SUPREME COURT NO.: 101942-4
COURT OF APPEALS NO.: 83127-5-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GARLAND D. HALL,

Petitioner.

v.

JOHN L. SCOTT REAL ESTATE, a Washington corporation, BILL STERN, an individual, and KIM STEVENSON, an individual

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

Jeffrey P. Downer
WSBA No. 12625
Daniel C. Mooney
WSBA No. 44521
Attorneys for Respondents

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street, Suite 1800
Seattle, WA 98101-3929
(206) 624-7990

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I. IDENTITY OF PETITIONER

Respondents John L. Scott Real Estate, William Stern, and Kim Stevenson (collectively "JLS"), defendants below, ask this Court to deny review of the decision designated in Part II.

II. CITATION TO COURT OF APPEALS DECISION

On January 17, 2023, the Court of Appeals, Division I, issued a unanimous unpublished opinion under Appellate Cause No. 83127-5-I (hereinafter "Opinion"), affirming the trial court's grant of summary judgment dismissing Garland Hall's claims against JLS.

III. ISSUE PRESENTED FOR REVIEW

Whether this Court should deny review of the Court of Appeals decision where Hall (1) fails to show that the Court of Appeals' decision conflicts with settled law; (2) simply disagrees with the decision; and (3) fails to establish any basis for review under RAP 13.4(b).

IV. STATEMENT OF THE CASE

The facts and procedure as stated in Division I's unpublished opinion are accurate and need not be repeated at length. However, a few facts are worth highlighting.

A. Hall knowingly and voluntarily executed the Form 47 Agreement, and it was disclosed to him that the buyer would compensate JLS.

Once Mr. Stern concluded that STCA was the ideal buyer of the multi-parcel assemblage, JLS approached Hall and several other owners (collectively the "sellers") and asked them to sign a standard Northwest Multiple Listing Service (NWMLS) Form 47 – Seller Representation Agreement ("No Marketing-Sale to Identified Buyer") (as to the version signed by Hall, the Form 47 Agreement). CP 653-54, 659-60. Under those agreements, JLS would market the sellers' properties to STCA alone in exchange for a commission equal to 4 percent of the purchase price. CP 653-54. JLS's agreed commission of 4 percent was well-below the typical 10 percent commission fee for such work. CP 654. JLS disclosed that it would seek an

additional "facilitation fee" from STCA of 2 percent or less of the purchase price, thereby bringing JLS's total possible compensation from the sellers' sale of the affected properties to STCA to 6 percent of the purchase price. *Id.*

Hall signed the Form 47 Agreement in December 2014. *Id.*; CP 721. The Form 47 Agreement identified JLS as Hall's agent within the meaning of RCW 18.86. CP 654, 659.

B. Hall knowingly and voluntarily signed a residential purchase and sale agreement for the Property.

On December 22, 2014, Stern presented Hall with a Residential Purchase and Sale Agreement (the "PSA") from STCA. CP 656, 666-88. The PSA included an addendum ("Addendum No. 1"). CP 671-76. Section 9.7 of Addendum No. 1 stated that STCA would pay JLS a facilitation fee pursuant to a separate written "Facilitator Agreement" and notes that JLS was not STCA's agent. CP 675.

Stern reviewed the terms of the PSA with Hall, and Hall signed it that same day without asking any questions. CP 656. On January 5, 2015, STCA executed the PSA. *Id.*

C. The Facilitation Agreement between JLS and STCA.

In 2016, long after Hall had signed the Form 47 Agreement and the PSA in December 2014, Jeannie Simpson, general counsel for JLS, reviewed a draft facilitation agreement between JLS, on the one hand, and STCA, on the other. CP 1304-20. The draft facilitation agreement contemplated that JLS would assist STCA "in procuring fully executed purchase and sale agreement … for certain real property located in Sammamish, King County, Washington." CP 1307.

