No. 100835-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

AMIE MCKEAN,

Respondent,

v.

JOSH THOMAS,

Petitioner.

ANSWER TO AMENDED PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

I. INTRODUCTION

Respondent Amie McKean asks this Court to deny petitioner Josh Thomas's amended petition for review (hereinafter the "Petition").

McKean owns a house in Kitsap County that has a mortgage. Thomas, her tenant, stopped paying rent in December 2019, just three months after signing an unacknowledged two-year lease. McKean tried to secure payment of the rent through an unlawful detainer action. When that was not possible due to pandemic restrictions, she had no choice but to seek to occupy her property by converting the lease to a month-to-month tenancy and terminating it. McKean could not afford a non-paying tenant, a mortgage, and rental of another property for her and her toddler.

Thomas admitted the lease was unacknowledged and became a month-to-month lease under RCW 59.18.210. Thomas raised estoppel but did not argue how that statute applied. The Superior Court rejected Thomas's estoppel

arguments, allowing the eviction of Thomas in December 2020. Thomas did not stay the eviction but did appeal.

The Superior Court and Division Two of the Court of Appeals correctly concluded McKean was not estopped from raising the statute of frauds to convert the unacknowledged two-year lease into a month-to-month tenancy. Thomas now raises issues regarding the applicability of RCW 59.18.210. But Thomas waived these arguments when he admitted the statute applied and created a month-to-month tenancy. He then failed to preserve these issues below. Further, Division Two's decision does not conflict with Court of Appeals decisions and does not conflict with this Court's precedent. Nor does the decision present an issue of substantial public interest. Review should be denied.

And contrary to Thomas's contention, McKean's unlawful detainer actions were not retaliation for his lawsuit—there is no evidence in the record that he served her with either

his original complaint or his amended complaint before she filed either of her unlawful detainer actions.

II. COURT OF APPEALS' DECISION

On March 15, 2022, Division Two of the Court of Appeals issued its unpublished opinion affirming the trial court's unlawful detainer determination but reversing the writ of restitution and the portion of the judgment awarding McKean attorney fees and costs. Decision at 2. Thomas now asks this Court to accept review. Review should be denied

III. RESTATEMENT OF ISSUES

Should review be denied when Petitioner waived and failed to preserve the issues he now raises before this Court?

Should review be denied when Petitioner fails to show that he can satisfy any prong of RAP 13.4(b) because the Court of Appeals' decision is consistent with other Court of Appeals' decisions, does not conflict with this Court's decisions, and does not involve an issue of substantial public interest?

IV. STATEMENT OF THE CASE

On September 18, 2019, McKean and Thomas signed a hand-completed document purporting to lease a residential property owned by McKean to Thomas for two years. Clerk's Papers ("CP") at 8-12. The lease required rent of $3,500 per month but did not require pre-payment. CP at 8-9.

Thomas stopped paying rent in December 2019.[1] CP at 15 (¶ 5). McKean began eviction proceedings for non-payment of rent before the pandemic began, which she eventually abandoned due to pandemic-related restrictions on evictions. CP at 15 (¶ 5).

On August 29, 2020, McKean provided Thomas with notice that she intended to terminate Thomas's tenancy on October 31, 2020, and personally occupy the premises. CP at 13, 203-04. On November 3, 2020, McKean provided Thomas with an additional affidavit explaining her need to move into

[1] Thomas has maintained that he was withholding rent pursuant to Washington's Residential Landlord-Tenant Act. CP at 194.

the property. CP at 14-16. McKean explained that she had dismissed the original eviction proceeding due to the prohibition on evictions for nonpayment of rent and that her circumstances had changed and she needed to occupy the property. CP at 15.

McKean had been living with a significant other when the pandemic began but that relationship ended during the pandemic, and she became a renter. CP at 15. She was then paying rent of her own and covering the mortgage on the property Thomas was leasing but Thomas was not paying any rent. CP at 15. McKean had a toddler and had to give up time with her child and take on another job "to make ends meet," she could not "continue in this financial situation," and she wanted to move back into her property. CP at 15.

