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NO. 636448

IN THE COURT OF APPEALS

DIVISION I

STATE OF WASHINGTON

MICHAEL A. GRASSMUECK, INC. AS CHAPTER 7 TRUSTEE FOR BANKRUPTCY ESTATE OF JOAN MELNIK, Appellant

vs.

TIMOTHY C. MCSHANE AND JULIE S. MCSHANE, HUSBAND AND WIFE, AND THE MARITAL COMMUNITY COMPOSED THEREOF, Respondents

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APPELLANT REPLY BRIEF

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SUMMARY

The court should reverse the trial court CR 59 order vacating the CR 60 order denying McShane's motion to vacate the judgment for lack of jurisdiction.

The court should reinstate the August 2006 judgment that is property of the bankruptcy estate of the U.S. Bankruptcy Court - Oregon District.

The U.S. District Court for Oregon and its U.S. Bankruptcy Court has exclusive jurisdiction over all property of the bankruptcy wherever located pursuant to the United States Constitution, Article I, Section 8., Clause 4. as codified in 28 U.S.C. Section 1334(a) and (e) and 28 U.S.C. Section 157(b)(2)(A) and (O).

The trial court order vacating a judgment that is exclusive property of bankruptcy estate is a constitutional violation under Article I, Section 8., Clause 4. and Article VI, Paragraph 2., of the United States Constitution.

And, the dismissal of appellant's case should be reversed and the Clerk of the King County Superior Court ordered to reinstate these proceedings so the U.S. Bankruptcy Court for the District of Oregon may administer this Chapter 7 bankruptcy pursuant to it exclusive jurisdiction.

I. THE STANDARD OF REVIEW OF A DENIAL OF A CR 60(b)(5) MOTION TO VACATE IS ERROR OF LAW NOT ABUSE OF DISCRETION.

McShane states a trial court decision to set aside a default judgment is reviewed under the abuse of discretion standard. Allstate Insurance v. Khani, 75 Wn. App. 317, 323, 877 P.2d 724 (1994).

McShane's opinion is incorrect; the standard of review of the denial of a CR 60(b)(5) motion is error of law as set forth in Brickum Inv. Co. v. Vernham Corp., where the court held:

> [t]he question before us, therefore, is not whether the trial court abused its discretion but whether the judgment is void for want of jurisdiction.

46 Wn. App. 517, 520-1, 733 P.2d 533 (1987)

Brickum is cited in Allstate v. Khani at 323; it appears McShane did not recognize the different standards of review in CR 60(b). According to Brickum, the "error of law" test is a straightforward approach and removes the appellate court from delving into an analysis of trial court discretion.

Under Brickum, a court must determine if it "does" or "does not" have jurisdiction. Brickum is cited in appellant's opening brief at Page 21.

The trial court determined it had jurisdiction when it denied McShane's CR 60(b)(5) motion per the April 24,

2009 order. (CP 1-3).

The order denying McShane's motion should have ended the proceedings, absent a timely appeal of the CR 60(b)(5) denial. RAP 2.2(a)(10) and 5.2(a). And, the court should have required McShane to post a supersedeas bond in the event of a RAP 2.2(a)(10) appeal. RAP 8.1.

II. McSHANE'S SERVICE OF PROCESS ARGUMENTS HAVE NO MERIT OR SUPPORT IN THE RECORD OR CASE LAW.

McShane asserts the declaration of service was deficient on its face since it did not identify the person served. (Respondent Brief, Page 4). This statement is false and ignores the evidence in the appeal record including:

(1) the executed Declaration of Service of Summons and Complaint and Order Setting the Civil Case Schedule as filed with the King County Superior Court Clerk on August 26, 2005. (CP 167, 198-199).

(2) the Declaration of ABC Legal Messenger Records Custodian, Wayne Anderson, with Isaac Delys's service of process handwritten notes, the process service instruction form and ABC computer records. (CP 200-203).

