

No. 92349-3

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

REBECCA A. RUFIN,

Plaintiff/Petitioner,

v.

CITY OF SEATTLE and JORGE CARRASCO,

Defendants/Respondents.

REPLY IN
MOTION TO CONSOLIDATE CASES FOR REVIEW

THE SHERIDAN LAW FIRM, P.S.

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The respondents argue against consolidation, because this case involves consolidation owing to related facts. In the past, this Court has consolidated two separate appeals to determine related legal issues like, “whether a supervisor who discriminates against an employee can be held individually liable under Washington’s Law Against Discrimination,” after “two separate panels of the Court of Appeals, reached different conclusions.” *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 353, 20 P.3d 921, 923 (2001). The consolidation of those two separate cases, which happened to be on appeal at the same time, made sense because this Court could more completely analyze the legal issue presented to the Court by looking at the facts of each case, which were not significantly different, but which led to opposite results. *Id.* at 354-56.

Here, the respondents argue that consolidation should be denied, because the legal postures of the two cases are different involving, “different orders, different issues presented for review, different relevant records on appeal, and different underlying legal principles.” Response at 1-2. The respondents are correct that the procedural postures differ—one case was vetted and lost at the Court of Appeals, which affirmed the trial court’s decision to slice and dice evidence at summary judgment approving one failure to promote claim for trial and dismissing the other, even though the facts supporting each failure to promote claim involved

the same chain of command, the same time period, the same applicant, and the same evidence supporting pretext, then affirmed the trial court's decision to weaken the remaining failure to promote claim at trial by ruling that the jury could not hear the evidence of the second failure to promote claim, because the trial court had dismissed that claim at summary judgment, as though the legal principles supporting a summary judgment dismissal equated with the legal principles supporting the admission of relevant evidence at trial.

The second appeal, involving CR 60, was brought to the same trial court's attention while the first case was on appeal. The second appeal involves discovery of a smoking gun email during related Public Records Act litigation, which was not produced in discovery in the first case, and which contradicts sworn testimony of City of Seattle managers that was relied upon by the trial court at summary judgment and by the jury at trial of the remaining failure to promote claim. This second appeal is a direct appeal to the Supreme Court, because the facts are intertwined and important for the determination of the first appeal even though the posture is different.

Here, as in *Brown v. Scott Paper*, the two cases happen to be on appeal at the same time, and as in *Brown v. Scott Paper*, consolidation of the two cases will allow this Court to more completely analyze the legal

issues raised in the first appeal, by adding critical facts that further undermine the trial court's erroneous conclusions leading to the dismissal of one failure to promote claim while keeping the other claim for trial, but excluding evidence of the dismissed claim.

If the Court does not consolidate the two cases, they will proceed separately through the process, but this Court will be denying itself critical facts, which complete the picture that is this case, and the Court of Appeals, having already decided the first appeal, will in fact be slicing and dicing two cases that should have been heard together, but could not be heard together owing to the unfortunate differing timelines of each, and the second appeal will be a weakened presentation to the Court of Appeals, because the underlying legal issue was already heard. Only consolidation will provide for a "fair review." *See* RAP 3.3(b), and RAP 7.3.

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CONCLUSION

For the foregoing reasons, the Court should enter an order consolidating Supreme Court cases 92349-3 and 92915-7.

Respectfully submitted this 18th day of April, 2016.

THE SHERIDAN LAW FIRM, P.S.

By: s/ John P. Sheridan

John P. Sheridan, WSBA # 21473

Mark Rose, WSBA# 41916

Attorneys for Petitioner

DECLARATION OF SERVICE

Mark Rose states and declares as follows:

1. I am over the age of 18. I am competent to testify in this matter, and am an associate with Petitioner's attorney of record. I make this declaration based on my personal knowledge and belief.

2. On April 18, 2016, I emailed to the following attorneys:

Carolyn Boies Nitta
Molly Daily
City of Seattle Attorneys Office
600 Fourth Avenue, 4th Floor
Seattle, WA 98104

David Bruce
Matthew Rice
Savitt Bruce & Willey
1425 Fourth Avenue, Suite 800
Seattle, WA 98101

a copy of the REPLY IN MOTION TO CONSOLIDATE CASES FOR REVIEW.

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

DATED this 18th day of April, 2016, at Seattle, King County, Washington.

s/ Mark Rose
Mark Rose

OFFICE RECEPTIONIST, CLERK

To: Mark Rose
Cc: Jack Sheridan; dbruce@sbwllp.com; mrice@sbwllp.com; Carolyn.BoiesNitta@seattle.gov; molly.daily@seattle.gov
Subject: RE: Case No. 92349-3 - Rebecca A. Rufin v. City of Seattle, et. al.

Received 4-18-2016

Supreme Court Clerk's Office

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-----Original Message-----

From: Mark Rose [mailto:mark@sheridanlawfirm.com]
Sent: Monday, April 18, 2016 11:19 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Jack Sheridan <jack@sheridanlawfirm.com>; dbruce@sbwllp.com; mrice@sbwllp.com; Carolyn.BoiesNitta@seattle.gov; molly.daily@seattle.gov
Subject: Case No. 92349-3 - Rebecca A. Rufin v. City of Seattle, et. al.
Importance: High

Washington Supreme Court
Attention: Clerk of the Court

Re: Rebecca A. Rufin v. City of Seattle, et. al.
Supreme Court Case No. 92349-3

Attached please find for filing with the Court the Reply in Motion to Consolidate Cases for Review.

Respectfully submitted this 18th day of April 2016,

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