Supreme Court Case No. 102654-4
Court of Appeals Case No. 38967-7-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BOLIVAR REAL ESTATE, LLC AND JAMISON EASTBURG,

RESPONDENTS,

v.

ROCHELLE PRATT AND DIANA PRATT,

APPELLANTS.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Respondents, Bolivar Real Estate, LLC and Jamison Eastburg (collectively "Bolivar"), submit this Answer to the *Petition for Review* filed by the Petitioners, Rochelle Pratt and Diana Pratt (collectively the "Pratts").[1]

This matter begins and ends with enforcement of an agreement signed under Civil Rule 2A between Bolivar and the Pratts to resolve a dispute regarding the Pratts' tenancy. That agreement was negotiated through attorneys for both parties. Bolivar accepted the terms proposed by the Pratts. The Pratts did not dispute the existence of the CR2A, the terms of the CR2A, or that it required them to sign a subsequent Settlement Agreement, which they refused to do. The trial court properly granted summary judgment in favor of Bolivar as there were no genuine issues of material fact at summary judgment as to the

[1] As the Petitioners share the same last name, it is being used to avoid confusion. No disrespect is intended.

existence, validity, and enforcement of the CR2A. The trial court's decision was properly upheld by Division III of the Court of Appeals (the "Opinion"). As discussed below, the *Petition for Review* should be denied and Bolivar should be awarded attorney fees in this matter.

II. IDENTITY OF RESPONDENTS

The Respondents in this matter are Bolivar Real Estate, LLC and Jamison Eastburg.

III. COUNTERSTATEMENT OF THE ISSUES

The Pratts first argue that review should be granted pursuant to RAP 13.4(b)(1) and RAP 13.4(b)(2) because they claim the Opinion conflicts with decisions of the Washington Supreme Court and a published decision of the Court of Appeals. As discussed below, the cases cited by the Pratts center on the general standards for a summary judgment motion and the general legal standard for substantive unconscionability. The Opinion does not conflict with the general standard imposed at summary judgment because there were no genuine issues of

material fact as to the existence of the CR2A, the Pratts were represented by counsel, understood its terms, signed the CR2A, the CR2A required that they sign a Settlement Agreement, and they refused to sign it. Instead, the Pratts focused on allegations which were wholly inapplicable to this narrow legal question and did not create a genuine issue of material fact to avoid summary judgment. The Opinion also does not conflict with Washington case law regarding substantive unconscionability because the CR2A did not rise to the level of a "monstrously harsh" or "overly harsh" contract. Instead, the Pratts, despite being represented by counsel, claim that they should have been able to control whom the property where they resided could be sold to, a provision that was not contained in the CR2A and to which the Opinion correctly held did not rise to the level substantive unconscionability.[2]

[2] While the Opinion addressed and disposed of the Pratts' claim that the CR2A was *procedurally* unconscionable, the Pratts did not raise this issue in the *Petition for Review* and any attempt to do so now should be disregarded. RAP 13.4(a) and *Shumway v.*

The Pratts also argue that review should be accepted pursuant to RAP 13.4(b)(4) alleging that this case involves an issue of substantial public interest because they claim (1) Bolivar attempted to circumvent Washington law to illegally evict them utilizing a Notice of Sale pursuant to RCW 59.18.650(2)(e); (2) Bolivar engaged in "bad faith" because the property was sold to Mr. Eastburg; and (3) Bolivar engaged in "harassment" both before and after the CR2A was signed. The Pratts did not raise

