74115-2

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NO. 74115-2-1

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

Viewcrest Condominium Association,

Plaintiff/Respondent,

v.

Brenda L. Robertson,

Defendant/Appellant.

REPLY BRIEF OF APPELLANT BRENDA L. ROBERTSON

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Veronica A. Galván

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INTRODUCTION

RCW 6.23.110(4) provides that "[i]n case of any homestead as defined in chapter 6.13 RCW . . . the judgment debtor shall have the right to retain possession thereof during the period of redemption." For the past 117 years, the legislature has determined that it is important to provide this protection and support to homeowners who have lost their homes through personal difficulties. Ms. Robertson, whose colon cancer and consequent loss of her job caused her to suffer the foreclosure of her home, is entitled to this protection.

Viewcrest contends that condominium owners should not receive the same protection that other homeowners receive. It relies on the fact that RCW 64.34.364(2) provides that a condominium association's lien "is not subject to the provisions of chapter 6.13 RCW," and on an argument that the legislature would, as a matter of policy, consider it more important to protect condominium associations than homeowners.

The statutory language and "the sanctity with which the legislature has attempted to surround and protect homestead rights," *Baker v. Baker,* 149 Wn. App. 208, 212, 202 P.3d 983 (2009), confirm that Ms. Robertson has a right to protection under RCW 6.23.110(4). This Court should recognize that right and reverse the decision of the superior court.

ARGUMENT

A. The Condominium Act Provides that an Association's Lien is Not Subject to the Homestead Act. It Does Not Provide that a Condominium Owner Has No Homestead.

Viewcrest's Response Brief makes inconsistent assertions regarding its central argument.[1] At times, it argues that the Condominium Act provides that the Homestead Act does not apply to a condominium association's lien (*e.g.*, Response Brief 3, 7, 9, 11, 22). At other times, however, it argues for the broader proposition that no homestead exists (*e.g.*, Response Brief 13, 22), perhaps because the homestead was not created (*e.g.*, Response Brief 7), or because the Condominium Act eliminated the homestead (*e.g.*, Response Brief 7, 11), or because the Condominium Act eliminated the right to claim that the homestead exists. (*e.g.*, Response Brief 6, 13-14, 20).

Only the first of these assertions is correct. RCW 64.34.364(2) provides that "[a] lien under this section is not subject to the provisions of chapter 6.13 RCW."

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[1] Viewcrest does not discuss, and has apparently abandoned, the alternative argument it made below that RCW 6.13.080(6) eliminates the homeowner's right to possession during the redemption period. *See* CP 151. Viewcrest also does not discuss Ms. Robertson's argument that that statute is to be construed together with RCW 64.34.364(2), confirming that the two statutes address the ability to execute on a lien, not the right to possession after execution. *See* Opening Brief 13-14.

The fact that the association's lien is not subject to RCW 6.13 does not mean that the homestead does not exist or that the homeowner's right to possession is eliminated. RCW 64.34.364(2) merely permits the association as lienholder to foreclose. It does not affect the right to possession of the homestead following the foreclosure. To use Viewcrest's terms, the statute speaks to the applicability of the homestead exemption, not to the existence of the homestead itself.

A long line of cases confirms this point. As Ms. Robertson's Opening Brief explained, a lien "is merely an encumbrance to secure an obligation," quoting *Byrne v. Ackerlund*, 108 Wn.2d 445, 450, 739 P.2d 1138 (1987), which provides the lienholder with the right to foreclose, but does not provide the lienholder with any right to possession. Opening Brief 10-13. When the foreclosure sale occurs, the lien is extinguished. *Id.* 12. At that point, the lien has no impact on the right to possession post-sale. At that point, there is no longer a dispute between the homeowner and the lienholder (except potentially as to a creditor's un-waived right to recover a deficiency against other assets). Rather, the dispute as to possession is between the homeowner and the foreclosure sale purchaser, who may or may not be the same person as the former lienholder. *See* CP 55 (chart, reproduced at Opening Brief App. A). That dispute is governed by RCW 6.23.110. Opening Brief 12-13.

