

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/9/2019 4:53 PM  
BY SUSAN L. CARLSON  
CLERK

No. 96853-5

---

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

FIRESIDE BANK f/k/a FIRESIDE THRIFT CO.  
(CAVALRY INVESTMENTS, LLC – Appellant of Record)

Respondent,

vs.

JOHN W. ASKINS and LISA D. ASKINS,

Petitioners.

---

**ANSWER TO BRIEF OF AMICI STATEWIDE POVERTY  
ACTION NETWORK AND NORTHWEST CONSUMER LAW  
CENTER**

---

Stephen C. Willey, WSBA #24499  
Brandi B. Balanda, WSBA #48836  
**SAVITT BRUCE & WILLEY LLP**  
1425 Fourth Avenue Suite 800  
Seattle, WA 98101-2272  
(206) 749-0500

Attorneys for Appellant

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. ARGUMENT .....1

    A. Statewide’s Policy Arguments are Inapposite. ....1

    B. Statewide Misconstrues This Appeal.....2

    C. Statewide’s Burden of Proof Argument is Misplaced. ....3

III. CONCLUSION.....4

**TABLE OF AUTHORITIES**

**Cases**

*Dalton v. State*,  
130 Wn. App. 653, 124 P.3d 305 (2005)..... 4

*Dawson v. Genesis Credit Mgmt. LLC*,  
2017 WL 5668073 (W.D.Wash. Nov. 27, 2011)..... 4

*Fireside Bank fka Fireside Thrift Co. v. Askins*,  
6 Wn. App.2d 431, 430 P.3d 1145 (2018)..... 1, 3, 4

*Jeff D. v. Otter*,  
643 F.3d 278 (9th Cir. 2011) ..... 4

**Rules**

CR 60 ..... 2, 3

CR 60(b)..... 2, 3, 4, 5

CR 60(e)..... 2

## I. INTRODUCTION

Appellant Cavalry Investments, LLC (“Cavalry”) submits that the brief of Amici Statewide Poverty Action Network and Northwest Consumer Law Center (collectively, “Statewide”) does not offer arguments that are apposite to the Court of Appeals opinion under review.<sup>1</sup>

In relevant part, the Court of Appeals reversed the trial court’s grant of a CR 60(b) motion, holding that CR 60 does not provide a vehicle for asserting and litigating an affirmative claim for relief. In this context, Statewide’s policy arguments are irrelevant and its substantive legal arguments are misguided.

## II. ARGUMENT

### A. Statewide’s Policy Arguments are Inapposite.

Statewide’s brief focuses on what it views as systemic problems in the debt-buying industry and the impacts of consumer debt on certain population groups. *See* Amicus Brief at pp. 4-10 and 12-15. Statewide makes arguments about the policy and social implications that it asserts flow from the sale of debt obligations and alleged industry practices. *Id.*

---

<sup>1</sup> For ease of reference, the Court of Appeals opinion, *Fireside Bank fka Fireside Thrift Co. v. Askins*, 6 Wn. App.2d 431, 430 P.3d 1145 (2018), is attached hereto as Appendix A.

The pending appeal, however, does not concern whether or under what conditions creditors should be allowed to transfer or sell their rights, or whether Washington’s existing statutory scheme should be modified. Such policy matters may be relevant to the legislative process, but they have no bearing on this Court’s evaluation of the requirements and strictures of CR 60 and whether the Court of Appeals correctly interpreted and applied the Civil Rules here.