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Payne, 136 Wn.2d 383, 392, 964 P.2d 349 (1998). Even if the Pratts had raised procedural unconscionability in their *Petition for Review*, the Opinion correctly concluded that there was no procedural unconscionability because the Pratts were represented by counsel, actively negotiated the CR2A terms over several weeks, and had a meaningful choice whether to enter into that agreement. *Opinion* A-17. In addition, while the Pratts claimed at the trial court and at the Court of Appeals that they could avoid the CR2A because (1) Bolivar breached the agreement by "constructively evicting" them; and (2) they signed the CR2A under duress, neither of these issues were raised in the *Petition for Review*. Even if these had been raised, the Opinion correctly held that (1) any claim for constructive eviction failed because the Pratts never vacated the premises which is a necessary requirement for any constructive eviction claim; and (2) because the Pratts had a meaningful choice and were not deprived of their free will at the time the CR2A was signed, they could not demonstrate duress to avoid the contract. *Opinion*, A-11 & 15-16.

any issue regarding RCW 59.18.650(2)(e) at the trial court and, even if they had, the landlord tenant statutes are inapplicable to this case because Bolivar never filed an unlawful detainer action to evict the Pratts based on the Notice of Sale. Instead, Bolivar filed suit to compel the Pratts to comply with the CR2A and sign the Settlement Agreement. The only issue in this case was the existence, terms, and enforcement of a CR2A under long-standing Washington law, which the Pratts did not dispute before the trial court, the Court of Appeals, and do not address in their *Petition for Review.*

Similarly, the Pratts' allegations of "harassment" before and after the CR2A was signed (which were denied by Bolivar at the trial court level), also do not implicate any substantial public interest. None of these allegations were material to the singular legal issue regarding the existence, terms and requirements of the CR2A. *Opinion,* A-17-18. As to claims of "bad faith", the Opinion correctly concluded that (1) there was no bad faith when the property was sold to Mr. Eastburg because the CR2A did not

restrict who the property could be sold to; and (2) there was no bad faith warranting avoidance of the CR2A based on claims for "harassment" *after* it was signed because the duty of good faith only imposes a duty to cooperate to fully perform the terms of the CR2A. *Opinion,* A-19-20.

Simply stated, the sole focus of this litigation was the existence, validity, terms and enforcement of a CR2A. While the Pratts have attempted to broaden the limited issue in this case, their *Answer* to the *Complaint* and their response to the *Motion for Summary Judgment* admitted all the material facts before the trial court and on appeal. There is no basis for review pursuant to RAP 13.4(b)(1) RAP 13.4(b)(2) or RAP 13.4(b)4) and the *Petition for Review* should be denied.

IV. COUNTERSTATEMENT OF THE CASE

Jamison Eastburg leased property owned by Bolivar Real Estate, LLC. CP 4. Mr. Eastburg sublet a small cottage on the property to the Pratts under a written lease agreement. CP 4.

Bolivar maintained that the most recent written lease expired on May 31, 2021 and the Pratts were on a month-to-month lease. CP 4. On August 11, 2021, the Pratts were served with a 90-day written notice of sale pursuant to RCW 59.18.650(2)(e). CP 198, CP 205-206.

An unlawful detainer action was never filed. Instead, the Pratts' attorney (Adam Johnson at the Northwest Justice Project) argued the Pratts were not on a month-to-month lease, claimed the written lease had been renewed for another year and did not expire until May 31, 2022 (which the Pratts refer to as their "third lease term") and the Notice of Sale was ineffective. CP 4, CP 28, CP 198. The parties entered into negotiations to resolve the dispute pertaining to the Pratts' tenancy over several weeks. CP 208, CP 300.

On November 27, 2021, Mr. Johnson proposed the terms to resolve the dispute and Bolivar agreed to those terms. CP 198, CP 208-209. These same terms were eventually incorporated into the CR2A which all parties signed as of December 15, 2021. CP

213-223.

