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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

Obsidian Finance Group, LLC, et al.,

Plaintiffs,

v.

Crystal Cox,

Defendant.

CASE NO.: 3:11-cv-00057-HZ

**MEMORANDUM IN SUPPORT OF
DEFENDANT CRYSTAL COX'S
MOTION FOR PARTIAL STAY AND
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

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INTRODUCTION

Plaintiffs are trying to use state law proceedings to cut off the federal appellate process, and to eliminate defendant Crystal Cox’s right to appeal. They have requested that the Multnomah County Sheriff seize and then sell Cox’s “right to pursue an appeal”—as part of Cox’s “intangible personal property.” The Multnomah County Sheriff has scheduled a sale on Cox’s right to appeal on January 16, 2013. Plaintiffs presumably plan to buy the right at auction for a nominal sum. (No one besides plaintiffs and defendant would find the right valuable.) Once plaintiffs acquire this right, it seems likely that they would try to use it to stop pursuing the appeal, whether by declining to file a reply brief, by declining to defend the cross-appeal, by declining to provide substantive argument at oral argument, or (most likely) by trying to dismiss the appeal.

This end run around Cox’s federally secured rights to pursue the appeal in this case is improper, and ought to be blocked so that the appeal can proceed the way the Federal Rules of Appellate Procedure provide. This is so for six related reasons.

First, plaintiffs’ attempt to seize Cox’s appeal rights contravenes the Federal Rules of Appellate Procedure, which provide that appeal decisions must be made by the appellant, with no provision for forcible seizure of those rights. *See* Part I, *infra*.

Second, while some federal and state statutes require an appeal bond for the amount of the judgment before defendants may appeal, the Rules reject any such requirement, thus securing poor defendants’ ability to appeal even if they cannot afford such a bond. A supersedeas bond may be required for the amount of the judgment to stay the execution of the judgment, but no bond for the amount of the judgment is required to pursue the appeal itself. Plaintiffs’ attempt, if successful, would contradict the Rules by effectively precluding poor defendants from appealing

unless they can file a supersedeas bond and thus stay the execution of the judgment. *See* Part II, *infra*.

Third, plaintiffs' attempt to block this appeal would violate Cox's First Amendment rights to independent appellate review in libel cases. *See* Part III, *infra*.

Fourth, plaintiffs' attempt to block this appeal would violate Cox's First Amendment rights to petition the Ninth Circuit for redress of grievances. *See* Part IV, *infra*.

Fifth, plaintiffs' attempt to use state procedures to block a federal appeal impermissibly intrudes on the authority of the federal courts. *See* Part V, *infra*.

Sixth, a defendant's right to pursue an appeal is not an intangible property interest under Oregon law, and thus cannot be subject to levy and sale. *See* Part VI, *infra*.

Cox therefore moves for a partial stay of execution of the judgment, in the form of a stay of any attempt to sell off Cox's right to appeal in this case. *See* FED. R. CIV. P. 62; All Writs Act, 28 U.S.C. § 1651 (providing that federal courts may take action needed to preserve their jurisdiction); *Teachers Ins. & Annuity Ass'n of America v. Butler*, 58 B.R. 1019, 1022 & n.6 (S.D.N.Y.), *aff'd*, 803 F.2d 61 (2d Cir. 1986) (district court using the All Writs Act primarily to preserve the jurisdiction of the Court of Appeals). For the same reasons, Cox moves for a temporary restraining order that would bar plaintiffs from attempting to buy her right to appeal at any forced sale, or in any transaction resulting from the forced sale.

Cox likewise moves that the Sheriff of Multnomah County be restrained under such an order from conducting the forced sale. The Sheriff is a "person[] who [is] in active concert or participation" with plaintiffs, FED. R. CIV. P. 65(d)(2)(C), in that he is planning to conduct the forced sale pursuant to a request by the plaintiffs (Exhibit 1 at 1), and in a context in which the plaintiffs or the plaintiffs' agents are likely to be the buyers. Under FED. R. CIV. P. 65(d), an

order of this court could bind the Sheriff not to effectuate plaintiffs' attempt to circumvent the federal appellate process.

