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THE SUPREME COURT  
OF THE STATE OF WASHINGTON

NO. 92199-7

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SANDRA J. ARCHDALE,

Petitioner,

vs.

SHARYL L. O'DANNE,

Respondent.

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ANSWER OF RESPONDENT, SHARYL O'DANNE,  
TO PETITION FOR REVIEW

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## ARGUMENT

Sandra Archdale fails in her Petition for Review to adequately address the considerations governing acceptance of review, and otherwise simply re-hashes arguments on the merits, which arguments failed before at the trial court and the Court of Appeals below. None of the considerations governing acceptance of review are satisfied here, and the Petition should be denied.

RAP 13.4 provides in part that "[a] petition for review will be accepted by the Supreme Court only:

. . .

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b) (amended 2010). Archdale relies, in her statement of issues on review, only on the first consideration; that is whether the

decision of the Court of Appeals conflicts with several decisions of the Supreme Court. She fails to demonstrate how such conflicts exist here.

Archdale cites to City of Lakewood v. Pierce Cnty., 144 Wn.2d 118, 126, 30 P.3d 446, 450 (2001), for the general proposition that a constructive trust is an equitable remedy applicable when the person holding title to real property would be unjustly enriched if permitted to retain title. *See* Petition at 7. She further cites to Kausky v. Kosten, 27 Wn.2d 721, 727-28, 179 P.2d 950 (1947), for the proposition that a constructive trust may be imposed where it would be unconscientious for the holder of legal title to real property to retain the beneficial interest. *Id.* These citations are of no help to Archdale. O'Danne was never enriched, much less unjustly enriched, in this case, and she never claimed or enjoyed any beneficial interest in the condominium. The decision of the Court of Appeals cannot therefore have conflicted with either City of Lakewood or Kausky.

With respect to the claim of unjust enrichment, O'Danne gratuitously extended her good credit out of love and concern for her sister, and not out of any potential for profit. *See* Judgment Confirming Decision and Order (hereinafter the "Decision and Order"), at ¶ 3, CP

4-5. (Archdale convinced O'Danne to purchase the condo for Archdale's sole benefit.) O'Danne was not enriched by having held legal title to the condo, because she never wished to own it, *id.* at ¶ 5, CP 5, and obviously did not sell it, so as to receive any gain on the property. On the contrary, O'Danne always conceded that her sister held constructive title to the condo. *Id.* at ¶ 7.

Nor was O'Danne unjustly enriched by the Court of Appeals' affirmance of the trial court's order that if Archdale did not purchase the condominium within six months, O'Danne would receive twenty-five percent of any net proceeds of public sale. In City of Lakewood, the Supreme Court explained that "[e]nrichment alone will not trigger the doctrine . . . [of restitution] . . . ; the enrichment must be unjust under the circumstances and as between the two parties to the transaction." Lakewood at 126. Even if it could be argued that O'Danne would be "enriched" by receipt of 25% of the net proceeds, if any, of the sale of the condo, such enrichment cannot be said to be unjust where Archdale failed to pay off the mortgage using her inheritance as promised, Decision and Order at ¶ 3, CP 4-5, and has now held O'Danne's credit hostage for almost eleven years. *Id.* at ¶

8.c.ii, CP 6, and CP 7. (Archdale had been in possession for some nine years at the time of the trial court's decision.) The Court of Appeals' decision determining that O'Danne was not unjustly enriched by the terms of the constructive trust established by the trial court is wholly consistent with the Supreme Court's decision in City of Lakewood v. Pierce Cnty., 144 Wn.2d 118, 126, 30 P.3d 446, 450 (2001).

