No. 99523-1

SUPREME COURT
OF THE STATE OF WASHINGTON

MARK WHITMORE,

Petitioner,

v.

ZANE LARSEN, individually, AFFORDABLE ADVANCED AUTOCARE, a Washington Limited Liability Company d/b/a EVERGREEN TIRE, and OCCUPANTS,

Respondents.

ANSWER TO PETITION FOR REVIEW

Aaron Orheim, WSBA #47670
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

Statutes

Codes, Rules and Regulations

Other Authorities

A. INTRODUCTION

Division III's unpublished opinion concerning a single four-to-ten-foot strip of land in Pullman, WA, affects just two people – Mark Whitmore and Zane Larsen. Appropriately applying existing precedent, Division III correctly ruled the trial court erred by allowing a dispute between adjacent property *owners* to go forward as an unlawful detainer action under RCW 59.12.030(3). Whitmore had no right to use this limited statutory procedure, reserved for evicting holdover tenants, to resolve a boundary dispute among property owners with no landlord/tenant relationship.

This Court should deny review because none of the RAP 13.4(b) criteria are met. Whitmore does not, and cannot, argue that this is a significant question of constitutional law under RAP 13.4(b)(3), nor does he argue that this is a matter of substantial public interest under RAP 13.4(b)(4). Whitmore fails to even cite RAP 13.4 anywhere in his petition. Rather, he alleges vague "conflicts" with published authorities, where no such conflicts exist. Washington courts have consistently determined that an unlawful detainer action is the inappropriate venue to resolve boundary disputes between abutting property owners who do not have a landlord/tenant relationship. Division III's unpublished opinion adheres to that authority. Simply put, this dispute is not a Supreme Court case.

B. STATEMENT OF THE CASE

Division III's opinion does a good job of setting forth the facts and procedures here. Op. at 2-12. Whitmore seeks to re-argue the facts, often mischaracterizing them. Several factual points bear emphasis.

This dispute dates back nearly 80 years to a faulty quiet title action that set up an inevitable boundary dispute between adjoining property owners. In 1962, Whitmore's grandmother, Maybelle Kaiser, acquired title to a parcel of land adjacent to the eastern side of a roofing building in Pullman, WA, via default judgment on her quiet title action for adverse possession. RP 36; Ex. 5. This parcel includes a four-to-ten-foot strip of land allegedly running beneath the eastern side of the building.[1] Kaiser's quiet title action failed to meet mandatory statutory requirements; she failed to name the owner of the building as a person with an interest in the land, despite claiming to acquire title to a strip of land beneath the building. Ex. 5. She also failed to name the City, even though the roadway was historically a public right of way known as Kaylor Road, established as early as 1888. *Id.*

[1] Division III estimated of the size of the strip of land beneath Larsen's building at 10 by 444 feet, which Larsen does not dispute for purposes of this answer. But Whitmore never presented clear evidence about exactly how much the building allegedly encroached on his property. He and his experts argued at various times throughout the case that Larsen's building encroached anywhere from two to ten feet. CP 293 (Whitmore arguing a two to three feet encroachment); CP 57 (expert affidavit claiming "between 4.5 and 4.7 feet" encroachment); RP 101 (expert testifying he "think[s the encroachment] it's about 10 feet."). That it required many surveyors, experts, and other evidence, just to establish how far Whitmore's ownership rights extended, further distances this case from typical cut and dry unlawful detainers involving holdover tenants.

Larsen's predecessors, prior owner/operators of the building, agreed to "lease" the small strip of land, historically for a nominal fee, rather than litigate their property rights. The roofing company executed a long-term lease for just $100 per year. Ex. 9; CP 217-21. Kaiser rented the strip of land for this nominal sum for decades, until her successors, including Whitmore, raised the rent considerably against the building's various owner/occupants in recent years. Exs. 10-13. None of the owner/occupants ever took the trouble to survey the property or question how Whitmore obtained ownership of a public road that ran partially beneath an existing building. RP 180-82, 191. Charles Chambers was the last owner/occupant of the building to sign a lease; paying $1085.50 per month on a three-year lease term with Whitmore that was set to expire on January 31, 2015. Ex. 14.

In the summer of 2014, months before the lease expired, Chambers told Whitmore that he would not renew the lease when it expired at the end of January, and that he planned to sell the building by the end of the year. RP 176. Chambers found a buyer in Zane Larsen, who planned to operate an auto repair business in the building. RP 187-88.

