Case No. 103685-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SCOTT HILLIUS, et al.,

Petitioners,

v.

18 PARADISE, LLP., et al.,

Respondents.

RESPONDENT CITY OF LYNDEN'S RESPONSE TO STATEMENT OF GROUNDS FOR DIRECT REVIEW

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TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Respondent, the City of Lynden ("the City"), respectfully submits this response to Petitioners' Statement of Grounds for Review. It should be denied for two principle reasons.

First, direct review makes no procedural sense in this instance. Petitioners are seeking review of rulings across thirteen (13) different trial court orders. *See* Notice of Appeal (November 1, 2024).[1] Yet Petitioners only suggest that *one* ruling merits direct review by this Court—and essentially ignore the others in their Statement of Grounds. So if this Court were to accept review:

a) It would be impliedly accepting review of dozens of other rulings, none of which are justified by RAP 4.2[2]; ***or***

b) Those other rulings will essentially sit idle while this Court reviews Petitioners' one CPA issue—and then the remaining rulings would be inefficiently remanded

[1] This includes the 2022 Order granting summary judgment in favor of the City—and rejecting Petitioners' attempt to *compel* governmental code enforcement against another party.

[2] Most appear to be procedural rulings, including sanctions orders and judgments against Petitioners' counsel.

> to Division I for another round of appellate review (subject to yet another round of review by this Court).

None of this is practical. Most or all of this appeal should be resolved in Division I. And even assuming the CPA issue ultimately justifies discretionary review, this Court would benefit from Division I's preceding analysis and sharpening of the issues. In other words, if there will be two stages of review, there is no reason to invert the standard order. By itself, this justifies denial of direct review.[3]

Second, Petitioners' singular review issue appears misguided. They are effectively asking the Court to confirm that a statute "exists." The CPA provides, in relevant part, that a claimant may prove an act or practice is injurious to the public because it:

> (1) Violates a statute that incorporates this chapter;
>
> (2) Violates a statute that contains a specific legislative declaration of public interest impact; or

[3] This problem would admittedly be negated if Petitioners dismissed the remainder of their appeal.

> (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.

RCW 19.86.093. This Court's reasoning in *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 836–37, 355 P.3d 1100 (2015), is not inconsistent with that. There, the Court considered the *Hangman Ridge* factors,[4] in the context of "capacity to injure," and concluded—that the plaintiff's allegations (per the statutory language) "state that other plaintiffs have or will likely suffer injury in the same fashion." *Id.* at 836. Petitioners' perceived issue is a misapprehension of the holding, which was consistent with the statute (and did not affect the outcome, in any event).

Nor, in reality, does Petitioners' CPA issue affect the outcome in *this* case, either. As they acknowledge, their claims

[4] "(1) whether the defendant committed the alleged acts in the course of his/her business, (2) whether the defendant advertised to the public in general, (3) whether the defendant actively solicited this particular plaintiff, and (4) whether the plaintiff and defendant have unequal bargaining positions." *Id* (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 791, 719 P.2d 531 (1986)).

failed for other reasons—including the fact that they had advance notice, in the form of a recorded document, of the allegedly "deceptive act" prior to buying in. *Strong v. Clark*, 56 Wn.2d 230, 232, 352 P.2d 183 (1960) ("When an instrument involving real property is properly recorded, it becomes notice to all the world of its contents."). A non-outcome dispositive decision from this Court, rendered for its own sake, would almost certainly muddle the value of the holding. *Cf. State v. Hummel*, 165 Wn. App. 749, 765, 266 P.3d 269 (2012) (statements made by the Supreme Court that are "'wholly incidental' to the basic decision constitute dicta and do not bind us").

The proposed issue to review is not only inconsistent with RAP 4.2, but yet another reason for Division I to address the appeal in the first instance.

* * *

At bottom, reminding everyone that a statute exists, as part of a dicta holding, is not a "fundamental and urgent issue

of broad public import which requires prompt and ultimate determination." RAP 4.2(a)(4). The statutory inconsistency does not exist, and Petitioners cite no other reason this appeal cannot proceed through the ordinary process.

I hereby certify that this document contains 731 words in accordance with RAP 18.17.

RESPECTFULLY SUBMITTED this 29th day of January, 2025.

KELLER ROHRBACK L.L.P.

By: _____
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CERTIFICATE OF SERVICE

I, Leona Flasch, certify that on January 29, 2025, I served a true and correct copy of this Answer to Statement of Grounds of record using the Court's Electronic Service System and also via email to the following people:

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DATED this 29th day of January, 2025 at Seattle, Washington.

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