No. 99715-2

SUPREME COURT
STATE OF WASHINGTON

HTP INC,
a Washington corporation,

Appellant,

v.

JC AVIATION INVESTMENTS, LLC, a Washington limited liability company; and HyTech Power, LLC, a Washington limited liability company.

Respondents.

ANSWER OF RESPONDENT JC AVIATION INVESTMENTS, LLC, TO PETITION FOR REVIEW

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INTRODUCTION

The alleged conflict between the divisions of the Court of Appeals is irrelevant to this appeal and appellant HTP, Inc. ("HTP") has failed to meet its burden under RAP 13.4(b) to establish the existence of one or more of the "considerations" governing this Court's acceptance of discretionary review. In its Opinion, the Court of Appeals did not consider the decisions cited by HTP from other divisions to be applicable in determining the scope of the arbitration clause before it. Rather, it properly distinguished both cases from the case before it. The Court of Appeals here determined the scope of the clause in question not by controverting other decisions in other divisions of the Court or adopting a rule of construction at odds with the teachings of those cases. Instead, it based its decision on a detailed analysis of the HyTech LLC Agreement as a whole and as well as the specific and express definition of the critical term "Agreement"—in effect enforcing the parties own agreed upon rule of construction as contained in and agreed to in the LLC Agreement itself.

In addition, the Court also found Respondent's separate security agreement—an agreement which itself contains no arbitration clause at all—is an independent contractual basis for the appointment of a receiver and one that necessarily falls wholly outside the ambit of the LLC Agreement and its arbitration clause, however narrowly or broadly the

"dispute hereunder" clause might be construed. In short, the Court of Appeals' Opinion here does not contain a ruling at odds with the holdings of the rules of construction adopted by other divisions, instead correctly finding its analysis depended upon its consideration of the clause within the context of the parties' agreement as a whole and after consideration of all of the language contained within the four corners of the HyTech LLC Agreement itself.

Respondent JC Aviation Investments, LLC ("JCAI"), filed this action for the purpose of protecting its collateral which is deteriorating in value, which HyTech has no resources to protect, and which due to HyTech's hopelessly deadlocked board is incapable or raising funds necessary to protect JCAI's collateral. Mindful of the threatened losses, the Court of Appeals recognized the exigencies and granted Respondents' motion for expedited review. JCAI respectfully requests that the Court similarly expedite its review of the HTP's Petition.[1] This Petition for Discretionary Review, which is devoid of citations to the record, and which to devotes scant discussion to how the issues HTP identifies satisfy the

[1] Subsequent to the Court of Appeals granting expedited review, the Superior Court found HTP in contempt for violating the preliminary injunction the trial court had granted to HyTech to prevent HTP from exercising control over HyTech's property, which is JCAI's collateral, and which HTP has now also appealed. *See* Court of Appeals, Div. I, Case No. 82337-0-I

criteria of RAP 13.4(b), is nothing more than a thinly veiled attempt to further delay the consideration of the merits of this dispute, while the value of JCAI's collateral continues to be at risk.

FACTS

JCAI is one of two members of HyTech Power, LLC ("HyTech"), a company that was formed to research, develop and manufacture tools to make diesel engines more efficient. HyTech's other member is the appellant, HTP, Inc. ("HTP").[2] Under the Limited Liability Company Agreement, executed by JCAI, HTP and HyTech and dated June 14, 2018 (the "LLC Agreement"), JCAI holds 52% percent of the membership units and HTP owns 48%. JCAI is also a secured creditor of HyTech. CP at 114-168. At the time of HyTech's formation, JCAI loaned HTP $5.7 million, which was projected to be sufficient to fund HyTech's operations until it could sustain itself from the sale of its products. CP at 46. However, within six months of its June 2018 formation, HyTech had exhausted this initial funding from JCAI and it was clear that HyTech need substantial additional funds. JCAI made additional advances totaling $1.15 million to HyTech pursuant to a Senior Loan Agreement and Senior Security Agreement both dated January 7, 2019 (together the "Senior Secured Loan Agreement"),

[2] HTP is a now a debtor in a general receivership pursuant to an order dated June 4, 2021, based on a petition filed by Acamar Investments, Inc., King County Superior Court No. 21-2-05739.

secured by substantially all of HyTech's assets.[3] CP at 49. The Senior Secured Loan Agreement had a maturity date of January 1, 2020, and in Section 4.04 HyTech consented to the appointment of a receiver if there was a default in payments. *Id.* HyTech failed to pay the Senior Loan Agreement at maturity.

