FILED
SUPREME COURT
STATE OF WASHINGTON
6/8/2021 9:21 AM
BY SUSAN L. CARLSON
CLERK

No. 997683

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

G. STEVEN HAMMOND, M.D.,

Petitioner,

v.

THE EVERETT CLINIC, PLLC, f/k/a THE EVERETT CLINIC, P.S., a limited liability corporation,

Respondent.

ANSWER TO PETITION FOR REVIEW

David R. Goodnight, WSBA #20286
Jenna M. Poligo, WSBA #54466
Jill D. Bowman, WSBA #11754
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Phone: (206) 624-0900

Attorneys for Respondent The Everett Clinic, PLLC

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. ISSUES PRESENTED 2

III. STATEMENT OF THE CASE 2

A. Statement of Facts 2

1. Responding to changing times in healthcare 2
2. Dr. Hammond's TEC employment and the Buy-Sell Agreement 3
3. The DaVita merger and settlement program 4
4. The settlement offer 5
5. Approval of the merger transaction 8
6. Dr. Hammond reviewed and voluntarily accepted the settlement offer 8
7. The terms of Dr. Hammond's release and his knowing acceptance of the same 10
8. Closure of the merger transaction and payment of the settlement amount 12
9. The *Baer* arbitration 12
10. Dr. Hammond's reaction to the *Baer* arbitration decision 13

B. Statement of Proceedings 14

IV. ARGUMENT 16

A. The Court of Appeals' Decision Does Not Conflict with Any Decision of This Court 16

B. The Court of Appeals Properly Rejected Dr. Hammond's Effort to Void His Settlement Agreement and the Trial Court's Award of Fees and Costs 18

V. CONCLUSION 19

TABLE OF AUTHORITIES

PAGE(S)

Cases

Brinkerhoff v. Campbell,
99 Wn. App. 692, 994 P.2d 911 (2000) 18

Hammond v. Everett Clinic, PLLC,
No. 80772-2-I, 2021 WL 961130 (Wash. Ct. App. Mar. 15, 2021) 15, 19

State ex rel. Hayes Oyster Co. v. Keypoint Oyster Co.,
64 Wn.2d 375, 391 P.2d 979 (1964) 16, 17

Jordan v. Duff & Phelps,
815 F.2d 429 (7th Cir. 1987) 18

Wool Growers Service Corp. v. Ragan,
18 Wn.2d 655, 140 P.2d 512 (1943) 16, 17, 18

Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima,
122 Wn.2d 371, 858 P.2d 245 (1993) 18

Statutes

RCW 23.01.360 16

Rules

RAP 13.4 18

RAP 13.4(b) 19

RAP 13.4(b)(1) 1, 16

I. INTRODUCTION

Although Petitioner relies upon RAP 13.4(b)(1) as supporting his petition for review, neither of the two decisions cited by Petitioner conflicts with the Court of Appeals' decision. Nor does either decision provide grounds for Petitioner to escape the settlement agreement he knowingly and voluntarily signed. The Court should reject Petitioner's continued (and repeatedly rejected) attempt to destroy the finality of the parties' settlement.

Before Petitioner signed the settlement agreement, he was given accurate information, was offered the opportunity to review for himself the documents relating to the underlying transaction, was encouraged to consult his own legal counsel (and did so), and had approximately a month to decide whether to accept the $350,000 he was offered in settlement of an arguable claim. Petitioner knew that others who were similarly situated were planning to reject the settlement offered by Respondent and pursue their claims in arbitration. Instead of joining them or pursuing his own claim in a separate arbitration, Petitioner knowingly and voluntarily chose, as did many others, to mitigate his risk by accepting the settlement offer and executing a release.

