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Hon. Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

KENT DOUGLAS POWELL AND HEIDI POWELL,

Appellants.

District Court Case No.: 2:17-cv-01268-RSL

BK Internal Appeal No: 17-S016

BK Case No.: 12-11140-MLB

APPELLANTS' MOTION FOR TEMPORARY RESTRAINING ORDER/STAY PENDING APPEAL

NOTED ON MOTIONS CALENDAR: September 5, 2017

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Debtor-Appellants Kent and Heidi Powell ("Appellants") hereby move this Court pursuant to Federal Rule of Bankruptcy Procedure 8007(b) to impose a Stay of the Bankruptcy Court's Order Authorizing Sale of Domain Name and the Related Contract Rights issued on August 8, 2017, as follows:

I. INTRODUCTION

Debtor-Appellants Kent and Heidi Powell have used domain names corresponding to their own names, heidipowell.com and kentpowell.com, for more than a decade. Because these domains were and still are used primarily for their personal email addresses, it didn't occur to them to schedule them as assets in their bankruptcy filing, just as they never would have thought to schedule their personal phone numbers as assets. One of these formerly worthless (and at the time of the bankruptcy, still worthless) domain names, heidipowell.com, became the interest of one Heidi Powell from Mesa, Arizona, some time after the bankruptcy had closed. Arizona Heidi Powell has tried relentlessly to get heidipowell.com for years, finally turning to the bankruptcy court to try to force the Appellants to surrender the domain name based on Appellant Heidi Powell's own name (after a failed attempt at claiming cyber-squatting and trademark infringement in the United States District Court for the District of Arizona). The bankruptcy court issued an order allowing the Chapter 7 trustee to sell the domain name for $20,000.00, and at this point there is nothing standing in the way of the trustee executing this order and transferring the domain name to Arizona Heidi Powell. For this reason, and to preserve the status quo for appeal, the Appellants ask for a stay of the Bankruptcy Court's August 8, 2017 Order Authorizing Sale of Domain Name and the Related Contract Rights.

II. RELEVANT BACKGROUND

Debtor-Appellants Kent and Heidi Powell of Bellingham, Wash. ("Appellant Kent" and "Appellant Heidi") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C., on February 8, 2012. ER 1. They received a full discharge on May 29, 2012, and the bankruptcy court closed the case three days later, on June 1. ER 346, 349. Having completed the

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Chapter 7 process in good faith and received their discharge, the Powells believed, as they had every right and reason to believe, that they would now be free and clear to embark on the fresh start promised by the Bankruptcy Code. For nearly four years, that was exactly what they did. And then Arizona Heidi entered their lives.

Heidi Powell v. Heidi Powell

Heidi Powell of Mesa, Ariz. ("Arizona Heidi"), née Heidi Lane and formerly Heidi Solomon, is a reality television "celebrity" whose primary claim to fame—apart from the controversy surrounding the domain name at issue here—is her role as a personal trainer on "Extreme Weight Loss," a reality program that aired on ABC from 2011 to 2015.[1]

After Appellants' bankruptcy case closed, Arizona Heidi contacted Appellants and offered to buy heidipowell.com, a domain name Appellants had registered in 2005.[2] ER 44, 47. Appellant Heidi had used heidipowell.com continuously since that time to host her primary email address and for other purposes, so she had no interest in selling the domain name at any price Arizona Heidi was willing to pay. ER 85, 87. Appellants refused Arizona Heidi's offer and continued to use heidipowell.com as they always had. Arizona Heidi contacted Appellants again in 2016, again offering to purchase the domain name, and Appellants again refused. ER 87.

Remarkably, audaciously, Arizona Heidi then sued Appellants in federal district court for violating Arizona Heidi's "trademark" (i.e., a personal name that Appellant Heidi had had for several years before Arizona Heidi was born) and for "cyber piracy" (i.e., using said personal name in a domain name that Appellants registered five years before Heidi Solomon married

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[1] Robert Anglen, *Arizona reality TV star Heidi Powell sues Heidi Powell over website*, ARIZONA REPUBLIC, September 23, 2016, http://www.azcentral.com/story/news/local/arizona/2016/09/23/arizona-reality-tv-star-heidi-powell-sues-grandmother-over-domain-name/90842984/, accessed August 30, 2017.

