Supreme Court No.:1022875

COURT OF APPEALS NO. 56441-6-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Kenneth Wren & Alice Wren,

Petitioners (underlying Plaintiff/Counter-Defendants),
vs.

Herbert L. Whitehead, III, Jennifer L. Whitehead, Southwest Enterprises, LLC, Mt. View Enterprise, LLC, Whitehead Consulting, LLC and Whitehead Enterprises, LLC;

Respondents (Underlying Defendants/Counter-Claimants)

Appealed from Pierce County Superior Court Case No. 20-2-04347-3

RESPONDENTS' ANSWER TO PETITIONERS KENNETH AND ALICE WREN'S PETITION FOR REVIEW

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TABLE OF CONTENTS

STATEMENT OF THE CASE 5

ARGUMENT 17

A. The appellate decision does not involve an issue of substantial public interest 17

B. The appellate decision does not conflict with any decisions of the Washington Supreme Court or the Washington State Court of Appeals 21

i. *Berg* and *Hearst* have never been applied to the memo line of a check, and therefore cannot conflict with the case at bar 22

ii. Wren relies on dicta from *Larson*, a fifty-six-year-old case in which the legal issue revolved around handwritten notes by and between the parties—not a check 27

iii. The case at bar does not conflict with *J¬-Z Sales* 29

iv. Review should not be granted on judicial estoppel grounds 31

CONCLUSION 32

TABLE OF AUTHORITIES

CASES

Berg v Hudesman, 115 Wn.2d 657, 801 P.2d 222 (1990).....17, 21, 22, 23

Hearst Commc'ns v. Seattle Times Co., 154 Wn.2d 493, 503-504, 115 P.3d 262 (2005).....17, 21, 24

In re Post-Sentence in re Combs, 353 P.3d 631, 631 (Wash. 2015).....18

In re Pers. Restraint of Mines, 146 Wn.2d 279, 285, 45 P.3d 535 (2002).....18

Randy Reynolds & Assocs. v. Harmon, 193 Wn.2d 143, 152-53, 437 P.3d 677, 682 (2019).....18, 19

In re Est. of Larson, 71 Wn. 2d 349, 428 P.2d 558 (1967).....20, 21, 22, 27

State v. J-Z Sales Corp., 25 Wn. App. 671, 610 P.2d 390 (1980).....22, 29

Stender v. Twin City Foods, Inc., 82 Wn.2d 250, 510 P.2d 221 (1973).....23

Hollis v. Garwall, Inc., 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999).....25

Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538, 160 P.3d 13, 15 (2007).....31

RULES

RAP 13.4(b)(1) or (4) 17

I. STATEMENT OF THE CASE

This case arose following the sudden and unexpected closure of the used motor vehicle dealership, Stanford and Sons, LLC d/b/a Puyallup Car and Truck ("Stanford and Sons"). While the case involves numerous parties, claims, cross claims, counterclaims, and third-party claims, this appeal revolves around one claim—an alleged breach of a line of credit and monies allegedly due and owing under that line of credit. The trial court granted summary judgment in favor of Petitioner on this issue. In turn, Division II overruled that decision, holding that issues of material fact prevented entry of summary judgment.

The central figures involved in this appeal are: (1) Third Party Defendant Kenneth Brautigan ("Brautigan"), who has always been the sole member of Stanford and Sons; (2) Defendant/Respondent Herbert "Butch" Whitehead III ("Whitehead"), a former longtime friend of Brautigan who partnered with Stanford and Sons and worked on its behalf; and

(3) Plaintiff/Petitioner Kenneth Wren ("Wren"), a longtime friend of Brautigan who loaned Stanford and Sons approximately $1,700,000 between 2016-2017.

Whitehead and Brautigan created Stanford and Sons in 2009. CP 1186. Brautigan was, and always has been, the sole member of Stanford and Sons. CP 83. Whitehead, a longtime friend of Brautigan, was heavily involved with the company—performing work and infusing it with cash and other collateral so that it could operate. CP 683-804 and CP 1082-1166.

