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NO. 100172-0

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

MICHAEL J. COLLINS,

Appellant,

v.

OLYMPIC INTERIORS INC.,

Respondent.

**RESPONDENT OLYMPIC INTERIORS INC.'S ANSWER
TO SECOND AMENDED PETITION FOR REVIEW**

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I. INTRODUCTION

Olympic Interiors, Inc. (“Olympic”) respectfully asks this Court to decline Petitioner Michael Collins’s petition for review of the Court of Appeals (Div. II) April 6, 2021 decision.

RAP 13.4(b) identifies four grounds upon which this Court will grant review. Petitioner fails to even discuss RAP 13.4(b) anywhere in his petition. However, even if he did, Petitioner could not establish any of the four grounds: the Court of Appeals decision does not conflict with any decision of this Court; it does not conflict with any decision of the Court of Appeals; it does not present a signification question of constitutional law; and it does not involve an issue of substantial public interest. The Court of Appeals decision is a “run of the mill” opinion affirming summary judgment because Petitioner failed to raise a genuine issue of material fact to overcome Olympic’s motion at the Trial Court. Without demonstrating one of RAP 13.4(b)’s grounds for review, Petitioner’s request must be denied.

II. STATEMENT OF THE ISSUES

Should this Court decline discretionary review when Petitioner failed to establish any of the grounds for review set forth in RAP 13.4(b)? [YES]

III. STATEMENT OF THE CASE

A. Background

Olympic hired Petitioner on January 27, 2017, to hang sheetrock at the Green River Community College (“Project”).¹ In total, Petitioner worked for Olympic for four days between January 30 and February 2, 2017. On the afternoon of February 2, Petitioner left work and never returned.²

The next time that Olympic heard from Petitioner was eight days later, when he sent an email indicating that he had not been able to return to work because a snowstorm had prevented him from leaving his house.³

¹ CP 215, ¶3

² Id.

³ CP 215, ¶¶ 2-4; CP 220-21

On June 20, 2017 – almost five months after his last day of work – Olympic received another email from Petitioner.⁴ In that email, Petitioner reported that he had filed a worker’s compensation claim with the Department of Labor and Industries (“Department”) alleging, for the *first* time, that he had injured his neck and shoulder during his first day working on the Project.^{5, 6}

In response, Olympic’s Controller, Doug Bagnell, authored a memorandum memorializing his observations of Petitioner’s limited physical mobility at the time of hire:⁷

I spoke with our Superintendent Bob Essenpreis and the job site foreman Victor Lopez, and neither one recalls being informed of an injury by Michael Collins. I recall hiring Michael and processing his paperwork, as well as issuing him a set of tools and some safety clothing. I do specifically recall Michael having some obvious mobility restrictions with his neck. He seemed unable to turn his neck

⁴ CP 233; 235-236

⁵ Id. Petitioner has a history of claiming workplace injuries after workplace disputes. In all, Petitioner has filed 10 worker’s compensation claims.

⁶ CP 216, ¶5

⁷ CP 223

fluidly, having to use his upper torso to turn. As an employer, I would want to question whether he has had some occupational issues with his neck and shoulder prior to starting work with Olympic Interiors. And we do not have a record of an injury being reported, and we are a bit apprehensive to accept an injury report 6 months later when both myself and the job site foreman noticed some mobility issues with Michael's neck.

After the Department conducted its investigation of Petitioner's worker's compensation claim, which included an independent medical examination, the Department accepted Petitioner's claim for his right shoulder as an "occupational disease," which was caused by Petitioner's 40 year career hanging sheetrock.⁸ The Department denied Petitioner's neck claim, concluding that it was not an occupational disease.⁹ However, the Department allowed Petitioner to re-submit his neck claim as an "industrial injury," which he did.¹⁰ After investigation, the Department subsequently denied that claim too, concluding that there was

⁸ CP 237

⁹ CP 237-241

¹⁰ CP 240

“no proof of specific injury at a definite time and place in the course of employment and that the condition was not an occupational disease.”¹¹ Petitioner appealed both denials to the Board of Industrial Appeals (“BIIA”).

On January 3, 2019, while his worker’s compensation was still pending before the BIIA, Petitioner filed a lawsuit against Olympic alleging intentional infliction of emotional distress (“IIED”)/outrage and defamation. In the Complaint, Petitioner alleged that the Department denied his claims based on information that Olympic provided to the Department in response to his worker’s compensation claim; specifically, Mr. Bagnell’s memorandum.¹²

¹¹ CP 247-248

¹² CP 223, 225. Petitioner’s Timesheet indicated that he worked 29 hours of framing and 2 hours of framing; CP 259 – 264.