**B. Statewide Misconstrues This Appeal.**

Statewide asserts that this case “exemplifies” the policy concerns it articulates regarding consumer debt. *See* Amicus Brief at pp. 10-12. This argument, however, is premised on a misunderstanding of what is at issue—and a misrepresentation of the record.<sup>2</sup>

In response to the Askins’ CR 60(b) motion and a CR 60(e) show cause hearing, the trial court entered an order finding that Cavalry had “violated RCW 19.16.250(21) by attempting to collect, through applications for writs of garnishment, amounts of money greater than

---

<sup>2</sup> For example, Statewide asserts that (i) “Cavalry collected or attempted to collect amounts in addition to principal that were greater than allowed by law in violation of the CAA” and (ii) “Cavalry sought ... unlawful costs and fees in garnishments.” *See* Amicus Brief at pp. 2, 12. Neither of these statements is supported by citation to the factual record and, as Cavalry has previously noted, there is no factual basis for them.

allowed by law.”<sup>3</sup> The Court of Appeals reversed, holding that a CR 60 motion is not a proper method for litigating an alleged violation of the CAA. In short, the trial court “exceed[ed] the scope of its authority under CR 60.”<sup>4</sup>

Statewide’s brief offers no input regarding the purpose and limitations of Rule 60, nor does it address the sound policy and due process reasons underlying why a party may not obtain affirmative relief via a post-judgment CR 60(b) motion and show cause hearing.

**C. Statewide’s Burden of Proof Argument is Misplaced.**

Statewide also argues the Court of Appeals improperly “shifted” the burden of proof to the Askins because under “black letter contract law” a plaintiff has the burden to establish the existence of a contract and breach. *See* Amicus Brief at pp. 15-18.

Statewide is correct in its general statement of law regarding contract claims, but it errs in application—and Stateside is wrong in its assessment of burden shifting. Statewide fails to recognize that a judgment debtor bears the burden of proof when challenging a judgment under CR 60(b).

---

<sup>3</sup> The trial court’s underlying orders at issue are attached hereto as Appendix B. Neither order makes reference to any record evidence.

<sup>4</sup> *See* Appendix A (*Fireside Bank*, 6 Wn. App.2d at 439).

The pertinent burden of proof issue here concerns whether the Askins satisfied their burden to show that the Judgment had been satisfied as required under Rule 60.<sup>5</sup> In this context, the burden of proof applicable to a party asserting a contract claim is inapplicable and irrelevant.<sup>6</sup> Statewide’s argument does, however, emphasize the foundational legal tenet that a party asserting an affirmative claim for relief bears the burden of proof.<sup>7</sup> Permitting litigation of an affirmative claim for relief through a CR 60(b) motion improperly inverts that burden.<sup>8</sup>

### III. CONCLUSION

The policy arguments asserted by Statewide have no bearing on whether CR 60(b) is a permissible vehicle for asserting and litigating a claim for affirmative relief. Similarly, Statewide’s legal arguments miss

---

<sup>5</sup> See generally Appendix A (*Fireside Bank*, 6 Wn. App.2d at 438-40); see also *Dalton v. State*, 130 Wn. App. 653, 665-66, 124 P.3d 305 (2005) (defendant’s burden of proof under CR 60(b) requires clear and convincing evidence).

<sup>6</sup> Statewide’s suggestion that a judgment creditor “must adhere to the same burdens of proof when it seeks to enforce a judgment” (see Amicus Brief at 17) would, in effect, require a judgment creditor to prove up its claim again every time it sought to collect on an existing judgment.

<sup>7</sup> E.g. *Dawson v. Genesis Credit Mgmt. LLC*, 2017 WL 5668073, at \*4 (W.D.Wash. Nov. 27, 2011) (holding plaintiff asserting claim for violation of RCW 19.16.250 did not present evidence required to support finding violation of the statute)

<sup>8</sup> See *Jeff D. v. Otter*, 643 F.3d 278 (9th Cir. 2011) (defendants have the burden of proving they met Rule 60’s requirements to show satisfaction of judgment; district court erred by imposing burden of proof on plaintiffs); Supplemental Brief of Respondent at pp. 10-12.

the mark. Indeed, Statewide's brief makes no mention of CR 60(b).

Cavalry respectfully submits that Statewide's arguments do not assist this Court with the issues before it.