In 2009, Whitehead initially provided the company $250,000 in assets and was responsible for locating a third party that loaned the company $350,000. CP 1085. Between 2010 and 2013, Whitehead Enterprises, LLC, a company owned by Whitehead, loaned Stanford and Sons $160,000 in order to keep it afloat and operating. CP 688. Whitehead later purchased a home in Arizona, titled it in Stanford and Sons' name, and allowed it to be used as collateral for a loan Wren made to

Stanford and Sons in March 2016. CP 87 and 1187.[1] As evidenced by these infusions, Whitehead was financially invested in seeing the company succeed.

In early 2010, just as the company was getting started, Whitehead and Brautigan agreed that Stanford and Sons would provide Whitehead, and several business entities he owned,[2] a secured line of credit up to $250,000 (the "2010 LOC"). CP 687. The promissory note for the 2010 LOC and a deed of trust were executed and recorded in March 2010. CP 687-688 and 708-713.

In March 2016, Wren loaned Stanford and Sons $1,200,000. CP 1534-1535. In February 2017, Wren loaned Stanford and Sons an additional $500,000. *Id.* Both loans were secured by Stanford and Sons' assets, including the Arizona

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[1] When Stanford and Sons abruptly closed and stopped paying the Wren loans, Wren seized the Arizona home and sold it for $610,000. CP 685.

[2] Southwest Enterprises, LLC, Mt. View Enterprises, LLC, and Whitehead Consulting, LLC.

home Whitehead had previously transferred to Stanford and Sons. *Id.*

On July 16, 2019, Brautigan abruptly, and without notifying Whitehead, shut down Stanford and Sons. CP 1191-1192. As a result, Stanford and Sons defaulted on the Wren loans. *Id.* Wren promptly seized the Arizona home and other assets belonging to Stanford and Sons. CP 684-687 and CP 1536-1537. Stanford and Sons also assigned the 2010 LOC to Wren. CP 1536-1537. Brautigan personally guaranteed the Wren loans, but Wren chose not to file suit against his longtime friend, and effectively refrained from collecting any real assets from Brautigan. CP 1535 and CP 95-96. Instead, he set his eyes on Whitehead and his family. CP 82-181. Brautigan, in an effort to avoid legal action against himself, sided with Wren and has since twisted the truth in an effort to propel forward Wren's claims against Whitehead. In October 2021, Wren obtained summary judgment against Whitehead and his associated businesses for money alleged to be due and owing

under the 2010 LOC, in large part relying on Brautigan's highly questionable deposition testimony. CP 817-820. The trial court also dismissed Whitehead's claim that money was due and owing to it for the Whitehead Enterprise loans. *Id.* Wren/Brautigan allege that between August 2013 and February 2016, Stanford and Sons loaned Whitehead several hundred thousand dollars under the 2010 LOC, and that payments to Whitehead from 2010 to 2013 were repayments for the $160,000 Whitehead Enterprise loans. CP 646-667.

However, no money has ever been loaned under the 2010 LOC and the Whitehead Enterprise loans have not been paid back. CP 687-693. The money alleged to have been "loaned" between 2013 and 2016 was in fact Whitehead's compensation for services rendered to the company. *Id.* Whitehead initially started performing services on behalf of Stanford in Sons in 2010, and was paid sporadically for his work.[3] CP 706 and CP

[33] Wren has claimed that payments made to Whitehead between 2010 and 2013 were repayments of the Whitehead Enterprise loans. However, this is not accurate. It was compensation for services rendered.

1186. This was in large part because Stanford and Sons did not have the money to pay him yet, which is also evidenced by Whitehead Enterprises infusing the company with $160,000 during this time. Starting in early 2013, Whitehead became increasingly more involved in the day-to-day operations of Stanford and Sons. CP 687-693. Whitehead helped direct sales, advised with administration, helped purchase inventory, wrote ads, and priced vehicles. *Id.* Because Stanford and Sons was tight on cash, the company paid Whitehead sporadically. *Id.* However, by year end, Whitehead's pay was almost equal to that of Brautigan, his business partner. *Id* and 731-734.

