No. 100301-3

SUPREME COURT
OF THE STATE OF WASHINGTON

HERITAGE OAK MANAGEMENT, LLC, a California Limited Liability Company, and SHANE DOUGLAS, an Individual

Defendants-Petitioners

v.

FIREGANG, INC., a Washington Corporation

Plaintiff-Respondent

ON PETITION FOR REVIEW FROM
COURT OF APPEALS, DIVISION I

FIREGANG, INC.'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals affirmed in an unpublished opinion that Shane Douglas personally consented to Washington's jurisdiction when he signed a contract with Firegang and expressly agreed to this State's forum for any disputes over the contract. *Firegang, Inc. v. Heritage Oak Mgmt., et al.*, No. 82012-5-I, 2021 WL 3159842 (Wn. App. July 26, 2021) ("Opinion"). The Opinion is not in conflict with any decision of this Court. Rather, the Court of Appeals applied well-accepted contract theory to the particular facts of this case to reach its conclusion. Moreover, the issue of whether Washington courts correctly exercised personal jurisdiction over Shane Douglas is not of general interest outside the parties to this controversy. There is simply no need for this Court's review.

II. STATEMENT OF THE ISSUE

Review is not appropriate under RAP 13.4(b)(1), (2) or (4) because the Court of Appeals' Opinion is not in conflict with any decision of this Court or any other court and the issue presented

is not of substantial public interest. If this Court were to grant review, the sole issue would be:

Should Firegang's Default Judgment against Douglas be upheld when Washington courts had personal jurisdiction over Douglas through his express consent and satisfaction of Washington's long-arm statute?

III. STATEMENT OF THE CASE

A. Shane Douglas Agreed to Digital Marketing Services by Firegang

Firegang is a Washington corporation located in Spokane, Washington that provides online dental marketing services specifically designed and tailored for its customers. CP 1, 27-40. On May 27, 2016, Firegang entered into a written Digital Marketing Agreement (the "Digital Marketing Agreement" or "Agreement") with Shane Douglas to provide website, marketing, and advertisement tracking for Douglas' dental practice, Heritage Oak Dental. CP 27. Pursuant to the Agreement, Douglas agreed to pay Firegang an initial setup fee and then monthly fees thereafter for the term of the contract. CP

27. Invoicing for the setup fee occurred in May 2016 and the monthly marketing fees started in August 2016. CP 27.

Douglas acknowledged that the term of the Agreement was for 12 months, with autorenewal in 6 months increments. *Id.* Douglas also acknowledged having "read, accept[ed], and agree[d]" to the terms and conditions of the Digital Marketing Agreement. *Id.*; *see also* CP 28-31 (in effect May 2016 to July 2018); CP 33-40 (effective July 2018 forward)[1] (hereinafter collectively referred as the "Terms and Conditions"). The Terms and Conditions specifically provide:

> Client may not terminate the Agreement prior to the expiration of the Initial Term or the then-current Renewal Term, except as set forth in the preceding paragraph. For clarity, should Client terminate this Agreement prior to expiration of the Initial Term or the then-current Renewal Term, Client shall remain liable for all contractually due payments through the expiration of the Initial Term or the then current Renewal Term, as the case may be.

CP 35. "Any notices provided to Firegang under the Agreement

[1] The revised terms were sent to Douglas in July 2018, which he opened after receipt and accepted. CP 203.

and these Terms must be transmitted via email to: admin@firegang.com." CP 39. The Terms and Conditions also specified that the Agreement would be governed by the laws of Washington. CP 39. Further, Douglas agreed under the Terms and Conditions that

> [i]f any suit, action or proceeding is filed by any party related to the Agreement or these Terms, **venue shall be in the federal or state courts in King County, Washington and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.**

CP 39 (emphasis added). Finally, Douglas agreed that he would pay Firegang for "all expenses, including, but not limited to, collections costs, all attorneys' fees and expenses, and all other expenses, which Firegang may incur in enforcing Client's payment obligation to Firegang under the Agreement." CP 34.

For more than two years, Firegang provided digital marketing services to Douglas and Heritage Oak. *See* CP 203, ¶ 7. On March 29, 2018, Douglas emailed Firegang Client Service Manager, Britt McDermitt, saying "I would like to finish

my services with firegang [sic] . . . Let me know how to proceed." CP 184. McDermitt immediately responded, providing Douglas with a copy of the Digital Marketing Agreement and Terms and Conditions: "Your contract's end date is July 31, 2018. Billing started July 2016, after 1 year renews at 6 month increments. We would love to chat with you and find out what you are looking for, and how we can make these last three months with Firegang better for you (if you'd still like to leave in July)." CP 184. Douglas did not afterwards send notice to Firegang terminating the Digital Marketing Agreement, but instead continued to communicate with Firegang regarding various services—without any further mention of cancellation. CP 204 ¶ 7.

