

21-6835

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

DEC 07 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Roland Ma — PETITIONER
(Your Name)

vs.

Gallery Belltown Condo. Ass'n — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of the State of Washington
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roland Ma
(Your Name)

99 Wall Street
(Mailing Address)

New York NY 10005
(City, State, Zip Code)

(206) 414-0000
(Phone Number)

QUESTION(S) PRESENTED

1. Does the Homeowner Association has the jurisdiction to eject a homeowner from his own home, living there since July 12, 2011?
2. Does the trial court has the jurisdiction to issue a Preliminary Injunction without an injunction bond, or any other types of security prohibit the homeowner to enter his home, retrieve his personal belongings and effects?
3. The presiding Judge has prejudice and personal bias against the undersigned Petitioner, does the Presiding Judge require to recuse him/herself, based on the prima facie evidences presented?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Decision of State Court of Appeals
APPENDIX B	Decision of State Trial Court
APPENDIX C	Decision of State Supreme Court Denying Discretionary Review
APPENDIX D	Order of State Supreme Court Denying Rehearing by the 3-judge Panel

TABLE OF AUTHORITIES CITED

CASES

Any other motion filed in a brief will not be considered by the court. *Brower v. State*, 137 Wn.2d 44, 76, 969 P.2d 42 (1998). The moving party must show that the equities require the maintenance of the status quo to preserve the fruits of the appeal. *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985). The appellate court applies a sliding scale under which the greater the injury the moving party would suffer if a stay is not granted, the lesser the showing of a debatable issue need be. *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716 P.2d 956 (1986), rev'd on other grounds, 108 Wn.2d 38 (1987). If the fruits of an appeal would be totally destroyed in the absence of a stay, then a stay should be granted, unless the appeal is totally devoid of merit. *Boeing Co.*, 43 Wn. App. at 291.

STATUTES AND RULES

Motions may relate to concerns outside the record on appeal, RAP 9.11 does not apply to supporting papers. Judgments that do not resolve all claims as to all parties are not subject to an appeal as a matter of right without CR 54(b) and RAP 2.2(d) determinations and findings establishing that there is no just cause for delay. See *Pepper v. King County*, 61 Wn. App. 339, 810 P.2d 527 (1991). When moving to modify a Court commissioner's ruling on a motion on the merits, the party receives *de novo* review of the Court Commissioner's ruling from a three-judge panel. *State v. Rolax*, 104 Wn.2d 129, 133 (1985)

Homeowners can be exempt from the requirements to obtain a license or use a certified electrician as provided under RCW 19.28.261

RCW 4.12.050: Notice of disqualification:

(1) Any party to or any attorney appearing in any action or proceeding in a superior court may disqualify a judge from hearing the matter, subject to these limitations:

(a) Notice of disqualification must be filed and called to the attention of the judge before the judge has made any discretionary ruling in the case.

(b) In counties with only one resident judge, the notice of disqualification must be filed not later than the day on which the case is called to be set for trial.

(c) A judge who has been disqualified under this section may decide such issues as the parties agree in writing or on the record in open court.

(d) No party or attorney is permitted to disqualify more than one judge in any matter under this section and RCW 4.12.040.

(2) Even though they may involve discretion, the following actions by a judge do not cause the loss of the right to file a notice of disqualification against that judge: Arranging the calendar, setting a date for a hearing or trial, ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings under CrR 3.2.1, arraigning the accused, fixing bail, and presiding over juvenile detention and release hearings under JuCR 7.3 and 7.4.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Court of Appeals of the State of Washington court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Supreme Court.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date:
12/01/2021, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Root cause: Pre-filing restrictions imposed by Hon. Judith H Ramseyer, a King County Superior Court Judge.

De Long v. Hennessey, 912 F.2d 1144 (9th Cir. 1990)

Holding that vexatious litigant orders "must be narrowly tailored to closely fit the specific vice encountered." *Hammler v. Hudson*, No. 2:16-cv-1153-JAM-EFB P (E.D. Cal. Mar. 13, 2018)

Holding that prior to ordering pre-filing restrictions a litigant must be given notice, an opportunity to oppose the order, that the Court must create an adequate record for review, and that the Court must make a finding of frivolousness. *Sage Home Mortg., LLC v. Roohan*, Case No.: 17-cv-1613-AJB-JMA (S.D. Cal. Sep. 22, 2017)

Holding that the district court abused its discretion when it did not make a finding that "the number of complaints was inordinate" to justify a finding of frivolousness, where the plaintiff had filed three related habeas petitions and two post-judgment motions. *Womack v. San Diego Metropolitan Transit Development Board*, CASE NO.14cv1929 WQH (DHB) (S.D. Cal. Dec. 5, 2014)

Finding due process violation where plaintiff "was not provided with an opportunity to oppose the order before it was entered". *Smith v. U.S.*, 386 F. App'x 853 (11th Cir. 2010)

Finding that before a district court issues a pre-filing injunction against a pro se litigant, it must make a finding that the litigant's actions were "frivolous" and "harassing in nature." *Hammler v. Aviles*, Case No.: 17-CV-1185-AJB(WVG) (S.D. Cal. Nov. 21, 2019)

Finding order enjoining any future filing by plaintiff in any case was overly broad where not restricted to actions with issues parallel to those that plaintiff persisted in litigating. *AT&T Mobility LLC v. Yeager*, No. 2:13-cv-00007-KJM-DB (E.D. Cal. Mar. 30, 2018)

Finding an order preventing the plaintiff from filing any suit in a particular district court overbroad. *Missud v. Nevada*, 861 F. Supp. 2d 1044 (N.D. Cal. 2012)

STATEMENT OF THE CASE

On May 14, 2021, the Plaintiff, Gallery HOA, filed a Complaint against Defendant, Roland Ma seeking injunctive relief and damages, and alleging claims for: (1) Property Damage, (2) Violation of the Washington Condominium Act, and (3) Violation of the Gallery Belltown Condominium Declaration.