The following terms of the CR2A were clear, unambiguous, and undisputed at the trial court and on appeal:

1. Bolivar agreed to withdraw the Notice of Sale;

2. The Pratts' tenancy would expire on May 31, 2022 as a matter of law;

3. The CR2A constituted notice of termination of that tenancy pursuant to RCW 59.18.650;

4. The Pratts waived any claim related to termination of a periodic or yearly tenancy under the residential landlord tenant statute;

5. The Pratts agreed to continue paying rent;

6. The property could be sold by Bolivar immediately;

7. The Pratts agreed to waive any claims for tort damages for injuries allegedly sustained on the property;

8. The parties agreed to sign a separate Settlement Agreement incorporating the terms of the CR2A including

an agreement to waive any claim for wrongful eviction pursuant to RCW 59.12 and RCW 59.18 and liability for injuries allegedly sustained on the property; and

9. The prevailing party in any litigation to enforce the terms of the CR2A or the Settlement Agreement would be entitled to attorneys' fees and costs. CP 199, CP 213-223.

On January 4, 2022, a draft of the Settlement Agreement was sent to the Pratts' attorney, Mr. Johnson. CP 199, CP 227. On January 11, 2022, Mr. Johnson sent an e-mail indicating that the Pratts believed that the property (which, under the terms of the CR2A could be sold immediately after the agreement was signed in December) had in fact been sold December 2, 2021 *before* the CR2A was signed. CP 199, CP 230. Mr. Johnson was advised that the transaction had not closed and the deed was not recorded until January 4, 2022. CP 199, CP 230-233. On January 17, 2022, Mr. Johnson was provided with (1) a copy of the Statutory Warranty Deed signed on December 29, 2021 and

recorded January 4, 2022 (after the CR2A was signed); and (2) advised that after communicating with the title officer, the documents originally had a date of December 2, 2021 because they had been prepared and put on hold during negotiations between the parties. CP 200, CP 235-239. At summary judgment, the Pratts agreed that that the Statutory Warranty Deed conveying the property was recorded January 4, 2022 after the CR2A was signed. CP 118-119, CP 301-302 and CP 322.[3]

Bolivar, through counsel, continued to request that the Pratts sign the Settlement Agreement as required by the CR2A through February 2022 and was advised that the Pratts were either ill or could not get to a notary. CP 200-202, CP 242, CP 245, CP 246. Mr. Johnson eventually withdrew from the case. CP 201, CP 253. After Mr. Johnson withdrew, the Pratts continued to refuse to sign and the lawsuit was filed to compel

[3] In addition to the Pratts' own admissions, the Statutory Warranty Deed transferring the property submitted by the Pratts in their *Answer* clearly shows a recording date of January 4, 2022 *after* the CR2A was executed. CP 23, CP 48, CP 118-119.

execution of the Settlement Agreement. CP 3-6, CP 201-202, CP 255-257; CP 281-283. While the Pratts devote a large portion of their *Petition for Review* disputing that that they did not sign the Settlement Agreement because they were ill or could not get to a notary to sign it, this is immaterial. Other than breaching the CR2A by refusing to sign the Settlement Agreement, the reasons why the Pratts did not sign it are irrelevant to the existence, validity, and enforcement of the CR2A. Instead, these were representations made by their counsel of record relayed to the trial court to show that Bolivar tried to obtain performance for months prior to filing suit and only filed suit as a last recourse. CP 200-202. Even if the reasons why the Pratts refused to sign the Settlement Agreement **were** disputed, they do not alter the material facts admitted by the Pratts in their *Answer* and in response to the *Motion for Summary Judgment* motion: (1) the parties signed a valid and enforceable CR2A; (2) the Pratts understood its terms; (3) the Pratts acknowledged the CR2A required them to sign the Settlement Agreement; and (4) they

refused to comply.

In their *Answer* to the *Complaint,* the Pratts admitted that both parties signed the CR2A, the CR2A outlined the terms of the dispute and the settlement, they signed the CR2A on December 9, 2021, the CR2A required them to sign a Settlement Agreement and the CR2A provided that the prevailing party in any action to enforce its terms would be entitled to attorneys' fees and costs. CP 30-31, CP 35, CP 44.

