

64757-1

64757-1

No. ~~80008-1~~

THE SUPREME COURT OF THE STATE OF WASHINGTON

SPARK NETWORKS, PLC,

Respondent,

v.

WILL KNEDLIK,

Appellant,

and

ANNA GIOVANNINI,

Appellant.

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OPENING BRIEF OF APPELLANTS

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I. INTRODUCTION

This appeal arises from a simple collection action on a questionable out-of-state judgment that has devolved over the last 32 months within two departments of the King County Superior Court – and in Division I of the Court of Appeals – into a cascade of constitutional, statutory and further substantive errors, together with an accompanying stream of major lapses as to separations of power, comity and other key issues resulting from that flawed process, and along with misapplications of long-established law as to mortgages, as to mortgagor-mortgagee relations, and as to mortgagees-in-possession, *inter alia*, and of similarly well-defined procedural rules as to operations of statute-of-limitation bars with respect to mortgages, as to judicial estoppel, and as to burdens of proof and underlying presumptions for proper resolutions of motions seeking summary judgments, *inter alia*.

These serious problems derive **initially** from disregard for explicit policy decisions enacted by territorial-and-state Legislatures here, during more than a century, in their systematic replacements of common law and equitable remedies for collections with a carefully and extensively defined process for “Enforcement of judgments” now codified as Title 6, Revised Code of Washington, Chapters 6.01 through 6.44; **subsequently** from the substitutions of judicial *fiat* for this state’s public policies, as thus formally enacted, despite this Honorable Court’s specific prohibitions against such

usurpations for more than a century and its territorial predecessor's even earlier, and despite resulting constitutional errors; and **ultimately** from a disdain for matters of public record, for sworn testimony, and for various other quintessentials for proper administration of justice, including central due process rights of Appellant Anna Giovannini on summary judgment.

These distortions of the judicial process below result from repeated overreaching by an out-of-state judgment creditor for relief contrary to this state's adopted public policies – which its territorial-and-state Legislatures have enacted to substitute codification of systematic and well-defined steps fully compliant constitutionally to enforce judgments in this state for, and thus in derogation of, common law and equitable methods not available for collections here – so as, thereby, to preclude any *fiat* alternatives for those public policies enacted by the Legislature, here, for enforcing judgments, which were therefore wrongly allowed below through such overreaching.

While some elements of this appeal are procedurally separate from prior deficiencies in a related matter filed under Supreme Court Cause No. 83255-2 – at this point – reality is that they derive substantively from, and are inextricably interrelated factually, legally and logically with, key legal issues resolved wrongly below and now pending before the Court therein.

Appellant Giovannini's mortgagee-in-possession status is patent, as a matter of law, and thus nominal summary judgments should be reversed.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. Department 30 of the King County Superior Court erred through its order granting a writ of assistance, on March 18, 2009, based then upon its reliance on earlier orders entered erroneously by Department 51 of said trial court contrary to specific terms of Title 6, RCW, so as thus to constitute *ultra vires* acts, *fiat* substitutions for mandatory statutory obligations, and structural errors, which are therefore void *ab initio* as matters of law.¹

2. Department 30 further erred through its order denying Appellant Giovannini's motion for partial summary judgment on April 10, 2009. and in not granting such order, as a matter of law, under this state's established jurisprudence as to ongoing relations between mortgagors and mortgagees.

3. Department 30 still further erred through its order granting full summary judgment for Judgment Creditor's motion on April 10, 2009.

4. Department 30 yet further erred in its summary preclusion of reasonably adequate oral argument by Appellant Giovannini on April 10, 2009 consistent with her investment of over \$1 million in cash for her first lien in real estate at issue here, and refusing to hear her argument (VRP 9).

¹Errors by Department 51 and by Division I of the Court of Appeals are pending before the Court, in Cause No. 83255-2, as to which consolidation is requested. Given central errors and core issues overlapping between this appeal and that related one, and given page limits precluding full analyses of both appeals herein, errors in Cause No. 83255-2 are listed following the additional errors in this appeal, but prior briefing is incorporated by this reference thereto rather than repeated herein, fully, which would exceed 50 pages.

5. Department 30 additionally erred in its denial of Appellant Giovannini's motion for reconsideration entered on May 12, 2009, and in not reversing its initial order as to purported statute-of-limitation bars, as to judicial estoppel and as to all other matters erroneous therein contrary to Appellant Giovannini's rights to partial summary judgment as a matter of law.

6. Department 30 also additionally erred in its failures to take judicial notice of matters of public record documenting constitutional, statutory and other legal rights of Appellant Giovannini as a mortgagee in first-lien position initially and as a mortgagee-in-possession later on and today.

B. Underlying Errors From and Overlapping With Cause No. 83255-2

1. The superior court erred substantively in its failures to conform core proceedings pursuant to various chapters of Title 6, Revised Code of Washington, with mandatory provisions of that Title **after** an Affidavit of Ownership, as sworn by Appellant Anna Giovannini, was delivered to the King County Sheriff on February 4, 2008, in compliance with each of her legal obligations as to oath, as to timing and otherwise, as imposed by the Washington State Legislature as state policies codified at RCW 6.19, and **during** pendency of three statutory circuit-breakers triggered, *seriatim*, for all proceedings by said delivery of that Affidavit to King County's Sheriff.

2. The superior court erred procedurally in its signing of all orders proposed below, thereafter, except possibly for one element of that court's

first “Order Denying Giovannini’s Motion for ‘Probable Validity’ Finding under RCW 6.19.030(2)” (CP 37-42), whereby its decision on a summary calendar, on February 20, 2008, denied immediate return of all properties claimed through her Affidavit, on oath, pursuant to the summary “probable validity” process statutorily authorized by RCW 6.19.030; and these errors include all of the trial court’s *ultra vires* acts **both** in said Order whereby, based on a summary process authorizing **nothing** beyond its determination of the said “probable validity,” the court purported that it “MAKES certain findings of fact and reaches certain conclusions of law” (CP at 91), which violated Appellant Giovannini’s due process rights by means of purported adjudications ordered and decreed beyond the scope of that limited hearing provided by statute, and contrary to provisions of Title 6, RCW, for a jury trial, which she had requested in her sworn Affidavit on February 4, 2008 (wherein she had directly stated that “I demand a trial by jury as provided by RCW 6.32.270” as identified in CP at 11), and **also** in all its later orders.

3. The superior court further erred constitutionally in its denials of major due process rights of Appellant Giovannini against substantive-and-procedural infringements upon her property rights and interests, including but not limited to equitable ownership under state law, both as guaranteed by the United States Constitution and by the state Constitution, and also as further protected by provisions of Title 6, RCW, as pivotal public policies

of this state established explicitly by a 99-page revision and reformulation of Title 6 through that omnibus reenactment (Chapter 442, Laws of 1987).

4. The superior court still further erred both substantively as to its nominal determination that statutory homestead rights of Appellant Will Knedlik are not remedial in nature, and procedurally in its purporting to decide this question, erroneously, since that issue could not properly come before the trial court while any of three circuit-breakers remain in effect as enacted by the 50th Legislature through its omnibus amendments to Title 6.

5. The superior court yet further erred both substantively through its nominal confirmation of sale, and also procedurally in purporting to decide, erroneously, this issue not properly before the trial court while the third circuit-breaker is in effect under provisions of Title 6 (CP 85-92).

