

68036-6

68036-6

No. 68036-6-1

King County Superior Court Cause No. 06-4-02161-1 SEA

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**COURT OF APPEALS  
DIVISION ONE  
OF THE STATE OF WASHINGTON**

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In the Matter of the Estate of  
SHIRLEY A. HARTY,

J. PATRICK HARTY, BENJAMIN HARTY, AND JASON HARTY,

Appellants,

v.

GREG HARTY,

Respondent.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2012 JAN -9 PM 10:41

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**APPELLANTS' OPENING BRIEF**

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Attorneys for Plaintiff/Appellants Harty  
Charles E. Watts  
Oseran, Hahn, Spring Straight & Watts, P.S.  
10900 NE 4<sup>th</sup> Street, #1430  
Bellevue, WA 98004  
425-455-3900

**ORIGINAL**

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**APPENDICES**

Appendix A: Order Denying J. Patrick and Christine Harty Motion for Recovery of Garnishment Monies (CP 160-162)

Appendix B: Declaration of J. Patrick Harty (CP 39-54)

Appendix C: Motion for Recovery of Monies Wrongfully Garnished (CP 37-38)

## I. INTRODUCTION

RAP 12.8 should have governed the actions of the Superior Court following remand. Instead, the Superior Court allowed emotions to override the law and rejected the application of Pat Harty and Chris Harty, husband and wife, for judgment against Greg Harty pursuant to RAP 12.8 (CP 160-162; App. A Attached).

As shown by the sworn and unchallenged materials submitted by Pat and Chris Harty, between the time of entry of the judgment against them by the Superior Court and the reversal and remand by the Court of Appeals of that judgment (against the marital community), Greg Harty had garnished community funds of theirs totaling \$28,539.55. The garnished funds are clearly and undisputedly community funds as shown by sworn statements submitted to the Superior Court in connection with the RAP 12.8 request of Pat and Chris Harty (CP 39-54; App. B Attached).

The Court, in what can only be described as an emotional reaction to being ordered to grant relief favorable to Patrick and Christine Harty, denied the RAP 12.8 request and instead invited Pat and Chris Harty and their marital community to claim “contribution” for the amounts garnished from their sons, Jason and Ben. The Court did so without any indication of the slightest legal or equitable authority for that action. This action beggars belief.

The Court in rejecting the RAP 12.8 application to the funds seized by Greg Harty pursuant to a judgment invalidated against the community of Pat and Chris Harty (CP 160-162) had no choice but to follow RAP 12.8, which is mandatory (“...the trial court shall enter orders...”). Its failure to do so is an obvious error. The foregoing is the sole issue presented by this appeal.

## **II. ASSIGNMENTS OF ERROR**

1. Error is assigned to the entry by the Trial Court, following remand of the “Order Denying J. Patrick and Christine Harty Motion For Recovery of Garnishment Monies” (CP 160-162).

2. Error is also assigned to the denial of the Motion for Reconsideration of this Order (CP 170-171).

3. Issue Presented by Assignment of Error – The issue presented by this Assignment of Error is the blatant ignorance by the Superior Court of its obligation under RAP 12.8.

## **III. STATEMENT OF THE CASE**

This Court in cause number 63719-3-I filed an unpublished opinion on February 7, 2011, which, on page 13, reversed the Superior Court judgment awarding attorney’s fees against the marital community of J. Patrick and Christine Harty. The Superior Court had awarded over \$100,000 in attorney’s fees judgment in favor of Greg Harty. Pat and

Chris Harty could not afford to supersede that huge judgment and, therefore, the appeal was taken without any protection from collection efforts by Pat's brother, Greg Harty. The co-judgment debtors on the award are the two sons of Pat and Chris Harty, both adults. One son is married and one son is single. Neither son had any assets. Greg Harty did not attempt collection efforts against either son of Pat or Chris Harty.

