No. 93465-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 73347-8-I
Skagit County Superior Court Cause No. 12-2-02034-8

JACK A. JOHNSON, in his capacity as the trustee of KEY DEVELOPMENT PENSION, f/k/a G & G Meats Pension fund and Columbia Meat Products Pension Plan,

Appellant/Plaintiff,

v.

CLYDE E. CARLSON and PRISCILLA A. CARLSON, husband and wife, and the marital community composed thereof,

Respondents/Defendants.

ANSWER OF RESPONDENTS CLYDE E. CARLSON AND PRISCILLA A. CARLSON TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

REGULATIONS

RULES

I. INTRODUCTION

The Court of Appeals Decision [1] correctly provides that two facially usurious loans (the "Loans") which The Pension Fund made to Carlson do not qualify for the limited "business purpose" exemption under RCW 19.52.080 of the Usury Statute [2] because they were not made "primarily for commercial, investment or business purposes" at the time of inception.[3] In so ruling, the Court of Appeals correctly determined that the Loans are not otherwise exempt from the protections of the Usury Statute based on the Trial Court's finding number 21 that Clyde and Priscilla "were not needy borrowers who by adversity and necessity of economic life, were driven to borrow money at any cost from an unconscionable money lender."[4]

The Court of Appeals Decision is consistent with this Court's decision in *Brown v. Giger*, 111 Wn.2d 76, 757 P.2d 523 (1988), the Court of Appeals' decision in *Stevens v. Sec. Pac. Mortgage Corp.*, 53 Wn. App. 507, 516, 768 P.2d 1007 (1989), and does not involve an issue of

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[1] "Court of Appeals Decision" refers to the Unpublished Opinion of the Court of Appeals, Division One, issued in this matter, dated July 11, 2016. It is attached as Appendix A to the Petition for Review (the "Petition").

[2] RCW Ch. 19.52 is referred to as the "Usury Statute".

[3] As used herein, "Pension Fund" refers collectively to Appellant Key Development Pension Fund and its predecessors in interest, G&G Meats Pension Fund and Columbia Meat Products Pension Plan. Respondents Clyde E. Carlson and Priscilla A. Carlson are referred to individually by their first names for clarity and together, as "Carlson" in the singular tense for readability. No disrespect is intended by the use of first names.

[4] [4] *See* Findings of Fact and Conclusions of Law at 6 ("Findings and Conclusion"), attached as Appendix B to the Petition.

substantial public interest that should be determined by this Court. Accordingly, this Court should deny the Petition. Carlson is entitled to an award of fees and costs to answer the Petition per RAP 18.1(j).

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether this Court should deny discretionary of the Court of Appeals Decision holding that the business purpose exemption of the Usury Statute (RCW Ch. 19.52) does not apply because the Loans made by The Pension Fund were for "commercial, investment or business" purposes at the time of their inception, where:

    a. The Court of Appeals Decision is consistent with this Court's holding in *Brown v. Giger*, 111 Wn.2d 76, 757 P.2d 523 (1988), and consequently, does not warrant discretionary review under RAP 13.4(b)(1) (*see* Section IV(A), *infra*);

    b. The Court of Appeals Decision is consistent with the Court of Appeals' holding in *Stevens v. Sec. Pac. Mortgage Corp.*, 53 Wn. App. 507, 516, 768 P.2d 1007 (1989), and consequently, does not warrant discretionary review under RAP 13.4(b)(2) (*see* Section IV(B), *infra*); and

c. The Court of Appeals Decision is based on the unambiguous language of the Usury Statute and does not involve an issue of substantial public interest to be decided by this Court, and consequently, does not warrant discretionary review under RAP 13.4(b)(4) (*see* Section IV(C), *infra*).