In their response to the *Motion for Summary Judgment,* the Pratts (1) admitted that the parties disputed whether they were on a month-to-month lease; (2) when Bolivar provided the Notice of Sale, they claimed the written lease did not expire until May 31, 2022; (3) the parties negotiated that dispute; (4) Bolivar agreed to the terms of settlement proposed by the Pratts' attorney; (5) as of December 15, 2021, Bolivar had agreed to these terms and all parties had signed the CR2A; (6) the CR2A required the parties to sign a separate Settlement Agreement incorporating its terms; (7) the property occupied by the Pratts

was sold and the transaction closed **after** the CR2A was executed; and (8) beginning January 17, 2022, Bolivar requested the Pratts sign the Settlement Agreement and they refused. CP 300-304, CP 322.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Opinion does not conflict with a decision of the Washington Supreme Court or a published decision of the Court of Appeals.

The Pratts first contend that review should be granted pursuant to RAP 13.4(b)(1) and RAP 13.4(b)(2) because the Opinion conflicts with opinions of the Washington Supreme Court and a published opinion of the Washington State Court of Appeals. This is simply not the case.

First, the Pratts claim that the Opinion conflicts with *Jones v. Allstate Ins. Co.,* 146 Wn.2d 291, 45 P.3d 1068 (2002) and *Stout v. Warren,* 176 Wn.2d 263, 290 P.3d 972 (2012). These cases simply outline the basic standard for summary judgment motion whereby (1) review of the trial court's decision is *de novo*; (2) all facts and inferences are considered in the light most

favorable to the non-moving party; and (3) the trial court may grant summary judgment if the pleadings and affidavits establish that there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. *Jones* at 300; *Stout* at 268. The Opinion does not conflict with either of these cases. Instead, the Opinion correctly outlines the basic rules regarding summary judgment, including, that in order to avoid summary judgment, the Pratts had to set forth specific facts showing that there was a genuine issue for trial, which they failed to do. *Opinion* A-13-14. The Opinion, like the trial court, recognized that the Pratts did not dispute material facts relevant to the only legal issue before the Court: the existence, terms, and enforcement of the CR2A to avoid summary judgment. *Opinion,* A-14-20. The Opinion did not depart from the basic summary judgment standard and there is no conflict with either of these cases. The Pratts did not dispute the material facts of this case and did not address long-standing Washington law governing the existence, interpretation and enforcement of agreements

executed under CR2A at the trial court, before the Court of Appeals or in their *Petition for Review*.

The principles of contract law govern settlement agreements and agreements under CR2A. *Condon v. Condon*, 177 Wn.2d 150, 162, 298 P.3d 86 (2013); *In re Marriage of Pascale*, 173 Wn.App. 836, 841, 295 P.3d 805 (2013). To form a valid contract, the parties must objectively manifest their mutual assent. *Condon*, 177 Wn.2d at 162; *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 388, 858 P.2d 245 (1993). The purport of an agreement is disputed within the meaning of CR2A if there is a genuine issue over (1) the existence of that agreement; or (2) material terms of that agreement. *Cruz v. Chavez*, 186 Wn.App. 913, 919-920, 347 P.3d 912 (2015). The party moving to enforce the agreement has the burden of proving there is no genuine issue of material fact that the agreement existed and the material terms of that agreement. *Id.* Once this burden is met, the non-moving party must provide affidavits, declarations or other evidence to show

that there is a genuine issue of material fact. *Id.* quoting *In re Patterson*, 93 Wn.App. 579, 584, 969 P.2d 1106 (1999).

