

65706-2

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NO. 65706-2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

UMPQUA BANK,

Appellant,

v.

BINGO INVESTMENTS, LLC, a Washington limited liability company;
FRANCES P. GRAHAM and JOHN DOE GRAHAM and the marital
community composed thereby; DAVID S. BINGHAM and SHARON G.
BINGHAM and the marital community composed thereby; SCOTT F.
BINGHAM and KELLY BINGHAM and the marital community composed
thereby; CHRISTOPHER G. BINGHAM and CHERISH BINGHAM and
the marital community composed thereby; and BINGO DEVELOPMENT,
LLC, a Washington limited liability company,

Judgment Debtors,

RAYMOND JAMES FINANCIAL SERVICES, INC.,

Respondent.

APPELLANT'S REPLY BRIEF

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COURT OF APPEALS, DIVISION I
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I. REPLY SUMMARY

Aside from the numerous and sundry personal attacks levied at Umpqua Bank (“Umpqua”) in trying to collect on a legitimate debt of over \$23 Million, Raymond James’ responsive brief only illustrates: (a) its failure to understand the basic collection remedies and procedures available to a creditor under the garnishment statutes; and (b) its own failure to properly comply with those procedures and its obligations as a financial institution maintaining accounts for debtors in this state.

Despite the waste of these several pages, Raymond James fails to cite any support for its assertions that it was (1) entitled to further notice after it was properly served the writs of garnishment and after it answered those writs admitting to holding specific amounts of funds in several Judgment Debtors’ accounts, and (2) Umpqua’s failure to give it notice as erroneously ordered by the Commissioner that somehow “affect[ed] the substantial rights” of them as an “adverse party” (*see* RCW 4.36.240). Without such support, Umpqua’s appeal should prevail and the Judgment/Pay Order should be reinstated.

Instead, Raymond James asserts *ad nauseum* that as a garnishee it was statutorily entitled to additional notice prior to entry of a judgment in conformity with the Answers it submitted in response to the writs. Stating this proposition over and over again does not make it true. Failing that,

Raymond James argues that it was “discharged from liability” under the writ by virtue of its Answers. This time Raymond James cites the statute but fails to grasp the clear prerequisites for such discharge. By answering in the affirmative that it was holding in excess of \$400,000 belonging to the judgment debtors’ in their respective accounts, Raymond James explicitly acknowledged its indebtedness to the debtors.¹

To the extent that Raymond James’ cries of “more notice” can only be found in the Commissioner’s Minute Order at issue – an order that Raymond James was unaware of and certainly never relied upon – then, Umpqua concedes for purposes of this appeal, that failing to give such additional notice was an “irregularity” in the proceedings.² Thus, this appeal really deals with whether RCW 4.36.240, which requires the maintenance of any judgment even if there was a “defect in the proceedings” (i.e. an irregularity), mandates reinstatement of the judgment. This issue must be analyzed in light of Raymond James’ failure to make any

¹ RCW 6.27.310 provides that a garnishee is only “discharged” on its answer if no judgment is taken in conformity with an answer admitting funds available within *one year*. Umpqua’s decision to wait a few months to see if anyone (debtors, Raymond James, or even the then-unknown Frontier) would actually take some action can not be held against it.

² Or course, if Umpqua is correct that, absent the Commissioner’s Minute Order, judgments on answers admitting funds held of a judgment debtor are normally/properly conducted *ex parte*, then Umpqua’s communication with the trial court asking it to enter judgment despite the Commissioner’s Minute Order would seemingly be in vein of a motion to revisit the commissioner’s decision *albeit* one without notice. However, why would the timing and notice provision of such a motion apply when the underlying motion sought to be revisited is likewise had without notice?

showing below or even now before this Court that its “substantial rights” had been affected (i.e. that it was legally prejudiced as contemplated by the statute) by failing to get the Commissioner’s seemingly ordered notice.

Accordingly, the questions to be answered are few and direct:

1. Does the garnishment procedures require additional pre-judgment notice to be given to a garnishee when a judgment is taken in conformity with those amounts admittedly held by the garnishee according to its answer (i.e., a judgment in the amount of the money admittedly held by the garnishee defendant in the judgment debtors’ accounts)? Or, does every collection attorney in this state have to begin doing what previously had not been done – noting up presentations of judgment with five to ten days’ notice (depending on the different counties’ local rules for presentation of orders and/or noting of motions) – eliminating the universal practice of presenting judgments in conformity with answers in the *ex parte* departments upon proof of the answer being on file?³

2. If the Court agrees that further notice was not required (absent the Commissioner’s Minute Order), then does RCW 4.26.240’s requirement that “defects in pleadings or proceedings” that *do not prejudice*

³ If Raymond James’ theories held water and every garnishment required a notice and in-person presentation before the Court, the maximum \$250 in allowed attorney fees under RCW 6.27.090(2)(b) would be woefully inadequate to cover the cost of each garnishment as such presentment itself would take at least an hour or more of additional time (in some counties, several hours) and that alone would far exceed the statutory allowance for fees.

the judgment debtor (now Raymond James) not be vacated, mandate that the judgment be reinstated?