Firegang continued to provide services to Douglas including but not limited to hosting and updating the website, running Google and Facebook ads, and handling call tracking and auditing for Douglas' dental practice. CP 204 ¶ 7. Douglas continued to accept these contracted-for digital marketing services beyond March 2018 and through November of 2018. CP

204 ¶ 7.

In November and December of 2018, while Firegang continued to provide services to Douglas under the Digital Marketing Agreement and the Terms and Conditions, Douglas initiated charge backs of his monthly payments made after May 31, 2018. CP 24 ¶ 8; CP 181 ¶ 6. In January of 2019, he initiated an additional chargeback. CP 24, ¶ 8. In total, Douglas charged back approximately $16,500, representing the monthly fees for six months of Firegang's services. CP 204 ¶ 8.

B. Firegang Acts to Enforce the Digital Marketing Agreement with Douglas

Counsel for Firegang contacted Douglas several times seeking to resolve the dispute over termination and lack of payment. CP 257 ¶ 2. Those communications included sending a copy of the draft complaint to Douglas, which indicated the case would be filed against him and his company Heritage Oak Management in King County, Washington. CP 257 ¶ 2. Despite his later statement to the contrary, CP 181 ¶ 7, Douglas did not inform Firegang's counsel that he believed the lawsuit would be

directed to the wrong parties or object to the venue. CP 257 ¶ 3.

On March 11, 2019, Firegang filed its Complaint in King County superior court for claims of breach of contract and unjust enrichment. CP 1-5. Firegang also sought its attorneys' fees and collection costs as specified in the Terms and Conditions. *See* CP 4, 34. Firegang completed service of process of the Summons and Complaint on both Douglas and Heritage Oak Management on March 21, 2019. CP 11-14. Douglas accepted personal service for himself and for Heritage Oak Management as that entity's registered agent at the address of Douglas' dental practice, Heritage Oak, where Heritage Oak Management is registered. CP 11; CP 13.

More than 60 days after the Summons and Complaint had been served on each of the defendants, neither Douglas nor Heritage Oak filed any appearance or filed any answer in the matter. *See* CP 41 ¶ 4. Accordingly, on May 30, 2019, Firegang moved for a Default Judgment against Douglas and Heritage Oak Management, which was granted by the superior court. CP 15-

53, 54-60.

Firegang then retained California counsel to domesticate and enforce the Default Judgment. CP 221 ¶ 2. On August 19, 2019, a Sister-State Judgment in the amount of $29,779.88 was entered against Douglas and Heritage Oak Management in California Superior Court for Placer County. CP 229-30. California counsel served both Douglas and Heritage Oak Management with a "Notice of Entry of Judgment on Sister Court Judgment" on September 16, 2019. CP 222 ¶¶ 4-5; CP 225; CP 227. They each had 30 calendar days from the date of service to oppose entry of the Sister-State Judgment or the Judgment would be final. CP 237. Rather than take any action to oppose entry of the Judgment in California, Douglas and Heritage Oak Management again ignored the proceedings. CP 222-23 ¶¶ 6-8. Firegang's Sister-State Judgment in the amount of $29,779.88 became fully enforceable. After entry of the Judgment in California, California counsel began collection actions. CP 223 ¶ 8.

At that point, for the first time, Douglas contacted California counsel for Firegang and said he had never heard of Firegang and he had never done business with Firegang. CP 223 ¶ 8. However, when the collection efforts continued, Douglas admitted that he had contracted with Firegang and sought to engage in negotiations with California counsel. CP 223 ¶ 8.

On April 22, 2020, six months after the Default Judgment became final in California, Douglas and Heritage Oak Management filed a "Motion to Set Aside Default," in California Superior Court. CP 242-52. Douglas and Heritage Oak Management argued the Judgment was "void" and should be set aside, based on the contention that "Defendants were not party [sic] to the Agreement upon which the judgment was obtained and had no reason to believe that they were being sued." CP 247. On June 5, 2020, the California Superior Court denied the motion. CP 254-56. The court concluded that California law did not permit it to set aside the default judgment. CP 255. The court further concluded,

> even if Code of Civil Procedure section 473(b) did afford potential relief in these circumstances, [Douglas and Heritage Oak Management] fail to establish that their failure to file a timely motion to vacate [default judgment] was based on reasonable mistake, circumstances which ordinary prudence could not have guarded against, or actions of a reasonably prudent person under the same circumstances.

CP 256.