To support his claim that these payments were loans, Wren relies on several pieces of evidence. First, the checks written to Whitehead for his compensation say "loan" on them. CP 594-595 and CP 646-667. Second, Stanford and Sons did not issue Whitehead a W-2 or 1099 for the payments. CP 692. Third, Brautigan has testified at a deposition that Whitehead

wanted to be compensated via loans. CP 646-667. That said, there is significant evidence that contradicts Wren's claim.

First, it is inconceivable that Whitehead worked for free for nearly three years. It is even more inconceivable that the compensation being paid to him would need to be paid back at the exorbitant interest rate of 36% per annum. There are communications between Brautigan and Whitehead where the two discuss Whitehead's pay. CP 692-693. In April 2012, Brautigan sent Whitehead a text message stating "when do you need your paycheck by." *Id.* In October 2015, Brautigan and Whitehead were corresponding by email, when Whitehead wrote "[Brautigan], *other than our income* here's what I see us spending in the next 30 days." *Id.* Stanford and Sons also paid for Whitehead's medical insurance, another form of compensation for services rendered. CP 751.

Second, Wren hired his longtime secretary/assistant, Nicola Bley Asquith, to put together an accounting of the alleged loans under the 2010 LOC, as well as the alleged

repayment of the Whitehead Enterprise loans. CP 591-600. However, Ms. Bley Asquith did not work for, nor was she affiliated with, Stanford and Sons at any time until after this lawsuit was filed. CP 690-691. She was hired and paid by Wren to review records and her opinions and conclusions are clearly biased. *Id.* She has been a staunch opponent of Whitehead throughout this case. She has no firsthand knowledge about the payments provided to Whitehead. In the declaration supporting her accounting she reaches a wide range of conclusions, based on her review of records, without taking into consideration anything Whitehead has said about the payments. For instance, she makes assumptions about the $160,000 Whitehead Enterprises loaned to Stanford and Sons between 2010 and 2013, and how to account for payments back to Whitehead Enterprises. CP 596-597. Yet, the record is entirely devoid of any affirmative statement from Brautigan about what payments he believes constitute repayment under

the Whitehead Enterprise loans. CP 646-667.[4] Rather, his statements are broad and vague—and unbelievable. *Id.* Thus, it is unclear where Ms. Bley Asquith derived her apparent knowledge. Again, she was not affiliated with Stanford and Sons between 2010 and 2016, and has no basis to simply make these assumptions. Further, per Ms. Bley Asquith's accounting, Stanford and Sons loaned Whitehead the principal sum of $886,432.17, well over the $250,000 line of credit. CP 594.

Third, the one person that should have an accurate accounting of the 2010 LOC and Whitehead Enterprise loans—Brautigan—never put one together. In fact, Brautigan testified that he never communicated once, in writing or orally, with Whitehead about the alleged debt. CP 770. Brautigan never even asked Whitehead to make a payment on the alleged debt. *Id.* When asked at his deposition why he never asked Whitehead to make a payment, he sat there befuddled, and

[4] In excerpts from Brautigan's deposition transcript, which serves as the foundation for Wren's claims, he does not affirmatively identify what payments constate repayments under the Whitehead Enterprise loans.

refused to answer the question for several minutes. *Id.* With that much money allegedly at stake, it is hard to believe Brautigan never asked for a payment or kept an accounting of it. Brautigan would scribble little numbers in the memo line of the check—usually a number between "1"-"12" followed by a "1" or a "2. CP 653-654. He "assumes" those numbers must have been affiliated with the month the alleged loan was given—unsure about his own accounting methods. *Id.* However, some of those numbers did not correspond with the month at all. *Id.* In one instance, the scribbled numbers say, "10 2 loan," but the check was dated in December 2014. *Id.* The more likely scenario is that Brautigan was accounting for pay periods, there being two in a given month. Because Whitehead was paid sporadically, and not in two equal installments in a given month, this was Brautigan's way of accounting for pay periods. This is further reflected in a spreadsheet that accounts for all the payments made to