II. ARGUMENT ON REPLY

A. NO FURTHER NOTICE IS REQUIRED BEFORE ENTERING JUDGMENT ON A GARNISHEE'S ANSWERS ADMITTING FUNDS HELD IN A DEBTOR'S ACCOUNT

Assuming that order was violated⁴ and not revisited by the trial court *de facto* (based on Umpqua's communications with the trial court, including advising the Court of the Commissioner's Minute Order), did the failure to give notice to a party that was neither entitled to such notice nor expecting it, substantially affect its rights. Before, discussing the lack of any prejudice suffered by Raymond James, the issue of whether pre-judgment notice need be given is addressed.

As stated in Umpqua's opening brief, nothing in the statutory section regarding judgments on garnishees' answer requires any pre-judgment notice when the judgment based on an answer admitting the holding of a judgment debtor's funds. In fact, the only additional statutory notice required to be given to a garnishee is found in RCW 6.27.200, wherein 10 days notice must be given before a creditor can take a *default*

⁴ This assumes that the order's reference to exemption and controversion claims (none of which are present in this garnishment action) and requiring notice to "adverse parties" was actually relating to providing notice to Raymond James in this instance and not a confused commissioner conflating this garnishment with the several others that actually had pending controversions and exemptions already set before the trial court. (CP 870 and 916).

judgment against a garnishee for the entire outstanding underlying judgment. Compare RCW 6.27.250 to 6.27.200.

Raymond James takes the unsupportable leap that notice must be required before any judgment enters because the legislature specifically provided for notice before entry of a default judgment. Its authority is the flippant argument that, it “would have been better off ... if it had never answered the writs in the first place.” *Resp. Brief* at p. 23. This pithy statement would be true if Raymond James was holding over \$23 Million dollars of the judgment debtors’ money when it failed to respond to a writ of garnishment. When a garnishee defaults, the creditor is entitled to seek a default judgment for the entire unpaid underlying judgment, not just any funds that might have been in the debtors’ accounts.⁵ Thus, by answering and admitting that it had possession of only slightly more than \$400,000 of the debtors’ funds in their accounts, its exposure to a judgment was limited to only the amount of those funds – funds that even now it disclaims any interest in (*see* its after-the-fact interpleader naming the debtors, Umpqua, and the late-comer Frontier as the parties interested in such funds).

⁵ Raymond James reliance on *Watkins* is misplaced as it only confirms that “upon a proper showing by a creditor, a court must enter either a default judgment against, or a judgment in the amount held by a garnishee.” *Watkins v. Peterson Enters. Inc.*, 137 Wn.2d 632, 645 (1999) (citing RCW 6.27.200 and .250, respectively). It is strange that Raymond James cites *Watkins* for the proposition that garnishments “requires strict adherence to the procedures expressly authorized by statute” (*see Resp. Brief* at p. 13) when it was Raymond James that failed to adhere to the statute’s express requirement that the form answer be utilized and that it is now arguing for notice that is not provided by statute.

If it had failed to respond to the writs at all, yes it would have received further notice of a judgment but, its failure to act again would have exposed it to a default judgment for *over \$23 Million* – a far cry from the \$400,000 that it was holding frozen to pay the garnishment if a judgment was entered. (CP 547 and 549 at ¶ 7: confirming Raymond James’ freezing of the accounts “up to the amount due on the garnishment”). Somehow this smart sounding turn of phrase, that it would have been “better off never answering,” rings hollow when looking at the real numbers at issue and the exposure it faced if it operated under that assumption.

Aside from the lack of any statutory authority or case law in Washington requiring pre-judgment notice, secondary authorities and common practice support the procedure utilized by Umpqua for obtaining such judgments. First, the trial court indicated no inherent procedural problem with entering judgments *ex parte* in conformity to the amount of dollars admitted in a garnishee defendant’s answer: [to Raymond James’ counsel] “Can you show me where in the garnishment statute that you were entitled to receive notice of their [Umpqua’s] intent to get judgment.” (CP 676).⁶ Furthermore, the Court stated “the writ serves as

⁶ This can even be said of the commissioners in King County. Despite the confusion that was obviously had over pending exemptions and contraversion claims in Umpqua’s pursuit of collecting on its judgment, neither commissioner rulings indicated a perceived prohibition against normally entering judgments against garnishees on answers admitting the holding of debtors’ property. Certainly the first commissioner order never indicated

notice to both the debtor and the garnishee and consequently gives each party an opportunity to defend, RCW 6.27.100, 6.27.140. So there's the notice that's required by statute." (CP 678).⁷

In fact, the experienced⁸ trial court judge aptly stated the following [again to opposing counsel]: "But you do recognize, do you not, that garnishment proceedings are ancillary. They are subject to the judgment. The legislature has determined the level of notice that is to be given with regard to garnishments." (CP 690) In the end, the trial court concluded that the Commissioner's Minute Order calling for more "notice" was simply "an erroneous determination." (CP 708).⁹

Next, as the judges of this Court must recognize, many of whom sat as trial judges originally, such notice and presentment on a judgment based

pre-judgment notice as an ordinary course must be given. For that matter, if notice is required, why does King County's *ex parte* department handle such judgment entries via "presentation by the clerk" under the recent changes to *ex parte* procedures?

