

**CASE NO. 76516-7-1**

**IN THE COURT OF WASHINGTON STATE  
SUPREME COURT**

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**CYRUS Y. KIM,**  
Petitioner,

vs.

**BEST BUY STORES, L.P.**  
Respondent.

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**PETITION FOR DISCRETIONARY REVIEW**

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Appeal from the order denying motion to modify of  
the appeals court (Division I) in 76516-7-1

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**OPENING BRIEF FOR PETITIONER**

Petitioner Cyrus Y. Kim Pro Se  
818 SW 347 PL  
Federal Way, WA 98023  
253 733-9479

July 25, 2017

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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**RCW 9a.52 090 (4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.**

**LCR 7(b)(7).....10**

**LCR 7(b)(7) (7) *Reopening Motions.* No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.**

## **I. IDENTITY OF PETITIONER**

Petitioner Cyrus Y. Kim Pro Se appeal from the order denying motion to modify of the appeals court (Division I) in 76516-7-1

## **II. CITATION TO COURT OF APPEALS DECISION**

The citation was that "We have considered the motion under RAP 17.7 and have determined that it should be denied."

## **III. ISSUES PRESENTED FOR REVIEW**

1. Can two different judges in the same court make controversial orders?
2. Does Washington law support a common law claim for punitive damages or bar punitive damages?
3. Can a trial court judge make a controversial order violating LCR 7(b)(7) against the previous judge?

## **VI. STATEMENT OF THE CASE**

**A. Best Buy employees' first extremely outrageous conduct caused punitive damage claim and unpaid paid data back-up fee for one year inflicted emotional distress for one year until receiving the paid data transfer fee.**

Petitioner Kim paid total \$214.93, \$54.99 for a new hard drive (SATA 3.5, 500 GB), \$99.99 for data transfer (backup) fee,

**\$49.99 for hardware install (labor), and sales tax of \$9.96 to fix my not-working computer on October 24, 2014.**

**Three days later, Best Buy called Kim the computer was fixed. The computer worked at the store but didn't work at home. Kim brought it back to the store. Next day after the phone that the computer was fixed, Kim walked 30 minutes to pick up it and another 30 minutes walk to the home because Kim had no car.. Best Buy employees showed it's working but it didn't work at home again. Likewise, Kim brought it back and forth five days five times, wasting one hour each time for the round trip, holding approximately 15 pound computer and five pound monitor. On the fifth day, Kim tried to work with the computer at home, no data were transferred. After calling to the store, Kim brought back the computer to the store. Supervisor Eddie Anderson tried to turn on the computer at the store but it didn't work again, nothing appeared on the monitor. He tried for ten or fifteen minutes and said, "pay \$199.99 more to fix this computer."**

**Argument started over the requesting to pay \$199.99 more without having fixed the computer. When Kim was refusing to pay \$199.99 more, the supervisor suddenly saying, "trespassing," expelled Kim and the not-fixed computer outside the store with**

other employees.

Next day, Kim called to other computer repair store, saying, "my computer works sometimes and does not work sometimes." The man said, "I can fix it. Bring it." When Kim asked the price of fixing computer and data transfer, the man said \$40 bucks.

Kim went to that store at Tukwila by bus. It took one hour.

The technician opened Kim's computer and said, "your computer has eight RAMs. One of them does not work. You don't need all eights." And then, he took out one RAM and looked at the monitor and backed it, took out another one and backed it. When he took out the third one, the window screen appeared in the monitor. He said, "this one works or synchronizes sometimes and sometimes not," the man threw it on the floor. He fixed less than five minutes and started to transfer the data on old hard drive to new hard drive. Less than 30 minutes, he fixed and transferred data but Best Buy could not fix the computer for more than a week and made Kim walk for five hours, holding more than 15 pounds computer and five-pound monitor and expelled Kim and the unfixed computer without transferring data from the old hard drive to new hard drive without refunding the paid data back up fee of \$99.99, saying, "trespassing."

Kim claimed punitive damage for this extremely outrageous conduct.