Cox requests that no supersedeas bond be required for this partial stay and temporary restraining order, because such remedies would not jeopardize plaintiffs' legitimate rights, regardless of the outcome of the appeal. The Ninth Circuit has held that, "[t]he district court may dispense with the filing of a bond [under Rule 65(c)] when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct," *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), and in particular "where requiring security would effectively deny access to judicial review," *California ex rel. Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1325 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

The logic of these precedents applies to this case, both as to the restraining order and the partial stay. Dispensing with the filing of a bond in this case is necessary to avoid "deny[ing] access to judicial review." "[T]here is no realistic likelihood of harm" to the plaintiffs' rights from blocking any forced sale of Cox's right to appeal in this case—for the reasons given below, plaintiffs are not entitled to prompt any such forced sale in the first place. Therefore, no bond should be required as to the limited remedies sought in this motion.

STATEMENT OF FACTS

On November 29, 2011, a jury ruled in favor of plaintiffs in their libel case against defendant Crystal Cox. On March 27, 2012, this Court denied Cox's motion for new trial, and on March 30, 2012, Cox filed a notice of appeal. On April 24, 2012, plaintiffs filed a notice indicating that they were cross-appealing from this Court's July 7, 2011, order, which granted Cox partial summary judgment as to most of the blog posts over which plaintiffs sued. On December 4, 2012, plaintiffs registered the judgment with the Oregon state court.

The case is now in the middle of being briefed before the Ninth Circuit. Cox's opening brief was filed on October 11, 2012; proposed *amicus curiae* briefs from SCOTUSblog.com and the Reporters Committee for Freedom of the Press were submitted on October 17, 2012. Plaintiffs' brief in response, and opening brief on cross-appeal, was filed on December 10, 2012.

On January 3, 2013, the Sheriff of Multnomah County levied on Cox's "intangible personal property," "including her right to pursue an appeal in [*Obsidian Finance Group v. Cox*]." (Exhibit 1 at 1.) This was done pursuant to a writ of execution that plaintiffs had obtained from the Circuit Court of Oregon in Multnomah County. (Exhibit 2 at 1-2.) The purported sale of this right is to take place on January 16, 2013. (Exhibit 1 at 1.)

ARGUMENT

I. The Federal Rules of Appellate Procedure Preclude Seizing or Otherwise Transferring the Appellant's Powers to Pursue the Appeal

Defendant Cox is the appellant in this case, as well as the cross-appellee with respect to plaintiffs' appeal from this court's July 7, 2011, order limiting the scope of Cox's potential liability. Under federal law, there is one person who may decide whether to file a reply brief: the appellant. FED. R. APP. P. 28.1(c)(3) ("The appellant . . . may . . . reply to the response in the appeal."). There is one person who must file a responsive brief in the cross-appeal: the appellant. *Id.* ("The appellant must file a brief that responds to the principal brief in the cross-appeal . . ."). There is one person who is specified as opening and concluding the oral argument: the appellant. FED. R. APP. P. 34(c). And the appellant's approval is required for a case to be dismissed. FED. R. APP. P. 42(b).

Under a narrow set of circumstances, a new appellant may be substituted for an old one. FED. R. APP. P. 43; *Sable Communications of Cal., Inc. v. Pacific Tel. & Tel. Co.*, 890 F.2d 184, 191 n.13 (9th Cir. 1989) ("substitution under Rule 43(b) is appropriate only where 'necessary,'

and “[n]ecessary” means that a party to the suit is unable to continue,’ ‘such as where a party becomes incompetent or a transfer of interest in the company or property involved in the suit has occurred’”) (citation omitted). But that is the one provision that the rules make for substituting one appellant for another, and it is inapplicable here. Cox is fully able to continue with the appeal, and plaintiffs are trying to transfer an interest in the defense of the appeal itself, not in any underlying “company or property involved in the suit.”

