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**IN THE**
**SUPREME COURT OF VIRGINIA**

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**RECORD NO. 161290**

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**ELIZABETH SHIFFLETT *et al.*,**

***Appellants*,**

**v.**

**LATITUDE PROPERTIES, INC., *et al.*,**

***Appellees.***

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# BRIEF OF APPELLEES

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## STATEMENT OF THE CASE

On March 16, 2009, Appellee Latitude Properties, Inc. ("Latitude"), was awarded a judgment in the amount of $1,067.60 upon unlawful retainer against Appellant Elizabeth Shifflett ("Shifflett") and her husband, Rodney Shifflett. (Joint Appendix ["App."] 24.) On July 17, 2012 Appellee Shen Valley Band Instrument Services, Inc. ("Shen Valley"), was awarded a judgment in the amount of $1,079.20 against Appellant Cassandra Deane ("Deane"). (App. 3.) Both Latitiude and Shen Valley have timely attempted to execute on these judgments, but the judgments remain unpaid.

Both Latitude and Shen Valley executed on their judgments through writs of *fieri facias* and debtor interrogatories in an attempt to recover intangible personal property to satisfy the judgments. (App. 3, 24.) Shifflett and Deane both answered the interrogatories served on them that they expected tax refunds for state and/or federal tax year 2015 due to tax overpayments. Accordingly, on January 5, 2016, based upon the Appellants' answers to interrogatories, the General District Court for Harrisonburg and Rockingham County, Virginia ("General District Court"), ordered Shifflett and Deane to transfer and deliver to their respective judgment creditors, Latitude and Shen Valley, any such refunds of state and/or federal tax refund for tax year 2015. (App 6, 16.)

Shifflett and Deane appealed the January 5, 2016 orders to the Twenty-Sixth Judicial Circuit Court ("Circuit Court"). On May 13, 2016, the Circuit Court denied Shifflett and Deane's Motion for Summary Judgment and granted summary judgment in favor of Latitude and Shen Valley. (App. 36.) The Circuit Court held that a taxpayer has a property right to a refund of his or her tax overpayment in the absence of a tax setoff. Therefore, the Circuit Court affirmed the General District Court's authority under Code § 8.01-507 to enter a transfer order directing Shifflett and Deane to turn over to the judgment creditors their vested property interest in their tax refunds. v(App. 38.)

Shifflett and Deane moved for reconsideration. (App. 39.) The Motion for Reconsideration was denied by the Circuit Court on June 20, 2016. (App. 56.)

Shifflett and Deane petitioned this Court to appeal the Circuit Court's order. This Court first granted the petition to appeal as to the Appellants' first assignment of error. On May 8, 2017, on Shifflett and Deane's petition for rehearing, this Court granted Shifflett and Deane's petition to appeal as to the second and third assignments of error.

## STATEMENT OF FACTS

It is uncontested that Shifflett is indebted to Latitude for unlawful detainer and that Latitude's 2009 judgment against Shifflett and her husband remains unpaid. It is also uncontested that Deane is indebted to Shen Valley for amounts due and owing under contract, and the 2012 judgment against Deane remains unpaid. It is also uncontested that Latitude and Shen Valley are fully authorized under Virginia law to execute as against any real or personal property of the judgment debtors, including intangible property which they expected to receive at a future date.

Accordingly, because neither Shifflett nor Deane satisfied the judgments filed against them, Shifflett and Deane were properly summoned to answer debtor interrogatories to identify both tangible and intangible personal property which could be applied to satisfy the outstanding judgments. Both Shifflett and Deane answered their respective interrogatories that they both expected to receive state and/or federal tax refunds for the tax year 2015, based on tax overpayments. (App. 6, 16.)

At the time Shifflett and Deane answered the interrogatories, neither had received a refund from the state or federal tax departments. Also, neither provided any evidence or information that the expected tax refunds would be offset by either the state or federal tax departments. To date, neither Shifflett nor Deane deny that

they received tax refunds, but neither have transferred the refunds to Latitude or Shen Valley.

