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Court of Appeals No. 58229-5-II

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT OF NATURAL
RESOURCES and COMMISSIONER OF PUBLIC LANDS
HILARY FRANZ,

Petitioners,

v.

COOKE AQUACULTURE PACIFIC, LLC,

Respondent.

**PETITIONERS' REPLY TO COOKE'S ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION

In response to DNR's Petition for Review, Cooke Aquaculture asks this Court to accept review of an additional issue: whether the Court of Appeals erred in holding that collateral estoppel precludes Cooke's Uniform Declaratory Judgment Act claim. This Court should deny review of the issue, and grant review as requested in DNR's Petition for Review.

In Cooke's first appeal, and below here, Cooke asked the Court to determine whether it was in default of its lease and whether DNR had the right to terminate that lease. Cooke and DNR have already litigated the issues of whether Cooke was in default and DNR had the right to terminate. Indeed, in the earlier appeal, the Court of Appeals held that there was no question that Cooke was in default, that Cooke did not dispute the existence of the conditions constituting default, and that DNR acted pursuant to its express contractual authority in terminating Cooke's lease. *Cooke Aquaculture Pac., LLC v. Wash. Dep't of Nat. Res. &*

Hilary Franz, No. 54564-1-II, slip op. at 11, 12, 14 (Wash. Ct. App. Dec. 14, 2021) (unpublished) (*Cooke* 1).

The Court of Appeals correctly concluded that collateral estoppel precludes Cooke's declaratory judgment claim. Cooke does not demonstrate that review is warranted under RAP 13.4(b)(1), (2), or (4). This Court should deny review of the decision on application of collateral estoppel to Cooke's declaratory judgment claim.

II. COUNTERSTATEMENT OF ISSUE RAISED BY COOKE'S CROSS-PETITION

Did the Court of Appeals properly hold that collateral estoppel precludes Cooke's declaratory judgment claim because it is based on the already-decided issues of whether Cooke was in default of its lease and whether DNR had the right to terminate?

III. STATEMENT OF THE CASE¹

In its first complaint, Cooke asserted that it “was not in default of the Lease, and there was no basis for DNR to declare an Event of Default or to terminate the Lease.” Clerk’s Papers (CP) at 279. Cooke asked the superior court to “rule that Cooke was not in default of the Lease [when the lease was terminated], that DNR had no basis to declare an Event of Default, and no basis to terminate the Lease.” CP at 279. The parties conducted discovery, and DNR produced its record. *E.g.*, CP at 373, 1321, 1329, 331. Cooke asked for, and was granted, additional time to complete discovery and supplement the record. CP at 364, 374, 425. Then, Cooke and DNR “worked together to identify additional documents,” and DNR supplemented its record. CP at 425. After briefing and oral argument, the superior court found that DNR’s decision to terminate was supported by the record.

¹ Consistent with RAP 13.4(d), this discussion is limited to facts relevant to the issue Cooke raised in its answer to DNR’s petition for review. DNR’s petition for review includes a more complete presentation of the statement of the case.

CP at 441; *Cooke 1*, slip op. at 8. The Court of Appeals concluded “[t]here is no question” that Cooke was in default, and “DNR had the right under the terms of the lease to terminate Cooke’s lease.” *Cooke 1*, slip op. at 11, 14.

In its complaint here, Cooke asserted that it “is not in default of the Lease[,]” and “[t]here is no basis for DNR to terminate the Lease.” CP at 140. Further, Cooke asserted that it “is entitled to a declaratory judgment that it is not in default of the Lease, that DNR has no right to declare a default, Event of Default, or to terminate the Lease, and that the Lease remains in full force and effect.” CP at 141; *Cooke Aquaculture Pac., LLC v. Wash. Dep’t of Nat. Res. and Hilary Franz*, No. 58229-5-II, slip op. at 11 (filed July 2, 2024) (unpublished) (*Cooke 2*). DNR moved for summary judgment, arguing that collateral estoppel precludes Cooke’s declaratory judgment claim. CP at 229. The superior court and the Court of Appeals agreed. CP at 2504; *Cooke 2*, slip op. at 11-12.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED ON COOKE'S CROSS-PETITION

The Court of Appeals' conclusion that collateral estoppel precludes Cooke's declaratory judgment claim does not warrant this Court's review. Cooke argues that the Court of Appeals misapplied collateral estoppel for three reasons: first, because it did not have an opportunity to fully litigate the underlying issues in *Cooke 1*; second, because the issues are not identical; and third, because application of collateral estoppel would result in an injustice. Answer at 24, 26, 28. Cooke is wrong on all three.

