

No. 72336-7-I

COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION I

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CALIFORNIA SHELLFISH COMPANY, INC.,  
d/b/a POINT ADAMS PACKING COMPANY,

Plaintiff/Appellant,

v.

SEAFOOD SALES, INC. and TERRY R. BERTOSON,

Defendants/Respondents.

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ON APPEAL FROM KING COUNTY SUPERIOR COURT  
(Honorable Monica J. Benton)

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**REPLY OF APPELLANT CALIFORNIA SHELLFISH  
COMPANY, INC.**

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COURT OF APPEALS  
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## I. INTRODUCTION

This Reply is entered in response to the brief of the Respondent filed on January 22, 2015 objecting to the Appellant's request to this Court to review the decision of the Superior Court denying CA Shellfish's motion for an order directing the sale of the Respondent's homestead. In its brief, the Respondent makes three incorrect assertions to which the Appellant now replies. First, the Respondent incorrectly claims that Washington jurisprudence requires the creditor to name both spouses in such an action. Second, the Respondent is mistaken in its assertion that the Appellant is required to prove that the Respondent's marital community derived a benefit from the extension of credit by the Appellant to Seafood Sales. Finally, the Respondent argues that the creditor is required to "plead and prove community liability" despite clear jurisprudence to the contrary. The Appellant replies on these erroneous arguments and reasserts that the trial court erred in its finding that the marital asset in question could not be encumbered.

## II. ARGUMENT

A. **In order to enforce a community obligation, it is sufficient to name one spouse under Washington jurisprudence.**

The Respondent makes the bold and incorrect claim that: "Washington jurisprudence requires that a creditor name both the husband and wife and the marital community to enforce a judgment against the marital estate." In support of this claim, the Respondent cited *Belknap v Platter*, 54 Wash. 1 (1909). The Court in *Belknap*

was not concerned with the correct parties named in an action, rather, it wrestled with the question of whether one spouse could testify over the objection of the other in circumstances where to disallow such testimony would facilitate a fraud. The Respondent further cites jurisprudence that it claims “suggests” that both spouses were named as defendants. *Warren v. Wash. Trust Bank*, 19 Wn. App. 348 (1978); *Nat’l Bank of Commerce v. Green*, 1 Wn. App. 713 (1969). The fact remains however, that the Respondent has failed to cite a single authority or rule of law that supports its claim. The Appellant refers the Court again to the decision in *Whitehead v Satran*, 37 Wn.3d 724 (1950), where no evidence was put forth that the garnishee defendant was married and neither the garnishee’s spouse or the marital community was named as a defendant. The Appellant reminds the court that a community is not a separate and distinct juristic entity (*see deElche v. Jacobson*, 95 Wn.2d 237 (1980)), with the clear result that it would be superfluous to name the community in any pleading. Therefore, it is clear that Washington jurisprudence has established that it is sufficient to proceed against one spouse in order to enforce a community obligation.

**B. The marital community benefitted from the extension of credit by CA Shellfish to Seafood Sales, even as the Appellant is not required to prove such benefit.**

Without citing any authority for its proposition, the Respondent claims that Appellant is required to “establish facts before the court proving the marital community derived a benefit

from the debt at issue”. In support of this claim, the Respondent notes simply that in *Fies v. Storey*, 37 Wn.2d 105 (1950), “the evidence before the court ... established that the debt at issue was incurred for the benefit of the marital community.” See *Brief of Respondent* at 6. In *Oil Heat Co. of Port Angeles, Inc. v. Sweeney*, 26 Wn. App. 351 (1980), the community received no benefit from the disputed contract. (The “presumption of community liability will not be refuted if there was any expectation of community benefit from the transaction for which the debt was contracted”). *Id.* at 355. Again, no benefit was found in *Rainier Nat’l Bank v Clausing*, 34 Wn. App. 441 (1983) and no community benefit was proved in *Malotte v Groton*, 75 Wn.2d 306 (1969). In any event, it is clear that the marital community benefitted from, and the interests of both spouses were served by, the extension of credit from CA Shellfish to the company of which Mr. Bertosen was President.

**C. The Presumption of Community Liability Places the Burden on the Defendant to Plead the Absence of a Community Obligation.**

Finally, the Respondent asserts that a “party seeking a judgment which it intends to enforce against the assets of the marital community must plead and prove community liability.” This claim is not supported by Washington jurisprudence, which, the Appellant repeats, has a long-established presumption of community liability. The result of the presumption is that the onus is not on the Plaintiff to plead the existence of the community debt; rather the burden lies

with the Defendant to prove that the debt is a separate and distinct obligation belonging to one spouse alone.