The Pratts did not dispute that there was mutual assent by all parties, an agreement was reached and that agreement was signed by all parties and counsel after review. In their *Answer* to the *Complaint* and in their response to Bolivar's *Motion for Summary Judgment*, the Pratts admitted that the CR2A existed as to the material terms of that agreement and that they were required to sign a subsequent Settlement Agreement. The Pratts also admitted that the property was not sold until after the CR2A was signed. Finally, the Pratts did not dispute that in any action to enforce the CR2A, the prevailing party would be entitled to attorneys' fees and costs. The Opinion correctly applied the summary judgment standard set forth in both *Jones v. Allstate* and *Stout v. Warren.*

The Pratts next contend that the Opinion was in conflict with *Renz v. Spokane Eye Clinic, P.S.*, 114 Wn.App. 611, 623, 60 P.3d 106 (2002) because the trial court did not consider all of

their exhibits and improperly "weighed" the evidence based on a singular exchange with the trial court at summary judgment. *Petition for Review*, pg. 21; RP 16. That exchange between Diana Pratt and the trial court addressed her contention that Bolivar was "harassing" them *after* the CR2A was signed. *Petition for Review,* pg. 21-22; RP 16-17. As noted by the trial court, the legal issue was the validity and terms of the CR2A which, critically, Ms. Pratt noted in that same passage, they agreed to and signed. RP 16. The trial court and the Opinion correctly determined that there were no facts to indicate that the CR2A was not effective, it was signed by all parties in good faith, there were no material facts to avoid the conclusion that it was enforceable, and summary judgment should be granted. RP 27-28; *Opinion,* A-14-15. The Opinion does not conflict with the holding in *Renz* because the Pratts did not provide any material facts to dispute the existence, validity and enforcement of the CR2A.

Finally, the Pratts contend that the Opinion conflicts with *Tadych v. Noble Ridge Construction, Inc.*, 200 Wn.2d 635, 519

P.3d 199 (2022). This case simply outlines the standard necessary to show substantive unconscionability: the party seeking to void a contract must show that its terms are "one-sided or overly harsh", "shocking to the conscience", "monstrously harsh" or "exceedingly calloused." *Id.* at 641. The Pratts contend the Opinion was in conflict because the CR2A allowed Mr. Eastburg to become the owner of the property, they were not advised he would be the owner, and they should have been able to control that decision. The Opinion correctly determined that a contract cannot be substantively unconscionable simply because it does not contain a term not contemplated by the CR2A. Furthermore, the CR2A as proposed by the Pratts did not limit Bolivar's right to sell the property to any buyer it wished, and under the terms of that CR2A Bolivar was not bound to select a buyer the Pratts found suitable. *Opinion,* A-17-18. Finally, the Opinion correctly determined that the CR2A benefitted the Pratts because they remained on the property until May 31, 2022 in accordance with their claimed third lease period. *Opinion,* A-18.

In *Tadych* the Washington Supreme Court invalidated a contractual one-year limitation provision to bring a construction defect action because (1) it abolished a plaintiff's statutory right to bring a claim under RCW 4.16.310; (2) provided for a substantially shorter limitation period to bring that claim, benefitting the contractor at the expense of the contractor; and (3) violated the general policy behind statute of limitations to allow sufficient time to investigate a claim while protecting against stale claims. *Tadych* at 643-644. The Opinion correctly determined that the terms of the CR2A the Pratts proposed, agreed to and signed did not come close to a "one-sided", "overly harsh" or "shocking to the conscience" and does not conflict with holding in *Tadych v. Noble Ridge.*

B. The Opinion does not raise an issue of substantial public interest.

The Opinion also does not raise any issue of substantial public interest warranting review under RAP 13.4(b)(4) as contended by the Pratts for four reasons.

First, the Court of Appeals determined that this case would not be published. Unpublished opinions have no precedential value and are not binding on any Court. GR 14.1(a). Moreover, GR 14.1(c) provides that appellate courts should not, unless necessary for a reasoned decision, cite or even discuss unpublished opinions. In addition, the Opinion itself correctly analyzed this dispute under long-standing Washington law regarding enforcement of CR2A agreements, defenses to enforcement of contracts and summary judgment standards which are not novel and do not raise a substantial issue of public interest.