On November 3, 2020, McKean filed a new Eviction Summons and a Complaint for Unlawful Detainer, seeking to establish the lease as one for a month-to-month tenancy, to terminate the tenancy, and to require Thomas to vacate the

premises. CP at 1-7. McKean concurrently moved for an Order to Show Cause for a Writ of Restitution, which was issued with a December 4, 2020, return date. CP at 37-39. All of these documents were served on November 6, 2020. CP at 40. McKean submitted briefing in support of her request. CP at 176-81.

On December 3, 2020, Thomas filed an Answer to the Complaint for Unlawful Detainer. CP at 41-46. In his Answer, Thomas admitted that the parties' residences were in Kitsap County, McKean owned the property Thomas leased, Thomas rented the property pursuant to the attached written agreement, and the stated rental period was two years. CP at 41-42; *see* CP at 4-5. Thomas also averred that he had rented the property "pursuant to two additional prior leases, one of which was for 18 months." CP at 42.

Thomas did not, however, deny that the lease "was not properly acknowledged" or the following allegation: "Pursuant to RCW 59.18.210, a lease may not exceed one year without

acknowledgment, witnesses or seals. As such [Thomas] occupies the property under a month to month tenancy." CP at 5 (§ IV); *see* CP at 42 (stating "Defendant denies that the Lease" without any further specific denial). Thomas's Answer contained no general or catchall denial. *See* CP at 41-45. Instead, Thomas asserted, in an affirmative defense, that McKean "is estopped from asserting that the lease is invalid under the statute of frauds." CP at 42 (Affirmative Defense 3).

Thomas never amended his Answer. *See* CP at 151-52, 184-85, 201-02, 207-08. Instead, he opposed the relief requested and submitted declarations showing that on August 8, 2019, **he proposed the <u>two-year period</u>** for the lease after McKean asked about the duration: "So give me a little bit to respond with thoughts/ideas on stuff to be done at the house, as well as the lease, but, it will be at least 2 years . . . ." CP at 52; *see* CP at 54 ("[A]lso let me know the time of lease (1-5 years) . . . ."). McKean asked about the duration of the potential lease after Thomas told her he was looking at other rentals and he had

raised the two-year period while relaying his thoughts about potentially purchasing the property. CP at 55 ("You and I will enter into a private contract whereby I'd essentially renew the lease for two years. . . .").

In a series of emails a month later on September 12, Thomas checked on the duration of the lease, "[D]oes it make more sense to do a year instead of two?" CP at 59. McKean replied that she had already put down two years to "make the bank happy for my re-fi," the previous lease had lapsed in the month since their earlier communication about the duration, she asked him to sign the lease effective as of September 1, and she specifically mentioned that if she sold the property "we can just void the lease." CP at 59. Thomas stated in his briefing that years before he entered the 2019 lease he knew about repair issues with the property and dated his knowledge as early as 2016 and 2017. CP at 186-87. Yet Thomas agreed to the lease in 2019. CP at 187.

Thomas argued in his opposition briefing that McKean was estopped to assert the statute of frauds. CP at 189-93; *see* Opening Brief at 14 (55455-1-II) (April 23, 2021) ("Mr. Thomas argued that Ms. McKean was estopped from asserting that the statute of frauds, RCW 59.18.210, invalidated the two-year lease term . . . ."). He also asserted that McKean's actions constituted retaliation. CP at 194-96.