Chambers' lease ended when it expired at the end of January 2015. Chambers reiterated to Whitmore multiple times that he was terminating their lease when it expired and that Whitmore needed to negotiate a new

arrangement with Larsen. RP 177-78. Chambers also confirmed that the lease expired via a letter he sent to Whitmore in February 2015. Ex. 15. When they started up negotiations for a new agreement, Whitmore told Larsen that all prior leases had ended. RP 204.

Larsen and Whitmore never agreed to a new lease. Larsen noted several red flags, including the lack of a proper survey, pressure from Whitmore to agree to a lease before lenders investigated the property sale, and the fact that the roadway Whitmore claimed to own was historically a public road, known as Kaylor Road. RP 204-07. Whitmore's rent demands were also unreasonable, an appraiser determined that the strip of land was only worth a mere $7,500 if sold outright. Ex. 12. Both Whitmore and Larsen leased much larger parcels of nearby land from the Department of Transportation for a mere $1,760 *per year* and $1,986.52 *per year* respectively, exs. 113, 119, yet Whitmore sought as much as $18,000 in yearly rent for the small strip of land beneath Larsen's building. *Id.*; CP 3.

Whitmore filed an unlawful detainer action and argued that under RCW 59.12.030(3), Larsen was a holdover tenant under a month-to-month lease and subject to summary eviction. CP 2-5, 50. At an early show cause hearing, the trial court recognized that this was not a typical landlord/tenant dispute, rather, the court described it as a "boundary dispute" involving abutting property owners. CP 298. The court ultimately refused to enter a

writ of restitution to remove Larsen from the property before the case went to trial and "strongly urge[d] the parties to mediate." CP 310. Whitmore did nothing for the next 14 months. CP 177.

Suddenly, in November 2016, Whitmore moved for summary judgment, arguing for the first time that Larsen was bound to the Chambers lease for another three years (through January 2018) because he alleged that the lease contained an automatic renewal provision that Chambers failed to timely cancel in writing. CP 46-54. This was a surprise, as Whitmore had never previously questioned Chambers' termination; nor did he ever suggest that he intended to hold Larsen to the Chambers lease. RP 211-12. In fact, both Chambers and Whitmore later testified that they did not even know about the automatic renewal provision in the lease when Chambers moved out. RP 62, 183.[2]

Larsen also moved for summary judgment, arguing that the case was improperly brought as an unlawful detainer action because he was never a party to any lease with Whitmore and had an ownership interest in the property action. CP 192-97. He argued that the case should be refiled as an ejectment action, the proper avenue to resolve such "boundary disputes" between adjacent property owners. *Id.* An ejectment action would have

[2] Whitmore never amended his complaint to include this post-hoc theory of recovery.

allowed the court to settle all the disputed property interests, including Larsen's challenges to Whitmore's title, his potential counterclaims for the value of the permanent improvements, and the court could have even forced a sale of the land under his building as a permanent solution. *Id.* (citing RCW 7.28.150-.160). The trial court denied Larsen's request, denied summary judgment to both parties, and the case eventually went to trial in April 2019. CP 189, 284-85.

After a bench trial, the trial court, the Honorable Gary Libey, found for Whitmore. CP 507-18.[3] It set the damages based on the terms of the Chambers lease, doubled them pursuant to the unlawful detainer statute, and awarded costs and attorney fees because the Chambers lease allowed for them. CP 523-25. Thus, the damage award for this small strip of land in Pullman totaled $165,680.40,[4] and the trial court required that Larsen's

[3] In light of Whitmore's ever-changing theories for recovery against Larsen – whether as a month to month tenant as the unamended complaint alleged or under the renewal provision in the Chambers lease that he raised years later – the trial court refused to definitively state the basis for finding that Larsen was liable for unlawful detainer. *See* CP 514 (Finding of Fact VIII) (finding that Larsen wrongfully occupied the premises "on a month to month basis and/or pursuant to a lease agreement that has not expired and/or by an implied lease"). Larsen argued that this lack of clarity alone was reason to remand, where the damage calculation for a holdover tenant (or tenant by implied lease) is fixed at fair market rental value rather than a tenant who does not pay rent under a valid lease and must pay the rent fixed by the lease. *Lenci v. Owner*, 30 Wn. App. 800, 803, 638 P.2d 598 (1981), *review denied*, 97 Wn.2d 1014 (1982) ("The amount of damages occasioned by an unlawful detainer and holding over is based upon the fair value of the use of the premises rather than the amount of rent agreed upon by the parties under a lease no longer in effect.").

