

Case No. 21-649

IN THE SUPREME COURT OF THE UNITED STATES

From the Supreme Court of Illinois, No. 127463, 127472

WALDER VACUFLO, INC., Petitioner

v.

THE ILLINOIS HUMAN RIGHTS COMMISSION, MARK WATHEN and
TODD WATHEN, Respondents.

EMERGENCY APPLICATION FOR STAY
ADDRESSED TO JUSTICE AMY CONEY BARRETT

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EMERGENCY APPLICATION FOR STAY

Petitioner, by its undersigned counsel, submits to this Court pursuant to Supreme Court Rule 23 to stay the Order of the Circuit Court of Ford County, Illinois, from July 12, 2021 entering a turnover of the property (now subject to a remote auction scheduled for November 10, 2021) of Petitioner Walder Vacuflo, Inc. to Mark and Todd Wathen, parties to this matter in which a Petition for Writ of Certiorari was filed in this Court on October 28, 2021, and in support states as follows:

1. In the related matter of *The People of the State of Illinois, Ex Rel. Illinois Department of Human Rights, Todd Wathen and Mark Wathen (Plaintiff-Intervenors) v. Walder Vacuflo, Inc. and Jim Walder (Respondent)*, Ford County Circuit Court Case No. 2018-CH-29, the Court granted the Plaintiff-Intervenors' Motion for Turnover of Real Property on July 12, 2021. Exhibit 1. A remote auction of said property is scheduled for November 10, 2021. Exhibit 2.
2. **The property to be turned over and auctioned on November 10, 2021 is the Timber Creek Bed & Breakfast owned by Walder Vacuflo, Inc., also the personal residence of Jim Walder.**
3. The turnover was granted to satisfy a judgment awarded in this Ford County case as a result of the matter *Wathen v. Walder Vacuflo, Inc.* in the Illinois Human Rights Commission (IHRC) (Charge Nos. 2011-SP-2488, 2011 SP-2489, consolidated as ALS No. 11-0703C), in which a judgment was

entered against Walder Vacuflo, Inc. for in excess of \$80,000 for alleged discrimination on the basis of sexual orientation due to Jim Walder informing the Wathens his business did not do civil union ceremonies on its premises. It is this matter which is the subject of the Petition for Writ of Certiorari filed on October 28, 2021. See Petition for Writ of Certiorari.

4. A Motion for Supervisory Order urging a stay of the turnover order was filed in the Illinois Supreme Court and said Motion was denied on July 27, 2021. Ptn. for Cert. App2a. A Second Motion for Supervisory Order (Exhibit 3—cover page) and a Motion for Stay (Exhibit 4—cover page) pending resolution of the Petition for Writ of Certiorari were both submitted for filing on November 2, 2021.

5. Because the Illinois Appellate and Supreme Court never addressed the merits of the appeal of the underlying matter in the Illinois Human Rights Commission, which is the basis of the Petition for Writ of Certiorari filed, the questions presented are of the utmost importance to the administration of justice, and involve key constitutional fundamental rights.

6. The questions presented in the petition sought to be filed were addressed by this Court, in *Masterpiece Cakeshop, Ltd., et al., Petitioners v. Colorado Civil Rights Commission, et al.*, 2017 U.S. LEXIS 4226, and more recently, *Fulton v. City of Philadelphia*, 2021 U.S. LEXIS 3121, *23-24, 141 S. Ct. 1868, 28 Fla. L. Weekly Fed. S 882, 2021 WL 2459253 (U.S. June 17,

2021), which were decided in a manner favorable to Petitioner, as the Petition for Writ of Certiorari argues.

7. If this Court grants Petitioner's Petition for Writ of Certiorari and decides the case favorably to Petitioner, then the basis for the turnover order would be voided—it is urgent to prevent the divestiture and sale of Petitioner's property (indeed, his home) while these fundamental constitutional questions are being addressed.

8. Based on the *Masterpiece* and *Fulton* cases, as explained in the Petition for Writ of Certiorari, Petitioner is likely to succeed on the merits.

9. Petitioner has appealed the turnover order in the Illinois Appellate Court, but the court denied a motion for a stay, and the standard appellate process is unlikely to afford the Petitioner meaningful relief given the property could be sold at any time. Exhibit 5. A second Motion for Stay pending decision on the Petition for Certiorari was submitted for filing on November 2, 2021. Exhibit 6—cover page.

10. **While the two (2) motions for stay in the Illinois Supreme Court (Exhibits 3 and 4) and the second motion for stay in the Illinois Appellate Court (Exhibit 6) filed November 2, 2021 have not yet been ruled upon, Petitioner URGES this Court to grant an immediate stay to prevent the November 10, 2021 auction of Petitioner's home and business property, because the Illinois lower courts have denied previous motions to stay and waiting on the Illinois lower courts to**

rule on the stay motions (likely futile) will likely not leave enough time for this Court to consider and rule on this Stay Application, and the sale of Petitioner's property would be a fait accompli.

11. In addition, in lieu of a superseadas bond, attached is a Certificate of Deposit in the amount of \$82,000 (more than the amount of the judgment at issue). Exhibit 7.

Conclusion

For the foregoing reasons, Petitioner urges this Court pursuant to Supreme Court Rule 23 to immediately issue a stay of the Order of the Circuit Court of Ford County, Illinois, from July 12, 2021 entering a turnover of the property of Petitioner Walder Vacuflo, Inc. to Mark and Todd Wathen, including a stay of the remote auction of said property on November 10, 2021, pending decision on the Petition for Writ of Certiorari which was filed on October 28, 2021, and for all other just relief.

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CERTIFICATE OF SERVICE

The undersigned certifies as aforesaid belief in the same verily to be true, and that the Petition has been electronically submitted to the Clerk's office and via email upon the following on November 2, 2021:

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