

FILED
SUPREME COURT
STATE OF WASHINGTON
6/2/2025 12:00 PM
BY SARAH R. PENDLETON
CLERK

No. 104029-6

Court of Appeals No. 58950-8-II

SUPREME COURT
OF STATE OF WASHINGTON

1200 HOWELL STREET, LLC,

Petitioner,

v.

SKANSKA USA BUILDING, INC.,

Respondent.

**AMICUS CURIAE MEMORANDUM OF THE LOW
INCOME HOUSING INSTITUTE**

MASTERS LAW GROUP, P.L.L.C.

Kenneth W. Masters, WSB 22278
Mail: 321 High School Road NE, D-3 #362
Office: 241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com

Attorneys for Amicus Curiae

TABLE OF CONTENTS

IDENTITY AND INTREST OF AMICUS	1
STATEMENT OF THE CASE	2
REASONS THIS COURT SHOULD ACCEPT REVIEW ..	3
A. LIHI agrees with the arguments set forth in the Petition for Review.....	3
B. LIHI – and low-income families across Washington – could be devastated if the appellate decision is not reversed.....	3
CONCLUSION.....	7

IDENTITY AND INTREST OF AMICUS

The Low Income Housing Institute (LIHI) is a nonprofit housing developer, building and operating affordable housing throughout the Puget Sound region since 1991. LIHI focuses on a wide range of affordable housing development, including (for example) Permanent Supportive Housing for homeless people; Affordable Workforce Housing for low-wage workers; Senior Housing; and Young Adult Homeless Housing. LIHI currently has 72 buildings in its portfolio, comprising roughly 3,700 affordable housing units. As further explained *infra*, all our projects are built with capital contributions from local municipalities and national/regional banks.

LIHI is gravely concerned about the potential effect of the appellate decision pending review. Permitting general contractors to give notice of cost impacts at the end of a project – rather than when those impacts occur – could be devastating. As a nonprofit housing developer and

steward of public resources, LIHI lacks the wherewithal to absorb cost overruns like (perhaps) more well-resourced private developers might.

LIHI strictly follows the cost contingency built into our projects, using the amounts spent (plus potential impacts disclosed by the contractor) to make decisions regarding project upgrades and add-ons that will improve the building quality for our tenants and to reduce the long-term project maintenance. As further detailed *infra*, the appellate decision could devastate LIHI's operations, potentially affecting many thousands of current and future low-income families all across Washington State.

This Court must grant review.

STATEMENT OF THE CASE

Amicus accepts the Statement of the Case in the parties' briefing, in the opinion, and in the Petition for Review.

REASONS THIS COURT SHOULD ACCEPT REVIEW

A. LIHI agrees with the arguments set forth in the Petition for Review.

Petitioner 1200 Howell Street, LLC, is ably represented by experienced appellate counsel. They have clearly set forth important issues for this Court to determine. LIHI agrees with their arguments and need not repeat them here. This Court should grant review of those important issues.

B. LIHI – and low-income families across Washington – could be devastated if the appellate decision is not reversed.

Beyond the general examples set forth above, two simple and practical examples may help the Court to see how harmful the appellate decision could be both to LIHI and to low-income families across Washington State: upgrading cabinet materials to plywood (instead of cheaper and less durable MDF) and upgrading countertops to solid surfaces (*e.g.*, quartz or engineered stone) instead of laminated countertops. The potential impacts are stark.

The decisions whether to make upgrades like these must be made roughly mid-way through constructing a building. LIHI looks at the current contingency amount, accounts for previous spending and potential change orders, and decides whether to make the upgrades. These are just two among (conservatively) hundreds of decisions that must be made during any construction projects.

Specifically, imagine that LIHI spends \$100,000 on upgrades like these based on the information from the contractor, who nonetheless issues a change order at the end of the project for an additional \$100,000 in costs related to (for example) earthwork at the beginning of the project. In this case, we may not have the additional \$100,000 after spending the contingency in good faith with input from the general contractor.