[4] Judge Pennell correctly noted at oral argument that this damage award setting a value on a small strip of land beneath a building was more in line with estimated values of

building be partially demolished or fenced off to "restore" possession to Whitmore (even though Whitmore nor his predecessors never possessed the land beneath the building). CP 518.

Division III reversed in a unanimous, unpublished decision. It held that the trial court erred in allowing the case to proceed as an unlawful detainer under RCW 59.12.030(3) because Whitmore and Larsen did not have a landlord/tenant relationship. Op. at 10-18. Although it agreed with Larsen that ejectment was one way to resolve this complicated boundary dispute, it declined to require that cause of action on remand, speculating that the parties might use other general civil actions, like trespass or nuisance. Op. at 18-20.

Whitmore moved for reconsideration, which Division III summarily declined. *See* Appendix. Now he petitions this Court for review.

C. ARGUMENT WHY THE COURT SHOULD DENY REVIEW

Whitmore fails to demonstrate that the RAP 13.4(b) criteria for Supreme Court review apply here.

(1) Division III Correctly Held in Its Unpublished Opinion That an Unlawful Detainer Does Not Apply to This Dispute

"[A]n unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of

land in New York City than Pullman, WA. *See* Oral Argument, available at https://www.tvw.org/watch/?eventID=2020091123 (last accessed March 23, 2020).

property." *Randy Reynolds & Assocs., Inc. v. Harmon*, 193 Wn.2d 143, 156, 437 P.3d 677 (2019). It is a "summary proceeding to determine the right of possession as between landlord and tenant. The action is a narrow one, limited to the question of possession and related issues such as restitution of the premises and rent." *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). "A court presiding over an unlawful detainer action sits as a special statutory tribunal, not as a court of general jurisdiction. As such, the court lacks authority to address disputes unrelated to possession" including most counterclaims and challenges to title. *Castellon v. Rodriguez*, 4 Wn. App. 2d 8, 18, 418 P.3d 804 (2018). The unlawful detainer statute is in derogation of the common law and requires strict compliance. *FPA Crescent Assocs., LLC v. Jamie's, LLC*, 190 Wn. App. 666, 675, 360 P.3d 934 (2015).

Division III correctly observed that unlawful detainer actions are an "alternative" statutory mechanism "when the statutory elements are met, to the more expensive and lengthy common law action of ejectment." Op. at 10. Ejectment is a general civil action governed by chapter 7.28 RCW, where a superior court can resolve all issues related to the land, including the right to title and "all…interests claimed by the defendants in the property." *Grove v. Payne*, 47 Wn.2d 461, 466, 288 P.2d 242 (1955); RCW 7.28.010. This includes the interests of defendants who own permanent

improvements on the property, RCW 7.28.150-.160, as courts have explained:

> Ejectment is a remedy for one who, claiming a paramount title, is out of possession. Ejectment is a mixed action, and damages for the ouster or wrong can be simultaneously recovered. When permanent improvements have been made upon the property by the defendant, in good faith, the value thereof may be allowed as a setoff, or as a counterclaim, against damages for withholding the property, RCW 7.28.150 and .160.

Bar K Land Co. v. Webb, 72 Wn. App. 380, 864 P.2d 435 (1993) (citations omitted).

Unlike in unlawful detainer cases, courts hearing ejectment or other civil actions have broad authority to resolve disputes among abutting property owners in an encroachment dispute like this one. For example, courts can a sale of the land beneath the permanent improvements or otherwise offset the judgment by the value of the permeant improvements. *Id.*; *Proctor v. Huntington*, 169 Wn.2d 491, 504, 238 P.3d 1117 (2010), *cert. denied*, 562 U.S. 1289 (2011) (holding that forced sale of property beneath permanent improvements that encroached on neighboring landowner's property was an appropriate remedy in an encroachment dispute between property owners); *Arnold v. Melani*, 75 Wn.2d 143, 449 P.2d 800 (1968) (awarding damages rather than destroying an encroaching building); RCW

7.28.150 (allowing ejectment judgment to be offset to account for value of permanent improvements).

Below, Larsen argued that the trial court erred by allowing the case to proceed as an unlawful detainer instead of an ejectment action, where Larsen could challenge Whitmore's right to obtain quiet title to a public road, counterclaim for the cost of permanent improvements, force a sale of the land beneath his building to come to a permanent resolution. Case law supports this argument.[5] And when resolving encroachment disputes, courts must avoid strict forfeitures, like those afforded under the unlawful detainer statute, and must instead take "a more reasoned, flexible approach." *Proctor*, 169 Wn.2d at 504.