(3) the deposition testimony of process server Isaac Stefen Delys. (CP 190-203).

McShane's argument also ignored that an affidavit of service is "facially correct" when it states the time,

place and manner of service. CR 4(g)(7). RCW 4.28.080(15). (CP 161-162, 198). A facially correct return of service is presumed valid and after judgment is entered the burden is on the person attacking service to show by clear and convincing evidence service was irregular. Woodruff v. Spence, 88 Wn. App. 565, 571, 945 P.2d 745 (1997). rev. denied 135 Wn.2d 1010 (1988). (CP 162).

McShane's assertion he demonstrated without contradiction he was not served has no basis in fact or law. (Respondent Brief, Page 4). McShane submitted no evidence that could be construed as meeting his burden of proof.

His declaration and his former wife's were simple recitations they were told by insurer, State Farm, to immediately turn over any summons and complaints because failing to do so could result in a default. (CP 87-93). And, claim adjuster Nancy Herschgold's statement there was no reason why they would not have contacted me or State Farm to advise they had been served with a lawsuit, if in fact they ever had been, is not evidence. (CP 95-103).

McShane asserts he was never served but cannot account for his whereabouts on August 22, 2005 at 8:48 p.m. or produce any person who was at his residence other than himself. Furthermore, all records produced

through formal discovery to defend against McShane's allegation and his CR 60(b)(5) motion were solely through the efforts of Grassmueck's counsel.

McShane worked for his employer, Destination Marketing, in Mountlake Terrace on August 22, 2005. (CP 176). He kept an appointment book but produced no records, entries or appointments. (CP 176 (lines 11, 12, 24-25) CP 177 (line 1)). His Evergreen Bank records show a $45.12 POS purchase at Shell Oil in Mountlake Terrance on August 22, 2005. (CP 188-189). And, his Evergreen Bank records show two (2) bar POS purchases on August 22, 2005.

McShane spent $17.00 at Mick Finsters in Edmonds; and McShane spent $36.25 at the Seattle Roanoke Park Place Tavern. (CP 188-189).

The Roanoke Tavern is 4.2 miles from McShane's apartment. (CP 164 (lines 2-3)). McShane never produced any receipts from these POS transactions or any other evidence to meet his burden of proof.

When McShane was asked how the process server's physical description matched his physical description, McShane answered:

> I suppose there are a number of way he could have come up with a description. He possibly could have seen me enter or leave the building on another occasion. I suppose. He possibly

> could have gotten a description from the plaintiff, who knew what I looked like very well, since she was my tenant for awhile.

(CP 162-163, 180 (lines 21-25), CP 181 (lines 1-2)).

Process server Isaac Delys had never been to McShane's address prior to the service date. Delys did not know McShane or ever speak to Joan Melnik. (CP 205).

McShane's statements are contradictory, lack credibility and not supported by the evidence in the record.

McShane's attorney, Shellie McGaughey, admitted he had no alibi. (CP 162 (Line 14), CP 204 (Line 11)).

McShane claimed a brother matching his physical description frequently visited and may have been served but when deposed McShane said he told his brothers they were under no obligation to come forward (CP 89, 164, 171-173, 186). And, when McShane was asked during his deposition which brother he was referring to this colloquy occurred:

> Q: So in your declaration from last February, you make the statement, "I have a brother who matches my description who is actually bald but he has never resided with me." Who were you referring to there?
>
> A: I was probably referring to Dan there, although people have said Paul and I look alike as well.
>
> Q: So you were referring to two brother there, is that right?
>
> A: I think I was referring to Dan there when I made that statement but like I said, some-

> times people think Paul and I look more alike than Dan and I, or Dan and Paul look more alike than Dan and I, or any combination thereof.
>
> (CP 174 (line 25) CP 175 (line 1-13)).

McShane submitted no affidavit from any brother or anyone fitting his physical description that corroborates his assertion he was not served.

