IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

UMPQUA BANK, Appellant/Cross-Respondent, v. BINGO INVESTMENTS, LLC, a Washington liability company; FRANCES P. GRAHAM and JOHN DOE GRAHAM, and the marital community composed thereby; SCOTT F. BINGHAM and KELLY BINGHAM, and the marital community composed thereby; CHRISTOPHER G. BINGHAM and CHERISH BINGHAM, and the marital community composed thereby; and BINGO DEVELOPMENT, LLC, a Washington limited liability company, Defendants/Judgment Debtors, v. RAYMOND JAMES FINANCIAL SERVICES, INC., <u>Respondent/Cross-Appellant.</u>	)	No. 65706-2-I linked w/No.65401-2-I DIVISION ONE UNPUBLISHED OPINION FILED: <u>July 25, 2011</u>

Spearman, J. — A trial court may grant relief under CR 60(b)(1) for irregularity in obtaining a judgment. Here, Umpqua Bank failed to comply with a commissioner's order, which denied ex-parte entry of a judgment under garnishment statutes and required Umpqua to resubmit only after providing additional notice. Umpqua did not

comply with this order, nor did it seek revision of the order. Instead, Umpqua sent a letter ex parte to the trial court to obtain its judgment. This constitutes an "irregularity" under CR 60(b)(1), and the trial court did not abuse its discretion in vacating the judgment after learning of the commissioner's order. Additionally, we find no abuse of discretion in the trial court's decision to impose terms as a condition for vacating the judgment. We affirm.

FACTS

Umpqua obtained a judgment against multiple entities and individuals for $23,290,953.14. Umpqua began collection procedures, which included serving writs of garnishment on financial institutions of the judgment debtors.

Umpqua obtained and served two writs of garnishment on Raymond James, one of the financial institutions of several judgment debtors. In its answers to the writs, Raymond James admitted that on the date the writs were served, it held accounts for two judgment debtors, one with a balance of $105,545.43, and one with a balance of $304,826.13. Raymond James also indicated that it had placed restrictions on the accounts by "prohibiting the transfer, withdrawal or distribution of any funds currently maintained in the account up to the amount due on the garnishment." In addition, Raymond James noted that the accounts were security for an unnamed lender, and that it had given the lender and the judgment debtors notice of Umpqua's writs.

No lender holding a security interest in the accounts ever appeared or moved to

intervene, and the judgment debtors never filed any claim indicating the amounts held by Raymond James were exempt. As such, Umpqua sought to obtain a judgment on the writs of garnishment. Umpqua presented to the King County Superior Court ex parte department a judgment and order to pay directed at the garnished accounts held by Raymond James, along with a declaration indicating (1) Umpqua had served notice of the judgment to the judgment debtor defendants, and (2) there were no pending exemptions or controversions regarding Raymond James's answers.

The commissioner denied Umpqua's application for judgment in a minute order:

> Given the controversions and exemption claims I think this needs to be presented in person and with notice to the opposing party. I have no time to figure out what the status of the litigation is but it is clear a hearing is to be set before Judge Dubuque. As well the Garnishment statute is not clear regarding the filing of a controversion upon pending answers to writs of garnishment but they do contemplate a hearing to determine the issue so the signing of a judgment against the garnishee defendant does not seem called for under the statutes.
> . . .
> Resubmit only with notice to opposing parties and even then you may end up being directed to the Judge.