HyTech is managed by a board of directors. The LLC Agreement entitled JCAI to appoint three directors and HTP two directors. CP at 145. A supermajority of the board (*i.e.* the vote of four directors) is required for any actions dealing with the raising of capital. CP at 144. Due to the fractured relations between JCAI and HTP, the HyTech board was deadlocked on how to deal with HyTech's deteriorating financial situation and no funding proposal was able to garner the necessary supermajority approval.

On March 6, 2020, the board unanimously passed a resolution, deciding it was "in the best interests of the Company to immediately discontinue employment of all employees" because HyTech was insolvent, was unable to meet payroll, had defaulted on $2.3 million in debt to its creditors, and was unable to agree on new financing offers. CP at 1293. At

[3] Acamar Investments, Inc. ("Acamar"), made an identical loan to HyTech in the amount of $1.15 million based on loan documents identical in substance to the Senior Secured Loan Agreement in favor of JCAI. The rights between JCAI and Acamar were set forth in a Subordination Agreement between them dated January 7, 2019.

a board meeting on April 9, 2020, the board unanimously agreed to retroactively reinstate its employees until April 17 when "[a]ll company employees will be terminated" unless the board agreed to additional funding. CP at 1179. The board also retroactively authorized new funding Acamar had provided from January through April 15 for the purpose of paying the employees, and agreed to refuse any additional new funding. CP at 1547.

On May 12, 2020, concerned about HyTech's insolvency, the board deadlock that prevented HyTech from taking any action to address its dire financial situation, and fearing that unless a receiver was appointed, HyTech's technology that was the security for JCAI's loans would deteriorate due to HyTech's inability to protect, maintain and develop it, JCAI filed a petition for judicial dissolution and for the appointment of a receiver and obtained an Order to Show Cause. The petition named both HyTech and HTP as defendants.

As a defensive measure to derail and delay the Superior Court from considering whether to grant appropriate equitable relief to JCAI, HTP's defense counsel hurriedly drafted and sent to JCAI's counsel two letters dated May 18 and 19, 2020, describing for the first time various alleged "arbitrable" claims Appellant HTP purported to possess. *See* CP 431-435; CP 442-445.

On May 20, 2020, HTP revealed it had continued with the beta testing of HyTech's technology notwithstanding the board's unanimous resolution to discontinue operations, carrying out a threat HTP had recently made at a contentious board meeting, where HTP announced it was going to independently fund beta tests of HyTech's product and would continue to do so "even if a lawsuit was filed." CP at 1547. In response, on May 27, 2020, HyTech filed a motion for a temporary restraining order (TRO) enjoining HTP from using HyTech's assets or conducting business in its name, CP at 672, which it followed up on June 3, 2020, by filing a motion for a preliminary injunction. CP at 1182.

JCAI's motion for Order to Show Cause for the Appointment of a Receiver came before the King County Superior Court on May 28, 2020. CP at 1338. The commissioner did not rule on the motion but certified it for trial before Judge McDonald. CP 1339. The next day, HTP moved to compel arbitration. CP 798.

On June 4, 2020, Commissioner Judson granted HyTech's request for a TRO to expire on June 16 when Judge McDonald would consider the motion for a preliminary injunction. CP at 1312. On June 16, Judge McDonald heard argument on HTP's motion to compel arbitration and HyTech's motion for a preliminary injunction. Judge McDonald first denied HTP's motion to compel arbitration, explaining the LLC Agreement's

arbitration clause did not encompass the issues of dissolution, appointment of a receiver, or injunctive relief. RP at 108-09. He then granted HyTech's motion for preliminary injunction, finding "[n]one of HTP's operations of HyTech's business or use of its assets were authorized by the Board." CP at 1632.

On June 17, 2020, HTP appealed the denial of its motion to compel arbitration as a matter of right, and sought discretionary review of the preliminary injunction. On June 22, 2020, it filed an emergency motion in the Court of Appeals to stay the scheduled June 30 trial of the petition for judicial dissolution and appointment of a receiver.

