

No. _____

In The
Supreme Court of the United States

WALL STREET APARTMENTS, LLC and ALAA ELKHARWILY, M . D . ,
Petitioners,

v.

ALL STAR PROPERTY MANAGEMENT, LLC, ALL
STAR CONSTRUCTION, LLC, GIEVE PARKER, individually
and on behalf of her marital community,

Respondents

On Petition For Writ Of Certiorari To The Supreme Court of the State of Washington

APPLICATION TO HON. ELENA KAGAN, ASSOCIATE JUSTICE, FOR EXTENSION TO
FILE PETITION FOR WRIT OF CERTIORARI

Applicants:

Alaa Elkhawily, M.D,
c/o Brian K. Dykman
222 W. Mission Ave, Ste. 246
Spokane, WA 99201
Tel. 507-398-6735

WALL STREET APARTMENTS, LLC
c/o Brian K. Dykman
222 W. Mission Ave, Ste. 246
Spokane, WA 99201
Tel. 507-398-6735

Pursuant to Rule 13.5, Rules of the United States Supreme Court, application is made to the Hon. Elena Kagan, the Associate Justice assigned to courts within the Ninth Circuit, which includes the State of Washington, for an extension of 60 days to file a petition for writ of certiorari.

1. Parties for whom an extension is being sought: Petitioners ALAA

ELKHARWILY, M.D. and WALL STREET APARTMENTS, LLC. Pursuant to Rule 29.6, there is no parent or publicly held company owning 10% or more of the corporation's stock.

2. Judgment sought to be reviewed: Petitioners seek review of the Order of the

Supreme Court of Washington dated and filed November 9, 2022, (attached *App. A*

hereto) denying Petitioners' Petition for Discretionary Review of the Order of

the Court of Appeals of the State of Washington dated and filed June 7, 2022,

(also attached hereto), *App. B* to wit: "ORDER: (1) DENYING MOTION FOR

RECONSIDERATION, AND (2) AMENDING OPINION"; and the Court of

Appeals of the State of Washington's original Opinion dated and filed April

19, 2022, (also attached hereto.) *App. B.*

3. Basis for the jurisdiction of the Supreme Court of the United States: 28

U.S.C. Section 1257 including the denial of Appellants' rights to due process

and equal protection of law under the constitution of the United States.

4. Specific reasons why an extension of time is justified are as follow:

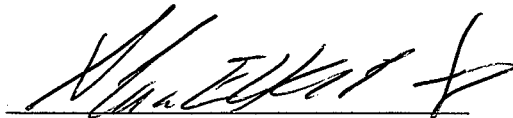
The attorneys of record are working on putting together their application for admission in this court.

Further, there are still pending motions in the Washington State Court of Appeals for which no final decision have been yet rendered by the appellate court. The decisions on said motions will have a grave impact on the final judgment and the timing of judgment which is the subject of the writ. Therefore, it is in the interest of justice and judicial economy to postpone the time to file the petition for writ of certiorari until such final decisions have been rendered.

Moreover, the record in this case consists of thousands of pages, which must be gathered, collated, and sent to the printer for the petition for writ of certiorari. The Appellants have not been able to accomplish this task. They also need more time to prepare the petition for writ of certiorari. More importantly, some of the records have been found to be inaccurately misfiled in the docket of the state court of appeals. The record of the docket of the state court of appeals has not been yet corrected. It is therefore necessary to extend the time to file the petition for the writ after the record of the docket has been accurately corrected.

5. This Application for extension is made for good cause and not for purposes of delay.

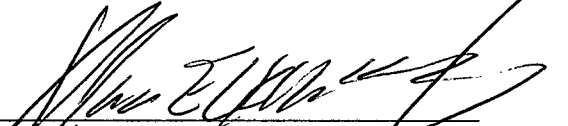
Dated: January 23, 2023.



