Supreme Court No. _____

COA No. 852051

SUPREME COURT OF THE STATE OF WASHINGTON

VP Elite Construction, LLC,

Petitioner,

v.

2400 Elliott, LLC,

Respondent.

PETITION FOR REVIEW

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TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

CASES **PAGES**

STATUTES

RULES

OTHER

I. INTRODUCTION

This Court is asked to accept review of a Court of Appeals Decision sanctioning (through the imposition of attorney's fees and costs under RAP 18.9) a mechanic's lien holder who did not provide a release of lien after the lien had expired by operation of law. Under RCW 60.04.141—a self-executing statute—where the lien claimant files no action to enforce the lien within eight calendar months after the claim of lien has been recorded, the claimant's lien rights fully expire by operation of law and the lien no longer binds the real property. It necessarily follows that, if the expired, void, and unenforceable lien no longer binds the real property, the lien claimant has no *legal* obligation to execute a release of the rights it no longer has by recording release of the void lien.

Mr. Petro Tomiev and Mr. Andrey Miroshnik are immigrants from Ukraine and the owners of VP Elite Construction, LLC ("VP Elite"), which they formed to survive, become contributing citizens of, and make a living in the U.S.

by providing construction services to those in need. As immigrants, they still struggle with the English language.

Here, VP Elite recorded a lien against certain property owned by 2400 Elliott, LLC ("2400 Elliott"). It took no further action, and all lien rights expired under RCW 60.04.141. When 2400 Elliott asked VP Elite to release the expired lien, VP Elite did not respond. 2400 Elliott sued VP Elite "For Release of Lien and Declaratory Judgment,"[1] seeking: (1) under the first cause of action, entitled Release of Lien (RCW 60.04.071), an order compelling VP Elite to deliver a release of the expired lien to clear title," even though the lien was void; and (2) under the second cause of action, entitled Declaratory Relief, a "declaration that VP Elite's Claim of Lien has expired an no longer burdens the Property, and that VP Elite has no further lien or right of lien against the Property," even though the lien statute already states the lien no longer burdens the property.

On November 21, 2022, after VP Elite inadvertently did

[1] CP at 18-25.

not respond to the lawsuit due, in part, to the misunderstanding of the paperwork,[2] 2400 Elliott took a default against VP Elite.[3] VP Elite quickly retained counsel.[4] On December 12, 2022, VP Elite's counsel appeared in the case informally by contacting 2400 Elliott's counsel regarding a possible resolution.[5] On March 13, 2023, VP Elite's counsel learned that 2400 Elliott would not agree to set aside the default voluntarily.[6]

On March 21, 2023, VP Elite promptly filed a motion to vacate under CR 60,[7] which the trial court denied on the grounds that "VP failed to bring its Motion within a reasonable time."[8] Citing 2400 Elliott's speculative regarding a title company's possible refusal to insure without a release of the expired lien as decision for the argument that the lien constituted a cloud on title, the Court of Appeals affirmed the trial court's order. AP 1-8.

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[2] CP at 177-181.
[3] CP at 126-130.
[4] CP at 177-181.
[5] CP at 186-187; CP at 173.
[6] CP at 173.
[7] CP 164-196.
[8] CP at 239-241.

The Court is asked to accept review to decide whether an expired lien, which is void by operation of Washington law, constitutes a cloud on title as the Court of Appeals concluded. As this Court has held, where a party shows a strong or virtually conclusive defense to the opponent's lawsuit, a motion to vacate should be granted if it is filed within the one-year period of CR 60(b)(1). *White v. Holm*, 73 Wn.2d 348, 352 (1968). *See also Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 95 Wn. App. 231, 243 (1999) (citing *Suburban,* 72 Wn. App. 302, 306 (1993)). Here, VP Elite had a conclusive defense because VP Elite had no *legal* duty to release the rights it no longer had by recording a release of the lien, which was void and no longer encumbered the real property.

This Court should accept review of this matter under RAP 13.4 as equating a title company's underwriting decision as the equivalent of the legal determination that a matter constitutes a cloud on title is error. Such a ruling gives title insurance companies too much power on such issues and essentially

supplants the role of the courts in making such determinations. And, the decision below conflicts directly with, *inter alia*, *Barstad v. Stewart Title Guar. Co., Inc.*, 145 Wn.2d 528 (2002), which holds, under RCW 48.29.010, that a commitment to issue a title insurance policy from a title insurance title company **"is not a representation as to the condition of the title to real property**, but is a statement of terms and conditions upon which the issuer is willing to issue its title policy, if the offer is accepted."[9] The decision below essentially upends *Barstad* given the provisions of GR 14.1. This Court should accept review and affirm the principles of *Barstad* and RCW 48.29.010.

II. IDENTITY OF PETITIONER

VP Elite seeks review of the decision issued below.

III. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals' unpublished decision filed on March 4, 2024. (Appx. A) (*2400 ELLIOTT, LLC v. VP Elite Constr., LLC*, 85205-1-I, 2024 WL

[9] Emphasis added.

913847 (Wash. Ct. App. Mar. 4, 2024)). The Court of Appeals denied the Motion for Reconsideration on April 2, 2024.

IV. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals err in affirming the trial court's decision denying VP Elite's motion to vacate and concluding that VP Elite failed to file its motion to vacate within a "reasonable time when the Court of Appeals concludes that the lien statute imposes no obligation to provide a lien release; VP Elite has a conclusive defense to 2400 Elliot's action; and VP Elite filed its motion to vacate within the timeframe prescribed by CR 60?
2. Does the Court of Appeals err, in conflict with *White*, by failing to first determine whether VP Elite had a strong or conclusive defense to the action before inquiring into the reasons that occasioned entry of default and whether VP Elite filed its motion to vacate within a "reasonable time"?
3. Does the Court of Appeals err by failing to consider that the trial court failed to determine whether VP Elite had a strong

or conclusive defense and instead determined only whether VP Elite filed its motion to vacate within a reasonable time, thereby misapplying the law and abusing its discretion?

4. Does the Court of Appeals err in relying on a title company's misconstruction of an expired lien for the conclusion that an expired lien can serve as a cloud on title and, therefore, create a direct conflict with *Barstad*.
5. Does the Court of Appeals err in ignoring the record before it when, if it considered all the facts before it—including that VP Elite did explain the delay in challenging the fee order and why it waited until it did to file its motion to vacate; that 2400 Elliott's lawsuit for the release of the lien and attorney fees was premised on a statutory obligation that did not exist; and that 2400 Elliott's cause of action for declaratory relief lacked lack of any justiciable controversy and did not seek a release of the lien or attorney fees and costs that—it could not have reached its conclusion?