[2] "HeidiPowell.com WHOIS, DNS, & Domain Info – Domain Tools", http://whois.domaintools.com/heidipowell.com, accessed August 30, 2017.

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Chris Powell to become Heidi Powell). *Powell v. Powell*, 2:16-cv-02386-SRB (D. Ariz. filed July 18, 2016). A flurry of motions and counterclaims followed, and the Arizona court ultimately dismissed all claims with prejudice on February 22, 2017. ER 137.

Ghosts from the Past

Facing certain defeat in the Arizona district court, it seems, Arizona Heidi came up with another tactic for seizing heidipowell.com: abusing the federal bankruptcy system. On September 15, 2016, citing "information concerning the existence of additional assets requiring further administration," the United States Trustee asked the bankruptcy court to reopen Appellants' bankruptcy case, which it had closed more than five years earlier. ER 44. The bankruptcy court reopened the case, and the Trustee moved to sell the domain name as property of the estate. ER 47.

At the time of their 2012 bankruptcy proceeding, Appellants disclosed all the things they owned that they believed were "property" on Schedules A and B, and provided significant detail to the Trustee and the bankruptcy court. ER 10-14. They did not initially list the domain name on Schedule B or exempt it on Schedule C, for two reasons: because heidipowell.com had no significant market value in 2012 and was essentially worthless, and because they did not (and do not) believe a personal domain name is "property" that could become part of a bankruptcy estate. Nevertheless, on November 16, 2016, Appellants filed Amendments to Schedules B, C and G with the bankruptcy court, disclosing executory contracts with domain name registrar GoDaddy, Inc., for the domain names heidipowell.com and kentpowell.com. ER 64-76. The amended schedules listed a value of $7.99 for each contract—the cost of registering or renewing a domain name, and the only market value associated with either domain name on the date of their 2012 bankruptcy filing, per 11 U.S.C. § 522(a)(2). *Id.* Anticipating that they might not be able to stop the seizure and sale of the domain name, they claimed an exemption of $7,945.01 for heidipowell.com. *Id.* The Trustee objected to the exemption, and a hearing was held on March

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22, 2017. ER 80, 291-293. On May 2, the bankruptcy court issued an order granting Appellants' claimed exemption for the heidipowell.com domain name. ER 154.

On August 8, the bankruptcy court granted the Trustee's request for permission to sell the domain name and associated executory contract to Arizona Heidi. ER 212. Appellants petitioned the bankruptcy court for a stay pending appeal to the district court, but were denied, with the bankruptcy court concluding that Appellants had not satisfied the four-part test for obtaining stay. ER 218-233. While acknowledging unclear case law and novel issues, the Bankruptcy Court reiterated its' findings of the August 8 Order in support of its' finding that the Debtors did not make a strong showing of a likelihood to succeed on the merits of appeal, and found that the public interest in this case lay with the best interest of creditors rather than protecting the privacy interest of the Debtors. ER 344.

III. LEGAL BASIS FOR STAY PENDING APPEAL

"The district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees. . . ." 28 U.S.C. § 158(a)(1). As required by Federal Rule of Bankruptcy Procedure 8007, Appellants moved for a stay in the bankruptcy court on August 15, 2017, and have explained, *supra*, the reasons given by that court for denying the stay. Fed.R.Bankr.P. 8007(a), 8007(b)(1)–(2). Appellants also provide additional details in this Motion explaining why this Court should grant the relief requested per Fed.R.Bankr.P. 8007(b)(3), and have noticed all parties per Fed.R.Bankr.P. 8007(b)(4). ER 370.

IV. ARGUMENT

Courts use four factors when deciding to issue a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder,* 556 U.S. 418, 434 (2009) (internal quotations omitted). Appellants clearly satisfy all four factors of this test.

