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SUPREME COURT OF THE
STATE OF WASHINGTON
Case No. 102739-7

COURT OF APPEALS,
OF THE STATE OF WASHINGTON
Case No. 82407-4-I

RANDALL R. STEICHEN,
Petitioner,

v.

1223 SPRING STREET OWNERS ASSOC, *et al.*
Respondents.

CWD GROUP'S ANSWER
TO RANDALL R.
STEICHEN'S MOTION FOR
DISCRETIONARY
REVIEW, AND APPENDIX

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I. IDENTITY OF RESPONDENT

CWD Group provides this answer to Randall Steichen’s Motion for Discretionary Review (“Motion”).¹ This Court should *deny* Steichen’s Motion.

II. DECISION BELOW

Steichen identifies the following for his requested discretionary review: the Court of Appeals’ “Order Denying Motion to Modify” (“Order”).²

III. STATEMENT OF CASE

CWD has given a statement of the case in its answer to Steichen’s petition for review of the Courts of Appeals’ unpublished Opinion.³ And it provides the following additional

¹ Motion for Discretionary Review, No. 102739-7 (Wash. Mar. 6, 2024) (“Motion”).

² Motion at p. 1.; Order Denying Motion to Modify, No. 82407-4-I (Wash. App. Jan. 31, 2024) (“Order”).

³ Respondent CWD Group’s Answer to Randall R. Steichen’s Petition for Review, and Appendix, at pp. 5–9, No. 102739-7 (Wash. Mar. 6, 2024); Unpublished Opinion, No. 82407-4-I (Wash. App. Oct. 23, 2023) (“Opinion”).

information relevant to Steichen’s request for discretionary review of the Court of Appeals’ Order.

A. In its unpublished Opinion, the Court of Appeals decided that the Respondents were entitled to their reasonable attorney fees on appeal, triggering the post-opinion process for establishing their amounts.

In its unpublished Opinion, the Court of Appeals determined that CWD and others were entitled to awards of reasonable attorney fees on appeal under RCW 64.34.455 and RAP 18.1.⁴ That determination triggered the process for establishing the amounts of the awards.⁵

The process for determining the amounts started with Respondents submitting affidavits for their fees, showing time

⁴ Opinion at pp. 22–24, 43.

⁵ Opinion at p. 43; RAP 18.1(d).

worked, the type of work done, and who did the work.⁶ The affidavit for CWD reflected approximately \$117,763 in fees.⁷ CWD also submitted a \$211 cost bill.⁸

Under the relevant rule of appellate procedure, RAP 18.1(e), Steichen had an opportunity to timely object to the affidavit for CWD's fees. He did not do so.

B. The Courts of Appeals' Commissioner ruled on the amounts of the awarded fees on appeal ("Commissioner's Ruling").

Then, the Court of Appeals' Commissioner ruled on the amounts of the awards of attorney fees, as well as costs

⁶ Opinion at p. 43; RAP 18.1(d). *See, e.g.*, Exhibit 1 & ¶ 2 of Affidavit of Matthew R. Wojcik for CWD Group's Attorney Fees on Appeal, No. 82407-4-I (Wash. App. Nov. 2, 2023).

⁷ Affidavit of Matthew R. Wojcik for CWD Group's Attorney Fees on Appeal at ¶ 4, No. 82407-4-I (Wash. App. Nov. 2, 2023).

⁸ Cost Bill of Respondent CWD Group, No. 82407-4-I (Wash App. Nov. 2, 2023).

(“Commissioner’s Ruling”).⁹ Under the ruling, CWD would not receive all fees reflected in the above-mentioned affidavit.

The Commissioner applied a reduction of “just under two-thirds”¹⁰ and set the following amounts for CWD’s award: \$40,200 for attorney fees; and \$1,200 for paralegal fees.¹¹ The Commissioner’s Ruling also included \$211 in costs for CWD.¹²

C. Steichen filed an unsuccessful motion to modify the Commissioner’s Ruling.

After, Steichen filed a motion to modify the Commissioner’s Ruling.¹³ In it, he tried contesting amounts of the awards of attorney fees.¹⁴ He, for example, objected to the

⁹ Letter, No. 82407-4-I (Wash App. Nov. 16, 2023) (“Commissioner’s Ruling”).

¹⁰ Commissioner’s Ruling at p. 3.

¹¹ *Id.*

¹² *Id.*

¹³ Motion to Modify Notation Ruling, No. 82407-4-I (Wash App. Dec. 13, 2023) (“Motion to Modify”).

¹⁴ *Id.*

general reductions that the Commissioner applied to the Respondents' fees.¹⁵ CWD and the other Respondents opposed Steichen's motion.¹⁶

Then, Steichen filed replies in support of his motion to modify.¹⁷ As to CWD, much of Steichen's reply consisted of new arguments on a matter other than the amounts of the awarded attorney fees; Steichen argued that CWD was not "entitled" to fees under RCW 64.34.455 and that the Court of Appeals' "panel" erred in awarding them.¹⁸ In doing that, he argued a matter that the Court of Appeals' three-judge panel resolved in the unpublished Opinion and for which he

¹⁵ *Id.* at p. 6.

¹⁶ *See, e.g.*, Respondent CWD Group's Response to Appellant's Motion to Modify Notation Ruling, No. 82407-4-I (Wash. App. Dec. 26, 2023).

¹⁷ Reply to CWD's Answer to Motion to Modify Notation Ruling, No. 82407-4-I (Wash. App. Jan 8. 2024).

¹⁸ *Id.* pp. 1–7, 12–13.

unsuccessfully moved for reconsideration¹⁹—not a matter for resolution in the Commissioner’s Ruling for the Court of Appeals’ review.

The Court of Appeals issued its Order denying Steichen’s motion to modify the Commissioner’s Ruling.²⁰ Steichen later filed at this Court his motion for discretionary review of that Order. He did so after filing at this Court his petition for review of the Court of Appeals’ unpublished Opinion,²¹ wherein he seeks review of issues regarding the Respondents’ entitlement to the awards of attorney fees under RCW 64.34.455.²²

¹⁹ Opinion at pp. 22–24, 43; Motion for Reconsideration, No. 82407-4-I (Wash. App. Nov. 13, 2023); Order Denying Motion for Reconsideration and Striking Motion for Court to Consider Motion for Reconsideration En Banc, No. 82407-4-I (Wash. App. Dec. 20, 2023).

²⁰ Order at p. 2.

²¹ Petition for Review, No. 82407-4-I (Wash. App. Jan. 19, 2024) (“Petition”).

²² Petition at pp. 1, 15–18; Opinion at pp. 22–24, 43.

IV. ISSUE

After the Court of Appeals decides the right to an award of attorney fees, a separate process starts for determining only the amount of the award. That involves the lodestar method and a commissioner's ruling on the amount. If a party objects to the commissioner's ruling with a motion, then the Court of Appeals reviews that ruling. Here, the Commissioner evaluated an unobjected-to affidavit for CWD's fees, applied a general reduction to them, and set the amount of CWD's awarded fees to \$41,400 in the Commissioner's Ruling. In its Order, the Court of Appeals did not modify the ruling in denying Steichen's motion to modify it. Now, Steichen seeks review of the Order with arguments about matters other than the amount of the award. ***Has Steichen met the burden of showing that the Order triggers the "specific and stringent criteria"²³ for discretionary review under RAP 13.5(b)?***

²³ *In re Dependency of N.G.*, 199 Wn.2d 588, 595, 510 P.3d 335 (2022) (internal quotations and citation omitted).

V. ARGUMENT

A. **The standards for discretionary review are “specific and stringent” and present a “heavy burden” for Steichen.**

RAP 13.5 governs a motion for discretionary review of a Court of Appeals’ interlocutory decision. It includes these three criteria for whether this Court will accept review:

1. “If the Court of Appeals has committed an obvious error which would render further proceedings useless.”²⁴ This “requires a high certainty of error
....”²⁵
2. “If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially

²⁴ RAP 13.5(b)(1).

²⁵ *In re Dependency of N.G.*, 199 Wn.2d at 595 (describing similar criteria in RAP 2.3(b)).

limits the freedom of a party to act.”²⁶ As to substantially altering the status quo, that “requires an immediate effect outside the courtroom.”²⁷

3. “If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.”²⁸

The above are “specific and stringent”²⁹ They present a “heavy burden”³⁰ for the moving party.

²⁶ RAP 13.5(b)(2).

²⁷ *In re Dependency of N.G.*, 199 Wn.2d at 602 (describing similar criteria in RAP 2.3(b)).

²⁸ RAP 13.5(b)(3).

²⁹ *In re Dependency of N.G.*, 199 Wn.2d at 595 (internal quotations and citation omitted).

³⁰ *See In re Grove*, 127 Wn.2d 221, 235, 897 P.2d 1252 (1995) (describing burden under similar criteria in RAP 2.3(b)).

Steichen seeks review of the Court of Appeals' Order under RAP 13.5. But he does not meet its heavy burden, making irrelevant arguments on a matter other than the amount of the awards of attorney fees in the Commissioner's Ruling in question for the Court of Appeals in issuing its Order. This Court should *deny* his Motion.

B. The Court of Appeals' Order regarded a review of the Commissioner's Ruling on the amounts of awards of attorney fees on appeal—not the right to them.

In his motion for discretionary review of the Court of Appeals' Order, Steichen argues about whether the Respondents had a right to awards of attorney fees under RCW 64.34.455. That, however, was a matter resolved in the Court of Appeals' unpublished Opinion, and it could not be resolved in the Commissioner's Ruling at issue in the Order.

Deciding the right to an award of attorney fees on appeal and deciding the award's amount are different processes governed by different provisions in RAP 18.1. To seek a

decision on the right to an award of attorney fees in cases like this one, a party must request and argue for the fees in their brief on the merits before the Court of Appeals.³¹

If the Court of Appeals awards that party the “*right*”³² to an award of attorney fees in its “decision”³³—here, the unpublished Opinion—then that triggers a separate process for determining the award’s “*amount*”³⁴ That party must submit an affidavit showing the expenses and work done,³⁵ to which an opposing party may timely object.³⁶

³¹ RAP 18.1(b); *Wilson Ct. Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998).

³² RAP 18.1(d) (emphasis added).

³³ RAP 18.1(d).

³⁴ RAP 18.1(f) (emphasis added).

³⁵ RAP 18.1(d).

³⁶ RAP 18.1(e).

Then, a “commissioner ... will determine the amount of the award” under RAP 18.1(f).³⁷ That provision does not allow for the resolution of anything other than the “amount”³⁸ of the award—like the “right” to an award of attorney fees resolved in a preceding “decision” by the Court of Appeals.³⁹

The commissioner issues their determination on the award’s amount,⁴⁰ here in the Commissioner’s Ruling. After, the Court of Appeals’ three-judge panel may review the commissioner’s ruling if an objecting party timely files a

³⁷ RAP 18.1(f).

³⁸ *Id.* See *In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (“[T]o express one thing in a statute implies the exclusion of the other.... Omissions are deemed to be exclusions.”); *Jafar v. Webb*, 177 Wn.2d 520, 526, 303 P.3d 1042 (2013) (“Court rules are interpreted in the same manner as statutes.”).

³⁹ RAP 18.1(d).

⁴⁰ RAP 18.1(f).

motion to modify it.⁴¹

If, however, a party wants to dispute the right to the award of attorney fees, then they must do so with different filings under different rules. For example, they may file not more than one motion for reconsideration of the opinion in which the appellate court decided that right.⁴²

Here, then, the Order of the Court of Appeals could regard only the amounts of the awards of attorney fees in the Commission's Ruling that Steichen moved to modify. After the Court of Appeals awarded fees in its unpublished Opinion, the Commissioner had before it affidavits for those fees,⁴³ based on which they could determine only the amounts of the awards.

⁴¹ RAP 18.1(g); RAP 17.7. *See Winter v. Dep't of Soc. & Health Servs. on behalf of Winter*, 12 Wn. App. 2d 815, 843, 460 P.3d 667 (2020) (“When a party moves to modify a commissioner’s ruling under RAP 17.7, we review the ruling de novo.”).

⁴² RAP 12.4.

⁴³ *See, e.g.*, Affidavit of Matthew R. Wojcik for CWD Group’s Attorney Fees on Appeal, No. 82407-4-I (Wash. App. Nov. 2, 2023).

The Commissioner did so in their ruling.⁴⁴ When Steichen moved to modify the Commissioner’s Ruling,⁴⁵ it triggered the Court of Appeals’ review of the same—not a review of the unpublished Opinion’s determination on the right to an award of attorney fees, which was a subject of Steichen’s unsuccessful motion for reconsideration and is now a subject of his petition for review at this Court.⁴⁶

In addition, because of other motion practice at the Court of Appeals, Steichen could not use his motion to modify to have the Court of Appeals’ review its determination on the right to an award of attorney fees. Before his motion to modify, Steichen filed a motion for reconsideration of the unpublished

⁴⁴ Commissioner’s Ruling.

⁴⁵ Motion to Modify.

⁴⁶ Opinion at pp. 22–24, 43; Motion for Reconsideration, No. 82407-4-I (Wash. App. Nov. 13, 2023); Order Denying Motion for Reconsideration and Striking Motion for Court to Consider Motion for Reconsideration En Banc, No. 82407-4-I (Wash. App. Dec. 20, 2023); Petition at pp. 1, 15–18.

Opinion, including its determinations on attorney fees.⁴⁷ He, then, could not file another motion directed at the reconsideration of those determinations in the unpublished Opinion, as that would violate RAP 12.4(h)'s limit of "only one motion for reconsideration"

C. Steichen fails to show that the Court of Appeals' Order triggers RAP 13.5(b) and, instead, gives irrelevant arguments.

The Court of Appeals' Order did not trigger RAP 13.5(b). There is no error that substantially changes the status quo or substantially limits Steichen's freedom to act. Steichen has owed the Respondents' attorney fees since the trial court litigation⁴⁸; what he owes increased as an ordinary result of him

⁴⁷ Motion for Reconsideration at pp. 31–35, No. 82407-4-I (Wash. App. Nov. 13, 2023); Order Denying Motion for Reconsideration and Striking Motion for Court to Consider Motion for Reconsideration En Banc, No. 82407-4-I (Wash. App. Dec. 20, 2023).

