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SUPREME COURT  
STATE OF WASHINGTON  
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THE SUPREME COURT OF WASHINGTON

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SUPREME COURT NO. 96655-9  
COURT OF APPEALS NO. 76576-1-I

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GREAT OCEAN CAPITAL HOLDING, LLC, a Washington limited liability company;  
HUY YING CHEN and XUE PING WANG, Husband and Wife Residing in  
Washington State;

Petitioners.

v.

YANLU LIU and AI HUA PAN, Husband and Wife Residing in King County,  
Washington; PENG ZHANG and ZHONGYUAN PAN, Husband and Wife Residing in  
Ontario, Canada,

Respondents,

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Respondents' Response in Opposition to Petitioner Huy Ying Chen and Xue Ping  
Wang's Motion to Disqualify Counsel and Strike Respondent's Answer to Petition for  
Review

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## I. INTRODUCTION

### (1). Petitioners' Motion To Disqualify Must Be Denied.

As a preliminary matter, it must be noted that Petitioners Xue Ping Wang and Huy Ying Chen (“the Chens”) are pro se and cannot make any arguments on behalf of Petitioner Great Ocean Capital Holding, LLC (GOCH). To the extent the Chens make any arguments on behalf of GOCH, Respondents request that this court strike any such arguments and statements.

The Chens waived their right to have Respondents’ counsel disqualified by waiting nearly four years to file the motion to disqualify. Moreover, the Chens’ motion is baseless and unsupported by any facts or law, and another of the Chens’ multiple attempts to thwart resolution of this matter. Simply put, there is no conflict of interest that mandates MDK Law’s disqualification. Even assuming there was—which there is none—the Chens’ failure to promptly bring the motion at the trial court mandates denial of the petition. Since the inception of this case in 2015, the Chens have had two attorneys represent them in this matter. None of the attorneys filed a motion to disqualify Respondents’ counsel. When the Chens proceeded pro se in April

2018, they did not bring any Motion to Disqualify Respondents' counsel. The Chens wait nearly four years to file a Motion to Disqualify counsel—after the trial court entered judgment in November 2016, and after the Court of Appeals affirmed the judgment in January 2019. The Chens' delay is nothing more than a disingenuous, tactical maneuver intended to thwart timely resolution of this matter and harm Respondents. Accordingly, the court should deny the Motion to Disqualify. Furthermore, the court should deny the Chens' Motion to Strike Pan's Answer filed on February 7, 2019.

(A). Identity of Respondents

Respondents, (collectively referred to as "Pan") are Yanlu Liu and Ai Hua Pan, Zhongyuan Pan and Peng Zhang.

II. RESPONSE TO PETITIONER HUY YING CHEN  
AND XUE PING WANG'S MOTION TO DISQUALIFY  
COUNSEL

(1). The Chens' Failure To Promptly File A Motion to Disqualify Respondents' Counsel Warrants Denial Of the Motion.

(2). No Conflict Of Interests Exists Which Mandates Disqualification Of Pan's Counsel.

(3). The Court Should Not Strike Pan's Answer To Chens.

### III. LEGAL ANALYSIS

(A). *The Chens' Failure To Promptly File A Motion To Disqualify Respondents' Counsel Warrants Denial Of The Motion.*

Washington Supreme Court has stated that the “failure to act promptly in filing a motion for disqualification may warrant denial of the motion.” First Small Bus. Inv. Co. v. Intercapital Corp., 108 Wn.2d 324, 337, 738 P.2d 263 (1987). “A motion to disqualify should be made with reasonable promptness after a party discovers the facts which lead to the motion. This court will not allow a litigant to delay filing a motion to disqualify in order to use the motion later as a tool to deprive his opponent of counsel of his choice after substantial preparation of a case has been completed.” First Small Business, 108 Wn.2d at 337 (quoting Cent. Milk Producers Coop v. Sentry Food Stores, Inc., 573 F.2d 988, 992 (8<sup>th</sup> Cir. 1978). “Delay in filing a motion to disqualify is suggestive of its use for purely tactical purposes and could be the sole grounds for denying a motion to disqualify. In re Firestorm 1991, 129 Wn.2d 130, 145, 916 P.2d 411 (1996). In Firestorm, the Washington Supreme Court indicated that a nine-month delay in filing a motion to disqualify warranted denial of the motion. Id. at 144-45.

Here, the Chens waited nearly four years to file the Motion to Disqualify counsel, which is significantly longer than the nine-month delay in Firestorm. Second, both parties engaged in extensive litigation. The court of appeals has affirmed the trial court's November 2016 ruling. The motion to disqualify was never filed at the trial court level. It is simply baseless and purely used for tactical reasons to delay and harass Pan. If the court were to grant the motion to disqualify, Pan would be prejudiced. Therefore, it must be denied.

*(B). No Conflict of Interest Exists Which Mandates Disqualification Of Pan's Counsel.*

The Chens' burden is heavy, and they have not even begun to carry that burden. Disqualification is "a drastic measure which courts should hesitate to impose except when absolutely necessary. In re Firestorm 1991, 129 Wn.2d 130, 916 P.2d 411 (1996)(quoting MMR/Wallace Power & Indus., Inc. v. Thames Assocs., 764 F. Supp. 712, 718 (D. Conn. 1991). The Chens fail to cite to any Rule of Professional Conduct that Pan's counsel purportedly violated by representing Pan.

The Chens' Motion does not even outline a prima facie basis for granting them the relief they seek, and as outlined

below, every allegation they make is false and unsupported by any applicable legal authority.

