FILED
SUPREME COURT
STATE OF WASHINGTON
12/23/2024 8:00 AM
BY ERIN L. LENNON
CLERK

No. 103614-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

JODY AUCOIN, individually and as personal representative of the Estate of DUCAS ACOIN; HOLLAND AUCOIN; and TELLIS AUCOIN,

Respondents,

v.

C4DIGS, INC.,

Petitioner,

LEONARDI LANDSCAPING, INC.; HOL-MAC CORPORATION dba DONKEY FORKLIFTS; and JOHN DOES 1-5,

Defendants.

RESPONDENTS' ANSWER TO PETITIONER C4DIGS' PETITION FOR REVIEW

Selena L. Hoffman, WSBA No. 43301
Pfau Cochran Vertetis Amala PLLC
909 A Street, Suite 700
Tacoma, Washington 98402
(253) 777-0799 / shoffman@pcvalaw.com

Jason P. Amala, WSBA No. 37054
Pfau Cochran Vertetis Amala PLLC
701 Fifth Avenue, Suite 4300
Seattle, Washington 98104
(206) 462-4339 / jason@pcvalaw.com

David Dawson, WSBA No. 19872
Law Offices of David M. Dawson, PS
1700 7th Ave., Suite 2100 PMB 570
Seattle, Washington 98101
(206) 236-1689 / david@dmdawsonlaw.com

Loren A. Cochran, WSBA No. 32773
Cochran Douglas, PLLC
4826 Tacoma Mall Blvd., Suite C
Tacoma, Washington 98409
(253) 472-7777 / loren@cochrandouglas.com

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON CASES

RULES

SECONDARY SOURCES

I. INTRODUCTION

Petitioner C4Digs seeks review of a Court of Appeals decision holding that the general contractor owed a duty to provide a safe workplace to Ducas Aucoin, the employee of an independent contractor, "if [C4Digs] had or retained the right to control the manner of [Ducas's] work." *Aucoin v. C4Digs, et al.*, No. 84921-2-I, at *12 (Wash. Ct. App. Sept. 3, 2024). The Court of Appeals concluded that genuine issues of material fact remain regarding the scope of C4Digs' control over the manner in which Ducas delivered heavy stone pavers to C4Digs' construction site. *Aucoin*, No. 84921-2-I, at *13-14. Accordingly, the Court reversed the trial court's summary judgment dismissal of the wrongful death claims against C4Digs.

C4Digs asserts that the Court of Appeals' decision expands the liability of a general contractor beyond the physical boundaries of a jobsite and, thus, conflicts with precedential authority and implicates an issue of "substantial public interest." RAP 13.4(b)(1), (2), (4). C4Digs is wrong.

Nearly half a century ago, this Court held that a general contractor owes a duty to provide safe working conditions to all employees, including those of an independent contractor, when the general contractor "retains control over *some part of the work*. The general then has a duty, *within the scope of that control*, to provide a safe place to work." *Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 330, 582 P.2d 500 (1978) (emphases added). In applying the retained control exception, "the proper inquiry is whether there is a retention of the right to direct *the manner in which the work is performed*." *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 121, 52 P.3d 472 (2002). This rule imposes a duty "on the entity best able to prevent harm to workers"—the entity that has "retained the right to control [the] work." *Afoa v. Port of Seattle*, 176 Wn.2d 460, 477, 296 P.3d 800 (2013) ("*Afoa I*").

The Court of Appeals' decision is a straightforward application of this Court's retained control doctrine to the specific facts of this case. C4Digs' contrary assertions are based

on a misapprehension of that decisional authority. Our appellate courts have adhered without exception to the principle that a general contractor's duty under the retained control exception is defined by the scope of the retained control. *Vargas v. Inland Washington, LLC*, 194 Wn.2d 720, 731, 452 P.3d 1205 (2019); *Afoa I*, 176 Wn.2d at 476-77; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias v. Port Blakely Co.*, 22 Wn. App. 2d 467, 473, 512 P.3d 574 (2022). *See also Afoa v. Port of Seattle*, 191 Wn.2d 110, 115, 421 P.3d 903 (2018) ("*Afoa II*"). It is the general contractor's right to control the performance of the work—*not* "the boundaries of the worksite," Pet. at 1—that defines the scope of the duty arising from the retained control exception.

