YEAR STATUTORY LIFE-SPAN OF THE JUDGMENT LIEN

a. The statutory life-span of the judgment lien, which expired on October 17, 2006 while the federal court stay of the writ of execution was in effect, may not be equitably tolled because the stay did no injury to Respondent's rights.

The Superior Court determined that the stay issued by the federal court caused prejudice to Respondent. RP (11/9/2006), p. 38, line 1.

Therefore, it invoked its equitable power to extend the duration of the statutory judgment lien. CP at 275. The Superior Court's exercise of equitable powers is reviewed for abuse of discretion. *Sac Downtown Ltd. Partnership v. Kahn*, 123 Wn.2d 197, 204, 867 P.2d 605 (1994). "A trial court abuses its discretion if its decision is ... based on ... untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997) (citations omitted). A decision "is based on untenable reasons if ... the facts do not meet the requirements of the correct standard." *Id.* at 47.

A court may invoke equity to toll a normal statute of limitations. However, the statutory judgment life-span is not a normal statute of limitations. *Hazel v. Van Beek*, 135 Wn.2d 45, 61, 954 P.2d 1301 (1998). There is only one appellate case in which equity has been invoked to extend the life-span of a statutory judgment lien. *Hazel v. Van Beek*, 135 Wn.2d at 61, citing *Hensen v. Peter*, 95 Wash. 628, 164 P. 512 (1917).

In *Hensen*, the Supreme Court tolled the life of a judgment lien where the statutory expiration of the lien occurred during the time an injunction, which was subsequently dissolved, was in effect. *Hensen v. Peter*, 95 Wash. at 630. This Court has critically examined the *Hensen* decision, and has concluded that "[t]he exception obviously has extremely limited application." *Weyerhaeuser Pulp Employees Fed. Credit Union v.*

Damewood, 11 Wn.App. 12, 16, 521 P.2d 953 (Div. 2, 1974). The Supreme Court agrees. In *Hazel*, the Court held that *Hensen* did not apply to the facts of the case before it, in that regard citing and discussing *Weyerhaeuser Pulp Employees* at length. *Hazel v. Van Beek*, 135 Wn.2d at 63.

According to the Supreme Court, an essential element to equitable tolling under *Hensen* is that the judgment creditor's rights were injured by the injunctive relief in force at the time the statutory judgment lien expired. *Hazel v. Van Beek*, 135 Wn.2d at 63 ("Absent a defendant's blatant abuse of the court system, *thereby injuring the rights of the plaintiff*, no equitable relief can be provided." (Emphasis added.)). In this case, the federal court stay of the writ of execution did not injure the Respondent because, as discussed above, WULPA does not authorize foreclosure on a partnership interest in a limited partnership. In other words, under WULPA, Respondent is not entitled to a sale on execution of Appellant's partnership interest in the limited partnership. Therefore, the federal court order staying that sale did no injury to Respondent's rights.

Even if the foreclosure remedy under WRUPA supplements WULPA, it is limited to a partner's transferable interest. "The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive

distributions." RCW 25.05.205. "Upon transfer, the transferor retains the rights and duties of a partner other than the interest in profits and losses of the partnership and distributions transferred." RCW 25.05.210(4). The writ of execution was facially defective because it directed the sheriff to sell Appellant's "*entire* limited partnership interest" CP at 19 (emphasis added), which includes "all rights and claims of any kind and nature past and future ... based upon or arising from or in connection with the partnership agreement" and "all claims ... against the [partnership] and all its past, present and future partners, principals, agents, successors and assigns." CP at 20. These interests go well beyond the transferable interests subject to foreclosure under WRUPA. Presumably, an overly broad writ could have been cured by drafting a new writ of execution that was limited to foreclosure of Appellant's transferable interest in the partnership. However, at the time the federal court issued the stay, there were 21 days remaining in the statutory life-span of the judgment lien. In order to conduct a sheriff's sale, the clerk of the court would need to issue a new writ describing the transferable interests to be sold, and a minimum of 30 days notice to Appellant would be required before the sale date. RCW 6.21.020(1) "[T]here can be no valid execution on the judgment unless every act necessary for a completed execution sale ... occurs during [the statutory] period." .*Weyerhaeuser Pulp Employees Federal Credit*

Union v. Damewood, 11 Wn.App. at 15. Since the judgment lien would expire before the 30-day notice period could be fulfilled, it was not possible to complete every act necessary during the statutory period.