C. Issues Pertaining to Assignments of Error

Major legal issues pertaining to assignments of error devolve first from the trial court's failures to conform its acts to those authorized during a relatively brief period provided by three circuit-breakers triggered by the filing of an Affidavit of Ownership under circumstances herein applicable pursuant to RCW 6.19.030; from the trial court's failure to stop the sheriff from proceeding with actions halted statutorily by the third circuit-breaker until completion of the jury trial requested as provided by RCW 6.32.270; from that court's refusal to stop the sheriff from every function halted by

the statutory circuit-breakers created by provisions of RCW 6.19.030 and further precluded by disqualification of the sheriff from acts inconsistent with that officer's status as a party defendant, on due process grounds, as specified by RCW 6.01.030, on receipt of an Affidavit of Ownership; and from the court's reliance, in all or most such repeatedly *ultra vires* actions contrary to highly specific terms of Title 6, on its purported findings based on summary processes from a hearing properly limited to summary review of "probable validity," or lack thereof, and of **no** other matter whatsoever, and of follow-on *fiat* substitutions for mandatory terms of public policies.

III. STATEMENT OF THE CASE

A. Nature of the Case; Course of Proceedings; and Dispositions Below

The case and its posture through December, 2008, when Department 30 of the King County Superior Court was substituted for Department 51, as in Cause No. 83255-2, derives from (1) an out-of-state judgment obtained by fraud on a retired-and-superannuated California trial court judge, then sitting specially and since involuntarily removed from hearing all cases, which was filed by Respondent Spark Networks PLC in King County Superior Court in early 2007; (2) supplemental proceedings below initiated by that then-British corporation; (3) various collection actions in 2007, 2008 and 2009, whereby it has sought to cause sales of (a) claims for its corporate predecessor's violations of Appellant Knedlik's civil rights to **itself** in order, thus, to extinguish

its legal responsibilities for substantial civil rights violations deriving from a set of complicated legal transactions and factual circumstances (which such civil rights claims belong to Appellant Giovannini, as an after-acquired asset, if legally assignable, and to Appellant Knedlik, if not legally assignable), and (b) certain real property within King County (which property has long been possessed by Appellant Giovannini) (CP at 3); (4) an Affidavit of Ownership filed on February 4, 2008 by Appellant Giovannini (CP at 3); and (5) serial Orders entered by the trial court on February 20, 2008, and thereafter, all in violation of explicit provisions of Title 6, following a series of nominal court hearings conducted despite three circuit-breakers established by said Title on the filing of Appellant Giovannini's Affidavit of Ownership by means of all interactions among RCW 6.01.030, RCW 6.19.030 and RCW 6.32.270, *inter alia* (e.g., CP 35, 38, 62 and 78), and all in further violations of core rights to due process constitutionally guaranteed to appellants and of related statutory rights created by circuit-breakers established by Chapter 442, Laws of 1987.

In consequence of summary procedures and of denials of basic due process, as hereinabove identified in Assignments of Error and as further indicated in Issues Pertaining to Assignments of Error, core facts and legal complexities remain largely undocumented, to date, and will so do until the expedited jury trial, as provided by RCW 6.19.050, is conducted on remand.

Developments in Department 30 largely add core errors above stated.

B. Statement of Facts to be Established by Jury Trial

Facts relevant to and essential for valid determinations of Judgment Creditor's wrongful efforts to misuse a sheriff's sale of civil rights claims in order thereby to acquire, using a Dickensian theater-of-the-absurd process masquerading as a "sale," every constitutional, statutory, legal, equitable and contractual claim due to violations of major civil rights by its own corporate predecessor, and of its related overreaching to conduct another sale to itself of real property in King County despite those three circuit-breakers triggered by Title 6 on filing of Appellant Giovannini's Affidavit of Ownership (CP at 3), remain undeveloped to date, and could not be established by a summary proceeding inadequate to fulfill the most basic requirements for due process, even without violations of Title 6, including disregard as to her jury demand.

Appellant Knedlik's civil-rights claims at issue against Judgment Creditor derive from a complex of factually complicated legal, equitable, statutory and constitutional issues which underlie several disputes between said creditor's corporate predecessor and him during 2000, as well as other complicating factors devolving from assignments to Appellant Giovannini on September 12, 1995 of then-owned and after-acquired assets (CP at 14).

On September 12, 1995, Appellant Knedlik negotiated a resolution for certain unpaid-and-unpayable debts, as then owed by him, by assignments of his then-owned and after-acquired assets to Appellant Giovannini (CP at 14).

On December 11, 1998, Appellant Knedlik received a discharge in bankruptcy from the U.S. Bankruptcy Court for the Western District of Washington at Seattle after review of his said assignment of then-owned and after-acquired assets to Appellant Giovannini in September, 1995 (CP at 18).

Shortly thereafter, Appellant Knedlik acquired a one-third interest in a California corporation, Cupid's Network, Inc., as an after-acquired asset, which had previously been assigned contractually to Appellant Giovannini.

During 2000, Appellant Knedlik was contacted by two self-described principals of and for the direct corporate predecessor of Judgment Creditor, MatchNet PLC, a corporation organized in London and then apparently still incorporated as a Britain company, which was during that time establishing offices for its Jdate.com and related website businesses in the Beverly Hills office building of an international online-pornography and telephone-sex conglomerate also being operated on the premises by Ami and Sarit Shafir, with Jdate.com and other MatchNet websites then being provided access to the internet by those web servers in that building also operating Mr. and Mrs. Shafir's multiple online smut websites and related telephone sex businesses.

The two individuals identified themselves at that time as Joe Shapira and as Alon Carmel, even though they have used other names at other times, as was later ascertained, and they soon indicated MatchNet PLC's desire to acquire every share of the California corporation, Cupid's Network, Inc., as

well as all of its internet assets constituting one of the world's earliest and then-largest online social networks operating over the worldwide web.

When Judgment Creditor's corporate predecessor shortly thereafter offered somewhat in excess of \$3.5 million for that California corporation through those two self-described principals, Appellant Knedlik voted one-third of the total issued shares against the sale, and two-thirds of total shares were voted for the sale, which opposition to that sale by that formal action triggered certain notice obligations owed to outvoted minority shareholders under California corporations law (*i.e.* respecting a right to obtain fair market value for the one-third of shares thus acquired as the interests of a dissenting shareholder), and that mandatory notice, as was then required by California's Corporations Code, in §1301, was not given either then or at any time since.

The fair market value of the one-third of total shares issued in Cupid's Network, Inc, and eligible for such dissenting-shareholders treatment under California law, appears to be have been between \$10 million and \$20 million before MatchNet PLC was taken public on the *Neuer Markt* in Frankfurt, substantially more after going public there, and rather more when listing of and trading in its shares moved onto the American Stock Exchange in 2007.

When an *impasse* developed over the forced sale of Cupid's Network Inc. shares under those circumstances, during early-to-mid 2000, Appellant Knedlik was contacted first by telephone by two individuals who declined to

identify themselves, but who later identified themselves as Daniel Nicherie and Abner Nicherie, and who represented themselves as business associates of Messrs. Shapira and Carmel, as silent partners in Respondent Spark Networks PLC's predecessor, as agents for Ami and Sarit Shafir's extensive business-and-financial interests, and as sons of a famous Israeli General and statesman; subsequently by Sarit Shafir, who was and represented herself as the person in charge of all online-pornography and telephone-sex operations being conducted from the building also housing MatchNet PLC and of large web-servers hosting her and its internet operations, and as a silent partner in MatchNet PLC; and thereafter by Ami Shafir, who represented himself as the person rightfully in charge of the Shafir family's business enterprise but as an individual effectively disenfranchised by frauds of Messrs. Nicherie.

Messrs. Nicherie were subsequently indicted along with Anthony Pellicano in 2006 for hiring Mr. Pellicano to wiretap Mr. Shafir, and for participating in his wiretapping operations, after Daniel Nicherie had been arrested in and incarcerated since 2004 for criminal frauds on Mr. Shafir and on Mr. and Mrs. Shafir's businesses. (Daniel Nicherie pleaded guilty to the 2006 indictment and he remains in prison. Abner Nicherie has been tried with Mr. Pellicano, in 2008, and he was also convicted at that time).