On September 3, 2020, Douglas and Heritage Oak Management then filed another Motion to Vacate—this time in King County Superior Court—seeking another ruling that the judgment was void. CP 171. They again claimed that Firegang's Complaint had been brought against "the wrong defendants," CP 172, and therefore the Default Judgment was void for lack of personal jurisdiction. *See* CP 171-79. Like the California Superior Court, the King County Superior Court denied their motion and ordered that the Default Judgment entered on May 30, 2019, should remain in full force and effect. CP 268.

C. The Court of Appeals Affirmed Washington Has Jurisdiction Over Douglas

The Court of Appeals affirmed the Default Judgment

against Douglas, but reversed against Heritage Oak Management.[2] *See Firegang*, 2021 WL 3159842, *1. Specific to Douglas, the Court applied the manifestation theory of contracts to determine that Douglas' signature on the Agreement and his subsequent conduct with Firegang manifested an objective intent to be personally bound by the contract terms. *Id.* at *2-4. The Court of Appeals accordingly held that Washington had personal jurisdiction over Douglas based on his express consent, as well as his specific acts and conduct in the State. *Id.* at *4-5; *see also Id.* at *5, n.53 (finding Douglas' contacts with the state sufficient to exercise personal jurisdiction under RCW 4.28.185). Douglas seeks review by this Court.

IV. REASONS TO DECLINE REVIEW

This case does not satisfy the criteria set forth in RAP 13.4(b) for this Court's review. The Court of Appeals applied straightforward authority to the particular facts of this case and

[2] Firegang does not seek review of the Court of Appeals' decision regarding Heritage Oak Management.

its Opinion is not substantial public interest. Only the parties have interest in whether Shane Douglas personally consented to Washington's jurisdiction when he signed the contract with Firegang and agreed to this State's forum for any disputes over the Agreement. This Court should decline review.

A. No Conflict Exists With a Decision of This Court or Any Other Court

RAP 13.4(b)(1) and (2) require a showing of an actual conflict between the Court of Appeals' decision and a decision of this Court or another court.[3] *Cf. Buchsieb/Dandard, Inc. v. Skagit Cty*, 99 Wn.2d 577, 580, 663 P.2d 487 (1983) (granting discretionary review to determine whether Court of Appeals decision conflicted with Supreme Court decision). Douglas, however, asserts that review is warranted because the Court of Appeals purportedly relied on—in Douglas words—"two factually and legally inapposite cases." Pet. at 9. Even if the

[3] Douglas cites only RAP 13.4(b)(1) but also discusses another Court of Appeals case. Firegang presumes he also meant to include RAP 13.4(b)(2).

Court of Appeals did rely on incorrect caselaw—which it did not—such an error would not warrant this Court's review under the requisite criteria. RAP 13.4(b)(1), (2).

The Court of Appeals also did not "extend" the principles of guaranty in this case, as Douglas contends. Pet. at 9. Instead, the Court of Appeals appropriately applied the "objective manifestation theory for contracts" to determine whether Douglas consented to Firegang's contract individually or in a representative capacity. *Firegang*, 2021 WL 3159842, *2 (citing *P.E. Sys. LLC v. CPI Corp.*, 176 Wn.2d 198, 207, 289 P.3d 638 (2012). Looking at the specific facts of this case, the Court of Appeals determined that Douglas signed the Digital Marketing Agreement with Firegang without indicating he was signing as company representative and that Douglas's conduct with Firegang showed that he acted as the "Client." *Id.* at *3-4. The Court of Appeals thus found "Douglas's "objective manifestation of intent" proved he acted in his individual capacity. *Id.*

As part of its analysis of the facts, the Court of Appeals highlighted two analogous cases as support for its conclusion that Douglas's addition of his title as "President" in one location of the agreement did not overcome the totality of the facts indicating he had signed the agreement in his individual capacity. *Id.* at *3.

In *Losh Family, LLC v. Kertsman*,—like Douglas did here—the appellant contended "that only his limited liability company is bound by an assignment of lease Grover signed as a member of the company." 155 Wn. App. 458, 461, 464, 228 P.3d 793 (2010). The Court of Appeals in *Losh Family*—like the Court of Appeals did here—concluded that the "form of [appellant's] signature" in one location did not alter the unambiguous language of the contract. *Id*. The contract at issue referenced the appellant's "individual capacity" five different times. *Id*. at 463. In this case, Douglas signed as the "Client" without indicating it was in a representational capacity and which term was repeatedly referenced throughout the contract

document for liability purposes. *See Firegang*, 2021 WL 3159842, *3-4.