Thus, even if WRUPA's foreclosure remedy were available, at the time the federal court stayed the writ of execution, there no longer was sufficient time for Respondent to cure the facial deficiency in the overly broad writ. The stay did not injure Respondent's rights because Respondent no longer had sufficient time to complete a sale of the property within the statutory life-span of the judgment lien.

b. The statutory life-span of the judgment lien, which expired on October 17, 2006 while the federal court stay of the writ of execution was in effect, may not be equitably tolled because obtaining the stay was not a blatant abuse of the court system.

The Superior Court determined that the injunctive relief obtained by Appellant from the federal court constituted an abuse of process. RP (11/9/2006), p. 37, line 25 – p. 38, line 1. Therefore, it invoked its equitable power to extend the duration of the judgment lien. CP at 275. As discussed above, the Superior Court's exercise of equitable powers is reviewed for abuse of discretion. *Sac Downtown Ltd. Partnership v. Kahn*, 123 Wn.2d at 204. The Superior Court abuses its discretion if its decision is based on untenable reasons, as where the facts do not meet the

requirements of the correct legal standard. *In re Marriage of Littlefield*, 133 Wn.2d at 46-47.

Equitable tolling under *Hensen* is proper only if the judgment debtor has blatantly abused the court system. *Hazel v. Van Beek*, 135 Wn.2d at 63 ("Absent a defendant's blatant abuse of the court system, ... no equitable relief can be provided.").

On September 25, 2006, George Gervin applied to the U.S. District Court for the Western District of Texas for a stay of the writ of execution issued by the clerk of the Superior Court. CP at 222-30. At the time, the federal court was considering Mr. Gervin's appeal from a decision of the bankruptcy court denying his request for a permanent injunction to stay the enforcement and collection of the judgment in this matter (i.e., the matter before the Superior Court). CP at 223. The gist of his argument was that the judgment was dormant and unenforceable under Texas law; therefore, collection of the judgment would violate the bankruptcy court's 1998 discharge injunction. CP at 226. Mr. Gervin sought the injunction because sale of the property could be irreversible, and thus would result in irreparable harm. CP at 227. The federal court granted the motion, ordering the writ of execution stayed for 45 days. CP at 72.

Nothing in this record indicates an abuse of the court system. George Gervin was awaiting a decision of the federal court in his appeal

from a decision from the bankruptcy court. The appeal directly affected the respective rights of the parties herein to the partnership interest subject to the writ of execution, and sale of that property could render the federal court's decision worthless and of no effect. Under these circumstances, it was eminently reasonable for Mr. Gervin to seek and obtain a stay of the writ of execution.

It is noted that the motion requesting the temporary stay states: "If the appeal is not successful, the property can be sold." CP at 227. In the proceedings before the Superior Court, Respondent suggested that this statement was made in support of the argument that Respondent would not be harmed by issuance of the stay. RP (11/9/2006), p. 23, lines 1-6. In fact, the statement was made as part of the discussion of the impact of the stay on the public interest. CP at 227. Moreover, the statement, although perhaps somewhat conclusory, was accurate in terms of the effect of the stay on the pending decision of the federal court. That is, if the federal court denied the appeal, neither the stay nor the federal proceedings would preclude the sale of the property. Neither party addressed the effect of Washington law, despite the fact that the statutory judgment lien clearly would expire 21 days later.

