Supreme Court No. 1040296

Court of Appeals No. 58950-8-II

SUPREME COURT
OF THE STATE OF WASHINGTON

SKANSKA USA BUILDING INC.,
a Delaware corporation,

Respondent,

v.

1200 HOWELL STREET, LLC,
a Washington limited liability company,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In its Petition, Howell[1] seeks review of two holdings from the Court of Appeals' unpublished opinion addressing Howell's prolific challenges to the trial court rulings. Howell claims the decision ignores statutory law and conflicts with decisions of this Court. Those asserted conflicts are illusory. Howell's arguments ignore or misstate critical facts established at trial, controlling statutes and case law, and operative contract provisions.

First, Howell argues the court improperly affirmed the trial court's decree of foreclosure on Skanska's lien. Howell's lien foreclosure argument fundamentally misinterprets the lien foreclosure statute and misrepresents the decree of foreclosure. This is a *lien foreclosure* case – not a *property foreclosure* case. Nothing in the lien foreclosure statue addresses foreclosure of real property and no real property was foreclosed here. The court understood this, applied the correct statutory framework, and its

[1] This Answer uses the same abbreviations as Howell's Petition ("Pet.").

decision is entirely consistent with this state's legal precedent and the public policy underpinning the construction lien statute.

Second, Howell contends the court erred by holding that clear contractual claim notice requirements can be ignored simply because they were not always enforced. But the court made no such holding. The court concluded that there were no clear contract provisions to enforce. It held that because the contract was ambiguous, the parties' intent and ultimate agreement addressing authorization was properly a question of fact for the jury.

Because Howell has not satisfied any criteria under RAP 13.4(b), this Court should deny review.

II. RESTATEMENT OF ISSUES

1. Whether Division Two correctly affirmed the trial court's decree of foreclosure of Skanska's lien and corresponding judgment for attorney fees where Washington law is clear that a lien claimant is legally entitled to foreclose its lien regardless of the security underlying the lien?

2. Whether Division Two correctly affirmed the jury's $19.2 million verdict after concluding that the parties' intent and ultimate agreement regarding the authorization of changes and procedures for change orders was properly a question of fact for the jury?

III. RESTATEMENT OF FACTS

Howell hired Skanska to construct the 41-story Nexus condominium tower in Seattle. Howell then withheld part of Skanska's contract balance and refused to pay Skanska for additional work caused by Howell's design changes and other issues outside of Skanska's control. Skanska recorded a lien on the Nexus property for the value of its unpaid work and sued Howell for breach of contract and foreclosure of the lien. Following a seven-week trial, the jury awarded Skanska the overwhelming majority of its claims. On appeal, Division Two rejected nearly all of Howell's challenges in a 72-page unpublished opinion.

A. The Contract

Howell and Skanska executed a guaranteed maximum price (GMP) contract (the "contract") in 2017. Ex. 46 at 1. The contract allowed Skanska to charge Howell for the actual costs of building the Nexus tower, plus Skanska's fee, a contingency fee, and a lump sum for certain general overhead costs to run the project, up to the GMP. *Id.* at 5. The GMP would be increased if Skanska's scope of work expanded due to changes in the work. *Id.* at 6, 54.

When the contract was executed, the parties understood it was based on drawings that were only 60% complete and were expressly "Not for Construction." Exs. 19-21. The contract anticipated a GMP amendment once the "100% Construction Documents" were completed. Ex. 46 at 4, 29-30.

Howell never provided 100% Construction Documents as required, but instead provided "Issued for Construction" (IFC) documents. Ex. 46 at 4; CP 653. Once Skanska received the IFC

documents, it concluded the changes required substantial additional work and cost. RP 1059, 1116; Ex. 113. Skanska proposed a price reconciliation – required by the contract – and asked Howell to increase the GMP by $4.55 million. Exs. 91, 92, 113. Howell refused. Ex 115 at 3.

