NO. 101547-0

IN THE SUPREME COURT OF THE STATE
OF WASHINGTON
COURT OF APPEALS CASE NO. 55882-3-II

IN RE THE DISSOLUTION OF APOGEE CAPITAL LLC

CINDI A. EDWARDS,
Respondent,

v.

SCOTT J. EDWARDS,
Petitioner.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Respondent Cynthia A. Edwards, Trustee of the Cynthia A. Edwards Irrevocable Trust ("Cindi"), respectfully submits this answer to the Petition for Review ("Petition") filed by Petitioner Scott Edwards ("Scott") on December 15, 2022, in which Scott seeks review of the Court of Appeals' Order Granting Motion for Reconsideration in Part and Amending Opinion dated November 15, 2022, as well as the corresponding Unpublished Opinion dated July 19, 2022 (collectively, the "Opinion"). The mere dissatisfaction with a judicial outcome does not warrant review of an appellate court's ruling; Scott has not demonstrated any valid reasons why discretionary review of the Opinion is necessary or justified under RAP 13.4(b).

II. RESTATEMENT OF THE ISSUE

Should this Court deny discretionary review of the Court of Appeals' Unpublished Opinion where (1) the Opinion neither conflicts with any decision of this Court nor any published decision of the Court of Appeals and where (2) the Opinion poses

no question of Constitutional law nor does it involve an issue of substantial public interest?

III. RESTATEMENT OF THE CASE

A. Background Facts.

Cindi and Scott are siblings who each own a 50% interest in Apogee Capital LLC ("Apogee"),[1] a Washington entity which their father established for purposes of real property development. CP 170-71. Cindi and Scott's 50/50 membership is the result of a testamentary bequest, in which Cindi, Scott and their brother Jeffrey initially held an equal one-third interest in Apogee upon their father's death in 2015; Apogee subsequently bought out Jeffrey's one-third interest as part of a settlement after Jeffrey made claims against Scott for wrongdoing as Manager of Apogee. CP 171. Scott has been the sole Manager of Apogee since 2012. *Id*.

Cindi and Scott's current 50/50 ownership of Apogee is ripe for deadlock because under the terms of the Operating Agreement, any significant actions of Apogee (such as buyout of

[1] Cindi's 50% interest in Apogee is held through her trust, the Cynthia A. Edwards Irrevocable Trust.

a party's interest, removal of a manager, or dissolution of the company) requires an affirmative vote in writing of the holders of "fifty-one (51%) of outstanding Percentage Interests." CP 177-87 (§§ 6.2, 7.1(a), 9.2). The ownership situation also left Cindi without the means to hold Scott accountable as Apogee's Manager, since she is unable to remove him without his consent. *Id*.

As Manager, Scott claimed to have absolute control of Apogee's assets, regardless of Cindi's wishes or concerns. For example, despite Cindi's rejection of Scott's proposed buyout of her membership interest in 2018, Scott unilaterally proceeded to "buyout" Cindi's interest through a series of unauthorized transactions whereby he purported to buy her interest by liquidating substantially all of Apogee's appreciating or income-generating assets to himself or companies he owns, in exchange for notes on very favorable terms. CP 254-55, 694-95. Scott acted without holding any meeting or vote and without obtaining Cindi's consent or approval, in direct contravention of his attorney's confirmation in December 2018 that he "will proceed

with his management of the LLC for the benefit of Cindi and himself." CP 263-64. Scott also failed to provide Cindi with an accounting of Apogee's assets. CP 28-30, 54. Due to the corporate deadlock, Cindi saw no other viable option than to petition the superior court to wind down Apogee's operations and appoint a receiver with power to recover any wrongfully transferred assets. CP 173.