⁴⁸ CP 12172–12219, 12478–12481.

continuing the litigation at the Court of Appeals. Nor did the Courts of Appeals depart from the accepted and usual course of judicial proceedings or commit an error that would make further proceedings useless. The Court of Appeals refused to modify the Commissioner's Ruling that was consistent with the law that governed the same, absent Steichen showing otherwise.

In trying to change a prior determination at the appellate court, a moving party should not submit new arguments for the first time.⁴⁹ In addition to preserving and timely making their arguments, a moving party must give sufficiently developed arguments in their motion.⁵⁰ And they cannot raise arguments

⁴⁹ See *King Cnty. v. Friends of Sammamish Valley*, 26 Wn. App. 2d 906, 934 n.7, 530 P.3d 1023 (2023) (“This court generally does not consider arguments raised for the first time in a motion for reconsideration.”).

⁵⁰ See *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (“This court will not consider claims insufficiently argued by the parties.”).

for the first time in a reply.⁵¹

Here, the Order concerned the Commissioner's Ruling wherein the Commissioner set the amounts of the awards of attorney fees consistent with the lodestar method.⁵² The Commissioner had before them affidavits for fees that reflected the hours worked, the type of work done, and the category

⁵¹ See *Kissan Berry Farm v. Whatcom Farmers Coop*, 23 Wn. App. 2d 490, 497 n.5, 516 P.3d 821 (2022) (“[A]rguments raised for the first time in a reply brief are not properly before the court because they do not permit the nonmoving party the opportunity to respond.” (citing *White v. Kent Med. Ctr., Inc.*, 61 Wn. App. 163, 168, 810 P.2d 4 (1991))).

⁵² See *Tribble v. Allstate Prop. & Cas. Ins. Co.*, 134 Wn. App. 163, 175, 139 P.3d 373 (2006) (“A commissioner ... will determine the amount ... using a basic lodestar formula.”); *McLelland v. Paxton*, 11 Wn. App. 2d 181, 224, 453 P.3d 1 (2019) (“[T]he trial court begins with a calculation of the ‘lodestar,’ which equals the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.... [T]he court should discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time.” (internal citations omitted)).

person who did the work.⁵³ The Commissioner applied a general reduction to the submitted fees,⁵⁴ permissible where segregation of time on matters for which fees are authorized from time on other matters is difficult.⁵⁵ Indeed, segregation need not occur where claims involve a common core of facts or

⁵³ See *Miller v. Kenny*, 180 Wn. App. 772, 822, 325 P.3d 278 (2014) (“This documentation need not be exhaustive or in minute detail, but must inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work”) (quoting *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983)). Affidavit of Matthew R. Wojcik for CWD Groups Attorney Fees on Appeal, No. 82407-4-I (Wash. App. Nov. 2, 2023).

⁵⁴ Commissioner’s Ruling.

⁵⁵ *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 672, 880 P.2d 988 (1994) (“If . . . an attorney fees recovery is authorized for only some of the claims, the attorney fees award must properly reflect a segregation of the time spent on issues for which attorney fees are authorized from time spent on other issues.”); *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 82, 272 P.3d 827 (2012) (“Appellate courts, however, have permitted the use of a percentage reduction in segregating fees and costs when, as here, the specifics of the case make segregating actual hours difficult.”).

are based on related legal theories.⁵⁶ The amount of \$41,400 in fees for CWD, then, was not unreasonably high and was consistent with the lodestar method.

In trying to modify the Commissioner’s Ruling, Steichen failed to present convincing, timely, and sufficiently developed arguments for doing so. After failing to timely object to the attorney-fees affidavit for CWD before the Commissioner’s Ruling, Steichen filed his motion to modify wherein he disputed the amount of the award of attorney fees in the Commissioner’s Ruling with new and insufficiently developed arguments. For example, he argued that fees were wrongly awarded for “duplicative efforts,” without specifying and explaining what “efforts” were supposedly “duplicative.”⁵⁷ He argued that fees were wrongly awarded for “block billed” work,

⁵⁶ *Fiore v. PPG Indus., Inc.*, 169 Wn. App. 325, 352, 279 P.3d 972 (2012). *See, e.g.*, CP 4–5 (¶ 17).

⁵⁷ Motion to Modify at p. 7.

without identifying what was supposedly “block billed.”⁵⁸ Nor did he articulate a proposal for the segregation of fees about which he argued.⁵⁹ In addition to being insufficient, Steichen’s motion to modify prejudicially left CWD to guess the scope of and bases for his contentions.⁶⁰

Steichen, thus, failed to give adequate, timely, and sufficiently developed arguments to modify the Commissioner’s Ruling. Similarly, he now fails to meet his

⁵⁸ *Id.* at p. 9.

⁵⁹ *Id.* at pp. 6–7. *See Miller*, 180 Wn. App. at 824 (“Especially because Safeco made no proposal as to how the time could have been segregated, we cannot find that the trial court was obliged to make a segregation.”).

⁶⁰ *See Garrett Dev., LLC v. Deer Creek Water Corp.*, No. 21-6105, 2022 WL 12184048, at *11–12 (10th Cir. Oct. 21, 2022) (unpublished) (indicating that a party’s duty to develop an argument is in part required to allow an opposing party the chance to respond); 10th Cir. R. 32.1 (“Unpublished decisions are not precedential, but may be cited for their persuasive value.”).

“heavy burden”⁶¹ of showing that the Court of Appeals’ Order triggers RAP 13.5(b)’s “specific and stringent criteria”⁶² Instead of addressing the amounts of the awards of attorney fees in the Commissioner’s Ruling that was the subject of the Order, Steichen argues a matter that could not be resolved by the Order: namely, the Respondents’ rights to awards of attorney fees resolved in the unpublished Opinion.⁶³ The parties have already addressed under the relevant rule of appellate procedure Steichen’s desire for the review of issues regarding the right to an award of attorney fees, specifically in his petition for review and the Respondents’ answers to the same before this Court.⁶⁴

⁶¹ See *In re Grove*, 127 Wn.2d at 235 (describing burden under similar criteria in RAP 2.3(b)).

⁶² *In re Dependency of N.G.*, 199 Wn.2d at 595 (internal quotations and citation omitted); RAP 13.5(b).

⁶³ See *supra* § V.B.

⁶⁴ RAP 13.4(b). Petition at pp. 1, 15–18; Respondent CWD Group’s Answer to Randall R. Steichen’s Petition for Review, and Appendix, at pp. 4–5, 28–30, No. 102739-7 (Wash. Mar. 6, 2024).

Moreover, for the sake of argument, assuming Steichen could dispute the right to an award of attorney fees in moving to modify the Commissioner’s Ruling (which he could not), Steichen failed to timely make those arguments. After CWD opposed Steichen’s motion to modify in which he tried disputing the amount of CWD’s award in the Commissioner’s Ruling,⁶⁵ Steichen made new arguments in his subsequent reply about whether CWD had a right to an award of attorney fees.⁶⁶ Steichen, however, could not make new arguments in his reply.⁶⁷

⁶⁵ Motion to Modify at pp. 5–9.

⁶⁶ Reply to CWD’s Answer to Motion to Modify at pp. 1–7, No. 82407-4-I (Wash. App. Jan. 8, 2024).

⁶⁷ See *Kissan Berry Farm*, 23 Wn. App. 2d at 497 n.5 (“[A]rguments raised for the first time in a reply brief are not properly before the court because they do not permit the nonmoving party the opportunity to respond.” (citing *White, Inc.*, 61 Wn. App. at 168)). Inasmuch as Steichen makes new arguments in his reply in support of his motion for discretionary review, they should not be considered. *See id.*

VI. CONCLUSION

Steichen has not and cannot meet his burden of showing that the Court of Appeals' Order triggers the criteria for discretionary review in RAP 13.5(b). This Court should *deny* Steichen's motion for discretionary review of the Order.

Respectfully submitted: April 1, 2024

Certificate of Compliance: Pursuant to RAP 18.17, I certify that this Answer contains 3,514 words, exclusive of words contained in any appendices, title sheet, table of contents, table of authorities, this certificate of compliance, certificate of service, signature block, and pictorial images.

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CERTIFICATE OF SERVICE

On the date set forth below, I caused to be served on the following persons CWD Group’s Answer to Randall R. Steichen’s Motion for Discretionary Review, and Appendix, to which this is attached, via appellate court email filing and service system:

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Dated: April 1, 2024

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4857-5457-2723.1

Index to Appendix
Certain Filings at Court of Appeals Cited to in Respondent CWD Group’s Answer to
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Excerpts of Unpublished Opinion,
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Excerpt of Affidavit of Matthew R. Wojcik for CWD Group’s Attorney Fees on
Appeal, No. 82407-4-I (Wash. App. Nov. 2, 2023)APP 6

Letter, No. 82407-4-I (Wash. App. Nov. 16, 2023)
 (“Commissioner’s Ruling”)APP 31

Excerpt of Motion to Modify Notation Ruling, No. 82407-4-I (Wash. App. Dec. 13, 2023)
 (“Motion to Modify”)APP 35

Respondent CWD Group’s Response to Appellant’s Motion to Modify Notation
Ruling, No. 82407-4-I (Wash. App. Dec. 26, 2023)APP 46

Reply to CWD’s Answer to Motion to Modify Notation Ruling,
No. 82407-4-I (Wash. App. Jan. 8, 2024)APP 64

Order Denying Motion to Modify,
No. 82407-4-I (Wash. App. Jan. 31, 2024) (“Order”).....APP 79

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Appellant,

v.

1223 SPRING STREET OWNERS ASSOCIATION, a Washington non-profit corporation; CWD GROUP, a Washington corporation; VALERIE FARRIS OMAN, a citizen of the State of Washington; CONDOMINIUM LAW GROUP, PLLC, a Washington professional limited liability company; DAVID BUCK, a citizen of the State of Washington; DANA REID, a citizen of the State of Washington; JEREMY SPARROW, a citizen of the State of Washington; ROBERT MOORE, a citizen of the State of Washington; CATHERINE RAMSDEN, a citizen of the State of Washington.

Respondents.

No. 82407-4-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — This appeal arises from a long and tortured dispute between a condominium unit owner and his condominium association. In 2016, the 1223 Spring Street Owners Association (Association) adopted a special assessment to repair the

It is undisputed that Steichen knew there were issues with the notice provided to him. When responding to Oman about his unpaid monthly dues, Steichen stated:

The first time I heard about a Special Assessment was when I was accused of being in default. I did not receive any notice of the proposed assessment, I was not provided an opportunity to participate in the decision-making process, and I was not afforded an opportunity to vote on the assessment . . . But, after I was made aware of the Special Assessment, I did pay the entire assessment amount as and when I agreed to do so.

Steichen repeatedly agreed to pay the special assessment. Later, Steichen did pay the special assessment in three installment payments. His last payment toward the special assessment was on June 30, 2018.

The trial court did not err in granting summary judgment, finding that the special assessment was valid and that Steichen ratified it.

G

After dismissal of Steichen's claims, the trial court granted the Association, CLG, and CWD's motion for an award of attorney fees under RCW 64.34.455.⁸ In his seventh argument, Steichen asserts that "The trial court erroneously awarded Respondents fees pursuant to an Act they asserted was inapplicable." We disagree.⁹

Attorney fees may be awarded when authorized by a contract, a statute, or a recognized ground in equity. Mohandessi, 13 Wn. App. 2d at 701. Whether a contract or law authorizes an attorney fee award is a question of law and reviewed de novo. Kaintz v. PLG, Inc., 147 Wn. App. 782, 785-86, 197 P.3d 710 (2008).

⁸ The Association and CLG also sought attorney fees under 15 U.S.C. § 1692k(a)(3). Steichen does not address the federal statute.

⁹ Before the trial court, Steichen's response to the motions for attorney fees was stricken as untimely under King County Superior Court Local Civil Rule (LCR) 7(b)(4)(g).

The WCA, RCW 64.34.455, provides:

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party.

Washington law is clear that RCW 64.34.455 allows for an award of attorney fees against an unsuccessful plaintiff. Bilanko v. Barclay Ct. Owners Ass'n, 185 Wn.2d 443, 452 n.8, 375 P.3d 591 (2016) ("RCW 64.34.455 grants courts the discretion to award attorney fees to the 'prevailing party.'"); Eagle Point Condo. Owners Ass'n v. Coy, 102 Wn. App. 697, 713, P.3d 898 (2000) ("A defendant can be awarded fees as a prevailing party under the Condominium Act."). The WCA's remedies "shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed." RCW 64.34.100.

Steichen argues that the respondents were not entitled to fees under RCW 64.34.455 because they argued throughout the case that the WCA did not apply. Steichen's argument is misplaced. While the respondents argued that the notice and meeting requirements in RCW 64.34.308 did not apply, they did not argue that RCW 64.34.455 was inapplicable.

RCW 64.34.010(1) explicitly states that section 64.34.455 applies "to all condominiums created in this state before July 1, 1990 . . . with respect to events and circumstances occurring after July 1, 1990" unless it invalidates or supersedes existing, inconsistent provisions of the declaration or bylaws. Steichen did not identify an inconsistent provision in the Declaration.

Steichen next asserts that CLG and CWD are not subject to the WCA. But, as a unit owner, Steichen is subject to the WCA and the Declaration. He violated provisions of the WCA and the Declaration by not paying his regular monthly dues. Steichen then chose to sue all of the respondents under largely the same theories. The respondents were “adversely affected” by Steichen’s actions.