Greg Harty was successful in garnishing community wages and bank accounts of Pat and Chris Harty totaling over \$28,000. These funds, as shown by the Declaration of Pat Harty filed in connection with the post-appeal motion for entry of judgment under RAP 12.8, were undisputedly community assets of the marriage of Pat and Chris Harty. Nothing presented by Greg Harty in the post-appeal motion response suggested otherwise (CP 138-142).

In the February 7, 2011 decision, the Court of Appeals, at page 13, found "merit" in the challenge of J. Patrick and Chris Harty to the award of attorney's fees against the marital community as against only the separate property of Pat Harty. The Court concluded on this point that

We therefore reverse the portion of the judgment awarding fees against Christine and the marital community.

The Court also vacated a "Supplemental Judgment" entered by the Superior Court awarding fees pursuant to CR 11 in favor of Greg Harty

finding that the Court had “no tenable reason for imposing a sanction under CR 11” (Opinion, p. 15). No appeal is taken from the action of the Superior Court following this decision on the CR 11 sanctions as the Court did vacate that judgment in its entirety.

The issue presented, therefore, is whether or not the Court had any legal basis upon which to ignore the dictate of RAP 12.8 whose very language makes the entry of the requested judgment in favor of the marital community of Pat and Chris Harty mandatory (“...the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party,...”).

#### **IV. ARGUMENT**

RAP 12.8 is mandatory. The plain language of the rule leaves no doubt that the relief sought by Pat and Christine Harty should have been granted (CP 37-38; App. C Attached). They sought a judgment against Greg Harty for marital community funds that he had garnished through wage garnishments or bank account garnishments which were undisputedly community, not separate, funds (Declaration of J. Patrick Harty, CP 39-54; ¶s 4-7).

In entering the Order of October 31, 2011 (CP 160-2), the Superior Court ignored the obligation of the Court under RAP 12.8 and instead

substituted, out of whole cloth, the highly irregular directive to “seek contribution from Jason and Ben Harty [the children of Appellants of Pat and Chris Harty].” Reconsideration of this illegal Order was denied by the Superior Court (CP 170-171).

Two recent Supreme Court decisions embody the law on the subject of RAP 12.8 application. *State v. A.N.W. Seed Corp.*, 56 Wn. App. 763, 785 P.2d 838 (1990), rev’d, 116 Wn.2d 39, 802 P.2d 1353 (1991) and *Ehsani v. McCullough Family P’ship*, 160 Wn.2d 586, 159 P.3d 407 (2007). Both cases acknowledge that “equitable circumstances” that might justify departure from the mandatory directive that the Court “...shall enter orders and authorize the issuance of process appropriate to restore any party any property taken from that party,...”

The instances of “appropriate” action involved property subsequently transferred to a bona fide purchaser at sheriff’s sale (A.N.W.) or property previously held in an attorney trust account subsequently distributed to the client (Ehsani). Neither of these cases have facts at all similar to the present case. Here, a money judgment was entered against the marital community, funds of the marital community were garnished and paid over, and the judgment against the marital community was subsequently reversed. The facts of the present case fit neatly within the directive of the Rule and application of principles of

restitution to unique facts is not necessary here. The “appropriate circumstances” phrase of the Rule does not apply here because the language of the Rule is mandatory where the property taken (cash in this case) is still in the hands of the other party.

The decision by the Superior Court rejecting the application of RAP 12.8 and instead ordering that Pat and Chris Harty seek “contribution” from their two sons, provides no legal grounds for the result. If there is any “equitable” basis upon which the Order was claimed to be founded, the Court does not say so. The Court stresses the “failure” to object to the garnishments. The Court ignores the fact that, until reversed, the judgment provided an unchallengeable basis for issuance of the garnishment writs (RCW 6.27.100). Pat and Chris Harty did not “waive” their rights under RAP 12.8. Nothing they did or did not do was “voluntary.” *Public Utility Dist. No. 1 of Lewis County v. WPPSS*, 104 Wn.2d 353, 705 P.2d 1195 (1985).<sup>1</sup>

The Court does not enter Findings of Fact or Conclusions of Law and took no testimony. The only facts before the Superior Court were those submitted in the Declaration of Pat Harty, which showed without

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<sup>1</sup> RAP 12.8 starts out with its application to either “voluntary or involuntary” payments. See also, *Athletic Club v. Market Street Assocs.*, 34 Wn. App. 478, 663 P.2d 128 (1983).

doubt that the funds garnished were community funds of Pat and Chris Harty and not subject to execution.