DATED: October 9, 2019.

**SAVITT BRUCE & WILLEY LLP**

By: /s/ Stephen C. Willey

Stephen C. Willey, WSBA # 24499

Brandi B. Balanda, WSBA #48836

Savitt Bruce & Willey LLP

1425 Fourth Ave., Suite 800

Seattle, WA 98101

Tel: (206) 749-0500

Fax: (206) 749-0600

Email: [swilley@sbwllp.com](mailto:swilley@sbwllp.com)

Email: [bbalanda@sbwllp.com](mailto:bbalanda@sbwllp.com)

*Attorneys for Respondent*

*Cavalry Investments, LLC*

# APPENDIX A



KeyCite Yellow Flag - Negative Treatment

Review Granted by [Fireside Bank v. Askins](#), Wash., May 1, 2019

6 Wash.App.2d 431

Court of Appeals of Washington, Division 3.

FIRESIDE BANK fka Fireside Thrift  
Co., a California Corporation, Appellant,

v.

John W. ASKINS and Lisa D. Askins,  
husband and wife and Their Marital  
Community Comprised Thereof, Respondents.

No. 34918-7-III

|

FILED DECEMBER 6, 2018

### Synopsis

**Background:** Judgment debtors requested a show cause hearing to determine that debt had been paid, and asking to quash the most recent writ of garnishment, entry of satisfaction of judgment, return of all money paid in excess of debt principal, finding a violation of the Collection Agency Act (CAA), and an award of sanctions and damages. The Superior Court, Whitman County, [David Frazier, J.](#), ordered default judgment stripped to its principal, and declared the judgment satisfied. Debt collector appealed.

**Holdings:** The Court of Appeals, [Korsmo, J.](#), held that:

e-mail communication between debt collector's attorney and judgment debtors' attorney did not constitute a violation of the CAA, and

show cause hearing was not a proper method of establishing a violation of the CAA.

Reversed and remanded.

**\*\*1147** Appeal from Whitman Superior Court, Docket No: 07-2-00204-7, Honorable John David Frazier, Judge

### Attorneys and Law Firms

[Stephen Charles Willey](#), [Brandi Buehn Balanda](#), Savitt Bruce & Willey LLP, 1425 4th Ave. Ste. 800, Seattle, WA, 98101-2272, [Karen L. Hammer](#), [Patrick James Layman](#),

[Suttell & Hammer, P.S.](#), Po Box C-90006, Bellevue, WA, 98009, for Appellant.

[Scott Kinkley](#), Northwest Justice Project, 1702 W. Broadway Ave., Spokane, WA, 99201-1818, for Respondents.

[Kimberlee L. Gunning](#), Columbia Legal Services, 101 Yesler Way Ste. 300, Seattle, WA, 98104-2528, for Amicus Curiae on behalf of Statewide Poverty Action Network.

### Opinion

[Korsmo, J.](#)

**\*433 ¶1** Cavalry Investments appeals from a decision of the superior court determining that violations of the Washington Collection Agency Act (CAA), ch. 19.16 RCW, needed to be remedied by stripping the debt to the principal and declaring the debt paid. Concluding that an email communication between attorneys does not constitute a violation of the CAA and that [CR 60](#) was not a proper method of presenting the debtors' theory of the case, we reverse and remand for further proceedings.

### FACTS

¶2 A used car loan bearing an interest rate of 18.95 percent issued in 2004 to respondents John and Lisa Askins is the basis for this case. According to the Askins, the car was returned in 2006, supposedly in satisfaction of the balance of the loan, and no further loan payments were made. However, this transaction was not reduced to writing. Fireside Bank, the assignee on the loan note, asserted that it repossessed the vehicle in December 2006, and sold it the following month for \$4,200.