3. THE SUPERIOR COURT ERRED IN EXTENDING THE DURATION OF THE JUDGMENT CONTRARY TO STATUTORY STANDARDS AND PROCEDURES

a. RCW 6.17.020(3) does not authorize the Superior Court to extend the duration of the judgment because Respondent did not apply for an extension within 90 days before expiration of the original judgment.

Invoking its equitable power, the Superior Court expressly "extend[ed] the duration of the judgment lien." CP at 275. Nothing in the order itself limits the duration of that extension. The Superior Court's exercise of equitable powers is reviewed for abuse of discretion. *Sac Downtown Ltd. Partnership v. Kahn*, 123 Wn.2d at 204. "A trial court abuses its discretion if its decision is manifestly unreasonable ...." *In re Marriage of Littlefield*, 133 Wn.2d at 46. "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard ...." *Id.* at 47. Where the Legislature creates a statutory legal standard for a time limit, the time limit is jurisdictional and is not subject to equitable exceptions. *Hazel v. Van Beek*, 135 Wn.2d at 61.

Here, the Legislature has made provision for extending the duration of a judgment lien. A judgment creditor, or its assignee, "may,

its stay. In other words, the Superior Court extended the actual time during which the judgment lien could be enforced beyond the statutory ten years. This was contrary to the standard established by the Legislature, and thus constitutes an abuse of discretion.

b. RCW 6.17.020(7) precludes enforcement of the judgment lien because the judgment was rendered in a court of the state of Texas and it has expired under the laws of that state.

On October 22, 2004, the Superior Court entered an order that a writ of execution be issued directing the sheriff "to sell the ownership interest of Defendant George Gervin in the 401 Group ...." CP at 6-7. In doing so, the Superior Court rejected the argument presented by George Gervin that the Respondent could not enforce the judgment because it was dormant, and not subject to revival, in Texas, its state of origin. RP (10/22/2004), p. 9, line 15 – p. 10, line 13. The Superior Court's construction of the statute is subject to de novo review by the Court of Appeals. *Sleasman v. City of Lacey*, 159 Wn.2d at 642.

The Superior Court's 2004 decision is reviewable at this time. The Court of Appeals "will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts

within ninety days before the expiration of the original ten-year period, apply ... 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." RCW 6.17.020(3). This is the sole means by which a judgment creditor may extend the life-span of a judgment lien. As the Supreme Court has held:

> 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 (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, 135 Wn.2d at 64.

The record shows no effort by Respondent to obtain an extension of the judgment lien under RCW 6.17.020(3). (As the following section of this discussion shows, Respondent would not have been entitled to obtain an extension, even had it applied.) The Superior Court extended the duration of the judgment lien indefinitely. It was not limited to the period of time during which injunctive relief prevented enforcement of the judgment lien, which merely would have preserved the 21 days left in the statutory life-span of the judgment lien at the time the federal court issued

review." RAP 2.4(b). Obviously, the latter requirement is met here. The other requirement – prejudice – is met where "the order appealed from would not have happened but for the first order." *Right-Price Recreation, LLC v. Connells Prairie Community Council*, 146 Wn.2d 370, 378, 46 P.3d 789 (2002). That requirement is met here, as the writ of execution that the Gervins sought to have quashed would not have issued had the Superior Court not issued its October 22, 2004 order authorizes foreclosure of George Gervin's partnership interest. The order denying the motion to quash the writ of execution would not have happened but for the October 22, 2004 order authorizing foreclosure.

Under Texas law, a writ of execution must be issued within ten years after rendition of the judgment, or the judgment is dormant and execution may not be issued unless the judgment is revived. Tex. Civ. Prac. & Rem. Code § 34.001(a). Revival must be sought not later than two years after the date upon which the judgment becomes dormant. Tex. Civ. Prac. & Rem. Code § 31.006 In this case, the judgment against George Gervin was rendered on February 27, 1989. It became dormant ten years later, on February 27, 1999. Plaintiff sought to revive the judgment, but its motion was dismissed for want of prosecution in 2002. RP (10/22/2004), p. 10, lines 3-8. Therefore, it is no longer subject to revival in the state of Texas.

