

68067-6

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No. 68067-6-I
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SHANE and AMY WATTS,

Respondents,

v.

MARY DUNPHY and MARK DUNPHY,

Appellants.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

I. INTRODUCTION1

II. ASSIGNMENTS OF ERROR2

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR2

IV. FACTUAL BACKGROUND.....3

V. LEGAL ANALYSIS.....12

 A. Standard of Review.....12

 B. Watt’s Action Is Barred By Their Receipt of the Meeting
 Minutes14

 1. Fraudulent Concealment.....17

 2. Fraud.....19

 C. The Court Should Award Attorney Fees to the Prevailing Party21

VI. CONCLUSION.....21

TABLE OF AUTHORITIES

Washington Cases

Alejandro v. Bull,
159 Wn.2d 674, 153 P.3d 864 (2007)..... 1, 14-20

Carlile v. Harbour Homes, Inc.,
147 Wn.App. 193, 204-205, 194 P.3d 280, 285 (2008).....14

George E. Miller Lumber Co. v. Holden,
45 Wn.2d 237, 245, 273 P.2d 786, 790 (1954).....13

Happy Bunch, LLC v. Grandview North, LLC,
142 Wn.App. 81, 88, 173 P.3d 959, 963 (2007).....13

Recreational Equipment, Inc. v. World Wrapps Northwest, Inc.,
165 Wn.App. 553, 558, 266 P.3d 924, 927 (2011).....13

Renfro v. Kaur,
156 Wn.App. 655, 667, 235 P.3d 800, 805 (2010).....20

Town Concrete Pipe of Washington, Inc. v. Redford,
43 Wn.App. 493, 502, 717 P.2d 1384, 1389 (1986).....13

Court Rules

RAP 18.15

I. INTRODUCTION

Appellants Mark and Mary Dunphy (“Dunphy”) sold their condominium to Shane and Amy Watts (“Watts”) in 2007. In connection with the purchase, Watts received a Resale Certificate that included the homeowner association meeting minutes. In a bench trial, King County Superior Court Judge Dean Lum found that “the Watts did receive the Homeowner’s Association meeting minutes and had the opportunity to read them, and in fact did read them enough to comment on the parking situation.” CP 66 at ¶ u. The singular question presented in this appeal is whether the meeting minutes put Watts on inquiry notice of the defects as a matter of law, requiring that the judgment in their favor be reversed.

In 2007, the Supreme Court addressed similar circumstances in *Alejandre v. Bull*, 159 Wn.2d 674, 153 P.3d 864 (2007). In that case, the Supreme Court affirmed the trial court’s dismissal of a jury trial for fraud and fraudulent concealment at the close of the plaintiff’s case because the plaintiff was aware that an inspection of the septic system was incomplete, but did nothing to investigate. In this case, Watts received and read meeting minutes of the condo board discussing the very defects alleged here, but did nothing to investigate.

Judge Lum ruled: “Although the words ‘defect’, ‘envelope studies’, ‘investigation’, and ‘defect attorney’ were mentioned several

times, there is no context or explanation for the brief references buried in a maze of other irrelevant information.” CP 68 at ¶ 3.4(5). Judge Lum’s decision is contrary to the Supreme Court’s holding in *Alejandre*, and this Court should reverse the judgment in favor of Watts and remand for entry of judgment in favor of Dunphy.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it made a finding of fact that the meeting minutes were “insufficient to put the Watts on notice that there were major problems with the complex in terms of missing WRB.” CP 77 at ¶ v.
2. The trial court erred when it concluded as a matter of law that the meeting minutes did not put the Watts on inquiry notice of the defects in the condominium project. CP 79 at ¶3.4(5).
3. The trial court erred when it concluded that Watts had proven by clear, cogent and convincing evidence that Watts had the right to rely on the subject representations. CP 80 at ¶ 3.5(8).

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does substantial evidence support the trial court’s finding that the meeting minutes were “insufficient to put the Watts

on notice that there were major problems with the complex in terms of missing WRB?” CP 77 at ¶ v. (First Assignment of Error).

2. Is the trial court’s Finding of Fact that the meeting minutes were “insufficient to put the Watts on notice that there were major problems with the complex in terms of missing WRB” actually a Conclusion of Law? CP 79 at ¶ 5. (First Assignment of Error).
3. Did the meeting minutes put the Watts on inquiry notice and bar their claims as a matter of law? (Second and Third Assignments of Error).

IV. FACTUAL BACKGROUND

Because the trial court’s uncontested findings are treated as verities on appeal, this statement of facts is derived entirely from the Findings of Fact and the meeting minutes that were admitted as exhibits and referenced in the Findings and Conclusions.

In 2006, Mary Dunphy purchased a condominium at 13020 102nd Ln NE, #3, Kirkland WA98034. CP 75 at ¶ a. On July 27, 2006, Mary Dunphy became Vice President of the Kirkland Village Homeowner's Association. CP 75 at ¶ b.

In October 2006, Mary Dunphy arranged for an inspection of buildings in Kirkland Village by Darrel Hay. Mr. Hay checked three buildings and found that in all three buildings, there was no tar paper or weather resistant barrier (WRB). He opined that these were problems and that the lack of WRB would allow the buildings to be vulnerable to water leakage and damage, though at the time he did not note any specific damage. That report was provided to Mary Dunphy. She read the report. CP 75 at ¶ c.

In a Board meeting in February 2007, the Hay report was discussed by the Board. Mary Dunphy was present at all Board meetings, some of which were held in her home, through May 2007. CP 75 at ¶ d.

The Board decided to investigate further, in connection with its ongoing disputes with the developer, Center Bay. The Board hired a new property manager, Suhrco, who recommended a thorough inspection of the complex be done, in order to go back to the developer with a list of things that needed to be fixed. The lack of WRB was one of the issues to look at. CP 75 at ¶ e.