McShane's physical description in his Washington Driver's License issued on 09-30-2004 and obtained during his deposition matches the process server's physical description with his driver's license photograph showing he had a bald head. (CP 163, 183).

McShane argues the declaration of service was deficient on its face because it was given to an unnamed "adult male" at his apartment and there was no factual basis to determine whether the person served resided therein. (Respondent's Brief, Page 6). And, McShane's statement: "the appellant presented evidence of nothing" is pure fabrication. (Respondent's Brief, Page 27). As to his argument:

> [i]ndeed, worse than nothing it was undisputed the process server could not pick the person allegedly served out a line up and had no memory whatsoever of the alleged service.
>
> (Respondent's Brief, Page 27)

This argument flies in the face of reason and

what this court held in State v. Phillips:

> [t]he return of service is a routine daily product of government. A return of service, when filed in court is a matter of public nature.
>
> We reject Phillip's argument that the return of service does not fall within the public records exception because it is a product of the observations, opinions, and exercise of discretion of the process server, such that the only way to establish the accuracy of the return of service is to question the process server. A facially correct return of service is presumed valid. Woodruff v. Spence, 88 Wn. App. 565, 571, 945 P.2d 745 (1997), review denied, 135 Wn.2d 1010 (1998); see also Connie J.C., 86 Wn. App. at 457 (noting that the mere fact that public records are kept is prima facie proof of their genuineness). Moreover, because public records are routine daily products of government, cross-examination serves little purpose "because the persons who generate such records rarely recall the details of the event evidenced in the record." Connie J.C., 86 Wn. App at 457. (quotation added).
>
> Nor does the return of service express the process server's opinion, or reflect the exercise of his or her discretion. Rather, it is a record of service of a particular document on the particular individual named in the return. It is not accurate to say that the process server is exercising judgment or discretion when he or she believes the information given by the person served as to his or her identity, and records the name of such individual on the return of service. By doing so, the process server is merely documenting the actions taken in the discharge of his or her duty.
>
> 94 Wn. App. 829, 835, 972 P.2d 932 (1999).

McShane's assertion the plaintiff produced evidence of "nothing" is yet again fabrication, not supported

by Phillips and another example of questionable tactics employed throughout respondent's brief.

When the burden of proof shifted to McShane to meet the legal standard of "clear and convincing evidence" he produced nothing more than ink on paper impugning the integrity of the judicial system and violating RAP 10.3 (a)(5) requiring any argument in support of issues presented for review cite relevant legal authority and reference a relevant part of the record.

None of these McShane statements remotely qualify as legal argument and are not supported by law or even remotely refer to any part of the appeal record.

(1) "On its face the return of service states no facts that establish service on an adult residing therein. At best, it is only a conclusion with no fact or substance." (Respondent Brief, Page 27).

(2) "It is submitted that if the form of proof of service is held sufficient proof of service is deemed a meaningless gesture." (Respondent Brief, Page 27).

(3) "Without facts for the court to consider, the Trial Court abdicated its roll (sic) to the process server or the person allegedly served to determine whether service was effected (sic)." (Respondent Brief, Page 27).

(4) "It is no large leap to consider a house guest will when confronted by a person at the front door wielding papers demanding to know whether they live there to defend their presence in the home as lawful. It is a human reaction for a person in such a circumstance to defend their presence in the house: 'yes I live here,' would be a common response." (Respondent Brief, Page 27-28).

(5) "It is not reasonable nor expected a person in that situation to launch into a conversation of: 'Well I am in from out of town, I am heading to Poughkeepsie next week.' Instead they are looking to close the door as quickly as they can." (Respondent Brief, Page 28).

(6) "A 5 day house guest might well consider themselves 'living there' - for 5 days anyway." (Respondent Brief, Page 28).

(7) "It is a perilous path the Courts walk, throwing due process to the wind, by simply accepting the types of conclusions contained in the server's return in this case as evidence of anything." (Respondent Brief, Page 28).

(8) "This court is asked to give careful consideration to what are little more than 'service mills' with servers serving hundreds of collection notices a week."

