

FILED
SUPREME COURT
STATE OF WASHINGTON
6/10/2022 3:43 PM
BY ERIN L. LENNON
CLERK

NO. 100783-3

SUPREME COURT
OF THE STATE OF WASHINGTON

THE MEADOWS OWNERS ASSOCIATION,

Plaintiff,

v.

JAYAKRISHNAN K. NAIR and JANE OR JOHN DOE NAIR

Appellants,

JOYOUS INVESTMENTS, LLC,

Respondent,

WILLMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A
CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE
FOR PREMIUM MORTGAGE ACQUISITION TRUST, a Delaware
corporation; and FIRST TECH CREDIT UNION,

Defendants

ANSWER TO PETITION FOR REVIEW OF RESPONDENT

JOYOUS INVESTMENTS, LLC

Michael G. Fulbright
Attorney for Joyous Investments, LLC,
as Respondent

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WSBA No. 11821

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A. IDENTITY OF RESPONDENT

Respondent Joyous Investments, LLC (“Joyous”) asks this Court to deny the Petition for Review (the “Petition”) by Appellant Jayarkishnan K. Nair (“Nair”).

B. COURT OF APPEALS DECISION.

Division One of the Court of Appeals filed its Opinion in this matter on January 24, 2022. All three Justices on the panel joined in the Opinion. An Order correcting the caption of the Opinion was filed on February 28, 2022. An Order denying Nair’s motion for reconsideration was also filed on February 28, 2022. Since Nair failed to include copies of these items in his Petition, copies are included in the Appendix hereto at pages A-2 through A-9, A-10 through A-11, and A-12 through A-13, respectively.

C. ISSUES PRESENTED FOR REVIEW.

Joyous is not seeking review of any additional issues.

D. STATEMENT OF THE CASE

Plaintiff The Meadows Owners Association

(“Meadows”) brought this action to enforce its lien for unpaid assessments against a condominium unit owned by Nair (the “Unit”). CP 1761-67. Because Nair failed to respond to the summons and complaint, an order of default, default judgment and foreclosure decree was entered on July 19, 2017 (the “Foreclosure Judgment”). CP 1724-28. After other efforts to collect the Foreclosure Judgment were unsuccessful, Meadows proceeded with the Sheriff’s sale process. CP 1717-18, 1677-78, 1662. On July 27, 2018, the Sheriff sold the Unit to Joyous for \$40,000. CP 1592-1604. The Foreclosure Judgment provided for the redemption period allowed by law, which is 1-year under RCW 6.23.020(1). CP 1727.

On the sale date, Nair filed a motion to vacate the Foreclosure Judgment under CR 60(b). CP 1646-49. On August 14, 2018, Nair’s motion to vacate was denied, and Nair was also sanctioned under CR 11. CP 1340-42. Meadows

then moved to confirm the Sheriff's sale to Joyous and noted the confirmation hearing for August 28, 2018. CP 1310-33, 1308-09. Nair participated in the August 28 confirmation hearing. CP 1271. Judge Ellis confirmed the Sheriff's sale to Joyous by Order Confirming Sheriff's Sale of Real Property and Disbursing Funds entered on August 28, 2018 (the "Sale Confirmation Order"). CP 1269-70.

On September 7, 2018, Nair filed a new Motion for Reconsideration and to Vacate Default Judgment/Motion to Transfer to Arbitration. CP 1251-61. This Motion was denied by Judge Ellis on September 18, 2018. CP 1215.

Having no reason to believe the Unit was Defendant Nair's homestead, Joyous did not send the Notice of Expiration required for homestead property under RCW 6.23.030. On July 22, 2019, Nair claimed for the first time that the Unit was his "de facto homestead" and that he was entitled to a six-month extension of the redemption period under RCW

6.23.030. CP 601. If valid, that extended the end of the redemption period to January 27, 2020.

Commencing on July 30, 2019, Nair filed a series of motions asking the Court to affirm extension of the redemption period and determine the redemption amount. CP 1180-1212, 1159-67, 1114-26, 1042-56. On August 9, 2019, Nair obtained a temporary restraining order preventing the Sheriff from issuing the Sheriff's deed until the Court ruled on Nair's motion to affirm extension of the redemption period and determine the redemption amount. CP 882. Joyous filed a cross motion to confirm expiration of the redemption period, terminate the restraining order and issue the Sheriff's deed. CP 663-871.

