

FILED
SUPREME COURT
STATE OF WASHINGTON
8/29/2022 3:49 PM
BY ERIN L. LENNON
CLERK

Supreme Court 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 FOR
EXTENSION TO FILE REPLY IN
SUPPORT OF MOTION TO STAY
PROCEEDINGS; AND REMAND THE
FORWARDED MOTIONS, RESPONSES
AND REPLIES.**

I. Identity of Moving Parties

Appellants Wall Street Apartments, LLC and Alaa Elkhawily, MD.

II. Legal Basis

Appellants' motion is brought pursuant to RAP 18.8 (a), on the grounds that the interests of justice will be served by full and fair presentation of Appellant's positions on review. The provisions of RAP 18.8 (b) and (c) limiting extensions under RAP 18.8(a) do not apply to this request. Appellants do not believe that Respondents would be prejudiced by the granting of an extension of time.

III. Relief Requested.

On August 8, 2022, Appellants filed a motion entitled, "MOTION TO STAY PROCEEDINGS; AND REMAND THE FORWARDED MOTIONS, RESPONSES AND REPLIES." The Clerk's scheduling letter order provided for Respondents' answer to the motion by August 22 and Appellants' reply by

August 29, 2022. The motion was set for consideration at the same time as the Petition for Review, on October 11, 2022.

Respondents filed an answer to the motion on August 22, 2022. It is Appellants' reply due August 29 on which they request an extension. Appellants request an extension until 7 days after the Court of Appeals has corrected its docket and the record.

IV. Why The Motion Should Be Granted.

A. 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."

B. 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 reply, RAP 10.3(a)(6), and 2) to fully and fairly respond to Respondents' claims made in their response, 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.¹ ; 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.

C. More, if the record of the Court of Appeals is not corrected, it would falsely appear as if Appellants were disingenuously referring to nonexistent records when in fact the Court of Appeals had concealed, misfiled or incorrectly maintained its docket and the record. The consequence would

¹ Both the petition for review and the motion to stay and remand were ordered to be considered by the Supreme Court on the same day, October 11, 2022. See Clerk's letters dated August 8 and 26, 2022.

be grave. The preliminary screening process leading to the consideration by the Supreme Court and its decisions on Appellants' motions and petition would be unfair.

D. In their attempt to correct the Court of Appeals' docket and record, and in turn the Supreme Court's, Appellants first tried to establish exactly which of their motions, responses, replies, and supplement filed in the Court of Appeals have been forwarded to the Supreme Court, and which have not. Counsel have communicated with the Clerk of this Court on this subject and have received a response. See, Appendix Ex. A. attached hereto. The Clerk of this court advised that the Court of Appeals has forwarded all Appellants' motions and responses. The docket of the Court of Appeals, however, does not show all the Appellants' filings.

E. Some filings are still missing and others do not accurately reflect what was filed. For example, out of the two motions that Plaintiffs filed on July 7, 2022, the docket shows only one motion was filed "received by the court". So does the

docket of the Supreme Court. More, it is not clear if the missing motion is the same motion that was forwarded to the Supreme Court or if it was the other one. Moreover, the dates of the filing do not accurately reflect the dates of actual filings. Some other filings appear to have been filed on later dates.

F. Moreover, because the Clerk did not designate nor identify the filings on the docket, and because the docket is missing references by name, and because the dates of filings are not accurate for some filings, any attempt by Appellants to reference the record is destined to be wrong. It is thus difficult, if not impossible, to correctly refer to any of the record or even guess which document is what. Even the single document that has been designated by the Clerk as “objection to attorney fees” does not accurately reflect the name of the document which should be Appellants’ reply in support of motion to modify and to disqualify the court Clerk and the Court of appeal itself.

