IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 92338-8

(Court of Appeals Cause No. 71420-1-I)

MICROSOFT CORPORATION,

Petitioner,

v.

BELLA ACHARYA,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Respondent Bella Acharya is a King County resident and American citizen who sued Microsoft Corporation ("Microsoft Corp.") under the Washington Law Against Discrimination ("WLAD") and Washington common law for failures by its management, Human Resources Department ("HR"), and Legal and Corporate Affairs Group ("LCA")—all located in Redmond, Washington—to prevent, deter, and remedy gender discrimination and retaliation committed against her.

Microsoft Corp. moved to dismiss for improper venue based on a forum selection clause in Acharya's employment contract with a Swiss subsidiary, Microsoft Global Resources GmbH ("MGR") (a non-party to this litigation), as well as *forum non conveniens*. Microsoft Corp. argued Acharya must prosecute her claims in Switzerland—a country where she has never lived, worked, or visited on Microsoft business, where not one of her supervisors or co-workers was located, and where not a single event relevant to this dispute occurred. The motion was denied. The Court of Appeals accepted discretionary review and, resolving the forum selection clause issue as a "pure question of law," affirmed unanimously in *Acharya v. Microsoft Corp.*, -- Wn. App. --, 354 P.3d 908, 913 (2015).

Microsoft Corp. now seeks review of that decision in this Court on a narrow issue: whether the Court of Appeals erred in allegedly rejecting Microsoft Corp.'s forum selection clause argument based on the "belie[f] that it was required to presume that Acharya was a Microsoft employee working in Washington because that was what she alleged in the complaint." Pet. at 1. The presumption to which Microsoft Corp. refers, however, played no role in the decision below, and in fact benefitted Microsoft Corp. Without it, according to the Court of Appeals, Microsoft Corp. could not have invoked the forum selection clause contained in Acharya's employment contract with MGR. As the court observed:

> [W]e operate with the inference that Microsoft was Acharya's employer at the time of the alleged discriminatory actions. Microsoft is thus ***entitled*** to invoke the provisions of the employment contract ... [and] Microsoft was ***entitled*** to assert a defense based on that forum selection clause.

App. at 6 (emphasis added). In other words, Microsoft Corp. lost on appeal ***despite*** the court's presumption that Microsoft Corp. was "entitled" to rely on the forum selection clause. If the Court of Appeals had ***not*** presumed Acharya's employment status, the forum selection clause in Acharya's contract with non-party MGR would have no bearing on this dispute. Thus, the position Microsoft Corp. takes in its Petition makes no sense. If the Court accepts review, then by Microsoft Corp.'s own logic the decision below must be affirmed. Where the parties effectively agree

that a lower court reached the correct result, discretionary review would be a waste of judicial time and resources.

Additionally, the record contains ample evidence that Microsoft Corp. was in fact Acharya's joint employer. Thus, even if the Court of Appeals had not presumed Acharya was a Microsoft Corp. employee—which, again, merely "entitled" Microsoft to invoke the forum selection clause in the first instance—the court would have reached that same conclusion on the record. Acharya respectfully requests that the Court deny Microsoft Corp.'s Petition for Review.

II. IDENTITY OF ANSWERING PARTY

The Answering Party is Plaintiff Bella Acharya.

III. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Should the Court grant Microsoft Corp.'s Petition for Review where Microsoft Corp. has failed to state a basis for review under RAP 13.4, the purported error was immaterial to the Court of Appeals' decision, and, in any event, it benefited Microsoft Corp.'s position?

IV. RESTATEMENT OF THE CASE

A. Microsoft Corp. Discriminates and Retaliates Against Acharya

Acharya—an American citizen—began working at Microsoft in 1991. CP 282. For fifteen years, beginning in 1993, she worked at Microsoft Corp.'s headquarters in Redmond as a well-regarded member of

the Advertising Business Group. CP 36-38, 295. Throughout this period, Acharya lived in King County, Washington. CP 282-83.