Whitehead and Brautigan between 2013 and 2016.[5] CP 731-735. In 2014, Whitehead was paid a total of $152,275, which equates to an average of $12,689.58 per month. *Id.* In the same year, Brautigan was paid $159,305. *Id.* In reviewing that spreadsheet, Stanford and Sons made sporadic payments to Whitehead, sometimes over $12,689, and sometimes well below. A review demonstrates that Stanford and Sons fell behind on paying Whitehead the amount he should have been paid, and as a result, Brautigan's handwritten note on a December 2014 check stating, "10 2 loan," demonstrates that he was making note that the payment was for a prior pay period.

Fourth, Wren does not allege that the monthly payments Stanford and Sons made to Whitehead for services rendered between March 2016 and July 2019 constitute loans. CP 595. The only thing that changed between February 2016, the date of the alleged last loan, and March 2016, is that Brautigan stopped

[5] Brautigan and Whitehead effectively earned the same amount of money during this time.

writing the word "loan" on the checks he wrote to Whitehead. *Id.* Stanford and Sons did not give Whitehead a W-2 or 1099 between 2016 or 2019 either. Wren essentially acknowledges that the payments to Whitehead from March 2016 through July 2019 are compensation for services rendered, yet claims the payments made before March 2016—for the same services rendered—are not compensation, but loans.

Fifth, Whitehead purchased and titled the Arizona home in Stanford and Sons' name in 2012. Presumably, if Whitehead owed Stanford and Sons money, he would have sought to offset the debt by the value of the Arizona home when he transferred it to Stanford and Sons.

In short, no money was ever loaned under the 2010 LOC. Stanford and Sons never kept an independent accounting of it and never made demand for payment. Now, with the 2010 LOC in the hands of Wren, he is seeking what would be a massive unentitled windfall. He wants to have Whitehead pay

him millions of dollars in principal and interest, and to foreclose on Whitehead's family home.

II. ARGUMENT

Wren argues that review should be granted under either RAP 13.4(b)(1) or (4). Each is addressed below.

A. The appellate decision does not involve an issue of substantial public interest.

This is a case about a niche evidentiary matter. Specifically, this case pertains to the extent that extrinsic evidence can be introduced to interpret the writing on the memo line of a check. Below, the Court of Appeals ruled that, on a motion for summary judgment, extrinsic evidence can be introduced to show an intent that was not captured within the memo line of a check. Wren argues that the holdings in *Berg v Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990) and *Hearst Commc'ns v. Seattle Times Co.*, 154 Wn.2d 493, 503-504, 115 P.3d 262 (2005) applies to checks, and under such an application, the memo line of a check is conclusive as to the

check's purpose, that extrinsic evidence can only be introduced when the memo line of a check is ambiguous, and that even then, such extrinsic evidence cannot be used to show an intent outside of what is written on the memo line. The extent to which extrinsic evidence can be used to construe the memo line of a check on summary judgment is not an issue of substantial public interest.

When determining the degree of public interest involved in a matter put forward for review, courts consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question. *In re Post-Sentence in re Combs*, 353 P.3d 631, 631 (Wash. 2015); *In re Pers. Restraint of Mines*, 146 Wn.2d 279, 285, 45 P.3d 535 (2002). "As a fourth factor, courts may also consider the level of adversity between the parties and the quality of the advocacy of the issues." *Randy*

Reynolds & Assocs. v. Harmon, 193 Wn.2d 143, 152-53, 437 P.3d 677, 682 (2019).

The four public interest factors weigh against a showing of substantial public interest in this case. First, the question presented is of a private nature, as it concerns the evidence that can be presented on summary judgement relating to funds transferred by private parties using a check. This matter does not involve statutory interpretation or government action, nor does it implicate any fundamental rights, constitutional or otherwise.

