No. 96186-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 351653-III

STADELMAN FRUIT, LLC, a Washington limited liability company,

Plaintiff/Respondent,

v.

JIM D. VOORHIES, a single person; JOHN E. HOWARD, as Personal Representative for the ESTATE OF FLORENCE E. HOWARD,

Defendants/Appellants.

ANSWER OF STADELMAN FRUIT, LLC TO THE PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent, Stadelman Fruit, LLC, files this Answer to the Petition for Review submitted by Appellant Jim Voorhies. The Court should deny the Petition for Review as set forth below.

II. INTRODUCTION

This is a simple contract case governed by clear and longstanding rules of contract interpretation. Stadelman sued to collect on a debt owed by Voorhies under a fruit handling agreement and to foreclose on a mortgage securing the debt which Voorhies failed to pay. The trial court granted summary judgment to Stadelman, dismissed Voorhies' counterclaims, and entered a judgment in favor of Stadelman. All of this was done pursuant to, and consistent with, well-known rules of contract interpretation and uncontroversial, widely accepted rules governing summary judgment proceedings.

The Court of Appeals unanimously held that (1) Voorhies had an obligation to repay Stadelman for unpaid advances it had

made; and (2) Stadelman was entitled to foreclose on a mortgage Voorhies had provided securing his obligation to repay.[1]

The Petition for Review is not well-grounded. This case does not involve any of the considerations under RAP 13.4 requiring this Court's review of the Court of Appeals' ruling. The Court of Appeals' decision does not conflict with this Court's prior decisions. It does not conflict with decisions of the other divisions of the Court of Appeals. It does not involve issues of constitutional law or issues of substantial public interest. The Petition for Review fails to meet any of the considerations in RAP 13.4. Accordingly, this Court should deny review.

III. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Should this Court grant review of the Court of Appeals decision in Stadelman Fruit, LLC v. Voorhies, 35165-3-III, 2018

[1] The Court of Appeals also ruled that Stadelman was entitled to prejudgment interest and fees; and it upheld dismissal of Voorhies' counterclaims, but those issues were not raised in the Petition for Review.

WL 3359659 (2018) when the facts and record establish the following?:

1. The decision of the Court of Appeals is not in conflict with a decision of this Court.

2. The decision of the Court of Appeals is not in conflict with a decision of another decision of the Court of Appeals.

3. The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or of the United States.

4. The decision of the Court of Appeals does not involve an issue of substantial public interest that should be determined by this Court.

IV. COUNTER STATEMENT OF THE CASE

Stadelman Fruit operates as a fruit packing facility that handles, packs, markets, and sells fruit grown by Yakima Valley orchardists.[2] Stadelman Fruit enters agreements with orchardists, under which agreements the orchardists agree to deliver their entire crop for a year and Stadelman agrees to store, process, pack, market, and sell the fruit on behalf of the orchardists.

[2] The following is taken from the Court of Appeals decision, which succinctly set forth the facts, and is set forth here for the Court's convenience.

Stadelman frequently advances growing and harvesting costs to the orchardists so that the orchardists need not procure a bank loan.

Voorhies was an apple orchardist. He entered a fruit handling agreement with Stadelman in 2008, requiring Voorhies to deliver to Stadelman all marketable apples grown in his orchards during the crop year. In exchange, Stadelman, in its sole discretion, handled all necessary processes for postharvest handling, packing, market and sale.

The fruit handling agreement applied to the 2008 crop year. However, Paragraph 3 of the agreement provided that it automatically renewed for subsequent crop years unless either party chose to terminate the agreement in writing. That never occurred. The agreement further extended its terms to include all crop years until Voorhies paid all debt owed Stadelman:

> 3. TERM: The term of this Agreement is for the 2008 crop year; provided, however, that this Agreement shall be considered as automatically renewed from year to year thereafter, unless either party terminates this Agreement by giving the other

> party written notice not later than March 1 of the crop year in which termination is desired. In addition, the term of this Agreement shall automatically be extended and shall include all subsequent crop years and crops grown during such crop years until all obligations, including advances, owed by Grower to Handler under the terms of this Agreement have been paid in full unless otherwise determined by Handler. In other words, it is contemplated that so long as Grower is indebted to Handler, Grower will continue to bring Grower's fruit to Handler for the purpose of handling and marketing in order to accommodate Handler's economic interest as a handler and packer of Grower's fruit and for the purpose of protecting Handler's rights as a creditor of Grower. Termination shall be prospective only and shall not, unless otherwise agreed in writing, affect the rights, liabilities and obligations of the parties with respect to fruit which previously has been delivered by Grower to Handler for purpose of handling and marketing.