Because Steichen violated the WCA and the Declaration, and the respondents were adversely affected by Steichen’s failure to comply, the trial court did not err in awarding attorney fees.¹⁰

H

In his eighth argument, Steichen contends that “CLG collects debts for third parties, and is therefore subject to the [Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. §§ 1692-1692p], the [Washington Collection Agency Act (WCAA), ch. 19.16 RCW], and the [Consumer Protection Act (CPA), ch. 19.86 RCW].” But Steichen fails to acknowledge that most of these claims remained at the time of trial and Steichen failed to prosecute them. Thus, we disagree.

These claims against CLG remained for trial: claims under the FDCPA, 15 U.S.C. § 1692e based on assessment of late fees, e-mails sent on December 29, 2017, and access to records; per se CPA claim based on an alleged violation of WCAA, RCW


¹⁰ In a footnote, Steichen asserts that the fee awards are unreasonable, duplicative, not segregated, the interest rate conflicts with the Declaration, and the trial court erred by striking Steichen’s objection and denying sanctions and reconsideration. This argument is not adequately briefed and argued, therefore we will not consider it. Cowiche Canyon, 118 Wn.2d at 809.

After reviewing the record, we cannot conclude that the trial court abused its discretion in denying the motion for disqualification.

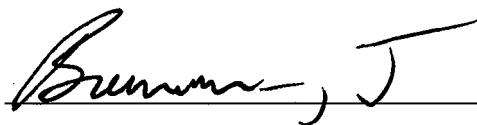
III

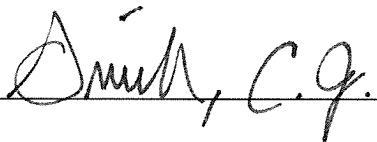
All parties request fees on appeal. Under RAP 18.1, we may grant attorney fees “[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review.” As discussed above, the WCA grants discretion for the court “in an appropriate case,” to award reasonable attorney fees to the prevailing party. RCW 64.34.455; see also Mohandessi, 13 Wn. App. 2d at 707-08 (awarding attorney fees on appeal under RCW 64.34.455). Here, the Association, CWD, and CLG are the prevailing parties; subject to compliance with RAP 18.1, we award their attorney fees on appeal.

We affirm.



WE CONCUR:





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

RANDALL R. STEICHEN,

Appellant,

v.

1223 SPRING STREET
OWNERS ASSOCIATION, et
al.,

Respondents.

No. 82407-4

AFFIDAVIT OF
MATTHEW R. WOJCIK
FOR CWD GROUP'S
ATTORNEY FEES ON
APPEAL

I, Matthew R. Wojcik, am an attorney for CWD Group in this case and give the following statements in this capacity:

1. In its opinion, this Court awarded Respondent CWD Group its attorney fees on appeal.¹ Accordingly, and pursuant to RAP 18.1(d), I submit this affidavit.

¹ Unpublished Opinion at 43, *Steichen v. 1223 Spring Street Owners Assoc.*, No. 82407-4 (Wash. App. Oct. 23, 2023) (hereinafter, “Unpublished Opinion”).

A. The paralegal and lawyers for CWD and their rates:

2. Below is a summary of the backgrounds and rates of the people involved in the representation of CWD during the appellate phase of this case:

a. **Shareholder Matthew R. Wojcik:** I represented Respondent CWD in the trial court and appellate court phases of this case. I am a shareholder at Bullivant Houser Bailey PC. I was admitted to practice law in Oregon in 1997 and in Washington in 1998. I concentrate my practice on defense of claims involving product liability, medical malpractice, professional liability, general liability, catastrophic injuries, class actions, and construction-related litigation. I received an “AV” rating from Martindale-Hubbell Law Directory, was selected for inclusion in *The Best Lawyers in America*, and am Past-President of the Washington Defense

Trial Lawyers organization. My hourly rate for the appellate phase of this case is the shareholder rate of \$335 per hour.

b. **Shareholder Daniel R. Lindhal:** During the beginning of the appellate phase in June 2021, Daniel R. Lindahl, a shareholder at Bullivant who focused his practice on appellate work, associated with me as counsel for CWD.² Lindahl was admitted to the Oregon and Washington bars in 1984. He had specialized in appellate litigation since 1994. He argued more than 165 appeals to merits panels in state and federal appellate courts. His hourly rate for the appellate phase of this case was the shareholder rate of \$335 per hour. In having Lindahl join me

² Notice of Association of Counsel, *Steichen v. 1223 Spring Street Owners Assoc.*, No. 82407-4 (Wash. App. Mar. 30, 2021).

for the appellate phase, I intended for him to prepare the brief of CWD and argue for CWD at oral argument before his retirement in September 2022. But after months of motion practice and filings regarding, among other items, the record on review and extensions for Steichen’s opening brief,³ Steichen did not submit his initial opening brief until August

³ See, e.g., Respondents’ Joint Objection and Motion to Compel Proper Statement of Arrangements and Verbatim Report of Proceedings, *Steichen*, No. 82407-4 (Wash. App. Sep. 9, 2021); Letter of L. Ennis, *Steichen*, No. 82407-4 (Wash. App. Jun. 28, 2022) (“Appellant Randall Steichen’s opening brief was originally due on March 4, 2022 and remains overdue Steichen shall file his opening brief by July 12, 2022); Letter of L. Ennis, *Steichen*, No. 82407-4 (Wash. App. Jul. 14, 2022) (“Steichen did not file his brief by July 12, 2022.... An extension is granted until July 29, 2022.”); Letter of L. Ennis, *Steichen*, No. 82407-4 (Wash. App. Aug. 2, 2022).

2022, shortly before Lindahl’s retirement.⁴ And Steichen later filed an amended opening brief.⁵

c. **Shareholder Owen R. Mooney:** Given the status of the briefing shortly before Lindahl’s retirement in September 2022, Owen R. Mooney, a shareholder at Bullivant, substituted for Lindahl in August 2022.⁶ Mooney was admitted to practice law in Washington in January 2013. He joined Bullivant’s Seattle office in September 2014 after he finished a two-year judicial clerkship at the Nevada Supreme

⁴ Appellant’s Opening Brief, *Steichen*, No. 82407-4 (Wash. App. Aug. 12, 2022); Appellant’s Motion to File Overlength Brief, or, In the Alternative to Eliminate Issues on Appeal or Otherwise Shorten Opening Brief, *Steichen*, No. 82407-4 (Wash. App. Aug. 12, 2022).

⁵ Appellant’s Amended Opening Brief, *Steichen*, No. 82407-4 (Wash. App. Aug. 31, 2022) (hereinafter “Amended Opening Brief”); Motion to File Amended Overlength Opening Brief, *Steichen*, No. 82407-4 (Wash. App. Aug. 31, 2022).

⁶ Respondent CWD Group’s Notice of Substitution of Counsel, *Steichen*, No. 82407-4 (Aug. 23, 2022).

Court. He has concentrated his practice on insurance-coverage litigation and appellate work. Recently, Mooney: represented an insurer who prevailed at the Ninth Circuit Court of Appeals in *Aspen Lodging v. Affiliated FM*, a case about disputed insurance coverage for alleged losses in connection with the Covid-19 pandemic⁷; and argued at oral argument for an insurer who prevailed at the Ninth Circuit Court of Appeals in *Bliss Sequoia v. Risk Advisors*, a case regarding disputed insurance coverage for claims of professional negligence.⁸ Best Lawyers recently recognized Mooney as one of its “Ones to Watch” for 2024.⁹ His work in this

⁷ *Aspen Lodging Grp., LLC v. Affiliated FM Ins. Co.*, No. 21-35472, 2023 WL 3562998 (9th Cir. May 19, 2023).

⁸ *Bliss Sequoia Ins. & Risk Advisors, Inc. v. Allied Prop. & Cas. Ins. Co.*, 52 F.4th 417 (9th Cir. 2022).

⁹ Bullivant Houser Bailey, 32 *Bullivant Houser Bailey Attorneys Selected to Best Lawyers 2024* (Aug. 17, 2023),

case included preparing CWD's brief. Mooney's hourly rate for the appellate phase of this case is the shareholder rate of \$335 per hour.

d. **Shareholder Daniel R. Bentson:** After the briefing ended, this Court scheduled oral argument for April 21, 2023.¹⁰ But Mooney lacked availability then. In late January 2023, Mooney and his wife welcomed their second child, who has a life-limiting condition. The extensive care for their child made it impractical for Mooney to argue for CWD at oral argument on April 21, whereas counsel for other respondents were available then. Given the circumstances and that this appeal started in 2021, CWD did not ask to continue oral

<https://www.bullivant.com/32-bullivant-houser-bailey-attorneys-selected-to-best-lawyers-2024/>.

¹⁰ Letter of L. Ennis, *Steichen*, No. 82407-4 (Mar. 17, 2023).

7 – AFFIDAVIT OF MATTHEW R. WOJCIK FOR CWD GROUP'S ATTORNEY FEES ON APPEAL

argument to a later date. Instead, a shareholder at Bullivant, Daniel R. Bentson, appeared for CWD to carry on much of the appellate work, including oral argument.¹¹ Bentson was admitted to practice law in Washington in November 2005. He joined Bullivant in September 2011 after he finished a one-year judicial clerkship at the Washington State Supreme Court. At Bullivant, he concentrated his practice on appeals and insurance-coverage litigation. After Lindahl's retirement, Bentson led an appellate team at Bullivant that included Mooney. Among other appeals, Bentson: recently represented the prevailing insurer in *Aspen Lodging* alongside Mooney; and represented an insurer who prevailed at the

¹¹ Notice of Association of Counsel for Respondent CWD Group, No. 82407-4 (Mar. 20, 2023).

Washington State Supreme Court in *Ohio Security Insurance Company v. Axis Insurance Company*, which concerned a dispute over service for authorized foreign insurers in Washington.¹² Bentson's rate for the appellate phase of this case was the shareholder rate of \$335 per hour.

- e. **Paralegal Leslie Narayan:** A paralegal at Bullivant, Leslie Narayan, supported the work of representing CWD in the appellate court phase of this case. She began her career with Bullivant in 1991. She is a litigation paralegal in Bullivant's insurance law and casualty groups. She has over 25 years of extensive litigation experience in a wide range of cases. Narayan's

¹² *Ohio Sec. Ins. Co. v. Axis Ins. Co.*, 190 Wn.2d 348, 413 P.3d 1028 (2018).

rate for the appellate phase of this case is the paralegal rate of \$135 per hour.

3. Based on my experience, the above rates are reasonable and are at the lower-end range for Seattle’s legal community. For example, the shareholder rate is lower than the rate of a senior attorney who represents another respondent in this case.¹³ The rates are likewise lower than rates deemed reasonable by other courts.¹⁴ And the shareholder rate is below or near

¹³ Declaration of Mary B. Reiten in Support of Request for Attorney Fees and Expenses at ¶ 5, *Steichen*, No. 82407-4 (Wash. App. Oct. 31, 2021) (disclosing rate of \$360 per hour).

¹⁴ *Amazon.com, Inc. v. Wong*, No. C19-0990JLR, 2022 WL 1092518, at *2 (W.D. Wash. Apr. 12, 2022) (finding that hourly rates ranging from \$535 to \$785 for attorneys and \$215 for paralegals “are comparable to those prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation” (internal quotations and citation omitted)); *Allstate Indem. Co. v. Lindquist*, No. C20-1508JLR, 2021 WL 4226155, at *3 (W.D. Wash. Sept. 16, 2021) (finding that rates from \$475-to-\$700 per hour for attorneys and a rate of \$300 per hour for legal assistants were reasonable); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326-27 (W.D. Wash. 2009) (finding \$475 to \$760 per hour to be a reasonable rate for attorneys in Seattle).

rates that this Court recently found reasonable in 2023.¹⁵ Moreover, the rates above are established rates for Bullivant in representing clients in arrangements involving a particular liability insurer, which is the situation for CWD.¹⁶

B. Fees, time worked, type of work done, and people performing the work:

4. CWD seeks fees in the amount \$117,763.50.
5. Exhibit Nos. 1 through 5 are lawyer-and-paralegal-specific billing reports that capture the fees CWD seeks—Exhibit 1 for Wojcik; Exhibit 2 for Lindahl; Exhibit 3 for Bentson; Exhibit 4 for Mooney; and

¹⁵ *Hays Elliot Props. v. Horner*, No. 839993 (Wash. App. Jul. 10, 2023) (finding hourly rate of \$390 to be reasonable); Letter of L. Ennis, *Kaur v. Am. Enters. Corp.*, No. 831194 (Wash. App. Mar. 6, 2023) (reflecting finding that attorney fees were reasonable where hourly rates ranged from \$300 to \$580).

¹⁶ *See Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983) (“Where the attorneys have an established rate for billing clients, that rate will likely be a reasonable rate.”).

Exhibit 5 for Narayan. For these fees, the reports show billed time that each lawyer or paralegal worked and the work done. They include narratives generated at or around the time of the work done for billing the same. For redacted content in an exhibit, there is a privilege log.

6. As to Exhibit No. 5, for paralegal Narayan, it reflects work that was done with shareholder oversight and that was, in my view, legal in nature.
7. This appeal involved the time-intensive work of mastering the record on review for understanding and responding to Steichen's arguments. The case was litigated at the superior court for over two years. It involved numerous defendants. And the superior court held approximately 17 hearings and issued approximately 60 orders.¹⁷ The record on review was

¹⁷ Unpublished Opinion at 7.

voluminous, including over 13,000 pages of clerk’s papers. It required significant time and work to analyze the record and determine what was relevant to a respondent and the arguments of Steichen. In addition, Steichen submitted a “significantly overlength brief [that] identifie[d] 10 issues pertaining to his assignments of error, and then raise[d] 13 arguments and a request for attorney fees”¹⁸ That brief had far more words—21,177 words— than the 12,000 words permitted under the relevant rule.¹⁹

8. Moreover, Steichen created unique circumstances that increased the time-intensive work. They included the following:

a. Steichen generated a voluminous record on review in an unconventional fashion. The record included over 13,000 pages of clerk’s papers. In

¹⁸ *Id.* at 7.