Here, the Chens appear to allege that MDK Law should be disqualified for the following four reasons:

- (1) Pan did not bring a derivative action against Chen<sup>1</sup>;
- (2) Pan's counsel knew the case was unconstitutional under the 14<sup>th</sup> amendment;<sup>2</sup>
- (3) Pan's counsel committed fraud with his proposed order to the Commissioner<sup>3</sup>;
- (4) Pan's counsel knew the case involved federal limited jurisdiction.<sup>4</sup>

Each one of the Chens' arguments are false, and are not supported by any iota of evidence or law.

(i). Derivative Action Not Required.

The Chens appear to argue that Pan was required to bring a derivative action against GOCH.<sup>5</sup> The argument is nonsensical, and unfortunately appears to be a misunderstanding of the law on the part of the Chens. The statute states:

A member may bring a derivative action to enforce a right of a limited liability company if:

- (1) The member first makes a demand on the members in a

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<sup>1</sup> See Petitioners' Motion to Disqualify Counsel at p. 2.

<sup>2</sup> Id. at p. 2 and 3.

<sup>3</sup> Id. at p. 3.

<sup>4</sup> Id. at p. 4.

<sup>5</sup> See Petitioner's Motion to Disqualify at p. 2.

member-managed limited liability company, or on the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or  
(2) A demand would be futile.

Notably, the statute is permissive, and not a requirement under Washington law.

A derivative action is not required. Furthermore, this has no relevance as to whether Pan's counsel should be disqualified. No conflict of interest exists which mandates disqualification of Pan's counsel.

(ii). Temporary Restraining Order Was Proper.

The Chens raise no substantive legal argument as to why the TRO was improperly entered. Indeed, they cannot. It must be noted that Washington law allows individuals to seek ex-parte temporary restraining orders. It is well established Washington law that one who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him  
See Port of Seattle v. Int'l Longshoremen's & Warehousemen's

Union, 52 Wn.2d 317, 324 P.2d 1099 (1958). As discussed in further detail in the Respondents' Response to Chen's Petition for Review, Pan met the threshold requirements for issuance of the TRO.<sup>6</sup>

Accordingly, there was no due process violation.

(iii). The Chen Fails to State All Nine Elements Of A Fraud Claim and Pan's Counsel Did Not Commit Fraud.

While not evidently clear, the Chens appears to argue, without any factual basis, that Pan's counsel committed fraud by presenting a misleading proposed order to the Commissioner who issued the temporary restraining order. Therefore, Pan's counsel should be disqualified.<sup>7</sup> First, Notably, Chen fails to articulate the nine elements required to prove a fraud claim. The nine elements of fraud are: (1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by plaintiff. Each element of fraud must be

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<sup>6</sup> See Respondents' Answer to the Chen's Petition for Review at p. 13-15.

<sup>7</sup> See Petitioner's Motion to Disqualify at p. 3&4.



established by “clear, cogent and convincing evidence. Stiley v. Block, 130 Wn.2d 486, 925 P.2d 194 (1996).

“Clear, cogent and convincing evidence” denotes a quantum of evidence or degree of proof greater than a mere preponderance, but something less than proof beyond a reasonable doubt. Matter of Deming, 108 Wn.2d 82, 736 P.2d 639 (1987); see also Davis v. Department of Labor and Industries, 94 Wn.2d 119, 615 P.2d 1279 (1980).

The Chens fails to even articulate the nine elements of fraud. Simply put, neither Pan or Pan’s counsel engaged in fraud in this matter. Accordingly, the court should disregard this argument in its entirety.

(iv). Jurisdiction Exists in This Matter.

Peculiarly, the Chen’s request relief in the form of disqualification of counsel by the state supreme court, and then assert that the court lacks jurisdiction over this matter.<sup>8</sup> As discussed in great detail in the Response to the Chens’ Petition for Review, subject matter jurisdiction exists over this matter and there is no federal preemption.<sup>9</sup> The Chens’ request for relief with the state court, while simultaneously asserting that the same court lacks jurisdiction is preposterous.

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<sup>8</sup> Petitioner’s Motion to Disqualify at p. 3&4.

<sup>9</sup> See Respondents’ Answer to the Chen’s Petition for Review at p. 8-12.

Pan's attorneys have always maintained that jurisdiction exists in this matter because it does. No conflict of interest exists which mandates disqualification of Pan's attorneys.

(C). *The Chens Present No Legal Basis to Strike Respondents' Answer.*

Simply put, the Chens have presented no cognizant argument which proves disqualification of Pan's counsel is proper. The Chens have not articulated any conflict of interest which would mandate disqualification of Pan's counsel. Accordingly, there is no basis to strike Pan's Response to the Chens' Petition for Review filed on February 7, 2019.

#### IV. CONCLUSION

The Chens' substantial delay in filing the Motion to Disqualify mandates the denial of the motion. Furthermore, the Chens fail to articulate a basis for disqualification. Their allegations are false, baseless, and not supported by facts or law. Hence, the Chens' motion must be denied in its entirety.

Respectfully submitted this 5th day of March, 2019.

MDK Law

*/s/ Courtney D. Bhatt*

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## DECLARATION OF SERVICE

I certify that on March 7, 2019, I caused a true and correct copy of the foregoing to be served on the following in the manner indicated below:

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Dated: March 5, 2019

/s/ Courtney D. Bhatt  
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**March 05, 2019 - 3:04 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
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**The following documents have been uploaded:**

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