The fruit handling agreement allowed Stadelman to provide advances/operating loans to Voorhies, which loans Voorhies would secure with a mortgage. The parties anticipated use of the advances for growing expenses. The advances clause in the agreement provides:

> 7. ADVANCES: Handler may make discretionary advances to Grower to grow and harvest Grower's

> fruit crop on such terms and conditions as Handler shall, in its sole discretion, determine to be appropriate. If Handler has agreed to make an advance to Grower, Grower hereby agrees to execute any security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the repayment of such advances and, in addition, any subordination agreements determined reasonable and necessary by Handler for such purpose. Handler's decision to make advances in any particular instance shall not constitute an obligation or agreement by Handler to provide such advances to Grower in the future, and Grower acknowledges and agrees that such advances are discretionary with Handler.

The fruit handling agreement allowed Stadelman to offset any advancements and any handling charges against the proceeds of the sale of fruit:

> 6.2 Right of Offset: The parties understand and agree that Handler shall have the right to offset all advances, assessments, charges and expenses owed by Grower prior to the payment of any funds to Grower or any third party having an interest in Grower's crops or proceeds thereof.

Voorhies also promised to execute any security documents Stadelman requested:

> 8.2 Security Documents: Grower shall, procure and deliver to Handler or execute for Handler, at its request, any additional security agreement, financing statement, negotiable warehouse receipt, promissory note for advance of credit given by Handler to Grower, or other writing necessary to create, preserve, protect or enforce Handler's lien and/or security interest in Grower's crops and its rights under state and federal law.

In fact, Voorhies at the same time in 2008 signed a mortgage securing repayment of the advances. The mortgage states it was being given:

> [T]o secure the payment of all sums due Mortgagee [Stadelman Fruit] pursuant to the crop handling agreement of even date herewith between Mortgagor [Jim Voorhies] and Mortgagee, including all sums advanced to provide crop financing for the crop to be grown upon the following described real estate . . .
>
> To secure the performance of each agreement of the mortgagor herein contained and the payment of all sums due Mortgagee in providing crop financing for the 2008 crop to be grown upon said premises, including all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon.

Stadelman handled all of Voorhies' crops for the 2008, 2009, and 2010 years. During this period, Stadelman advanced

$575,252.95 to Voorhies, but only received $464,080.22 in receipts from Voorhies' apples to offset the advances, leaving an overdue balance of $111,172.73 that Voorhies never repaid.

Because of the debt Voorhies owed Stadelman, Stadelman sued to foreclose on the mortgage. The trial court granted summary judgment to Stadelman.

Voorhies appealed. The Court of Appeals, Division Three, unanimously affirmed the trial court in all respects: "We affirm the trial court's grant of summary judgment in favor of Stadelman Fruit for amounts owed, for foreclosure of the mortgage, and for dismissal of Jim Voorhies' counterclaims." Stadelman Fruit, LLC v. Voorhies, 35165-3-III, 2018 WL 3359659, at *8 (2018).

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. There Is No Basis under RAP 13.4 for Review to Be Granted

Review by this Court of decisions of the Court of Appeals is very limited. Under RAP 13.4, review is only appropriate in the following limited circumstances, none of which is present

here:

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

RAP 13.4(b).

A party is not entitled to review simply because he disagrees with the Court of Appeals decision on the merits. The primary purpose of a petition for review is to persuade the Court that one or more of the considerations specified in subdivision (b) of the rule applies. The purpose is not to reargue the merits of the appeal:

> [I]t is a mistake for a party seeking review to make the perceived injustice the focus of attention in the petition for review. RAP 13.4(b) says nothing in its criteria about correcting isolated instances of

injustice. This is because the Supreme Court, in passing upon petitions for review, is not operating as a court of error. Rather, it is functioning as the highest policy-making judicial body of the state. It is the ultimate arbiter of the meaning of the state constitution, statutory and regulatory law, and is responsible for the development of the common law and public policy within its sphere of authority.

The Supreme Court's view in evaluating petitions is global in nature. Consequently, the primary focus of a petition for review should be on why there is a compelling need to have the issue or issues presented decided *generally*. The significance of the issues must be shown to transcend the particular application of the law in question. Each of the four alternative criteria of RAP 13.4(b) supports this view.