**B. Best Buy employees' second extremely outrageous conduct, violated RCW 9a.52.090, added punitive damage claim and false report of trespassing caused infliction of emotional distress for one year**

Kim filed a small claim suit with district court to receive the paid data transfer fee of \$99.99. The district judge dismissed the small claim case. The case was appealed to Seattle superior court. Kim entered Best Buy for the personal service of the notice of appeal (15-2-5636-1 SEA), opening brief, and notice of judicial assignment and date of consideration. When Kim said that I brought court documents to one man working at the repair department, he went other side inside the store. When Kim was waiting for a while, five or six employees led by Eddie Anderson, saying "trespassing," immediately expelled Kim outside the store, by pushing Kim forcefully approximate 15 yards with extreme body-force, violating RCW 9a.52.090.

**RCW 9a.52 090 (4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the**

premises was reasonable and necessary for service of the legal process. .

Next day, Kim mailed the documents to Best Buy.

Soon after Best Buy's false report of "trespassing," violated RCW 9a.52.090, two police officers of Federal Way police department came and one police officer started to read the above documents and the other police officer said it's not trespassing toward the employees who were waiting to see what's happening outside the store.

After having heard the police officer's words, three Best Buy employees entered the Best Buy, and then, the officer yelled to Kim, "stopped there, don't move" and talked to someone for a while through his handheld phone and then issued NOTICE OF TRESPASS (motion for discretionary review, appendix 1) for the reason Kim committed trespassing to the Best Buy, opened to the public, and ordered Kim not to enter the Best Buy for one year from March 24 2015.

Seattle Superior Court modified the district court ruling and ordered to pay \$99.99 to Kim.

Kim claimed punitive damage more for this extremely outrageous conduct, the unlawful act, violated RCW 9a.52.090, and



false report of trespassing and added the damage for emotional distress caused by unpaid data transfer fee for six months.

**C. Best Buy counsel's inflicted emotional distress**

Best Buy's counsel, John E. Zehnder, Jr. and John B. Stauffer, falsely notified July first hearing place as "Seattle courthouse only."

Kim departed home at 6:00 a.m. to take buses at Federal Transit Center because there was no bus to get the Seattle Courthouse. Seattle court house Clerk's office opens at 9:00 a.m. Kim tried to find the hearing place anxiously for approximately 30 minutes but there was no one to know the hearing place. Kim went to the window of family law and asked the hearing room. The Clerk said, "the judge by the name of Richard F. McDermott is not here" and Bailiff Lisa Tran gave the judge's room phone number of 206 477-1555. Kim called at 8:30 a.m. and left message and tried to find the bus stop to Kent but could not. While Kim was extremely anxious in a fluster moment to moment, relaxed defendant counsel was making the motion be granted in Kent courthouse.

Best Buy counsel's malicious falsehood caused to inflict emotional distress.

**D. Damage claims in detail**

(a). \$500,000 (five hundred thousand dollars) for the infliction of emotional distress for six months from November of 2014 until April of 2015 to receive the paid data transfer fee.

(b). \$2 million (two million dollars) for the infliction of emotional distress for one year from suspended Kim's fundamental right of liberty, which was guaranteed by Fourteenth Amendment to the Constitution, and which was caused by Best Buy employees' false report of trespassing, violated RCW 9a.52.090.

(c). \$500,000 (five hundred thousand dollars) for the infliction emotional distress by the Best Buy counsel's falsified the wrong hearing place.

(d). \$3 million (three million dollars) for punitive award to penalize the Best Buy employees and deter similar outrageous conduct, expelled Kim and the unfixed computer and the act which did not refund the paid data transfer fee, saying, "trespassing" and expelled Kim for personal service of court documents, saying, "trespassing" and reporting false report of committed trespassing.

