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SUPREME COURT
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CLERK

No. 993785

Court of Appeals No. 53494-1-II

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

ROBERT MARTIN,

Respondent,

v.

KIMBERLY HAN,

Petitioner/Appellant.

ANSWER TO PETITION FOR REVIEW

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164 Wn.2d 545 192 P.3d 886 (2008) 5

Court Rules

RAP 13.4 3, 8, 9

I. IDENTITY OF RESPONDENT, RELIEF REQUESTED & INTRODUCTION

Respondent Robert Martin asks this Court to deny Kimberly Han's Petition for Review. The Slip Opinion is attached.

The appellate court concluded that the undisputed facts, taken in a light most favorable to Ms. Han did not raise an issue of fact.

Ms. Han complains that because these *are* material questions of fact the appellate court erred in affirming the summary judgment order. But error is not a conflict with other precedent. This appeal presents no conflict with other decisions, no significant question of law under any constitution, and no issue of substantial public interest. Prior decisions are entirely consistent with the legal standard for summary judgment set out in the appellate decision. Ms. Han admitted she received the proceeds of the bank loan.¹ She admitted

¹ PRF at 8.

she used the money for her benefit.² She admitted she intended to pay the bank loan.³ And she admitted that Mr. Martin co-signed with the expectation she would pay the loan.⁴ She admitted she defaulted,⁵ and that Mr. Martin's CDs were used to pay off the loan.⁶ This Court should deny review.

II. FACTS RELEVANT TO ANSWER

The appellate decision correctly recites the relevant facts and procedure. The facts are discussed as relevant to the arguments, *infra*.

III. REASON THIS COURT SHOULD DENY REVIEW

Under RAP 13.4(b), this Court will grant a petition for review only when:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

² CP 40, 106-110.

³ Id at 38, 48-50, 57, 64.

⁴ CP 60-61.

⁵ Id.

⁶ CP 62, 63, 65

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Ms. Han claims that RAP 13.4(b)(1) applies.⁷ But no conflict exists because the appellate decision correctly states existing black letter law regarding summary judgment and unjust enrichment. None of the criteria applies. This Court should deny review.

A. The appellate decision does not conflict with any other decision regarding the standard on Summary Judgment.

The appellate decision found that there were no material disputed facts. This holding is wholly consistent with Washington law.

The opinion did not apply the wrong legal standard. Rather, it followed the standard argued by Ms. Han:

We consider the facts and inferences from those facts in the light most favorable to the nonmoving party. *Bremerton Pub. Safety Ass'n v. City of Bremerton*, 104 Wn. App. 226, 230, 15 P. 3d 688 (2001). A party is entitled to summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and the party is entitled to judgment as a matter of law.⁸

⁷ CP 105.

⁸ Slip. Op at 8. (Emphasis added).

This is precisely the standard cited in Ms. Han's Petition, *Ranger Ins. Co. v. Pierce County*⁹ The legal standard cited in the decision below does not conflict with any this Court's authority, or that of any division of the Court of Appeals.

Ms. Han relies on her belief that if the CDs were not forfeited, she would have received them as a gift.¹⁰ But she did not receive the CDs – the bank did. This fact was central to the lower court's decision.¹¹

The decision below turned on whether Mr. Martin intended the CD's forfeited as gift and whether Ms. Han was unjustly enriched – not on what the proper standard on summary judgment. As cited above, the decision relies on well-established precedent that is consistent among our state's appellate courts. Assuming, *arguendo*, that the trial court and appellate court applied the legal standard incorrectly, it is not a basis for review. Otherwise, every time a court of appeals decision erroneously affirmed a summary judgment order, review would be appropriate.

⁹ 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

¹⁰ PRF at 9.

¹¹ PRF at 3.

B. The Court of Appeals decision is not erroneous – there was no material question of fact.

On December 23, 2015, Ms. Han received the proceeds of the loan, \$234,357.18.¹² She used it to purchase waterfront property;¹³ logs¹⁴ (Ms. Han had a business trading in timber);¹⁵ and to make repairs to a rental property.¹⁶ Ms. Han concedes the loan was for her benefit.¹⁷ She concedes she was obligated to pay it back, and she intended at the inception of the loan she would pay it back.¹⁸ She concedes that Mr. Martin had the expectation that Ms. Han would pay the loan.¹⁹

Before she defaulted on the loan Ms. Han and Mr. Martin became estranged.²⁰ Ms. Han was upset that Mr. Martin's testamentary plans no longer include her. She wrote in her response to the summons "And Heidi wants to manage all of Mr. [Martin's] rentals, and Mr[] Martin said since when he die [sic] and he [cannot]

¹² CP 40, 106-110.

¹³ CP 38.

¹⁴ CP 38.

¹⁵ CP 48-50; 57.

¹⁶ CP 58; 60.

¹⁷ CP 64.

¹⁸ CP 60-61.

¹⁹ CP 124.

²⁰ CP 29-31.

take it with him, and Heidi can have all when he die, and now Mr. Martin also said Heidi asked him to have his Will to change and take out [Autumn's] for his power of attorney!"²¹

When the loan became due, Ms. Han wanted to extend the loan term,²² but did not apply to do so.²³ She recognized that she had to do something but did nothing because Mr. Martin did not call her.²⁴

Ms. Han and the dissent argue that Ms. Han's deposition testimony creates a material question of fact whether Mr. Martin intended his paying off the bank loan as a gift.²⁵ But as the Court of Appeals decision correctly notes, the loan is from the bank, and the deposition testimony does not show that Mr. Martin intended the payment to the bank as a gift. Ms. Hans' argument is contrary to the evidence in the record. The parties were estranged from each other when the default occurred and the CD's used to pay off the loan.²⁶ Ms. Han's self-serving testimony does not create a question of fact.

²¹ CP 29.

²² CP 63.

²³ CP 63.

²⁴ CP 63.

²⁵ Slip Op at 7; PRF at 9.

²⁶ CP 29-31.

IV. CONCLUSION

The Court of Appeals correctly concluded that there was no evidence that Mr. Martin intended to gift the CDs to Ms. Han at the time of the default. The court did not err in holding that Ms. Han's receipt of the loan proceeds and failure to pay the loan payments was unjust enrichment. The Court relied on the correct standard. None of the RAP 13.4(b) criteria apply. This Court should deny review.

RESPECTFULLY SUBMITTED this 29th day of January,
2021.



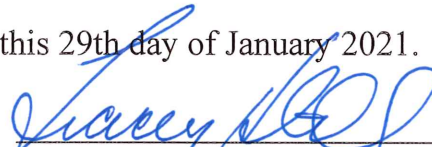
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CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury of the laws of the State of Washington, that on January 29, 2021, I caused a copy of the foregoing to be served to the following in the manner noted below:

Kelly DeLaat-Maher Attorneys for Appellant/Defendant Smith Alling, PS 1501 Dock Street Tacoma, WA 98402	✓ Via U.S. Mail, Postage Prepaid <input type="checkbox"/> US Mail, Certified <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail ✓ Email kelly@smithalling.com teri@smithalling.com
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DATED at Silverdale, Washington, this 29th day of January 2021.



Tracey Hamilton-Oril, Legal
Assistant

TEMPLETON HORTON WEIBEL PLLC

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