The court accepts review sparingly, only approximately 10 percent of the time. Failure to show the court the "big picture" will likely diminish the already statistically slim prospects of review.

RAP 13.4 (b) (3), (4) criteria, regarding significant questions of constitutional law or issues of substantial public interest, require more extensive analysis of how the issues resonate throughout the jurisdiction. For example, in support of a claim that the issue is one of "substantial public interest," the petitioner should point out any evidence in the record or information capable of judicial notice which demonstrates the issue is recurring in nature or impacts a large number of persons.

Wash. Appellate Prac. Deskbook § 27.11 (italics in original).

Voorhies' Petition fails to demonstrate why any of the criteria in RAP 13.4 points towards acceptance of review. Neither in the Petition for Review nor in the decision from the Court of Appeals are there any issues that would fall under one of the four conditions as outlined by RAP 13.4(b). Indeed, Voorhies does not even claim this case falls under RAP 13.4(b). He does not in fact even mention, much less cite, that appellate rule, which is the controlling standard of review. Rather, he focuses entirely on the merits of the case as if it is a foregone conclusion this Court will accept review. *Petition for Review at 9-18.*

This is telling. Presumably Voorhies ignored the standard of review because this case falls very far from the RAP 13.4 tree. It does not involve any conflict among the divisions of the Court of Appeals or with this Court's prior precedent. And it does not involve—or come close to involving—any significant issues of law under the Constitution, or any issue of substantial public

interest. This is evident by even a cursory review of the Petition, which does not advance any argument to the contrary.

This case is at most a routine contract dispute governed by longstanding precedent, uncontroversial rules of contract interpretation, and well-known and well-accepted summary judgment standards. With respect, nothing about this case justifies review by this Court.

B. The Trial Court Did Not Err, and the Court of Appeals Was Corrected in Affirming the Lower Court

As to the merits, Voorhies advances two main arguments, both of which collapse under scrutiny and were properly rejected by the Court of Appeals.

First, Voorhies argues he had no obligation to repay the many advances Stadelman made him despite the deficiency left after the offset of the apple sales. As discussed below, this is contrary to the governing documents and is supported by no evidence or reasonable interpretation of the documents.

Second, he argues that the mortgage he signed to secure repayment did not cover advances made past 2008. As shown below, this argument is completely untenable.

1. The Agreements Required Voorhies to Repay Any Deficiencies

Voorhies first argues that there is no loan agreement, and that nothing in the parties' fruit handling agreement required repayment of advances that were not fully offset by fruit sales. *Petition for Review at 9, 14*. That is incorrect. The fruit handling agreement as well as the mortgage plainly contemplate repayment of advances/loans. The fruit handling agreement states at Paragraph 7:

> If Handler [Stadelman] has agreed to make an advance to Grower, Grower hereby agrees to execute any security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the *repayment* of such advances . . . .

As the Court of Appeals correctly noted, "this provision would serve no purpose if Jim Voorhies lacked an obligation to pay any deficiency after a credit for sale proceeds." Stadelman

Fruit, LLC v. Voorhies, 35165-3-III, 2018 WL 3359659, at *5 (2018).

This is further evidenced by the fact that the Mortgage explicitly states that it is given to secure payment of "all sums advanced to provide crop financing." Specifically, it states it is being given

> to secure the payment of all sums due Mortgagee [Stadelman] pursuant to the crop handling agreement of even date herewith between Mortgagor and Mortgagee, including all sums advanced to provide crop financing for the crop to be grown upon the following described real estate [followed by legal description of Assessor's Parcel Nos. 171423-22001 and 171423-22002].

The only reasonable interpretation of the agreement and the mortgage is that Voorhies was obligated to repay any advances that were not offset by proceeds from his fruit sales. Per the mortgage, this included "all sums advanced to provide crop financing." That is the conclusion the Court of Appeals reached, and there is no basis under RAP 13.4 to review it.

Voorhies also argues there is no promissory note to evidence a debt. *Petition for Review at 9*. That is irrelevant. As the Court of Appeals correctly noted, "an 'account' or a debt need not be evidenced by any writing or promise to pay." Voorhies, 35165-3-III, 2018 WL 3359659 at *5. Tellingly, Voorhies does not cite any authority establishing that a promissory note is required to evidence a debt for the debtor to become obligated to pay the debt. He simply asserts that must be the case.