B. Procedural History.

On March 2, 2021, Cindi filed a Petition for Dissolution and Appointment of General Receiver. CP 1-13. The court's commissioner originally denied Cindi's petition. CP 265-267. However, Superior Court Judge Shelly Speir-Moss revised that order on April 30, 2021. CP 599-602. Contrary to Scott's claim that "[t]he court never considered whether a receiver was 'reasonably necessary' or the possibility of any 'other available remedies'" (Petition at 6), Judge Speir-Moss demonstrated her consideration of these factors in explaining her ruling (in part):

> What we have here is a very unfortunate situation where the two remaining members in this company have the exact same interest, 50/50. And from what

> I've read, there is a deadlock. We have one member who has pretty much sold off all of the revenue-producing assets. . . . And we are left with one member who really has no power to exercise her rights under the operating agreement because nobody has 51 percent anymore.

RP (4/30/21) at 29-30.

In its April 30, 2021 Order Granting Petitioner's Motion for Revision of Commissioner's Order, the trial court expressly determined that "cause exists pursuant to RCW 7.60.025(1), including provisions (t), (u), and (nn) for appointment of a general receiver." CP 601. Similarly, in the trial court's Order for Appointment of General Receiver the trial court explained it was "fully advised of the facts" and that "the Court finds that grounds exist for appointment of a general receiver in accordance with RCW 7.60.025(1)(i),(t), (u) and (nn) to take charge over all of the assets of Apogee, and to do such acts as are required to protect and preserve the business, assets, and the income stream therefrom…" CP 604-605.

Shortly after being appointed Receiver, Resource Transition Consultants LLC ("RTC") uncovered several abusive

transactions Scott orchestrated in his role as Manager. *See* CP 695-696. Despite RTC's uncovering of wrongdoing, Scott requested that the trial court reconsider its decision in ordering dissolution and appointing a receiver; however, the trial court denied Scott's motion for reconsideration and reaffirmed its rulings that dissolution and appointment of a receiver were necessary because there was no other adequate alternative, which the trial court explained as follows:

> The basis for the Court's holding last time was this problem with the 50/50 ownership split, and the fact that without 100 percent agreement of the members, this company can never be dissolved. I think that's a problem. . . When we have that kind of problem and there doesn't appear to be any way to give someone a 51 percent ownership interest, at least right now, ***the Court sees no other way to end the problem than to appoint a receiver and start winding things down***.

RP (5/21/21) at 26-27 (emphasis added).

Scott appealed the trial court's orders on many of the same grounds upon which his Petition is now based, including that the trial court erred in failing to compel arbitration, in ordering dissolution, and in appointing a general receiver. *See*

Appellant's Opening Br. (Oct. 8, 2021). The Court of Appeals issued its Unpublished Opinion on July 19, 2022, in which it affirmed the Superior Court's order granting Cindi's petition for dissolution and appointment of a general receiver. Scott moved for reconsideration, which the Court of Appeals granted in part on November 15, 2022.[2] Scott's Petition repeats the same arguments upon which his motion for reconsideration was based and which the Court of Appeals flatly rejected. *See* Appellant's Mot. for Reconsideration (Aug. 5, 2021).

On December 7, 2021, RTC filed an adjunct action under RCW 7.60.160 against Scott and certain of his entities to, among other things, recover Apogee's wrongly transferred assets. *See Resource Transition Consultants LLC v. Scott Edwards, et al.*, Pierce County Sup. Ct. Cause No. 21-2-08611-1 (Adjunct Complaint for Breach of Contract, Breach of Fiduciary Duties and Avoidance of Transfers) (filed Dec. 7, 2021). On October

[2] The Court's modification of its original Unpublished Opinion merely changes the second sentence in the first full paragraph of page 21 from "Scott does not dispute that he sold Apogee's properties to LLCs that he owns for less than their fair market value" to read: "The parties dispute whether the properties were sold at fair market value." Order Granting Motion for Reconsideration in Part and Amending Opinion (Nov. 15, 2022).