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A. Appellants Are Likely to Succeed on Appeal

1. Appellants' Amended Schedules Make the Domain Name Fully Exempt

When a bankruptcy court accepts a debtor's amended schedules, the amended portions are treated as though they had been part of the schedules when originally filed, for practical purposes. 11 U.S.C. § 522(a)(2); *In re Polis*, 217 F.3d 899, 902 (7th Cir. 2000). Appellants' amended schedules listed the contract for the heidipowell.com domain name valued at $7.99, with an exemption of $7,945.01. ER 68, 72. The first indication of any market interest in the domain name did not come until long after Appellants' bankruptcy case closed. Therefore, Appellants' exempted interest in the domain name, as accepted by the bankruptcy court in the amended schedules, was 100 percent, both at the time of filing and at the time the bankruptcy case was closed. Appellants used federal exemptions under 11 U.S.C. § 522(d)(5), which allow the debtor to exempt "the debtor's aggregate interest in any property, not to exceed in value $1,075 plus up to $10,125 of any unused amount of the debtor's homestead exemption." The key term in § 522(d)(5) is "value," which implied an amount capable of fluctuation, rather than a fixed dollar amount. *Polis*, 217 F.3d at 902. For property that is worth less than the claimed exemption on the date of the filing of the petition, the only valuation that would matter for the estate is the "value" of the property for which the exemption is sought, which "means fair market value" *on the date the petition for bankruptcy was filed.* 11 U.S.C. § 522(a)(2); *Polis*, 217 F.3d at 902. Property that is fully exempt leaves the estate and revests in the debtor after the time for objection has passed. *Smith v. Kennedy (In re Smith)*, 235 F.3d 472,478 (9th Cir. 2000).

The Trustee has objected that Appellants' failure to schedule the domain name during the 2012 proceeding denied him the opportunity to obtain value from the domain name for the benefit of creditors. ER 77. But what value can be obtained from a worthless asset? The heidipowell.com domain name had no market value at any time during the 2012 bankruptcy proceeding. By the Trustee's own admission, Appellants only received a purchase offer for the domain name after the bankruptcy case closed. ER 80-81. Arizona Heidi first registered

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heidipowell.net, her alternate choice and the domain name she still uses today, on October 27, 2012, nearly five months after Appellants' bankruptcy closed and they embarked on their fresh start.[3]

Irregular though it may be, the unusual nature of this case invites us to travel back in time and, using the "reasonable person" standard, explore the alternate timeline that would have arisen had Appellants scheduled the heidipowell.com and kentpowell.com domain names when originally submitting their schedules on February 8, 2012. The value for each domain name would have been $7.99, the cost associated with the GoDaddy contracts, as they are in the amended schedules. As neither domain name had any known market value, it is reasonable to suppose Appellants would have entered exemptions of $7.99 for each. Would there have been grounds for the Trustee to object to the valuations or exemptions, or to pursue value in excess of the exemptions? If he was in possession of information at the time that would have led him to believe that heidipowell.com would have held any value to anyone other than Appellants, he has not seen fit to reveal it. Although it is possible that any long-held domain name could be sold on the open market for more than the cost of registering it, in practice a domain name representing a random personal name would be highly unlikely to sell for more than a few dollars—well below the amount Appellants could have then elected to exempt. ER 52-62. As the bankruptcy court itself concluded when denying the Trustee's objection to the amended schedules, it is very unlikely that any creditor would have seen anything in the schedule worth objecting to. ER 294, lines 7-10. ("But as a practical matter, would [creditors] ever have responded to the exemption?")

The only reasonable conclusion, therefore, is that Appellants' bankruptcy would have proceeded exactly as it did in our own timeline: with no non-exempt assets, Appellants would

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[3] "HeidiPowell.net WHOIS, DNS, & Domain Info – Domain Tools", http://whois.domaintools.com/heidipowell.net, accessed September 2, 2017.