Voorhies also argues in his Petition that the fruit handling agreement is subject to multiple interpretations, generating an issue of fact as to its meaning. However, this is disingenuous. As the Court of Appeals recognized, Voorhies conceded below that there was no factual dispute about the interpretation of the agreement, when he argued that the Court of Appeals should decide the issue as a matter of law: "We conclude that the fruit handling agreement bears only one reasonable meaning. Jim Voorhies does not provide extrinsic testimony that clashes with

that meaning. Voorhies agrees the meaning of the fruit handling agreement creates only a question of law." Voorhies, 35165-3-III, 2018 WL 3359659, at *6 (emphasis added).

Finally, as a last resort Voorhies relies on Wallace v. Kuehner, 111 Wn. App. 809, 43 P.3d 823 (2002). *Petition for Review at 14*. He also cited that case below and the Court of Appeals rightly rejected its application. The reliance is problematic because Wallace involves completely different facts. In Wallace, a father loaned his daughter money. Thereafter the father discarded the promissory note and declared that, if his daughter lost the money loaned, the amount would be taken from her inheritance. The court ruled that the father could not recover on the debt because of the later agreement to collect the money only by deducting the sum from the inheritance.

Wallace does not apply because it does not involve remotely similar facts (i.e., a promissory note and later promise to forego repayment). As the Court of Appeals correctly noted, "Voorhies supplie[d] no testimony that Stadelman Fruit ever

agreed to forgo amounts owed to it for the crop years 2008, 2009, and 2010." Voorhies, 35165-3-III, 2018 WL 3359659, at *5.

2. The Mortgage Clearly Covers Advances Made after 2008

Voorhies next argues that the mortgage only secured the 2008 crop year, and not the subsequent advances. *Petition for Review at 15-16.* He claims the fruit he delivered in 2009-2010 offset the 2008 advances. This argument contradicts the plain language of the documents.

The mortgage Voorhies signed secured "the payment of all sums due [Stadelman Fruit] in providing crop financing for the 2008 crop to be grown upon said premises, including all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon."

The fruit handling agreement specifically provides that it renewed automatically unless terminated, which was never done. The mortgage thus clearly covered the advances in 2009 and

2010, as those were renewals or modifications under the fruit handling agreement.

Moreover, as the Court of Appeals also correctly noted, the mortgage covers the 2009 and 2010 deficiencies because those debts "resulted from such 'additional sums as shall be agreed upon.' . . . The language does not require that both parties agree that the mortgage will secure additional sums, only that the parties agree to additional sums provided by Stadelman Fruit for crop financing. Jim Voorhies obviously agreed to the sums advanced in 2009 and 2010 or he would not have accepted the funds." Voorhies, 35165-3-III, 2018 WL 3359659 at *6.

In short, Voorhies misconstrues the documents. A correct analysis of the records demonstrates the propriety of Division III's ruling. Further, it demonstrates why this case does not implicate any of the considerations in RAP 13.4(b).

VI. THE COURT SHOULD AWARD STADELMAN FEES ON APPEAL

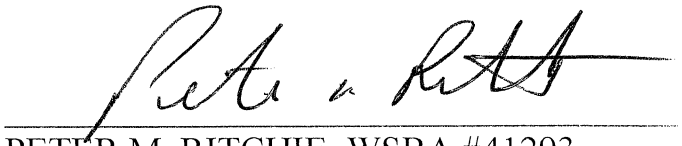
Pursuant to RAP 18.1(j), Stadelman requests that the

Court award Stadelman its attorney's fees and expenses incurred in preparing and filing this answer to the Petition for Review.

VII. CONCLUSION

Voorhies has failed to satisfy the elements of RAP 13.4(b). His Petition for Review fails to demonstrate how the Court of Appeals decision conflicts with this Court's prior rulings, or with other divisions of the Court of Appeals. In addition, he fails to identify, much less argue, any matters of substantial public interest or constitutional import. This is simply an ordinary case of contract interpretation that raises no issues justifying review by this Court. Review is improper, and the Court should deny the Petition. The Court should also award Stadelman its costs and attorney's fees under RAP 18.1.

Respectfully submitted this 10th day of September, 2018.



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CERTIFICATE OF TRANSMITTAL

I certify under penalty of perjury under the laws of the State of Washington that the undersigned caused a copy of this document to be sent to the attorney(s) of record listed below as follows:

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DATED THIS 10th day of September, 2018, at Yakima, Washington.

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