

FILED
SUPREME COURT
STATE OF WASHINGTON
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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 CWD GROUP'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,

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....

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 with 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.

⁷ Oman:

Security Deposit & Acceleration

- Only if in your Declaration.
- Cannot use both at the same time.

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 knowingly sided with the wrongdoers, and Division One followed.

1. Steichen properly challenged CWD’s fee award pursuant to RCW 64.34.455.

CWD fails to cite authority that Steichen is not able to challenge the authority for CWD’s attorney fee award. Answer, 10-15. “Const. art. 4, s 1 and s 30 vests the judicial power in the supreme court, court of appeals and superior courts of this state. Upon creation, these courts assumed certain powers and duties. These duties include, among others, the fair and impartial administration of justice and the duty to see that justice is done in the cases that come before the court.” *Iverson v. Marine*

Bancorporation, 83 Wn.2d 163, 167, 517 P.2d 197 (1973)(citation omitted).

“Undoubtedly, the Legislature may prescribe reasonable regulations governing court procedure.... But the courts are not required to recognize a legislative restriction which has the effect of depriving them of ... one of their inherent powers. What the Legislature has not given, it cannot take away. The Legislature cannot indirectly control the action of the court by directing what steps must be taken in the progress of a judicial inquiry, for that is a judicial function.” *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 418, 63 P.2d 397, 407 (1936); RCW 2.28.150; RAP 1.2(a); CAR 6.

“We recognize the modern preference of courts to interpret their procedural rules to allow creditable appeals to be addressed on the merits.” *Graham Thrift Grp., Inc. v. Pierce Cnty.*, 75 Wn. App. 263, 268, 877 P.2d 228 (1994). “RAP 7.3 vests this court with the authority ‘to perform all acts necessary or appropriate to secure the fair and orderly review of a case.’”

Major Products Co., Inc. v. Nw. Harvest Products, Inc., 96 Wn. App. 405, 409, 979 P.2d 905 (1999). Indeed, this Court should “perform those acts which are proper to secure fair and orderly review, and to waive the rules of appellate procedure when necessary to ‘serve the ends of justice.’ RAP 1.2(c), 7.3.” *State v. Aho*, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999).

“[A]ppellate courts have discretion to consider a case on its merits, despite technical flaws. RAP 1.2 allows a court to waive the rules ‘to serve the ends of justice,’ and courts should ‘liberally interpret[]’ the rules ‘to promote justice and facilitate the decision of cases on the merits.’ Accordingly, a court **should** exercise its discretion to reach an appeal’s merits.” *Bergerson v. Zurbano*, 6 Wn. App. 2d 912, 926, 432 P.3d 850 (2018)(emphasis added). This Court can, and should, consider CWD’s fee award pursuant to RCW 64.34.455, which Steichen properly challenged.

2. Division One's decision materially affects Steichen's valuable real property right, which substantially alters the status quo and limits Steichen's freedom to act.

"Title to real property is a *most valuable right*." *Thomas v. Harlan*, 27 Wn.2d 512, 518, 178 P.2d 965 (1947)(emphasis added). Division One's decision materially affects Steichen's valuable real property right. 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. 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.

CWD's assertion that its attorney fee award merely increased what Steichen owes is meritless. Answer, 15-16. Division One awarded CWD fees pursuant to RCW 64.34.455, authority it failed to plead and adamantly maintained did not apply. This materially impairs Steichen's ability to sell and use his unit as collateral. Accordingly, the decision immediately changes Steichen's rights.

Additionally, Division One's decision will have profound effect outside the courtroom. If left to stand, Division One's opinion will allow collection attorneys to collude with homeowner associations and property managers to deceive owners they want to get rid of into liability for unlawful charges and then *take* their homes through foreclosure based upon fictitious charges in hearsay ledgers. The effects prongs in Rule of Appellate Procedure 13.5 are met. RAP 13.5(b)(1),(2).

Further, Division One exceeded its authority by ignoring the plain language of the appellate rules, by ignoring plain statutory language, and violating Steichen's clear right to due process of law. Division One's renegade action starkly departed from the accepted and usual course of judicial proceedings that the exercise of revisory jurisdiction by this Court is warranted. RAP 13.5(b)(3). Without review, Steichen will suffer substantial, unfounded, and unjustifiable consequences. This Court should accept review to preserve Steichen's rights and his property.

CONCLUSION

If ever there were a case demonstrating a *dire* need for judicial reform, this is it. When they found out that they had a judge who was on their side and willing to give them whatever they wanted no matter what, the defense lawyers in this case grossly misrepresented the evidence and the applicable law with abject impunity. For reasons that defy belief and clearly violate the sacred oath of judicial office, the trial judge was overtly biased and willingly issued erroneous rulings that had absolutely no basis in law or fact.

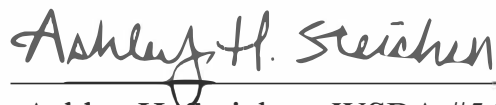
As demonstrated in Steichen's briefs and motion papers, the result was a veritable train wreck—an abhorrent miscarriage of justice. While these words may read like a John Grisham novel and sound too egregious to be true, these unjust actions actually occurred—and a careful examination of the record will *conclusively* demonstrate to this Court the injustice that occurred. If this Court does not inject itself to clean up the veritable debacle that happened and the intolerable injustice that

has been foisted upon Steichen, as well as to take action to demonstrate to rogue lawyers and judges (that do in fact exist) that such conduct will not be tolerated, the Rule of Law is lost and no longer has a place in the State of Washington. Steichen respectfully urges this Court to look into this matter and accept review.

This Reply contains 2,272 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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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 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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