Greg Harty makes much of the fact that his judgment might not be collectible if against the separate property of Pat Harty only. Nothing in RAP 12.8 or in restitutionary principles makes that an operative factor. If, assuming it is true, the judgment against Pat Harty separately would not result in collection, that is no different than the Court entering a judgment against an insolvent judgment debtor in any civil case. The Court should not and cannot fashion its decision based on the collectability of a legally enforceable judgment.

There is no conceivable basis for the ignorance of RAP 12.8 by the Superior Court in this matter.

**V. CONCLUSION/RELIEF SOUGHT**

The determination of the Superior Court to deny the request of Pat and Christine Harty for judgment against Greg Harty under RAP 12.8 should be reversed and the Court ordered to enter such a judgment, with interest retroactive to the date of the initial decision on the appeal of the main action.

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///

RESPECTFULLY submitted this 4<sup>th</sup> day of January, 2012.

OSERAN HAHN SPRING STRAIGHT & WATTS, PS

By: 

CHARLES E. WATTS, WSBA #02331  
Attorney for Appellants

**CERTIFICATE OF MAILING/SERVICE**

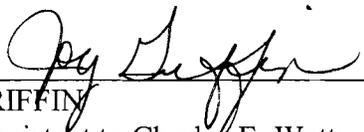
The undersigned, Joy Griffin, certifies that on the 4<sup>th</sup> day of January, 2012, she caused to be served via U.S. Mail, postage prepaid, a copy of the foregoing APPELLANTS' OPENING BRIEF to the Court of Appeals/Division I, Cause No. 68036-6-I and to the following:

**VIA US MAIL**

David Lawyer  
Inslee, Best, Doezie & Ryder, P.S.  
Attorneys at Law  
Symetra Financial Center, Suite 1900  
777 108<sup>th</sup> Avenue NE  
Bellevue, WA 98004

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

Dated this 4<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
JOY GRIFFIN  
Legal Assistant to Charles E. Watts

# Appendix A

Counsel for Respondent shall promptly mail a copy of this order to all other parties to the case.

Honorable Mary I. Yu  
Consideration Requested: September 7, 2011  
Without Oral Argument

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In re the Estate of:

SHIRLEY A. HARTY

Deceased.

NO. 06-4-02161-1 SEA

ORDER DENYING J. PATRICK AND  
CHRISTINE HARTY MOTION FOR  
RECOVERY OF GARNISHMENT  
MONIES

THIS MATTER, having come before the Court upon Petitioner J. Patrick Harty and Christine Harty's motion for Recovery of Monies Garnished by Greg Harty to apply toward satisfaction of this Court's April 10, 2009 judgment, the Court having reviewed said motion, together with the Declaration of J. Patrick Harty and exhibits attached thereto, , the Declaration of Charles E. Watts, and proposed Findings of Fact and Conclusions of Law, and Respondent Greg Harty's response, and deeming itself otherwise fully advised in the premises, this court hereby finds (a) that J. Patrick and Christine Harty have not presented evidence that Greg Harty's post-judgment garnishment activities were unauthorized by law or otherwise "wrongful"; (b) that under the factual circumstances presented to this Court,

ORDER DENYING MOTION FOR RECOVERY OF  
GARNISHMENT MONIES - Page 1  
420924.01 | 361415 | 0001

  
**INSLEE BEST**  
INSLEE, BEST, DOEZIE & RYDER, PS  
Attorneys at Law  
777 - 108th Avenue N.E., Suite 1900  
P.O. Box 90016  
Bellevue, WA 98009-9016  
425.455.1234