Based on information provided by Messrs. Nicherie, by Mr. and Mrs. Shafir and by former business partners of Joe Shapira and of Alon Carmel

in Matrix Video Duplication Corporation and in several other closely related businesses, during mid-to-late 2000, Appellant Knedlik identified securities frauds, insurance frauds and other civil-and-criminal wrongdoing alleged as to these self-identified principals of Judgment Creditor's corporate predecessor, both by regulators and also by police agencies located from Israel to California, and their various roles through Matrix Video Duplication Corporation's operations for many years in and for the international pornography trade operated from the San Fernando Valley within Southern California.

In order to stop Appellant Knedlik's further documentation as to such an inconvenient truth, to silence him and to avoid required payment of fair market value for shares of Cupid's Network, Inc., *inter alia*, Judgment Creditor's corporate predecessor commenced litigation against him; its legal counsel repeatedly presented sworn testimony and other materials claiming that its self-styled principals never at any time had either any role of any kind whatsoever in or with any relationship of any kind whatsoever with the international pornography trade; said legal counsel repeatedly sought to obtain sanctions against him through a superannuated California trial court judge; and its self-styled principals appear to have affirmatively intervened with Gadi Givol, Daniel Nicherie and Sarit Shafrir in order to prevent their agreements to testify then regarding Matrix Video Duplication Corporation's extensive-and-lengthy role in the southern California pornography industry.

Due to false claims made under oath repeatedly by Joe Shapira and by Alon Carmel and to their apparent witness tampering, and due to the presentation of that major fraud on a very elderly trial court judge and on Appellant Knedlik, Judgment Creditor's corporate predecessor was able to obtain civil contempt findings against Appellant Knedlik in 2000, and default judgments in 2001, and its legal counsel, Tom Lallas, has continued to prosecute actions based on this fraud even after Appellant Knedlik was able to identify that Matrix Video Duplication Corporation had stipulated to its role in acts, circumstances and events so egregious that an intermediate California appeals court squarely stated that a video thus admittedly provided by the video company then operated by Messrs. Shapira and Carmel create circumstances "giving a new meaning to the term 'kiddie-porn.'"

Given that Respondent Spark Networks PLC's rights all arise from its false claims both that Appellant Knedlik slandered its officers by his inquiries into their roles in the southern California pornography trade, and also that those officers never had any role in the pornography industry; given that a California trial court's awards rest squarely on those wholly fraudulent claims; given that a subsequently identified court record documents that a California appellate court judge had previously found that those two officers' predecessor company had been involved in the activities as to which "Matrix entered into an agreement which provided in pertinent part (1) Matrix

would not contest liability” as to its thus-indisputable role in a fiasco by which “The Best Christmas Pageant Ever” videotape, as marketed by the prominent Scholastic, Inc. company to young “children across America that Christmas,” had resulted in “giving a new meaning to the term ‘kiddie-porn,’” due to graphic oral-and-vaginal sex scenes which had been included within that video intended for small children and distributed to numerous elementary schools across the United States (as identified at: caselaw.findlaw.com/data2/californiastatecases/b109989.pdf); given other abuses deriving from those frauds both on a California trial court and also on Appellant Knedlik; and given later-and-ongoing uses of those frauds in order to infringe upon Appellant Knedlik’s civil and other rights, the jury trial demanded as to assets which Judgment Creditor seeks to seize is indicated, whether the chose is owned by Appellant Giovannini under assignment (if legally assignable), or by Appellant Knedlik (if not assignable).

In early 2007, Judgment Creditor filed those default judgments in Washington State under King County Cause No. 07-2-08361-8, and that case is now here on appeal in this matter and in Cause No. 83255-2.

In late 2007, Judgment Creditor undertook through Department 51 to cause the King County Sheriff to seize and to sell Appellant Knedlik’s civil-rights claims against that corporation, in respect to its predecessor’s wrongful actions to suppress its frauds against him and against the trial

court in California in order to cover up its long history of activities in the southern California pornography industry and its failure to comply with California corporations law related to forced sale by a dissenting minority shareholder, and Appellant Giovannini filed an involuntary bankruptcy petition, on November 19, 2007, in order to restrain that self-dealing by Judgment Creditor on the following day, as the rightful owner of such civil-rights claims to the extent that such civil-rights claims are subject either to assignment to her or else to seizure otherwise.

Subsequently, Judgment Creditor sought a Sheriff's sale on certain real estate in King County, which is subject to mortgages and liens recorded in favor of Appellant Giovannini long before the initial corporate existence of the British corporation that preceded it and through which it is asserting default judgments, including a first deed of trust which she bought from an unrelated third party through a prior judicial proceeding in which U.S. Bankruptcy Judge Thomas T. Glover supervised that purchase, and on which said first lien she is currently owed more-than-\$2 million in its unpaid principal, unpaid interest, unpaid taxes and other costs provided by its standard terms.

C. Standard for Review

The standard for review as to summary judgment, statutory interpretation, resulting constitution defects and structural errors is *de novo*, uniformly, as was recently stated in *Post v. City of Tacoma*, ___ Wn.2d ___, ___ (2009).

IV. ARGUMENT

A. Errors Overlapping from Cause No. 83255-2 to Cause No. 83208-1

With errors and lapses that yield this appeal substantively deriving from, and inextricably interrelated factually, legally and logically with, central issues wrongly resolved below and thus now pending before this Court, as to that previous action, reality is that proper resolution of principal mistakes by Department 51 due to its *fiat* substitutions for every quintessential requirement of mandatory public policies for “Enforcement of judgments” herein, as codified in Title 6, Revised Code of Washington, Chapters 6.01 through 6.44 – as well as by Division I of the Court of Appeals in its acceptance of that trial court’s *fiat* usurpations rather than the application of this Court’s explicit decisional law as to acts in derogation of the common law – could legally moot the need for resolution of this appeal altogether.²

Department 30’s error in granting Judgment Creditor’s motion for a writ of assistance in 2009 results directly from reliance on orders issued by Department 51 during 2008 contrary to specific requirements in RCW 6.19.030 (which precluded that trial court from allowing predicate acts, after Appellant Giovannini had filed her Affidavit of Ownership prior to her jury trial being completed as provided by RCW 6.32.270), as well as re-

²If Cause No. 83255-2 is consolidated with this appeal, leave for rebriefing thereafter within a reasonable period, such as 30 days, would afford more orderly presentation of all interrelated factual-and-legal questions required for proper resolution of this appeal by the Court than is feasible, herein, through the incorporation of previous briefing by reference.

sulting from Department 30 repeating the same “out of sequence” error in allowing a writ of assistance as a legal cart before the controlling statutory horse, *i.e.* by granting such a writ on March 18, 2009, so as therefore to be wrongly decided, before a hearing on motions for partial and full summary judgments on April 10, 2009, which were also wrongly decided in key regards as well as is discussed in documenting error more fully hereinbelow.

These errors are structural in their distortions of public policies, as codified in Title 6, RCW, and, therefore, cannot be considered to be harmless as a matter of law, *State v. Strode*, ___ Wn.2d ___, ___ (2009), thus rendering every act purported thereunder void *ab initio* from Department 51’s nominal orders in February, 2008 through Department 30’s nominal writ of assistance based on and in furtherance thereof on March 18, 2009.

Other lapses by Department 51 involve judicial misapplications of statutes, as well, and are also erroneous, but are preliminary in legal effect and, thus, do not render such errors structural and therefore void *ab initio*, except in consequence of their involvements in seizure of Appellant Giovannini superior property interests in valuable real estate at issue herein.

While this Court must reverse orders entered both by Department 51 in 2008 and also by Department 30 in 2009, for legal consequences of these overlapping errors, it likely could not grant relief to Appellant Giovannini as to her property as a matter of law due to errors by Department

51, given the preliminary nature of “probable validity” to be found, or not, under RCW 6.19.030, but it can and should do so as matters of law herein.