Second, there is a low desirability for an authoritative determination in this area. An authoritative decision on this question would offer guidance to judicial officers and attorneys. However, such a decision is not desirable under these circumstances. Given the limited space for writing on checks, courts will almost always have to employ extrinsic evidence to understand the scope of the agreement between the transacting parties. The evidence needed to ascertain this scope is likely to

vary on a case-by-case basis, depending on the complexity of the transaction, the relationship of the parties, and other circumstances. Trial courts are well situated to evaluate the scope of evidence needed to interpret these agreements on summary judgment, and a Supreme Court decision imposing a uniform evidentiary rule could be unduly oppressive. There is not a strong need for an authoritative determination of this issue.

Third, while this issue may reoccur, it is not likely to do so regularly. There is scant case law on this subject for a reason; it is rare that courts are faced with questions regarding the scope of extrinsic evidence that can be used to interpret the memo line of a check on summary judgment. That's why, despite *Hearst* being published over eighteen years ago, there is no case law on its application to this issue. This is further why Petitioner Wren relies so heavily on *In re Est. of Larson*, 71 Wn. 2d 349, 428 P.2d 558 (1967), a fifty-six-year-old case

about forgiveness of a debt, which as described below in more detail, is easily distinguishable.

Fourth, the parties in this case are similarly situated. Both litigants are reasonably sophisticated businessmen, with a history of success in the automotive industry. There is no issue of inequality between the parties that furthers a showing of substantial public interest.

None of the substantial public interest factors favor a review of this case by the Supreme Court. This is an esoteric evidentiary issue. A substantial public interest is not implicated by this case.

B. The appellate decision does not conflict with any decisions of the Washington Supreme Court or the Washington State Court of Appeals.

Wren claims that the Court of Appeal's decision conflicts with the following four cases: (1) *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990); (2) *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 115 P.3d 262 (2005); (3) *In re*

Estate of Larson, 71 Wn.2d 349, 428 P.2d 558 (1967); and (4) *State v. J-Z Sales Corp.*, 25 Wn. App. 671, 610 P.2d 390 (1980). Wren's assertion is incorrect. *Berg* and *Hearst* have never been applied to checks; *Larson* is cited for a few sentences of dicta, does not elicit a hard and fast rule concerning the memo line in a check, and is distinguishable; and the facts and holding of *J-Z Sales* are entirely alien to the case at bar.

***i.* *Berg* and *Hearst* have never been applied to the memo line of a check, and therefore cannot conflict with the case at bar.**

The case at bar does not conflict with the "context rule" of *Berg*, nor the more restrictive standard laid out in *Hearst*, as neither case applies when interpreting the memo line of a check. *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990), concerns the interpretation of the phrase "gross rentals," an undefined term in a lease for real property. *Berg*, 115 Wn.2d

at 672. Therein, the Court states that Washington follows the "context rule", under which:

> [d]etermination of the intent of the contracting parties is to be accomplished by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.

Id. at 667 (quoting *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 510 P.2d 221 (1973)). *Berg* further goes on to state that "[the] acceptance of accountings and payments over a period of years may be considered as an aid to ascertainment of the intent of the parties. It is well established that subsequent acts and conduct of the parties to the contract are admissible to assist in ascertaining their intent." *Id.* at 677-78; *Stender*, 82 Wn.2d at 254.

Berg does not relate to an instance of interpreting the memo line of a check. Rather, these cases relate to the interpretation of long-form contracts. The Court of Appeals

decision identified this correctly, and declined to extend the *Berg/Hearst* line of cases to checks.