In September 2016, STCA and JLS executed the facilitation agreement ("Facilitation Agreement"). CP 912-17. The Facilitation Agreement recognized that JLS "has assisted [STCA] in procuring fully executed purchase and sale agreements … for certain real property in Sammamish, King County, Washington … [and] may continue to provide the same

assistance to [STCA] in procuring additional PSA Agreements on other real property in Sammamish … for the term of this Facilitator Agreement." CP 912. For its services, JLS would receive a facilitation fee "equal to two percent (2%) … of the total purchase price paid to the seller of the PSA Property or Potential PSA Property … due and payable upon the closing of the sale of each PSA Property or Potential PSA Property." *Id.* The 2 percent facilitation fee contemplated by the Facilitation Agreement matched that facilitation fee Stern disclosed to Hall and other potential sellers that JLS would seek. CP 654.

The Facilitation Agreement further stated that it was

> for payment of compensation only and is not an agency agreement, does not create an agency relationship between the parties and does not impose any affirmative duties or obligations on [JLS] other than those agency duties owed to any party to whom a real estate broker provides real estate brokerage services pursuant to RCW 18.86.030. [STCA] understands and acknowledges that [JLS] will be representing either the property owner (seller) or neither party in any transaction involving Buyer. … [T]his Agreement shall in all respects be subject to the duties of [JLS] to the sellers they represent,

including without limitation, the duties of confidentiality and loyalty.

CP 912-13.

D. Hall failed to remove his personal property from the Property and failed to close pursuant to the terms of the PSA.

Despite having had four years between execution of the PSA and closing, Hall failed to take steps to remove his personal property, including several cars and a large quantity of audio equipment, from the Property. CP 455-61, 463-71.

In addition, when the time for closing came, Hall refused to close in accordance with the PSA, forcing STCA to institute legal proceedings and incur legal fees; STCA ultimately recovered an award of its reasonable attorney fees from Hall. *See* CP 621-33, 635-46. STCA finally closed on the Property on January 15, 2019. CP 648-51.

After taking title to the Property, STCA incurred more than $300,000 in costs remediating the gasoline contamination from the underground storage tank and removing Hall's abandoned personal property. CP 583-85, 586-619.

E. Statement of Proceedings

Hall sued JLS, asserting claims for breach of duties under RCW 18.86, misrepresentation, and violation of the CPA. CP 1-11. Hall later filed an Amended Complaint that contained an additional claim for breach of contract. CP 14-27.

After discovery, JLS moved for summary judgment. CP 427-446. The trial court granted JLS's motion for summary judgment in its entirety and denied Hall's motion for reconsideration. CP 1093-95, 1096-112, 1402-03. The trial court also granted JLS's motion for attorneys' fees and costs pursuant to the prevailing party provision of the Form 47 Agreement. Op. Br. Appx., Ex. 1.

F. The Court of Appeals affirmed the trial court's decision, holding that Hall had failed to meet his burden.

Hall appealed the trial court's decision to the Court of Appeals, Division I. On January 17, 2023, the Court of Appeals issued a unanimous unpublished opinion affirming the trial court's grant of summary judgment on the grounds that:

1. Hall failed to present evidence supporting a genuine issue of material fact on whether JLS breached the duty owed under RCW 18.86.030(1)(a) and (d), or RCW 18.86.040 (1)(a) and (b), (1)(d);
2. Hall failed to present evidence supporting a genuine issue of material fact as to causation under the CPA; and
3. Hall failed to present evidence supporting a genuine issue of material fact as to the reliance element of the misrepresentation claim.

Opinion at 26, 28, 31, 32, 33, and 36. After Hall's motion for reconsideration and motion to publish were denied, he timely filed a Petition for Review. *See generally* Pet. for Rev.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Hall fails to establish any basis under RAP 13.4 for this Court to accept review.

Hall's Petition for Review does not present a proper basis for review by this Court. The Supreme Court's review of a Court of Appeals decision is an extraordinary step, and

RAP 13.4(b) sets forth the **only** grounds under which a Court of Appeals decision will be reviewed:

> (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 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.

RAP 13.4(b).

Nothing in RAP 13.4 or in Washington law entitles Hall to review simply because he disagrees with the Court of Appeals' decision:

> RAP 13.4(b) does not allow review simply to correct isolated instances of injustice. The Supreme Court, in passing upon a petition for review, is not operating as a court of error, but rather is functioning as the highest policy-making judicial body of the state. Its concern is with the general state of the law, not particular applications of it, whether involving the state constitution, statutory or regulatory law, or the common law. …

Wash. Appellate Prac. Deskbook, §18.2 (4th ed. 2016).