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have received a discharge from the court, the Trustee would have issued a Report of No Distribution, and the case would have closed quietly and uncontroversially on June 1, 2012, with the domain name having revested with the debtors many months before any indication would arise that someone else might be interested in it.

2. The Ninth Circuit's Decision in *In re Gebhart* Supports Appellants' Claim

The bankruptcy court cited *In re Gebhart*, 621 F.3d 1206, 1209 (9th Cir. 2010) , in its May 4, 2017 oral ruling:

> Regardless, a trustee is able to pursue any postpetition increase in value of an asset. Rejecting the debtors' argument that the value of the homestead in that case, for purposes of bankruptcy, had been locked in at the time of the bankruptcy filing.

Transcript May 4, 2017, Page 14, Lines 14-19 (internal citations omitted).

Gebhart was a consolidated appeal to the Ninth Circuit concerning two debtors, Gebhart and Chappell, who had filed for Chapter 7 bankruptcy at a time when the value of the equity in their homes was less than the amount they were allowed to claim as homestead exemptions. *Id.* at 1208. Subsequently, the value of both debtors' homes increased to greater than the state and federal exemptions allowed, and the bankruptcy trustees moved to sell the homes for the benefit of the estate. *Id*. Following *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (2010), the circuit court ruled in favor of the trustees, finding that the state and federal exemption statutes used by the debtors allowed them to exempt their interest in their homestead property, but not the property itself. *Gebhart*, 621 F.3d at 1210. "[W]hat is frozen as of the date of filing the petition is the value of the debtor's exemption, not the fair market value of the property claimed as exempt." *Id*. at 1211.

However, the Bankruptcy Court mistakenly extends the holding of *Gebhart*, which was much more limited: "*At least when the total fair market value of the property is in fact greater than the exemption limit at the time of filing*, . . . any additional value in the property remains the property of the estate, regardless of whether the extra value was present at the time of filing or

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whether the property increased in value after filing." *Gebhart* at 1211 (emphasis added). That distinction, as emphasized in this quote, makes all the difference in this case.

In *Gebhart*, as in most bankruptcy cases involving the homestead exemption, both debtors' homes were encumbered by mortgages, which meant that the debtors' interest in their homes was less than 100 percent. For example, debtor Gebhart owned a home worth $210,000 on the day of filing, with mortgages totaling $120,297, which meant that his interest in the home at filing amounted to $89,703, or about 43 percent of the value of the home. *Id*. at 1208.

In the Appellants' case, there were never any encumbrances on their domain names. The total fair market value of the thing at issue, if it is property of the estate, was no more than $7.99 (the cost of the contract with GoDaddy) at the time the bankruptcy was filed, and they possessed 100 percent of the interest in the contract. This is considerably less than their allowed exemption of over $7,000.00 on this item. The trustee objected to the exemption, but such objection was overruled and the exemption was allowed by the bankruptcy court on March 22, 2017. When the exemption was allowed for an amount in excess of the total fair market value of the domain name/contract, this item, if it ever was property of the estate, ceased to be property of the estate and became property of the Appellants, and they were entitled to exclude "the full value of the asset." *Schwab*, 130 S. Ct. at 2668.

Value for purposes of exemptions is determined as of the petition date:

> "[V]alue" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

11 U.S.C.A. § 522(a)(2).

It is undisputed that the domain name/contract, if it is property of the estate, was property of the estate as of the petition date.

Contrary to earlier assertions by the Trustee and the conclusions of the Bankruptcy Court, such a reading of *Gebhart* would not be prejudicial to creditors, in that it would put all parties in the exact same position as if the Debtors' had scheduled the domain name as an asset and

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exempted it at the time of the petition (or even as the trustee asserted they should have, had the Debtors amended their schedules the next year to list and exempt the asset). As the Bankruptcy Court made clear in upholding the Debtors' exemptions, the Bankruptcy Court cannot limit a Debtor's ability to amend exemptions due to perceived bad faith, which the Bankruptcy Court explicitly did not find in this case. *Law v. Siegel*, 134 S. Ct. 1188, 1197, 571 U.S. ___, 188 L. Ed. 2d 146 (2014).

