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No. 66725-4-I

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**COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION I**

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SPARK NETWORKS, PLC,

Respondent,

v.

WILL KNEDLIK,

Judgment Debtor,

and

ANNA GIOVANNINI,

Appellant.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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**OPENING BRIEF OF APPELLANT**

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## **I. ASSIGNMENTS OF ERROR & MATTERS RELATED THERETO**

### **A. Assignments of Error**

1. The superior court erred in granting summary judgment to Judgment Creditor Spark Networks, PLC on December 10, 2010 by signing an Order Granting Summary Judgment Pursuant To RCW 6.32.270, as prepared and as presented by Spark's legal counsel, in order to terminate, summarily, all of Adverse Creditor Anna Giovannini's rights to and interests in a certain real property<sup>1</sup> located in King County, as is legally described in that Order, on grounds directly contrary to dispositive state and federal law, including erroneous findings of fact and erroneous conclusions of law propounded by Spark's counsel, as also entered on that day, as well as in its denial of her timely filed motion for reconsideration by signing an Order drafted by Hon. Douglass A. North on January 18, 2011, as entered on the following day, together with every underlying legal issue thereby made applicable herein.

2. The trial court further erred by failing to award a partial summary judgment to Giovannini on December 10, 2010 to terminate all claims by Spark in the real property located in Bellevue, Washington, as well as in its denial of her timely filed motion for reconsideration on January 18, 2011.

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<sup>1</sup>All rights and all interests of Adverse Creditor Anna Giovannini at issue herein are held by her as trustor of and as trustee for Blue Rapids Investment Trust, a revocable trust established for her grandchildren, and the taxpayer of record for all state-and-local property taxes imposed on certain physical real estate at issue herein. Every reference to Appellant Giovannini's rights to and interests in the real property at issue herein, and thus to and in the physical real estate at issue herein, is to be understood to be made as to this capacity.

## **B. Issues Pertaining to Assignments of Error**

Major equitable, legal and comity issues pertaining to assignments of error devolve from the superior court's failures to conform its actions to those authorized by law and by practices controlling as to its conduct, and dispositive of legal outcomes directly contrary to its rulings below, which include its abuses from failing to analyze the following issues adequately:

1. Does disregard for central requirements for a valid imposition of judicial estoppel, as established as mandatory by the Washington Supreme Court, as well as by this Division I, constitute abuse of discretion so as to require reversal of the trial court's award of summary judgment below?

2. Does disregard for statutory requirements for valid jurisdiction under Title 6, RCW, constitute such abuse of discretion requiring reversal?

3. Does disregard for presumptions and for inferences required for valid imposition of summary judgment constitute such abuse of discretion?

4. Does acceptance of the benefits of a formal Discharge of Debtor issued by the U.S. Bankruptcy Court on December 11, 1998 in a Chapter 7 bankruptcy (CP 17) constitute *res judicata* and yield collateral estoppel as to Adverse Creditor Giovannini, and as to a Judgment Debtor common both to her and also to Judgment Creditor Spark, when that formal Discharge of Debtor results from an involuntary petition in bankruptcy filed by Adverse Creditor herein against that Judgment Debtor to terminate his legal rights?

5. Is the equitable doctrine of judicial estoppel properly applied in circumstances when a legal adversary in a state court action purports asset irregularity in a Chapter 13 bankruptcy action by misrepresenting both fact and also law so as to thus evidence its intent to prevent substantial equity?

6. Does judicial comity mandate or otherwise indicate appropriate respect by the trial court for the U.S. Bankruptcy Court's entry of its order issuing a Discharge of Debtor, inclusive of its ongoing injunctive element, and for the formal report as to the real property at issue herein, as prepared by the official Chapter 7 Trustee as to Adverse Creditor's ownership of the real property as issue herein as of September 22, 1998, and as to Judgment Debtor's lack of ownership therein as of said date; as relied on by that federal court such that said formal report informed the Discharge of Debtor so ordered on December 11, 1998; and as since constituting *res judicata* and thereafter yielding collateral estoppel effect in claim-and-issue preclusion?

7. Does the filing of an involuntary petition in bankruptcy against the Judgment Debtor by the Adverse Creditor to cut off all of his rights in the real property at issue herein, to exclude him from that real estate and to establish her ownership of same constitute "hostility" and "exclusivity" to meet those factual-and-legal requirements under state law for adverse possession begun earlier by a dispossession evidenced by the investigation reported by the official Chapter 7 Trustee and before the trial court (CP 14)?

8. Can Adverse Creditor's interests in real property owned by her from no later than December 11, 1998 be equitably subordinated to a claim that did not come into existence until years later on the bases herein thus documenting its actual-or-constructive intent to prevent substantial equity?

9. Do errors below deriving from and following on the trial court's patent disregard for major requirements for any valid imposition of judicial estoppel, as established as mandatory by the Washington Supreme Court, as well as by this Division I, and constituting abuse of discretion requiring reversal of the trial court's award of summary judgment below, devolve in part from misapplication of this Court's analysis of the doctrine of judicial estoppel established in *Miller v. Campbell*, 137 Wn.App. 762 (2007), in its unpublished decision in its Cause No. 64757-1-I issued on April 12, 2010?

### **C. Standard of Review**

An appellate court reviews Adverse Creditor Giovannini's appeal of the trial court's grant of a summary judgment against her, as well as its denial of a partial summary judgment in her favor, *de novo*, placing itself in the position of the superior court judge in order to consider every fact before that court and each of their inferences in the light most favorable to the party that was nonmoving below, in respect to each such Civil Rule 56 motion, so as to terminate only cases in which no material fact or legal inference remains. *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261 (2006).

Appellate courts also review matters of law, *res judicata*, collateral estoppel, statutory requirements *cum* related interpretation and due process and other constitutional guarantees involving constitutional infirmities and related fundamental errors *de novo*. *Post v. City of Tacoma*, 167 Wn.2d 300, 305 (2009), and cases cited therein. Cf. *Lynn v. Dep't of Labor*, 130 Wn.App. 829, 837 (2005) and *Martin v. Wilbert*, \_\_ Wn.App. \_\_ (2011).

Since judicial estoppel is invoked as a matter of judicial discretion by a court, review of the application of that judicial doctrine upon motions for summary judgment to facts before the lower court and to their legal and logical inferences in favor of the nonmoving party is based upon an abuse of discretion standard rather than on a *de novo* basis. *Cunningham v. Reliable Concrete Plumbing, Inc.*, 126 Wn.App. 222, 227 (2005).

A trial court abuses its judicial discretion when its decision rests on untenable grounds or untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26 (1971). Errors in respect to law “necessarily abuse” discretion. *Wash. State Physicans v. Fisons Corp.*, 122 Wn.2d 299, 339 (1993).

The U.S. Supreme Court has determined that in circumstances such as those at issue below, and now herein, disregard for *res judicata* effects of a discharge order, as a judgment, thus “render[s] judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects [to be] nullities,” *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940).

## II. STATEMENT OF THE CASE

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

At one level, this appeal arises merely as a follow-on collection action in supplemental proceedings under Title 6 pending in King County Superior Court for more-than-four years since the filing of a foreign judgment in early 2007 against a Judgment Debtor common to Adverse Creditor Giovannini and to Judgment Creditor Spark (Hon. Douglass A. North presiding), after a previous collection action was reviewed by this Division in its No. 64757-1-I, and was concluded through an unpublished decision on April 12, 2010.

In this basic respect, although Judgment Debtor was a co-appellant in the earlier appeal and is not a party herein, the statutory basis for the cause below yielding this appeal is unchanged from before, and the trial court has again granted summary judgment to Spark and denied partial summary judgment to Giovannini. Thus, the Statement of the Case in No. 64757-1-I also applies herein, but is too lengthy for restatement and has been disallowed as an appendix for the court's convenience by court directive on July 6, 2011.

On a second and more critical level, follow-on collection activities by Spark below in 2010, and allowed by the trial court there, is entirely different from prior functions since the nature of the real property at issue herein is in nature completely different, *i.e.* because that real estate became Giovannini's asset under principles of *res judicata* and of collateral estoppel no-later-than-

December 11, 1998, when a formal Discharge of Debtor was granted to the Judgment Debtor below in the form provided to the trial court at CP 17 (as attached as Appendix A hereto for the Court's convenience), pursuant to the involuntary bankruptcy petition that she filed against him to extinguish all of his previous rights, interests and claims in the real property at issue herein, as well as because of her adverse possession of the physical real estate at issue, herein, as commenced before the involuntary bankruptcy petition was filed, and as perfected thereafter through her performance of all requirements for acquisition by adverse position under state law controlling below and herein.

In these regards, the trial court failed both to examine and also to rule on legally dispositive federal-and-state issues; and, instead, substituted use of the terminology of judicial estoppel for thorough analysis necessary for that doctrine to apply validly; slid over facts and law before it documenting that pivotal requirements for valid judicial estoppel were not met below; and then skated from that critical error into its signing of an invalid order for equitable subordination based upon substituting the terminology of judicial estoppel in place of meeting those requirements mandatory for such estoppel to be valid.

The trial court's abuses of discretion in these interrelated errors of law by disregarding both facts before it and also dispositive law applicable to and controlling as to such disregarded facts are particularly grievous because its pivotal errors further disregarded core presumptions and inferences owed to

Giovannini, as the nonmoving party, *vis-à-vis* Spark's motion for summary judgment below as to her rights and interests in real property previously set as *res judicata* and by collateral estoppel in the operation of law through the U.S. Bankruptcy Court's Discharge of Debtor issued on December 11, 1998 as a federal judgment to Judgment Debtor herein, finally, as well as thereby offending core principles of judicial comity between state and federal courts.