Alaa Elkharwily, M.D,
Applicant
c/o Brian K. Dykman
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Spokane, WA 99201
Tel. 507-398-6735
Email: Elkharwily.Alaa@gmail.com

Dated: January 23, 2023.

WALL STREET APARTMENTS, LLC

By 

Alaa Elkharwily, M.D, It's President
c/o Brian K. Dykman
222 W. Mission Ave, Ste. 246
Spokane, WA 99201
Tel. 507-398-6735
Email: Elkharwily.Alaa@gmail.com

APPENDIX A

THE SUPREME COURT OF WASHINGTON

WALL STREET APARTMENTS, LLC, et al.,)	No. 101073-7
)	
Petitioners,)	ORDER
)	
v.)	Court of Appeals
)	No. 37512-9-III
ALL STAR PROPERTY MANAGEMENT,)	
LLC, et al.,)	
)	
Respondents.)	
)	
_____)	

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its November 8, 2022, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied. That the “Appellants’ Motion to Stay Proceedings; and Remand the Forwarded Motions, Responses and Replies”, the “Appellants’ Motion for Extension to File Reply in Support of Motion to Stay Proceedings; and Remand the Forwarded Motions, Response and Replies” and the “Appellants’ Motion to Modify Clerk’s Rulings filed August 8, 2022, and August 30, 2022” are also denied.

DATED at Olympia, Washington, this 9th day of November, 2022.

For the Court


CHIEF JUSTICE

APPENDIX B

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



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June 7, 2022

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CASE # 375129
Wall Street Apartments, LLC, et al v. All Star Property Management, LLC, et al
SPOKANE COUNTY SUPERIOR COURT No. 152040213

Counsel:

Enclosed is a copy of an order: (1) denying the appellants' motion for reconsideration, and (2) amending this Court's April 19, 2022, opinion.

A party may seek discretionary review by the Washington Supreme Court of a Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review of the April 19, 2022, opinion must file a petition for review in this Court within 30 days after the attached order denying reconsideration is filed. RAP 13.4(a); *see also* RAP 12.4(h). Please file the petition electronically through the Court's e-filing portal. The petition for review will then be forwarded to the Supreme Court. The petition must be received in this court on or before the date it is due. RAP 18.5(c).

If the party opposing the petition for review wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service on the party of the petition. RAP 13.4(d). The address of the Washington Supreme Court is Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:btb
Attachment

FILED
JUNE 7, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

WALL STREET APARTMENTS, LLC,)
a Washington limited liability company;)
and ALAA ELKHARWILY, M.D.)

Appellants.)

v.)

ALL STAR PROPERTY)
MANAGEMENT, LLC, a Washington)
limited liability company; GIEVE)
PARKER, individually and on behalf of)
her marital community,)

Respondents,)

JOHN DOES and JANE DOES I)
through X,)

Defendants.)

No. 37512-9-III

ORDER: (1) DENYING MOTION
FOR RECONSIDERATION,
AND (2) AMENDING OPINION

THE COURT has considered appellants Wall Street Apartments, LLC and Alaa Elkhawily, M.D.,’s motion for reconsideration of our April 19, 2022, opinion; and the record and file herein.

IT IS ORDERED that the appellants’ motion for reconsideration is denied.

No. 37512-9-III

Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC


IT IS FURTHER ORDERED that the court's April 19, 2022, opinion is amended as follows:

The second sentence in the first paragraph on page eight, including footnote two, is stricken from the opinion and replaced with the following:

The trial court denied Wall Street's motions for reconsideration, a new trial, and relief from judgment, but granted in part the motion for amended findings of fact and conclusions of law. *See* CP 1382-1407.