Because C4Digs has not met any standard for the acceptance of review under RAP 13.4(b), this Court should decline to accept review of the Court of Appeals' well-considered decision.

II. COUNTERSTATEMENT OF THE ISSUE

1. Did the Court of Appeals, in applying the longstanding jurisprudence of this Court, correctly conclude that general contractor C4Digs owed to Ducas Aucoin, the employee of an independent contractor, a duty to provide safe working conditions if C4Digs retained the right to control the manner in which Ducas performed the work of delivering materials at C4Digs' jobsite?

III. COUNTERSTATEMENT OF THE CASE

Petitioner C4Digs was the general contractor for a Seattle construction project where Ducas Aucoin was killed while unloading heavy stone pavers to the jobsite. CP 33, 35, 119-20. C4Digs had contracted with subcontractor Leonardi Landscaping to provide landscaping for the project. CP 40-41, 126-27. Leonardi, in turn, had scheduled the delivery of pavers from SiteOne Landscape Supply, which employed Ducas. CP 40, 46.

As the general contractor, C4Digs was responsible for obtaining a "staging permit" to establish an unloading zone for the project. CP 122, 143. C4Digs' project manager had the responsibility and authority to clear out this "staging area" for

deliveries, including by having vehicles towed from the unloading zone. CP 124, 144. The project manager testified that it was "quite important that [he] notify people where they can park and . . . get cars towed in advance if there was a delivery." CP 144.

C4Digs required that its subcontractors inform it when deliveries would be made—particularly "problem deliveries," like the delivery made by Ducas. CP 128-29, 144, 146-47. C4Digs itself, however, had sole control and authority over the unloading zone. CP 144, 146-47. The general contractor was also aware of the danger posed by delivering materials from East John Steet, the street adjacent to the jobsite where Ducas was ultimately killed. CP 151. C4Digs' project manager testified that there was "[a]bsolutely" a safety concern with delivering materials to the jobsite from that "very steep" street. CP 151. He testified unequivocally that he had personally observed "[m]ultiple" delivery drivers attempt to make deliveries from that street. CP 151. Due to his knowledge of the danger, C4Digs'

project manager exercised his authority to direct the deliveries each time a driver attempted to make a delivery from East John Street. CP 151. He "immediately directed them to [C4Digs'] unloading area on 26th Avenue East." CP 151.

When Ducas arrived to deliver the stone pavers, however, C4Digs' project manager was not present at the jobsite. CP 153. The designated unloading zone on 26th Avenue East was blocked by parked vehicles. CP 132. Ducas thus delivered the pavers to a different location on the jobsite, unloading them from East John Street, the steeply sloped adjacent street, where the forklift he was operating overturned. CP 151-53. C4Digs' project manager testified that, if he had been present when Ducas made the delivery, he "would have directed him to park in [C4Digs'] designated area and unload the bricks from there," as he had done for prior deliveries. CP 153.

Ducas's wife and daughters ("the Aucoins") filed wrongful death claims against both C4Digs and Leonardi. CP 1-10. The trial court dismissed the Aucoins' claims on summary

judgment, concluding that neither C4Digs nor Leonardi owed a duty of care to Ducas. CP 217-21; RP 24-28. The trial court reasoned that "the incident happened in an area that was not under the control of C4Digs, which is where the load/unload zone was." RP 26.

