

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Sep 01, 2015, 5:00 pm  
BY RONALD R. CARPENTER  
CLERK

E CPJ  
RECEIVED BY E-MAIL

**IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION I**

JOHN R JOHNSTON and  
DARCEE L FOX-JOHNSTON,

Respondents,

vs.

PETER A. TORKILD, JULIA A.  
TORKILD, and FIRST CAPITAL,  
INC.,

Appellants.

Supreme Court No.  
91864-3

Court of Appeals No.  
70719-1-1

**RESPONSE TO MOTION  
AND ARGUMENT FOR  
EXTENSION OF TIME**

**INTRODUCTION**

This appeal involves a judgment against Appellants Peter and Julia Torkild for fraudulently obtaining John and Darcee Johnston's residence through a foreclosure rescue scam. Mr. Torkild used a series of false promises and his professional



**ORIGINAL**

FILED AS  
ATTACHMENT TO EMAIL

**BURIFUNSTON  
MUMFORD**  
attorneys@law

BurifunstonMumford, PLLC

1601 F Street  
Bellingham, Washington 98225  
P 360.752.1500 | F 360.752.1502

credentials as an attorney, mortgage broker, and real estate agent to induce the Johnstons to rely on him to save their home. Ms. Torkild actively assisted Mr. Torkild with the scheme. Instead of helping the Johnstons, the Torkilds, through a series of transactions stole the Johnstons equity, collected rent, and then eventually evicted them from their own home while making the arrangement appear legitimate on paper. The Whatcom County Superior Court entered judgment of \$754,766.04 against the Torkilds based on the Johnstons' claims for Fraud, Violations of the Consumer Protection Act, The Deed of Trust Act, and the Mortgage Broker Protection Act. Although The Whatcom County Superior Court entered 285 Findings of Fact, the Torkilds only challenged only 16 of those findings in an unsuccessful appeal to Division I of the Court of Appeals, in which the court affirmed the underlying judgment. The decision terminating review was filed on May 20, 2015. On June 23, 2015, the Torkilds filed their Petition for Discretionary Review.

### **THE PETITION FOR REVIEW IS UNTIMELY**

A Motion for Discretionary review must be filed within 30 days of the decision terminating review. RAP 13.5(a). The time limits for seeking discretionary review are rigidly enforced. In re

Carlstad, 114 Wash. App. 447, 455, 58 P.3d 301, 305 (2002), as corrected (Dec. 6, 2002), aff'd, 150 Wash. 2d 583, 80 P.3d 587 (2003), (Carlstad's personal restraint petition arrived at this court for filing one day after the statutory deadline for filing of personal restraint petitions. Accordingly, it was not timely filed. The result of an untimely petition is dismissal id.

RAP 18.6 provides in pertinent part:

(c) Filing by Mail. Except as provided in GR 3.1, a brief authorized by Title 10 or Title 13 is timely filed if mailed to the appellate court within the time permitted for filing. Except as provided in GR 3.1, any other paper, including a petition for review, is timely filed only if it is received by the appellate court within the time permitted for filing.

The Petition for Review was required to be received by the Court on or before Friday, June 19, 2015. It was not received by the court until Tuesday, June 23, 2015.

The Torkilds argue that their failure to timely file the Petition for Review should be excused because they believed that they were allowed an additional three (3) days for mailing. This argument fails for two reasons. First, the petition was four (4) days late, so even if they were allowed an additional three days the Petition would have still been untimely. Second, the Rule has different filing deadlines for briefs and other pleadings, and

Petitions for Review. The Torkilds simply failed to understand and comply with the requirements of RAP 18.6 (c).

RAP 18.8 (b) is an exception to the general rule of liberal construction of the appellate rules. This is because, as explained in the express language of the rule:

The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section.

An extension of time for filing an original Petition for Review should only be granted upon a showing of extraordinary circumstances. The Torkilds have made no such showing. Indeed, they admit that they were able to timely file other pleadings even though they have been working in rural Vietnam. They also admit that they are not entitled to rely on statements made by court staff.

### CONCLUSION

The language of the rules is clear, and the case law is consistent. Cases in more compelling circumstances have been dismissed due to failure to comply with the court rules. Accordingly, the Motion to Extend Time should be denied and the

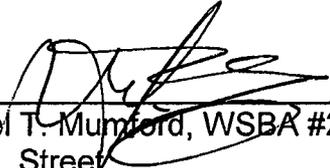
///

///

Petition for Discretionary Review Dismissed.

DATED this 1<sup>st</sup> day of September, 2015.

BURI FUNSTON MUMFORD, PLLC

By   
Michael T. Mumford, WSBA #28652  
1601 F. Street  
Bellingham, WA 98225  
360/752-1500

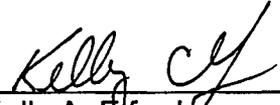
### DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Respondents' Response to Motion and Argument for Extension via email and U.S. Mail to:

Peter Torkild and Julia Torkild  
PO Box 268  
Moses Lake, WA 98837

(Email pursuant to an email service agreement between the parties at: Legalmatters86@yahoo.com)

DATED this 1 day of September, 2015.

  
\_\_\_\_\_  
Kelly A. Elford

## OFFICE RECEPTIONIST, CLERK

---

**To:** Kelly Elford; legalmatter86@yahoo.com; spencerm@bbaylaw.com  
**Cc:** Goldmann, Wendy  
**Subject:** RE: Case #91864-3 Response to Motion for Extension

Received on 09-01-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Kelly Elford [mailto:Kelly@burifunston.com]  
**Sent:** Tuesday, September 01, 2015 4:55 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; legalmatter86@yahoo.com; spencerm@bbaylaw.com  
**Cc:** Goldmann, Wendy <Wendy.Goldmann@courts.wa.gov>  
**Subject:** Case #91864-3 Response to Motion for Extension

Please see the attached Response to Motion for Extension.

Kelly A. Elford  
BURI FUNSTON MUMFORD, PLLC  
1601 F. Street  
Bellingham, WA 98227  
(360) 752-1500