21, 2022, Superior Court Judge Matthew H. Thomas granted in part RTC's motion for partial summary judgment, finding that, as a matter of law, Scott breached his fiduciary duties, misappropriated company opportunities in violation of RCW 25.15.038(2)(a), improperly competed with the company in violation of RCW 25.15.038(2)(c), and effectuated conflict-of-interest transfers in violation of RCW 25.15.038(2)(b) when he entered into certain transactions as Apogee's Manager "without the required affirmative vote or affirmative written consent of the LLC Members" as required under RCW 25.15.121 and Apogee's operating agreement. *See id.* (Order Granting Plaintiff's Motion for Partial Summary Judgment Regarding Scott Edwards' Breach of Fiduciary Duties for Real Estate Transfers) (filed Oct. 21, 2022). Because Scott has already been found liable on those causes of action as a matter of law, the only issue remaining for trial in the adjunct proceeding is damages. *Id*.[3] Trial in the adjunct case is currently set for May 1, 2023. *Id*. (Order Amending Case Schedule) (filed Sept. 16, 2022).

[3] The Superior Court subsequently modified its order upon Scott's motion for reconsideration on December 2, 2022. *See id*. (Order Granting and

IV. ARGUMENT

RAP 13.4(b) sets forth the narrow circumstances upon which the Supreme Court will accept a petition for discretionary review, namely: "(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 (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." Even if one or more bases under RAP 13.4(b) is present, the Supreme Court still has discretion on whether to accept review or not. Scott argues that this case qualifies for discretionary review based on the grounds set forth in RAP 13.4(b)(1), (2) and (4).

Contrary to Scott's Petition, the Court of Appeals' unpublished Opinion does not create a conflict of law and does

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Denying in Part Reconsideration of Partial Summary Judgment Regarding Fiduciary Duties) (filed Dec. 2, 2022). This modification did not impact the Court's finding that Scott breached his fiduciary duties and committed other statutory violations in managing Apogee as a matter of law.

not address an issue of substantial public interest that affects individuals beyond the parties in the case. Discretionary review is, therefore, unjustified.

A. The Court of Appeals' Holding that Judicial Dissolution of Apogee was Outside of the Operating Agreement's Arbitration Clause does not Conflict with Binding Precedent.

Scott argues that the Court of Appeals' Opinion is "in conflict with multiple Court of Appeals decisions concerning the scope of LLC agreement arbitration clauses and the authority of an arbitrator to order extraordinary equitable relief." Petition at 10. Specifically, Scott contends that the Opinion is inconsistent with Division I of the Court of Appeals' decisions in *Berman v. Tierra Real Estate Group, LLC*, 23 Wn. App. 2d 387, 515 P.3d 1004 (2022) and *Verbeek Props., LLC v. GreenCo Envtl., Inc.* 159 Wn. App. 82, 246 P.3d 205 (2010). These contentions are unsupported.

1. The Opinion is Not Inconsistent with Berman v. Tierra Real Estate Group, LLC.

At the outset, Division I's ruling in *Berman* is far narrower than Petitioner portrays to this Court. *Berman* did not hold that

a plaintiff's cause of action for dissolution was arbitrable and, in fact, made no rulings with respect to the arbitrability of a petition for judicial dissolution. Instead, *Berman* held that plaintiff's individual and derivative claims against the entities at issue, specifically claims for breach of fiduciary duty and civil conspiracy, fell within both entities' arbitration clauses. *See Berman*, 23 Wn. App. 2d at 398 ("The [derivative] claims here at issue are the same as those discussed in the previous section: breach of fiduciary duty and civil conspiracy based on the individual appellants' alleged wrongdoing. ***These claims*** clearly fall within the very broad language of the agreement ('arising under, out of, in connection with or in relation to this Agreement')") (emphasis added). *Berman* is far more limited and tailored to the specific circumstances of that case.

In *Berman*, a plaintiff brought causes of action against entities of which he was a minority owner and their managers, alleging civil liability for wrongdoing related to corporate activities. The narrow holdings in *Berman* are not inconsistent with the Opinion in this case.

Here, Cindi petitioned the court for judicial dissolution of Apogee and appointment of a receiver; however, unlike in *Berman*, she did not file any affirmative causes of action for damages against Scott or his entities. The analysis in *Berman* is, therefore, not applicable to the facts of this case.