Another crucial distinction between *Gebhart* and this case is that in *Gebhart*, neither Gebhart's nor Chappell's bankruptcy cases had closed at the time the trustees moved to sell their homes. *Gebhart*, 621 F.3d at 1208; *In re Chappell*, 373 B.R. 73, 83 (B.A.P. 9th Cir. 2007). In this case, Appellants' bankruptcy had closed in 2012 and was then reopened in 2016, more than four years later. (As explained earlier, Appellants contend that no reasonable person would believe that the presence or absence of two $7.99 domain name contracts on their initially filed bankruptcy schedules would have had the slightest effect on the date of closing.) The *Gebhart* court recognized the importance of the distinction as it considered some of the concerning ramifications of its decision:

> The debtors argue that the result we reach today will lead to uncertainty about the status of exempt property and abuses by trustees. The facts of the Gebhart bankruptcy suggest that some of these concerns are legitimate. Gebhart remained in his home for five years after filing for bankruptcy, paying his mortgage and believing that his bankruptcy was finished when he received his discharge. Gebhart may have been mistaken in this belief, but his misapprehension was shared by his mortgage lender, which refinanced his home, apparently unaware of any claims on the property by the Trustee. *A Chapter 7 debtor will not be certain about the status of a homestead property until the case is closed (something that may not happen for several years after bankruptcy filing)* or the trustee abandons the property.

Gebhart, 621 F.3d at 1211–12 (emphasis added). It must surely follow that a debtor *can* be certain about the status of property *after* a case is closed. Even if the bankruptcy court's expansive reading of *Gebhart* were correct, there is no support in either the Bankruptcy Code or in the common law for the notion that post-petition appreciation of a fully exempt asset should

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accrue to the estate even if no appreciation takes place until well after the bankruptcy closes. For things to be otherwise would mean that no bankruptcy can ever truly be over.

3. Appellants Have an Inalienable Personality Rights Interest in the heidipowell.com Domain Name, Rendering It Incapable of Transfer to the Trustee for Sale

For decades, statutory and common law have recognized personality rights, or right of publicity, as the right of the individual to control the use and exploitation of her own identity. *See, e.g.*, Melville B. Nimmer, *The Right of Publicity*, LAW AND CONTEMPORARY PROBLEMS 19.2 (1954): 203-223; *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953). On the federal level, courts have generally deferred to state law on the definition and extent of personality rights. *See Experience Hendrix LLC v. Hendrixlicensing.com Ltd.*, 742 F.3d 377, 384 (9th Cir. 2014), *en banc denied*, 762 F.3d. 829 (9th Cir. 2014); *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1004–1005 (9th Cir. 2001). In the Supreme Court's only significant ruling on the subject, the Court found that the First and Fourteenth Amendments did not bar individuals from seeking redress for right-of-privacy violations under state law. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 578–9, 97 S. Ct. 2849, 2859, 53 L. Ed. 2d 965 (1977). Early treatment of the subject primarily involved celebrities and other entertainers whose identities have marketable value, and recognized personality rights in the context of a famous person's right to reap the rewards of his creative or entertainment endeavors. *See Zacchini*, 433 U.S. 562 at 573. More recently, as the Internet revolution has ushered in an era in which nearly anyone can—intentionally or unintentionally—achieve notoriety in an instant, several states have recognized personality rights as fundamental rights belonging inalienably to every citizen and resident.

Despite the spate of high-profile celebrities who have declared bankruptcy over the past few decades, the case law on personality rights as saleable assets in bankruptcy has been surprisingly light. Jennifer E. Rothman, *The Inalienable Right of Publicity*, 101 GEO. L. J. 185, 200 (2012). Those courts that have considered the issue have generally held that the right of

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publicity cannot be assigned to satisfy debts. *Id.*; *see also Goldman v. Simpson*, No. SC03-6340, slip op. at 12 (Cal. Super. Ct., Oct. 31, 2006). In the absence of specific treatments of the issue with regards to non-famous debtors, it is appropriate to consider how the Bankruptcy Code defines property of the estate, as well as how applicable laws define personality rights.