Following a hearing on June 26, 2020, Judge McDonald concluded RAP 7.2(a) precluded further proceedings because the Court of Appeals had accepted review of HTP's appeal or the order denying the motion to compel arbitration, and he struck the pending trial on the motions for dissolution and appointment of a receiver until this appeal is resolved. CP at 1687-88. After Judge McDonald ruled, HTP immediately withdrew its emergency motion and has since done everything in its power to prolong this proceeding.[4] Subsequently, the Court of Appeals granted JCAI's motion for

[4] In its emergency motion, HTP stated it was not using its appeal rights to unduly delay the court's determination and indicated it was willing to file its opening brief within 15 days after the Clerk's papers were received by the Clerk and it reply brief 15 days after the filing of the responsive brief. Notwithstanding, its representations, HTP requested and obtained two

expedited review and ultimately affirmed Judge McDonald's rulings. For the reasons set forth below, this Court should deny HTP's petition for discretionary review.

ARGUMENT

A. There is No Basis for an Appeal Under RAP 13.4(b).

RAP 13.4(b) provides that the Supreme Court will only accept review if based on one of the four criteria set forth in the rule. HTP seeks review based on the criteria number two: "If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals." The alleged conflict between the divisions of the Court of Appeals is irrelevant to this appeal. The Court of Appeals did not rely on either of the two cases, which HTP claims are in conflict — *David Terry Investments, LLC-PRC v. Headwaters Development Group Limited Liability Company,* 13 Wn. App. 2d 159, 463 P.3d 117 (2020) and *McClure v. Davis Wright Tremaine,* 77 Wn. App. 312, 890 P.2d 466 (1995) — both of which it distinguished from the case before it. Opinion at 6, n. 11. Although HTP

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extensions of its opening brief, filing it opening brief 62 day after it was originally due on August 6, and two extensions of its reply brief, filing it 21 days after it was originally due. Its motion for reconsideration was filed on the thirtieth day and in attempting to file its Petition for Review in this Court on the very last day, missed the deadline but was excused in a letter ruling from the Clerk dated May 11, 2021, based on the Court's order No. 25700-B-659 suspending the application of RAP 18.8(b).

claims this case involves a substantial public interest, it fails to articulate why this is the case.

This case involves an unusual and uniquely worded arbitration provision. Even if there is a conflict between the divisions of the courts of appeal, this case is not an appropriate vehicle to resolve it. As discussed below, the Court of Appeals did not rely on either the two cases, resolved this case based solely on unique provisions of the LLC Agreement and found it unnecessary to address the alleged conflict between *David Terry* and *McClure*. Accordingly, there is no reason for the Supreme Court to do so here.[5]

B. The Alleged Conflict is Irrelevant to Resolution of this Appeal and the Court of Appeals did not rely on either of the Decisions Allegedly in Conflict.

The principal issue before the Court of Appeals was the scope of the arbitration clause in the parties' LLC Agreement. While a strong public policy favoring arbitration is recognized under both the Federal Arbitration Act, 9 U.S.C. § 2 ("FAA") and Washington law, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Satomi Owners Ass'n v. Satomi,*

[5] This Answer addresses only the issues regarding the scope of the Arbitration clause as it relates to the relief sought by JCAI. The issues related to court rulings regarding injunctive relief are in being addressed in the separate Answer filed by HyTech. JCAI joins and incorporates the arguments made by HyTech.

LLC, 167 Wn.2d 781, 810, 225 P.3d 213, 229 (2002) (internal citations and quotations omitted). Likewise, the threshold issue of arbitrability is the same under the FAA and Washington's Uniform Arbitration Act, chapter 7.04A RCW; whether the parties agreed to arbitrate a particular dispute. *Id.*

The arbitration clause in the HyTech LLC Agreement is found in Section 12.03, which provides:

> The parties hereto will use their reasonable best efforts to resolve any dispute hereunder through good faith negotiations. In the event a dispute cannot be resolved informally within thirty (30) days of notice by one party to the other of such dispute, the parties agree that such dispute will be resolved exclusively through final and binding arbitration.

CP at 163 (emphasis added).