Generally, a judgment creditor may obtain an execution for enforcement of the judgment "at any time within ten years from entry of the judgment or the filing of the judgment in this state." RCW 6.17.020(1). However, in 2002, the Legislature amended RCW 6.17.020, expressly providing that "[n]othing 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." RCW 6.17.020(7). Therefore, under the plain language of the statute, the statutory enforcement period for a foreign judgment lapses on the earlier of (1) the ten-year anniversary date after the filing of the judgment in this state, or (2) the date on which the judgment expired under the laws of the originating jurisdiction. In this case, the ten-year anniversary after the filing of the judgment in Washington was October 17, 2006, but the judgment expired under the laws of Texas when the revival period lapsed on February 27, 2001. Under RCW 6.17.020(7), the expiration date does not extend beyond February 27, 2001. Therefore, the Superior Court committed error when, on October 22, 2004, it authorized issuance of a writ of execution on the expired foreign judgment.

E. CONCLUSION

The Superior Court erred in approving the August 1, 2006 writ of execution. The writ directed the Pierce County sheriff to foreclose on

George Gervin's entire interest in a limited partnership. Thus, it contravened WULPA's charging order provision because WULPA does not authorize foreclosure. Nor does WRUPA's foreclosure remedy supplement WULPA, because WULPA provides for a judgment creditor's rights with respect to the partnership interest of a judgment debtor in a limited partnership, and these do not include foreclosure. Even if WRUPA's remedy of foreclosure supplements WULPA, the writ of execution is overly broad because WRUPA only authorizes the foreclosure of a partner's transferable interest (i.e., his interest in the profits and losses and distributions of the partnership), not other rights or interests the partner may have in the partnership.

Additionally, it was error for the Superior Court to equitably toll the expiration of the 10-year life-span of the judgment lien due to the 45-day federal court stay. Although the stay was in effect at the time the statutory judgment lien expired, it did no injury to Respondent's rights because, as noted above, WULPA does not authorize foreclosure on a partnership interest in a limited partnership – and, if WRUPA's foreclosure provision supplements WULPA, it is limited to the partner's transferable interest. Furthermore, obtaining the stay from the federal court, which was at the time considering an appeal from a bankruptcy court decision directly affecting rights to the partnership interest, was not a

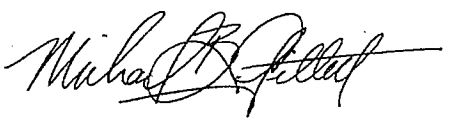
blatant abuse of the court system.

Finally, the Superior Court erred because its order is contrary to statutory standards. It extends the duration of the judgment lien beyond ten years without following the standards and procedures of RCW 6.17.020(3). Also, it enforces a judgment lien on a Texas judgment after the date the judgment expired under the laws of Texas, contrary to RCW 6.17.020(7).

Therefore, the Gervins respectfully request that this Court reverse the Superior Court's November 9, 2006 order denying the Motion to Quash Writ of Execution and Dismiss These Proceedings. Since the statutory life-span of the judgment lien has expired, no further proceedings to enforce the judgment lien are necessary or appropriate. Therefore, the Gervins respectfully request that this Court remand this matter to the Superior Court with instructions to dismiss under RCW 6.32.150.

DATED this 21st day of May, 2007.

