No. 102739-7
No. 82407-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Petitioner,

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.

REPLY TO CLG'S ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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INTRODUCTION

This case is before this Court because a collection attorney (Oman), with the approval of a condominium association and its property manager (CWD), unlawfully terminated the utilities to Steichen's unit in the dead of winter when Steichen's homeowner account had a ***$30,458.20 credit***.

In 2017, the Association obtained a loan for owners who elected to make monthly payments instead of paying their special assessment allocations in full. CP 3295-99. On February 24, 2017, CWD charged each owner's account, except Steichen's, either: (1) $10,000; or (2) the full special assessment allocation. CP 1449-1452, 3823, 3826, 3828, 3833.[1] CWD did not charge Steichen's account because he had an agreement with the Association to pay the full amount. CP 1449-1452. On June 1, 2017, CWD started imposing monthly special assessment

[1] Owners who elected to use the Association's loan and make monthly payments were required to pay $10,000 upfront. CP 7844.

financing charges to owners who elected to use the loan—and to Steichen—who did not. CP 1446, 1449-1452, 7292.[2]

According to the Association:

> Because [Steichen] did not follow through on his stated intention to pay his share in one lump sum, ***he was set up on the installment plan*** (CP 6298) and the first installment payment of *$382.89* came due on June 1, 2017.

Br. at 13-14 (emphasis added).

The first time Steichen, who was residing out state, heard about the special assessment was after it had been approved by owners. CP 360-66. Board President Buck contacted Steichen when Buck learned that he needed to send the lending Bank owners' special assessment checks. *Id.*; CP 7268-69; *see* CP 360, 363, 422, 486, 524-550, 3324, 6485, 6487, 7283. Finally informed of the special assessment, Steichen advised Buck that he wanted to pay his allocation, $49,620, *in full*; he did not want to finance it through the Association's loan. CP 7284. Because

[2] It is undisputed that as of May 31, 2017, Steichen's account had a zero balance. CP 8866.

Steichen had not received any notice of the assessment, he told Buck he needed time to make the payment. CP 7283-89, 7399.

On November 6, 2017, unbeknownst to Steichen, his homeowner account had an outstanding balance of $2,696.68 due to $382.89 special assessment and related charges. CP 360, 3278, 7513.[3] On November 7th, Oman demanded that Steichen pay $12,434.66. CP 2887-89.

On December 4th, collection attorney Oman recommended, and the Board approved, terminating the utilities to Steichen's unit if he failed to respond by Oman's demand deadline. CP 1043, 2887, 7684, 8755. Oman *then* drafted a collection policy that included a utility termination provision. *See* CP 7489, 7705.

To avoid foreclosure, on the December 11th demand deadline, Steichen proposed to pay what he thought was his *outstanding* special assessment obligation, $49,620, in

[3] CWD did not provide Steichen notice of the charges. CP 360.

installments. CP 6415; *see* CP 3276-78, 7254. On December 29th, Steichen brought his homeowner's account current. CP6465, 6951-52, 6968. "Buck explained [to other owners] that the … Board took steps to recover a small delinquency [from Steichen] and a payment plan was *established* and *fulfilled*." CP 7531 (emphasis added).

On April 3rd, because Steichen was in "active legal collection" with a $31,633.41 account credit, Oman "updated" the collection policy, adding:

> An account becomes delinquent when a monthly Assessment is not paid in full by the 15th of the month or when a Special Assessment is not paid by its due date.

CP 512, 7709; *see* CP 1069, 7468-69, 7473, 7486. Oman's new provision is a blatant attempt to circumvent express statutory provisions and the Declaration, which precluded Respondents' baseless collection demands. RCW 64.34.020(3); RCW 64.34.364(17)(b),(18)(a); CP 1768.

