

**RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE**

Nov 16, 2016, 4:57 pm

RECEIVED ELECTRONICALLY

**THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
Division III**

CASE #326161

LAKODA, INC., a Washington corporation; DALE AMES and DODIE AMES, husband and wife, and the marital community comprised thereof,

Respondents

v.

OMH PROSCREEN USA, INC., a Washington corporation; and BRAD HILMOE, a married individual; JOHN O'CONNELL, a married individual; OMH INNOVATIONS, USA, INC., a Washington corporation; and OMH INNOVATIONS, INC., a foreign corporation

Appellants.

**RESPONDENTS' ANSWER TO
PETITION FOR REVIEW**

Kevin W. Roberts, WSBA #29473
Roberts | Freebourn, PLLC
313 W. Riverside Ave.
Spokane, Washington 99201
Telephone: (509) 381-5262
Facsimile: (509) 473-9026
Attorney for Respondent

FILED AS
ATTACHMENT TO EMAIL



ORIGINAL

TABLE OF CONTENTS

I. IDENTITY..... 1

II. COURT OF APPEALS DECISION 1

III. RESPONSE TO ISSUES PRESENTED FOR REVIEW..... 1

IV. STATEMENT OF THE CASE..... 2

V. ARGUMENT 3

 A. Appellants Were Allowed to Argue Their Case.... 3

 B. The Trial Court Properly Allowed the Jury to
 Decide the Contract Issue..... 5

 C. The Trial Court Properly Allowed the Jury to
 Decide Whether Appellants Had Misappropriated
 Lakoda’s Trade Secrets..... 5

 D. The Trial Court Properly Excercised It’s Descretion
 In Determining the Amount of Attorney..... 6

VI. RAP 18.1 MOTION FOR ATTORNEY FEES AND COSTS..... 7

VII. CONCLUSION..... 7

TABLE OF AUTHORITIES

RCW

RCW 19.108.040 7

COURT RULES

CR 9..... 1, 5

CR 9(k)..... 4, 7

RAP 13.4 1, 3

RAP 18.1..... 7

I. IDENTITY

Respondents Lakoda, Inc., Dale Ames and Dodie Ames request the review be denied.

II. COURT OF APPEALS DECISION

On September 8, 2016, the Court of Appeals issued a thorough, unanimous, unpublished decision in the above captioned matter in favor of Respondents and affirming the Trial Court's rulings and the Jury's decision. The decision provided proper review and none of the considerations for review exist in this matter. RAP 13.4.

III. RESPONSE TO ISSUES PRESENTED FOR REVIEW

The Issues Appellant identify and seek review on confirm that none of the considerations for review exist in this matter.

1. The Trial Court properly exercised its discretion by applying CR 9 and the rules of evidence to preclude admission of an untranslated Chinese document through which Appellants wanted to present foreign law that had not been pled.

2. The Trial Court properly applied Washington law based upon the evidence and facts before and properly allowed the Jury to decide the factual dispute with regard to the inter-play between the parties' agreements and their conduct.
3. The Trial Court properly exercised its discretion by allowing both parties to present the jury with their arguments as to whether TPD was an agent or not.
4. The Trial Court properly exercised its discretion in determining the amount of attorney fees and costs that were incurred for claims which had the right to fees attached to them.

IV. STATEMENT OF THE CASE

The Unpublished Court of Appeals decision provides a succinct and accurate review of the facts of this case. The Statement of the case provided by Appellants presents the arguments that Appellants made to Jury with regard to their interpretation of the evidence presented at trial. However, the Jury has already weighed those disputes and

rejected the conclusions that are offered by Appellants. Likewise, the Court of Appeals reviewed the record and found that the Trial Court did not abuse its discretion and that it followed Washington Law with regard to any legal decisions. Accordingly, Appellants self-serving interpretation of the evidence at trial does not support its request for review in this case.

V. ARGUMENT

RAP 13.4 only provides for four considerations which will justify review by the Washington Supreme Court. The Appellants fail to identify that any of those reasons exist here. The only attempt is made when in a conclusory fashion, Appellants claim that the unpublished, unanimous Court of Appeals decision should be reviewed because “[t]his case involves multiple issues of substantial public interest”. However, a review of the Petition for Review fails to identify any issue of “substantial public interest”. Instead, the Petition for Review is a litany of legal and factual arguments that the Court of Appeals already reviewed and determined that the Trial Court and the Jury properly decided. As a result, the Petition for Review should be denied.

A. Appellants Were Allowed To Argue Their Case.

In an odd argument, Appellants claim review should be granted because “*whether or not a party is required to plead foreign law is an issue of substantial public interest.*” However, this argument ignores the fact that this is not some novel issue. The Civil Rules already specifically address this issue and requires that a party provide notice if they intend to present or rely on foreign law. CR 9(k). As a result, there is not any law or procedure that needs reviewed by the Washington Supreme Court.