6. Does the Court of Appeals err in imposing sanctions for filing a frivolous appeal and conflict with the decisions of this Court and the Court of Appeals on this issue?
7. If the trial court's default judgment is reversed, should all orders following that default be reversed, including the fee order in favor of 2400 Elliott, so that the parties' rights are left as though the default had never been entered?

V. STATEMENT OF THE CASE

Like the trial court, the Court below failed to correctly consider and apply the *White* test, which the decision below does not even mention, and which requires that, in determining whether a party is entitled to vacation of a default judgment, the court first determine whether a party can demonstrate the existence of a strong or virtually conclusive defense before engaging in any further inquiry.[10] Rather, the Court below first considered whether VP Elite failed to file its motion to vacate

[10] *White v. Holm*, 73 Wn.2d 348 (1968).

within a "reasonable time."[11] Disregarding the sequence of the *White* test, the Court below only later considered VP Elite's defense, incorrectly concluding that VP Elite "had *no defense*":

> "Here, VP Elite conceded that its lien had expired and "was absolutely *void* and no longer bound" 2400 Elliott's property. Throughout its briefs in this court, VP Elite characterizes this concession as a "virtually conclusive defense" to 2400 Elliott's lawsuit. This characterization is not reasonable. Although VP Elite is correct that its lien had clearly expired under RCW 60.04.141, which imposes no obligation to provide a lien release, 2400 Elliott's lawsuit was not premised on a statutory obligation to deliver a lien release. Instead, 2400 Elliott sought equitable and declaratory relief because VP Elite's recorded lien notice remained a potential cloud on title even if the underlying lien was clearly invalid. To this end, VP Elite's own counsel confirmed in a declaration submitted in support of the motion to vacate that at least one title company has incorrectly construed a recorded lien notice as valid even when it was not, thus requiring his intervention. Far from establishing a conclusive defense, the record shows that VP Elite had *no defense*. *See Robinson v. Khan*, 89 Wn. App. 418, 423, 948 P.2d 1347 (1998) (cloud on title is anything "'that has a tendency, *even in a slight degree*, to cast doubt upon the owner's title'" and includes an "'encumbrance which is actually invalid or inoperative, but which may nevertheless impair the title to property'" (emphasis added) (quoting *Whitney v. City of Port Huron*, 88 Mich. 268, 272, 50 N.W. 316 (1891); 65 AM. JUR. 2D *Quieting Title* § 9, at 148 (1972)). This was an

[11] *Slip Op.* at 4.

> independent reason for the trial court to deny VP Elite's motion to vacate as it pertained to the default judgment. The trial court did not abuse its discretion."

Slip Op. at 6-7.

VI. ARGUMENT FOR GRANTING REVIEW

A. Criteria for discretionary review.

The decision upends *Barstad* given the provisions of GR 14.1. The decision further conflicts with other prior opinions of this Court, including in *White* and *Davis*, and with prior Court of Appeals' decisions, including in *Shepard* and *Suburban*; and it involves significant issues of public interest. Under RAP 13.4(b), this Court should accept review and affirm the principles of *Barstad*, and RCW 48.29.010.

B. The Opinion Conflicts with Case Law Holding That, In Determining Whether a Party Is Entitled to Vacation of a Default Judgment, The Initial Inquiry Is Whether the Defendant Can Demonstrate the Existence of a Strong or Virtually Conclusive Defense.

In *TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.*, 140 Wn. App. 191 (2007) (citing *Johnson v.*

Cash Store, 116 Wn. App. 833, 841-43 (2003), which the decision below cites, Division I reiterated "the test established in *White*," namely, that "the court should first inquire whether the defendant has demonstrated the existence of a strong or virtually conclusive defense or, alternatively, the existence of a prima facie defense to the plaintiff's claims." *Id.* at 201. Critically, "[t]he nature of the trial court's further inquiry depends upon its determination of that question." *Id.*

As stated, "***where the moving party is able to demonstrate a strong or virtually conclusive defense to the opponent's claim, scant time will be spent inquiring into the reasons which occasioned entry of the default***[.]" *White*, 73 Wn.2d at 352. Likewise, Division I has also held that "***where a party moving to vacate a default shows a strong defense and the cause of the error is understandable, a motion to vacate can be granted if it is filed within the one year period of CR 60(b)(1) even where the moving party has been less***

than totally diligent." *Shepard Ambulance,* 95 Wn. App. at 243 (1999) (citing *Suburban,* 72 Wn. App. at 306).

As an initial matter, directly contrary to *TMT*, the very case it cites, the opinion below fails to first consider whether VP Elite can demonstrate the existence of a strong or virtually conclusive defense. Rather, the decision below incorrectly first heavily focuses on whether VP Elite failed to file its motion to vacate within a "reasonable time."[12] (Notably, while the decision below does later consider the conclusive defense issue, thereby misapplying the *White* test, the trial court never even determined whether VP Elite demonstrated a strong or conclusive defense,[13] and, therefore, abused its discretion.[14]) In

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[12] *Slip Op.* at 4.

[13] CP at 329-241. Noticeably absent from the order is any finding or conclusion as to the conclusive defense argument.

[14] A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds, or for untenable reasons. *Showalter v. Wild Oats,* 124 Wn. App. 506, 510 (2004). It is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wn. App. 786, 793 (1995) (citing WASHINGTON STATE BAR ASS'N,

doing so, stating that VP Elite "did not explain why VP Elite waited another three months to seek relief,"[15] the Court below also ignores the record of VP Elite's attempts to reach 2400 Elliot's counsel during this timeframe for purposes of possibly reaching a resolution to minimize party and court resources,[16] which does explain the delay. And, in stating that VP Elite "did not address, much less explain, VP Elite's delay in challenging the fee order," the Court below ignores the record of 2400 Elliott not providing a copy of the fee order, which 2400 Elliott obtained on December 14, 2021,[17] to VP Elite's counsel until March 13, 2022,[18] even though VP Elite's counsel had informally appeared in the case on December 12, 2021.[19]

WASHINGTON APPELLATE PRACTICE D ESKBOOK § 18.5 (2d ed.1993)), *review denied*, 129 Wn.2d 1003 (1996).