Similar to *Berg*, the case at bar does not conflict with *Hearst*, as the rules of contract interpretation espoused thereunder have also never been applied to interpret the memo line of a check. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 115 P.3d 262 (2005) is a successor case to *Berg*, which narrows the circumstances in which extrinsic evidence can be introduced to interpret a contract. *Hearst* concerns a dispute between two newspapers, the Seattle Times, and the Seattle PI, which pooled the cost of their operations under a Joint Operating Agreement (the "JOA"). *Id.* at 496-97. The JOA provided that, if one of the papers suffered losses for three consecutive years, they could move to terminate the JOA. *Hearst*, 154 Wn.2d at 498. The Times employed this provision, and Settle PI sued, claiming that the force majeure clause of the JOA prevented a termination for losses which occurred due to force majeure events. *Hearst*, 154 Wn.2d at 499. In

interpreting the JOA, this Court ruled that the *Berg* "context rule" does not mean that extrinsic evidence is always admissible when interpreting a contract. *Id.* at 503-04. Rather, surrounding circumstances and other extrinsic evidence can "be used to determine the meaning of specific words and terms used and not to show an intention independent of the instrument or to vary, contradict or modify the written word." *Id.* at 503; *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999). The *Hearst* Court went on to apply this rule to allow extrinsic evidence to interpret the force majeure rule, finding that it was insisted upon by the Seattle Times and only pertains to liability between the two parties.

Distinguishing *Hearst* is the same as distinguishing *Berg*, it has never been applied to interpret the memo line of a check. The focal point of *Hearst* is that the subjective intent of the parties is ignored if it is not reflected in the words of the contract at issue. However, the memo line of a check is so brief that it rarely, if ever, captures the full intent of the contracting

parties. The contracting parties must therefore routinely look to extrinsic evidence to determine their intent relating to a check. Under those circumstances, it would be a bridge too far to apply the *Hearst* rule to the writing on check memo lines, as doing so would bar the parties from introducing their full intent relating to the check.

In fact, Wren must necessarily introduce extrinsic evidence to correlate the various checks, issued over approximately 6 years (2010-2016), back to the 2010 LOC (executed in 2010). The checks themselves do not contain interest rates or repayment terms. It cannot simply be concluded that each of those checks relates back to the 2010 LOC—especially in light of the fact that Stanford and Sons failed to keep an accounting of the alleged loans in the first place. It was Wren's so called "expert" that located the checks and concluded that they all relate to the 2010 LOC. This is in itself extrinsic evidence.

ii. Wren relies on dicta from *Larson*, a fifty-six-year-old case in which the legal issue revolved around handwritten notes by and between the parties—not a check.

Wren cites *Larson* as though it is a landmark case on the interpretation of checks. A close reading demonstrates otherwise.

In re Estate of Larson, 71 Wn.2d 349, 428 P.2d 558 (1967) concerns whether Larson forgave a loan to one of his children, Clifford, before he passed away. The initial loan to Clifford was evidenced by a check for $8,500.00 which Larson delivered to him, with the words "as loan" written on the memo line. *Id.* at 350. The following year, and shortly before the death of Larson, Clifford wrote Larson a note which stated:

> Dad
> It looks like you are going to be pretty well kept under watch so I'll try to let you know this way rather than start a fuss. I am wondering what to do about the check you wrote for the land last year, if you want it payed (sic) back now, I'll go to the bank, because I have heard some rumers (sic) that the Cancelled Check will be used on me on account of the size on it, If you could, I would like

> to have the Cancelled Check which I may need for income tax reasons, but I don't know how you want to handle this now. I don't dare wait any longer before doing something.

Id. at 350-51. Larson then wrote the following on the back of the same piece of paper:

> Keep it No Return Maby Pay Income Tax will try and find check Hur and Cleo got lawyers in Van Cover to stop my Bank Biss in Wibaux Mont.

Id. Following a bench trial, not summary judgment, the trial court made seven findings of fact, including that "[o]n April 10, 1963, Henry L. Larson made an open account loan to his son, Clifford S. Larson, in the amount of $ 8,500.00." *Id.* at 351. The rest of the findings of fact, and the vast majority of *Larson*, concern whether the two notes exchanged between Clifford and Larson constituted a forgiveness of the loan, or instead, a gift. The Larson Court wrote that:

> In essence, the question presented on this appeal is whether the note from Henry L. Larson to his son Clifford constituted a valid forgiveness of the loan he had previously made to his son. The contention of appellant that the transaction did not constitute a loan in the first instance is without merit. The words "As Loan" on the face of the check in the

> handwriting of decedent is unequivocal and supports the finding of the trial court in that regard.