Division One of the Court of Appeals reversed the trial court's summary judgment orders. *Aucoin*, No. 84921-2-I. Relying on this Court's retained control doctrine jurisprudence, the Court concluded that C4Digs owed both a common law and statutory duty to Ducas "to provide a safe workplace if [C4Digs] had or retained the right to control the manner of [Ducas's] work when he delivered the pavers to the [job]site." *Aucoin*, No. 84921-2-I, at *10-11, 12. Applying these "same basic control principles" to the facts of this case, the Court determined that genuine issues of material fact remain as to whether C4Digs retained the right to control the manner in which Ducas made the delivery. *Aucoin*, No. 84921-2-I, at *13-14. Thus, the Court concluded that "[t]he trial court erred in deciding [the issue of

control] as a matter of law in [C4Digs'] favor." *Aucoin*, No, 84921-2-I, at *14.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

C4Digs contends that review of the Court of Appeals' decision is warranted under RAP 13.4(b)(1), (2), and (4). But each of the general contractor's arguments is premised on an erroneous assertion—that the Court of Appeals' decision "expanded" the retained control doctrine, thus resulting, according to C4Digs, in "expansive and ambiguous liability" for general contractors in our state. Pet. at 1-2. This is not so.

For decades, the law has been clear. When a general contractor "retains control *over some part of the work*," it owes a duty, "*within the scope of that control*," to provide safe working conditions for all employees, including those of independent contractors. *Kelley*, 90 Wn.2d at 330 (emphases added). "[T]he proper inquiry [is] whether there is a retention of the right to direct the manner in which the work is performed." *Kamla*, 147

Wn.2d at 121. Thus, the general contractor's duty is defined—and, thus, limited—by the scope of its control over the work performed by the employee, not by an inflexible measuring of "the boundaries of the worksite." Pet. at 1.

The Court of Appeals correctly applied this Court's well-established authority in concluding that C4Digs owed a duty to Ducas Aucoin if it retained the right to control the manner in which his work was performed. *See Aucoin*, No. 84921-2-I, at *10-12. Because the Court's decision does not conflict with precedential authority, and because C4Digs' petition does not implicate an issue of "substantial public interest," review should be denied. RAP 13.4(b)(1), (2), (4).

A. The Court of Appeals' Decision is Fully Consistent with Precedential Authority

1. Under the Retained Control Doctrine, a Duty Arises When a General Contractor Retains Control Over the Manner in Which the Work is Performed

This Court has unwaveringly adhered in its worker safety jurisprudence to the principle that "[g]eneral contractors have

expansive statutory and common law duties to provide a safe workplace"—duties that are owed "to all employees." *Vargas*, 194 Wn.2d at 722, 734 (emphasis added). Consistent with that principle, this Court, nearly half a century ago, adopted the retained control exception to the general common law rule of nonliability to employees of an independent contractor. *Kelley,* 90 Wn.2d at 330-31. The exception applies when the general contractor "retains control *over some part of the work*. The general then has a duty, *within the scope of that control*, to provide a safe place to work." *Kelley*, 90 Wn.2d at 330 (citing RESTATEMENT OF TORTS (SECOND) § 414 (1965)) (emphases added). The *Kelley* opinion, this Court has explained, "elevates concern for worker safety over rigid adherence to formalistic labels and emphasizes [the Court's] central role in ensuring the safety of our state's workers." *Afoa I*, 176 Wn.2d at 475-76.

This Court has since clarified that, in applying the retained control doctrine, "the proper inquiry [is] whether there is a retention of the right to direct the manner in which the work is

performed." *Kamla,* 147 Wn.2d at 114.[1] Washington appellate courts have adhered without exception to the principle that *the duty under the retained control doctrine is defined by the scope of the retained control*. *Vargas*, 194 Wn.2d at 731; *Afoa I*, 176 Wn.2d at 476-77; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 473. *See also Afoa II*, 191 Wn.2d at 115 (in *Afoa I*, Court considered whether the Port of Seattle "had retained sufficient control over [the employee's] work" for a duty to arise under the retained control doctrine). Defining the duty based on the scope of control makes sense. As this Court has explained, its "doctrine seeks to place the safety burden on the entity in the best position to ensure a safe working