A condominium owner does *not* owe assessments when his account has a credit (positive) balance. It is axiomatic that an account with a credit balance is not delinquent. An account is delinquent when the charges are greater than the payments.[4] Buck and Oman ignored this elementary principle (and Steichen's account credit) because they wanted to force Steichen out. CP 1068, 7539, 7709.[5]

On May 25th, when Steichen was current on the payment plan for what he thought was his *outstanding* special assessment obligation and had a $26,314.75 account credit, Oman demanded that Steichen pay $29,297.48. CP 2897-98, 6425, 6686, 6951-52, 6968, 7871. Finding the parties' unlawful conduct facetious,

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[4] If CWD imposes an assessment and the owner does not pay, if the account has a credit, the balance is simply reduced by the assessment amount. *See* CP 6686, 12042.

[5] Oman: Steichen is "a repeat offender" and "the best result a collection action can bring is a new owner who pays on time." CP 7364, 7369. After unlawfully terminating the utilities to Steichen's unit, Buck opined that Steichen would sell and, the Board wouldn't need to "move on to foreclosure." CP 7372-73, 7376.

CWD remarked to Selvakumar: "At *this point* you can report that [Oman is] *actively* working legal collection with [Steichen]. ***That is true at this point***. 🙂" CP 7775, 7762, 8154 (smiley face original; emphasis added).

Respondents deceived Steichen into thinking his account had an outstanding balance. Steichen therefore emailed Oman on August 13th:

> I agree to, and will immediately, pay the following:
>
> 1. All monthly HOA dues that are due and payable (… April, May, June, July, and August) ....[6]
>
> The remainder of the charges, which amazingly appear to total almost $25,000… are punitive in nature, duplicitous, and patently unreasonable….

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[6] Contrary to what CLG contends, this is clearly not an admission. Respondents colluded to deceive Steichen into paying charges that were never imposed. CP 513-521, 889, 893, 2897-98, 7758, 7839-40, 12161. Accordingly, there was not an "uncontested failure to pay." CP 513.

Steichen: "All I was provided by Attorney Farris Oman was a two-page summary spread sheet." CP 7836-37. Oman's hearsay ledger has $49,620 imposed on June 1, 2017. 2899.

> [A]fter I was made aware of the Special Assessment, I *did pay the entire assessment* amount as and when I agreed….
>
> I am prepared to litigate if necessary to prevent injustice.

CP 7797-99 (emphasis added); *see* CP 512, 514, 519-20, 889, 893, 2900, 12161. On August 14th, Steichen informed Buck/ Selvakumar: "I believe the HOA has an obligation to provide me with a detailed analysis and explanation of the bases for those charges." CP 7805-06. Later that day, Treasurer Selvakumar confessed the Association Board was "***in the weeds <u>with</u> the attorney and unit 500 over his dues***." CP 7758 (emphasis added).

On August 21st, Oman, sent Steichen a letter stating:

> The Board … *would* agree to waive $3K … the amount of interest that has *been added* to your balance due ***by acceleration of the Special Assessment*** – if you will agree to pay the *remaining balance due* by August 31, 2018.

CP 7839-40 (emphasis altered). Oman's assertion is patently false. As undeniably demonstrated by CWD's ledgers, the Board

did not accelerate Steichen's special assessment obligation. CP 512-13, 1180-81, 6465, 6686.

Steichen agreed to, and paid, $49,620, which he believed was his outstanding special assessment obligation. To conceal his substantial account credit and that CWD never charged Steichen $49,620, Oman deceptively informed Steichen that the Board *accelerated* his special assessment obligation.[7]

When a collection attorney colludes with a condominium association and property manager to deceive an owner into paying charges that were never imposed, the owner should have his day in court. That was not allowed.

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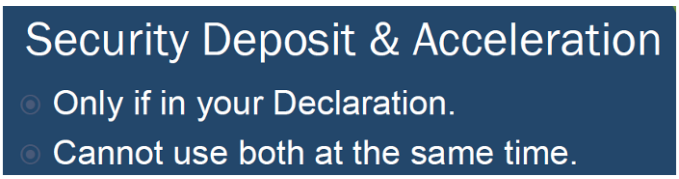
[7] Oman:



CP 3544. Acceleration is not in the Declaration. CP 1793-1801.