Second, this case does not involve an issue of substantial public interest because there was no illegal conviction under RCW 59.18.650 as contended by the Pratts.

At the outset, the Pratts never raised this issue before the trial court and, instead, raised it for the first time on appeal. An argument that is not plead or argued to the trial court cannot be raised for the first time on appeal. RAP 2.5(a); *Washington*

Federal Savings v. Klein, 177 Wn.App. 22, 29, 311 P.3d 53 (2013). Even if the Pratts **had** properly raised this issue, it is irrelevant because an unlawful detainer action was never filed pursuant to RCW 59.18.650(2)(e) to evict the Pratts. Bolivar **did** send a 90-day notice informing the Pratts of the intent to sell the property and to terminate the month-to-month tenancy in accordance with RCW 59.18.650(2)(e). When the Pratts claimed that they were not on a month-to-month tenancy and the written lease had been extended to May 31, 2022, the parties **resolved** that dispute through negotiations through their attorneys and signed the CR2A utilizing terms proposed by the Pratts. Bolivar agreed to withdraw notice of sale, agreed to allow the Pratts to remain on the property until May 31, 2022 (which was the end of the term of the alleged "third lease"), the Pratts agreed that the CR2A constituted the notice of termination of the tenancy pursuant to RCW 59.18.650 and agreed that Bolivar was free to sell the property immediately. It is also undisputed that the property was not sold until January 4, 2022, well after the CR2A

was signed. An unlawful detainer action was never filed, no provision of RCW 59.18.650 was used to evict the Pratts and the Pratts were never evicted. Finally, even if RCW 59.18.650 was somehow applicable to this case, RCW 59.18.650(5) provides that a landlord and tenant may agree to end a tenancy for a specified period of time before the completion of the term if the parties enter into a written agreement and the tenant is given at least sixty (60) days to vacate. The parties agreed to do so here, and the Pratts were given more than sixty (60) days' notice. In any event, the landlord tenant statute was not used to evict anyone. The trial court and Court of Appeals correctly identified that the legal issue in this case was limited to long-standing Washington law regarding the requirements, interpretation and enforcement of a CR2A. *Opinion,* A-13-15.

Third, while not clear from the *Petition for Review,* any contention that the Pratts' claim of "bad faith" involves an issue of substantial public interest should be rejected. As correctly stated in the Opinion, every contract imposes an implied duty of

good faith and fair dealing obligating the parties to cooperate with each other to obtain the benefit of full performance. *Rekhter v. Dep't of Soc. & Health Servs.,* 180 Wn.2d 102, 112, 323 P.3d 1036 (2014). However, that duty does not add to or contradict express contract terms and does not impose a "free-floating" obligation of good faith on the parties. *Id.* at 113. While there is a general duty of good faith in a contract, that duty is not breached when one party stands on its rights to require full performance according to its terms. *134th Street Lofts, LLC, v. iCap Northwest Opportunity Fund, LLC,* 15 Wn.App.2d 549, 562, 479 P.3d 367 (2020). As such, any contention that the CR2A was unenforceable because Bolivar allegedly attempted to "illegally" evict the Pratts before it was signed, allegedly harassed them before and after it was signed, or that the CR2A was otherwise unenforceable because they were not informed Mr. Eastburg would be the new owner of the property do not implicate the mutual duty to cooperate to obtain performance of CR2A's specific terms. As the Opinion correctly determined, the

duty of good faith and fair dealing cannot add terms and conditions to a contract which are simply not present. *Opinion* A-19-20. To the extent the Pratts contend review should be granted because of the duty of good faith and fair dealing, there is no issue of substantial public interest warranting review by this Court under RAP 13.4(b)(4).