[1] In *Kamla*, this Court recognized that Washington appellate decisions applying the retained control doctrine "represent a straightforward application of the *Restatement Second of Torts* § 414 cmt. c (1965)," which provides that, for a duty to arise, "'[t]he employer must have retained at least some degree of control over the manner in which the work is done. . . . There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.'" 147 Wn.2d at 121 (quoting RESTATEMENT (SECOND) OF TORTS § 414 cmt. c (1965)).

environment." *Afoa I*, 176 Wn.2d at 479. That entity, of course, is the one that has the right to control "the manner in which the work is performed." *Kamla,* 147 Wn.2d at 114.

2. The Court of Appeals Properly Applied this Court's Precedential Authority

Consistent with this Court's decisional authority, the Court of Appeals recognized that "the paramount consideration" for imposing a duty "is that general contractors . . . have control over the work and are therefore best situated to ensure that safety precautions are in place and enforced." *Aucoin*, No. 84921-2-I, at *5. After a thorough analysis of that authority, the Court concluded that "if there is control," then "there is duty." *Aucoin*, No. 84921-2-I, at *10. Applying those "same basic control principles," *Aucoin*, No. 84921-2-I, at *13, the Court of Appeals held that general contractor C4Digs owed both a statutory and common law duty to Ducas Aucoin "if it had or retained the right to control the manner of [Ducas's] work when he delivered pavers to the [jobsite]." *Aucoin*, No. 84921-2-I, at *10, 12.

The Court then properly applied the summary judgment standard to determine whether, here, genuine issues of material fact remain regarding whether C4Digs retained the right to control the manner of Ducas's work. *Aucoin*, No. 84921-2-I, at *13-14. Based on the testimony of C4Digs' project manager that, in the same circumstances, he had previously directed the delivery of materials at the jobsite, the Court determined that "a reasonable jury could conclude that C4Digs had or retained the right to control the manner of [Ducas's] work when he delivered pavers [on the sloped street adjacent to the jobsite] because he was unable to access the designated [unloading] zone." *Aucoin*, No. 84921-2-I, at *14. Accordingly, the Court reversed the trial court's summary judgment dismissal of the Aucoins' negligence claim against C4Digs. *Aucoin*, No. 84921-2-I, at *17.

3. C4Digs' Contrary Arguments are Without Merit

Despite the Court of Appeals' straightforward application of this Court's retained control doctrine, C4Digs contends that the Court's decision conflicts with precedential decisional

authority regarding the duties owed by general contractors. Pet. at 11-15, 20-22. This contention is based on a misapprehension of Washington appellate decisions.

C4Digs asserts that, in Washington, the duty of a general contractor "has always been tied to the physical scope of the workplace." Pet. at 11. Thus, the argument goes, the Court of Appeals departed from precedential authority by defining C4Digs' duty based on its control over Ducas's performance of the work, rather than on the perimeter of the jobsite. C4Digs is wrong. Our appellate courts have steadfastly adhered to the principle that the duty of a general contractor under the retained control exception is defined by the scope of its control over the manner in which the work is performed. *Vargas*, 194 Wn.2d at 731; *Afoa I*, 176 Wn.2d at 476-77; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 473. *See also Afoa II*, 191 Wn.2d at 115.

Indeed, C4Digs fails to identify *a single appellate decision* that defines the duty owed under the retained control doctrine

based on "the boundaries of the construction site."[2] Pet. at 22. Instead, the general contractor appears to assert that its duties should be defined by the perimeter of the jobsite because statutes and decisional authority have employed the term "workplace." *See* Pet. at 11-13. But C4Digs misapprehends the significance of "the workplace" in applying the retained control doctrine. A general contractor owes a duty to provide safe working conditions in "the workplace" precisely because its "innate supervisory authority constitutes sufficient *control* over the workplace." *Stute v. P.M.B.C., Inc.*, 114 Wn.2d 454, 464, 788 P.2d 545 (1990) (emphasis added) (statutory duty); *see also Vargas*, 194 Wn.2d at 731-32; *Kelley*, 90 Wn.2d at 331 (common law duty). As the Court of Appeals here held, "control is the starting point" from which the duty flows. *Aucoin*, No. 84921-2-I, at *10.