⁷ If Judge DuBuque felt that all judgments against garnishees had to be noted for presentment before entry, she would not have entered the other several judgments against other garnishees that were entered concurrent with the Raymond James' judgment or the original Judgment/Pay Order for that matter. (CP 506 n. 4). In fact, after all was said and done, she confirmed that "[t]he order of the commissioner is the only thing that gives me pause. It's my assessment that the commissioner looked at the volume of this litigation and made an erroneous determination." (CP 708, ll. 11-15). Obviously, Judge DuBuque understands how judgments on answers in garnishments are obtained.

⁸ This Court can take judicial notice that Judge DuBuque served as a court commissioner herself from 1984-89, and has since been sitting as a superior court judge to the present. Certainly she has had ample experiences with garnishments and the entry of judgments related to the same to understand the standard practice and procedure.

⁹ Nevertheless, this "irregularity" was the sole basis for the trial court's decision to vacate the judgment. (CP 718).

on amounts admittedly held by the garnishee in the debtors' accounts is not the practice by counsel in any superior court in this state, and such matters are routinely handled through the counties' *ex parte* commissioner or sitting judge of that superior court on any given day. (CP 695 and 701). This long standing practice is even recognized in the Washington Practice series on collection as is often cited by the Courts of this state as ancillary authority in relevant matters.¹⁰ See 28 Marjorie Dick Rombauer, Washington Practice: Creditors' Remedies – Debtors' Relief § 8.52 (1998) (“FORM – Judgment Against Garnishee on Answer Showing Debt Due”).

This proffered practice form utilized by many for years in this state clearly anticipates no further notice: “This matter came on for hearing *on the ex parte application of the plaintiff* for judgment against the Garnishee Defendant” See Appendix A, hereto (emphasis added). This Court should be hesitant to change a method of practice that has long been subscribed to in the absence of specific statutory authority requiring it and in the face of other notice required by the legislature for other situations under the garnishment procedures that do not apply to this case.

¹⁰ See, e.g., *Udall v. T.D. Escrow Serv., Inc.*, 159 Wn.2d 903, 910 (2007); *Plein v. Lackey*, 149 Wn.2d 214, 227 (2003).

Lastly, Corpus Juris Secundum (“CJS”) is also a treatise Washington courts look to in the absence of other controlling authority.¹¹ In this case, under the “Procedure to Obtain Judgment” on a garnishee’s answer, CJS provides: “In order to obtain judgment, a traverse of the answer is unnecessary, and notice to the garnishee is not required unless the statute expressly so provides.” 38 C.J.S. Garnishment § 330 (2010).

If Raymond James’ position were adopted, then all the various credit collection statutes come under scrutiny. By analogy, when a creditor seeks a debtor’s exam (RCW 6.32.010) or debtor interrogatories (RCW 6.32.015) or the same of third parties (RCW 6.32.030), or even the issuance of a writ for garnishment in the first instance (RCW 6.32 et seq.), there is no notice of the motion, the application, the process given to the debtor or the third-party witnesses/garnishees. These procedures are all also done *ex parte* and without notice. Do practitioners need to completely revamp the collection process just because Raymond James does not understand the statutory framework and practice of collection, thus increasing the administrative burden on both the creditors and garnishees by requiring an unnecessary hearing?¹² Notice is not required

¹¹ See, e.g., *Templeton v. Peoples Nat’l Bank*, 106 Wn.2d 304, 209 (1986) (indicating the use of CJS was “for additional guidance” as a “persuasive summation” of authority).

¹² RCW 6.27.005 states that “[t]he state should take whatever measures that are reasonably necessary to reduce or offset the administrative burden on the garnishee defendant consistent with the goal of effectively enforcing the debtor’s unpaid obligations.”

except for the notice the debtors and the garnishees receive by being served with the writ in the first instance, unless the garnishee fails to respond at all and a default judgment is expected to be entered.

B. RCW 4.36.240 TRUMPS ANY FAILURE TO GIVE UNNECESSARY NOTICE AS OSTENSIBLY PROVIDED BY THE COMMISSIONER’S MINUTE ORDER

In response to Umpqua’s assertion that Raymond James failed to show below (or here) that it was “substantially affected” (i.e. prejudiced) by entry of the judgment is a circular response: “There’s a judgment against us for \$400,000. It’s against us ourselves [sic]. We are prejudiced. There’s no way to suggest that a judgment against Raymond James for \$400,000 isn’t prejudice to Raymond James.” (CP 704). This logic would gut the entire purpose of RCW 4.26.240, which clearly states that “no judgment shall be reversed or affected by reason of” “any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party ...”