[15] *Slip Op.* at 4.

[16] CP at 173; CP at 185.

[17] CP at 156-160.

[18] CP at 167-168.

[19] CP at 186-187; CP at 173. A party that substantially complies with the appearance requirement is entitled to notice. *Morin v. Burris*, 160 Wn.2d 745, 755 (2007). A defendant need not strictly follow CR 4(a)(3) or RCW 4.28.210. *Servatron, Inc. v.*

In any event, ignoring the prescribed sequence of the *White* test, the Court below incorrectly considered whether VP Elite's had a conclusive defense only after it had already (incorrectly) concluded that VP Elite failed to file its motion to vacate within a reasonable time,[20] referring to the consideration of the nature of the defense as simply "an independent reason" for the trial court to deny VP Elite's motion to vacate, which decision ignores not only that the trial court had failed to even determine whether VP Elite had a strong or conclusive defense, but also that this inquiry had to have been the key "initial" inquiry controlling any and all further inquiries.

C. The Opinion Conflicts with Case Law Holding That an Expired Lien Under RCW 60.04 Is Void and Does Not Bind the Real Property.

Under the lien statute, "No lien created by this chapter binds the property subject to the lien for a longer period than

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Intelligent Wireless Products, Inc., 186 Wn. App. 666, 675 (2015). Substantial compliance with the appearance requirement may be satisfied informally. *State v. Superior Court of Clallam Cty.*, 52 Wn. 13 (1909).

[20] *Slip Op.* at 4.

eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien." RCW 60.04.071. Notably, the lien statute does not require the lien claimant to release the claim of client if the lien claimant does not file an action within the required timeframe and otherwise lets the claim of lien expire, because the lien automatically expires by operation of law.

This Court held in *Davis* that "*the lien expires by force of the statute* unless action be commenced within the statutory time."[21] Further, Division II has noted that courts have consistently followed *Davis*:

> "By its 1992 amendment, the legislature simplified the procedure to create a valid lien. It did so by allowing the lien claimant to create a valid lien by serving the owner rather than all necessary parties. But the legislature did not address the *Davis* holding that ***a lien becomes void as to any party not served within eight months*** and 90 days. And courts have consistently followed *Davis.* "[22]

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[21] *Bob Pearson Const., Inc. v. First Cmty. Bank of Washington*, 111 Wn. App. 174, 178 (2002) (citing *Davis v. Bartz*, 65 Wn. 395, 397 (1911) (emphasis added)).
[22] *Id.* (emphasis added).

Because VP Elite's Claim of Lien expired after eight months, it was void and no longer bound the 2400 Elliot's real property. *See also Diversified Wood Recycling, Inc. v. Johnson*, 161 Wn. App. 891, 902 (2011) (The claimant must file suit within 8 months of recording the lien or else the lien will expire); *Schumacher Painting Co. v. First Union Mgmt., Inc.*, 69 Wn. App. 693, 700 (1993) (lien expired and foreclosure action was void); *Geo Exch. Sys., LLC v. Cam*, 115 Wn. App. 625, 630 (2003) (if an action is not filed within eight months, the right to recover on the recorded lien expires); *Curtis Lumber Co. v. Sortor*, 83 Wn.2d 764, 767 (1974) (according to the statutory language the lien expires eight months after filing of claim of lien unless an action to foreclose is commenced). *Milwaukie Lumber Co. v. Veristone Fund I, LLC*, 16 Wn. App. 2d 1090, *review denied sub nom. Lumber v. Veristone Fund I, LLC*, 198 Wn.2d 1013 (2021) (to prevent expiration of a valid lien, the lien claimant must file a lawsuit within 8 months of recording); *Hindman Constr., Inc. v. Boos*, 25 Wn. App. 2d

1043 (2023) (merely recording a lien does not ensure a claimant's right to recover; they must initiate a legal action within eight months or their right to recover on the recorded lien expires). *Shelcon Const. Grp., LLC v. Haymond*, 187 Wn. App. 878, 899 (2015) (a specific lien claim expires within the eight-month period under RCW 60.04.141).

Accordingly, Washington case law is clear: Although an expired lien, like all recorded documents, is a matter of public record, it is without force or effect and, under the self-executing lien statute, constitutes and can constitute no cloud—not even in the slightest degree—on 2400 Elliot's real property's title. As a result, VP Elite had no legal obligation to record a release of the lien rights VP Elite no longer had once its lien expired.

But, the decision below conflicts with this case law and is internally contradictory. As an initial matter, the Court below actually rules on the key dispositive issue in favor of VP Elite. Specifically, 2400 Elliott's lawsuit was mainly, if not entirely, premised on the misplaced notion that VP Elite was required to

deliver a release of the lien after it had expired. CP at 18-25.[23] Despite 2400 Elliot's claims to the contrary, the Court below concludes that the lien statute "imposes no obligation to provide a lien release."[24] This conclusion is fatal to 2400 Elliot's lawsuit because it expressly confirms the very existence of a conclusive defense to both of 2400 Elliot's causes of action.

Specifically, 2400 Elliott's *Amended* Complaint for Release of Lien and Declaratory Judgment's ("Amended Complaint") first cause of action is entitled "**FIRST CAUSE OF ACTION – RELEASE OF LIEN (RCW 60.04.071).**" *Id.*[25] As to 2400 Elliott's second cause of action, entitled "**SECOND CAUSE OF ACTION – DECLARATORY**

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[23] *See also, generally*, Brief of Respondent ("VP Elite Raises No Valid Defense Against the Claim to Compel Deliverance of a Lien Release.") *See also* CP at 207 ("Rather than assert any defense, it simply claims that a lawsuit is unnecessary because an expired lien does not burden the property and therefore VP Elite should not have to record or deliver a release of lien. However, it is no defense to a claim that the defendant does not believe the claim is necessary to accomplish the plaintiff's purpose.")

[24] *Slip Op.* at 6.

[25] Emphasis added.

