Supreme Court No. 101087-7

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 82468-6-I

DIVISION I OF THE WASHINGTON COURT OF APPEALS

KATHLEEN E. JOHNSON, and STEVEN W. GENTRY,

Petitioners,

v.

SHARON GREICHEN O'GRADY, PETER WEINER et al,

Respondents.

ANSWER TO PETITION FOR REVIEW

KELLEY J. SWEENEY, WSBA #25441
Attorney for Respondents
Sharon Greichen O'Grady and Peter Weiner
SIMMONS SWEENEY FREIMUND SMITH TARDIF PLLC
1223 Commercial Street
Bellingham, WA 98225
(360) 752-2000

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I. INTRODUCTION

There is no dispute that by November 2017, Johnson and Gentry were aware that they had allegedly suffered injury in the O'Grady rental home, were aware they had been exposed to rat dander, chemicals and mold, and had a reasonable suspicion that alleged wrongdoing of O'Grady and Weiner caused the injury. They had painstakingly outlined the litany of alleged salient facts they knew as of November 2017 in multiple contemporaneous and subsequent iterations to attorneys and medical professionals. The statute of limitations began to run at that time even if Johnson and Gentry did not know whether it was the rat dander, the chemicals, the mold, or a combination thereof, that had allegedly caused the injury. Johnson and Gentry's causes of action were susceptible of proof in November 2017. Division I correctly found as much and the Decision should not be the basis of further review.

In their Petition, Johnson and Gentry take two approaches. First, they conflate susceptibility of proof with actual proof,

arguing that a cause of action does not accrue until a claimant possesses actual proof of the cause in fact of his/her injuries. Washington law has no such requirement. Next, they admit that Washington law does not support their position, but argue that their case compels a change in that law. The Court should reject both approaches and deny the Petition.

The cases cited by Johnson and Gentry are factually inapposite and fail to provide support for their assertion that actual proof of causation is required before a cause of action accrues. Instead, those cases concern situations in which plaintiffs have no knowledge and no reason to know within the limitations period that they have been injured by the acts or omissions of others. In many instances an action accrues immediately when a wrongful act occurs; but in some circumstances a plaintiff can be unaware of the harm until a later time. To prevent an injustice in these instances, courts may apply a discovery rule. Here, Johnson and Gentry in effect argue for an application of the discovery rule (and misapplication at that)

even though they admit they were aware of harm/injury allegedly due to the actions or inactions of O'Grady and Weiner.

Indeed, Johnson and Gentry ask this Court to disregard established Washington law on the accrual of causes of action and change Washington law to require not only confirmation or diagnosis of an injury, but also proof of cause in fact of injury – before triggering the statute of limitations. This would indeed be a gross extension of precedent which only requires knowledge of *the salient facts* underlying the potential cause of action – to trigger the running of the limitations period.

Because Johnson and Gentry cannot show review is warranted under any of the criteria of RAP 13.4(b), their Petition must be denied.

II. COUNTER STATEMENT OF ISSUES

A. Should this Court deny the Petition where Division I correctly found the causes of Johnson and Gentry's alleged injuries were susceptible of proof in November 2017 thereby affirming the trial court's grant of summary judgment in

O'Grady and Weiner's favor; thus, review is not warranted under RAP 13.4(b)(1) or RAP 13.4(b)(2)? *Yes.*

B. Should this Court deny the Petition given Division I correctly considered application of the discovery rule and found Johnson and Gentry were aware they had been injured and the alleged connection of their injuries to mold and/or chemicals (rather than requiring actual proof of cause in fact) as of November 2017? *Yes.*

C. Should this Court deny the Petition where affirming summary judgment of a blatant statute of limitations violation does not involve an issue of substantial public interest as contemplated by RAP 13.4(b)(4)? *Yes.*

III. COUNTER STATEMENT OF THE CASE

There is no dispute as to the following facts:

6/24/17 Plaintiff Johnson began the tenancy. CP 86.