Obviously, the caution relates to “judgments” and the adverse party to a judgment as referenced in the statute would have to be the now-judgment debtor (in this case Raymond James). To argue that having a judgment entered is sufficient, in and of itself, to show the requisite prejudice – the affecting of substantial rights contemplated by the statute – is ludicrous. If that were the standard, then the statute would be

meaningless, because it deals with the potentially reversing (i.e. vacating) judgments. If having a judgment entered was sufficient, then the statute would say “any error or defect relating to a judgment mandates the reversal of said judgment” which is the exact opposite of what the legislature requires.

Thus, again Raymond James is left with the admitted facts that it neither knew of the Commissioner’s Minute Order directing unnecessary and non-statutorily prescribed notice nor was it expecting further notice under the law. How it can claim it was prejudiced by notice that it neither expected nor was waiting for under the law is beyond Umpqua. Umpqua was entitled to its judgment against Raymond James and its failure to either interplead the money within 20 days after service of the writ, convince Frontier to intervene within 20 days after service of the writ, or even have it or Frontier contact Umpqua formally or even informally to explain and discuss the situation leaves Raymond James exposed for the Judgment/Pay Order on the funds it admittedly was holding in the Debtors’ accounts.

C. RAYMOND JAMES WAS NEVER DISCHARGED OF ITS OBLIGATIONS UNDER THE WRITS

Knowing that “more notice” is not a winning argument, Raymond James next attempts to avoid the consequences of its inactions by asserting that it was somehow “discharged” because it demanded it in its

“homemade” Answers to the writs and because it claims it somehow “denied indebtedness” in those same Answers. *Resp. Brief* at pp. 14-15. Its reliance on the application of RCW 6.27.240 is, at best, misplaced.

Pursuant to this provision, a garnishee is only discharged if its answer indicated that the garnishee was not indebted to the defendant and the garnishee did not possess or control property of the judgment debtor:

If it appears from the answer of the garnishee that the garnishee was not indebted to the defendant when the writ of garnishment was served, and that the garnishee did not have possession or control of any personal property or effects of the defendant, and if an affidavit controverting the answer of the garnishee is not filed within twenty days of the filing of the answer, as provided in this chapter, the garnishee shall stand discharged without further action by the court or the garnishee and shall have no further liability.

See RCW 6.27.240 (emphasis added). What Raymond James fails to address is that its Answers expressly indicated that it did possess and control accounts belonging to the Judgment Debtors at the time Umpqua’s writs were served: “RJA held one (1) active account for Sharon G. Bingham...with a balance of \$105,545.43” and “RJA held one (1) active account for Scott F. Bingham...with a balance of \$304,826.13” (CP 546-549). Moreover, both garnished accounts had significant balances – \$105,545.43 and \$304,826.13, respectively – illustrating that Raymond James was indebted to the Judgment Debtors in those amounts as indicated in the Answers at the time Umpqua’s writs were served. (*Id.*).

No where in its Answers does Raymond James deny these propositions. In fact, it even cautioned Umpqua that “[t]here is no guarantee this balance will remain *available in the account* as values may fluctuate daily based on market conditions. The stock market is volatile and values change daily.” (CP 547 and 549). Clearly, Raymond James was warning Umpqua that the monies it held for the garnishment might change on a day-to-day basis depending on when Umpqua took action in reliance on the answers. In fact, it assured Umpqua that it “ha[d] placed a restriction on said pledged account prohibiting the transfer, withdrawal or distribution of any funds currently maintained in the account *up to the amount due on the garnishment.*” (CP 547 and 549 at ¶7). This is an obvious inference that it recognized the possibility of a judgment for the same amounts to be entered on the writ. There is no question that Raymond James was indicating that the funds would be subject to garnishment collection, absent proper and timely action by the alleged secured creditor (a/k/a Frontier) or by the debtors, especially since Raymond James admitted that it “ha[d] notified the lender of its receipt of this Writ of Garnishment.” (*Id.*).

The mere fact that Raymond James’ Answers stated that an undisclosed lender had an alleged perfected security interest in the two garnished accounts does not trigger the application of RCW 6.27.240.

Raymond James appears to argue that this vague disclosure somehow amounted to both a “denial of indebtedness” as well as an elimination of Raymond James’ “control” over or “possession” of the garnished accounts, thus making this statute applicable. This argument, although artfully crafted (they label all of this together somehow as “denying indebtedness”), is incorrect and would be nothing more than an improper play on the word “control” or “possession.”