In addition, Appellants ignore the fact that the Court of Appeals confirmed that the Trial Court properly exercised its discretion and maintained a fair playing field by allowing OMH to present evidence of its reasons for its actions, including presenting evidence that it was told “*Longfei was the only one that was allowed to manufacture screeners in China.*” All that was excluded was Appellants attempt to present an untranslated document and lay testimony of its legal effect under Chinese law. Appellants have never disputed the fact they did not plead foreign law. The Court of Appeals properly found that the

Trial Court did not abuse its discretion and explained why CR 9 was properly applied in this case.

B. The Trial Court Properly Allowed the Jury To Decide the Contract Issue.

Appellants do not identify any specific case on point with the facts of this dispute that the Trial Court's ruling or the Court of Appeals decision is "*in conflict with.*" The Court of Appeals properly upheld the Trial Court's decision pointing out that "*Under the context rule, the interpretation of the parties' nondisclosure agreement presented a question of fact, not law.*" Appellants were allowed to argue to the Jury the effect of the contract provisions and the intent of the parties based on the surrounding circumstances. The Jury rejected those arguments. There is no basis for review in this case, the Court of Appeals decision is consistent with Washington Law and the context rule for contract interpretation.

C. The Trial Court Properly Allowed the Jury To Decide Whether Appellants Had Misappropriated Lakoda's Trade Secrets.

At the heart of Appellants argument is its claim that trade secrets cannot be utilized or protected through the use of agents and in

its final sentence an argument that trade secrets cannot be sold or transferred. (“Whether a principle [SIC] can claim the trade secrets of an agent.”) However, there is no legal support for this position or argument and it is contrary to Washington’s law of agency and Trade Secrets. The Court of Appeals properly analyzed Washington’s Trade Secret Act and correctly found that “[t]he definition does not exclude information obtained through agents.” It also found that based on the record there was evidence to support the Jury’s conclusion that “*the Longfei factory and methods of working with it was Lakoda’s trade secret.*” Appellants did not object to the Jury being instructed on the law of agency and were allowed to make the factual argument they now make. The Jury rejected that argument.

**D. The Trial Court Properly Exercised Its Discretion
In Determining The Amount of Attorney.**

Appellants seek review to ask the Supreme Court to second guess the discretion that was properly exercised by the Trial Court, who oversaw the entire case and had a full understanding of what was necessary and related to Respondents prevailing on the Trade Secret claim. As a result, the Court of Appeals correctly found no abuse of discretion occurred. There is no substantial public interest in

reviewing the discretionary ruling of a trial court where no evidence of abuse of discretion exists.

VI. RAP 18.1 MOTION FOR ATTORNEY FEES AND COSTS

Based on RAP 18.1, Respondents respectfully request an award of reasonable attorney fees and costs incurred on appeal pursuant to RCW 19.108.040.

VII. CONCLUSION

Appellants have not established that review of the unanimous, unpublished decision is appropriate in this case. This case is relating to private disputes and the rulings do not relate to any issue of substantial public interest.

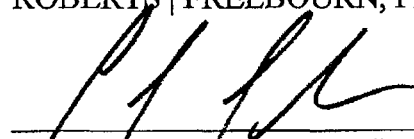
1. CR 9(k) requires foreign law to be pled in order to provide proper notice.
2. Based upon the facts surrounding a parties' agreements, under the context rule, interpretation of the contract can be a question of fact.

3. Under Washington law, a person or entity can act through agents and the Definition of Trade Secrets does not preclude using an agent to create a trade secret.
4. A Trial Court has the discretion to determine what what fees relate to the recoverable claim.

Appellants have not established that review is appropriate in this case.

DATED this 16th day of November, 2016.

ROBERTS | FREEBOURN, PLLC



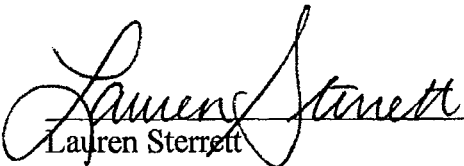
Kevin W. Roberts, WSBA #29473
Counsel for Respondents.

Chad Freebourn, WSBA #35628

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of November, 2016, I caused to be served a true and correct copy of the foregoing document to the following:

Brian S. Sheldon	Hand Delivery	[]
Phillabaum, Ledlin, Matthews & Sheldon, PLLC	U.S. Mail	[X]
1325 N. Post St., Ste. 100	Facsimile	[]
Spokane, WA 99201	Email	[]


Lauren Sterrett