2. Whether this Court should award Carlson costs pursuant to RAP 18.1(j) (*see* Section V, *infra*).

III. STATEMENT OF THE CASE[5]

Jack Johnson, Gary Dahlby and Clyde Carlson have known each other for many years.[6] From about 1978 to 1994, Jack and Gary were involved together in a business known as G&G Meats.[7] Through this business they formed and funded a pension plan for their mutual benefit – the G&G Meats Pension Fund.[8] Beginning in about 1999, the primary investment activity of the G&G Meats Pension Fund was making high

[5] All facts are set forth in the Trial Court's Findings and Conclusions and summarized in the Court of Appeals Decision, both of which are attached to the Petition for Review.
[6] CP 172; RPI 100:24-25. Jack Johnson and Gary Dahlby are referred to herein by their first names for clarity. No disrespect is intended. Jack brought the underlying lawsuit in his capacity as the trustee of Pension Fund.
[7] RPI 99:6-17. The two day trial commenced on October 13, 2014 and reconvened on October 20, 2014. The Report of Proceedings for each of the two days of trial commences with page number 1 so the reference to the Report of Proceedings for the first day of trial on October 13, 2014 will be referred to as "RPI" and the Report of Proceedings for the second and final day of trial on October 20, 2014 will be referred to as "RPII".
[8] RPI 99:23-25, 100:1-10.

interest loans to their friends, family and business acquaintances.[9] Jack and Gary were "amateur lenders" as they had no training or experience in making loans, but they made significant money on these high interest loans.[10] These pension funds made more than 30 loans over the years; some to businesses, some to individuals and some to friends and family.[11]

Since about 1988, Clyde owned a small float plane business, Northwest Seaplanes, Inc. ("Northwest Seaplanes"), based out of Renton, Washington.[12] The business was incorporated, maintained its own set of accounting records and bank accounts, and filed its own corporate tax returns.[13] The seaplane business is seasonal in the Pacific Northwest and Clyde's personal income was derived from this business.[14] Because of their friendship, Clyde was aware that Jack and Gary made loans from their pension plan.[15] In November 2000 Clyde approached Gary and inquired as to whether Jack and Gary would make him a loan.[16] He needed additional funds on a short term basis to pay a variety of personal expenses.[17]

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[9] Ex. 74.
[10] RPI 127:14-19.
[11] RPI 127:20-22; Ex. 24.
[12] CP 173. *See also* Finding No. 2.
[13] CP 173.
[14] CP 173.
[15] CP 173. *See also* Finding No. 3.
[16] CP 173.
[17] *See* Deposition of Clyde Carlson at 44:15-25 (CP 61); *see also* Finding No. 5 (CP 173). RPII 66-69.

Jack and Gary agreed to lend Clyde $150,000 in November 2000 in favor of G&G Meats Pension Fund ("G&G Meats Note").[18] The interest rate was 18% for the first six years, and then in 2006 the interest rate was reduced to 14%.[19] The loan process was very informal; there was no loan application or documentation required.[20] There was no underwriting; there was no credit review.[21] A check in the amount of $149,500 made payable to "Clyde Carlson" was delivered to Clyde, and he deposited it into his personal bank account, and used the proceeds to pay a variety of personal expenses.[22]

The second note – this time made to Columbia Meat Pension Plan – was executed in April 2002 ("Columbia Meat Note") – also at 18% interest.[23] This time Clyde was borrowing money to pay the settlement of a lawsuit he was involved in with his sister involving their father's estate.[24] The $150,000 check was written to Clyde directly on the Key Development, Inc. ("Key Development") business account – rather than from the Pension Fund account.[25] The timing of the Columbia Meat Note

[18] Ex. 51; *see also* Finding No. 4 (CP 173).
[19] CP 173.
[20] CP 173.
[21] CP 173.
[22] *See* Deposition of Clyde Carlson at 35-39 (CP 52-56); *see also* Finding No. 5 (CP 173); Ex. 52.
[23] Finding No. 6 (CP 173).
[24] RPII 83:4-8.
[25] *See* Finding No. 6 (173).

corresponds exactly with the entry of the dismissal order in the estate lawsuit.[26]

The borrowers on both of the Notes were Clyde and Priscilla Carlson (personally) and the checks for the loan proceeds were both made to Clyde (personally).[27] Although each of the Notes had a one year term, the parties verbally agreed to several changes and modifications of the Notes over the years.[28] Clyde paid a substantial amount on each Note over the years, $234,020 on the First Note and $207,750 on the Second Note.[29]

There was no loan application requested or filled out.[30] There was no documentation regarding the specific purpose of the Loans.[31] It appears that these lax, or rather non-existent, underwriting procedures continued over the course of the many loans made by Jack and Gary from their pension funds.[32]