THE GILLETT LAW FIRM



Michael B. Gillett
Attorney for Appellants

APPENDIX A
EXCERPTS OF KEY PORTIONS OF THE RECORD

1 - **Charging Order (December 6, 1996)**

2 - **Order Directing Sale (October 22, 2004)**

3 - **Writ of Execution (August 1, 2006)**

4 - **Order Denying Motion to Quash (November 9, 2006)**

FILED
DEPT. 13
IN OPEN COURT
DEC 6 1996
Pierce County Clerk
By ..... DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a TRANSAMERICAN CAPITAL CORPORATION, Plaintiff, vs. GEORGE GERVIN, Defendant, 401 GROUP, a Washington Limited Partnership, Party to be Charged.	NO. 96-2-11938-1 ORDER CHARGING PARTNERSHIP INTEREST

THIS MATTER having come on regularly for hearing on the Motion of the plaintiff for an Order charging the interest of defendant George Gervin in 401 Group Limited Partnership with payment of the Judgment in favor of plaintiff, the Court having considered the Affidavit of Plaintiff's Attorney in support of the motion, the Response of defendant George Gervin and plaintiff's Reply thereto, having heard arguments of counsel, having the

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28908 1/15/2004 88128

records and files before it and deeming itself fully advised in the premises, now, therefore, it is hereby

ORDERED that the partnership interest of defendant George Gervin in 401 Group, a Washington Limited Partnership, is charged with payment of the Judgment herein in favor of plaintiff; and it is further

ORDERED that the managing partner of 401 Group, a Washington Limited Partnership, and/or his agent delegated with management of the real property owned by the partnership, shall pay all of defendant George Gervin's share of the distributions of income and all other amounts coming due to defendant George Gervin, to the plaintiff, in care of its attorney in the State of Texas, Donald L. Curry, Attorney at Law, 720 Texas Avenue, P.O. Box 1466 79408, Lubbock, Texas 79401, for application to payment of the Judgment, plus accruing interest, until such time as the Judgment is satisfied in full or until further Order of the Court.

DONE IN OPEN COURT this 6 day of Dec., 1996.

JUDGE NILE B. AUBREY

FILED
DEPT. 13
IN OPEN COURT
DEC 6 1996
Pierce County Clerk
By ..... DEPUTY

Presented by:

VANDEBERG JOHNSON & GANDARA

By: JOANNE HENRY, WSBA# 6798
Of Attorneys for Plaintiff

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96-2-11938-1 21984650 OR 10-25-04

IN PIERCE COUNTY SUPERIOR COURT
FILED
A.M. OCT 22 2004 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a TRANSAMERICAN CAPITAL CORPORATION, Plaintiff, vs. GEORGE GERVIN, Defendant, 401 GROUP, a Washington limited partnership An interested party	NO. 96-2-11938-1 ORDER DIRECTING SALE OF PARTNERSHIP INTEREST

THIS MATTER having come before the court upon the Motion of Cadles of Grassy Meadows II, L.L.C., which is the assignee of plaintiff TCAP Corporation, f/k/a/ Transamerican Capital Corporation (referred to herein as "Plaintiff"), for an Order Directing Sale of Partnership Interest, and the court having considered the Memorandum of Law, Affidavit of Plaintiff's Attorney and the records and files herein and being fully advised, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that a Writ of Execution be issued to the Pierce County Sheriff directing the Pierce County Sheriff to sell the ownership interest of

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Defendant George Gervin in the 401 Group, a Washington limited partnership, at public sale in the same manner as personal property is sold on execution, pursuant to RCW 6.32.085. This order does not affect any partnership interest held by Joyce Gervin. CEA CAG KO

DONE IN OPEN COURT this 22 day of Oct, 2004.

JUDGE/COURT COMMISSIONER

Presented by:

CHRISTOPHER E. ALLEN, WSBA #20877
Of Morton McGoldrick, P.S.
Attorneys for Plaintiff

Cassadin Goddard, WSBA 31786
attorney for defendant.

