

**FILED**

MAY 12 2006

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re )  
 )  
RICHARD C. BRUMGARD and KAY E. )  
BRUMGARD, )  
 )  
Debtors. )

Chapter 13  
No. 4-02-04327-EWH

\_\_\_\_\_)  
 )  
YOUNG BUILDERS, INC. PROFIT )  
SHARING & RETIREMENT TRUST, )  
 )  
Plaintiff, )

Adv. No .4-02-00117

v. )  
 )  
RICHARD C. BRUMGARD and KAY E. )  
BRUMGARD, )  
 )  
Defendants. )

**MEMORANDUM DECISION  
ON REMANDED MOTION TO  
RECONSIDER CLAIMS AND  
TO ALTER OR AMEND  
FINDINGS AND ORDERS**

INTRODUCTION

Should certain claims, based on three different judgments, be denied because the judgments were not timely renewed? Based on the renewal date of two of the judgments, the judgments had not expired when Debtors filed their petition and, therefore, have still not expired because the Debtors' case remains open. The third judgment was not timely renewed prior to the Debtors' petition date and, therefore, is not a claim against the Debtors or their bankruptcy estate.

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## PROCEDURAL HISTORY

On September 1, 2005, a Memorandum Decision (“Memorandum Decision”) and Order was issued determining, among other things, that the Pearce Judgment was not timely renewed.<sup>1</sup> The Plaintiff filed a Notice of Appeal of the Memorandum Decision on October 7, 2005. Thereafter, Debtors filed a Motion to Reconsider Claims and to Alter or Amend Findings and Orders (“Motion”). The Motion seeks a determination that certain judgments held by the Trust and the Youngs were not timely renewed as follows:

- A. Trust Judgments: Tanner Judgment and Foxworth Judgment
  - B. Youngs’ Judgment: Brumgard Judgment.
- (collectively “Remand Judgments”).

Because the Memorandum Decision had been appealed, the Motion could not be considered. On March 7, 2006, the Bankruptcy Appellate Panel for the Ninth Circuit remanded the Motion to this court for determination. A hearing on the Motion was set for April 17, 2006, but the Plaintiff’s lawyer had a conflict and requested a continuance. Because I am familiar with the case and the Remand Judgments, I vacated the hearing and set an April 28, 2006 deadline for the Trust and the Youngs (“Creditors”) to file a response. On April 28, 2006, the Creditors filed their Response. The matter is now ready for decision.

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<sup>1</sup> All capitalized terms in this Memorandum Decision shall have the same meaning as those terms in the court’s Memorandum Decision of September 1, 2005.

1 **DISCUSSION**

2 A. **Scope of the Motion and the BAP Remand Order**

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4 The Motion requests this court find that the Remand Judgments have abated because  
5 they were not timely renewed under Arizona law. The Response, however, addresses all of  
6 the Creditors' judgments, allegedly because the Motion refers to "judgment claims."  
7 However, the Motion's claim for relief is clearly limited to the request that the Remand  
8 Judgments be found to be unenforceable. The Response also devotes almost four pages  
9 (pp 8-11) of argument to why the Memorandum Decision's determination that the Pearce  
10 Judgment was not timely renewed is incorrect. Another two pages (pp 11-12) address  
11 judgments which are not the subject of the Motion.<sup>2</sup> Most of the Response addresses matters  
12 outside the scope of the Motion, including matters such as the enforceability of the Pearce  
13 Judgment, which are no longer subject to this court's jurisdiction. Accordingly, the only  
14 parts of the Response which were considered in deciding the Motion were those portions  
15 which specifically address the Remand Judgments.  
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19 B. **Judgments Which Had Not Lapsed by the Date of the Debtors' Chapter 13**  
20 **Filing Have Not Abated**

21 The Debtors filed their Chapter 13 case on September 4, 2002. Attached to this Order  
22 is the court's analysis of the three Remand Judgments and their renewal dates based on the  
23 condition of title report prepared by Fidelity National Title Agency filed by the Debtors with  
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26 <sup>2</sup> The Response also wrongly asserts that the Memorandum Decision held that the  
27 Brumgard Judgment was not timely renewed.

1 their Reply on May 1, 2006. That exhibit indicates that the renewal period had not lapsed  
2 on the Brumgard Judgment and the Foxworth Judgment on the Debtors' petition date. Under  
3 A.R.S. § 12-1612(E), the Brumgard Judgment did not need to be renewed until 90 days prior  
4 to December 21, 2003. The Foxworth Judgment did not need to be renewed until 90 days  
5 prior to May 21, 2004.<sup>3</sup>  
6

7  
8 The Ninth Circuit decided in In re Spirtos, 221 F.3d 1079 (9th Cir. 2000) that  
9 11 U.S.C. § 108(c) extends the time for renewing state court judgments when the renewal  
10 period has not expired as of the petition date. See also In re Smith, 293 B.R. 220, 224 (9th  
11 Cir. B.A.P. 2003) (108(c) applies regardless of whether renewal of the judgment is stayed  
12 by 11 U.S.C. § 362). Because the renewal periods for the Brumgard and Foxworth  
13 judgments had not expired on the Debtors' petition date, those judgments remain  
14 enforceable.  
15

16  
17 There is a different fact pattern with respect to the Tanner Judgment. The Tanner  
18 Judgment was first recorded on September 13, 1990 and renewed on June 3, 1993. Under  
19 A.R.S. § 12-1612(E), it had to be renewed within 90 days of June 3, 1998. It was not  
20 renewed until June 8, 1998. Accordingly, for the reasons set forth in the Memorandum  
21 Decision at pp 44-45 and under the holding of the Arizona Supreme Court in In re Smith,  
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25  
26 <sup>3</sup> A.R.S. § 12-1612(E) states: "Additional and successive renewal affidavits as provided  
27 for in subsection B may be made and filed within ninety days of expiration of five years from the date of  
28 the filing of a prior renewal affidavit."

1 101 P.3d 637, 639 (Ariz. 2004), the Tanner Judgment has abated and cannot be enforced  
2 against the Debtors or property of the estate.  
3

4 **CONCLUSION**

5 For reasons set forth above, the Motion is denied with respect to the Foxworth and  
6 Brumgard judgments and granted with respect to the Tanner Judgment.  
7

8 Dated this 12th day of May, 2006.  
9

10   
11 Eileen W. Hollowell  
12 U.S. Bankruptcy Court

13 Copy of the foregoing mailed  
14 this 12th day of May, 2006, to:

15 Steven M. Cox, Esq.  
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23 By   
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25  
26  
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**Exhibit A**

Analysis of Judgment Renewals

1. Brumgard Judgment: (CIV 36326)

entered	January 25, 1989
recorded	May 5, 1989
renewed	January 7, 1994
re-recorded	April 11, 1994 *
renewed	December 21, 1998

2. Foxworth Judgment (CIV 89-38069)

recorded	July 17, 1989
renewed	July 7, 1994
renewed	May 21, 1999

3. Tanner Judgment (CIV 36356 - CIV 36603)

recorded	September 13, 1990
renewed	June 3, 1993
renewed (not timely)	June 8, 1998

\* Debtors argue that the December 21, 1998 renewal was not effective because it occurred more than 90 days before April 11, 1999, which they calculate as being the expiration date of the first renewal. Debtors reach this conclusion by using the re-recording date of January 7, 1994 as the operative date. However, simply re-recording the judgment renewal did not change the original January 7, 1994 renewal date. The renewal on December 21, 1998 was within 90 days of January 7, 1999, the expiration date of the January 7, 1994 renewal.