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STATE OF WASHINGTON
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Supreme Court No. 101757-0

IN THE WASHINGTON SUPREME COURT

WEI WANG, Respondent

v.

GARDEN RIDGE INVESTMENT, LLC, Petitioner

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF THE RESPONDENT; CITATION TO COURT OF APPEALS DECISION

The Respondent, Wei Wang, is the Plaintiff in the Trial Court and Respondent in the Court of Appeals. The unpublished decision of the Court of Appeals, Division I, was issued on January 30, 2023. A copy of this Opinion is appended to the Petition for Review.

II. ISSUES PRESENTED FOR REVIEW

Garden Ridge Investment, LLC¹, the Petitioner here and in the Court of Appeals, raises only one issue on its Petition for Review: Did the admission of the alleged debt asserted by Wei Wang as being “assumed by the Buyer²” create a genuine issue of fact that the debt was satisfied, relieving Garden Ridge as guarantor for the loan?

This statement of the issue on appeal is not only confusing but misstates the evidence and creates or infers facts not in evidence: There is nothing in evidence that Wei Wang admitted

¹ Garden Ridge Investment, LLC herein “Garden Ridge” or “Petitioner.”

²The term “Buyer” refers to Ambleside Holdings USA, Inc. a Washington corporation owned in part by Qiao Yi, who along with Rongfang Chan, is a guarantor of the guarantee made to Wei Wang by Garden Ridge. Ambleside purchased the Washington Hotel Marysville Project from the Washington Hotel Receivership.

that the debt was assumed by the Buyer; or that the debt was assumed.

The Respondent raises no new issues but reiterates that 1) she is entitled to the Summary Judgment on the basis that there are no genuine issues of any material facts and that she is entitled to a judgment as a matter of law. CR 56; and that 2) She is entitled to her attorney's fees in defense of the Petitioner's Petition for Review. RAP 18.1

III. THE PETITIONER DOES NOT RAISE A REVIEWABLE ISSUE UNDER RAP 13.4(b)

The Petitioner cites no authority for its appeal to this Court; but refers to its submission as a "Petition for Review." Under RAP 13.4(b) this Court does not accept a petition for review unless at least one of the following four qualifying standards are met:

A petition for review will be accepted by the Supreme Court only: (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.

This Court in Shumway v Payne, 136 Wash.2d 383, 964

P.2d 349 (1998) has ruled that:

RAP 13.4 requires a party seeking discretionary review of a Court of Appeals decision on direct appeal to file a petition for review within 30 days of the entry of the decision or order terminating review. *A petition for review will be granted only in certain circumscribed cases, RAP 13.4(b)*, and, if this court accepts review, the court will review only the questions raised in the petition and in the answer to the petition, unless the court orders otherwise. RAP 13.7(b). *Emphasis added.*

There is no argument, citation to fact or law that meets any of the four standards for the acceptance of this Petition for Review. The Petitioner has failed to demonstrate that the underlying Court of Appeals Opinion is in conflict with any decision of the Washington Supreme Court. Nor did it demonstrate that the Opinion is in conflict with any decision among any of the Divisions of the Courts of Appeals. This is not a case that raises any significant question under the Constitutions of the State of Washington or the United States. Nor is this a case of significant public interest. In fact, neither party moved to have the Court of Appeals decision published. This is a private contract dispute.

The Petitioner failed to raise or support the requirements for a Petition for Review under RAP 13.4(b). Nor did it file a

motion for reconsideration in the Court of Appeals.³ Its Petition for Review must be dismissed.

IV. STATEMENT OF THE CASE⁴

This is not a complex case. It is a simple breach of contract action for a monetary judgment and an order of foreclosure against Garden Ridge (Second Amended Complaint CP 1-8 plus attachments CP 9-54)

Wei Wang, the Respondent, loaned \$3,000,000 to a hotel project in Marysville. The loan documentation was later amended at the request of the borrowers and the Petitioner, Garden Ridge, guaranteed the \$3,000,000 debt and granted a Deed of Trust in its Renton property as collateral. As part of this transaction, Qiao Yi and Rongfang Chan, two of the principals of the Marysville Project guaranteed this debt to Garden Ridge. (CP 66-70, CP 107-116, and CP 117-118).

Wei Wang never received a payment on the loan, was never repaid. As a result, this action ensued. (CP 69).

³ Garden Ridge not only failed to support one of the four categories which would allow this Court to accept a Petition for Review under its own rules, but also failed to move for a reconsideration.

⁴ A more detailed version is in the Respondent's Brief to the Court of Appeals.

Wang moved for an order granting summary judgment on the debt due to her under the terms of the Loan Agreement and Promissory Note against Garden Ridge, to foreclose on the Renton property, for attorneys' fees, costs, and other relief. (CP 57-65)

On the motion for summary judgment, the Respondent, by declaration, provided undisputed evidence of the loan and the security. She provided a declaration that no payment had been received on the loan and that it was in default. (CP 66-70, CP 107-116, and CP 117-118)

The Petitioner tried to assert, without proper evidentiary proof, that the loan had been paid by a third party. It was an unsupported and incorrect allegation since the debt has not been assumed or repaid. Wei Wang was granted the partial Summary Judgment and a supplemental judgment for attorneys' fees and costs. (CP 183-189 and CP 282-284).⁵

V. RESPONSE TO ISSUE PRESENTED FOR REVIEW

Wei Wang never made an admission that the debt was assumed by the Buyer.⁶ This language is contained in a statement made by the Receiver in its final report in the Washington Hotel

⁵ See, Wei Wang's Response Brief in the Court of Appeals for the Respondent's full rendition of facts and its arguments.