Petitioner now wants to undo that decision. His argument to the courts below boiled down to "if I had known that the former shareholders who decided to litigate their rights under our common buy-sell agreement were going to prevail in their arbitration proceeding, then I would not have accepted the settlement offer." But rather than risk receiving nothing, Petitioner knowingly and voluntarily chose to accept the sure payment

offered by Respondent. In exchange, he released all claims related to or arising out of his stock buy-sell agreement and the merger agreement between Respondent (Petitioner's former employer) and a third party. Further, after specifically acknowledging he might later discover facts different from or in addition to the facts he knew or believed at the time he signed the release agreement, Petitioner agreed to waive any claim that might arise as a result of such different or additional facts.

The petition for review should be denied.

II. ISSUES PRESENTED

1. Whether the Court of Appeals properly affirmed the trial court's summary judgment declaring Petitioner's release enforceable and refusing to allow Petitioner to renege on the parties' settlement.

2. Whether the Court of Appeals properly affirmed the trial court's award of reasonable attorneys' fees and costs to Respondent.

III. STATEMENT OF THE CASE

A. Statement of Facts.

1. Responding to changing times in healthcare.

In early 2014, The Everett Clinic, P.S., a Washington professional service corporation,[1] was facing economic challenges and uncertainty stemming from changes in the healthcare industry. CP 357-58. TEC's board of directors (the Board) hired a strategic advisor to help it evaluate

[1] Respondent The Everett Clinic, PLLC is a successor to The Everett Clinic, P.S. CP 30; *see also* CP 1. The corporate entity is referred to herein as "TEC."

TEC's options. CP 357. Within a few months, the Board had concluded it was an opportune time to consider strategic partnerships. CP 358.

TEC solicited proposals from interested parties and received responses ranging from strategic business relationships to mergers. *Id.* With assistance from its strategic advisor and its legal counsel—lawyers from K&L Gates LLP—the Board considered the different proposals. *Id.* In August 2015, the Board executed a non-binding letter of intent with DaVita Healthcare Partners, Inc. (DaVita). CP 358, 491. TEC notified its current and former physician-shareholders that the company was considering a proposal to merge with a DaVita affiliate and that further information would be provided when available. CP 396, 491.

2. Dr. Hammond's TEC employment and the Buy-Sell Agreement.

TEC employed G. Steven Hammond, M.D., from 1998 through August 2004. CP 404-05. During that time, Dr. Hammond purchased and owned four shares of TEC common stock. CP 407. When he left TEC's employ, the company redeemed his shares. CP 407-08.

A Buy-Sell and Stock Purchase Agreement (the Buy-Sell Agreement) between TEC and the company's physician-employees governed the terms of all purchases, sales, and transfers of TEC stock, including the purchase and redemption of Dr. Hammond's shares. CP 382-90, 856. According to the Buy-Sell Agreement, when TEC redeemed a shareholder's stock, the former shareholder's "rights and privileges as a Shareholder" immediately ceased. CP 383 (Section 3). For the next 15

years, however, the former shareholder possessed contractual rights that would be triggered if TEC were "dissolved and liquidated" or if all the outstanding stock of TEC were "sold to one or more third parties and [sic] any one or more related transactions." CP 385 (Sections 6.1, 6.3, 6.4). If the latter occurred, the net sale proceeds would ultimately be distributed to (a) the shareholders whose stock had been sold "to one or more third parties," and (b) the former shareholders whose stock had been redeemed within the preceding 15 years. CP 385-86 (Section 6).

3. The DaVita merger and settlement program.

Negotiations for a merger between TEC and DaVita continued during the late summer and fall of 2015. CP 359. During this time, TEC's Board met at least twice to discuss the potential rights of former shareholders whose stock had been redeemed during the prior 15 years. *Id*. After consulting with in-house counsel and K&L Gates lawyers, and based on their advice, the Board decided it did not believe the proposed merger transaction with DaVita would trigger the Buy-Sell Agreement's contingent rights, but it recognized that opinions might differ on that point and concluded it would be in TEC's best interests to offer a settlement program to the former shareholders to resolve any potential disputes. CP 359-60, 368-69, 376, 392.