Plaintiffs thus seek to have the Multnomah County Sheriff seize from appellant a right (the right to pursue the appeal) that, under the Rules, is solely a right of the appellant. They seek to have that right sold to someone who, under the Rules, may not exercise it. And if they plan to themselves buy at the auction the appellant’s rights to pursue the appeal, then their plan is to have the same parties (the plaintiffs) exercise both the appellant’s rights and the appellees’ rights—the antithesis of the carefully designed scheme that the Rules set forth.

II. The Federal Rules of Appellate Procedure Secure Defendants’ Rights to Appeal, Even When Defendants Lack the Assets for Filing a Supersedeas Bond

Plaintiffs’ stratagem contravenes the Federal Rules of Appellate Procedure in another way: it undermines the rights of defendants-appellants who, like Cox, lack the money to file a supersedeas bond for the amount of the trial judgment.

Under the Rules, such a supersedeas bond is necessary to stay the execution of the judgment. But no bond in the amount of the judgment is required simply to appeal. FED. R. CIV. P. 62(d).

This is a deliberate decision of the Rules’ drafters in favor of generally protecting defendants’ ability to appeal, even when the defendants cannot afford the bond. Federal law provides that to appeal certain kinds of cases, a losing defendant must ordinarily put up a bond for the amount of the judgment (or more). *See, e.g.*, 7 U.S.C. §§ 18(e), 499g(c) (appeals in

certain agricultural regulation cases); 26 U.S.C. § 7485 (appeals in certain tax cases). Some states take the same view. *See, e.g.*, 820 ILL. COMP. STAT. 305/19; NEB. REV. STAT. § 30-1601; VA. CODE ANN. § 16.1-107. But the Federal Rules of Appellate Procedure have rejected any such amount-of-the-judgment bond requirement for normal civil appeals. “A person who cannot furnish supersedeas bond does not lose his right to appeal.” *Koster & Wythe v. Massey*, 262 F.2d 60, 62 (9th Cir. 1958); *see also Strong v. Laubach*, 443 F.3d 1297, 1299 (10th Cir. 2006) (“A judgment debtor who is unable or is unwilling to post a supersedeas bond retains the right to appeal even if the judgment is executed.”).

Yet if plaintiffs’ end run around the Rules were accepted, then poor defendants in civil cases would routinely lose their rights to appeal. Defendants would not be able to afford to get a bond for the amount of the judgment. Plaintiffs would then be able to get sheriffs to levy on the defendants’ right to pursue the appeal. Plaintiffs would buy the right cheaply at the sheriff’s sale, since nobody would be competing with them at the auction. And they would then use the newly acquired right to drop the appeal against them.

The appeal bond requirement that the Federal Rules rejected would thus come in through the back door. Poor defendants would be unable to effectively challenge the judgments against them. And the development of the law would be distorted because appellate courts would be unable to hear the defendants’ appeals. This is not consistent with the system that the Rules strive to create.

III. Forced Sale of Cox’s Appeal Rights Would Undermine the First Amendment Independent Appellate Review Doctrine

In First Amendment cases, defendants who lose at trial are entitled to independent appellate review. “The requirement of independent appellate review reiterated in *New York*

Times Co. v. Sullivan is a rule of federal constitutional law.” *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 510 (1984). This is so for two reasons, both applicable here.

First, because erroneous denial of constitutional protection is a violation of constitutional rights, appellate courts must “exercise [independent] review in order to preserve the precious liberties established and ordained by the Constitution.” *Id.* at 511. Second, independent appellate review should help “confine the perimeters of any unprotected category within acceptably narrow limits in an effort to ensure that protected expression will not be inhibited.” *Id.* at 505. The content of many Free Speech Clause rules “is not revealed simply by [the rule’s] literal text”; rather, the rules must be “given meaning through the evolutionary process of common-law adjudication.” *Id.* at 502. Therefore, appellate judges, “as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold.” *Id.* at 511. This rule has been repeatedly applied in libel cases. *See, e.g., Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 685–86 (1989); *Time, Inc. v. Pape*, 401 U.S. 279, 284 (1971); *New York Times Co. v. Sullivan*, 376 U.S. 254, 284–85 (1964).