[2] In asserting that a general contractor's duty is "tie[d] . . . to the geographic scope of the workplace," Pet. at 20, C4Digs wholly disregards this Court's retained control doctrine, which is the very basis for the common law duty owed here.

Rather than identify a conflict between the Court of Appeals' decision and precedential authority, RAP 13.4(b)(1), (2), C4Digs appears to be inviting this Court to accept review in order to reevaluate its own retained control doctrine jurisprudence.[3] But this Court has repeatedly rejected invitations

---

[3] C4Digs' petition appears to be aimed at persuading this Court that a different rule—one defining the duty based on "the boundaries of the workplace"—would be superior to the doctrine already adopted by this Court. *See, e.g.*, Pet. at 15-16, 21-22. But the facts of this case illustrate the prudence of this Court's prior decisions.

Ducas was killed while delivering pavers to the jobsite, which involved unloading the materials from the street adjacent to the jobsite and then traveling onto and off of the jobsite to accomplish the delivery. Under this Court's retained control doctrine, if C4Digs controlled the manner in which Ducas delivered the pavers—for instance, by requiring that deliveries be made from the designated unloading zone—then C4Digs owed a duty to Ducas (within the scope of that control) throughout the delivery process.

In contrast, under C4Digs' proposed "geographic location" rule, *see* Pet. at 13, C4Digs would have owed a duty to Ducas only during the part of the delivery when Ducas was on the physical jobsite—despite C4Digs' control over the delivery itself. Such a result would contravene not only the retained control doctrine, but also the policy underlying that doctrine—that "the safety burden [be placed] on the entity in the best position to ensure a safe working environment." *Afoa I*, 176

to limit or abandon that doctrine. *Vargas*, 194 Wn.2d at 733-34 (rejecting a "cramped reading" of *Kelley* that would limit the general contractor's duty to "common work areas"); *Afoa I*, 176 Wn.2d at 477-78 (reaffirming that the duty "depends on retained control over work" and rejecting limitation based on "formalistic labels"); *Kamla*, 147 Wn.2d at 121 (rejecting invitation "to abandon the 'retained control' inquiry"). Indeed, in *Vargas*, this Court rejected the argument that the duty owed under the retained control exception should apply only to specific locations on the jobsite.[4] *Vargas*, 194 Wn.2d at 732-33. This Court should now similarly decline to accept review of the Court of Appeals' decision to entertain C4Digs' invitation to abandon the principles underlying the retained control exception.

C4Digs largely disregards this Court's analysis of the

Wn.2d at 479.

[4] Although, there, this Court addressed whether the duty extended beyond "common work areas" to other areas on the jobsite, it made clear that the general contractor's retention of control over the work—not a particular location on the jobsite—defined the scope of the duty. *Vargas*, 194 Wn.2d at 731.

retained control doctrine. However, the general contractor does identify two decisions applying that doctrine that, it contends, are in conflict with the Court of Appeals' opinion. Pet. at 22-26 (citing *Kamla*, 147 Wn.2d 114; *Shingledecker v. Roofmaster Products Co.*, 93 Wn. App. 867, 971 P.2d 523 (1999)). According to C4Digs, the principal in those decisions "retained far more control over the manner of the work" than did C4Digs over Ducas's work. Pet. at 23. C4Digs is wrong on both accounts.