F. Ironically, Appellants’ original motions and petitions at the Court of Appeals (and subsequent motions to modify),

such as the petition to recall/withdraw the Court of Appeal's opinion and to correct the record, motion to supplement the record, motion to disqualify the clerk and the Court of Appeals, and the supplement for disqualification of the clerk and the Court of Appeals (which do not show on the docket of the Supreme Court), are centered on the improper and disingenuous filing which was not supposed to be part of the record undeniably by and under the watch of Attorney/Commissioner Landrus, which made its way to the Court of Appeals and apparently to this court. It is worth noting that this filing was designated by the court Clerk as "Declaration of Alaa Elkhawily", when in fact, the genuine and true declaration of Alaa Elkhawily was not designated and thus was not transmitted to the Court of Appeals, nor to the Supreme Court.

G. The question remains whether there is still improper mishandling or concealment of the docket and courts' record, which continues to create the appearance of unfairness as a

serious issue extending beyond the trial court, and wherever there is implicated an interest of Commissioner Landrus.² “Fundamental fairness is absent from any proceeding "in which evidence is allowed which lacks reliability." *State v. Bartholomew*, 101 Wn.2d 631, 649, 683 P.2d 1079 (1984); “*State v. Rupe*, 108 Wn. 2d 734 (Wash. 1987).

H. As evidenced by the docket, the courts’ record, and the answer letter by the clerk of this court, if the issue of maintaining accurate and complete docket and record is not addressed or resolved at this stage, the denial of appellants’ petition for review and their motion to stay and remand would unfairly become inevitable.

2 Commissioner Landrus remains Respondents’ attorney of record at the trial court. Commissioner Landrus continued to procure decisions and judgment on behalf of the Respondents at the trial court including the trial court’s denial of the post-trial motions centered on Respondents’ concession of manufacturing the fraudulent and fabricated evidence under the watch of Attorney/Commissioner Landrus. The Court of Appeals refused to review the trial court decision procured by Attorney/ Commissioner Landrus after she had been appointed as the commissioner of Division III.

I. Appellants, through their counsel, also requested information about the record from the Clerk of the Court of Appeals. See, Appendix Ex. B attached hereto. But they have not yet received a response from the Clerk of the Court of Appeals. It will be necessary to receive a response from both clerks, and the court record must be corrected, before preparing Appellants' Reply or even proceeding with the preliminary screening of Plaintiffs' petition for review. RAP 10.3(a)(6).

J. Appellants do not know when the Clerk of the Court of Appeals will respond to their counsel's inquiry of August 26, 2002, so cannot predict when the information sought will be available or when they will know that the information is not provided or when the Court of Appeals will get its records corrected. But 7 days after complete and accurate correction of the record will allow the same 7 days that have been allocated to Appellants' reply by the Clerk.

K. Also, note that Appellants reserve their right to request an adjustment should the Clerk correct the records

within a few days from today: Appellant, Alaa Elkhawily, MD, is significantly involved in the preparation of his filings. He is involved in another proceeding in this Court in which he has a filing deadline for a motion to modify a ruling by the Clerk on September 2, 2022.³ Dr Elkhawily is also due to file a Reply in support of his motion for discretionary review of the Court of Appeal's denial to his motion to disqualify Commissioner Landrus in another matter under Case No. 101135-1, and is due to file a third Reply in a different matter under Case No. 101130-0 on September 15 and 12, 2022, respectively.

L. Co-counsel Richard Wylie was approved as *pro hac vice* counsel for Appellants in this Court for this matter on August 26, 2022. Mr. Wylie has numerous matters with deadlines between now and September 9, including a mediation requiring attention on August 29 and 30, 2022, and two cases with filing deadlines thereafter.

³See, Case No. 100848-1.

M. This requested extension would, it appears, not inconvenience the Court, because the filing of the Reply under the requested extension would come more than one month before the date for consideration of the motion in question.

CONCLUSION

For the reasons set forth herein, Appellants respectfully request the Supreme Court to grant their requested relief.

Certificate of Compliance

I certify that this document contains 1605 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED: August 29, 2022.