## ARGUMENT

### I. THE CIRCUIT COURT CORRECTLY ORDERED APPELLANTS TO TRANSFER THEIR 2015 TAX REFUNDS TO APPELLEES UNDER VIRGINIA LAW

#### A. Standard Of Review

The material facts in this appeal are uncontested. This Court reviews questions of law and the sufficiency of legal conclusions de novo. *Hale v. Town of Warrenton*, ___ Va. ___, 798 S.E.2d 595 (2017); *see also Brown v. Jacobs*, 289 Va. 209, 215, 768 S.E.2d 421, 424 (2015) ("[This] Court performs de novo review of a trial court's sustaining of a demurrer" which tests the legal sufficiency of the plaintiff's claims").

The Court reviews questions of statutory interpretation and construction de novo. *Crawford v. Haddock*, 270 Va. 524, 621 S.E.2d 127 (2005).

### B. The Circuit Court Correctly Held That Appellants' Property Interest In Their Future Tax Refunds Vested As Of The Close Of The Tax Year In Which The Tax Overpayments Were Made

The gravamen of Shifflett and Deane's appeal is whether the Circuit Court properly held in its May 13, 2106 decision that "a taxpayer does hold a vested property interest in his or her future tax refund . . . [and] a lien of *fieri facias* may properly attach under Virginia Code Section 8.01-501." (App. 36-37.) Specifically, the Circuit Court opined that a tax refund is an intangible property interest under a debtor's control and that the property interest vested as of midnight of December 31 of the year in which the tax overpayments were made. (App. 37.) Therefore, according to the Circuit Court, the General District Court had authority to order the transfer of the property interests under Code § 8.01-507.

In the Opening Brief of Appellants, Shifflett and Deane disagree, contending that a taxpayer does not have a possessory interest in a tax refund until the taxpayer asks the government for the money through the filing of a tax return. Not so. The law is clear that a taxpayer's property interest in his or her tax overpayment is determined as of the last day of the tax year in which the taxpayers made the overpayments. *In re Copley*, Case No, 14-03142-KLP, 2016 WL 1170771 (Bankr.

E.D. Va. Mar. 22, 2016) (citing *In re Addison*, Case No. 1:15CV00041, 2016 WL 223771, at * 3 (W.D. Va. Jan. 19, 2016)).

This ruling makes sense because the tax overpayments are made by the taxpayer from the taxpayer's personal funds. As Shifflett and Deane explain in the Opening Brief of Appellants, tax money sent to the Government is held in trust, subject only to the Government's statutory right to offset any tax liability from the individual's tax overpayment pool. *See* 26 U.S.C. § 6402; Va. Code Ann. §§ 58.1-524, 58.1-528. For these reasons, federal courts, outside of the bankruptcy context, reject the Internal Revenue Service's contention that this offset authority is tantamount to title to the taxpayer's overpayment. *See In re Benson*, 566 B.R. 800 (Bankr. W.D. Va. 2017) (specifically rejecting the Government's claim that overpaid funds belong to the Government until it decides to issue a refund).[1]

Likewise, in *U.S. Department of Agriculture v. Sexton*, 529 B.R. 667 (W.D. Va. 2015), contrary to Shifflett and Deane's contention, the bankruptcy court plainly stated that at the close of the relevant tax year, the taxpayer's tax overpayment vests.

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[1]While Shifflett and Deane discuss in detail the state and federal tax departments' statutory right to offset a taxpayer's overpayment, neither Appellant has presented any evidence of a possible offset of his tax overpayments, rendering this factual issue immaterial on appeal.

The bankruptcy court does not state that the debtor's property interest in that overpayment is a contingent interest but that it vests at the close of the relevant year.

Further, the mechanics of filing a tax return do not, and should not, determine a taxpayer's vested property interest in his or her tax overpayment for the following reasons. First, the federal courts which have reviewed this issue have consistently held that taxpayers' interests in their overpayments are established and vest on the last day of the tax year, before taxpayers file their tax returns. Second, it would be inequitable to allow taxpayers to hold their tax refunds out of reach of creditors by simply holding off on filing returns, or never filing them.