(Respondent Brief, Page 28).

(9) "This Court would turn resolution of a fundamental concept, due process, original service, to the determination of a process server with every incentive to gild the lily." (Respondent Brief, Pages 28 - 29).

(10) "However, even if the return of service is considered "prima facie" evidence of service, it does not withstand the challenge of the clear, cogent and convincing evidence of Mr. McShane that he was not served personally and that any adult that might have been in his unit did not reside therein." (Respondent Brief, Page 29).

The Court should note McShane is now asserting for the first time that:

> any adult that 'might' have been in his unit did not reside therein.
>
> (Respondent Brief, Page 29).

This is an entirely new assertion not in the record and yet another violation of RAP 10.3(a)(5) and CR 11.

III. McSHANE FAILED TO MEET HIS BURDEN OF PROOF OF CLEAR AND CONVINCING EVIDENCE

A judgment is void under CR 60(b)(5) regardless of the lapse of time if the court is without jurisdiction over a defendant; no one disputes this rule of constitutional law and fundamental due process.

McShane cites Allstate Ins. Co. v. Khani,

75 Wn.App. 317, 877 P.2d 724 (1994) as authority that the judgment is void; however, the facts and evidence in Allstate Ins. Co. v. Khani are vastly different than in McShane's case.

In Allstate Ins. Co. v. Khani, Mohamad Amar Khani brought a CR 60(b)(5) motion to set aside a default judgment asserting it was "void" for lack of personal service. The King County Superior Court denied Khani's motion and he appealed. The evidence Khani offered in his CR 60(b)(5) motion met the clear and convincing evidence standard and the appellate court reversed. Khani's evidence included: (1) the September 1987 notification to the Department of Licensing (DOL) of his change of address to his mother-in-law's home where he lived until December 1988; (2) the affidavit from the apartment manager stating no tenant named Khani lived at the address where service was alleged to have occurred; (3) the affidavit of Don McDonough who lived in the apartment where service was alleged to have occurred stating Matthew Welton lived with him on the alleged service date; and (4) affidavit of Matthew Welton confirming he lived with McDonough on the alleged service date and did not know or live with anyone named Khani. Khani satisfied his burden of proof under the clear and convincing evidence standard and the judgment

was void as a matter of law under CR 60(b)(5).

Isaac Delys's Declaration of Service created the presumption service of process was valid and shifted the burden of proof to McShane. Woodruff v. Spence 88 Wn. App 565, 571, 945 P.2d 745 (1997), rev. denied 135 Wn. 2d 1010 (1998) and Leen v. Demopolois 62 Wn.App 473, 478, 815 P.2d 269 (1991).

McShane, however, produced no evidence.

IV. McSHANE'S MERITORIOUS DEFENSE AND EXCUSABLE NEGLECT ARGUMENTS ARE INVALID

McShane argues the trial court erred by not setting aside the default order and judgment in light of his meritorious defense and excusable neglect citing White v. Holm, 73 Wn.2d 348, 438 P.2d 581 (1968) and Griggs v. Averbeck Realty, 92 Wn.2d 576, 599 P.2d 1289 (1979). (Respondent Brief, Pages 5, 30-31, 34).

White and Griggs have no application; their facts are vastly different because the respective parties brought their motions within reasonable periods after discovering the circumstances that prevented them from appearing and each had a meritorious defense. (CP 165).

McShane brought his April 16, 2009 motion asserting the judgment was obtained by fraud or misrepresentation (CR 60(b)(4)) or was void for want of jurisdiction (CR 60(b)(5)) or any other reason justifying relief from the

operation of the judgment. (CR 60(b)(11)). (Respondent Brief, Page 4, CP 122-137).

The April 16, 2009 motion was not based on any assertion of a meritorious defense or excusable neglect. Furthermore, a CR 60(b)(1) motion claiming excusable neglect shall be made not more than one (1) year after entry of the judgment. CR 60.