In 2008, Acharya discussed with Microsoft taking on a new role in the Group. CP 285-86. The role was originally conceived as Redmond-based and not associated with any foreign Microsoft subsidiary. CP 285-86. Eventually, however, Microsoft Corp. determined that it would be more efficient to have Acharya based in London, England. CP 285-86. At Microsoft Corp.'s request, Acharya agreed to work out of London "for a couple of years." CP 286. She always understood and expected, however, that she would return to her home in King County and Microsoft Corp.'s Redmond headquarters after that time. *Id.*

For tax purposes associated with its corporate structure, Microsoft Corp. compelled Acharya to "resign" and to "accept" employment with MGR, one of its wholly-owned subsidiaries. CP 286, 140-41.[1] Microsoft Corp. assured her that she would remain in the same group and report to the same direct supervisor and management structure as she had while based in Redmond. CP 283-88, 297, 358, 360-66. Acharya never communicated with anyone at MGR about her new employment agreement or offer letter. CP 285, 297, 339, 358-70, 390-91.

[1] MGR is a European corporation headquartered in Switzerland that represents itself as an "employment agency" with approximately five employees and a capitalization approximately $22,192 U.S. dollars. CP 298-88, 328, 566.

Acharya's employment agreement with MGR contains a forum selection clause:

> Any dispute, controversy or claim arising under, out of or in relation to this Employment Agreement ... shall be referred and finally determined by the ordinary courts at the domicile of MGR in Switzerland.

CP 303. The agreement also contains an "applicable law" provision, which states "[t]he terms of this agreement shall be construed in accordance with and governed in all respects by the laws of Switzerland (without giving effect to principles of conflicts of laws)." CP 303. The MGR contract was presented to Acharya on a "take it or leave it" basis. CP 286-87.[2]

Little changed for Acharya when she moved to London. She maintained her primary residence in King County and continued to pay property taxes on it. CP 282-83. She also kept current her Washington State driver's license. CP 282-83. Further, her relationship to Microsoft Corp. remained largely the same. She continued to report to the same Microsoft Corp. manager as before. CP 283-84. She remained subject to internal policies and procedures of Microsoft Corp., not those of MGR. CP 287-88. Acharya and her Redmond-based team continued to be paid

[2] In transmitting the contract documents to Acharya, a Redmond-based Microsoft Corp. employee stated her intention to "***confirm*** the terms and conditions of your MGR (Microsoft Global Resources) international assignment offer..." CP 297 (emphasis added). No one associated with any Microsoft entity suggested the terms were negotiable. CP 287. Nor did anyone advise her to consult with counsel, or explain how her rights under Swiss law compared to her rights under Washington and U.S. law. CP 287. Without such information, Acharya could not meaningfully evaluate the forum selection clause.

monetary compensation and benefits out of Microsoft Corp.'s budget. CP 328. A W-2 form Microsoft submitted to the IRS for 2012 (while Acharya was located in London) identifies her employer's location as Redmond. CP 328. Moreover, consistent with this treatment of Acharya as a Redmond-based employee, HR in Redmond purportedly "investigated" her complaints about discrimination and retaliation. CP 288-91, 330.

After more than 19 years of service and a superlative performance record, in 2010, Acharya began reporting to a new, male supervisor, Olivier van Duüren (an employee of Microsoft Ltd., anther European subsidiary). CP 283-84, 288. Acharya later learned that van Duüren had a history of discriminatory conduct toward his female direct reports, and she soon became a target herself. CP 294. Van Duüren impliedly referred to Acharya as a "bitch." CP 288. He accused her of being a "queen sitting on a throne," and taunted her for allegedly appearing "emotional." CP 288-89. All the female employees who reported directly to van Duüren (except for his administrative assistant) left the group. CP 7-8. Not surprisingly, Acharya began receiving unjustifiably poor performance reviews—for the first time in her Microsoft Corp. career—from van Duüren. CP 292-94.