Richard T. Wylie (MN #11912X)
(pro hac vice)
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Minneapolis, MN 55402
612-337-9581
Email: rickwlaw@aol.com
Attorney for Appellants

/s Brian K. Dykman
Brian K. Dykman WA Bar No. 22986
222 W. Mission Ave., Ste. 246
Spokane, WA 99201
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Attorney for Appellants

APPENDIX EX. A

From: SUPREME@COURTS.WA.GOV,
To: dykmanlaw@msn.com,
Cc: chagermann@stamperlaw.com, rickwlaw@aol.com, elkharwily.alaa@gmail.com,
Subject: RE: No. 101073-7: Wall Street Apartments LLC et al, Appellants vs All Star Property Management LLC et al, Respondents
Date: Thu, Aug 25, 2022 6:09 pm

Received 8-25-22

From: Brian Dykman <dykmanlaw@msn.com>
Sent: Thursday, August 25, 2022 3:59 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Courtney Hagermann <chagermann@stamperlaw.com>; rickwlaw@aol.com; Alaa Elkharwily <elkharwily.alaa@gmail.com>
Subject: No. 101073-7: Wall Street Apartments LLC et al, Appellants vs All Star Property Management LLC et al, Respondents

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Attn: Edith

I am co-counsel for Appellants in the above matter.

I'm following up on Appellant Dr. Elkharwily's communication with you yesterday regarding filings in the Supreme Court in the above captioned matter and about motions, responses and replies filed in the court of appeals forwarded or transmitted from Division Three.

The Clerk of the Supreme Court advised in a letter dated July 11, 2022, that there was a "Motion", not **motions**, that was forwarded by the Clerk of the court of appeals.

Dr. Elkharwily told me that in your conversation yesterday with him that it appears that only one motion "to

modify Clerk's order filed June 7" has been transmitted or forwarded by Division Three. This is the motion to modify a ruling by the clerk regarding a motion/petition to recall / withdraw the opinion and correct the record . The document consists of 33-34 pages and appears to have been transmitted or forwarded from the court of appeals on July 8, 2022.

Plaintiffs have filed a total of four (4) motions to modify in Division III:

Two motions to modify a ruling by the clerk filed June 7, on July 7.

(to Recall / withdraw the opinion filed April 19, 2022; and 2- motion for second designation of clerk's papers and supplement records)

One motion to modify a clerk ruling filed June 29, on July 25, 2022,

One motion filed to modify action/ruling and to disqualify the clerk and the to disqualify the court filed August 8.

Defendants/Respondents did not file a response to the first three motions . They however filed a response in the court of appeals to the fourth motion. (Motion to modify clerk's action/ ruling and to disqualify the clerk and the court) on August 18, 2022. Plaintiffs filed replies in support of each of these 4 motions.

Please advise which motion(s), responses and replies have been forwarded and or transmitted to the Supreme Court from the court of appeals.

Also, the docket of the Supreme Court shows that the Respondents filed an answer on August 18, 2022. From what Dr. Elkhawily related to me of his conversation with you yesterday, this was Respondents' answer/ response to Appellants' court of appeals motion to modify and to disqualify the clerk and the court. The Supreme Court docket shows it was "filed" August 18, 2022, but Dr. Elkhawily told me that he was informed on his telephone call that the filing was rejected. Could you confirm that Respondents' filing was rejected, and if so, if the docket will reflect that it was "rejected," and not just "filed" as it shows on the docket?

Also, if there have been any other communications or transmittals of filings from the clerk or other personnel at the Court of Appeal to the Supreme Court, please advise of those.

Thank you for your assistance,

Brian Dykman

ERIN L. LENNON
SUPREME COURT CLERK

THE SUPREME COURT
STATE OF WASHINGTON



TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

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August 26, 2022

LETTER SENT BY E-MAIL ONLY

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Courtney Jewel Hagermann
Attorney at Law
720 W. Boone Avenue, Suite 200
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Richard Wylie
222 S. Ninth Street, Suite 1600
Minneapolis, MN 55402

Re: Supreme Court No. 101073-7 - Wall Street Apartments, LLC, et al. v. All Star Property Management, LLC, et al.
Court of Appeals No. 37512-9-III

Counsel:

On August 25, 2022, a “MOTION FOR LIMITED ADMISSION PURSUANT TO APR 8(b) AND ORDER” was filed by Brian K. Dykman. The motion requests limited admission of Richard T. Wylie. On August 25, 2022, the Supreme Court also received an email from attorney Dykman requesting information regarding the motions to modify and responses filed at the Court of Appeals.