It is true that the Answers indicated that an undisclosed lender had an alleged perfected security interest in the garnished debtors’ accounts; and it is also true that the Uniform Commercial Code (“UCC”) allows a lender to perfect its security interest in investment property (i.e., securities) through “control” as that term is specifically defined under the UCC and that independent statutory scheme. *See* 62A.9A-106, cmt. 4; RCW 62A.9A-314(a) (referring to a “control agreement” – an agreement which was not produced by Raymond James with either of its answers). But “control” as defined under the UCC for purposes of perfecting a security interest is not the same as “control” as used in the garnishment statute. The garnishment statute does not reference the UCC for its definitions, and for

Raymond James to attempt to tie the two words together as one in the same is wrong.¹³ See RCW 6.27.010 and RCW 6.27.240.

More importantly, Raymond James' Answers do not even expressly state that it did not have "control" over the judgment debtors' accounts. Clearly it does as such funds rest within Raymond James accounts and in its physical possession. *Id.* Lastly, any confusion as to what Raymond James' Answers' implied would have to be interpreted against Raymond James, as it was its choice to improperly decide not to use the statutory-required answer form (the one Umpqua provided it as required under the statute), but instead created its own form.¹⁴ This fact was not lost on the trial court either: "Raymond James did not file an answer in accordance with the simple mechanism or the procedure of the statute that required that it verify its answer under oath and that it be done by somebody within the corporate structure who has the authority to make the statement on behalf of the corporation."¹⁵ (CP 707).

¹³ Clearly, as used in the garnishment statute, if one has possession (like Raymond James does), then one also has control. On the other hand, having control does not always mean having possession – personal property could be locked away in a rented storage facility that only the garnishee has the key to (i.e., lacks possession, but has control).

¹⁴ See RCW 6.27.190 ("The answer shall be made on a form substantially as appears in this section, served on the garnishee with the writ."). Umpqua served the required answer forms on Raymond James which were then promptly ignored. (CP 96 and 97).

¹⁵ The trial court also wisely noted that "none of the judgment debtors ever filed anything relating to that garnishment to give any indication that they were claiming that the funds that the creditor was seeking were exempt because they were due to another secured creditor." (CP 707). "I do not believe the case law requires the creditor, when there is a

But regardless of Raymond James' cleverly crafted argument about impliedly "denying indebtedness," Raymond James still overlooks the fact that its answers unquestionably indicate that it had *possession* of the garnished accounts and that it was indebted to the Judgment Debtors, which in and of itself renders its argument of discharge and application of RCW 6.27.240 inapplicable. (*Id.*). Why else did it indicate it had over \$400,000 in funds in the debtors' accounts? Accordingly, Raymond James' answers did not automatically discharge it from the Garnishment Action.

Continuing with its attempts to place the blame anywhere but on itself, Raymond James next argues that it was incumbent upon Umpqua to controvert the Answers. However, as correctly recognized by the trial court, Umpqua could not controvert those Answers. The garnishment statute provides that Umpqua may only controvert a garnishee's answer within twenty days of its filing if it has "good reason" to believe the answer is incorrect. *See* RCW 6.27.210. At the time Raymond James' answers were filed, Umpqua had no reason to believe the account balances

simple statement that there is a secured creditor out there, that lender or secured creditor has been given notice of the existence of the garnishment, that they [Umpqua] has to go searching through the records to find out whom that may be, especially when we have sophisticated financial institutions [Raymond James], sophisticated investors [the debtors], and a bank [Frontier] that supposedly knows what you need to do if you are given notice that you have a garnishment on an account in which you claim that you're a secured creditor. The mechanisms to address that are simple. They were not used." (CP 708-09).

listed in the Answers were incorrect or that the perfected security interest was correct or incorrect. (CP 528 at ¶ 5).

In fact, as discussed in its opening brief, it was the combination of two significant inactions which caused Umpqua to seek its judgment in this Garnishment Action when it did. First, the Judgment Debtors failed to file an exemption in this Garnishment Action when they had filed one in another garnishment action to protect a secured third-party's interests in the garnished funds. This inaction was suspicious (i.e., if there really was a secured creditor with rights to the funds, why did the debtors not speak up this time as they did previously). (CP 529). Then, more than two months after the alleged secured lender had notice of Umpqua's writ, it had not sought to formally intervene or even informally contact Umpqua's counsel to prove its perfected security interest. (*Id.*). Overall, the combination of these two occurrences (or lack of action) caused Umpqua to believe that either there was no valid perfected security interest in the garnished funds or that it had been released. Thus, in order to protect its own rights, Umpqua proceeded to seek a judgment against Raymond James. (*Id.*, ¶ 6).

