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No. 65722-4-I

COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

In re the Receivership of Tragopan Properties
King County Superior Court Case No. 08-2-34767-2 KNT

REPLY BRIEF OF APPELLANT



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I. REPLY ARGUMENT

Here, there are no disputed facts. Mr. Jackson Smith, on January 3, 2003, filed a Chapter 13 bankruptcy repayment plan in the presence of a notary, with the advice of counsel, and under the penalty of perjury, acknowledging that he owed a debt to Tom Delanty and that he intended to repay it. He later deeded the property (in lieu of foreclosure) to his family's attorney, Bruce Morgan, the principal member of Tragopan Properties. The issue therefore is not whether the bankruptcy statute preempts state law, but rather whether filing a Chapter 13 bankruptcy repayment plan by the debtor is considered an "acknowledgement" under the *Jewell*¹ test.

The appellant has clearly satisfied all of the requirements under the *Jewell* test: (1) the Chapter 13 bankruptcy petition was in writing; (2) the bankruptcy filing acknowledged the existence of a debt; (3) the debt was communicated to the creditor; and (4) the listing of the debt showed an intent to repay the debt as a Chapter 13 bankruptcy's purposes are to reorganize and pay back creditors.

Nothing argued by the respondent called this analysis into question. The cases cited by the respondent, *Biggs v. Mays*, *In re Plovill*,

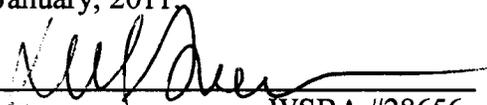
¹ *Jewell v. Long*, 74 Wn.App. 854, 876 P.2d 473 (1994).

*In re Lipman, In re Wooten*², all deal with Chapter 7 discharge petitions. Moreover, the appellant agrees with the respondent that a Chapter 7 should not be construed to revive a debt because (1) the debtors are required by law to list all the debts and (2) a Chapter 7 shows intent to avoid, or discharge, such debts. However, the converse is true in a Chapter 13 repayment plan, as argued in the appellant's opening brief.

II. CONCLUSION

For the reasons set out above, the Superior Court should be reversed, allowing Mr. Delanty to recover his debt.

Respectfully submitted this 18th day of January, 2011.



David A. Leen
Attorneys for Appellant

WSBA #28656

² Citations omitted; *See*, Respondent's appellate brief, at p. 8-9.

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THE COURT OF APPEALS DIVISION I
OF THE
STATE OF WASHINGTON

In re the receivership of:

TRAGOPAN PROPERTIES, LLC

NO. 65722-4-1

CERTIFICATE OF SERVICE

I, Ali Higgs, certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Leen & O'Sullivan, Seattle, Washington 98122.

On January 18, 2011, I caused a true and correct copy of the Brief of Appellant to be served upon the following parties in the manner indicated below:



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Service List		
D. Bruce Morgan Morgan & McDonald PS 17422 Old Highway 99 SE Tenino, WA 98589-9703	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	Hand Delivery/Messenger Electronic Mail Facsimile U.S. Mail
David Hadley Fuller The Law Office of David H. Fuller 1316 Central Ave S. Ste 1002 Kent, WA 98032-7431	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Hand Delivery/Messenger Electronic Mail Facsimile U.S. Mail
Leland L. Bull, JR Attorney at Law 1825 NW 65 th St. Seattle, WA 98117-5532	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Hand Delivery/Messenger Electronic Mail Facsimile U.S. Mail

DATED this 18th day of January, 2011.

Ali Higgs
Ali Higgs