RELIEF," this cause of action did not seek any order requiring any release of the lien or award of attorney fees.[26] Rather, this second cause of action merely and (needlessly) sought a virtually verbatim declaration of what the lien statute already provides by operation of law, namely: "Plaintiff is entitled to a declaration that VP Elite's Claim of Lien has expired and no longer burdens the Property, and that VP Elite has no further lien or right of lien against the Property."[27] 2400 Elliott's Amended Complaint asserts no other causes of action. In short, 2400 Elliott's demand that VP Elite be ordered to deliver a release of the (expired) lien and to pay 2400 Elliott's attorney fees was premised on the first cause of action, which asserted a statutory obligation based on the lien statute, and not on the cause of action for declaratory relief. Indeed, 2400 Elliott's "**Prayer For Relief**" confirms that the sought relief with regard to a release of the lien was under "RCW 60.04.071 and RCW

[26] CP at 18-25 (Amended Complaint, ¶¶ 7.1-7.6).
[27] CP at 18-25 (Amended Complaint, ¶¶ 7.6).

60.04.141" and with regard to "reasonable attorneys' fees" under "RCW 60.04.071 and RCW 60.04.181,"[28] all of which was clearly premised on a claimed statutory obligation.

But, the Court below ignores this record by stating that "2400 Elliott's lawsuit was not premised on a statutory obligation to deliver a lien release. Instead, 2400 Elliott sought equitable and declaratory relief because VP Elite's recorded lien notice remained a potential cloud on title even if the underlying lien was clearly invalid."[29] Having concluded that lien statute "imposes no obligation to provide a lien release" and, therefore, confirmed the very existence of a conclusive defense to 2400 Elliott's action, the decision below conflicts with *White*, *Shepard*, *Suburban* and related case law, which would require a reversal of the trial court's order denying VP Elite's motion to vacate, which was brought in less than a year.

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[28] CP at 18-25.
[29] *Slip Op.* at 6-7.

The decision below also ignores the decisions of this Court and the Court of Appeals that a 'justiciable controversy' must exist (but which are absent in 2400 Elliott's Amended Complaint) before a court's jurisdiction may be invoked under the Uniform Declaratory Judgments Act. *DiNino v. State,* 102 Wn.2d 327, 330 (1984). This Court has made this requirement quite clear: "we have resolutely maintained that no decisions should be made under the Act absent a 'justiciable controversy.' " *To–Ro Trade Shows v. Collins,* 144 Wn.2d 403, 417 (2001) (alteration in original) (quoting *Seattle Sch. Dist. No. 1 of King County v. State,* 90 Wn.2d 476, 490 (1978)). Our authority is limited to resolving justiciable controversies because, otherwise, we "step [ ] into the prohibited area of advisory opinions." *DiNino,* 102 Wn.2d at 331; *accord Branson v. Port of Seattle,* 152 Wn.2d 862, 877 (2004); *Bloome v. Haverly,* 154 Wn. App. 129, 141 (2010). Here, noticeably absent from 2400 Elliott's second cause of action is any

justiciable controversy.[30] By 2400 Elliott's own admission, VP Elite did not even dispute that its lien expired or otherwise claim that VP Elite's lien still bound the property.[31] And, when 2400 Elliott moved for default, 2400 Elliott presented to the trial court no evidence of any justiciable controversy regarding the lien's validity. CP at 26-30.[32] In short, the absence of a 'justiciable controversy' independently rendered VP Elite's defense to 2400 Elliot's second cause of action conclusive.

The decision below is also internally contradictory: It specifically holds that the lien statute does not require VP Elite to provide a lien release and yet simultaneously effectively holds that VP Elite was required to provide a lien release because 2400 Elliot "sought equitable and declaratory relief,"[33]

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[30] CP at 18-25.
[31] *See*, e.g. CP at 207 ("VP Elite concedes, as it must, that its lien has expired").
[32] While VP Elite had not yet appeared or defended against the action, the trial court nonetheless had an obligation to ensure that its default order with regard to the second cause of action was supported by the record. It was not.
[33] *Slip Op.* at 6-7.

which cause of action did not seek this particular relief. Further, the lien statute does not require a lien claimant to provide a release of an expired lien for obvious reasons: It would be absurd and otherwise improper, as a matter of law, to require a lien claimant to release a void, expired, and unenforceable lien. Specifically, *release*, as compared, for example, with waiver,[34] relates to the law of contracts and gives effect to ***an intentional relinquishment of rights in exchange for consideration***. *See Voelker v. Joseph*, 62 Wn.2d 429, 435 (1963); *Bowman v. Webster*, 44 Wn.2d 667, 670 (1954). Under the lien statute's plain and unambiguous language, the lien will encumber the owner's property for eight months only, unless within that eight months period the claimant sues to foreclose the lien. RCW 60.04.141. Therefore, if the clamant files no lawsuit to

[34] Waiver is an equitable principle that gives effect to a person's intentional relinquishment of a known right, either through positive action or by failing to assert available remedies. *See Schroeder v. Excelsior Management Group, LLC*, 177 Wn.2d 94, 106 (2013); *Albice v. Premier Mtg. Serv. of Wash.*, 174 Wn.2d 560, 569 (2012).

foreclose the lien within that eight months period, the claimant's lien rights expire and become void. It follows that, after that eight months period, unless the claimant has sued to foreclose the lien, the claimant simply has no lien rights to release. It would be absurd and legally untenable to require someone to release that which he or she does not have.[35] *See State v. Barber*, 170 Wn.2d 854, 864 (2011) (decision may be incorrect if inconsistent with precedent, constitution or statutes, policy concerns, or "if it relies on authority to support a proposition that the authority itself does not actually support"). By holding that VP Elite had no defense, the Court below effectively held that VP Elite, whether it be for equitable reasons or otherwise, had a duty to release the expired lien, and, therefore, that VP Elite had duty to release that which VP Elite did not have—which decision conflicts with *Voelker*, *Bowman*, *Schroeder*, and *Albice* with regard how a release operates.

[35] When interpreting a statute, the court has duty to avoid absurd results. *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 433 (2012).