First, C4Digs misapprehends the Court of Appeals' reasoning in *Shingledecker*, 93 Wn. App. 867. There, the Court determined that a roofing contractor owed no duty to the employees of a material supplier who had been injured on a jobsite "where no work had yet been undertaken." 93 Wn. App. at 868. The contractor "had no supervisory function or control over [the material supplier's] employees." *Shingledecker*, 93 Wn. App. at 872. Rather, "[t]he means by which the delivery was accomplished was entirely within [the material supplier's]

discretion." *Shingledecker*, 93 Wn. App. at 872. Because the roofing contractor had not "retain[ed] control over some part of the work," it owed no duty to the employee of the material supplier. *Shingledecker*, 93 Wn. App. at 871.

C4Digs ascribes significance to the fact that, both here and in *Shingledecker*, the general contractor was not present when the materials were delivered. Pet. at 24. But the issue presented in *Shingledecker*—and here—is not whether the general contractor was present, but whether it had retained control over the manner in which the delivery was made.[5] 93 Wn. App. at 871-72. As the Court of Appeals recognized, the record here, unlike that in *Shingledecker*, "indicates that C4Digs had long been in its role as general contractor at the workplace and that it had previously exercised control over attempted deliveries on

[5] Indeed, the presence of the general contractor at the jobsite is irrelevant to whether a duty was owed under the retained control exception. As this Court has made clear, "a general contractor cannot shirk its duties merely by vacating the premises." *Vargas*, 194 Wn.2d at 733.

[the steeply sloped street where Ducas was killed]." *Aucoin*, No. 84921-2-I, at *16. The Court of Appeals correctly concluded that *Shingledecker* is inapposite.

C4Digs nevertheless faults the Court of Appeals for considering "the timing of the delivery." Pet. at 25. This argument, too, misses the point. In *Shingledecker*, the fact that the delivery occurred before the roofing contractor had begun work on the project demonstrated that it had not retained control over the delivery. 93 Wn. App. at 872. In other words, "the timing of the delivery" indicated an absence of control over the work. The Court of Appeals properly distinguished *Shingledecker* based on principles of control, and, contrary to C4Digs' assertion, its opinion does not conflict with that decision.

Nor does the Court of Appeals' opinion conflict with this Court's decision in *Kamla*, 147 Wn.2d 114. There, this Court clarified that, under the retained control doctrine, "the proper inquiry [is] whether there is a retention of the right to direct the

manner in which the work is performed, not simply whether there is an actual exercise of control over the manner in which the work is performed." *Kamla*, 147 Wn.2d at 121. The record in *Kamla* indicated that the landowner had not retained the right to interfere with the manner in which the work—installation of a fireworks display—was completed. 147 Wn.2d at 121-22. Rather, the independent contractor "was free to do the work in its own way." *Kamla*, 147 Wn.2d at 122.

C4Digs appears to assert that the Court of Appeals' decision conflicts with *Kamla* because "C4Digs did not retain control over the manner in which [Ducas] unloaded his truck." Pet. at 26. But C4Digs fails to identify any such conflict. Instead, C4Digs appears to argue that the evidence was insufficient for the Court of Appeals to conclude that issues of material fact remain as to whether C4Digs retained the right to control Ducas's work.[6] Even were this true—and it is not—such

[6] Whether a general contractor has retained control over the work is "usually a question of fact." *Straw v. Esteem Const.*

a purported error is not a "conflict" with precedential authority and does not warrant review by this Court. *See* RAP 13.4(b).

B. C4Digs' Petition Does Not Involve an Issue of Substantial Public Interest

C4Digs further contends that the Court of Appeals' decision has "a substantial impact on the construction industry in Washington," and, thus, that review by this Court is warranted under RAP 13.4(b)(4). This contention, too, is without merit.