The settlement program developed by TEC consisted of an offer to pay $350,000 to each former shareholder who had owned four shares, and $175,000 to those who had owned two shares, in exchange for a full release and waiver of all claims arising out of the Buy-Sell Agreement and/or

TEC's transaction with DaVita. CP 360. Former shareholders whose shares had been redeemed during the previous 15 years would be offered the opportunity to participate in the settlement program. CP 369. Each former shareholder would be offered identical terms relative to the number of shares he or she previously owned. CP 360; *see also* CP 494-95.

On November 23, 2015, TEC executed a confidential Agreement and Plan of Merger with DaVita and related entities (the Merger Agreement). CP 358. The Merger Agreement called for another professional service corporation to be merged with and into TEC, and that transaction to be followed by two more mergers and other steps in the transaction. CP 372. TEC scheduled a special meeting of the shareholders to consider and vote on whether the transaction should be approved. CP 359, 364.

4. The settlement offer.

TEC communicated its offer to participate in the settlement program to its former shareholders. CP 360, 367-70, 392. On December 3, 2015, the Board's president, Dr. Harold Dash, sent out a letter describing the planned merger transaction with DaVita, the reasons for the Merger Agreement, and how the transaction would affect current and former TEC shareholders if the current shareholders approved the deal. CP 367-69. He then explained the settlement offer being made to eligible former shareholders and the rationale for the offer:

> Under [the Buy-Sell Agreement], shareholders whose stock was redeemed in the fifteen years prior to the date of TEC's dissolution or sale of all of TEC's stock have contingent

111005135.4 0067342-00002

> payment rights. Because a merger is neither a dissolution nor a sale of stock, ***it is the Board's assessment that those provisions of the Buy-Sell Agreement are not applicable and there are no payment rights for former shareholders under the Buy-Sell Agreement with respect to transactions contemplated by the Merger Agreement***.
>
> ***Nevertheless, the Board understands how opinions on the application of the Buy-Sell Agreement may differ with respect to the merger transactions and the Board has concluded that it is in the best interest of TEC and its shareholders to avoid the costs, risks and delays in possible litigation and offer a payment to former shareholders*** who were parties to the Buy-Sell Agreement within the fifteen year period ending on the closing of the final step in the Merger Agreement. Accordingly, in the proxy statement to the TEC shareholders in which the Board has recommended the shareholders approve the merger and the Merger Agreement, the proxy disclosed the Board's determination that former shareholders in the fifteen year lookback period would be offered a payment. The amount you are being offered (the "Payment") under the Program is stated in the enclosed Release Agreement.

CP 368-69 (emphasis added).

Enclosed with the settlement offer letter was a more detailed summary of the planned merger, a copy of the Buy-Sell Agreement, and the proposed release agreement. CP 361, 372-78, 382-90. On the first page of the merger summary, TEC described the transaction's multiple steps. CP 372. At the top of the next page, TEC stated that all outstanding TEC shares ultimately would be "exchanged for cash merger consideration." CP 373.

In the settlement offer letter, TEC explained it was anticipated that when the transaction closed, payments would "be made to the current TEC shareholders in exchange for their Company stock received in the initial merger." CP 368. "A significant portion of the merger proceeds" would be used, however, "to pay off current TEC debt, [and] to pay staff retention

bonuses for non-shareholder staff," and certain proceeds would be placed in escrow accounts. *Id.* More details were provided in the merger summary, including that a "shareholder representative escrow account" would likely contain $75.5 million to $136 million and those funds would be available to satisfy various claims, "including . . . any claims that may be asserted by former shareholders." CP 374.

In the same settlement offer letter, TEC told the former shareholders that if the transaction closed, it was estimated that current shareholders would receive initial payments ranging from $800,000 to $1 million (for four shares) and possibly would receive additional payments in subsequent years. CP 368. The enclosed release agreements told former shareholders that if the planned transaction closed, and if they signed and returned the release agreements on or before January 5, 2016, they would, within 10 days after the closing, receive $350,000 if they had owned four shares or $175,000 if they had owned two shares. CP 369, 501.