Finally, while also not clear from the *Petition for Review,* any contention that review should be accepted regarding the Pratts' claim of material breach of the CR2A does not involve an issue of substantial public interest. To excuse performance of a contract by one party, the breach by the other party must be material. *U.S. National Bank Association as Trustee for Truman 2016 SC 6 Title Trust v. Roosild*, 17 Wn.App.2d 589, 603, 487 P.3d 212 (2021). A material breach is one the substantially defeats a primary function of the contract. *Top Line Builders, Inc., v. Bovenkamp,* 179 Wn.App. 794, 808, 320 P.3d 130 (2014). Materiality "…is a term of art in contract analysis and identifies a breach so significant that it excuses the other party's

performance and justifies rescission of the contract." *Park Avenue Condo Owners Ass'n v. Buchan Dev., LLC,* 117 Wn.App. 369, 383, 71 P.3d 692 (2003). As correctly determined by the Opinion, the Pratts did not include any provision in the CR2A requiring Mr. Eastburg from engaging in any behavior the Pratts found offensive and did not point to any provision of the CR2A which was allegedly breached. *Opinion*, A-18-19. While the Pratts contend that they were deprived of the benefit of quiet enjoyment of the rental property because of the "material breach", any such claim is wholly unrelated to the specific legal issue in this case: the existence, terms and enforcement of the CR2A the Pratts signed and refused to perform. There is no substantial issue of public interest warranting review.

C. Bolivar is entitled to an award of attorneys' fees and costs.

Washington follows the American rule for an award of attorneys' fees and costs. *Dayton v. Farmers Ins. Group*, 124 Wn.2d 277, 280, 876 P.2d 896 (1994). Under the American rule, "a court has no power to award attorney fees as a cost of litigation

in the absence of contract, statute or recognized ground of equity providing for fee recovery." *Id.* "An award of attorneys' fees based on a contractual provision is appropriate when the action arose out of the contract and the contract is central to the dispute." *Mehlenbacher v. DeMont*, 103 Wn.App. 240, 244, 11 P.3d 871 (2000) (citing *Seattle-First Nat'l Bank v. Washington Ins. Guar. Ass'n*, 116 Wn.2d 398, 413, 804 P.2d 1263 (1991)). The CR2A provides for the following:

> The prevailing party in any legal proceedings to enforce the terms of this Agreement and/or the executed settlement agreement shall be entitled to payment of all attorney fees and costs incurred. CP 217.

A contractual provision for an award of attorneys' fees at the trial court supports an award of attorneys' fees and expenses on appeal. RAP 18.1; *Umpqua Bank v. Shasta Apartments, LLC,* 194 Wn.App. 685, 699-700, 378 P.3d 585 (2016). See also *Matter of Estate of Petelle,* 23 Wn.App.2d 203, 216-217, 515 P.3d 548 (2022). (Use of the term "shall" in a CR2A Agreement governing attorneys' fees removes the court's discretion

regarding a fee award based on enforcement proceedings and, under RAP 18.1, the prevailing party is entitled to attorneys' fees under the plain terms of that agreement).

The CR2A provides that the party prevailing in any litigation to enforce its terms is entitled to reasonable attorneys' fees and costs. Bolivar should also be awarded its attorneys' fees and costs for the time an expense incurred to file the Answer to the *Petition for Review* as the prevailing party in this appeal based on the CR2A and RAP 18.1(a).

VI. CONCLUSION

Based on the foregoing, the Respondents respectfully request that this Court deny the *Petition for Review* and award attorneys' fees and costs.

RESPECTFULLY SUBMITTED this 23rd day of February, 2024. Pursuant to RAP 18.17(c)(10), Lawrence W. Garvin, counsel for Respondents, hereby certifies that the word count for Respondents' Answer is **4,809** words, excluding words contained in the title sheet, table of contents, table of authorities,

certificate of service, signature blocks and this certificate of compliance.

WITHERSPOON BRAJCICH MCPHEE, PLLC

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CERTIFICATE OF SERVICE

I, Lawrence W. Garvin hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this 23rd day of February, 2024.

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