Even though constitutional rights as to valuable property interests and as to still-more-valued due process interests are central as to both instances, and while applications of long-established principles for proper statutory construction of Title 6’s clear language is likewise required to resolve each appeal, errors by Department 30 of the trial court below involve issues also requiring judgment for Appellant Giovannini, as matters of law, which would not appear to have been the case in Department 51, given the terms of Title 6 operative therein, since such errors were preliminary then.

In Department 51, Appellant Giovannini submitted an Affidavit of Ownership, CP 3-34, which could be accepted as “probable” pursuant to RCW 6.19.030, or which “shall” result in her property being ordered by the trial court to be held by the King County Sheriff until her rights can be resolved through the jury trial provided by RCW 6.32.270, if explicit language of Title 6, RCW, had simply been complied with by Department 51. At that preliminary stage of the statutory construct, Appellant Giovannini had not submitted further documentary evidence of mortgagor-mortgagee relations of public record, her payment of property taxes of public record, and other related matters of public record pursuant to her motion for partial summary judgment (CP 37-54), which were before Department 30 and

which were tendered to that Department by motion for reconsideration (CP 174-198), after that trial court had refused to hear her argument (VRP 9).

Hence, while proper resolution of Cause No. 83255-2 could moot need for this appeal altogether, this appeal can and should both establish Appellant Giovannini's property rights, finally, as matters of law, and also formally void *ab initio* overlapping structural errors as outlined hereinabove.

B. *Modus Operandi* and Matters of Public Record

In Department 30, during 2009, Judgment Creditor Spark's *modus operandi* was to overreach repeatedly in seeking to collect its questionable out-of-state judgment against Appellant Knedlik through legal sleights-of-hand to avoid Appellant Giovannini's superior property interests in certain valuable real estate at issue, on which it seeks foreclosure, despite pivotal undeniable facts of **public record** that Appellant Giovannini purchased the first-lien position in said real estate for \$368,704, in 1995, **as a matter of public record**; subsequently paid in excess of \$150,000 in property taxes to protect her first-lien priority in the real estate at issue, including having paid \$35,354 to King County in October, 2000 after that county's elected prosecuting attorney had commenced litigation in June, 2000 to collect its tax lien under King County Cause No. 00-2-15281-7, **also as a matter of further public record**; thereafter renewed her junior security interest in the real estate at issue for \$463,180 under King County Cause No. 92-2-

27528-7 through her then-legal counsel, Warren Erickson, on May 6, 2004, **also as a still further matter of public record**; subsequently become the mortgagee-in-possession of the real estate at issue, **also as a yet further matter of public record**; and thereafter began to use the real property at issue as a personal residence no later than her registration to vote there, on April 3, 2006, **also as an additional matter of public record, *inter alia***.

As these matters in a variety of factual-and-legal categories thereby make abundantly clear, all involve **a matter of public record** and each occurred **before** Judgment Creditor first filed its questionable out-of-state judgment against Appellant Knedlik, in King County Superior Court, on March 8, 2007, 32 months ago yesterday, and **after** Appellant Giovannini had clearly established not just her first-lien position through her purchase of a deed of trust from a third party for \$368,704 in 1995, and **after** she had saved the property from a tax foreclosure for \$35,354 in 2000 as well as paying property taxes and other assessments from 1995 through 2008, and **after** she had refilled her junior lien for \$463,180 in 2004, and **after** she had become a mortgagee-in-possession, begun use of the property as a residence and registered to vote and voted from that residence since 2006.

The law of this state under these circumstances is entirely patent, as it has been explicated by this Court for more than a full century, as will be documented hereinbelow, in some detail, after a brief review of the bad

faith shown by Judgment Creditor's efforts to deny Appellant Giovannini every benefit of her large investment of over \$1 million in cash in order to steal her property through its legal sleights-of-hand to collect a judgment as to which she had no involvement of any kind and no knowledge whatsoever until well after its filing on March 8, 2007, given both its knowledge of these matters of public record, and also its intent by such means wrongfully to harm the health of an 86-year-old woman that is still continuing.

In addition, Judgment Creditor's *modus operandi* of overreaching also is the initiating factor for the cascade of constitutional, statutory and further substantive errors referenced in the Introduction above and detailed in prior briefing respecting Cause No. 83255-2, and for the accompanying stream of major lapses as to separations of power, comity and other major issues resulting from that flawed process also so referenced and so briefed.

Judgment Creditor's *modus operandi* for its overreaching in Department 30, in 2009, simply continued its wrongful methods exploited within Department 51, in 2007 and in 2008, based on diversion of judicial attention from explicit terms of statutes, from well-defined decisional law by this Court for proper interpretation of our state's statutes and from pivotal facts through baseless accusations, and outright character assassinations, including utterly absurd claims of perjury against Appellant Giovannini, which this Court should sanction through claims dismissal and otherwise.

C. State Mortgage Law Requires Reversals of Department 30

Even though a series of complex legal issues exist as to derivative aspects of specific factual-and-legal circumstances arising from disregard for this state's public policies for enforcement of judgments by two trial courts and by one intermediate appellate tribunal – as complicated with extraneous *ad hominem* attacks against Appellant Giovannini – essential issues of statutory and decisional law nonetheless remain as simple as the collection action should have been before this state's dispositive law of mortgages, properly applied, brought all collection actions to an early and complete end, as each relates to Appellant Giovannini, as soon as she had been examined under oath pursuant to provisions of Title 6, RCW (which, of course, was never done precisely because Judgment Creditor's *modus operandi* intends to obscure matters of public record not to identify them).

Of central importance for proper disposition of this appeal – as to both Department 30's denial of Appellant Giovannini's motion for partial summary judgment to establish validity of her first-lien and other junior priorities, as superior to Judgment Creditor's much-inferior lien position, and also its granting of that creditor's motion for full summary judgment – is long-established state law as to mortgages, as to mortgagor-mortgagee relations and as to mortgagees-in-possession, as well as to the indisputable fact that **no** statute-of-limitation bar arises under the circumstances herein

due to judicially stated mortgage law of this state respecting her first-lien position, her junior-lien priorities or her liens for all property taxes and any assessment arising from her payment of them from 1995 to 2008, including but not limited to her payment of \$35,354 in order to prevent litigation by King County to foreclosure on the real estate at issue for taxes, in 2000, as indicated by copies of pleadings and of her \$35,354 check (CP 189-199).

Particularly significant for proper resolution of this appeal – given Judgment Creditor’s averment of a statute-of-limitation bar on Appellant Giovannini’s first-lien position of public record as to its creation and as to its repeated defenses through payment of property taxes, purchases of two large junior liens both superior to its much-inferior judgment position and other affirmative actions – is well-established law of this state squarely on point, for more than a full century under the jurisprudence of this Court for our state, contrary to its assertions of a disqualifying legal bar from repose.

The starting point for the core error of Department 30 in accepting Judgment Creditor’s self-serving distortions of the statute-of-limitation bar asserted as applicable to the first-lien position as issue, herein, is that such misstatements of fact and of law ignore the legal impacts on repose within this state when relations between Appellant Giovannini, as mortgagee, and Appellant Knedlik, as mortgagor, are indisputably continuing, which such sidestepping of the core fact of those circumstances in view below was not

only done inaccurately, and rather flagrantly so in contradiction to long-established principles of mortgage law in this state, but these false claims by Judgment Creditor were made as a complete stranger to the contractual mortgagor-mortgagee relationship ongoing between said parties, *i.e.* were made falsely by a self-interested creditor of one contracting party with no rights as to more-than-\$1 million in cash advanced as loans made by the other contracting party from early 1995 to this date, and therefore with no legitimate interest therein under explicit black letter law here (and with no other interest of any kind as to the mortgage at issue except for its *modus operandi* in order to seek unjust enrichment at the expense of mortgagee).