On a third and also important level, abuses of discretion as to specific requirements for the doctrine of judicial estoppel to apply in this state validly – due to the trial court's disregard for explicit necessities for judicial estoppel to be legitimately imposed by any Washington court, as clearly stated by the Washington State Supreme Court and by this Division I, and as reviewed in some detail in the Argument section of this brief hereinbelow – could derive from failure of the above-identified unpublished decision to apply mandatory requirements for judicial estoppel, therein, such that, as Judgment Creditor, Spark urged it on the trial court as constituting "law of the case" (VRP at 3).

The complex of factual matters and of legal issues devolving from the trial court's multiple errors in granting summary judgment in violation of the major requirements for judicial estoppel, as the legal center of its disposition, can be discussed more usefully for review of dispositive issues in Argument, hereinbelow, than by further statements here and by additional restatements there, following a brief outline of vital prior procedural history in Division I.

## **B. Previous Procedural History**

As was suggested previously, as to the ninth issue pertaining to the assignment of errors hereinabove, Division I's unpublished decision issued on April 12, 2010 in respect to earlier collection litigation between Adverse Creditor Giovannini and Judgment Creditor Spark with respect to validity or to invalidity of several mortgage instruments – in its Cause No. 64757-1-I – made several comments on judicial estoppel issues that were not required for reaching its determination of expiration of those mortgages for enforcement purposes through judicial means (but withheld from making comments with regard to equitable subordination, as unnecessary therein, in its footnote 2).

As suggested hereinabove respecting that ninth issue pertaining to the assignment of errors, and as documented hereinbelow in considerable detail derived from Division I's decision in *Miller v. Campbell*, 137 Wn.App. 762 (2007), our state Supreme Court's companion decision in *Miller v. Campbell*, 164 Wn.2d 529 (2008), the United States Supreme Court's decision in *New Hampshire v. Maine*, 532 U.S. 742 (2001), and a variety of other state- and-federal precedents developed prior to the unpublished decision now here under discussion, those several references to judicial estoppel by Division I, on April 12, 2010, do not conform to the specific standards required for valid judicial estoppel in this state, and within the jurisdictional boundaries of and for Division I, and are thus, legally, both unnecessary and also erroneous.

Division I directly acknowledged the authority of appellate courts to modify legal premises and judicial practices deriving from the preference for finality within litigation through explicit notice that “an appellate court has discretion to disregard the policy if the prior decision is erroneous” (page 5 of unpublished opinion), before then squarely indicating that Giovannini had “not demonstrated any error in the prior decision or other circumstances that merit disregarding the policy” favoring finality in most circumstances (*Ibid.*)

In short, core facts, law and circumstances not found to be applicable by Division I in its previous unpublished decision are in each instance, here, arrayed in an absolutely diametrically opposed alignment, which thus offers opportunity to withdraw or otherwise to modify previous statements *vis-à-vis* judicial estoppel that were both unnecessary and also based on inattention to essential elements for valid judicial estoppel as documented by its important *Miller* decision, directly, as well as by the key U.S. Supreme Court decision in *New Hampshire* on which it relied pivotally, such that the unpublished decision of April 12, 2010 does conform to the central tenets laid out in careful detail by Division I in *Miller* several years before its unpublished decision.

As also indicated hereinbelow, the trial court has not just taken up the series of erroneous statements respecting judicial estoppel contrary to *Miller*, and to its quintessential elements, but has bootstrapped from those deviations from key obligations of *Miller* as leverage for equitable subordination below.

### III. SUMMARY OF ARGUMENT

The trial court erred in several fundamental respects in granting summary judgment to Judgment Creditor Spark based on entirely patent errors of law – both as to state equity standards, state statutes and state decisional law in interpretation thereof by the Washington State Supreme Court and by this Division I and also as to federal bankruptcy jurisprudence – each dispositive, herein, if applied correctly rather than without regard for judicial obligations, as well as in denying partial summary judgment to Adverse Creditor Giovannini, similarly dispositive, herein, if thus adjudged rightly instead of wrongly.

Central to these substantial, indeed egregious, errors is the trial court's failure to conform its analyses of facts and of law as proffered by Spark and by Giovannini to mandatory requirements for valid application of the doctrine of judicial estoppel in this state as legally established, explicitly, both by our state Supreme Court and also by this Division I, so as to document, squarely, that all rights and all interests in the real property at issue herein legally held by Giovannini are not subject to any legitimate challenge to those rights and interests due to the specific requirements for any valid imposition of judicial estoppel; its further failure to accept *res judicata* and the preclusive effects of collateral estoppel legally controlling herein as matters of law such that every right and every interest in the real property at issue herein inheres, legally, in Giovannini as direct consequences of the Discharge of Debtor granted by the

U.S. Bankruptcy Court, on December 11, 1998, to a Judgment Debtor common to Adverse Creditor and to Judgment Creditor so as to have thus cut off all of said Judgment Debtor's rights, interests and claims therein through her involuntary bankruptcy petition filed against him in order to affect such legal termination in the real property at issue herein; and its yet further failures due to injudicious bootstrapping from its misapplication of judicial estoppel and due to disregard for or suppressions of *res judicata* and collateral estoppel to reach nominal-but-nonexistent bases for equitable subordination without the showings required for legitimate exercise of that equitable power, *inter alia*.

While abuse of discretion below is made out repeatedly hereinafter, the first cause starts with a misrepresentation by Spark's counsel in open court in falsely asserting that "We're in exactly the same procedural posture this time, Your Honor" (VRP at 2), and ends with the trial court accepting serial self-interested *ad hominem* attacks on an 88 year old woman *in lieu* of its duties.

Whether taken together or viewed separately, erroneous application of purported judicial estoppel, as imposed below, has yielded precisely what our state Supreme Court has indicated to be improper, in *Miller v. Campbell*, 164 Wn.2d 529 (2008) at 544, because Spark, with no possibly lawful interest in the real property at issue herein, has deceptively manipulated the court below into granting its self-interested collection goal in the guise of its *faux* interest in the court system's integrity, even as it has thus undermined judicial probity.

## IV. ARGUMENT

### A. Errors as to judicial estoppel

The starting point for understanding the trial court's central judicial estoppel errors – as well as its follow-on errors deriving from abuses of discretion at its Order's heart – is disregard for crucial instructions both by our state Supreme Court and also by this Division I as to: **how** the purpose for the doctrine of judicial estoppel is to be understood; **what** the mandatory requirements on the judiciary at trial-and-appellate levels are thus intended to achieve toward that quintessential rationale; and **why** this judicial policy does not create hyper-technical means available for legal adversaries to use in advancing their own self-interested ends, but solely a modality through which courts of this state can oblige respect for the judicial system here.<sup>2</sup>

The trial court thus turned *sine qua non* elements of **how**, **what** and **why** onto their heads, below, so as to distort issues now here on appeal by nominally basing its Order on judicial estoppel but in reality accomplishing precisely the *verboten* of manipulation barred by our state Supreme Court.

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<sup>2</sup>Proper application of the principles of *res judicata* and of collateral estoppel deriving from a formal Discharge of Debtor issued to the Judgment Debtor common herein to Adverse Creditor Giovannini and to Judgment Creditor Spark by the U.S. Bankruptcy Court, on December 11, 1998, legally resolves all matters on appeal for Giovannini without need to examine errors regarding the doctrine of judicial estoppel. However, because trial court errors as to *res judicata* and as to collateral estoppel are reflected by a silence below upon those controlling preclusive effects raised by Giovannini there, because errors as to central mandatory elements for valid judicial estoppel are at the heart of the invalid Order entered on December 10, 2011, and because this error in turn yields the primary basis for its bootstrapping through lack of examination from bogus judicial estoppel to piled-on equitable subordination, this briefing therefore addresses the central judicial estoppel errors initially.

In passing on this Division I's pivotal analysis of judicial estoppel in *Miller v. Campbell*, 137 Wn.App. 762 (2007), our state Supreme Court not only left that decision in place, *Miller v. Campbell*, 164 Wn.2d 529 (2008), but also joined with this Division I in adopting the U.S. Supreme Court's three principal requirements for judicial estoppel at 771 (at its 544 therein).

In so doing, our state Supreme Court squarely rejected tactical uses of judicial estoppel to shape contours of liability and thus of recoverability based on its direct determination that "the doctrine of judicial estoppel protects the integrity of the judicial process, not the interest of a defendant attempting to avoid liability" (also at 544), with citation to one Third Circuit case, and with reliance on another, for its clarification of this state's law:

"[Judicial estoppel] is not meant to be a technical defense for litigants seeking to derail potentially meritorious claims [and] is not a sword to be wielded by adversaries unless such tactics are necessary to 'secure substantial equity'" (quoting *Gleason v. United States*, 458 F.2d 171, 175 (3d. Cir. 1972)).

Nonetheless, despite extended explications in *Miller* of the purpose of and of direct requirements for judicial estoppel in this state – first by this Division I and later by our state Supreme Court – its purpose was distorted below through complete disregard for the doctrine's explicit requirements.

In particular, Spark has repeatedly leveraged gargantuan advantage in its piecemeal litigation to collect a huge judgment from Giovannini – for a common Judgment Debtor who owes millions of dollars both to Adverse

Creditor Giovannini and also to Judgment Creditor Spark – through its self-serving assertions that a bankruptcy schedule prepared for her in a Chapter 13 filing was incomplete as filed in the U.S. Bankruptcy Court and that the posited incompleteness precludes her from protecting her assets from it, as an interloper with no interest in that Chapter 13 filing, whatsoever, except to wield its factually inaccurate and legally falsified charge over and over.