Viewcrest never addresses the authorities cited by Ms. Robertson's Opening Brief at 10-13. Instead, it contends, without citing to any supporting authority, that a condominium association's lien is like a deed of trust lien, that "the foreclosure of the lien upon junior interests . . . operates to extinguish those interests," and that "upon foreclosure of the lien, the unit owner, as a junior interest, loses that interest and the right of possession post sale." Response Brief 15. In fact, a homestead is not a "junior interest" extinguished by a lien foreclosure. "The homestead is neither a lien nor an encumbrance, but a species of land tenure . . . An assessment lien cannot, therefore, be 'superior' to homestead." *City of Algona v. Sharp*, 30 Wn. App. 837, 843, 638 P.2d 627 (1982). Indeed, in *Sweet v. O'Leary*, 88 Wn. App. 199, 201, 944 P.2d 414 (1997), the "trial court held that the protection of the homestead interest was extinguished" by a deed of trust foreclosure sale. This Court rejected that proposition and reversed. *Id.* at 201-04. Were Viewcrest's argument correct, the cases recognizing the homeowner's right to possession following a deed of trust or mortgage foreclosure would not exist.[2]

That the Condominium Act does not eliminate the existence of homesteads in condominium units is also confirmed by the following:

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[2] *See, e.g.,* Opening Brief 21 n.12 and cases cited therein; *Great Northwest Fed. Sav. & Loan Ass'n v. T.B. & R.F. Jones, Inc.*, 23 Wn. App. 55, 57, 596 P.2d 1059 (1979).

First, this Court has recognized that homesteads exist in condominium units. RCW 6.23.120 governs post-foreclosure listings for the sale of "property that a person would be entitled to claim as a homestead." In *P.H.T.S., LLC v. Vantage Capital, LLC*, 186 Wn. App. 281, 287-90, 345 P.3d 20 (2015), this Court applied that statute to the listing of a condominium unit following the condominium association's foreclosure of its lien. If, as Viewcrest contends, the Condominium Act had eliminated the existence of homesteads in condominiums, RCW 6.23.120 would not have governed the parties in *P.H.T.S.*.

Second, Viewcrest, at oral argument below, acknowledged that "the homestead does apply to other types of liens with respect to a condominium unit. For example, a mechanic's lien or a judgment that was obtained against the debtor. So the legislature wanted to specifically carve out that as to the condominium lien that the homestead does not apply." RP 12; *cf. Sweet*, 88 Wn. App. at 203-04 ("[T]he granting of a deed of trust to one beneficiary does not deprive the homestead owner of his rights to the homestead as against other parties.").

Third, a "home automatically becomes a homestead when the owners use the property as their primary residence." *In re Dependency of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007); Opening Brief 17 and authorities cited therein. This occurred when Ms. Robertson moved

into her home in 2007. The homestead existed before the lien, which supposedly prevented the homestead from existing, ever arose.

Finally, RCW 6.23.030 provides that the foreclosure sale purchaser must send to the former homeowner a notice of expiration of the redemption period "***[i]f the property is subject to a homestead as provided in chapter 6.13 RCW***." Viewcrest's April 11 Response Brief emphasized that this notice is to be sent "only" if the property is subject to a homestead as provided in chapter 6.13 RCW. Response Brief 7. Less than two weeks later, Viewcrest did send the required notice to Ms. Robertson. CP 224. Viewcrest's sending of the notice was an acknowledgement that Ms. Robertson's homestead exists.

Thus, the most that Viewcrest can argue is what the language of the Condominium Act provides: that a "lien under this section is not subject to the provisions of chapter 6.13 RCW." This sentence grants the lien an exemption from the normal protection given the homestead against execution. But it does not eliminate the homestead. Nor does it deprive the homeowner of the right to possession during the redemption period.

B. The Policy of Protecting the Homestead and the Rules of Statutory Construction Confirm Ms. Robertson's Right to Possession.

The Washington Supreme Court recently emphasized that it has "repeatedly held that the homestead statutes are favored in the law." *In re*

Wieber, 182 Wn.2d 919, 925-26, 347 P.3d 41 (2015). *See also, e.g., Schermer*, 161 Wn.2d at 953 (Homestead Act is to be construed "so it may achieve its purpose of protecting family homes"); *Baker*, 149 Wn. App. at 212 (referencing "sanctity" of the homestead); Opening Brief 20-21 and cases cited therein.

The strong policy of protecting the homestead has given rise to three rules of statutory construction in favor of the homestead: (1) homestead statutes are to be liberally construed in favor of the homeowner, Opening Brief 20-21; (2) lien statutes, by contrast, are to be strictly construed, Opening Brief 21; and (3) any legislative abrogation of the homestead's protection must be clear, direct, and specific. Opening Brief 22-23. If a question exists regarding how to construe together statutes relating to the relationship between a lien and the homestead, the homestead prevails. Opening Brief 21 and cases cited therein.

