

No. 24A57

In the

SUPREME COURT OF THE UNITED STATES

VICTORIA WONG,

Petitioner,

-against-

RICKY WONG,

Respondent.

ON APPLICATION TO EXTEND TIME TO FILE PETITION FOR A
WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

RESPONSE OF RESPONDENT RICKY WONG IN OPPOSITION TO
PETITIONER'S APPLICATION TO EXTEND TIME TO FILE PETITION

GREGORY J. GETZ
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Attorneys for Respondent

RESPONSE IN OPPOSITION TO APPLICATION TO EXTEND TIME

Respondent Ricky Wong, through counsel, respectfully submits this response to pro se petitioner Victoria Wong's application to extend the time to file a petition for a writ of certiorari to the New York Court of Appeals in the matter of Wong v. Wong, Mo. No. 2023-826. In that proceeding, the court below, by decision and order dated and entered on April 25, 2024, dismissed as untimely petitioner's motion for leave to appeal from the decision and order of the Appellate Division, First Department, dated and entered on October 17, 2023 (copy annexed), which unanimously affirmed a decision and order of the Supreme Court, New York County which dismissed petitioner's complaint seeking to vacate the March 2015 matrimonial settlement agreement between the parties on the grounds of alleged fraud and breach of fiduciary duty. For the reasons set forth below, respondent respectfully requests that petitioner's application be dismissed as defective or otherwise denied on the merits.

As a preliminary matter, review of petitioner's application demonstrates that petitioner does not at any juncture "set out the basis for jurisdiction in this Court" or otherwise "identify the judgment sought to be reviewed" as mandated by S. Ct. Rule 13.5. For this threshold reason, the application is defective on its face and, accordingly, should be dismissed.

More importantly, petitioner's application does not proffer any valid reason why an extension of time to file the petition is justified. Petitioner merely suggests, in summary fashion, that she is proceeding pro se and thus requires "more time to understand the relevant issues and rules involved." Yet the record is clear that petitioner previously proceeded pro se in her application to the New York Court of Appeals for leave to appeal (copy of Notice of Motion annexed hereto). Notwithstanding her self-representation in that proceeding, petitioner was fully capable of understanding the relevant issues and rules involved during the approximately 30 days between the Appellate Division's October 17, 2023 decision and order and her November 21, 2023 Notice of Motion sufficiently to prepare her leave application and related submissions in that court without incident during that abbreviated timeframe.

Petitioner does not -- and apparently cannot -- offer any viable reason why she was unable here to proceed similarly to prepare and file her petition in this Court during the approximately 90 days since issuance of the New York Court of Appeals dismissal order. Her vague suggestion that she is scheduled for some undefined surgery next month neither reflects nor implies that she has been in any way impeded or prevented from preparing her petition during the past three months. Considering her documented ability to proceed pro se with her leave application to the court

below, it is apparent from the foregoing that petitioner's application fails to demonstrate the requisite good cause for a time extension under S. Ct. Rule 13.5 and, accordingly, should be denied.

Finally, in the event that the merits of a petition herein were ultimately addressed, it is indisputable that there would exist no compelling reason under S. Ct. Rule 10 to grant a writ of certiorari herein. Thus, review of the Appellate Division decision and order demonstrates conclusively that no important federal question or important question of federal law was ever decided or even addressed by the courts below. On the contrary, petitioner's arguments solely implicate questions of state law and her contentions consist exclusively of purported erroneous factual findings or asserted misapplication of well settled principles of New York law. Moreover, the New York Court of Appeals never addressed the underlying merits of petitioner's leave application to that court, but dismissed the application as untimely and, for that additional reason, no merits review by this Court would be warranted or appropriate.

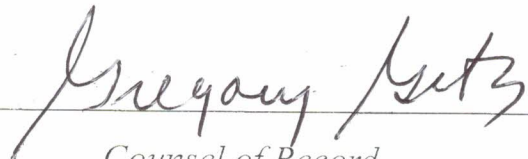
CONCLUSION

For the foregoing reasons, and considering the proscription contained in S. Ct. Rule 13.5 that applications to extend the time to file a petition for a writ of certiorari

are not favored, respondent respectfully submits that petitioner's within application for such relief be denied in its entirety.

Dated: Marcy, New York
July 17, 2024

GREGORY J. GETZ

A handwritten signature in cursive script, reading "Gregory J. Getz", is written over a horizontal line.

Counsel of Record

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Appellate Division, First Judicial Department

Webber, J.P., Oing, Rodriguez, Rosado, JJ.

809 VICTORIA WONG,
Plaintiff-Appellant,

Index No. 158126/17
Case No. 2022-05463

-against-

RICKY WONG,
Defendant-Respondent.

Sutton Sachs Meyer PLLC, New York (Zachary Meyer of counsel), for appellant.

Leitner & Getz LLP, Marcy (Gregory J. Getz of counsel), for respondent.

Order, Supreme Court, New York County (Schlomo S. Hagler, J.), entered on November 10, 2022, which, to the extent appealed from as limited by the briefs, granted defendant husband's motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7), unanimously affirmed, without costs.

