

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

No. 95594-8

IN THE SUPREME COURT OF  
THE STATE OF WASHINGTON

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RE: MOTION FOR DISCRETIONARY REVIEW OF THE  
DECISION OF THE COURT OF APPEALS DIVISION III

COURT OF APPEALS CASE NO. 35310-9

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IVAN KRIGER and  
CRYSTAL CITY, LLC,

*Petitioner,*

v.

RIDPATH PENTHOUSE, LLC,

*Respondent*

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ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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## I. INTRODUCTION AND SUMMARY OF ANSWER

Ivan Kriger (“Petitioner”)<sup>1</sup> has presented a Motion for Discretionary Review (“Petition”) asking this Court to accept discretionary review of the decision of the Court of Appeals. Specifically, the Court of Appeals’ Order Denying Motion to Modify Commissioner’s Ruling affirming the ruling in favor of Ridpath Penthouse, LLC. RAP 13.4(b) sets forth the bases for a party requesting the Supreme Court grant discretionary review of a decision of the Court of Appeals. Under any of the identified alternatives, Petitioner is unable to demonstrate a justifiable bases for granting discretionary review.

First, there is no conflict between the Court of Appeals’ decision in this case with a decision of this Court. Second, there is no conflict between the Court of Appeals’ decision in this case with a published decision of the Court of Appeals. Third, there is no constitutional issue or question under the Constitution of Washington or the United States Constitution. Fourth, there is no issue of substantial public interest that requires this Court to grant review.

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<sup>1</sup> Mr. Kriger has identified Crystal City, LLC as a Petitioner, however, Mr. Kriger is not a licensed attorney in Washington and is unable to legally represent Crystal City, LLC in this matter. *See, Lloyd Enterprises v. Longview Plumbing & Heating Co., Inc.*, 91 Wash. App. 697, 701, 958 P.2d 1035 (1998). Furthermore, Mr. Kriger has not presented any issues in his Petition that would contradict or warrant the reversal of the Commissioner’s Ruling dismissing Crystal City, LLC. Therefore, reference is only made to Mr. Kriger as Petitioner.

Rather, the Petition lacks any fundamental bases for Petitioner to seek review in this Court and is nothing more than continued delay by Petitioner, which Ridpath Penthouse, LLC has had to endure for over a year since Petitioner recorded his frivolous lien.

Finally, Petitioner's Petition should also be rejected because the issues he has raised in his Petition were not raised in the trial court or on appeal and misrepresent the facts. As argued below, issues not raised in the trial court should not be considered on appeal at any level. RAP 2.5(a); see also, *Roberson v. Perez*, 156 Wash.2d 33, 39, 123 P.3d 844 (2005)(“In general, issues not raised in the trial court should not be raised on appeal.”). There is no authority presented by Petitioner in his Petition that suggests that this Court should disregard appellate rules and allow Petitioner to now completely change his tactics and the issues he raises, or lack thereof, in proceedings below. Therefore, the Court should deny Petitioner's Petition.

## **II. IDENTITY OF RESPONDENT**

Ridpath Penthouse, LLC (“Ridpath”) was the Respondent before the Court of Appeals and asks this Court to deny review of the Court of Appeals' decision, including the Commissioner's Ruling.

## **III. ANSWER TO ISSUES PRESENTED FOR REVIEW**

As noted above and in the argument section below, the issues Petitioner has presented to this Court for review have 1) no bases in fact or

law, 2) were not presented in the trial court or on appeal, and 3) are devoid of any merit and entirely unrelated to the purported claim of lien Petitioner originally filed against Ridpath, and which the trial court and Court of Appeals have both determined was a frivolous filing.

#### IV. ARGUMENT

The issues in this case only involve the filing of a claim of lien (“Lien”) by Petitioner, pursuant to RCW 60.04 *et. al*, and not unrelated issues that are irrelevant to the Lien. The issues that Petitioner presents for consideration do not address the merits of or provide any bases for the Lien. Instead, Petitioner attempts to persuade this Court that some alleged nefarious conduct has occurred. Yet, Petitioner has never provided the trial court or the Court of Appeals with support for such alleged conduct.

The trial court and Court of Appeals correctly determined that Petitioner’s Lien was frivolous and so devoid of merit that reasonable minds could not differ in requiring the Lien release and Petitioner’s Petition does not alter those decisions. As such, the Court should deny Petitioner’s Petition.

Similar to the Court of Appeals, Petitioner argues that there is “[s]uspect of conflict of interest within this case by Topliff and Boyd” and that the separate bankruptcy matter in Nevada impacts and/or supports the Lien. Presumably, Petitioner’s claim of “Boyd” is meant to be Ridpath’s

counsel, Mr. Sean P. Boutz, as there has not been a party or attorney named “Boyd” in this matter. Regardless, the Court of Appeals correctly determined, in affirming the Commissioner’s Ruling, that there was no conflict, as supported by the Affidavit of Mr. Boutz. Further, Petitioner’s Motion for Sanctions was denied, which claimed a conflict of interest between Mr. Boutz and Mr. Topliff.