1 Greg Harty <sup>had</sup> has a right to proceed against J. Patrick Harty's half of community property <sup>Q</sup>  
2 assets of the marital community comprised of J. Patrick and Christine Harty; and (c) that by  
3 failing to supersede this Court's April 10, 2009 judgment, failing to controvert the answer to  
4 any of Greg Harty's garnishment writs filed by garnishee defendants and by failing to make  
5 a motion to quash any of Greg Harty's garnishment writs, J. Patrick and Christine Harty  
6 ~~waived the right to object to community assets being applied in partial satisfaction of this~~  
7 ~~Court's judgment.~~ *can not now complain that such acts were unlawful + without basis.*  
*However, the community is entitled to reimbursement from*  
8 *the* Court's judgment. Now, therefore, based upon the above-joined Findings, it is hereby *the*

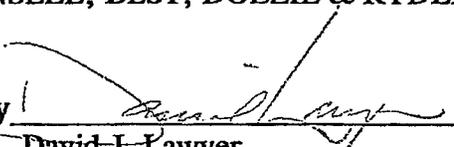
9 ORDERED, that the motion for recovery of garnishment monies is hereby DENIED. *Judgment debts*  
10 *Q*

11  
12 ENTERED this 31 day of <sup>October</sup> ~~September~~, 2011.

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15   
16 Mary I. Yu, Judge

17 Presented by:

18 INSLEE, BEST, DOEZIE & RYDER, P.S.

19  
20 By 

21 David J. Lawyer

22 W.S.B.A. #16353

23 Attorneys for Respondent Greg Harty

24 ORDER DENYING MOTION FOR RECOVERY OF  
GARNISHMENT MONIES - Page 2

420924.01 | 361415 | 0001

  
INSLEE BEST  
INSLEE, BEST, DOEZIE & RYDER, PS  
Attorneys at Law  
777 - 108th Avenue N.E., Suite 1900  
P.O. Box 90016  
Bellevue, WA 98009-9016  
425.455.1234

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Approved as to form, notice of presentation waived:

OSERAN HAHN SPRING & WATTS, P.S.

By \_\_\_\_\_

Charles E. Watts  
W.S.B.A. #2331  
Attorneys for Petitioners

# Appendix B

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Judge Mary Yu  
September 7, 2011  
Without Oral Argument

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

IN RE

ESTATE OF SHIRLEY A. HARTY

No. 06-4-02161-1 SEA

**DECLARATION OF J.  
PATRICK HARTY**

J. Patrick Harty states and declares under penalty of perjury under the laws of the State of Washington that he is all respects competent to testify in this matter and declares under his testimonial knowledge as follows:

1. Declarant is one of the parties to the proceeding and is one of three children of the decedent. Declarant was involved with litigation in this matter that resulted in an attorneys' fee Judgment against Declarant entered on April 10, 2009 and a Supplemental attorneys' fee Judgment entered against Declarant on April 27, 2010.

2. The decision awarding attorneys' fees was appealed by me and my attorneys to the Court of Appeals and the Judgment awarding attorneys' fees against the marital community of my wife Christine and I was modified and the Judgment awarding supplemental attorneys' fees on April 27, 2010 was reversed and remanded to be vacated in its entirety.

**ORIGINAL**

1           3.       Christine and I have been married for 32 <sup>April 8-11-2011</sup> years and have resided together as  
2 husband and wife during that entire period of time. We have had two children, Jason and Ben,  
3 now adults, that we have raised as husband and wife. At all times since our marriage, Christine  
4 and I have worked together as a community to earn income to support the community which  
5 consists of ourselves and our two children.

6           4.       After the judgment was entered against the marital community of Christine and  
7 me in this action on April 10, 2009, my brother, Greg, instructed his attorneys to begin  
8 garnishing my salary which I earn through my employment. This salary is my community  
9 earning and in no way constituted my separate property. Christine and I have always comingled  
10 our salaries and treated all of our earnings as community earnings and my earnings since  
11 April 10, 2009 have been treated no differently. In fact, my earnings since April 2009 have  
12 become even more important to our community welfare because my wife Christine has suffered  
13 a stroke and is no longer able to work. Since Christine's stroke I have been the sole support of  
14 our community. As a result of my brother garnishing my wages and Christine suffering her  
15 stroke and being no longer able to work, we lost our family home in Bellevue to foreclosure.