These cross-motions were eventually set for hearing on October 11, 2019. The motions were not heard because Nair filed to remove this action to Federal District Court on October 7, 2019. CP 450-51. The Federal District Court Judge later

ruled that Defendant Nair's removal was untimely and remanded this case back to the trial court. CP 452-60.

In May 2020, Joyous filed a new Motion, Declaration and Certificate of Service for Confirmation that the Redemption Period Has Expired, Vacation of Restraining Order and Issuance of Sheriff's Deed, and Response to Defendant Nair's Amended Motion (the "Joyous Expiration Motion"). CP 422-644. The response portion was directed to the last motion then filed by Nair. On May 22, 2020, Joyous mailed copies of Joyous Expiration Motion and related papers to the address most recently used by Nair in this action (other than the Unit which he did not occupy) and the address where he was originally served in this action. CP 428-29, 878, 1758-59. The Joyous Expiration Motion was noted for June 30, 2020, at 9:30 a.m. CP 416-18.

On June 23, 2020, Nair filed his own Motion to Compel Accounting and Issue Certificate of Redemption (the "Nair Motion to Compel"). CP 374-415. Nair also noted his motion

for June 30, 2020. CP 370-73. At 10:59 a.m. on June 30, 2020, Nair filed an Interim Response to Motion for Vacating Restraining Order and Issuance of Sheriff's Deed (the "Nair Interim Response"). CP 267-369. The Nair Interim Response was directed at the Joyous Expiration Motion.

The Joyous Expiration Motion and the Nair Motion to Compel were effectively cross motions to resolve the redemption issues raised by Nair. Judge Okrent held the motion hearing by telephone, starting at 9:30 a.m. on June 30. CP 266. Nair appeared pro se and counsel appeared for Joyous. *Id.* The minute entry for the hearing reflects that Judge Okrent did not receive working copies of the Nair Interim Response, denied a motion by Nair to continue the hearing, ruled against the arguments in the Nair Motion to Compel and ruled in favor of the Joyous Expiration Motion. *Id.*

On July 13, 2020, Judge Okrent entered an Order Confirming Expiration of Redemption Period, Vacating

Restraining Order, for Issuance of Sheriff's Deed, and Denying Defendant Nair's Motion (the "Redemption Expiration Order"). CP 263-65. The Redemption Expiration Order specifically confirms that Judge Okrent considered the Nair Motion to Compel (among other items) and the oral argument of both Nair and counsel for Joyous. CP 263-64. It also confirms that Nair's motion for a continuance was not timely and was denied. CP 264.

On August 12, 2020, Nair filed a Notice of Appeal. CP 66-69.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) sets forth the grounds or basis for accepting a petition for review. Nair's primary argument is that his Petition should be accepted under RAP 13.4(b)(3): "If a significant question of law under the Constitution of the State of Washington or of the United States is involved." The argument section of Nair's Petition cites numerous cases for the

principle that federal law applies to state court actions. That principle is not disputed.

Nair's due process claims were considered and rejected by the Court of Appeals. The argument section in Nair's Petition fails to specify exactly how the Court of Appeals decision is contrary to any federal law or cite any portion of the record for this appeal. Nair's approach is consistent with his brief in Court of Appeal, which that Court described as follows:

Nair neglects to do more than cast bare allegations of constitutional and civil rights violations by the trial court. He cites only the Fourteenth Amendment to the United States Constitution, article 1, section 3 of the Washington State Constitution, and section 1654 of Title XXVIII of the United States Code. He fails to lay out the test for procedural due process, to apply law to any facts, and to provide citations to the record in support of his allegations.

...

Nair's motion was filed June 30, 2020 at 10:59 a.m. The hearing during which the judge disallowed Nair's motion was conducted on June 30, 2020 and docketed at 9:30 a.m. The judge was permitted by the local court rules to disallow any late material, and Nair fails to adequately brief any constitutional challenge to that decision. As such, his argument fails.

Nair likewise fails to make any legal or factual argument regarding the denial of his motion to continue. Without more, we cannot say the trial court abused its discretion in denying the oral motion to continue or violated Nair's due process rights in doing so.