In opposition to the eviction, Thomas also submitted an amended complaint filed on November 20, 2020, in a different lawsuit. *See* CP at 67-81. At the show cause hearing, Thomas's current counsel argued that the eviction proceeding was retaliatory based on the other lawsuit but submitted no evidence that McKean had been served or was even aware of the lawsuit when she brought either unlawful detainer action. *See* Report of Proceedings ("RP") at 7:12 to 8:20. McKean's counsel outlined the landlord tenant act's provisions regarding retaliatory eviction and responded to Thomas's arguments regarding the statute of frauds. *See* RP at 8:22 to 9:17, 9:18 to

11:7. The trial court focused the parties on arguments regarding estoppel. RP at 11:10 to 12:4, 13:2-10. And Thomas's primary assertion was that suing McKean was the basis of his estoppel defense. RP at 12:6-8, 12:15-21, 14:11-23, 18:5-19.

Based on the briefing and the argument, the trial court concluded that a tenant bringing and maintaining a lawsuit against a landlord does not support estoppel to prevent a landlord from invoking the statute of frauds, and the trial court signed the proposed judgment. RP at 18:20-20:16, 22:10-19. The Order on Show Cause and the Judgment were both entered, the Writ of Restitution was issued, and findings of fact and conclusions of law were entered. CP at 84-89, 139-42, 147-49. Thomas subsequently appealed without seeking to stay the Judgment. *See* CP at 130-46.

On December 15, 2020, Thomas was ousted and ejected from the Property. CP at 206.

And although Thomas has stated that McKean retaliated against him for a lawsuit he filed in January 2020, there is no evidence in the record that she was served with that lawsuit or aware of it before she brought either eviction proceeding. *See* CP at 47 (¶ 4); *see also* CP at 64.

V. ARGUMENT

Thomas should not be allowed to make new arguments in his petition for review where he admitted the lease became a month-to-month tenancy and argued at the trial court and to the Court of Appeals that McKean should be estopped from raising the statute of frauds. Thomas also fails to meet the requirements of RAP 13.4(b) and review should also be denied on these grounds.

A. Thomas' Answer admitted the lease was a month-to-month lease by failing to deny it.

Thomas, for the first time in his Petition, contends that "Respondent has no basis for invoking the statute of frauds, other than to circumvent the eviction moratorium." Petition at

2. Thomas suggests that the issue for this Court to resolve is "the appropriate test to apply in determining the applicability of the statute of frauds, RCW 59.18.210." Petition at 3-4. And Thomas asks this court to decide when a landlord may invoke the statute of frauds. Petition at 10-11. Thomas did not raise these arguments to the trial court or the Court of Appeals, choosing to argue the McKean was estopped from raising the statute of frauds to convert the lease to a month-to-month lease. Moreover, Thomas admitted in his Answer that, under RCW 59.18.210, the lease created a month-to-month tenancy. For all these reasons, review is inappropriate.

Under CR 8, "[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." CR 8(d). Thus, the following allegations are deemed admitted by Thomas: "Pursuant to RCW 59.18.210, a lease may not exceed one year without acknowledgment, witnesses or seals. As such [Thomas]

occupies the property under a month to month tenancy." CP at 5 (§ IV); *see* CP at 42.

Of course, an answer can contain a general denial when appropriate. *See Shinn Irrigation Equip. v. Marchand*, 1 Wn. App. 428, 432, 462 P.2d 571 (1969). And it is common practice to include a catchall denial for any allegations not admitted. *See, e.g., Summit Leasing, Inc. v. Chhatrala Edes, LLC*, No. 33870-3-III, 2016 WL 5942819, 2016 Wash. App. LEXIS 2488, at *11 (Ct. App. Oct. 13, 2016) (unpublished);[2] *see also Porter v. Brice*, 31 Wn.2d 1, 3, 194 P.2d 958 (1948) ("Plaintiffs, by their reply, denied the allegations contained in the answer not admitted by the complaint."). However, Thomas did not include any such denial in his Answer. *See* CP at 41-45. Instead, Thomas's strategy centered on estoppel. *See* CP at 42 (Affirmative Defense 3).

[2] *See* GR 14.1.

The Residential Landlord Tenant Act's statute of frauds treats unacknowledged leases as oral leases and converts them into a month-to-month tenancy:

> Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals.