In February 2007, The Board asked a construction inspection firm, Corke Amento (CAI), to prepare a presentation for the Board. That was presented at the Board meeting in February 2007. In the same meeting, the Hay report was discussed by the Board. CP 75 at ¶ f.

On March 14, 2007, CAI prepared a "Scope of Limited Investigation, showing the plan for the complex inspection. It showed, among other things, that Mary Dunphy's unit would have the siding taken off. That proposal was circulated among the Board members, and Mary Dunphy read it. CP 75 at ¶ g.

In April 2007, the Board hired CAI to do the inspection. It was discussed and approved by the entire Board, including Mary Dunphy. Among the potential problems being looked at was the lack of WRB. CP 75 at ¶ h.

The inspection took place starting on May 1, 2007. The majority of the complex buildings had siding taken off, and showed that 75% or so of the buildings had WRB either missing or installed incorrectly. Mary Dunphy's unit had siding taken off and showed there was no WRB on her unit. Mary Dunphy saw that there was no WRB on her unit. CP 75 at ¶ i.

On May 4 2007, CAI, including Mark Cress, the CAI lead engineer; Steven Amento, CAI President; David Onsager, a defects attorney retained by the board to make recommendations as to legal action against Center Bay; Craig Cleaver, and Mary Dunphy met to walk through the complex and look at the buildings. Some portion of the buildings still had siding off, specifically so the board and the attorney could look at what was underneath the siding. The walkthrough showed there was no

WRB on the majority of the buildings. Mary Dunphy saw there was no WRB. CP 75-76 at ¶ k.

Mary Dunphy, as a member of the Board, who had been at the walkthrough, was aware that there were significant material problems with the missing WRB under the siding on the buildings throughout the complex. CP 76 at ¶ l. Mary Dunphy was aware that CAI would produce a report; and when the report was produced to the Board it would have to be disclosed to a potential buyer. CP 76 at ¶ m.

The next month, in June 2007, Mary and Mark Dunphy purchased a single family home in Juanita, for \$473,000. Mary Dunphy did not have the cash she needed to close the sale. The only way for her to close the sale, and move, was to sell her unit, at full market value, and close the sale. CP 76 at ¶ n.

The Watts signed a Purchase and Sale Agreement for the condominium. Along with that, Mary Dunphy provided a Real Property Disclosure Statement (Form 17.). The parties reached an agreement to purchase the unit for \$280,000 on July 23, 2007. CP 76 at ¶ o.

The Watts had a home inspection done by a home inspector. The inspector did not look under the siding, or inspect the rest of the complex. The inspection did not disclose any of the missing WRB on the Dunphy unit, or the missing WRB or the problems with the buildings in the rest of

the complex. The evidence was uncontroverted that a normal, routine home inspection of a condominium would not have uncovered any of the problems in the complex or the missing WRB in the Dunphy unit. The court found that the Watts did a reasonably diligent inspection of the property. CP 76 at ¶ q.

Mary Dunphy filled out two Form 17's, on July 9 and July 25. The court finds the buyers (the Watts) had a right to rely on Mary Dunphy's disclosures on the Form 17. The court also finds Mary Dunphy had a duty to fill the Form 17 out completely and correctly. The court finds the July 25 Form 17 is the Form that controls with respect to disclosures. CP 76 at ¶ o (second paragraph with same designation)

In the July 25 Form 17, in response to Question 1(G), "Is there any study ... that would affect the property", Mary Dunphy answered "Don't Know". This was a lie. Mary Dunphy knew about both the Darrell Hay inspection and the CAI inspection in May. The court in a summary judgment order found that Mary Dunphy lied when she answered this question. That order was not appealed and is the law of the case, as well. CP 76 at ¶ q.

In the July 25 Form 17, in response to Question 4(F), "Are there any defects with the following ... ", Mary Dunphy answered "No". This was a lie. She knew of the missing or wrongly installed WRB in multiple

buildings in the complex, including her own unit. She did not say material defects, but she represented that there were no defects in the siding, external, and the internal walls. There was no evidence that there was any defect in the siding itself, but there was a substantial question whether the lack of the vapor barrier or moisture barrier was a defect. There were clearly notices, studies, and oral reports well known to Ms. Dunphy that the moisture barrier did not exist, and that future damage was likely if something was not done. The fact that no damage might ever occur, or that the whole fix might be paid by the developer, does not mean there was no defect. CP 76-77 at ¶ r.

In the July 25 Form 17, in response to Question 10(A) "Are there any other existing material defects affecting the property that a prospective buyer should know about?", Mary Dunphy answered "Don't Know". This was a lie. She was well aware of the CAI inspection, the walk through, and the problems that Mark Cress had pointed out in the walkthrough on May 4 that she had attended. CP 77 at ¶ s.

These misstatements were intentional, and intended to mislead the Watts, in order to make sure the sale closed, for full price, and on time. CP 77 at ¶ t.

Mary Dunphy arranged for Suhrco, the property manager, to produce a Resale Certificate, along with a series of required documents. Those documents included a copy of the HOA Board Minutes for the past 6-12 months. Though testimony was conflicting, the court finds the Watts did receive the Homeowner's Association meeting minutes and had the opportunity to read them, and in fact did read them enough to comment on the parking situation. CP 77 at ¶ u.

The Minutes contain a list of all the issues the Board dealt with. In there, among the other issues, are mentions of inspections; envelope studies, Darrel Hay's report, etc. CP 77 at ¶ v. The meeting minutes were admitted as trial exhibit 3, excerpts of which are attached as Appendix I.

The first minutes are from February 13, 2007, which was the first meeting of the Board. Those minutes contain the following notations:

1. Envelop Study was discussed by Mark Cress; an overview of the independent inspection report by Darrell Hays was commented by Mark.