The Court of Appeals did not rely on either of the two cases HTP contends are in conflict. It distinguished *David Terry*, which concluded that the phrases "arising out of or related to" a contract had the same broad meaning when used in an arbitration clause, but which did not purport to construe the operable phrase in the HyTech LLC Agreement, a "dispute hereunder." Opinion at 6.[6] The Court of Appeals correctly rejected HTPs

[6] It is questionable whether there is in fact any conflict between *David Terry* and *McClure.* The abirritation clause in *McClure* was broadly worded, providing for the arbitration of "[a]ny dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof[.]" 77 Wn. App. at 314. The so called dispute exists because *David Terry* distinguished *McClure* based on its statement that an arbitration clause that encompasses any controversy

argument that that a dispute "under" an agreement is just as broad as a claim "arising out of" or "relating to" the agreement. In the same footnote in which the Court of Appeals distinguished *David Terry*, it noted that federal courts under the FAA have interpreted the phrase "arising hereunder" narrowly:

> Clauses requiring arbitration of disputes "arising under" or "hereunder" are interpreted narrowly. *Cape Flattery Ltd. v. Titan Mar., LLC*, 647 F.3d 914, 924 (9th Cir. 2011) (citing *Mediterranean Enter. v. Ssangyong Corp.*, 708 F.2d 1458, 1464 (9th Cir. 1983)); see *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 307-08, 130 S. Ct. 2847, 177 L Ed. 2d 567 (2010) (describing the phrase "arising under this agreement" as "relatively narrow") (citing *Drake Bakeries, Inc. v. Local 50, Am. Bakery & Confectionary Workers Int'l*, 370 U.S. 254, 256-57, 82 S. Ct. 1346, 8 L. Ed. 2d 474 (1962)); but see *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1086 (9th Cir. 2018) (construing the phrase "any disputes arising out of or related to" broadly)).

Opinion at 6, n.11.

HTP argues that the particular language the parties use in an arbitration clause is irrelevant and all language invoking arbitration should be broadly construed regardless of the parties' intent as expressed in the language contained in their agreement. According to HTP, if the contract contains an arbitration clause, regardless of its language, the court should

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"relating to" a contract is broader than language covering only claims "arising out of" a contract. *David Terry*, 13 Wn. App.2d at 167. This statement in *McClure i*s pure *dicta* as the arbitration clause in *McClure* used both the phrases "related to" and "arising out of" and was thus irrelevant to *McClure's* holding.

disregard the language chosen by the parties and rule that all disputes between them are arbitrable. The Court of Appeals rejected that argument as being inconsistent with Washington law, which requires the court to determine the parties' intent by focusing on the objective manifestations of the agreement, and imputing to the parties an intention corresponding to the reasonable meaning of the words used. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262, 267 (2005); ***see also Nelson v. Westport Shipyard, Inc.***, 140 Wn. App. 102, 117, 163 P.3d 807 (2007) ("[W]e look to the language of the agreement to determine the scope of the arbitration clause") (citing *Drake Bakeries*, 370 U.S. at 256; *Mediterranean Enter.*, 708 F.2d at 1464).

Accordingly, the Court of Appeals engaged in detailed examination of the language in the LLC Agreement. The key provisions of the arbitration clause in the LLC Agreement are specifically defined in the agreement. Section 1.02 of the Agreement specifies that "hereunder" refers to "this Agreement as a whole." Section 1.01 defines "Agreement" as "this Limited Liability Company Agreement, as executed and as it may be amended." This is to be contrasted with the various other agreements that are separately defined in section 1.01 and distinguished from the LLC Agreement, including the HTP Contribution Agreement, the JCAI Class A Contribution Agreement and the JCAI Class B Contribution Agreement, Founder's

Agreement and Joinder Agreement. Section 12.07 further distinguishes the LLC Agreement from other documents associated with HyTech: "This Agreement, together with the Certificate of Formation and all related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein." The Court of Appeals thus correctly concluded that "arbitration is required for a dispute about the LLC Agreement itself, exclusive of documents not part of the "Agreement" defined in section 1.01.

This case provides no occasion for the Court to examine what HTP alleges is a conflict between the divisions of the Court of Appeals. Neither of the decisions that are alleged to be conflicting (if in fact they do conflict) were relied on by the Court of Appeals, and because neither case construes the operative phrase "arising hereunder," it is unnecessary for this Court to address the alleged conflict to resolve this appeal.