McShane's assertion of a meritorious defense or excusable neglect should not be considered as neither were a basis of the April 16, 2009 motion.

V. AN OMISSION ON A DEBTOR'S BANKRUPTCY SCHEDULE(S) DOES NOT CONSTITUTE FRAUD.

McShane claims Melnik fraudulently failed to disclose the personal injury claim in her bankruptcy schedules. If a debtor fails to schedule an asset and the trustee later discovers it the trustee may reopen the case to administer the asset on behalf of the creditors. Kane v. National Union Fire Ins. Co. 535 F.3d 380 (5th Cir. 2008) (citing 11 U.S.C. Section 350(b) and 3 COLLIER ON BANKRUPTCY Section 350.03[1] (Alan N. Resnick & Henry J. Sommers ed. 15th ed. rev. 2008). Furthermore, Kane noted that one of our bankruptcy courts observed:

> It is not serendipitous that the Bankruptcy Code has an explicit provision that prevents the loss of assets that a debtor fails to disclose in [b]ankruptcy [s]chedules. "It happens all the time, especially with claims." And when it

> does, cases are "routinely reopened," in accordance with the statute to administer those assets. (quotations added).
>
> Kane v. National Union Fire Ins. Co. 535 F.3d at 385, citing In re Miller, 347 B.R. 48, 53 (Bankr. S.D.Tex 2006). (citations omitted).

This is precisely the action Melnik's Chapter 7 Trustee performed on May 6, 2008 when he filed his motion to reopen the bankruptcy case utilizing 11 U.S.C. Section 541. (CP 106-107).

McShane's fraud claim is without merit and his statement: "she hid the claim, obtained the default through questionable service and then 'laid in the weeds' for approximately a year before attempting collection." (Respondent Brief, Pages 32-33). This is a baseless allegation and yet another example of McShane's questionable tactics that serve no legitimate purpose in these judicial proceedings.

The record is clear once counsel learned of the Melnik bankruptcy he promptly disclosed the information to McShane's co-counsel, Shellie McGaughey, who is a partner of Mr. Bridges. (CP 104-111).

McShane has repeatedly failed to understand Washington law recognize standing and real party in interest as distinct legal doctrines. (Respondent Brief, Page 10). Melnik had standing to sue as she suffered an injury to a legally protected right while Michael A. Grassmueck,

the Chapter 7 Bankruptcy Trustee, is the real party interest who possesses the right to enforce the August 2006 judgment for the benefit of Melnik's bankruptcy estate and its creditors. See Sprague v. Sysco Corp., 97 Wn. App. 169, 982 P.2d 1202 (1999), rev. denied 140 Wn.2d 1004 (2000), citing Hammes v. Brumley, 659 N.E.2d 1021, 1030, (Ind. 1559). See also, Battle v. Alapha Chemical & Paper Co. 770 So.2d 626 (Court of Civil Appeals Alabama 2000).

Washington law recognizes a bankruptcy trustee is a separate entity and is not judicially estopped from pursuing a personal injury claim on behalf of the bankruptcy estate. Arkinson v. Ethan Allen Inc.,160 Wn.2d 535, 160 P.3d 1025 (2007); see also,Bartley-Williams v. Kendall, 134 Wn. App. 95, 139 P.3d 1103 (2006).

Washington law recognizes property neither abandoned or administered remains property of the estate even after the estate is closed pursuant to 11 U.S.C. 541(d). Bartley-Williams v. Kendall, 134 Wn.App. at 100, 139 P.3d at ___ (2006).

Under this analysis, the 2006 judgment was in fact property of the bankruptcy estate and the trial court had no authority to void the judgment under CR 59.

V. THE BANKRUPTCY COURT HAS EXCLUSIVE JURISDICTION OVER ALL PROPERTY OF THE ESTATE PURSUANT TO 28 USC SECTION 1334(a) and (e)(1) AND CORE PROCEEDINGS UNDER 28 USC SECTION 157(b)(2)(O).