Hall argues review is warranted under RAP 13.4(b)(1), (2), and (4), but the authority he cites in his Petition does not conflict with the Court of Appeals' ruling, and no matters of substantial public interest are implicated by this purely private dispute.

B. The Court of Appeals' decision with respect to dismissal of the fraudulent misrepresentation claim was consistent with precedent of the Supreme Court and Court of Appeals.

Hall argues the Court of Appeals erred in affirming dismissal of the fraudulent misrepresentation claim when it ruled he failed to meet his burden of proof on the reliance element. Pet for Rev. at 10-12. Hall contends that case law eliminates the reliance requirement when the defendant is under a duty to disclose material facts. *Id.* Hall is not correct.

1. The Court of Appeals' decision requiring Hall to establish the reliance element was consistent with Supreme Court precedent.

Hall cites a number of Supreme Court cases to advance his argument that reliance is not a required element of a

fraudulent misrepresentation claim against a defendant with a duty to disclose. *See* Pet. for Rev. at 10-12. However, all the Supreme Court caselaw cited by Hall on this point make clear that reasonable reliance remains a required element, even in cases where the defendant is under a duty to disclose.

Hall first cites *Stiley v. Block*, 130 Wn.2d 486, 925 P.2d 194 (1996). Pet. for Rev. at 10. In *Stiley*, the plaintiff was a real estate investor who brought a claim for fraud against an attorney who acted as an escrow agent and represented the owner of a property. *Id.* at 489-98. In analyzing whether a grant of directed verdict was proper, the Court detailed the nine elements of fraud, including "plaintiff's right to rely" upon an alleged misrepresentation of an existing fact. *Id.* at 505. Though the focus of *Stiley* was whether the plaintiff had made a sufficient showing that the alleged misrepresentation was an existing material fact, *id.* at 505-06, and the opinion does not discuss at length the reliance element, the Court notes it is a required element of the cause of action, even where the

defendant has a duty to disclose. Hall's contention that *Stiley* eliminated it is false.

Hall also cites *Oates v. Taylor*, 31 Wn.2d 898, 199 P.2d 924 (1948). Pet. for Rev. at 10-11. In *Oates,* Oates claimed fraud against Taylor regarding disclosures Taylor made with respect to the financial health of his home building business. In holding that the trial incorrectly entered judgment in favor of Oates, the Court held that there was no fiduciary relationship, and thus Taylor had no duty to speak; therefore, his silence as to the financial health of his company did not constitute actionable fraud. *Id.* at 904-05.

The *Oates* Court did not extensively discuss the reliance element because it was not the focus of the Court's opinion, the Court certainly did not eliminate it. In fact, the Court specifically noted reliance was an element of a fraud claim when stating the elements of the cause of action. *Id.* at 902 ("he must have acted in reliance upon them to his injury").

Hall also cites *Wash. Mut. Sav. Bank v. Hedreen*, 125 Wn.2d 521, 886 P.2d 1121 (1994). Pet. for Rev. at 11. In that case, the Court was analyzing whether the defendant had a duty to disclose a discrepancy between a master lease and a commitment letter under the particular facts of the case. *Id.* at 529. The Court specifically noted in its discussion of the issue that reliance is an element of such a claim, stating: "in those cases where a court has found a duty to disclose, the circumstance surrounding the transaction have created a relationship of trust and confidence **upon which the injured party was entitled to rely.**" *Id.* at 526 (emphasis added).

Hall also cites *Morris v. Int'l Yogurt Co.*, 107 Wn.2d 314, 729 P.2d 33 (1986). Pet. for Rev. at 12. Hall misstates the holding of *Morris*. *Morris* is limited to those cases involving omission of a material fact in violation of RCW 19.100.170 (2), Washington's Franchise Investment Protection Act. *Morris*, 107 Wn.2d at 330 ("We hold, therefore, that in an action alleging the omission of a material

fact in violation of RCW 19.100.170 (2), proof of nondisclosure of a material fact establishes a presumption of reliance which the defendant may rebut[.]"). The Court's opinion was limited to the burden of proof under a particular statute designed to protect franchisees' investments, not a wholesale abolition of the reliance element in all cases. Furthermore, far from eliminating the reliance element, the case establishes that reliance is a required element and creates a burden-shifting scheme on the element. *Id.*