Rather than amend the contract to encompass the vast changes between the 60% documents and the IFC documents, Howell issued Construction Change Directive 5 (CCD 5), which directed Skanska to construct the project using the IFC documents. RP 1094, 1096; Ex. 124 at 2. As a result of CCD 5, Howell directed Skanska to proceed despite lacking an agreement on price and schedule, deliberately leaving cost and time adjustments unresolved. *See* Ex. 46 at 54.

Skanska soon learned the IFC documents did not provide the information expected from 100% Construction Documents as required by the contract. RP 1071-72, 1103; Ex. 401 at 2-5. Skanska was forced to issue numerous requests for information (RFIs) to Howell's architects and engineers. RP 1119.

To remedy the difficulty of proceeding with incomplete construction documents, Howell executed Change Order 9, which provided an expedited process for authorizing changes and directing Skanska to proceed with changes. Change Order 9 directed Skanska to submit an architect-approved RFI to Howell, for Howell to stamp an approval. Ex. 157; RP 1154. Neither Change Order 9 nor the contract define "authorization request" ("AR"). Change Order 9 also authorized Howell to issue verbal Field Directives for changes costing less than $15,000, which would then be confirmed by e-mail. Ex. 157.

Skanska performed work and then submitted ARs documenting the changes, actual costs, and time impacts. In practice, Howell approved and paid ARs showing it had authorized work through stamped RFIs, construction change directives, Field Directives, supplemental instructions from the architect, and even meeting minutes. 26 RP 5507. But roughly 180 ARs remained unresolved and unpaid after the project was completed.

B. The Lien

As it was completing construction, Skanska recorded a claim of lien on the Nexus tower to secure its right to payment for its work, including the unresolved ARs. CP 50-64. Shortly thereafter, Skanska filed an amended claim of lien, which reduced the lien and included a list of the condominium units and each unit's percent interest in the property. CP 50-60. Before filing suit seeking foreclosure of its lien, Skanska performed a title search and obtained a litigation guarantee. CP 22105-06, 19064. This due diligence showed Howell had the only relevant property interest (none of the condominium units had been sold) and there were no lien bonds recorded. *Id.*

After Skanska initiated litigation to foreclose its lien – and between February 12, 2020 and April, 2022 – Howell obtained 346 partial lien bonds (one bond for each condominium unit sold during that period). CP 19152-20559. Throughout discovery and the extensive pretrial motion practice, Howell never notified Skanska it had bonded portions of its property, never provided

Skanska with copies of the partial lien bonds, and never sought to add the bond surety as a party to the litigation.[2] CP 19064, 22107.

After a seven-week jury trial, the jury rendered a net verdict in favor of Skanska for $19,199,531. CP 18358-69. Skanska then filed a motion for entry of judgment and decree of foreclosure. CP 18776-94. Skanska provided a proposed judgment and decree of foreclosure, which included the legal description of the Nexus property as required by RCW 4.64.030(b) and identified the amended lien by recording number (which included the list of condominium units and each unit's respective percent interest). CP 18808-26.

In response, Howell argued the proposed decree of foreclosure was flawed because Howell had obtained partial lien bonds for 83.13% of the real property that was subject to

[2] During discovery Howell indicated it "was using a different strategy involving hold back of closing proceeds to clear title" rather than bonding Skanska's lien. CP 19074.

Skanska's claim of lien. CP 18961. Howell did not include a copy of the 346 partial lien bonds, did not identify the name of the surety company, bond numbers, or recording numbers. CP 18991-92, 19058. Nor did Howell submit an alternative proposed form of judgment and decree of foreclosure. Instead, Howell offered a proposed order *denying* Skanska's motion in its entirety so no judgment or decree of foreclosure would be entered. CP 22108.

Skanska offered to rephrase its proposed judgment and decree of foreclosure if Howell provided a copy of the partial lien bonds. CP 19064, 19074. Howell did not respond. CP 19064.