Acharya raised her discrimination and retaliations concerns with van Duüren's supervisor, a Microsoft Corp. employee (CP 288-89), and the issue was referred to the Redmond-based employees of Microsoft

Corp. in HR, LCA (legal affairs), and the Employee Relations Investigation Team ("ERIT"). CP 289. As part of a pattern and practice of Microsoft Corp., these HR/LCA/ERIT investigators in Redmond issued perfunctory "findings" that Acharya's claims had no merit, and refused to take any corrective action against van Duüren. CP 288-91, 330.

Acharya then began trying to transfer out of her group to a position in King County. CP 289-91. However, in one of Acharya's routine telephonic meetings with her former direct supervisor (still a Microsoft manager in Redmond), he told her that van Duüren had been "poisoning the well" about her in Redmond with Microsoft's Xbox Group while van Duüren was in Redmond on a business trip in or around March-April 2012. CP 290. She was told that, as a result, she would be denied a job in Redmond and should seek employment outside Microsoft. CP 290. Microsoft then terminated Acharya on September 30, 2012. CP 291.

B. Acharya Sues in King County Superior Court; Microsoft Moves to Dismiss; the Court Denies Microsoft's Motion

Acharya filed a complaint against Microsoft Corp. alleging a pattern and practice of discrimination and retaliation in Washington and asserting violations of the WLAD and Washington common law. CP 32-57. Acharya alleged that employees working in Redmond failed to prevent, deter, or remedy gender discrimination and retaliation by van

Duüren. *Id.* She also asserted claims regarding retaliatory acts committed by van Duüren while he was physically present in King County, as well as Microsoft Corp.'s unlawful response to those acts. CP 42.

Microsoft Corp. moved to dismiss Acharya's claims on three grounds. First, it argued Acharya failed to state a viable claim because she was not its employee while she was working in London. CP 78. Second, it sought dismissal for improper venue under the forum selection clause contained in Acharya's contract with MGR. CP 78. Third, it sought dismissal on the grounds of *forum non conveniens*. CP 78-79. The trial court denied Microsoft Corp.'s motion. CP 733-35.

C. Microsoft Corp. Appeals to Division One, Which Affirms

The Court of Appeals then granted Microsoft Corp.'s motion for discretionary review. App. at 5. Microsoft appealed under two of the three theories it presented to the trial court; i.e., the forum selection clause in Acharya's MGR employment contract and *forum non conveniens*. *Id.* at 5-6. Microsoft Corp. abandoned its argument that Acharya failed to state a claim under the WLAD. *Id.* at 6 n.2.

The Court of Appeals affirmed the trial court's order denying Microsoft Corp.'s motion to dismiss on both theories. ***First***, following the Supreme Court's logic in *Dix v. ICT Grp., Inc.*, 60 Wn.2d 826, 837, 161 P.3d 1016 (2007), the court concluded that the forum selection clause was

not enforceable because it would "[p]revent[] a Washington plaintiff from enforcing Washington law" and, particularly where the plaintiff alleges discrimination, this "is contrary to public policy." App. at 11. Before engaging in this analysis, and as a ***threshold*** matter, the court found that Microsoft Corp. was entitled to invoke the terms of Acharya's employment contract with MGR:

> Acharya is the nonmoving party, and she asserted that Microsoft was her employer when she suffered the alleged discrimination. Accordingly, we operate with the inference that Microsoft was Acharya's employer at the time of the alleged discriminatory actions. Microsoft is thus entitled to invoke the provisions of the employment contract.

Id. at 6 (emphasis added). ***Second***, the court rejected Microsoft Corp.'s *forum non conveniens* argument, finding that both private and public interest factors weigh in favor of litigation in Washington. *Id.* at 13-16.