Here, as in *Bose* and as in the other cases cited above, defendant is claiming that her First Amendment rights have been violated, and is seeking appellate review of those claims. And here, as in the other cases, appellate review is part of the way in which the terms of First Amendment law—such as “public official” or “matters of public concern”—are given meaning. *See, e.g., Snyder v. Phelps*, 131 S. Ct. 1207, 1216 (2011) (holding, in a tort case involving the intentional infliction of emotional distress, that *Bose* independent appellate review must be used to decide whether a statement is on a matter of public concern); *Ferguson v. Union City Daily Messenger, Inc.*, 845 S.W.2d 162, 166–67 (Tenn. 1992) (holding that *Bose* independent appellate review must be used to decide whether plaintiff was a public official).

The Federal Rules of Appellate Procedure safeguard this “rule of federal constitutional law,” *Bose*, 466 U.S. at 510, by assuring that defendants who raise First Amendment defenses may indeed get “independent appellate review” of those defenses, even if they are too poor to afford a supersedeas bond for the amount of the judgment. *See* Parts I and II, *supra*. Yet plaintiffs’ attempt to seize defendant’s appeal rights would strip Cox of the independent appellate review to which she is constitutionally entitled. And if plaintiffs’ proposed approach were accepted, then most other poor libel defendants would be stripped of their independent appellate review rights as well.

IV. Forced Sale of Cox’s Appeal Rights Would Violate the Petition Clause

The First Amendment protects the right “to petition the Government for a redress of grievances,” and that includes the right to seek redress in court. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 524–25 (2002). The Petition Clause does not protect baseless or sham lawsuits, *id.* at 526, and it would likewise not protect federal appeals that are not authorized by federal law. But once the law provides for a right to sue or to appeal, the Petition Clause protects a nonfrivolous lawsuit or appeal from interference.

Thus, for instance, a court’s or executive agency’s use of antitrust law, labor law, or other laws to penalize litigants for their nonfrivolous litigation would violate the Petition Clause. *Id.* at 528–33. That is also true when a private party tries to use a court to impose liability on litigants for such nonfrivolous litigation. *See, e.g., Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 56 (1993); *Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 643–44 (9th Cir. 2009). Even intrusive government investigations, without any actual imposition of liability, may violate the Petition Clause when the investigations are founded on the targets’ nonfrivolous litigation. *White v. Lee*, 227 F.3d 1214, 1232–34 (9th Cir. 2000). Likewise, a

government entity's threat of retaliating against a litigant unless he drops an appeal could violate the Petition Clause as well. *Soundview Assocs. v. Town of Riverhead*, 725 F. Supp. 2d 320, 342 (E.D.N.Y. 2010). Use of government processes may violate the Petition Clause even when it merely "chill[s]" people's exercise of their right to sue or to appeal. *White*, 227 F.3d at 1233; *Soundview Assocs.*, 725 F. Supp. 2d at 341.

Here, plaintiffs are trying to use government processes to do more than just chill Cox's right to appeal: they are trying to actually seize that right from her. Such a seizure would deny Cox's right to petition the Ninth Circuit for redress of grievances, and would thus violate the First Amendment.

V. Plaintiffs' Attempt to Use State Remedies to Interrupt a Federal Appeal Violates the Supremacy of Federal Law

Plaintiffs' attempt to seize Cox's federal appeal rights also violates federalism principles, because it tries to use state remedies to interrupt the course of a federal appeal. Whether a defendant is entitled to pursue (or dismiss) an appeal must be decided by federal courts applying federal law, not by state courts applying state law.

To be sure, federal law sometimes incorporates state law. If, for instance, a federal court must decide who owns a piece of land located in a state, that question is resolved using state property law: property in real estate is a creature of state law. Likewise, contracts to transfer even federally created property interests (such as copyrights) are usually interpreted using state law, because there is no general federal law of contract. *See S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1088 (9th Cir. 1989). But such application of state law may not supersede federal law. *See, e.g., Gardner v. Nike, Inc.*, 279 F.3d 774, 781 n.5 (9th Cir. 2002) (holding that federal law related to transfer of copyrights trumps contrary state rules).