The Court below mistakenly applies *Robinson v. Khan*, 89 Wn. App. 418 (1998) to this case for the proposition that "cloud on title is anything 'that has a tendency, *even in a slight degree*, to cast doubt upon the owner's title' and includes an 'encumbrance which is actually invalid or inoperative, but which may nevertheless impair the title to property.'" But, *Robinson* involved a real property title dispute arising from an agreement between the Robinsons and the Khans where the Khans, without notifying the Robinsons, recorded the written agreement in King County. *Robinson*, 89 Wn. App. at 419. Unlike in VP Elite's case, there was no statute or a decision of this Court declaring to the universe that the agreement did not bind the real property. In fact, unlike a lien under RCW 60.04, *Robinson* noted that the agreement was "not the type of document the Khans have a recognized right to record." And, this Court has held that an encumbrance is "a burden upon land depreciative of its value, such as a lien, easement, or servitude, which, though adverse to the interest of the landowner, does not

conflict with conveyance of the land in fee." *Moeller v. Good Hope Farms*, 35 Wn.2d 777, 785 (1950). This definition emphasizes the depreciative effect on the land's value as a critical component. Yet, as this Court and the Courts of Appeals have held consistent with the lien statute, when a lien expires under RCW 60.04.141, it completely ceases to be a burden, claim, charge, or otherwise an encumbrance on the property. Consequently, it no longer diminishes the value of the land. Therefore, despite a lien otherwise typically being considered an encumbrance, once it has expired, it no longer fulfills all the criteria of the definition, including the requirement of depreciating the land's value. Additionally, this Court in *Stone v. Sexsmith*, 28 Wn.2d 947 (1947), reinforced this concept by stating that an encumbrance is any right to, or interest in, land that may subsist in third persons to the diminution of the value of the estate of the tenant but consistently with the passing of the fee. Since an expired lien does not continue to subsist as a right or interest in the land, it is not an encumbrance and cannot

"even in a slight degree" impair the owner's title. Critically, if that were not the case, RCW 60.04.141's language that an expired lien no longer binds the property would be meaningless, yet the principle that a court should not interpret statutes in a way that would render their language meaningless is well established in case law. *See Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 963 (1999). Thus, the decision below conflicts with the above case law because it holds that an expired lien is somehow still an encumbrance when it is not.

While the decision below pointed out that VP Elite's own counsel confirmed in a declaration submitted in support of the motion to vacate that at least one title company had incorrectly construed a recorded lien notice as valid even when it was not, the decision below conflicts directly with *Barstad*, which holds, under RCW 48.29.010, that a commitment to issue a title insurance policy from a title insurance title company **"is not a representation as to the condition of the title to real property**, but is a statement of terms and conditions upon

which the issuer is willing to issue its title policy, if the offer is accepted."[36] The decision below essentially upends *Barstad* given the provisions of GR 14.1. Nor can a title company's ignorance of the law or confusion about the validity of a lien create a cloud on title as it does not alter the statutory requirements for determining a lien's validity or directly affect the property's value. For example, the title company might have a new employee who lacks sufficient knowledge or experience and inadvertently flags an expired lien, which, in fact, can occur even if a release is recorded but which the title company erroneously misses as part of its title investigation. A cloud on title refers to any claim or potential claim that affects the title to the property, and an expired lien does not and cannot affect the title to the property. Additionally, under RCW 60.04.141, a lien expires if the lien claimant does not timely serve the property owner with the summons and complaint. The title company's confusion or interpretation does not factor into this process.

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[36] Emphasis added.

And, lien rights are strictly statutory, meaning any party asserting a lien claim must demonstrate that all the statutory requirements have been satisfied. *See Dean v. McFarland*, 81 Wn.2d 215, 220, (1972) (lien statute must be strictly construed to determine whether a lien attaches). As such, it is not the title company's confusion but the statutory requirements that determine whether a cloud on title exists. Finally, a lien encumbers property to secure payment of a debt, and encumbrances diminish the value of the property. But, the title company's confusion about the validity of a lien does not encumber the property or diminish its value. It is the existence of a valid lien that does so, not the confusion about it.

D. These Issues Are of Substantial Public Interest.

The presence of issues of "substantial public interest" weighs in favor of this Court granting review. RAP 13.4(b)(4). Three criteria determine whether an issue is of substantial public interest:

> "(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur."

Matter of McLaughlin, 100 Wn.2d 832, 838 (1984) (accepting review of moot issues of substantial public importance); *accord*, *Leonard v. City of Bothell*, 87 Wn.2d 847 (1976) (same); *City of Bellingham v. Chin*, 98 Wn. App. 60 (1999) (accepting review of issue pertaining to whether defendant operated a public nuisance because it was a matter of substantial public interest).

Here, the issue of whether VP Elite has a conclusive defense to 2400 Elliott's lawsuit is of substantial public interest because it will determine: (1) whether those lien claimants who intentionally or otherwise allow their liens expire by not commencing a foreclosure action against the real property are at risk of being liable to the property owners for not releasing the expired liens and otherwise at risk of being subjected to litigation and attorney fees; and (2) whether property owners

still have an encumbrance on their properties' titles when a lien expires notwithstanding the lien statute's express declaration to the contrary. Again, the lien statute contains no requirement that lien claimants execute releases of liens upon expiration. Had the Legislature intended to require lien claimants to record releases of rights they do not have upon expiration those rights, it would have done so expressly.[37] It did not.

Put aside that the decision below virtually upends *Barstad*, if this Court does not grant review, this issue will surely reoccur due to the multitude of lien recordings throughout the State; the conflict the decision below now creates; the undue power it gives to the title companies; the doubt it places on the legal effect of an expired lien; and the rights of both claimants and owners.

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[37] *See In re Det. of A.S.*, 138 Wn.2d 898, 927 (1999) (had the Legislature intended to create an exception to the signature requirement, it would have done so expressly); *see also In re Detention of Swanson,* 115 Wn.2d 21, 27 (1990) (had Legislature intended initial detention period to be measured in days rather than hours, it would have said so).

Moreover, one big problem in a market where virtually anyone can become a contractor is that locating the lien claimant after eight months may be impossible. It appears that the Legislature (and this Court) had foreseen such problems and—rather wisely—declared such liens void and unenforceable, apparently to protect both property owners and lien claimants: Owners from having to spend resources on lawyers to have to track down lien claimants and wastefully seek declaratory judgments (as is the case here); and lien claimants from having to remember to absurdly release the rights they no longer have or risk liability for clouding titles.

Additionally, a claimant that receives no payment for work completed generally has no incentive to release the lien before it expires. For example, the claimant may have a reason to wait until the last day to file a lawsuit, especially if the claimant is in active negotiations with the owner and/or the party indebted to the claimant. Yet, if the claimant must release the lien immediately upon expiration to avoid liability, that

means that, if the claimant is one minute late in doing so, the claimant is subject to liability for clouding the property owner's title with an expired lien. The decision below creates an improper chilling effect forcing claimants to release their valid liens before the eight months period to avoid risking liability to the property owners, which now also means that they have less rights and less time to act than the statute otherwise allows.