¹⁹ RAP 18.17(c)(2).

addition, Steichen filed a corrected amended statement of arrangements for a “verbatim report of proceedings,” which reflected that twelve trial court hearings listed in the statement would not be transcribed.²⁰ For those twelve hearings, Steichen represented that transcripts for them were in the clerk’s papers.²¹ Respondents objected, raising among other things: that Steichen did not comply with RAP 9.2(c), under which a party “should include in the statement of arrangements a statement of the issues the party intends to present on review” if they arrange for less than all of the verbatim report of proceedings; and that his statement of arrangements imposed a burden on respondents

²⁰ Corrected Amended Statement of Arrangements at ¶ 8, *Steichen*, No. 82407-4 (Wash. App. Aug. 30, 2021).

²¹ *Id.*

to search for trial-court hearing transcripts within over 13,000 pages of clerk's papers.²² This Court determined that "it appear[ed] counterproductive to direct Steichen to file an amended statement of arrangements"²³ The circumstances imposed on respondents the time-intensive burden of navigating and analyzing a voluminous record and, in so doing, searching for hearing transcripts within over 13,000 pages of clerk's papers.

- b. Steichen initially filed an opening brief that he later amended without prior notice to

²² Respondents' Joint Objection and Motion to Compel Proper Statement of Arrangements and Verbatim Report of Proceedings, *Steichen*, No. 82407-4 (Wash. App. Sep. 9, 2021); Respondents' Joint Response to Appellant's Motion to Modify Ruling on Statement of Arrangements and Verbatim Report of Proceedings, *Steichen*, No. 82407-4 (Wash. App. Sep. 29, 2021).

²³ Letter of L. Ennis, *Steichen*, No. 82407-4 (Wash. App. Oct. 4, 2021).

Respondents. Between August 18 and August 31, 2022, CWD and other respondents believed they were responding to Steichen's initial 150-page opening brief, and CWD invested time directed at preparing briefs in response to it.²⁴ But on August 31, 2022, Steichen filed a 129-page Amended Opening Brief and moved this Court to allow for it.²⁵ This Court allowed for that amended brief.²⁶

- c. Steichen's Amended Opening Brief lacked details that typically appear in an opening brief and that help a reader understand the bases for the appellant's arguments. In his brief, for example, Steichen listed 18 assignments of error

²⁴ Appellant's Opening Brief, *Steichen*, No. 82407-4 (Wash. App. Aug. 12, 2022).

²⁵ Motion to File Amended Overlength Opening Brief, *Steichen*, No. 82407-4 (Wash. App. Aug. 31, 2022).

²⁶ Letter of L. Ennis, *Steichen*, No. 82407-4 (Wash. App. Sep. 20, 2022).

and 10 issues purportedly pertaining to those assignments.²⁷ He did so with general language and without details, like citations to the record, that often appear and help with identifying what the claimed errors are and where they appear in the record.²⁸

d. Steichen’s Amended Opening Brief lacked sufficient citations to the record on review. That left a respondent with the laborious work of finding what within the voluminous record Steichen relied on for his arguments.²⁹ At times, Steichen failed to give a citation.³⁰ And he also had citations to volumes and page numbers of a “VRP” when referring to trial court hearings³¹;

²⁷ Amended Opening Brief at 6-10.

²⁸ *Id.*

²⁹ *See, e.g.*, Amended Opening Brief at 23, 29, 30 (“CP ___”).
See also RAP 10.3(a)(5) & (6).

³⁰ *Id.*

³¹ *See, e.g.*, Amended Opening Brief at p. 106-17.

many, maybe all, of these citations were to a proposed multiple-volume “Agreed Report of Proceedings” that was not agreed to by the parties, not signed by them, and not filed with this Court.³² The deficient and defective citations left a respondent with the burden of looking at Steichen’s citations to material not part of the record on review and then trying to find that material in over 13,000 pages of clerk’s papers if the hearing at issue was not ordered by Steichen for transcription.

Put simply, Steichen’s activities at this Court generated and increased the time-intensive work for this appeal, reflected in Exhibit Nos. 1 through 5. The work included: participating in motion practice before this

³² Respondents’ Motion for an Extension of Time for Answering Briefs and Supporting Declaration, *Steichen*, No. 82407-4 (Wash. App. Nov. 2, 2022).

Court; analyzing and navigating an extensive record generated in an unconventional way; and understanding and responding to Steichen's overlength brief, including his defective and insufficient record citations.

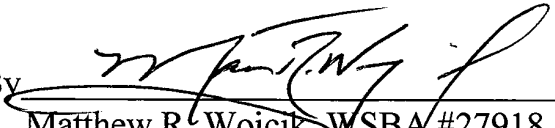
9. I have worked on approximately fifteen appeals in my career. Thus, I am familiar with the amount of time required to litigate an appeal to an opinion. Given that and the circumstances of this appeal, the hours worked are consistent with the amount of time I would expect to work in representing CWD in this type of appeal. The hours billed were reasonably incurred to represent CWD in this appeal.
10. In addition, CWD reserves the right to seek fees incurred if Steichen files a motion for reconsideration of this Court's opinion and if CWD submits an answer.

Certificate of Compliance: Pursuant to RAP 18.17(b), I certify that this this affidavit contains 2,614 words, exclusive of word contains in any appendices, title sheet, table of contents, the table of authorities, certificate of compliance, certificate of service, signature block, and pictorial images.

Dated November 2, 2023, at Bend, Oregon.

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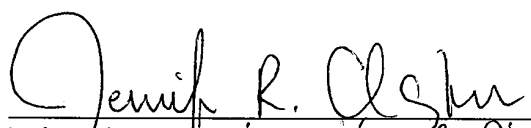
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By 
Matthew R. Wojcik, WSBA #27918
E-mail: matt.wojcik@bullivant.com
Bullivant Houser Bailey PC
925 Fourth Avenue, Suite 3800
Seattle, WA 98104
(206) 292-8930
Attorney for Respondent CWD Group

STATE OF Oregon)
) ss.
COUNTY OF Deschutes)

On the 2nd day of November, 2023, before me appeared Matthew R. Wojcik, known to me to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he/she executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.


Printed Name: Jennifer R. Clayton
NOTARY PUBLIC in and for the State of
Oregon, residing at Bend OR
My commission expires Feb 26, 2027

CERTIFICATE OF SERVICE

On the date set forth below, I caused to be served the Affidavit of Matthew R. Wojcik for CWD Group’s Attorney Fees on Appeal, to which this is attached, via appellate court email filing and service system, on the following persons:

Ashley Steichen	ashleysteichen@gmail.com
Christopher Nye	cnye@rmlaw.com
Marilee C. Erickson	merickson@rmlaw.com
David Reeve	dreeve@rmlaw.com
Marc Rosenberg	mr@leesmart.com
Mary Reiten	mreiten@pstlawyers.com
Stephan O. Fjelstad	sfjelstad@pstlawyers.com

DATED at Seattle, Washington this 2nd day of
November, 2023.

s/ Matthew R. Wojcik

4883-5800-6412.1

22 – AFFIDAVIT OF MATTHEW R. WOJCIK FOR CWD
GROUP'S ATTORNEY FEES ON APPEAL

EXHIBIT 1

Date	Initials	Timekeeper Name	Hours	Amount	Narrative	Matter Number	Rate	Billed
6/9/2021	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER FROM COURT OF APPEALS GRANTING PLAINTIFF EXTENSION OF TIME TO FILE SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS;	02802-00838	335.00	TRUE
6/24/2021	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER FROM COURT OF APPEALS IN RESPONSE TO PLAINTIFF'S MOTION TO MODIFY;	02802-00838	335.00	TRUE
7/8/2021	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER FROM COURT OF APPEALS RE PLAINTIFF'S OVERDUE SUBMISSION OF SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS AND POSSIBILITY OF SANCTIONS;	02802-00838	335.00	TRUE
7/26/2021	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER OF COURT OF APPEALS DENYING STEICHEN'S MOTION TO MODIFY THE COMMISSIONER'S MAY 20, 2021 RULING DENYING HIS MOTION TO VACATE JUDGMENT;	02802-00838	335.00	TRUE
8/9/2021	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE COURT OF APPEALS' ORDER EXTENDING TIME TO FILE SUPPLEMENTAL VERBATIM REPORT OF PROCEEDINGS AND CLERKS PAPERS.	02802-00838	335.00	TRUE
1/7/2022	1048	MATTHEW WOJCIK	0.40	134.00	REVIEW AND ANALYZE REPLY TO ANSWER TO MOTION TO MODIFY COMMISSIONER'S RULING DENYING DISCRETIONARY REVIEW.	02802-00838	335.00	TRUE
4/27/2022	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE VALERIE OMAN AND CONDO LAW GROUP'S RESPONSE TO APPELLANT'S MOTION TO EXTEND TIME TO FILE BRIEF.	02802-00838	335.00	TRUE
5/2/2022	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE STEICHEN'S REPLY TO CLG'S ANSWER TO MOTION TO EXTEND TIME TO FILE BRIEF.	02802-00838	335.00	TRUE
5/31/2022	1048	MATTHEW WOJCIK	0.40	134.00	REVIEW AND ANALYZE MOTION TO MODIFY NOTATION RULING AND SUPPORTING DECLARATION.	02802-00838	335.00	TRUE
6/1/2022	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE DEFENDANT OMAN AND CONDO LAW GROUP'S RESPONSE TO PLAINTIFF'S MOTION TO MODIFY NOTATION RULING.	02802-00838	335.00	TRUE
6/1/2022	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE COURT'S RESPONSE TO PLAINTIFF'S MOTION TO MODIFY NOTATION.	02802-00838	335.00	TRUE
6/13/2022	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE STEICHEN'S REPLY TO CLG'S RESPONSE TO MOTION TO MODIFY NOTATION RULING.	02802-00838	335.00	TRUE
6/28/2022	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER FROM COURT OF APPEALS IN RESPONSE TO PLAINTIFF'S REQUEST FOR CONTINUATION.	02802-00838	335.00	TRUE
8/1/2022	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE DEFENDANT CONDOLAW'S OPPOSITION TO FURTHER EXTENSION OF TIME REQUESTED BY PLAINTIFF TO FILE APPELLATE BRIEF.	02802-00838	335.00	TRUE
8/2/2022	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW ORDER FROM COURT OF APPEALS GRANTING FURTHER EXTENSION OF TIME FOR APPELLANT TO FILE APPELLATE BRIEF.	02802-00838	335.00	TRUE
8/15/2022	1048	MATTHEW WOJCIK	0.40	134.00	REVIEW AND ANALYZE CONDOLAW'S PROPOSED RESPONSE TO PLAINTIFF'S AMENDED MOTION TO FILE OVERLENGTH BRIEF.	02802-00838	335.00	TRUE
8/15/2022	1048	MATTHEW WOJCIK	0.40	134.00	REVIEW AND ANALYZE PLAINTIFF'S MOTION TO FILE OVERLENGTH BRIEF OR ALTERNATIVE MOTION TO ELIMINATE ISSUES ON APPEAL OR OTHERWISE SHORTEN OPENING BRIEF AND SUPPORTING DECLARATION.	02802-00838	335.00	TRUE
8/15/2022	1048	MATTHEW WOJCIK	0.30	100.50	COMMUNICATE WITH CO-DEFENDANTS RE PLAINTIFF'S APPELLATE MOTION.	02802-00838	335.00	TRUE
8/16/2022	1048	MATTHEW WOJCIK	0.80	268.00	CONFERENCE CALL WITH ALL DEFENDANTS TO DISCUSS PLAINTIFF'S 150-PAGE BRIEF AND OUTLINE DEFENDANTS' RESPONSE.	02802-00838	335.00	TRUE
8/18/2022	1048	MATTHEW WOJCIK	0.20	67.00	REVIEW ORDER FROM COURT OF APPEALS WAIVING PAGE LIMITATION AND ALLOWING PLAINTIFF TO PROCEED WITH 150 PAGE MOTION.	02802-00838	335.00	TRUE
8/24/2022	1048	MATTHEW WOJCIK	2.10	703.50	OUTLINE ISSUES TO BE ADDRESSED IN RESPONSE TO PLAINTIFF'S 155-PAGE APPELLATE BRIEF.	02802-00838	335.00	TRUE
8/24/2022	1048	MATTHEW WOJCIK	2.60	871.00	REVIEW AND ANALYZE PLAINTIFF'S 155-PAGE APPELLATE BRIEF.	02802-00838	335.00	TRUE
8/26/2022	1048	MATTHEW WOJCIK	0.40	134.00	WORK ON MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S APPELLATE BRIEF.	02802-00838	335.00	TRUE
8/31/2022	1048	MATTHEW WOJCIK	0.60	201.00	WORK ON MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S OVERLENGTH APPELLATE BRIEF.	02802-00838	335.00	TRUE
8/31/2022	1048	MATTHEW WOJCIK	0.40	134.00	COMMUNICATE WITH CLIENT PAUL GRUCZA RE STATUS OF APPEAL.	02802-00838	335.00	TRUE
9/1/2022	1048	MATTHEW WOJCIK	2.30	770.50	REVIEW AND ANALYZE PLAINTIFF'S 129-PAGE AMENDED OPENING BRIEF.	02802-00838	335.00	TRUE
9/1/2022	1048	MATTHEW WOJCIK	0.40	134.00	REVIEW AND ANALYZE PLAINTIFF'S MOTION TO FILE AMENDED OVERLENGTH OPENING BRIEF AND DECLARATION IN SUPPORT.	02802-00838	335.00	TRUE
9/2/2022	1048	MATTHEW WOJCIK	0.40	134.00	REVIEW AND ANALYZE OMAN AND CONDO LAW'S 25-PAGE RESPONSE TO APPELLANT'S MOTION TO FILE AMENDED OVERLENGTH OPENING BRIEF.	02802-00838	335.00	TRUE
9/2/2022	1048	MATTHEW WOJCIK	0.80	268.00	CONFERENCE CALL WITH ALL DEFENSE COUNSEL TO DISCUSS HOW TO RESPOND TO PLAINTIFF'S MOTION TO FILE AMENDED APPELLATE BRIEF.	02802-00838	335.00	TRUE