10/13/17 Plaintiff Johnson moved out of the O'Grady rental home, leaving belongings behind. CP 272. As of that time, Johnson had been to the doctor or hospital

no less than seven times for symptoms allegedly associated with the rental home. CP 152.

11/11-25/17 Alleged negligent cleaning and chemical application in the rental home. CP 272.

11/11/17 Johnson writes: "[F]rom the time [O'Grady] began messing with the house Nov 11 to the time we moved… I could not breath in the house without coughing… We saw a bucket of unknown agents, deodorizers, and heat dishes…" CP 272-273.

11/27/17 All personal property removed from the rental home. CP 305. Johnson writes: "When moving in late November, our friend Keith helped [Gentry] with furniture and he said it smelled vile throughout the house, with maybe decomposing rodents in the walls and some mold in the air (he owns Bellevue Roofing and is experience with these smells. He told me to tell [O'Grady] in summer (August 2017) that her roof was soft when I asked him to retrieve

a toy off the roof . . . she was not concerned when I told her this information.) CP 121, 270-76. "[Gentry] took pictures, documenting that [O'Grady] was using various agents to try to treat the rodent issue…" [Gentry] spent time in the house for several days and was exposed to post-treatment vapors the most." CP 271.

12/12/17 Johnson writes: Gentry experienced chest pain, difficulty breathing, and "numbness in his arm and hand." After going to the emergency room, Gentry's "eyes were red and watery, his skin pale, and he had slightly elevated bilirubin and was borderline anemic." Further: "We discovered that the cabinet from the room where chemicals were used was particularly vile… it caused an instant reaction in me with redness/swelling in my face, a tight feeling in my neck/tongue, and I was really frightened by the response." CP 273. "We had Pure

Clean, a company that specializes with allergen and mold/mildew cleaning to clean the carpets of new home, but (Johnson) still reacted…" CP 273.

12/26/17 Johnson writes to Attorney Poloni about consultation with Attorney Schneiderman: "[A]s my medical issues are continuing to be an issue and I truly believe it to have begun and be attributable to living in the Kirkland rental house…it has become clear as the house is cleared and it was isolated as the only possible allergen that I am reacting violently to it…I've been on 4 courses of Prednisone since October 10 for allergic symptoms…" CP 305.

6/23/20 Complaint filed. CP 1.

1/16/21 Service of Complaint. CP 249-250.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

This Court will grant discretionary review of a decision

terminating review only under discrete circumstances. RAP 13.4 (b).

Here, Johnson and Gentry argue the Decision is in conflict with decisions by this Court and published decisions by the Court of Appeals and that this case involves an issue of substantial public interest. Petition at 16-19, 20-25. Johnson and Gentry have not supported either assertion. Their Petition should be denied.

A. Division I Correctly Applied Washington Law Regarding Accrual of Causes of Action to the Facts

"A cause of action accrues when a party has the right to apply to a court for relief." *1000 Virginia Ltd. P'ship v. Vertecs Corp*., 158 Wn.2d 566, 575, 146 P.3d 423 (2006). And, there is no dispute that "[i]n general terms, the right to apply to a court for relief requires each element of the action be *susceptible* of proof." *Haslund v. City of Seattle*, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976) (emphasis added).

[T]he limitation period begins to run when the

> factual elements of a cause of action exist and the injured party knows or should know they exist, whether or not the party can then conclusively prove the tortious conduct has occurred. A smoking gun is not necessary to commence the limitations period. ***An injured claimant who reasonably suspects that a specific wrongful act has occurred is on notice that a legal action must be taken.*** At that point, the potential harm with which the discovery rule is concerned – that remedies may expire before the claimant is aware of the cause of action – has evaporated. The claimant has only to file suit within the limitations period and use the civil discovery rules within that action to determine whether the evidence necessary to prove the cause of action is obtainable. ***If the discovery rule were construed so as to require knowledge of conclusive proof of a claim before the limitation period begins to run, many claims would never be time barred.***

Beard v. King County, 76 Wn. App. 863, 868, 889 P.2d 501 (1995) (emphasis added).

