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STATE OF WASHINGTON
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NO.:100862-7
NO.: 82409-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GINA J. DOBSON,

Petitioner,

v.

TREFAN ARCHIBALD,

Respondent.

**ANSWER TO PETITION FOR
DISCRETIONARY REVIEW**

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**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

<p>GINA J. DOBSON, Petitioner, vs. TREFAN ARCHIBALD, Respondent.</p>	<p>NO.: 100862-7 ANSWER TO PETITION FOR DISCRETIONARY REVIEW</p>
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IDENTITY OF RESPONDENT

The Respondent, **TREFAN ARCHIBALD**, asks this Court to deny review of the decision terminating review set forth below.

CITATION TO COURT OF APPEALS DECISION

See Petitioner's Citation to Court of Appeals Decision.

STATEMENT OF THE CASE

This case arises out of a claim for monies allegedly owed for work performed by Petitioner, **GINA J. DOBSON**, for Respondent, **TREFAN ARCHIBALD** in refinishing floors in Archibald's home. Archibald filed and prevailed on a motion for summary judgment on the

argument that Dobson met the definition of “contractor” pursuant to RCW 18.27.010. That, as a contractor, Dobson had the obligation to prove she was properly registered in the State of Washington. RCW 18.27.080.

It is an undisputed fact that Dobson was not a registered contractor. Dobson contends she did not need to be registered because she did not perform work as a contractor as defined by that statute. In addition, the Court of Appeals held that because Dobson asserted in her complaint that she was not a contractor that needed to be licensed and Archibald denied that averment, the same was sufficient to put the matter at issue. The Court of Appeals subsequently ruled that a separate affirmative defense was not required to raise the issue of contractor status.

In analyzing the contractor status, the Court of Appeals affirmed the trial court by finding that Dobson’s actions met the definition of a contractor and must be registered with the State of Washington. Therefore, the Court of Appeals affirmed the trial court’s ruling and Dobson now seeks review of that published opinion.

ARGUMENT

I. RESPONSE TO ISSUES PRESENTED BY THE PETITIONER.

The Petitioner raises two issues for review. Both issues, as decided by the Court of Appeals, should be affirmed.

A. The Finding That Petitioner Acted as a Contractor as Defined by RCW 18.27.010 Should Be Affirmed.

Petitioner cites cases that are factually and legally distinguishable and unrelated to the contractor's statute (RCW 18.27 *et seq*). Petitioner cites *Stoughton v. Mut. of Enumclaw*, 61 Wn. App. 365, 810 P.2d 80 (1991) which addresses a question of insurance coverage or exclusion based upon certain policy terms and within that policy the definition of a "business pursuit." See Corrected Petition for Review (CPR) at page 6. That case involved a person doing part-time work five to six hours a week for a ranch business performing odd jobs. He was like an employee and the court held that his labor was a business pursuit, therefore excluded by the insurance policy for coverage. *Id*, at 370-71. However, the court makes no analysis under RCW 18.27 *et seq* because having or not having a contractor's license was not at issue.

Similarly, Petitioner relies on *Dale v. Black*, 81 Wn. App. 599, 915 P.2d 1116 (1996) for defining an isolated transaction. See CPR at page 7. That case involved selling a business. The defendants were accused of violating the Franchise Investment Protection Act (FIPA), but

the court held that the sale was an isolated transaction, and therefore FIPA did not apply.

An isolated transaction logically refers to a transaction that is not common or repeated by either party. A transaction cannot be isolated if the seller is engaged in the business of that type of transaction. But the Dales were not engaged in the business of conducting this type of transaction, and sold only the one Diet Center business. There simply is no indication that this was anything other than an isolated transaction.

Dale v. Black, supra. at 601-02.

In that case, the court did not consider any of the contractor issues germane to this case. It is not analogous to this case.

Finally, the Petitioner misconstrues the Supreme Court's use of the word "business venture" (also referred to as a "single venture") in its holding in *Northwest Cascade Const., Inc. v. Custom Component Structures, Inc.*, 83 Wn.2d 453, 519 P.2d 1 (1974). In that case, it is apparent that the court was referencing "venture" as a stand-alone defined word. That is, simply as "An undertaking attended with risk...". Black's Law Dictionary, Fifth Edition. The court in the *Northwest Cascade* case, stated in relevant part as follows:

If the purpose of the registration act is indeed to prevent fraud against the public by unreliable and incompetent contractors, there is no logical reason why such fraud cannot be perpetrated **in a single venture as well as in a series of contracts**. We therefore conclude that the Court

of Appeals placed an erroneous construction upon the meaning of RCW 18.27.010 in this case, **and hold that a person engaging in an isolated and single business venture is as subject to the provisions of the registration act as is a party engaging in the construction business on a regular and continuing basis.**

Nw Cascade Const., Inc. v. Custom Component Structures, Inc., supra. at 460 (emphasis added)

Petitioner saying that a “business venture” is obviously a “business” begs the question and does nothing to remove the holding that a single act (single venture) may meet the statutory definition of contractor. Reading RCW 18.27.010 as a whole with the other sections of that title is necessary. For example, RCW 18.27.080 states as follows:

No person engaged in the business **or acting in the capacity of a contractor** may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract..." Wash. Rev. Code 18.27.080
Registration prerequisite to suit. . .
RCW 18.27.080(emphasis added).