The parties were married in 1996, and in June 2008, plaintiff wife commenced the underlying divorce action. In March 2015, the parties entered into a stipulation of settlement to resolve all rights and obligations arising out of the marital relationship. The agreement provided the wife with, among other things, maintenance for three years, equitable distribution of marital assets, and counsel fees.

Shortly after entry of the judgment of divorce, the wife brought an action in Taiwan, asking for an investigation into, and seeking equitable distribution of, defendant husband's assets there. She asserted that she had discovered that the husband had assets in Taiwan that were undisclosed on his net worth statements. The

court dismissed the action, having concluded that the issue was properly brought before the courts of New York. In 2018, prior to the Taiwan court rendering its decision, the wife commenced this action alleging that, having uncovered that the husband had assets in Taiwan that were unreported on his net worth statement, he had fraudulently induced her into entering the stipulation of settlement.

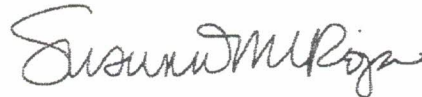
The motion court correctly dismissed the wife's complaint. The record establishes that prior to settlement the wife was aware of the husband's bank accounts in Taiwan, as they had been itemized on his net worth statement. Even assuming the amounts listed by the husband were inaccurate, it cannot be said that the husband failed to disclose the existence of the accounts, and nothing prevented the wife from discovery on that point during the settlement agreement negotiations (*see Kojovic v Goldman*, 35 AD3d 65, 68 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007]). Moreover, the real properties in Taiwan that were not disclosed on the net worth statement were not only held to be nonmarital property by the Taiwan court, but admitted as such by the wife. They were, accordingly, specifically excluded from equitable distribution by the terms of the agreement. As for the stock accounts, according to the husband's affidavit, he was unaware of certain stock accounts that were set up in his name in Taiwan by his parents, a fact corroborated in the affidavit of his sister. This unrebutted lack of knowledge of the accounts refutes the wife's allegations of any intent to defraud (*see Mahan v Mahan*, 29 AD3d 471, 472 [1st Dept 2006] ["[A]sserted nondisclosure of financial information is not the equivalent of fraud"]). Accordingly, the wife cannot assert that she reasonably relied on the husband's silence or any misrepresentation at the time of settlement (*see Kojovic v Goldman*, 35 AD3d 65).

We also note that the wife had already ratified the agreement by accepting substantial benefits thereunder before seeking rescission and reformation of the stipulation nearly three years after the divorce (*see DePalma v DePalma*, 193 AD3d 449, 450 [1st Dept 2021], *lv dismissed* 37 NY3d 1039 [2021]). This further precludes the wife from asserting a fraud claim (*see Chalos v Chalos*, 128 AD2d 498, 499 [2d Dept 1987], *lv denied* 70 NY2d 609 [1987]; *Mahan v Mahan*, 29 AD3d at 472; *Markovitz v Markovitz*, 29 AD3d 460, 461 [1st Dept 2006]).

We have considered the wife's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 17, 2023



Susanna Molina Rojas
Clerk of the Court

COURT OF APPEALS
STATE OF NEW YORK

Webber, J.P., Oing, Rodriguez, Rosado, JJ.

(Names of parties as set forth in the Appellate Division caption)

VICTORIA WONG

Plaintiff-Appellant

v.

LAWRENCE WONG

Defendant-Respondent

NEW YORK

(Indicate name of county)

County Clerk Index No.:

#158126/2017

NOTICE OF MOTION FOR
LEAVE TO APPEAL TO
THE COURT OF APPEALS
[AND FOR *(Specify additional
relief, if any)* _____]
_____]

PLEASE TAKE NOTICE that, upon the annexed statement pursuant to Rules 500.21 and 500.22 of the Court of Appeals Rules of Practice, signed on 21 day of November, 2023.

Victoria Wong will move this Court, at the Court of Appeals Hall, Albany, New York on

(Your Name)

December 11, 2023, for an order granting leave to appeal to this Court from the order

(Return Date)

The Supreme Court of New York, Appellate Court, First dated October 17, 2023
département

[, and for _____].

*(Specify additional relief, if any)***

If you are moving for leave to appeal, you are the appellant in this Court; the opposing party is the respondent.

** Add information within the brackets only if you are seeking relief in addition to leave to appeal.

*** Return Date (see Rule 500.21 [a], [b]) - Court of Appeals motion returns days are only on Mondays, unless Monday is a legal holiday, in which case the return date shall be on the next available business day. If the motion is served in person, you must give 8 days' notice. If the motion is served by regular mail, you must give 13 days' notice. Set the return date of your motion for the first Monday on or after the notice period. If that Monday is a legal holiday, set the return date of your motion for the next available business day.

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NEW YORK STATE
COURT OF APPEALS

Answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of the motion.

There is no oral argument of motions, and no personal appearances are permitted.

Signature: Victoria Wong

Print Name: Victoria Wong

Address: 4206 Bell Blvd Bayside New York 11361

Phone: 646-7527356

To: Clerk of the Court of Appeals
Court of Appeals Hall
20 Eagle Street
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Insert the names and addresses of all other parties:

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