LIHI would then be on the hook for \$100,000 to ensure that we receive a final lien waiver from the contractor. That is of course necessary to complete the

project *under the terms of our nonprofit funding*. Indeed, LIHI receives financing from a variety of public and private sources that award funds to us with the expectation that we will manage and complete projects within budget. Funds recently have been competitively awarded to us for construction of affordable and homeless housing by the following public agencies and entities:

- Washington State Housing Finance Commission;
- Washington State Department of Commerce Housing Trust Fund;
- Thurston, Pierce, and King Counties;
- The Cities of Seattle, Tacoma, Bellevue, and Bainbridge Island;
- The US Department of Housing and Urban Development (HUD); and
- A Regional Coalition for Housing (ARCH).

Both LIHI and the public agencies have relied on the language in our construction contracts regarding timely notice for change orders, add-ons, and corrections. The entire system for calculating construction contingencies and for budgeting for publicly-funded low-income housing

could be upended if notice deadlines are no longer enforced. The ramifications for our operations could be dire, as we don't have any extra money. Apocalyptic may not be too strong a word.

As noted, LIHI could multiply these few examples by at least an order of magnitude, and likely by several orders of magnitude if one includes all the interim decisions we must make on all the thousands of units we build. Any inability to rely on the information we receive from our contractors likely hobbles our ability to move forward. But the implications for – among many other things – our nonprofit status are monumental.

LIHI asks this Court to please grant review of this important appellate decision that so far departs from this Court's jurisprudence in ***Mike M. Johnson***. Owners of all kinds depend on the stability of the law in this area. This Court should act to maintain that stability.

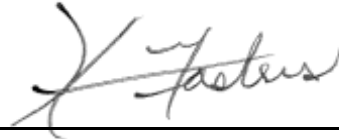
CONCLUSION

This Court should grant review.

The undersigned hereby certifies under RAP 18.17(2)(b) that this document contains **853** words.

RESPECTFULLY SUBMITTED this 2nd day of June,
2025.

MASTERS LAW GROUP, P.L.L.C.

A handwritten signature in dark ink, appearing to read "K. Masters", is written over a horizontal line.

Kenneth W. Masters, WSB 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com

Attorneys for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that I caused the filing and service of the foregoing **AMICUS CURIAE MEMORANDUM OF THE LOW INCOME HOUSING INSTITUTE** on the 2nd day of June, 2025 as follows:

Counsel for Petitioner 1200 Howell Street, LLC

Howard M. Goodfriend	<input type="checkbox"/>	U.S. Mail
Smith Goodfriend, P.S.	<input checked="" type="checkbox"/>	E-Service
1619 8 th Avenue North	<input type="checkbox"/>	Facsimile
Seattle, WA 98109-3007		
howard@washingtonappeals.com		
cate@washingtonappeals.com		
adrienne@washigntonappeals.com		

Karl F. Oles	<input type="checkbox"/>	U.S. Mail
Bart W. Reed	<input checked="" type="checkbox"/>	E-Service
Evan A. Brown	<input type="checkbox"/>	Facsimile
Stoel Rives, LLP		
600 University Street, Suite 3600		
Seattle, WA 98101		
karl.oles@stoel.com		
bart.reed@stoel.com		
evan.brown@stoel.com		

Counsel for Respondent Skanska USA Building, Inc.

Scott R. Sleight	<input type="checkbox"/>	U.S. Mail
Kristina Southwell	<input checked="" type="checkbox"/>	E-Service
Ahlers, Cressman & Sleight, PLLC	<input type="checkbox"/>	Facsimile
1325 Fourth Avenue, Suite 1850		
Seattle, WA 98101		
scott.sleight@acslawyers.com		
kristina.southwell@acslawyers.com		
masaki.yamada@acslawyers.com		
dianna.hubacka@acslawyers.com		

Jeanette M. Petersen	<input type="checkbox"/>	U.S. Mail
PWRFL	<input checked="" type="checkbox"/>	E-Service
1001 Fourth Avenue, Suite 4131	<input type="checkbox"/>	Facsimile
Seattle, WA 98154		
peterston@pwrfl-law.com		
madison@pwrfl-law.com		

Counsel for Third and Fourth Party Defendants

Counsel for Third-Party Defendant

Fidelity & Deposit Co. of Maryland

Larry Glosser	<input type="checkbox"/>	U.S. Mail
Ahlers, Cressman & Sleight, PLLC	<input checked="" type="checkbox"/>	E-Service
1325 Fourth Avenue, Suite 1850	<input type="checkbox"/>	Facsimile
Seattle, WA 98101		
Larry.Glosser@asclawyers.com		

Counsel for Third-Party

Defendant/Fourth-Party Plaintiff Sound

Glass Sales, Inc.

