

FILED
SUPREME COURT
STATE OF WASHINGTON
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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 TO STAY
PROCEEDINGS; AND REMAND THE
FORWARDED MOTIONS, RESPONSES AND
REPLIES.**

I. Identity of Moving Parties

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

II. Legal basis

This motion is brought under RAP 17.7 (a).

III. Relief sought, Argument

In the Clerk's letter ruling filed July 11, 2022, the Clerk
stated:

“ The Court of Appeals has forwarded the
"PETITION FOR REVIEW OF APPELLANTS" filed
there on July 7, 2022, in the referenced matter. The
matter has been assigned the Supreme Court cause
number indicated above. The Court Appeals also
forwarded to this Court the
"PLAINTIFFS/APPELLANTS' MOTION TO MODIFY
CLERK'S ORDER FILED JUNE 7, 2022."

Moreover, on July 25, 2022, the clerk of the court
of appeals forwarded the motions to modify to the
Supreme Court as well.

On July 11, the Clerk of the Supreme Court
noted that “It appears as though the Court of Appeals
forwarded to this Court the motion to modify the clerk's

order along with the petition for review because the case there is now closed.”

The Clerk further noted, “As the Supreme Court cannot act on the motion to modify, the motion will be placed in the file without further action.” Because motions to modify have to be decided first by the court of appeals, and because justice will be better served by presenting all issues on appeal before the Supreme Court, and because there is no rule that precludes the court of appeals from deciding these motions, especially that this court has not denied nor accepted the discretionary review yet, RAP 12.7(a) Appellants move as follows:

- 1) to stay all proceedings in the Supreme Court pending decisions by the court of appeal on Appellant’s motions to modify; and
- 2) to remand, and direct the court of appeal to decide, all motions to modify whether filed, received and or forwarded by the court of appeal.

IV. Why the Supreme Court should grant Appellants' motion to remand to the Court of Appeals for rulings on Appellants' motions.

If the Supreme Court does not stay proceedings and return Appellants' motions to modify to the Court of Appeals, Appellants will not have the opportunity to argue those issues on this appeal. The ends of justice will be served by having all Appellants' motions ruled upon in the lower appellate court, as will the fact and appearance of fairness.¹

RULE 12.7(a) provides that the Court of Appeals loses the authority to change or modify its decision (1) upon issuance of a mandate in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9, (2) upon

¹ It is evident the court of appeals is reluctant to review any fact or record that implicate its Commissioner Hailey Landrus, who was and remains counsel of record of Defendants at the trial court. Indeed, Commissioner Landrus had and continued to actively procure decisions in favor of Defendants after she had assumed her position. She had been also been implicated in irregular filings in this matter on review: See, in the Supreme Court, the details of a motion for discretionary review of the court of appeal's denial of disqualification of Ms. Landrus filed in this court: Supreme Court No. 101135-1 – In the Matter of the Estate of Elsayed M. Elkhawwely, Court of Appeals No. 38201-0-III (consolidated with Nos. 38347-4-III and 38348-2-III). Also, see motions to modify forwarded by the clerk of the court of appeal.

acceptance by the Supreme Court of review of the decision of the Court of Appeals, or (3) upon issuance of a certificate of finality as provided in rules 12.5(e) and rule 16.15.(e). None of these events have occurred.

Further, the time for a petition for review does not commence until all motions for reconsideration are denied. See, RAP 13.4(a), which provides that a petition for review must be filed within 30 days of the date reconsideration is denied. Petitions for review are filed from "decisions terminating review". RAP 13.3(b); RAP 13.4(a). But where an order denies reconsideration of only one issue it is not an order "terminating review". *State v. Solberg*, 122 Wn.2d 688, 695-96, 861 P.2d 460, 464-65 (1993). It is therefore evident that the petition for review was premature and the court of appeal should render its decisions on the motions to modify before proceeding any further with the petition for review.

CONCLUSION

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

Certificate of Compliance

I certify that this document contains 727 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED: August 8, 2022.

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The following documents have been uploaded:

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