At its core, Cooke's argument is that it would like an opportunity to try to prove that DNR had bad intentions when it terminated Cooke's lease. But the lease is a contract. Cooke has not, in the first case or here, identified any authority supporting the idea that DNR's contract rights are conditioned on Cooke's agreements with DNR's political positions. The leasehold conditions at the time of termination are undisputed. *Cooke 1*, slip op. at 12. The Court of Appeals, in its de novo review of the lease, held that DNR exercised its rights under the terms of the

lease. *Cooke 1*, slip op. at 13-14. This Court denied review of the Court of Appeals' first decision. *Cooke Aquaculture Pac., LLC v. Wash. Dep't of Nat. Res.*, 200 Wn.2d 1002, 516 P.3d 374 (2022).

Cooke's arguments are flawed and unsupported. The Court of Appeals properly applied well-settled law to bar Cooke's declaratory judgment claim under collateral estoppel, and Cooke cannot meet the criteria of RAP 13.4(b)(1), (2), and (4).

A. Cooke Had an Opportunity to Fully Litigate the Underlying Facts and Issues in the First Appeal

Cooke argues that the Court of Appeals ignored the elements of collateral estoppel, namely the importance of the full and fair opportunity to litigate an issue. Answer at 25. The Court of Appeals did not ignore the concept. The Court of Appeals considered the concept and rejected Cooke's argument that it did not have an opportunity to litigate its declaratory judgment claim because it was unsupported. *Cooke 2*, slip op. at 12.

Cooke asserts that it did not fully litigate the issue because it was not able to present live witnesses or “conduct complete discovery.” Answer at 26. But Cooke did litigate the issues underlying its declaratory judgment claim—whether it was in default of the lease, and whether DNR had the right to terminate the lease. Cooke engaged in discovery and fully briefed and argued the case at superior court and on appeal. CP at 366, 374, 1321, 1329. Notably, Cooke does not dispute the existence of the conditions on the lease site, but instead argues that it should not be held to the terms of the lease for various reasons. *Cooke 1*, slip op. at 12, 13.

Cooke does not identify how the Court of Appeals’ decision conflicts with this Court’s precedent or Court of Appeals’ precedent, or how it implicates an issue of substantial public interest. The issues resolved in *Cooke 1* are dispositive of Cooke’s declaratory judgment claim.

B. The Court of Appeals Properly Determined that Cooke’s Declaratory Judgment Claim Raised Identical Issues to the Issues Decided in the First Appeal

The Court of Appeals properly held that the underlying issues are identical to those resolved in *Cooke 1*. Cooke argues that the Court of Appeals “failed to appreciate the deferential nature of the substantial evidence standard.” Answer at 27. But Cooke’s argument convolutes the case history and the issues. Cooke does not provide meaningful argument or explanation about how the Court of Appeals’ decision conflicts with decisions of this Court, or with other published decisions of the Court of Appeals, or otherwise warrants this Court’s review.

Cooke disputes the ultimate conclusions, but the underlying issues are undisputed and have been fully litigated. A lease is a contract, and contract interpretation is a question of law reviewed de novo. *Nyman v. Hanley*, 198 Wn.2d 72, 77-78, 491 P.3d 974 (2021). The de novo standard applied in *Cooke 1* and would apply in a declaratory judgment claim. *Cooke 2*, slip op. at 11; *Cooke 1*, slip op. at 10-11. Accordingly, the standard of

review for the legal questions of interpreting Cooke's lease were exactly the same in the first appeal as here.

