No. 101073-7

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 37512-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

WALL STREET APARTMENTS, LLC, a Washington limited liability company, and ALAA ELKHARWILY, M.D.,

Plaintiffs/Appellants,

v.

ALL STAR PROPERTY MANAGEMENT, LLC, a Washington limited liability company; GIEVE PARKER individually and on behalf of her marital community; and JOHN DOES AND JANE DOES I through X,

Defendants/Respondents.

RESPONDENT'S ANSWER TO APPELLANT'S MOTION TO STAY PROCEEDINGS; AND REMAND THE FORWARDED MOTIONS, RESPONSES AND REPLIES

STAMPER RUBENS, P.S.

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I. INTRODUCTION

On April 19, 2022, the Court of Appeals issued an unpublished Opinion regarding the appeal filed by Wall Street Apartments, LLC ("Wall Street") and Alaa Elkharwily ("Elkharwily") (collectively "Plaintiffs"). On May 9, 2022, Plaintiffs filed a Motion for Reconsideration, which was denied on June 7, 2022.

Since the opinion of April 19, 2022, Plaintiffs have engaged in a pattern of frivolous and harassing litigation practices. In addition to the one properly filed Motion for Reconsideration, after the Court of Appeals issued its opinion, Plaintiffs also filed a Motion to Direct Second Transmission an additional, an improper Petition to Withdraw/Recall Opinion and to Correct the Record, a second and wholly improper Motion for Reconsideration, and four (4) separate motions titled as Motions to Modify, the most recent of which also incorporated a motion to disqualify the entirety of Division 3 of the Washington Court of Appeals. Plaintiffs' original Motion for Reconsideration was

denied by order issued on June 7, 2022. The Motion to Direct Second Transmission was denied on June 9, 2022, with the parties informed by letter on June 10, 2022. That same letter also informed the parties that the Petition to Withdraw/Recall opinion was denied on June 9, 2022. On June 29, 2022, the Court of Appeals denied Plaintiffs' second Motion for Reconsideration per RAP 12.4(h), and reiterated to Plaintiffs that the deadline to file a Petition for Review remained July 7, 2022.

Plaintiffs' Motions to Modify were all filed either simultaneous with or subsequent to the Petition for Review pending before this Court. The Motion to Disqualify in fact was not filed until a month after the Petition for Review, being filed on August 8, 2022, a mere two (2) days before Respondents were required to respond to the Petition for Review.

Plaintiffs continue to seek to over-complicate the record by filing frivolous motions that have no basis in fact or in law. These motions appear to be intended to cause further delays,

further costs to Respondents, and to harass Respondents, none of which are for a proper purpose.

II. ARGUMENT

A. The Motions to Modify filed by Plaintiffs on July 7, 2022, July 25, 2022, and August 8, 2022 are not permitted under the Rules of Appellate Procedure and need not be ruled on.

The sole rule cited by Plaintiffs as the legal basis for the present Motion is RAP 17.7(a), which does not, in fact, pertain to the relief sought by Plaintiffs. In fact, there is no Rule of Appellate Procedure which would allow Plaintiffs to seek a stay of proceedings in the Supreme Court and thus prevent a decision on the Petition for Review that Plaintiffs themselves sought.

Moreover, to the extent that Plaintiffs argue that rulings on the numerous Motions to Modify are necessary for this Court to rule on the Petition for Review – this is false. RAP 17.7(a), the rule cited by Plaintiffs, states in pertinent part: "An aggrieved person may object to a ruling **of a commissioner or clerk**...only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk...the motion to

modify must be served...and filed in the appellate court not later than 30 days after the ruling is filed." (emphasis added)

Each of the Court of Appeals rulings subject to Plaintiffs' numerous Motions to Modify are, in fact, rulings by the assignment judge – and not by a clerk or a commissioner. The June 7, 2022, letter from this Court clearly states that Plaintiff's Motion to Direct Second Transmission of Clerk's Papers and to Withdraw/Recall Opinion were denied "**At the direction of the assignment judge**...." *See Letter June 7, 2022* (emphasis added). The June 10, 2022, letter from this Court contains identical language stating that "**At the direction of the assignment judge**" the replies filed subsequent to the Court's ruling have no impact on the order filed on June 7, 2022. *See letter June 10, 2022* (emphasis added). The June 29, 2022 also states "**At the direction of the assignment judge**..." Plaintiffs' second Motion for Reconsideration was denied pursuant to RAP 12.4(h) (limiting parties to one Motion for Reconsideration). As provided in RAP 17.6(b), the clerk thereafter "notif[ied] the

movant and all persons entitled to notice of the motion of the order made...by the court." Because a judge is the one who made the decisions at issue, Plaintiffs have no further right to review by the Court of Appeals at the outset because there is no right to file a motion to modify a judge's decision. Furthermore, while Plaintiffs demand a statement of the basis for the rulings addressed *supra*, under RAP 17.6 a judge, unlike a clerk or commissioner, is not required to include a statement of the reason for the decision.

