

No. 96952-3

SUPREME COURT
OF THE STATE OF WASHINGTON

ROLFE GODFREY and
KIRSTINE 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.

MOTION TO STRIKE
PETITIONERS' REPLY TO
JOINT ANSWER TO
PETITION FOR REVIEW
FROM REMAND AND FOR
SANCTIONS

A. Relief Requested by Moving Parties

Respondents Rolfe and Kirstine Godfrey and Robert Kornfeld,
ask the Court to strike Petitioners' Reply to respondents' Joint

Answer to Petition for Review from Remand and to award RAP 18.9 sanctions.

B. Facts Relevant to Motion and Grounds for Relief.

Petitioners' Reply is not authorized by RAP 13.4(d) because respondents' Joint Answer raised no "new issue." The Court should award sanctions under RAP 18.9 because the Reply is both frivolous and filed for the sole purpose to increase the cost of litigation.

1. The Court should strike the reply, because the answer raised no new issues.

The Court should strike the Reply because the respondents' Joint Answer raised no "new issue" under RAP 13.4(d). The petition for review argued that respondents waived their alternative argument for reversing the trial court's judgment, which was never reached by the Court of Appeals when it (twice) ordered a new trial for the trial court's failure to recuse after Godfrey filed a timely affidavit of prejudice. (Pet. on Remand 7, n.6) Respondents addressed this argument in their Joint Answer, responding that they had not waived this alternative ground for a new trial, citing each appellate brief in which the issue was raised. (Joint Ans. 16, citing App. Br. 25-38; Reply Br. 9-23; 2016 Ans. to Pet. 17 n.6; Supp. Br. 9) Respondents again cited RAP 13.7(b) to remind the Court that in the unlikely event it should reverse the Court of Appeals, either this

Court or the Court of Appeals must address respondents' arguments that the trial court erred in striking respondent Godfrey's exhibits, excluding witnesses and sanctioning trial counsel, respondent Kornfeld. (Joint Ans. 16-17)

RAP 13.4(d) allows a reply in support of a petition for review only "if the answer raises a new issue." Respondents did not cross-petition and raised no "new issue" in their Joint Answer to the petition for review. They instead directly answered petitioners' waiver argument and, relying on RAP 13.7(b), reminded the Court that the appellate courts had not addressed an alternative basis to reverse the judgment and order a new trial. Petitioners' Reply should be stricken as it merely rehashes the argument made in the petition for review and is contrary to the letter and spirit of RAP 13.4(d).

2. The Court should award fees under RAP 18.9.

This Court should compensate respondents for the additional fees they incurred in filing this motion. As respondents pointed out in their answer, petitioners' waiver argument – that a respondent waives an alternative basis "which might support that [Court of Appeals] decision" under RAP 13.7(b) unless the respondent addresses the criteria for review under RAP 13.4(b) – was frivolous when raised in the petition. (Joint Ans. 16-17) Embellishing on that

same argument in a seven-page Reply that is not authorized by RAP 13.4(d) is beyond frivolous; it is a tactic undertaken solely for the purpose of increasing the cost of litigation.

A well-heeled corporation may be expected to engage in scorched earth tactics with no regard for their merit, in order to punish an opponent by increasing the cost of litigation. But experienced counsel, who should (and does) know better, need not abet that strategy. “About half of the practice of a decent lawyer is telling would be clients that they are damned fools and should stop.” *Watson v. Maier*, 64 Wn. App. 889, 891, 827 P.2d 311 (Alexander, J., quoting Elihu Root, The United States Secretary of State from 1905-1909), *rev. denied*, 120 Wn.2d 1015 (1992). The Court should assess sanctions against petitioners and their counsel under RAP 18.9 to compensate respondents for the needless attorney fees they have incurred in securing compliance with the Rules of Appellate Procedure.

C. Conclusion.

The Court should strike the unauthorized Reply and award sanctions.

DATED this 9th day of May, 2019.

SMITH GOODFRIEND, P.S.

By: 

Howard M. Goodfriend, WSBA No. 14355

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Attorneys for Respondents

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on May 9, 2019, I arranged for service of the foregoing Motion to Strike Petitioners' Reply to Joint Answer to Petition for Review from Remand and for Sanctions, to the court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Robert Kornfeld Kornfeld Trudell Bowen & Lingenbrink PLLC 3724 Lake Washington Blvd. N.E. Kirkland, WA 98033-7802 robert@kornfeldlaw.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Emily J. Harris Kelly H. Sheridan Corr Cronin LLP 1001 4th Ave Ste 3900 Seattle, WA 98154-1051 eharris@corrchronin.com ksheridan@corrchronin.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Michael B. King Gregory M. Miller Carney Badley Spellman PS 701 5th Ave Ste 3600 Seattle WA 98104-7010 king@carneylaw.com miller@carneylaw.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

Russell A. Metz Metz & Associates, P.S. 2101 4th Ave., Suite 2400 Seattle, WA 98121 russm@metzlawfirm.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
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DATED at Seattle, Washington this 9th day of May, 2019.



Sarah N. Eaton

SMITH GOODFRIEND, PS

May 09, 2019 - 4:08 PM

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

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Motion 1 - Strike

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