

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GREG MCCREA,

Respondent,

v.

JENNIFER DRURY and ALL OTHER
SUBTENANTS,

Appellants.

No. 99464 - 1

RULING

Petitioner Jennifer Drury moves for an emergency stay pending her appeal of a writ of restitution issued by the Stevens County Superior Court directing petitioner's eviction from a leased residence owned by respondent Greg McCrea. Petitioner alternatively asks that this court consolidate this matter with *Nyman v. Hanley, et al.*, No. 99249-5, a direct appeal currently pending in this court.

Petitioner asserts she is scheduled to be evicted on February 8, 2021. The superior court denied her motion for a stay. Petitioner filed a notice of appeal directly in this court on January 29, 2021. She filed the instant motion for an emergency stay on February 1. Respondent filed an answer opposing the stay on February 3. Petitioner followed with her reply on February 4. Petitioner has not yet filed a statement of grounds for direct review. RAP 4.2(b). There is also an unresolved question whether the challenged superior court order is reviewable as a matter of right under RAP 2.2.

Meanwhile, on February 3, 2021, this court retained the appeal in *Nyman* for a decision on accelerated review and extended an existing stay of the writ of restitution issued in that case. At issue in *Nyman* is whether a residential tenant whose lease has expired may claim the protections of the temporary eviction moratorium ordered by the Centers for Disease Control (CDC) in response to the COVID-19 emergency. That temporary moratorium is still in effect.

The factual circumstances of this case are different than *Hanley* in that the writ of restitution here is linked to Mr. McCrea's sale of the leased property. Notwithstanding that factual difference, the court's decision in *Nyman* may provide controlling precedent on the scope of the protections offered under the CDC's eviction moratorium. The decision may therefore affect the enforceability of the writ issued in this case. It may also affect whether this case should be decided in this court or in the Court of Appeals. RAP 4.2(a).

Having reviewed the papers submitted, and in light of the foregoing considerations, a stay of the writ of restitution is warranted pending finality of the court's decision in *Nyman*, or until such time as this court orders the stay lifted. Because the stay is necessitated by a pending case in this court, and in the interests of justice, the rule requiring the posting of a supersedeas bond or cash, assuming it applies, is waived. RAP 8.1(b)(2); RAP 1.2(c). Furthermore, due to the different factual circumstances and early procedural posture of this case, petitioner's request to consolidate this case with *Nyman* is denied.

Accordingly, the emergency motion for a stay is granted. Execution of the writ of restitution issued in Stevens County Superior Court No. 20-2-003199 is stayed pending further order of this court. The request for consolidation is denied.


COMMISSIONER

February 4, 2021