

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 101420-1

SUPREME COURT
OF THE STATE OF WASHINGTON

PENNY ARNESON f/k/a PENNY ARNESON SWEET, on
behalf of herself personally and on behalf of the 6708 Tolt
Highlands Personal Residence Trust

Appellant

v.

GARY NORDLUND, *et al.*,

Respondent,

REPLY TO RESPONDENT'S MOTION TO STRIKE

KOVAC & JONES, PLLC
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I. IDENTITY OF PETITIONER

Appellant, PENNY ARNESON, f/k/a PENNY ARNESON SWEET on behalf of the “6708 TOLT HIGHLANDS PERSONAL RESIDENCE TRUST (hereinafter “the Trust”), respectfully offers the following in reply to the Motion to Strike filed January 18, 2023 by Respondent, GARY NORDLUND (hereinafter “Mr. Nordlund”).

II. ARGUMENT AND AUTHORITY

At the outset, it should be noted that it was Mr. Nordlund who raised concerns about the sufficiency of the Trusts abbreviated Statement of Facts in his Answer to Petition for Review of January 3, 2023. To address Mr. Nordlund’s criticism, the Trust offered a complete Statement of Facts and Procedural History, as *Addendum A*, in its Reply to Respondent’s Answer to Petition for Discretionary Review of January 12, 2023, based upon the appellate record below. Please compare *Addendum A* to the Trust’s Statement of Fact contained in its Initial Brief of Appellant of February 9, 2022, on file herein.

Mr. Norlund's criticisms of the Trust's statement of fact could be characterized as a separate issue not raised in the Trust's Petition for Discretionary Review, justifying a Reply to Mr. Nordlund's Answer pursuant to *RAP 13.4(d)*. But an extended statement of fact is not necessarily "relevant to the issues presented for review" in this matter. *RAP 13.4(c)(6)*. Indeed, the Court has before it the entire appellate record for its review if it has questions regarding any fact that may form the basis for the Trust's request for discretionary review.

Mr. Nordlund's suggestion that the Trust is attempting to "evade the word limits" of *RAP 18.17(c)* with regard to its initial Petition for Discretionary Review is specious. The Trust would not have offered *Addendum A* to its Reply had Mr. Nordlund not complained and criticized the Statement of Fact offered by the Trust in its Petition for Discretionary Review in his Answer. Ans. at pg. 2. *Addendum A* was offered by the Trust to support its Reply – not its Petition for Discretionary Review.

Moreover, the Trust is not attempting to “evade the word limits” related to its Reply to Mr. Nordlund’s Answer. The Trust’s Reply is offered pursuant to *RAP 13.4(d)*. The Reply and *Addendum A* together amounts to a total of **4,849** words. *RAP 18.17(c)(10)* provides: “Petitions for review, answers, and replies (RAP 13 .4): **5,000** words (word processing software) or 20 pages (typewriter or handwritten).” Accordingly, the Trust’s Reply, including *Addendum A*, thoroughly complies with the provisions of *RAP 18.17(c)(10)* with regard to the word limitations imposed by the rule.¹

III. CONCLUSION

On the basis of the foregoing, there is no basis in law or fact to strike *Addendum A* from the Trust’s Reply of January 12, 2023. Accordingly, Mr. Nordlund’s request to strike *Addendum A* to the Trust’s Reply of January 12, 2023 should be denied.

The undersigned hereby certifies that the number of

¹ Mr. Nordlund’s reliance on *RAP 18.17(c)(18)* is misplaced as it refers to page limitations for “replies to answers to motions (RAP 17.4)” - not replies to answers to petitions for discretionary review under *RAP 13.4*.

words contained in this document contains approximately 504 words, in compliance with *RAP 18.17*.

REPECTFULLY SUBMITTED this 26th day of January, 2023.

KOVAC & JONES, PLLC.

/s/ Richard Llewelyn Jones

Richard Llewelyn Jones

WSBA No. 12904

Attorney for Appellants

KOVAC AND JONES PLLC

January 26, 2023 - 1:33 PM

Transmittal Information

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Appellate Court Case Number: 101,420-1
Appellate Court Case Title: Penny Arneson v. Gary Nordlund, et al.

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