RCW 59.18.210; *see Stevenson v. Parker*, 25 Wn. App. 639, 643, 608 P.2d 1263 (1980). By failing to deny McKean's allegation, Thomas already admitted that RCW 59.18.210 required the lease to be treated as a month-to-month lease. Thomas's arguments to the trial court and the Court of Appeals focused on estoppel. CP at 186, 189-93; RP at 12:6-8, 12:15-21, 14:11-23, 18:5-19; *see* RP at 11:10 to 12:4, 13:2-10; *see also* Opening Br. at 14-21 (No. 55455-II) (April 23, 2021); Reply Br. at 1-4 (No. 55455-II) (June 11, 2021).

Thomas cannot now challenge the application and effect of RCW 59.18.210, which he admitted. And he cannot raise

new arguments here that he did not preserve below. This Court should deny review. To the extent this Court wishes to entertain Thomas's petition as seeking review on the issue of estoppel, it should still deny review because he does not satisfy any prong of RAP 13.4(b).

B. The Court of Appeals' decision here does not conflict with another decision of the Court of Appeals.

Thomas cites three cases that he claims conflict with the Court of Appeals' decision. Petition at 10-15. None of these cases conflict with the decision, and review should be denied.

Under RAP 13.4(b)(2), review is appropriate if the Court of Appeals' decision conflicts with another decision of the Court of Appeals. Here, there are only two cases that cite RCW 59.18.210, excluding the Court of Appeals' decision below. *See W. Plaza, LLC v. Tison*, 184 Wn.2d 702, 714, 364 P.3d 76 (2015); *Stevenson*, 25 Wn. App. at 642. This Court's decision in *West Plaza, LLC*, addressed the Mobile Home Landlord Tenant Act, and thus has no bearing here. *See* 184 Wn.2d at

714. The only potential decision that could be in conflict is *Stevenson*. However, there is no conflict and review must be denied.

In *Stevenson*, the residential landlord, Stevenson, obtained a judgment for unlawful detainer against the residential tenant, Corbray née Parker. 25 Wn. App. at 640. The lease was a year-to-year lease that continued from year-to-year, which violated RCW 59.18.210. *Stevenson*, 25 Wn. App. at 640, 642-43. Division Three then considered the doctrine of part performance to determine whether the landlord could assert "the invalidity of a contract where the other party has acted in conformity with the contract and thus placed himself in a position where it would be intolerable in equity to deny its enforcement." *Stevenson*, 25 Wn. App. at 644.

First, the court considered that Corbray took possession under the lease in May 1974—**more than four years** before Stevenson sought to terminate the lease. *Stevenson*, 25 Wn. App. at 641, 644. Division Three concluded that this four-year

period of possession under the lease was considered "long acquiescence" under this Court's decisions interpreting RCW 59.04.010. *Stevenson*, 25 Wn. App. at 644. Division Three cited cases where commercial tenants had been in possession under leases for more than five years and seven years. *Gattavara v. Cascade Petroleum Co.*, 27 Wn.2d 263, 265, 177 P.2d 894 (1947) (describing a commercial tenant in possession from 1940 to 1945 who invoked a renewal for an additional five years in 1945); *Metro. Bldg. Co. v. Curtis Studio of Seattle*, 138 Wash. 381, 383, 387, 244 P. 680 (1926) (describing a commercial tenant in possession from 1917 to 1924).

Second, Division Three noted that, although there was an "irregular arrangement regarding the payment of rent," the tenant had "made substantial payments under the lease prior to service of the notice of termination," and, when she received notice of termination, she "attempted to tender a sum in satisfaction of the alleged delinquencies." *Stevenson*, 25 Wn. App. at 644.

Third, Division Three noted that both parties agreed the tenant had leased the house in the hope of exercising an option to purchase at the end of five years and she had improved the house following execution of the lease. *Stevenson*, 25 Wn. App. at 644-45.