Here, Cox’s right to pursue an appeal from an adverse federal district court decision is created by federal law. As Part I discussed, federal law dictates who is to exercise this right, and provides no mechanism for transfer, voluntary or involuntary, other than the substitution procedure specified in FED. R. APP. P. 43. State sheriffs and state judges applying state law ought not be allowed to interfere with the exercise of this right.

VI. Oregon Law Precludes Levying on a Defendant’s Appeal Rights, Because Those Rights Do Not Constitute “Property”

Oregon law allows judgments to be executed through levies on “property,” whether tangible or intangible. *E.g.*, OR. REV. STAT. § 18.884 (allowing levying on “intangible property”). But rights to appeal are not property under Oregon law.

Oregon courts recognize that not all legally secured rights are property rights. *See, e.g.*, *Bash v. Fir Grove Cemeteries, Co.*, 581 P.2d 75, 79 (Or. 1978) (holding that a “legal right” to have the remains of one’s spouse undisturbed, though “an interest long recognized in our law and in the law of other cultures,” is nonetheless “not a property right”). Rather, property rights are limited to “something that is or may be owned or possessed, or the exclusive right to possess, use, enjoy, or dispose of a thing.” *In re Marriage of Massee*, 970 P.2d 1203, 1212 (Or. 1999). In particular, a hope or expectation of financial gain is not itself a property interest under Oregon law. *Perrin v. Oregon State Bd. of Higher Educ.*, 515 P.2d 409, 411 (Or. Ct. App. 1973) (“hope” of getting tenure “is not a property right”); *In re Marriage of Githens*, 204 P.3d 835, 841 (Or. Ct. App. 2009) (“expectancies,” such as interests in revocable trusts, “do not constitute ‘property’”); *Prudential Ins. Co. v. Weatherford*, 621 P.2d 83, 87 (Or. Ct. App. 1980) (interest as beneficiary of a still-living person’s life insurance policy “was not a property interest, but a mere expectancy”).

A defendant-appellant's right to pursue an appeal, in the hope of erasing a judgment against her, does not qualify as a property right under these precedents. Neither federal law nor Oregon law has ever described this right as being "owned." It lacks the normal incidents of ownership, such as alienability. *See* Part I, *supra*. It is not "something that . . . may be . . . possessed," nor does it constitute an "exclusive right to possess, use, enjoy, or dispose of a thing."

The right of appeal is not even equivalent to a plaintiff's contingent possibility of receiving a sum of money in a lawsuit, sometimes labeled a "chose in action." Such a chose in action is "defined as a personal right not reduced into possession but recoverable by a suit at law," *Barber v. Department of Revenue*, 5 Or. Tax 342, 344 (1973), or "[a] right to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action," *Nugent v. Ashcroft*, 367 F.3d 162, 174 (3d Cir. 2004). Cox's right was not a right to receive or recover possession of property, but simply a right to resist having to turn over her property.

To be sure, the right to appeal may in practice have some value to a defendant, and stripping defendant of that right may have some value to a plaintiff. But that is not sufficient to make a right into a property right. As noted above, the hope of getting tenure, an interest in a revocable trust, and an interest as beneficiary of a still-living person's life insurance policy have potential economic value, but are not property. *See Perrin*, 515 P.2d 409; *Githens*, 204 P.3d 835; *Prudential Ins. Co.*, 621 P.2d 83.

Likewise, a hypothetical defendant might find it valuable to criticize the plaintiff (in nonlibelous ways) after plaintiff wins a verdict against defendant. Sometimes, this might even be financially valuable, for instance if it helps the defendant raise funds for the appeal, or if

defendant is a newspaper that draws more paying readers through such criticisms. A plaintiff might likewise find it valuable to stop the defendant from criticizing the plaintiff. Yet surely such a plaintiff may not have the relevant sheriff levy on and sell off defendant's right to criticize plaintiff. Nor can this hypothetical be distinguished on the grounds that the right to speak is protected by the First Amendment. The right to use legally established judicial procedures is also protected by the First Amendment, specifically by the Petition Clause. *See* Part IV, *supra*.