16           5.       Greg continued to garnish my wages earned through my employment for a period  
17 of 11 months beginning July 1, 2009 and ending May 3, 2010. I am paid on a bi-monthly basis  
18 and through garnishment my brother Greg caused to be deducted from my wages a total of  
19 \$22,124.52. This amount was community earnings and a community asset and in no way  
20 constituted my separate property. The actual amounts and dates of the wage garnishments and  
21 the dates the amounts were deposited by my employer are shown on the attached Exhibit "A."

22  
DECLARATION OF J. PATRICK HARTY -2

C:\Users\pat\AppData\Local\Microsoft\Windows\Temporary Internet  
Files\Content.Outlook\9TUGRZ2M\Decl of Harty-2.doc 8/11/11 (ph) #

OSERAN HAHN SPRING STRAIGHT & WATTS P.S.  
10900 NE Fourth Street #1430  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201



# **EXHIBIT A**

## Joy Griffin

---

**From:** Pat Harty [Pat@raisbeck.com]  
**Sent:** Tuesday, August 09, 2011 2:38 PM  
**To:** Ted Watts  
**Subject:** FW: Here is your spreadsheet...  
**Attachments:** Garnishment.xlsx

Ted,

Attached, please find a schedule of the garnishments from my paychecks and the related payments to the court.

### J. PATRICK HARTY

Office 206.723.2000  
Mobile 206.427.9056  
Raisbeck Engineering

---

**From:** Janice Babbitt  
**Sent:** Tuesday, August 09, 2011 2:35 PM  
**To:** Pat Harty  
**Subject:** Here is your spreadsheet...

### JANICE BABBITT

Director of Finance  
4411 S. Ryan Way  
Seattle, WA 98178  
Office 206.723.2000  
www.raisbeck.com



**Analysis of Payroll Deductions and Payments to Satisfy Garnishment on J. Patrick Harty**

<b>Pay Period</b>	<b>Payroll Deduction</b>	<b>Check No.</b>	<b>Check Date</b>	<b>Payment of Garnishment</b>
7/1/09-7/15/09	1,005.66	48424	9/29/2009	6,033.96
7/16/09-7/31/09	1,005.66	48561	11/4/2009	2,011.32
8/1/09-8/15/09	1,005.66	48691	11/30/2009	2,011.32
8/16/09-8/31/09	1,005.66	48855	1/15/2010	2,011.32
9/1/09-9/15/09	1,005.66	48932	2/5/2010	2,011.32
9/16/09-9/30/09	1,005.66	49040	3/12/2010	2,011.32
10/1/09-10/15/09	1,005.66	49144	4/2/2010	2,011.32
10/16/09-10/31/09	1,005.66	49306	5/14/2010	2,011.32
11/1/09-11/15/09	1,005.66	49380	6/4/2010	2,011.32
11/16/09-11/30/09	1,005.66			
12/1/09-12/15/09	1,005.66			
12/16/09-12/31/09	1,005.66			
1/1/10-1/15/10	1,005.66			
1/16/10-1/31/10	1,005.66			
2/1/10-2/15/10	1,005.66			
2/16/10-2/28/10	1,005.66			
3/1/10-3/15/10	1,005.66			
3/16/10-3/31/10	1,005.66			
4/1/10-4/15/10	1,005.66			
4/16/10-4/30/10	1,005.66			
5/1/10-5/15/10	1,005.66			
5/16/10-5/31/10	1,005.66			
<b>Total Deducted</b>	<b>\$22,124.52</b>			
		<b>Total Paid on Garnishment</b>		
		<b>to Inslee, Best, Doezie &amp; Ryder</b>		<b>\$22,124.52</b>

# **EXHIBIT B**

## Joy Griffin

---

**From:** Pat Harty [Pat@raisbeck.com]  
**Sent:** Tuesday, August 09, 2011 4:27 PM  
**To:** Ted Watts  
**Subject:** Watermark Credit Union - Levies  
**Attachments:** Watermark CU Statements.pdf

Ted,

Attached, please find attached, pertinent portion of the bank statements for Watermark Credit Union showing the monies withdrawn and transferred to the Court. I have summarized the transactions below.