Without proof of any valid partial bond securing its lien (and even if such bonds existed, with Howell's admission the lien was secured, in part, by the real property), Skanska requested the trial court enter the judgment and decree of foreclosure as originally proposed. CP 19058. Skanska noted if post-foreclosure sale proceedings were necessary, Howell could

provide evidence of the partial bonds to prevent sale of a bonded unit. *Id*.

The judgment and decree of foreclosure provided the legal description of the land of the Nexus tower securing Skanska's lien (in part), specifically stated the recording numbers of Skanska's claim of lien and amended claim of lien, and instructed the sheriff to seize and sell the property "described in the aforementioned Lien in the manner provided by law." CP 19122-27.

Howell then filed a motion to amend the judgment. Howell did not request that the judgment reference its partial lien bonds; instead, it asked the trial court to "remove the decree of foreclosure" – suggesting that Skanska had no right to foreclose its lien. CP 19141. In response, Skanska explained the trial court's foreclosure of Skanska's lien fully complied with Washington law. CP 22113-17. Skanska also explained that if Howell were permitted to "remove" the decree of lien foreclosure, Skanska's judgment would be unsecured and

Howell's bond surety would be absolved of its legal obligation to pay the validly issued judgment. CP 22117. The trial court denied Howell's motion to amend the judgment. CP 22241. Fifteen days later Howell's bond surety paid the judgment to Skanska. CP 22307-0

IV. ARGUMENT IN OPPOSITION TO REVIEW

A. The Court Of Appeals Correctly Applied RCW 60.04.161 And Its Decision Is Consistent With Washington Precedent

Howell first contends the court "ignored the plain language of RCW 60.04.161 in holding that Skanska could *foreclose on real property* after Howell posted replacement surety bonds." Pet. 11 (emphasis added). But this is a *lien foreclosure* – not a *property foreclosure* – case. The construction lien statute does not concern property foreclosures. The court understood this, applied the correct statutory framework, and its decision is consistent with this state's legal precedent.

1. The construction lien statue governs foreclosure of *liens* – not real property.

The initial flaw with Howell's lien foreclosure argument is that it contends the trial court mistakenly foreclosed *real property*. It did not. The decree of foreclosure issued by the trial court foreclosed Skanska's lien. The judgment is entitled: "Judgment in Favor of Skanska USA Building Inc. Against 1200 Howell Street LLC *and Decree of Foreclosure of Skanska's Lien*." CP 19122 (emphasis added). It states: "Skanska's Lien (Recording Numbers 20200131002276; 20200210000017) attached to the following real property is hereby foreclosed." CP 19125. It is undisputed Skanska's lien was attached to and secured by real property (in part).

Howell misconstrues the significance of the reference to the legal description of the real property in the judgment. Where a judgment involves *any* interest in real property, RCW 4.64.030(b) requires that "the first page [of the judgment] must also include an abbreviated legal description of the property."

Here, the legal description of the real property was included in the judgment form because Skanska's lien was

undisputedly still attached to the real property (in part). Had Skanska *not* included the legal description of the real property in the judgment, Howell most certainly would have disputed its compliance with RCW 4.64.030(b).

2. Partial lien release bonds do not impact a lien claimant's ability to foreclose its lien.

RCW 60.04 sets forth a lien procedure to protect the financial interests of persons contributing labor, materials or equipment to a construction project. "If construction costs are not paid, the statute allows a lien to be placed against the construction project property as a method for financial recovery." *Inland Empire Dry Wall Supply Co., v. W. Sur. Co.,* 197 Wn. App. 510, 513, 389 P.3d 717 (2017), *aff'd*, 189 Wn.2d 840, 408 P.3d 691 (2018).

Lien rights exist to help contractors get paid for work they perform. Often the only asset held by the owner is the project itself. If that project is sold, the owner has no assets and becomes judgment proof. Thus, the statute "is construed liberally to protect persons who fall within its provisions." *Williams v.*

Athletic Field, Inc., 172 Wn.2d 683, 696-97, 261 P.3d 109 (2011).

Liens cloud title and prevent the sale of the property unless the lien is paid or substitute security is provided. RCW 60.04.161 provides a procedure where a property owner can obtain and record a bond to substitute as security for the lien and thereby clear the property title. This is why Howell obtained a partial lien bond for each condominium unit it sold.