Similarly, say that a hypothetical defendant physically injures plaintiff; plaintiff sues, but also complains to the police, and defendant is criminally prosecuted and convicted. Defendant's right to appeal that conviction can have great value to defendant, including financial value, in the sense that a successful appeal will free defendant and let him continue making money. And plaintiff may derive great value from blocking defendant's appeal—both emotional value (from seeing his assailant in prison) and financial value (if the sentence comes with a restitution order that can be enforced with more effective remedies than a normal civil judgment carries). Yet surely plaintiff may not try to seize defendant's right to appeal his criminal conviction, in the process of executing on the civil judgment.

Cox's right to appeal the judgment against her is thus not a property right under Oregon law, just as an expectancy under a life insurance policy, the hope of getting tenure, an individual's right to speak, and a criminal defendant's right to appeal his conviction are not property rights. There is thus no basis in Oregon law to levy on and sell off Cox's right to appeal.

CONCLUSION

For each of the reasons given above, any execution of the judgment that would lead to a forced sale of defendant Cox's right to pursue an appeal should be stayed, plaintiffs should be

ordered not to attempt to buy Cox's right at any such forced sale, and the Sheriff of Multnomah County should be ordered not to conduct the sale.

In view of the pending January 16, 2013 sale, defendant Cox requests that her Motion for a Temporary Restraining Order be heard on an expedited basis. Defendant Cox suggests that the hearing on the Motion for Partial Stay be held at a later time after a full briefing schedule has been accomplished.

DATED this 7th day of January, 2013.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 4,056 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of authorities, signature block, and any certificates of counsel.



SHERIFF'S NOTICE OF JUDICIAL SALE MULTNOMAH COUNTY SHERIFF'S OFFICE

Case No. 1212-15329

By virtue of a Writ of Execution issued out of the Circuit Court of the State of Oregon from Multnomah County, in the case entitled: In the Matter of a Foreign Judgment Rendered in the Case of Obsidian Finance Group, LLC and Kevin D. Padrick, Plaintiffs vs Crystal Cox, Defendant, on the 3rd day of January 2013, I levied upon the following intangible personal property of Crystal Cox, judgment debtor; to-wit:

All of judgment debtor's rights and interests in connection with the case originally filed in the United States District Court for the District of Oregon, styled as *Obsidian Finance Group v. Cox*, Case No. 3:11-cv-57-HZ, and now pending in the United States Court of Appeals for the Ninth Circuit, Case Nos. 12-35238 and 12-35319, including her right to pursue an appeal in the matter.

Notice is hereby given that on **Wednesday the 16th day of January 2013, at 10:30 AM** at the east front entrance to the Multnomah County Courthouse, 1021 SW 4th Ave., Portland, OR, in Multnomah County, Oregon, I will sell the above described intangible property to the highest bidder for **cash** in hand; judgment creditor may bid against the judgment.

Full payment at time of sale in U.S. Currency required – no checks of any type accepted.

All potential bidders are subject to inspection of funds prior to or during participation in the auction. Individuals without proof of sufficient funds will not be allowed to participate.

DANIEL STATON,
Sheriff

By: 

Marshall Ross, Senior Deputy
503-251-2516
Civil Unit



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

IN THE MATTER OF A FOREIGN
JUDGMENT RENDERED IN THE CASE OF

OBSIDIAN FINANCE GROUP, LLC and
KEVIN D. PADRICK ,
Plaintiffs,

vs

CRYSTAL COX,
Defendant.

Case No. 1212-15329

**Notice of Levy
on Intangible Property**

I HEREBY CERTIFY, that I received the within Writ of Execution, on the 2nd day of January 2013.