2. Mark Cress presented his findings with photo of the property which included siding, moisture barrier.

* * * *

5. David Onsager (another attorney) at Stafford Frie Law Firm was mentioned as another option.

Trial Exhibit 3 at February 13, 2007 Minutes.

The next meeting took place on March 13, 2007 and includes the notation: “3)Update on inspection. Deferred until next meeting, no response from Mark W. of Corke-Armento.” Trial Exhibit 3 at March 13, 2007 Minutes.

The ongoing inspection was again noted in the April 2007 minutes with the notation that: “Craig/Terry spoke to Corke Amento and we are moving ahead with the envelope/invasive inspection. Centerbay wanted to use their inspector, Craig declined that offer, but accepted the offer for Centerbay to pay 50% of the cost.” Trial Exhibit 3 at April 2007 Minutes.

The moisture barrier issue itself was expressly mentioned in the minutes of the May 2007 meeting.

2) Discussion of Intrusive Study

- a. Need David Onsager to weigh in on the moisture barrier and whether or not there is significant damage.
- b. Waiting for results from Corke Amento and David Onsager .
- c. David Onsager will provide recommendation in the report
- d. Terry to call David's assistant in order to get the date the report will be ready

Trial Exhibit 3 at May 2007 Minutes.

On June 12, 2007, the association held its annual meeting of the unit owners. The minutes from that meeting indicate that the board was

trying to avoid a legal battle with the developer and the possibility of future assessments as a result of the ongoing envelope study.

Discussed envelope study and possible assessments. Informed that we are working with Centerbay and trying to resolve issues and working on not going into a legal battle.

IV. New Business (8:19 - 8:24)

a. Inspection/Construction Defect

- i. Corke Amento performing inspection
 1. Currently waiting for report
- ii. Asked owners to inform board of any of defects or issues
- iii. Timeline - depends on cooperation of builder

Trial Exhibit 3 at June 12, 2007 Minutes.

The July 2007 meeting minutes reflect that Mary Dunphy had resigned from the Board. Trial Exhibit 3 at July 2007 Minutes. Those minutes reflect further developments in the dispute over building defects.

Bill from Corke Amento, inspectors for Envelope inspection came in at \$9350.03
We are holding Center Bay to their offer to pay for half of this inspection.
David Ansager defect Attorney has billed us 1792.00 for 5.6 hours of work.
Missing insulation is an issue the Board will be going after Center bay for.

Id.

After sale closed, the Watts found out about the problems with the condominium. The HOA sued the developer. That lawsuit has settled, for a little over a million dollars. The HOA also has a bankruptcy court Claim

against the developer's owner, which at the time of trial was still under way. The HOA has collected approximately 1.3 million dollars. No repairs have been started, and there is no plan on when they will be started. While there was testimony as to how much the repairs would cost, there was no definite plan on what would be done; how much it would cost. The court found that the future possible repairs to be too speculative to use in determining the effect on the current value of the unit. CP 77 at ¶ q. The court found that the current value of the unit, by clear, cogent, and convincing evidence, is \$132,000. CP 77 at ¶ r.

While the HOA has a substantial amount of money in the bank, there remain a few unanswered questions that do affect the value of the condo today. It may be that the stigma will be significantly reduced, if not eliminated, years into the future once the repairs are completed and paid for; but the issue is the fair market value now, not years into the future. CP 77 at ¶ r. In the present case, the court found that the plaintiffs established by clear, cogent, and convincing evidence that the condominium would have been worth a minimum of \$170,000. CP 78 at ¶ r.

V. LEGAL ANALYSIS

A. Standard of Review.

The standard of review in this case depends on the correct characterization of Judge Lum's determination that the meeting minutes were "insufficient to put the Watts on notice that there were major problems with the complex in terms of missing WRB. (CP 77 at ¶ v.). If it is treated as a finding of fact, then review is for substantial evidence. *Recreational Equipment, Inc. v. World Wrapps Northwest, Inc.*, 165 Wn.App. 553, 558, 266 P.3d 924, 927 (2011). However, a finding of fact that is actually a conclusion of law will be treated as such. *George E. Miller Lumber Co. v. Holden*, 45 Wn.2d 237, 245, 273 P.2d 786, 790 (1954); *Town Concrete Pipe of Washington, Inc. v. Redford*, 43 Wn.App. 493, 502, 717 P.2d 1384, 1389 (1986) ("Findings of fact that are conclusions of law are treated as such and will stand only if there are other findings of fact sufficient to support them.").

When the essential facts are undisputed, the legal consequence is a question of law. *Town Concrete Pipe of Washington, Inc. v. Redford*, 43 Wn.App. 493, 502, 717 P.2d 1384, 1389 (1986). Consequently, as this Court has said: "Where the relevant facts are undisputed and the parties dispute only the legal effect of those facts, the standard of review is also

de novo.” *Happy Bunch, LLC v. Grandview North, LLC*, 142 Wn.App. 81, 88, 173 P.3d 959, 963 (2007).

The undisputed fact is that Watts received and read the association’s meeting minutes before closing. Whether those minutes preclude Watts from proving the right to rely therefore presents a question of law that is reviewed *de novo*.