There should be no doubt regarding the proper interpretation of RCW 6.23.110(4) and RCW 64.34.364(2). RCW 64.34.364(2) never states that a condominium foreclosure sale purchaser is not subject to RCW 6.23.110(4). It says only that the association's lien is not subject to RCW 6.13. If there were a doubt about the interpretation of the statutes, however, that doubt would be resolved in favor of the homestead.

Viewcrest never addresses the policy of protecting the homestead or the applicable rules of statutory interpretation. Nor does it address the rationale for protecting the homestead during the redemption period. *See* Opening Brief 28-29. Instead, Viewcrest argues for a need to protect condominium associations, which it says would be in grave danger if large numbers of owners were permitted to remain in their homes following foreclosure. Viewcrest's argument is flawed for multiple reasons.

First, whatever the policies supporting condominium associations, they do not trump the strong policy, in place for more than a century, of protecting homesteads. Nor do they overcome the applicable rules of statutory construction.

Second, Viewcrest overstates the burden it bears with respect to owners who fail to pay assessments. *See* Opening Brief 29 n.22 (burden estimated to be 98 cents per owner per month).[3]

Third, Viewcrest offers no evidence that it, or any other association, is burdened by a majority of homeowners who are unable to pay their assessments, thereby threatening the association. If such a fact

[3] Viewcrest suggests that it pays for unit owners' utilities and depends on the owners to repay it through assessments. Response Brief 2, 17. This is not correct; the owners pay their own utility bills. *See* Declaration for Viewcrest, a Condominium, King County Recording No. 20060905000355 § 12.8 ("Each Unit may be individually metered and each Unit Owner will be solely responsible for all natural gas, water and electricity provided to their Unit"); *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 725-26, 189 P.3d 168 (2008) (court may take judicial notice of public documents).

pattern existed, it would indicate that the condominium in question does not provide a sustainable housing option. That is not a problem that would be solved by forcing former owners from their homes eight or twelve months sooner than provided for under RCW 6.23.110(4).

Fourth, the Condominium Act does provide condominium associations with a remedy with respect to owners who default on their assessments. That remedy is to foreclose, free and clear of the normal $125,000 homestead exemption, and to recover the lost assessments from the proceeds of the sale. The Act did not further impinge homestead rights by eliminating the homeowner's ability to live in the home during the redemption period while figuring out how to move on with their life.[4]

C. Viewcrest's Claim to Possession Must be Judged With Respect to its Rights as Purchaser, Not With Respect to its Rights as Lienholder.

Viewcrest has worn two different hats at two different times with respect to Ms. Robertson's home. As creditor-lienholder, Viewcrest had a lien that it enforced through the foreclosure sale. After the sale, the lien was extinguished and Viewcrest had no more rights with respect to the property as creditor. Instead, it acquired rights as the purchaser of the property.

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[4] Viewcrest suggested below that Ms. Robertson's "fear of homelessness is misguided" because Viewcrest would be willing to rent to her during the redemption period. CP 181. *See also* Response Brief 5. In fact, after Viewcrest prevailed in superior court, it refused to rent to Ms. Robertson, forcing her to move out.

Viewcrest appears in this action as the foreclosure sale purchaser, not as the foreclosing lienholder. See Opening Brief 10-11. But Viewcrest has attempted to conflate these two different roles.

When the same person or entity wears two different hats with respect to a set of transactions, a court examining one of the transactions must identify which hat the party is wearing with respect to that transaction and which rights and responsibilities are associated with that hat.[5] Here, RCW 64.34.364(2) addressed Viewcrest's rights as lienholder prior to the sale. After the sale, however, RCW 6.23.110 addressed the respective rights of Ms. Robertson and Viewcrest. The exemption granted by RCW 64.34.364(2) to the creditor's lien had no impact on the right to possession following the sale.

