Supreme Court No. **102683-8**

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Appellate Court No: 848011-I

DIVISION ONE

JINRU BIAN,

Petitioner,

v.

OLGA SMIRNOVA,

Respondent.

REPLY TO
Olga Smirnova's Answer To Jinru Bian's Corrected Petition For Discretionary Review

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TABLE OF AUTHORITIES AND STATUTES

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Statute and Court Rule

I. IDENTIFY OF THE PARTY

Petitioner, Jinru Bian (Appellant), replies Smirnova's Answer to the Petition for Review.

II. INTRODUCTION

Bian filed the Petition for Discretionary Review on December 29, 2023. Smirnova filed Olga Smirnova's Answer to the Petition. In the Answer, Smirnova restated the Issues (Restatement Of The Issues). Bian did find that the Answer did not respond to the issues in the Petition; Bian respects the way in the Answer and will not reply the restated issues in the Answer, except the issue on interest on the reversed Judgment.

In the Answer, Smirnova states:

> "Bian's trespass, unjust enrichment, and injunctive relief causes of action were each predicated on the success of Bian's claim for adverse possession. As such, insignificant time was dedicated to addressing Bian's trespass and unjust enrichment claims in the briefs of the parties. ….. There is no need to segregate time incurred litigating the trespass and unjust enrichment causes of action, nor is there any basis for excluding fees incurred dealing with procedural matters."

Bian has to point out that in Bian's filings back to 2021; Bian **has never claimed** to segregate the time on "trespass, unjust enrichment, and injunctive relief." Since it has not been an issue to Bian, Bian does no reply on the issue raised in the Answer.

There are other untrue "facts" and confusing concepts in the Answer, to which Bian chooses also not to reply because they were clarified in the Reply filed to the Court of Appeals.

III. INTEREST ON THE REVERSED (2021) JUDGMENT CONFLICTS WITH THE AUTHORITIES AND HAS NO LEGAL BASE

In the Answer, a section title is "Smirnova ss entitled to interest on the *Second Amended Judgment* in accordance with RCW 4.56.110(6)." Bian believes Smirnova claiming the interest on the reversed (2021) judgment, which became one part of the Second Amended Judgment (2023 Judgment).

RCW 4.56.110(6) states: "interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered." In the statute,

"**the portion of the judgment affirmed**" must mean the other portion that is not affirmed (or revered). Thus, the clause that the portion affirmed should date back to… also means that the reversed portion should not date back to….

RCW 4.56.110 cited in the Answer, however, was not presented in the trial Court. In fact, in the proposed 2023 judgment and its signed version, there was no citation of any authority or statute for interest on a reversed judgment. Earlier in a Summons On Complaint For Unpaid Legal Fees And Judgment Foreclosure (of Bian property), filed by Smirnova, on December 5, 2022, before Bian filed the Notice of Appeal and the trial Court granted the Motion for Reconsideration [see Bian's Brief, P. 9], the interest on the reversed (2021) judgment was incorporated into the proposed Judgment for the Foreclosure but there also **was no citation** of a statute or authority for it. The facts lead to Bian respectfully believes that when Smirnova thought the interest on the reversed judgment at drafting the Summons on Complaint[1], and the Judgment the

Counsel did not do a law search as whether a reversed judgment should bear interest. This is a non-legal base request that led to wasting time of everyone, including the time of Smirnova.

It is well established that in Washington State:

> Awards reversed on review do not bear interest….[I]nterest runs from the date of the original judgment where the appellate court "merely modifies the trial court award…," while interest runs from the new judgment where the court "has reversed the trial court judgment and directed that a new money judgment be entered…". Fisher Properties v. Arden-Mayfair, Inc., 115 Wn.2d 364, 798 P.2d 799, (1990); Humphrey Indus., Ltd. v. Clay St. Assocs. 176 Wn.2d 662, 295 P.3d 231, (2013).