1. C4Digs' Contention is Premised on a Misapprehension of Washington Law

C4Digs argues that the Court of Appeals' decision is an "expansion of liability" because, according to C4Digs, the duty of a general contractor "has always been tied to the physical scope of the workplace." Pet. at 11. However, in so arguing, the

---

Co., Inc., 45 Wn. App. 869, 874, 728 P.2d 1052 (1986). Summary judgment is inappropriate where "there is evidence the [general contractor] retained the right to control over [the employee's] work." *Kinney v. Space Needle Corp.*, 121 Wn. App. 242, 246-47, 85 P.3d 918 (2004). *See also, e.g., Afoa I*, 176 Wn.2d at 482 (reversing summary judgment dismissal of negligence claim where issues of material fact remained as to extent of control).

general contractor wholly disregards this Court's retained control doctrine jurisprudence. Again, Washington appellate courts have unwaveringly adhered to the principle that the duty arising from that doctrine is defined by the scope of control over the manner in which the work is performed. *Vargas*, 194 Wn.2d at 731; *Afoa I*, 176 Wn.2d at 476-77; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 473. *See also Afoa II*, 191 Wn.2d at 115. The Court of Appeals' decision is fully consistent with that decisional authority.

C4Digs nevertheless attempts to persuade this Court that the Court of Appeals' decision will result in "potentially unlimited liability" for general contractors and, perhaps, "workplace owners as well." Pet. at 17, 19. This is not so. This Court has repeatedly and unambiguously set forth the limiting principle underlying the retained control doctrine—that a duty arises from that doctrine only when there is "the retention of the right to direct the manner in which the work is performed." *Kamla*, 147 Wn.2d at 121. It is that retention of control—*not* the

perimeter of a jobsite—that determines whether a duty is owed. In applying this Court's retained control doctrine, the Court of Appeals did not expand the scope of liability under that doctrine. Rather, the limits to such liability—which this Court delineated nearly half a century ago—remain the same.[7]

Contrary to C4Digs' suggestion, this Court has never limited the duty arising from the retained control exception "to the physical scope of the workplace." *See* Pet. at 11. Indeed, this Court has explicitly rejected a similarly "inflexible approach as inconsistent with the policy behind workplace safety laws." *Afoa I*, 176 Wn.2d at 480 (citing *Kelley*, 90 Wn.2d 323). The Court

---

[7] C4Digs' questions regarding the extent of general contractor liability are easily answered by this Court's retained control doctrine jurisprudence. *See* Pet. at 17-18. Contrary to the general contractor's suggestion, neither the Court of Appeals' decision nor this Court's decisional authority impose a duty for "any offsite accident that can be tied back to the project." Pet. at 17. Rather, again, the general contractor owes a duty only when it has retained control over the manner in which the work is performed. *Vargas*, 194 Wn.2d at 731; *Afoa I*, 176 Wn.2d at 476-77; *Kamla*, 147 Wn.2d at 121; *Kelley*, 90 Wn.2d at 330; *Farias*, 22 Wn. App. 2d at 473.

of Appeals' decision is a straightforward application of this Court's longstanding authority to the specific facts of this case, not an "expansion" of liability for general contractors. *See* Pet. at 11. C4Digs' contention that the decision will have a "substantial impact on the construction industry" is without merit.

2. An "Impact on the Construction Industry" Does Not Implicate an Issue of Substantial Public Interest

C4Digs asserts that the Court of Appeals' decision will have a "significant effect on the construction industry in Washington" and, thus, that review is warranted under RAP 13.4(b)(4). Because the Court's decision does not expand liability under the retained control doctrine, it will not have a "significant effect" on the construction industry. However, even were that true, C4Digs' petition does not implicate an issue of "substantial public interest" warranting review. RAP 13.4(b)(4).

This Court has never held that an issue having a "significant effect on the construction industry" warrants review

under RAP 13.4(b)(4). Rather, it has accepted review under that rule when the underlying decision implicates: a vast swath of sentencing proceedings and the potential to chill policy actions by attorneys and judges in other proceedings, *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005); questions regarding parental rights under the Indian Child Welfare Act, *In re Adoption of TAW*, 184 Wn.2d 1040, 387 P.3d 636, 636-38 (2016); public safety concerns resulting from the removal of "an entire class of sex offenders" from registration requirements, *Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092-93 (2017); and the "constantly changing threat" of and "chaos wrought by COVID-19" in correctional facilities, *Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445, 446-47 (2021).