This distinction is at the heart of the Washington Supreme Court's decision in *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 242 P.2d 169 (1952), discussed in Ms. Robertson's Opening Brief at 14-16. *Tiffany* confirms that the statutes governing (1) enforcement of liens through forced sales; and (2) the right to possession after the sale address two

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[5] *See, e.g., Mistretta v. U.S.*, 488 U.S. 361, 404 (1989); *U.S. v. Sioux Nation of Indians*, 448 U.S. 371, 408-09, 416 (1980), quoting *Fort Berthold Reservation v. U.S.*, 390 F.2d 686, 691 (Ct. Cl. 1968); *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 197, 242 P.2d 169 (1952); *Sauter v. Houston Cas. Co.*, 168 Wn. App. 348, 355-59, 276 P.3d 358 (2012).

different sets of rights, governing the relationship between two different sets of parties, which are relevant at two different points in time.

Viewcrest argues that because *Tiffany* was decided before the Condominium Act was enacted, it has no application to RCW 64.34.364(2). Response Brief 19-20. This argument ignores the reasoning and holding of *Tiffany*. Statutes governing the right of a lienholder to foreclose have no application to the respective rights of the foreclosure sale purchaser and the homeowner to possession after the sale, even if the lienholder and the purchaser are one and the same person. 40 Wn.2d at 197-99. A purchaser does not have any greater or lesser right to possession by virtue of the fact that it had also been a lienholder.[6]

D. Viewcrest is Subject to the Redemption Act, Notwithstanding that its Lien Was not Subject to the Homestead Act.

Ms. Robertson's Opening Brief noted that "[c]ourts have, on a number of occasions, rejected arguments by parties in the position of Viewcrest that a statute did not apply to them because it utilized a definition in another statute to which they were not subject." Opening Brief 18-19 & n.10. Viewcrest attempts to avoid that point and the cases cited by Ms. Robertson by stating that "the 'homestead' is not merely a

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[6] *See also Western Bank of Las Cruces v. Malooly*, 895 P.2d 265, 270-71 (N.M. 1995) (rejecting argument that defendant's "right of redemption that she acquired as a junior lienholder was enhanced by her status as judicial sale purchaser. . . We do not agree that, because these rights vested simultaneously in the same person, the right of redemption was thereby enhanced.").

definition" and that the legislature had eliminated the homestead "by stating that the association lien was not subject to the provisions of the entire Chapter RCW 6.13." Response Brief 13-14.

Viewcrest's argument is incorrect, for multiple reasons. First, as discussed above, providing that the association's lien is not subject to RCW 6.13 does not eliminate either the homestead or the right to claim the homestead. It only provides that the lien is not subject to the otherwise applicable rule that the lien may not execute against the homestead. Nor does exempting the lien from RCW 6.13 have any impact on the respective rights of homeowner and purchaser following the execution sale and the expiration of the lien, even if the purchaser happens to be the same entity that previously held the lien.

Moreover, much as it tries to re-characterize its argument, Viewcrest is attempting the same type of argument made and rejected in the cases cited by Ms. Robertson. For example, in *Seal Builders & Realty Corp. v. City of Pawtucket Board of Appeals*, 230 A.2d 875, 877-78 (R.I. 1967), the zoning ordinance permitted issuance of a permit to build "[a]n apartment house . . . as defined in" another ordinance. Neighbors challenged the issuance of the permit, arguing that because the other ordinance had been repealed, no standards existed to determine what constituted an apartment house. Thus, they contended, there could not be

such a thing as an apartment house for purposes of the zoning ordinance, and no permit could be issued to build such a thing. The court rejected this argument. *Id.* at 877-78.

Similarly, in *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196, 1206 (11th Cir. 2003), a business challenged an Alcohol Ordinance's prohibition on the sale of alcoholic beverages at an "adult business," i.e., a business required to obtain a license under the city's Adult Ordinance. The Adult Ordinance had been invalidated, prompting the plaintiff to argue that because "no valid Adult Ordinance existed," the Alcohol Ordinance could not apply to businesses defined by reference to the non-existent Adult Ordinance, and the business was free to serve alcohol. The court rejected that argument. 331 F.3d at 1206.[7]

The rejected arguments are comparable to Viewcrest's argument that because RCW 6.23.110(4) relies on the existence of a "homestead as defined in chapter 6.13 RCW," and because RCW 64.34.364(2) provides that its lien is "not subject to the provisions of chapter 6.13 RCW," there

[7] *See also, e.g., Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 380-81 (D.C. Cir. 2013) ("We further reject the appellants' contention that this aspect of the rule must be vacated because the bona fide hedging definition was cross-referenced to another rule that was recently vacated."); *California v. Summer Del Caribe, Inc.*, 821 F. Supp. 574, 579-80 (N.D. Cal. 1993) (party exempt from regulation under Solid Waste Disposal Act could not avoid regulation under CERCLA by virtue of fact that CERCLA incorporated provisions from Solid Waste Disposal Act).

can be no homestead to which RCW 6.23.110(4) can apply. The argument should be rejected here as it was in the other cases cited.