In particular, well over a full century ago, this Honorable Court squarely determined “[c]oncerning the statute of limitations,” based on its direct reliance on Judge Leonard “Jones, in his valuable treatise on Mortgages, that, so long as the relation of mortgagor and mortgagee exists, the statute does not commence to run in favor of either the mortgagor or the mortgagee,” *Krutz v. Gardner*, 25 Wash. 396, 402 (1901).

In fact and in law, statutes of repose cannot be construed otherwise, since to do so, as the trial court nominally did upon reconsideration, would interpret the statute so as not only to interfere with contractual relations of parties as to extensions of credit and as to acceptances of credit under contracts in the form of mortgages, but to distort statutes of repose to violate,

thereby, the contract clauses of federal-and-state constitutions prohibiting interference through any state law having the legal effect of “impairing the Obligation of Contracts” under the U.S. Constitution, Article I, section 10.

Further, the first lien at issue herein remains legally in effect not simply due to well-established state law that ongoing mortgagee-mortgagor relations toll repose statutes, nor merely due to Division I having also been clear in stating that even the running of a “statute of limitations bars the remedy but does not extinguish the debt,” *Jordan v. Bergsma*, 63 Wn.App. 825, ___ (1992), but also because the deed of trust at issue here, as set out within CP 44 to 54, was judicially compelled by Hon. Warren Chan as a specific “additional property award [that] is and shall be deemed to be a judgment for owelty or lien in partition” (Decree of Dissolution signed on December 7, 1990 in King County Cause No. 88-3-04362-4 at page 3), and this decree of partition thus granted as a separate property award constitutes a permanent judicial partition nonextinguishable legally until paid.

This Court’s subsequent decisions make clear that when ordinary mortgagees become mortgagees-in-possession as Appellant did in the circumstances of this case – and did, in fact and in law, well before she first heard either of Judgment Creditor or of its out-of-state judgment – then the “principle involved was decided adversely to [Judgment Creditor’s] contention in *Kurtz v. Gardner*, 25 Wash. 396, where it was held that, as long

as the relation of mortgagor and mortgagee exist, the statute does not commence to run in favor of either the mortgagor or the mortgagee,” *Catlin v. Murray*, 37 Wash. 164, 16_ (1905), as litigation in which an individual, “the testimony shows, was placed in possession as mortgagee, and there having been no foreclosure, the action was not barred by the statute of limitations, and judgment is affirmed” (*Ibid*) years beyond the normal bar.

While *Catlin* does not make clear the precise circumstances or chronology as to establishment of debtor-in-possession status, evidence before Department 30 documents mortgagor’s explicit consent to debtor-in-possession status for mortgagee, on her demand, at any time after mid September, 1996 (as set forth in CP 14 to 20), as in fact later occurred.

Furthermore, the mortgage at issue is in standard form and thus provides for mortgagee to make subsequent advances, as her prerogative, and both her sworn statements in her Affidavit of Ownership and in other declarations on her oath before Department 30 document her property-tax payments from 1995 to 2008, as do receipts for tax payments (CP 189-96).

Indeed, this Court has squarely determined that over \$150,000 in taxes paid by Appellant Giovannini from 1995 to 2008 to protect her first position in the real estate at issue is unextinguishable on an absolute basis.

As the Court stated in *Childs v. Smith*, 51 Wash. 457 (1909), at 461: “When appellant made the [tax and assessment] payments, he was

equitably subrogated to the rights and liens held by the county and state.” One year later, in *Childs v. Smith*, 58 Wash. 148 (1910), based on citations to earlier decisions involving mortgagees who prevented “the paramount lien of the taxes from destroying the value” of real estate (at 149), this Court specified that “[s]uch liens are not like liens which may be barred by time, or where the statute may be tolled to the prejudice of the owner of the land” (at 150), noting that “[i]f the taxes had not been paid by the lien claimants in this case, the land would no doubt have been lost to respondents long ago by delinquent tax foreclosure” (151), as is the exact case in this appeal, with King County’s tax foreclosure action clearly evidencing that situation herein when Appellant Giovannini paid \$35,354 to end King County’s foreclosure action in 2000, not just as a matter of valid judicial logic, but as a matter of an actual foreclosure thus factually documented.

Further, for well over a century, this Court has instructed that in the circumstances of this appeal, with payment of over \$150,000 in state property taxes having created equitable subrogation of governmental tax liens in favor of Appellant Giovannini, “before the plaintiff can maintain this action, he must pay or tender the amount of the taxes paid by defendants, with legal interest from the time of payment,” *Denman v. Steinbach*, 29 Wash. 179, 184 (1902), as a condition precedent for Judgment Creditor’s commencement of its actions below to interplead Appellant

Giovannini, with failure to comply with this long-standing obligation as to her subrogated rights thus appearing to be legally fatal, *sui generis*, and further creating a legal situation wherein she, as a mortgage-in-possession, is entitled to have the trial court act “to ascertain the amount of the general taxes, and assessments not barred, with [all applicable] interest thereon from the respective dates of payment, to decree the appellant an equitable lien on the land therefore, to enter a judgment foreclosing the same, and to award him [or her] an order of sale to enforce payment” as the law of this state for fully a century now. *Childs v. Smith*, 51 Wash. 457, 462 (1909).

While mechanical details regarding Department 30’s obligations in these matters, and their implementations as one-or-more conditions precedent do not appear to be fully defined by the decisional law of this state, doubt cannot exist that the trial court could not grant a full summary judgment to Judgment Creditor, was required to grant at least partial summary judgment to Appellant Giovannini, and thus entered *ultra vires* orders that constitute abuse of discretion (especially given presumptions operating in favor of nonmoving parties in circumstances of every summary judgment).

Decisions have also repeatedly indicated that failure by trial courts to provide for equitable subrogation of tax liens is a reversible error, as is stated in *Hemen v. Rinehart*, 45 Wash. 1, 8 (1906), wherein said reversal by this Court was explicitly indicated to be made upon that specific basis.

Again, however, decisional law does not appear to have indicated precisely **how** trial courts are to establish tax reimbursement, as a precondition, and exactly **how** interest applies at the legal rate as *Denman* states.

Also, black letter law makes patent that strangers to a contract lack legal standing to exploit statutes of repose with C.J.S. so documenting the “general view that only the person for whose benefit the statute inures or someone standing in that person’s place may take advantage of it, and not a stranger” (Limitations of Actions, sec. 25, at 48-49). This black letter law is supported in this state by repeated determinations that mortgagees own the power to declare default, and can claim or waive it as mortgagees, it being “for the benefit of the mortgagee, and cannot be taken advantage of by the mortgagor.” *First National Bank v. Parker*, 28 Wash. 234 (1902).

Further, Judgment Creditor could have obtained, but did not seek, Appellant Knedlik’s contractual rights as mortgagor in the mortgage contract constituting the first-lien at issue herein as is necessary to obtain any legal status as to that contract – since such an act would have resulted in a foreclosure action by Appellant Giovannini as mortgagee and mortgagee-in-possession against it as a defaulting mortgagor – and it chose to remain a stranger to the action, legally, and to seek to manipulate repose as such.

This is also legally significant in this appeal because it documents the failure of Judgment Creditor properly to levy on **all** available personal

property, before its nominal levy on real estate, which violates obligations of Title 6 during the circuit-breaker period as provided by RCW 6.21.040.

Still further, Judgment Creditor likewise could have but also failed to seek an accounting as to Appellant Giovannini's substantial financial interests in the real estate at issue, including at least \$150,000 in property taxes paid by her of public record that are indisputably **exempt** from any running of any statute of limitations under this state's clear decisional law.

Therefore, in these circumstances, Department 30's acts allowing a judgment creditor with **no** interest in the mortgage contract at issue to dictate its terms are not only contrary both to this state's law as to mortgages, and also to black letter law as to contracts generally, but document its lack of compliance with Title 6 as to an essential precondition for levying on any real property and interference with constitutionally protected rights of both mortgagor and also mortgagee to contract under the contract clauses of federal and state constitutions, both respecting the initial contract, and also regarding their subsequent contractual relations related to Appellant Giovannini becoming mortgagee-in-possession of the real estate at issue even before she first moved her primary residence there at some point before April 3, 2006 and thereafter registered to vote from there on that date.