Id. at 353. Thus, the legal question before the *Larson* Court was not whether the words written on the memo line of a check is binding on a party, but instead, whether the two notes, exchanged between father and son demonstrated an intent to forgive the loan. The *Larson* trial court concluded, after a bench trial, that the check was in fact intended as a loan. The Supreme Court took no issue with that and did not disturb that ruling. That is the only component of *Larson* that even touches on the check. The "written instrument" referred to in *Larson* is not the check, but instead, the notes exchanged between father and son. Thus, there is no holding, as Wren would suggest, that the words written in a check memo line are binding and controlling contracts.

iii. The case at bar does not conflict with *J-Z Sales*.

State v. J-Z Sales Corp., 25 Wn. App. 671, 610 P.2d 390 (1980), is cited by Wren as an example which "relates to accord

and satisfaction, where the creditor will be bound by the memo line of a check reading 'payment in full,' even if that depositing creditor indicates his disagreement with the same." Petitioner's Brief at p. 26. Wren then goes on to state that the decision of the Court of Appeals conflicts with the holding of *J-Z Sales*.

Beyond its status as a case which relates to accord and satisfaction, *J-Z Sales* is easily distinguishable from the case bar. Chiefly because the eventual deposit of the check in *J-Z Sales* was preceded by a drawn-out period of dispute and negotiations between the parties. The *J-Z Sales* Court considered these negotiations in its interpretation of the check and did not ground its ruling solely in the language found on the check's memo line.

J-Z Sales is not a case about being bound by the words of a memo line when interpreting the purpose of a check, nor is it about the scope of extrinsic evidence that the can be employed to interpret an instrument. Rather, *J-Z Sales* pertains to when the deposit of a check will trigger an accord and satisfaction

when debtor and creditor are disputing an unliquidated obligation arising from the sale of goods. There is no conflict between the decision of the Court of Appeals and *J-Z Sales*.

iv. Review should not be granted on judicial estoppel grounds.

As Division II accurately points out, "the trial court did not make any conclusions regarding judicial estoppel." 5/9/23 Opinion, p. 15. "Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13, 15 (2007). Below, the Court of Appeals declined to apply judicial estoppel to statements that were made by two distinct parties in separate court proceedings. 5/9/23 Opinion, p. 17-20. Petitioner does not cite any case law that Division II's opinion contradicts. There is no reason to grant review on judicial estoppel grounds.

CONCLUSION

The Court should not grant Wren's petition for review, as the case at bar does not include issues of substantial public importance, nor does the decision of Division II conflict with existing case law.

I hereby certify that, pursuant to RAP 18.7, there are 4,664 words contained in this document.

DATED this 15th day of November 2023.

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CERTIFICATE OF SERVICE

Under penalty of perjury under the laws of the State of Washington, I declare that on this 15th day of November 2023, a true copy of this document was filed with the Court of Appeals, Division II and served via e-mail on:

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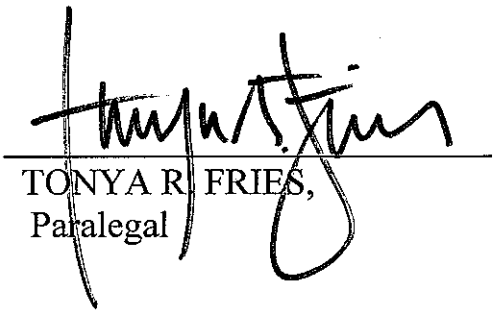

TONYA R. FRIES,
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November 15, 2023 - 9:34 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,287-5
Appellate Court Case Title:	Kenneth and Alice Wren v. Stanford and Sons and Whitehead, et al.
Superior Court Case Number:	20-2-04347-3

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