These decisions emphasize, again, outside of the bankruptcy context, that as of the last day of the tax year, the taxpayer, and *not* the government, is entitled to his or her tax overpayment. At that point, the federal government is a judgment creditor and has no vested property interests in the overpayments. All judgment creditors may have certain statutory rights which allow them to execute on the tax overpayments, but they do not have a property interest in the funds.

Similarly, Virginia law recognizes that the taxpayer, and not the State Taxation Department, holds a property interest in his or her tax refund. Under Va. Code Ann. §34.26(9), the taxpayer holds a vested property interest in his or her tax refund which

is exempt from any creditor who tries to execute on that portion attributable to the Child Tax Credit or the Additional Child Tax Credit.

As the Circuit Court correctly held in this present case, a taxpayer's property interest in the overpayment is an intangible property interest under the control of the taxpayer who can decide whether to file that return and retrieve the overpayment in the form of a refund. (App. 37); *see also Sexton*, 529 B.R. at 664 (holding that the amount of the overpayment is subject to the government's statutory determination of what portion of the overpayment may be subtracted in the form of an offset).[2]

Importantly, again, the courts in both *Sexton*, and most recently in *Benson*, reject the argument that the Government's offset authority somehow shifts the property interest in the tax overpayment from the taxpayer, where it rightfully belongs, to the Government. In each of these decisions, citing *Addison* and *Copley* have been cited, the courts consistently held that the property interest in the tax

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[2]The Opening Brief makes several other arguments that are not pertinent. Title 26 U.S.C. § 7422 concerns limitations on suits by taxpayers against the federal government, notably the Internal Revenue Service, for the recovery of taxes alleged to have been erroneously collected. Such lawsuits can be filed only after a claim for a refund has been filed with the federal agency. Contrary to Appellants' Opening Brief, this statute does not define a taxpayer's vested property interest in his or her tax overpayments. Further, *George v. Commonwealth*, 276 Va. 767, 667 S.E.2d 779 (2008), interprets Code § 58.1-474 and an employer's failure to withhold state taxes required under the Virginia tax code. The court does not opine as to a taxpayer's vested property interest in overpaid state taxes.

overpayments vests in the taxpayer as of the close of the relevant tax year. The amount of the refund sent to the taxpayer may reflect an offset, or the taxpayer may never get around to asking for it, but the property interest in the overpayment remains with the taxpayer starting as of December 31 at midnight in the relevant tax year and is considered an intangible property interest of the debtor whether the debtor is in bankruptcy or outside of bankruptcy.

### C. The Circuit Court Correctly Held That The General District Court Was Authorized Under Code § 8.01-507 To Order The Transfer Of Appellants' Future Tax Refunds

Virginia law permits a judgment creditor to levy, through a writ of *fieri facias* under Code § 8.01-501, on a judgment debtor's personal property interests not otherwise capable of being levied on. The writ of *fieri facias* includes all intangible property interests, even when the debtor has no more than a mere future expectancy of the property interest. *In re Lamm*, 47 B.R. 364 (E.D. Va. 1984). In *Lamm*, the court, citing *Boisseau v. Bass' Administrator*, 100 Va. 207, 40 S.E. 647 (1902), stated that the lien of *fieri facias* extends broadly to the judgment debtor's personal property, including a debt payable in the future and "all choses in action to which the debtor may be entitled." *Lamm*, 47 B.R. at 367. Code § 8.01-501 states, inter alia:

> Every writ of fieri facias shall, in addition to the lien it has under §§ 8.01-478 and 8.01-479 on what is capable of being levied on under those sections, be a lien from the time it is delivered to a sheriff or other officer, or any person authorized to serve process pursuant to § 8.01-293, to be executed, on all the personal estate of or to which the judgment debtor is, or may afterwards and on or before the return day of such writ or before the return day of any wage garnishment to enforce the same, become, possessed or entitled, in which, from its nature is not capable of being levied on under such sections

