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IN THE SUPREME COURT OF THE STATE OF NEVADA

PLATTE RIVER INSURANCE) Case No.: 81974
COMPANY)
)
Appellant,)
)
vs.)
)
SUSAN JACKSON; and LANCE))
JACKSON)
)
Respondents)
)

APPELLANT'S REPLY BRIEF

APPEAL
From the Ninth Judicial District Court, Douglas County
The Honorable THOMAS W. GREGORY, District Judge
District Court Case No. 19CV0197

I. DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

Platte River Insurance Company is a wholly owned subsidiary of Capitol Indemnity Corporation. Capitol Indemnity Corporation is a wholly owned subsidiary of CapSpecialty, Inc. CapSpecialty, Inc., is wholly owned by Alleghany Insurance Holdings LLC, which is wholly owned by Alleghany Corporation (NYSE:Y).

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Attorney of record for PLATTE RIVER INSURANCE COMPANY

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I. SUMMARY OF ARGUMENT

From the arguments of the Respondents' Brief, it is apparent that the District Court committed error in its interpretation of the Nevada exemption statute.

In summary, if N.R.S. §21.090(1)(z) is intended to apply to "all property," as the Respondents' Answering Brief appears to argue, their Brief fails to properly address why the statute did not just read, "Any personal property not to exceed \$10,000.00 in total value, to be selected by the judgment debtor." As opposed to the actual language of N.R.S. §21.090(1)(z):

Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor. (emphasis added)

The Respondents' interpretation renders the additional language meaningless. Further, the subsection need only say "personal property" without any further elaboration because "personal property" is already defined in N.R.S. §10.045¹. Under the Respondents' interpretation, the additional language and examples of N.R.S. §21.090(1)(z) are superfluous and meaningless.

Further, the Respondents fail to address why "earnings" and "wages" are conspicuously omitted from N.R.S. §21.090(1)(z), even though the wage garnishment is so widely utilized, that it would be the primary example given if the exemption applied to earnings.

¹ Remarkably, this statute does not appear in Respondents' Answering Brief.

1 The Respondents fail to properly address the legislative history from
2 both 2007 and 2017. In 2007, Assemblywoman Barbara Buckley testified that
3 the Wildcard was not to affect wage garnishments. In 2017 the Wildcard was
4 increased ten-fold from \$1,000.00 to \$10,000.00, while minor adjustments
5 were made to the wage garnishment exemption. Both legislative actions prove
6 that the Wildcard would not affect wage garnishments, and that N.R.S.
7 §21.090(1)(g) and N.R.S. §21.090(1)(z) operate independently of one another.

8 Further still, the Respondents do not address the absurd and
9 unreasonable results produced by their interpretation including: 1) Forcing
10 every court to hold a Wildcard exemption hearing on every wage garnishment
11 in Nevada (because every wage garnishment would be allowed a Wildcard
12 hearing); 2) forcing employers to perform difficult and practically impossible
13 paycheck withholding compliance for both exemptions to operate
14 simultaneously; 3) forcing debtors to pay additional post-judgment interest
15 and accrued costs as futile wage garnishments are served every 180-days as
16 the \$10,000.00 Wildcard exemption amount gets depleted; 4) forcing creditors
17 to waste time and expense of serving futile wage garnishments as the
18 \$10,000.00 Wildcard exemption gets depleted; 5) Invalidating every Nevada
19 judgment if it is for under \$10,000.00, and even cancelling the first \$10,000.00
20 of every Nevada judgment.

21 This Court should not be deterred by Respondents' apparent challenge
22 (or concession) to this Court:
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Accordingly, little will change. However, the application of the statute [sic] will require the debtor and the creditor to look at new and additional ways to settle and satisfy judgment debts.²

The District Court's Exemption Order must be reversed.

II. ARGUMENT

A. There is No Alleged "Status Quo" that Supports Respondents' Position

The Respondents argue that "Platte River's interpretation of N.R.S. 21.090(1)(z) is not the status quo."³ This false assertion demands a strong response.

First, the "status quo" supports the Appellant's position. Both the Las Vegas Justice Court in Koster Finance v. Ken Vi Lu (Las Vegas Justice Court 16C019573) and the U.S. District Court in Dodge City Healthcare Group v. Chaudhry (D. Nev. June 9, 2010 Case No. 09-00091) support the Appellant's position. Contrary to what is implied by the Respondents, this Supreme Court's does passively abstain from adjudication merely because the Respondents label something "the status quo."

Further, the following statement in Respondents' Answer Brief must also be dragged out into the light:

Platte River's interpretation of the application of NRS 21.090(1)(z) is not being employed in the bankruptcy court, and does not comport with this Court's previous suggested use of

² Respondents' Answering Brief page 6.

³ Respondents' Answering Brief page 17 (emphasis added).