REASONS TO ACCEPT REVIEW

The trial court hit the nail on the head: "what happened here is, you guys cooked this whole thing up, the whole thing was fraudulent. I never owed any money, but you convinced me that I did, so then I wrote a check for money that I never actually owed." RP (5/3/2019) at 21. The trial court correctly characterized what happened but then knowingly sided with the wrongdoers. Division One followed.

1. CLG failed to cite authority and present argument showing entitlement to attorney fees as required by RAP 18.1.

The court of appeals erroneously awarded Oman and Condominium Law Group (collectively, CLG) attorney fees despite CLG's failure to comply with the mandatory requirements of Rule of Appellate Procedure 18.1. To overcome its failure, CLG asks this Court to consider multiple sections of its brief and additional filings. Answer, 12-13, 25.[8]

[8] CLG cites RAP 18.12. Answer, 8, 13, 26. RAP 8.12 is inapplicable. CLG may be referring to RAP 18.14, which is also

"RAP 18.1(b) provides in pertinent part: 'The party must devote a section of its opening brief to the request for the fees or expenses.'" *Gourley v. Gourley*, 158 Wn.2d 460, 470, 145 P.3d 1185 (2006).[9] "The rule requires more than a bald request for attorney fees on appeal. Argument and citation to authority are required." *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710, 952 P.2d 590 (1998)(citation omitted). CLG utterly and fatally failed to comply with the plain language of RAP 18.1.

Division One committed obvious and probable error by failing to follow this Court's clear precedents and ignoring the plain language of RAP 18.1. It's decision substantially alters the status quo, limits Steichen's freedom to act, and affects his substantive rights. The decision will result in a judgment lien.

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inapplicable. Division One does not accept motions on the merits and CLG did not file one.

[9] Without support, CLG disingenuously argues that this Court should consider other Respondents' briefing to meet this requirement. Answer, 25.

This has an immediate affect outside of the courtroom. It is a cloud on Steichen's title and affects his ability to sell his unit. Accordingly, the decision immediately changes Steichen's rights. Additionally, Steichen does not have a right to appellate review and the proceedings below have concluded. RAP 13.5(b)(1),(2).

Division One exceeded its authority in contravention of the clear language of the appellate rules. Its renegade action so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of revisory jurisdiction by the Supreme Court. RAP 13.3(a); RAP 13.5(b)(3). Without review, Steichen will suffer substantial, unfounded, and unjustifiable consequences.

2. CLG is not entitled to attorney fees pursuant to RCW 64.34.455, authority it failed to plead and adamantly maintained did not apply.

Division One violated Steichen's right to due process in awarding CLG attorney fees pursuant to RCW 64.34.455. CLG pleaded it was entitled to attorney fees pursuant to CR 11 and the

FDCPA—not RCW 64.34.455. CP 5176-77.[10] "Expressio unius est exclusio alterius, i.e., expression of one thing is the exclusion of another." *State v. Sorenson*, 2 Wn. App. 97, 103, 466 P.2d 532 (1970).

CLG did not plead RCW 64.34.455 because the Association and CLG conceded it did not apply.

Potential for Attorney Fees

> Because the court has ruled that the Old Condo Act applies to the Association, the potential exposure to attorney fees should be limited. The Association has not adopted the attorney fee provisions of the New Condo Act in RCW 64.34.455 and, instead, adopted [CP 1836] … that provides, in a dispute, the parties are to bear their own attorney fees.

CP 1435 (emphasis original). "[T]he Association intended to continue to be governed by the Old Condo Act except where expressly stated otherwise [in the Declaration]." CP 1430; *see* CP 2877, 2938-39, 5177, 10191, 11285.[11]

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[10] Steichen's Motion incorrectly states that CLG did not plead authority.