In *Wilson Court Limited Partnership v. Tony Maroni's, Inc.*, the Court held "a signature on a guaranty with additional words that are *descriptio personae* generally binds the individual who signed the agreement unless the signature creates an ambiguity as to who is bound." 134 Wn.2d 692, 695, 952 P.2d 590 (1998). In reaching that conclusion, however, this Court applied the "objective manifestation test for contracts" to the agreements at issue because a "guaranty is a contract subject to these general rules regarding contract formation." *Id*. at 699. In other words, this Court did not apply special signatory rules because the matter involved a guaranty; rather it applied the rules because the guaranty was a contract. *See id.* at 700 (collecting cases).

The Court found the agreement in *Wilson Court* to be ambiguous as to whether the signor intended to be personally liable based on the specific formation of the contract. *Id*. at 704-

05. It went on to find the signor individually liable after applying various contract and equitable principles, including that the appellant created the ambiguity himself by adding the descriptive language of his title to the signature line. *Id*. at 705-10. The Court further noted that liability could have easily been avoided: "If Riviera did not intend personal liability, he should have said so." *Id*. at 710. That was the case here.

Unlike in *Wilson Court*, the Court of Appeals below concluded that the Agreement with Firegang was unambiguous as to who was the "Client" and who had contracted for Firegang's services: Shane Douglas. *Firegang*, 2021 WL 3159842, *3-4. Like in *Wilson Court*, however, the Court of Appeals found that the "mere presence" of Douglas's title and the company name adjacent to his name on the Agreement did not manifest an objective intent that Douglas intended to sign only as company representative. *Id.* at *4. If Douglas had intended otherwise, he should have said expressly said so.

Moreover and contrary to Douglas's argument, Pet. at 12,

the Court of Appeals did look to extrinsic evidence to determine whether Douglas evidenced an intent to bind himself or only his company. *See id.* *4, n.47 (citing authority providing that courts may consider extrinsic evidence of subsequent conduct to determine the intent of the parties). Looking at Douglas's communications and actions with Firegang, the Court of Appeals correctly found that "Douglas's subsequent conduct show[ed] he acted as the 'Client.'" *Id.* at *4. Such conduct is markedly unlike the cases relied on by Douglas where the facts were plainly different. *See Revolutionar, Inc. v. Gravity Jack, Inc.*, No. 36499-2-III, 2020 WL 2042965, *14 (Wn. App. April 28, 2020) ("No language in the design and development resourcing contract suggests that Joshua Roe bound himself to its terms.")[4]; *Diversified Realty, Inc. v. McElroy*, 41 Wn. App. 171, 175, 703 P.2d 323 (1985) (fact that McElroys acknowledged lease in their

[4] Douglas cited this unpublished opinion at page 12 of its Petition. The case should be given only such persuasive value as the Court deems appropriate. GR 14.1.

corporate, but not personal capacities, would not preclude their liability).

In sum, the Court of Appeals applied well-established contract principles to the specific facts of this case. Further review is not warranted.

B. This Case Does Not Involve Issues of Substantial Public Interest

Review under RAP 13.4(b)(4) is also not warranted. The Court of Appeals applied the same objective manifestation theory to the Agreement at issue here that courts would apply to any contract. The case law to which the Court of Appeals' analogized did the same. There is nothing of substantial public interest in the Opinion. It is of interest only to the parties, despite Douglas' feeble attempt to claim otherwise.

C. Firegang is Entitled to its Reasonable Attorneys' Fees under RAP 18.1(j)

Firegang prevailed against Douglas in the Court of Appeals and was awarded its reasonable attorneys' fees. *Firegang*, 2021 WL 315982, *6. For the reasons discussed in this

Answer, this Court should deny review of Douglas's petition. It should also award Firegang its reasonable attorneys fees' and expenses under RAP 18.1(j) for having to Answer the Petition.

V. CONCLUSION

Shane Douglas purposefully availed himself of this State's jurisdiction when he signed the Agreement with Firegang as the client and he purposefully transacted business here. The Court of Appeals appropriately determined the facts drove the outcome and used analogous contract case law to show why. No further review is necessary.

This document contains 3,123 words in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED NOVEMBER 29, 2021.

LANE POWELL PC

By: *s/Callie A. Castillo*

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington and the United States that on the below date, I electronically filed the foregoing document with the Supreme Court of the State of Washington.

I further hereby declare under penalty of perjury under the laws of the State of Washington and the United States that on the below date, I caused a copy of the foregoing document to be served on the following person(s) in the manner indicated below at the following address(es):

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DATED this 29th day of November, 2021, at Seattle, Washington.

s/Angela L. Craig
Angela L. Craig
Legal Assistant

LANE POWELL

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