Whether the 2021 judgment was to be modified or reversed should be defined by the Court of Appeals. The Court of Appeals issued the unpublished opinion (No. 81937-2-I, "the Opinion") stating [CP 408]:

1: Smirnova stating that the interest was catalyzed because of Bian payment of $25, 000.00 on December 27, 2022 was untrue, because the interest was added in the Complaint to Foreclose Bian's property filed in another trial court on December 5, 2022, which led to Notice of Appeal to stay the enforcement of the foreclose before a decision of the Motion for reconsideration.

> Because the record fails to establish that the trial court **determined** the award was equitable and just, as required by RCW 7.28.083(3), we **reverse** the award of attorney fees and remand…

The Opinion clearly states that the award of attorney fees in the 2021 judgment was reversed and never states it was affirmed or to be modified.

The clause in the authority of Fisher Properties shows that a reviewing court must know that there is a legal base when mandating a trial court to enter a new money judgment, and the reversal of original judgment is for the trial court to determine certain issues. Logically, any money judgment entered after prior reversal is a new money judgment unless the reviewing court directs to modify it by "simple mathematical computation", Fisher Properties, which (and only which) excludes the "reversal" definition in the authority context. Any new money judgment mandated to enter by a reviewing court after the reversal of its prior judgment must have its legal base (no exception). By Smirnova's logical, any reversed judgment

to a new money judgment should bear interests back to the day when a trial court decides to award attorney fees. This is not what the Washington law has been developed.

In the case of Fisher Properties, the Supreme Court clearly indicated that whether interest should be calculated from original or new judgment depended on whether the trial court did a "simple mathematical computation" or excised its discretion for the new money judgment. If the trial Court exercised its discretion for the new Judgment, the interest must run from the new Judgment. Fisher Properties court also "noted that the fact that the trial court awarded the same amount as in its first judgment was irrelevant for purposes of determining whether the trial court had exercised its discretion." Deep Water Brewing, LLC v. Fairway Res. Ltd. 170 Wn. App. 1, 282 P.3d 146 (2012). The Supreme Court in Fisher Properties did not classify discretions by denying, confirming, or justifying as the qualified discretion. As long as it was a "determination", not a "simple mathematical computation", by the trial court, it was

the discretion, by which the interest should start from the new judgment. By the court of Fisher Properties, the "use of remand term '**determine**' required the trial court to enter new findings and exercise discretion". Deep Water Brewing, LLC. This indicates that as long as a reviewing court uses the term of "determine", the trial court must excise its discretion, no matter whether the determined result is the same or different amount from reversed judgment. The hearing for the postjudgment was a discretion, not a "simple mathematical computation", and thus, the judgment entered after the hearing is a new money judgment and the interest should start from this new judgment.

Smirnova also messed around interest **rate** and the **time** bearing the rate. Bian did not object the interest rate, but objects the time bearing interest. Smirnova should not confuse the interest **rate** and the **time** bearing interest in the Answer.

Smirnova should also realize that the interest starting from new money judgment is the law. It is not decided by personal sense reasoning as so-called "equitable", especially at

where a presenter makes reversible mistakes by aggressively pursuing everything that may not belong to him or her. Granting a petition for review or a cross-petition for review is for law consistent in this State, not to entitle someone's personal sense or reasoning, which should already be briefed in the Court of Appeals; therefore, a conflict with a published opinion is required for review by this Court. However, Smrinvoa did not show at least one of such conflict in her cross-petition, and the cross-petition, thus, has no any legal base to be reviewed.

IV. REQUESTING ATTORNEY FEES FOR ANSWERING THE PETITION VIOLATES RAP 18.1(J)

Smirnova claimed:

> "Smirnova should also be granted an award attorneys' fees and costs incurred in responding to this Petition for Review under RCW 7.28.083(3) and RAP 18.1(j)."

RAP 18.1(j) states (bold added):

> **If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and** if a petition for review to the Supreme Court is subsequently denied,

> reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review.

That attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals is one of the prerequisites for requesting attorney fees. Without this prerequisite, requesting attorney fees is an abuse or violation of 18.1(j).