While RCW 60.04.161 allows the owner to clear the property title by obtaining a bond, it *does not* modify the lien or prevent foreclosure of the lien. In its analysis (Pet. 12), Howell omits the following statutory language:

> The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien.

RCW 60.04.161. This language makes clear that the posting of a bond does not bar the lien claimant (Skanska) from proceeding with a lien foreclosure action. Rather, a bond simply replaces the

real property as security for the lien. Thus, Skanska retained its right to foreclose on its lien regardless of whether Howell obtained a partial lien bond.

Howell's failure to analyze the full statutory text of RCW 60.04.161 leads to its erroneous conclusion that "Skanska had no right to foreclose against bonded units." Pet. 4. *See also* Pet. 17. Of course, "this argument is simply incorrect. A lien bond does not eliminate a lien entirely. A lien bond releases the property from the lien, but the lien is then secured by the bond." *DBM Consulting Eng'rs, Inc. v. U.S. Fid. & Guar. Co*., 142 Wn. App. 35, 42, 170 P.3d 592, 596 (2007).

Washington law is clear: the posting of a bond does not eliminate, modify, release, or change the nature of a lien. Howell's contention that it extinguished Skanska's lien simply because it obtained partial lien bonds is without merit and contrary to the fundamental purpose of the construction lien statute.

3. Skanska was entitled to foreclose its lien regardless of whether the lien was secured by real property, bonds, or both.

Howell contends that "the plain teaching" of *Inland Empire* and *DBM* suggest that "once a bond is recorded under RCW 60.04.161, no foreclosure may be had against the real property." Pet. 16 (emphasis in original). Again, Howell fails to understand that the trial court foreclosed Skanska's lien, not the real property. Division Two's decision fully comports with *Inland Empire*, *DBM*, and RCW 60.04.161.

Washington law is clear: the type of security underlying a lien plays no role in determining whether the lien claimant is legally entitled to foreclose its lien. And regardless of the type of underlying security, foreclosure *must* occur before the lien claimant can receive the benefit of the security.[3] *DBM,* 142 Wn.

[3] Importantly, Skanska was *required* to foreclose its lien to "trigger" the surety's payment obligation on Howell's bonds. *DBM*, 142 Wn. App. at 38-39. Skanska's judgment was paid by the bond surety (not Howell) because Skanska foreclosed the lien. That is precisely how security is intended to function under RCW 60.04.161.

App. at 42. Here, the amended judgment and decree of foreclosure makes clear it is effecting foreclosure on Skanska's *lien*. CP 22261-65. The court confirmed this basic fact. Op. 63 ("the plain language [of the judgment] effects foreclosure on the lien.").

Howell contends Division Two "rejected [its] argument that the [lien] bonds precluded foreclosure against the real property because the bonds were recorded after commencement of the action." Pet. 5. But Howell made no such argument below and the court made no such ruling.

Rather, the court opined that because Skanska recorded its lien and filed suit before any bonds existed, it "was not required to join the bond surety as a necessary party in order for the trial court to *foreclose the lien*." Op. 67 (emphasis added). *See Findahl v. Davis as Trustees of the Chester L.F. Paulson Revocable Tr.*, 13 Wn. App. 2d 1109, *review denied sub nom.*, *Findahl v. Davis*, 196 Wn.2d 1022, 474 P.3d 1054 (2020). As the court made clear, this legal question is settled in Washington.

Notably, Howell ignores that it failed to prove it had obtained a valid bond in accordance with RCW 60.04.161 *before* the trial court entered Skanska's decree of lien foreclosure. Although Howell asserts "[t]here is no dispute that Howell had recorded lien release bonds for 83% of the condominium units[,]" the existence of Howell's bonds was unquestionably in dispute. CP 19058, 18991-92. Howell was repeatedly asked to provide proof of its partial lien bonds and invited to provide an alternative proposed form of judgment and decree of foreclosure, but Howell refused. CP 22108. Given this record, Howell cannot complain that the decree of foreclosure did not include information that Howell refused to provide about *its own* bonds.[4] CP 22108.