As DNR argued below and in its Petition for Review, different burdens of proof do not necessarily preclude application of collateral estoppel. There is no indication that *Cooke 1* afforded DNR deference in determining that substantial evidence supported DNR's conclusion that Cooke was in default, or in interpreting the lease provisions and the record. In Cooke's first appeal, Cooke asked the Court of Appeals to apply the substantial evidence standard, with no mention of deference. CP at 460, 491-92. Cooke asked the Court to determine de novo whether the record supported lease termination, arguing that a de novo review would have shown that DNR improperly terminated the Lease. CP at 460, 476, 491-92. And *Cooke 1* did, in fact, conduct a de novo review of the record, and held Cooke was in default of its lease and DNR had the right to terminate. *Cooke 1*, slip op. at 10, 11-12, 14.

Moreover, Cooke has not disputed the underlying facts to which a burden of proof would apply. In *Cooke 2*, Cooke argued that it did not have an opportunity to challenge the underlying facts. *Cooke 2*, slip op. at 12. But, Cooke admitted the leasehold conditions existed. CP at 500, 502 (responding to default based on anchors being outside of the leasehold area and explaining “DNR had known for years that the anchors were outside of the leasehold and the parties never intended that Cooke relocate them”).

The Court of Appeals’ decision is consistent with established law. Cooke fails to demonstrate that the Court of Appeals erred, or that its decision warrants review under RAP 13.4(b)(1), (2), or (4).

C. Application of Collateral Estoppel Does Not Result in Injustice

Cooke asserts that the Court of Appeals erred by not accepting its argument that collateral estoppel of its declaratory judgment claim would result in an injustice. Answer at 28. Cooke contends that application of collateral estoppel to its declaratory

judgment claim would shield DNR from civil liability contrary to public policy. Answer at 29. Cooke's contention, however, is unsupported. Application of collateral estoppel will not stop DNR from being held accountable or its actions being challenged. As Cooke has acknowledged, the Legislature has provided a mechanism for the public to challenge DNR's decisions. RCW 79.02.030; *see* CP at 366 (Cooke noting that statutory appeal in RCW 79.02.030 provides a mechanism "for determining the appropriateness of DNR's termination" of its lease).

Contrary to Cooke's arguments, holding Cooke to the terms of its lease and enforcing existing law does not create a different law for the sovereign. Cooke's citation to *Architectural Woods, Inc. v. State*, 92 Wn.2d 521, 526, 598 P.2d 1372 (1979), is inapposite. *Architectural Woods* addressed sovereign immunity and the State's responsibility for interest on its debts. *Architectural Woods*, 92 Wn.2d at 523-24, 526. The Court held that multiple statutes allowed for the State to be sued on and

responsible for the contract claim at issue, and for the interest on judgment arising out of that contract claim. *Architectural Woods*, 92 Wn.2d at 526-27. *Architectural Woods* does not stand for the proposition that the principles of contract interpretation do not apply to the State, or that the State cannot enforce the terms of its contract. Indeed, the logical outgrowth of Cooke's argument would create a different law for the State's tenants: allowing them to breach the unambiguous terms of their leases with no consequences and at the expense of the state's citizens who entrust DNR with the management of the state's aquatic lands. That has never been the law in this state, and this Court should disregard Cooke's arguments to the contrary. The Court of Appeals properly held that collateral estoppel precludes Cooke's declaratory judgment claim, and Cooke has not demonstrated that it meets the criteria for review.

V. CONCLUSION

Cooke's argument that the Court of Appeals improperly applied collateral estoppel to its declaratory judgment claim is

unfounded and does not warrant review under RAP 13.4(b)(1), (2), or (4). DNR respectfully requests this Court deny review of the Court of Appeals' application of collateral estoppel to Cooke's declaratory judgment claim, and grant review as requested in DNR's Petition for Review.

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This document contains 2,020 words, excluding the parts
of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 20th day of
September 2024.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on September 20, 2024, as follows:

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I certify under penalty of perjury, under the laws of the state of Washington, that the foregoing is true and correct.

DATED this 20th day of September 2024, at Olympia, Washington.

s/ *Anne M. Caulder*

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Public Lands and Conservation Division

**ATTORNEY GENERAL'S OFFICE - PUBLIC LANDS & CONSERVATION
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