Finally, Hall cites *Mersky v. Multiple Listing Bur. Of Olympia, Inc.*, 73 Wn.2d 225, 437 P.2d 897 (1968). Pet. for Rev. at 11-12. In *Mersky*, vendors of real estate sued their broker after they discovered the buyer was related to one of the broker's employees. *Id.* at 228. The Merskys testified that had they known about the relationship, they would have not have simply accepted the offer and instead would have made a counteroffer. *Id.* In fact, the Merskys had specifically asked the broker who the prospective purchasers were, to which the

broker inaccurately responded that he knew only that they were from California. *Id.* at 227-28. The trial court dismissed the claim, finding that the alleged breach of the duty to disclose was immaterial. *Id.* at 226.

Reversing that decision, the Supreme Court stated that the admitted failure to disclose the close blood relationship, particularly in light of the Merskys' request for the information, breached the broker's duty of full disclosure. *Id.* at 233. The Court therefore fashioned a remedial rule whereby the broker must give up its commission due to the breach of duty by failing to disclose the familial relationship. *Id.* While the Court acknowledged the proximate cause element, it did not eliminate the reliance element. *Id.* at 231. In fact, the Court barely discussed the reliance element, noting only that it had been established ("despite the fact that a request for identity of the purchaser had been made"). *Id.* at 233.

2. The Court of Appeals' holding that Hall failed to establish the reliance element of his fraudulent misrepresentation claim

was consistent with published Court of Appeals decisions.

Hall cites several cases from various Courts of Appeals in support of his argument that reliance is not a required element of a fraudulent misrepresentation claim against a defendant with a duty to disclose. *See* Pet. for Rev. at 10-12. However, those cases also make clear that reasonable reliance is a required element even in cases where the defendant is under a duty to disclose.

Hall cites *Crisman v. Crisman*, 85 Wn. App. 15, 931 P.2d 163 (Div. 2 1997). Pet. for Rev., p. 11. However, the section of the case cited by Hall was the Court's general discussion of the discovery rule in the context of tolling the statute of limitations, and was not a statement abrogating the reliance element of a fraudulent misrepresentation claim. Hall misstates the holding of the case.

Hall also cites *McRae v. Bolstad*, 32 Wn. App. 173, 646 P.2d 771 (Div. 1 1982). Pet. for Rev. at 11. In that case, when reviewing whether the trial court properly instructed the

jury on the elements of fraud in a case involving the sale of a house with known, but not disclosed, plumbing problems, the court of appeals specifically discussed that reliance is an element of a fraud claim, noting "purchasers of property have a right to rely on the sellers' and their agents' representation." *Id.* at 177. Clearly the court did not eliminate the reliance element.

Hall also cites *Dussault et rel. Walker-Van Buren v. American Intern. Grp., Inc.*, 123 Wn. App. 863, 99 P.3d 1256 (Div. 1 2004). Pet. for Rev. at 11. However, *Dussault* does not discuss whether reliance is a required element of a fraud claim, but rather discusses more generally whether a plaintiff can bring a fraudulent misrepresentation claim even if plaintiff is not owed a duty to disclose. *Id*. at 871-72. Hall grossly overstates the case's holding.

Hall also cites *Deegan v. Windermere Real Estate/Center-Isle, Inc.*, 197 Wn. App. 875, 391 P.3d 582 (2017) for the proposition that it is impossible to prove the reliance element in non-disclosure cases so that it has

been eliminated. Pet. for Rev. at 12. However, the *Deegan* court said no such thing; in fact, it expressly noted that reliance is an element of the cause of action when it held that in cases under the CPA for omission of material facts, there is a rebuttable presumption of reliance. *Id.* at 890. Clearly, the *Deegan* court did not eliminate the reliance element from misrepresentation claims.

C. The Court of Appeals' decision with respect to disclosing the terms of the Facilitator Agreement and conflicts of interest was correct and consistent with Washington caselaw.