Umpqua did not give further notice to Raymond James, nor did it move for revision of the commissioner's order. Instead, Umpqua wrote a letter ex parte to Judge DuBuque, who was the assigned trial judge. That letter, which did not enclose a copy of the commissioner's order, read as follows:

> Following up on my message to your bailiff, Alice, today, Umpqua Bank encloses for ex parte entry several judgments and orders to pay on garnishments that are **unrelated** to the pending

> exemptions and controversion proceedings before you. In essence, the following five garnishments have been answer[ed] and **have not** had any exemptions or controversion filed. Thus, according to RCW 6.27.250 "the court shall render judgment for the plaintiff against such garnishee for the amount so admitted . . . ."
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> . . .
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> Although we attempted to simply have this handled through the ex parte department **twice**, the court indicated that, in light of the pending controversion and exemption proceedings (which are not related to these garnishments), "I have no time to figure out what the status of the litigation is but it is clear a hearing is to be set before Judge DuBuque." Our ex parte submissions were returned to us executed by the Commission[er], but then "voided" by him in light of his belief that you should handle this matter (copies enclosed for your reference).
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> It is a frustrating process when the Court will not consider the materials in front of it and/or contact counsel for an easy explanation. So be it, but Umpqua deserves to have the uncontested garnishments concluded. Accordingly, we request entry of the five (5) Judgments and Orders to Pay. . . .

The trial court entered the judgment and order to pay.

About a month after the trial court entered judgment, Frontier Bank (now Union Bank), the alleged secured lender, moved to intervene. The trial court denied the motion. Shortly thereafter, Raymond James moved to vacate the judgment. The trial court held a hearing on the matter, and granted Raymond James's motion, but made vacation contingent upon Raymond James paying Umpqua's attorney fees. Raymond James paid the fees, and the court signed the order vacating the judgment. Umpqua moved to reconsider, and the trial court denied the motion.

After the court vacated the judgment, Raymond James filed an interpleader action, naming the judgment debtors, Umpqua, and Union Bank as parties.[1] Umpqua

[1] At oral argument in Union Bank v. Umpqua, Division One, No. 65401-2-I, an appeal that is linked with this matter, counsel for Union Bank indicated the funds at issue were deposited with the King

appeals the order vacating the judgment and the order denying its motion for reconsideration. Raymond James cross-appeals the portion of the trial court's order conditioning vacation upon payment of attorney fees. In a separate appeal, No. 65401-2-I, Union Bank seeks reversal of the order denying intervention.

DISCUSSION

Order Vacating Judgment

This court reviews a trial court's decision whether to vacate a judgment under CR 60 for an abuse of discretion. Mosbrucker v. Greenfield Implement, Inc., 54 Wn. App. 647, 651, 774 P.2d 1267 (1989). A trial court abuses its discretion if the decision is based on untenable grounds or for untenable reasons. Shaw v. City of Des Moines, 109 Wn. App. 896, 900, 37 P.3d 1255 (2002); Grigsby v. City of Seattle, 12 Wn. App. 453, 454, 529 P.2d 1167 (1975).

Umpqua argues the trial court abused its discretion in vacating the judgment against Raymond James because, as a matter of law, a judgment cannot be reversed because of a harmless procedural error. Umpqua argues that it obtained the judgment in full compliance with the Washington garnishment statute, RCW 6.27 et seq. Specifically, Umpqua contends that it complied with RCW 6.27.250(1)(a), which provides that a court "shall" enter judgment when (1) the garnishee is indebted to the defendant in any non-exempt amount and (2) the plaintiff has filed an affidavit

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County Superior Court Clerk.

showing service on the defendant.[2] The statute contains no express requirement of additional notice to the garnishee before judgment can be entered. Id. Thus, Umpqua contends that its compliance with the statute renders any failure to comply with the commissioner's order harmless and without prejudice to Raymond James. Accordingly, there was no irregularity in obtaining the judgment and no tenable reason for the trial court to set aside the judgment.

The argument is without merit. The sole authority cited by Umpqua in support of the proposition is RCW 4.36.240,[3] but that statute, first enacted in 1854, is among those civil procedure statutes that were superseded by the court rules. See RAP

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[2] RCW 6.27.250(1)(a) provides:

> If it appears from the answer of the garnishee or if it is otherwise made to appear that the garnishee was indebted to the defendant in any amount, not exempt, when the writ of garnishment was served, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount exceeds the amount of the plaintiff's claim or judgment against the defendant with accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, in which case it shall be for the amount of such claim or judgment, with said interest, costs, and fees. In the case of a superior court garnishment, the court shall order the garnishee to pay to the plaintiff or to the plaintiff's attorney through the registry of the court the amount of the judgment against the garnishee, the clerk of the court shall note receipt of any such payment, and the clerk of the court shall disburse the payment to the plaintiff. In the case of a district court garnishment, the court shall order the garnishee to pay the judgment amount directly to the plaintiff or to the plaintiff's attorney. In either case, the court shall inform the garnishee that failure to pay the amount may result in execution of the judgment, including garnishment.