The Court of Appeals have been forwarding all motions and responses filed there to the Supreme Court, presumably because their case is now closed. As previously advised, no action will be taken on the motions to modify by this Court because it cannot act on motions to modify a Court of Appeals clerk. However, it is noted that the “motion to stay proceedings and remand the forwarded motions, responses and replies to the Court of Appeals”, has been received and set for the Supreme Court’s consideration. Accordingly, this Court will send the motions to modify to the Court of Appeals if that motion is granted.

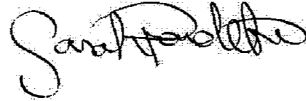
In regard to the pro hac vice motion, the following ruling is entered:

The motion is granted. Pursuant to APR 8(b), Richard T. Wylie is granted permission to appear before this Court in Supreme Court cause number 101073-7; provided he shall be supervised at all times by Brian K. Dykman, WSBA No. 22986.

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No. 101073-7
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It is noted that APR 8(b)(1) provides that payment of the required fee to the Washington State Bar Association is only necessary upon a lawyer's first application to any court in the same case. Because Mr. Wylie was admitted pro hac vice for this case at the Court of Appeals, a fee is not required for pro hac vice admission in the Supreme Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah R. Pendleton". The signature is written in a cursive, flowing style.

Sarah R. Pendleton
Supreme Court Deputy Clerk

SRP:bw

APPENDIX EX. B

From: rickwlaw@aol.com,
To: Tristen.Worthen@courts.wa.gov,
Cc: chagermann@stamperlaw.com, dykmanlaw@msn.com, rickwlaw@aol.com,
Subject: Wall Street Apartments, LLC et al v. All Star Property Mangement, LLC et al, Court of Appeals No. 37512-9-III
Date: Fri, Aug 26, 2022 3:22 pm

Dear Ms. Worthen,

I am co-counsel for the Appellants in the above matter.

This is to request advice concerning all filings made by the Appellants and Respondents that Division III has forwarded/transmitted to the Supreme Court to date. Also please advise the title of the filings, dates of the filings, and the dates the filings were forwarded/transmitted to the Supreme Court and the reason for the transmittal. Also, please advise whether the transmittal, if any, was formal or informal.

A docket caption shown for one of Appellants' filings on August 23, 2022, (shown on the docket "August 24") is described as an objection to attorney's fees. Is this the same filing as Appellants' "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"?

Also, Appellants on August 23, 2022, made three filings

The Reply, etc mentioned above;
An appendix; and
Motion to waive word limit.

These documents show as having been "filed", per the court's stamps, on August 23. However, the docket shows they were "received" by the court. Is this different than a "filed" status?

The docket shows two of the three August 23 filings as "other filings." Please advise if the Appendix and the Reply were merged by the court into one filing and specify which one is the reply on the motion to modify and to disqualify.

Please advise if any of Appellants' August 23 filings has or will be forwarded to the Supreme Court or is going to be considered by the court of appeals panel, and if so has it been set on the calendar. Has there been any written order or direction made regarding this?

Finally, please provide copy of the filing (ruling or otherwise) that was filed in the court of appeals on May 26, 2022.

Thank you for your assistance,

Richard T. Wylie

BRIAN K. DYKMAN, ATTORNEY AT LAW

August 29, 2022 - 3:49 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,073-7
Appellate Court Case Title: Wall Street Apartments, LLC, et al. v. All Star Property Management, LLC, et al.
Superior Court Case Number: 15-2-04021-3

The following documents have been uploaded:

- 1010737_Motion_20220829154902SC792028_0625.pdf
This File Contains:
Motion 1 - Extend Time to File
The Original File Name was MotionExtensionTimeFile_000772.pdf

A copy of the uploaded files will be sent to:

- chagermann@stamperlaw.com
- rickwlaw@aol.com

Comments:

Sender Name: Brian Dykman - Email: dykmanlaw@msn.com

Address:

222 W MISSION AVE STE 246

SPOKANE, WA, 99201-2341

Phone: 509-324-0238

Note: The Filing Id is 20220829154902SC792028