My wife's accounts at Bank of America, and others are not included.

Watermark Credit Union		
Date	Withdrawn from Account	Transferred to Court
7/17/2009	\$ 1,771.39	
8/7/2009		\$ 1,777.31
9/1/2009	\$ 2,729.27	
10/6/2009	\$ 1,914.37	
10/6/2009		\$ 4,543.83
	\$ 6,415.03	\$ 6,321.14

<b>Account Number</b> [REDACTED]	<b>Statement Period 07-01-09 - 07-31-09</b>	<b>Page 1 of 4</b>
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P.O. Box 24927, Seattle WA 98124-0927 ■ (206) 382-7000 ■ 1-800-732-9300 ■ Fax (206) 382-7983

J PATRICK HARTY  
CHRIS HARTY  
[REDACTED]  
BELLEVUE WA 98006

**IMPORTANT MESSAGE**

ONLINE BANKING CHANGES  
COMING AUGUST 4TH  
See insert for details.

**ACCOUNTS SUMMARY**

**DEPOSIT ACCOUNTS BALANCE SUMMARY**

Checking(1)	\$ 921.11
Savings(1)	\$ 1,796.39

**LOAN ACCOUNTS BALANCE SUMMARY\***

Vehicle(1)	\$ 7,554.69
Home Equity(1)	\$ 50,000.00

\*Loan balances shown are not payoff balances.

**CHECKING**

**CHECKING 10: DIVIDEND CHECKING**

Beginning Balance	+	5 Deposits & Other Credits	-	42 Withdrawals & Other Debits	=	New Balance
\$3,543.08	+	\$5,241.20	-	\$7,863.17	=	\$921.11

**TRANSACTION HISTORY**

POST DATE	AMOUNT	TRANSACTION DESCRIPTION
-----------	--------	-------------------------

Account Number [REDACTED]	Statement Period 07-01-09 - 07-31-09	Page 2 of 4
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TRANSACTION HISTORY

→ 07/17/2009	-1,771.39	Withdrawal Transfer MAIL To Share 00	→
07/17/2009	-135.11	Withdrawal POS #919821133616 CAT & DOG CLINIC OF BE BELLEVUE WA	
<del>07/17/2009</del>	<del>-25.00</del>	<del>Withdrawal POS #919821133616</del>	

Account Number 100688	Statement Period 07-01-09 - 07-31-09	Page 3 of 4
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A 0.200% Dividend of \$0.06 will be posted on 08/01/09

Account Number 100688	Statement Period 08-01-09 - 08-31-09	Page 4 of 4
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**SAVINGS**

SAVINGS 00: REGULAR SHARES

Account Number [REDACTED]	Statement Period 09-01-09 - 09-30-09	Page 1 of 4
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P.O. Box 24927, Seattle WA 98124-0927    ■ (206) 382-7000    ■ 1-800-732-9300    ■ Fax (206) 382-7983

J PATRICK HARTY  
CHRIS HARTY  
[REDACTED]  
BELLEVUE WA 98006

**IMPORTANT MESSAGE**

Give Your Wallet a Jumpstart!  
For a limited time, refinance any non-Watermark auto loan  
and we'll give you \$50!\*

\*See insert for details

**ACCOUNTS SUMMARY**

**DEPOSIT ACCOUNTS BALANCE SUMMARY**

Checking(1)	\$	0.00
Savings(1)	\$	2,754.46

**LOAN ACCOUNTS BALANCE SUMMARY\***

Vehicle(1)	\$	6,906.17
Home Equity(1)	\$	50,000.00

\*Loan balances shown are not payoff balances.