The reason that a request for attorney fees in an answer is only permitted if the Court of Appeals awarded fees should be obvious: due process. Because the denial of attorney fees in the Court of Appeals, Smirnova could not request attorney fees in the Answer, unless it was by way of seeking review from this Court if the Court of Appeal abused manifestly within its discretion in its fee decision. For this reason and the plain language Smirnova used, a right to request attorney fee becomes a new issue to argue and Bian should have an opportunity to present arguments to the new issue raised created in the Answer. However, at this situation, Bian will not present any argument, but would like only to point out one thing below.

Before the request, it is the duty of Smirnova to justify that the Petition for Review was unnecessary, or to clarify the issues presented in the Petition for Review are meritless. However, in the Answer, there is no "responding to [the issues raised in] the Petition for review", not to speak of proving the speific issues are unnecessary or meritless. Following examples the non-responding to the issues in the Petition:

Smirnova did not respond to **issues A** and **B** (Section I) specifically, where Bian presented that there was no analysis, comment or finding and law conclusion for the specific discountable hours on the unsuccessful claim or unproductive efforts spent on the revered order for attorney fees, in the record, judgments and the opinions.

Smirnova did not respond to **issue C** where Bian presented that there was (is) no rule, statute or published opinion to allow an award by one court to another independent and closed case where no party prevailed (see AllianceOne Receivables Mgmt., Inc. v. Lewis, 180 Wn.2d 389, 325 P.3d 904, (2014)). Whether

the award was in conflict with CR 41b(2)(A) which requires the closure was "without prejudice and without cost to any party, and with RCW 7.28.083(3) where the statute [2] requires "considering all the facts" (**Issue D**) and Smirnova did not respond how the courts considered why the 18-case discovered no story of "original fence" but this case created the story that was the sole base to prevail in this case.

Smirnova did not respond to any of the **issues F, G, H, I** and **J**. (omitted the details).

Each of the issues in the Petition was very specific, one must also specific in showing if it is meritless.[3] The non-responding to all the issues whether they are meritless or unnecessary indicates no contribution to that if the petition would be denied. Thus, it is further shown that the request for attorney fees is baseless.

2: Bian believes conflict with a statute is as serious as a conflict with a published opinion. But it is not fitted into RAP 13.4(b)(1), (2) or (3). He also believes violating a statute involves an issue of substantial public interest and it should be applied to RAP 13.4(b)(4), although Smirnova does not believe violation of the statute is important.

V. CONCLUSIONS

Smirnova requests reviewing the interest on the original judgment has no legal base because of no conflict.

Smirnova requesting "attorneys' fees and costs in answering the Petition is an abuse of RAP 18.1(j). It is baseless also because the Answer did not prove the petition meritless because of no responding to the specific issues in the Petition. It should be denied.

Respectfully submitted, this 16th day of February, 2023.

WCCR 59 requires "[a] party should not file a response to a motion for reconsideration unless the Court requests a response". Since Smirnova filed a response to the motion for reconsideration in 2020. Bian requested the trial court remove the time on the response in his filing the hearing. The trial court refused it with a reason that Bian did not object the response filing then. Bian does not agree with the reason but accepted the inclusion of the time, because the trial court ruled it very SPECIFIC and Bian has a reason to persuade himself that the trial court being just even though the time was on violation of the local court rule.

I, Jinru Bian, certify that the total number of the words in this REPLY is 2180 (allowed 5000).

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JINRU BIAN

February 16, 2024 - 10:23 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,683-8
Appellate Court Case Title:	Jinru Bian v. Olga Smirnova and John Doe Smirnova
Superior Court Case Number:	20-2-00253-1

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CERTIFICATE OF SERVICE

I, JINRU BIAN certify under penalty of perjury under the laws of the State of Washington that on the 16th day of February 2024, I caused to be served a true and correct copy of the preceding documents:

1. **REPLY TO Olga Smirnova's Answer To Jinru Bian's Corrected Petition For Discretionary Review**

on the parties listed below at their email addresses of record via Email:

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