Further, in *Berman*, the language of the arbitration was broad. *See Berman*, 23 Wn. App. 2d at 398. In contrast, the Court of Appeals held that the issue of corporate dissolution "is not a legal dispute 'between or among Members and/or Manager(s)'" for purposes of the Apogee arbitration clause here. Opinion at 13. The Court concluded that dissolution "is a proceeding with respect to the continuing existence of the private entity at issue." *Id*. (citing RCW 25.15.265, .274). The Court similarly concluded that the appointment of a receiver cannot be a "dispute between or among Members and/or Manager(s)" of Apogee because a receivership is a remedy, not a cause of action. Opinion at 15 (citing *Bero v. Name Intelligence, Inc.*, 195 Wn. App. 170, 176, 381 P.3d 71 (2016) (internal citation omitted)). The Court of Appeals correctly held here that Apogee's

arbitration clause, which is not the broad clause that was present in *Berman*, did not bar Cindi from seeking judicial dissolution and appointment of a receiver in the Superior Court.

The Court of Appeals was also correct to reject Scott's argument that the reasons underlying Cindi's petition for dissolution (*i.e.*, allegations that Scott had breached his fiduciary duties as manager of Apogee by, among other things, unilaterally attempting to buyout Cindi without her consent, engaging in self-dealing and failing to fully and completely account for Apogee's assets) turned the issue of whether dissolution was proper into an arbitrable "dispute" under the Operating Agreement. It was unnecessary to resolve the merits of those issues prior to finding that the arbitration clause does not apply to a judicial dissolution or receivership action. *See Heights at Issaquah Ridge Owners Ass'n v. Burton Landscape Grp., Inc.*, 148 Wn. App. 400, 403, 200 P.3d 254 (2009) ("Courts resolve the threshold legal question of arbitrability of the dispute by examining the arbitration agreement without inquiry into the merits of the dispute.").

The Court of Appeals declined to read the arbitration clause in a manner inconsistent with the Operating Agreement's provision regarding corporate dissolution (§ 7.1), which expressly provides that the "entry of a decree of judicial dissolution pursuant to the Act" is an event triggering dissolution. *See* CP 177-87; Opinion at 15 ("Because Scott's argument would nullify article 7.1(b), we reject Scott's arguments."). In considering the intention of §7.1(b), the Court of Appeals followed a well-established canon of contractual interpretation. *See GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 140, 317 P.3d 1074 (2014) ("An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.") (internal citation omitted).

In sum, the Court of Appeals' determination that Cindi's petition for judicial dissolution was not subject to arbitration under Apogee's operating agreement was justified under

Washington law, is consistent with §7.1 of the Operating Agreement, and is not in conflict with the *Berman* case.[4]

2. The Opinion is Also Not Inconsistent with Verbeek Props., LLC v. GreenCo Envtl., Inc.

On its face, the Court of Appeals' Opinion does not conflict with the holding in *Verbeek*. That case simply held that nothing in RCW 7.24.010 prevents an arbitrator from determining in an arbitration award that declaratory relief is an appropriate remedy, which can then be confirmed by a court. *Verbeek*, 159 Wn. App. at 92. Arbitrators have the authority to consider prayers for declaratory relief under RCW 7.24.010 and RCW 7.04A.210(3). *Id*. But, contrary to the Petition, there was no ruling in the *Verbeek* case with respect to the arbitrability of

[4] The Court of Appeals' decision is consistent with Division I's decision in *JC Aviation Investments*, a case which Scott cites in support of his Petition. *See* Petition at 27, citing *JC Aviation Investments, LLC v. Hytech Power, LLC*, Case No. 81539-3-I, 16 Wn. App. 2d 1051, 2021 WL 778043 (Mar. 1, 2021) at *5 (n. 25). As noted in Scott's Petition, the Court of Appeals has interpreted an LLC agreement's arbitration clause to exclude an action for judicial dissolution of the company. *Id.* The Court in *JC Aviation Investments* made clear that a determination of whether judicial dissolution is appropriate under RCW 25.15.274 "does not require resolving a dispute under the LLC agreement" where the facts demonstrate it is not "reasonably practicable" for a company to continue operating under its LLC agreement. *Id*.

petitions for dissolution or an arbitrator's authority to enter a decree of judicial dissolution.

