

FILED
SUPREME COURT
STATE OF WASHINGTON
8/7/2019 12:13 PM
BY SUSAN L. CARLSON
CLERK

97519-1

Court of Appeals Cause No. No. 78014-0-I

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

DAVID ESSIG,

Plaintiff and Respondent,

v.

MICHAEL LAI AND VEENY VAN, individually and the marital community comprised thereof; MICHAEL LAI d/b/a ML COMPANIES, INC., ML COMPANIES, LLC, a Washington limited liability company; USASIA PACIFIC, INC. a Washington corporation; PT HOLDING LCC, a Washington limited liability company; REALTY NETWORK TEAM, INC., a Washington corporation; SEATTLE MODERN LIVING, LLC, a Washington limited liability company; SEATTLE MODERN LIVING ON 35th LLC, a Washington limited liability company; and JOHN DOE COMPANIES, INC. 1-5,

Defendants and Petitioners.

MOTION TO EXTEND TIME FOR PETITION FOR REVIEW

Randy Baker, WSBA# 27421
Attorney at Law
2719 E. Madison St., Suite 304
Seattle WA, 98112
Tel. 206-325-3995
FAX 206-681-9991
Email bakerlaw@drizzle.com
Attorney for Petitioners

I. IDENTITY OF PETITIONERS

Petitioners are the defendants against whom judgment in the amount of \$555,861 was entered on January 24, 2018, and which judgment was affirmed by the Court of Appeals on July 8, 2019.

II. RELIEF SOUGHT

Pursuant to RAP 18.8 (b) petitioners request that this Court extend the time for filing the petition for review 44 days, from August 7, 2019 to September 20, 2019.

III. ARGUMENT

A. PETITIONERS SHOULD BE GRANTED AN EXTENSION OF TIME TO FILE THE PETITION FOR REVIEW

Petitioners request an extension of time to file the petition for review. The current due date is August 7, 2019. Petitioners request an extension of 44 days, until September 20, 2019.

The extension is requested for the following reasons. Petitioner Michael Lai, on behalf of all the defendants, has been negotiating with respondent and plaintiff David Essig to settle this case, since the court of appeals affirmed the judgment on July 8, 2019. Declaration of Michael Lai (hereinafter "Lai Declaration"), p. 1. Mr. Lai expected that these negotiations would conclude prior to the deadline for filing the petition for review. Lai Declaration, p. 1. However, Plaintiff Essig and his counsel postponed settlement discussions several times. Lai Declaration, p. 1.

As a result, on August 6, 2019, Petitioner Lai realized the negotiations likely would not conclude within the 30-day period in which a petition for review could be filed. Lai Declaration, p. 1. Accordingly, Petitioner Lai telephoned Randy Baker, the attorney who represented him in the appeal from the judgment in this case, and requested he file a petition for review. Lai Declaration, p. 1. Declaration of Randy Baker (hereinafter “Baker Declaration”), p. 1.

Attorney Baker advised he was unable to file a petition for review by the August 7, 2019 deadline. Lai Declaration, p. 1; Baker Declaration, p. 1. Attorney Baker must complete a complex appellant’s opening brief by September 6, 2019 in *People v. Archila*, Cal.Ct.App. No. H045662 in which the defendant has been convicted of 16 felonies and sentenced to prison for in excess of 225 years to life. Baker Declaration, p. 1. The Court in that case has ordered that no further extensions of time would be granted. Baker Declaration, p. 1. Petitioner Lai did not search for an attorney to file this petition who might be available sooner, because Attorney Baker is well acquainted with the record and issues in this case, and because Lai believes Baker will be able to effectively present the case for granting review to this Court. Lai Declaration, pp. 1-2.

Finally, review of the published decision in this case would allow this Court to decide the substantial question of whether the 1938 Wage

Rebate Act (RCW 49.52.050) was intended to punish and deter not only employers who fail to pay employees for the entirety of the work they have performed, but also, as the court of appeals found, to punish and deter employers who breach a bilateral contract to an employee, where the monies owed are not predicated on the employee having worked.

If this Court grants the requested 44-day extension of time, petitioners' counsel will timely file the petition for review in this case. Baker Declaration, p. 1.

IV. CONCLUSION

For the aforementioned reasons, petitioners' request for an extension of time to file the petition for review should be granted.

Dated: August 7, 2019

Randy Baker /s/, WSBA# 27421
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DECLARATION OF SERVICE

Essig v. Lai et al., No. 78014-0-I

I, Randy Baker, declare, I am above 18 years of age and not a party to the above titled suit. My business address is 2719 E. Madison St., Suite 304, Seattle, WA 98112.

On August 7, 2019 I served a copy of the attached Motion for Extension of Time to File Petition for Review on Respondent's counsel, Brian K. Keeley, through this court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Seattle, Washington on this 7th day of August 2019.

Randy Baker /s/

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Defendants and Petitioners.