Indeed, the trial court's decision below – both in its oral statements as to its thought process and also in the written Order prepared by Spark's legal counsel – clearly accepted this falsified charge as accurate in stating:

It's also quite clear that judicial estoppel is a bar to most, if not all, of Ms. Giovannini's claims here. She has asserted inconsistent positions under penalty of perjury in other lawsuits, and it would make a mockery of our court system if you could take one position in one action and – and be allowed – to sustain that position in a different action. VRP at 11.

Likewise, the Order signed by the trial court rests directly on the following:

21. Allowing Giovannini to assert that she now holds any interest in the Bel-Red Property would demonstrate that her representations to the Bankruptcy Court, made under oath and while represented by counsel, were false;

22. Allowing Giovannini to assert she holds any interest in the Bel-Red Property now would provide her with an unfair advantage and/or would do harm to Knedlik's legitimate creditor, Spark;

23. Adverse Claimant Anna Giovannini is judicially estopped from claiming to hold any interests in the Bel-Red Property, whether she seeks to assert said claims in her own right or as a purported trustee[.] (CP at 38)

The trial court reached these nominal-but-spurious findings of fact and derived its likewise-incorrect conclusion of law as to judicial estoppel, at the heart of its erroneous Order, by simply disregarding both black-letter law documenting no defect in Giovannini's Chapter 13 filing as to property held in trust – and thus no inconsistency in her sworn bankruptcy schedules with her sworn statements in the trial court – and also core requirements for valid application of judicial estoppel, in this Division I, after its decision in *Miller* in 2007, and, statewide, after our Supreme Court's opinion in 2008.

The point here is not merely that Chapter 13 bankruptcy schedules were accurate as filed by Giovannini (despite that being patently correct, in fact and in law, pursuant to applicable bankruptcy jurisprudence), **but that even if Giovannini's bankruptcy schedules had been incomplete**, as prepared for her by expert bankruptcy counsel, any such imperfection – as long and repeatedly posited by Spark and as both mouthed and as also signed off on by the trial court on December 10, 2011 – would **not** provide a legally adequately basis for imposition of judicial estoppel because of an inability of such an imposition to meet black-letter terms of state law as to central requirements mandatory for judicial estoppel in this state based upon analyses of earlier-stated minimal necessities by those *Miller* decisions.

Here, as in this Division I's *Miller* case, the trial court has acted to terminate a right, summarily, both nominally “based on judicial estoppel”

due to actual-or-claimed lack of full disclosure in bankruptcy schedules on oath as filed, earlier, whereby the key issue was, in each instance, “Did the plaintiff have knowledge of a claim and not list that claim” (*Miller* at 768).

As this Division I stated without any equivocation in *Miller* at 769:

There are two primary limitations on the application of the doctrine. First, it may be applied “only where the position of the party to be estopped is clearly inconsistent with its previous one”; **and** second, “that party must have convinced the court to accept that previous position.” *In re Coastal Plains, Inc.*, 179 F.3d 197, 206 (5th Cir. 1999) (emphasis added).

This Division then demonstrated the accuracy of its statement of “two primary limitations” for valid judicial estoppel through state decisional law in its discussion of a Division II decision wherein a party filing a state action for personal injuries was properly denied access to this state’s courts when the “lower court appropriately dismissed the personal injury action based on judicial estoppel” (at 770), first, because that “litigant’s personal injury action was clearly inconsistent with his implicit representation in bankruptcy that he did not have such a claim,” and, second, because in fact “he had convinced the bankruptcy court to accept that representation. *Cunningham [v. Reliable Concrete Pumping, Inc.]*, 126 Wn.App. at 230-31.”

Unlike the *Miller* situation, where **clearly** inconsistent positions were taken by Mr. Miller in U.S. Bankruptcy Court through schedules to which he swore initially and in this state’s Snohomish County Superior

Court subsequently, and where he **clearly** benefitted from obtaining a discharge from his debts based on those sworn schedules, no careful analysis could rationally conclude **either** that Giovannini’s identification of rights and interests have been or are “clearly inconsistent” (since black-letter law of bankruptcy jurisprudence and expert bankruptcy advice caused her to disclose her own assets fully in her Chapter 13 schedules and not to list the property held in trust for her grandchildren), **or** that she in fact “must have convinced the court to accept that previous [clearly inconsistent] position” (since there was **no** acceptance of any kind by the bankruptcy court due to her having withdrawn her Chapter 13 filing before it was relied on by the U.S. Bankruptcy, for any reason, so as to moot Spark’s pretextual and self-interested charges as wielded successfully as a weapon, thus far, despite both factual inadequacies and also disqualifying erroneousness legally).

This Division provides an extended discussion in *Miller* as to those equities to be weighed in imposing or withholding judicial estoppel – in a valid fashion – and its important examination was left undisturbed by our state Supreme Court in deciding a more narrow question in respect to the legal effect on that doctrine, from the substitution of a bankruptcy trustee, as indicated in its statement that the “substitution of the bankruptcy trustee leaves us no opportunity to review the Court of Appeals decision” at 544.

Thus, the law for this Division I stated in its *Miller* controls herein.

Despite rejecting an averred lack of duty to disclose a sexual abuse claim in sworn bankruptcy schedules, as filed by Miller, some years before his state court claim – by noting “Miller’s argument that he had no duty to disclose a possible claim against Campbell is contrary to bankruptcy law” (at 770) and that “his duty under bankruptcy law was to disclose” (at 771) – this Division’s analysis rests on one quintessentiality: “judicial estoppel, an equitable doctrine, is not to be applied inflexibly. *New Hampshire v. Maine*, 532 U.S. 742, 751, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001).”

In addition to this Division I’s hereinabove-noted focus on **both** of the “two primary limitations on the application of the doctrine” requiring a “clearly inconsistent” position not subject to clarification as why **seeming** conflicts are not **clearly** contradictory as so explained and that “the party must have convinced the court to accept that previous position,” this Court stressed judicial estoppel’s *raison d’être* (versus litigant efforts to abuse it):

Its purpose is to “protect the integrity of the judicial process” by “preventing parties from playing fast and loose with the courts to suit the exigencies of self interest’.” *Coastal Plains*, 179 F.3d at 205 (quoting *Brandon v. Interfirst Corp.*, 858 F.2d 266, 268 (5th Cir. 1988).

This Court then discussed limitations of knowledge and lack of motivation in proper judicial plumbing into any **apparent** inconsistency presented to courts here – typically by the legal adversary to be benefitted by judicial estoppel being imposed as is the case herein *vis-a-vis* Spark’s self-serving

averments against Giovannini herein – in order to separate pure chaff from actual wheat by ascertaining whether purported conflicts constitute “clearly inconsistent” positions or merely some veneer of **seeming** incompatibility, indentifying circumstances wherein failures to disclose assets within sworn bankruptcy schedules involve a person who “either lacks knowledge of the undisclosed claims or has no motive for their concealment” as constituting the latter category appropriate for judicial estoppel to be withheld (at 771).

In this instance, of course, Giovannini’s personal Chapter 13 filing would **not** have benefitted by her nondisclosure of those assets in trust not properly in that bankruptcy estate under principles for trust asset exclusion in personal bankruptcy filings, as established by *In re Kirby*, 9 B.R. 901 (Bkrcty. E.D. Pa. 1981), as stated by leading bankruptcy treatises as black-letter law on this specific issue, and as was documented to the trial court:

While this Honorable Court lacks valid jurisdictional authority to reach the issues of judicial estoppel and of equitable subordination in this supplemental proceeding, our state Supreme Court’s mandates require examination of these policy issues such that each trial court’s actions are “determined on the facts of each case upon mixed considerations of logic, common sense, justice, policy, and precedent,” *King* at 250, rather than being subject to illogic, lack of common sense and injustice and contrary to black-letter federal bankruptcy law as directly stated by *In re Kirby*, 9 B.R. 901 (Bkrcty. E.D. Pa. 1981), and as explicated repeatedly by leading bankruptcy treatises over much of the last 30 years.

In particular, moving party was squarely required by *In re Kirby* in a Chapter 13 bankruptcy filing, in 2007, to distinguish roles as a current trustee as to certain property interests at issue

herein – which she held personally briefly after adverse possession was first begun in the mid 1990s but which she had held for over a decade as a trustee for her grandchildren by 2007 – by declaring her personal property and not declaring trust assets, pursuant to the black-letter bankruptcy principle stated by *In re Kirby*, 9 B.R. 901 (Bkrcty. E.D. Pa. 1981), as cited both by *Cowan’s Bankruptcy Law and Practice* and by *Norton on Bankruptcy* as the basis for such black-letter bankruptcy rule, with differing treatments for property owned by her as an individual at the time of her 2007 bankruptcy filing and of all assets held by her as trustee for a revocable trust for her grandchildren then (which black-letter bankruptcy requirements legally mandated that she identify personal assets exactly as her schedules were filed solely as to property held by her, personally, versus as trustee. This full compliance with black-letter bankruptcy law cannot properly be exploited by Judgment Creditor to misrepresent the applicable facts of a sworn bankruptcy schedule prepared with careful compliance with requirements of said bankruptcy law by expert bankruptcy counsel.