The Bankruptcy Code defines "property of the estate," with enumerated exceptions, as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541. "Section 541 is read broadly and is interpreted to include all kinds of property, including tangible and intangible property [and] causes of action…." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-5 & n. 9 (1983). For specific determinations of what constitutes property, bankruptcy courts look to the underlying state law. *Butner v. United States*, 440 U.S. 48, 54 (1979). In the present context, this means examining how Washington treats personality rights and how they intersect with property rights.

In Washington, the Personality Rights Act of 1998, RCW 63.60, establishes a fundamental right of personality for individuals in the state:

> Every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness. . . . The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime. . . . This chapter is intended to apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death.

RCW 63.60.010.

RCW 63.60 was one of the most comprehensive state statutory schemes for the protection of the right of publicity when it became law in 1998. Neil Caulkins, *A Trustee's Duties When a Celebrity Persona is the Asset*, J. PAT. & TRADEMARK OFF. SOC'Y 83 (2001): 31, 51. Crucially, it recognizes the right of personality as being a personal right, in addition to being a property right. RCW 63.60.040 grants a living individual the exclusive right to assign or license her personality rights to other parties. RCW 63.60.040(1). Personality rights may only be exercised on behalf of another person by "a personal representative, attorney-in-fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction." RCW 63.60.040(3). This Court

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has even found that a mother lacked standing to exercise right of publicity on behalf of her young children when she failed to demonstrate her legal authority to serve as their personal representative. *Milo & Gabby, LLC v. Amazon.com, Inc.*, 12 F. Supp. 3d 1341, 1349 (W.D. Wash. 2014). As the Court recognized in *Milo & Gabby,* the Legislature intended the right of publicity to be construed broadly and comprehensively, that the individual is the sole owner of her personality rights and exclusively holds the privilege of exploiting them, and that those rights are only alienable in certain specific and well-defined circumstances—none of which involve bankruptcy. RCW 63.60.040(3), RCW 63.60.070.

Appellant Heidi has used the heidipowell.com domain name for her personal email continuously since 2005, as she has a right to do. That there exists another individual in Arizona who is also named Heidi Powell does not in any way diminish Appellant Heidi's fundamental right to her own name, and her right to protect the use thereof under state law. Arizona Heidi might argue that, as the more famous of the two, she has a greater claim to the publicity value associated with their shared name, but Washington law makes no such distinction: it defines both an individual (as "a natural person, living or dead") and a personality (as "any individual whose name, voice, signature, photograph, or likeness has commercial value. . ."), and specifically grants the same personality rights to both categories. RCW 63.60.010–020.

The Trustee clearly holds the view that the personality rights of an individual in bankruptcy are solely subject to the whims of the highest bidder: "If instead of an offer of $20,000 in this case, I had someone who was offering me a million dollars, it wouldn't make any difference." ER 334 lines 17-22. Arizona Heidi, despite the invalidity of her claim to the heidipowell.com domain name, at least has the virtue of actually being named Heidi Powell. The Trustee would happily ignore the personality rights of *both* Heidis and sell the domain name to John Smith, or to President Trump, or to an individual with a personal grudge against Arizona Heidi and her husband and/or "Extreme Weight Loss." *See Randazza v. Cox,* 920 F. Supp. 2d 1151 (D. Nev. 2013) (defendant enjoined from using plaintiff's personal name in domain names

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for purposes of harassment). This rather mercenary view flies in the face of the Personality Rights Act, and this Court should not adopt it.