Date	Initials	Timekeeper Name	Hours	Amount	Narrative	Matter Number	Rate	Billed
9/7/2022	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE ASSOCIATION'S OPPOSITION TO PLAINTIFF'S MOTION TO FILE AMENDED OVER LENGTH BRIEF.	02802-00838	335.00	TRUE
9/7/2022	1048	MATTHEW WOJCIK	1.40	469.00	WORK ON OPPOSITION TO PLAINTIFF'S MOTION TO FILE AMENDED OPENING BRIEF.	02802-00838	335.00	TRUE
9/20/2022	1048	MATTHEW WOJCIK	0.20	67.00	REVIEW AND ANALYZE ORDER FROM COURT OF APPEALS ON PLAINTIFF'S AMENDED MOTION TO FILE OVERLENGTH BRIEF OF IN THE ALTERNATIVE TO ELIMINATE ISSUES ON APPEAL.	02802-00838	335.00	TRUE
10/4/2022	1048	MATTHEW WOJCIK	3.40	1,139.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/10/2022	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER FROM COURT GRANTING EXTENSION OF TIME TO FILE RESPONSE BRIEF.	02802-00838	335.00	TRUE
10/12/2022	1048	MATTHEW WOJCIK	3.80	1,273.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/14/2022	1048	MATTHEW WOJCIK	3.80	1,273.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/17/2022	1048	MATTHEW WOJCIK	2.40	804.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/19/2022	1048	MATTHEW WOJCIK	2.50	837.50	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/25/2022	1048	MATTHEW WOJCIK	1.80	603.00	WORK ON RESPONSE BRIEF TO PLAINTIFF'S APPEAL.	02802-00838	335.00	TRUE
10/27/2022	1048	MATTHEW WOJCIK	2.80	938.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/28/2022	1048	MATTHEW WOJCIK	1.80	603.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
10/31/2022	1048	MATTHEW WOJCIK	1.80	603.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
11/3/2022	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE ORDER OF COURT EXTENDING TIME FOR RESPONDENT TO FILE BRIEF.	02802-00838	335.00	TRUE
12/7/2022	1048	MATTHEW WOJCIK	1.80	603.00	REVIEW AND ANALYZE DEFENDANT ASSOCIATION'S DRAFT RESPONSE BRIEF AND SUPPORTING DECLARATION AND EXHIBITS.	02802-00838	335.00	TRUE
12/8/2022	1048	MATTHEW WOJCIK	7.20	2,412.00	WORK ON APPELLATE BRIEF.	02802-00838	335.00	TRUE
1/10/2023	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE COURT ORDER DENYING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE REPLY, MOTION FOR OVERLENGTH BRIEF, AND MOTION TO CORRECT ORIGINAL FILING.	02802-00838	335.00	TRUE
1/10/2023	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE DEFENDANT CONDO LAW'S RESPONSE TO APPELLANT'S MOITONS FOR EXTENSION OF TIME, TO CORRECT OPENING BRIEF, AND FOR PERMISSION TO EXCEED WORD LIMITATIONS.	02802-00838	335.00	TRUE
2/15/2023	1048	MATTHEW WOJCIK	0.20	67.00	REVIEW AND ANALYZE PLAINTIFF'S DESIGNATION OF CLERK'S PAPERS.	02802-00838	335.00	TRUE
2/15/2023	1048	MATTHEW WOJCIK	0.40	134.00	COMMUNICATE WITH ALL COUNSEL RE PLAINTIFF'S REPLY BRIEF AND DESIGNATION OF CLERK'S PAPERS.	02802-00838	335.00	TRUE
2/22/2023	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE CONDO LAW'S RESPONSE TO STEICHEN'S MOTION FOR EXTENSION OF TIME TO FILE REPLY AND FOR SANCTIONS.	02802-00838	335.00	TRUE
2/27/2023	1048	MATTHEW WOJCIK	0.10	33.50	REVIEW AND ANALYZE COURT OF APPEALS' ORDER GRANTING EXTENSION OF TIME FOR PLAINTIFF TO REPLY UNTIL MARCH 3.	02802-00838	335.00	TRUE
3/2/2023	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF DUE TO EXTENUATING CIRCUMSTANCES.	02802-00838	335.00	TRUE
3/14/2023	1048	MATTHEW WOJCIK	0.30	100.50	REVIEW AND ANALYZE CONDO LAW'S MOTION TO STRIKE OR ALTERNATIVE MOTION TO STRIKE.	02802-00838	335.00	TRUE
4/10/2023	1048	MATTHEW WOJCIK	0.50	172.50	REVIEW AND ANALYZE SPREADSHEET OUTLINING VARIOUS MOTIONS AND COURT RULINGS UPON WHICH PLAINTIFF IS BASING APPEAL.	02802-00838	345.00	TRUE
4/20/2023	1048	MATTHEW WOJCIK	1.70	586.50	CONFERENCE CALL WITH APPELLATE COUNSEL TO WALK THROUGH KEY EVIDENCE AND PREPARE FOR ORAL ARGUMENT.	02802-00838	345.00	TRUE
		BILLED TOTALS:	54.60	18,313.00	55 Records			
		GRAND TOTALS:	54.60	18,313.00	55 Records			

*The Court of Appeals
of the
State of Washington*

LEA ENNIS
Court Administrator/Clerk

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November 16, 2023

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Case #: 824074
1223 Spring Street Owners Assoc, et al., Respondents v. Randall Steichen, Appellant
King County Superior Court No. 18-2-57978-3

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on November 13, 2023, regarding Attorney Fees and Cost:

On October 23, 2023, this Court issued an unpublished opinion affirming the trial court's resolution of Appellant Randall Steichen's dispute with 1223 Spring Street Owners Association and awarding attorney fees on appeal to the Association, CWD Group, and Condominium Law Group.

Counsel for the Association on the counterclaim, Attorney Mary Reiten, has prepared a declaration providing supporting information for a request of \$22,107 in attorney fees and \$25 for parking expenses. Reiten describes her 58.2 hours of attorney work at a rate of \$360 per hour for \$20,952 in fees; 1.4 hours of attorney work by Stephan Fjelstad for \$525 in fees; and 4.2 hours of paralegal work by Laurie Shinyama at a rate of \$150 per hour for \$630 in fees.

Counsel for CWD Group, Attorney Matthew Wojcik, provided detail for a request of \$117,763.50 in attorney fees. Wojcik describes attorney work performed at a rate of \$335 per hour, including 54.6 hours of his own work; 33.8 hours by Attorney Daniel Lindhal; 234.7 hours by Attorney Owen Mooney; and 24.1 hours by Attorney Daniel Bentson, as well as 9.3 hours of paralegal work by Leslie Narayan at a rate of \$135 per hour. CWD Group also filed a cost bill requesting \$211 for copies of clerk's papers.

Counsel for the Association, Attorney Marilee Erickson has also filed a declaration requesting \$98,437 for 641.2 hours of work and \$57.49 in expenses for a copy of a hearing recording to verify the record on appeal. Erickson describes her 91.7 hours of attorney work performed at a rate of \$230 per hour for a total of \$21,091 in fees; 176.4 hours of attorney work performed by Attorney Christopher Nye at a rate of \$200 per hour for a total of \$35,280 in fees; 20.8 hours of attorney work performed at a rate of \$200 per hour by Attorney David Reeve for a total of \$4,160 in fees; and 352.3 hours of paralegal work at a rate of \$110 per hour by Mary Clifton for a total of \$37,906 in fees. The Association also filed a cost bill requesting \$200 in statutory attorney fees, \$1,266.73 for copies of clerk's papers.

Counsel for Condominium Law Group, Attorney Marc Rosenberg, has filed a declaration requesting \$54,639.45 in attorney fees, based on a 10% reduction of the total amount billed of \$60,710.50 and waiving costs. Although the supporting documents show descriptions of hours worked at rates of \$190 and \$275 for attorney work and \$105 for paralegal work, Rosenberg has not provided a total number of hours worked. Based on the total fee amounts, the documents suggest Rosenberg performed between 212 and 307 hours of attorney work and Paralegal Ryan Bridges performed approximately 22.3 hours of paralegal work.

Steichen objects to any award of fees to the Association, contending that the Association's counterclaim counsel did not include a request for fees on appeal as to its counterclaim in its brief on the merits and therefore failed to comply with RAP 18.1. In a footnote, Steichen also contends that the "Association's Counterclaim briefing" is nearly identical to its filings before the trial court.

Reasonable attorney fees are based on the number of hours reasonably spent, multiplied by a reasonable hourly rate. *Berryman v. Metcalf*, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). RAP 14.3 provides a list of expenses that this Court presumes are reasonable to be awarded as costs.

I have reviewed this Court's file, the fee requests and cost bills, and the objections. After consultation with the panel, I conclude that the amounts requested are not reasonable and must be reduced.

In its 43-page opinion, the panel acknowledges that Steichen raised "multiple" issues and arguments in a "significantly overlength brief" and presented a "voluminous" record. However, the panel declined to extensively address several issues based on Steichen's failure to identify support in the record or authority; resolved several issues based on well-settled authority; and rejected several claims based on undisputed facts and circumstances. Although the panel held oral argument, a review of the recorded hearing reveals that four attorneys split Respondents' 15-minute argument time; the argument did not involve any complex legal analysis; and the panel asked few questions, most of which were focused on clarifying evidentiary details, none of which seemed ultimately dispositive. Although this Court's file shows that the case included a number of motions, nothing in the hearing record or opinion suggests that a total of between 900 and 1000 hours of attorney work by nine attorneys for three Respondents could be considered time reasonably spent on this appeal.

As for Attorney Reiten, who represented the Association on the counterclaim, it appears that the attached time sheets refer to work performed on trial court matters in addition to work on the appeal. As Reiten elected not to clearly separate out time spent on the appeal and I was only able to identify approximately 40 hours of her attorney time for which the descriptions appear to refer solely to work on the appeal, and because the total number of hours worked do not appear reasonable for the overall role of defending the resolution of the Association's counterclaim and attorney fee award on appeal, I will reduce the total number of hours to 40 for Reiten, but include the 1.4 hours of attorney work by Fjelstad and 4.2 hours of paralegal work. Their reported hourly rates of \$360, \$375, and \$150, respectively appear reasonable. Accordingly, I will award \$15,555 of Reiten's requested fees. As this Court does not generally award costs for parking fees under RAP 14.3(a), the requested \$25 cost will not be awarded.

As for Attorney Wojcik's request on behalf of CWD Group, over \$116,000 for 347 hours of attorney work is unreasonable. CWD Group's brief was 9,381 words and was properly focused on Steichen's issues and arguments related to CWD Group's role in the case. The brief explicitly acknowledges Steichen's insufficient briefing and includes a reasonable description of the facts and straightforward discussion of the legal issues. The brief does not appear to include novel or complex analysis. The opinion does not suggest that any particular argument aimed at CWD Group justified such an excessive amount of hours, all of which were billed at the same rate. The motions presented to this Court also cannot explain such excess. While the \$335 hourly rate is not unreasonable for the attorneys listed, it does not appear reasonable or warranted for that many attorneys of that level of experience to spend that many hours on this case. Given the circumstances here, I will reduce the requested amount by just under two-thirds, despite my impression that even 120 hours of attorney time is on the high end of a reasonable range for a case like this. Accordingly, attorney fees in the amount of \$40,200 will be awarded, in addition to \$1,200 for paralegal fees and \$211 in costs under RAP 14.3(a)(2), for a total of \$41,611 to CWD Group.

As for Attorney Erikson's request on behalf of the Association, 288.9 hours of attorney work and 352.3 hours of paralegal work appears unreasonably high. The Association's 9,694-word brief explicitly identified the shortcomings of Steichen's brief and urged this Court not to reach the merits. The brief also clearly addressed the issues and included reasonable argument without

Page 4 of 4
November 16, 2023
Case #: 824074

any novel or complex analysis. Although the total number of hours spent appears unreasonable, the billing rates here appear more reasonable than certain counsel of other Respondents, as the amounts are both lower, \$230 and \$200 per hour for the attorneys, and distributed in a more reasonable manner, as Erickson billed 91.7 hours at the \$230 rate, while other attorneys billed 197.2 hours at the \$200 rate, and a paralegal billed 352.3 hours at the \$110 rate. Still, as the total request of over \$98,000 appears excessive and unreasonable for the overall circumstances of this case - in my view and in consultation with the panel - such that an approximate fifty percent reduction appears appropriate. Accordingly, \$50,000 in attorney fees will be awarded, along with \$1,266.73 in costs under RAP 14.3(a)(3), for a total of \$51,266.73. This Court generally does not award the \$200 statutory attorney fee when also awarding attorney fees.

As for Attorney Rosenberg's request on behalf of Condominium Law Group for \$54,639.45 in fees, his total number of attorney hours spent appears excessive for the circumstances of this case. While I appreciate counsel's voluntary reduction in his fee request and waiver of costs, particularly in light of his reasonable hourly rate and the fact that he filed the longest Respondent's brief of 11,991 words, an additional reduction of approximately twenty percent appears appropriate. Accordingly, I will award Condominium Law Group \$44,000 in fees.

Therefore, it is
ORDERED that attorney fees of \$15,555 are awarded to the Association at the request of Attorney Reiten; \$41,611 in attorney fees and costs are awarded to CWD Group; \$51,266.73 in attorney fees and costs are awarded to the Association at the request of Attorney Erickson; and \$44,000 in attorney fees are awarded to Condominium Law Group, for a total of \$152,432.73 in attorney fees and costs. Appellant Randall Steichen shall pay this amount.

Sincerely,



Lea Ennis
Court Administrator/Clerk

jh

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Appellant,

vs.