RCW 18.27.080 provides more meaning and reveals the intent of the legislature regarding how to define a contractor. That is, the legislature makes a distinction between persons engaged in the business of contractor and those “acting in the capacity of a contractor.” *Id.* It is

apparent that the legislature was not attempting to restrict its application to businesses, but to those engaged in contractor-like activities.

More to the point, Division I of the Court of Appeals has not enlarged the meaning of a contractor by its ruling in this case and has not entered a ruling that conflicts with pre-existing appellate decisions on this topic. Petitioner is ignoring the reality that this job was not her first job. Petitioner is also ignoring that she had performed a series of jobs that, through word-of-mouth, brought the Petitioner and Respondent together. Op. at 1-2. In other words, it was as a result of other work that Petitioner had done for pay that brought Petitioner and Respondent together. Therefore, the Petitioner acted as a contractor on this job.

B. This Ruling Does Not Conflict With *Rose v. Tarman*.

It is difficult to understand how Petitioner can make an assertion that this decision conflicts with *Rose v. Tarman* 17 Wn. App. 160, 560 P.2d 1129 (1977). There are important factual differences as Division I of the Court of Appeals pointed out in its ruling. Op. at 8-9.

Dobson claimed she was not a contractor and cites and relies upon *Rose v. Tarman, supra*. In that case, the court based its ruling on the unique facts while it held that the person who performed the earth moving work was not a contractor. The contracting parties in that case

were 1) friends and 2) co-employees of a construction company. The party performing the earth moving did not use word of mouth referrals (like Dobson in this case) for ongoing, moonlighting projects. Specifically, the court stated as follows:

Our reason for holding the statute inapplicable here in that the evidence is uncontroverted that Rose was not in the pursuit of an independent business, as that phrase is understood in plain and ordinary usage. The record indicates **that this transaction between two social friends** was far removed from a typical business enterprise. Rose did not hold himself out to the public as a bulldozer operator, nor did he actively solicit a contract with Tarman.

* * * *

The economic considerations present in the normal business relationship and in *Northwest Cascade* are absent in this case, **where the foundation for the contract was the friendship of the parties.**

Rose v. Tarman, supra, at 163 (emphasis added).

The Petitioner fails to acknowledge and recognize these key differences. As stated in the record, the parties were not friends, or even acquaintances, prior to entering into the business relationship that resulted in Petitioner performing the work. Op. at 9. Therefore, it is clear that this case does not conflict with the Court of Appeals decision entered in *Rose v. Tarman, Id.*

C. Asserting an Affirmative Defense is Not Required in This Case.

There was no need to assert an affirmative defense in order for the court to determine the threshold issue of whether the Petitioner was a contractor bound by RCW 18.27 *et seq.* The first reason is that Petitioner raised the issue in her complaint and Respondent denied it. Op. at 5-6. One is not obligated to raise a denied averment as an affirmative defense.

The second reason is Respondent was granted leave to raise the affirmative defense at the discretion of the trial court. The request to amend the answer to include the affirmative defense was requested prior to trial. Unlike the case Petitioner cites, *Davidson v. Hensen*, 135 Wn.2d 112, 954 P.2d 1327 (1998), there was no trial or arbitration prior to the Respondent seeking to amend his answer. Furthermore, in this case, there was sufficient notice to the Petitioner that this was an issue in the case as evidenced by the discovery requests made to the Petitioner as well as an exchange of correspondence between counsel. The potential issue of Petitioner being prejudiced by untimely notice was absent in this case. This case does not circumvent any existing appellate decision. Therefore, this court should deny Petitioner's request to accept review.

II. Request for Attorney's Fees Pursuant to RAP 18.1.

Respondent hereby requests attorney's fees and costs for responding to the Petition for Review on the grounds that Respondent was awarded attorney's fees and costs at trial. Fees were awarded as costs to the Respondent at trial pursuant to RCW 60.04.181(3). Respondent is making this request pursuant to RAP 18.1.

CONCLUSION

There is no reason under RAP 13.4(b) to grant discretionary review. There are no constitutional issues involved, there are no appellate decisions that are in direct conflict with the ruling, and this subject does not reach the level of "substantial public interest" as it pertains to a very small group of citizens within Washington state. For the foregoing reasons, Respondent, **TREFAN ARCHIBALD**, respectfully requests that this Court not accept review and award attorney's fees and costs to the Respondent.

This Answer contains 1906 words, excluding words that are exempt from the word count requirement pursuant to Rules of Appellate Procedure 18.17.



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DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on June 3, 2022, I filed a true and correct copy of the foregoing document with the Washington State Appellate Court's Portal. The Court will notify counsel of record of filing at the following email address:

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HAMMERMASTER LAW OFFICES, PLLC

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