[4] Division Two held that the failure to include a reference to bonds "that all parties and the court knew existed at the time that judgment was entered" "does not make foreclosure of the lien invalid." Op. 67, n.9. Of course, *only Howell* possessed the bond information when judgment was entered.

Howell failed to prove it recorded any valid bonds in compliance with RCW 60.04.161 before the entry of judgment and foreclosure of Skanska's lien. CP 19058, 18991-92. But even ignoring Howell's failure of proof, Washington law is clear that a lien claimant is legally entitled to foreclose its lien regardless of the security underlying the lien.

4. Division Two's decision properly applies RCW 60.04.161, safeguarding the interests between lien claimants and property owners.

Howell contends the court's decision "deprived Howell and its condominium unit purchasers of the protection against clouding title to real property that RCW 60.04.161 was designed to safeguard." Pet. 18. Howell's manufactured complaints are unsupported by the record.

Notably, Howell provides no evidence that it was unable to sell any bonded units. Howell received the full benefit of its lien bonds – it was able to sell each unit it bonded, title was not clouded, and no bonded unit was foreclosed. Skanska's *lien* was foreclosed.

Despite Howell's hyperbolic arguments to the contrary, no bonded units were ever even *at risk* of seizure and sale.[5] This is because Skanska's foreclosure of its lien triggered the payment obligation of each partial bond, with the bond surety satisfying the judgment as required by RCW 60.04.161. This is precisely how the construction lien statute was designed to work. And here, it worked exactly as designed.

Howell asks this Court to hold that Skanska could not foreclose its lien simply because Howell obtained partial lien bonds for 83.13% of the property subject to Skanska's claim of lien. But RCW 60.04.161 does not alter, remove, or destroy a lien simply because a bond (or here, a partial bond) is recorded. If accepted, Howell's arguments would destroy the protections of

[5] The decree of foreclosure allowed the seizure and sale of property "in the manner provided by law," and subsequent sale proceedings would have needed to occur before any condominium units could have *actually* been sold. CP 19126. In reality, Howell would have produced the partial bond after foreclosure, demonstrating the unit was not subject to sale.

the construction lien statute by inventing a loophole for owners to prevent foreclosure of valid liens by simply purchasing bonds. That is not the law in Washington.

The Court of Appeals' decision follows established precedent, does not contravene clear legislative intent, and presents no issue of substantial public concern. This Court should not grant review. RAP 13.4(b)(1), (2), (4).

B. The Court Of Appeals Correctly Held The Parties' Agreement Addressing Claim Notice Requirements Was Properly A Jury Question And Does Not Conflict With Any Controlling Precedent

Howell next contends that the "Court of Appeals erred "in holding that Skanska was entitled to recover on claims (ARs) that were never approved by Howell, under unambiguous contract provisions that were never waived, let alone by Howell's unequivocal acts." Pet. 19. Howell's argument is – yet again – entirely divorced from the record below. The court carefully reviewed the *full* factual record, properly applied controlling law, and its unpublished opinion does not require this Court's review.

1. Division Two properly ruled the jury could consider extrinsic evidence of the parties' intent to determine the contract's context.

Washington law is settled: if a contract is ambiguous, courts consider extrinsic evidence of the parties' intent to resolve the ambiguity. *Lehrer v. Dep't of Soc. & Health Servs*., 101 Wn. App. 509, 516, 5 P.3d 722 (2000). Washington uses the "context rule" to determine the contracting parties' intent, which includes "subsequent acts and conduct of the parties, the reasonableness of the respective interpretations advanced by the parties," and "course of dealing." *Adler v. Fred Lind Manor,* 153 Wn.2d 331, 351, 103 P.3d 773 (2004).