**CHECKING**

**CHECKING 10: DIVIDEND CHECKING**

Beginning Balance	+	3 Deposits & Other Credits	-	31 Withdrawals & Other Debits	=	New Balance
\$2,897.73	+	\$2,629.91	-	\$5,527.64	=	\$0.00

**TRANSACTION HISTORY**

POST DATE	AMOUNT	TRANSACTION DESCRIPTION
09/01/2009	\$2,897.73	Beginning Balance
09/01/2009	0.09	Deposit Dividend 0.100%
		Annual Percentage Yield Earned 0.100% from 08/01/09 through 08/31/09
→ 09/01/2009	-2,729.27	Withdrawal Transfer To Share 00

Account Number [REDACTED]	Statement Period 09-01-09 - 09-30-09	Page 3 of 4
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QUICARD ACTIVITY

Account Number [REDACTED]	Statement Period 10-01-09 - 10-31-09	Page 2 of 3
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DEPOSIT  
DATE

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10/06/2009	-4,643.83	From HARTY,CHRIS 100687 Share 00 Withdrawal by Check KING COUNTY SUPERIOR COURT GARNISHMENT
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Account Number [REDACTED]	Statement Period 10-01-09 - 10-31-09	Page 1 of 3
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P.O. Box 24927, Seattle WA 98124-0927 ■ (206) 382-7000 ■ 1-800-732-9300 ■ Fax (206) 340-6070

# Appendix C

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Judge Mary Yu  
September 7, 2011  
Without Oral Argument

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

IN RE  
ESTATE OF SHIRLEY A. HARTY

No. 06-4-02161-1 SEA

**MOTION FOR RECOVERY OF  
MONIES WRONGFULLY  
GARNISHED**

COMES NOW J. Patrick Harty and moves the court for judgment against Gregory Harty in the amount of \$28,539.55 representing wage and bank account garnishments Greg Harty sought out and obtained against J. Patrick Harty based on the judgment in favor of Greg Harty against the marital community of J. Patrick and Christine Harty in this action on April 10, 2009 and the supplemental judgment entered on April 27, 2010. Both these judgments have been vacated as to the marital community of J. Patrick Harty and Christine Harty. As shown by his declaration, the wages earned by J. Patrick Harty from his employment are community wages not subject to garnishment. The bank accounts also contained only community funds.

Pursuant to the provisions of RAP 12.8, "... the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution," where a

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1 party has voluntarily or involuntarily satisfied a trial court decision which is later modified by  
2 the appellate court. The only way to appropriately restore the monies wrongfully garnished from  
3 the marital community of J. Patrick Harty and Christine Harty is to enter judgment against  
4 Gregory Harty for that amount. *See, State v. A.N.W. Seed Corp.*, 56 Wn. App. 763, 785 P.2d 838  
5 (1990), *rev'd*. 116 Wn.2d 39, 802 P.2d 1353 (1991).

6 Because the amounts ordered to be returned are liquidated, the marital community of Pat  
7 Harty and Christine Harty ask that they be awarded prejudgment interest on those amounts from  
8 the date of the service of the Writ of Garnishment on the garnishee defendant until the date of the  
9 judgment herein and further that the judgment accrue interest after entry at the rate of 12% per  
10 annum. RCW 19.52.010; *King County v. Puget Sound Power & Light Co.*, 70 Wn. App. 58,  
11 852 P.2d 313 (1993); *Mall Tool Co. v. Farwest Equipment*, 45 Wn.2d 158, 170, 273 P.2d 652  
12 (1954).

13 This motion is based upon the records and files herein, the decision of the Court of  
14 Appeals in cause 63719-3-I, and the Declarations of J. Patrick Harty and Charles E. Watts  
15 submitted herewith.

16 Dated this 20 day of August 2011.

17 OSERAN HAHN SPRING STRAIGHT & WATTS, P.S.

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19 CHARLES E. WATTS, WSBA #2331  
20 Attorneys for Petitioners J. Patrick Harty and  
21 Christine Harty and Jason and Ben Harty  
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