

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation
under the laws of the State of Washington,

Defendant.

NO. 21-2-11739-9 SEA

**DECLARATION OF BRANDI
BALANDA IN SUPPORT OF CITY
OF SEATTLE’S REPLY IN SUPPORT
OF MOTION FOR
DETERMINATION OF FEE
AMOUNT PURSUANT TO COURT
ORDER AWARDING FEES**

I, BRANDI B. BALANDA, hereby state and declare as follows:

1. I am a partner with Savitt Bruce & Willey LLP, counsel for Defendant City of Seattle (the “City”) in this matter. I am over the age of eighteen and am competent to testify. I make this declaration based on personal knowledge unless otherwise stated herein.

2. Attached hereto as **Exhibit E** is a true and correct copy of a ruling by the Court of Appeals that I received from the Court by email at 2:29 pm on February 3, 2023.

3. During the parties’ meet and confer on January 20, 2023, I explained that the spreadsheet attached to my letter that is Exhibit A contains excerpts from invoices for the work performed in connection with the Motion to Compel Deposition of Plaintiff Kimberly Ferreiro for which the Court awarded the City its reasonable attorneys’ fees and costs. I further

1 explained that we included this spreadsheet so that Plaintiffs could see the invoice detail that
2 supports the work. Mr. Needle then accused my firm of charging the City and receiving
3 payment from the City for work performed and then seeking to recover for ourselves a fee
4 award for that same work – “double collecting”. I told him unequivocally that this was
5 incorrect because it is incorrect. He then inquired about discussions between my firm and our
6 client, and I declined to invade the City’s attorney-client privilege.

7 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE**
8 **STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND**
9 **CORRECT.**

Executed this 7th day of February 2023, at Seattle, Washington.

11 */s/ Brandi B. Balanda*
12 Brandi B. Balanda

1 **CERTIFICATE OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that
3 on this date, I caused a true and correct copy of the foregoing document to be served on the
4 following in the manner(s) indicated:

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12 *Attorney for Plaintiffs*

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- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

21 *Attorney for Plaintiffs*

22 DATED this 7th day of February, 2023 at Seattle, Washington.


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24
25
26
27

Meghan Parker

EXHIBIT E

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

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February 3, 2023

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Case #: 848437

Stacy Irwin and Kimberly Ferreiro, Petitioners v. City of Seattle, Respondent
King County Superior Court No. 21-2-11739-9

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on February 3, 2023, regarding Petitioner's Motion to Stay Proceedings:

Plaintiffs Stacy Irwin and Kimberly Ferreiro seek interlocutory review of a revised and updated trial court order entered following in camera review on the City of Seattle's motion for privilege determination. The trial court sustained, overruled, and partially granted the City's attorney-client and work product privilege claims as to specific documents. The Ferreiros also seek review of January 6, 2023 trial court orders that denied their revised motion to compel discovery and for in camera review and compelled plaintiff Kimberly Ferreiro's deposition.

The Ferreiros filed a motion to stay the trial court proceedings until 30 days after the final resolution of their motion for discretionary review. They point out that trial has been rescheduled for June 12, 2023 with discovery cut-off on April 24, 2023. They point out that this Court's earliest available discretionary review calendar at this time is April 7, 2023. They argue a stay is necessary because they seek to discover all unprivileged information in sufficient time to afford them the opportunity to depose City officials

based on the information and use the information at trial. The City filed a response opposing a stay, and the Ferreiros filed a reply.

The Ferreiros request a stay under RAP 8.1(b)(3), which allows this Court to exercise its discretion to stay a trial court decision pending review. But the Ferreiros request a stay of the entire trial court proceedings. Under RAP 8.3, this Court may issue orders, including a stay, “to insure effective and equitable review.” RAP 8.3. Such relief generally requires a showing (1) that the appeal raises a debatable issue and (2) that the harm without relief outweighs the harm that would result from it. In balancing the parties’ relative harm, this Court considers whether the requested relief is necessary to maintain the status quo and preserve the fruits of a successful appeal in light of the equities of the situation. See *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985).

The Ferreiros challenge the trial court’s discretionary discovery rulings. Interlocutory review is disfavored, and the Ferreiros’ assertion of debatable issues must be evaluated in light of the strict criteria for discretionary review under RAP 2.3(b) and the deferential standard of review.

Even if Ferreiros raise a debatable issue, a stay is not warranted. As the City points out, if this Court accepts review after considering the motion for discretionary review on the April 7 calendar, the trial court proceedings will likely be stayed with a revised case schedule. Under RAP 7.2(l), when review is accepted from an interlocutory order that does not resolve the entire case, the “trial court retains full authority to act in the portion of the case that is not being reviewed by the appellate court.” The City points out the Ferreiros signed a stipulation agreeing to modify the January 6, 2023 order regarding the timing of the deposition to require Kimberly Ferreiro’s deposition on January 30, 2023, as “a date and time on which the parties have now agreed.” City’s Appendix 650. The Ferreiros fail to show a stay is necessary to preserve the fruits of a successful appeal in light of the equities of the situation.

The motion for stay is denied. However, in considering the motion for discretionary review on the April 7 calendar, the commissioner assigned to the calendar may expedite consideration, and the Ferreiros are not precluded from seeking relief in the trial court.

The City’s request for attorney fees is denied at this time.

Sincerely,



Lea Ennis
Court Administrator/Clerk

Jh