Scott argues that the Court of Appeals erred in failing to extend the reasoning in *Verbeek* to this case. But this is not a viable reason under RAP 13.4(b) to warrant discretionary review. Moreover, the Court of Appeals properly distinguished *Verbeek* on the grounds that RCW 7.24.010 places no limits on an arbitration clause's authority to provide for the award of declaratory relief, while, in contrast, RCW 25.15.018(3)(k) expressly precludes LLC agreements from varying a court's discretionary power to order dissolution. Because the interpretation of the arbitration clause Scott advocated would have violated RCW 25.15.018(3)(k), the Court of Appeals found Scott's reliance on *Verbeek* unwarranted and unpersuasive (Opinion at 14 (n. 6)); the Court of Appeals was under no obligation to extend *Verbeek*'s logic to an entirely different statutory scheme and factual circumstance.

In his Petition, Scott also suggests that the Court erred in holding that arbitrators do not have authority over a judicially

appointed receiver. Petition at 25-27. There is no binding decision in Washington holding that an arbitrator has the authority to appoint or oversee a receiver. Instead, the Court of Appeals was justified in holding the superior court has exclusive jurisdiction over such matters under RCW 7.60.005(10) and RCW 7.60.055(1). Opinion at 16 ("Because a receiver is defined as a person appointed by the superior court, and because the court maintains exclusive authority over the receiver, an arbitrator could not appoint or oversee a general receiver."). Given the clear language of the receivership statute, the Court of Appeals correctly rejected Scott's argument that the Uniform Arbitration Act, chapter 7.04A RCW, supersedes chapter 7.60 RCW and gives an arbitrator the authority to appoint and oversee a receiver.

In short, there is simply no legitimate reason to grant discretionary review based on an alleged conflict with *Verbeek*. That case is not in conflict with the Opinion below.

B. Revision of the Court of Appeals' Interpretation of RCW 7.60.025(1) is Unnecessary.

In its Opinion, the Court of Appeals held that RCW 7.60.025(1) requires a judicial finding of reasonable

necessity and inadequacy of other remedies in three specific circumstances, namely "where a statute requires a receiver, a state agent seeks a receiver, or a party seeks a receivership with respect to real property under RCW 7.60.025(1)(b)(ii)." Opinion 24-25. Because none of those circumstances are present in this case, the Court of Appeals stated that such findings were not required. *Id*. at 25. Regardless, the Court found that the Superior Court made such findings when it "considered the equitable circumstances in dissolving Apogee and appointing a receiver based on the record before it" and concluded that the Superior Court did not abuse its discretion in appointing a general receiver. *Id*.

Scott asked the Court to reconsider its ruling on the same legal basis upon which his current Petition is based; in fact, he specifically argued that the Court of Appeals misinterpreted the standard for appointment of a receiver. *See* Appellant's Mot. for Reconsideration (Aug. 5, 2021). The Court of Appeals, however, declined to amend its Opinion on those grounds. *See* Opinion at 1.

Given the plain language of the statute, the Court of Appeals' interpretation was reasonable. The statute states that a receiver "may be appointed by the superior court of this state in the following instances…" then lists multiple instances in which a superior court may appoint a general receiver. RCW 7.60.025(1)(a)-(nn). The statute includes a qualifying phrase "but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, ***a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate***." *Id*. (emphasis added). Given that the additional language *immediately follows* the three specific excepted instances, the Court's reading of the statute – that a determination of reasonable necessity and inadequacy of other remedies is

required only in those three circumstances – is the more rationale reading of the language. If each statutory basis required a specific finding of reasonable necessity, the legislature would not have had to repeat itself in RCW 7.60.025(1)(u) and (nn), wherein it authorized a court to appoint a receiver if "reasonably necessary" to protect property or "reasonably necessary" to secure ample justice.