Viewcrest also does not address RCW 61.24.030(4), discussed at pages 19-20 of Ms. Robertson's Opening Brief. If Viewcrest were correct that RCW 6.23.110(4) could not apply to Viewcrest because that statute is dependent on the existence of a homestead as defined in RCW 6.13, to which Viewcrest's lien is not subject, the same logic would apply to RCW 61.24.030(4). That statute regulates rents and profits "derived from property subject to a homestead as defined in RCW 6.13.010." By Viewcrest's logic, the statute would not apply to any deed of trust holder, since, per RCW 6.13.080(2), liens held by deed of trust holders are not subject to the homestead exemption. But that would render RCW 61.24.030(4) null; its only application is to the very same deeds of trust that are exempt under RCW 6.13.080(2). Viewcrest attempts no reconciliation of its argument and RCW 61.24.030(4).

E. The Condominium Act's Changes to the Horizontal Property Regimes Act Do Not Assist Viewcrest.

Viewcrest's Response Brief has introduced a new argument: that ambiguity regarding the relationship between RCW 6.23.110(4) and RCW 64.34.364(2) should be resolved by comparing the text of RCW 64.34.364(2) with the prior Horizontal Property Regimes Act's RCW

64.32.200(2). According to Viewcrest, the comparison demonstrates a legislative intent to broaden the rights of condominium associations. Response Brief 10-11. Specifically, Viewcrest contends that RCW 64.32.200(2) "created an apparent contradiction" by permitting the association to charge the owner rent during the foreclosure. According to Viewcrest, the legislature's passage of RCW 64.34.364(2) "resolved this contradiction" by "eliminating the homestead in its entirety." Response Brief 11.

Viewcrest's argument suffers from the same defect noted previously, i.e., RCW 64.34.364(2) did not "eliminate[e] the homestead." It also ignores the fact that the legislature addressed the rental provision in question by replacing it with RCW 64.34.364(10). That statute permits the association to have a receiver appointed to collect rent only when the unit "is not occupied by the owner thereof." Thus, to the extent there was a question about the comparative rights of the association and owner with respect to the collection of rent, RCW 64.34.364(10) resolved that question in favor of the owner. RCW 64.34.364(10), like RCW 6.23.110(4), protects the right of the homeowner to live in the home without paying rent.

Viewcrest further contends that if the legislature had only intended to prevent a condominium owner from claiming a homestead exemption

against an execution or forced sale, then retaining the language in RCW 64.32.200(2) or the exemption set forth in RCW 6.13.080(6) would have been sufficient, and RCW 64.34.364(2) would have been superfluous. Response Brief 9, 11, 12. This argument ignores the point, previously noted by Ms. Robertson, that RCW 64.34.364(2) did make an important change to the rights condominium associations previously had under RCW 6.13.080(6). It eliminated the requirement that the association provide a notice regarding the fact that nonpayment of assessments could lead to foreclosure. Opening Brief 10 n.1; *id.* 24 & n.14. The legislative history for RCW 64.34.364(2) identified the elimination of the notice requirement as the purpose of the section. Opening Brief 24. The purpose was not to eliminate the homestead.

Viewcrest also points to the language of RCW 64.34.364(9), which permits an association to purchase at a foreclosure sale and to "acquire, hold, lease, mortgage or convey the same." It contends that this language reflects a legislative intent to broaden the rights of condominium associations beyond those granted by RCW 64.32.200(2). Response Brief 9. Viewcrest ignores the fact that comparable language had already appeared in RCW 64.32.200(2). The phrase merely confers the same rights on a lienholder-purchaser association that another purchaser would have. Those rights are still subject to the rights of the former homeowner.

For example, notwithstanding the fact that RCW 64.34.364(9) states that a purchaser may acquire and convey a foreclosed property, it will not receive the sheriff's deed to the property, confirming its acquisition and permitting it to convey, until the conclusion of the redemption period. *See* RCW 6.21.120; RCW 6.23.060. And it obtains a right to possession pursuant to RCW 6.23.110(1), but that right is subject to the former homeowner's right pursuant to RCW 6.23.110(4).

