

No. 94088-6

SUPREME COURT
OF THE STATE OF WASHINGTON

BUSINESS SERVICES OF
AMERICA II, INC.

Appellant,

v.

WAFERTECH LLC,

Respondent.

REPLY IN SUPPORT OF
RESPONDENT'S MOTION
TO STRIKE REPLY TO
ANSWER TO PETITION
FOR REVIEW

A. Introduction

This Court should grant Respondent WaferTech's Motion to Strike Petitioner Business Services of America II, Inc.'s ("BSofA") improper reply to WaferTech's Answer to BSofA's Petition for Review.

B. Reply Argument

BSofA's reply brief is improper because WaferTech did not ask this court to review any part of the Court of Appeals

unpublished decision, which is the subject of BSofA's petition for review. RAP 13.4(d) ("A party may file a reply to an answer *only* if the answering party *seeks review* of issues not raised in the petition for review.") (emphasis added)

BSofA's reliance on *State v. Barker* is misplaced. Answer at 4, citing *State v. Barker*, 143 Wn.2d 915, 919-20, 25 P.3d 423 (2001). *State v. Barker* stands for the uncontroversial proposition that a "respondent must raise in an answer to the petition for review any issue the respondent wants [the Supreme Court] to address." *Id.* In *Barker*, the State did not even file an answer to the petition for review and was thus precluded from challenging in this Court the Court of Appeals' holding that the police officer lacked statutory authority to make an arrest. *Id.*

Here, by contrast, WaferTech is not challenging any aspect of the appellate decision. Rather, WaferTech is arguing only that the Court of Appeals was correct for many reasons, including some which the Court of Appeals did not need to reach. WaferTech is not asking this Court to review anything.

Simply put, in the absence of a cross-petition for review, RAP 13.4(d) prohibits an appellant—like BSofA—from filing a reply.

C. Conclusion.

This Court should strike petitioner's improper reply.

Dated this 27th day of March, 2017.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served by email, by agreement of counsel, on the 27th day of March, 2017, to:

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