On May 13, 2019, the BIIA issued its orders dismissing Petitioner's appeals, finding that the *medical evidence* failed to support his neck-related claims.¹³

B. The Trial Court Grants Summary Judgment

On November 6, 2019, Olympic moved for summary judgment on all of Plaintiff's claims, arguing that Petitioner could not establish the prima facie elements of his IIED/outrage and defamation claims; that he could not produce evidence that the Department relied on *any* information from Olympic when it made the decision to deny his claim (i.e., no causation); and that even if Petitioner had put forth evidence to support his claims, the claims were barred by Washington's Anti-SLAPP statute.¹⁴

In response to the motion, Petitioner failed to submit *any* evidence – not even his own declaration.¹⁵

¹³ CP 242-246; CP 250-256

¹⁴ CP 206-214

¹⁵ CP 79-104; CP 135-136

On reply, in addition to explaining how Petitioner's position, even if considered by the Court, had failed to establish the prima facie elements of his claims, Olympic also pointed out that Petitioner failed to submit any evidence to preclude summary judgment, and as a result, summary judgment was appropriate.¹⁶ Recognizing his error, Petitioner attempted to file a declaration *after* Olympic had filed its reply.¹⁷ Olympic filed a motion to strike the improper and untimely submissions, which the Trial Court granted.¹⁸

At the hearing on Olympic's motion, the Court considered the parties' arguments and their written submissions.¹⁹ At the conclusion of the hearing, the Court ruled that Petitioner had not met his burden to withstand summary judgment:

¹⁶ CP 266-272

¹⁷ CP 137-157; CP 158-162

¹⁸ CP 311-319; CP 163-165. Petitioner's appeal does not address the Trial Court's Order striking his untimely declaration.

¹⁹ CP 163-165

Now, in this particular instance, Mr. Collins asserts by doing so they intentionally inflicted emotional distress on him, as well as defamed him, *but in order for Mr. Collins here to defeat summary judgment, he has to at least set forth some facts that demonstrate the elements of those two claims. And based on the filing that Mr. Collins has made to this Court, he has failed to do so.*

Based on that, this Court is going to grant the defendant's motion for summary judgment, and I'm dismissing the claims in whole that Mr. Collins has made, and I will sign an order to that effect.²⁰

Because the Trial Court reached its decision on the basis that Petitioner failed to submit evidence to withstand summary judgment, the Trial Court did not analyze Olympic's Anti-SLAPP defense. Petitioner appealed the Trial Court's Order on December 12, 2019.

C. The Court of Appeals Affirms the Trial Court's Order; Petitioner Seeks Discretionary Review

On April 6, 2021, the Court of Appeals issued its decision affirming the Trial Court and concluding that Petitioner failed to

²⁰ Verbatim Report of Proceedings, 21:12-23

prove the elements of his claims.²¹ Petitioner filed a petition for discretionary review on September 2, 2021.

IV. ARGUMENT

Petitioner Fails to Establish Any Basis for Review Under RAP 13.4(b). Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court *only*:²²

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

²¹ Court of Appeals April 6, 2021 Opinion, p. 6. Although Olympic also presented its Anti-SLAPP defense on appeal, the Court of Appeals affirmed the Trial Court without analyzing the defense.

²² RAP 13.4(b) [Emphasis added]

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Petitioner makes no effort to establish *any* of the enumerated grounds set forth in RAP 13.4(b). Instead, Petitioner reargues the same positions that failed at the Trial Court and in the Court of Appeals, namely that the Trial Court did not consider his improper motion to compel or his meritless “spoliation” arguments before granting summary judgment. As set forth in the Court of Appeals Opinion, Petitioner failed to properly present either issue to the Trial Court.²³

Petitioner also spends much of his petition discussing Olympic’s Anti-SLAPP defense. However, as shown by the Court of Appeals decision, the defense was not the basis upon which it affirmed the Trial Court’s decision. In fact, it is not mentioned anywhere in the Court of Appeals 15-page decision.

²³ Court of Appeals April 6, 2021 Opinion, p. 11-13

The truth is that the Court of Appeals decision is straightforward and unremarkable: at summary judgment, Petitioner failed to submit admissible evidence supporting his claims.²⁴ Instead, he relied upon allegations, which is insufficient to withstand summary judgment – a longstanding principle set forth in the Court Rules and case law.²⁵

Petitioner cannot establish any of the basis for review in RAP 13.4(b). The Court of Appeals decision is wholly consistent with the decisions of this Court, the Courts of Appeals, the Civil Rules, and case law. It does not implicate any constitutional issues or issues of public interest.²⁶ Without establishing (or even discussing) the limited grounds for review set forth in RAP

²⁴Court of Appeals April 6, 2021 Opinion, p. 6

²⁵ CR 56(e); *Overton v. Consolidated Insurance Co.*, 145 Wn.2d 417, 430 (2002); *Young v. Key Pharmaceuticals Inc.*, 112 Wn.2d 216, 225-226 (1989)

²⁶ Respondent anticipates that Petitioner will seek to use his reply to address the grounds set forth in RAP 13.4(b), now that Respondent has raised it, continuing his pattern of seeking to cure defects in his reply. Respondent asks the Court to disregard any new arguments raised.

13.4(b), Petitioner's request for discretionary review must be denied.

V. CONCLUSION

As set forth above, this Court should decline Petitioner's request for discretionary review. Petitioner fails to demonstrate a basis for review under RAP 13.4(b).

I certify that this document contains 1,747 words, in compliance with RAP 18.7.

RESPECTFULLY SUBMITTED this 26th day of
October, 2021.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on October 26, 2021, I caused a true and correct copy of the foregoing document to be delivered via email and the court efileing system to:

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DATED this 26th day of October, 2021, at Seattle,
Washington.



Sandra V. Brown, Legal Assistant

WILLIAMS KASTNER

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