Review of the limited documents produced by the Pension Fund regarding other loans they made reveals that Jack and Gary (and their attorney) clearly knew how to document a loan when it was for business purposes so they could avoid the claim of usury, as is the standard of

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[26] RPII 83:4-8.
[27] Exs. 51, 52, 55, 56.
[28] *See* Finding Nos. 4, 6 (CP 173-74).
[29] *See* Finding No. 7 (CP 174). CP 53, 57.
[30] *See* Finding No. 4. (CP 173).
[31] Exs. 51, 54, 55.
[32] *See* Finding No. 4 (CP 173); RPI 14-19; RPII 34:7-11, 35:16-19, 37:8-12.

practice in the industry.[33] For instance, the documents evidencing the Loan made by Jack Johnson to Lakeside Heating and Tonkka Trucking in 2004 contain two very important and significant differences when compared with the documents for the Carlson Loans.[34] Neither one of Clyde's Loans contained the critical language found in the Lakeside Heating and Tonkka loans, specifically:

1. Identification of the Borrower obligated on the Promissory Note.

    a. Lakeside: Promissory Note and Agreement to Make Secured Loan identify the business "Lakeside Heating and Air Conditioning" as the borrower and the individuals (Brandon and Linnea Agostinelli) as the guarantors.[35]

    b. Tonkka: The borrowers are identified in the Promissory Note as the business Tonkka Trucking and Excavating, LLC, and its owner, Ben Tanielian.[36]

    c. Carlson: The only borrowers of the Carlson Notes are Clyde and Priscilla Carlson – there is no business identified, named or involved.[37]

2. Representation regarding a "business purpose" in the Agreement.

    a. Lakeside: In the Agreement to Make Secured Loan, at Section 3.1(e) both Lakeside Heating and the Agostinellis specifically represent and warrant that the "**loan evidenced**

[33] Exs. 58, 59, 60, 61.
[34] Exs. 63-64.
[35] Exs. 58, 59, 60, 61.
[36] Exs. 63, 64.
[37] Exs. 51, 55.

by the note is for business purposes and the loan funds will be used solely for business purposes."[38]

b. Carlson: The package of documents prepared by Stephan Todd (Jack's attorney) also contained a document titled "Agreement to Make Secured Loan." However, Section 3 of this Agreement, which is otherwise identical to the Lakeside Agreement, **does not contain a representation by the borrower that the loan is for business purposes.**[39]

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Review is not warranted under RAP 13.4(b)(1) because the Court of Appeals Decision is consistent this Court's holding in *Brown v. Giger.*

Because the 18% interest rate on the Loans exceeded the statutorily-allowed maximum rate, the Loans are usurious on their face. The Trial Court relied on substantial evidence in making the factual findings in support of the conclusion of law that the Loans do not qualify for the business purpose exemption under RCW 19.52.080, and therefore the Loans violated the Usury Statute.

Despite the inapplicability of the business purpose usury exemption, the Pension Fund argued on appeal and in the Petition that the Usury Statute was not intended to protect someone in the position of Clyde and Priscilla Carlson based on the Trial Court's finding number 21 that they "were not needy borrowers who by adversity and necessity of economic life, were driven to borrow money at any cost from an

[38] Ex. 59.
[39] Exs. 54.

unconscionable money lender."[40] In other words, the Pension Fund argues for a broad expansion of the business purpose exemption whereby the protections of the Usury Statute would not apply to a loan for personal use if the borrower "did not need to borrow money at any cost."[41]

The flawed position is contrary to the plain language of the Usury Statute and would eliminate from its protections all individual borrowers, save those in the most desperate of financial situations.[42] The Usury Statute does not state, suggest, or even hint at the notion that its protections only apply to certain borrowers; those who resort to taking a usuriously high interest rate loan out of "adversity" and/or "necessity".[43] Indeed, the terms "adversity" and "necessity" are nowhere to be found in the Usury Statute.[44]

The absence of any express language in the Usury Statute even remotely supporting the Pension Fund's proposed "adversity and necessity" rule is noteworthy. In this regard, *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 149 P.3d 666, 669–70 (2006), provides the following guidance:

> Our purpose when interpreting a statute is to " 'discern and implement the intent of the legislature.' " *Id.* at 295, 126

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[40] *See* Petition at 4-9.
[41] *Id.*
[42] *See* RCW Ch. 19.52.
[43] *Id.*
[44] *Id.*

> P.3d 802 (quoting *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003)). Where the meaning of statutory language is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. *Id.* In discerning the plain meaning of a provision, we consider the entire statute in which the provision is found as well as related statutes or other provisions in the same act that disclose legislative intent. *Id.; Advanced Silicon Materials, L.L.C. v. Grant County,* 156 Wash.2d 84, 89–90, 124 P.3d 294 (2005); *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wash.2d 514, 519, 22 P.3d 795 (2001). When a statute is ambiguous, we then resort to aids of construction, including legislative history.

The absence of any language in the Usury Statute that could be interpreted as limiting its protections to borrowers who resort to taking a usuriously high interest rate loan out of "adversity" and/or "necessity" is consistent with discussion of the evolution of the business purpose exemption over time in the portions of the opinion in *Brown v. Giger*, 111 Wn.2d 76, 757 P.2d 523 (1988) quoted extensively by the Pension Fund.[45] Specifically, the Pension Fund quotes verbatim, and relies heavily on, dicta in *Brown v. Giger* summarizing the history of legislative enactments which successively broadened the business purpose exemption over time to its present form. At this time the exemption applies to transactions of any amount made "primarily for agricultural, commercial, investment, or business purposes."[46]

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[45] *See* Appellant Petition at 6-7 (quoting *Brown*, 111 Wn. 2d at 79–81).
[46] *Brown*, 757 P.2d at 525 (quoting RCW 19.52.080).

Attempting to persuade this Court to dramatically broaden the scope of the exemption intended by the legislature, the Pension Fund misconstrues the following dicta in *Brown v. Giger*:

> The evil at which the usury laws are aimed, as we have said, is oppression of the borrower "who by adversity and necessity of economic life [is] driven to borrow money at any cost."
>
> * * *
>
> **One who incurs a debt "primarily for agricultural, commercial, investment, or business purposes", RCW 19.52.080, is not subject to such oppression, as he does not borrow out of "adversity and necessity of economic life".** Thus, RCW 19.52.080 denies to this person the protections against usury.[47]

According to the Pension Fund, the above language means that the business purpose exemption to the protections of the Usury Statute does not apply to borrowers "who by adversity and necessity of economic life" are "driven to borrow money at any cost."[48] Quite opposite, the above-quoted portion of *Brown v. Giger* actually establishes that "[o]ne who incurs a debt "primarily for agricultural, commercial, investment, or business purposes",[49] is not subject to such oppression, as he does not borrow out of "adversity and necessity of economic life.'"[50]

In other words, a borrower who obtains a debt for a primarily business purpose is not afforded the protections of the Usury Statute

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[47] *Brown*, 757 P.2d at 526 (citation omitted) (emphasis added).
[48] *See* Petition at 4-9.
[49] *See* RCW 19.52.080.
[50] *Brown*, 757 P.2d at 526..

because, by definition, such a "business purpose" borrower is not borrowing "out of adversity and necessity of economic life."[51] The inverse claim of the Pension Fund – that a showing of "adversity and necessity of economic life" is a prerequisite to the protections of the Usury Statute (regardless of the purpose of the loan) – is not a logical corollary, and not supported by the plain language of the Usury Statute.[52]

Other cases addressing the applicability of the business purpose exemption do not support the position that the Carlsons should be exempted from the protection of the Usury Statute in this case.[53] "[W]hen a loan is usurious on its face, as in the present case, the burden is upon the lender to prove that its loan qualifies for the narrow transaction exemption."[54] "The borrower's intended use for the loan proceeds must be characterized according to the manifestations of intent, if any, that the

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[51] *Id.*

[52] *Id.*; *see also* RCW Ch. 19.52. The folly of concluding that *Brown v. Giger* stands for the proposition that only a borrower facing "adversity and necessity of economic life" should receive Usury Statute protections is further shown in light of the fact that the opinion directly quotes *Baske v. Russell*, 67 Wn.2d 268, 273, 407 P.2d 434, 437 (1965), decided in 1965 when the business purpose exemption was limited in that it only "denied the defense of usury to certain entities and persons 'in the business of lending money or the development or improvement of real estate'". *Brown*, 757 P.2d at 526 (quoting prior enactments).