More specifically, the Complaint alleges that Roland Ma performed unauthorized electrical modifications to Unit # 515 at the Gallery Belltown Condominium ("Unit").

The Court granted Plaintiff's Ex-Parte Temporary Restraining Order on May 17, 2021, and then a Preliminary injunction on Jun 23, 2021, enjoining Mr. Ma from:

- (1) Doing any additional work to the Unit,
- (2) Interfering with, touching or modifying any work the HOA or their contractors perform in the Unit,
- (3) Prohibiting Mr. Ma from preventing or hindering ingress or egress of Gallery's staff or contractors to perform repairs at the Unit or Gallery common elements,
- (4) Preventing Mr. Ma from entering Unit 515 while urgent and necessarily electrical work is conducted,
- (5) Preventing Mr. Ma from contacting, approaching, threatening, or harassing Gallery Board members, management and staff.

The Court has not issued any orders or rulings regarding the Complaint's other non-injunctive claims, which remain active. Insurance company assigned defense counsel, Thomas Dickson, Esq. Plaintiff is Gallery Belltown Condominium Association. Gallery Belltown Condominium ("Condominium") is a mixed use condominium in the Belltown neighborhood of Seattle, consisting of a multi-story building housing some retail units, as well as 236 residential units, and common areas. The Condominium was created in 2008 by the recording of a Declaration of Covenants, Conditions and Restrictions" (hereinafter "Declaration" or "CC&Rs"), which was recorded on August 21, 2008, and has been amended five times. The Condominium is operated and managed by Plaintiff, the Condominium Association, through its Board of Directors. The Declaration sets forth various requirements for repairs to the Units, and also requires occupants to obtain the approval of the Condo Association prior to such repairs.

Plaintiff is represented by Samantha Brown of Barker Martin, and Donna Young of Lee Smart.

REASONS FOR GRANTING THE PETITION

Roland Ma is the owner of the Unit 515, and his business Handsomeland, LLC, which he runs out of his Unit. Mr. Ma performed some electrical modifications by obtaining an over-the-counter permit from the City, per RCW 19.28.261, however, he did not obtain prior approval from the HOA to perform these modifications.

Mr. Ma was acting pro se in this matter in the early beginning, but due to the pre-filing restrictions imposed by Hon. Judith Ramseyer, all filing and pleadings are removed due to the 5-page limitation, causing him be homeless nearly seven (7) months now with no progress at all, jury demand has been paid and requested, but because of the prejudice and personal bias of the presiding Judge, he had exhausted all remedies. He had no choice other than retained attorney Thomas Dickson to represent him in this matter, and currently have an outstanding \$150k attorney's fee, but the alleged damages is only \$120k.

The Court further prohibited Mr. Ma from residing at the unit during all remediation work needed to repair the damage, but instead of remediation, HOA demolished his unit without permit, and currently stuck at a situation that the City is denying to issue any type of permits due to the earlier unpermitted work, which is authorized by the HOA, and in all of the permit application, HOA has been claiming and acting as the homeowner of the unit.

With the currently situation, does the trial court has the jurisdiction in the beginning to issue a Preliminary Injunction without an injunction bond, or any other types of security prohibit the homeowner to enter his home, retrieve his personal belongings and effects? CR65(c) stated no Preliminary Injunction can be issued without notice and security (such as an injunction bond)

Secondly, the presiding Judge has prejudice and personal bias against the undersigned Petitioner, does the Presiding Judge require to recuse him/herself, based on the prima facie evidences presented? If not, can either party (or defendant in this case) appeal or seek review of denial of disqualification under RCW 4.12.050?

"In Washington, every court of justice has inherent power to control the conduct of litigants who impede the orderly conduct of proceedings." *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849 (2008); RCW 2.28.010(3) ("Every court of justice has power . . . [t]o provide for the orderly conduct of proceedings before it or its officers."). "Accordingly, a court may, in its discretion, place reasonable restrictions on any litigant who abuses the judicial process." *Yurtis*, 143 Wn. App. at 693.

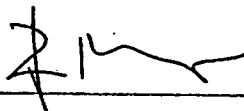
The undersigned petitioner was hoping the Washington Courts can adopt the Ninth Circuit opinion in *De Long v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990). De Long addressed a federal district court order enjoining a habeas corpus petitioner from filing any further actions or papers with the court without leave of the court's general duty judge. The Ninth Circuit vacated the order because the record did not show the petitioner was given an opportunity to oppose the order before its entry, the district court failed to create an adequate record for review and failed to make a substantive finding as to the frivolous or harassing nature of the petitioner's actions, and the order was not narrowly tailored. The court remanded to the district court to apply the criteria set forth in the opinion.

However, the Ninth Circuit's decision may be persuasive authority but is not binding on Washington courts on Washington court's authority to control the conduct of litigants who impede the orderly conduct of proceedings before it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12/12/21