

FILED
SUPREME COURT
STATE OF WASHINGTON
7/30/2024 4:10 PM
BY ERIN L. LENNON

CLERK SUPREME COURT OF THE STATE OF WASHINGTON

No. 102883-1

ANDERSEN CONSTRUCTION COMPANY

Appellant,

v.

REVITALIZATION PARTNERS, LLC, et al.,

Respondent.

In the receivership of:
APPLIED RESOTRATION, INC.

APPELLANT ANDERSEN CONSTRUCTION COMPANY'S
ANSWER TO MEMORANDUM OF AMICI CURIAE

Joshua B. Lane, WSBA #42192
Ahlers Cressman & Sleight PLLC
1325 Fourth Avenue, Suite 1850
Seattle, WA 98101
(206) 287-9900 Fax (206) 934-1139
Attorneys for Appellant, Andersen Construction Company

I. INTRODUCTION

Petitioner Andersen Construction Company (“Andersen”) respectfully submits its answer to the memorandum (“Memorandum”) filed by *Amici Curiae*, Associated General Contractors of Washington (“AGC”) and National Utility Contractors Association of Washington (“NUCA”) in support of Andersen’s Petition for Review (“Petition”).

II. ANSWERING ARGUMENT

Andersen adopts the arguments made by *Amici*. Andersen shares *Amici’s* concerns that the errors made by the Court of Appeals impact not just Andersen but have significant consequences for the entire construction industry, including the thousands of the *Amici’s* members, supporting review per RAP 13.4(b)(4). Andersen adopts the arguments and authorities in the Memorandum because they are consistent with and support Andersen’s arguments below and as they now are presented following the published opinion of the Court of Appeals.

A. Andersen Adopts *Amici's* Contract Assignment Arguments.

Johansen expressly adopts *Amici's* arguments and authorities at that the assignment of rights from Applied Restoration Inc. (“ARI”) to Revitalization Partners, LLC (the “Receiver”) – which is axiomatic of each and every receivership action – means the Receiver’s contract rights are subject to and limited by the terms of ARI’s subcontract with Andersen. *See* Memorandum at 6-9. *Amici's* arguments are consistent with Andersen’s, including those set out in its Petition for Review at pp. 13-18, and including what it argued in the trial court. *E.g.*, CP 51 (in Andersen’s opposition to the Receiver’s Second Motion for Turnover, Andersen argued: “...the Receiver continues to ignore the unequivocal language of the Subcontract between Andersen and ARI which controls the terms of payment to ARI and/or the Receiver.”). Andersen agrees this issue affects the entire construction industry, supporting review per RAP 13.4(b)(4).

B. Andersen Adopts *Amici's* Equitable Arguments.

Andersen argued below that the insolvent, ARI, and thus the Receiver who stands in the insolvent's shoes, has no right to any of the funds because, e.g., no payment was owed to ARI under the Subcontract because ARI had failed to satisfy the conditions precedent to payment and that ARI had falsely certified that it had satisfied those conditions to wrongly obtain payment from Andersen. *See* CP 52 (Relying on Unconditional Waivers from ARI assuring [Andersen] that ARI had paid all obligations owed to its sub-tiers, Andersen agreed to issue payment for work performed by ARI and its sub-tiers in February and March [2020]....After issuing payment, Andersen learned that ARI has not paid its sub-tiers in January, February, or March of 2020. During this period of time, the Owner, through Andersen, had paid ARI \$272,236.83 for work performed solely by ARI's sub-tiers – none of whom received a penny.”); *see also*, Petition for Review at 8. *Amici's* equitable and clean hands arguments that the Receiver has no right to the funds because of

ARI's "dirty hands" stemming from its breach of contract and false certifications are congruent. *See* Memorandum, at 13. Andersen therefore expressly adopts *Amici's* arguments and authorities as its own for this Court to address if review is granted: that equitable principles do not supersede express contract terms and, in fact, they preclude granting the "broad equity" decreed by the Court of Appeals to an insolvent with such unclean hands as the Receiver standing in ARI's shoes.