Division I found that Johnson and Gentry were aware in November 2017 that mold and chemicals were potential causes of their injuries. Decision at 8-11, APP 8-11. A letter written by Johnson in January 2018 undeniably disclosed that Johnson and Gentry were aware by November 2017 that they had been exposed to both mold and chemicals in the rental residence. The

Decision outlined the details of the letter at length. APP 3-4. In that letter, Johnson outlined specific use of chemicals and also their friend Keith's reference to mold in the air and earlier reference to a soft roof in August 2017. *Id.* CP at 270-76. On this record, Division I correctly concluded that "the causes of the injuries that were sustained by Johnson and Gentry were 'susceptible of proof' in November 2017. *Haslund*, 86 Wn.2d at 619." Decision at 11, APP 11.

In arguing that Division I misapplied this standard, Johnson and Gentry erroneously conflate susceptibility of proof with *conclusive* proof of the cause of injury.[1] Washington has never adopted a requirement of actual proof of causation to

[1] Johnson and Gentry's arguments related to knowing the "cause in fact" of their injuries are misplaced. "Cause in fact refers to the 'but for' consequences of an act—the physical connection between an act and an injury. It is a matter of what has in fact occurred." *Hartley v. State*, 103 Wn.2d 768, 777–78, 698 P.2d 77, 82–83 (1985) (citations omitted). There can be no dispute that Johnson and Gentry knew the physical connection between their alleged injuries and the O'Grady home, i.e., they were in the home, and/or had been exposed to belongings that had been in the home and got sick immediately thereafter.

trigger the running of the limitations period in a personal injury action. The standard is susceptibility of proof which equates with reasonable suspicion, not actual proof. *See Haslund*, 86 Wn.2d at 619; *Beard*, 76 Wn. App. at 868; s*ee also Steele v. Organon, Inc*., 43 Wn. App. 230, 234, 716 P.2d 920 (1986) (once the plaintiff is aware of some injury beyond nominal damage, the statute of limitation begins to run *even if* he does not know the full extent of his injuries).

In fact, the pattern in *Steele* is quite similar to this case—the plaintiff took the problematic substance upon advice of a doctor. It first caused numbness and tingling, which made her aware of some injury from the drug. Much later, it also caused a heart attack and stroke. The cause of action was held to have accrued upon the first occurrence of harm. *See Steele*, 43 Wn. App. at 235. The later occurrence of more harm did not reset the statute or trigger the discovery rule. *Id*.

By the end of November 2017, Johnson and Gentry had seen and smelled chemicals in the rental home, and a

professional roofer had informed them that the roof was soft and that he smelled mold in the air. At that point, Johnson and Gentry reasonably suspected that a wrongful act had occurred, i.e., that their injuries were due to exposure to mold and chemicals within the O'Grady rental home, triggering the statute of limitations. *See Beard,* 76 Wn. App. at 868 (An injured claimant who reasonably suspects that a specific wrongful act has occurred is on notice that a legal action must be taken). The Petition should be denied.

B. The Decision Is Consistent with Supreme Court and Appellate Court Precedent Analyzing Accrual of Actions and Utilizing the Discovery Rule Only in Cases Where Plaintiffs Do Not Know They Have Been Injured.

"The general rule in ordinary personal injury actions is that a cause of action accrues ***at the time the act or omission occurs***." *Matter of Estates of Hibbard*, 118 Wn.2d 737, 744, 826 P.2d 690 (1992) (emphasis added). The discovery rule, which is an exception to the general rule recognized in *Hibbard*, applies in certain torts when the injured parties **do not know they have**

been injured and literal application of the statute of limitations could result in grave injustice. *Id*. at 744-45; *1000 Virginia Ltd.*, 158 at 566. Neither factor applies here. Even where the discovery rule applies, reasonable suspicion, not factual certainty, triggers the running of the limitations period under Washington's discovery rule.

There is no dispute that Johnson and Gentry knew they had allegedly been exposed to chemicals and mold and that they experienced negative effects on their health by the time they had completely vacated the premises in November 2017. Their own writings prove as much. Because Johnson and Gentry were aware they had been injured allegedly due to some exposure within the O'Grady rental home, the discovery rule does not apply. Instead, the statute of limitations began to run "at once" from the alleged act or omission of O'Grady and Weiner in allegedly exposing Johnson and Gentry to mold and chemicals.