It is true that in another garnishment action related to the same underlying \$23 Million plus judgment, Umpqua controverted answers from two law firms representing the Judgment Debtors: Bucknell Stehlik Sato & Stubner, LLC's ("Bucknell") and Hall Zanzig Claflin McEachern

PLLC's ("Hall"). This was because Umpqua had good reason to believe they were incorrect when they were filed. (CP 531 at ¶ 17). In these answers, the garnishees admitted to possessing funds (retainers) previously provided by the Judgment Debtors, but indicated clearly on the face of the answers that no monies were owed to the Judgment Debtors due to the garnishees' perfected security interests/lien interests and that the law firms claimed entitlement to the funds for themselves.¹⁶ Thereafter, Umpqua analyzed copies of Bucknell's and Hall's trust account balances, engagement contracts, and bills, and came to the conclusion that their answers were incorrect and the garnishees were holding advance fee deposits for work not done and claiming a security interest in violation of the Rule of Professional Conduct. Thus, Umpqua controverted the incorrect answers. (*Id.*, ¶ 17).

This other Garnishment Action is not analogous to the Answers in this Garnishment Action because Raymond James did not expressly represent or state that no monies were due and owing to the Judgment Debtors nor did they claim an interest in those fund themselves – nor do they today. Pursuant to Raymond James' Answers, it possessed and owed

¹⁶Hall's answer actually represents that "\$0" is due and owing to the Judgment Debtors. Bucknell's answer, however, left that section blank, and therefore, Bucknell also represented \$0 was due and owing to the Judgment Debtors by failing to fill in that section. (CP 602-605).

the Judgment Debtors the amounts disclosed therein. (CP 573-76). And because Umpqua did not have any reason to initially believe that these answers were incorrect, it could not have controverted them.

Raymond James was not “discharged” simply because its own answers demanded it, nor does its failure to take responsibility for its own actions and inactions justify “discharging” it from the impact of its answers the judgment that routinely would flow there from.

D. BALANCING THE HARMS, RAYMOND JAMES HAD SUPERIOR KNOWLEDGE AND THE ABILITY TO ACT AND CAUSED THE VERY PROBLEMS AT ISSUE

Raymond James’ brief attempts to place all the blame on Umpqua, while accepting none of the responsibility for itself. This is true despite the fact that Raymond James had all the knowledge, the documents, and the abilities to influence the outcome of the Garnishment Action, but apparently relied entirely upon others (either Frontier or Umpqua) to handle its affairs.

In the case of Umpqua, it assumed that Umpqua would either “controvert” its answers (which it knew did not occur because 20 days passed without notification of such a controversion being instigated) or apparently do nothing (it claims surprise when “after months of doing nothing, Umpqua resolved to obtain a judgment against Raymond James ...”). *Resp. Brief* at p. 7. In reality, Raymond James was actually waiting for Frontier to act. Evidence of this is most obviously seen in Raymond

James' failure to take any action when it received notice from Umpqua that a judgment had actually been entered against it just a day later. (CP 597-99). Thereafter, despite notice from Frontier that it expected Raymond James to take action regarding this judgment, it neither sought reconsideration of the entry of the judgment, nor did it file an appeal to claim its entry was somehow improper. (CP 601). What it did instead, was to wait and see what Frontier would do. Only after Frontier's untimely attempt to intervene, did Raymond James finally decide to take action and search out the Commissioner's Minute Order giving it a hook for its argument to vacate the Judgment/Pay Order.

In this case, the Court should analyze the responsibilities of the various parties. First, if the Debtors believed that the funds were exempt, then they could have filed a controversion or exemption as they had previously in a situation where there actually was a perfected, existing secured creditor to which they owed money. (CP 722).¹⁷

Next, in looking at Frontier, it did nothing to protect itself. It did send a letter to Raymond James demanding that it take action – which was ignored. But, it failed to avail itself of the right to intervene in a timely

¹⁷ What was learned later was that the Judgment Debtors contest Frontier's claim of debt and actually claimed that Frontier owes them money. (CP 620-30; and *see Frontier Bank v. Bingham's et al.*, (Snohomish Sup. Ct., No. 09-2-09274-3)). This would explain why the debtors did not concede any obligation to Frontier or claim that interest as an exemption.

manner as allowed under Washington law. *Zesbaugh, Inc. v. Gen. Steel*, 95 Wn.2d 600, 601 (1981) (“The Court of Appeals correctly held that intervention would be the proper mode for [the secured party] to protect its interest in the property subject to the garnishment proceeding.”) (citations omitted). Additionally, it is undisputed that Umpqua was not told who the alleged secured creditor was and neither Frontier nor Raymond James ever contacted Umpqua or its counsel formally or informally in response to the writs. The only communication from anyone was Raymond James’ Answers.

Third, the Court should review Raymond James’ involvement. It held the money and it apparently entered into extra-contractual relations with Frontier regarding the garnished funds. Accordingly, it had the documents, the facts, and all the knowledge, but decided to share none of this with Umpqua. It likewise could have filed an interpleader once it knew Umpqua was trying to claim the funds under CR 22. *See Smith v. Dement Bros. Co.*, 100 Wn. 139, 144-45 (1918) (finding that when more than one person claims an interest in garnished funds, then the garnishee may file an interpleader). It clearly understood this procedure since, post-vacation (after the proverbial horse has gotten out of the barn), it has now filed such an interpleader disclaiming any interest in the funds to Umpqua, Frontier, and the Debtors.