Importantly, the **reason** that Giovannini would **not** have benefitted, **at all**, had she **incorrectly disclosed** trust assets held as trustee, then and now, in her sworn Chapter 13 schedules as if they were hers personally – in the fashion that Spark’s legal counsel have insisted, repeatedly, that she was legally obligated to do so as to commit perjury, thereby, through a thus false oath that they would be claiming to be perjury, now, on substantially more-compelling grounds than their unending pretextual propoundments of perjury at present – is not simply fundamental but also dispositive.<sup>3</sup>

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<sup>3</sup>With this Division I’s determination in *Miller* that “state law provides the touchstone for determining whether a party has asserted clearly inconsistent positions supporting judicial estoppel” based on earlier-filed bankruptcy schedules, at 772, its criteria for reviewing Giovannini’s Chapter 13 filing derive from the “logic, common sense, justice, policy, and precedent” mandated for this state’s jurisprudence as instructions for all lower courts, here, by our state Supreme Court in *King v. State*, 84 Wn.2d 239, 250 (1974).

This altogether essential factor requiring attention under Division I doctrine as to judicial estoppel after *Miller* – in order for the trial court to have distinguished between conduct that was “clearly inconsistent” and an act or omission that may be subject to arguments positing **seeming** conflict – is the simple reality that her Chapter 13 petition with its asset schedules, as properly filed to reflect all personal assets, correctly, and to exclude all trust assets, properly, documented her personal assets to be **several times larger** than her personal liabilities so that **no** creditor with any legitimate interest in those sworn schedules could have suffered any loss of any kind whatsoever, and no bankruptcy judge, trustee or other officer of that court could have been called on to render any asset allocation other than her full payment to all of her then creditors from her properly disclosed schedules.

Thus, the only persons in the world with any potential for a logical concern about this completely ginned-up charge by Spark’s attorneys are they (in their designs to steal assets from her and from her grandchildren by means of entirely pretextual manipulations); the trial court (in allowing Department 30 of the King County Superior Court to be induced, thereby, to do nominal equity in a wholly inequitable manner, repeatedly, based on patent fabrications by Spark’s counsel contrary to the explicit standards of this Division I’s jurisprudence in *Miller*); Giovannini and her beneficiaries; and this court to correct abuse of discretion below through terms of *Miller*.

Division I standards for separation of chaff from wheat after *Miller* could be a bit challenging in certain instances – based as they are upon “its invocation in terms redolent of intentional wrongdoing” from *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1428 (7th Cir. 1993), at 772, and on its decision that the “flavor of manipulation is not readily discernible in this record” as to claims of an adult who reported having been molested by a stepparent as a child – but this appeal is not one of them since the stink of what Spark has been doing in this regard, and has been allowed to do by this state’s judiciary, is not simply on all assets held by her for her grandchildren, but on her reputation for insistent accountability as to all financial issues and for personal honesty for more-than-80 years as to such matters.

Far from crude caricatures of Giovannini painted by Spark’s cruel legal counsel through false representations of and utter misrepresentations about her character – based on completely pretextual claims devised from purportedly incomplete disclosure of trust assets that she had no obligation, nor legal right, to disclose as her personal property in order thereby to gain “a sword to be wielded” by those adversaries against her in a fashion that is directly contrary to what our state Supreme Court clearly precluded well before such misuse was first made against her – Giovannini has demanded accountability as to financial matters to the extent of filing the involuntary bankruptcy petition against the Judgment Debtor in common between her

and Spark in order to ensure that the real property at issue herein would be passed on by the U.S. Bankruptcy Court as an asset no longer belonging to him (as it was through the Chapter 7 Trustee's official report presented to the U.S. Bankruptcy Court and incorporated into the formal Discharge of Debtor to Judgment Debtor issued on December 11, 1998, presented to the trial court below in evidence thereof [CP 17] and attached for the convenience of this court here [as Appendix A hereto]), but has dealt in every case with such difficult-and-painful matters with candor and with civility.

In order to steal from Giovannini and from her grandchildren, the legal counsel representing Spark below and herein have not merely twisted public records to squeeze out some pretext for that intended theft based on the thinnest of possible claims in a Chapter 13 filing that was never acted on by the U.S. Bankruptcy Court for any substantive purpose subject to any rational argument that it was misled (or even **could** have been misled), nor acted on in any procedural fashion (except for authorizing its dismissal, on Giovannini's motion, after she had paid every one of her creditors **in full**).

Clearly, under such patently pretextual circumstances, as ginned up by Spark's legal counsel below, just as Division I properly determined on analysis that "we cannot say that allowing Miller to pursue the claim will affront the integrity of the judicial process," and, thus, that "we find no tenable grounds for concluding that Miller's present lawsuit is clearly in-

consistent with his position in bankruptcy” (despite Miller’s patent duty to have identified his claims for sexual molestation by Miller’s stepfather in private), this Court’s analysis therein documents real need for evenhanded application of that core analysis *vis-à-vis* “clearly inconsistent” positions to Giovannini’s Chapter 13 filing in order to stop clear molestation by Spark through counsel that has occurred in public at the trial court level, and that will certainly be ongoing until its doctrine in *Miller* is also required herein.

With judicial estoppel being central to the trial court’s errors below and with both this Division and also our state Supreme Court having relied specifically upon the U.S. Supreme’s explication of judicial estoppel as “a discrete doctrine” in *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) – for thus refining such estoppel principles for this state’s jurisprudence in their respective decisions in *Miller* – attention is appropriately focused on that high court’s direct identification of its doctrinal history, for more than a full century, in establishing that success in maintaining a particular legal position in an initial litigation is essential in order for a judicial estoppel to be appropriate in some later litigation based on **clear** inconsistency at 749:

“[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” *Davis v. Wakelee*, 157 U.S. 680, 689 (1895).

After focusing on a then-106-year-old precedent from the late 19th century to identify that requirement of long standing for a judicial estoppel to be legitimate, the unanimous U.S. Supreme Court then promptly quoted from a then-recent decision in this 21st century for the verity that a judicial estoppel “generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase ” (citing *Pegram v. Herdrich*, 530 U.S. 211, 227 [2000]), as well as noting both the purpose “to protect the integrity of the judicial process” (at 749), and also the trial court’s error as to same below (at 750-51):

[C]ourts regularly inquire whether the party has succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create “the perception that either the first or the second court was misled,” *Edwards*, 690 F.2d, at 599. Absent success in a prior proceeding, a party’s later inconsistent position introduces no “risk of inconsistent court determinations,” *United States v. C. I. T. Constr. Inc.*, 944 F.2d 253, 259 (CA5 1991), and thus poses little threat to judicial integrity. See *Hook*, 195 F.3d, at 306; *Maharaj*, 128 F.3d, at 98; *Konstantinidis*, 626 F.2d, at 939.

The importance of this explicit requirement is especially critical in the context of personal bankruptcy filings – such as Giovannini’s Chapter 13 petition – when exigent financial circumstances forced her to file upon short notice in order to protect her personal assets, when she had never before sought personal bankruptcy protection for her assets, where asset-and-liability schedules were thus unfamiliar even with aid from expert counsel,

and where those risks of “inadvertence or mistake” squarely recognized by the U.S. Supreme Court, through citations to decisions from Fourth, Ninth and D.C. circuits at 753, were particularly high from a Judgment Creditor, then entirely unknown to her, that would later use her filing, pretextually, precisely as Spark’s legal counsel have demonstrated in abusing the trial court by misleading this state’s judiciary into abuses of discretion below.

Given the U.S. Supreme Court’s emphasis on this key requirement as a century-old element for valid judicial estoppel as that doctrine was restated unanimously in 2001, given its establishment of this formulation as the second of three prongs thereby made useful for winnowing valid-from-invalid applications of judicial estoppel after its influential decision, given this Division I’s embrace of that key decision in 2007, and given our state Supreme Court thereafter embracing its three-pronged approach in 2008, no reasonable doubt can exist both that the trial court erred in erroneous application of this state’s doctrine, and also that it did so from reliance on extravagant misinformation provided by Spark’s legal counsel to mislead the superior court in furthering its and their self-interested collection purposes in the guise of falsified interest in our state court system’s integrity.

**B. Errors as to grant of summary judgment pursuant to Civil Rule 56**

Further, in order for Spark’s summary judgment motion to be proper under Civil Rule 56 below, all facts and every legal inference must be

afforded the position of the nonmoving party and, in circumstances below, that requirement would preclude summary judgment centered on judicial estoppel and built from there to equitable subordination because, at a legal minimum, all law, all facts and all of their inferences would preclude any determination that the bankruptcy schedules that she filed in her Chapter 13 petition were “clearly inconsistent” with her ownership rights as trustee of a revocable trust as sworn in defense of her property interests in Spark’s supplemental proceedings against the common Judgment Debtor therein.

**C. Errors as to *res judicata* and collateral estoppel**

While arguments made deviously by Spark’s legal counsel in order to impose judicial estoppel on Giovannini without meeting essential terms for valid application of such doctrine in this state, and in this Division, **do not apply** – both because of those defects, and also because of its failure to meet the burden of proof as to its summary judgment motion under Civil Rule 56 – judicial estoppel principles correctly applied **do preclude** summary judgment for Spark as nominally but erroneously granted below due to reasons of fact and of law involving two additional-and-separate errors.

In particular, since Spark’s claims against Giovannini’s assets derive from its rights against the Judgment Debtor common to her and to it, both claim preclusion and also issue preclusion arise from earlier litigation against him through an involuntary bankruptcy petition and, thus, attach to

its claims through *res judicata* and through collateral estoppel such that he and thus its claims are both judicially estopped from any state court action by a legal chain with at least two key links preventing relief to Spark below by their operations so that Spark's purported reliance on RCW 6.32.270 in order to obtain jurisdiction over Giovannini to adjudicate her rights and interests in the real property at issue herein is invalid by the statute's explicit terms (as was briefed below and as is discussed in the next section in order to review effects on state statutory law from legally required preclusion).