B. Appellants Will Suffer Irreparable Harm Absent a Stay

The harm Appellants face if a stay is not granted is clear, beginning with the loss of the heidipowell.com domain name, which Appellant Heidi has used for 12 years and is unlikely to be able to reacquire after sale, even if this Court determines it should never have been sold in the first place. Arizona Heidi would be unlikely to voluntarily sell it back to Appellants at any price, given her tenacity in pursuing it over the past year, and there is no provision in the Code for the seizure of an asset that has been wrongfully—but lawfully—sold by the Trustee to a third party. Every domain name is unique: whereas a debtor who wrongfully loses an automobile might be compensated by a similar vehicle of the same year, make, and model, the loss of heidipowell.com would mean that Appellants could never truly be made whole.

Appellants also face a potential loss of privacy if the domain name is sold. Appellant Heidi has been using her email address to exchange email with many friends and contacts for a decade or more. Although Appellant Heidi has made every effort to inform as many people of the potential transfer as possible, there is a real possibility that the privacy of Appellants or their contacts might be violated if someone unknowingly or inadvertently sends mail to heidi@heidipowell.com after Appellants lose control of the domain. Multiple individuals have declared their concerns about the potential loss of privacy they face from such a scenario. ER 173–184. Appellants also face possible disclosure of sensitive financial details or privileged communications in the event of a careless "reply"—or worse, "reply all"—on the part of an unaccounted-for third party.

C. Other Parties Will Not Be Harmed by a Stay

The Trustee faces little danger that a stay will cause the market value of the domain name to diminish. Arizona Heidi has gone to great lengths to take the domain name from Appellants,

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subjecting herself to considerable public ridicule in the process.[4] Her continuing enthusiasm for obtaining the domain name is quite clear, and there is no reason to believe that it will dim during the pendency of this proceeding. Arizona Heidi, for her part, faces no harm from continuing to host her website at heidipowell.net in the meantime, as she has for five years.

D. The Public Interest is Best Served by a Stay

This case raises issues that touch many different areas of federal and state law, including areas (such as the Washington Personality Rights Act) that concern fundamental personal rights. Many of these issues at the intersection of bankruptcy, technology law, and personality rights have never been fully explored, and would be considered by this Court *de novo*. The public has a clear interest in seeing these issues dealt with comprehensively, fairly, and with full consideration of all factors and interests in play.

There is also a question of basic justice here which concerns the public interest greatly. The bankruptcy court's interpretation of *Gebhart* creates the possibility that a bankruptcy trustee could swoop in years—even decades—after a bankruptcy case has closed in order to reopen it and sell the hapless former debtor's house or other property, which was fully exempt without objection, out from under her. Even worse, an unscrupulous trustee could conceivably *lie in wait*, checking market values every few months and waiting for the former debtor's interest in the property to rise to the point it becomes attractive to sell. This flies in the face of the deeply held principle that bankruptcy affords the debtor a fresh start. The public has a vital interest in seeing whether a debtor, having gone through bankruptcy and received a discharge, can ever truly be free of it. This case may help answer that question—but only if the course of justice is not short-circuited by a premature sale.

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[4] *See, e.g.*, Kieren McCarthy, *Narcissist Heidi Powell wants her dot-com and she wants it now, now, NOW!*, THE REGISTER, September 27, 2016, https://www.theregister.co.uk/2016/09/27/narcissist_heidi_powell_wants_her_dotcom/, accessed September 3, 2017.

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V. CONCLUSION

For the reasons outlined herein, Appellants respectfully request that this Court stay the Trustee's proposed sale of the domain name at issue pending a hearing on the appeal.

Dated this 4th of September, 2017.

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CERTIFICATE OF SERVICE

I, Jacob DeGraaff declare under penalty of perjury, that on the dates indicated below, I caused a copy of the following document to be served on the parties listed below via ECF:

VIA ECF on September 4, 2017

1) Motion for Temporary Restraining Order/Stay Pending Appeal

Dennis Lee Burman on behalf of Trustee Dennis Lee Burman
dburman@premier1.net

Nicholas M. Beizer
VP & Deputy General Counsel
GoDaddy, Inc.
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Dated this 4th day of September 2017.

/s/ Jacob DeGraaff
Jacob D. DeGraaff

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