[3] RCW 4.36.240 reads as follows:

> The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

18.22, CR 81(a)(b). Thus, the statute is of no help to Umpqua. Moreover, even if we were to accept Umpqua's argument that Raymond James was not entitled to notice of entry of judgment, in light of the commissioner's order, it was not an abuse of discretion to set the judgment aside. Under CR 60(b)(1) a trial court "may" grant relief for "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order. . . ." "'Irregularities'" within the meaning of CR 60(b)(1) "concern departures from prescribed rules or regulations" and "involve[] procedural defects unrelated to the merits." Summers v. Dep't of Revenue, 104 Wn. App. 87, 93, 15 P.3d 902 (2001) (citing 4 Lewis h. Orland & Karl B. Tegland, Washington Practice: Rules Practice 717 (4th ed. 1992)).

Here, Umpqua did not comply with the commissioner's ruling, which denied ex parte entry of a judgment, expressed concern about possible pending controversions and exemptions, and required Umpqua to resubmit only after providing additional notice. Nor did Umpqua seek revision of the commissioner's ruling. Instead, Umpqua sent a letter ex parte to the trial court seeking entry of the judgments, and it did not enclose the commissioner's ruling. It is difficult to see how, after the trial court learned of the commissioner's ruling, it was untenable for the court to conclude Umpqua's decision to ignore the ruling and refusal to seek revision was a "departure[] from prescribed rules . . . ." Summers, 104 Wn. App. at 93. The trial court did not abuse its discretion in vacating the judgment, and we affirm.

Attorney Fees as Condition for Vacation of Judgment

CR 60(b) allows a trial court to set aside a judgment "upon such terms as are just . . . ." Additionally, the decision to impose terms as a condition on an order vacating a judgment lies within the sound discretion of the trial court. Knapp v. S. L. Savidge, 32 Wn. App. 754, 757, 649 P.2d 175 (1982). In its cross-appeal, Raymond James argues the trial court abused its discretion in conditioning vacation of the judgment on Raymond James paying Umpqua's attorney fees, because under Pamelin Indust., Inc. v. Sheen-U.S.A., Inc., 95 Wn.2d 398, 622 P.2d 1270 (1981), a trial court is obligated to vacate without terms where a judgment is void.

Raymond James claims the judgment in this case was void because under the garnishment statute it was entitled to discharge from the proceedings and because Umpqua failed to provide it with notice of the proposed judgment. With regard to discharge, Raymond James argues that its answers denied indebtedness to the judgment debtors and denied that it had possession or control of the judgment debtors' personal property. Accordingly, Raymond James contends that Umpqua was required to either controvert the answers or recognize Raymond James's discharge from the proceedings without further liability. The garnishment statute provides:

> If the garnishee files an answer, either the plaintiff or the defendant, if not satisfied with the answer of the garnishee, may controvert within twenty days after the filing of the answer, by filing an affidavit in writing signed by the controverting party or attorney or agent, stating that the affiant has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars the affiant believes the same is incorrect.

RCW 6.27.210. The statute further provides:

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

RCW 6.27.240.

