

No. 94088-6

SUPREME COURT
OF THE STATE OF WASHINGTON

BUSINESS SERVICES OF
AMERICA II, INC.

Appellant,

v.

WAFERTECH LLC,

Respondent.

MOTION TO STRIKE REPLY
TO ANSWER TO PETITION
FOR REVIEW

A. Relief Sought By Moving Party.

Respondent WaferTech, LLC (“WaferTech”) asks the Court to strike Petitioner Business Services of America II, Inc.’s (“BSofA”) Reply to Answer to Petition for Review.

B. Argument And Grounds For Relief.

“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.” RAP 13.4(d) (emphasis added); *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 261 n.17, 178 P.3d 981 (2008) (“The answer

does not raise any new issues and a reply is therefore not authorized by the rules of appellate procedure.”). WaferTech has not sought review of any issue, but has asked the Court to deny review entirely. (Answer at 1, 20) Accordingly, RAP 13.4(d) bars BSofA’s Reply. This Court should strike BSofA’s improper Reply in its entirety.

BSofA’s assertion that “Wafertech raises several issues new issues” [sic] is both erroneous and not a basis for filing a reply. (Reply at 5) WaferTech argued that the BSofA’s CR 15 Motion was futile as an additional ground to support the Court of Appeals decision. (Answer at 15-20) *See LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 73, 331 P.3d 1147 (2014) (“an appellate court may affirm a decision on any ground supported by the record”). But WaferTech did not seek review of this (or any other) aspect of the Court of Appeals decision. The Rules of Appellate Procedure do not authorize a reply simply because a respondent raises additional reasons for denying review. *See* 3 Wash. Prac., Rules Practice RAP 13.4 (7th ed.) (Drafters’ Comment to 2006 Amendment of RAP 13.4: noting that amendment was intended to stop “abuse by petitioning parties who attempt to cast an answering party’s arguments in response to a petition for review as ‘new issues’ in order to reargue issues raised in the petition”).

C. Conclusion.

This Court should strike petitioner's reply.

Dated this 15th day of March, 2017.

Respectfully Submitted

/s/ James T. McDermott
James T. McDermott, WSBA No. 30883
Gabriel M. Weaver, WSBA No. 45831
Ball Janik LLP
101 SW Main Street, Ste. 1100
Portland, OR 97204

Howard M. Goodfriend, WSBA No. 14355
Smith Goodfriend, P.S.
1619 8th Ave. North
Seattle, WA 98109
Attorneys for Respondent WaferTech, LLC