Division III generally agreed, stating that "presumably" the case could be brought as an ejectment claim. Op. at 19. That said, it refused to go so far as to require the case to proceed as one for ejectment, noting that the parties could use some other civil action to resolve this boundary dispute, like a trespass or nuisance claim. Op. at 18-20.

[5] *See, e.g.*, *Bar K*, 72 Wn. App. at 380 (ejectment was the proper remedy against occupant who remodeled a home as part of an early possession agreement of a mortgage while paying rent because occupant had ownership interest); *Honan v. Ristorante Italia, Inc.*, 66 Wn. App. 262, 270, 832 P.2d 89, *review denied*, 120 Wn.2d 1009 (1992) (holding that trial court erred in permitting unlawful detainer where it was "evident the essence of the action…was one for ejectment, not unlawful detainer"); *Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 528, 963 P.2d 944 (1998) (affirming dismissal of unlawful detainer where the "appropriate procedure is an action in ejectment and quiet title under RCW 7.28").

In any case, Division III adopted Larsen's argument that the trial court erred in allowing the case to proceed as an unlawful detainer because Larsen was never Whitmore's tenant. Division III correctly observed that an unlawful detainer under RCW 59.12.030(3), the provision under which Whitmore proceeded, applies to a "tenant of real property for a term less than life" who continues in possession "after a default in the payment of rent" and after a written notice, properly served, remains uncomplied with for three days. Op. at 11. The plain language of the statute necessities Division III's common sense ruling that "[o]nly actual tenants are 'tenant[s] . . . for a term.'" Op. at 15.

Here, there was no "default in the payment of rent." No rent was ever owed because Whitmore and Larsen never agreed to a lease. Whitmore admitted that he never signed a lease with Larsen. RP 55. Whitmore admitted Chambers' lease was never formally assigned to Larsen, even though the lease contained a clause prohibiting assignment and subletting without a written agreement between the parties. CP 116. Whitmore admitted that he tried to negotiate a new lease with Larsen, "multiple times," after the lease with Chambers expired in January 2015. RP 53-54. And during those negotiations he told Larsen that "all leases prior had been already paid for" and all business was concluded with Chambers. *Id.*

Without a lease, Whitmore had no right to evict an adjacent property owner for failure to pay rent through an unlawful detainer action under RCW 59.12.030(3). Division III correctly ruled that he must pursue some other remedy to resolve this more complicated boundary/encroachment dispute.

(2) Division III's Unpublished Opinion Does Not Conflict with Existing Precedent

Again, although Whitmore does not cite RAP 13.4(b) anywhere in his petition, the only grounds for Supreme Court review to which he alludes are alleged conflicts with existing precedent under RAP 13.4(b)(1) and (2). His arguments are lacking and are almost entirely contained in parentheticals to cases listed in the issue statement section of his petition. Pet. at 2-3. But setting aside his lack of proper argument, the Court should deny review because Division III's unpublished opinion creates no conflicts with established precedent.[6]

First, none of the cases Whitmore cites speak to this *unique situation* in which an adjacent landowner quieted title to land beneath a pre-existing building, without even naming the owner/occupant of the building as a

[6] Many cases Whitmore cites are wildly off-point and distinguishable on their unique facts alone. *E.g.*, *Chase v. Tacoma*, 23 Wn. App. 12, 594 P.2d 942, *review denied*, 92 Wn.2d 1025 (1979) (eminent domain case); *Selene RMOF II REO Acquisitions II, LLC v. Ward*, 189 Wn.2d 72, 399 P.3d 1118 (2017) (question about applicability of unlawful detainer in nonjudicial foreclosure sales under chapter 61.24 RCW).

person with "some interest" in the property, as required by law. RCW 7.28.010 (quiet title actions must include the "tenant in possession" and all persons "claiming the title [to the property] *or some interest therein*") (emphasis added).[7] By doing so and then charging exorbitant rents to the successor owners of the building, Whitmore primed this dispute to erupt as soon as someone like Larsen came along who sought to enforce his *equally valid property rights* as the owner of the real improvements on the land.[8] Consistent with cases from this Court and the Court of Appeals such as *Proctor*, *Arnold*, *Bar K*, *Honan*, and *Puget Sound Investment Group*, *supra*, disputes between persons with *ownership* interests involving boundary disputes, encroachments, or where the essence of the action is for ejectment, summary eviction under the unlawful detainer statute is inappropriate.