In the absence of a reversal by this Court, a lien claimant is subject to significant exposure if the lien claimant chooses not to enforce the lien by simply letting it expire because the lien claimant could get sued the next day, for "equitable and declaratory relief" or otherwise. Worse yet, in the absence of such a decision, the decision below can lead to a "flood gate of litigation" by property owners against every claimant whose lien has expired but who has recorded no release at this time.

E. The Opinion Also Conflicts with Case Law Holding That an Appeal Is Frivolous If The Appeal Presents No Debatable Issues Upon Which Reasonable Minds Might Differ.

"An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." *Advocates for Responsible Dev. v. W. Washington Growth Mgmt. Hearings Bd.*, 170 Wn.2d 577, 580 (2010); *see also Seattle Iron & Metals Corp. v. Lin Xie*, 169 Wn. App. 1032 (2012) (citing *Lutz Tile, Inc. v. Krech,* 136 Wn. App. 899, 906 (2007). "A frivolous action is one that cannot be supported by any rational argument on the law or facts." *Rhinehart v. Seattle Times,* 59 Wn. App. 332, 340 (1990). All doubts as to whether the appeal is frivolous should be resolved in favor of the appellant. *Tiffany Family Trust Corp. v. City of Kent,* 155 Wn.2d 225, 241(2005). Here, the Court below erroneously imposed sanctions under RAP 18.9 for filing a frivolous appeal. For the reasons discussed above, the issue of whether VP Elite had a defense to 2400 Elliott's action and whether VP Elite properly filed its motion to vacate is not frivolous. Even if this

Court were to hold that VP Elite's argument lacks merit, it would not be so totally devoid of merit as to be frivolous, especially because the Court of Appeals agreed with VP Elite that the lien statute imposed no obligation to record a release.

While the Court below also noted that VP Elite assigned error to an order that the Court below had ruled was not within the scope of this appeal,[38] nothing in VP Elite's opening brief was intended to violate or disregard the Court's ruling. The subject orders—Order of Default, Default Judgments, and Order Granting Motion for Attorneys' Fees, Costs, and Expenses—are underlying default orders, which led to VP Elite's motion to vacate: Neither VP Elite's motion nor the court's denying its motion would have occurred but for these orders. They constitute an integral part of this appeal and had to have been designated at least as "part of decision which the party wants reviewed." RAP 5.3(a)(3). VP Elite's appeal of the denial of the motion to vacate necessitated the inclusion of the

[38] *Slip Op.* at 8.

orders to which the motion to vacate was directed. Hence, VP Elite's properly asked that the Court below remand the case to the trial court with instructions to vacate these underlying orders. Moreover, even if assigning an error to the wrong order was frivolous, it did not alone justify the Court of Appeals in awarding sanctions under RAP 18.9(a) because the rest of the appeal was not frivolous, and raising at least one debatable issue precludes finding that the appeal as a whole is frivolous. *See Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.,* 107 Wn.2d 427 (1986). *See also Advocates for Responsible Dev. v. W. Washington Growth Mgmt. Hearings Bd.*, 170 Wn.2d 577, 581 (2010) ("Because the action was not frivolous in its entirety, if at all, the Court of Appeals should not have awarded attorney fees as sanctions.")

VII. CONCLUSION

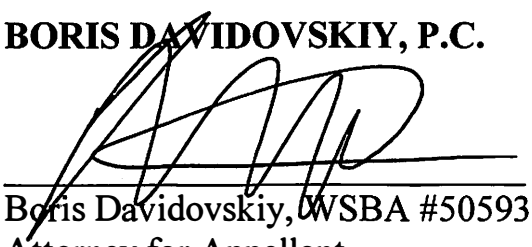
Because this case meets the criteria for discretionary review set forth in RAP 13.4(b), this Court should grant review, reverse, and remand consistent with the reversal and with directions to

vacate: (1) Order of Default; (2) Order Granting Default Judgment; and (3) Order Granting Motion for Attorneys' Fees, Costs, and Expenses. *In re Marriage of Leslie*, 112 Wn.2d 612 (1989) (a vacated judgment has no effect, and the parties' rights are left as though the judgment had never been entered).

Respectfully submitted this 2nd day of May 2024.

I certify that this document contains 4,842 words.

BORIS DAVIDOVSKIY, P.C.



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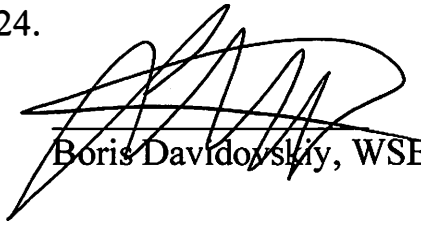
CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2024, I caused the foregoing document to be efiled with the Court of Appeals, Division I, which will send notification to all counsel of record.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Edmonds, Washington, this 2nd day of May, 2024.



Boris Davidovskiy, WSBA #50593

APPENDIX A

FILED
3/4/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

2400 ELLIOTT, LLC, a Washington limited liability company, Respondent, v. VP ELITE CONSTRUCTION, LLC, a Washington limited liability company, Appellant.	No. 85205-1-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, A.C.J. — VP Elite Construction LLC appeals an order that denied its motion to set aside an order of default, default judgment, and attorney fee award in favor of 2400 Elliott LLC. Finding no abuse of discretion in the trial court's denial of the motion to vacate, we affirm.

FACTS

On September 27, 2021, VP Elite Construction LLC recorded a notice claiming a lien against property owned by 2400 Elliott LLC under RCW chapter 60.04, mechanics' and materialmen's liens. A lien under that statute expires eight months after recording if the claimant does not sue to enforce it within that time. RCW 60.04.141. It is undisputed that VP Elite did not timely file an action to enforce its lien.

In August 2022, after unsuccessfully attempting to persuade VP Elite to file or deliver a lien release, 2400 Elliott filed the underlying action that sought a

declaratory judgment stating that VP Elite's lien had expired, an order compelling VP Elite to deliver a lien release, and an award of attorney fees and costs. On October 5, the trial court found that VP Elite had been properly served but had not timely "appeared, answered, pleaded, or otherwise defended," and it declared VP Elite in default.

