

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

No. 101073-7
Court of Appeals No. 37512-9-III

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

WALL STREET APARTMENTS, LLC and ALAA
ELKHARWILY, M.D.
Plaintiffs/Appellants,

v.

ALL STAR PROPERTY MANAGEMENT, LLC, ALL STAR
CONSTRUCTION, LLC, GIEVE PARKER, INDIVIDUALLY,
AND JOHN DOES AND JANE DOES I THRU X,

Defendants/Respondents.

**APPELLANTS' MOTION TO MODIFY CLERK'S
RULINGS FILED AUGUST 8, 2022, AND AUGUST 30,
2022**

I. Identity of Moving Parties

Appellants Wall Street Apartments, LLC and Alaa Elkharwily, MD, move to modify rulings by the clerk of this court.

II. Legal basis

This motion is brought under RAP 17.7 (a).

III. Order Sought to Modify

The Clerk's rulings filed August 8, 2022, and August 30, 2022, which are:

- A. On August 8, 2022, the Clerk of Supreme Court issued a letter ruling concerning "Appellants' Motion to Stay Proceedings; and Remand the Forwarded Motions, Responses and Replies" filed August 8, 2022. The Clerk also stated: "The motion to stay will be set for consideration without oral argument at the same time as the Court considers the pending petition for review."
- B. On August 30, 2022, the Clerk of Supreme Court issued a letter ruling concerning

“Appellants’ Motion for Extension to File Reply in Support of Motion to Stay Proceedings; and Remand the Forwarded Motions, Responses and Replies” filed August 29, 2022. The Clerk also stated: “The motion will be set for consideration without oral argumet at the same time as the Court considers the pending petition for review.”

IV. Relief Sought

1- Appellants request that the consideration and ruling on their motions to stay proceedings and remand to the Court of Appeals of their motions filed in that court, but forwarded to the Supreme Court, occur before consideration of their Petition for Review.

2- The Justices may respectfully take judicial notice and consider all other different matters involving Plaintiff, Alaa Elkharwily, MD, currently before the Supreme Court, all of which including this matter, establish a grave offensive attack on the integrity of our Washington State Courts and on public confidence and trust by the very

officers of the court charged with the courts' safeguarding. In order to better serve the interest of justice and the public, the court may respectfully, consider Plaintiff's current motion with judicial notice of those other matters under Case No. 100848-1; and Case No.101135-1, and Case No, 101130-0.

V. Why Relief Should Be Granted.

A. To prevent any less than complete and full review of all of the court of appeal's decisions in this matter.

Whether the Supreme Court accepts or rejects Appellants' petition for review on the same day of plaintiffs' motion for stay and to remand, and motion for extension of time so as to allow time to correct the records, the court of appeals loses its jurisdiction over Appellants' motions to modify rulings¹ by the clerk, motion to disqualify the clerk and the court of appeal, and the whole matter. RAP 12.7. Considering

¹ RAP 13.3 (e), provides:

A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. The decision of the Court of Appeals on a motion to modify a ruling by the commissioner or clerk may be subject to review as provided in this title.

Plaintiff's motion for stay and remand and the motion for extension of time earlier preserves the jurisdiction of the court of appeals to decide all pending motions at the court of appeal.

B. To prevent the reliance of the Supreme Court on inaccurate, incomplete, or concealed record in considering Appellants' petition for review and pending motions in the Supreme Court.

The main purpose of Appellant's motion for extension of time is to allow time to correct the records. See motion filed August 29, 2002. Considering Appellants' petition for review without a true, full and complete record would be utterly unfair and unjust. RAP 10.3(a)(6) contemplates that any argument in support of the issues presented for review in this court, must be presented together with citations to legal authority and "references to relevant parts of the record." Appellants are trying to correct the docket and record of the Court of Appeals 1) so as to be able to use accurate references to the record in their pleadings, RAP 10.3(a)(6), and 2) to fully and fairly respond to Respondents' claims made in their responses, and 3) to ensure that the Supreme Court considers the accurate, true, correct and complete record to which Appellants had

referred to in their petition for review and their motion to stay and remand the forwarded motions to modify and Appellants' motion to disqualify the Court of Appeals. Id; and 4) to establish the merits of Appellants' claim of the Court of Appeals' partiality as well as the merits of Appellants' motion to disqualify the Clerk and the Court of Appeals, Division Three. If a concealed, misfiled, or mishandled docket remains without correction, the record as presented on the docket today can only best serve Respondents, and the Court of Appeals which Appellants moved to disqualify.

C. By considering Appellants' motions prior to the petition for review, the Supreme Court would be able to decide which court should consider Appellants' pending motions at the court of appeals before considering Appellants' petition for review.

Plaintiff filed a motion to disqualify the clerk of the court of appeal and the court itself which was transmitted to this court. The disqualification issue was also raised in , Appellants' motions sought to be considered earlier by this court. By considering said motions earlier, the Supreme Court would be able to decide whether to disqualify Division III, and remand to

another Division. This, considering Appellants' claims of conflict of interest of the court of appeals judges who became witnesses in the same matter over which they are presiding. See, Appellants' Reply In Support of Motion To Modify A Ruling/Action By The Clerk; And To Disqualify The Clerk; And To Disqualify The Court. And Response To Respondents' "Motion" For Attorney Fees, at 2 -3 (filed August 23, 2021, and inaccurately identified as "objection to attorney fees" on the docket of the court of appeals. See, also, Appellants' Supplement to Motion To Modify A Ruling/Action By The Clerk; And To Disqualify The Clerk; And To Disqualify The Court.²

CONCLUSION

For the foregoing reasons, Appellants respectfully request that the Court grant their requested relief.

² Please note Appellants' supplement to motion to disqualify the clerk and the court itself cannot be found as part of the filings forwarded by the court of appeals. Nor did the court of appeal identify the document on the docket. Appellants cannot accurately refer to the document. This is one of the reasons the records should be corrected

Certificate of Compliance

I certify that this document contains 1,052 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED: September 7, 2022.

/s Brian K. Dykman

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