B. Watt’s Action Is Barred By Their Receipt of the Meeting Minutes.

Judge Lum found Dunphy liable both for fraudulent concealment and for making an affirmative misrepresentation. The two claims have different elements. *Carlile v. Harbour Homes, Inc.*, 147 Wn.App. 193, 204-205, 194 P.3d 280, 285 (2008). Although the two claims are closely related, fraudulent concealment requires proof that the concealed defect could not have been discovered through the exercise of reasonable diligence, while fraud requires proof of the right to rely on the misrepresentation. *Id.*

This is one of those rare appeals that can be decided entirely on the basis of a single recent Supreme Court case, *Alejandre v. Bull*, 159 Wn.2d 674, 153 P.3d 864 (2007). For that reason, the facts and background of *Alejandre* are set forth here. *Alejandre* is particularly helpful because it was decided in the context of a motion for judgment as a matter of law at

the close of the plaintiff's case in a jury trial. In other words, *Alejandre* sets forth the law when viewing the evidence in a light most favorable to the plaintiff.

“A motion for judgment as a matter of law must be granted ‘when, viewing the evidence most favorable to the nonmoving party, the court can say, as a matter of law, there is no substantial evidence or reasonable inference to sustain a verdict for the nonmoving party.’ ” *Id.* (quoting *Sing v. John L. Scott, Inc.*, 134 Wash.2d 24, 29, 948 P.2d 816 (1997)). “Substantial evidence” is evidence that is sufficient “‘to persuade a fair-minded, rational person of the truth of a declared premise.’ ” *Davis*, 149 Wash.2d at 531, 70 P.3d 126 (quoting *Helman v. Sacred Heart Hosp.*, 62 Wash.2d 136, 147, 381 P.2d 605 (1963)).

Alejandre, 159 Wash.2d at 681.

Mary Bull (“Bull”) owned a single family residence that was served by a septic system. The year before she put the house up for sale, Bull noticed soggy ground over the septic system. She hired Gary's Septic Tank Service to pump the tank and had Walt Johnson Septic Service perform some repairs. Shortly thereafter, she applied for a connection to the city sewer, but when she learned there was a \$5,000 hook-up fee, she abandoned the idea. *Id.* at 678.

Bull then placed her home on the market in June 2000. In September 2001, Bull and the Alejandres entered into an agreement for the sale of Ms. Bull's home to the Alejandres. The agreement required Bull to

pump the septic system and contained a contingency for an inspection of the septic system. *Id.* at 678-79.

Walt's Septic Tank Service pumped the tank, and the Alejandres received a copy of the bill. The bill stated on it that the septic system's back baffle could not be inspected but there was "[n]o obvious malfunction of the system at time of work done." *Id.* at 679.

As in this case, Bull provided the Alejandres with a seller's disclosure statement. In it, she disclosed that the house had a septic tank system which was last pumped and last inspected in Fall 2000 and that "Walt Johnson Jr. replaced broken line between house and septic tank." She answered "no" to the inquiry whether there were any defects in operation of the septic system. *Id.* at 680.

A month after the sale closed, the Alejandres smelled an odor inside their home. They also heard "water gurgling like it was coming back up." They noticed a foul odor outside the home as well, which they believed came from the ground around the septic tank, which they said was soggy. By chance, they hired the same person that had pumped the system for Bull in 2000, and he informed them that he had told Bull that the drain fields were not working and that she needed to connect to the city's sewer system. That occurred immediately before Bull did apply to connect to the sewer and learned that it would cost \$5,000. *Id.* at 680.

The Alejandres then hired another company to connect to the city sewer system. During this work, the company discovered that the baffle to the outlet side of the septic system was gone, thus allowing sludge from the septic tank to enter the drain field and plug it. *Id.* at 680.

The Alejandres sued Bull for fraud and misrepresentation, claiming costs and damages totaling nearly \$30,000. After the plaintiffs rested their case, Ms. Bull moved for judgment as a matter of law. The court granted the motion, ruling that the economic loss rule bars the Alejandres' claims and that they failed to present sufficient evidence in support of their claims. The Alejandres appealed, and the Court of Appeals reversed, holding that the Alejandres presented sufficient evidence to take their claims to the jury. *Id.* at 680-81.

The Supreme Court granted review and issued its decision reversing the Court of Appeals on March 1, 2007. Although *Alejandre* is better known for its discussion of the economic loss rule, which is not relevant here, the Court also affirmed the trial court's decision to dismiss the fraud and fraudulent concealment claims. Those aspects of *Alejandre* are on all fours with this case, and are particularly helpful because *Alejandre* was decided in the context of taking a case from the jury.

1. **Fraudulent Concealment.**

As noted by the Supreme Court, a claim for fraudulent concealment has five elements.

- (1) where the residential dwelling has a concealed defect;
- (2) the vendor has knowledge of the defect;
- (3) the defect presents a danger to the property, health, or life of the purchaser;
- (4) the defect is unknown to the purchaser; and
- (5) the defect would not be disclosed by a careful, reasonable inspection by the purchaser.

Alejandre, 159 Wn.2d at 689. The element in question here is whether the defect would have been disclosed by a careful, reasonable inspection by the purchaser.

In *Alejandre*, the Court addressed a buyer's duty to investigate in the context of a fraudulent concealment claim.

The Alejandres failed to meet their burden of showing that the defect in the septic system would not have been discovered through a reasonably diligent inspection. In fact, the Alejandres accepted the septic system even though the inspection report from Walt's Septic Tank Service disclosed, on its face, that the inspection was incomplete because the back baffle had not been inspected. The testimony at trial showed that this part of the septic system was relatively shallow and easily accessible for inspection. A careful examination would have led to discovery of the defective baffle and to further investigation.

Id. at 689-90. It is important to note that the purchaser in *Alejandre* did not have any evidence that the septic system was defective, but instead had an inspection report stating that part of the system could not be

inspected. *Id.* at 679. This occurred in the context of a statement on the same document that there was “[n]o obvious malfunction of the system at time of work done” (*Id.* at 679), and a bank inspection that “indicated that the septic system ‘Performs Intended Function’ and stated that ‘everything drains OK.’” (*Id.* at 680)

Despite these positive indications, the Supreme Court held that the buyer had a duty to inquire further. Here, inquiring further would have been extremely simple because the meeting minutes identified the board members and property manager. The issues with the condominium were not a secret, but rather were discussed at the annual homeowner meeting. Any diligence at all by Watts would have uncovered all of the information about the potential defects, and they would have known everything that Dunphy did.