[53] *Aetna Fin. Co. v. Darwin*, 38 Wn. App. 921, 924–25, 691 P.2d 581 (1984); *see also, Trust of Strand v. Wel-Co Grp.*, 120 Wn. App. 828, 835, 86 P.3d 818 (2004).

[54] *Aetna Finance Co.*, 38 Wn. App. at 924–25; *see also Trust of Strand*, 120 Wn. App. at 835.

borrower made to the lender at the time the parties entered into the loan contract."[55]

"Washington cases consistently have noted the importance of objective indications of purpose in determining the applicability of the 'business purpose' exemption." [56] Moreover, in all cases where the business purpose exemption under RCW 19.52.080 has been satisfied, there has been a written representation by the individual borrower in the loan documents indicating that the loan was intended for a business purpose or it has been undisputed that the loan was intended for a business purpose.[57]

In Washington, it is the "general rule that, for the purposes of showing usury in a written contract, parol or extrinsic evidence is

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[55] *Aetna Finance Co.*, 38 Wn. App. at 927–28 ("The lender's purpose for the loan, which is almost always is a business purpose, is irrelevant"); *Brown*, 111 Wn. 2d at 82 (quoting *Aetna Finance Co.*, 38 Wn. App. at 927).

[56] *Brown*, 111 Wn. 2d at 82.

[57] We have uncovered no reported Washington cases that have applied the business purpose exemption based upon the lender's testimony alone. *See Paulman v. Filtercorp*, 127 Wn.2d 387, 394, 899 P.2d 1259 (1995) (undisputed that loan proceeds were intended for borrower's business purposes); *Brown*, 111 Wn. 2d at 82 (loan documents include borrower's representations that loan was for a business or commercial purpose); *Trust of Strand*, 120 Wn. App. at 832 (loan agreement included representation from borrower that the loan was to be used exclusively for business purposes); *Jansen v. Nu-W., Inc.*, 102 Wn. App. 432, 435, 6 P.3d 98 (2000), *as amended on reconsideration* (Sept. 21, 2000) (borrower representation in note that loan proceeds were to be used for business or commercial purposes),); *Thweatt v. Hommel*, 67 Wn. App. 135, 138, 834 P.2d 1058 (1992) (borrower signed affidavit for business purpose in connection with loan); *Stevens*, 53 Wn. App. at 516 (loan documents indicated loan was for business purposes); *Pacesetter Real Estate, Inc. v. Fasules*, 53 Wn. App. 463, 472, 767 P.2d 961 (1989) (borrower's acknowledgement of commercial loan in note and commercial borrower); *Gemperle v. Crouch*, 44 Wn. App. 772, 773, 724 P.2d 375 (1986) (undisputed that loan was for commercial purposes).

admissible, the parol evidence rule not being applicable to such a situation."[58] However, the Pension Fund completely lacks the necessary evidence that the Loans were intended "primarily" for "commercial, investment or business purposes" at the inception. The Notes are issued to the Carlsons and the checks representing the proceeds of the Loans are the only objective documentary evidence available for the Loans from the time they were issued. Notably, the borrowers on the Notes were Mr. and Mrs. Carlson personally and the Notes lack any representation by the Carlsons (or anyone else) that the proceeds from the Loans were to be used for commercial or other business purposes as is the customary practice for business loans. Similarly, the checks were made payable to Clyde personally, not to a business.

The Notes were drafted by the Pension Fund's attorney, Mr. Todd. Mr. Todd was clearly aware of Washington's usury laws yet did not request that Carlson represent that the Loan proceeds were to be used for commercial or business purposes.[59] In fact, in the documentation for subsequent loans made by the Pension Fund and by Jack, Mr. Todd specifically requested that the borrower represent that the loan funds would be used solely for business purposes. This evidence establishes that

[58] *Ostiguy v. A. F. Franke Const., Inc.*, 55 Wn.2d 350, 358, 347 P.2d 1049, 1053–54 (1959), citing *Auve v. Fagnant*, 16 Wn.2d 669, 134 P.2d 454 (1943).
[59] Mr. Todd was admitted to the Washington State Bar in 1982, a fact to which this Court may take judicial notice. *See* ER 201.