1 NRS 21.090(1)(z) to supplement other exemptions to exempt
2 property that would otherwise not be exempt.⁴

3 The interpretation of Nevada’s statutory exemption scheme is the province of
4 this Court to interpret for other courts, including the bankruptcy courts.⁵ What
5 is allegedly “employed in the bankruptcy court” does not dictate to this Court.
6 In addition, the Respondents’ assertion quoted above as to what is allegedly
7 “employed in bankruptcy courts” and this court’s alleged “suggested use” is
8 uttered without citation to any supporting authority.

9 B. The Respondents Have No Explanation for the meaning of the
10 phrase “Not Otherwise Exempt” in N.R.S. §21.090(1)(z)

11 The phrase “not otherwise exempt” is completely meaningless if it is not
12 meant to limit the Wildcard application to property that is not otherwise
13 exempt, or “wild” property. The Respondents argue, “The phrase ‘not
14 otherwise exempt’ found in N.R.S. §21.090(1)(z) should be found to mean any
15 property selected by the debtor that is not exempted under any other
16 exemption within NRS 21.090(1).”⁶ Respondents then suggest that the phrase
17 “means ‘all property’ not exempt by some other exemption [note: earnings are
18

19
20 ⁴ Respondents’ Answering Brief pages 5-6 (emphasis added).

21 ⁵ See e.g. Weinstein v. Fox (In re Fox), 129 Nev. 377 (2013)(certified
22 question of law from United States Bankruptcy Appellate Panel of the Ninth
23 Circuit relating to permissible exemptions); Savage v. Pierson, 123 Nev. 86
24 (2007)(certified question of law from the Nevada bankruptcy court on
25 exemptions), among others.

⁶ Respondents’ Answering Brief Page 5.

1 already “exempt by some other exemption”], chosen by the debtor, is exempt
 2 from execution up to \$10,000.”⁷ The Respondents’ interpretation belies the
 3 language of the statute.

4 If N.R.S. §21.090(1)(z) allows the Wildcard to apply to any property, then
 5 the (1)(z) should simply read, “Any personal property not to exceed \$10,000
 6 in total value, to be selected by the judgment debtor.” Instead, the subsection
 7 reads, “Any personal property not otherwise exempt from execution pursuant
 8 to this subsection belonging to the judgment debtor, including, without
 9 limitation, the judgment debtor’s equity in any property, money, stocks, bonds
 10 or other funds on deposit with a financial institution, not to exceed \$10,000 in
 11 total value, to be selected by the judgment debtor.” (emphasis added) Further,
 12 if the Wildcard applies to “any personal property” without limitation, there is
 13 no purpose to give examples of “personal property” in the Wildcard
 14 subsection because “personal property” is already defined in N.R.S. §10.045.⁸
 15 Respondents argue “any personal property not otherwise exempt from
 16 execution...” really means “all property”⁹ then the remaining language of
 17 subsection (1)(z), including qualifications and the examples, is rendered
 18 meaningless.¹⁰

19
 20
 21 ⁷ Respondents’ Answering Brief page 13.

22 ⁸ Respondents’ Answering Brief does not appear to specifically cite to this
 23 statute.

24 ⁹ Respondents’ Answering Brief page 13.

25 ¹⁰ CarsonTahoe Hosp. v. Bldg. & Constr. Trades Council of N. Nev., 122 Nev.
 218, 220 (2006) (No part of a statute should be rendered meaningless.)

Further, if “earnings” are “personal property,” then why aren’t “earnings” listed in the Wildcard statute as an example to which the exemption applies? There is no purpose for the language in N.R.S. §21.090(1)(z), other than to limit to the Wildcard to “wild” property, meaning any property that is not otherwise enumerated in the exemption statute.

The Respondents argue that the Appellant’s interpretation “would render the wildcard exemption ineffective.” This assertion is without merit. In fact, in February 2021, the District Court allowed Respondent Lance Jackson to claim his \$10,000.00 Wildcard to Respondent Susan Jackson’s savings account.¹¹ In addition, Nevada already has a “generous exemption scheme”¹² for judgment debtors that includes approximately 38 enumerated exemptions.

C. Respondents’ Position Produces an Absurd Result.

First, it is a false assertion in Respondents’ Answering Brief that “Platte River did not argue . . . at the September 4, 2020 hearing, that the plain language of the statute creates an absurd result.” In fact, as evident by the Hearing Transcript, at the September 4, 2020 hearing, Platte River repeatedly,

¹¹ Although not relevant to this appeal, Appellant did not “garnish the same exempted property twice.” The District Court found that the funds in Susan’s savings account were not traceable, and that Respondents did not attempt to prove their source. Notwithstanding that the savings account funds were from an unknown source, the District Court allowed Lance to apply his \$10,000 Wildcard to Susan’s savings account.