Here, none of the factors described in *Stevenson* favor estoppel. The undisputed evidence in the Record is that:

- Thomas first suggested a two-year lease; McKean just wanted to know what length of lease Thomas wanted; Thomas told McKean he wanted "at least 2 years" for the lease; and after a month had already passed and the previous lease had expired, McKean sent him a lease with a duration consistent with his previous statement and that her lender needed. CP at 55, 54, 52; *see* CP at 58-59.

- McKean mentioned to Thomas the possibility of voiding the lease if she sold the property in 2020, so Thomas knew the lease might end early. CP at 59.

- Thomas was in possession under the lease at issue starting in September 2019, and he then stopped paying rent in December 2019—a mere three months after signing the lease. *See* CP at 12, 15 (¶ 5).

- Despite eviction proceedings being brought for nonpayment of rent, Thomas did not tender payment of unpaid rent. *See* CP at 15 (¶ 5).

- The lease did not contain an option to purchase, and it included a provision allowing McKean to show the property to prospective purchasers who were not the tenant. CP at 9 (¶ 8).

Thus, the Court of Appeals' decision does not conflict with *Stevenson*. Thomas was not in possession under the lease for multiple years before he stopped paying rent and McKean sought to terminate the lease. Thomas did not pre-pay rent, stay current with rent, or tender full payment when eviction proceeding were brought. Thomas did not make substantial improvements to the property in anticipation of purchasing the property or exercise an option to purchase the property. In fact, the lease agreement did not include an option to purchase and the parties only discussed the possibility of Thomas purchasing the property.

Thomas also cites and discusses the cases of *Ben Holt Industries v. Milne*, 36 Wn. App. 468, 675 P.2d 1256 (1984) and *Powers v. Hastings*, 20 Wn. App. 837, 582 P.2d 897 (1978), suggesting they conflict with Division Two's decision.

Petition at 10-15. Thomas fails to recognize numerous key differences between this case and those decisions.

Ben Holt involved a commercial lease for office space between two corporate entities, which necessarily does not involve RCW 59.18.210. 36 Wn. App. at 469. *Ben Holt* involved a lease that was acknowledged, but the acknowledgment was accidentally defective—both parties failed to use the correct acknowledgment language for corporations "specified in RCW 64.08.070." 36 Wn. App. at 470. The tenant in *Ben Holt* took possession and paid rent for almost year, only stopped paying rent when it vacated without notice, and never notified the landlord it believed it was a month-to-month tenancy (i.e., that it was void or voidable). 36 Wn. App. at 476. Further, in *Ben Holt*, the court determined that "[t]here was sufficient acquiescence under the terms of the lease to invoke the doctrine of part performance" and that "[a]llowing a technical flaw in the acknowledgment to invalidate the lease" would be inequitable. 36 Wn. App. at 476.

None of the facts or factors at play in *Ben Holt* arise in this case.

Like *Ben Holt*, the decision in *Powers* does not conflict with the Court of Appeals' decision. The three-year oral lease in *Powers* was for farmland—not ordinary residential property—and it had an option to purchase the property for $185,000 with a down payment. 20 Wn. App. at 838-39, 844. The tenant in *Powers* paid rent and did so for more than a year. 20 Wn. App. at 843-44 ("Powers paid the rent . . . and occupied the house in about August, 1973 [until s]ometime in November, 1974 . . . ."). There was no argument that the three-year lease became a month-to-month tenancy, and the parties apparently acknowledged the oral lease through in-court testimony about written, notarized affidavits setting forth the lease's terms. *Powers*, 20 Wn. App. at 845. Further, the tenant in *Powers* spent $14,250 improving the property, paid rent for over a year at $1,000 per month under the lease, then paid escalated rent at $1,500 per month for a time, and both rental rates "were far in

excess of a reasonable monthly rental value for the farm." 20 Wn. App. at 847-48. And the tenant in *Powers* ran into difficulties with obtaining financing to exercise the option and purchase the property because the landlord refused to give the tenant a written lease that corresponded with the oral lease. 20 Wn. App. at 840. It was in this context that the court in *Powers* reversed the trial court's decision and remanded to allow the tenant to pursue his action for damages for breach of the lease and the option agreement. 20 Wn. App at 838-40, 846-48.