**D. Errors as to the state statute relied on (RCW 6.32.270)**

The trial court's disregard for legal consequences of the Discharge of Debtor before it on Spark's summary judgment motion – as to claim-and-issue preclusion deriving by operations of law from that federal judgment – was previously noted in the context of CR 56 presumptions and of related inferences ignored below. However, this error as to *res judicata* and as to collateral estoppel also informs its misjudgment in respect to this state's statute relied on below erroneously by Spark as the moving party.

After Spark took enforcement actions under Title 6 to terminate all nominal rights, interests and claims of Judgment Debtor to and in the real property at issue herein during early 2010 – which had **not** existed legally, whatsoever, since no later than the Discharge of Debtor issued to him on December 10, 1998 as the final substantive act in Giovannini's involuntary

bankruptcy action against him that eliminated all of his prior rights, interests and claims with his acceptance of that judgment, created *res judicata* and collateral estoppel as to all such prior interests, and yielded mandatory judicial estoppel from discharge and from resulting claim-and-issue preclusion – Spark then filed to proceed under Title 6 to terminate all actual rights and all genuine interests in that real estate by adding Giovannini as a party defendant to its long-pending supplemental proceedings in late 2010, on bases contrary to statute, through a show cause order obtained *ex parte*.

Giovannini appeared specially in order to respond to an amended “Order to Show Cause Pursuant to RCW 6.32.270” as to “why she should not be made a party to this supplemental proceeding pursuant to RCW 6.32.270,” as she was ordered on September 30, 2010, and as to “why the any [*sic*] interests she may claim in the Bel-Red Property should not be eliminated,” as she was further ordered on that date (CP 1), and filed a brief demonstrating defects under the statute being relied on there since the Judgment Debtor common to her and to Spark had **no** interest in that asset.

Although Giovannini demonstrated the invalidity of Spark’s efforts pursuant to RCW 6.32.270 as to the real property at issue herein – because its Judgment Debtor had no interest in the property at issue as required by RCW 6.32.270 – the trial court rejected that statute’s patent jurisdictional limitation on its authority to hear Spark’s motion, under its explicit terms,

by accepting Spark's falsified assertion that Title 6 provides Judgment Debtor with a right of redemption in the parcel of real estate in Bellevue that he had held **no claim** against, **nor any possible legal claim** against, since late 1998, and by disregarding the doctrine of judicial estoppel that was at the very heart of its nominal grant of summary judgment to Spark.

The trial court's acceptance of a right to redemption by a Judgment Debtor who had lost all rights, interests and claims in the real property at issue herein on December 10, 1998 (pursuant to the Discharge of Debtor issued to him by the U.S. Bankruptcy Court in evidence below), and who had likewise lost all rights, interests and claims therein no later than seven or at most ten years, thereafter, pursuant to an adverse possession begun with his physical dispossession from the real estate at issue previous to his bankruptcy discharge (pursuant both to a sworn statement by Giovannini and also to supporting documentation as submitted and in evidence below), based on self-interested propoundments by Spark notwithstanding both of these two dispositive legal circumstances, is not simply wrong, in fact and in law, but wrongheaded, in its utter disregard for "logic, common sense, justice, policy, and precedent" required of the judiciary of this state as has been directly mandated, within this state's jurisprudence, by this directive by our state Supreme Court in *King v. State*, 84 Wn.2d 239, 250 (1974).

Simply put, if this is **not** abuse of discretion, then **none** is possible.

The trial court purported to impose judicial estoppel on Giovannini on the **nominal** basis of a Chapter 13 filing by her (before its withdrawal in advance of **any** reliance by that federal court as specifically required by judicial estoppel doctrine in this state), yet failed to employ judicial estoppel doctrine on the **actual** basis of a Discharge judgment under Chapter 7 to a Judgment Debtor as to real property in which he is precluded from being heard as to the real estate at issue herein by any state court not only by that doctrine, but also by *res judicata* and collateral estoppel principles legally deriving from Judgment Debtor's acceptance of that Discharge as a direct consequence of her involuntary bankruptcy petition filed against him (so that he not only has **no** right, interest or claim but **cannot** be heard to assert **any** claim in **any** state court under proper judicial estoppel doctrine).

Similarly, Judgment Debtor common to Giovannini and to Spark was through judicial estoppel also stripped by acceptance of that Discharge to terminate litigation against him of any other right that he might have had to resist adverse possession of the physical real estate, which she had begun before her involuntary bankruptcy petition thereafter (again due to his preclusion from being heard, in any state court, under judicial estoppel rules).

Indeed, the trial court's acceptance of Spark's self-serving claim of a redemption right that prevents its extinguishment or waiver not only turns a statutory right into a legal liability, but violates due process by doing so.

Given *de novo* review for summary judgment, statutory interpretation and constitutional law, Giovannini's briefing below is set forth herein:

**THE *SINE QUA NON* REQUIREMENT OF RCW 6.32.270  
PRECLUDES ADDING ANNA GIOVANNINI "AS A  
PARTY TO THIS SUPPLEMENTAL PROCEEDING"**

The quintessential prerequisite of RCW 6.32.270 squarely mandates that Judgment Debtor WILL KNEDLIK must have some actual-or-potential interest in the property as to which Judgment Creditor SPARK NETWORKS PLC might wish to add any third party, *i.e.* as an additional "party to this supplemental proceeding pursuant to RCW 6.32.270" in this instance on a show-cause order, based on legal appearances ascertained by the trial court.

RCW 6.32.270 reads as follows in its entirety:

**Adjudication of title to property – Jury trial.**

In any supplemental proceeding, where it appears to the court that a judgment debtor may have an interest in or title to any real property, and such interest or title is disclaimed by the judgment debtor or disputed by another person, or it appears that the judgment debtor may own or have a right of possession to any personal property, and such ownership or right of possession is substantially disputed by another person, the court may, if the person or persons claiming adversely be a party to the proceeding, adjudicate the respective interests of the parties in such real or personal property, and may determine such property to be wholly or in part the property of the judgment debtor. If the person claiming adversely to the judgment debtor be not a party to the proceeding, the court shall by show cause order or otherwise cause such person to be brought in and made a party thereto, and shall set such proceeding for hearing on the first open date in the trial calendar. Any person so made a party, or any party to the original proceeding, may have such issue determined by a jury upon demand therefor and payment of a jury fee as in other civil actions: PROVIDED, That such person would be entitled to a jury

trial if the matter was adjudicated in a separate action.  
[1923 c 160 § 4; RRS § 638-1.]

While Respondent has received no notice from Judgment Creditor in regard to any of its prior actions in this Honorable Court respecting the “Bel-Red Property” nominally at issue herein based on its amended order to show cause, court files document a series of actions taken without notice to her – despite her adverse possession of that real estate for nearly 15 years – whereby every interest of Judgment Debtor was nominally eliminated.

Since all previous orders based on motion papers were prepared by legal counsel for Judgment Creditor explicitly in order to pursue extinguishment of all interests, rights and claims of Judgment Debtor, since they were all signed by this Honorable Court for such purpose, and since Judgment Creditor has acted on such extinguishment in order to deny rent to Blue Rapids Investment Trust through me as its trustor and as its trustee as of September 1, 2010, no logical basis nor legal basis can exist whereby this Department 30 could ascertain rational grounds “where it appears to the court that a judgment debtor may have an interest in or title to any real property” or whereby “it appears that the judgment debtor may own or have a right of possession to any personal property,” as required by the two clear statutory obligations for jurisdiction to add Respondent as a party herein.

Simply stated, Judgment Creditor cannot preclude Respondent from participation in the statutory process whereby the “Bel-Red Property” owned by Blue Rapids Investment Trust was taken from her as trustor and as trustee judicially, with no notice to her, and then, after that wrongful taking, yank her before this court through patent misuse of the same mandatory statutory process that was available to but disregarded by it as terms providing for a single proceeding to adjudicate all interests, rights and claims as the core purpose for and public policy underlying the legislation now codified as RCW 6.32.270.

Further, judicial interpretation of RCW 6.32.270 by our state Supreme Court’s key decision gives the lie to misrepresentations to this Honorable Court by Judgment Creditor, through its counsel, regarding central provisions of the controlling statute.

In particular, legal counsel for Judgment Creditor correctly cite *Junkin v. Anderson*, 12 Wn.2d 58 (1941), as the leading case interpreting RCW 6.32.270 in briefing submitted herein, but they have withheld pivotal information from the court for its show-cause order.

First, our state Supreme Court therein embraced the filing of a separate legal action for conversion by Berchia Junkin after he had been excluded from participation in an earlier supplemental proceeding pursuant to RCW 6.32.270 by a judgment creditor completed so as to take his property, wrongfully, in order for him thereby to assert and to obtain ownership of a Chevrolet sedan originally purchased by his then-deceased father-in-law (*Junkin* at 61).

Second, and still more troubling, counsel for Judgment Creditor does not inform this Honorable Court that our state Supreme Court, in its leading case, embraced Mr. Junkin's legal position as stated in his separate legal action to set aside a conversion created through a highly defective judicial process pursuant to RCW 6.32.270, *i.e.* that "the order entered in the supplementary proceeding was void, and does not now operate to preclude appellant from asserting his right, as owner of the automobile, against respondent" (at 65).