Additionally, the Nevada bankruptcy matter did not involve Ridpath in any way expect for that Ridpath was a bidder in the bankruptcy for the Ridpath Hotel property. The bankruptcy court approved Ridpath’s offer, but only after Petitioner was unable to fulfill his purported bid. This is likely at the heart of the issue for Petitioner, but it doesn’t warrant a further appeal as Petitioner’s has no evidence to support the Lien.

At the trial court and Court of Appeals, Petitioner failed to demonstrate, among other things, that he satisfied the following statutory requirements:

- Providing Ridpath with notice for improving the real property under RCW 60.04.031;
- Identifying or including in the Lien all of the property owners as required by RCW 60.04.091;

- Providing Ridpath or the property owners with a copy of the Lien within fourteen (14) days of filing as required by RCW 60.04.091; and
- Registering as a contractor under Washington's Contractor Registration Act, RCW 18.27.020, which is mandatory for filing a Lien.

See, CP 210-11. Petitioner was also unable to provide the trial court with 1) any documentation to support the Lien, 2) an agreement, written or otherwise, between Ridpath and Petitioner, and 3) that Petitioner had improved or performed any lienable services on the real property. *Id.* None of these conclusions were countered by Petitioner to the Court of Appeals.

Under any reasonable or rationale bases, Petitioner cannot provide this Court with justification to grant his Petition, which the trial court likely summed it up best when it stated, in relevant part:

[Mr. Kriger] has nothing to offer the Court. He filed no response. He didn't serve Counsel any pleadings. The Court didn't receive any pleadings. I mentioned I think earlier that I stayed here late. Our clerk's office, for what it's worth, is way behind on filings, so sometimes I have to take special care to make sure that, if a lawyer or a party has filed a document in the clerk's office, but they failed to bench copy the Court, I have to take special care to make sure it's not up in the clerk's office and just hasn't been able to make its way

into the Court file yet because they're so far behind.

But as it turned out, there wasn't anything here, and Mr. Kriger confirmed that for me in his comments when I asked him this morning. And Mr. Kriger told me today, when I inquired of him, and if I understand his position, essentially – I'm just trying to put it into small quotes. Essentially, he said, you know, I had a deal that I put together with Mr. Wells to furnish either work or services or goods of some sort regarding this Ridpath Project. And, you know, when I asked Mr. Kriger if he had anything he could give me, any contracts, any documents, any agreements, anything to show me that this is anything other than just argument on his part, he doesn't, except to say, well, if you give me some time, I'll provide something, or I might be able to provide it to you later, or maybe the bankruptcy court in Nevada has it, or whatever it might have been. **The fact is, this is the hearing, and he has nothing.**

RP 30-31 (emphasis added).

Accordingly, Petitioner's Petition should be denied.

#### **V. MOTION FOR ATTORNEY FEES AND COSTS**

Pursuant to RAP 18.1, Ridpath hereby moves the Court for an award of its attorney's fees and costs in answering Petitioner's Petition. Ridpath has incurred significant attorney fees and costs throughout this case, which have previously been awarded by both the trial court and Court of Appeals.



However, more attorney fees and costs are now being incurred by Ridpath with the filing of Petitioner's Petition and the need for Ridpath to answer the Petition.

RAP 18.1(j) provides, in pertinent part,

If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review. A party seeking attorney fees and expenses should request them in the answer to the petition for review.

Here, the evidence, or lack thereof, supports the denial of Petitioner's Petition and the award of Ridpath's attorney fees and expenses.

## **VI. CONCLUSION**

For the reasons stated above, Ridpath requests that this Court deny Petitioner's Motion for Discretionary Review of the Court of Appeals' Order Denying Motion to Modify Commissioner's Ruling.

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RESPECTFULLY SUBMITTED this 20 day of June, 2018.

EVANS, CRAVEN & LACKIE, P.S.

By: 

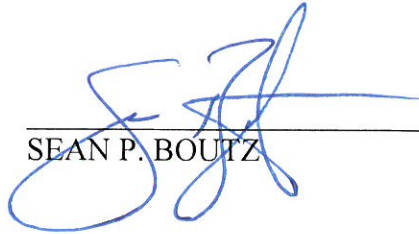
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Ridpath Penthouse, LLC

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on June 20, 2018, I caused to be delivered to the address below a true and correct copy of Answer to Motion for Discretionary Review:

Ivan Kriger  
1502 West Panorama Avenue  
Spokane, WA 99208  
[ivankrigersam@gmail.com](mailto:ivankrigersam@gmail.com)

DATED this 20 day of June, 2018.

  
\_\_\_\_\_  
SEAN P. BOUTZ

**EVANS, CRAVEN & LACKIE, P.S.**

**June 20, 2018 - 2:14 PM**

**Transmittal Information**

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