In support of its erroneous claim, the Respondent mistakenly relies on the case of *Belkema v Grolimud*, 92 Wash. 326, 328 (1916) where a court stated that it had not intended “to countenance the idea that a person from whom the wife borrows has from the mere circumstance of her borrowing a personal claim upon the husband as well” and refers to a previous decision where it found no “presumed lien on the family estate.” First, in the facts of the instant case, CA Shellfish is not seeking to establish a personal claim against Mr. Bertosen’s wife. Second, in *Belkema*, a case decided in 1916 when society held assumptions about the roles of spouses that are widely rejected today, the court stated that it could not assume that the money in question was family money, “since to disburse family money, save for necessities, the presumption is [the wife] has no right.” *Id.* at 328. In the facts of the current case, it is undisputed that Mr. Bertosen had the right to sign the personal guaranty in question. Thus, *Belkema* is not authority for the Respondent’s incorrect denial of the presumption of a community liability.

Next, the Respondent cites *Fielding v Ketler*, 86 Wash. 194 (1915) as authority for the claim that whether the act of one spouse creates a community obligation is a question of fact. In reality, *Fielding* is authority for the exact opposite proposition. In *Fielding*, the court unequivocally states: “The legal presumption is, of course, that the money being borrowed, it became a community liability.”

The money in question in that case was, “established as a loan to the wife, during the existence of the status and relations of the community.” *Fielding*, 86 Wash. at 195. The court continues that, “In such case, it is a community obligation” *Fielding*, 86 Wash. at 195.

The Respondent claims that the statement of law in *Whitehead v Satran*, 37 Wn.2d 724 (1950) that “a judgment against a married man is presumptively a community liability” is distinguishable from the current case because “there were no facts whatsoever before the trial court concerning Mr. Bertosen’s marital status at the time the debt was incurred [or] his current wife’s relationship to the business where the debt was incurred.” *See Respondent’s Brief* at 4-5. Of course, once again, the very operation of a presumption has the result that it is not incumbent on CA Shellfish to put facts before the trial court regarding Mr. Bertosen’s marital status. Indeed, the opposite is true: where Mr. Bertosen wishes to overcome the operation of the presumption that his debt is a community liability, it is his burden to show that the debt constitutes a separate obligation.

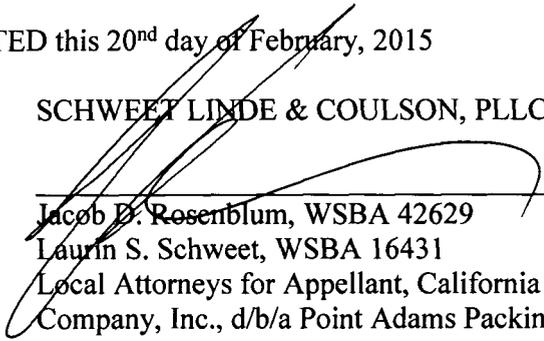
### III. CONCLUSION

The Respondent has failed to cite a single authority to support its propositions. The Appellant was not required to name the spouses or marital community as a party to proceedings; the community derived a benefit from the extension of credit to Seafood Sales, although the Appellant was not required to prove the

existence of such a benefit; and the Appellant was not required to plead the existence of community liability rather, as a result of the presumption of its existence, the burden lies with the Respondent to establish that the debt in question is a separate debt. The Appellant repeats that the Superior Court erred in its refusing to accede to its motion and respectfully requests that the Court reverse the trial court's decision and grant an order directing the sale of the homestead in question.

DATED this 20<sup>nd</sup> day of February, 2015

SCHWEET LINDE & COULSON, PLLC

  
Jacob D. Rosenblum, WSBA 42629

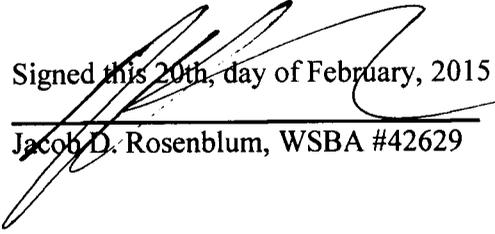
Laurin S. Schweet, WSBA 16431

Local Attorneys for Appellant, California Shellfish  
Company, Inc., d/b/a Point Adams Packing Co.

**CERTIFICATE OF SERVICE**

I certify that on February 20, 2015 I mailed a copy of the foregoing Reply of Appellant California Shellfish Company, Inc., by placing said document in a sealed envelope with first class postage fully paid thereon to :

Matthew Hartman  
Impact Law Group, PLLC  
1325 Fourth Avenue, Suite 1400  
Seattle, WA 98101

  
Signed this 20th, day of February, 2015

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Jacob D. Rosenblum, WSBA #42629