Appendix, p. A-6.

The argument section of Nair's Petition also makes a passing claim that review should be accepted under RAP 13.4(b)(1): "If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court." But Nair fails to specify how the Court of Appeals decision conflicts with any particular decision of the Supreme Court.

In the Issues Presented for Review and Conclusion sections of Nair's Petition, Nair also asks this Court to remedy alleged widespread corruption, criminality, and racism in the state's legal system. These allegations are specious and completely unsupported by any references to the record or otherwise. Moreover, Nair cites no legal authority whatsoever for this request.

Under RAP 13.4(e), petitions for review are subject to RAP 10.3. RAP 10.3(a)(6) requires “citations to legal authority and references to relevant parts of the record.” Nair’s Petition cites no authority concerning specific issues in this matter and contains no references to the record. The Court does not consider arguments not supported by specific authority or references to the record. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *see also Orwick v. City of Seattle*, 103 Wn.2d 249, 256, 692 P.2d 793 (1984) (“It is not the function of trial or appellate courts to do counsel’s thinking and briefing.”).

Nair’s Petition is based solely on bare, unsupported claims and allegations. No matter how outlandish the claims, that is not sufficient for his Petition. Nair has completely failed to establish any basis in law or the case record for the Court to accept his Petition.

F. CONCLUSION

Given Nair's failure to cite relevant legal authority or any portion of the record, or to otherwise advance any coherent argument for further review, Joyous respectfully requests that the Court deny Nair's Petition.

This document contains 1,646 words, excluding the parts of the document exempt from the word count by RAP 18.17.

June 10, 2022.

Respectfully submitted,

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Investments, LLC

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE MEADOWS OWNERS	)	No. 81754-0-I
ASSOCIATION, a Washington non-profit)	
corporation,	)	DIVISION ONE
)	
Plaintiff,	)	UNPUBLISHED OPINION
)	
v.)	
)	
JAYAKRISHNAN K. NAIR, and JANE OR)	
JOHN DOES NAIR, spouses or registered)	
domestic partners and the marital)	
community composed thereof;)	
WILMINGTON SAVINGS FUND SOCIETY)	
FSB, D/B/A CHRISTIANA TRUST, NOT)	
INDIVIDUALLY BUT AS TRUSTEE FOR)	
PREMIUM MORTGAGE ACQUISITION)	
TRUST, a Delaware corporation; and)	
FIRST TECH CREDIT UNION,)	
)	
Appellants,)	
)	
JOYOUS INVESTMENTS, LLC,)	
)	
Respondent.)	

HAZELRIGG, J. — Jayakrishnan K. Nair appeals from the denial of his motion for reconsideration of an order confirming the sheriff’s sale of a foreclosed property and to vacate a default judgment against him in the foreclosure proceeding. He alleges that the superior court violated his procedural due process rights and his right to represent himself pro se by disallowing a late-filed motion and denying his oral motion to continue. He also alleges he is entitled to equitable tolling of the

redemption period and that his tender of \$1,000 was adequate to redeem his property. Because Nair fails to adequately allege any error, we affirm the superior court.

FACTS

In May 2017, The Meadows Owners Association (Meadows)¹ filed a complaint for lien foreclosure based on nonpayment of fees for a condominium unit in Snohomish County. Meadows obtained a default judgment against Jayakrishnan Nair and proceeded with a sheriff's sale. Joyous Investments, LLC, (Joyous) purchased the unit at the sale. After the redemption period expired, Joyous moved to confirm the sheriff's sale and issue the deed, which was so ordered by the trial court on August 28, 2018. Nair then moved for reconsideration and to vacate the default judgment, which was denied. Nair timely appealed.

ANALYSIS

I. Scope of Appeal

We first note the scope of the appeal before us. A party may appeal only from a final judgment in an action or proceeding, including an order on a motion to vacate a judgment and final orders after judgments that impact a substantial right. RAP 2.2(a)(1), (10), (13). A party has 30 days to file a notice of appeal. RAP 5.2(a). An appellate court will only extend this time in "extraordinary circumstances" to "prevent a gross miscarriage of justice." RAP 18.8(b). While

¹ Meadows has not filed a brief or otherwise participated in this appeal. Joyous states in its brief that because Meadows was paid in full after the sheriff's sale, Meadows is not impacted by any of the issues.