Howell complains that Division Two inappropriately used "extrinsic evidence of context to vary, contradict, or modify the written words of the contract and show an intention independent of the instrument itself." Pet. 25. But the court simply acknowledged what Howell ignores – because Howell used CCD 5 to order Skanska to build using the IFC documents and then Change Order 9 modified the contract, introducing an undefined

AR process – the contract's original claim notice requirements were rendered ambiguous. *See* Op. 34-35. The court explained:

> Because there were such extensive changes with the adoption of the [IFC] documents, the parties further negotiated a process for Skanska to efficiently obtain approval of work that would increase the contract price and time for completing the project. We must consider the whole contract in context, including subsequent changes through [CCD 5], change order 9, and Howell's subsequent actions during the AR process.

Op. 33.

Not surprisingly, Howell makes no mention of CCD 5 when analyzing the contract's so-called "unambiguous" provisions. As a result, Howell fails to acknowledge that CCD 5 made a critical change to the contract – directing Skanska to construct the project using the IFC documents and proceed with the project despite lacking an agreement on price and schedule. RP 1094, 1096; Ex. 124 at 2.

Throughout its opinion, the court meticulously detailed the contradictions between the original contract, CCD 5, Change Order 9, and the additional "forms of authorization that Howell

accepted in practice that went beyond the listed methods of authorization in those documents." Op. 34. *See also* Op. 6, 26-29, 35-36. The court's analysis demonstrates that the contract was ambiguous[6] and therefore that extrinsic evidence was necessary and appropriate to determine the parties' intent regarding the claim notice requirements. *Lehrer*, 101 Wn. App. at 516.

Howell's complaint that the court erroneously looked to extrinsic evidence of the parties' intent and relied on the contract's full context (Pet. 23) is disingenuous given that *Howell* proposed a jury instruction permitting the jury to consider extrinsic evidence of the parties' subsequent actions as part of

[6] Howell ignores that the terms AR and "claim" are undefined in the contract. When Howell contends that Skanska evaded "the contract's notice and approval requirements" (Pet. 24), its argument presupposes there was an agreed approval process. In fact, the process was entirely undefined and ambiguous, which the court acknowledged.

the contract's context. CP at 18339 (jury instruction proposed by Howell – and given by trial court).

The court's opinion is consistent with Howell's jury instruction – and established Washington law. Because Howell adopted CCD 5 and Change Order 9, these changes rendered the contract's claim notice requirements ambiguous. The court properly held extrinsic evidence and the contract's full context were legally relevant to determine the parties' intent. It also correctly held that once the contract's full context is viewed, "the parties' intent and ultimate agreement addressing authorization—including whether Howell waived the strict procedures in the contract—was properly a question of fact for the jury." Op. 35.

2. This case is not governed by and does not conflict with *Mike M. Johnson*.

Howell maintains that the "Court of Appeals' opinion directly conflicts with established precedent enforcing contractual claim notice requirements." Pet. 19. But Howell provides no meaningful analysis of *Mike M. Johnson, Inc. v.*

Cnty. of Spokane, 150 Wn.2d 375, 78 P.3d 161 (2003), and mischaracterizes the Court of Appeals' opinion here. The court properly held that *Mike M. Johnson* does not control. Op. 33-34.

Mike M. Johnson provides that contractors must follow contractual notice procedures unless the other party waives those procedures or the parties agree to modify the contract. 150 Wn.2d at 386-87. "However, the requirement of a writing is for the benefit of the owner, and the owner, either expressly or by conduct, may waive such a requirement." *Swenson v. Lowe*, 5 Wn. App. 186, 188, 486 P.2d 1120 (1971). Stated simply, *Mike M. Johnson* does not apply if (1) Howell and Skanska modified the contract's claim notice requirements; *or* (2) Howell waived the contract's claim notice requirements. The court found *both* contract modification *and* waiver by Howell in this case.

Howell entirely ignores the court's holding that *Mike M. Johnson* does not apply because the parties modified the contract:

> We note that *Mike M. Johnson* is distinguishable. There is no evidence that the parties in that case modified the contract procedures with change orders or other instruments, or that they mutually engaged in a course of conduct that directly contradicted the express contract provisions governing protest procedures after executing the contract. … These facts are distinguishable from the events in this case.

