No. 1042329

SUPREME COURT

OF THE STATE OF WASHINGTON

SARA HUTCHINSON

Appellant,

vs.

ED PUTKA

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Defendant-Respondent Ed Putka (hereinafter "Putka") submits this Answer in response to the Petition for Review by Plaintiff-Appellant Sara Hutchinson (hereinafter "Hutchinson").

In an unpublished decision dated April 29, 2025, the Washington Court of Appeals, Division II, upheld a Summary Judgment dismissal of Hutchinson's civil action for real estate discrimination under RCW 49.60.2235. In a thorough and well-reasoned opinion, it found that Hutchinson failed to provide specific evidence sufficient to create a genuine issue of material fact about Putka's discriminatory purpose.

Contrary to Hutchinson's assertion that this case presents unique issues, Division Two correctly applied the well-established standards for discrimination first announced fifty years ago in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) and subsequently affirmed in *Scrivener v.*

Clark College, 181 Wn.2d 439 (2014) and *Mikkelsen v. PUD No.1 of Kittitas County,*189 Wn.2d 516 (2017).

Other than arguing that the Appellate court was wrong in its application of the law and evidence, Hutchinson has not explained why this Court should expend its resources reviewing Division II's decision. Nowhere in her Petition does the Appellant even mention RAP 13.4(b)(1), which governs acceptance for review. The decision is not in conflict with any Supreme Court or Court of Appeals decision; it is not a constitutional issue and doesn't involve an issue of substantial public interest that hasn't already been fully ruled on by Washington Courts.

The Court should deny review.

II. IDENTITY OF RESPONDENT

Ed Putka opposes the Petition for Review.

III. RESTATEMENT OF THE CASE

The facts of this case are set out in Division II's opinion.

Petitioner's Statement of the case in her Petition for review is misleading insofar as it states (Pet. at 9) the trial court initially denied Summary Judgment and later reversed itself "based on a record that was substantially the same." Division II's recitation of the procedural history makes it clear that the second ruling came only after a Motion in Limine, a second deposition, and a new Declaration by the Respondent. Op. 7-9.

As is clear from the verbatim report therein quoted, the trial judge at the first Summary Judgment exercised caution in his initial ruling. This, it is submitted, due to the shotgun nature of the original pleading. When subsequent discovery revealed there was no separate discrimination claim for eviction from the commercial building, the trial court properly focused on the real estate transaction and found insufficient evidence of discrimination there.

There was no double-dipping here.

I. ARGUMENT AGAINST REVIEW

A. <u>The scope of the Appellate Court's review is not a proper ground for appeal.</u>

Petitioner argues that Division II improperly narrowed the WLAD claim. This is untrue. As clearly stated in the opinion below, the issues taken up by the court directly related to the Petitioner's own infirm pleadings. Op. 11.

Despite the scattershot references to all parts of RCW 49.60, there was no specific claim of discrimination for being evicted from the commercial property and the lower court properly refused to consider it.

Petitioner, as previously, uses inflammatory language (Pet. at 12) to sway this Court into believing she is the victim of ethically outrageous behavior. In truth, her own lying and fraud, not discrimination, was the basis for Putka's behavior. Op.16.

Regardless of the scope of the Appellate review, scope of review, of itself, is not grounds for appeal to this Court. RAP 13.4(b)(1).

B. The lower court properly applied the *McDonnell Douglas* analysis.

Petitioner argues the lower court improperly applied the case-law analysis for discrimination. She fundamentally misstates the law.

Under the three-step framework set out in *McDonnell, supra,* the parties have a burden of *production*, not *persuasion.* However, to survive Summary Judgment, the defending party must do more than produce: it must offer evidence creating a *genuine issue of material fact that discrimination was a substantial motivating factor.* Op. 14, quoting *Mikkelsen* at 527.

Petitioner seems to be saying that all she has to do is provide *some* evidence, however weak, circumstantial or conclusory to avoid dismissal. This is contrary to CR 56 and the cases interpreting it. Here, Division II discussed the competing arguments in the light most favorable to the nonmoving party and specifically found that the Petitioner failed to present sufficient evidence to create a genuine issue of material fact as to pretext or discriminatory intent. Op. 2.

It agreed with Summary Judgment precedent that a plaintiff alleging discrimination must do more than express an opinion or make conclusory statements. “Instead, the facts must be specific and material.” Op.15

And, even if, as above, the court was incorrect in its analysis, that fact, in itself, is not grounds for appeal under RAP 13.4(b)(1).

C. The lower court properly dealt with Petitioner’s so-called excluded evidence.

Petitioner complains of the lower court’s failure to consider certain circumstantial evidence pointing to discrimination. However, the court did, in fact, deal with each of her complaints in turn: Op. 9 (VFW sign); Op. 19 (back-up buyer and VA loan); Op. 9 (new witness).

Of note, is that she faults the Appellate Court for her own incompetence in presenting her case. Petitioner’s failure to obtain all documents related to the back-up offer is not proof of Respondent’s deviousness, but of Petitioner’s bungling. So, too, with her failure to obtain a Declaration from

the missing witness. To now claim this should be considered evidence of Respondent's intent is disingenuous at best and hypocritical at worst.

D. The lower court properly applied RAP 2.5 and 9.12

Petitioner argues that Putka's actions in evicting her and reporting her fraudulent practice were improperly treated as "new evidence" and not considered under the relevant appellate rules. This is directly contradictory to the clear language of the lower opinion: "...although we *can* consider them as evidence relating to these allegations, we decline to address them as a separate basis for Hutchinson's discrimination claim." (emphasis added) Op.12

The context of this statement relates to the court's discussion that the eviction and reporting of fraud were not standalone causes of action. Had they been, Respondent would have argued justification for the eviction based on violation of the lease (not discrimination) and the reporting based on the absence of a license (not discrimination).

The appellate court clearly considered this circumstantial evidence (which occurred after the closing of the home sale) in determining whether sufficient facts existed to take this case to a jury.

E. This is not a case of first impression under RCW 49.60, the Washington Law Against Discrimination

Since housing discrimination was added to RCW 49.60 in 1969, there has been extensive litigation at the appellate level in the State of Washington. All of the guidance in this area has been established since at least 1973 when Washington adopted the US Supreme Court's burden shifting framework for discrimination set out in *McDonnell, supra.* As the Court of Appeals' opinion in this case correctly points out, *Tafoya v. Wash. State Hum. Rts. Comm'n* 177 Wn. App. 216 (2013) directs any discrimination case to rely on the standards for employment discrimination. Which is exactly what the appellate court did here.

Although there are no published opinions that directly deal with the issue of alleged discrimination in the context of a

contract for the purchase and sale of real property, the legal formula that should apply to such claims is well established. No two discrimination cases are exactly alike, yet the conclusion that flows from this fact cannot be that every discrimination case qualifies as a "matter of first impression," as this is not a workable or functional standard. Accordingly, this Court need not grant review on this basis.

V. CONCLUSION

The decision below conforms with a long line of Washington cases defining what is necessary to allow a discrimination case to proceed to trial. Petitioner has stated no basis for review under the strict rules governing appeals to the Supreme Court. The lower court addressed all issued raised by the Petitioner and properly applied the standards necessary to survive a Motion for Summary Judgment. Review should be denied.

Respectfully submitted,

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