

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court Case No. 102654-4  
Court of Appeals Case No. 38967-7-III

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IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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BOLIVAR REAL ESTATE, LLC AND  
JAMISON EASTBURG

RESPONDENTS,

v.

ROCHELLE PRATT AND DIANA PRATT,

PETITIONERS.

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RESPONSE TO PETITIONERS' MOTION  
FOR EXTENSION TO FILE PETITION FOR REVIEW

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## **I. IDENTITY OF PARTIES FILING THIS MOTION**

Respondents, Bolivar Real Estate, LLC and Jamison Eastburg, pursuant to RAP 17.4(e) submit this response to Petitioners' Motion for Extension to File a Petition for Review.

## **II. FACTS RELEVANT TO RESPONSE**

The deadline for Petitioners to file a Petition for Review was January 5, 2024. Rather than filing the Petition for Review, Petitioners filed a Motion for Extension on December 18, 2023 requesting to file the Petition for Review on February 5, 2024.

On December 18, 2023, the Washington State Supreme Court provided a letter ruling indicating that the Motion for Extension had been received by the Court, directed the Petitioners to file a Petition for Review by February 5, 2024, and directed Respondents to file an Answer to the untimely Petition for Review along with a response to the Motion for Extension by March 6, 2024. Once filed, the Supreme Court indicated it would first address whether the Motion for Extension should be granted

or denied. At the request of the Court, Respondents submit this Response to the Motion for Extension.

### **III. AUTHORITY**

RAP 18.8(b) provides that “The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section.”

This standard is applied rigorously, and as a result, there are very few instances in which Washington Appellate courts have found that it was met. *State v. Moon*, 130 Wn. App. 256, 260, 122 P.3d 192 (2005) (citing *Schaefco, Inc., v. Columbia River Gorge Comm’n*, 121 Wash. 2d 366, 368, 849 P.2d 1225 (1993)). Petitioners have the burden to provide a sufficient

excuse for their failure to file a timely Petition for Review and are required to demonstrate sound reasons to abandon the judicial preference for finality. *Moon*, 130 Wn. App at 260.

“Extraordinary circumstances” permitting an extension under RAP 18.8(b) include instances where the filing (despite reasonable diligence) was defective due to excusable error or circumstances beyond the party’s control. *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988). Courts have allowed for an extension where the filing itself would have been timely but for an excusable error of the filing party, i.e. by filing in the wrong court or failing to pay a filing fee resulting in the filing being rejected. *Id.* at 765 (referencing *State v. Ashbaugh*, 90 Wash. 2d 432, 438, 583 P.2d 1206 (1978), and *Structurals N.W., Ltd., v. Fifth & Park Place, Inc.*, 33 Wash. App. 710, 714, 658 P.2d 670 (1983)).

The common denominator in scenarios where the Court has allowed for an extension is “reasonable diligence” by the filing party to get the pleading filed within the deadline, but an

excusable error or circumstance beyond the parties' control made the filing defective. Petitioners have not exercised reasonable diligence in this matter as they made no effort to file the Petition for Review within the thirty (30) days' period. The filing was not defective – it was never attempted. As a result, the narrow circumstances which have generally allowed for an extension of time to be granted are not present.

Regardless of whether the Respondents would be prejudiced by an extension of time or not, the appellate system, as well as litigants in general, are prejudiced by extensions because they “are entitled to an end to their day in court.” *Pybas v. Paolino*, 73 Wn. App. 393, 401, 869 P.2d 427, (1994). In other words, a lack of prejudice to the Respondents is irrelevant to the decision of granting or denying a motion for extension, because the prejudice to be avoided is the prejudice to the appellate system. *Id.*

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#### IV. CONCLUSION

Pursuant to RAP 18.8(b), Respondents respectfully request that this Court deny Petitioners' Motion for Extension to file the Petition for Review.

RESPECTFULLY SUBMITTED this 23rd day of February, 2024. Pursuant to RAP 18.17(c)(17), Lawrence W. Garvin, counsel for Respondents, hereby certifies that the word count for the Respondents' Response is **693 words**, excluding words contained in the title sheet, certificate of service, signature blocks and this certificate of compliance.

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**CERTIFICATE OF SERVICE**

I, Lawrence W. Garvin hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this 23rd day of February, 2024.

<input type="checkbox"/> U.S. Mail	Rochelle Pratt
<input type="checkbox"/> Hand Delivered	Diana Pratt
<input type="checkbox"/> Overnight Mail	P. O. Box 15124
<input checked="" type="checkbox"/> E-mail to:	Spokane Valley, WA 99215-5124
<a href="mailto:hopfm12@gmail.com">hopfm12@gmail.com</a>	
<a href="mailto:maxfrankie67@gmail.com">maxfrankie67@gmail.com</a>	

/s/ Lawrence W. Garvin  
Lawrence W. Garvin

**WITHERSPOON BRAJCICH MCPHEE, PLLC**

**February 23, 2024 - 8:52 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,654-4  
**Appellate Court Case Title:** Bolivar Real Estate, LLC, et al. v. Rochelle Pratt, et al.  
**Superior Court Case Number:** 22-2-00611-5

**The following documents have been uploaded:**

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