With respect to the second factor relevant to application of the discovery rule, no grave injustice would result here from

application of the general rule that claims accrue when the act or omission occurs. Johnson and Gentry did, in fact, *file* their lawsuit timely. It was not for lack of knowing of their right to bring a claim that this case was untimely. Instead, their failure was in not following up the filing of suit with personal service upon any individual defendant.

Contrary to Johnson and Gentry's claims in their Petition, the Decision in this matter was consistent with this Court and published Appellate decisions.

1. Green v. A.P.C.

In *Green v. A.P.C.*, 136 Wn.2d 87, 96-97, 960 P.2d 912 (1998), this Court detailed Washington law—still applicable today—regarding the accrual of a cause of action and application of the discovery rule when a wrongful act leads to two or more injuries. In *Green*, the two injuries both stemmed from administration of DES, a medication, to plaintiff's mother while she was pregnant with plaintiff. The DES medication could cause reproductive problems in female offspring, and Green

experienced two physical changes--to her cervix and to her uterus—which both made for a more difficult pregnancy. Green learned of the fact of her own *in utero* exposure to DES when she was 14 years old. She learned of her own diagnosed cervical problems at age 19, and more than three years prior to filing suit. In 1992, she learned of her T-shaped uterus. She filed suit in 1994. Only the discovery of the uterine problem was within the three years prior to filing suit.

The pharmaceutical defendants moved for dismissal on statute of limitations grounds. They argued that plaintiff knew of the "injury"—her *in utero* DES exposure--as early as age 14, and certainly as late as age 19 when she learned that she did, in fact, have the cervical problem. Plaintiffs countered with an argument that the two types of injuries from DES exposure were separate and distinct, and that only the claims based on the cervical problem were time-barred. Because she did not discover the T-shaped uterus problem until 1992, they argued, any complications from that discrete injury were not time-barred.

The trial court dismissed the entire case on statute of limitations grounds. The court of appeals disagreed. It ruled that separate statutory limitations periods were applicable for the "separate and distinct" injuries to plaintiff from her mother's DES ingestion. *Green,* 86 Wn. App. at 63. This Court reversed, stating the following:

- Under Washington's discovery rule, a cause of action does not accrue until a party knew or should have known the essential elements of the cause of action--duty, breach, causation, and damages. *Id.* at 95.
- A cause of action may accrue for purposes of the statute of limitations if a party should have discovered salient facts regarding a claim. *Id.* at 96.
- "[W]hen a plaintiff is placed on notice by some appreciable harm occasioned by another's wrongful conduct, the plaintiff must make further diligent inquiry to ascertain the scope of the actual harm." *Id.*
- "The statute of limitations is not postponed by the fact

that further, more serious harm may flow from the wrongful conduct." *Id.*

- "Where an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefore, the statute of limitations attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date." *Id* at 96. (Citations omitted).

The Court's analysis of the loss of consortium claim is also instructive as to when a claim accrues. Rejecting a majority rule that a loss of consortium claim does not lie when the injury to the spouse that caused the loss of consortium occurred prior to marriage, the Court instead reasoned: "…loss of consortium damages should be available for a premarital injury if the injured spouse either does not know or cannot know of the *injury." Id.* at 102. (Emphasis supplied). The Court then clarified "[t]he

spouse's loss of consortium claim accrues when the spouse first suffers *injury* from loss of consortium…" *Id.* at fn. 9. (Emphasis supplied).

The *Green* decision does not postpone accrual of a cause of action until the claimant possesses conclusive proof of the cause of injury or full knowledge of the extent of injury; it is instead the fact of *some injury* – which again results in the statute of limitations attaching at once.