Va. Code Ann. § 8.01-501; *see also Network Solutions, Inc. v. Umbro Int'l, Inc.*, 259 Va. 759, 529 S.E.2d 80 (2000) (holding that when property of a judgment debtor is not capable of being levied on, such as is the case with intangible property, the property is still subject to the execution of a lien upon the delivery of a writ of *fieri facias).* The lien on intangible property is perfected from the time the writ of *fieri facias* is delivered to the sheriff. *In re Hughson*, 74 B.R. 438 (Bankr. W.D. Va. 1987). The lien ceases only when the judgment creditor's right to enforce the judgment ceases. *Lamm*, 47 B.R. at 368.

Intangible property covered by a *fieri facias* lien is defined as "property that lacks a physical existence [such as] bank accounts, stock options and business goodwill." *In re Estate of Parsons*, 65 Va. Cir. 295, 2004 WL 1746353, at *5 (City of Richmond 2004) (citing *Black's Law Dictionary* 1434 (7th ed. 1999)); *see also Ward v. Ernst & Young*, 246 Va. 317, 435 S.E.2d 628 (1993).

Significantly, the expectancy of a tax refund falls within the definition of intangible property under Virginia law. *Lamm*, 47 B.R. 364 (applying Virginia state law, the court held that the lien of *fieri facias* extends to debts payable in the future and includes all property to which a debtor may be entitled); *Doer v. Arel*, 60 F. Supp. 2d 558, 559 (E.D. Va. 1999) (holding that Code § 8.01-501 reaches a judgment debtor's intangible personal property that includes a wide range of rights and debts held by the debtor, including bonds, notes, stocks, and debts of all kinds, including those payable in the future); *Sexton*, 529 B.R. 667 (holding that a debtor's interest in a tax refund is a property interest of the debtor).

Shifflett and Deane do not dispute the broad reach of a *fieri facias* lien on their intangible property. Instead, they contend only that on January 5, 2016, the General District Court erred in concluding that the *fieri facias* lien held by Latitude and Shen Valley extended to their 2015 tax refunds because as of that date they had not filed their tax returns to ask for the refunds. Yet both Shifflett and Deane stated in their answers to debtor's interrogatories, filed pursuant to §8.01-506, that they would receive tax refunds for tax year 2015. Further, neither contends that their 2015 tax overpayments would be subject to offset.

The only contested issue, therefore, is *when* a taxpayer obtains a vested property interest in a tax overpayment and whether Shifflett and Deane held a vested

property interest in their expected tax refunds as of January 5, 2016, as held by the Circuit Court, the date of the General District Court's transfer order. As Shifflett and Deane emphasize in their Opening Brief, under Virginia law, a writ of *fieri facias* creates a lien only to the extent that the debtor has a possessory interest in the intangible property subject to the writ. *Int'l Fid. Ins. Co. v. Ashland Lumber Co.*, 250 Va. 507, 463 S.E.2d 664 (1995) (citing *Lynch v. Johnson*, 196 Va. 516, 84 S.E.2d 419 (1954)); *see also Wells Fargo Bank v. Levin Prof'l Serv.*, 348 F. Supp. 2d 638 (E.D. Va. 2004) (holding that under Virginia law, if a debtor has no interest in property held by a suggested garnishee, the writ of *fi fa* cannot create a valid lien on that property).

As discussed above, courts have resolved this important timing issue, holding that a taxpayer obtains a vested interest in a tax overpayment "as of midnight on the last day of the year when her overpaid taxes were due." *Addison*, 2016 WL 223771 at *3; *Sexton*, 529 B.R. at 665 (the taxpayer has a property interest in the tax overpayment as of the close of the relevant tax year); *see also Copley*, 2016 WL 1170771, at *4 (holding that the debtor held a property interest in his tax refund, and the debtor's right "to recover his tax overpayment arises at midnight on the last day of the tax year and that, unless the government has acted [to offset against the overpayment], the debtor's interest in the overpayment vests in the bankruptcy

estate"). The courts' decisions in these cases were not limited to the context of what constitutes the bankruptcy estate under 11 U.S.C. § 541.