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96-2-11938-1 25897913 WRIT 08-02-06

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 0 1 2006 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

TCAP CORPORATION, f/k/a TRANSAMERICAN CAPITAL CORPORATION, Plaintiff, vs. GEORGE GERVIN, Defendant, 401 GROUP, a Washington limited partnership An interested party	NO. 96-2-11938-1 WRIT OF EXECUTION

TO THE STATE OF WASHINGTON

AND TO THE SHERIFF OF PIERCE COUNTY:

YOU ARE COMMANDED, in accordance with the order of this court entered on October 22, 2004, to satisfy the judgment entered herein against defendant/judgment debtor George Gervin out of his personal property, consisting of his entire interest in the 401 Group, a Washington limited partnership (the "401 Group"), and the proceeds thereof, including but not limited to: (1) George Gervin's entire limited partnership interest in the 401 Group; (2) All past and future distributions owed to George Gervin by the 401 Group by virtue of his partnership

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interest including accrued distributions and interest currently held by Pan Pacific Properties, property manager for the 401 Group; (3) All rights and claims of any kind and nature past and future of George Gervin based upon or arising from or in connection with the partnership agreement (and any amendments) of the 401 Group; and (4) All claims of George Gervin against the 401 Group and all its past, present and future partners, principals, agents, successors and assigns.

Nothing herein shall constitute a waiver of the position of Cadles of Grassy Meadows II, LLC ("Cadles"), successor in interest to plaintiff TCAP Corporation f/k/a Transamerican Capital Corporation, taken in that certain bankruptcy adversary action styled Joyce Gervin v. Cadles of Grassy Meadows II, LLC v. George Gervin, Adv. No. 04-5138, pending before the U.S. Bankruptcy Court for the Western District of Texas, San Antonio Division, as well as any collateral proceedings and appeals relating thereto (the "Texas Bankruptcy Litigation"). Cadles expressly reserves any and all rights with respect to the Texas Bankruptcy Litigation.

The judgment was entered in the Superior Court for the County of Pierce in favor of Plaintiff TCAP Corporation f/k/a Transamerican Capital Corporation, against Defendant George Gervin, on October 17, 1996, as follows:

Principal Amount of Judgment Entered on February 27, 1989 in the District Court for Collin County State of Texas.	$353,347.86
Interest Accruing on Judgment at the rate of 10% per annum compounded annually pursuant to Texas Civil Statute 5069-1.05 for the period of February 28, 1989 through October 17, 1996. (Date of entry of foreign judgment).	$335,227.16
Interest Accruing on Balance of Judgment and Accrued Interest ($688,575.02) at the rate of 12% per annum for the period of October 17, 1996 through August 1, 2006.	$809,308.50
Total Amount Currently Owed	**$1,497,883.52**

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WITNESS the Honorable Stephanie Arend Judge of the Superior Court for the County of Pierce, and the seal of the Court, this 1st day of August, 2006 Judgment #06-9-04733-9

Clerk Kevin Stock

By Sharon Glaspel

Deputy Clerk

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FILED
DEPT. 13
IN OPEN COURT
NOV 09 2006
By DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

TCAP Corporation, f/k/a Transamerican Capital Corporation Plaintiff(s) vs. George Garvin Defendant(s)	Cause No: 96-2-11938- **ORDER**

The court finds that the scope of the writ of execution is not overly broad because it complied with the Washington Limited Partnership Act, RCW Ch. 25.10. The Court further finds that the Court has discretion to exercise its equitable power to extend the duration of the judgment lien, pursuant to Hansen v. Peter, 95 Wash. 628 (1917) and the court is hereby exercising its equitable power to extend the duration of the judgment lien. The Court hereby orders that Defendant's motion to quash the writ of execution is denied.

DATED November 9, 2006

Kathryn J. Nelson
JUDGE KATHRYN J. NELSON

Christopher E. Allen
Attorney for Plaintiff(s)
WSBA# 20872

Approved as to form
Michael B. Gillett
Michael B. Gillett
Attorney for Defendant(s)
WSBA# 11038

APPENDIX B
CITED PROVISIONS OF REVISED CODE OF WASHINGTON

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.

* * *

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.

* * *

(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.

* * *

(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.