The former shareholders also were told they could obtain a copy of the Merger Agreement. CP 368, 370. If they had questions about the settlement offer, they could contact attorneys at K&L Gates—contact information was provided for two attorneys. CP 369, 392. The former shareholders also were encouraged to consult with their own legal counsel. CP 369 ("***When considering this matter you should consult with legal counsel of your choice regarding your rights.***" (emphasis in original)).

5. Approval of the merger transaction.

At a special meeting held on December 20, 2015, TEC's shareholders of record approved the proposed transaction. CP 359.

6. Dr. Hammond reviewed and voluntarily accepted the settlement offer.

When Dr. Hammond received the settlement offer, he had not been a TEC shareholder for more than 11 years. CP 405, 407, 409, 411-12. He had heard some news reports that TEC "was contemplating selling itself," but had not realized that if a sale occurred, it might affect him. CP 856.

Upon opening his mail, Dr. Hammond read "the entire package" of settlement documents "several times" and discussed the contents of the documents with his wife. CP 408-12, 856. He then met with his lawyer, Greg Sandoz. CP 413-17, 446. He showed Mr. Sandoz all the documents he had received (the December 3 settlement offer letter, copies of the merger summary and his Buy-Sell Agreement, and the proposed release) and obtained legal advice from Mr. Sandoz as to the meaning of the documents. *Id*. After the two of them went over the documents, Dr. Hammond followed Mr. Sandoz's suggestion to reach out to someone who was still with TEC to ask about the proposal. CP 414-15, 444-46, 499.

Dr. Hammond emailed Dr. Robert Jacobson (a then-current holder of TEC stock) to ask about the transaction with DaVita. CP 444, 499. In his email, Dr. Hammond explained that he had received information about a merger of TEC and DaVita and an offered payment of $350,000 in exchange for a release. CP 499. According to Dr. Hammond, everything

seemed to "be on the up and up," but he wanted to know if "this all seems consistent with [Dr. Jacobson's] understanding of this deal." *Id.*

After he sent the email, Dr. Hammond spoke with Dr. Jacobson. CP 444. During their telephone conversation, Dr. Jacobson confirmed that the transaction between TEC and DaVita was "happening." *Id*. Dr. Jacobson then volunteered that a group of former shareholders planned to reject the settlement offer and pursue what they felt were legitimate claims as former shareholders. CP 444-45. Dr. Hammond elected not to contact that group of former shareholders. CP 418. He was, as he admitted in his deposition, unwilling to forgo "***a guaranteed $350,000 for the chance of prevailing in [the] arbitration***." CP 443 (emphasis added).

After speaking with his wife, his lawyer, and Dr. Jacobson, Dr. Hammond executed the release agreement. CP 501-04, 856. He knew he could have contacted the K&L Gates lawyers to ask questions, but he chose not to do so. CP 420-21. He knew he could have requested a copy of the Merger Agreement, but he chose not to do so. CP 424-25. He did not request more time to evaluate the offer; instead, he signed the release on December 28, 2015, and sent it back in plenty of time to ensure it was received before the deadline for acceptance of the settlement offer. CP 436.

Shortly after he executed the release agreement, Dr. Hammond received an email from Erika Price informing him that her husband had joined a group of former shareholders who planned to arbitrate their rights under the Buy-Sell Agreement. CP 506. Dr. Hammond responded that he had decided to accept the offered settlement. *Id.*

7. The terms of Dr. Hammond's release and his knowing acceptance of the same.

Dr. Hammond's release agreement contained the following terms:

> In exchange for Company's execution and performance of this Agreement on the terms stated herein, Former Shareholder on behalf of himself/herself and his/her marital community, if any, and the Former Shareholder's heirs, successors, and assigns, fully and finally waives, releases, discharges and agrees to hold harmless Company and its shareholders, representatives, employees, officers, directors, agents, attorneys, assigns, heirs and successors (the "Released Parties") from ***any and all claims, causes of action and demands of any kind or nature, whether matured or unmatured, contingent or non-contingent, liquidated or unliquidated, known or unknown, based in contract, tort, statute, common law or equity, that Former Shareholder may now assert or may in the future assert against Released Party related to or arising under the Buy-Sell Agreement, the Merger Agreement and any and all transactions contemplated thereunder***.
>
> Former Shareholder understands that Former Shareholder ***may later discover claims or facts that may be different than, or in addition to, those that Former Shareholder or any other Former Shareholder now knows or believes to exist*** regarding the subject matter of this release, and which, if known at the time of the signing this Release Agreement, may have materially affected this Release Agreement and Former Shareholder's decision to enter into it and grant the release provided in this Paragraph 2. ***Former Shareholder expressly waives any right, claim, cause of action or demand that might arise as a result of such different or additional facts.*** Former Shareholder further agrees that Former Shareholder shall forever covenant not to sue or otherwise seek to enforce the Buy-Sell Agreement against Company or Company's shareholders.

CP 501-02 (emphases added).

In the same release agreement, Dr. Hammond represented and warranted that he:

> (i) carefully read this Agreement; (ii) knows and understands the contents of it; (iii) had the opportunity to discuss it and

> its effects with an attorney of its/his/her choice; (iv) signed it as their free and voluntary act; and (v) [had] full and legal authority to enter into this Binding Agreement.
>
> . . . [H]ad an opportunity to review the correspondence from the Company that accompanies this Agreement, the Summary of Merger as provided by the Company, the Buy-Sell Agreement and, if requested and subject to a non-disclosure agreement, the Merger Agreement, and that such documents constitute all information material to Former Shareholder's decision to enter into this Agreement.

CP 502. He also represented that he had:

> conducted his or her own due diligence, [and was] not relying on (and shall not rely on) any statements, interpretation, promises, representations, warranties or agreements from Company or its directors, officers, employees, representatives, or shareholders, whether written or oral, other than documents identified in Paragraph 3(b).

CP 502-03.

When he signed the release agreement, Dr. Hammond understood that:

- Opinions could differ as to the interpretation of the Buy-Sell Agreement and its application to the proposed transaction between TEC and DaVita. CP 423.
- The Board was offering the settlement program as a compromise to avoid the risks of litigation. CP 423, 426-27.
- He was agreeing to accept an amount "significantly less" than current shareholders would receive if the transaction were to close. CP 428.
- In exchange for the $350,000 settlement payment, he was "waiving, releasing, discharging and agreeing to hold harmless [TEC] and its shareholders[] [and] representatives . . . from any and

all claims, causes of action and demands of any kind or nature." CP at 429-32; *see also* CP 506. This included "claims based on facts that might arise in the future" and claims based on "different or additional facts." CP 432-34.

When asked in deposition what else he wanted to have been told by TEC before he signed the release agreement, Dr. Hammond admitted he could not think of a "single, specific thing." CP 650.

8. Closure of the merger transaction and payment of the settlement amount.

TEC and DaVita closed the seven-step reverse triangular merger between February 29, 2016 and March 1, 2016. CP 359. Dr. Hammond received his $350,000 settlement payment as agreed. CP 437.

9. The *Baer* arbitration.

Of the 138 former shareholders who received TEC's settlement offer, 107 accepted it. CP 392-93. The others commenced an arbitration proceeding (the *Baer* arbitration) claiming they were entitled to share in the proceeds from the TEC/DaVita transaction to the same extent as were the current TEC shareholders. *See* CP 514-15, 897-907. The dispute was tried to an arbitrator in December 2016. CP 514-15. After the arbitrator ruled in favor of the former shareholders, the King County Superior Court entered the arbitrator's decision as a final judgment. CP 514-19, 521-23, 897-907.