Related to HTP's Issue 1 are Issues 2 and 3. Issue 2 raises the question whether a contract subject to the FAA should be construed using the substantive body of federal law that all reasonable doubts concerning arbitrability should be construed in favor of arbitration. Issue 3 asks "whether this Court should require the party opposing arbitration in cases involving a valid arbitration provision in a valid larger agreement that is

subject to the FAA to prove that a dispute is not arbitrable using the body of federal law construing a valid arbitration provision's scope."

Washington law is identical to federal law on these points. *See Gandee v. LDL Freedom Enters., Inc.*, 176 Wn.2d 598, 602-03, 293 P.3d 1197 (2013). HTP's Petition contains no discussion of how federal law is different or how it would require a different outcome from the one reached by the Court of Appeals.

The Court of Appeals found that the arbitration clause required only arbitration of "a dispute about the LLC Agreement itself exclusive of documents not of part of the 'Agreement' defined in section 1.01" and that the "agreement's narrow, unambiguous language is sufficient to show the parties' objective intent to limit the scope of arbitration." Opinion at 8. HTP's petition is devoid of any discussion of why the Court of Appeals' reasoning or its conclusion that parties' unambiguous language manifesting an objective intent to limit the scope of the arbitration fails to satisfy the applicable legal standard under with the FAA or Washington law.

C. The Court of Appeals Correctly Determined that JCAI's Request for the Judicial Dissolution was Not Subject to Arbitration.

The only issue HTP identifies that specifically addresses the Court of Appeals' ruling that JCAI's request for judicial dissolution was within the scope of the arbitration agreement is Issue 5 "Whether the FAA,

whether [sic] judicial dissolution actions are subject to arbitration or can they only be entertained in a judicial forum." This is a purely hypothetical issue. HTP's petition devotes no discussion of how this issue relates to the Court of Appeals' Opinion or how it satisfies the requirements for Supreme Court review. It notes only there are a number of differing decisions in both federal and state courts on this issue.

JCAI sought the dissolution of HyTech based solely on the event of dissolution described Section 11.01(d) of the LLC Agreement: "The entry of a decree of judicial dissolution under RCW 25.15.274 of the Washington [Limited Liability Company] Act." The Court found that "[b]y allowing for dissolution 'under RCW 25.15.274,' section 11.01(d) is an objective manifestation that a party to the LLC agreement may seek a decree of judicial dissolution in superior court, as contemplated by the statute." Opinion at 10. Since there was no dispute about the meaning of section 11.01(d) or the LLC Agreement, JCAI could petition for judicial dissolution without arbitration. *Id.* Additionally, there was no dispute that the board of HyTech was hopelessly deadlocked and effectively dysfunctional because of the supermajority provisions in the LLC Agreement. And regardless, because judicial dissolution arises from circumstances outside the LLC Agreement, JCAI's claim was outside the scope of the arbitration clause. Opinion at 11. Having found the JCAI's petition for judicial dissolution

was not subject to arbitration, the Court found it unnecessary to address the question of an arbitrator's authority (*id.* at 10, n. 25), which is the issue HTP raises in its Issue 5. HTP totally fails to explain how this issue, which the Court of Appeals did not decide satisfies the for criteria of RAP 13.4(b).

D. The Court of Appeals Ruled Correctly Determined the Arbitrability of Each of the Claims.

HTP's Issue 4 is "[w]hether courts confronted with a good faith motion to compel arbitration of multiple disputes in a single action must determine each claim's arbitrability rather than denying arbitration of all disputes because one dispute may not be arbitrable." HTP's argument here, as the Court of Appeals observed, is based on a mischaracterization of its own Motion to Compel (*see* Opinion at 8-9), and a mischaracterization of the trial court proceedings.

HTP's Motion to Compel asked the Superior Court to decide "[w]hether this action for judicial dissolution of HyTech and for appointment of a general receiver is an] arbitrable] dispute between JCAI, HTP and HyTech under the LLC Agreement." CP at 162. At the hearing on June 16, 2020, the trial court addressed both these issues and whether HyTech's request for an injunction was arbitrable, which issue arose after HTP filed its motion to compel. HTP's argues, based on the transcript of the June 16 hearing, that all of the issues before the court were not addressed as part of the oral argument (*see* Petition at 12). This misstates the record.