McShane requests this court uphold the trial court order granting his CR 59 motion for reconsideration that vacated the CR 60(b) order denying his motion to vacate the default judgment. (CP 230-231). McShane argues Rose v. Fritz, 104 Wn. App, 116 (2001) is controlling since the final judgment prohibited CR 17(a) relation back. (CP 7-18).

Grassmueck respectfully disagrees.

Property interests are generally created and defined by state law. Butler v. United States 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed. 136 (1979). However, what constitutes property of a bankruptcy estate is "ultimately" a federal question. In re Becker, 136 B.R. 113 (Bankr. N.J. 1992) citing In re Loughnane, 28 B.R. 940, 942 (Bankr.D. Colo. 1983).

Here, the bankruptcy estate's property is the 2006 judgment, which the trial court upheld when it denied McShane's CR 60(b)(4),(5) and (11) motion to vacate. (CP 1-3).

The trial court recognized the Chapter 7 Trustee's rights by permitting its CR 17(a) substitution as the real party in interest per its order of October 13, 2008:

> 2.1 [T]he plaintiff's motion to amend the complaint to substitute the Chapter 7 Bankruptcy Trustee Michael A. Grassmueck, Inc. for Joan Melnik as the real party in interest herein is GRANTED. Michael A. Grassmueck, Inc. is substituted for Joan Melnik as the plaintiff.
>
> (CP 226-229).

However, the court struck this language without explanation:

> "and the amendment shall relate back to the date the original complaint was filed." (quotation added).
>
> (CP 226-229).

McShane asserted for the first time in his CR 59 motion for reconsideration since the complaint cannot be amended to create "a legal fiction" that it was Chapter 7 Trustee - and not Melnik - who obtained the default judgment it is void. (CP 18).

Grassmueck asserts the McShane argument is nothing more "than a play on words" and when put to the test as set forth it collapses under its own weight.

A bankruptcy court has original and exclusive jurisdiction over bankruptcy cases. 28 U.S.C. Section 1334(a). And, its exclusive jurisdiction encompasses all matters connected with the bankruptcy estate including "all proceedings affecting the liquidation of the assets of the estate." 11 U.S.C. 157(b)(2)(0).

<u>In re Gruntz</u>, 202 F.3d 1074 (9th Cir. 2000)

the court held a state court modification of an automatic stay constituted an unauthorized infringement upon the bankruptcy court's jurisdiction. Further, more, Gruntz held that:

> '[w]hile Congress has seen fit to authorize courts of the United States to restrain state-court proceedings in some special circumstances,' such as the automatic stay, 'it has in no way relaxed the old and well-established judicially declared rule that state are completely without power to restrain federal-court proceedings in in personam action.' Donovan v. City of Dallas, 377 U.S. 408, 412-13, 84 S.Ct. 1579, 12 L.Ed.2d 409 (footnotes omitted). Although Donovan discussed this rule as applied to in personam actions, its holding applies even more strongly to federal in rem proceedings under the Bankruptcy Code, in which a 'federal court having custody of such property has exclusive jurisdiction to proceed.' Id. at 412. see also, Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon 153 F.3d 991, 996 (9th Cir.)
>
> 202 F.2d 1074, 1082.

And, according to In re Simon, the district court in which the bankruptcy case is commenced obtains "exclusive in rem jurisdictions over all of the property in the estate under 28 U.S.C. Section 1334(e)." (quotations added). 153 F.3d 991, 996, (citing Commodity Futures Trading Comm'n v. Co Petro Marketing Group Inc. 700 F.2d 1279, 1282 (9th Cir. 1983) (interpreting 28 U.S.C. Section 1471, the statutory precursor to 28

U.S.C. Section 1334(e).