Thomas fails to establish that the Court of Appeals' decision conflicts with another decision of the Court of Appeals. Review should be denied on this ground.

C. The Court of Appeals' decision does not conflict with Supreme Court Decisions.

Thomas seemingly contends that the Court of Appeals decision conflicts with this Court's decisions. *See* Petition at 15-19. It does not, and review should be denied.

Under RAP 13.4(b)(1), review is appropriate if the Court of Appeals' decision conflicts with binding precedent from this Court.

This Court's decisions have never held that a short period of possession and payment of rent estop a landlord from invoking the statute of frauds. *See, e.g.*, *Labor Hall Ass'n v. Danielsen*, 24 Wn.2d 75, 77, 97, 163 P.2d 167 (1945) (affirming a trial court decision allowing termination of the lease by a landlord where the tenant possessed the property for 10 months before receiving a notice of termination, the landlord received nothing "other than the agreed rent," and the tenant made no physical improvements to the property). In fact, this Court has stated that estoppel does not apply where a tenant merely takes possession and pays rent—the tenant must do something more for there to be an injustice to support estoppel:

> [U]nder the theory of estoppel, there must be some element of benefit to the landlord aside from the rent reserved, or some injustice to the tenant that a court of equity will not tolerate; as, for instance where the landlord has made the lease conditioned

> upon some alteration or improvement that would enhance the value of the property, or where the value of the property lies in the taking of an annual crop. In other words, the mere possession, the payment of rent, and the conduct of a business in the usual way and for the sole benefit of the tenant, unaccompanied by circumstances which will create a consideration going to the term, will not make an oral lease from month to month a term lease resting in estoppel.

Armstrong v. Burkett, 104 Wash. 476, 479, 177 P. 333 (1918); *see Labor Hall Ass'n*, 24 Wn.2d at 98 (citing and quoting this passage).

Had Thomas taken possession and made a payment of rent for the entire two-year term of the lease—i.e., consideration going to the entire term—then an estoppel argument could have succeeded. *See Jones v. McQuesten*, 172 Wash. 480, 482-83, 20 P.2d 838 (1933) (noting that property was transferred at the beginning of the lease period to the lessor as part of the two-year lease); *Haggen v. Burns*, 48 Wn.2d 611, 615, 295 P.2d 725 (1956) (quoting an allegation that the tenant purchased an inventory from the landlord, valued at $1,857.03,

which could not be sold until the end of the term); *see also Matzger v. Arcade Bldg. & Realty Co.*, 80 Wash. 401, 403, 406-07, 141 P. 900, 901 (1914) (describing how the tenant was required to and did pay $3,000 for stock in an unrelated company that "was practically worthless" and tenant paid a $2,200 bonus to induce the lease).

This Court's decision in *Miller v. McCamish*, 78 Wn.2d 821, 479 P.2d 919 (1971) does not change the analysis. *Miller* did not involve possession—it involved the sale of a property to another and the only question was whether Miller could recover wages and an increase in value to a farm after he had improved the property and planted permanent crops. 78 Wn.2d at 824, 831. *Miller* does not support Thomas's position.

By contrast, Thomas was in possession in September 2019, paid monthly rent until December 2019, and then proceeded to never pay rent again. Thomas did not improve the property. And the unacknowledged leased did not give Thomas an option to purchase the property—Thomas and McKean had

only discussed the possibility of her selling it at some point in the future. No precedent from this Court supports Thomas's contention that McKean should be estopped from asserting that the lease is subject to the statute of frauds and was a month-to-month lease that could be terminated upon notice. Review should be denied on this ground.