The Superior Court specifically ruled, "[t]here is Section 12.15, which allows for the parties to seek equitable relief. And judicial dissolution proceeding is one that is considered one for equitable relief, including a temporary restraining order that's available from a court of competent jurisdiction." RP at 108. Moreover, there is no requirement that the trial court entertain oral argument or set out its analysis in an oral ruling. The Court's written order clearly indicates HTP's motion was denied. CP 1650. The trial court clearly denied the motion to compel arbitration of the receivership as well as the motion to compel arbitration of the judicial dissolution, as those matters were set to proceed to trial on June 30, 2020, which the trial court struck following HTP's appeal. CP 1687-88.

Moreover, an appellate court reviews a trial decision *de novo*, and the appellate court may affirm on any grounds established by the pleading and supported by the record. *Otis Hous. Ass'n v. Ha*, 165 Wn.2d 582, 586, 201 P.3d 309 (2009). Here, the Court of Appeals separately and correctly evaluated each of the two issues on which HTP sought to compel arbitration.

E. The Court of Appeals Correctly Determined that JCAI's Request for the Appointment of a Receiver was Not Subject to Arbitration.

The only issue HTP raises challenging the court's decision that JCAI's petition for a receiver was not subject to arbitration is Issue 6: "Whether the FAA, whether [sic] receiver appointment are subject to

arbitration or can only be entertained in a judicial forum." Again, this is a purely hypothetical issue, since HTP does not, in any of its issues identified in its Petition, dispute the correctness of the Court of Appeal's conclusion that JCAI's request for an appointment of a receiver was outside the scope of the arbitration clause in the LLC Agreement. Also, as the Court of Appeals pointed out, this issue was not properly before it since it was never considered by Superior Court. Opinion at 13.[7]

JCAI's petition and motion for an order to show cause sought the appointment of a general receiver for HyTech on multiple grounds, including Section 4.04 of the Senior Security Agreement, which provided that upon an Event of Default under the Senior Secured Loan Agreement, JCAI is entitled to the appointment of a receiver "as a matter of right." CP 7; *see also* CP 10-11, 19-20. HTP is not a party the Senior Secured Loan Agreement — its only parties are JCAI and HyTech — and it does not contain an arbitration clause. And as the Court of Appeals noted, receivership is not a subject addressed anywhere in the LLC Agreement.

The Court of Appeals in its Opinion noted that section 4.05 of the LLC Agreement states that JCAI's security interest in HyTech's assets "will

[7] The Superior Court stayed all proceedings other than those relating to the enforcement of the preliminary injunction effective June 17, 2020, the date on which HTP filed its Notice of Appeal of the order denying its Motion to Compel arbitration. CP at 1687-88.

be evidenced by a separate agreement." Opinion at 12. HTP correctly notes that section 4.05 of the LLC Agreement does not reference the Senior Security Agreement dated January 7, 2019, but rather JCAI's earlier security agreement dated June 14, 2018, and devotes a page and half of its argument to this point. However, this is a distinction without a difference — the point being that JCAI's rights as a secured creditor were intended to be controlled by agreements between JCAI and HyTech, separate and apart from the LLC Agreement.

The Court of Appeals correctly ruled that "because arbitration is required only for disputes under the LLC Agreement and the receivership provision in JCAI's security agreement is entirely separate and not subject to an arbitration clause, the court did not err by concluding arbitration of the request for a receiver was not compelled. *See Satomi*, 167 Wn.2d at 810 (because "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.") (quoting *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002)).

None of the 12 issues HTP raises under RAP 13.4(c) challenges the Court of Appeals' conclusion that the scope of the arbitration clause in the LLC Agreement did not apply to JCAI's right to the appointment of a receiver under a separate agreement to which HTP was not a party and

which does not contain an arbitration clause; and HTP fails to explain how this satisfies how the hypothetical issue it raises in its Petition, which the not the subject of a decision by either the Superior Court or the Court of Appeals, satisfies any of the criterial of RAP 13.4(b).

CONCLUSION

For the foregoing reasons, HyTech respectfully submits that this Court should decline to accept review of the Court of Appeals' March 1, 2021 Opinion.

DATED this 10th day of June 2020.

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