On November 21, 2400 Elliott filed a motion for default judgment against VP Elite. The trial court granted the motion, declared VP Elite's lien claim "expired and unenforceable," ordered VP Elite to deliver an executed lien release within 30 days, and awarded 2400 Elliott its reasonable attorney fees and costs in an amount to be determined.

On December 1, 2400 Elliott moved to set the amount of the fee award and noted the matter for a hearing on December 14. The record reflects that 2400 Elliott mailed courtesy copies of its fee motion and the hearing notice to VP Elite's principal, Andrey Miroshnik, at the same address where VP Elite was initially served.[1] VP Elite did not oppose the fee motion and the trial court entered an order awarding 2400 Elliott attorney fees and costs totaling $28,414.51 at the conclusion of the hearing.

The record establishes that, by early December 2022, VP Elite was aware of the default judgment and its significance based on unspecified documents Miroshnik received in the mail and his consultations with counsel. More than three months later, on March 20, 2023, VP Elite's counsel filed a notice of appearance.

[1] 2400 Elliott was not required to serve its attorney fee motion on VP Elite given that it was in default. *See* CR 5(a) ("No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.").

The next day, VP Elite filed a motion to set aside the order of default, the default judgment, and the order on attorney fees and costs under CR 60. The trial court denied the motion to vacate, and VP Elite timely appealed.[2]

ANALYSIS

I. CR 60 Motion To Vacate

VP Elite contends that the trial court erred by denying the motion to vacate. We disagree.

CR 60(b) sets forth the limited circumstances under which a trial court may vacate a final judgment or order. Under CR 60(b)(1), the court may do so based on "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining [the] judgment or order."[3] A motion to vacate under this rule "shall be made within a reasonable time and . . . not more than 1 year after the judgment [or] order . . . was entered." CR 60(b).

We review a trial court's denial of a CR 60(b) motion to vacate for abuse of discretion. *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000). A trial

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[2] VP Elite's notice of appeal designated not only the trial court's order denying the motion to vacate but also the order of default, the default judgment, and the order on attorney fees and costs. A commissioner of this court dismissed the appeal with regard to these latter three orders, ruling that "[t]hese orders and judgment are not properly within the scope of review in this appeal" and "VP Elite may not challenge the order of default, the default judgment, or the attorney fee order it failed to timely appeal by appealing from the order denying a motion to vacate."

VP Elite did not move to modify the commissioner's ruling but nevertheless assigns error to the attorney fee order. We do not consider this assignment of error or the argument in support thereof. *See Hough v. Ballard*, 108 Wn. App. 272, 277 n.3, 31 P.3d 6 (2001) ("If an aggrieved party fails to seek modification of a commissioner's ruling within the time permitted by RAP 17.7, the ruling becomes a final decision of the court.").

[3] VP Elite also cites CR 60(b)(4) (fraud, misrepresentation, or other misconduct) and CR 60(b)(11) (any other reason justifying relief) in its opening brief. But, because VP Elite provides no argument related to these distinct sections of the rule, we do not address them further. *See Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011) ("We will not consider an inadequately briefed argument.").

court abuses its discretion when it exercises it on untenable grounds or for untenable reasons. *Noble v. Safe Harbor Fam. Pres. Tr.*, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009). The trial court here was well within its discretion to deny VP Elite's motion to vacate.

First, the record amply supports the trial court's finding that VP Elite failed to file its motion to vacate within a "reasonable time."[4] VP Elite was aware no later than early December 2022 that the trial court had entered judgment by default based on paperwork that 2400 Elliott mailed to Miroshnik. Additionally, Miroshnik did not deny receiving the earlier documents that the record shows were also mailed to him by 2400 Elliott, including 2400 Elliott's motion for default judgment explaining that VP Elite had been found in default. Miroshnik declared that he did not act on any previous documents he received because he did not understand them. But, he did not explain why VP Elite waited another three months to seek relief once it understood that the court had entered a default judgment, particularly given that, by the time it did so, the deadline for compliance with the judgment had already passed by more than 60 days. While VP Elite suggested that its duty to act under CR 60 was not "trigger[ed]" until 2400 Elliott responded to VP Elite's

[4] 2400 Elliott asserts that this finding and a separate finding that VP Elite failed to show grounds to vacate are verities on appeal because VP Elite did not assign error to them. Although VP Elite did not formally assign error to these findings as required by RAP 10.3(a)(4), it clearly challenged them in its opening brief, and 2400 Elliott fully responded to those challenges. Accordingly, we reach the merits of the argument. *See Goehle v. Fred Hutchinson Cancer Rsch. Ctr.*, 100 Wn. App. 609, 614, 1 P.3d 579 (2000) ("The appellate court will review the merits of the appeal where the nature of the challenge is perfectly clear and the challenged ruling is set forth in the appellate brief."); *see also* RAP 1.2(a) ("[The RAPs] will be liberally interpreted to . . . facilitate the decision of cases on the merits.").

To the extent that VP Elite argues that its motion to vacate was timely so long as it was filed within a year, it is incorrect. *See Ha v. Signal Elec.*, 182 Wn. App. 436, 454, 332 P.3d 991 (2014) ("A motion to vacate under CR 60(b)(1) must be filed within a reasonable time *and* within one year from the judgment." (emphasis added)).

request to voluntarily set aside the default, the trial court was well within its discretion to reject this attempt to place the burden to act on 2400 Elliott. *See Ha v. Signal Elec.*, 182 Wn. App., 436, 454, 332 P.3d 991 (2014) ("The critical period is between *when the moving party became aware of the judgment* and when it filed the motion to vacate." (emphasis added)).

As to the attorney fee order, Miroshnik similarly did not deny receiving a copy of 2400 Elliott's attorney fee motion or the corresponding hearing notice. And, even though that motion was still pending at the time VP Elite's counsel began corresponding with counsel for 2400 Elliott, VP Elite took no action to oppose it and instead waited until three months after its entry to seek relief. Furthermore, VP Elite's request to vacate the fee order focused on the reasonableness of certain fees. But, in this appeal from the denial of the motion to vacate, we review only the propriety of the denial, not the alleged impropriety of the underlying order. *Bjurstrom v. Campbell*, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980). Because Miroshnik's declaration did not address, much less explain, VP Elite's delay in challenging the fee order, the trial court did not abuse its discretion by declining to vacate it on the basis that VP Elite did not file its motion within a reasonable time.