I hereby levy upon the following intangible personal property of judgment debtor: Crystal Cox; to-wit:

All of judgment debtor's rights and interests in connection with the case originally filed in the United States District Court for the District of Oregon, styled as *Obsidian Finance Group v. Cox*, Case No. 3:11-cv-57-HZ, and now pending in the United States Court of Appeals for the Ninth Circuit, Case Nos. 12-35238 and 12-35319, including her right to pursue an appeal in the matter.

DANIEL STATON,
Sheriff

By:

Marshall Ross, Senior Deputy, DPSST #21635
Civil Unit

January 3, 2013

MULTNOMAH COUNTY SHERIFF'S OFFICE
DAN STATON,
Sheriff

CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH

IN THE MATTER OF A FOREIGN)
JUDGMENT RENDERED IN THE CASE OF)

OBSIDIAN FINANCE GROUP, LLC and)
KEVIN D. PADRICK,)

Plaintiffs,)

v.)

CRYSTAL COX,)

Defendant.)

Case No. 1212-15329

United States District Court for the
District of Oregon, Civil No.
CV11-0057HZ

INSTRUCTIONS TO SHERIFF

INSTRUCTIONS TO SHERIFF OF MULTNOMAH COUNTY:

I am an attorney for Obsidian Finance Group, LLC and Kevin D. Padrick, the plaintiffs in the above-referenced action. Set forth below are instructions, provided pursuant to ORS § 18.875, for conducting the sale of intangible personal property in connection with a judgment obtained against Crystal Cox, the defendant in this action. You are hereby instructed to carry out the terms of the writ of execution that has been forwarded to you by the Multnomah County Circuit Court.

The names and addresses of the judgment creditors in this case are Obsidian Finance Group, LLC located at 5 Centerpointe Drive, Suite 590, Lake Oswego, Oregon, 97035 and Kevin Padrick located at PO Box 3510, Sunriver, Oregon, 97707. The name and address of the judgment creditor's attorney is David S. Aman located at 888 SW Fifth Avenue Suite 1600, Portland, OR 97204.

The name and address of the judgment debtor is Crystal Cox located at PO Box 2027, Port Townsend, Washington, 96368. To my knowledge, the judgment debtor is not represented by an attorney in this matter. The sheriff must give the judgment debtor notice by mailing or delivering a copy of the writ of execution to her pursuant to ORS § 18.888.

The personal property to be levied is intangible personal property, specifically all of judgment debtor's rights and interests in connection with the case originally filed in the United States District Court for the District of Oregon, styled as *Obsidian Finance Group v.*

1 Cox, Case No. 3:11-cv-57-HZ, and now pending in the United States Court of Appeals for
2 the Ninth Circuit, Case Nos. 12-35238 and 12-35319, including her right to pursue an appeal
3 in the matter. Pursuant to ORS § 18.884, the sheriff must file with the court administrator a
notice of levy identifying the intangible personal property to be sold pursuant to this writ of
execution.

4 The property described in the writ of execution is not residential property. No
5 portion of the property to be levied on is a condominium unit, manufactured dwelling, or
floating home held as inventory for sale or lease in the regular course of business.

6 A true copy of the judgment and money award are attached to these
7 instructions.

8 Your assistance in connection with this matter is appreciated. Please contact
me at 503.802.2053 if you have any questions or if I can be of any assistance.

9 DATED this 19th day of December, 2012.

10 TONKON TORP LLP

11
12 By 

David S. Aman OSB No. 962106
Direct Telephone: 503.802.2053
Direct Facsimile: 503.972.2753
E-mail: david.aman@tonkon.com
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **INSTRUCTIONS TO SHERIFF**

on:

Crystal L. Cox
PO Box 2027
Port Townsend, WA 96868

☐ by faxing a copy thereof to each attorney at their last-known facsimile number on the date set forth below;

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to Crystal L. Cox's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be e-mailed to each attorney at said attorney's last-known email address on the date set forth below;

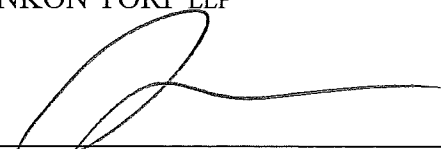
☐ by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below.

Dated this 19th day of December, 2012.