This case is much stronger than *Alejandre* because the Watts had and read documents referring to the moisture barrier, construction defect attorneys and assessments. Whereas the Alejandres had only an unanswered question, Watts had multiple red flags and took no action to inquire. *Alejandre* squarely bars their claim.

1. Fraud.

The “right to rely” element of fraud is essentially the equivalent of the duty to investigate for fraudulent concealment. Again, *Alejandre* is determinative.

Next, insofar as the Alejandres have asserted common law fraud theories, they have failed to present sufficient evidence of the nine elements of fraud. *See Williams v. Joslin*, 65 Wash.2d 696, 697, 399 P.2d 308 (1965). In particular, they have failed to present sufficient evidence as to the right to rely on the allegedly fraudulent representations about the condition of the septic service. The “right to rely” element of fraud is intrinsically linked to the duty of the one to whom the representations are made to exercise diligence with regard to those representations. *Id.* at 698, 399 P.2d 308; *Puget Sound Nat'l Bank v. McMahan*, 53 Wash.2d 51, 54, 330 P.2d 559 (1958). As explained, the Alejandres were on notice that the septic system had not been completely inspected but failed to conduct any further investigation and indeed, accepted the findings of an incomplete inspection report. Having failed to exercise the diligence required, they were unable to present sufficient evidence of a right to rely on the allegedly fraudulent representations.

Alejandre, 159 Wash.2d at 690 (footnote omitted). The Watts’ right to rely on any representations made to them was tied to their diligence concerning the information they had. *Id.* In *Alejandre*, the buyer’s possession of a receipt indicating that part of the septic system had not been investigated barred a claim for fraud. Here, the Watts had much more information indicating the existence of a problem, not just an unanswered question.

C. **The Court Should Award Attorney Fees to the Prevailing Party.**


Judge Lum awarded attorney fees to Watts under the purchase and sale agreement. CP 73. The entitlement to attorney fees has not been appealed. If the Court reverses, it should award Dunphy attorney fees both at trial and in this appeal. RAP 18.1; *Renfro v. Kaur*, 156 Wn.App. 655, 667, 235 P.3d 800, 805 (2010).

VI. CONCLUSION

In *Alejandre*, the Supreme Court held that a buyer who was on notice that part of a septic system could not be inspected was barred from bringing a claim for fraud or fraudulent concealment. Here, the buyer received and read condominium board meeting minutes containing numerous references to studies, defects and legal claims. The argument for dismissal in this case is stronger than in *Alejandre*, and this Court should reverse the judgment for Watts and remand for entry of judgment in favor of Dunphy.

DATED this 23rd day of April, 2012.

DEMCO LAW FIRM, P.S.


Matthew F. Davis, WSBA No. 20939
Attorneys for appellant

Meeting Date: 2/13/07

HOA Meeting call to start at 7:10pm by the President

Present: Craig Clever, Mary Dunphy, Lisa Robberson, Mark Cress, John Coe, Terry Hughes

“Special Meeting”

1. Envelop Study was discussed by Mark Cress; an overview of the independent inspection report by Darrell Hays was commented by Mark.
2. Mark Cress presented his findings with photo of the property which included siding, moisture barrier.
3. Discussed options on how to proceed depending on what the POS states about envelop study. Two options are proposed: 1. Intrusive Investigation or 2. Envelop Study
4. Envelop study was the recommendation
5. David Onsager (another attorney) at Stafford Frie Law Firm was mentioned as another option.
6. John Coe will put together a firewall amendment to address sensitive matter with Tammy's board position and conflict with her being an employee of Center Bay as we move forward with the envelop study.
7. Survey map / plan needed to use for the amendment to the POS on parking
8. Mary to contact Title company to get updated Warranty Deeds for Kirkland Village for any additional recordings and send information to John Coe
9. Discussed retaining a California CPA auditing firm to complete an audit of the Kirkland Village books. A local CPA quoted a price of \$3000 to do the audit, but the fee did not include travel expenses.
10. Mary to contact her CPA friend with other options
11. Lisa and John Coe will work on the Rental Restrictions
12. Terry Hughes is assigned to get landscaping budget from Center Bay

Meeting adjourned at 9:14pm

KIRKLAND VILLAGE MEETING NOTES

3/13/07 7:10pm

Attendance:

Craig Cleaver

Lisa Robberson

Bryan Balsley

Mary Dunphy

Tammy Dickinson

Terry Hughes

Review of Agenda

0) Review/ adopt minutes from last meeting.

Deferred until next meeting.

1) Update on rental cap. Packet passed out to all board members. Packet also included rental adjustments. Review of categories 1,2 and 3.

11.3 talking about rentals

11.3.1.4 adds .25 cents for copies, Lisa recommends also adding an administrative fee. Owner is responsible for giving renter copy of P.O.S., rules and regs, Terry-will obtain a hard copy of rules and regs. That can request and state that they have to adopt by the rules and regs. Administrative fee is voted and all members agree to \$40.00 charge.

Rental cap voting ballot- some worries that may have to redo, due to process taking so long.

11.3.1.9 rental fee. Put into rules and regulations a community deposit. Typical deposits \$200 -\$300. All charges to owner.

Lisa is also concerned how to enforce, but page 10 covers how to. If not paid, Lien can be put on property.

Approval for rental cap to be approved for next meeting. Board is to review and report any changes to Lisa by March 27th via email.

