

Supreme Court No. 93601-3

SUPREME COURT
OF THE STATE OF WASHINGTON

ROLFE GODFREY and KRISTINE GODFREY, husband
and wife and their marital community composed thereof,

Plaintiffs-Respondents,

v.

STE. MICHELLE WINE ESTATES, LTD. dba
CHATEAU STE. MICHELLE, a Washington Corporation;
and SAINT-GOBAIN CONTAINERS, INC.,

Defendants-Petitioners,

AND

ROBERT KORNFELD,

Additional Appellant.

**ANSWER TO MOTION FOR EXTENSION OF TIME FOR ANSWER
TO PETITION FOR REVIEW**

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and Saint-Gobain Containers, Inc.*

On September 14 Defendants filed their Petition for Review and simultaneously moved to have their petition linked for consideration with the Petition for Review and Answer to the Petition for Review in *State v. Lile*, 193 Wn. App. 179, 373 P.3d 247 (2016), which were then set for consideration on the Court's September 29 *en banc* calendar. This Court, by a letter from Clerk Carlson issued on September 16, stated that the members of the Court would be advised of Petitioners' motion, and set a due date of October 14 for any answer to the motion to link, the same day when Plaintiffs' Answer to Defendants Petition would be due.¹

On September 29 this Court in *Lile* granted review of the judicial disqualification issue raised in that case which is substantially the same as the issue that Defendants have raised in their Petition for Review. As Defendants stated in their Motion to Link and their Supplement to that motion, *Lile* presents that issue in a criminal procedure context while Defendants seek review of that issue in a civil procedure context; considering the issue in both contexts simultaneously will allow this Court to resolve the conflict amongst its decisions and also to consider whether there should be a different analysis for criminal and civil cases based either on the governing rules or due process concerns unique to either context. Defendants have urged this Court to take whatever steps it deems

¹ Clerk Carlson's letter also stated that this Court does not "link" cases, but does from time to time set cases as "companions" to be argued on the same day. Defendants appreciate that clarification of this Court's procedures. They will continue to refer to their motion as one to link only because that is the title the motion was given when made to this Court.

appropriate so that, following a grant of review in this case, the issue of judicial disqualification raised in both cases can be considered simultaneously (e.g., by treating the two cases as companion cases that will be set for argument on the same day).

Yesterday, three days in advance of the due date of their Answer to Defendants' Petition, Plaintiffs moved for what they described as a 30 day extension of the due date for that answer, to Monday, November 14, 2016.² Defendants do not object to the requested extension, as such. Defendants are concerned, however, that granting the motion in advance of when Plaintiffs must answer the Motion to Link could prejudice the Court's ability to set this case and *Lile* for argument as companion cases during the Court's 2017 Winter Term.

The undersigned counsel is aware that this Court is already in the process of selecting cases to be heard on several of the earlier argument days of that Term (having received one of those notices in another case in which the petition for review was granted on September 27). The undersigned counsel is also aware that this Court has not yet issued such a letter for *Lile* (having checked with the Clerk's office yesterday afternoon to ascertain whether such a letter had been issued for that case).

Plaintiffs state in their motion for an extension of the due date for their answer this this case has not been set for accelerated consideration of

² A 30 day extension would fall due on Sunday, November 13. Defendants assume that the request for what is actually a 31 day extension is due to the requirement under the counting rules that, when an action would fall due on a weekend day, the due date will be moved to the next court day -- here, Monday, November 14.

Defendants' petition. While this is correct as far as it goes, Defendants observe that such an acceleration is one of the options that this Court could select in order to bring about a setting of this case and *Lile* for argument as companion cases.

As stated, Plaintiffs answer to the motion to link is due this coming Friday, October 14. Defendants hereby commit to the filing of their reply in support of that motion no later than noon, the following Monday, October 17. Defendants request that this Court withhold taking action on Plaintiffs' extension request until the briefing on the motion to link has been completed, and the Court has had an opportunity to consider the merits of that motion. In light of the question of acceleration raised by Plaintiffs' in their motion for an extension, Defendants also hereby commit to filing any reply to Plaintiffs' answer to Defendants' petition, to which Defendants may be entitled under RAP 13.4(d), within the 15 day period allowed for the preparation and submission of such reply and not to seek any extension of time for the filing of that reply.

Respectfully submitted this 12th day of October, 2016.

**CORR CRONIN MICHELSON
BAUMGARDNER FOGG & MOORE
LLP**

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By: Michael B. King
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And,

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NO. 46963-4-II

DECLARATION OF
SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the *Answer to Motion for Extension of Time for Answer to Petition for Review* on the below-listed attorney(s) of record by the method(s) noted:

Email and first-class United States mail, postage prepaid, to the following:

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DATED this 12th day of October, 2016.



Patti Saiden, Legal Assistant

CARNEY BADLEY SPELLMAN

October 12, 2016 - 9:47 AM

Transmittal Information

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Appellate Court Case Number: 93601-3
Appellate Court Case Title: Rolfe and Kirstine Godfrey and Robert Kornfeld v. Ste. Michelle Wine Estates, Ltd., et al.

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