As noted in the Petition, allowing the Receiver to be granted such equity would amount to letting ARI benefit from its false certifications by: forcing Andersen to pay twice for ARI's sub-tier work, forcing Andersen to pay the Subcontract balance to the Receiver for work ARI never performed, and denying Andersen's costs and damages incurred for ARI's defective and incomplete work after ARI stopped work in breach of the Subcontract.

///

C. Andersen Adopts *Amici's* Argument That The Receivership Act Did Not Abrogate Washington Contract Law.

Andersen adopts *Amici's* argument and authorities that the Receivership Act did not abrogate Washington contract law but merely preserved then-current law. Memorandum at 9-11. This is consistent with the arguments stated in the Petition at 19-22. Whether that legislative enactment made a fundamental change to Washington's receivership law is an important question of state-wide significance which only this Court can resolve, making review appropriate. RAP 13.4(b)(4).

III. CONCLUSION

Amici's Memorandum, demonstrates the need for review in this case. Andersen respectfully requests the Court grant review for those reasons stated in their Memorandum and in Andersen's Petition for Review.

RESPECTFULLY SUBMITTED this 30th day of July,
2024.

AHLERS CRESSMAN & SLEIGHT PLLC

By: /s/ Joshua B. Lane
Joshua B. Lane, WSBA No. 42192
1325 Fourth Avenue, Suite 1850
Seattle, WA 98101
(206) 287-9900 | Fax: (206) 934-1139
joshua.lane@acslawyers.com
Attorneys for Appellant

*I certify that this motion contains 707
words, in compliance with RAP 18.17.*

DECLARATION OF SERVICE

On July 30, 2024, I caused to be served a true and correct copy of the foregoing document to be served on counsel of record stated below, via the Washington Courts E-Portal:

Nathan Riordan
Faye C. Rasch
Catherina J. Reny
Wenokur Riordan PLLC
600 Stewart Street, Ste 1300
Seattle, WA 98101
Ph: (206) 492-7083
nate@wrlawgroup.com
faye@wrlawgroup.com
cat@wrlawgroup.com
Attorneys for Receiver Revitalization Partners, LLC

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

DATED this 30th day of July, 2024, at Seattle, Washington.

By: /s/Sarah King
Sarah King, *Legal Assistant*

AHLERS CRESSMAN & SLEIGHT PLLC

July 30, 2024 - 4:10 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,883-1
Appellate Court Case Title: In the Receivership of: Applied Restoration, Inc.

The following documents have been uploaded:

- 1028831_Answer_Reply_20240730160429SC331986_7523.pdf
This File Contains:
Answer/Reply - Other
The Original File Name was 2024 07 30 Andersen Answer to Amicus Motion.pdf

A copy of the uploaded files will be sent to:

- angie@bergmanapc.com
- bmarconi@ashbaughbeal.com
- cat@wrlawgroup.com
- csmith@pregodonnell.com
- dpoore@pregodonnell.com
- edgar.rosales@millernash.com
- faye@wrlawgroup.com
- geoff@groshonglaw.com
- james.yand@millernash.com
- jeffreym@bcmjlaw.com
- jlaurick@kilmerlaw.com
- john.knapp@millernash.com
- kalen@groshonglaw.com
- maxwell@mftlaw.com
- msimmons@scblaw.com
- nate@wrlawgroup.com
- oa@wrlawgroup.com
- rose@carneylaw.com
- stafford@mftlaw.com
- todd@thetracylawgroup.com
- tparcel@kilmerlaw.com
- welch@carneylaw.com
- wmalaier@omwlaw.com

Comments:

Sender Name: Simone Torres - Email: sarah.king@acslawyers.com

Filing on Behalf of: Joshua Brian Lane - Email: joshua.lane@acslawyers.com (Alternate Email: sarah.king@acslawyers.com)

Address:
1325 4th Ave Suite 1850
SEATTLE, WA, 98101

Phone: (206) 287-9900

Note: The Filing Id is 20240730160429SC331986