Nair emphasizes that he appears pro se, we hold a pro se litigant to the same procedural rules as an attorney. In re Martin, 154 Wn. App. 252, 265, 223 P.3d 1221 (2009).

On August 14, 2018, Nair filed a motion objecting to the sheriff's sale, requesting that the sale be vacated. The trial court denied his motion that same day.² Nair filed a motion for reconsideration and to vacate the default judgment on September 7, 2018. It was also denied.³ The time for Nair to appeal those decisions has long passed, and he has failed to identify any extraordinary circumstances that would compel us to extend the time to appeal. As such, we decline to reach the issue of whether the sale should be set aside on equitable grounds.

Nair also asks this court to determine whether Joyous committed a federal crime. He does not tie this assignment of error to a particular decision of the trial court, does not provide any citations to the record in support of this claim, and fails to provide any legal authority in support of this issue. See RAP 2.2(a), 10.3(a)(6). This question is beyond the scope of this court and we decline to reach it.

Accordingly, our review is limited to Nair's due process challenge, the issue of equitable tolling of the redemption period, and the determination as to the adequacy of his tender for redemption.

² The trial court also sanctioned Nair under CR 11 "for engaging in vexatious litigation."

³ Although the order was not transmitted to this court, both parties appear to agree in their briefing that Nair filed a motion for reconsideration, which was denied.

II. Due Process Challenge

Nair argues he was deprived of an opportunity to be heard and to represent himself because the trial court disallowed his Interim Response to Motion for Vacating Restraining Order and Issuance of Sheriff's Deed, and denied his oral motion to continue.

We review constitutional challenges de novo. Hale v. Wellpinit Sch. Dist. No. 49, 165 Wn.2d 494, 503, 198 P.3d 1021 (2009). We review a decision denying a motion to continue for an abuse of discretion, reversing only if the decision is "exercised on untenable grounds or reasons." Wood v. Milionis Constr., Inc., 198 Wn.2d 105, 133, 492 P.3d 813 (2021).

RAP 10.3(a)(6) requires an appellant in their brief to include the argument in support of the issue "with citations to legal authority and references to relevant parts of the record." While we construe the Rules of Appellate Procedure liberally, we also hold a pro se litigant to the same procedural rules as an attorney. RAP 1.2(a); Martin, 154 Wn. App. at 265.

This court "will not consider an inadequately briefed argument." Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011); see also Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (court would not consider arguments unsupported by reference to the record or citation of authority); see also Orwick v. City of Seattle, 103 Wn.2d 249, 256, 692 P.2d 793 (1984) ("It is not the function of trial or appellate courts to do counsel's thinking and briefing.").

Nair neglects to do more than cast bare allegations of constitutional and civil rights violations by the trial court. He cites only the Fourteenth Amendment to the United States Constitution, article 1, section 3 of the Washington State Constitution, and section 1654 of Title XXVIII of the United States Code. He fails to lay out the test for procedural due process, to apply law to any facts, and to provide citations to the record in support of his allegations.

Additionally, the trial court was acting pursuant to its discretion under the Snohomish County Local Court Rules, which state “[a]ny material offered at a time later than required by this rule may be stricken by the court and not considered.” SNOHOMISH COUNTY SUPER. CT. LOCAL CIV. R. 7(c). Nair’s motion was filed June 30, 2020 at 10:59 a.m. The hearing during which the judge disallowed Nair’s motion was conducted on June 30, 2020 and docketed at 9:30 a.m. The judge was permitted by the local court rules to disallow any late material, and Nair fails to adequately brief any constitutional challenge to that decision. As such, his argument fails.

Nair likewise fails to make any legal or factual argument regarding the denial of his motion to continue. Without more, we cannot say the trial court abused its discretion in denying the oral motion to continue or violated Nair’s due process rights in doing so.

III. Redemption

Nair next argues he is entitled to equitable tolling of the redemption period because Joyous grossly exaggerated the redemption amount and that his tender of \$1,000 was adequate to redeem before the redemption period expired.