1223 SPRING STREET OWNERS
ASSOCIATION, a Washington
non-profit corporation; CWD
GROUP, a Washington
corporation; VALERIE FARRIS
OMAN, a citizen of the State of
Washington; CONDOMINIUM
LAW GROUP, PLLC, a
Washington professional limited
liability company; DAVID
BUCK, a citizen of the State of
Washington; DANA REID, a citizen
of the State of Washington;
JEREMY SPARROW, a citizen
of the State of Washington;
ROBERT MOORE, a citizen of
the State of Washington;
CATHERINE RAMSDEN, a
citizen of the State of
Washington,

Respondents.

No. 82407-4

MOTION TO MODIFY
NOTATION RULING

Appellant, Randall R. Steichen, asks this Court to modify
the Commissioner's November 13, 2023 Notation Ruling.

RELEVANT FACTS

On November 13, 2023, Commissioner Jennifer Koh entered a Notation Ruling awarding Respondents attorney fees and costs.

GROUND FOR RELIEF

First, the Association is not entitled to fees for appellate review of its Counterclaim. Second, the fees awarded to the three Respondents are manifestly unreasonable. “An aggrieved person may object to a ruling of a commissioner . . . by a motion to modify the ruling directed to the judges of the court.” RAP 17.7(a). This Court should modify the Commissioner’s Ruling.

The Association is not entitled to fees pursuant to RCW 64.34.455 for review of its Counterclaim because it did not comply with RAP 18.1. “The recovery of costs was unknown to the common law, and no provision could be made for their payment, except as expressly authorized by statute. This rule has been one of such universal application that it has become the settled doctrine of the courts that costs are the creature of statute

merely, and that the allowance of them in any case would depend entirely upon the terms of some statute.” Pierce Cnty. v. Magnuson, 70 Wash. 639, 641, 127 P. 302 (1912). “It has also been held that there is no inherent power in the courts to award costs, and that they can be granted in any case or proceeding solely by virtue of express statutory authority.” Id. Indeed, “there is no inherent power in the courts to award costs.” State v. Sizemore, 48 Wn. App. 835, 839, 741 P.2d 572 (1987)(quotation marks omitted).

“The general rule in Washington, commonly referred to as the American rule, is that each party in a civil action will pay its own attorney fees and costs.” Cosmopolitan Eng’g Grp., Inc. v. Ondeo Degremont, Inc., 159 Wn.2d 292, 296-97, 149 P.3d 666 (2006). “This general rule can be modified by contract, statute, or a recognized ground in equity.” Id. “A party is entitled to attorney fees on appeal if a contract, statute, or recognized ground of equity permits recovery of attorney fees at trial and the

party substantially prevails.” Matter of Special Deputy Prosecuting Attorney, 193 Wn.2d 777, 791, 446 P.3d 160 (2019).

“A party seeking reasonable attorney fees on appeal must ‘devote a section of its opening brief to the request for fees or expenses.’ RAP 18.1(b). If an attorney fails to make a sufficient request in the opening brief, the appellate court will deny fees regardless of the merits; *this request is mandatory.*” Just Dirt, Inc. v. Knight Excavating, Inc., 138 Wn. App. 409, 420, 157 P.3d 431 (2007)(emphasis added). “Argument and citation to authority *are required* ... to advise us of the appropriate grounds for an award of attorney fees as costs.” Id. (emphasis added). The Association failed to comply and is not entitled to a fee award.

In prosecuting its Counterclaim, the Association sought fees “under authority of Section 11.9 of the 1223 Spring Street Declaration and RCW 64.34.364(14).” CP 616, 630. The trial court awarded fees “under authority of Section 11.9 of the 1223 Spring Street Declaration and RCW 64.34.364(14).” CP 11521. On appeal, however, the Association’s request for fees states:

“And this Court should award the Association its attorney fees on appeal pursuant to RCW 64.34.455 and based on the frivolous and bad faith litigation brought by appellant. RAP 18.1.” Br. 41.

As clearly demonstrated, the Association did not seek fees pursuant to RCW 64.34.364(14) or Section 11.9 of the 1223 Spring Street Declaration or provide any argument or authority on appeal as required. Further, the Association did not provide any argument as to why it is entitled to fees pursuant to 64.34.455 for appellate review of its Counterclaim. Accordingly, the Association is not entitled to fees on review.

Further, Respondents fee awards are not reasonable. “A determination of reasonable attorney fees begins with a calculation of the ‘lodestar,’ which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). “The burden of proving the reasonableness of the fees requested is upon the fee applicant.” Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993).

Respondents did not meet their burden of proving that the fees awarded are reasonable. Because Respondents did not meet their burden, the Commissioner discounted the fees awarded. However, by merely discounting the fees, it is impossible to tell that fees were awarded for any specific tasks. Additionally, the fees awarded are unreasonable and relevant facts were not considered. “The lodestar must be limited to hours reasonably expended. The total hours an attorney has recorded for work in a case is to be discounted for hours spent on ‘unsuccessful claims, duplicated effort, or otherwise unproductive time.’” Berryman, 177 Wn. App. at 662. This did not occur.

“It is well established that where attorney fees are authorized for only some of the claims, the award of fees “must properly reflect a segregation of the time spent on issues for which attorney fees are authorized from time spent on other issues.” Dash Point Vill. Associates v. Exxon Corp., 86 Wn. App. 596, 611, 937 P.2d 1148 (1997); Eagle Point Condo. Owners Ass’n v. Coy, 102 Wn. App. 697, 714, 9 P.3d 898

(2000). “If attorney fees are recoverable for only some of a party’s claims, the award must properly reflect a segregation of the time spent on issues for which fees are authorized from time spent on other issues.” Mayer v. City of Seattle, 102 Wn. App. 66, 79–80, 10 P.3d 408 (2000). “It is also appropriate to discount for unproductive time.” Berryman, 177 Wn. App. at 663. “Duplicated effort includes overstaffing.” Id. at 662.¹ Again, this did not occur.

Respondents were awarded fees for arguments, objections, and theories not relied upon by the panel and unsuccessful issues, arguments, and duplicative efforts. Respondents did not meet their burden. Moreover, Respondents raised and were awarded fees for frivolous arguments. For example, in its Response Brief,

¹ The three Respondents sought fees incurred by eight attorneys and three paralegals. In addition, an extreme amount of time was duplicative and unnecessary. This is not reasonable.

CLG relied upon the substantial evidence standard—which is entirely inapplicable.²

Additionally, Respondents were awarded an unreasonable amount of fees incurred in conducting researching as well as formulating a defense strategy. “Particularly in cases where the law is settled, there is a ‘great hazard that the lawyers involved will spend undue amounts of time and unnecessary effort to

² CLG also relied heavily on the trial court’s “findings”—which are inapplicable. See Br. at 5-6 (“In one of its final orders, the trial court summarized ... CP 12208 [inapplicable ‘finding’]”); Br. at 11 (“As summed up by the trial court ... CP 12209 [inapplicable ‘finding’]”); Br. at 29 (“The trial court’s findings of fact are essentially unchallenged, and should be treated as verities”); Br. at 30 (“When making a substantial evidence challenge, ‘[t]he appellant must present argument to the court why specific findings of fact are not supported by the evidence ... or they become verities... Unchallenged findings of fact are verities”); Br. at 30-31 (“this Court should treat the trial court’s findings of fact as unchallenged, and thus verities”); Br. at 36 (“in several instances, the trial court held that Steichen ratified the special assessment ... CP 12208 [inapplicable ‘finding’]”); Br. at 36-37 (CLG’s “motion was supported by substantial evidence”); Br. at 57 (“the trial court held in one of several such orders ... CP 12208 [inapplicable ‘finding’]”); Br. at 53 (“the trial court set forth its reasoning for denial of sanctions in a memorandum order ... CP 8490-95 [interlocutory order]”); Br. at 63 (“as the trial court ruled [on summary judgment]”).

present the case.” Berryman, 177 Wn. App. at 662. This is not reasonable. Respondents impermissibly block billed. “The block billing entries tend to be obscure.” Berryman, 177 Wn. App. at 663. The fees awarded are not reasonable.

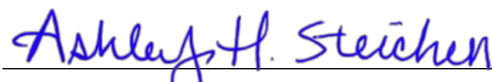
Additionally, the portion of the Association’s Brief devoted to its Counterclaim is nearly identical to documents it filed previously. Compare Br. at 42-59 with Appendix to Motion at 1-16. It is not entitled to additional fees for work it performed previously and for which it has already received compensation. This is manifestly unjust.

CONCLUSION

The Association failed to comply with the mandatory requirements set forth in Rule of Appellate Procedure 18.1 and is not entitled to fees. Additionally, the fee awards to the three Respondents for work performed by eight attorneys and three paralegals are patently unreasonable. This Court should reverse the award of fees and costs.

This Motion contains 1,446 words, excluding words that are exempt from the word count requirement and complies with Rule of Appellate Procedure 18.17.

DATED this 13th day of December 2023.



Ashley H. Steichen, WSBA #54433

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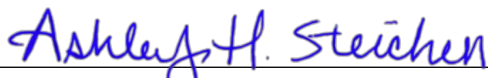
Attorney for Randall R. Steichen

DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on December 13, 2023, I filed a true and correct copy of the foregoing document with the Washington State Appellate Court's Portal. The Court will notify counsel of record of the filing at the following email addresses:

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DATED December 13, 2023 at Seattle, Washington.



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

RANDALL R. STEICHEN,

Appellant,

v.

1223 SPRING STREET
OWNERS ASSOCIATION, et
al.,

Respondents.

No. 82407-4

RESPONDENT CWD
GROUP'S RESPONSE
TO APPELLANT'S
MOTION TO MODIFY
RULING

A. RESPONDING PARTY'S IDENTITY

Respondent CWD Group ("CWD") provides its response to Appellant Randall Steichen's "Motion to Modify Notation Ruling" ("Motion").¹

B. RELIEF REQUESTED

The Court should *deny* Steichen's Motion as to CWD.

¹ Motion to Modify Notation Ruling, Dec. 13, 2023 ("Motion").

C. RELEVANT FACTS

In its opinion in favor of the Respondents, this Court granted attorney fees to CWD and the other Respondents under RAP 18.1 and RCW 64.34.455.² Accordingly, and in addition to a \$211 cost bill, CWD’s counsel submitted a detailed affidavit for CWD’s attorney fees on appeal (“Affidavit”).³ In that Affidavit, CWD sought \$117,763.50 in fees.⁴

Under the applicable rule of appellate procedure, Steichen had a chance to timely object to the Affidavit.⁵ He did not do so.

Then, a Commissioner of the Court ruled on the Respondents’ attorney fees and costs (“Commissioner’s Ruling”).⁶ As to CWD, the Commissioner did not find the

² Unpublished Opinion, Oct. 23, 2023 (“Opinion”) at p. 43.

³ Affidavit of Matthew R. Wojcik for CWD Group’s Attorney Fees on Appeal, Nov. 2, 2023 (“Affidavit”).

⁴ *Id.* at p. 11 (¶ 4).

⁵ *See* RAP 18.1(e).

⁶ Letter from L. Ennis, Nov. 16, 2023 (“Ruling”).

attorney hourly rates to be unreasonable.⁷ The Commissioner, however, did not award all that CWD asked for but, instead, applied a reduction of “just under two-thirds” to the requested fees.⁸ As a result, the Commissioner’s Ruling set out the following award for CWD: \$42,000 for attorney fees; \$1,200 for paralegal fees; and \$211 in costs.⁹

After, Steichen filed his Motion. In it, he asks the Court to “reverse the award of fees and costs.”¹⁰

D. ARGUMENT

- 1. The Court should deny the Motion because Steichen failed to timely object to the affidavit for fees and, now, gives new but insufficiently developed arguments in his Motion.**

When a moving party seeks a change to a determination of the appellate court, in general that party should not be

⁷ Ruling at p. 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ Motion at p. 9.

permitted to submit new arguments for the first time.¹¹ In addition to preserving and timely making their arguments, a moving party must give sufficient arguments in their motion or risk the court refusing to consider them.¹² Likewise, a party should not save and raise arguments for the first time in a reply.¹³

After not objecting to the Affidavit, Steichen brings a Motion with insufficiently developed arguments. He quotes authorities and makes conclusory assertions absent applying the authorities to the evidence. He, for example, contends that “Respondents impermissibly block billed,”¹⁴ without

¹¹ See *King Cnty. v. Friends of Sammamish Valley*, 26 Wn. App. 2d 906, 934 n., 530 P.3d 1023 (2023) (“This court generally does not consider arguments raised for the first time in a motion for reconsideration.”).

¹² Cf. *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (“This court will not consider claims insufficiently argued by the parties.”).

¹³ See *Kissan Berry Farm v. Whatcom Farmers Coop*, 23 Wn. App. 2d 490, 497 n.5, 516 P.3d 821 (2022) (“[A]rguments raised for the first time in a reply brief are not properly before the court”).

¹⁴ Motion at p. 9.

identifying what billing entries this concerns. He argues that the “fee awards [we]re not reasonable”¹⁵ and that “relevant facts were not considered,”¹⁶ absent explaining what made the awards purportedly unreasonable and what facts allegedly went unconsidered. He argues that fees were wrongly awarded for: “arguments, objections and theories not relied upon by the panel”;¹⁷ “frivolous arguments”; “unsuccessful issues, arguments, and duplicative efforts”¹⁸; “duplicative” and “unnecessary” time¹⁹; “research[]”²⁰; and formulation of a “defense strategy.”²¹ But as to CWD, he does not explain what “arguments,” “objections,” “theories,” “issues,” “efforts,” “duplicative” or “unnecessary” time, “research[],” or

¹⁵ Motion at p. 5.

¹⁶ *Id.* at p. 6.

¹⁷ *Id.* at p. 7.

¹⁸ *Id.* at p. 7.

¹⁹ *Id.* at p. 7 n.1.

²⁰ *Id.* at p. 8.

²¹ *Id.* at p. 8.

“strategy” that he contests as unsuitable for fees, nor does he make a proposal for the segregation of fees for which he argues.

Indeed, Steichen does not cite or address the evidence of the work and fees that he tries to dispute, namely the Affidavit and its lawyer-and-paralegal-specific billing reports.²² Nor does he address the “costs” awarded.