2) Review 7-1 cable issue. He did have permission, but still did not follow the guidelines. Homeowners do not always read paperwork properly or comprehend how to respond with the documents. Terry will make up form being revised. Terry recommends that he contacts Comcast.

3)Update on inspection. Deferred until next meeting, no response from Mark W. of Corke-Amento.

4) Update on grounds keeper role- Tammy's son Brandon was hired on to do grounds maintenance 3 hours per week. Craig approved hire and for standard hours. Email Terry with any additional items if above 4 hours each job. Payroll is 2 times a month. It was decided that Brandon will report to Tammy for payroll sign off. It was discussed that he

does every other day. All board members will have access to Brandon per his phone for any issues that arise. Tammy will email the board with his number.

Call City of Kirkland for street sign repair.

5) Other issues- Parking stickers. People with more than 2 cars need to find a way to obtain space. Colin Sternberg volunteered to lead a parking committee for unused spaces. It was agreed that if a homeowners of 3 bedrooms wants to rent or lend their reserved parking permit to another homeowner, they can do so, but must report to the board which unit they are ceding their space to and respective vehicle info. Three bedroom reserved parking needs to have a parking sticker and parking hanger. There are 64 covered spaces, 22 reserved spaces 28 open spaces. Cars need to be operable and current tabs 11.6 in P.O.S. Towing company is Mac towing. Should do a courtesy posting before towing.

Auditing is expensive. Terry can recommend a company? Discussed whether auditor needs to be in California or can paperwork be sent to Washington. Terry will find out if that is possible. Tammy mentioned that the other property did it that way. It may help cut down on the cost if it can be done this way.

Landscaping. Bill wanted Craig to talk to Pepo with Creative Brothers, but he said declined as Bill had stated he was the point person for Center Bay. \$100 landscaping may need to be trimmed to defer \$ to cost of audit and 'envelope' inspection; pending action till the board gets true costs for both 'Inspection' and 'Audit.

Heather from Suhrco has questions on budget whether the dues were lowered because of no management/maintenance fees. Terry and Tammy will go over together.

General meeting- Are we ready? There is nothing in documents stating that we have to have a quarterly meeting. Open meeting will be semi annual. Board decided on June and January. The first meeting by the 1st quarter of the year. General meeting will be at 6:30 for board and 7:30-8:30 for open discussion. First meeting will be June 12th.

Mary recommends that we do a yahoo group or google group. You can post email that are beneficial, post important information and anyone can have access to it. It has been decided that Bryan will set up.

Delinquencies- Only 1 delinquent past 60 days. 9-1. Tammy will pull ledger from old company to see what charges are for and pass along to Terry. She thinks it is pet and late fees.

Lisa asked about the gutters, it is unsightly on the roof of building 1 as you drive into the community. Cotton will be falling soon. Terry will get a couple more bids together.

Action items list for next meeting: Terry will send out.
Last meeting notes- Mary and Lisa will do by the 27th.

Inspection- find a second company
Grounds-Tammy and Terry
Yahoo google- Bryan and Mary
Craig- Parking
Heather- Originals
Craig- respond to people about meeting

Meeting adjourned at 8:51

Meeting Date: 4/10/07

HOA Meeting call to order 7:17pm by the President

Present: Craig Cleaver, Mary Dunphy, Lisa Robberson, Tammy Dickinson, Terry Hughes

Absent: Bryan Balsley

(Typed from Tammy's notes by Craig)

1. No Owner Forum – no attendance
2. Craig read/reviewed Feb/March meeting minutes and they were adopted
 - a. Craig will forward to Judith (Suhrco) for binder
3. Financial report: (Terry) \$110, 216.78, operating & reserves
 - a. Report of delinquencies was given (redacted)
4. Review of Action Items:
 - a. Gutter bids complete
 - b. No soft copy of 'Rules' identified, Terry going to see what she can find; Craig to work on KVC version.
 - c. Craig/Terry spoke to Corke Amento and we are moving ahead with the envelope/invasive inspection. Centerbay wanted to use their inspector, Craig declined that offer, but accepted the offer for Centerbay to pay 50% of the cost.
 - d. Landscaping
 - i. Centerbay \$100k budget original breakout, \$80k water features, \$20k landscaping.
 - e. Unit 7-1 exterior cable – they attempted to cover, Suhrco to send note to have them "tidy" it up more.
 - f. Rental Cap – Lisa sent changes to John Coe for update. Reviewed ballot to go out. The amendment is sent out with the ballot USPS.
 - i. Send Ballot prior to June Annual Meeting so everyone has time to read; John Coe to attend meeting to answer questions.
 - g. Parking – should be separate issue from rental cap
 - i. Original exhibit says 'assigned' parking, but none issued via Appendix B; problem is where spaces are not assigned. There are 64 covered reserved but KVC is shy 14 if every unit had two vehicles per allowance. The 3BR spaces "reserved unassigned" to be determined by board....
5. Google site – Mary to investigate
6. Flyer boxes for meeting notes – Craig to handle.
7. Year 1 Board Elections: Determined Lisa and Bryan's seats would be the ones up for election based on a 1 year term as outlined on POS with the other three seats up the following year.
 - a. Note: This was changed to Tammy's seat based on her resignation, Lisa's remained a 2 year term
8. Annual Meeting: 14 days before annual meeting, Suhrco will send notice along with Board nomination form and voting proxy.
 - a. Terry will handle chair rental for meeting

9. Asphalt Repair: The moving company that caused the damage is paying for repair, Benjamin Asphalt, which will take 4-6 hours doing ½ at a time so entrance remains accessible.
10. Gutter Cleaning:
 - a. Roof King \$1995 – declined
 - b. Roof Tech – Time & Materials, estimate \$2000, we will go with them pending clarification of proposal
 - c. Glass --- (can't read) - \$2150 – declined
11. Cats: Tabby has been around outside, does this belong to someone?
 - a. Should we put up a notice?
 - b. Should we call animal control?
12. Rules & Regs:
 - a. Should we add language about flooring details
 - i. Hardwood...need to check on this
 - b. Blinds
 - i. All white facing external?