Redemption of real property from sale is controlled by Chapter 6.23 RCW. We interpret a statute de novo. Dep't. of Ecology v. Campbell & Gwinn, LLC., 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

A. Equitable Tolling

Absent an exception, a judgment debtor has 12 months from the date of the sheriff's sale to redeem the property. RCW 6.23.020(1). One such exception equitably tolls the redemption period "when the redemptioner in possession submits a grossly exaggerated statement of the sum required to redeem" such that the judgment debtor "cannot with due diligence ascertain the sum required to redeem within the time remaining." Millay v. Cam, 135 Wn.2d 193, 206, 955 P.2d 791 (1998).

In support of this assignment of error, Nair offers only his bare allegations as to fraud. He asserts that Joyous was not required to pay off a prior deed of trust and should not have, that the interest rate was incorrect, and that Joyous collected more rent than it reported. We agree with Joyous that nothing in RCW 6.23.020(2)(c) required it to pay the senior lien in a particular way to benefit Nair. Nair provides no support to counter Joyous's contention that its only option to stop the trustee's sale for the senior lien was to pay it in full. Joyous, in contrast, provided sworn declarations and accountings about the amounts paid and rents collected during the redemption period.

Joyous correctly asserts that RCW 6.23.020(2) allows a purchaser to collect "[t]he amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption." (Emphasis added). The July 19, 2017

Order of Default provided a 12 percent annual interest rate. RCW 6.23.090(1) allows a purchaser to obtain insurance for the property, and the clerk's minutes for the hearing suggest that the trial court found Joyous had to pay to insure the property.⁴ Nair provides no basis for his assertion that this interest rate or the insurance expenses contravened any law apart from his own bare allegations of misconduct.

Finally, Nair alleges Joyous collected more rents than they reported, claiming the home could have been rented at \$1,500 per room per month, based on his own calculations. He offers no legal authority supporting the contention that Joyous as purchaser was required to rent the unit at all, let alone for a particular amount or following a particular business model like the one he offers. Given that Nair had a year to redeem the unit, it was reasonable for Joyous to continue renting to the current tenant. There is nothing about the rental income that suggests a gross exaggeration in Joyous's reporting.

Because Nair has failed to support any of his allegations with law or fact, we affirm the trial court's confirmation of the sheriff's sale to Joyous.

B. Adequate Tender

Nair next argues his tender of \$1,000 on August 5, 2019, was sufficient to redeem or toll the expiration of the redemption period. His argument that this tender was sufficient rests entirely on his allegations of gross exaggeration of expenses and rents, which are unsupported in fact or law. As such, his tender

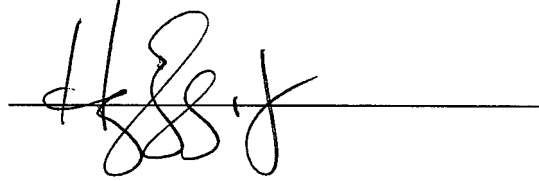
⁴ The hearing was not recorded and no written order was transmitted to this court. The parties submitted clerk's minutes generated at the hearing which contain the court clerk's written summary of the proceeding, but nothing more.

No. 81754-0-1/8

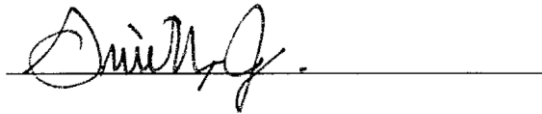
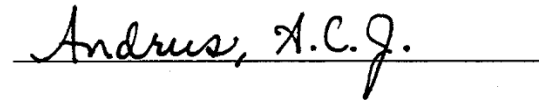
of \$1,000 was inadequate compared to the \$339,823.02 required by statute.

RCW 6.23.020(2).

Finding no error in the trial court's rulings, we affirm.