PANEL: Judges Pennell, Fearing and Lawrence-Berrey

FOR THE COURT:


LAUREL H. SIDDOWAY
Chief Judge

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



April 19, 2022

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CASE # 375129
Wall Street Apartments, LLC, et al. v. All Star Property Management, LLC, et al.
SPOKANE COUNTY SUPERIOR COURT No. 152040213

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please see word count rule change at <https://www.courts.wa.gov/wordcount>, effective September 1, 2021. Please file the motion electronically through this court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attach.

c: E-mail—Hon. Maryann C. Moreno

FILED
APRIL 19, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

WALL STREET APARTMENTS, LLC,)
a Washington limited liability company,)
and ALAA ELKHARWILY, M.D.,)

Appellants.)

v.)

ALL STAR PROPERTY)
MANAGEMENT, LLC, a Washington)
limited liability company; GIEVE)
PARKER, individually and on behalf of)
her marital community,)

Respondents,)

JOHN DOES and JANE DOES I)
through X,)

Defendants.)

No. 37512-9-III

UNPUBLISHED OPINION

No. 37512-9-III

Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

PENNELL, J. — Wall Street Apartments, LLC and Dr. Alaa Elkharwily (collectively Wall Street) appeal an adverse judgment in favor of All Star Property Management, LLC and Gieve Parker (collectively All Star). We affirm and award All Star attorney fees on appeal.

FACTS

Dr. Alaa Elkharwily was the CEO of Wall Street Apartments. Through Wall Street, Dr. Elkharwily owned an apartment building at 225 South Wall Street (the Wall Street building) in Spokane. On September 2, 2012, Wall Street entered into an agreement with All Star to manage units in the Wall Street building. All Star was owned by Ronald and Gieve Parker.

The management agreement tasked All Star with duties:

1. To use due diligence in the management of the premises . . . and agrees to furnish services for the renting, leasing, operating, and managing of the above mentioned premises.
2. To render monthly statement of receipts, expenses, and charges and to remit the same to the Owner together with receipts less disbursement. In the event the disbursements are in excess of the rents collected by All Star Property Management, the Owner hereby agrees to pay such excess promptly upon demand
3. To deposit all receipts collected for the Owner (less any sums properly deducted or as otherwise provided for herein) in a pooled Trust account
4. To advertise the availability for rental of the above-referenced premises . . . to sign, renew and/or cancel or terminate leases for the

premises or any part thereof; to collect rents due or to become due and give receipts therefore; to terminate tenancies and to sign documents in the Owner's name.

....

6. To make or cause to be made and to supervise repairs, expenses, and charges and to remit to Owner receipts less disbursement. In the event the disbursements shall exceed of [sic] the amount of rents collected by All Star Property Management, the Owner hereby agrees to pay such excess promptly upon demand

7. To make or cause to be made and to supervise any alterations, and to do maintenance on the above-referenced premises; to purchase supplies and pay all bills thereof. All Star Property Management agrees to secure the prior approval of the Owner on all expenditures in excess of \$1.00 for any one item

....

9. To hire, discharge, and supervise all labor and employees required for the operation and maintenance of the premises. . . .

Ex. P1, at 1-2. In consideration for All Star's work, Wall Street agreed to pay six percent of the monthly rental rate, \$100.00 for each new signed lease, all rental income in excess of \$533.00, and \$0.55 per mile to pick up and deliver materials to any job site.

In meetings with the Parkers around the time the management agreement was signed, Dr. Elkhawily expressed his intent to renovate the interior of the Wall Street building. All Star did not agree to perform the remodeling.

On September 12 and 13, 2012, All Star secured tenants for apartment 19 of the Wall Street building. Ms. Parker collected \$685.00 from the new tenants and placed the funds in trust accounts. Ms. Parker also collected \$300.00 in rent from apartment 18 on

No. 37512-9-III

Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

September 22. A receipt dated September 22 noted the apartment as “# 5 Was 18.”

Ex. D133. In the month of September, All Star incurred \$1,517.39 in expenses for travel and materials at the direction of Wall Street.