In light of these matters of indisputable **public record**, not only has Judgment Creditor apparently failed to fund Appellant Knedlik's right to a

homestead allowance pursuant to Title 6's establishment of homestead rights, at either the level that it acknowledges or at the increased level remediated by the state Legislature in 2007, but it has also failed to take any action to resolve Appellant Giovannini's statutory homestead rights.

Given the short circuiting to date of Appellant Giovannini's legal rights, first as a mortgagee and subsequently as a mortgagee-in-possession, and of Appellant Knedlik's legal rights, as a mortgagor, the court record is incomplete as to major issues related to the accounting required and other matters discussed above, and this is again by design as another function of Judgment Creditor's *modus operandi* of repeatedly overreaching from no later than its submission of an order based on a highly summary "probable validity" hearing whereby the trial court signed an order in Department 51 that "Will Knedlik and Anna Giovannini are hereafter barred from raising the question of ownership" in a proper evidentiary hearing thereafter (SCP ___), which was of necessity designed to prevent development of facts and of law essential for a lawful resolution of Appellant Giovannini's superior interests and of its much inferior interests (if any), and which preclusion of facts in turn provided inadequate legal bases for, but was necessarily relied on, by Department 30's erroneous writ of assistance on appeal herein, and which thus documents a further structural error requiring this appeal.

Again, the history of mortgage law in this state is to the contrary.

In fact, this state's mortgage law is patent as to at least two matters essential for proper resolution of this appeal from what appears to be the first statement on mortgages by Justice John Hoyt in the second volume of this Court's Territorial Reports, in 1880, namely that *Jones on Mortgages* has been heavily relied on in the creation of mortgage law here, since the first edition of this influential treatise by Judge Leonard Jones in 1878, and that common sense financial considerations as to intent of mortgagors and of mortgagees has shaped development of that body of law from that decision in *Miller v. Ausenig*, 2 Wash.Terr. 22 (1880), forward to this day.

Certainly, this Court's reliance on Judge Jones' mortgage treatise from the first edition, just two years after it was published in 1878, and its scores and scores of citations to later editions of Jones up to and including the eighth and final edition issued in 1929, taken together, demonstrate the major influence of that treatise on development of mortgage law here (as well as in scores of other states in that influential half century of reissues), and document key bases for long-established rules as to tolling of statutes of repose when ongoing mortgagor-relations can be made out by common sense analysis of factual-and-financial circumstances from *Miller* forward, including Judge Jones' detailed analysis of the role of subsequent advances made by mortgagees in documentation of ongoing relations tolling repose between mortgagors and mortgagees (as well as of any "stranger" thereto).

D. State Mortgage Law Requires Partial Summary Judgment for Appellant Giovannini's First-Lien Position as a Matter of Law

In addition to Department 30's reversible errors in granting a full summary judgment in favor of Judgment Creditor for several reasons indicated hereinabove, the trial court also must be reversed as a matter of law as to its denial of Appellant Giovannini's motion for a partial summary judgment to establish the validity of her first-lien position (as well as to her unextinguishable tax liens, in light of state decisional law cited above, which she obtained through her payment of property taxes to prevent a tax foreclosure on the property plus interest, at the legal rate, under *Denman*).

E. State Law as to Judicial Estoppel Also Requires Reversals

The common sense approach of this Court in development of mortgage law for our state for nearly 130 years now from the earliest decisions shaping that jurisprudence from territorial days, with rather heavy reliance placed on *Jones on Mortgages* for more than 50 years during formation of the central foundations for mortgage law here, is fully adequate to identify the *modus operandi* of overreaching employed by Judgment Creditor in its efforts to enforce its questionable multimillion-dollar foreign judgment obtained based on default against Appellant Knedlik, as a mortgagor, through foreclosure on assets belonging to Appellant Giovannini, as a mortgagee owning first-lien position through an arms-length purchase under direction

of Hon. Thomas Glover, initially, and as a mortgagee-in-possession, later, after a tax foreclosure action by King County and other defaults under the terms of the first mortgage thus purchased by her, subsequently, *inter alia*.

Indeed, common sense analysis of financial realities, as opposed to financial pretexts, relied on by this Court in *Miller* at 24 – wherein Justice Hoyt inquired “Was such a transaction, as this is claimed by the defendant to have been, such an one as plaintiffs would have been likely to have entered into, in light of the circumstances above set forth,” whereunder \$800 would have been paid for possession of premises for six months notwithstanding “it was only worth about three hundred dollars per year,” and wherein he concluded for the Court thusly in 1880: “We think not” – is more than sufficient to understand overreaching that resulted in Department 51 precluding essential fact development in a fact-based hearing as nominally based on a highly summary “probably validity” hearing held pursuant to RCW 6.19.030 for a very limited and entirely different statutory purpose, and in Department 30 refusing to hear Appellant Giovannini at all regarding real estate for which she has paid over \$1 million, in cash, as indicated by the *verbatim* report of proceedings and especially VRP 9.

However, even though both actions constitute structural error that cannot be gainsaid and that require a reversal herein, and while both such structural defects are implemented through overreaching orders drafted by

Judgment Creditor's counsel, and misleading arguments of said counsel to Department 51 in 2007 and in 2008 and to Department 30 in 2009, nothing in either department can approach the bad faith involved in such counsel's numerous and repeated claims of perjury made against Appellant Giovannini, an 86 year old widow with a high school education acting *pro se* below, and herein, in large part due to Judgment Creditor's behavior leaving her without assets to protect her interests and those held in trust by her.

While this Court's statements of central elements of mortgage law dispositive herein are clear, but old, its statements of principal elements required for judicial estoppels also dispositive herein are explicit, and recent, including multiple core factors identified in *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538-539 (2007), reversing a purported estoppel, and *Ashmore v. Estate of Duff*, ___ Wn.2d ___, ___ (2009), condensing down to its essence as follows: "The gravamen of judicial estoppel is the intentional assertion of an inconsistent position that erodes respect for the judicial process and the courts" (and, again, reversing another purported estoppel).

While complete analysis implicates the inability of Judgment Creditor to meet **any** of the multiple factors required by this Court, its bad faith at issue herein derives from its factual, legal and logical inability to thus conform its casual fraud accusations against Appellant Giovannini to estoppel's *gravamen*, *i.e.* "intentional assertion of an inconsistent position."

In this instance, the red herring which Judgment Creditor purports to constitute a red-handed perjury by Appellant Giovannini derives from the fact that she acquired her first lien position in the real estate at issue in 1995 personally (CP 44-45), subsequently transferred her interests therein to a revocable trust for her grandchildren (CP 14-20), and later filed for a Chapter 13 bankruptcy in 2007 in order so to prevent another foreclosure action against that real estate, which it seeks to use to create a “gotcha.”

Because the first lien and other interests in the real estate at issue had been held in a trust by Appellant Giovannini for over a decade by the point when, in filing a Chapter 13, she was required by black letter federal bankruptcy law to separate those property interests held in a trust capacity from her then property interests held by her in her personal capacity, and she did properly omit from her schedules assets held in trust with notation identifying that it was held personally a decade before when first acquired.

This mixed factual-and-legal issue was squarely presented to Department 30 in her response opposing Judgment Creditor’s summary judgment motion (CP 95-143), including the following to rebut its assertions of a variety of estoppel theories, then, as based on its wild fraud accusations:

Moving party’s assertion of collateral estoppel to prevent me from proving my title, legal and equitable interests in the property at issue does not even start with good news for its bad faith attacks on my interests, since black letter law begins with explicit clarity that the doctrine of collateral estoppel, or issue preclusion, does not apply in the context of a default

judgment because an essential element of that doctrine requires that the claims sought to be precluded have been actually litigated in the earlier litigation. Thus, a default judgment is not entitled to issue preclusive effect because nothing was actually litigated.