¹² In re Gagow, 590 B.R. 517 (Bankr. Nev. 2018).

1 throughout the hearing, pointed out the absurd results created by the
2 Respondents' interpretation.¹³

3 In addition, more context is necessary as to what was argued at the
4 hearing. As revealed in the Opening Brief, the Respondents initially filed a
5 boilerplate "Claims of Exemption" document for asserting approximately
6 seven mostly inapplicable exemptions, without any briefing (AA026-28).
7 Appellants then promptly filed a timely Motion to Determine the Issue of
8 Exemption, addressing the legality and applicability of each of the claimed
9 exemptions. (AA030-36) It was not until an approximate judicial day prior to
10 oral argument in Minden that the Respondents surprised Appellant with a
11 more detailed Brief (AA038-AA061) that included a prior order from the same
12 District Court on this issue of applying the Wildcard to wages. In that the
13 Respondents had the burden of proof at the exemption hearing (N.R.S.
14 §21.112(6)), there was no justification for Respondents electing to conceal
15 their briefing in their initial Claim of Exemption, and then withhold the
16 briefing until the "eve" of the September 4, 2020 hearing.

17 Notwithstanding the Appellant's procedural disadvantage, the fact that
18 the Respondents' statutory interpretation produces an absurd result was
19 adamantly argued by the Appellant. Not only that, but the Respondents'
20 Answering Brief is summarily dismissive of the profoundly absurd results
21 produced by their interpretation of the statute.

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25 ¹³ See e.g. AA066-AA092.

1 D. None of Respondents' Case Authority Supports its Position

2 Respondents cite to Newman v. Schwartzer (In re Newman), 487 B.R.
3 193 (B.A.P. 9th Cir. 2013) for the alleged proposition that the Wildcard “can
4 be applied to any and all property as determined by the debtor up to the
5 exemption amount.”¹⁴ No such language can be located in Newman. Further,
6 Newman does not support the Respondents’ expansive interpretation of the
7 Wildcard application. In fact, the bankruptcy court in Newman compelled the
8 turnover of the debtor’s tax refund, over the debtor’s claim of a Wildcard
9 Exemption.

10 The Respondents also misunderstand this Court’s holding in Becker v.
11 Becker, 131 Nev. 857 (2015), because Becker supports Appellant’s case. This
12 Court in Becker held that a judgment debtor’s economic interest in his closely-
13 held corporations is not exempt from execution. The subsection N.R.S.
14 §21.090(1)(bb), exempts a debtor’s non-economic interest. Therefore, in that
15 the judgment debtor’s economic interest in his closely-held corporation is
16 “personal property not otherwise exempt from execution pursuant to this
17 subsection” (N.R.S. §21.090(1)(z)), the debtor’s economic interest may be
18 claimed under the Wildcard exemption.

19 A few other noteworthy aspects of Becker. In Becker, this Court looked
20 to the language of N.R.S. §21.090(1)(z), and specifically to the enumerated
21 examples of the Wildcard subsection, and noted that “stocks” are expressly
22 included in the Wildcard subsection. If the Wildcard applied to “any personal
23 property” without limitation (where “personal property is already defined
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¹⁴ Respondents’ Answering Brief page 9.

1 under N.R.S. §10.045), then there would be no purpose to give examples in
2 the statute, and no purpose for this Court to give any significance to those
3 statutory examples. Again, along that line of reasoning, it is noteworthy that
4 “earnings” or “wages” are glaringly omitted from the Wildcard examples.

5 Further, this Court in Becker also stated that under the debtor’s
6 interpretation of the exemption statute it would prevents a judgment
7 enforcement remedy, and as such the debtor’s interpretation would be an
8 “impermissible interpretation” of the exemption statute:

9 If NRS 21.090(1)(bb) and NRS 78.746(2)(b) then allowed for a
10 complete exemption of stock, judgment creditors could never get
11 the charging order remedy in NRS 78.746(1). Such an
interpretation is impermissible. (emphasis added)

12 Therefore, it likewise follows that it would be impermissible to apply the
13 \$10,000.00 Wildcard to the attachable portion of wages because such an
14 application would preclude the wage garnishment, the same way the debtor’s
15 interpretation in Becker precluded the charging order. Further, the application
16 of the \$10,000.00 to a wage garnishment would, in effect, render every
17 judgment in the State of Nevada under \$10,000.00 completely unenforceable,
18 in effect invalidating the judgment. It could also invalidate the first
19 \$10,000.00 of every judgment in Nevada.

20 In Re Gagow, 590 B.R. 517 (Bankr. Nev. 2018), likewise does not
21 support the Respondents’ position. In Gagow, the bankruptcy court sustained
22 the trustee’s objections to the claims of exemption on cash and an LLC. The
23 bankruptcy court commented that the trustee did not object to applying the
24 Wildcard to the cash or the LLC, presumably because that property “was not
25 otherwise exempt from execution.” The Respondents incorrectly argue that in

1 Gagow the debtors used the wildcard to “supplement” other exemptions.¹⁵
 2 The Gagow debtor was denied the right to claim the underlying exemption, so
 3 there was no “supplementing.”