Microsoft Corp. only seeks review of the court's ruling on forum selection with respect to the inference noted above. Pet. at 2.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Decision Below Does Not Conflict With *Dix* or Other Appellate Decisions

A petition for review may be granted only in limited circumstances; specifically, in this case, if "the decision of the Court of Appeals is in conflict with a decision of the Supreme Court" (RAP 13.4(b)(1) (emphasis added)) or "[i]f the decision of the Court of Appeals

is in conflict with another decision of the Court of Appeals" (RAP 13.4(b)(2) (emphasis added)). Commonly understood the verb "to conflict" connotes a direct irreconcilability or opposition. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 477 (2002) (defining to "conflict" as "to show variance, incompatibility, irreconcilability, or opposition"). In another context, Washington courts have held that one law is in "conflict with" another only if there is a plain and unavoidable divergence of legal principles, as where "[one] declares something to be right which the [other] declares to be wrong" or one "grants a permit or license to do an act which is forbidden or prohibited by the other." *Town of Republic v. Brown*, 97 Wn.2d 915, 919, 652 P.2d 955 (1982). The Court of Appeals' analysis below does not "conflict with" *Dix* or governing Washington law.

In *Dix*, this Court considered whether a forum selection clause designating Virginia was enforceable to preclude class action plaintiffs from asserting claims in Washington against America Online under the Washington CPA. 160 Wn.2d 826, 828, 161 P.3d 1016 (2007). The Court held that it "does not accept the pleadings as true" and instead would consider "evidence to justify nonenforcement" of the forum selection clause. *Id.* at 835. Applying that framework, the *Dix* Court determined that the plaintiffs had presented adequate evidence to justify non-enforcement

of the forum selection clause where they established that Virginia would deny them class-wide relief and substantially impair their rights under the CPA—a statute of vital public importance in Washington. *Id.* at 834-35.

Microsoft Corp. argues that (1) the Court of Appeals' "presumption" here conflicts with this Court's opinion in *Dix*; (2) the error was outcome determinative; and (3) accordingly sufficient ground exists for review in this Court under RAP 13.4. See Pet. at 1-2. Microsoft Corp. is wrong on all three counts, and its Petition should be denied.

The Petition relies on a single sentence in the Court of Appeals' decision that merely reiterates the court's resolution of a threshold issue in Microsoft Corp.'s ***favor***; i.e., that it was "entitled" to rely on the forum selection clause contained in Acharya's contract with MGR. App. at 6. In other words, absent Acharya being presumed a Microsoft Corp. employee, Microsoft Corp. could not have invoked the forum selection clause at all.

Moreover, Microsoft Corp. fails to acknowledge that in *Dix*, the Court declined to enforce a forum selection clause based solely on "a pure question of law"; i.e., "whether public policy precludes giving effect to a forum selection clause in particular circumstances." *Id.* In concluding that "a forum selection clause that seriously impairs a plaintiff's ability to bring suit to enforce the CPA violates the public policy of this state," *id.* at 837, the purported location of the defendant was immaterial. *Id.* at 833-34

(stating scenarios in which "enforcement would be unreasonable"; none relates to the defendant's location). Here, as in *Dix*, the Court of Appeals determined that the forum selection clause cannot be enforced because it would contravene a "strong public policy" of Washington State to allow "WLAD rights [to] be waived by contract." App. at 10-11. The "location" of Acharya's employer was irrelevant to its analysis.

Further, the purportedly erroneous "presumption"—even isolated from context—does not "conflict with" *Dix*. The *Dix* Court held that, in assessing a forum selection clause, a court should not limit its factual inquiry to a review of the complaint and instead should consider "evidence to justify nonenforcement" of the forum selection clause. 160 Wn.2d at 835. Here, however, the court resolved the issue on public policy grounds as "a pure question of law." The only presumption the court made—i.e., that Acharya was employed by Microsoft Corp.—supported ***enforcement*** of the forum selection clause; without it, the clause was simply irrelevant.

Additionally, *Dix* did not resolve how to analyze a forum selection clause where, as here, the parties presented countervailing evidence concerning the enforceability of a forum selection clause. Here, contrary to Microsoft's perfunctory assertion (Pet. at 15), Acharya presented substantial evidence indicating Microsoft Corp. as Acharya's joint employer. *See* App. at 5.

