

FILED
SUPREME COURT
STATE OF WASHINGTON
5/10/2019 9:30 AM
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 96952-3

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 46963-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ROLFE GODFREY and KRISTINE GODFREY, husband
and wife and their marital community composed thereof,

Respondents,

v.

STE. MICHELLE WINE ESTATES, LTD. dba
CHATEAU STE. MICHELLE, a Washington Corporation;
and SAINT-GOBAIN CONTAINERS, INC.,

Petitioners,

AND

ROBERT KORNFELD,

Additional Respondent.

**PETITIONERS' ANSWER TO MOTION TO STRIKE REPLY TO
ANSWER TO PETITION FOR REVIEW**

Emily J. Harris, WSBA No. 35763
Kelly H. Sheridan, WSBA No. 44746
CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle WA 98154-1051
Telephone: (206) 625-8600
Facsimile (206) 625-0900

Michael B. King, WSBA No. 14405
Gregory M. Miller, WSBA No. 14459
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
Telephone: (206) 622-8020
Facsimile: (206) 467-8215

*Attorneys for Petitioners Ste. Michelle Wine Estates Ltd.
and Saint-Gobain Containers, Inc.*

Petitioners confess bafflement at the Godfrey Respondents' motion to strike the Petitioners' reply to the issue raised in the Godfrey Respondents' Answer to Petitioners' Petition for Review of the Court of Appeals' remand decisions. Respondents' answer undeniably has raised (albeit improperly) an issue for review—the *Burnet* issue, which the answer describes as the trial court's striking of “nearly all of Mr. Godfrey's liability evidence and imposing \$10,000 in sanctions against Mr. Kornfeld.” See Joint Answer at 16. This issue was never addressed by the Court of Appeals, and RAP 13.4(c) expressly provides that a petitioning party has the right to reply to an issue raised for review in an answer.

So why are the Godfrey Respondents moving to strike that reply? They claim that they are doing so because the *Burnet* issue was not new, but had already been raised in Petitioners' petition.

Seriously? Petitioners did briefly discuss what they contend is the waiver of that issue by Respondents, but they certainly did not “raise” that issue for review by this Court. All Petitioners did by that reference was identify a ruling that Respondents might ask this Court to review, and advise this Court that such an attempt would be procedurally futile because Respondents had waived that ruling as a subject for review. Petitioners certainly did not ask this Court to review that ruling. If Petitioners had done so, then they would presumably have had no reason to turn around and submit a reply opposing review of that issue.

But that is exactly the point, isn't it? Petitioners did not ask this Court to review the *Burnet* sanctions ruling. Petitioners did not contend that

the ruling warranted review by this Court under any of the criteria for review set forth by RAP 13.4(b). It was the Godfrey Respondents who, in their answer, asked this Court to review the *Burnet* sanctions ruling. And indeed, how else could the Godfrey Respondents hope to keep that issue alive as a basis for appellate relief, save by raising it in their answer? The 2006 amendment to RAP 13.4 makes plain that this step is a precondition to review of any issue by the Supreme Court not reached by the Court of Appeals. Hence the request by the Godfrey Respondents that this Court, should it grant Petitioners' review request, should also grant review of the *Burnet* issue, even if only to reach the conclusion that the issue should be remanded for resolution by the Court of Appeals.

The real reason the Godfrey Respondents moved to strike Petitioners reply is they don't want the Department that considers Petitioners' petition to be aware of the true circumstances surrounding the trial court's sanctions ruling. As the reply shows, the Godfrey Respondents are falsely claiming that the sanctions ruling denied them a fair trial on the merits of Godfrey's claims. The Godfrey Respondents got a fair trial over 12 days with their liability experts testifying for three of them, and lost. They are now grasping at *Burnet* straws as a way to obtain a second trial, should they lose on the affidavit of prejudice issue. This Court should see through the Godfrey Respondents' motion to strike, recognize it for what it is, deny it, and then also deny review of the *Burnet* issue.¹

¹ Petitioners are not requesting that this Court should sanction the Godfrey Respondents for making their motion to strike. This Court has yet to issue a ruling making clear the

Respectfully submitted this 10th day of May, 2019.

CORR CRONIN LLP

**CARNEY BADLEY
SPELLMAN, P.S.**

By:

#14405
MBK for

Emily J. Harris, WSBA 35763
Kelly H. Sheridan, WSBA 44746

By:

M. Michael B. King

Michael B. King, WSBA 14405
Gregory M. Miller, WSBA 14459

*Attorneys for Respondents Ste. Michelle Wine Estates Ltd.
and Saint-Gobain Containers, Inc.,*

impact of the 2006 amendment on the prior practice of some parties to rely on RAP 13.7 as a basis for seeking to keep open the possibility of lesser appellate relief should this Court grant review and rule against that party on the issue raised by the opposing party. Accordingly, Petitioners do not believe that the strict standard for sanctions under RAP 18.9 would be met—hence the decision not to counter the Godfrey Respondents with a request for sanctions against them, for bringing their motion to strike. This should not mean, however, that this Court should be unconcerned about the bringing of a motion to strike so clearly motivated by an attempt to obscure relevant facts from this Court’s designated decision-makers.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the *Petitioners' Answer to Motion to Strike Reply to Answer to Petition for Review* on the below-listed attorney(s) of record by the method(s) noted:

Email via Appellate Portal to the following:

| | |
|--|--|
| Emily J. Harris Corr Cronin Michelson Baumgardner Fogg & Moore LLP 1001 4th Ave Ste 3900 Seattle WA 98154-1051 eharris@correronin.com lnims@correronin.com elesnick@correronin.com | Robert B. Kornfeld Kornfeld Trudell Bowen Lingenbrink PLLC 3724 Lake Washington Blvd NE Kirkland WA 98033-7802 rob@kornfeldlaw.com |
| Howard M. Goodfriend Ian C. Cairns Smith Goodfriend, PS 1619 8th Ave N Seattle WA 98109-3007 howard@washingtonappeals.com ian@washingtonappeals.com | |

DATED this 10th day of May, 2019.



Marie Jensen, Legal Assistant

CARNEY BADLEY SPELLMAN

May 10, 2019 - 9:30 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96952-3
Appellate Court Case Title: Rolfe and Kirstine Godfrey and Robert Kornfeld v. Ste. Michelle Wine Estates, Ltd., et al.
Superior Court Case Number: 12-2-12968-7

The following documents have been uploaded:

- 969523_Answer_Reply_20190510092933SC009905_5853.pdf
This File Contains:
Answer/Reply - Answer to Motion
The Original File Name was Answer to Motion to Strike.pdf

A copy of the uploaded files will be sent to:

- andrienne@washingtonappeals.com
- eharris@corrchronin.com
- howard@washingtonappeals.com
- ian@washingtonappeals.com
- jensen@carneylaw.com
- ksheridan@corrchronin.com
- miller@carneylaw.com
- msullivan@corrchronin.com
- rob@kornfeldlaw.com
- saiden@carneylaw.com
- sdamon@corrchronin.com

Comments:

Sender Name: Patti Saiden - Email: saiden@carneylaw.com

Filing on Behalf of: Michael Barr King - Email: king@carneylaw.com (Alternate Email:)

Address:
701 5th Ave, Suite 3600
Seattle, WA, 98104
Phone: (206) 622-8020 EXT 149

Note: The Filing Id is 20190510092933SC009905