A handwritten signature in black ink, appearing to be "H. E. J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in black ink, appearing to be "Smith, J.", written over a horizontal line.A handwritten signature in black ink, appearing to be "Andrus, A.C.J.", written over a horizontal line.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

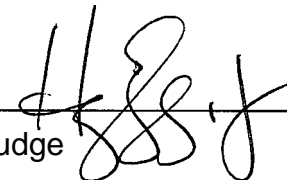
THE MEADOWS OWNERS	)	No. 81754-0-I
ASSOCIATION, a Washington non-profit)	
corporation,	)	DIVISION ONE
)	
Plaintiff,	)	ORDER CORRECTING
	)	CAPTION OF OPINION
v.)	
)	
JAYAKRISHNAN K. NAIR, and JANE OR)	
JOHN DOES NAIR, spouses or registered)	
domestic partners and the marital)	
community composed thereof,)	
)	
Appellants,)	
)	
JOYOUS INVESTMENTS, LLC,)	
)	
Respondent,)	
)	
WILMINGTON SAVINGS FUND SOCIETY)	
FSB, D/B/A CHRISTIANA TRUST, NOT)	
INDIVIDUALLY BUT AS TRUSTEE FOR)	
PREMIUM MORTGAGE ACQUISITION)	
TRUST, a Delaware corporation; and)	
FIRST TECH CREDIT UNION,)	
)	
Defendants.)	

The opinion in this case was filed on January 24, 2022. Wilmington Savings Fund Society, Christiana Trust and First Tech Credit Union, were incorrectly designated in the caption of the opinion. The caption should be corrected in this case to reflect that these parties be listed as defendants; now, therefore, it is hereby

ORDERED that the caption of the opinion previously filed on January 24, 2022, is hereby changed to:

THE MEADOWS OWNERS ASSOCIATION,)
a Washington non-profit corporation,)
)
Plaintiff,)
)
v.)
)
JAYAKRISHNAN K. NAIR, and JANE OR)
JOHN DOES NAIR, spouses or registered)
domestic partners and the marital community)
composed thereof,)
)
Appellants,)
)
JOYOUS INVESTMENTS, LLC,)
)
Respondent)
)
WILMINGTON SAVINGS FUND SOCIETY)
FSB, D/B/A CHRISTIANA TRUST, NOT)
INDIVIDUALLY BUT AS TRUSTEE FOR)
PREMIUM MORTGAGE ACQUISITION)
TRUST, a Delaware corporation; and FIRST)
TECH CREDIT UNION,)
)
Defendants.)
)
_____)

For the Court:



Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

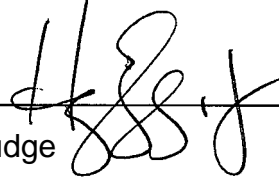
THE MEADOWS OWNERS	)	No. 81754-0-I
ASSOCIATION, a Washington non-profit)	
corporation,	)	DIVISION ONE
)	
Plaintiff,	)	ORDER DENYING MOTION
	)	FOR RECONSIDERATION
v.)	
)	
JAYAKRISHNAN K. NAIR, and JANE OR)	
JOHN DOES NAIR, spouses or registered)	
domestic partners and the marital)	
community composed thereof,)	
)	
Appellants,)	
)	
JOYOUS INVESTMENTS, LLC,)	
)	
Respondent,)	
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WILMINGTON SAVINGS FUND SOCIETY)	
FSB, D/B/A CHRISTIANA TRUST, NOT)	
INDIVIDUALLY BUT AS TRUSTEE FOR)	
PREMIUM MORTGAGE ACQUISITION)	
TRUST, a Delaware corporation; and)	
FIRST TECH CREDIT UNION,)	
)	
Defendants.)	

The appellant, Jayakrishnan K. Nair, filed a motion for reconsideration of the opinion filed on January 24, 2022. A majority of the panel has determined that the motion should be denied; now, therefore, it is hereby

No. 81754-0-1/2

ORDERED that the motion for reconsideration be, and the same is,
hereby denied.

For the Court:



Judge

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date below I (1) electronically filed the foregoing Answer with the Washington Supreme Court, and (2) caused a copy of the foregoing Answer to be served on Appellant Nair via the Court's electronic filing system and email service.

Signed at Navarre, Florida, on June 10, 2022.

/s/Michael Fulbright
WSBA #11821
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Attorney for Respondent Joyous
Investments, LLC

LAW OFFICE OF MICHAEL FULBRIGHT

June 10, 2022 - 3:43 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,783-3
Appellate Court Case Title: Joyous Investments, LLC v. Jayakrishnan Nair
Superior Court Case Number: 17-2-05181-9

The following documents have been uploaded:

- 1007833_Answer_Reply_20220610154140SC062971_8776.pdf
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