This judicial embrace is evident in our state Supreme Court's restatement of RCW 6.32.270's provision that "[i]n any supplemental proceeding [where the right to the property is substantially disputed], . . . the court may, if the person or persons claiming adversely be a party to the proceeding, adjudicate the respective interests" as follows (at 66):

To paraphrase a corollary proposition: In any supplemental proceeding where the right to the property is substantially disputed, if the person claiming adversely be not a party to the proceeding, nor made a party thereto, the court may not adjudicate the respective interests in such property. And the jurisdictional requirements of § 638-1 (now RCW 6.32.270), relative to parties, do not depend upon whether the particular property in dispute is in the possession of the judgment debtor or in the possession of the adverse claimant (at 66-67).

Additionally, our state Supreme Court explicitly found in *Junkin* as follows:

Section 620 (now RCW 6.32.080) must be considered in relation to § 638-1 (now RCW 6.32.270). In so far as the two may be in conflict, § 638-1, the more recently enacted section, must prevail. Thus construing § 620, and applying it to a situation wherein the judgment creditor has caused only the judgment debtor to be made a party to the supplemental proceeding, it is manifest that the court has no power to order the judgment debtor to deliver up to the sheriff personal property in the judgment debtor's possession, "ownership [of which] . . . is substantially disputed by another person.["] The court can acquire jurisdiction to make such an order only by following the method prescribed in § 638-1.

If in a supplemental proceeding such a question of title is presented for determination, in the absence of voluntary appearance by the third party, any purported adjudication of the title is void, if jurisdiction over the parties or the property has not been obtained in some manner within the requirements of the section (at 67).

Following discussions of supplemental proceedings as being "summary in character and merely auxiliary to the original action" (at 66), and as "being special in character (at 67), our state Supreme Court then spells out limited authority of a state Superior Court, in other major respects, before finding that "the order of the superior court, when attacked in the case at bar, is not entitled to the presumption that no such dispute then existed" (at 68), and before quoting the applicable rule from several leading authorities:

"Where a court of general jurisdiction proceeds in the exercise of special powers, wholly derived from statute, and not exercised according to the course of the common law, or not pertaining to its general jurisdiction, its jurisdiction must appear in the record, and cannot be presumed in a collateral proceeding, although the court proceeds in accordance with the course of the common law as far as applicable to the proceedings." 34 C. J. 543 (at 68).

Thus, our state Supreme Court concluded by answering the paramount question herein:

It appears beyond question that, in that proceeding, the title to the automobile was in dispute. Mrs. Havery disclaimed title and testified that the car belonged to appellant. No attempt was made to subject appellant to the jurisdiction of the court, nor was any attempt made to vest the court with jurisdiction to bind appellant by any order concerning the title to the automobile. It must, therefore, be held that, in the supplemental proceeding, the court was without jurisdiction to make any order affecting the title to the automobile (at 72).

Our state Supreme Court then determined the dispositive matter as to this show cause:

The order in the supplemental proceeding being void, appellant is not estopped thereby from asserting his claim in this action (at 74).

Given knowledge of *Junkin* by legal counsel for Judgment Creditor (as evidenced by its reliance on this principal decision through citation to begin its “Motion for Order to Show Cause and for Summary Judgment pursuant to RCW 6.32.270” at its page 11), and given said counsel’s Civil Rule 11 duties (as evidenced by the signing of motion papers herein), Respondent is unable to explicate either why the pending motion has been filed, or why the *Junkin* decision as relied upon by it has been misrepresented to his Honorable Court, unless the purpose was to seek a void order in supplemental proceedings and then to enjoy the fruits of such patent wrongdoing by misrepresentations to the court herein.<sup>4</sup>

**SUMMARY JUDGMENT WOULD NOT BE WITHIN JUDICIAL AUTHORITY OF THIS HONORABLE COURT AT THE PRESENT JUNCTURE, PURSUANT TO MANDATORY TERMS OF RCW 6.32.270, EVEN WERE JURISDICTION NOT**

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<sup>4</sup>As in the *Junkin* case, where the asset at issue was personal property, the statute legally controlling below was the provision of RCW 6.32.270 applicable to personal property (since the real estate at issue herein was purchased and held by a limited partnership pursuant to RCW 25.10.390). Thus, the entire foreclosure process below was erroneous.

LACKING FOLLOWING ITS NOMINAL EXTINGUISHMENT  
OF EVERY RIGHT OF JUDGMENT DEBTOR IN “THE BEL-  
RED PROPERTY” THROUGH VOID ACTIONS

RCW 6.32.270 sets out a process allowing for jury trial in cases in which legal rights to a jury trial exist, *e.g.*, where an ejectment action, in law, is required respecting Judgment Creditor’s legally void orders herein in the Superior Court action pending against it therein, and its attempt to avoid this explicit statutory right of Respondent with another end-around effort by combining a Summary Judgment motion with its wrongful motion to add her as a party herein both violates the process legislated as the public policy of this state and also invites a judicial error regarding same (notwithstanding the limited jurisdiction of this Honorable Court explicated by our state Supreme Court, at great length, but withheld in the briefing in this matter as submitted by its legal counsel).

Additionally, the statutory provision relied on by Judgment Creditor, RCW 6.32.270, is not merely designated as establishing statutory rights for “**Adjudication of title to property - Jury trial**” (bolding in the original), but it also explicitly provides as follows:

If the person claiming adversely to the judgment debtor be not a party to the proceeding, the court shall by show cause order or otherwise cause such person to be brought in and made a party thereto, and shall set such proceeding for hearing on the first open date in the trial calendar. Any person so made a party, or any party to the original proceeding, may have such issue determined by a jury upon demand therefor and payment of a jury fee as in other civil actions: PROVIDED, That such person would be entitled to a jury trial if the matter was adjudicated in a separate action.

Simply put, this mandatory provision supplies the mechanism required in order to afford an opportunity for third-parties thus brought into the summary-and-special processes of supplemental proceedings to exercise constitutional rights to jury trial necessary to meet minimal due-process rights through a statutory novation for all common law modalities.

Otherwise, third parties could neither preserve their rights to demand jury trials nor pay for jury fees as nonparties; thus, the sequencing afforded by this explicit term of RCW 6.32.270 are [is] critical to preserve major constitutional guarantees as to jury trials, due process and other valued rights; and, therefore, the limited authority of trial courts of general jurisdiction when acting under said statutory provision is critically important.

**SUMMARY JUDGMENT WOULD FAIL HEREIN EVEN WERE JURISDICTION NOT LACKING AFTER THE NOMINAL EXTINGUISHMENT OF ALL RIGHTS OF JUDGMENT DEBTOR IN “THE BEL-RED PROPERTY” THROUGH VOID ACTIONS**

Respondent is appearing herein specially, as ordered, to defend against Judgment Creditor’s bogus pending motion and, without waiving any rights under said special appearance, Respondent provides certain substantive information regarding her adverse possession of the “Bel-Red Property,” as trustor and as trustee of Blue Rapids Investment Trust, sufficient to defeat summary judgment on substantive terms, not properly before the court, as well as on dispositive procedural bases outlined above.

In particular, Respondent’s adverse possession of the “Bel-Red Property” from the mid 1990s to the present date nearly 15 years later meets every requirement both for the so-called “10-year form” of adverse possession and also for a so-called “seven-year form” of special statutory adverse possession, and briefing by Judgment Creditor’s legal counsel in order to assert otherwise is based both on mischaracterizations of facts and also on intentional conflations of purported “permission,” which it asserts to oppose adverse possession in its typical, too-casual fashion, with “mere knowledge and acquiescence by the owner, which will not. That is, if the owner knows of the possession and allows it because he believes the possessor is actually the owner, the possession will be hostile” (Stoebuck, “The Law of Adverse Possession in Washington,” 35 *WLR* 53 (1960) at 74.

As Professor Stoebuck’s often-cited review suggests through the quotation in the prior paragraph, and as this state’s leading decisional law repeatedly makes patent, the legal doctrine

of adverse possession created by the English law courts, initially, and developed by American law courts, thereafter, requires very fact-specific examinations.

In this instance, the facts are somewhat simpler than in many cases, since the reason that Judgment Debtor believed Respondent “is actually the owner” as trustor and as trustee of Blue Rapids Investment Trust is because of an involuntary bankruptcy that she filed against him in 1997, because of her direct assertions of ownership in the “Bel-Red Property” as trustor and as trustee to the U.S. Bankruptcy Trustee in 1998 (as was reported by that Chapter 7 Trustee in his official report to the U.S. Bankruptcy Court as stated in Appendix A hereto [CP 14 and Appendix B herein on appeal]), because of said Chapter 7 Trustee’s investigation into and his direct recognition of Respondent’s ownership of the “Bel-Red Property” through the trust (as stated in his official report at Appendix A hereto [CP 14 and Appendix B herein on appeal]), and because of Judgment Debtor’s formal Discharge in Bankruptcy on December 11, 1998 based on the said U.S. Bankruptcy Court’s Chapter 7 Trustee’s report that documented ownership of the “Bel-Red Property” in the Blue Rapids Investment Trust through Respondent as its trustor and as its trustee (through a court-approved Discharge set forth at Appendix B hereto [CP 17 and Appendix A herein on appeal]).

Given fact-intensive natures of adversary proceedings, they are not well-suited to summary judgment generally and are antithetical to summary-and-special processes of supplemental proceedings into which Judgment Creditor is illegitimately seeking to bootstrap a summary judgment motion, for obvious tactic reasons, intending thereby to cut off all rights to the jury trial necessary to resolve Respondent ownership of the “Bel-Red Property” through adversary [adverse] possession and all other related-and-derivative rights.