* * *

RCW 6.21.020. Notice of sale--Personal property

Before the sale of personal property under execution, order of sale or decree, notice thereof shall be given as follows:

(1) The judgment creditor shall, not less than thirty days prior to the day of sale, cause a copy of the notice of sale to be transmitted both by regular mail and by certified mail, return receipt requested, to the judgment debtor at the debtor's last known address, and by regular mail to the attorney of record for the judgment debtor, if any. The judgment creditor shall file an affidavit with the court showing compliance with the requirements of this subsection.

(2) The sheriff shall post typed or printed notice of the time and place of the sale in three public places in the county in which the sale is to take place, for a period of not less than four weeks prior to the day of sale.

RCW 6.32.085. Order charging partnership interest or directing sale

If it appears from the examination or testimony taken in the special proceedings authorized by this chapter that the judgment debtor owns an

interest in a partnership, the judge who granted the order or warrant or to whom it is returnable may in his or her discretion, upon such notice to other partners as the judge deems just, and to the extent permitted by Title 25 RCW, (1) enter an order charging the partnership interest with payment of the judgment, directing that all or any part of distributions or other amounts becoming due to the judgment debtor, other than earnings as defined in RCW 6.27.010, be paid to a receiver if one has been appointed, otherwise to the clerk of the court that entered the judgment, for application to payment of the judgment in the same manner as proceeds from sale on execution and, in aid of the charging order, the court may make such other orders as a case requires, or (2) enter an order directing sale of the partnership interest in the same manner as personal property is sold on execution.

RCW 6.32.150. Discontinuance or dismissal of proceedings

A special proceeding instituted as prescribed in this chapter may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed, or where it appears that the judgment has been satisfied, the special proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditor's action against the debtor, or of a judgment creditor who has instituted either of the special proceedings authorized by this chapter.

RCW 25.05.205. Partner's transferable interest in partnership

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

RCW 25.05.210. Transfer of partner's transferable interest

(1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) Is permissible;

(b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(c) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) To receive, in accordance with the transfer, allocations of profits and losses of the partnership and distributions to which the transferor would otherwise be entitled;

(b) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(c) To seek under RCW 25.05.300(6) a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in profits and losses of the partnership and distributions transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(6) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

RCW 25.05.215. Partner's transferable interest subject to charging order

(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the

judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one or more of the other partners; or

(c) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(4) This chapter does not deprive a partner of a right under exemption laws with respect to the interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

RCW 25.10.400. Assignment of partnership interest--Certificate of partnership interest

(1) Unless otherwise provided in the partnership agreement:

(a) A partnership interest is assignable in whole or in part;

(b) An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner;

(c) An assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(d) A partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his or her partnership interest.

* * *

RCW 25.10.410. Rights of creditor

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

RCW 25.10.660. Rules for class not provided for in this chapter

In any case not provided for in this chapter, the provisions of the Washington revised uniform partnership act, or its successor statute, govern.

APPENDIX C

CITED PROVISIONS OF TEXAS CIVIL PRACTICES AND REMEDIES CODE

§ 31.006. Revival of Judgment

A dormant judgment may be revived by scire facias or by an action of debt brought not later than the second anniversary of the date that the judgment becomes dormant.

§ 34.001. No Execution on Dormant Judgment

(a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.

* * *

Declaration of Service

I, MICHAEL B. GILLETT, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am the attorney-of-record for Appellants George Gervin and Joyce Gervin in the above-entitled matter. I am over 18 years of age, knowledgeable of the matters stated herein, and competent to testify as to the same. On this day, I caused to be served on the persons indicated below the Brief of Appellants, via ABC Messenger Service:

Attorney for Respondent:
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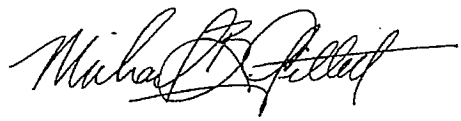
BY DEPUTY

SIGNED this 21st day of May, 2007 at Seattle, Washington.



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