Most recently, in *Benson*, the court again emphasized the time at which a taxpayer holds a property interest in his or her tax overpayment as defined by *Addison*. In *Benson*, the debtor filed bankruptcy schedules that reflected a tax refund for his 2015 tax year. Later, after filing her tax returns, the debtor amended her schedules to reflect a significantly higher tax refund amount. When the IRS processed the tax refund, it completely offset the tax overpayment by the amount the debtor owed the IRS under a nine-year-old tax liability. The debtor filed a turn over action against the IRS pursuant to 11 U.S.C. § 522. In determining the § 522 claim, the bankruptcy court affirmed its earlier ruling in *Addison,* as to when the taxpayer had an actual property interest in the overpayment. The decision did not arise under § 522 or under another Bankruptcy Code section, none of which address a debtor's property interest in a tax overpayment. Instead, based on other federal statutes, the *Benson* court, citing *Addison*, held that a taxpayer acquires a possessory interest in the tax overpayment as of midnight on the last day of the year when her overpaid taxes were due. Specifically, the court stated:

> The District Court in *Addison* did observe that the government's argument that "the overpaid funds belong to the government until it decides to issue a refund . . . overstates the government's entitlement to

> the overpaid funds." *Addison*, 2016 WL 223771, at *3. However, the District Court further confined its ruling to stating that "if a bankruptcy stay is instituted prior to the actual offset, then the overpaid funds are protected by the stay, and the government must be treated like any other creditor of the debtor." *Id.*

566 B.R. at 814.

In the Opening Brief of Appellants, Shifflett and Deane contend that the court's decision in *Boisseau v. Bass' Administrator*, 100 Va. 207, 40 S.E. 647 (1902), supports their contention that the *fieri facias* lien should not have been applied to the future payment of their tax refunds. Yet, in *Boisseau*, a garnishment against an insurer for proceeds from a life insurance policy were denied because insured died after the return day of execution. The court held that there was no existing indebtedness against insurer to which the lien could attach and that "the debt itself must be in existence at the time of service of the writ." *Id.* at 211, 40 S.E. at 649.

Shifflett and Deane's application of *Boisseau* to the uncontested facts in this case is misdirected and should be rejected. In the present case, the debt owed to the judgment creditors is not disputed. Under Virginia law, judgment creditors, such as Lattitude and Shen Valley, who have obtained money judgments, as in the present case, may enforce the judgments against the debtors' personal property by executing on intangible personalty by means of a writ of *fieri facias*. *Lamm*, 47 B.R. at 367. The writ of *fieri facias* shall be executed on all the debtors' property interests,

including tax refunds, to which the debtor "is, or may afterwards and on or before the return day of such writ . . . become, possessed or entitled, in which, from its nature is not capable of being levied on." *See* Va. Code Ann. § 8.01-501.

Having established the point in time when a taxpayer obtains a vested property interest in his or her tax overpayment, the overpayment is within the taxpayer's control, subject to a possible offset under 26 U.S.C. § 6402, or the equivalent state offset statute, neither of which are relevant in the present case. Significantly, contrary to Shifflett and Deane's claim, this vested property interest in not contingent, but established and controlled by the taxpayer.

Because Shifflett and Deane held a vested property interest in their tax overpayments as of midnight December 31, 2015, testified to their expectation of these funds, and had complete control over seeking the payment of the refund arising from the overpayments, the Circuit Court properly held that the liens of *fieri facias* attached to the refunds. Further, the Circuit Court properly held that the General District Court acted within its authority under Va. Code Ann. § 8.01-507 to enter the transfer orders on January 5, 2016, approximately one week after the property interest vested.