Mr. Todd knew to include such representations when a loan was to be used by a borrower for business purposes at the time it was issued.

The only evidence available supporting the notion that the Loans were intended for business purposes at their inception is the testimony of Jack and Gary, which was insufficient to establish that Carlson intended to use the Loan proceeds for business purposes at the inception. As discussed above, Washington Courts that have determined that a loan was primarily for a business purpose under RCW 19.52.080, have done so by relying on representations made by a borrower in the loan documents themselves.[60]

B. Review is not warranted under RAP 13.4(b)(2) because the Court of Appeals Decision is consistent the Court of Appeal's holding in *Stevens.*

Aside from the Pension Fund's strained reading of the dicta in *Brown v. Giger*, that case, along with the *Stevens v. Sec. Pac. Mortgage Corp.*, 53 Wn. App. 507, 516, 768 P.2d 1007 (1989) case on which the

[60] *See Paulman*, 127 Wn. 2d 387 (undisputed that loan proceeds were intended for borrower's business purposes); *Brown*, 111 Wn. 2d 76 (loan documents include borrower's representations that loan was for a business or commercial purpose); *Trust of Strand*, 120 Wn. App. 828 (loan agreement included representation from borrower that the loan was to be used exclusively for business purposes); *Jansen*, 102 Wn. App. 432 (note included a business purpose declaration from borrower); *Castronuevo v. Gen. Acceptance Corp.*, 79 Wn. App. 747, 905 P.2d 387 (1995) (borrower representation that loan proceeds were to be used for business or commercial purposes in note); *Thweatt*, 67 Wn. App. at 138 (borrower signed affidavit for business purpose in connection with loan); *Stevens*, 53 Wn. App. 507 (loan documents indicated loan was for business purposes); *Pacesetter Real Estate, Inc.*, 53 Wn. App. 463 (borrower's acknowledgement of commercial loan in note and commercial borrower); *Gemperle*, 44 Wn. App. 772 (undisputed that loan was for commercial purposes).

Pension Fund misplaces reliance, are readily distinguishable. [61] Specifically, in both *Brown v. Giger* and *Stevens*, the loan documents indicated the loan was for a *business* purpose.[62] In contrast, there is no indication in the Carlson Loan documents that the Loans are for a business purpose, a significant omission establishing that the Loans were for personal use, *i.e.*, a determination bolstered by extrinsic evidence that Carlson used the loans for personal uses.

Contrary to the Pension Fund's urging, the Court of Appeals Decision is consistent with prior published opinions, including *Stevens*. Evidence of the consistency is found in the fact the opinion is unpublished. It is a straight forward application of the statute to the facts.

C. Review is not warranted under RAP 13.4(b)(4) because the Court of Appeals Decision was based on the unambiguous language of the Usury Statute and therefore does not involve an issue of substantial public interest to be decided by this Court.

The Pension Fund contends that review of the Court of Appeals decision is warranted under RAP 13.4(b)(4) citing a number of examples of federal and state statutes which exempt a variety of transactions from the Usury Statute and arguing that as a result usury laws are less relevant in today's economy. However, nowhere in its argument does the Pension Fund demonstrate why this case, a private transaction between two parties,

[61] *See* Appellant Petition at 9.
[62] *Brown*, 757 P.2d at 525; *Stevens*, 53 Wn. App. at 516.

involves any issue of any public interest, much less *substantial* public interest. The increase of specific state and federal statutes exempting various other transactions from state usury laws has not created a new legal issue of substantial public interest requiring Supreme Court review of the exemption applicable in this case.

A case involves an issue of "substantial public interest" where it affects individuals and cases beyond the parties to the particular proceeding.[63] In this regard, the role of the Court is to interpret and apply statutes.[64] As it relates to the Court of Appeals Decision, the Usury Statute is unambiguous and no clarification is needed. The Court of Appeals correctly noted that the purpose of the Usury Statute "is 'to protect the residents of this state from debts bearing burdensome interest rates' on consumer loans."[65] A consumer loan is "primarily for personal, family, or household purposes."[66] This Court should not rewrite the plain and clear language of the Usury Statute at the Pension Fund's behest to exclude certain citizens of this State from its protections as is argued by the Pension Fund.