In addition to the baseline question of “hostility,” which Judgment Creditor’s motion papers have misrepresented, Respondent has also continuously paid property taxes on the “Bel-Red Property” (which is documented through Appendix C with copies of her checks for property taxes from 1996 through

the seven year period necessary to have obtained adverse possession, pursuant to a specific statutory provision for adverse possession over that period of time shorter than the normal 10-year repose term if it is based upon the payment of property taxes for seven years pursuant to RCW 7.28.070 [CP 19-26]).

Hence, the law of adverse possession in this state properly applied both as to the 10-year period, and also as to the seven-year period, is dispositive as to the second of the two orders herein to show cause “why the any [*sic*] interests she may claim in the Bel-Red Property should not be eliminated,” given all presumptions operating in favor of the nonmoving party, even if this Honorable Court had lawful authority to determine this issue (which the court does not have, for reasons more fully discussed hereinabove, based on clear terms of RCW 6.32.270, as well as upon the leading case interpreting it).

Following dispossession of Judgment Debtor during the mid 1990s, Respondent undertook direct supervision of the “Bel-Red Property” on behalf of Blue Rapids Investment Trust as trustor and as trustee, which had previously been performed by Judgment Creditor [Debtor], including ordering of repairs of that office property at issue as is evidenced by a billing for plumbing and septic-tank services ordered and overseen by her through the billing set forth as Appendix D [CP 28], performed rental functions with its tenants, cleaned and painted the office space and weeded the flower-garden areas, until the seven-year period had run, and until her health both precluded further physical activities in these respects, and also required her to obtain help from her sons and from her three grandchildren for physical activities that she had previously performed as to the office rented at the “Bel-Red Property” on behalf of Blue Rapids Investment Trust as trustor and as trustee and for herself with respect to the upkeep and maintenance of her own residential property.

Thus, payment of taxes that can be documented and other acts making out all elements required for adverse position that can be demonstrated by sworn testimony, when taken together, give the lie both to Judgment Creditor’s casual misstatement of the law of adverse possession in this state through its legal counsel, which is fact intensive, and also to the self-serving caricature

of available facts and of legal requirements, which do not meet its burden of proof first required to shift any duty to Respondent, even if this Honorable Court had jurisdiction to hear a summary judgment motion (which it does not).

#### RESERVATION OF RIGHTS

Respondent hereby reserves all rights, interests and claims, including but not limited to her jury right pursuant to the Washington State Constitution and to all requirements that are established as terms of and pursuant to requirements in RCW 6.32.270, and to her rights pursuant to violations of Civil Rule 11 by legal counsel for Judgment Creditor herein as set forth in part hereinabove for the court's information as to bad faith of the pending motion.

#### VERIFICATION ON OATH

Respondent hereby verifies on her oath the accuracy of every factual statement made hereinabove to the best of my knowledge and the authenticity of each [all] documents that she has attached hereto in Appendix A through Appendix D also to the best of my knowledge. (CP 13-28)

#### CONCLUSION

This Honorable Court should deny all relief requested as to Respondent by Judgment Creditor in its pending bogus motion and should undertake an investigation, *sua sponte*, into why the primary decisional law of this state clearly stated in *Junkin* during 1941 as to legally valid interpretation of RCW 6.32.270's mandatory terms, as is necessary to preclude orders being void *ab initio*, was withheld respecting the primary case relied on by the moving party in order to file and to prosecute its bad-faith motion as simply the latest element in a pattern of misconduct toward Respondent, undertaken though color of law, with knowledge of this and prior misconduct's adverse impacts on her health as an 87-year-old handicapped person.

Thus, no rationale doubt can exist in any reasonable mind that Giovannini provided the trial court with facts and law adequate to avoid abuse.

Giovannini's motion for reconsideration also showed the trial court, directly, the absurdly illogical position foisted onto it by Spark's counsel:

First, the baseline requirement for lawful jurisdiction over moving party cannot be met by Judgment Creditor based on the necessary judicial determination "that a judgment debtor may have an interest in or title to any real property" at issue because even if Judgment Debtor held a right of redemption following a sheriff's sale pursuant to state statute – which is not the case legally since any and all legal rights in him as to the real estate at issue in Bellevue herein had been cut off by adverse possession well before Judgment Creditor filed its action in this Honorable Court in 2007 – it would not be "an interest" in the real estate at issue that could be legally sufficient or otherwise adequate to meet the standard inherent pursuant to the state policy underlying the statute relied on nominally.

The state policy on which RCW 6.32.270 rests as to any judgment debtor's interest in a piece of real property, or in an item of personal property, is premised on and requires it to be "an interest" that is available to the judgment creditor (not a redemption right that precludes a judgment creditor from cutting off a residual legal right of a judgment debtor).

While no decisional law reviewing this basic point has been located, the statute's purpose is evident, both from Title 6's entire structure and also from its simple language, and our state Supreme Court has made clear, repeatedly, in explicating a broad range of key policy questions, in a wide array of policy contents, that such a policy issue is "to be determined on the facts of each case upon mixed considerations of logic, common sense, justice, policy, and precedent," *King v. State*, 84 Wn.2d 239, 250 (1974) (to resolve core liability issues therein); "will be dependent upon 'mixed considerations of logic, common sense, justice, policy, and precedent,'" *Hartley v. State*, 103 Wn.2d 768, 779 (1984) (to resolve causation issues therein); and requires the trial court to "weigh 'considerations of 'logic, common sense, justice, policy, and precedent,'" *Affiliated FM Insurance Company v. LTK Consulting Services, Inc.*, \_\_\_ Wn.2d. \_\_\_, \_\_\_ (2010) ("to decide

if the law imposes a duty of care, and to determine the duty's measure and scope," quoting *Snyder v. Medical Service Corp. of Eastern Washington*, 145 Wn.2d 233, 243 (2001), *inter alia*).

Simply put, "logic, common sense, justice, policy, and precedent" weigh heavily against the interpretation posited by Judgment Creditor in order to assert legally invalid jurisdiction over moving party, as to real estate at issue herein, as accepted by the Court.

#### **E. Errors as to "hostility" and "exclusivity" for adverse possession**

Following that submission, including its outline of the involuntary bankruptcy filed against the Judgment Debtor by Giovannini, Spark's attorneys nonetheless insisted that she had not shown adequate measures of "hostility" and "exclusivity" for adverse possession, including a claim in oral argument below that "there's nothing in rebuttal, Your Honor, that's admissible in opposition to the issue of hostility" (VRP at 6), and this legal-and-factual absurdity was accepted as adequate there to void her rights and interests in the real estate at issue for averred defects in adverse possession.

Suggestions by Spark's legal counsel and by the trial court that the filing of an involuntary petition in bankruptcy – in order to strip a property owner of all rights, interests and claims in real estate against which an adverse possession had already been commenced earlier – is insufficient evidence to meet "hostility" and "exclusivity" requirements *vis-à-vis* that real property is plainly risible in every imaginable circumstance possible – in any normal human mind – except one wherein this court might determine

that acceptance of a Discharge judgment, in circumstances that stripped Judgment Debtor of **all** interests in the real property at issue on issuance thereof on December 11, 1998, legally operated so as to have mooted the earlier-filed and then-still-ongoing adverse possession as a legal nullity.

Such logic and common sense did not operate in the trial court, and thus requires correction by this Court herein on an initial appellate review.

While no state decisional law has been identified on this issue, no doubt can exist that Judgment Debtor was judicially estopped from **any** assertion of **any** interest in the real property at issue herein in **any** state court action at **any** time after a discharge was issued on December 11, 1998, and that Judgment Creditor's claims against Judgment Debtor cannot yield any right, claim or interest superior to those held by its Judgment Debtor (as is evident from a jurisprudence here based on "logic, common sense, justice, policy, and precedent," as our state Supreme Court stated in *King* at 250).

#### **F. Errors as to denial of partial summary judgment**

Discussion heretofore provides interrelated grounds indicating the appropriateness of Giovannini's motion for a partial summary judgment as to the real property at issue here being granted, herein, given *res judicata* and collateral estoppel deriving from the U.S. Bankruptcy's issuance of a Discharge judgment on December 11, 1998, as well as judicial estoppel as devolving from application of such claim-and-issue preclusion thereafter.

In addition, Spark's collection action as to the real property at issue herein through RCW 6.32.270 – after notice of its inapplicability pursuant to statutory terms thereof reviewed hereinabove – constitutes an election of remedies that legally precludes any alternate collection method after its improperly granted motion for summary judgment is reversed herein, as it must be, especially given Spark's seizure of control over both the property at issue herein and also the rental income thereof as of September 1, 2010 (during the pendency of purported-but-fictional redemption rights therein).

#### **G. Errors as to judicial comity**

Substantial search of state-and-federal judicial decisions for legal precedents that would assist this Court in analyzing the interrelated issues of fact and of law, as discussed hereinabove, has gone unrewarded by discovery of cases on point, squarely, as to several important matters herein.

Speculation as to paucity of decisional law as to multiple errors by the trial court – documented herein and making out substantial abuses of discretion below – would, as conjecture, not afford useful assistance here.

However, the nearly certain reason for the apparent dearth of such relevant legal precedents flows from the trial court's abuses as to respect for and comity with the federal court system regarding the U.S. Bankruptcy Court's order issuing a Discharge judgment on December 11, 1998 (placed in evidence, below, on Giovannini's oath at CP 17) as legally informed by

that court's formal Chapter 7 Trustee's report on her ownership of the real property at issue herein prior to that date and of Judgment Debtor's lack of any rights, any interests or any defensible claims to that real property also before that date (likewise placed in evidence below on her oath at CP 14).