Steichen cannot fail to timely object to the Affidavit and then try to modify the Commissioner’s Ruling with a Motion in which he makes his new but insufficiently developed assertions. That, alone, warrants denying the Motion. It is prejudicial to CWD for Steichen to leave it and others to guess the scope of and bases for his contentions.²³ Insomuch as Steichen wants to

²² Affidavit at p. 11 (¶¶ 4–5) & Exhibit Nos. 1–5.

²³ See *Garrett Dev., LLC v. Deer Creek Water Corp.*, No. 21-6105, 2022 WL 12184048, at *11–12 (10th Cir. Oct. 21, 2022) (indicating that a party’s duty to develop an argument is in part required to allow an opposing party the chance to respond); 10th Cir. R. 32.1 (“Unpublished decisions are not precedential, but may be cited for their persuasive value.”).

remedy the deficiencies of the Motion in a subsequent filing, that should not be permitted.²⁴

2. CWD’s sought reasonable fees that it sufficiently supported and, thus, the reduced fee amount in the Commissioner’s Ruling is not an unreasonably high one.

The lodestar method is used for determining an attorney fee award on appeal.²⁵ The lodestar amount is determined by

²⁴ *Supra* nn.13 & 23. Also, inasmuch as Steichen tries to challenge the Court’s determination in its Opinion to award attorney fees, that is impermissible. The Opinion addressed awarding fees, whereas the Commissioner’s Ruling regards the amount of the fees for the award. *See* RAP 18.1(f), (g). Thus, to the extent Steichen uses his Motion to challenge the fee-award determination in the Opinion, that would be another instance where he tries to impermissibly argue for reconsideration of the Opinion with multiple motions. *See* Respondents’ Answer to Appellant’s Motion for Court to Consider Motion En Banc, Nov. 27, 2023, at pp. 4-5; Objection to Appellant’s Improper “Reply” Brief, Dec. 5, 2023.

²⁵ *See Tribble v. Allstate Prop. & Cas. Ins. Co.*, 134 Wn. App. 163, 175, 139 P.3d 373 (2006).

multiplying a reasonable hourly rate by the number of hours reasonably expended.²⁶

The documents in support of the attorney fees need not be in minute detail.²⁷ They must simply inform the court of the hours worked, the type of work done, and the category person who did the work.²⁸

Here, the hourly rates for the lawyers and paralegal involved in CWD's representation were reasonable.²⁹ The Commissioner did not find otherwise. Steichen does not argue otherwise. Nor can he argue otherwise given the background of those who did the work and given that the rates were at the lower-end range for Seattle's legal community.³⁰

Nor does Steichen meaningfully challenge the documents in support of the attorney fees. In compliance with the law, the

²⁶ *Miller v. Kenny*, 180 Wn. App. 772, 820, 325 P.3d 278 (2014).

²⁷ *Id.* at 822.

²⁸ *Id.*

²⁹ Affidavit at pp. 2–11 (¶¶ 2–3).

³⁰ *Id.*

Affidavit and its lawyer-and-paralegal-specific billing reports reflected the amount of time worked, the work done, and the people who did the work.³¹

Moreover, the Affidavit showed the requested fees to be reasonable in light of the time-intensive challenges of this appeal. In addition to submitting billing reports, the Affidavit explained that the appeal involved a record on review with over 13,000 pages of clerk's papers and regarded a lawsuit that involved multiple defendants, lasted over two years,³² included approximately 17 hearings, and resulted in approximately 60 orders.³³ It also explained the laborious burdens imposed by the record and Steichen's multiple overlength opening briefs, the last of which had deficient citations to the record.³⁴ Such burdens included navigating and reviewing the voluminous

³¹ *Id.* & Exhibit Nos. 1–5.

³² Affidavit at p. 12–13 (¶ 7).

³³ *Id.*

³⁴ *Id.* at pp. 11–18 (¶¶ 7–8).

record to comprehend it and to understand and respond to Steichen’s arguments.³⁵

In challenging the fees awarded, Steichen appears to contest the number of attorneys involved for CWD at the appellate stage.³⁶ But the Affidavit explained what reasonably led to the number of attorneys involved.³⁷ It took an abnormally long amount of time for Steichen to file his opening brief, followed by his amended brief.³⁸ The briefing continued beyond the retirement of one of CWD’s attorneys, who was replaced by a new attorney.³⁹ Because it was later impractical for that new attorney to argue at the scheduled oral argument, CWD had another attorney appear for it at oral argument— instead of seeking a continuance of oral argument for the

³⁵ *Id.*

³⁶ Motion at p. 9 (“[T]he fee awards to the three Respondents for work performed by eight attorneys and three paralegals are patently unreasonable.”). *See also* Motion at p. 7 n.1.

³⁷ Affidavit at pp. 3–9 (¶ 2.b.–2.d.).

³⁸ Appellant’s Amended Opening Brief, Aug. 31, 2022.

³⁹ Affidavit at pp. 3–7 (¶ 2.b.–2.c.).

protracted appeal.⁴⁰ Respectfully, given the circumstances, the number of attorneys involved was reasonable.

And for the sake of argument, if one limited fees to only two attorneys of CWD who joined the case midstream—namely, the one who argued at oral argument, and another involved in analyzing the record, preparing CWD’s brief, and participating in the motion practice—then the \$40,200 of fees in the Commissioner’s Ruling would be less than half of the fees for those two attorneys.⁴¹ Even with that approach, the Commissioner’s reduction of fees would be substantial and would not generate an unreasonably high fee award for CWD.

Further supporting the fees sought, CWD filed what the Commissioner described as a “properly focused” brief with a “straightforward discussion of the legal issues.”⁴² While CWD respects the Commissioner’s work, it respectfully disagrees

⁴⁰ Affidavit at pp. 7–8 (¶ 2.d.)

⁴¹ *Compare* Exhibit Nos. 3–4 of Affidavit, *with* Commissioner’s Ruling at p. 3.

⁴² Commissioner’s Ruling at p. 3.

with reducing the requested fees because of its brief.

Respectfully, it takes time and hard work to prepare a focused brief with a straightforward discussion—especially when, as here, an appellant generated a voluminous record and submitted an overlength brief, which had insufficient and deficient record citations. That said, CWD respects the Commissioner’s work and has not moved to modify the Commissioner’s Ruling.

Put simply, this appeal involved time-intensive work for which CWD requested reasonable fees. The Affidavit sufficiently supported the same. And the reduced \$40,200 fee award in the Commissioner’s Ruling is not an unreasonably high amount.

3. The Court permissibly applied a general reduction to the requested fees of CWD.

A court should limit the lodestar amount to hours reasonably expended and, thus, discount hours for unsuccessful

claims, duplicative work, or otherwise unproductive time.⁴³ If attorney fees are authorized for some but not all claims, then in general a court should segregate time on matters for which fees are authorized from time on other matters.⁴⁴

If segregation is difficult, then a general percentage reduction can occur.⁴⁵ And if no reasonable segregation of fees can be made, then it need not happen,⁴⁶ like where the claims involve a common core of facts or are based on related legal theories.⁴⁷

Here, the Commissioner reduced CWD's requested fees by "just under two-thirds."⁴⁸ Again, that was a substantial reduction; it did not result in an unreasonably high fee award.

⁴³ *Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 597, 675 P.2d 193 (1983).

⁴⁴ *Hume v. Am. Disposal Co.*, 124 Wn. 2d 656, 672, 880 P.2d 988 (1994).

⁴⁵ *Clausen v. Icicle Seafoods, Inc.*, 174 Wn. 2d 70, 82, 272 P.3d 827 (2012).

⁴⁶ *See Hume*, 124 Wn. 2d at 673.

⁴⁷ *Fiore v. PPG Indus., Inc.*, 169 Wn. App. 325, 352, 279 P.3d 972 (2012).

⁴⁸ Commissioner's Ruling at p. 3.

But Steichen objects to the Commissioner doing a general reduction instead of awarding fees on a task, issue, or claim specific basis.⁴⁹ The law, however, permits the general reduction; it does not require more.⁵⁰

It is unreasonably difficult to segregate fees for the work on this appeal. The appeal concerns a lawsuit against CWD and others for alleged liability as to common and connected events and related legal theories regarding alleged wrongdoings in connection with the Condominium Act.⁵¹ During the appellate phase, CWD’s attorneys engaged in work that was interconnected and which led to one cohesive brief for CWD and the presentation of its arguments at oral argument—e.g., engaging in motion practice regarding the record and briefing; analyzing the record, which was a challenge augmented by its

⁴⁹ *See, e.g.*, Motion at pp. 6–7 (“[I]t is impossible to tell that fees were awarded for any specific tasks....”).

⁵⁰ *Supra* n.45.

⁵¹ *See, e.g.*, CP 4–5 (¶ 17).

volume and unconventional composition⁵²; and analyzing and trying to understand Steichen’s briefs and his arguments, which was a challenge augmented by his briefs’ deficiencies.⁵³

The appellate work, then, does not reasonably lend itself to the segregation that Steichen wants. Tellingly, in raising segregation, Steichen has not put in his motion any proposal for how to accomplish the segregation here. His omission signals that segregation need not be done.⁵⁴

E. CONCLUSION

The fees and costs awarded to CWD in the Commissioner’s Ruling are not unreasonably high. The Commissioner’s Ruling need not be changed as demanded by Steichen. The Court should *deny* Steichen’s Motion.

⁵² See, e.g., Affidavit at pp. 13–14 (¶ 8.a.).

⁵³ See, e.g., Affidavit at pp. 16–18 (¶¶ 8.c.–8.d.).

⁵⁴ See *Miller*, 180 Wn. App. at 824 (“Especially because Safeco made no proposal as to how the time could have been segregated, we cannot find that the trial court was obliged to make a segregation.”).

DATED: December 26, 2023

Certificate of Compliance: Pursuant to RAP 18.17, I certify that this Response contains 2,264 words, exclusive of words contained in any appendices, title sheet, table of contents, table of authorities, this certificate of compliance, certificate of service, signature block, and pictorial images.

BULLIVANT HOUSER BAILEY PC

By *s/ Owen R. Mooney* _____

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Attorneys for Respondent CWD Group

CERTIFICATE OF SERVICE

On the date set forth below, I caused to be served Respondent CWD Group's Response to Appellant's Motion to Modify Ruling, via the appellate court email filing and service system, on the following persons:

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Dated: December 26, 2023.

s/ Owen R. Mooney

4863-3095-1576.1

17 – RESPONDENT CWD GROUP'S RESPONSE TO
APPELLANT'S MOTION TO MODIFY RULING

BULLIVANT HOUSER BAILEY

December 26, 2023 - 3:36 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 82407-4
Appellate Court Case Title: 1223 Spring Street Owners Assoc, et al., Respondents v. Randall Steichen, Appellant

The following documents have been uploaded:

- 824074_Answer_Reply_to_Motion_20231226153256D1909022_7467.pdf
This File Contains:
Answer/Reply to Motion - Response
The Original File Name was 20231226 Response to Appellants Motion to Modify Ruling.pdf

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- ashleysteichen@gmail.com
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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Appellant,

vs.

1223 SPRING STREET OWNERS
ASSOCIATION, a Washington
non-profit corporation; CWD
GROUP, a Washington
corporation; VALERIE FARRIS
OMAN, a citizen of the State of
Washington; CONDOMINIUM
LAW GROUP, PLLC, a
Washington professional limited
liability company; DAVID
BUCK, a citizen of the State of
Washington; DANA REID, a citizen
of the State of Washington;
JEREMY SPARROW, a citizen
of the State of Washington;
ROBERT MOORE, a citizen of
the State of Washington;
CATHERINE RAMSDEN, a
citizen of the State of
Washington,

Respondents.

No. 82407-4

REPLY TO CWD'S ANSWER
TO MOTION TO MODIFY
NOTATION RULING

CWD is not entitled to attorney fees. CWD did not plead entitlement to fees pursuant to RCW 64.34.455, and the panel's

fee award violates Steichen’s right to due process. Additionally, as conclusively demonstrated by CWD’s ledger, Steichen did not violate the Declaration—his homeowner’s account had a credit of \$30,458.20. CP 513. Finally, CWD sought and was awarded fees that are not reasonable.

A court may only award fees pursuant to RCW 64.34.455 “in an appropriate case,” which this is not. The panel violated Steichen’s right to due process in awarding, and affirming, attorney fees. “Due process requires a [party] to be advised, by the pleadings, of the issues he must be prepared to meet at the trial. That includes the issue of attorney fees.” Dalton M, LLC v. N. Cascade Tr. Servs., Inc., 534 P.3d 339, 347 (2023)(citations and quotation marks omitted).

“The requirement that a party plead attorney fees provides the opposing party not only with a meaningful opportunity to meet the merits of the pleader’s claim, but also a chance to make an informed decision to undergo the risks of litigation.” Id. CWD failed to plead entitlement to fees pursuant to RCW

64.34.455. CP 2754. Because CWD did not comply with this mandatory requirement, it is not entitled to fees.

Further, the Association, conceded that it had “not adopted the attorney fee provisions of the New Condo Act found in RCW 64.34.455 and, instead ... parties are to bear their own attorney fees.” CP 1435; see CP 1711, 1755, 2877, 2938-39, 6169, 10191, 11285. This is an express admission that none of the Respondents are not entitled to fees.

This Court found: “[Steichen] violated provisions of the WCA and the Declaration by not paying his regular monthly dues.” Op., 24. That is erroneous. CWD’s ledgers, that were called to the attention of the trial court, controvert the panel’s finding. CP 512-13. Further, this Court misconstrues “a claim for appropriate relief.” If a “person subject to this chapter fails to comply with ... any provision of the declaration or bylaws, any person ... adversely affected by the failure to comply has *a claim for appropriate relief.*” RCW 64.34.455 (emphasis added). This “shall be liberally administered to the end that *the*

aggrieved party is put in as good a position as if the other party had fully performed.” RCW 64.34.100 (emphasis added).

