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IT IS SO ORDERED.

This matter is dismissed, and the case is REMANDED to the Trial Court for further actions consistent with this Order.

Colville Tribal Credit, Appellant,

vs.

Mathew E. Pakootas and Lisa L. Ortiz, Appellees.

Case No. AP07-002, 5 CTCR 09, 35 ILR 6017

9 CCAR 34

[Appearances by David D. Shaw, Attorney for Appellant Colville Tribal Credit; Appellee Matthew E. PAKOOTAS, pro se; and Tim Liesenfelder for Appellee Lisa L. Ortiz.

Trial Court Case No. CV-CD-2005-25018]

Decided on the briefs, January 8, 2008.

Before Presiding Justice Theresa M. Pouley, Justice Dennis L. Nelson, and Justice Conrad Pascal.

Nelson, J., for the Panel.

I. SUMMARY

On February 1, 1999, the marital community of appellees Matthew E. Pakootas and Lisa L. Ortiz (formerly Lisa L. Pakootas) executed a promissory note in favor of Colville Tribal Credit (CTC) in the amount of \$2868.20. In accordance with the provisions of the note, Mr. and Mrs. Pakootas were each jointly and severally liable for the debt.

They divorced on January 21, 2000. The Divorce Decree apportioned between them payment of the amount then owing to CTC (\$1840.25) as follows: Matthew Pakootas to pay "up to \$500.00" and Lisa Pakootas Ortiz to pay the balance of \$1340.25.

Little or nothing was paid on the debt after the divorce which caused CTC to file a complaint to collect the balance due. On March 24, 2004, judgment was entered by the Colville Tribal Court against Matthew Pakootas and Liza Pakootas Ortiz in the amount of \$8227.68³⁴. The judgment represented \$2,598.98 in principal, interests, and costs, and \$5,628.70 for attorney's fees.

Mr. Pakootas subsequently filed a complaint³⁵ in the Colville Tribal Court in which he sought to make Liza Ortiz, formerly Lisa Pakootas, solely liable and to absolve him from the judgment obtained by CTC. He was awarded judgment against Lisa Ortiz in the amount of \$8,227.68 plus costs. In addition, CTC was ordered to "cease and desist" from collecting on "Loan #27999 from the Tribal Dividend Payments of Matthew Pakootas....". CTC took exception to the order and subsequently moved for a limited appearance before the court to vacate or reconsider judgment. The motion was denied. We reverse.

II. ISSUES

1. Where Colville Tribal Credit entered into a binding loan contract signed by both spouses to a marriage, and the spouses subsequently received a divorce decree providing that one spouse shall have primary responsibility for the loan payment, may Colville Tribal Credit continue to collect in full on its loan and judgment from both spouses?

2. Where Colville Tribal Credit has entered into a binding contract providing payment and collection rights, and successfully adjudicated those rights through prior litigation, may the trial court subsequently modify those rights without providing

³⁴ *Colville Tribal Credit v. Pakootas and Ortiz*, CV-CD-2001-21151.

³⁵ *Pakootas v. Ortiz*, CV-CO-2005-25018. CTC was not a party to this action.

Colville Tribal Credit notice and opportunity to present evidence and arguments?

3. Whether the trial court erred to the extent it found Colville Tribal Credit unhindered in its ability to collect on Lisa Ortiz's per capita payments.

III. STANDARD OF REVIEW

The issues before us are solely questions of law. Therefore, we review the matter *de novo*. *Colville Confederated Tribes v. Naff*, 2 CCAR. 2 CTCR 08, 22 ILR 6032 (1995). The Colville Tribal Court of Appeals engages in *de novo* review in those cases which concern issues of law. *In Re the Welfare of R.S.P.V.*, 4 CCAR 68, 3 CTCR 07, 26 ILR 6039 (1998).

IV. DISCUSSION

The facts before us are undisputed. Briefly restated, they are: The appellees contracted a debt, jointly and severally, during the time they were married. They divorced. The divorce decree assigned primary responsibility of the debt to the wife. Little or nothing was paid on the debt following the divorce.

The creditor (CTC) subsequently sued both husband and wife for non-payment. A judgment found both liable for the unpaid debt.

The husband then filed a separate complaint seeking relief from the judgment. CTC was not a party to this action nor was it invited to intervene. The trial court, without notice to CTC, held the wife to be solely liable for the debt and ordered CTC to stop execution of its judgment against property of the husband.

1. Whether a creditor may collect a contracted, joint and several, debt from either spouse despite the fact that their subsequent divorce decree ordered primary liability to the wife.

Actions for divorce, by their very nature, are unique to the marital community. The assets of the community are distributed and the community indebtedness is apportioned between the parties. Debts contracted jointly and severally by the spouses of the community, however, remain jointly and severally owed to the creditor. *Hanson v. Hanson*, 55 Wash.2d 884, 350 P.2d 859.