In his written decision, the arbitrator addressed the specific unresolved issue TEC had identified in its December 3 settlement offer letter: Whether the former shareholders' contingent rights under the Buy-

Sell Agreement would be triggered by TEC's transaction with DaVita. CP 903-04. In addressing this question, the arbitrator observed that TEC and DaVita had "agreed on a seven step transaction that included three mergers," and acknowledged that the case law cited by the parties was "mixed" on the question of whether a merger is a sale of shares. CP 901-02. Instead of deciding that question, however, he concluded that the issue before him was "not whether the DaVita transaction represented in the abstract either a merger or a sale of all outstanding TEC shares." CP 903. In his view, the issue presented in the arbitration was whether all of TEC's outstanding stock had been "sold to one or more third parties [in] any one or more related transactions." CP 903-04. It was his conclusion that it had been and therefore the arbitration claimants were entitled to share in the net proceeds from the DaVita transaction. CP 904.

10. Dr. Hammond's reaction to the *Baer* arbitration decision.

In the spring of 2017, Dr. Hammond learned that the former shareholders had prevailed in the *Baer* arbitration. CP 856-57. Although he had not questioned the validity of his release agreement before learning about the outcome of the arbitration, Dr. Hammond suddenly "felt [he] had been deceived and misled." CP 438, 857. He now claims that had he known that the DaVita transaction "was in fact an 'acquisition' and not a 'merger'" and that "a 'slush fund' of sorts had been created . . . to pay claims from the Redeemed Shareholders," he "would have insisted on being paid the full value of [his] redeemed shares." CP 857.

B. Statement of Proceedings.

On August 31, 2018, Dr. Hammond filed an action against TEC asking to have his release declared "null and void" and to be awarded more than $650,000 based on the outcome of the *Baer* arbitration. CP 1-6. Earl Bardin, M.D., later joined the action as a second plaintiff. CP 37-92. After the doctors filed a second amended complaint, CP 93-94; *see also* CP 95-148, TEC answered and counterclaimed seeking a declaration that the doctors' release agreements were valid and enforceable. CP 257-74. The doctors never answered TEC's counterclaim.

The parties filed cross motions for summary judgment. CP 297-311, 329-52. Drs. Hammond and Bardin also filed a motion for leave to file a third amended complaint so they could add a claim under the Washington State Securities Act and add TEC's Board President, Dr. Harold Dash, as an individual defendant. CP 277-94. The doctors' partial summary judgment motion was based on the alleged "preclusive effect" of the *Baer* arbitration award; it also addressed TEC's "failure to arbitrate" affirmative defense and the issue of whether return of the $350,000 settlement payment was a condition precedent to the doctors' recovery. CP 297. Relying heavily on the doctors' admissions, TEC sought a ruling that the doctors' release agreements were valid and enforceable and barred all their claims against TEC. CP 335-40, 344-50.

The trial court heard oral argument on the parties' summary judgment motions and the doctors' motion for leave to file a third amended complaint. CP 741; RP 4-40. At that hearing, the doctors were asked,

pointblank, "leaving . . . aside what the arbitrator found, what is the evidence of fraud by the Board in calling this a 'merger' versus an 'acquisition[?]'" RP 9. The doctors could not point to any: "I'm not sure there is—outside Henry Jameson's arbitration decision . . . ."[2] *Id.*

On October 3, 2019, the trial court granted TEC's motion for summary judgment in its entirety and dismissed the doctors' claims with prejudice. CP 807-09. It also denied as moot the doctors' cross-motion for summary judgment and denied their motion for leave to file a third amended complaint. CP 801-03, 804-05. The doctors moved for reconsideration, which the trial court also denied. CP 810-22, 915.

TEC moved for an award of its reasonable attorneys' fees and costs. CP 916-28. The doctors disputed the amount of fees requested but did not challenge TEC's right to recover attorneys' fees or costs. CP 1109-17. Following oral argument, the trial court granted TEC's motion with certain fee adjustments and awarded TEC its reasonable attorneys' fees, costs, and expenses. RP 41-64; CP 1152, 1226-29.