## II. BOTH THE CIRCUIT COURT AND THE GENERAL DISTRICT COURT HAVE SUBJECT-MATTER JURISDICTION TO ORDER THE TRANSFER OF APPELLANTS' TAX REFUNDS

### A. Standard Of Review

Subject-matter jurisdiction is a question of law which is reviewed de novo. *Parrish v. Fed. Nat'l Mortg. Ass'n*, 292 Va. 44, 787 S.E.2d 116 (2016). The reviewing court deciding issues of subject-matter jurisdiction are not limited to the arguments raised by the parties on appeal. *Id.* at 49, 787 S.E.2d at 120 (citing *Morrison v. Bestler*, 239 Va. 166, 169-70, 387 S.E.2d 753, 755 (1990)).

In deciding a challenge to the lower court's subject-matter jurisdiction, the reviewing court will review the statutory language delegating authority to the court to decide the issue. *Nagera v. Chesapeake Div. of Soc. Servs.*, 48 Va. App. 237, 629 S.E.2d 721 (2006). Subject-matter jurisdiction issues depend upon the state of things at the time the action is brought. *Keene Corp. v. United States*, 508 U.S. 200 (1993).

The Circuit Court's grant or denial of a motion for summary judgment is also subject to de novo review on appeal. *Deutsche Bank Nat'l Trust Co. v. Arrington*, 290 Va. 109, 772 S.E.2d 571 (2015).

The court's review of questions concerning statutory construction are also reviewed de novo. *Id.* at 114, 772 S.E.2d at 573.

### B. The Courts Properly Exercised Their Respective Subject-Matter Jurisdiction In The Proceedings Below

Subject-matter jurisdiction refers to the power of a court to adjudicate a specified class of cases and it is granted by constitution or statute. Subject-matter jurisdiction cannot be waived. *Commonwealth ex rel. Beales v. JOCO Found.*, 263 Va. 151, 558 S.E.2d 280 (2002). Importantly:

> An order issued by a court with subject matter jurisdiction, even if arguably erroneous and thus voidable, is still a court order. As a result, it governs the parties before the court until vacated by the trial court upon reconsideration . . . or reversed by an appellate court . . . or set aside pursuant to a bill of review . . . or successfully challenged in an independent action.

*De Avies v. De Avies*, 42 Va. App. 342, 592 S.E.2d 351 (2004).

The Circuit Court's subject-matter jurisdiction on the appeal of a General District Court order is limited to the jurisdiction of the General District Court. *Parrish* 292 Va. at 50, 787 S.E.2d at 120 ("Therefore when exercising its *de novo* appellate jurisdiction, the circuit court has no more subject matter jurisdiction than the general district court had in that court's original proceeding.").

Under § 8.01-506, General District Courts are authorized to issue a summons against a judgment debtor to appear before the court from which a writ of *fieri facias* was issued, to answer interrogatories to ascertain the debtor's personal estate. Under § 8.01-507, the General District Court may order the property appearing in the

debtor's answers to interrogatories, and which property is in the possession of *or under the control of the debtor,* be transferred by the debtor to the judgment creditor or court, in such manner as may be ordered by the court.

In the present case, it is uncontested that both Latitude and Shen Valley properly delivered a writ of *fieri facias,* pursuant to § 8.01-501, in their efforts to execute on their enforceable judgments against Shifflett and Deane. The writ was a lien from the time it was delivered to the sheriff "on all the the personal estate of or to which the judgment debtor is, or may afterwards and on or before the return day of such writ . . . become[] possessed or entitled, in which, from its nature is not capable of being levied on." *See* Va. Code Ann. § 8.01-501. At the time, neither Shifflett nor Deane contested the General District Court's subject-matter jurisdiction under § 8.01-506 to issue summonses against them to answer interrogatories to ascertain their personal estate and any intangible property in the possession of or under the control of each. Both parties duly answered the interrogatories served.

Upon reviewing Shifflett's and Deane's answers to the interrogatories, the General District Court was authorized under § 8.01-507 to order the judgment debtors to turn over property in their possession and/or control as identified in the answers. It is uncontroverted that both Shifflett and Deane answered that they are entitled to state and/or federal tax refunds. The January 5, 2016 order by the General District

Court ordered Shifflett and Deane to pay over and deliver the refunds to the judgment creditors. (App 6, 16.) Shifflett and Deane were vested with a possessory interest in their own tax overpayments and thus had control over the property as of midnight on December 31, 2015, a week before the General District Court's order.