See also In re Sasson, 424 F.3d 864, 870 (9th Cir.) wherein the court held that at commencement of the case the bankruptcy court acquired exclusive in rem jurisdiction over all the debtor's legal or equitable interests in property wherever located and by whoever held. 28 U.S.C Section 1334 (e); citing Commodity Futures Trading Comm'n v. Co Petro Marketing Group Inc. 700 F.2d 1279, 1282 (9th Cir. 1983). And further, the bankruptcy court's jurisdiction is granted by the Bankruptcy Code as derived from the Bankruptcy Clause. U.S. Const. art. 1, Section 8.

Therefore, under 28 U.S.C. Section 1334(a) and (e) and the cases and federal statutes cited:

> [t]he court's exercise of "custody" over the debtor's property, via its exercise of in rem jurisdiction, essentially creates a fiction that the property--regardless of actual location--is legally located within the jurisdiction of the district in which the court sits. See Katchen v. Landy, 382 U.S. 323, 327, 86 S.Ct. 467, 15 L.Ed.2d 391 (1996)(noting that bankruptcy courts have "constructive possession" over estate property),

In re Simon, at 996.

28 U.S.C. Section 1334(e) specifically provides:

> the District Court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

> (1) of all property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

And, since a determination of a bankruptcy estate's interest in property, which the debtor possessed an interest is the exclusive jurisdiction of the bankruptcy court McShane's argument must fail.

McShane is also barred by the doctrine of res judicata, which is the preclusive effect of judgments including any relitigation of claims that were litigated or could have been litigated. Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763-4, 887 P.2d 898, citing Philip A. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 Wash. L. Rev. 805 (1985). (Appellant Brief, Page 16).

As set forth in Kemmer v. Keiski:

> [w]e begin by examining the preclusive effect of the May 2000 judgment. When the judgment disposes of all claims and parties, it is both appealable and preclusive. It remains appealable for 30 days. If not appealed in that period of time, it directly precludes all further proceedings in the same case, except "clarification" and enforcement proceedings, and it collaterally precludes other suits based on the same claim.
>
> In this case, the May 2000 judgment disposed of all claims and all parties. It was not appealed within 30 days of its entry. No one sought reconsideration or amendment within the 10 days allowed by CR 59.

116 Wn. App. 924, 932, 68 P.3d 1138 (2003).

A judgment - be it a default or otherwise - is the final determination of the rights of each party herein. CR 54(a). However, if a judgment is vacated by an erroneous state court ruling as here -- a bankruptcy court is not bound.

> In the Ninth Circuit, therefore bankruptcy courts are not bound by incorrect state court judgments in core matters that fall within a bankruptcy court's "arising under jurisdiction, see McGhan, 288 F. 3d at 1180....
>
> In re Birting Fisheries, Inc. 300 B.R. 489, 500 (B.A.P. 9th Cir, 2003).

CONCLUSION

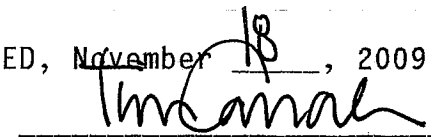
The court should vacate the order of dismissal and direct the trial court to reinstate the denial of McShane's CR(b) motion to vacate.

The court should further direct the Clerk of of the King County Superior Court to reinstate the August 4, 2006 judgment that is the exclusive property of the Chapter 7 Bankruptcy estate of the United States Bankruptcy Court for the District of Oregon - Case No. 03-64832-aer7.

The court should further vacate the order dismissing this matter and remand directing the

Clerk of the King County Superior Court to reinstate state these proceedings.

RESPECTFULLY SUBMITTED, November 18, 2009.



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CERTIFICATE OF MAILING

I declare under penalty of perjury that on November 18, 2009, I deposited in the U.S. Mail, first class postage paid, a true and correct copy of the foregoing Appellant Reply Brief addressed to:

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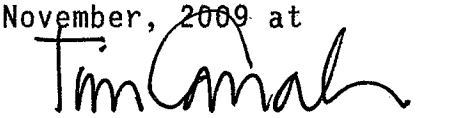
DATED this 18th day of November, 2009 at Seattle, Washington.



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