F. Viewcrest Appears to Have Abandoned its Reliance on the Declaration of James Strichartz.

Viewcrest all but concedes that the declaration of James Strichartz, on which it relied below, *see* CP 179, 205-06; RP 21, is inadmissible. *See* Response Brief 4 (¶E), 21. It characterizes the superior court's refusal to strike the declaration as "absolutely harmless error" because the superior court's decision did not reflect reliance on the declaration. *Id.* 21.

In the context of this Court's de novo review of the legal issue on appeal, the Court need not determine whether the superior court did or did not rely on the Strichartz declaration so as to render the error harmless. It is sufficient to confirm that the declaration is inadmissible.

Viewcrest's brief, at 21-22, does make a three-sentence argument that the declaration was admissible. It does not, however, cite any authority in support of that proposition. Nor does it discuss the cases cited

by Ms. Robertson holding that declarations such as this are not admissible, *see* Opening Brief 25-26, except to argue that those authorities are distinguishable because they "involve circumstances where the declaration or statement sought to be admitted was in contradiction to the clear and unambiguous language of the statute." Response Brief 22.

Viewcrest cites no law in support of the proposition that a declaration as to legislative intent may be admissible if the declaration is in support of, rather than in contradiction to, the language of the statute. Such a test would beg the question; one could not tell whether the declaration is admissible until deciding what the statute meant. Opposing parties would, undoubtedly, each claim that their own declarations are admissible because they are consistent with the statute and that the other party's declarations are inadmissible because they are inconsistent with the statute. *See also Eugster v. City of Spokane*, 118 Wn. App. 383, 411 n.6, 76 P.3d 741 (2003) (holding that affidavits of attorneys and staff involved in developing legislation were inadmissible, notwithstanding fact that the affidavits supported the interpretation adopted by the court). Nor does Viewcrest cite any authority holding that such declarations are admissible if the language of the statute is ambiguous. *See id.* at 411 & n.6 (rejecting admissibility of affidavits in the course of discussing legislative history "[e]ven if the loan provision was ambiguous.").

In any event, Viewcrest's purported standard is contrary to the unqualified language of the cases cited by Ms. Robertson. *City of Yakima v. Int'l Ass'n of Firefighters*, 117 Wn.2d 655, 676-77, 818 P.2d 1076 (1991), for example, held that it is "well settled that the legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator." This standard does not leave room for the exceptions that are posited by Viewcrest.

Viewcrest has also abandoned the argument it made below, based on what "Mr. Strichartz has unequivocally declared," CP 179, that the legislature's intent was "to put a condominium association in the same position as a deed of trust holder with regard to a homestead." CP 84; *see* CP 179, 206. Ms. Robertson's Opening Brief pointed out that the legislature has indeed placed condominium associations in the same position as deed of trust holders, which (1) must honor homeowners' right to possession during the redemption period when they conduct judicial foreclosures; and (2) may avoid that right when they conduct non-judicial foreclosures. *See* Opening Brief 26-28. In the face of those facts, Viewcrest has now reversed field, arguing that "there is a fundamental difference" between a commercial deed of trust holder and a non-profit condominium association. Response Brief 18. Viewcrest now says that it does not seek to be in the same position as deed of trust holders, but

instead seeks to be in a better position, because condominium associations allegedly deserve greater rights. Response Brief 16-18.

For the reasons set forth in Ms. Robertson's Opening Brief at 26-28, the legislature did put condominium associations in the same position as deed of trust holders, not in a better position. Viewcrest's argument to the contrary should be rejected, both because it is incorrect and because Viewcrest should be estopped from contradicting the argument it made below. *See Urbick v. Spencer Law Firm, LLC*, 192 Wn. App. 483, 367 P.3d 1103, 1105-06 (2016).

CONCLUSION

For the reasons set forth above, the Court should reverse the decision of the superior court and remand for assessment of Ms. Robertson's damages resulting from the loss of her right to possession pursuant to RCW 6.23.110(4).

DATED this 10th day of May, 2016.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this 11th day of May, 2016, I caused to be delivered via ABC Legal Messenger, Inc., a true and correct copy of this REPLY BRIEF OF APPELLANT BRENDA L. ROBERTSON, addressed to following:

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