On September 26, demolition began on an interior wall in the lobby of the Wall Street building. At 4:00 p.m. that day Ms. Parker sent a text message to Dr. Elkharwily containing a photo of Christopher Godwin, a handyman for Dr. Elkharwily who lived at the Wall Street building, demolishing the lobby wall. On the wall were two components of the building’s fire alarm system—a fire panel, and a fire box (i.e., the electric box supplying the fire alarm system with power).

At 10:25 a.m. on September 27, Ms. Parker sent Dr. Elkharwily a text message informing him she quit after the two had a heated dispute over garbage bags. Dr. Elkharwily accepted the resignation. After she quit, Mr. Godwin helped Ms. Parker load her truck with various supplies from the Wall Street building, which had been purchased by All Star. Ms. Parker returned some of these supplies to the stores where they were purchased. Ms. Parker made multiple trips to the Wall Street building to collect items from the building’s hall and the office after she quit. Mr. Godwin ultimately departed the Wall Street building with Ms. Parker after the last trip.

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Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

Around 7:00 p.m. on September 27, Dr. Elkharwily became aware that the lobby wall had been demolished and the fire alarm system disconnected. The fire department had called Dr. Elkharwily and informed him the Wall Street building was without a working fire alarm system, and would be condemned unless he established a fire watch program. Dr. Elkharwily proceeded to hire individuals to perform a constant fire watch until the fire alarm system could be replaced several days later.

Over the ensuing days, Dr. Elkharwily accused Ms. Parker of dismantling the lobby wall and removing the fire alarm system. Ms. Parker denied the accusations, directed him to call the phone number on the fire box, and demanded payment for All Star's unpaid \$1,517.39 in expenses.

On October 12, Ms. Parker sent Dr. Elkharwily two envelopes via certified mail. One envelope contained all the apartment and office keys. The other contained invoices for All Star's outstanding expenses, account statements, leases, and a check for funds in tenant trust accounts.

In 2015, Wall Street sued All Star. The complaint contained nine causes of action, including breach of contract, breach of implied covenant of good faith and fair dealing, and violation of Washington's Consumer Protection Act (CPA), chapter 19.86 RCW.

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Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

All Star answered the complaint and also asserted a counterclaim for \$1,517.39 in outstanding expenses.

Most of Wall Street's claims were dismissed on summary judgment based on a lack of evidence. The trial court later characterized Wall Street's surviving claims as follows:

1. Whether [All Star] breached its management duties concerning due diligence, collecting and turning over rent, demolishing a lobby wall [without permission], and incurring unauthorized purchases over \$1.
2. Whether [All Star] breached its implied covenant of good faith and fair dealing concerning production of monthly statements, the demolition of the lobby wall . . . and the removal of the fire alarm [system].

Clerk's Papers (CP) at 1098.

The remaining claims initially went to mandatory arbitration in January 2019. An arbitrator found in favor of Wall Street, issuing an award of \$7,949.00 against All Star. Wall Street exercised its right to request a trial de novo under former¹ Superior Court Mandatory Arbitration Rule (MAR) 7.1 (2011) and Spokane County Local Superior Court Mandatory Arbitration Rule (LMAR) 7.1(a). All Star later offered to settle with Wall

¹ The Superior Court Mandatory Arbitration Rules (MAR) were renamed the Superior Court Civil Arbitration Rules (SCCAR) effective December 3, 2019.

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Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

Street for \$2,796.30, a figure All Star arrived at by subtracting a \$5,152.70 judgment it had against Wall Street in another case from the \$7,949.00 arbitration award.

Wall Street rejected All Star's settlement offer and proceeded with a de novo bench trial. At trial, the parties presented conflicting testimony over what happened during their short business relationship. Dr. Elkharwily testified that Ms. Parker engaged in a course of intentionally wrongful conduct. He claimed Ms. Parker was solely responsible for tearing down the lobby wall and did so out of frustration; she made unauthorized purchases of supplies; and after her departure, business records, supplies, and tools were missing. Ms. Parker denied Dr. Elkharwily's allegations. According to Ms. Parker, Dr. Elkharwily was responsible for directing the destruction of the lobby wall. She also denied removing any business records or making unauthorized purchases.