2. Winbun v. Moore

Johnson and Gentry's argument that "cause in fact" was necessary before their claims accrued misstates Washington law. The discovery rule requires reasonable suspicion, not actual proof, for a claim to accrue. *Winbun v. Moore*, 143 Wn.2d 206, 18 P.3d 576 (2001), discussed in the Motion for Reconsideration (APP 30-31) and cited in the Petition at 16, does not dictate a contrary conclusion. *Winbun* is a medical malpractice case in which plaintiff had brought timely action against several of the physicians who had treated her. The Court allowed her to add an

additional physician to the suit more than three years after the malpractice had occurred. In so doing, the Court applied the discovery rule and concluded that plaintiff had been diligent in requesting the records that would permit her to identify the physicians involved in her care; however, the providers failed to produce certain records that disclosed potentially actionable negligence by one of the treating physicians. Prior to receiving those records, plaintiff knew that the physician had been on her treatment team, but she had no reason to suspect that he had been negligent. The Court concluded that "knowledge of suspected professional negligence as to one health care provider does not of necessity trigger the medical malpractice discovery rule of RCW 4.16.350 as to all other health care providers who also treated the plaintiff." *Id.* at. 223. Johnson and Gentry had "knowledge of suspected" exposure to chemicals and mold in the O'Grady home and due to alleged action or inaction of O'Grady and/or Weiner in November 2017 triggering the limitations period. The Decision is entirely congruent with *Winbun.*

3. Nichols v. Peterson NW, Inc.

Similarly, *Nichols v. Peterson NW, Inc*., 197 Wn. App. 491, 500–01, 389 P.3d 617, 622–23 (2016), is consistent with Division I's analysis. *Nichols* simply reaffirms that "[u]nder the discovery rule, a cause of action accrues when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the *salient facts* underlying the cause of action's elements. *Id.* (Emphasis added). In *Nichols*, the defendant alleged negligent actions that led to water intrusion occurred in 2006 (plaintiffs filed in 2012) and that plaintiffs should have discovered water intrusion earlier because one plaintiff admitted that she observed the roof deck being exposed to rain after defendant failed to tarp the roof. However, plaintiff also stated that she did not witness any water intrusion at the time and believed that a tarp placed over the roof thereafter solved any concern about water intrusion. Plaintiffs provided evidence that it was not until 2011, when one of them went into the attic and observed mold, that they noticed any water intrusion. Their claim

was not time barred. *Id.*

This is not a situation where Johnson or Gentry allege that any problem had been remedied, or that symptoms had abated for that matter. Their injuries and damages were in full swing, they knew it and believed it was due to exposure within the O'Grady residence when they completely vacated the premises in November 2017. Johnson and Gentry possessed the salient facts underlying their claims by that time. *Nichols* does not support their argument that they must have known *cause in fact*.

4. North Coast Air Services, Ltd. v. Grumman Corp.

Nor does the Decision conflict with *North Coast Air Services, Ltd. v. Grumman Corp.*, 111 Wn.2d 315, 759 P.2d 405 (1988), a case concerning the statute of limitations for a products liability action and again, consideration of a discovery rule. The case involved a plane crash that was attributed at the time to pilot error. Years later, the father of the deceased pilot learned that there had been subsequent crashes of the same type of aircraft that had been caused by a defect in the aircraft's elevator control

assembly. The father filed a products liability action against the plane's manufacturer within three years of learning of the possibility that the crash had been caused by a defect in the aircraft.

The products liability statute of limitations provides that "no claim under this chapter may be brought more than three years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause." RCW 7.72.060(3). This Court concluded that a products liability action accrues when a claimant discovers, or in the exercise of due diligence should have discovered, a factual causal relationship of the product to the harm. In reaching that conclusion, the Court was informed by the legislative declaration of purpose for the products liability statute of limitations, to wit, "to treat the consuming public, the product seller, the product manufacturer, and the product liability insurer in a balanced fashion" without unduly impairing "the right of the consumer to recover for injuries sustained as a result of an unsafe product."

North Coast, 111 Wn.2d at 321, quoting from Laws of 1981, Ch. 27, § 1. The Court observed that the desirability of the discovery rule was particularly evident in this case "where the official investigation concluded that the 'cause' of the crash was pilot error." *Id*. at 323. Requiring plaintiff to have brought an action within three years of the crash would have required plaintiffs "to begin a suit before they either had or should have had any knowledge of a possible legal responsibility of this defendant." *Id*.