Similarly, subject to the rule that the judgment is conclusive as to every fact necessary to uphold it, a default judgment is not conclusive, in a subsequent suit on a different cause of action, as to matters which, if affirmatively pleaded and proved by defendant in the former action, would have defeated or diminished plaintiff's recovery, because, in the absence of a trial and hearing in the first suit, it cannot be said that such matters were adjudicated therein. (50 C.J.S. §797: Judgment by Default).

Black letter law as to collateral estoppel further makes clear that the equitable nature of the doctrine yields further protections for my interests in the real estate at issue herein since I was not represented by legal counsel, at the time of the default, and since "the full representation requirement demands that the party has had a full and fair chance to litigate the issue to be precluded" (50 C.J.S. §797: When Doctrine Applicable Generally; Elements, Requisites, an[d] Exceptions: *Representation in prior litigation*).

This state's decisional law not only conforms to general statements of black letter law as to collateral estoppel, but emphasizes a judicial duty of this Honorable Court to ensure that "application of collateral estoppel does not work an injustice on the party against whom it is applied," as recently stated by our Supreme Court in *Christensen v. Grant County Hospital District No. 1*, 152 Wn.2d 299 (2004) at 307.

Collateral estoppel may be applied to preclude only those issues that have actually been litigated and necessarily and finally determined in the earlier proceeding. See *Shoemaker*, 109 Wn.2d at 507. Further, the party against whom the doctrine is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding. *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 264-65 (1998). For collateral estoppel to apply, the party seeking application of the doctrine must establish that (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

Again, moving party cannot prevail with its black-hat “gotcha” litigation against me herein, due to collateral estoppel, since my right to prove my asset interests is not estopped.

Likewise, moving party’s bad-faith efforts to misrepresent black letter bankruptcy law in order to twist my obligations thereunder in my personal bankruptcy filing in 2007 to distinguish my role as a current trustee as to certain property interests at issue herein – which I held personally from March 21, 1995 until September 12, 1995, but which I have held for over a decade as a trustee for my grandchildren – fail both because it distorts black letter bankruptcy law for bad-faith purposes and also because it misrepresents black letter law as to estoppel-by-records (which it must purport to be available for its unworthy purposes).

In particular, the black letter bankruptcy principle stated by *In re Kirby*, 9 B.R. 901 (Bkrcty. E.D. Pa. 1981), as cited by Cowan’s Bankruptcy Law and Practice as the basis for such black letter bankruptcy rule, imposes differing treatments for property owned as an individual at the time of my 2007 bankruptcy filing and of assets held by me as trustee for a revocable trust for my grandchildren then (which black letter bankruptcy requirements legally mandated that I identify assets e[x]actly as my schedules were filed solely as to property held by me, personally, versus as trustee, and my compliance with black letter bankruptcy law cannot be properly used to misrepresent the applicable facts of my sworn bankruptcy scheduled prepared in compliance with requirements of said bankruptcy law by counsel).

In short, moving party’s attacks on me for complying with federal law in order to attempt thereby to bootstrap around its lack of standing or other right to interfere with my first-lien position herein are understandable, given its *modus operandi* as a stranger trying over and over to obtain benefits for which it has no standing, but attacking me for my compliance with black letter bankruptcy law will not fix its defects as to estoppel-by-records herein.

In Appellant Giovannini’s effort to argue this matter before she was cut off by the trial court, she further documented the contrary-to-black-letter nature of Judgment Creditor’s erroneous accusations of fraud against her – for having **properly** complied with federal bankruptcy requirements as to property held by her as a trustee – in order to claim to this Court that she had sworn falsely in a bankruptcy by filing her asset schedules in fully

proper form as advised by expert bankruptcy counsel, Warren Erikson, who prepared her Chapter 13 filing and advised her as to her schedules.

In particular, page 4 of the *verbatim* report of proceedings shows:

[MS. GIOVANNINI]: I want to hand up additional hornbook law so as In Re Kirby's legal implications. This summary judgment, as you will see –

[Off-the-record discussion.]

MS. GIOVANNINI: As you see, Norton's Bankruptcy Law and Practice is even stronger than Cohen's [for Cowan's] in stating that, quote, "If an individual who is the trustee commences a Chapter 13 case, it should be obvious that any debt or" – or "property of the trust should not be a proper matter for treatment in the Chapter 13 case," end quote, citing In Re Hirby [sic] [for Kirby].

Thus, while the nine-page transcript of that hearing makes very clear – on any fair reading – how very short a shrift was granted to Appellant Giovannini when she attempted to protect her cash investments of over \$1 million from a very junior creditor with a questionable foreign judgment, no doubt can exist from her written response and from brief oral argument afforded her, on April 10, 2009, that she squarely informed both Judgment Creditor's counsel and also Department 30 such that **no** judicial estoppel can be found without major abuse of discretion when the core basis for the baseless accusations of fraud made against her are that she characterized assets on a schedule of assets in a Chapter 13 bankruptcy, **correctly**, as is required by black letter bankruptcy doctrine, and that she also took a still

further step to identify assets **not** properly then in her personal control, as personal assets legally, all done with advice of expert bankruptcy counsel.

To argue that inconsistencies in requirements for characterizations of assets in state court, where she has identified her assets held personally and in trust accurately, and in federal bankruptcy court, where she has also identified and allocated her personal and trust assets correctly, could thus create “the intentional assertion of an inconsistent position” identified as the *gravamen*, in *Ashmore*, would not and could not meet common-sense standards of this state’s jurisprudence as to mortgages, in rather old decisional law, and such norms for its judicial estoppel doctrine, in recent decisional law, and any such averments should be met with the “We think not” wisdom of this Court, in July, 1880, and the *per curiam* rebuff of the Court of Appeals, in April, 2009, reliant on prior rejections in recent years of all-too-casual impositions of judicial estoppel, including in *Sorenson v. Pyeatt*, 158 Wn.2d 523, 541 (2006), in a case wherein the Court did in fact “readily agree with the Lenders that Sorenson engaged in some measure of inequitable conduct,” and wherein strong equities therefore existed as to lenders, unlike this instance in which a very junior judgment creditor seeks to create a intellectually dishonest basis for its bogus accusations of fraud in order to leverage its abuses of core Civil Rule 56 obligations in order to take advantage of an 86-year-old woman to deny her more-than-\$1 million

that she has invested in the real estate at issue herein, in cash, plus the time value thereof at the legal rate to which she has a legal right, as well, with no regard either for logic, law or facts, much less for simple decency, and it does so as a complete stranger to the bankruptcy upon which it marauds.

Indeed, even if the Court were inclined to grant the benefit of each and every doubt possible to Judgment Creditor's counsel under all circumstances below – including a potential for initial ignorance of the black letter status of federal bankruptcy law rendering its claims of perjury against Appellant Giovannini both absurd and also obscene even though it is, as documented above, a matter of black letter bankruptcy law – **no** common sense analysis is capable of blinking away the fact that such legal counsel continued to rely on that character assassination, time upon time upon time, **after** the black letter status of this matter in federal bankruptcy law had been identified to them both in motion papers and also in argument, including in Appellant Giovannini's very brief argument allowed her by Department 30, before the trial court then abruptly cut her off completely, as is documented within the *verbatim* report of proceedings herein.

In short, after having first been thus informed of the black letter nature of the bankruptcy law that gives the lie to the perjury allegation at issue herein, repeated accusations of perjury under that circumstance can have been made for no good faith reason, and formation of an argument in

order to seek judicial estoppel is not merely shameful, it patently crosses the line set as to good faith by Civil Rule 11, and the sanction of dismissal for misleading both Department 51 and also Department 30 is appropriate, along with financial sanctions measured, at a minimum, by all damages as imposed on Appellant Giovannini to the date of imposition of sanctions.