The trial court entered judgment jointly and severally against Drs. Hammond and Bardin. CP 1217-19. The doctors appealed.[3] CP 1145-51, 1220-25. The Court of Appeals affirmed the judgment in an unpublished opinion, *see Hammond v. Everett Clinic, PLLC*, No. 80772-2-I, 2021 WL

---

[2] Contrary to the doctors' suggestion, the *Baer* arbitrator did not hold that the transaction between TEC and DaVita was an acquisition instead of a merger. *See* CP 903-04.

[3] Dr. Bardin later chose to withdraw his appeal. *See* Co-Appellant Dr. Earl Bardin's Motion for Voluntary Withdrawal of Review and to Recaption Case Title, Case No. 80772-2-I, filed May 1, 2020. The Court of Appeals granted Dr. Bardin's motion for withdrawal. *See* Notation Ruling, entered May 11, 2020.

961130 (Wash. Ct. App. Mar. 15, 2021), and denied Dr. Hammond's motion for reconsideration.

IV. ARGUMENT

A. The Court of Appeals' Decision Does Not Conflict with Any Decision of This Court.

Although Dr. Hammond bases his petition for discretionary review on RAP 13.4(b)(1) and his assertion that the Court of Appeals' decision conflicts with this Court's decisions in *State ex rel. Hayes Oyster Co. v. Keypoint Oyster Co.*, 64 Wn.2d 375, 391 P.2d 979 (1964), and *Wool Growers Service Corp. v. Ragan*, 18 Wn.2d 655, 140 P.2d 512 (1943), *see* Appellant's Petition for Review at 15-19, there is no conflict. Neither of the cited decisions addresses a former shareholder's attempt to void a settlement agreement he knowingly and voluntarily made, nor do they even suggest that a corporation owes fiduciary duties to a former shareholder.

The *Hayes Oyster* decision concerned fiduciary duties that corporate officers and directors owed to their corporation and its shareholders under Washington's Private Business Corporation Act (a statute that was repealed in 1965), and under the common law. *See Hayes Oyster*, 64 Wn.2d at 381 (citing RCW 23.01.360). The Court held that a corporate officer or director owed a duty to the corporation and its shareholders to make full disclosure of the details of any transaction involving corporate property in which the officer or director had a personal interest. *See id.* at 381-86. The Court further held the

corporation could not release its former corporate officer from his breach of fiduciary duties unless a full and complete disclosure was made to the corporation and the corporation thereafter intentionally relinquished its rights. *See id.* at 385-86. In no part of that decision, however, did the Court address whether a corporate officer or director, or the corporation itself, owes any duty at all to an individual who (a) at the time of the transaction at issue is not a shareholder because he had sold all his shares many years before, and (b) possesses only a contingent contractual right with respect to any proceeds flowing from the transaction. Accordingly, the Court of Appeals' decision in this case is not "in conflict with" the *Hayes Oyster* decision.

Nor does the *Wool Growers* decision, 18 Wn.2d 655, conflict with the Court of Appeals' ruling. In that case, the Court observed that the directors and officers of a corporation should be deemed to stand in a fiduciary relation to the corporation, *id.* at 691 (citing Laws of 1933, ch. 185, § 33, p. 796 – a statute that was amended and later repealed), and that corporate directors also stand in a fiduciary relation to the corporation's shareholders, while majority shareholders stand in a fiduciary relation to minority shareholders, *id.* (citing 1 George Gleason Bogert et al., *Trusts and Trustees*, § 16, at 59). Nowhere in that decision is there any indication that a corporation, or its corporate officers or directors, owe any fiduciary duty to a former shareholder.

As for the portion of the *Wool Growers* ruling refusing to hold two parties estopped by their release from demanding an accounting, the Court

determined their release was invalid because full disclosure had not been made to a person described as "uneducated" and "unable to read English or write it," and because the consideration given for the release was "so grossly unfair that it cannot be recognized . . . in equity." 18 Wn.2d at 657, 697. Indeed, the Court determined that the consideration for the release had a value of "less than nothing." *Id.* at 695-96. That obviously is not the case here. The decision does not support Dr. Hammond's effort to have this Court void the release that he signed knowingly and voluntarily.