In this circumstance, on a motion to dismiss where evidence presented conflicts, Washington law counsels that a court should resolve the dispute with an inference in favor of a plaintiff's chosen venue. *See Eubanks v. Brown*, 180 Wn.2d 590, 595, 327 P.3d 635 (2014) (holding that it is a "well-established principle" that "[t]he initial choice of venue belongs to the plaintiff"); *Carr v. Remele*, 74 Wash. 380, 381, 133 P. 593 (1913) (Washington courts favor the venue chosen by the plaintiff). This was the approach implemented by the trial court.

The decision below also does not "conflict with" other appellate decisions cited by Microsoft Corp., none of which extends beyond *Dix*. *See Wilcox v. Lexington Eye Inst.*, 130 Wn. App. 234, 239, 122 P.3d 729 (2005) (stating only that that a court "does not accept the pleadings as true," without further analysis); *Bank of Am., NA. v. Miller*, 108 Wn. App. 745, 748, 33 P.3d 91 (2001) (same); *Voicelink Data Servs., Inc. v. Datapulse, Inc.*, 86 Wn. App. 613, 618, 937 P.2d 1158 (1997) (same).

Further, as Microsoft Corp. concedes, federal authority applying the parallel Fed. R. Civ. P. 12(b)(3) supports the proposition that where the facts presented conflict, a limited inference in favor of the allegations in the complaint is appropriate. *See* Pet. at 12. For example, in *Estate of Myhra v. Royal Caribbean Cruises*, the United States Court of Appeals for the Eleventh Circuit explained that the court properly looks beyond the

boundaries of the complaint in considering a Fed. R. Civ. P. 12(b)(3) motion, but when the parties submit conflicting evidence "the court, in the absence of an evidentiary hearing, 'is inclined to give greater weight to the plaintiff's version of the jurisdictional facts and to construe such facts in the light most favorable to the plaintiff.'" 695 F.3d 1233, 1239 (11th Cir. 2012) (quoting *Home Ins. Co. v. Thomas Indus., Inc.*, 896 F.2d 1352, 1355 (11th Cir. 1990)). Thus, the court concluded "we continue to favor the plaintiffs facts in the context of any actual evidentiary dispute." *Estate of Myhra*, 695 F.3d at 1239. This is the prudential approach the Court of Appeals implemented. Accordingly, there is no basis to grant the Petition under RAP 13.4(b)(1)-(2).

B. The Court of Appeals' Decision Does Not Otherwise Present a Matter of "Substantial Public Interest" Worthy of Review

Microsoft Corp. argues that the Petition should be granted because consistent application of forum selection clauses is an "important" issue. Pet. at 17-18. Yet, the threshold to obtain Supreme Court review invoked by Microsoft does not mention "importance" but instead requires a showing by the Petitioner that Petition "involves an issue of ***substantial public interest*** that should be determined by the Supreme Court." RAP 13.4(b)(4) (emphasis added).

This rule is designed to allow the Supreme Court to ensure that disputes concerning distinctly public issues are adjudicated at the highest level. For example, when considering an argument that a lawsuit is moot, this Court has explained that the "continuing and substantial public interest" mootness exception turns in relevant part upon "whether the issue is of a public or private nature." *Hart v. Dep't of Soc. & Health Servs.*, 111 Wn.2d 445, 447-48, 759 P.2d 1206 (1988).[3] Only disputes that are at their essence public in nature are subject to review under RAP 13.4(b)(4).[4]

Microsoft Corp. fails to cite any authority holding that the interpretation of a clause in a private contract is a matter of "substantial public interest" under RAP 13.4(b)(4). Applying the rule's plain language, the issue in Petition is simply not "public" (much less of "substantial" public interest). Microsoft Corp.'s Petition should be denied.

C. The Court Of Appeals Correctly Determined That Microsoft Corp. Was Acharya's Employer

The Court of Appeals plainly reached the correct conclusion: Microsoft Corp. was Acharya's exclusive or "joint" employer. As detailed above, Microsoft Corp. employees based in Redmond facilitated her

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[3] Under the "continuing" aspect of the mootness analysis, the court also considers "whether the issue is likely to recur." *Hart*, 111 Wn.2d at 447-48.

