

S249593

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

KERRIE REILLY
Plaintiff & Appellant,

vs.

MARIN HOUSING AUTHORITY
Defendant & Respondent.

ON APPEAL FROM JUDGMENT OF MARIN COUNTY SUPERIOR COURT
CASE NO. CIV1503896, HONORABLE PAUL HAAKENSEN
FIRST APPELLATE DISTRICT, DIVISION TWO, APPEAL NO. A149918

MOTION TO STAY ISSUANCE OF REMITTITUR

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INTRODUCTION

This Court issued its decision in this case on August 31, 2020, reversing the lower courts' judgment. The majority, in a 4-3 decision, held that respondent Marin Housing Authority (MHA) had incorrectly interpreted a federal regulation governing Section 8 housing subsidies. Conversely, the dissent agreed with MHA's interpretation as to whether the income received by petitioner Kerrie Reilly through the In-Home Supportive Services program should be counted as "income" for purposes of calculating her Section 8 rental voucher.

MHA respectfully seeks an order staying the issuance of the remittitur so that it can pursue appellate review of this Court's decision in the U.S. Supreme Court. The petition for a writ of certiorari is normally due within ninety days of this Court's August 31 decision; i.e., by Monday, November 30, 2020. See U.S. Sup. Ct. R. 13.1, 30.1. However, due to the pandemic, "the deadline to file any petition for a writ of certiorari due on or after" that Court's March 19, 2020 order "is extended to 150 days from the date of the lower court judgment..." (U.S. Sup. Ct. Order, Dated March 19, 2020.)

DISCUSSION

"On a party's or its own motion and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall." (Cal. Rules of Court, rule 8.540(c)(2).) One such

reason is to allow time for a party to seek review in the U.S. Supreme Court. (See, e.g., *Reynolds v. E. Clemens Horst Co.* (1918) 36 Cal.App. 529, 529-530 [addressing intermediate appellate courts' power to stay the issuance of remittitur for this purpose]; see also *Severns Drilling Co. v. Superior Court* (1936) 16 Cal.App.2d 435, 437 [same].)

Good cause exists for the relief requested here. A stay recognizes the importance of the issues raised in this case and provides the parties an opportunity to present their respective positions to the United States Supreme Court. This case, decided by a 4–3 vote, presents cert-worthy issues (Sup. Ct. R. 10(b)) because this Court's decision conflicts with a decision by another state's highest court in interpreting a federal regulation. (Typed opn. 17-18 [majority opinion].) In addition, the majority opinion conflicts with the decision of the Fifth Circuit regarding the subject regulation. (Typed opn. 1-2 (dis. opn. of Cantil-Sakauye, C. J.).)

A stay is also necessary to avoid potential waste of judicial resources by further proceedings in the trial court. Plaintiffs are expected to seek attorneys' fees on remand based on the majority opinion. Should the United States Supreme Court conclude that MHA properly interpreted the subject regulation, this would eliminate the need to litigate plaintiffs' fee motion. A stay would avoid this potentially wasteful result.

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[PROPOSED] ORDER

Issuance of the remittitur in the above-entitled cause is stayed to permit Marin Housing Authority to file a petition for writ of certiorari with the Supreme Court of the United States, which is due in that court on or before Monday, November 30, 2020. (28 U.S.C. § 2101(c); U.S. Supreme Ct. R. 13.1, 30.1.) However, in the event MHA invokes the automatic pandemic extension issued by that Court in filing its petition (U.S. Sup. Ct.

Order, dated March 19, 2020), this stay Order shall remain in force during such extension.

Upon the timely filing of MHA's petition, the issuance of the remittitur is further stayed until final disposition of the certiorari proceeding. If a petition for writ of certiorari is not filed within the time prescribed, the stay will terminate when the time for filing the petition has expired.

Dated: September __, 2020 By: _____
Tani G. Cantil-Sakauye
Chief Justice of the
California Supreme Court

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18. I am an active member of the bar. I am not a party to this action. My business address is 555 S. Flower Street, Suite 2900, Los Angeles, CA 90071-2407.

On **September 15, 2020**, I served the attached **MOTION TO STAY ISSUANCE OF REMITTITUR** on the interested parties in this action as follows:

[X] (BY ELECTRONIC MAIL) The attached document is being served via electronic transmission to each addressee's electronic mail address as noted on the attached Service List.

[X] BY MAIL - As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. Under that practice, the envelope would be sealed and placed for collection and mailing on the date listed below following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on **September 15, 2020** at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

By: /s/ Susan Marriott
Susan Marriott

SERVICE LIST

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Supreme Court of California, Case No. S249593
Wilson Elser File No. 21727.000001

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