The Decision did not require that Johnson and Gentry begin suit before they either had or should have had any knowledge of the possible legal responsibility of O'Grady and Weiner. The letter written by Johnson in January 2018 undeniably discloses that Johnson and Gentry were aware by November 2017 that they had been allegedly exposed to both mold and chemicals in the rental residence and had suffered an injury. Even if the products liability statute of limitations discussed in *North Coast* was applicable to the causes of action

brought by Johnson and Gentry, their claims would still have accrued in November 2017, as the record demonstrates that they undeniably had sufficient knowledge of the "factual causal relationship of the product to the harm" by that time. *See Id*.

5. Ruth v. Dight

In *Ruth v. Dight*, 75 Wn.2d 660, 665, 453 P.2d 631 (1969), superseded by statute as recognized in *Winbun*, 143 Wn.2d at 214 n. 3, plaintiff had experienced intermittent pain in her lower abdomen for years following surgery, but did not discover until 22 later, during subsequent surgery, that the original surgeon had left a surgical sponge in her abdomen. Despite having been treated by multiple physicians over the years, neither Ruth nor her physicians had any knowledge or reason to suspect the presence of a sponge in her abdomen. *Id*. at 663. The Court introduced the discovery rule in that case as a mechanism to balance the need to provide a legal remedy for a wrong and the harm occasioned to a party having to defend against a stale claim. In so doing, the Court sought to provide recourse for claimants

who "would not in the usual course of events know he had been injured until long after the statute of limitations had cut off his legal remedies."

In arguing that *Ruth* is inconsistent with the Decision in this action, Johnson and Gentry ignore the evidence that, in November 2017, they knew they had been exposed to mold and chemicals in the rental house and knew that their injuries coincided with that exposure. This is in stark contrast to Ruth and plaintiff in *North Coast* who had no knowledge or reason to know that they had been harmed by the acts or omissions of others. The cases cited by Johnson and Gentry do not support their argument that a cause of action does not accrue until a claimant has *actual* proof of the *cause* of the injury. Instead, those cases stand for the proposition that a claim does not accrue at the time an act or omission occurs if the injured party has *no knowledge and no reason to know that he/she has suffered an*

injury due to the act or omission of another.[2] Johnson and Gentry had sufficient knowledge in November 2017 that they were exposed to rat dander, various chemicals, and mold in the O'Grady rental home and suffered injury. At that point in time, their claims were susceptible of proof, triggering the limitations period. That period expired before they effected service of the summons and complaint on any Defendant. Summary judgment was proper in the trial court and appropriately affirmed on appeal.

The Decision is in entirely in line with decisions of this

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[2] Johnson and Gentry misstate the critical factual underpinning in these cases. *See Petition at 18.* They claim that plaintiffs in these cases had "knowledge of the injury." This is false. Ruth did not know she had been "injured" at the hands of a medical professional. She had pain; but did not know the source of the pain. *Ruth*, 75 Wn.2d at 662-63. Similarly, plaintiffs in *North Coast*, had no reason to believe any defect in the aircraft. Yes, they knew a plane crash; but had been told pilot error. *North Coast*, 111 Wn.2d at 328. Again, here, it is undisputed Johnson and Gentry knew they were injured and due to exposure within the O'Grady residence. It is of no import that they did not know the exact nature of exposure, whether alleged rat infestation, chemical, or mold exposure.

Court and those published in the Court of Appeals. The Petition should be denied.

C. The Decision Affirming Summary Judgment on a Blatant Statute of Limitations Violation Does Not Involve an Issue of Substantial Public Interest.

These facts do not present an issue of substantial public interest. To the contrary, this case involves a private rental agreement, specific, arguably unsupported allegations of chemical and or mold toxicity,[3] knowledge of alleged injury and tortfeasor wrongdoing susceptible of proof triggering the limitations period, timely filing of a complaint, but resultant failure to serve any defendant within the limitations period.

