No. 101225-0

THE SUPREME COURT
STATE OF WASHINGTON

SaviBank, Respondent,

v.

Aaron Lancaster, et al., Appellants.

Court of Appeals No. 82880-1-I

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case involved judicial foreclosure of an arms-length mortgage loan provided by SaviBank to Aaron Lancaster. Before the Covid-19 pandemic began, Mr. Lancaster defaulted on the loan. After the default, SaviBank properly exercised its legal rights per the loan to charge default interest and proceeded with a routine judicial foreclosure of the mortgage. The trial court properly granted summary judgment to SaviBank and the Court of Appeals properly affirmed. This case does not implicate any of the grounds for Supreme Court review in RAP 13.4(b). Therefore, Mr. Lancaster's petition for review should be denied.

II. STATEMENT OF THE CASE

In 2015, SaviBank issued Aaron Lancaster an agricultural loan in the principal amount of $250,000 that was secured by Mr. Lancaster's farm equipment. CP 192. In 2016, Mr. Lancaster applied for a Small Business Administration loan through SaviBank, but that application was denied due to a series of delinquent payments on his credit report. CP 191–92.

In 2018, at Mr. Lancaster's request, SaviBank agreed to refinance that existing loan with the $675,000 loan at issue in this case. CP 144; CP 224. The new loan amount was sufficient to allow Mr. Lancaster to purchase the farm real property from his father. CP 188.

Mr. Lancaster was provided the loan documents at the office of an attorney who did not represent SaviBank. CP 224. Prior to signing, Mr. Lancaster had the opportunity to review the loan documents and the terms of the loan with that attorney. *Id.* The loan document review and closing were not handled internally by SaviBank. *Id.* Prior to signing, Mr. Lancaster also had opportunity to decline to sign the loan documents if he did not agree to the terms. *Id.*

The loan was issued on February 21, 2018, and evidenced by a promissory note (the "Note") of the same date, with an interest rate of 6.75%. CP 144. The Note contained a provision for payment of attorney's fees and costs if a suit was brought to collect any portion of the Note. *Id.* The Note also provided that a

default interest rate of 18% may be applied, and late charges assessed, following an event of default. *Id.* The default interest rate was included in a simple, standard two-page form promissory note that banks and credit unions routinely use. CP 155–56. It was also specifically called out in its own paragraph with the bold and all caps heading "INTEREST AFTER DEFAULT."

The loan was secured by a mortgage encumbering the farm real property. CP 145.

Mr. Lancaster made monthly payments on the Note until November 2019, then stopped. SaviBank filed its judicial foreclosure action on June 10, 2020. CP 3–12.

While Mr. Lancaster defended against the foreclosure case, his initial answer did not include any affirmative defenses or counterclaims. CP 1–2. SaviBank moved for summary judgment seeking a monetary judgment against Mr. Lancaster for the amounts owed on the loan, plus the remedies of judicial foreclosure of the real property subject to the mortgage. CP 88–

96.

Mr. Lancaster attempted to assert various defenses and counterclaims by trying to file amended pleadings. He wanted to assert claims that the 18% default interest rate was unconscionable, that SaviBank had some type of fiduciary duty to advise and provide a loan to Mr. Lancaster that was guaranteed by the federal government, and that the equal protection clauses of the Washington or federal constitutions were somehow violated. RP 6–7, Jan. 6, 2021; CP 3–6; CP 12–15; CP 105–10; CP 194–209; CP 282–86; CP 287–90.

The trial court allowed Mr. Lancaster to amend his answer to include only the affirmative defense that the 18% default interest rate was unconscionable. CP 113–14. The trial court denied his requests to amend his answer in all other respects. *Id.*

The trial court then granted SaviBank's motion for summary judgment almost entirely, but reserved ruling on the 18% default interest rate unconscionability defense. CP 115–20. After SaviBank filed a second summary judgment motion on the

remaining issue of unconscionability of the 18% default interest rate, CP 97–104, the trial court ruled in SaviBank's favor and issued a final judgment for SaviBank. CP 76–81.

The Court of Appeals decision affirmed the trial court in all respects.

III. ARGUMENT

The grounds upon which the Supreme Court will accept review of a Court of Appeals decision are listed in RAP 13.4(b). None of the grounds apply to this run-of-the-mill judicial foreclosure case. Mr. Lancaster's petition for review does not cite to any of these grounds for review or argue that any are applicable here. Therefore, the petition should be denied.

A. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court per RAP 13.4(b)(1).

The first basis for review is if the decision of the Court of Appeals conflicts with a decision of the Supreme Court. RAP 13.4(b)(1). Mr. Lancaster's petition does not point to any Supreme Court decision that is in conflict with the Court of

Appeals decision in this case. So review cannot be granted for this reason.

B. The decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals per RAP 13.4(b)(2).

The second basis for review is if the decision of the Court of Appeals conflicts with a published decision of the Court of Appeals. RAP 13.4(b)(2). Again, Mr. Lancaster's petition does not point to any published decision of the Court of Appeals that is in conflict with the Court of Appeals decision in this case.