Simply put and respectfully stated, the case law available is almost certainly thin because the egregiousness involved in the trial court's utter disregard for the U.S. Bankruptcy Court's entry of a Discharge judgment to Debtor is thankfully rare, among judiciaries in 50 states and in several territories, as is its consequent disrespect of, if not actual defiance for, that federal judgment, as well as of and for its continuing injunctive element, in evidence in pivotal aspects by virtue of the rarity of such stark action as its effective refusals to grant any deference, any regard or any respect to the federal judiciary's Discharge order, either as matters of law, or of comity.

Indeed, still worse than such affirmative acts of effective contempt, in at least one crucial perspective, is the trial court's casual acceptance of Spark's self-serving distortions of what happened in fact and in law in the U.S. Bankruptcy Court, with respect to Giovannini's Chapter 13 filing, so as to **impose** actual reliance by that federal court on bankruptcy schedules never relied on by that court, in order for the court below to create wrongdoing so as to implicate and to involve that court in its abuses of discretion on pretextual bases ginned up by legal counsel for Spark and accepted by it

without adequate factual examination or sufficient legal analysis (despite documents of public record in evidence below that demonstrate claim-and-issue preclusion through *res judicata* and collateral estoppel, *inter alia*).

## V. CONCLUSION

The trial court has created a total disconnect between the purpose for the doctrine of judicial estoppel and the result imposed without regard either for essential terms for that discretionary act or for all circumstances “to be determined on the facts of each case upon mixed considerations of logic, common sense, justice, policy, and precedent” under *King* at 250.

The trial court's decision is thus indefensible, both for abuses of discretion technically, and also for abuse of judicial values more generally.

Remarkably, these abuses have occurred in the specific context of statutory interpretation of RCW 6.32.270 and despite briefing evidencing a variety of serious problems precluding the illogical statutory interpretation urged on the trial court by legal counsel for Spark and imposed by it below contrary both to black-letter law for judicial estoppel and also to strictures on the judiciary in interpretation of statutes when their purposes are turned on their heads in order to benefit the party not protected by a state statute.

The resulting errors are major and obvious, particularly since the standard for the interpretations of statutory provisions contrary to terms of the common law – such as those involved in enforcement of judgments in

this state – strictly constrains judicial actions at issue, herein, as repeatedly stated by our state Supreme Court in *Junkin* cited above, after *De Gooyer v. Northwest Trust & State Bank*, 130 Wash. 652 (1924), and before *Dean v. McFarland*, 81 Wn.2d 215 (1972), among numerous cases to this effect.

Clearly, the trial court has not only disregarded rules mandatory on it for legally valid judicial estoppel – as announced both by this Division I and also by the state Supreme Court, as well as by the U.S. Supreme Court – and principles mandatory on it for legally valid statutory interpretation; but, in so doing, it has forced justice itself off tracks firmly nailed down as to the central tasks before the court below that now require reversal herein.

As Aristotle’s investigations into human circumstances caused him to conclude more-than 2,360 years ago, in his *Nicomachean Ethics*, equity is as essential, genuinely, as it is subject to going wrong, badly, and central to rendering justice is recognition of “Equity, a corrective of legal justice:”

What creates the problem is that the equitable is just, but not the legally just but a correction of legal justice. The reason is that all law is universal but about some things it is not possible to make a universal statement which shall be correct. In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. (Chapter 10)

Here, on appeal for multiple abuses of discretion below by the trial court, on overt urging by Spark through its legal counsel’s repeated factual distortions and legal misrepresentations, it was clearly possible for equity

to have been done, correctly, and indeed Giovannini pleaded and begged for that outcome, precisely, with documentation placed into evidence before Department 30 of the King County Superior Court, so that this Court is not only “not ignorant of the possibility of error,” but now well aware of errors below and of huge injustice resulting from those abuses of discretion.

This Court should reverse the trial court and should enter judgment in favor of Giovannini in the real property at issue herein, since Spark has elected its remedies, and directed its fire at Giovannini without mercy, yet again, in this instance through a statute that does not allow for relief to it.

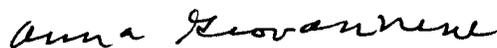
Thus, this Court should grant relief to her rather than remanding to the trial court due to lack of jurisdiction and to the severity of abuse below.

Enough is enough, and Spark has abused both Giovannini and also this state’s court system more than often enough through its endless acts to mislead the judiciary, here, in the guise of feigned interest in actual justice.

The 4th of July now over, and Judgment Creditor having elected to spark its legal fireworks to explode in its hand from its misuse of RCW 6.32.270, the Court should bring its very redolent show to an end by return of real property owned under a federal judgment since December 11, 1998.

Dated this 18<sup>th</sup> day of July, 2011, and

Respectfully submitted,

  
Anna Giovannini, Appellant *pro se*

# **APPENDIX A**

United States Bankruptcy Court  
1200 6th Ave  
Seattle, WA 98101

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

FILED  
Western District of Washington

DEC 11 1998

U.S. Bankruptcy Court

1200 6th Ave #315  
Seattle, WA 98101

CASE NUMBER: 97-16005

IN RE (NAME OF DEBTOR) Will Knedlik, 532-42-1697, dba Grand  
Rapids Investments Trust, dba  
Christina/Cambridge Trust, dba Blue  
Rapids Investment Trust III

DISCHARGE OF DEBTOR

It appearing that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 12/05/97, and that an order for relief was entered under chapter 7 and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court [or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained];

IT IS ORDERED THAT:

1. The above-named debtor is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
  - (a) debts dischargeable under 11 U.S.C. Sec. 523;
  - \*\* (b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2),(4),(6) and (15) of 11 U.S.C. Sec. 523(a);
  - (c) debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated: 12/11/98

BY THE COURT

*Karen A. Overstreet*

Karen A Overstreet  
United States Bankruptcy Judge

\*\* If you have filed a complaint to determine the dischargeability of your claim under 11 U.S.C. Section 523, and there has been no final disposition of your complaint, this discharge order does not apply to your claim.

A

## **APPENDIX B**

FILED - RECEIVED  
OFFICE OF U.S. TRUSTEE

SEP 23 4 15 PM '98  
SEP 23 3 14 PM '98

The Honorable Karen A. Overstreet  
Chapter 7  
Hearing Location: Park Place Bldg., Rm. 427  
Hearing Date: N/A  
Hearing Time: N/A  
Response Date: N/A

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE:

Case No. 97-16005

WILL KNEDLIK,

REVISED STATEMENT OF TRUSTEE  
CONCERNING INVESTIGATION AS TO  
POSSIBLE ASSETS

Debtor.

Geoffrey Groshong, Chapter 7 trustee in the above-captioned case, provides the following information as to his investigation into possible assets in this case:

Since my appointment, I have reviewed pleadings, correspondence and title reports for the Knedlik residence on Rose Point Lane in Kirkland, Washington, and for the rental home in Bellevue, Washington, held in the name of the Blue Rapids Trust. I have had numerous telephone conversations with attorneys for Skagit Valley Publishing, with Anna Giovannini and with Will Knedlik. I have also looked at the above-referenced real properties with Don Adams, a realtor I use regularly to value and sell real property for me in my role as a Chapter 7 trustee.

Based on my visit to the Rose Point Lane residence with Will Knedlik and Don Adams, I believe the maximum fair market value of the house is not more than 1.2 million dollars

REVISED STATEMENT OF TRUSTEE CONCERNING  
INVESTIGATION AS TO POSSIBLE ASSETS - 1

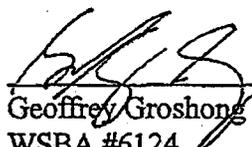
REED MCCLURE  
ATTORNEYS AT LAW /  
3600 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104-7081  
(206) 292-4900 FAX (206) 223-0152

B

1 (\$1,200,000). There are encumbrances recorded against the Rose Point Lane residence, which are  
2 greatly in excess of the fair market value, in the following approximate amounts: \$350,000 in favor  
3 of Skagit Valley Funding and \$1,400,000 in favor of Anna Giovannini. In approximately 1995,  
4 ~~Will Kredlik transferred his interest in the Blue Rapids trust to his mother, and thus transferred~~  
5 control of the Bellevue rental residence to his mother, Anna Giovannini. I do not believe this  
6 transfer can be avoided. However, at some point Mrs. Giovannini should account for her acquisition  
7 of the Bellevue rental residence and reduce the amount of her claim against the Rose Point Lane  
8 residence accordingly. The Bellevue rental residence has a current fair market value of not more  
9 than \$160,000. In the event of a sale of the Rose Point Lane residence, there would be several  
10 hundred thousand dollars of capital gains tax which the estate might have to pay, if the estate were  
11 the seller. In addition, costs of sale would total between 8% and 10%.

12 Thus, I conclude there is no equity in the Rose Point Lane residence and I have no plans to  
13 oppose any relief from stay motion that any of the secured creditors might bring.

14 DATED this 22<sup>nd</sup> day of September, 1998.

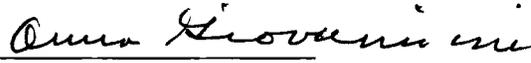
15  
16  
17   
18 Geoffrey Groshong  
19 WSBA #6124  
20 Chapter 7 Trustee  
21  
22  
23  
24



## CERTIFICATE OF SERVICE

The undersigned Appellant Anna Giovannini hereby certifies on her oath, through her signature below, that her Opening Brief of Appellant in this matter was refiled with Division I of the Court of Appeals on July 18, 2011, as instructed by the Court on July 6, 2011, and was also redelivered to local legal counsel for Respondent Spark Networks, PLC, Dorsey & Whitney LLP, on that day.

DATED this 18<sup>th</sup> day of July, 2011.

  
Anna Giovannini  
Anna Giovannini, *Pro Se*