Terence J. Scanlan	<input type="checkbox"/>	U.S. Mail
Ana-Maria Popp	<input checked="" type="checkbox"/>	E-Service
Patricia A. Laughman	<input type="checkbox"/>	Facsimile
Cairncross & Hemplemann, PS		
524 Second Avenue, Suite 500		

Seattle, WA 98104-2323
tscanlan@cairncross.com
apopp@cairncross.com
plaughman@cairncross.com

*Counsel for Fourth-Party Defendant
Eckersley O'Callaghan & Partners*

J. Scott Wood
James D. Hicks
Joshua Tinajero
Sinars Slowikowski Tomaska
55 West Monroe, Suite 4000
Chicago, IL 60603
swood@woodgrlaw.com
jhicks@sinarslaw.com
joshua.tinajero@jacksonlewis.com

____ U.S. Mail
x E-Service
____ Facsimile

*Counsel for Fourth-Party Defendant
Kawneer Company, Inc.*

Ashley E.M. Gammell
K&L Gates, LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Ashley.gammell@klgates.com

____ U.S. Mail
x E-Service
____ Facsimile

*Counsel for Fourth-Party Defendant
Mettemeyer Engineering, LLC*

David Davidson, Esq.
O'Hagan Meyer
4695 MacArthur Court, Suite 210
Newport Beach, CA 92660
davidson@ohaganmeyer.com

____ U.S. Mail
x E-Service
____ Facsimile



Kenneth W. Masters, WSB 22278
Attorney for Amicus Curiae

MASTERS LAW GROUP

June 02, 2025 - 12:00 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 104,029-6
Appellate Court Case Title: Skanska USA Building Inc. v. 1200 Howell Street, LLC

The following documents have been uploaded:

- 1040296_Briefs_20250602115755SC034170_3896.pdf
This File Contains:
Briefs - Amicus Curiae
The Original File Name was Amicus Curiae Memorandum - Low Income Housing Institute.pdf

A copy of the uploaded files will be sent to:

- Joshua.tinajero@jacksonlewis.com
- Larry.Glosser@acslawyers.com
- Petersen@pwrfl-law.com
- andrienne@washingtonappeals.com
- apopp@cairncross.com
- ashley.gammell@klgates.com
- bart.reed@stoel.com
- cate@washingtonappeals.com
- cmacrae@williamskastner.com
- ddavidson@ohaganmeyer.com
- dianna.hubacka@acslawyers.com
- ebrown@groffmurphy.com
- evan.brown@stoel.com
- howard@washingtonappeals.com
- jhicks@sinarlaw.com
- jschiewe@cairncross.com
- kara@appeal-law.com
- karl.oles@stoel.com
- karrie.fielder@stoel.com
- kcoselman@Cairncross.com
- ken@appeal-law.com
- kristina.southwell@acslawyers.com
- madison@pwrfl-law.com
- masaki.yamada@acslawyers.com
- office@appeal-law.com
- plaughman@cairncross.com
- rhonda.hinman@klgates.com
- scott.sleight@acslawyers.com
- swebster@Cairncross.com
- swood@woodgrlaw.com
- trang.nguyen@acslawyers.com
- tscanlan@cairncross.com

Comments:

AMICUS CURIAE MEMORANDUM OF THE LOW INCOME HOUSING INSTITUTE

Sender Name: MLG Paralegal - Email: paralegal@appeal-law.com

Filing on Behalf of: Kenneth Wendell Masters - Email: ken@appeal-law.com (Alternate Email: office@appeal-law.com)

Address:

241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20250602115755SC034170