¶3 Fireside then filed suit seeking the balance of the note. The Askins did not appear in the action and ultimately **\*434** a default judgment was entered against them on September 28, 2007, in the amount of \$7,754.39, plus prejudgment and postjudgment interest. Clerk's Papers (CP) at 13. After collecting some money from the Askins over the years via garnishment, Fireside in 2012 sold the note to appellant Cavalry Investments, a debt collection agency. The two creditors issued 19 writs of garnishment between 2008 and 2015. A total of \$10,849.16 was collected by the writs.

¶4 With collection efforts against them continuing, the Askins obtained an attorney. Their attorney contacted Cavalry's

counsel in November 2015, and requested an accounting. Three months later, the Askins' counsel asked Cavalry's attorney to enter a satisfaction of judgment. Cavalry's counsel did not agree that the judgment had been satisfied and sent an email to counsel on April 7, 2016, containing an amortization schedule explaining the balance still owed. Both the email and the amortization schedule bore the notice: "This is an attempt to collect a debt. Any information obtained will be used for that purpose." CP at 372. The schedule also reported that the remaining debt had been calculated by adding \$643 in attorney fees and \$280 or \$285 in collection costs for each writ of garnishment. The spreadsheet concluded that the Askins still owed \$15,820.89.

¶5 The Askins then requested, and the court granted, a show cause hearing pursuant to [CR 60](#) to determine that the debt had been paid. The hearing request also asked for additional relief, including: quashing the most recent writ of garnishment, entry of a satisfaction of judgment, return of all money paid in excess of the debt principal, finding a violation of the CAA for attempting to collect unlawful amounts, and awarding sanctions and damages. CP at 403. The motion relied on the schedule contained in the April 7 email between counsel.

**\*\*1148** ¶6 The parties argued the matter before the Honorable David Frazier of the Whitman County Superior Court, the **\*435** same judge who had signed the judgment nine years earlier. Cavalry argued that the April 7 email accounting had been erroneous and that the proper accounting showed that a balance remained. Judge Frazier considered the email accounting and found that the CAA had been violated by Cavalry requesting more costs than they were entitled to collect in violation of [RCW 19.16.250\(21\)](#). He ordered the judgment stripped to its principal pursuant to [RCW 19.16.450](#) and declared the judgment satisfied. CP at 427.

¶7 Cavalry moved for reconsideration and argued, with two alternative accountings attached, that the debt remained unsatisfied and that the matter should be set for trial. The Askins argued that the original ruling was proper and that Fireside Bank also had violated the CAA before Cavalry acquired the debt. Judge Frazier heard oral argument on the motion and took the matter under advisement before subsequently entering an order denying reconsideration. The order on reconsideration stated, in part, that the court's original ruling was based on efforts to claim more in attorney fees and costs than was legally permissible, and that the new accounting could not cure the earlier error. CP at 462-63.

¶8 Cavalry timely appealed to this court. An amicus curiae, the Statewide Poverty Action Network, filed a brief in support of the Askins. A panel heard oral argument of the case.

## ANALYSIS

¶9 Cavalry's appeal presents us with two significant questions. First, was the accounting contained in the email between the attorneys an effort to collect a debt under the CAA? Second, could the Askins pursue violations of the CAA under the provisions of [CR 60](#)? We first consider the relevant statutes before turning to the two questions presented.

**\*436** ¶10 The CAA is a counterpart of the federal Fair Debt Collection Practices Act (FDCPA), [15 U.S.C. §§ 1692-1692o](#), and constitutes our state's effort to regulate debt collection practices by in-state and out-of-state collection agencies. [Panag v. Farmer's Ins. Co. of Wash.](#), [166 Wash.2d 27, 53, 204 P.3d 885 \(2009\)](#). Those who make collection efforts in this state must be licensed, [RCW 19.16.110](#), and also must not violate a lengthy list of prohibited debt collection practices. [RCW 19.16.250](#). Violations of these two statutes are actionable under the Washington Consumer Protection Act (CPA), ch. 19.86 RCW. *See* [RCW 19.16.440](#).