[4] By way of example, the Legislature expressed the keen ***public*** importance of guaranteeing that the WLAD receives broad affect to protect Washington residents. RCW 49.60.010. Accordingly, if the Court of Appeals had denied Acharya's right to invoke the WLAD to protect against alleged gender discrimination, basis might exist to grant review under RAP 13.4(b)(4).

transition, managed, and controlled her group, supervised and controlled her direct manager, van Duüren, and handled every aspect of her complaints regarding discrimination and retaliation. *See* CP 283-291. These facts, and others, indicate Microsoft Corp. as her employer. *See, e.g., Becerra v. Expert Janitorial, LLC*, 332 P.3d 415, 421 (Wash. 2014) (joint employment relationship analyzed under the "economic reality" test, which takes into consideration any factors the court deems "relevant to its assessment of the economic realities"); *c.f. Anfinson v. FedEx Ground Package Sys., Inc.*, 159 Wn. App. 35, 72, 244 P.3d 32 (2010), *aff'd*, 174 Wn.2d 851, 281 P.3d 289 (2012) ("whether a defendant is a plaintiffs' joint employer is a mixed question of law and fact and is properly a question for the jury").

D. The Alleged Erroneous Inference Did Not Affect or Control the Court of Appeals' Forum Selection Clause Analysis

Microsoft Corp. vaguely asserts that the Court of Appeals' "presumption" controlled and determined the Court's finding that the forum selection clause in Acharya's contract was unenforceable and, in this way, Microsoft Corp. was prejudiced. Microsoft Corp. is incorrect.

First, the Court's "presumption" concerning Acharya's employer is not relevant under governing forum selection clause law—authority that the Court of Appeals properly applied. Under *Dix*—the very case

Microsoft Corp. relies upon—the purported location of the employer is not a factor considered by the courts in evaluating whether a forum selection clause should be enforced. The *Dix* Court explained that the court begins with the presumption that a forum selection clause is "valid and enforceable" and deviates from that presumption to deny enforcement only "in the particular circumstance, enforcement would be unreasonable." 160 Wn.2d at 834. The *Dix* Court then identified three "particular circumstances" in which a clause may be held unreasonable:

> if (i) it was induced by fraud or overreaching, (ii) the contractually selected forum is so unfair and inconvenient as, for all practical purposes, to deprive the plaintiff of a remedy or of its day in court, or (iii) enforcement would contravene a strong public policy of the State where the action is filed.

Id. Here, the court's inference concerning Acharya's employer could not even conceivably control the analysis in any of these circumstances. The first circumstance turns on whether the employment contract is dishonest or oppressive; the second circumstance considers whether the clause would strip the plaintiff of its right to bring its claim in a court somewhere; and the third circumstance turns on Washington public considerations. The court's supposedly erroneous inference did not dictate—nor was it relevant to—the answers to any of these questions.

Tellingly, Microsoft Corp. does not even mention this governing law nor make any effort to link the Court of Appeals' inference to an

actual, outcome-determinative analytical error. This is because the Court of Appeals did not err. Indeed, its analysis closely patterns the Washington Supreme Court's analysis in *Dix*. As explained above, the *Dix* Court considered whether to enforce a forum selection clause that would "seriously impair" the contracting plaintiffs' rights under the CPA. The *Dix* Court declared that, in Washington, "a contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision." 160 Wn.2d at 836 (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972)). Turning to the facts of the case, the *Dix* Court explained that "[t]he private right of action to enforce [the CPA] is more than a means for vindicating the rights of the individual plaintiff." *Id.* at 837. The purpose of CPA enforcement is "for the public as a whole." *Id.* Accordingly, the Court concluded:

> Given the importance of the private right of action to enforce the CPA for the protection of all the citizens of the state, we conclude that a forum selection clause that seriously impairs a plaintiff's ability to bring suit to enforce the CPA violates the public policy of this state.