A claim for relief is: “A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.” BLACK’S LAW DICTIONARY, cause of action “— Also termed *claim for relief*.”

CWD does not have a claim for relief for attorney fees pursuant to RCW 64.34.455. Further, the panel conflates aggrieved and adversely affected. CWD is neither. Steichen paying assessments does not affect CWD and would not put “the aggrieved party,” CWD, “in as good a position as if the other party [Steichen] had fully performed” as required by RCW 64.34.100. Accordingly, CWD is not aggrieved. This is not an appropriate case to award fees.

During oral argument:

[Steichen:] My client’s homeowner’s account had a credit of \$30,000.

[Panel:] But that was the \$30,000 uh uh um he made a \$30,000 payment, which was part of the \$49,000 special assessment. He made a \$10,000 and a \$30,000 payment and your argument is that because he made that \$30,000, which was *due* on the special assessment, that they could not use that money, they could no longer use that money they had to use that money for his monthly?

[Steichen:] that is not my argument. So, at CP 512-13 it shows that he was never charged the full amount of the special assessment because they financed his portion through the loan without his knowledge. So, he was never charged that.... He was only charged \$382.89 per month ... so that's where it comes out, he had a credit. He was never told it was financed, so, he is making these payments thinking he has an outstanding obligation that he did not have. That's how his account has a credit, and they did not use his payments to pay down the loan, so they were just in his account¹ having a credit....

[Panel:] So, the same account is for everything. And, so, if there is money in it regardless of whether there is an outstanding assessment that was to be paid, and I know your position is that it was financed and therefore money wasn't taken out. But, if there's \$30,000 sitting there and he owes an assessment, they're just supposed to take the assessment from there. And, if there's a payment due on um the fees, then they are supposed to take the money from that same account regardless?

¹ The Association's bank account.

[Steichen:] ... It is just a running balance. It is just their computer system. They put in the charges and the payments, and at the bottom is a balance.

TVW at 6:11-9:04.²

A homeowner's account is not a physical account. It is an electronic ledger application that keeps a running balance of charges and payments. Therefore, an owner's payments do not go into a homeowner's account—they go into an association's bank account, to be used by, and for the benefit of, the association. CP 512-13, 830-35, 1768; RCW 64.34.020(3).

Steichen's homeowner account is simply CWD's ledger.

² TVW, DIVISION 1 COURT OF APPEALS, [https://tvw.org/video/division-1-court-of-appeals-2023041266/?eventID=2023041266&_gl=1*1b11ta*_ga*NzE\(0ODQ2NDU5LjE2NDk3ODczNzQ.*_ga_J5MMHVD463*M TcwMTMwMjEzNi4xMDAuMS4xNzAxMzAyMTQzLjAuMC4w](https://tvw.org/video/division-1-court-of-appeals-2023041266/?eventID=2023041266&_gl=1*1b11ta*_ga*NzE(0ODQ2NDU5LjE2NDk3ODczNzQ.*_ga_J5MMHVD463*M TcwMTMwMjEzNi4xMDAuMS4xNzAxMzAyMTQzLjAuMC4w).

12-1211 1223 Spring Street
1223 Spring St
Seattle WA 98104

CWD Group, Inc., AAMC
2800 Thorndyke Ave West
Seattle WA 98199

Unit	Space	Resident	Type	Date	CC	Description	Check	Charge Amount	Payment/Credit	Balance
Chg			BL	03/23/2018		2/18 Legal Review		446.00		-31,087.41
Chg			HA	04/01/2018		Homeowner Assessment		1,927.44		-29,159.97
Chg			S2	04/01/2018		Sp Projects Assess		382.89		-28,777.08
Pay				04/05/2018		Direct Debit			-2,310.33	-31,087.41
Chg			RT	04/11/2018		Return Item Fee		52.00		-31,035.41
Rev			ACH NSF	04/11/2018					2,310.33	-28,725.08
Chg			FC	04/15/2018		Finance Charge		100.00		-28,625.08
Chg			HA	05/01/2018		Homeowner Assessment		1,927.44		-26,697.64
Chg			S2	05/01/2018		Sp Projects Assess		382.89		-26,314.75
Chg			FC	05/15/2018		Finance Charge		100.00		-26,214.75
Chg			HA	06/01/2018		Homeowner Assessment		1,927.44		-24,287.31
Chg			S2	06/01/2018		Sp Projects Assess		382.89		-23,904.42
Chg			BL	06/13/2018		Collections		474.00		-23,430.42
Chg			FC	06/15/2018		Finance Charge		100.00		-23,330.42
Chg			HA	07/01/2018		Homeowner Assessment		1,927.44		-21,402.98
Chg			S2	07/01/2018		Sp Projects Assess		382.89		-21,020.09
Pay				07/09/2018		Payment - SPA	410901		-10,000.00	-31,020.09
Chg			FC	07/15/2018		Finance Charge		100.00		-30,920.09
Chg			BL	07/20/2018		6/18 Legal Fees		609.00		-30,311.09
Chg			HA	08/01/2018		Homeowner Assessment		1,927.44		-28,383.65
Chg			S2	08/01/2018		Sp Projects Assess		382.89		-28,000.76
Chg			FC	08/15/2018		Finance Charge		100.00		-27,900.76
Chg			BL	08/23/2018		7/18 Legal Fees		300.00		-27,600.76
Pay				08/23/2018		Payment	411087		-9,514.43	-37,115.19
Cr			BL	08/31/2018		Rfnd rovd fr atty			-474.00	-37,589.19
Chg			HA	09/01/2018		Homeowner Assessment		1,927.44		-35,661.75
Chg			S2	09/01/2018		Sp Projects Assess		382.89		-35,278.86
Chg			FC	09/15/2018		Finance Charge		100.00		-35,178.86
Chg			HA	10/01/2018		Homeowner Assessment		1,927.44		-33,251.42
Chg			S2	10/01/2018		Sp Projects Assess		382.89		-32,868.53
Chg			FC	10/15/2018		Finance Charge		100.00		-32,768.53
Chg			HA	11/01/2018		Homeowner Assessment		1,927.44		-30,841.09
Chg			S2	11/01/2018		Sp Projects Assess		382.89		-30,458.20
						End Bal				-30,458.20

CP 513 RCW 64.34.364(17)(an association refers “a delinquent account” to an attorney—it does not refer a regular account or regular assessments, and it does not refer a special account or special assessments). Steichen did not violate a provision of the Declaration or RCW 64.34 *et seq.* because his homeowner’s account (singular) had a credit. CWD is not entitled to fees.

Additionally, based upon CWD’s deficient fee request, the Commissioner awarded it fees for time spent on legal theories for which fees cannot be awarded, time spent spinning its wheels,

and time spent on unsuccessful matters. Because CWD failed to excise this time from its fee request, it failed to meet its burden.

“A determination of reasonable attorney fees begins with a calculation of the ‘lodestar,’ which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). “A court arrives at the lodestar award by multiplying a reasonable hourly rate by the number of hours reasonably expended on the matter.” Brand v. Dep’t of Labor & Indus. of State of Wash., 139 Wn.2d 659, 666, 989 P.2d 1111 (1999).

“The lodestar must be limited to hours reasonably expended. The total hours an attorney has recorded for work in a case is to be discounted for hours spent on ‘unsuccessful claims, duplicated effort, or otherwise unproductive time.’” Berryman, 177 Wn. App. at 662. “Duplicated effort includes overstaffing.” Id. The burden is on the party seeking fees, not the court, to

exclude those hours. See Bright v. Frank Russell Investments, 191 Wn. App. 73, 85, 361 P.3d 245 (2015).

CWD sought an exorbitant amount of fees for unsuccessful, duplicative, and unproductive time and time spent on trial court proceedings. Wojcik Decl., Exs. 1-5. This is improper. CWD's requested fees are replete with entries that pertain to proceedings in other court. Id. These are not appellate costs. Fees for non-appellate work are prohibited. Hepler v. CBS, Inc., 39 Wn. App. 838, 848, 696 P.2d 596 (1985).

Due to CWD's deficient fee request that sought fees for unsuccessful, duplicative, and unproductive time and time spent on trial court proceedings, the Commissioner did not calculate the lodestar as required. "To determine the reasonableness of attorney fees, the court calculates a lodestar figure." O'Neill v. City of Shoreline, 183 Wn. App. 15, 24-25, 332 P.3d 1099 (2014). The burden of proving the reasonableness of the fees requested is upon the fee applicant." Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993). Because the

Commissioner could not calculate the lodestar, CWD is not entitled to attorney fees.

Further, “[i]f, as in this case, an attorney fees recovery is authorized for only some of the claims, the attorney fees award must properly reflect a segregation of the time spent on issues for which attorney fees are authorized from time spent on other issues.” Hume v. Am. Disposal Co., 124 Wn.2d 656, 672, 880 P.2d 988 (1994). “The court must separate the time spent on those theories essential to the cause of action for which attorneys’ fees are properly awarded and the time spent on legal theories relating to the other causes of action.... This must include, on the record, a segregation of the time allowed for the separate legal theories. Id. at 673 (cleaned up).

CWD is not entitled to fees for issues unrelated to the Washington Condominium Act. Gaglidari v. Denny’s Restaurants, Inc., 117 Wn.2d 426, 450, 815 P.2d 1362 (1991). CWD, however, failed to segregate its fees. “Fees should be awarded only for services related to causes of action which allow

for fees.” Absher Const. Co. v. Kent Sch. Dist. No. 415, 79 Wn. App. 841, 847, 917 P.2d 1086 (1995). “[W]hile there may be an interrelationship as to the basic facts, the legal theories which attach to the facts are different.” Travis v. Washington Horse Breeders Ass’n, Inc., 111 Wn.2d 396 (1988).

Here, several of Steichen’s legal theories were separate and distinct from the WCA. For example, Steichen’s FDCPA claims are entirely distinct from the WCA. Likewise, Steichen’s fraud, nuisance, aiding and abetting, and conversion claims are distinct from the WCA. Further, Steichen seeking review of recusal is distinct from the WCA. CWD was required to segregate its fees. Because it failed to do so, it is not entitled to attorney fees.

Additionally, CWD improperly sought fees for work performed by its paralegal.

The following criteria will be relevant in determining whether such services should be compensated: (1) the services performed by the non-lawyer personnel must be legal in nature; (2) the performance of these services must be

supervised by an attorney; (3) the qualifications of the person performing the services must be specified in the request for fees in sufficient detail to demonstrate that the person is qualified by virtue of education, training, or work experience to perform substantive legal work; (4) the nature of the services performed must be specified in the request for fees in order to allow the reviewing court to determine that the services performed were legal rather than clerical; (5) as with attorney time, the amount of time expended must be set forth and must be reasonable; and (6) the amount charged must reflect reasonable community standards for charges by that category of personnel.

Absher Const. Co., 79 Wn. App. 841, 845, 917 P.2d 1086 (1995).

The work performed by Leslie Narayan is clerical—not legal in nature. Wojcik Decl., Ex. 5. Additionally, Narayan’s qualifications are not known. See Wojcik Decl. Accordingly, CWD failed to meet the requirements set forth above, and fees should not be awarded for Narayan’s work. CWD is not entitled to fees.

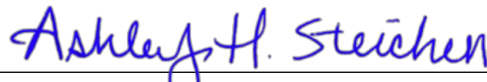
CONCLUSION

The panel violated Steichen’s right to due process by awarding CWD fees when CWD did not plead entitlement to fees

pursuant to RCW 64.34.455. Further, as conclusively demonstrated by CWD's ledger above, Steichen did not fail to pay assessments—his homeowner's account had a credit of \$30,458.20. Finally, the fees that the Commissioner awarded to CWD are not reasonable. CWD is not entitled to fees.

This Reply contains 1,925 words, excluding words that are exempt from the word count requirement and complies with Rule of Appellate Procedure 18.17.

DATED this 8th day of January 2024.



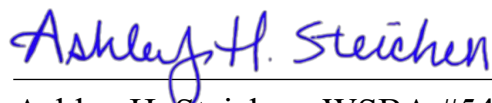
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DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on January 8, 2024, I filed a true and correct copy of the foregoing document with the Washington State Appellate Court's Portal. The Court will notify counsel of record of the filing at the following email addresses:

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DATED January 8, 2024 at Seattle, Washington.



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January 08, 2024 - 4:54 PM

Transmittal Information

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Appellate Court Case Number: 82407-4
Appellate Court Case Title: 1223 Spring Street Owners Assoc, et al., Respondents v. Randall Steichen, Appellant

The following documents have been uploaded:

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Answer/Reply to Motion - Reply to Response
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RANDALL R. STEICHEN,

Appellant,

v.

1223 SPRING STREET OWNERS ASSOCIATION, a Washington non-profit corporation; CWD GROUP, a Washington corporation; VALERIE FARRIS OMAN, a citizen of the State of Washington; CONDOMINIUM LAW GROUP, PLLC, a Washington professional limited liability company; DAVID BUCK, a citizen of the State of Washington; DANA REID, a citizen of the State of Washington; JEREMY SPARROW, a citizen of the State of Washington; ROBERT MOORE, a citizen of the State of Washington; CATHERINE RAMSDEN, a citizen of the State of Washington,

Respondents.

No. 82407-4-I

ORDER DENYING MOTION
TO MODIFY

Appellant Randall Steichen has filed a motion to modify the commissioner's November 13, 2023 ruling regarding attorney fees and costs. Respondents 1223 Spring Street Owners Association, Condominium Law Group, and Valerie Oman and CWD Group have filed answers, and Steichen has filed replies. We have considered the motion to modify and have determined that it should be denied.

Now, therefore, it is hereby

ORDERED that motion to modify is DENIED.

Seldman, J.

Birk, J.

Chung, J.

BULLIVANT HOUSER BAILEY

April 01, 2024 - 4:12 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,739-7
Appellate Court Case Title: Randall R. Steichen v. 1223 Spring Street Owners Assoc, et al.

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Comments:

CWD Group's Answer to Randall R. Steichen's Motion for Discretionary Review, and Appendix

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