The Court of Appeals' decision also comports with the Supreme Court's decision in Kausky. O'Danne never sought or enjoyed any beneficial interest in the condo. It was Archdale, not O'Danne, who occupied it after the purchase. *See* Decision and Order at ¶¶ 1, CP 4, and 8.b, CP 5. O'Danne in fact stipulated to the imposition of a constructive trust that would document her sister's equitable interest in the condominium; provided that O'Danne was, as a provision of that trust, released from the burden of liability on the mortgage on the condo. *Id.* at ¶¶ 5 and 7, CP 5. O'Danne had been in the meantime telling her sister for years that the condo would be transferred as long as Archdale paid off or assumed the underlying mortgage. *See* Exhs. 32 and 37.

Archdale has also failed in her Petition to show how the Court

of Appeals' affirmation of the trial court's award of attorneys' fees to O'Danne under RCW 4.84.185 conflicts with decisions of the Supreme Court. Archdale cites Biggs v. Vail, 119 Wn.2d 129, 830 P.2d 350 (1992), for the propositions that the claims must have been frivolous in their entirety and must have been made without a rational basis in fact or law. *See* Petition at 11. Those are precisely the standards that the Court of Appeals applied in this case.

The Court of Appeals concluded that Archdale's claims were without factual or legal basis where the findings established that Archdale failed to pay off the mortgage as promised, *see* Decision of Court of Appeals at 4, and that O'Danne had been willing, without a court order, to convey in exchange for a payoff. *Id.* at 10. The only remaining claim was one for damages, and Archdale presented no evidence on that claim. *Id.* at 10-11.

Archdale also asserts that the Court of Appeals' decision conflicts with the Supreme Court's holding in State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 969 P.2d 64 (1998). *See* Petition at 5. She then cites that case, however, only for the general proposition that the Court of Appeals abused its discretion in finding that her claims

were frivolous. *See* Petition at 16. No argument is presented as to any actual conflict between the Court of Appeals' decision below and the Supreme Court's opinion in Quick-Ruben. The Court of Appeals did in fact, under the authority of State ex rel. Quick-Ruben v. Verharen, *supra*, examine Archdale's claims to determine whether they had been advanced with reasonable cause. The Court applied that standard and determined that Archdale had not reasonably perceived that she had a legal right to quiet title in her name, subject to encumbrances. *See* Court of Appeals Decision at 11. The Court of Appeals' decision thus comports with the Supreme Court's opinions in Biggs and in and State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 969 P.2d 64 (1998).

Finally, the Court of Appeals properly applied the Supreme Court's decision in Riss v. Angel, 131 Wn.2d 612, 633-34, 939 P.2d 669 (1997), in affirming the award of attorney's fees to O'Danne as the prevailing party. In Riss, the Supreme Court held that if neither party "wholly prevails, then the determination of who is a prevailing party depends upon who is the substantially prevailing party, and this question depends upon the extend of the relief afforded the parties." *Id.* at 633-34. The Court of Appeals determined that O'Danne had received

an affirmative judgment in her favor, in that she could, if Archdale did not timely purchase, sell the condo to a third party and thus obtain a release from the mortgage. Court of Appeals Decision at 12. O'Danne also received an affirmative judgment in that she was, if Archdale did not timely purchase, to receive an award of twenty-five percent of any net proceeds of sale. *Id.* The Court of Appeals then compared the relief afforded Archdale, and found that it was "entirely different from the relief requested in her complaint . . .", *id.*, and at trial. *Id.* The Court of Appeals therefore completed all appropriate analysis in determining that O'Danne was the prevailing party and was entitled to an award of fees under RCW 4.84.185.

#### CONCLUSION

Archdale asserts in her Petition only one of the considerations that govern acceptance of review; that being whether the decision of the Court of Appeals conflicts with a decision of the Supreme Court. She provides no tenable argument, however, in support of that position. Indeed she cannot do so, for the Court of Appeals' decision properly applied the law of this Court as it relates to constructive trusts and frivolous claims. The Petition for Review should be denied.

Respectfully submitted this 2nd of September, 2015.

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## **APPENDIX 1**

### **RCW 4.84.185**

#### **Prevailing party to receive expenses for opposing frivolous action or defense.**

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

[1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

## **APPENDIX 1**