Scott argues that Court of Appeals' statutory interpretation would result in absurd consequences. Petition at 18. However, this Court has made clear that the absurd results canon "must be applied sparingly" because "by its terms, [it] refuses to give effect to words the legislature has written" and "necessarily results in a court disregarding an otherwise plain meaning…." *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d 892 (2011). The Unpublished Opinion of the Court of Appeals gave due effect to the words and plain language of the statute.

Scott also argues that the Opinion diverges from Division I's interpretation of RCW 7.60.025(1) as articulated in *Bero v.*

Name Intelligence, Inc., 195 Wn. App. 170, 381 P.3d 71 (2016), *Chengdu Gaishi Electronics, Ltd. v. G.A.E.M.S., Inc.*, 11 Wn. App. 2d 617, 454 P.3d 891 (2019) and *King County Dep't of Comm. & Human Servs. v. Nw Defenders Ass'n*, 118 Wn. App. 117, 75 P.3d 583 (2003). Petition at 18-19. However, only *Nw Defenders* is a case where the appointment of a receivership was being challenged[5] and in that case the Court explicitly upheld the appointment of a receivership because, like here, one of the express statutory basis for appointing a receiver had been shown. *See Nw. Defs. Ass'n*, 118 Wn. App. at 123 (affirming the order appointing the receiver where the appointment was "fully authorized" by two of the statutory grounds). Even if these cases were "in conflict" with the Court of Appeals' Opinion below, the Court should not accept review.

First, the Opinion is ***unpublished*** and carries no precedential value under General Rule 14.1. It cannot be cited as binding authority, and will only be given "such persuasive

[5] In *Bero*, only the court's discretion to terminate a receivership was at issue, while in *Chengdu Gaishi Electronics* the trial court declined to appoint a receiver.

value as the court deems appropriate." GR 14.1(a). Therefore, it is not necessary to correct any perceived conflict.

Moreover, even if Scott's interpretation is correct, the orders, together with the oral explanations of the trial court, satisfy RCW 7.60.025(1), as is clear that the trial court acted well within the discretion afforded by the receivership statute.

More specifically, in its April 30, 2021 Order Granting Petitioner's Motion for Revision of Commissioner's Order, the trial court expressly determined that "cause exists pursuant to RCW 7.60.025(1), including provisions (t), (u) and (nn) for appointment of a general receiver" thereby incorporating the entire statutory standard in its order. CP 601. Similarly, in its Order for Appointment of General Receiver, the trial court explained that it was "fully advised of the facts" and found that "grounds exist for appointment of a general receiver in accordance with RCW 7.60.025(1)(i), (t), (u) and (nn) to take charge over all of the assets of Apogee, and to do such acts as are required to protect and preserve the business, assets, and the income stream therefrom…" CP 604-605. The specific citation

to RCW 7.60.025(1)(u) and (nn) means the trial court determined a receiver was "reasonably necessary," as that language is in the specific statutory provisions cited. Like in *Nw. Defs. Ass'n*, the trial court acted well within its discretion because several of the statutory reasons warranting the appointment had been shown.

Further, contrary to the Petition, the trial court made a finding of reasonable necessity and inadequacy of other remedies when it explicitly determined in its oral ruling that "there is a deadlock" and that "it is no longer reasonably practical to operate the company." RP (4/30/2021) at 29-31. The trial court later affirmed these findings on reconsideration, when it concluded that it "sees ***no other way to end the problem*** [of corporate deadlock] ***than to appoint a receiver*** and start winding things down." RP (5/21/21) at 26-27 (emphasis added). The Court also explained "it is not reasonably practical for this company to continue" and "there is a ***need*** for a receiver here, if for no other reason, to get the parties out of this 50/50 ownership split" which created an impossibility of performance under the Apogee Operating Agreement. *Id*. at 27 (emphasis added).