Id. Similarly, here, the Court of Appeals analyzed whether to enforce the forum selection clause in light of Washington's public policy interest in preventing discrimination. App. 10-11 & n.3. The court explained:

"Acharya argues that it would contravene public policy to require her to litigate in Switzerland, thus "relinquish[ing] the robust civil rights afforded to her under the WLAD." *Id.* at 11. The court credited Acharya's position, finding that "[u]nder Washington law, the right to be free from discrimination is nonnegotiable and cannot be waived in contract" and ultimately concluding that "[p]reventing a Washington plaintiff from enforcing Washington law is contrary to public policy." *Id.* (citing *Dix*, 160 Wn.2d at 837). Thus, the Court of Appeals held that, under the legal standard articulated in *Dix*, "[i]t would be unreasonable to enforce the forum selection and choice of law clauses, thereby precluding Acharya from pursuing her WLAD claims." *Id.* Conspicuously absent from this analysis is any discussion of identity of Acharya's employer. That fact—inferred or proven otherwise—was not relevant.[5]

Second, even if it could be argued that the Court of Appeals' inference concerning Acharya's employer was relevant to the forum selection clause analysis, that inference benefited Microsoft, not Acharya, and buoyed Microsoft Corp.'s argument that it could invoke the clause in Acharya's employment contract with MGR to escape the jurisdiction of

[5] The identity of Acharya's employer is arguably relevant to the question of whether Acharya's complaint stated a claim against Microsoft Corp., the Washington entity. Yet, as Microsoft concedes, it is black letter law that in the context of CR 12(b)(6) motion, the Court presumes allegations in the complaint to be true. *See* Pet. at 14. Furthermore, Microsoft Corp. did not appeal this issue.

Washington courts: "Acharya is the nonmoving party, and she asserted that Microsoft was her employer . . . . Accordingly, we operate with the inference that Microsoft was Acharya's employer . . . . Microsoft is thus entitled to invoke the provisions of the employment contract." App. at 6. Indeed, the Court of Appeals allowed Microsoft Corp. the benefit of the forum selection clause over Acharya's objections that Microsoft Corp. could not invoke the clause as non-signatory. Thus, the supposedly erroneous judgment actually favored Microsoft Corp. Microsoft Corp. cannot obtain review from such a finding by implying that it was "outcome determinative" in Acharya's favor. It plainly was not.

VI. CONCLUSION

Microsoft has failed to establish any basis for granting review under RAP 13.4(b). The Court of Appeals decision does not "conflict with" *Dix* or other governing Washington law, and this matter of interpretation of private contract is not one of substantial public interest warranting review. In any event, the Court of Appeals' alleged error benefited Microsoft Corp.'s position and in no way affected or controlled the Court of Appeals' analysis of whether to enforce the forum selection clause in Acharya's contract. For these reasons, and for all additional reasons stated above, Acharya respectfully asks the Court to deny the Petition for Review.

DATED this 9th day of October, 2015.

McNAUL EBEL NAWROT & HELGREN PLLC

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DECLARATION OF SERVICE

On October 9, 2015, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via the method of service indicated:

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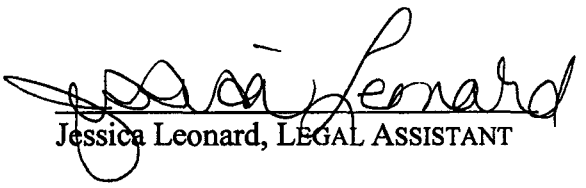
I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

DATED this 9th day of October, 2015, at Seattle, Washington.



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Subject: Supreme Court No. 92338-8 - Bella Acharya v. Microsoft Corporation (COA No. 71420-1-I) - Respondent's Answer To Petition For Review
Importance: High

Ladies and Gentlemen,

Respectfully submitted for filing in the above-referenced matter is Respondent's Answer To Petition For Review.

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