¶11 In addition, a violation of any of the practices prohibited by [RCW 19.16.250](#) results in the creditor losing its right to collect any costs or interest, and limits collection to only the original judgment principal. [RCW 19.16.450](#). Among the prohibited practices are efforts to attempt to collect "any sum other than allowable interest, collection costs or handling fees expressly authorized by statute." [RCW 19.16.250\(21\)](#).

¶12 Washington's garnishment statute authorizes the imposition of attorney fees and other allowable costs. [RCW 6.27.090\(2\)](#). The attorney fee was \$250 at the onset of this litigation, but was raised to \$300 in 2012. *See* LAWS OF 2012, ch. 159, § 2. In order to recover costs or attorney fees, the plaintiff must obtain a judgment specifying the amount recovered. [Watkins v. Peterson Enters., Inc.](#), [137 Wash.2d 632, 647, 973 P.2d 1037 \(1999\)](#).

¶13 With these understandings in mind, we turn to the questions presented by this appeal.

*April 7 Email between Counsel*

¶14 The initial order granting the Askins' motion was predicated in part on the incorrect figures used in the April 7 email between the two attorneys. To the extent that the trial court considered that accounting to constitute a violation of the CAA, it erred. Communications between \*437 opposing attorneys do not constitute an effort to collect debt under the CAA.

¶15 The CAA defines “debtor” as “any person owing or alleged to owe a claim.” RCW 19.16.100(7). Many of the prohibited practices involve improper communication \*\*1149 practices between collection agencies and debtors. E.g., RCW 19.16.250(8), (9), (11), (13), (14), (15), (16), (17), (18). A collection agency is prohibited from communicating directly with a debtor who is represented by counsel. RCW 19.16.250(12).

¶16 These provisions of the CAA prohibit collection agencies, including attorneys or other agents, from contacting the debtor. They simply do not apply to communications with a debtor's attorney. The federal courts have reached the same conclusion under the FDCPA. “The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment, and deceptive collection practices.” *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007). Similarly, the purpose of the CAA is to “ensure [collection agencies] deal fairly and honestly with alleged debtors.” *Panag*, 166 Wash.2d at 54, 204 P.3d 885.

¶17 Neither act categorically excludes attorneys from its scope. *Paris v. Steinberg & Steinberg*, 828 F.Supp.2d 1212, 1220 (W.D. Wash. 2011) (“The [CAA] does not exempt attorneys attempting to collect a debt owed to a third party...”); *Heintz v. Jenkins*, 514 U.S. 291, 299, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995) (“[The FDCPA] applies to attorneys who ‘regularly’ engage in consumer-debt-collection activity, even when that activity consists of litigation.”). However, the FDCPA’s “purposes are not served by applying its strictures to communications sent only to a debtor's attorney.” *Guerrero*, 499 F.3d at 938; see also *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002) (“Where an attorney is interposed as an intermediary between a debt collector and a consumer, we assume the attorney, rather than the FDCPA, will protect the consumer from a debt collector's fraudulent or harassing behavior.”). Thus, “when the debt collector ceases contact with the debtor, and instead communicates \*438 exclusively with an attorney hired to represent the debtor in the matter, the [FDCPA's] strictures no

longer apply to those communications.” *Guerrero*, 499 F.3d at 939.

¶18 We believe the *Guerrero* principle governs here. Accordingly, we conclude that a communication by a creditor's attorney to a debtor's attorney, even if in violation of a provision of the CAA, does not itself constitute a violation of the CAA. The communication may still be of evidentiary value in subsequent litigation, but it does not constitute a prohibited communication to a debtor.

¶19 The trial court appeared to rely heavily upon the email communication in its original ruling. Although we reverse for the reasons stated in the next section and remand for additional action, we expressly note that sending the amortization schedule to the Askins' attorney could not itself constitute a violation of the CAA. The schedule itself, though, may still be of some evidentiary value to the parties. We believe that any future consideration of this communication will be consistent with the views expressed in this opinion.