**E. Trial court judge LeRoy McCullough denied to dismiss punitive damage claim.**

Previous superior court judge LeRoy partially granted respondent counsel's motion by dismissing the claims of (a) and

(c) (Motion for discretionary review Appendix 2, order granting in part defendant's motion to dismiss pursuant to CR 12(b)(6), p. 1) but denied to dismiss petitioner's claiming for the punitive damage against Best Buy employees' extremely outrageous conduct, ignoring respondent counsel's groundless assertion that in Washington, punitive damages are not available unless specifically provided by statute, no such statute is applicable in this matter and therefore such relief should be denied.

**F. A new trial court judge John McHale granted to dismiss punitive damage claim.**

Defendant's counsel reopened motion to strike on the same issue, asserting, "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck."

The new judge John McHale granted the motion to strike petitioner's punitive damage claim on the ground that, "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck." violating LCR 7(b)(7).

LCR 7(b)(7) clearly bars to reopen the motion on the same issue as follows:

**LCR 7(b)(7) (7) Reopening Motions.** No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.

Accordingly, judge LeRoy denied that in Washington, punitive damages are not available unless specifically provided by statute, no such statute is applicable in this matter and therefore such relief should be denied, but John McHale granted that "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck." On the same issue, two judges made controversial orders. Whose order was right?

**G. Appeals Court's doing nothing for the trial court's controversial orders**

Appeals Court, Division I, three-judge panel did nothing for trial court two judges' controversial orders. Thus, John McHale's granted motion, which violated LCR 7(b)(7), justified the groundless assertion that "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck."

We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby ORDERED that the motion is denied.

## **V. ARGUMENT**

### **Established basics for punitive damage**

**Rest. 2d, §908 Comment b established the basics for punitive damage as follows:**

**In ordinary negligence case, as opposed to intentional torts, punitive damages are not awardable, but even in negligence case, punitive damages usually awarded only where the defendant's conduct was "reckless" or "willful and wanton" because punitive damages are awarded to penalize the defendant, and deter similar wrongdoers, where the defendant's conduct is particularly outrageous.**

**Actually, in USA, no state has such laws barring punitive damages as common law claims. Rather, since the late 1980s, at least 15 states have attempted to put statutory controls on punitive damages about limits on the amount that may be awarded, payment of some of the award to the state instead of to the plaintiff, and tightening of the standard of proof beyond the usual "preponderance of the evidence" standard.**

**However, In the motion to strike, respondent counsel to support his groundless assertion, cited the case of *Broughton***

*Lumber Co. v. BNSF Ry. Co.*, 174 Wn.2d 619, 638, n. 14, 278 P.3d 173 (2012), which was against railroad defendant under timber trespass statute after fire caused by railroad grinding operations spread to owner's property and destroyed owner's trees. In that case, there was no extremely outrageous conduct . Thus, this case had nothing to support that in Washington, punitive damages are not available unless specifically provided by statute, no such statute is applicable in this matter and therefore such relief should be denied and that "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck."

The case of *Spokane Truck & Dray Co. v. Hoefer*, 2 Wash. 45, 25 P. 1072 (1891), which was a negligence case and the case of *Barr v. Interbay Citizens Bank*, 96 Wn.2d 692, 635 P.2d 441 (1982), which was the case taken title to automobile as collateral for loan extended to former owner, to whom title had been sent by mistake. Thus, these two cases had no extremely outrageous conduct, and thus, had nothing to support that "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck."

Judge LeRoy McCullough ignored or denied that in Washington, punitive damages are not available unless specifically provided by statute, no such statute is applicable in this matter and therefore such relief should be denied.

On the contrary, judge John McHale granted that "Washington law does not support a common law claim for damages and therefore Plaintiff's request for punitive damages should be struck," and made controversial orders on the same issue, violating LCR 7(b)(7).

The Appeals court the three- judge panel did nothing for the controversial orders on the same issue and did nothing the order violated LCR 7(b)(7).

## **VI. CONCLUSION**

From the controversial orders in the same court, it's necessary that Washington Supreme Court must establish the basics of whether or not Washington law does support a common law claim for damages or bar punitive damage claim against the extremely outrageous conduct.

Dated this on 25th day of July.

A handwritten signature in black ink, appearing to read "C. R. Smith", is written below the date.