4 Respondents also cite to the unpublished bankruptcy decision in In re
 5 Acosta and Fonseca, (Bankr. D. Nev.: 17-15347-MKN). This case did not
 6 analyze whether the Wildcard exemption could be applied to attachable
 7 wages. The trustee simply did not object to applying the \$10,000.00 to a
 8 personal injury settlement. The bankruptcy court sustained the trustee’s
 9 objection to the husband’s claim of exemption. The Acosta and Fonseca case
 10 offers no support for the problematic proposition that the \$10,000.00 Wildcard
 11 could apply to attachable wages.

12 E. Respondents Deny the Legislative History

13 The Respondents will not even acknowledge that the legislative history
 14 expressly states that “Nothing eliminates [a judgment creditor’s] just claims to
 15 garnish wages.” The Respondents argue that in disregarding the majority of
 16 the language in N.R.S. §21.090(1)(z) the statute is then declared by the
 17 Respondents to be “unambiguous.” Again, the language of N.R.S.
 18 §21.090(1)(z) supports the Appellant’s position and to the extent the
 19 Respondents argue otherwise, rendering the statute ambiguous, we look to the
 20 Legislative History that supports Appellant’s argument.¹⁶ Whether the
 21

22 ¹⁵ Respondents’ Answering Brief Page 16.

23 ¹⁶ See Nev. Board of Parole Commissioners v. Second Judicial Dist. Court of
 24 Nev., 451 P.3d 73 (Nev. 2019) *quoting* Torres v. Nev. Direct Ins. Co., 131
 25 Nev. 531, 535 (2015)(When the statute is ambiguous, meaning that it is

1 Wildcard statute is unambiguous or ambiguous, the Appellant's interpretation
2 is the correct interpretation.

3 F. The Wildcard Does Not Apply to Earnings.

4 The Nevada statutory exemption scheme for claiming an exemption on
5 earnings requires that the claim of exemption to be filed "10 days after the
6 date of each withholding of the judgment debtor's earnings." The
7 Respondents completely ignore this subsection. Respondents go on to argue
8 that a debtor could claim an interest in property of the future. Whereas the
9 statute makes it a requirement to file a claim for each withholding period
10 (N.R.S §21.112(1)), the Respondents see no problem claiming an earnings
11 exemption in August, for a paycheck that would not be earned until December,
12 for example. The Respondents made Appellant's argument for them, when
13 Susan Jackson got \$10,000.00 of her wages exempt in September 2020, then
14 in December she tried to use the same Wildcard exemption (that was already
15 being applied by the District Court order to her earnings) on her money in an
16 untraceable savings account, asserting that she hadn't exhausted the
17 \$10,000.00 yet.¹⁷

18 Applying the \$10,000.00 Wildcard to a 180-day wage garnishment goes
19 against the exemption procedure. In addition, applying a \$10,000 exemption
20 to property rights that do not come into existence yet, and may never come
21
22

23 subject to more than one reasonable interpretation, this court may look to
24 interpretive aids such as legislative history.)

25 ¹⁷ In February 2021, the District Court rejected that attempt.

1 into existence, demonstrates that the \$10,000.00 Wildcard and earnings
2 exemptions are not meant to be combined.

3 **CONCLUSION**

4 Based on the foregoing, the District Court's September 2020 Order
5 Upon Claims of Exemptions should be reversed, and this Court should rule
6 that the \$10,000.00 Wildcard does not apply to wages.

7 **ATTORNEY'S CERTIFICATE**

8 I hereby certify that this brief complies with the formatting
9 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
10 and the type style requirements of NRAP 32(a)(6) because:

11
12 This brief has been prepared in a proportionally spaced typeface using
13 Word in 14-point Times New Roman.

14
15 I further certify that this brief complies with the page- or type-volume
16 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
17 exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.

18
19 Finally, I hereby certify that I have read this appellate brief, and to the
20 best of my knowledge, information, and belief, it is not frivolous or interposed
21 for any improper purpose. I further certify that this brief complies with all
22 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
23 which requires every assertion in the brief regarding matters in the record to
24 be supported by a reference to the page and volume number, if any, of the
25 transcript or appendix where the matter relied on is to be found. I understand
that I may be subject to sanctions in the event that the accompanying brief is

1 not in conformity with the requirements of the Nevada Rules of Appellate
2 Procedure.

3 Dated this 25th day of May 2021

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May 2021, I filed the foregoing
APPELLANT’S REPLY BRIEF, which shall be served via electronic service
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