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No. 103018-5

SUPREME COURT
OF THE STATE OF WASHINGTON

In the Receivership of:
CASTLE WALLS LLC:

JOHANSEN CONSTRUCTION COMPANY,
LLC,

Petitioner,

v.

REVITALIZATION PARTNERS, LLC,

Respondent/Receiver.

**JOHANSEN'S ANSWER TO *AMICI CURIAE*
MEMORANDUM OF AGC AND NUCA**

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I. INTRODUCTION

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

II. ANSWERING ARGUMENT

First, Johansen adopts the arguments made by *Amici* AGC and NUCA. Johansen joins in point that the errors made by the appellate court have significance far beyond the parties to this action – they affect the entire construction industry, including the thousands of the *Amici*’s members, supporting review per RAP 13.4(b)(4). Johansen adopts the arguments and authorities in the Amicus Brief because they are consistent with and support Johansen’s arguments below and as they now are presented following the appellate court’s decision.

A. Adoption of *Amici's* Contract Assignment Arguments.

Johansen expressly adopts *Amici's* arguments and authorities at AM 6-10 that the assignment of rights from Castle Walls to the Receiver – which is at the heart of each and every receivership action – means the Receiver's contract rights are subject to and limited by Castle Walls' contracts' terms, and Castle Walls' actions and inactions up to the point of assignment. *Amici's* arguments are consistent with Johansen's, including those set out in its Petition for Review at pp. 17-18, and including what it argued in the trial court. *E.g.*, RP 12-13.¹ Johansen agrees this issue affects the entire construction industry, supporting review per RAP 13.4(b)(4).

¹ “Johansen also has clear and unambiguous contractual rights to the full payments due or that may become due to Castle Walls breached the subcontract agreement. It is undisputed that Castle Walls was in breach of the subcontract and was terminated prior to appointment of the receiver....the subcontract provides Johansen the right to withhold any payments that may be due to Castle Walls if there is a breach.

... nothing in the receivership statute or the order (appointing the receiver) that allows the receiver to step in and take some type of pre-termination rights and assert those.”

B. Adoption of Equitable Arguments of *Amici*.

Johansen argued below that the insolvent, Castle Walls, LLC., and thus the Receiver who stands in the insolvent's shoes, has no right to any of the funds because Castle Walls fraudulently negotiated the joint checks without the required second signature and thus never lawfully owned or possessed the funds represented by the checks. *See, e.g.*, RP 11;² Petition at 20-23 (Castle Walls, and thus the Receiver, had no lawful interest in funds obtained by fraud or theft, such as negotiating joint checks without the second signature). *Amici's* equitable and clean hands arguments that the Receiver has no right to the funds because of Castle Walls' "dirty hands" stemming from its breach of contract and fraudulent negotiations of the joint checks, *see* AM at pp. 12-15, are congruent. Johansen therefore expressly adopts *Amici's* arguments and authorities as its own for this Court to address if

² "Castle Walls wrongfully and without authority or endorsement from Automatic Wilbert [the supplier] deposited two-party checks into its bank account. Crassly, Castle Walls stole the funds from Johansen and Automatic Wilbert."

review is granted: that equitable principles do not supersede express contract terms and, in fact, they preclude granting the “broad equity” decreed by the appellate court to an insolvent with such unclean hands as the Receiver standing in Castle Walls’ shoes.

As noted in the Petition, allowing the Receiver to be granted such equity would amount to letting Castle Walls and its assignee steal the funds twice – once by negotiating the joint checks without the required second signature; a second time by the Receiver’s “turnover” action which obtains funds which literally could not be funds Castle Walls obtained since its account was overdrawn on the date of the transmission to Johansen’s bank.

C. Adoption of *Amici’s* Argument That The Receivership Act Did Not Abrogate Washington Contract Law.

Johansen adopts *Amici’s* argument and authorities that the Receivership Act did not abrogate Washington contract law but merely preserved then-current law. AM at 10-12. This is consistent with the arguments stated in the Petition at 19-20.

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).³

³ *Amici* also note at AM p. 6, fn.1, that another recent appellate decision is also before this Court seeking review and includes the issue of the disregard for contract rights in receiverships, citing to *In re Receivership of Applied Restoration*, 28 Wn.App.2d 881, 539 P.3d 837 (2023), *petition for review pending*, No. 102883-1. Johansen seeks review in its own right, regardless of how the Court addresses *Applied Restoration*. Given material differences in the circumstances and issues in the two cases, they need to be decided separately, even if heard on the same calendar.

III. CONCLUSION

Amici AGC and NUCA demonstrate in their memorandum the need for review in this case.

This document contains 816 words, excluding the parts exempted by RAP 18.17.

Respectfully submitted this 30th day of July, 2024.

CARNEY BADLEY SPELLMAN, P.S.

By /s/ Gregory M. Miller

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 30th day of July, 2024.

/s/ Elizabeth C. Fuhrmann

Elizabeth C. Fuhrmann, Legal
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CARNEY BADLEY SPELLMAN

July 30, 2024 - 4:00 PM

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