#### *Use of CR 60 to Obtain Affirmative Relief*

¶20 The Askins brought the show cause hearing under CR 60 to establish a satisfaction of the judgment and other affirmative relief. We conclude that this was not a proper method of establishing a violation of the CAA.

¶21 CR 60 allows relief from judgment in several circumstances, including:

(b)(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

We believe this provision probably was the one relied on in the request for relief, although the calendaring order simply stated “CR 60.”

¶22 “ ‘Rule 60(b) is available only to set aside a prior judgment or order; courts may not use Rule 60(b) to grant \*439 affirmative relief in addition to the relief contained in the prior order or judgment.’ ” *Geonerco, Inc. v. Grand Ridge*

*Prop. IV, LLC*, 159 Wash.App. 536, 542, 248 P.3d 1047 (2011) (applying federal standard to [CR 60\(b\)](#) and quoting *Delay v. Gordon*, 475 F.3d 1039, 1044-45 (9th Cir. 2007) ). The party seeking vacation of a judgment under [CR 60\(b\)](#) bears the burden of establishing entitlement to relief. \*\*1150 *Puget Sound Med. Supply v. Dept of Soc. & Health Servs.*, 156 Wash.App. 364, 373 n.9, 234 P.3d 246 (2010). The effect of vacating a judgment is that it “is of no force or effect and the rights of the parties are left as though no such judgment had ever been entered.” *In re Estate of Couch*, 45 Wash.App. 631, 634, 726 P.2d 1007 (1986).

¶23 [CR 60\(b\)](#) allowed the Askins to establish that the judgment had been satisfied through their payments, but they did not directly attempt to do so. Instead, they sought to show a violation of the CAA, invoke the remedy of [RCW 19.16.450](#), and, once applying that remedy, claim that the judgment was satisfied. While this novel approach had the benefit of limiting the expenses of the parties by reducing the case to a motion, it appears to run counter to legislative intent that the CAA be enforced through the CPA. [RCW 19.16.440](#). It also required Cavalry to essentially defend against a CPA action without such a case having been initiated and without being allowed to engage in relevant discovery, while conversely permitting the Askins to litigate a CPA claim

without filing one. Although the trial court did not grant all relief available under the CPA, it granted enough to exceed the scope of its authority under [CR 60](#).

¶24 Without applying the [RCW 19.16.450](#) remedy, it is unclear on this record whether the trial judge believed the Askins had met their burden under [CR 60\(b\)\(6\)](#). Although we recognize that all parties benefit from the simplified and less expensive motion practice, it was not a practice available under the rule. We therefore reverse and remand \*440 for further proceedings and without prejudice to seeking relief outside the strictures of [CR 60](#).<sup>1</sup>

Reversed and remanded.

WE CONCUR:

[Fearing, J.](#)

[Siddoway, J.](#)

**All Citations**

6 Wash.App.2d 431, 430 P.3d 1145

#### Footnotes

- 1 This case should settle. In light of the fact that Fireside appears to have collected, or attempted to collect, fees and costs that it was not entitled to collect, it may be prudent for Cavalry to abandon its efforts to collect on the debt and enter a satisfaction of judgment rather than defend Fireside's actions.

# APPENDIX B

FILED  
JUL 15 2016  
WHITMAN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHITMAN

No. 07-2-00204-7

Cavalry Investments, LLC,  
Plaintiff,  
vs.  
John Askins  
Defendant.

ORDER

THIS MATTER came before the court upon the application of Defendant to consider and determine the following: Show cause why satisfaction of judgment + finding of RCW 19.16.250(a) violation.  
FINDINGS

AFTER considering the evidence, argument, and/or other information presented with respect to the above application, the court hereby finds as follows:

The Plaintiff, Cavalry Investments, LLC, violated RCW 19.16.250(a) by attempting to collect, through applications for writs of garnishment, amounts of money greater than allowed by law. Per RCW 19.16.450.