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[63] *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005).
[64] *Cosmopolitan Engineering Group, Inc.*, 149 P.3d at 669–70.
[65] *See* Court of Appeals Decision at 17; *see also* RCW 19.52.005.
[66] *See* RCW 19.52.080.

V. CARLSON IS ENTITLED TO FEES AND COSTS

Carlson is entitled to fees and costs incurred to answer the Petition. In this regard, RAP 18.1(j) provides, "[i]f attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review." Carlson was correctly awarded its fees and costs on appeal by the Court of Appeals.[67] Accordingly, this Court should award Carlson fees and costs upon denying the Petition for Review.

VI. CONCLUSION

The Court of Appeals Decision is consistent with Washington law, which holds that loans made at the time of inception "primarily for commercial, investment or business purposes" do not qualify for the limited "business purpose" exemption under RCW 19.52.080 of the Usury Statute. The decision does not present an issue of substantial public

[67] *See* Court of Appeals Decision at 17 and n. 12. The determination was proper under RAP 14.1 et seq. and RAP 18.1. Indeed, both of the Notes provide that the prevailing party in a collection action is entitled to an award of attorneys' fees and costs. (Exs. 51, 55) RCW 4.84.330 awards attorney fees authorized by contract. The Usury Statute, RCW 19.52.032, is complementary to, and not in conflict with, RCW 4.84.330. *Jansen*, 6 P.3d at 104 (citing *King v. W. United Assur. Co.*, 100 Wn. App. 556, 561, 997 P.2d 1007 (2000)). *See, e.g.*, *Jansen*, 102 Wn. App. 432; *Olympic S.S. Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 51–54, 811 P.2d 673, 680–82 (1991); *Butzberger v. Foster*, 151 Wn.2d 396, 89 P.3d 689 (2004).

interest. Accordingly, the Court should deny the Petition for Review. Per RAP 18.1(j), Carlson is entitled to fees and costs to answer the Petition.

Respectfully submitted this 8th day of September, 2016.

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CERTIFICATE OF SERVICE

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I, Heidi Corcoran, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am employed with the law firm of Peterson Russell Kelly PLLC, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to this action, and am competent to be a witness herein.

I hereby certify that on September 8, 2016, I caused to be served a copy of the following:

1. Answer of Respondents Clyde E. Carlson and Priscilla A. Carlson to Petition for Review;
2. Certificate of Service

to the following Appellant/Plaintiff and/or attorney at their last known address via the method(s) indicated below:

Stephan E. Todd PO Box 13635 Mill Creek, WA 98082-1635 Attorney for Appellant/Trial Court Plaintiff	[ ] Via Facsimile [X] Via U.S. First Class Mail [ ] Via Messenger [X] Via E-mail per E-Service Agreement: toddlawoffice@comcast.net

DATED: September 8, 2016, at Bellevue, Washington.

s/ Heidi Corcoran
Heidi Corcoran, Paralegal
1850 Skyline Tower
10900 NE 4th Street
Bellevue, WA 98004
(425) 462-4700

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Supreme Court Clerk's Office

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Subject: Supreme Court No. 93465-7 - Key Development Pension v. Carson; Answer to Petition for Review of Respondents Carlson

Dear Supreme Court Clerk,

Case Name: Key Development Pension v. Clyde E. Carlson and Priscilla A. Carlson
Case Number: Supreme Court No. 93465-7

Person filing the document:
Heidi Corcoran, Paralegal
Phone Number: 425-462-4700
Email: hcorcorn@prklaw.com

Attorneys for Respondents:
Marcia P. Ellsworth, WSBA No. 14334 and
Joshua D. Brittingham, WSBA No. 42061
Phone Number: 425-462-4700
Email: mellsworth@prklaw.com and jbrittingham@prklaw.com

Attached please find the following documents to be filed with the Court:

1) Answer of Respondents Clyde E. Carlson and Priscilla A. Carlson to Petition for Review; and
2) Certificate of Service.

Please confirm receipt.

Thank you,

Heidi Corcoran | Peterson Russell Kelly PLLC
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