Although it has never been clear exactly what relationship Raymond James and Frontier had together (*see* CP 761-762 indicating the apparently

related nature of these two corporations), it is undeniable that the two companies were in communication with each other and each was aware (1) of Umpqua's attempts to secure the judgment debtors' accounts' funds by way of garnishment, (2) that they each had all the documents, knowledge and ability to set the matter before the Court if either wanted to dispute Umpqua's rights to garnish those funds (e.g., by intervention or interpleader); and (3) that neither of them timely took any action and, in the case of Raymond James, it did not decide to react to the Judgment/Pay Order at all until after Frontier's untimely motion to intervene was denied.

Umpqua was kept in the dark as to all these pertinent facts, communications, relationships, documents, and plans. The only irregularity in obtaining its judgment was the failure to adhere to the "erroneous determination" of the Commissioner that notice to "adverse parties" should be given. Raymond James cannot claim it expected such notice, was legally (i.e. statutorily) entitled to such notice, or that it was even aware of the Commissioner's Minute Order until well after-the-fact. Thus, RCW 4.26.240 would seem to mandate the reinstatement of the judgment in just this situation despite this irregularity.

**E. RESPONSE TO CROSS-APPEAL/TRIAL COURT
PROPERLY REQUIRED PAYMENT OF FEES**

Raymond James apparently takes issue with the trial court's order requiring the payment of Umpqua's fees incurred as a result of Raymond James' failure to follow its basic obligations under the garnishment statute, claiming that such "terms" were apparently "unjust." Obviously, CR 60(b)(4) provides that "[o]n motion and upon such terms as are just, the court may relieve" If this Court is to sustain the trial court's order vacating the judgment, it must sustain the "terms" awarded by that same trial court.

The sole basis for its arguments, again seem steeped in the mistaken assertion that Raymond James claims it was "entitled to have its 'day in court' *as a matter of law*" and/or that it was somehow "discharged" (emphasis in the original). As both of these propositions have been dealt with above, suffice it to say that Raymond James never explains how the Judgment/Pay Order was void "as a matter of law" and no authority for such a proposition is ever set forth in its appeal brief on this issue.

If this Court reinstates the judgment, obviously Raymond James will be entitled to a partial satisfaction for the fees it has already paid to Umpqua pursuant to the trial court's order vacating the judgment. However, if this Court does not reverse, then it is hard to say how the trial judge "abused her discretion" by awarding the fees incurred as a result of

Raymond James' failings then-to-date. In ruling that Umpqua be awarded its fees as a precondition to vacating the judgment, the trial court succinctly held that:

I think that the only fair and appropriate thing to do in light of the way this litigation has proceeded is this: I will grant Raymond James' motion to vacate the judgment provided it pays all of counsel's attorneys fees that have been incurred relating to the garnishment on Raymond James. ... This has caused unnecessary incurrence of attorneys fees by the failure of parties [referring to Raymond James and Frontier] to act when they should have acted quickly.

(CP 48-49). Raymond James' argument that the trial court was without authority to award "such terms as are just" is simply wrong.

III. CONCLUSION

Is it any wonder the trial court entered judgment against Raymond James on its Answers? The facts were simple: (1) Umpqua garnished Raymond James, (2) Raymond James answered indicating it had accounts belonging to the Judgment Debtors containing more than \$400,000, (3) Raymond James indicated it had promptly advised Frontier (although at the time, Umpqua was unaware of the identity of the alleged secured creditor) of the writs but otherwise provided no information, documents, or proof any alleged security interest, (4) no parties stepped-up within the next several months to interplead, intervene, to controvert, to claim exemption, to even call or write to Umpqua and assert any alleged superior rights, (5) Frontier admits thereafter that it was promptly notified

of Umpqua's collection activities but neither it nor Raymond James takes any timely action, (6) the Judgment/Pay Order is issued after waiting the statutorily mandated amount of time plus several months, (7) Raymond James is notified of Judgment/Pay Order and then does nothing: it seeks neither reconsideration nor appeal of the judgment but instead wait for Frontier to finally act, (8) Frontier waits even longer to finally seek intervention, (9) the trial court denies intervention due to lack of timeliness; and then, and only then, (10) does Raymond James finally come before the trial court to argue it was all a lack of notice – notice that it was neither statutorily entitled to nor expecting – that caused the judgment to enter against it.

Umpqua had neither the inherent knowledge of the situation, nor was it ever provided sufficient facts/documents to allow it to act otherwise. Raymond James (and Frontier) were completely “in the know.” They had notice of the writs, ample time to take the proper action (either interplead or intervention), and a sufficient monetary incentive, to act promptly. This Court should not relieve these parties (Raymond James and Frontier) of the results of their failings, when they contracted with each other regarding the alleged security arrangement and when the legislature has already indicated that defects in the proceedings, without prejudice, should not unwind otherwise proper judgments.