**Cyrus Y. Kim, Petitioner, Pro Se  
818 SW 347 PL, Federal Way, WA 98023  
cykim@q.com  
253 733-9479**

## **APENDIX**

**A copy of Appeals Court decision**



THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

CYRUS Y. KIM,

Petitioner,

v.

BEST BUY STORES, LP,

Respondent.

No. 76516-7-1

ORDER DENYING  
MOTION TO MODIFY

Petitioner Cyrus Y. Kim has moved to modify the commissioner's April 24, 2017 ruling denying discretionary review. The respondent, Best Buy Stores, LP, has filed an answer, and petitioner filed a reply. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby ORDERED that the motion to modify is denied.

Done this 30th day of June, 2017.

Spencer J.

Man. J.  
Schiraldi, J.

FILED  
JUL 13 2017  
COURT OF APPEALS  
STATE OF WASHINGTON  
411 8:33

**APPEALS COURT, DIVISION I OF WASHINGTON FOR KING COUNTY**

|                        |   |                                 |
|------------------------|---|---------------------------------|
| CYRUS Y. KIM           | ) |                                 |
| Petitioner,            | ) | <b>No. 76516-7-1</b>            |
|                        | ) |                                 |
| v.                     | ) | <b>Notice of Appeal to</b>      |
|                        | ) | <b>Washington Supreme Court</b> |
| BEST BUY STORES, L.P., | ) |                                 |
| Respondent.            | ) |                                 |

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CYRUS Y. KIM, petitioner, seeks review the denied modifying ruling by Washington Supreme Court entered on 06-30-2017.

A copy of the decision is attached to this notice.

July 25th day, 2017



petitioner Cyrus Y. Kim, Pro Se

Cyrus Y. Kim, 818 SW 347 PL Federal Way, WA 98023, 253-733-9479  
Counsel for respondent 1102 Broadway, Suite 500 Tacoma, WA98402, 253-627-2247

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

CYRUS Y. KIM,

Petitioner,

v.

BEST BUY STORES, LP,

Respondent.

No. 76516-7-1

ORDER DENYING  
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Done this 30th day of June, 2017.

Spencer, J.

Man, J.  
Schiraldi, J.

2017 JUN 30 AM 10:33  
COURT OF APPEALS  
STATE OF WASHINGTON

**Appeals Court, Division I, King County of State of Washington**

Cyrus Y. Kim,  
Petitioner,

vs.

BEST BUY STORES, L.P.,  
Respondent.

**No.76516-7-1**

**Motion for Order Waiving or Reducing  
Interest on Legal Financial Obligations  
(MTAF)**

**I. Motion**

The undersigned requests the court to grant an order that waives or reduces interest on legal financial obligations. This motion is based on RCW 10.82.090 and the declaration below.

**Dated:** July 25th 2017



Signature

Cyrus Y. Kim  
Print Name

**II. Declaration**

I am the defendant in the above action and declare that:

2.1  I am asking the court to waive interest on the non-restitution legal financial obligations that accrued during total confinement because the interest creates a hardship for me or my immediate family.

I left total confinement on (date): \_\_\_\_\_

Amount of non-restitution LFO: \$ \_\_\_\_\_

Interest that accrued during total confinement: \$ \_\_\_\_\_

Basis for calculation of interest:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have attached my financial case history report from the court clerk.

2.2  I am asking the court to reduce interest on restitution. I have paid the restitution amount in full.

2.3  I am asking the court to waive or reduce interest on non-restitution legal financial obligations because the accrual of interest is causing a significant hardship and I have personally made a good faith effort to pay my legal financial obligations, as follows:

I paid the principal in full.