TONKON TORP LLP

By


David S. Aman OSB No. 962106
Direct Telephone: 503.802.2053
Direct Facsimile: 503.972.2753
E-mail: david.aman@tonkon.com
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attorneys for Plaintiffs

033992/00010/4174610v1

CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH

IN THE MATTER OF A FOREIGN
JUDGMENT RENDERED IN THE CASE OF
OBSIDIAN FINANCE GROUP, LLC and
KEVIN D. PADRICK,
Plaintiffs,
v.
CRYSTAL COX,
Defendant.

Case No. 1212-15329
United States District Court for the
District of Oregon, Civil No.
CV11-0057HZ
WRIT OF EXECUTION

TO: SHERIFF OF MULTNOMAH COUNTY:

On or about December 4, 2012, a foreign judgment was entered in the register for this case in the above-entitled court, in favor of Plaintiffs Obsidian Finance Group, LLC and Kevin D. Padrick and against Defendant Crystal Cox, providing a money award in the principal amount of \$2,500,000. The foreign judgment is based on a money judgment entered in the United States District Court for the District of Oregon on December 8, 2011.

Now in the name of the State of Oregon, you are hereby commanded to sell intangible personal property belonging to the judgment debtor. The proceeds from such sale shall be used to satisfy the (1) judgment's principal amount of \$2,500,000, (2) accrued post-judgment interest in the amount of \$9,246.58, (3) post-judgment interest accruing on the judgment per diem \$616.44, and (4) the costs of and upon this writ. Please perform the requested actions within 60 days after you have received this writ.

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PAGE 1 - WRIT OF EXECUTION

1 The mailing address for the judgment debtor Crystal Cox, PO Box 2027, Port
2 Townsend, Washington, 96368.

3 DATED this _____ day of _____, 201____.

4 COURT ADMINISTRATOR

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6 By: _____
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PAGE 2 - WRIT OF EXECUTION

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **WRIT OF EXECUTION** on:

Crystal L. Cox
PO Box 2027
Port Townsend, WA 96868

☐ by faxing a copy thereof to each attorney at their last-known facsimile number on the date set forth below;

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to Crystal L. Cox's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be e-mailed to each attorney at said attorney's last-known email address on the date set forth below;

☐ by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below.

Dated this 19th day of December, 2012.

TONKON TORP LLP

By 

David S. Aman OSB No. 962106
Direct Telephone: 503.802.2053
Direct Facsimile: 503.972.2753
E-mail: david.aman@tonkon.com
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attorneys for Plaintiffs

033992/00010/4174618v1

CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH

IN THE MATTER OF A FOREIGN
JUDGMENT RENDERED IN THE CASE OF

OBSIDIAN FINANCE GROUP, LLC and
KEVIN D. PADRICK,

Plaintiffs,

v.

CRYSTAL COX,

Defendant.

Case No. 1212-15329

United States District Court for the
District of Oregon, Civil No.
CV11-0057HZ

PRAECIPE FOR EXECUTION

TO: THE COURT ADMINISTRATOR OF THE ABOVE-ENTITLED COURT:


You are hereby requested and instructed to issue an execution to the Sheriff of
Multnomah County, Oregon, in the above-entitled case on the General Judgment entered on
December 4, 2012, in favor of plaintiffs.

It is hereby certified that the provisions of the writ of execution conform to the
terms of the aforementioned General Judgment in this matter.

DATED this 19th day of December, 2012.

TONKON TORP LLP

By


David S. Aman OSB No. 962106
Direct Telephone: 503.802.2053
Direct Facsimile: 503.972.2753
E-mail: david.aman@tonkon.com
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PRAECIPE FOR EXECUTION**

on:

Crystal L. Cox
PO Box 2027
Port Townsend, WA 96868

☐ by faxing a copy thereof to each attorney at their last-known facsimile number on the date set forth below;

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to Crystal L. Cox's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be e-mailed to each attorney at said attorney's last-known email address on the date set forth below;

☐ by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below.

Dated this 19th day of December, 2012.

TONKON TORP LLP

By



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