Meeting adjourned at 8:43pm

Kirkland HOA Board Meeting
May 8, 2007

7:15pm Meeting called to order

In Attendance: Craig Cleaver, Mary Dunphy, Lisa Robberson and Terry Hughes of Suhrco

- 1) Delinquency Report
 - a. Delinquencies come in around the 13th/14th of the month.
 - b. Judith at Suhrco to email delinquency report on the 15th of the month to the Board
- 2) Discussion of Intrusive Study
 - a. Need David Onsager to weigh in on the moisture barrier and whether or not there is significant damage.
 - b. Waiting for results from Corke Amento and David Onsager
 - c. David Onsager will provide recommendation in the report
 - d. Terry to call David's assistant in order to get the date the report will be ready
- 3) Transitional Audit
 - a. Terry has left several messages for Andrew McAllister (Auditor/CPA)
 - i. Terry to place another call this week
- 4) Asphalt Repair
 - a. Benjamin Asphalt to start on repair on May 15th
 - b. Being paid by moving company that did the damage
- 5) Roof Cleaning & Leaf Removal
 - a. Rooftech to start cleaning next week
- 6) Damage to Owners Sliding Glass Door
 - a. Horizon Glass to repair this week
 - b. Condo Commercial (landscaper) will pay for the repair bill
- 7) Landscaping
 - a. Scheduled to start with base plan on the 15th of May
 - i. Around doors and natural barrier
 - b. Patio's would be additional work
 - c. Still waiting for response from Bill with regards to the budget
 - d. If response not received by May 15th, have John Coe (lawyer) deliver letter
- 8) 7-1 Cable Cord Exposure
 - a. Sent letter to owner
- 9) Rental Cap
 - a. John Coe provided letter
 - b. Craig read letter to the board
 - c. Craig made one change to letter to include straw pole vote
 - d. Terry to make corrections
 - e. Contact will be Terry Hughes at Suhrco

- f. Terry to send letter, amendment, ballot and self-addressed stamped envelope
 - g. Deadline for owner's to return – June 30th
- 10) Board Members
- a. Elect 2 new positions for 1 year terms at bi-annual meeting on June 12th
 - b. Positions vacated by Tammy Dickinson and Bryan Balsley
- 11) Rules & Regulations
- a. Add amendments for the insurance policy
 - i. i.e. deductible, hardwood floors, hot water heater water damage
 - b. Discuss in general meeting on June 12th
- 12) General Meeting Agenda on June 12th
- a. Parking
 - i. In process of changing rules and regulations
 - b. Landscaping
 - c. Rental Cap – John Coe
 - i. Terry to talk to John Coe about availability for general meeting
 - d. Intrusive Study/Investigation
 - e. Forum for the owners (20 minutes)
 - f. Management Change
 - g. Election of Board Members
 - h. Terry to send package
 - i. Proxy
 - ii. Agenda
 - iii. Nomination Forms
 - iv. Provide map of new location
 - i. Assign time period to each segment
 - i. Try to keep meeting at 2 hours
 - j. Sign up sheet with relative % of ownership

8:30pm Meeting adjourned

Kirkland Village Annual Association Meeting
June 12, 2007

- I. Waited for quorum (16 people)
 - a. Started Informal meeting at 7:24pm
 - b. Rental Cap – John Coe (7:24pm – 8:02)
 - i. Explanation of Rental Cap Amendment
 1. Benefits
 - a. Insurance
 - b. Financing
 - c. Association to finance repairs
 2. Chose 25% rental cap (total rentals)
 3. Grandfather the 12 units currently renting
 4. 90% of owners have to approve along with those currently leasing and 51% of mortgagees approval
 5. Run through of actual amendment
 6. Balloting is due June 30th – requires 90%
 7. Voting on the amendment will be in August
- II. Call to Order
 - a. Officially called meeting to order 8:02
 - b. Approval of Agenda
 - i. Granted
 - c. Introduction of new Property Manager and why (8:04 – 8:11)
 - i. Why
 1. Lack of action on Centerbay
 - a. Landscaping
 - b. Siding washing and replacement not taking care of timely
 - c. Failed to perform requirements timely
 - ii. Hired Suhrco
 1. Performance of envelope study based on recommendation of Suhrco that Centerbay never informed us of it
 2. Taking steps forward to make corrections going forward
 3. Terry informed of assistant – Judith for other contact opportunity
 4. kirklandvillage@hotmail.com alias
- III. Financial Report (8:11 – 8:19)
 - a. Year to Date
 - i. Switching to calendar year versus fiscal year
 - b. Calendar Year Budget
 - i. Operating account \$78k
 - ii. Maintenance reserve account \$28k
 - iii. Most properties have a reserve level much higher

Side note: Derek Wampler (Unit 6-6) volunteered to help create a website to post information for the association on a website (for example: posting financials)

Discussed envelope study and possible assessments. Informed that we are working with Centerbay and trying to resolve issues and working on not going into a legal battle.