Hall argues that the Court of Appeals erred in its conclusion that JLS sufficiently disclosed any conflict of interest posed by the Facilitator Agreement or relationship with STCA. Pet. for Rev. at 12-21. In making these points, Hall does not discuss any point of law on which the Court of Appeals supposedly errored; instead, he argues that review is warranted so this Court can determine whether a broker must fully disclose the terms of compensation to the broker's client (a settled point of law), and so this Court can give guidance to

the lower courts regarding when a conflict of interest arises and the scope of a broker's disclosure obligations regarding any conflicts of interest. *Id.*

These arguments fail to show any conflict in the law that this Court needs to resolve. Rather, they are merely Hall taking issue with the Court of Appeals' view of the facts. For example, Hall argues that JLS "never disclosed that it would receive a 2% (sic) commission from the Buyer of Hall's property," so this Court supposedly should accept review to determine whether a broker must fully disclose the terms of compensation. Pet. for Rev. at 14-15. However, the record reflects that the 2 percent fee *was* disclosed to Hall. CP 654 at ¶9; CP 675. The Court of Appeals deemed that disclosure sufficient. Hall merely disagrees. Such disagreement is no basis for this Court to take the extraordinary step of accepting review.

Hall also argues that review is warranted to give guidance to lower courts about when a conflict of interest arises

and the scope of disclosure for them. Pet. for Rev. at 17. Again, this argument is merely Hall's disagreement with the Court of Appeals' view of the facts. Though Hall contends JLS did not sufficiently disclose the nature and details of its working relationship with STCA, the Court of Appeals deemed it sufficient. *See* Op. at 28-32, 36-37. And in reaching its decision, the Court of Appeals assumed a conflict of interest existed under the facts of the case. *Id*. at 32 ("To the extent there was one, Hall cannot reasonably argue that JLS failed to disclose a conflict of interest with STCA").

Every court that has reviewed this matter has viewed the facts differently than Hall does. His mere disappointment that he has lost at every turn does not entitle him to review by this Court. In evaluating a petition of review under RAP 13.4(b), this Court is not operating as a court of error, nor does it seek to correct isolated instances of injustice. Indeed, no injustice occurred here, and thus none needs correction.

D. To the extent Hall seeks to have dismissal of his CPA claim reviewed, this Court should decline to do so.

The Court of Appeals affirmed dismissal of Hall's CPA claim because he failed to show how any of his alleged damages under the CPA were proximately caused by JLS. Op. at 33.

In his Petition for Review, Hall gives at most passing treatment to *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.* for the proposition that a misrepresentation of material terms of a transaction may form the basis of a CPA claim. Pet. for Rev. at 23. There is no dispute on that point of law, and it was not the basis for the dismissal of Hall's CPA claim.

Since he fails to offer any meaningful analysis and completely fails to address the actual basis for the Court of Appeals' decision regarding the CPA claim, this Court should decline to review the Court of Appeals' decision to dismiss the CPA claim. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 416, 120 P.3d 56 (2005) (Supreme Court will not review issues

for which inadequate argument has been briefed or only passing treatment has been made).

E. This case does not present a genuine issue of substantial public interest that should be determined by this Court.

Hall contends that there is uncertainty whether a real estate "agent[1]" representing a seller under RCW 18.86 must disclose to the principal the terms and the amount of compensation it will receive from a buyer. Pet. for Rev. at 1. He argues that finding such information to be "material" would bring a broker's duties into harmony with the disclosures required by the Department of Licensing. *Id.*

For a substantial public interest to exist, Hall must show "the particular issue has ramifications beyond the particular parties and the particular facts of an individual case." *Wash. Appellate Prac. Deskbook* §18.2(3) (4th ed. 2016). Detailed analysis of the "substantial public interest" criterion of

[1] Hall refers to real estate professionals under RCW 18.85 as "agents"; however, the statute actually refers to them as "brokers", which is defined as a "natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of a designated broker or managing broker." RCW 18.85.011(2).

RAP 13.4(b)(4) is scant, but this Court weighed what amounts to "public interest" when considering the related question of whether to decide a moot issue:

> When determining the requisite degree of public interest, court should consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question.