C4Digs baldly asserts that an impact on Washington's construction industry is an "issue of substantial public interest." RAP 13.4(b)(4). This Court has never so held, and C4Digs makes no persuasive argument that RAP 13.4(b)(4) should apply.

V. CONCLUSION

The Court of Appeals' decision is fully consistent with Washington decisional authority applying this Court's retained control doctrine. RAP 13.4(b)(1), (2). Moreover, C4Digs' petition does not present an issue of "substantial public interest." RAP 13.4(b)(4). This Court should deny review.

Respectfully submitted this 20th day of December 2024.

The undersigned certifies that this answer consists of 4,722 words in compliance with RAP 18.17(c)(10).

PFAU COCHRAN VERTETIS AMALA PLLC

By: */s/ Selena L. Hoffman*
Selena L. Hoffman, WSBA No. 43301
Jason P. Amala, WSBA No. 37054
Attorneys for Appellants

LAW OFFICES OF DAVID M. DAWSON, PS

By: */s/ David M. Dawson*
David M. Dawson, WSBA No. 19872
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Dominika Falkowski, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Amala PLLC and that on this date I served the foregoing on all parties or their counsel of record via email, legal messenger, and/or facsimile by directing delivery addressed to:

Mr. Steven G. Wraith
Ms. Carinne Bannan
Lee Smart, P.S., Inc.
701 Pike St., Suite 1800
Seattle, WA 98101
[X]Via Email:
sgw@leesmart.com;
ceb@leesmart.com;
crb@leesmart.com;
mvs@leesmart.com
Attorneys for Defendant C4Digs, Inc.

Mr. Christopher Engle
Tyson & Mendes, LLP
811 First Ave., Suite 260
Seattle, WA 98104
[X]Via Email:
cengle@tysonmendes.com
Attorneys for Third-Party Defendant
Leonardi Landscaping, Inc.

Mr. Martin J. Pujolar
Mr. Paul S. Smith
Forsberg & Umlauf, P.S.
901 Fifth Ave, Ste 1400
Seattle, WA 98164-2047
[X]Via Email:
mpujolar@foum.law;
psmith@foum.law;
lyndaha@foum.law;
dmcclure@foum.law;
mroberts@foum.law
Attorneys for Defendant Hol-Mac dba Donkey Forklifts

DATED this 20th day of December 2024.

/s/ Dominika Falkowski
Dominika Falkowski
Legal Assistant

PFAU COCHRAN VERTETIS AMALA PLLC

December 20, 2024 - 5:06 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,614-1
Appellate Court Case Title:	Jody Aucoin et al. v. C4DIGS, Inc., et al.

The following documents have been uploaded:

- 1036141_Answer_Reply_20241220170543SC527992_0298.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Aucoin Respondents Answer to C4Digs Petition.pdf

A copy of the uploaded files will be sent to:

- EservicePAL@LibertyMutual.com
- MES@soslaw.com
- PSmith@FoUm.law
- SGW@Leesmart.com
- cheryl.klinger@libertymutual.com
- clapham@carneylaw.com
- cta@leesmart.com
- david@dmdawsonlaw.com
- gklug@tysonmendes.com
- hrivera@foum.law
- jcl@leesmart.com
- jem@leesmart.com
- lyndaha@foum.law
- matt@tal-fitzlaw.com
- mcullen@williamskastner.com
- mpujolar@foum.law
- mvs@leesmart.com
- phil@tal-fitzlaw.com
- prevost@carneylaw.com
- scodd@rhhk.com
- shoffman@pcvalaw.com

Comments:

Sender Name: Jason Amala - Email: jason@pcvalaw.com
Filing on Behalf of: Jason Paul Amala - Email: jason@pcvalaw.com (Alternate Email: dfalkowski@pcvalaw.com)

Address:

701 5th Ave #4300
Seattle, WA, 98104
Phone: (206) 806-6863

Note: The Filing Id is 20241220170543SC527992