

No. 840440

SUPREME COURT
OF THE STATE OF WASHINGTON

BANK OF AMERICA, N.A., a national association,

Petitioner,

v.

KENNETH TREIGER,

a married person as to his separate estate,

Respondent,

J'AMY LYN OWENS, an unmarried person, SHULKIN, HUTTON,
INC., P.S. a Washington professional service corporation; and
EDMUND JOHN WOOD,

Defendants.

ANSWER TO AMICUS CURIAE BRIEF
OF WASHINGTON LAND TITLE ASSOCIATION

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

By: Catherine W. Smith
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While claiming that its opinion is "based on flawed legal analysis" (Amicus Br. 1), WLTA fails to address the Court of Appeals' decision in any substantive way. WLTA relies solely on a portion of RCW 4.64.030(3) to claim that "for Mr. Treiger to have a valid and perfected judgment lien, there had to be a judgment, with a judgment summary, on the county clerk's execution docket." (Amicus Br. 7) But RCW 4.64.030(3) in its entirety provides: "*If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed.* The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary." (emphasis added)

"Where no contrary intention appears in a statute, relative and qualifying words and phrases, both grammatically and legally, refer to the last antecedent." *Boeing Co. v. State, Dept. of Licensing*, 103 Wn.2d 581, 587, 693 P.2d 104 (1985). WLTA makes no attempt to explain why, based on the plain language of RCW 4.64.030(3), the Court of Appeals interpretation that "subsection (3)'s dictate that a judgment does not take effect until the judgment has a summary to apply at most to judgments for

attorney fees" is not accurate. *Bank of America, N.A. v. Owens*, 153 Wn. App. 115, 129, ¶ 28, 221 P.3d 917 (2009).

WLTA also makes no argument, nor can it, that the latter two sentences of subsection three of RCW 4.64.030 should be read independently to apply to all judgments, and not just the attorney fee judgments addressed in subsection three. This Court "will not correct perceived [legislative] errors if an omission or mistake creates some inconsistencies, but the statute remains rational on the whole." *State v. Delgado*, 148 Wn.2d 723, 730, 63 P.3d 792 (2003). Requiring only judgments for attorney fees contain a summary before being effective on a whole is rational, as several other statutes only require that the judgment be filed to become effective. See RCW 4.56.200; RCW 6.01.020.

WLTA's "position is that the plain language of RCW 4.56.190 and RCW 4.64.030 give judgment lien effect only to those documents that contain the required Judgment Summary and are entered on the execution docket." (Amicus Br. 7, emphasis in original) But the "plain language" of RCW 4.64.030 contains no requirement that the judgment be "entered on the execution docket" before taking effect. Neither does RCW 4.56.190, the only other authority cited by WLTA. Instead, RCW 4.56.190 directs that

"every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200." RCW 4.56.200 states that "judgments of the superior court for the county in which the real estate of the judgment debtor is situated [shall commence] from the *time of the entry or filing thereof.*" (emphasis added). RCW 6.01.020 provides that "for purposes of this title and RCW 4.56.190 and RCW 4.56.210, a judgment of the superior court is entered when it is delivered to the clerk's office for filing." Here, the judgment at issue was both "entered" and "filed" on August 28, 2006, and the Court of Appeals correctly held that it had priority over the Bank's prejudgment writ of attachment entered four months later.

In any event, even if a judgment summary is required for *all* judgments, Document no. 1376 substantially complied with the statute.¹ This Court did not change Division One's correct holding that "[s]trict compliance with legislatively mandated procedures [of RCW 4.64.030] is not always required. Washington courts have

¹ WLTA appears to challenge only the Court of Appeals' decision regarding a post-decree order that awarded Treiger \$99,012 (Document no. 1376), complaining that it "does not contain the statutorily required summary" under RCW 4.64.030(3). (Amicus Br. 2) The other judgment at issue, the supplemental decree of dissolution (Document no. 1372) that awarded Treiger a percentage of the proceeds from the sale of certain real property, contains the real property judgment summary required by RCW 4.64.030(2)(b).

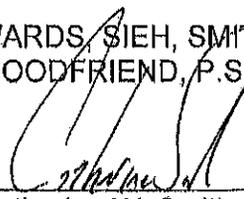
long upheld actions taken in substantial compliance with statutory requirements, albeit with procedural imperfections" in *Kim v. Lee*, 102 Wn. App. 586, 591, 9 P.3d 245 (2000), *overruled on other grounds by* 145 Wn.2d 79, 31 P.3d 665, 43 P.3d 1222 (2001). Even without a judgment summary, a judgment may still be effective if it is "in actual compliance with the substantive purpose of RCW 4.64.030 despite the minor procedural imperfection." *Kim*, 102 Wn. App. at 592. Here, Document no. 1376 was filed and recorded and was a valid judgment, as it "actually complied with the substantive purpose" of RCW 4.64.030 by providing notice to the Bank of the existence of Treiger's judgment.

Finally, WLTA's concerns that the Court of Appeals decision "puts a title examiner in the position of having to find the proverbial 'needle in a haystack'" (Amicus Br. 3) is simply not supported by the facts of this case. As WLTA concedes, "when title insurers research public records for liens against real property, they look in two places: the county auditor's office, and the county clerk's execution docket in the county where the subject property is located." (Amicus Br. 2) Here, a title insurer would have readily located Document no. 1376 in the county auditor's office, as it was *recorded* there on October 27, 2008. (CP 41)

WLTA's amicus brief provides no substantive analysis to assist this Court in addressing the issues here. It is a misguided "doomsday" warning that is neither supported by the law nor by the facts of this case.

Dated this 3rd day of January, 2011.

EDWARDS, SIEH, SMITH
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By: 

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Valerie A. Villacin, WSBA No. No. 34515

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DECLARATION OF SERVICE

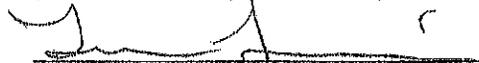
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 3, 2011, I arranged for service of the foregoing Answer to Amicus Curiae Brief of Washington Land Title Association, to the court and the parties to this action as follows:

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 Tara D. Friesen