In re Mines, 146 Wn.2d 279, 285, 45 P.3d 535 (2002) (internal quotation marks omitted). *Dept. of Ecology v. Adsit*, 103 Wn.2d 698, 705, 694 P.2d 1065 (1985); *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Where the Court has directly addressed the "substantial public interest" criterion of RAP 13.4(b)(4), it has used these principles. *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005).

In *Watson*, the issue was whether a prosecutor's office delivery of a memo to all members of the bench regarding its decision not to recommend drug offender sentencing alternative (DOSA) sentences was an improper *ex parte* communication. This Court held that the Court of Appeals' decision was

reviewable under RAP 13.4(b)(4) because the ruling (1) could affect every sentencing proceeding involving a DOSA sentence; (2) created confusion and invited unnecessary litigation; and (3) could chill policy actions by both attorneys and judges in the future. *Id.*

In contrast, this case involves only the private parties to this action and affects only them. Generally, disputes between real estate professionals and property buyers are private rather than public. *See*, *e.g.*, *Sato v. Century 21 Ocean Shores Real Estate*, 101 Wn.2d 599, 681 P.2d 242 (1984). This is a private real estate breach of duties case based on unique facts applicable to this case only, which are unlikely to recur, and the legal issues involved in this case are well-settled. Therefore, RAP 13.4(b)(4) does not provide a basis for review of the decision.

Although Hall offers a perfunctory argument that there are broader implications for the duties of real estate brokers who need clarification as to the scope and extent of their

disclosure obligations, that is simply not the case, as the law is already clear and in unity as to what a conflict of interest is and what information a broker must disclose.

Furthermore, Hall petitions for review of an unpublished decision. Because that decision is unpublished, it has no precedential value. RCW 2.06.040; *State v. Fitzpatrick*, 5 Wn. App. 661, 668, 491 P.2d 262 (1971). Unpublished opinions of the Court of Appeals will not be considered in appellate courts and should not be considered in the trial courts. *Id.* They do not become part of the common law of the State of Washington. "Unpublished opinions … should not be cited or relied upon in any manner." *Skamania County v. Woodall*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701, *rev. denied* 144 Wn.2d 1021, 34 P.3d 1232 (2001) (citing RAP 10.4 (h)). Therefore, there is no possibility the Court of Appeals' decision creates supposedly bad precedent and or otherwise has broad implications beyond the parties to this case, such that review under RAP 13.4(b)(4) is warranted.

F. The Court should award JLS its fees in responding to this petition.

RAP 18.9 permits an appellate court to award a party its attorney's fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action. *Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 349 (2004). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and the appeal is so devoid of merit that there is no possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325 (2005); *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 183 P.3d 849 (2008) (*pro se* litigant's multiple, frivolous appeals and motions to modify warranted imposition of attorney's fees and costs).

JLS should be awarded its attorney's fees and costs under RAP 18.9. Hall's petition for review is devoid of merit and based on arguments with no relation to the law. Hall's petition appears intended to delay JLS' efforts to put this matter behind

it, be done with this transaction and have peace of mind. This is precisely the abuse of the appellate process that RAP 18.9 is intended to deter. JLS should be awarded its reasonable attorney fees and costs opposing this petition for review.

VI. CONCLUSION

RAP 13.4 enumerates the four narrow grounds for review by the Supreme Court. This case presents no such issue for review; Hall fails to meet the strict standards of RAP 13.4 in any regard. This Court should deny review and award JLS its reasonable attorney's fees and costs incurred in responding to this Petition for Review.

Respectfully submitted this 17th day of July, 2023.

I certify that this memorandum contains 4,548 words, in compliance with RAP 18.7.

LEE SMART, P.S., INC.

By: */s/ Daniel C. Mooney*
Jeffrey P. Downer, WSBA No. 12625
Daniel C. Mooney, WSBA No. 44521
Of Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on July 17, 2023, I caused service of the foregoing pleading on each and every attorney of record herein:

VIA EMAIL

Mr. Mark Perez
Emissary Law
3901 Leary Way NW, Suite 4
Seattle WA 98107
Main 206.216.2980
E-mail mark@emissarylaw.com

DATED this 17th day of July, 2023, at Seattle, Washington.

/s/ Selena Riley
Selena Riley
Legal Assistant

LEE SMART P.S., INC.

July 17, 2023 - 12:26 PM

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