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[3] Again, it should be noted that blood or test results are not satisfactory proof of causation in this case. O'Grady and Weiner had moved to strike Johnson and Gentry's Exhibit G (Blood and urine, furniture toxicity, and rental home testing) offered in response to summary judgment pursuant to ER 401-403, 602,701-703, 801-803, 901. CP 344-45. Moreover, on December 2, 2018 (just four months after the August "testing" in the rental home), the current tenants in the O'Grady rental home were unequivocal that they had no issues with the condition of the home (no rodents or mold) and had resided there for almost the last year. They also indicated that O'Grady was a "great" landlord. CP 132-33.

This type of case is unique and not likely to recur. Johnson and Gentry fail to provide any authority in support of their proposition that this case does implicate a substantial public interest. Non-persuasive authority in other jurisdictions does not dictate a different result from the Decision. APP 77-84. Rather, they seem to rely on this Court to provide a remedy for admitted attorney malpractice. This is not the function of the Court, nor a substantial public interest. The more compelling public interest, if anything, is certainly to affirm an analysis which avoids the disaster of allowing stale claims to linger and/or other claims to never be time barred.

V. CONCLUSION

Discretionary review is reserved for those few cases that meet one or more of the criteria of RAP 13.4(b). This is not one of them. The trial court granted summary judgment in favor of O'Grady and Weiner, and Division I affirmed based on long standing Washington precedent and proper analysis of statute of limitations principals.

Because Johnson and Gentry cannot establish any conflict between the Decision and a decision of this Court or a published decision of the Court of Appeals, nor that this case is of substantial public interest, their Petition should be denied.

This document contains 4998 words, excluding the parts exempted from the word count by RAP 18.17.

Dated this 12th day of August, 2022.

KELLEY J. SWEENEY, WSBA # 25441
Attorney for Respondents
SIMMONS SWEENEY FREIMUND
SMITH TARDIF PLLC
1223 Commercial Street
Bellingham, WA 98225
Ph: (360) 752-2000
Fax: (360) 752-2771

JEFF BROWN, hereby declares:

On August 12, 2022, I caused to be served, by electronic service via Washington State Courts – Supreme Court E-Filing/Service the Answer to Petition for Review via e-service to the following:

SUNAINA ASWATH, hereby declares:

On August 12th, 2022, I caused to be served, by electronic service the Answer to Petition for Review via e-mail to the following:

Attorney for Plaintiffs/Appellants:
Dallas W. Jolley, Jr.
Attorney at Law
3901 100th St SW Ste 1
Lakewood, WA 98499-4486
dallas@jolleylaw.com

Attorney for Appellants:
Linda B. Clapham
Gregory M. Miller
Carney Badley Spellman, P.S.
701 5th Ave Ste 3600
Seattle, WA 98104-7010
clapham@carneylaw.com
miller@carneylaw.com
keihn@carney.com

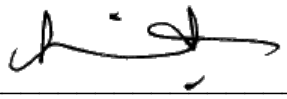
Attorney for Defendants/Respondents Cassandra and Jeremiah Kerk:
Shellie McGaughey
Michael Kyllo
McGaughey Bridges Dunlap, PLLC
3131 Western Ave Ste 410
Seattle, WA 98121-1036
shellie@mcbdlaw.com
mike@mcbdlaw.com

I declare under penalty of perjury pursuant to the laws of the State of Washington that the foregoing statement is true and correct.

Dated this 12th day of August, 2022 at Bellingham, Washington

/s/ Jeff Brown
JEFF BROWN
SIMMONS SWEENEY FREIMUND SMITH TARDIF PLLC
1223 COMMERCIAL STREET
BELLINGHAM, WA 98225

Dated this 12th day of August, 2022 at Bellevue, Washington



SUNAINA ASWATH
SIMMONS SWEENEY FREIMUND SMITH TARDIF PLLC
1223 COMMERCIAL STREET
BELLINGHAM, WA 98225

SIMMONS SWEENEY FREIMUND SMITH TARDIF PLLC

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