⁶ See, *supra*.

Receivership.⁷ There were no distributions to the unsecured creditors of the Washington Hotel Receivership. The debt, still held by Wei Wang, has never been paid, and is still owed. Garden Ridge made no effort to argue or explain why or how its guaranty of the debt was somehow exonerated or otherwise mitigated.

In fact, the agreement between the 'Buyer' and Wei Wang which is in evidence is not an assumption, and specifically reserves all claims against Garden Ridge and others. (CR 99)

The Petitioner, who guaranteed the debt, provided no credible evidence in response to Wei Wang's motion for summary judgment that its obligation as the guarantor to that debt has been terminated or otherwise mitigated. Garden Ridge asserts that "Wang **may** have already been partially paid or fully paid." (Petitioner's Opening Brief in the Court of Appeals at Page 7) (Emphasis added)

Without substantive proof or support, this comment is precisely the self-serving speculation, opinion, and conclusion that the Courts have stated is insufficient to defeat a motion for summary judgment. Once Wei Wang met her burden on summary judgment of sworn testimony of the loan, the collateral,

⁷ Hotel America LLC v Washington Hotel and Restaurant Development, LLC et al., Snohomish County Superior Court, Case No. 19-2-07132-31

nonpayment, and notice of default, then the burden shifted to Garden Ridge to provide real evidence to support its unpled affirmative defense of payment.

Payment is an affirmative defense. U.S. Bank National Ass'n v. Whitney, 119 Wn. App. 339, 347, 81 P.3d 135 (2003).

The only testimony submitted by Garden Ridge is the declaration provided by its former principal, Ms. Chan. (CP 162-165). She states, without providing real proof that, “there are real issues of fact surrounding the facts as to the Plaintiffs claims that she was ever paid or not towards the loan agreement, or had the debt assumed by a new buyer during the receivership sale in Snohomish County, Washington.” (CP 162).

Based on these inconclusive and unsupported allegations of Garden Ridge and considering the declarations of Wei Wang and Qiao Yi to the effect that there have been no payments made, the Court granted summary judgment.

Garden Ridge did not move to reconsider the order on summary judgment in the Trial Court. Nor did it take the time to file a reply brief in the Court of Appeals.

Based on this, the Court of Appeals properly affirmed the Trial Court's Order on summary judgment.

As stated by the Court of Appeals in its Opinion at page 7:

Even assuming that Garden Ridge produced evidence sufficient to show that the receivership buyer assumed WHD's⁸ debt to Wang, Garden Ridge fails to explain how that evidence is material to the issues of default and liability of Garden Ridge as a guarantor. *See, Owen v. Burlington N. Santa Fe R.R. Co.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005) ("A material fact is one that affects the outcome of the litigation."). Garden Ridge appears to equate assumption of the loan debt with satisfaction of that debt, but the evidence of assumption does not show that WHO, a successor to the borrower, or any other party, made payments to satisfy the loan.

Garden Ridge does not assert that it made any payments. In its response to the summary judgment motion, Garden Ridge acknowledged it had no information about the receivership buyer or whether Wang received any loan payments from any party. At the hearing on the motion, rather than identifying evidence of funds paid to Wang, Garden Ridge claimed that whether someone had "paid off Wang" was an issue to be "fleshed out" through further litigation. However, as the trial court pointed out, the case had been pending since 2018 and there was no motion for a continuance under CR 56(f) to allow for further discovery. And to defeat summary judgment, Garden Ridge had to produce admissible evidence to counter the evidence of default and liability under the amended loan agreement and note as a guarantor. Instead, Garden Ridge merely argued that relevant evidence might surface if the case could proceed to trial. The receiver's comment about assumption of WHD's debt does not contradict Wang's testimony denying the receipt of

⁸ Washington Hotel Development

payments due on the loan or Qiao's testimony denying having made any payments personally or through affiliated business entities.

There are no genuine issues of any material fact which would require the reversal of the Trial Court's Order on Summary Judgment.

VI. RESPONDENT IS ENTITLED TO HER ATTORNEYS' FEES AND COSTS RELATED TO THIS PETITION FOR REVIEW

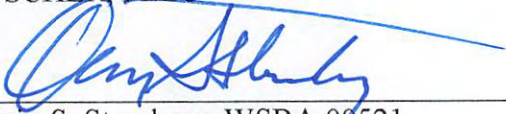
The Court, in affirming the Trial Court, should award a subsequent award for Respondent's attorneys' fees and costs pursuant to RAP 18.1. The Court of Appeals allowed the Respondent to apply for attorneys' fees, which she did. The Court of Appeals has not ruled on Wang's application for attorneys' fees.

VII. CONCLUSION

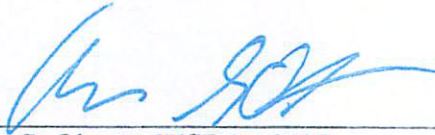
The Court should affirm the superior court ruling of Judge Parisien as well as the Court of Appeals' Opinion and grant an award to Respondent for her reasonable attorneys' fees and costs in responding to this Petition for Review.

Dated this 28th day of March 2023.

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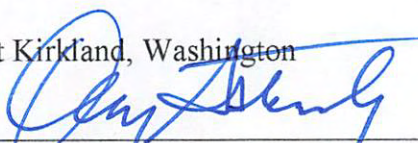
CERTIFICATE OF SERVICE

I, Craig S. Sternberg, do hereby declare under penalty of perjury that I have arranged service of this attached Answer to Petitioner Garden Ridge's Petition for Review on counsel for Petitioner by email delivered on March 28, 2023, as follows;

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