[11] RCW 64.34.445 is not set forth in the Declaration.

Oman asserted: "The Association would continue to be governed by chapter 64.32, RCW (the 'Old Condo Act'), with only specific portions of chapter 64.34, RCW (the 'New Condo Act') being incorporated into the … Declaration." CP 1714, 2194. CLG: "This Court has already determined … the Old Condo Act applies to the Association, except to the extent the New Act is expressly incorporated into the Old Act or the Condoimium [*sic*] Declaration." CP 10010. These are express admissions that CLG is not entitled to fees pursuant to RCW 64.34.455.

CLG asserts that pleading CR 11 and the FDCPA was sufficient to put Steichen on notice to conduct discovery because a party may … plead a type of relief, without citing authority." Answer, 14. This is preposterous. CLG was required to plead authority for attorney fees. Steichen was not required to attempt to ascertain it through discovery.[12]

[12] Why would Steichen seek discovery on different attorney fee authority when CLG pleaded only CR 11 and the FDCPA.

"Due process requires [the opposing party] 'to be advised, by the pleadings, of the issues he must be prepared to meet at the trial.'" *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 534 P.3d 339, 347, 2 Wash. 3d 36 (2023). "That includes the issue of attorney fees." *Id.* "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.* Because CLG did not plead RCW 64.34.455, and instead raised it for the first time after more than two years of litigation, the courts below deprived Steichen of due process and the opportunity to weigh the risks of litigation. CP 11244-11255.[13]

In violation of *Dalton* and Steichen's right to due process, Division One committed obvious and clear error by awarding CLG attorney fees pursuant to authority that it did not plead, and

[13] CLG failed to address this.

adamantly maintained did not apply. Again, Division One's decision results in a judgment lien that substantially alters the status quo, limits Steichen's freedom to act, and affects his substantive rights. Steichen does not have a right to appellate review and proceedings below have concluded. RAP 13.5(b)(1),(2).

Division One exceeded its authority in contravention of Steichen's right to due process and starkly departed from the accepted and usual course of judicial proceedings. RAP 13.5(b)(3). This Court should accept review to preserve Steichen's rights and property.

3. CLG is not entitled to fees pursuant to RCW 64.34.455 because it is not subject to RCW 64.34.455 or the Association's Declaration.

CLG is not entitled to fees. CLG *falsely* asserts that Steichen "alleged CLG ***was*** subject to the Condominium Act" and that is entitled to fees because it was adversely affected. Answer, 16-17. Pursuant to RCW 64.34.455:

> If … [any] person subject to this chapter fails to comply with any provision hereof or any provision of the declaration … any person … 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.

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.

Contrary to CLG's assertion, Steichen did not allege that it failed to comply with the New Act. CP 92.[14] Therefore, CLG is not entitled to fees pursuant to the New Act (RCW 64.34.455).

Division One committed obvious and clear error by failing to follow precedents and plain statutory language. Again, Division One's decision substantially alters the status quo, limits Steichen's freedom, and renders proceedings useless. RAP 13.5(b)(1),(2). Division One exceeded its authority and starkly

[14] CLG is not adversely affected or aggrieved.

departed from the accepted course of judicial proceedings. RAP 13.5(b)(3).

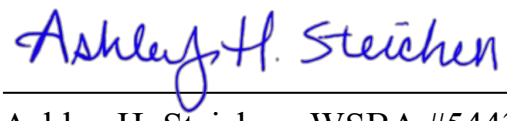
CONCLUSION

This Court should accept review.

This Reply contains 2,500 words, excluding words that are exempt from the word count requirement and complies with Rule of Appellate Procedure 18.17.

DATED this 11th day of April 2024.

Respectfully submitted:



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DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on April 11, 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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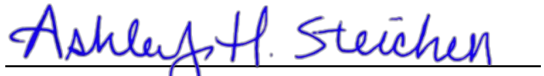
DATED April 11, 2024 at Seattle, Washington.



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