Mr. Lancaster's petition provides some argument about *Tokarz v. Frontier Fed. Sav. & Loan Ass'n*, 33 Wn. App. 456, 656 P.2d 1089 (1982). Pet. for Review 8–9. However, the Court of Appeals decision here does not contradict *Tokarz*. It does the opposite. The Court of Appeals decision actually acknowledges the standards in *Tokarz*. App. ¶ 15. It reiterated the rule from *Tokarz* that a financial institution may owe fiduciary duties to a customer if certain special circumstances exist. *Id*. However, the Court of Appeals ruled that, just like the bank's customer in

Tokarz, Mr. Lancaster did not provide any evidence that any of the requisite "special circumstances" existed between him and SaviBank to give rise to any fiduciary duty of SaviBank. There is no conflict with *Tokarz*, or any other published decision of the Court of Appeals.

Therefore, review cannot be granted for this reason.

C. A significant question of law under the Constitution of the State of Washington or of the United States is not involved per RAP 13.4(b)(3).

The third basis for review is if a significant question of law under the state or federal constitution is involved. RAP 13.4(b)(3). Yet again, Mr. Lancaster's petition does not point to any provision of the Washington Constitution or United States Constitution that is involved, let alone point to a significant question under those constitutions. The petition wholly lacks any discussion of any constitutional principles. So review cannot be granted for this reason.

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D. An issue of substantial public interest is not involved per RAP 13.4(b)(4).

The fourth basis for review is if the case involves an issue of substantial public interest that should be decided by the Supreme Court. RAP 13.4(b)(4). Although Mr. Lancaster's petition does not cite this ground specifically, it appears his petition might be aimed in this direction. However, for a variety of reasons, no issue of substantial public interest is involved in this case.

First, Mr. Lancaster himself admits "This case is the classic sui generis case." Pet. for Review 10. The term "sui generis" is defined as "Of its own kind or class; unique or peculiar." Black's Law Dictionary 678 (2d pocket ed. 2001). Thus, by Mr. Lancaster's own definition, this case does not have broad implication or ramifications affecting the public interest.

Second, while Mr. Lancaster's main objection is to the 18% default interest rate he agreed to in the loan documents, he offers no evidence or case law demonstrating that such a default

interest rate is out of the ordinary in non-consumer agricultural loans such as this. He does not dispute that a previous loan he had with SaviBank also included an 18% default rate. CP 225. And he offers no argument about how an issue of substantial public interest is involved in this case about whether or not an 18% default interest rate could be charged to Mr. Lancaster in this particular case with his particular circumstances.

Third, his scapegoating of the Covid-19 pandemic does not show any issue of substantial public interest that this Court should address. He does not explain how an issue of substantial public interest is involved in him seeking his particular relief from this Court because of his particular situation in this particular case. He decries the actions of the legislative and executive branches of the state and federal governments, and asks this Court to grant him particular relief because those branches of government chose not to. But he does not explain why this Court should choose to step into the shoes of the executive or legislative branches and grant him the specific

Covid-19 pandemic related relief he seeks. Finally, he offers no evidence that the Covid-19 pandemic had any effect on him in this case. And he fails to acknowledge that he stopped making payments on his loan in November 2019, before the Covid-19 pandemic hit the United States. CP 146.

Fourth, Mr. Lancaster's argument that an 18% default rate is unconscionable because of the onset of the Covid-19 pandemic ignores longstanding precedent that unconscionability is determined by the circumstances at the time the contract was entered into. *State v. Brown*, 92 Wn. App. 586, 601, 965 P.2d 1102 (1998); *Jeffery v. Weintraub*, 32 Wn. App. 536, 544, 648 P.2d 914 (1982). Here, Mr. Lancaster agreed to the loan from SaviBank in February 2018, long before the Covid-19 pandemic. CP 144. He offers no argument for why this longstanding legal principle should be ignored in this case and how that would impact a substantial public interest. Ignoring this principle would subject the enforceability of contract terms to which way the economic winds were blowing at any particular time, greatly

undermining the sanctity of contracts. That would definitely not be in the public interest.

Therefore, review cannot be granted since there is no issue of substantial public interest that this Court should take up.

E. SaviBank is entitled to its reasonable attorney fees and costs for answering the petition.

If fees and costs are awarded to the prevailing party in the Court of Appeals, and if a petition for review is subsequently denied, then reasonable fees and costs may be awarded for the prevailing party's preparation and filing an answer to the petition for review. RAP 18.1(j). Additionally, the Note and the mortgage each contained attorneys' fees and costs provisions requiring Mr. Lancaster to pay SaviBank's legal fees and costs incurred in the enforcement of the loan. CP 155, 162, 170. Therefore, if the Supreme Court denies Mr. Lancaster's petition for review, SaviBank requests an award of its reasonable fees and costs for answering the petition.

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V. CONCLUSION

For the reasons set forth above, Mr. Lancaster's petition for review should be denied and SaviBank should be awarded its fees and costs in answering the petition.

DATED this 28th day of September 2022.

I certify this brief contains 1,896 words in compliance with RAP 18.17.

Respectfully submitted,
CARMICHAEL CLARK, P.S.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the 28th day of September 2022, I electronically filed the *Answer to Petition for Review* with the Supreme Court, State of Washington, using the Washington State Appellate Courts' Secure Portal Electronic Filing System which will send notification and an electronic copy to:

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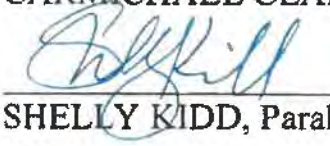
DATED this 28th day of September 2022 at Bellingham, Washington.

CARMICHAEL CLARK, P.S.



SHELLY KIDD, Paralegal

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