ORDER

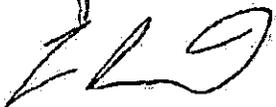
BASED on the above findings, it is hereby Ordered as follows:

Pursuant to RCW 19.16.450, based on the finding of a 19.16.250(a) violation, the judgment is stripped to principle. Because the Plaintiff has collected an amount greater than principle, the Plaintiff is ordered to immediately enter a satisfaction of judgment.

DATED: 7/15/2016.

  
JUDGE

Presented by:  
 #44034

Approved as to form:   
WSOA #4678

Order

WHITMAN COUNTY SUPERIOR COURT  
N. 400 MAIN STREET • P.O. Box 678  
COLFAX, WA 99111  
(509) 397-6244

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

**FILED**  
**OCT 18 2016**  
JILL E. WHELCHER  
WHITMAN COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHITMAN**

**CALVARY INVESTMENTS, LLC,,**  
  
Plaintiff,  
  
vs.  
  
**JOHN W. ASKINS,**  
  
Defendant.

No. 07-2-00204-7

**ORDER DENYING MOTION  
FOR RECONSIDERATION**

THIS MATTER came before the Court upon the filing of a Motion for Reconsideration by Plaintiff. Plaintiff sought reconsideration of an Order entered on July 15, 2016 that stripped the judgment amount in this matter to principal and directed entry of a full satisfaction of judgment. This order was entered pursuant to RCW 19.16.450 and was based on the court's finding that Plaintiff violated RCW 19.16.250(21) by attempting to collect amounts of money greater than allowed by law.

Plaintiff's motion was brought under CR 59(a)(7), contending that there was no evidence or reasonable inference from the evidence to support the court's order, and CR 59(a)(4), the discovery of new evidence. A hearing on the motion was held on September 2, 2016. At the conclusion of argument, the court took its decision under advisement. Based on further review and consideration, the court enters the following decision.

**DISCUSSION**

The evidence submitted both in support and opposition to Defendant's original motion, together with numerous documents in the casefile, supported the court's finding that Plaintiff not only attempted to collect, but did collect, unlawful and unauthorized collection costs. The court did not base this decision on Plaintiff's attempts to collect the principal amount of the judgment or interest. Specifically, the court found that Plaintiff repeatedly attempted to collect

**WHITMAN COUNTY SUPERIOR COURT**  
N. 400 MAIN STREET + P.O. Box 679  
COLFAX, WA 99111  
(509) 397-6244

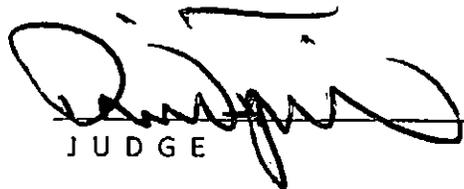
1 garnishment attorney fees in excess of the amount authorized by RCW 6.27.090, that it  
2 repeatedly collected garnishment costs in excess of the actual costs that were incurred in  
3 violation of RCW 6.27.090(2), that garnishment costs and attorney fees were charged that were  
4 not specified or included in garnishment judgments, and that interest was unlawfully  
5 compounded.

6 In support of the Motion for Reconsideration, Plaintiff submits a new "accounting"  
7 wherein it attempts to back out the unauthorized costs in order to cure the various violations of  
8 RCW 19.16.250(21). This shows that a balance would remain owing on the judgment. This  
9 accounting is not really new evidence, however; it is merely another recalculation of figures  
10 that were presented in evidence at the show cause hearing. This accounting deletes the  
11 various unlawful and improper charges that Plaintiff previously attempted to collect and/or did  
12 collect, but it ignores the statutory sanction of RCW 19.16.450 to "disallow recovery of any  
13 interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees  
14 or charges otherwise legally chargeable to the debtor on such claim." The court recognizes that  
15 Plaintiff was entitled to charge and collect interest on the principal balance of the judgment. It  
16 lost that right, however, when it attempted to collect charges that were not authorized by law.