I made at least 15 monthly payments within an 18-month period (not counting mandatory deductions by the department of corrections.)

other: \_\_\_\_\_

2.4 The following is an accurate statement of my current financial situation:

|  |  |              |
|--|--|--------------|
| <b>2.4.1 Family</b>  |  |              |
| a. Persons whom I financially support: <input type="checkbox"/> Spouse <input type="checkbox"/> Children <input type="checkbox"/> Other NONE |  |              |
| b. List names, ages, relationship and address if different from yours:   |  |              |
| none   |  |              |
|  |  |              |
|  |  |              |
| <b>2.4.2 Employment</b>  |  |              |
| a. I am employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No.   | a. Is spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |              |
| b. Name and address of employer:   | b. Name and address of employer:   |              |
| N/A  | N/A  |              |
|  |  |              |
| c. Length of employment: N/A   | c. Length of employment: N/A   |              |
| d. Occupation: NONE  | d. Occupation: NONE  |              |
|  |  |              |
| <b>2.4.3 Income</b>  | <b>2.4.5 Expenses and Debts</b>  |              |
| a. Net monthly wages/salary (self):  | a. Monthly living expenses (itemized):   |              |
| b. Other source(s) of income (self): SSI   | Rent/House Payment: \$550  |              |
| c. Net monthly wages/salary (spouse):  | Food: \$160  |              |
| d. Other source(s) of income (spouse):   | Utilities: \$0   |              |
| <b>Total net monthly income:</b>   | Transportation: \$10   |              |
|  | Insurance: \$0   |              |
| <b>2.4.4 Assets</b>  | Medical & Dental: MEDICARE & MEDICAID  |              |
| a. Savings Accounts: \$0   | Other: storage fee \$60  |              |
| b. Checking Accounts: \$10   | Phone bill: \$30   |              |
| c. Stocks & Bonds: \$0   | b. Debts:  |              |
| d. Cash: \$7.00  | Name of Creditor   | Amount Owed: |
| e. Vehicles/boats/RV/motorcycles: NONE   | TARGA REAL ESTATE  | \$ 2,422.52  |
| f. Home equity: NONE   |  | \$           |
| (sale value less amount owed): \$0   |  | \$           |
| g. Other: \$0  |  | \$           |
|  |  | \$           |
|  |  |              |

|                           |  |
|---------------------------|--|
| <b>Total assets: \$17</b> | <b>Total expenses and debts: \$650</b> |
|---------------------------|--|

2.5 I believe the interest is causing me and/or my family a significant hardship because:

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

Signed at (city) SEATTLE, (state) Washington on (date) July 25, 2017.



Signature of petitioner

Cyrus Y. Kim  
Print Name

**Appeals Court, Division I, King County of State of Washington**

CYRUS Y. KIM,  
Petitioner,  
  
vs.  
  
BEST BUY STORES, L.P.,  
Respondent.

**No. 76516-1-1**

**Order to Waive or Reduce Interest  
on Legal Financial Obligations  
(ORWILFO)**

**I. Basis**

The court considered the defendant's Motion for Order Waiving or Reducing Interest on Legal Financial Obligations, declaration(s), testimony, if any, and reviewed the relevant court records.

**II. Findings**

- 2.1  The defendant  did  did not show that the interest that accrued during total confinement for this matter created a hardship for the defendant or the defendant's immediate family.
- 2.2  The defendant  has  has not paid restitution in full.
- 2.3  The defendant  did  did not make a good faith effort to pay defendant's non-restitution legal financial obligations and the defendant  has  has not shown that the accrued interest is causing a significant hardship.

**III. Order**

The court:

- 3.1  waives \$ \_\_\_\_\_, the interest on non-restitution legal financial obligations that accrued during defendant's total confinement for this matter.
  - 3.2  reduces interest on restitution to \$ \_\_\_\_\_.
  - 3.3  reduces interest that has accrued on non-restitution legal financial obligations to \$ \_\_\_\_\_.
  - 3.4  Other: \_\_\_\_\_
-

\_\_\_\_\_  
\_\_\_\_\_

Interest will continue to accrue after this order is entered unless the court has ordered otherwise.

The defendant shall remain under the jurisdiction of the court until the remaining balance, if any, is paid in full.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Judge/Print Name**

Presented by:



\_\_\_\_\_  
Signature of Petitioner

Cyrus Y. Kim  
Print Name