DECLARATION OF RANDY BAKER IN SUPPORT OF
MOTION TO EXTEND TIME FOR PETITION FOR REVIEW

Randy Baker, WSBA# 27421
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Attorney for Petitioners

I, Randy Baker, make the following statement based upon personal knowledge.

I represented the petitioners in this case in the court of appeals and, if this Court grants the requested extension of time, I will write and file a petition for review of the court of appeals decision on their behalf in this Court.

I was contacted on August 6, 2019 by Petitioner Michael Lai and asked to file a petition for review in this case. I advised Mr. Lai I could not file the petition by the August 7, 2019 deadline.

I must complete a complex appellant's opening brief by September 6, 2019 in *People v. Archila*, Cal.Ct.App. No. H045662 in which the defendant has been convicted of 16 felonies and sentenced to prison for in excess of 225 years to life. The court of appeal in that case has ordered that no further extensions of time would be granted to file the appellant's opening brief. I explained to Mr. Lai that as a result of that deadline, I would require until September 20, 2019 to file a petition for review in this case.

If this Court extends time to file the petition for review until September 20, 2019, I will timely file the petition.

Accompanying this declaration and motion for extension of time is the Declaration of Michael Lai.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 7th day of August 2019.

Randy Baker, WSBA# 27421
Attorney at Law
2719 E. Madison St., Suite 304
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Tel. 206-325-3995
FAX: 206-681-9991
Email: bakerlaw@drizzle.com
Attorney for Petitioners
Michael Lai, et al.

DECLARATION OF SERVICE

Essig v. Lai et al., No. 78014-0-I

I, Randy Baker, declare, I am above 18 years of age and not a party to the above titled suit. My business address is 2719 E. Madison St., Suite 304, Seattle, WA 98112.

On August 7, 2019 I served a copy of the attached Declaration of Randy Baker on Respondent's counsel, Brian K. Keeley, through this court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Seattle, Washington on this 7th day of August 2019.

Randy Baker /s/

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Defendants and Petitioners.

DECLARATION OF MICHAEL LAI IN SUPPORT OF
MOTION TO EXTEND TIME FOR PETITION FOR REVIEW

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Attorney for Petitioners


I, Michael Lai, am an appellant and petitioner in the above-titled case. For approximately the past 28 days, following the July 8, 2019 decision of the Court of Appeals in this case, I have been negotiating on behalf of the appellants to settle this lawsuit with respondent and plaintiff David Essig. Until today I had been under the impression that we would reach an agreement in these negotiations within the 30 day period following filing of an opinion of the court of appeals in which a party may petition this Court for review.

However, Mr. Essig and his counsel have repeatedly postponed our negotiations, and it has become clear that we will not reach a settlement within this 30 day period. Accordingly, in order to preserve my right to petition this Court to consider this case for review, today I contacted Randy Baker, the attorney who represented the appellants in this case, and requested that he file a petition for review.

As a result of our conversation, I understand that he is unable to file the petition within the 30 day period ending August 7, 2019 due to a filing deadline in another case. I understand that as a result of that deadline, he is requesting the deadline for filing the petition for review in this case be extended until September 20, 2019. Since Attorney Baker is well acquainted with the record and the issues in this case, and as a result of working with him I believe he will effectively present the grounds for

review to this Court, I am relying on him to proceed with the petition, rather than to search at this point for alternate counsel who might be available sooner.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge. Executed in Seattle Washington on this 6th day of August 2019.

A handwritten signature in black ink, appearing to read "Michael Lai", written in a cursive style.

Michael Lai

DECLARATION OF SERVICE

Essig v. Lai et al., No. 78014-0-I

I, Randy Baker, declare, I am above 18 years of age and not a party to the above titled suit. My business address is 2719 E. Madison St., Suite 304, Seattle, WA 98112.

On August 7, 2019 I served a copy of the attached Declaration of Michael Lai in Support of Motion for Extension of Time to File Petition for Review on Respondent's counsel, Brian K. Keeley, through this court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Seattle, Washington on this 7th day of August 2019.

Randy Baker /s/

August 07, 2019 - 12:13 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: David Essig, Respondent v. Michael Lai and Veeny Van, et al., Appellants (780140)

The following documents have been uploaded:

- PRV_Affidavit_Declaration_20190807121149SC623697_2256.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Declaration of Michael Lai for Extension of Time.pdf
- PRV_Motion_20190807121149SC623697_0297.pdf
This File Contains:
Motion 1 - Extend Time to File
The Original File Name was Motion for Extension of Time for Petition for Review.pdf
- PRV_Other_20190807121149SC623697_1314.pdf
This File Contains:
Other - Declaration of Counsel
The Original File Name was Declaration of Randy Baker for Extension of Time .pdf

A copy of the uploaded files will be sent to:

- bkk@soslaw.com

Comments:

Sender Name: Randy Baker - Email: bakerlaw@drizzle.com
Address:
2719 E MADISON ST STE 304
SEATTLE, WA, 98112-4752
Phone: 206-325-3995

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