Finally, and with regard to the default judgment in particular, VP Elite was required to show that (1) there was substantial evidence supporting a prima facie defense, (2) its failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect, (3) it acted with due diligence after notice of the default judgment, and (4) 2400 Elliott would not suffer a substantial hardship if the court vacated the default judgment. *Ha*, 182 Wn. App. at 448-49.

"Factors (1) and (2) are primary; factors (3) and (4) are secondary." *Id.* Also, the "factors are interdependent; thus, the requisite proof that needs to be shown on any one factor depends on the degree of proof made on each of the other factors." *Norton v. Brown*, 99 Wn. App. 118, 124, 992 P.2d 1019 (1999). Consequently, if the moving party shows a "'strong or virtually conclusive defense,'" then "'the court will spend little time inquiring into the reasons for the failure to appear and answer, provided the party timely moved to vacate and the failure to appear was not willful.'" *TMT Bear Creek Shopping Ctr., Inc. v. PETCO Animal Supplies, Inc.*, 140 Wn. App. 191, 205, 165 P.3d 1271 (2007) (internal quotation marks omitted) (quoting *Johnson v. Cash Store*, 116 Wn. App. 833, 841, 68 P.3d 1099 (2003)). Conversely, because the primary purpose for requiring a meritorious defense is to avoid a useless trial, a default judgment should stand if the party seeking to vacate it can present no defense. *See Pfaff v. State Farm Mut. Auto. Ins. Co.*, 103 Wn. App. 829, 834, 14 P.3d 837 (2000) ("If a CR 60 movant cannot produce substantial evidence with which to oppose the claim, there is no point to setting aside the judgment and conducting further proceedings.").

Here, VP Elite conceded that its lien had expired and "was absolutely *void* and no longer bound" 2400 Elliott's property. Throughout its briefs in this court, VP Elite characterizes this concession as a "virtually conclusive defense" to 2400 Elliott's lawsuit. This characterization is not reasonable. Although VP Elite is correct that its lien had clearly expired under RCW 60.04.141, which imposes no obligation to provide a lien release, 2400 Elliott's lawsuit was not premised on a statutory obligation to deliver a lien release. Instead, 2400 Elliott sought equitable

and declaratory relief because VP Elite's recorded lien notice remained a potential cloud on title even if the underlying lien was clearly invalid. To this end, VP Elite's own counsel confirmed in a declaration submitted in support of the motion to vacate that at least one title company has incorrectly construed a recorded lien notice as valid even when it was not, thus requiring his intervention. Far from establishing a conclusive defense, the record shows that VP Elite had *no defense*. *See Robinson v. Khan*, 89 Wn. App. 418, 423, 948 P.2d 1347 (1998) (cloud on title is anything "'that has a tendency, *even in a slight degree*, to cast doubt upon the owner's title'" and includes an "'encumbrance which is actually invalid or inoperative, but which may nevertheless impair the title to property'" (emphasis added) (quoting *Whitney v. City of Port Huron*, 88 Mich. 268, 272, 50 N.W. 316 (1891); 65 AM. JUR. 2D *Quieting Title* § 9, at 148 (1972)). This was an independent reason for the trial court to deny VP Elite's motion to vacate as it pertained to the default judgment. The trial court did not abuse its discretion.

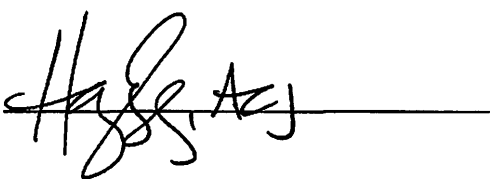
II. Fees on Appeal

Both parties request fees on appeal. VP Elite included one sentence in its brief requesting attorney fees, without citing any authority for its request. Moreover, VP Elite does not prevail on appeal. Accordingly, we deny its request for fees. *See Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 705, 915 P.2d 1146 (1996) (RAP 18.1(b) "requires more than a bald request for attorney fees on appeal. Argument and citation to authority are required under the rule." (citation omitted)).

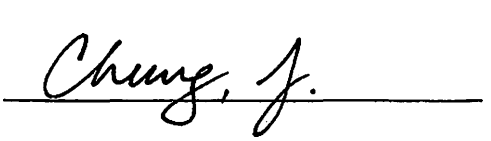
2400 Elliott requests fees on appeal under RAP 18.9 as a sanction for a frivolous appeal. "An appeal is frivolous if, considering the entire record, the court

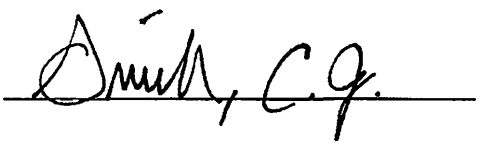
is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal." *Advocs. for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). We agree with 2400 Elliott that VP Elite's appeal is frivolous: VP Elite assigned error to and disputed an order that this court had already ruled was not within the scope of this appeal. As to its remaining assignment of error, VP Elite challenged a discretionary ruling that the record amply supported, relying largely on a frivolous argument that recharacterized what was in fact was a concession as a defense to the underlying action in an attempt to satisfy the requirements of CR 60. Accordingly, we grant 2400 Elliott's request for fees on appeal,[5] subject to its compliance with the procedural requirements of RAP 18.1.

Affirmed.



WE CONCUR:





[5] Because we grant 2400 Elliott's request under RAP 18.9, we do not address its argument that it is also entitled to appellate fees under RCW 60.04.071 or RCW 60.04.181(3).

APPENDIX B

FILED
4/2/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

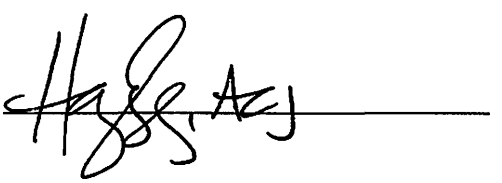
2400 ELLIOTT, LLC, a Washington limited liability company, Respondent, v. VP ELITE CONSTRUCTION, LLC, a Washington limited liability company, Appellant.	No. 85205-1-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant filed a motion for reconsideration on March 25, 2024. After consideration of the motion the panel has determined that the motion for reconsideration shall be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



BORIS DAVIDOVSKIY, P.C.

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