Divorce courts often order one spouse primarily liable on a community debt. That, however, does not relieve the other spouse of liability on the debt. "Such a decree can adjudicate only rights relating to debts and taxes as between the parties. This is because in a divorce action the court cannot adjudicate the rights of creditors who are not parties to the action. *Hanson* at 887. Emphasis in the original. Should a secondarily liable spouse pay down the debt or pay it off, he or she can apply to the divorce court for reimbursement from the primarily liable spouse. *Proff v. Maley*, 14 Wash.2d 287, 128 P.2d 330.

For the foregoing reasons, CCT may legally collect the community debt contracted during the marriage from either spouse subsequent to the marriage being dissolved.

2. Where Colville Tribal Credit has entered into a binding contract providing payment and collection rights, and successfully adjudicated those rights through prior litigation, may the trial court subsequently modify those rights without providing Colville Tribal Credit notice and opportunity to present evidence and arguments?

The payment and collection rights to the former spouses marital indebtedness was adjudicated against each of them and in favor of CCT. *Colville Tribal Credit v. Pakootas and Louie*, CV-CD 2001-21151. The record is not clear whether CCT executed its judgment against Mr. Pakootas's per capita distribution or whether it had simply indicated to him that such was its intention.

Nevertheless, Mr. Pakootas subsequently filed a complaint against Ms. Ortiz asking the court to find her solely liable for the indebtedness and judgment on the grounds that he was not primarily liable because of the divorce court's order apportioning the greater part of the indebtedness to Ms. Ortiz. The Court granted Mr. Pakootas judgment to the extent that it found him not liable on the debt and ordered CTC to not execute its judgment against Mr. Pakootas's per capita distribution³⁶. CTC

³⁶ *Pakootas v. Louie*, CV-CO-2005-25018 (2005).

was not a party to this action.

CTC, after receiving a copy of the Court's judgment, moved for a limited appearance to move to vacate or reconsider the judgment relieving Mr. Pakootas from liability on CTC's judgment against him. The Court denied the motion and entered its judgment on February 14, 2007.

In its judgment, the court wrote that it was "aware that Colville Tribal Credit did not have notice or full and fair opportunity to litigate the issue of its ability to collect debts in full from either party." This sentence was followed by a footnote that stated: "*Grogan v. Garner*, 378 U.S. 279.³⁷" Nothing further was written about CTC's failure to receive notice of the action concerning its property or its lack of opportunity to participate in a hearing in which property was taken from it. We are at a loss to understand why the trial court specifically recognized a salient issue and then failed to address it in a meaningful manner.

CTC was and is entitled to collect its judgment from either Matthew Pakootas or Lisa Ortiz. The judgment is in the amount of \$8,227.68 and is the property of CTC. One cannot be deprived of property without due process of law. *U.S. Constitution, Amendment XIV, Section 1; Indian Civil Rights Act*, 26 U.S.C. 1302; *Civil Rights Act of the Confederated Tribes of the Colville Indian Reservation*, Ch. 1-5-2(h). Due process of law mandates notice and an opportunity to be heard. *International Shoe Co. v. Washington*, 326 U.S. 310. CTC received neither in a meaningful manner.

CTC raised the issue of judicial estoppel in the Motion to Vacate or Reconsider. We are again at a loss to understand why the trial court did not address this issue. Judicial estoppel "precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested

³⁷ *Grogan v. Garner*, 378 U.S. 279, held that, in a complaint challenging the discharge of a fraudulent claim in bankruptcy, the standard of evidence was by a preponderance. The only similarity between *Grogan* and this matter is to what extent, and how, collateral (judicial) estoppel should apply to the issue before the court. The trial court did not address the issue of judicial estoppel although it was raised by CTC in its Motion to Vacate or to Reconsider.

and decided in the first action". *Kelly-Hansen v. Kelly-Hansen*, 87 Wash. App. 320, 328, 941 P.2d 1108.

Matthew Pakootas effectively relitigated the issue whether he was jointly or severally liable for the debt owed CTC³⁸ when he asked the trial court to find Lisa Ortiz solely liable. The issue of whether Matthew Pakootas owed CTC on the debt was "actually contested and decided in the first action"³⁹. The trial court should have addressed the question of judicial preclusion and should have dismissed the claim on those grounds.

3. Whether the trial court erred to the extent it found Colville Tribal Credit unhindered in its ability to collect on Liza Ortiz's per capita payments.

Because of the reasoning set forth above, it is not necessary to decide this issue .

For the foregoing reasons, the judgment of the trial court is REVERSED and the matter REMANDED for proceedings consistent with this opinion.

James H. GALLAHER Jr., Appellant,

vs.

Cheryl D. SCHROCK, COLVILLE INDIAN HOUSING AUTHORITY, Appellees,

Case No. AP07-020, 5 CTCR 10

9 CCAR 39

[Appellant is pro se.

Appellees represented by Edmund Clay Goodman, Attorney, Portland OR.

Trial Court Case No. CV-OC-2007-27006]

Decided on the record, January 29, 2008.

Before Chief Justice Anita Dupris, Justice Earl L. McGeoghegan and Justice Theresa

³⁸ *Pakootas v. Louie*, CV-OC-2005-25018 (2005).

³⁹ *Colville Tribal Credit v. Pakootas and Ortiz*, CV-CD-2001-21151.