The General District Court's January 5, 2016 orders were well within the court's statutory authorization and, therefore, within the subject-matter jurisdiction of the Court. Accordingly, the Circuit Court had subject-matter jurisdiction to grant summary judgment in favor of Latitude and Shen Valley. The gist of Shifflett and Deane's jurisdiction argument appears to be that the General District Court ordered the turn over of property not within the control of the debtors. Again, while they disagree, the majority rule is that a taxpayer is vested with their tax overpayments as of December 31 of the tax year in which the overpayments were made.

The decision relied upon by Shifflett and Deane, *United States v. Clintwood Elkhorn Mining*, 553 U.S. 1 (2008), does not address when a debtor assumes a possessory interest in a tax refund and is not controlling here. Instead, that case involved a lawsuit by a coal company against the United States for the refund of taxes allegedly unlawfully assessed on the coal company's shipment of coal for export. The legal issue before the U.S. Supreme Court concerned the administrative requirements and time limits for suits brought against the United States under 26 U.S.C. § 7422,

of the Internal Revenue Code, for taxes wrongfully assessed or collected. In the present case, neither Shifflett nor Deane are suing the United States for wrongful assessment of taxes and the subsequent recovery of taxes improperly paid. The only issue here is when the judgment debtors held a possessory interest in their tax overpayments for tax year 2015, a refund which neither party has never disputed.

Importantly, even if this Court rejects the line of decisions discussed in detail above, the General District Court acted within its authority to enter theoOrders, even if it was later found to be erroneous by this Court. A disagreement over the timing of the property interests at issue does not extinguish the General District Court's subject-matter jurisdiction to hear the matter and make an informed decision based on the evidence before it. *See De Avies*, 42 Va. App. at 346, 592 S.E.2d at 352 (holding that a trial court has "jurisdiction to err" just as an appellate court has jurisdiction to correct such errors).

As Shifflett and Deane suggest in the Opening Brief of Appellants, Virginia's judgment enforcement statutes must be considered as a whole to determine the General District Court's authority over a judgment debtor's personal estate. A turn over order under § 8.01-507 follows the filing of a writ of *fieri facias* under § 8.01-501. Further, the transfer order under § 8.01-507 arises from the debtor's answers to interrogatories propounded under § 8.01-506.

The General District Court's January 6, 2016 transfer order was neither premature, meaningless, nor void as suggested by Shifflett and Deane. To the contrary the Orders require Shifflett and Deane to transfer their tax refunds, which they themselves testified that they expected in the future, to Latitude and Shen Valley. The legal issue as to when Shifflett and Deane's property interest in their tax overpayments vested has been consistently ruled on, and it is now well established that the property vests as of midnight on December 31, the last day of the tax year in which the overpayments were made. *Addison*, 2016 WL 223771; *Benson*, 566 B.R. 800; *Sexton*, 529 B.R. 667. A writ of *fieri facias* under § 8.01-501 extends to a debtor's intangible personal property, including tax refunds payable by the Government in the future.

## CONCLUSION

For each of the reasons stated herein, Appellees Latitude Properties, Inc., and Shen Valley Band Instrument Services, Inc., respectfully request this Court deny Appellants Shifflett and Deane's appeal and enter an order affirming the Circuit Court's May 13, 2016 order granting summary judgment in favor of Latitude and Shen Valley, and for whatever further relief this Court deems just and proper at this time.

Dated: June 30, 2017

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I caused the true and correct copies of Brief of Appellees to be hand delivered and filed with the Supreme Court of Virginia, that an electronic copy of Brief of Appellees was filed via VACES in PDF format, and an electronic copy of Brief of Appellees was served upon Dathan J. Young, Blue Ridge Legal Services, Inc., P.O. Box 551, Harrisonburg, Virginia 22803, counsel for the Appellants, via email in PDF format.

Appellees respectfully request Oral Argument.

s/ Grant A. Richardson
Grant A. Richardson, Esquire