The trial court ruled in favor of All Star, finding Wall Street had submitted insufficient facts and the conflicting testimony favored All Star. The court concluded Wall Street breached its duty to pay All Star for expenses, and awarded All Star \$1,321.57 in damages.

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Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

Wall Street subsequently moved for reconsideration, a new trial, amended findings, and relief from judgment. The parties represent² that the court granted Wall Street's motion in part, and entered amended findings of fact and conclusions of law. The trial court's amended findings did not change the case's ultimate disposition.

All Star moved for an award of attorney fees and costs. First, All Star requested \$29,920.00 in postarbitration attorney fees and \$997.73 in costs under RCW 7.06.060 and former MAR 7.3.³ Second, All Star requested \$28,526.80 in prearbitration attorney fees and \$633.60 in costs under RCW 4.84.185 and CR 11. In response, Wall Street contended All Star's postarbitration fee request was duplicative of work performed prior to arbitration.

The trial court granted All Star's requests. It found Wall Street failed to improve its position on trial de novo, entitling All Star to fees and costs under RCW 7.06.060 and former MAR 7.3. The court also found Wall Street should have known it was unlikely to prevail at trial due to a lack of supporting evidence, entitling All Star to fees and costs under RCW 4.84.185. Finally, it found:

² Neither the trial court's order granting the appellants' motion in part nor the amended findings of fact and conclusions of law are included in the record on review.

³ See footnote 1, *supra*.

No. 37512-9-III

Wall St. Apartments, LLC v. All Star Prop. Mgmt., LLC

Elkharwily pursued litigation against Defendants in bad faith and for an improper purpose. This includes relying on incoherent, inadmissible, and nonexistent evidence at summary judgment, at which time all but one of Plaintiffs' claims were dismissed, as well as producing indecipherable testimony and exhibits at trial.

Order Granting Defs.' Mot. for Att'y's Fees and Costs at 3. This entitled All Star to attorney fees and costs under CR 11. The court found the amounts presented and detailed by All Star to be reasonable and necessary to defend against Wall Street's claims, and awarded it the amounts requested.

Wall Street now appeals the order granting partial summary judgment, the judgment in favor of All Star, and the order granting All Star's attorney fees and costs.

ANALYSIS

This appeal raises four issues: (1) whether substantial evidence supports the trial court's findings in favor of All Star on the two substantive claims submitted at trial, (2) whether the trial court properly granted summary judgment on Wall Street's CPA claim, (3) whether the trial court properly awarded attorney fees, and (4) whether All Star should be awarded attorney fees on appeal.

Substantial evidence

We review the factual findings of a trial court in a bench trial for substantial evidence. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). “Substantial

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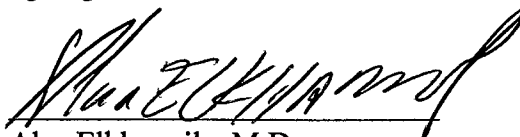
Respondents
On Petition For Writ Of Certiorari To The Supreme Court of the State of Washington
CERTIFICATE OF SERVICE

I declare that on January 24th, 2023, I served a copy of the APPLICATION TO HON.
ELENA KAGAN, ASSOCIATE JUSTICE, FOR EXTENSION TO FILE PETITION FOR WRIT
OF CERTIORARI by first class United States Mail, postage prepaid addressed to
Respondents' attorney of record addressed as follows:

Courtney J. Hagermann, Esq.
700 W. Boone Ave., Ste 200
Spokane WA 99201
Tel. 507-326-4800

And by email as follows: chagermann@stamperlaw.com.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January
____, 2023.



Alaa Elkhawily, M.D.
c/o Brian Dykman
222 W. Mission Ave, Ste. 246
Spokane, WA 99201
Tel. 507-398-6735