Finally, the Seventh Circuit case cited at page 17 of Appellant's Petition for Review also does not help Dr. Hammond. *See Jordan v. Duff & Phelps*, 815 F.2d 429 (7th Cir. 1987). It is not covered by RAP 13.4. Even if it were, it does not hold that any fiduciary duty is owed by a corporation (or its officers and directors) to an individual who sold his shares back to the corporation many years before the parties' dispute arose.

B. The Court of Appeals Properly Rejected Dr. Hammond's Effort to Void His Settlement Agreement and the Trial Court's Award of Fees and Costs.

A party seeking to avoid a contractual release must prove (1) he agreed to the contract based on an assertion that was not in accord with the facts, (2) the assertion was fraudulent or material, and (3) he reasonably relied on the assertion. *Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 390, 858 P.2d 245 (1993); *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 697, 994 P.2d 911 (2000). Based on the

undisputed evidence in the record, the Court of Appeals properly concluded Dr. Hammond had not met his burden. *Hammond*, 2021 WL 961130, at *1.

Dr. Hammond and TEC's other former shareholders each made a choice. As did more than 75 percent of the company's former shareholders, Dr. Hammond chose to accept the settlement offered by TEC. Although he knew there was a difference of opinion as to whether the former shareholders had a contractual right to share in the proceeds from the DaVita transaction, Dr. Hammond elected to accept the offered $350,000 rather than risk receiving nothing. That was his choice after he studied the documents and spoke to his wife, his lawyer, and a then-current shareholder, and after he learned that others had decided to reject the settlement offer and pursue their contract rights in arbitration. The Court of Appeals properly held he should not be permitted to back out of a deal that he knowingly and voluntarily made, merely because others who took the risk later prevailed on their claims. *Id.* at *2-5.

Dr. Hammond never challenged TEC's right to seek attorneys' fees and costs. In fact, he agreed before the trial court that the request was proper, and before the Court of Appeals, he sought reversal of the award only in the event he prevailed. *Id.* at *6. He did not prevail and he has not identified any grounds under RAP 13.4(b) for this Court now to reconsider the trial court's award.

V. CONCLUSION

Dr. Hammond's petition for review should be denied.

Dated this 8th day of June, 2021.

STOEL RIVES LLP

s/ *Jill D. Bowman*
David R. Goodnight, WSBA No. 20286
Jenna M. Poligo, WSBA No. 54466
Jill D. Bowman, WSBA No. 11754
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
206.624.0900

Attorneys for Respondent The Everett Clinic, PLLC

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2021 I caused the foregoing document to be efiled and served via email on counsel of record as follows:

Attorneys for Petitioner

Mark G. Olson
Olson Law Firm, PLLC
P.O. Box 1066
Everett, WA 98206
mark@mgolsonlaw.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Seattle, Washington, this 8th day of June, 2021.

s/Karrie Fielder
Karrie Fielder, Practice Assistant

STOEL RIVES LLP

June 08, 2021 - 9:21 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99768-3
Appellate Court Case Title:	G. Steven Hammond, M.D. v. The Everett Clinic, PLLC

The following documents have been uploaded:

- 997683_Answer_Reply_20210608091457SC252142_6517.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2021.06.08 Answer to Petition for Discretionary Review.pdf

A copy of the uploaded files will be sent to:

- david.goodnight@stoel.com
- jenna.poligo@stoel.com
- leslie.lomax@stoel.com
- mark@mgolsonlaw.com

Comments:

Sender Name: Karrie Fielder - Email: karrie.fielder@stoel.com
Filing on Behalf of: Jill Diane Bowman - Email: jill.bowman@stoel.com (Alternate Email:)

Address:
600 University St.
Suite 3600
Seattle, WA, 98101
Phone: (206) 386-7574

Note: The Filing Id is 20210608091457SC252142