D. The Court of Appeals' decision does not present a matter of substantial public interest.

Thomas fails to establish that there is "substantial public interest" to justify review—instead he rehashes his erroneous arguments about the cases he already cited and reiterates his view of the facts. Petition at 19-22. Thomas falls far short of establishing that the decision presents a "matter of substantial public interest." Review should be denied.

Under RAP 13.4(b)(4) review is appropriate if the "petition involves an issue of substantial public interest that should be determined by the Supreme Court." The petition must clearly explain the public interest at issue:

> A petition that relies on RAP 13.4(b)(4) should, at a minimum, discuss why the particular issue has ramifications beyond the particular parties and the particular facts of an individual case. A bare recitation that a case affects the public interest will not be sufficient to convince the court to grant review.

2 WASHINGTON APPELLATE PRACTICE DESKBOOK §18.2 (Catherine Wright Smith & Howard M. Goodfriend, eds., 4th ed. 2016). For example, a substantial public interest might arise if the Court of Appeals' decision will generate "unnecessary litigation," "create confusion," "chill policy actions," "immediately affect[] significant segments of the population," or have some other wide-ranging effect. *See, e.g.*, *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803, 83 P.3d 419 (2004).

Here, the case does not affect the public interest. This case does not involve a question of first impression and does not arise frequently—the most recent case cited by Thomas is 38 years old. *See Ben Holt*, 36 Wn. App. at 468. Further, the Court of Appeals agreed that this is not a case of public interest

or even worthy of review by this Court—it did not publish the decision, necessarily determining that the decision (1) did not determine "unsettled or new questions of law"; (2) did not modify, clarify, or reverse "an established principle of law"; (3) was not "of general public interest or importance"; and (4) was not "in conflict with a prior opinion of the Court of Appeals." RAP 12.3(d). Instead, the Court of Appeals' decision has "no precedential value" and is "not binding on any court," which belies any argument that review is appropriate under RAP 13.4(b)(4). GR 14.1(a). Further, Thomas did not seek publication pursuant to RAP 12.3(e).

Given the clarity of RCW 59.18.210, the infrequency of cases involving unacknowledged leases exceeding one year, and that the Court of Appeals' decision properly applied this Court's precedent without conflicting with any other Court of Appeals decision, Thomas has failed to establish that this case involves a "matter of substantial public interest." Review should be denied.

VI. CONCLUSION

This Court should deny review because Thomas has waived and then failed to preserve the issues he presents to this Court and because his petition does not satisfy the requirements of RAP 13.4.

First, Thomas has already admitted that RCW 59.18.210 converted the two-year unacknowledged lease into a month-to-month lease, waiving that argument. By solely arguing the issue of estoppel below, he has also failed to preserve the issues he now attempts to present to this Court that RCW 59.18.210 is not applicable to an unacknowledged two-year lease. That ship has sailed and Thomas took a different tack.

To the extent this Court wants to reframe Thomas's petition as raising the issue of estoppel, the Court of Appeals properly applied this Court's precedent, its decision in this case does not conflict with other decisions, and this case does not present a matter of substantial public interest for this Court to resolve. Thomas signed a two-year lease, he was in possession,

he paid no consideration beyond monthly rent, he paid rent for no more than four months under the lease, he stopped paying rent, he made no improvements to the property, and the lease did not include an option to purchase. The courts below properly concluded that McKean was not estopped from asserting the statute of frauds created a month-to-month tenancy.

DATED this 4th day of May, 2022.

I hereby certify that this document contains 5,000 words or fewer, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images.

SANCHEZ, MITCHELL, EASTMAN & CURE, PSC

Carrie E. Eastman, WSBA No. 40792
Matthew V. Pierce, WSBA No. 42197

CERTIFICATE OF SERVICE

I, Jon Brenner, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

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SIGNED in Bremerton, Washington this 4th day of May, 2022.

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