But Raymond James's claims are not supported by the record. While Raymond James did assert in its answers that an unidentified lender had a secured interest in the accounts, it also acknowledged in each answer that it held "one active account" in the name of the judgment debtor and acknowledged that it had asserted control over the account by "prohibiting the transfer, withdrawal or distribution of any funds currently maintained in the account up to the amount due on the garnishment." Under RCW 6.27.240, a garnishee is only entitled to discharge where the garnishee's answer shows that (1) it is not indebted to the defendant; (2) it is not in possession or control of the defendant's personal property and (3) an affidavit controverting the answer has not been filed. Watkins v. Peterson Enters., Inc., 137 Wn.2d 632, 648, 973 P.2d 1037 (1999). Because Raymond James was unable to satisfy the first two conditions, it cannot show that it was entitled to discharge from the garnishment proceeding, even in the absence of an affidavit from Umpqua controverting the answer.

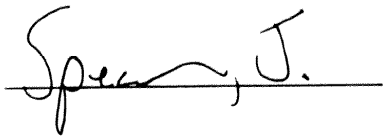
Raymond James's argument that the judgment is void on the ground that it did not receive notice prior to entry of judgment also fails. Even assuming that Raymond James was entitled to notice as it claims[4], the judgment is nonetheless valid where the complaining party can show no resulting prejudice. Burton v. Ascol, 105 Wn.2d 344, 352-53, 715 P.2d 110 (1986) (where defendant was allowed to appeal adverse judgment and argue issues on appeal, defendant could not show lack of notice caused prejudice and judgment was not void). Here, Raymond James has not shown that the lack of notice resulted in any prejudice. Raymond James prevailed on its motion to vacate the judgment. Moreover, it was also allowed to appeal the trial court's imposition of attorney fees and to argue the issues it wished to raise. Id.

In addition, while Raymond James claims that any fees incurred by Umpqua

[4] Whether Raymond James is entitled to notice as it claims is a dispute we need not resolve in light of our disposition of this case. We do note, however, that Raymond James is unable to cite to any provision in the garnishment statute providing for such notice. At best, Raymond James relies on RCW 6.27.200, which requires notice prior to obtaining a default judgment against a garnishee. But in that event, notice is required because the garnishee is then subject to entry of judgment "for the full amount claimed by the plaintiff against the defendant," not just the amount the garnishee has in its possession. Raymond James also relies on Watkins v. Peterson Enter., Inc., 137 Wn.2d 632, 648, 973 P.2d 1037 (1999), but, as Raymond James acknowledges in its brief, that case is inapposite. Watkins addresses a creditor's attempt to bypass the statutory requirements for obtaining a judgment against the garnishee as set out in RCW 6.27.250(1)(a) by obtaining "pay orders" as permitted in subsection (2) of the statute. To the extent the case is relevant to the issues presented here it holds that a creditor satisfies the necessary prerequisites to obtain a judgment under subsection (1)(a) "where a garnishee affirmatively answers the writ, without controversion by the debtor[.]" Id. at 648. In that event "a court must enter…a judgment in the amount held by a garnishee." Id. at 645. Finally, Raymond James contends that the court rules regarding notice, particularly CR 5(a) and 6(d), should apply in this case because the statute does not specify the manner in which a judgment is to be obtained. But CR 81(a) precludes the application of the court rules when inconsistent with rules or statutes applicable to special proceedings. Here, the statute provides specific criteria which, if met, mandate that judgment be entered against a garnishee. Id., Snyder v. Cox, 1 Wn. App. 457, 462, 462 P.2d 573 (1969). But for the commissioner's order those conditions were met here. Imposing conditions other than those specified by the statute is arguably inconsistent and may well be precluded by CR 81(a). It is also evident that in those instances where the legislature believed additional notice was warranted it was expressly provided for, as in RCW 6.27.200.

were the result of Umpqua's own failure to provide proper notice, the trial court concluded otherwise. It found that Raymond James failed to use the proper forms or prepare its answer in accordance with the statute. Raymond James does not dispute these findings. The trial court concluded that vacating the judgment on the condition that Raymond James pay Umpqua's attorney fees was "the only fair and appropriate thing to do in light of the way this litigation has proceeded[.]" The trial court did not abuse its discretion.

Affirmed.



WE CONCUR: