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Supreme Court No. 102683-8

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SUPREME COURT  
FOR THE STATE OF WASHINGTON

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JINRU BIAN, a married man,

*Petitioner,*

v.

OLGA SMIRNOVA, a married woman,

*Respondent.*

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**OLGA SMIRNOVA'S ANSWER TO JINRU BIAN'S  
CORRECTED PETITION FOR DISCRETIONARY  
REVIEW**

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## I. INTRODUCTION

Petitioner Jinru Bian’s (“Bian”) Petition for Review (“Petition”) of the Division 1 Court of Appeals’ decision affirming<sup>1</sup> the grant of Respondent Olga Smirnova’s (“Smirnova”) award of attorneys’ fees and costs states no legitimate basis for further review. The Court of Appeals properly affirmed the award of attorneys’ fees and costs and remanded only for a recalculation of interest on the judgment in question. As a result, this Court should deny this Petition.

This Petition is the second time Petitioner has sought relief from this Court in this matter. At the trial court level, Smirnova was granted summary judgment on all of Bian’s claims. Summary judgment was upheld on appeal to the Court of Appeals<sup>2</sup> and on petition for review to this Court.<sup>3</sup> The only remaining issue for the trial court was the entry of an award of attorneys’ fees and costs to Smirnova. After extensive motion

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<sup>1</sup> *Bian v. Smirnova*, 2023 WL 7298788 (Div. 1 2023).

<sup>2</sup> *Bian v. Smirnova*, 2021 WL 4840816 (Div. 1 2021).

<sup>3</sup> *Bian v. Smirnova*, 199 Wash.2d 1008, 506 P.3d 642 (Table) (2022).

practice, the trial court did this by entry of its Second Amended Judgment dated April 14, 2023 (the “Judgment”).

Bian appealed again. The Court of Appeals upheld the trial court’s award of attorneys’ fees and costs but remanded to the trial court to recalculate interest on the judgment from the date of entry of the Judgment in April 2023, rather than from the initial entry of the Original Judgment in 2021, defined herein. Bian now—again—seeks review. However, Bian fails to meet the correct standards for review under RAP 13.4(b). This significant failure mandates this Court deny the Petition.

## **II. RESTATEMENT OF THE ISSUES**

1. Did the Court of Appeals err in upholding the trial court’s award of attorneys’ fees and costs to Smirnova with remand to the trial court to amend the *Second Amended Judgment* solely to recalculate interest accruing on said Judgment?

If the Court grants Bian’s Petition for Review, the following issue should also be reviewed:

2. Did the Court of Appeals err in denying Smirnova interest on the award of attorneys' fees and costs from the date of entry of the Original Judgment in March 2021?

### **III. STATEMENT OF THE CASE**

The Whatcom County Superior Court granted Smirnova summary judgment on August 5, 2020, including summary judgment on Bian's claim for adverse possession (CP 202-203). That Court also denied reconsideration on September 21, 2020. (CP 241). Judgment was entered by the trial court on March 19, 2021 ("Original Judgment") (CP 387-389).

This case was originally filed on August 1, 2018, under Whatcom County Superior Court Cause Number 18-2-01455-37. The parties conducted written discovery and litigated under that cause number until the Whatcom County Superior Court Clerk dismissed that case on January 24, 2020, due to Bian's failure to diligently prosecute the case (*See Verbatim Report of Proceedings, Volume 1, March 29, 2023 ("VRP1")* at p. 30:17-22). Bian re-filed the same complaint on February 3, 2020,



requiring Smirnova to re-answer the complaint (*Id.*). Importantly, all prior discovery and work done in the dismissed case was available for use by the parties in the re-filed case—including for use in the summary judgment proceedings.

Bian appealed the Original Judgment on October 12, 2020 (CP 281-285), and amended his Notice of Appeal on March 19, 2021, to include an appeal of the attorneys’ fees and costs awarded to Smirnova. (CP 382-385). In an unpublished opinion issued on October 18, 2021 (the “Unpublished Opinion”), the Court of Appeals upheld the trial court’s substantive ruling. (CP 417). The Court of Appeals also upheld Smirnova’s entitlement to an award of attorneys’ fees and costs under RCW 7.28.030(3), but “reverse[d] the award of attorneys’ fees and remand[ed] to the trial court to independently determine if the amount Smirnova requested was equitable and just.” (CP 433)

The Supreme Court denied Bian’s Petition for Review on March 30, 2022 (the “Order Denying Petition”), and the case was therefore remanded to the trial court for review of the attorneys’

fees issue by mandate of the Supreme Court on July 20, 2022 (the “Mandate”).

Smirnova submitted her *Amended Order Granting Smirnova’s Motion for Entry of Judgment and for Award of Attorneys’ Fees and Costs* to the Trial Court on July 22, 2022 (CP 409-411). Bian objected to the amended order (CP 445-446), and Smirnova filed a detailed reply (CP 459-462). The trial court awarded Smirnova a total of Fifty Thousand Seventy-Eight Dollars and Eighty-Nine Cents (\$50,078.89) in attorneys’ fees and costs on October 28, 2022 (the “Amended Order”). (CP 463-465). The Amended Order included as exhibits the opinion of the Court of Appeals and the Order Denying Petition entered by the Supreme Court. The Amended Order specifically states that “after considering all the facts, the Court has determined that such an award is equitable and just as required under RCW 7.28.083(3), and in accordance with the Opinion of the Court of Appeals . . . ” (CP 465).

Bian filed a Motion for Reconsideration on November 4, 2022. (CP 466-474). Before any ruling on that Motion for Reconsideration was issued, the trial court entered its judgment in favor of Smirnova awarding her Fifty Thousand Seventy-Eight Dollars and Eighty-Nine Cents (\$50,078.89) on November 16, 2022 (“Amended Judgment”) (CP 476-479).

Confusingly, while the Motion for Reconsideration was pending, Bian also filed a Notice of Appeal on December 9, 2022. (CP 480-487). The trial court issued an order granting Bian’s Motion for Reconsideration on December 15, 2022, AFTER the Notice of Appeal had already been filed (CP 488-489). The trial court’s order, while granting the Motion for Reconsideration, ordered the parties to engage in subsequent briefing and a hearing to address the attorneys’ fees issue (*Id.*).

Following the trial court’s instructions, on January 13, 2023, Bian filed a so-called *Motion for Discounting Hours on Unsuccessful Claims, Duplicated or Wasted Effort, or Unproductive Time in Order and Judgment* (“Motion for

Discounting Hours”) (CP 490-501). Smirnova filed her response to Bian’s Motion for Discounting Hours on January 23, 2023 (CP 502-512). Bian filed his reply on January 26, 2023 (CP 607-617).

The hearing on Bian’s Motion for Discounting Hours took place on March 29, 2023 (*See Generally* VRP1). After hearing argument from the parties, the trial court made detailed findings of fact and conclusions of law orally on the record. (VRP1 at pp. 29-32). As part of its ruling, the trial court ordered Smirnova to note a hearing on April 14, 2023, for consideration of an amended judgment in accordance with the trial court’s ruling (VRP1 at p. 32). The only issue for consideration at that subsequent hearing was whether the proposed judgment complied with the trial court’s ruling denying Bian’s Motion for Discounting Hours (*Id.*).

Smirnova filed her *Second Amended Judgment* on April 5, 2023 (CP 627-630). Bian filed a *Response to Plaintiff’s Second Amended Judgment* on April 12, 2023 (CP 631-633). In his response, Bian primarily objected to the calculation of interest

contained in the *Second Amended Judgment*, but also objected (again) to Smirnova’s counsel’s billing. At the hearing, the Trial Court noted that the proposed judgment complied with the court’s earlier rulings and that the court intended to enter judgment. (*See Verbatim Report of Proceedings*, Vol. 2, April 14, 2023 (“VRP2”) at p. 37). The trial court further ruled that:

. . . your response does not adequately address the proposed judgment, . . .

I reviewed your response, Mr. Bian, but it is not an appropriate response to a proposed judgment.

If there is a final order, I will sign it.

The parties are free to seek whatever further relief they believe is appropriate under court rule.

(VRP2 p. 39). The *Second Amended Judgment* was entered by the trial court on April 14, 2023. (CP 634-637).

On April 18, 2023, Bian filed what he styled as his *Motion for Submission of Items that Plaintiff Wish to Reduce from the Judgment, as a Partial Relief* (“Motion for Partial Relief”) (CP 638-640). This Motion for Partial Relief sought leave to file

further briefing on specific items that Bian thought should be eliminated and/or reduced from Smirnova's counsels' billing. Smirnova filed her response to Bian's Motion for Partial Relief on April 24, 2023 (CP 641-642), and Bian filed his reply on April 26, 2023 (CP 653-654). This Motion for Partial Relief was not heard by the trial court due to the pending appeal.

Bian filed an *Amended Notice of Appeal* on April 24, 2023 (CP 643-650). Bian also filed his *Notice of Cash Supersedeas* on April 26, 2023 (CP 651-652), effectively preventing Smirnova from moving forward with collecting the *Second Amended Judgment* and holding her hostage by this unnecessary appeal.

Division 1 of the Court of Appeals issued an unpublished opinion upholding the award of attorneys' fees and costs to Smirnova on November 6, 2023, No. 84801-1-I, 2023 WL 7298788 (Div. 1 2023) (the "Opinion"). Specifically, the Court of Appeals affirmed "the trial court's award of attorney fees as equitable and just but remand[ed] for the court to modify the

April 14, 2023[,] money judgment to accrue interest from the date of its execution.” Opinion at p. 4.

Smirnova has been forced to litigate this case for nearly five years. The parties have filed extensive cross-motions for summary judgment, including supplemental briefing in support of those motions; contested a motion for reconsideration and attorneys’ fees motions; litigated the first and second appeal to the Court of Appeals and the first Petition for Review to this Court; and, on remand, have renewed this battle over an award of attorneys’ fees and costs through no less than four contested hearings where Bian has put forth substantially the same arguments—keeping in mind that the substance of this dispute (which is over six inches of property) was decided by the trial court over three years ago.

In addition, Smirnova has been denied recovery of attorneys’ fees and costs before the Court of Appeals in the first AND second appeal, as that Court deemed Bian the “prevailing party” with respect to the issues of (1) the findings of fact and

conclusions of law supporting the award of attorneys' fees in the first appeal (even though all substantive issues were decided in her favor); and (2) the calculation of interest (even though the award of attorneys' fees and costs was upheld). Therefore, Smirnova will not recover the over Fifty Thousand Dollars (\$50,000.00) she incurred successfully defending this case before the Court of Appeals. Smirnova will have suffered over five years of litigation and will only recover approximately half of her attorneys' fees and costs expended in successfully defending against this meritless litigation.

The total amount of attorneys' fees awarded to Smirnova in the *Second Amended Judgment* is Twenty-Five Thousand Seventy-Eight Dollars and Eighty-Nine Cents (\$25,078.89), which includes the award of fees before the trial court and the first time before the Supreme Court.<sup>4</sup> Such an amount is

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<sup>4</sup> The *Second Amended Judgment* takes into consideration and is reduced accordingly by the payment of Twenty-Five Thousand Dollars (\$25,000.00) made by Bian to Smirnova on December 27, 2022.



reasonable and customary in Whatcom County, Washington, for the services provided.

Counsel has spent an additional twenty-two and seven-tenth (22.7) hours responding to this Petition, totaling Eight Thousand One Hundred Seventy-Two Dollars (\$8,172.00). This brings the combined total of attorneys' fees on remand and in responding to this Petition to Thirty-Three Thousand Two Hundred Fifty Dollars and Eighty-Nine Cents (\$33,250.89).

The total costs incurred by Smirnova in this matter to date amount to One Hundred Eighty-Seven Dollars and Eighty-Nine Cents (\$187.89), comprised of FedEx and USPS charges. Smirnova has incurred an additional Two Hundred Twenty-Five Dollars and Sixty-Three Cents (\$225.63), comprised of postage charges, copy charges from the Whatcom County Superior Court Clerk, and recording fees. The combined total of costs incurred by Smirnova is Four Hundred Thirteen Dollars and Fifty-Two Cents (\$413.52). The grand total of all attorneys' fees and costs on remand and in this appeal is Thirty-Three Thousand Six

Hundred and Sixty-Four Dollars and Forty-One Cents  
(\$33,664.41).

#### IV. ARGUMENT

**A. This Court should not grant the Petition because Bian fails to satisfy any one of the four requirements for review under RAP 13.4(b).**

Bian cannot satisfy any of the requirements set out by RAP 13.4(b) in order to warrant review. This Court accepts petitions for review under RAP 13.4(b) only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or<sup>5</sup>
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Petitioners “must demonstrate that the Court of Appeals decision conflicts with a decision of this court or another Court of Appeals decision, or that [they are] raising a significant

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<sup>5</sup> Bian does not appear to argue that a significant question of Constitutional law is at stake.

constitutional question or an issue of substantial public interest.”  
*In re Matter of Dove*, 188 Wn. 2d 1008, 398 P.3d 1070 (2017).  
Smirnova below addresses Bian’s failure to satisfy any of these  
criteria.

**1. The Court of Appeals’ Opinion is in harmony with existing Supreme Court and Court of Appeals decisions.**

The Opinion of the Court of Appeals does not conflict with any decision by this Court or the appellate courts of this State, as the Court of Appeals properly applied existing state law.

**(a) Standard of Review**

Determining whether the award of attorneys’ fees is proper is a two-step inquiry, and each step is subject to its own standard of review. *See Etheridge v. Hwang*, 20 P.3d 958, 966 (Wash. Ct. App. Div. I, Feb. 12, 2001) (awarding attorneys’ fees for all claims because they all arose from the same core set of facts and relevant lease provision provided for fees to the prevailing party). First, the court looks to “whether the prevailing

party was entitled to attorney fees,<sup>6</sup> and second, whether the award of fees is reasonable.” *Id.* at 966. Moreover, “[w]hether a party is entitled to attorney fees is an issue of law which is reviewed de novo...[w]hether the amount of fees awarded was reasonable is reviewed under an abuse of discretion standard.” *Id.* In granting an award for attorneys’ fees “[a] trial judge is given broad discretion in determining the reasonableness of an award, and in order to reverse that award, it must be shown that the trial court manifestly abused its discretion.” *Id.*

**(b) The trial court did not abuse its discretion in awarding the attorneys’ fees.**

**(i) Contrary to the assertions of Bian, the Trial Court explicitly entered on the record findings of fact and conclusions of law justifying the fee award in this case.**

Bian’s primary argument is that the trial court failed to make findings of fact and conclusions of law supporting its

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<sup>6</sup> The Court of Appeals and this Court have already ruled that Smirnova is entitled to an award of her attorneys’ fees and costs under RCW 7.28.030(3), satisfying the first step in the two-step inquiry.

determination to award Smirnova her attorneys' fees and costs, or that the trial court's ruling is somehow "inconsistent" with the Court of Appeal's October 18, 2021, Unpublished Opinion. These assertions are fundamentally untrue.

There is nothing in the trial court's rulings that conflicts with the Opinion of the Court of Appeals. First, in the trial court's Amended Order entered on October 28, 2022, the trial court explicitly states that "after considering all the facts, the Court has determined that such an award is equitable and just as required under RCW 7.28.030(3), and in accordance with the Opinion of the Court of Appeals." (CP 465). The trial court referenced and attached the prior Opinion of the Court of Appeals, the Supreme Court's Order Terminating Review, the Supreme Court's *Clerk's Ruling Setting Amount of Attorneys' Fees and Expenses*, and the Court of Appeals' Mandate to the trial court in making its ruling. (CP 463-465). The appellate court rulings were foremost in the mind of the parties and the trial court.

More importantly, the trial court made oral findings of fact and conclusions of law on the record at both the March 29, 2023, hearing on Bian’s Motion for Discounting Hours and the April 14, 2023, hearing on entry of the *Second Amended Judgment*. (VRP1 at pp. 29-32; VRP2 at pp. 37-39). In those rulings, the trial court stated its grounds for determining that the attorneys’ fees and costs award sought by Smirnova were both reasonable and “equitable and just” under RCW 7.28.030(3). These rulings followed no less than six separate hearings on the issue of attorneys’ fees in this matter. In sum, the trial court “suppl[ied] findings of fact and conclusions of law sufficient to permit a reviewing court to determine why the trial court awarded the amount in question.” *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 144, 331 P.3d 40, (2014) (citing *Mahler v. Szucs*, 135 Wash.2d 398, 434-435, 957 P.2d 632 (1998)).

**(ii) The trial court did not abuse its discretion because its award was reasonable and “equitable and just” under RCW 7.28.030(3).**

Attorneys must provide “reasonable documentation of the work performed” when requesting attorneys’ fees and costs. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1983). Notably, that “documentation need not be exhaustive or in minute detail.” *Id.* Additionally, “where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate.” *Id.* The billing entries for Smirnova’s counsel in this matter are:

- Attached as **Exhibit 1** to the *Declaration of T. Todd Eglund* filed in support of Smirnova’s motion for fees on September 22, 2020 (CP 246-256).
- Attached as **Exhibit 6** to the *Second Supplemental Declaration of T. Todd Eglund* filed in support of Smirnova’s prior motion for fees on February 24, 2021 (CP 316-378).
- Attached as **Exhibit 5** to the *Declaration of T. Todd Eglund in Support of Response to Motion for Discounting Hours* (CP 513-606).

“Reasonable” attorneys’ fees are calculated using the lodestar method by multiplying “the number of hours reasonably expended by the reasonable hourly rate.” *Chuong Van Pham v. City of Seattle, Seattle City Light*, 159 Wash.2d 527, 538, 151 P.3d 976 (2007). “The hours reasonably expended must be spent

on claims having a ‘common core of facts and related legal theories.’” *Id.* (quoting *Martinez v. City of Tacoma*, 81 Wash.App. 228, 242–43, 914 P.2d 86 (1996)). “The court should discount hours spent on unsuccessful claims, duplicated or wasted effort, or otherwise unproductive time.” *Id.* (quoting *Bowers v. Transamerica Title Ins. Co.*, 100 Wash.2d 581, 597, 675 P.2d 193 (1983)).

Based on the above, the trial court’s award of attorneys’ fees and costs was reasonable and “equitable and just.” Smirnova has spent over five years of her life defending against this meritless action by Bian. Every court to review the facts and law in this case has ruled in her favor. The trial court has awarded her the attorneys’ fees and costs incurred in this litigation three times, and the Court of Appeals and Supreme Court have both ruled in her favor. Smirnova has been forced to respond, through her attorneys to each of Bian’s failed attempts to achieve a different result (and, indeed, will not recover a large amount of the attorneys’ fees she has expended in the Court of Appeals in



this matter). This has necessarily led to a substantial accumulation of attorneys' fees and costs entirely of Bian's making. It is only equitable and just that Bian bears the burden of that cost and reimburse Smirnova for these fees and costs.

**(c) Smirnova is entitled to an award of all her attorneys' fees and costs incurred in this action because this case was solely devoted to Bian's adverse possession claim.**

Bian has repeatedly argued, and argues here on appeal, that because this case was dismissed, for lack of prosecution by Bian, and then re-filed, that such re-filing prevented him from submitting evidence from the 2018 case in the re-filed 2020 case—that discovery and evidence developed in that 2018 case was somehow “inaccessible to the courts.” This is wrong. All prior discovery and evidence were equally available to the parties during the 2020 case as they were in the 2018 case. There is no court rule or statutory provision that excludes facts and evidence from a prior case where the exact same claims are asserted. Bian failed to timely prosecute the case, so the Whatcom County

Superior Court Clerk dismissed it. Had there been additional evidence gleaned from the 2018 case that Bian desired to submit in his motion for summary judgment, he could have done so. He did not and cannot use that as a basis to reduce Smirnova's fee award. The trial court heard argument, and considered and rejected this issue at the hearing on Bian's Motion for Discounting Hours. (VRP1 at pp. 14:24-7:24; 30:17-31:19).

This case was an adverse possession case. Bian's trespass, unjust enrichment, and injunctive relief causes of action were each predicated on the success of Bian's claim for adverse possession. As such, insignificant time was dedicated to addressing Bian's trespass and unjust enrichment claims in the briefs of the parties. In fact, Bian moved for partial summary judgment solely on his claim for adverse possession. There is no need to segregate time incurred litigating the trespass and unjust enrichment causes of action, nor is there any basis for excluding fees incurred dealing with procedural matters (such as Bian allowing the original case to be dismissed) solely caused by Bian

or his counsel. The trial court quite reasonably concluded the same. (VRP1 at pp. 30:17-31:19).

Bian also makes the non-sensical argument that Smirnova “litigated” a counterclaim for merger and is, therefore, not entitled to attorneys’ fees for “litigating” that claim. Smirnova asserted no counterclaims in this case. Smirnova filed an answer asserting affirmative defenses, including an affirmative defense to Bian’s adverse possession claim based on the merger of title doctrine (CP 7-12). Bian cites no law that provides for the conversion of an affirmative defense to a counterclaim in order to justify the denial of attorneys’ fees and costs. This is a preposterous argument to make and should be rejected.

In sum, the Verbatim Report of Proceedings, Vols. 1 and 2, as well as the general history of this case, show that Bian was given every opportunity to dispute the attorneys’ fees and costs sought by Smirnova. As noted by the trial court, despite repeated opportunities to do so, Bian failed to meet his obligation “to identify specifically with objections to essentially line items in

the bill.” (VRP1 at p. 29). In this appeal, Bian similarly fails to provide any such specific objections. It was not an abuse of discretion for the trial court to enter the *Second Amended Judgment* awarding Smirnova her attorneys’ fees and costs as requested.

**2. This case does not involve an issue of substantial public interest.**

Finally, the lawsuit does not involve an issue of substantial public interest. *See, e.g., State v. Watson*, 155 Wn. 2d 574, 577, 122 P.3d 903 (2005) (finding a decision concerning validity of a sentencing memorandum of substantial public interest when it had the immediate potential to affect all sentencing hearings in Pierce County); *see also In re Adoption of T.A.W.*, 184 Wn. 2d 1040, 387 P.3d 626 (2016) (finding an issue of substantial public importance in determining the scope of the ability to terminate parental rights pertaining to Native American tribes). Here, the Court of Appeals applies the law applicable to fee awards in a straightforward manner to the narrow set of facts on the record. Bian’s Petition focuses on how the Opinion will impact him (i.e.,

violate Due Process, etc.), but does not discuss a broader public interest. As such, the Opinion is relevant to the particular dispute between Bian and Smirnova, and not some greater substantial public interest.

The Court should deny the Petition because it does not meet RAP 13.4(b)'s requirements for review. Smirnova should also be granted an award attorneys' fees and costs incurred in responding to this Petition for Review under RCW 7.28.083(3) and RAP 18.1(j).

**B. Smirnova is entitled to interest on the *Second Amended Judgment* in accordance with RCW 4.56.110(6).**

RCW 4.56.110 governs the accrual of interest on judgments. Subsection 6 of RCW 4.56.110 provides that:

[J]udgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

The Court of Appeals in its Unpublished Opinion in this case affirmed that Smirnova was entitled to an award of attorneys' fees and costs under RCW 7.28.030(3). (CP 407). The Court of Appeals only remanded for the trial court to "independently determine if the amount Smirnova requested was equitable and just." (CP 408). The trial court had no discretion to deny Smirnova an award of attorneys' fees and costs, but was instead tasked with justifying its award. Any accrual of interest, therefore, should run from the date of the Original Judgment on March 19, 2021.

The *Second Amended Judgment* lays out in detail the calculation of interest on each of the judgments entered in this case. (CP 635-636). Smirnova was careful to calculate for each period and to give credit to Bian for the payment of Twenty-Five Thousand Dollars (\$25,000.00) on December 27, 2022, which was the catalyst for providing a calculation of interest in the *Second Amended Judgment* in the first place, as no such calculation was even necessary. Smirnova simply wanted to

make sure that the *Second Amended Judgment* accurately reflected payments received and to minimize the accrual of interest. Indeed, the provision of interest at 12% per annum was featured in EACH of the judgments entered in this case and Bian did not object to the inclusion of interest on the judgments until Smirnova submitted the *Second Amended Judgment* for hearing on April 14, 2023.

The Court of Appeals in its Opinion below did not agree with this reasoning. Instead, it noted that “we did not modify the fee award and remand for the trial court to simply follow our mandate. Instead, we authorized the trial court to exercise its discretion and determine what amount of Smirnova's fee request was equitable and just. As a result, interest should accrue from the date of the new money judgment.” Opinion at p. 3. The Court of Appeals cited to *Fisher Props, Inc. v. Arden-Mayfair, Inc.*<sup>7</sup> and *Fulle v. Boulevard Excavating, Inc.*<sup>8</sup> in support of its ruling.

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<sup>7</sup> 115 Wn.2d 364, 798 P.2d 799 (1990).

<sup>8</sup> 25 Wn.App. 520, 610 P.2d 387 (1980).

But, interpreting RCW 4.56.110 in this way creates a gaping hole in the attorneys' fee award scheme where a defendant can "win" at every single stage of the litigation on every substantive issue and still "lose" by being denied interest on that original successful defense of the judgment (or in fact, as below, denied attorneys' fees entirely for successfully defeating an appeal). Bian lost this case in August 2020 with the Original Judgment entered in March 2021. Interest should accrue from that date and not from entry of the Second Amended Judgment in April 2023. To do otherwise is not "equitable and just."

## V. CONCLUSION

This Petition should be denied because Bian fails to satisfy the criteria for discretionary review under RAP 13.4(b). If Bian's Petition is granted, Smirnova asks that the Court grant review of the Court of Appeals decision to deny interest from the date of the Original Judgment. Smirnova should also be granted an award attorneys' fees and costs incurred in responding to this Petition for Review under RCW 7.28.083(3) and RAP 18.1(j).



Respectfully submitted this 7<sup>th</sup> day of February, 2024.

**CERTIFICATE OF COMPLIANCE**

This document complies with the word limits of RAP 18.17(c) because, excluding the parts of the document exempted by RAP 18.17(c), this document contains four thousand seven hundred nine (4,709) words.

**CSD ATTORNEYS AT LAW P.S.**

By  \_\_\_\_\_

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*Attorneys for Olga Smirnova*

**CERTIFICATE OF SERVICE**

I, KIMIKO A. TORRES, certify, under penalty of perjury under the laws of the State of Washington, that on the 8<sup>th</sup> day of February, 2024, I caused to be served a true and correct copy of the preceding document, *Olga Smirnova's Answer to Jinru Bian's Corrected Petition for Discretionary Review*, on the parties listed below at their e-mail addresses of record via E-mail:

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By \_\_\_\_\_  
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**February 08, 2024 - 1:19 PM**

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