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Case No. 93529-7

SUPREME COURT OF THE STATE OF WASHINGTON

Hatsuyo "Sue" Harbord,

Petitioner,

v.

Safeway Inc.,

Respondent.

ANSWER OF RESPONDENT
SAFEWAY INC. TO
PETITIONER'S REQUEST
FOR ORAL ARGUMENT
REGARDING THE PETITION
FOR REVIEW

I. IDENTITY OF RESPONDING PARTY

Respondent Safeway Inc. ("Safeway"), through its undersigned counsel, Daniel P. Hurley of K&L Gates LLP, hereby responds to the motion filed by Petitioner Hatsuyo "Sue" Harbord on September 23, 2016 (the "Motion"), in which she requests oral argument on her Petition for Review¹.

II. RELIEF SOUGHT

Safeway requests that the Court deny Ms. Harbord's Motion.

¹ The Petition for Review was filed on August 24, 2016, and is titled "Motion for Discretionary Review."

III. FACTS RELEVANT TO MOTION

On July 25, 2016, Division I of the Court of Appeals (Case No. 72731-1-I) filed its 15-page Unpublished Decision affirming the trial court's order in this case, which dismissed Ms. Harbord's lawsuit against Safeway on two alternatively sufficient bases: (i) because Ms. Harbord failed to submit or identify any admissible evidence supporting her claims in response to Safeway's motion for summary judgment; and (ii) as a sanction for Ms. Harbord's violation of the trial court's discovery order compelling her to respond to Safeway's discovery requests (with such violation resulting from Ms. Harbord's unfounded assertion that she had no obligation to comply with court rules regarding discovery). Unpublished Opinion at pp.1-15; CP 1895-1897 (trial court's order of dismissal). The Court of Appeals also awarded Safeway its attorney fees pursuant to RAP 18.9, finding Ms. Harbord's appeal to be frivolous. Unpublished Decision at p.15 ("Harbord's complete failure to identify supporting evidence in the record or present any meaningful legal argument addressing the summary judgment standard and discovery sanctions precludes any arguable challenge to the trial court's decision.").

Ms. Harbord filed her Petition for Review of the Unpublished Opinion on August 24, 2016. In its Answer to Petition for Review, filed September 26, 2016, Safeway has set forth argument, with supporting

citations to the trial court record and the record before the Court of Appeals, sufficient to show that Ms. Harbord has no cognizable basis pursuant to RAP 13.4 or RAP 13.5 to justify this Court's discretionary review of the Unpublished Opinion.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 13.4 governs petitions for discretionary review by the Supreme Court of any decision by the Court of Appeals that terminates appellate review of a case. RAP 13.4(a). In this case, the Unpublished Opinion is the decision that has terminated appellate review of Ms. Harbord's case. RAP 13.4 further provides that, when a party files a petition for review of a decision that has terminated review, "[t]he Supreme Court will decide the petition without oral argument." RAP 13.4(j) (emphasis added). RAP 13.4(j) contains no limitations, qualifications or exemptions to this rule.

While RAP 1.2(c) allows this Court to "waive or alter the provisions of any of [the Rules of Appellate Procedure] in order to serve the ends of justice," Ms. Harbord does not and cannot set forth any evidence or argument that provides any reasonable basis for the Court to ignore RAP 13.4(j) and allow oral argument on the Petition for Review. In fact, after reviewing both Ms. Harbord's Petition for Review and Safeway's Answer to Petition for Review, it will be readily apparent to the

Court that oral argument on Ms. Harbord's Petition Review would not serve the ends of justice here, but instead would result in further unjustified waste of resources for both the Court and Safeway.

V. CONCLUSION

For the foregoing reasons, Safeway requests that the Court deny the Motion.

DATED this 24th day of October, 2016.

K&L Gates LLP

By s/ Daniel P. Hurley

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on October 24, 2016, I served a true and correct copy of the foregoing *ANSWER OF RESPONDENT SAFEWAY INC. TO PETITIONER'S REQUEST FOR ORAL ARGUMENT REGARDING THE PETITION FOR REVIEW* by delivering same via U.S. Mail, First Class postage prepaid to:

Hatsuyo Harbord
P.O. Box 112
Sequim, WA 98382

DATED this 24th day of October, 2016.

s/Anita Spencer
Anita Spencer, Practice Assistant