Plaintiffs are correct that all allowable Motions for Reconsideration must be ruled on before the time in which to file a Petition for Review begins. RAP 13.4(a). However, RAP 12.4(h) makes it clear that there was only one Motion for Reconsideration in this case which could toll that limitation period: "Each party may file **only one motion for reconsideration**, unless the appellate court withdraws its opinion and files a subsequent opinion. Any party adversely affected by the subsequent opinion may file a motion for

reconsideration." The Court of Appeals did not withdraw its opinion, thus, Plaintiffs had no further right to file another Motion for Reconsideration. The Rules of Appellate Procedure do not permit Plaintiffs to continue filing harassing motions, with no basis in fact or in law, and receive the benefit of tolling the limitations period of RAP 13.4(a).

B. There is no valid basis to disqualify the Court of Appeals.

The other motion filed by Plaintiffs in the Court of Appeals was filed as part of the August 8, 2022 Motion to Modify – namely, a Motion to Disqualify the whole of Division 3 of the Court of Appeals. The sole basis for that request is the mere fact that Commissioner Hailey Landrus is the former attorney of record on the present appeal. However, Commissioner Landrus has never made any decision on this matter in the Court of Appeals, and she withdrew from representation by filing a Substitution of Counsel in the Court of Appeals on May 21, 2020. Despite Plaintiffs subjective belief of bias, the fact remains that there is no indication whatsoever of

bias in this case, given that Commissioner Landrus has no involvement whatsoever in this appeal. The Motion to Disqualify – filed more than two (2) years into the appeal, filed subsequent to the Court of Appeals issuing its ruling and denying Plaintiffs' Motion for Reconsideration – not only has no basis in fact, but is on its face a bad faith motion that seeks only to further delay this matter.

C. Respondents Object to Continued Legal Representation by Richard T. Wylie without pro hac vice admission before this Court.

Plaintiffs' brief contains a signature of Richard T. Wylie with the notation "pro hac status expected." This Court issued a letter on July 11, 2022, stating "It is noted that there was a pro hac vice attorney involved in this case at the Court of Appeals and we have included them on this initial letter as a courtesy. However, if the pro hac vice attorney intends to be involved in this case at the Supreme Court, a motion for pro hac vice admission should be served and filed. See APR 8(b)."

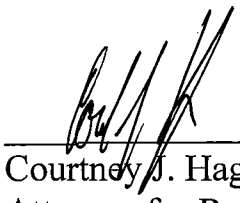
Despite this clear instruction, and while proceeding with vexatious litigation tactics, Plaintiffs have to date failed to file a proper Motion for Pro Hac Vice admission as required by APR 8(b). Mr. Wylie, therefore, does not have this Court's permission to continue representation of Plaintiffs before the Supreme Court. While Respondents have included Mr. Wylie on documents filed with the Supreme Court as a courtesy, expecting prompt compliance with APR 8(b) and with this Court's clear instruction, at this time Respondents must object to any further action being taken by Mr. Wylie without filing the requisite motion to be considered and ruled on by this Court.

III. CONCLUSION

For the reasons set forth above, Respondents respectfully request that Plaintiffs' Motion to Stay Proceedings be denied in its entirety.

Undersigned counsel certifies pursuant to RAP 18.17(b) that this brief is 1,365 words in length.

Respectfully submitted on August 22, 2022.



Courtney J. Hagermann, WSBA #51596
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PROOF OF SERVICE (RAP 18.5(b))

I, Laurel Vitale, do hereby certify under penalty of perjury that on August 22, 2022, I mailed to the following, by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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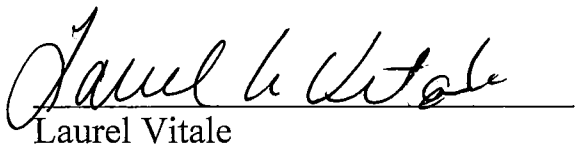

Laurel Vitale

STAMPER RUBENS, P.S.

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Respondent's Answer to Appellant's Motion to Stay Proceedings; and Remand the Forwarded Motions, Responses and Replies

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