17 **DECISION**

18 Based on a review of the Motion for Consideration and all materials submitted  
19 therewith, the court finds no merit to the motion, and it is hereby ORDERED that said motion is  
20 denied.

21 DATED: 10/18/2016.

22   
23 J U D G E  
24  
25  
26  
27  
28  
29  
30  
31  
32

**CERTIFICATE OF SERVICE**

On this date I caused a copy of the foregoing document to be served upon the attorneys of record listed below by E-Filing, with a courtesy copy by Email/PDF:

Karen Hammer  
Patrick Layman  
Suttell, Hammer & White, P.S.  
P.O. Box C-90006  
Bellevue, WA 98009  
Email: [karen@suttelllaw.com](mailto:karen@suttelllaw.com)  
[patrick@suttelllaw.com](mailto:patrick@suttelllaw.com)

Scott M. Kinkley  
Northwest Justice Project  
1702 W. Broadway Ave.  
Spokane, WA 99201-1818  
Email: [scottk@nwjustice.org](mailto:scottk@nwjustice.org)

*Attorneys for Respondent*

*Attorneys for Petitioners*

Amy C. Teng  
Matthew Geyman  
Office of the Attorney General  
800 5<sup>th</sup> Ave., Ste. 2000  
Seattle, WA 98104  
Email: [Amy.Teng@atg.wa.gov](mailto:Amy.Teng@atg.wa.gov)  
[Matthew.Geyman@atg.wa.gov](mailto:Matthew.Geyman@atg.wa.gov)

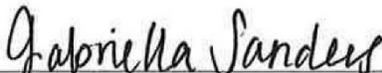
Erika L. Nusser  
Amanda N. Martin  
Terrell Marshall Law Group, PLLC  
936 N 34<sup>th</sup> St., Ste. 300  
Seattle, WA 98103  
Email: [enusser@terrellmarshall.com](mailto:enusser@terrellmarshall.com)  
[amanda@nwclc.org](mailto:amanda@nwclc.org)

*Attorneys for Amicus Curiae Attorney  
General of Washington*

*Attorneys for Amici Statewide  
Poverty Action Network and the  
Northwest Consumer Law Center*

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 9<sup>th</sup> day of October 2019, at Seattle, Washington.

  
\_\_\_\_\_  
Gabriella Sanders

**SAVITT BRUCE & WILLEY LLP**

**October 09, 2019 - 4:53 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96853-5  
**Appellate Court Case Title:** Fireside Bank, fka Fireside Thrift, Co. v. John W. Askins and Lisa D. Askins  
**Superior Court Case Number:** 07-2-00204-7

**The following documents have been uploaded:**

- 968535\_Briefs\_20191009164655SC864459\_7996.pdf  
This File Contains:  
Briefs - Answer to Amicus Curiae  
*The Original File Name was Answer to Amici Statewide Poverty Action and NW Consumer Center.pdf*

**A copy of the uploaded files will be sent to:**

- Amanda@nwclc.org
- Karen@suttelllaw.com
- MatthewG@ATG.WA.GOV
- amyt2@atg.wa.gov
- bbalanda@sbwllp.com
- cpreader@atg.wa.gov
- enusser@terrellmarshall.com
- patrick@suttelllaw.com
- scotk@nwjustice.org

**Comments:**

---

Sender Name: Devri Owen - Email: eservice@sbwllp.com

**Filing on Behalf of:** Stephen Charles Willey - Email: swilley@sbwllp.com (Alternate Email: eservice@sbwllp.com)

Address:  
1425 Fourth Avenue  
Suite 800  
Seattle, WA, 98101  
Phone: (206) 749-0500

**Note: The Filing Id is 20191009164655SC864459**