Op. 33-34. The court provided a detailed analysis explaining that Howell and Skanska significantly modified the contract procedures through CCD 5 and Change Order 9 (Op. 34), as well as through the subsequent course of dealing between the parties that directly contradicted the contract (Op. 35).

Howell also misunderstands the court's waiver holding, claiming it "did *not* hold that the authorization requirement or claim notice requirement had been waived [by Howell], let alone by unequivocal acts." Pet. 23 (emphasis in original). Howell is wrong. The court specifically held "[t]here was evidence that Howell waived the strict authorization procedures under GR-26(A)." Op. 35 (detailing specific facts demonstrating Howell's plain waiver).

Division Two carefully analyzed this Court's precedent addressing contractual claim notice requirements in light of the evidence admitted at trial and its opinion fully comports with Washington law.[7]

3. The Court of Appeals' opinion does not impact the efficient and summary resolution of construction litigation.

Howell contends that the court's decision "risk[s] lengthy and expensive jury trials on claims that should be resolved as a matter of law" in contravention of the so-called "*Mike M. Johnson* rule." Pet. 29. Howell's argument fails on both factual and legal grounds.

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[7] Howell argues that the opinion also conflicts with *American Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 174 P.3d 54 (2007), and *NOVA Contracting, Inc., v. City of Olympia*, 191 Wn.2d 854 426 P.3d 685 (2018). Pet. 21-22. But unlike the WSDOT Standard Specification contracts at issue in all of those cases, here the contract does not detail any formal claim procedure, specify what information must be provided in a claim, when a claim must be submitted, a deadline for Howell's response, or Skanska's remedy if it disagrees. Ex. 46 at 54-55.

Factually, Howell ignores that it failed to bring *any* summary judgment motion arguing that Skanska's claims should be dismissed as a matter of law. Op. 10. Because Howell failed to attempt to resolve its claims before trial – instead raising them for the first time in a CR 50(b) motion – Howell's complaints about "expensive and time-consuming construction litigation" (Pet. 29) are disingenuous at best.

Legally, the court properly acknowledged that given the contract's full context – including its modification and subsequent course of dealing between the parties – "there were issues of fact as to the parties' intent and it would have been inappropriate" to rule as a matter of law on the ultimate agreement addressing authorization. Op. 35. With no clear contract language to enforce, the court properly held that this was a question of fact for the jury. *Id.*

The Court of Appeals' decision follows established precedent and presents no issue of substantial public concern. This Court should not grant review. RAP 13.4(b)(1), (2), (4).

C. Skanska Is Entitled To Attorney Fees As The Prevailing Party At Trial, On Appeal, And Before This Court

As previously demonstrated, the Court of Appeals properly affirmed the trial court's decree of foreclosure of Skanska's lien and corresponding judgment for attorney fees pursuant to RCW 60.04.181(3). And the Court of Appeals properly awarded Skanska its attorney fees as the prevailing party on appeal. RCW 60.04.181(3).

Because Howell fails to demonstrate it has satisfied RAP 13.4(b) and that review is warranted, this Court should grant Skanska its attorney fees in this Court. RCW 60.04.181(3).

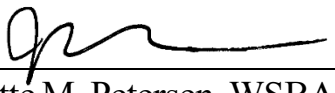
V. CONCLUSION

This Court should deny review.

I certify that this brief is in 14-point Times New Roman font and contains 4,842 words, excluding the parts of the document exempted from the word count, in compliance with the Rules of Appellate Procedure. 18.17(b).

Dated this 2nd day of May, 2025.

PWRFL



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I certify that on the date shown below this document was efiled via the Washington State Appellate Courts website, which electronically serves all counsel of record.

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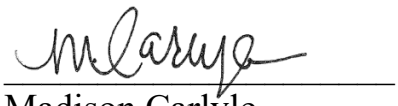

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