F. State Law as to Summary Judgments Also Requires Reversals

Sworn declarations presented to Department 30 by Appellant Giovannini as to her assets, documentary evidence provided to the trial court as identified from the Clerk's Paper hereinabove, further materials that she tendered and attempted to tender at the brief summary judgment hearing on April 10, 2009, and additional documentation and information that she supplied to the court in her motion for reconsideration, particularly when examined together, can leave no doubt of a major abuse of discretion both in failing to grant her motion for partial summary judgment, at least in part and likely in whole, and also in granting Judgment Creditor's motion for a full summary judgment, especially given the presumptions operating as to an investment of over \$1 million by Appellant Giovannini, in cash, under all of the circumstances of this case given law clearly on point as to repose as to contractual relations ongoing between mortgagors and mortgagees and as to the utter impossibility for there to be a valid judicial estoppel in the circumstances of the action below at the point of summary judgment.

V. CONCLUSION

There have been abuses of the judicial process in this matter; such abuses have been substantial; such abuses are continuing; and such abuses have been and are against Appellant Giovannini's property and against her person by Judgment Creditor's reckless actions to seize her assets and its baseless accusations of perjury as a reed so thin as to be transparent, and, to a lesser degree, against Appellant Knedlik as to contractual rights pursuant to ongoing relations by him as a mortgagor with her as a mortgagee.

Since all actions prosecuted in enforcement of judgments pursuant to Title 6 are statutory remedies, and since such creatures of statute must be conformed strictly to all statutory duties in order to be determined by a trial court validly, all orders below should be reversed in their entirety, and the sanction of dismissal entered against Judgment Creditor, with further sanctions to be set by the trial court on remand of remaining issues, or a partial summary judgment granted to Appellant Giovannini as to her first-lien priority, her tax payments as unextinguishable liens and other matters determined by the Court herein, also with a remand as to other issues not subject to this Court's determination based on its *de novo* review herein as to summary judgment, constitutional law, statutory interpretations, structural errors and other matters herein, including through an order directing the trial court to schedule a jury trial, as was demanded by Appellant Gio-

vannini on February 4, 2008 through her Affidavit of Ownership, as well as to take all other steps required to comply fully with all mandatory provisions of Title 6 applicable to the action, after such reversal, on remand.

Numerous errors devolve from failures by the trial court and by the King County Sheriff to conform actions to a clear statutory structure as to enforcement of judgments, and to equally clear decisional law that defines mortgage law in this state, due to Judgment Creditor's overreaching below.

Initial *sequelae* of such disregard for statutory requirements result in the void *ab initio* status of every substantive order entered by the King County Superior Court in its Department 51 and in its Department 30 from its first failure to comply with RCW 6.19.030 in February, 2008 up to the present date (as well as of Division I's follow-on judicial errors in accepting and embracing *fiat* judicial substitutions by the trial court for the state Legislature's legitimate and exclusive policymaking role), and of all substantive, ministerial and other acts taken by the King County Sheriff due to void orders (as well as of all of Judgment Creditor's thus-derived actions).

Further *sequelae* of such disdain devolve from erroneous application of well-established decisional law of this state to legal circumstances not properly before the trial court until the brief circuit-breaker established by RCW 6.19 is concluded by compliance with its explicit terms and other interrelated provisions of Title 6, RCW, including but not necessarily lim-

ited to a writ of assistance ordered by Department 30 on March 18, 2009 based upon prior underlying structural errors in 2008 by Department 51.

As indicated in a pending request for direct review based on major bases outlined and discussed hereinabove, as well as for the central bases that motivated acceptance of direct review in *TCAP Corp. v. Gerwin*, 163 Wn.2d 645 (2008), *i.e.* judicial illegitimacy and legal invalidity deriving from disregard for statutory language affording the sole legal foundation for all lawful enforcements of any judgment in this state pursuant to terms of and conditions on Title 6, the errors herein involve serious matters not limited merely to the more-than-\$1 million stolen by Judgment Creditor from Appellant Giovannini by legal sleights-of-hand with judicial assistance, but also go the core of the representative form of government that is required in this state pursuant to the Enabling Act of 1889, and its terms specifically requiring fidelity not merely to the Constitution of the United States, but also to “the principles of the Declaration of Independence.”

The unanimous decision in *TCAP*, as issued just 17 months ago, not only squarely identifies, but also directly resolves, the quintessential defect below as the same fatal error therein: namely, a lethality from any casual disregard for duties and limits imposed by state statutes on statutory remedies completely created and entirely embraced within Title 6, RCW, which replace and thus derogate earlier court-created collection methods.

Within *TCAP*'s unanimous rebuke for disregard for pivotal terms of enabling statutory law inheres explicit directions toward various issues of patent unconstitutionality implicated by those particular *ultra vires* acts that have devolved below from failures to comply with the explicit duties of and equally clear limitations on the authority of trial courts in this state, both therein and also herein, including but not limited to a key lack of due process that arises when the discrete summary procedure authorized solely to determine a "probable validity" in RCW 6.19.030 is exploited by a very junior creditor, through overreaching, in order to propose excessive findings as to property interests, which go far beyond narrow legal authority of judicial processes set forth in the statute, and, worse yet, when two trial courts and Division I of the Court of Appeal facilitate such overreaching.

Simply put, pivotal *Bleak House* elements noted in the Court's unanimous *TCAP* decision, in 2008, identify a much extended and entirely needless waste of time and of resources therein, as well as herein, and thus implicate judicial errors that have long deprived adjudication of validity as to right as a part of the "monstrous wrong" identified by that author in his "Author's Preface," and these elements of law and of right would yield, if not promptly corrected herein, further bases for Charles Dickens' "protest and his insurrection against the emptiness and arrogance of law, against the folly and the pride of judges," as is stated as the quintessential problem

in Lord G. K. Chesterton's famous formulation in his influential *Preface* to the original Everyman edition of *Bleak House* in 1907, over a century ago, as quoted thusly hereinabove.

This Honorable Court has only recently identified unfortunate-and-unacceptable *Bleak House* consequences resulting from insufficient legal attention to particulars of Title 6, Revised Code of Washington, in *TCAP* – including limits on valid statutory authority for enforcement of judgments thereunder – which are at least equally applicable to egregious misconduct by a foreign Judgment Creditor through its local counsel as in view herein.

Documentation hereinabove evidences haste in judicial inattention to controlling law, summarily imposed, to be as injurious as terminal delay.

Indeed, this appeal demonstrates that simple disregard for explicit judicial obligations and for limited judicial authority – as specific elements of the public-policy framework thus created by the state Legislature and so interpreted by this state's decisional law – has deprived a property owner of assets without the protections afforded both by due process guarantees in state-and-federal constitutions and also by further rights under Title 6, as well as “the principles of the Declaration of Independence” preserved for her by the 1889 Enabling Act as a condition precedent for statehood.

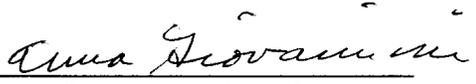
Thus, the relief requested herein should be granted as the minimum required by the Court to begin to rectify the wrongdoing identified *supra*.

Dated this 9th day of November, 2009, and

Respectfully submitted,



Will Knedlik, Appellant *pro se*



Anna Giovannini, Appellant *pro se*

CERTIFICATE OF SERVICE

The undersigned Appellant hereby certifies on his oath, through his signature below, that a corrected Opening Brief of Appellants in this matter was filed with Division I of the Court of Appeals for delivery to the Supreme Court on November 9, 2009, or on such other date as shown by said court's date stamp on the face hereof, and was also delivered to local legal counsel for Respondent, Dorsey & Whitney LLP, on such day of delivery to said court.

DATED this 9th day of November, 2009.



Will Knedlik, Pro Se

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