RESPECTFULLY SUBMITTED this 7th day of January, 2011.

WILLIAMS, KASTNER & GIBBS PLLC

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I hereby certify that I served the foregoing Reply Brief on:

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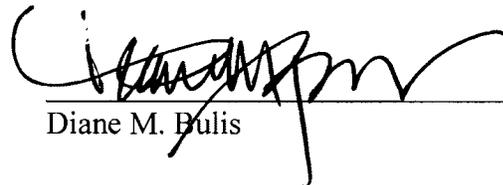
Attorney for Raymond James
Financial Services

by the following method:



Via U.S. Mail, postage prepaid, to the attorney as shown above, the last-known office address of the attorney on the date set forth below.

DATED this 7th day of January, 2011.



Diane M. Bulis

~~X~~
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APPENDIX A

court rules apply to the extent not inconsistent.²⁷

A default judgment entered against a garnishee by a commissioner was vacated as fraudulent when the attorney failed to call the commissioner's attention to a response on the reverse of the garnishee's answer indicating that there was a dispute as to ownership of the money reached by the garnishment.²⁸

§ 8.52 FORM—Judgment Against Garnishee on Answer Showing Debt Due

This form can be electronically retrieved from the companion disk.

[Name of Court]

_____)	
Plaintiff,)	No.
vs.)	JUDGMENT AGAINST
)	GARNISHEE DEFENDANT
)	ON ANSWER
_____)	
Defendant,)	
)	
)	
_____)	
Garnishee Defendant.)	

SUMMARY OF JUDGMENT AGAINST GARNISHEE

Judgment Creditor: _____

Judgment Creditor's Attorney: _____

Judgment Debtor: _____

Amount of Judgment: \$_____

Amount of Interest Owed to Date of Judgment: \$_____

27. Before adoption of the present provision in 1969, the court reviewed numerous applications for vacation of default judgments against garnishees based on usual vacation grounds of mistake, excusable neglect, and so on, addressed to the trial court's discretion. For illustrative cases and collected citations, see *Borg-Warner Acceptance Corp. v. McKinsey*, 71 Wn.2d 650, 430 P.2d 584 (1967) (proof that defendant had left garnishee's employ was absolute defense; default judgment set aside); *Corporate Loan & Section Co. v. Peterson*, 64 Wn.2d 241, 391 P.2d 199 (1964) (reversing vacation of default judgment where motion

to vacate was filed more than one year after entry of default judgment); *Bishop v. Illman*, 14 Wn.2d 13, 126 P.2d 582 (1942); *Rule v. Somervill*, 150 Wash. 605, 274 P. 177 (1929) (excuse that law of garnishee's state did not require answer to garnishment was not ground for vacating default judgment); *Frieze v. Powell*, 79 Wash. 483, 140 P. 690 (1914) (meritorious defense was established by a showing that the garnishee owed no debt to principal defendant).

28. *Wilson v. Henkle*, 45 Wn.App. 162, 724 P.2d 1069 (1986).

Total Taxable Costs: \$_____

JUDGMENT

This matter came on for hearing on the ex parte application of the plaintiff for judgment against the Garnishee Defendant on the Garnishee's answer, Garnishee having filed its answer showing that it is indebted to Defendant [name] in the amount of \$_____ in excess of exempt amounts and Plaintiff having a judgment against Defendant [name] unsatisfied in the principal amount of \$_____ plus costs and attorney fees in this proceeding in the amount of \$_____, consisting of garnishment fee, \$_____; postage and certified mail, \$_____; service fee, \$_____; [answer fee when appropriate] and garnishment attorney fee, \$_____, plaintiff having filed the [affidavit/return] of service on the Garnishee Defendant and the Defendant [name] and more than 20 days having passed since service of the writ and Garnishee's answer,

IT IS ORDERED that

1. Plaintiff recover judgment against the Garnishee Defendant in the amount of \$_____, as appears in the summary of judgment above, and
2. Garnishee Defendant shall be discharged from this action on payment of the amount of the judgment against it to the Clerk of this Court, and
3. The Clerk shall, upon receipt of the amount of the judgment from Garnishee Defendant, disburse the amount received to Plaintiff's attorney, who shall satisfy the judgment to the extent of the amount received.

DONE IN OPEN COURT this _____ day of _____, ____.

Judge/Commissioner

Presented by:

[Name]
Plaintiff's Attorney
[Bar Association No.]
[Address]
[Telephone Number]

§ 8.53 Garnishee Protected Against Claim of Defendant

It is a sufficient answer to a later claim by the defendant against the garnishee that the garnishee paid the debt claimed or delivered the property claimed to the sheriff under a judgment or order of the court on the garnishment.¹ A garnishee is not protected by this statute, however,