Second, many cases on which Whitmore relies involved traditional landlord/tenant relationships, where a tenant or assignee to a lease (with no ownership interest in the property) held over after the lease expired. *See*

[7] At oral argument, Whitmore's counsel admitted he "[did not] know why" the roofing company was not included in the quiet title action as it should have been. *See* Oral Argument, available at https://www.tvw.org/watch/?eventID=2020091123 (last accessed March 23, 2020).

[8] *See, e.g.*, *SSG Corp. v. Cunningham*, 74 Wn. App. 708, 712, 875 P.2d 16 (1994) ("When a person with no interest in the land affixes an article thereto in the furtherance of his own purposes, the presumption is that he intends to reserve title to the chattel in himself."); *see also*, RCW 7.28.150-.160 (permitting counterclaims for owners of permanent improvements on another person's property).

Decker v. Verloop, 73 Wash. 10, 11, 131 P. 190, 190 (1913) (tenant held over after lease expired);[9] *Sarvis v. Land Res., Inc.*, 62 Wn. App. 888, 890, 815 P.2d 840 (1991), *review denied*, 118 Wn.2d 1020 (1992) (commercial tenant remained in possession of property after written lease expired). Here, the parties here never agreed to a lease, as Whitmore admitted many times during trial. Thus, Division III's opinion creates no conflicts where these cases are off point.

Third, none of the cases Whitmore cites involve boundary or encroachment disputes between adjacent property owners, like what is at stake here. *E.g.*, *Williamson v. Hallett*, 108 Wash. 176, 177, 182 P. 940 (1919) (tenant occupied, but did not own, hotel on leased property); *Lake Union Realty Co. v. Woolfield*, 119 Wash. 331, 332, 205 P. 14 (1922) (dispute over leased storeroom within a building tenant did not own). Whitmore simply refuses to recognize the importance of the fact that the building, which is real and not personal property, has been separately owned and occupied since 12 years before his predecessors ever attempted to quiet title to the disputed land in question. The trial court made the same error,

[9] *Decker* is over 100 years old, and like many cases from that era, its facts are opaque, so the details on the lease and the parties are scarce. Many cases that Whitmore relies on are decades, if not, a century old. Washington property law has evolved greatly since then. *See Proctor*, 169 Wn.2d at 504 ("recognize[ing] the evolution of property law in Washington away from rigid adherence" to a rule requiring the removal of permanent improvements that encroach on another's property "and toward a more reasoned, flexible approach.").

as Division III correctly determined.

Finally, to the extent modern Washington law recognizes "implied" tenants, as Whitmore now argues – *see* 17 *Wash. Prac.*, Real Estate § 6.17 (2d ed.) ("There is doubt and confusion over whether the common law tenancy at sufferance exists in Washington.") – this is not what he argued in his unlawful detainer action below. He exclusively argued under RCW 59.12.030(3), which only applies to tenants, and he sought damages based on the Chambers lease without providing any evidence of the reasonable value of the leased property. As Division III correctly noted, even if a party can seek unlawful detainer under an "implied tenant" theory using RCW 59.12.030(6), Whitmore did not argue this theory and reasonable rental value would have been his only recourse,[10] for which he presented *no* evidence or argument:

> [T]here is no basis for construing Mr. Whitmore's presentation at trial as relying in the alternative on RCW 59.12.030(6). He relied for his remedy entirely on prior lease agreements. He presented no evidence of the extent to which—apart from the commercial building—Mr. Larsen had entered premises described by the Chambers lease. He disputed that "reasonable" rent should be the measure of his damages. On the matter of "reasonable" ground rent, only Mr. Larsen presented evidence—what appears to be quite relevant evidence—that applying the rental rate both parties

[10] *See Lake Union Realty*, 119 Wash. at 332 (owner cannot hold a non-tenant to a prior lease and to the extent he can seek damages he may only seek the reasonable rental value of the property against a non-tenant); *Davis v. Jones*, 15 Wn.2d 572, 574, 131 P.2d 430 (1942) (discussing rent for a common law "tenancy by sufferance").

> were paying to DOT, a reasonable rent for all the Whitmore property let by the Chambers lease was $475.33 per year.

Op. at 17-18.