The Court of Appeals properly considered these Superior Court's oral rulings, and concluded that "the superior court did not abuse its discretion by appointing a general receiver." Opinion at 25. Specifically, the Court of Appeals held:

> [T]he record shows that the superior court did in fact consider whether equitable circumstances existed to dissolve Apogee [and appoint a receiver]. A review of the court's oral ruling shows that it considered the seriousness of the parties' deadlock (specifically, on the issue of removal, withdrawal, and dissolution) and the fact that Scott sold all of Apogee's revenue producing assets. The court also considered whether breaking the deadlock by dissolution would be beneficial for Apogee's members.

Opinion at 20. The Court further noted that the strained relationship between Cindi and Scott, their irreconcilable differences, as well as Scott's failure to provide Cindi with the requested accounting of Apogee's assets and transactions, were additional equitable circumstances necessitating dissolution and appointment of a receiver. Opinion at 22. The Court of Appeals also found that the Superior Court did not abuse its discretion in concluding that it was not reasonably practicable to carry on

Apogee's activities in conformity with its operating agreement, stating:

> The business purpose of Apogee is "to acquire, develop, improve, lease operate, encumber, sell, own and otherwise deal in and with real and personal property located in the State of Washington and elsewhere." CP at 177. However, Apogee's only remaining assets are the proceeds from Scott's property sales and some company cash. There is no evidence that Scott will be acquiring any more real estate on behalf of Apogee. In fact, based on the record and Scott's arguments before us, it appears that he was in the process of winding up business affairs, dissolving, and liquidating Apogee without [Cindi's] consent, even though she still remained a member, all the whole doing so without a majority vote.

Opinion at 21-22.

Scott suggests that a lawsuit (or arbitration) for damages would have been an adequate remedy in this situation and, for that reason, the trial court's appointment of a general receiver was unwarranted. *See* Petition at 2. But, just as in *Mony Life Ins. Co. v. Cissne Family L.L.C.*, permitting Scott to retain managerial control over Apogee and its assets while a lawsuit is pending would be inadequate, given the immediate danger (and

likelihood based on past behavior) of Scott dismissing that suit to shield his improper selling, transfer and wrongful disposal of Apogee's assets. 135 Wn. App. 948, 954, 148 P.3d 1065 (2006) (holding the remedy of filing a lawsuit would be inadequate given the immediate danger of respondent disposing of its assets, in which plaintiff had a secured interest).

In sum, review of the Court of Appeals' Opinion is improper under RAP 13.4(b)(1) and (2). The Opinion is unpublished and has no precedential value, contains a justifiable statutory reading, and regardless, modification in the manner advocated by Scott would not alter the ultimate outcome of this case because the trial court properly exercised its broad discretion, as is amply evidenced by its orders and oral findings.

C. The Opinion and the Underlying Disputes do not Implicate Issues of "Substantial Public Interest."

The Opinion also does not implicate any issue of "substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). The "substantial public interest" that Scott articulates appears only to be the "proper scope of an arbitrator's authority to order business dissolution."

But Washington law makes clear that dissolution of a business is a judicial undertaking and is not an arbitrable dispute. *See JC Aviation*, 2021 WL 778043, at *5.

Here, Scott's selfish desire to wrest control over Apogee back to himself, so that he may presumably dismiss the adjunct case, and shield assets he wrongly transferred to himself and his entities, hardly warrants discretionary review by this Court. The Unpublished Opinion below raises no issue of public importance to justify accepting review.

V. CONCLUSION

Cindi respectfully requests that the Supreme Court deny Scott's Petition. The Court of Appeals unpublished Opinion is consistent with Washington law, and Scott has failed to show any legitimate basis for acceptance of review under RAP13.4(b).

Respectfully submitted this 17th day of January, 2023.

EISENHOWER CARLSON PLLC

I certify that this answer contains 4,935 words in compliance with RAP 18.17(c)(10).

/s/ Neil A. Dial

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons an in the manner listed below:

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DATED this 17th day of January, 2023 at Tacoma, Washington.

Kathy Kardash

Kathy Kardash, Legal Assistant

EISENHOWER CARLSON PLLC

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