- IV. New Business (8:19 – 8:24)
 - a. Inspection/Construction Defect
 - i. Corke Amento performing inspection
 - 1. Currently waiting for report
 - ii. Asked owners to inform board of any of defects or issues
 - iii. Timeline – depends on cooperation of builder
 - b. Landscaping (8:24 – 8:36)
 - i. Started on June 11, 2007
 - ii. Master plan from Centerbay shown to unit owners
 - iii. Board voted no on water features and instead decided to invest in other landscaping
 - iv. Owner concerned with replanting – Craig explained fill-in
 - 1. Trying to create natural barriers
 - 2. Contractual obligated to replace any items that do not survive
 - v. If there are plantings on your own it will be up to owner on whether to keep those plantings
 - vi. Owner asked about sprinkling system
 - 1. Do we have control?
 - 2. Are we conserving?
 - 3. Craig to research if on timers or how we can control – follow up with landscaping company
 - vii. Completion
 - 1. Start to end – 3 months
 - 2. Crew size will vary
 - 3. Craig meeting with Bill regarding landscaping
 - viii. Changes requested by Craig
 - 1. Will be considered based on budget
 - c. Grounds keeper
 - i. Current one is not currently keeping up with committed time
 - ii. Possibly looking for new grounds keeper
 - 1. Pat offered to post job description
- V. Old Business
 - a. Parking (8:41 – 8:50)
 - i. Still an issue
 - ii. Head in only
 - iii. Guests park off-site
 - iv. Every owner must offered 2
 - v. Reserved must have hanging tag plus sticker
 - 1. Unassigned reserved spot

- vi. We will send out a reminder of parking rules
 - vii. Can only act on parking problems if board is informed
 - viii. Area is shy 13 spaces if everyone has two cars
 - b. Rules and Regulation (8:50 -
 - i. Add parking issues to rules and regulations
 - ii. Quiet times
 - iii. Speed limit
 - iv. Other rules will be added to protect ownership
 - v. Loud music
 - vi. Pets – dogs
 - vii. Parking – purchasing spots not a formal methodology
 - 1. Will ask John Coe the rules on allowing them being sold
- VI. Elections (9:00 – 9:03)
 - a. Two Board Positions
 - i. Pat Hunter
 - ii. Nancy Barille
 - b. Motion made to accept nominations, seconded and approved unanimously
- VII. Owner Forum
 - a. Issues with ice in the winter and possible lawsuits due to injury
 - i. De-icer issued through out community to be distributed
 - b. Work out emergency plan within community
 - c. Leaves causes problems
 - i. Board will check maintenance schedule
 - d. Audit of books of Centerbay
 - i. To look at contracts for maintenance
 - ii. Will consider changing contract
 - e. Will work on putting together a plan on when things need to be taken care of
 - f. Cannot get additional recycling bins
- VIII. Adjournment
 - a. Meeting adjourned at 9:13

Meeting minutes
Kirkland Village Homeowner's Assoc
July 12th 2007

Meeting called to order 7:18 PM

Owner form issues:

2 homeowners present, Josh and Derrick

Reminder, Homeowners are invited to attend meetings during the HO forum, to discuss issues but will be asked to leave when business portion of the meeting is called by the Board.

Rental cap agreement

Still looking for 20 owners to vote. 2 owners have voted No. We will have to flip them to get our 98% quorum.

Josh has agreed to knock on doors to ask for votes. Craig will supply him with necessary info to target owners that have not yet voted.

Approval of May minutes

(April, May, June)

all approved

Financial reports

e-mailed from Shurco to Board members before each monthly meeting.

Craig and Lisa were e-mailed May statements they will review.

Management report

Review of Action items:

Transition Audit, still gathering info from California office, including tracking of all dollars paid into association at closing of units.

Current timeframe for full Audit , mid January

Delinquency report: Julie from Shurco will update and send report before HOA meetings. complete

Revised parking notices: Craig will update and distribute

Inquiry to Janet regarding report from Mark Cress. Complete

Mail Rental amendment. Complete

Confirm John Coe for next 6-12 meeting. Complete

Mail annual meeting notice. Complete

Maps from Craig to Raj. Complete

Bill from Corke Amento, inspectors for Envelope inspection came in at \$9350.03

We are holding Center Bay to their offer to pay for half of this inspection.

David Ansager defect Attorney has billed us 1792.00 for 5.6 hours of work.

Missing insulation is an issue the Board will be going after Center bay for.

Old Business

Audit:action item list

Rental Cap (see above)

Rental owners to be called

Website

The fabulous Derrick Wampler has offered to re do our web site

Landscaping

Creative Brothers landscaping company is currently working on the door areas. The new plants are guaranteed for a full year. Any dead will be replaced. Drains at front doors have been moved and downspouts have been connected to under ground drain system.

More to come.....

New Business

We have hired a new groundskeeper, Tevis Mahoney. Craig will locate an appropriate crawl space for supplies for Tevis.

Note: Crawl spaces are community property, and as such will be inspected by Craig for old locks that will be removed and replaced with new locks. We will keep supplies such as de-icer and other emergency supplies in these spaces.

Terry will check for buckets for de-icer.

Parking:

Three bedroom units are allowed a second reserved but uncovered parking space. Rear view mirror permits are issued to unit owners. These should not be loaned, traded or sold to owners of two bedroom units.

Also note, permits are to be transferred from owner to owner in case of unit sale, and should be retrieved from renters at the end of the lease.

Craig will issue a parking reminder this month.

Vandalism

We need to stay on top of this as a community. Letters to neighbor violators will be sent out by Shurco.

→ Resignation of Mary:

We will miss her, thanks for helping us get our start!

→ Mary is selling her unit and resigning from the board. As per the bylaws, the board can appointment a replacement.

Derrick Wampler is nominated seconded and approved, and he accepts!

Board meeting date is set for the second Monday of the month.

Meeting adjourned at 9:02 PM

DECLARATION OF SERVICE

I, Linda Fierro, state: On this day I caused to be delivered by regular mail postage prepaid the Brief of Appellant to the Court of Appeals Division I and to:

Craig Jonathan Hansen
12000 NE 8th, Ste. 202
Bellevue, WA 98005-3193

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 23rd day of April, 2012 at Seattle, Washington.



Linda Fierro