This creates no conflicts where unlawful detainer actions are in derogation of the common law, and thus pleading standards are strictly construed. *Cmty. Investments, Ltd. v. Safeway Stores, Inc.*, 36 Wn. App. 34, 38, 671 P.2d 289 (1983) (citing, e.g., *Smith v. Seattle Camp 69, Woodmen of the World*, 57 Wash. 556, 107 P. 372 (1910) ("The provisions governing the time and manner of bringing an unlawful detainer action are to be strictly construed.")).[11] Moreover, Whitmore's ever-changing theories for relief, track the rest of his unfair and dilatory litigation behavior in the case. Division III did not create any conflict by refusing to construe the unlawful detainer statute in his favor.

In sum, Division III's unpublished case creates no conflicts where this unique boundary dispute between adjacent property owners is distinguishable from the off-point cases Whitmore cites. The Court should deny review.

[11] Also, "[i]n construing a lease in a controversy between lessor and lessee, the lease will be construed against the lessor [and] the same rule…appl[ies] in a controversy between a lessor and one who holds as successor in interest to the lessee." *Nat'l Bank of Commerce of Seattle v. Dunn*, 194 Wash. 472, 482-83, 78 P.2d 535 (1938). Division III's holding tracks and does not conflict with this rule interpreting landlord/tenant disputes.

(3) This Is Not a Supreme Court Case

Again, Whitmore does not argue that this case warrants Supreme Court review because it addresses an important question of law or affects the public interest under RAP 13.4(b)(3) or (4). Nor can he; this case involves a discrete disagreement between two adjacent landowners that only exists because Whitmore's predecessors quieted title to land beneath an existing building without even naming the building's owner/occupant as a person with an interest in the property as required by law. RCW 7.28.010. Division III properly ruled that this complex dispute among property owners could not be resolved through the summary procedures of unlawful detainer. In sum, this case turns on unique facts, and its ultimate outcome after remand will have zero ripple effect beyond these two litigants.

Finally, Division III narrowed its opinion by declining to address Larsen's argument that the strip of land is a public road, to which Whitmore's predecessors could not quiet title. *See* op. at 10 ("We find [Larsen's] challenge to the trial court's pretrial ruling that the case could proceed as an unlawful detainer action under RCW 59.12.030(3) to be dispositive."). Should the Court grant review, this issue which also turns on discrete, hyper-local facts and evidence will also be before the Court. The Supreme Court is not needed to properly resolve this hyper-local dispute. The Court should decline review.

D. CONCLUSION

The Court should deny review. Division III's unpublished opinion creates no conflicts with existing precedent. Whitmore argues no other basis for granting review under RAP 13.4(b), nor do any exist where this case only involves facts unique to two private property owners litigating over a single four-to-ten-foot strip of land. This case simply does not merit Supreme Court review.

DATED this 29th day of March, 2021.

Respectfully submitted,

/s/ Aaron Orheim

Aaron Orheim, WSBA #47670
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Respondents
Zane Larsen, Affordable Advance
Autocare, LLC, d/b/a Evergreen Tire,
and Occupants

APPENDIX

FILED
JANUARY 26, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

MARK WHITMORE, Respondent, v. ZANE LARSEN, individually, AFFORDABLE ADVANCE AUTOCARE, a Washington Limited Liability Company, d/b/a EVERGREEN TIRE, and OCCUPANTS, Appellants.	)	No. 36863-7-III ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered Respondent's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of October 20, 2020, is hereby denied.

PANEL: Judges Siddoway, Pennell, Lawrence-Berrey

FOR THE COURT:

REBECCA L. PENNELL
Chief Judge

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Answer to Petition for Review*** in Supreme Court Case No. 99523-1 to the following:

Howard Neill, WSBA #5296
P.O. Box 307
Pullman, WA 99163-0307

Original E-filed via appellate portal with
Supreme Court Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 29, 2021, at Seattle, Washington.

/s/ Frankie Wylde
Frankie Wylde, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

March 29, 2021 - 11:49 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99523-1
Appellate Court Case Title:	Mark Whitmore v. Zane Larsen, et al
Superior Court Case Number:	15-2-00140-8

The following documents have been uploaded:

- 995231_Answer_Reply_20210329114802SC046534_2249.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to PFR.pdf

A copy of the uploaded files will be sent to:

- aspnr@pullman.com
- assistant@tal-fitzlaw.com
- matt@tal-fitzlaw.com

Comments:

Answer to Petition for Review

Sender Name: Frankie Wylde - Email: assistant@tal-fitzlaw.com
Filing on Behalf of: Aaron Paul Orheim - Email: Aaron@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:
2775 Harbor Avenue SW
Third Floor Ste C
Seattle, WA, 98126
Phone: (206) 574-6661

Note: The Filing Id is 20210329114802SC046534