No. 97592-2

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 79666-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TERRY HOY, an individual,

Petitioner,

v.

THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In 2014, Petitioner Terry Hoy ("Hoy") requested permission from the 400, a Condominium association (the "Association") to install a "heat pump" ("HVAC Unit") in his condominium unit. Hoy requested that the Association's Board of Directors (the "Board") approve his request to install the HVAC Unit through the wall of his unit and on to his deck. Hoy needed Board approval because, to install the HVAC Unit, he needed to cut through the interior wall of his Unit, cut through an exterior wall, and run the HVAC Unit through those openings onto an exterior deck. This was the first owner request to install an HVAC Unit since the Association's inception. Although some units had HVAC systems, these systems were Limited Common Elements incorporated into the building as part of its original construction. If granted, Hoy would be the only owner to install a standalone, private HVAC system into a unit at the Association.

In response to Hoy's request, the Association began to investigate the proposed equipment, the work that would be required to occur in common areas and limited common areas, and the risk, if any, that the HVAC Unit would pose. The Association was thorough in its investigation. It consulted engineers, interviewed unit owners, reviewed published materials, and worked closely with multiple counsel to determine how it

should proceed. The Board discussed Hoy's installation of the HVAC Unit over a lengthy period of time at monthly meetings. Ultimately, Hoy installed the HVAC Unit and the Board permitted it to remain so long as he agreed to conditions the Board would impose after the Board finished its investigation. There is some dispute among the parties as to whether Hoy agreed to sign only a memorandum of understanding ("MOU"). Nevertheless, Hoy does not dispute that he agreed to stipulate to the Board's still undetermined conditions in exchange for permission to install the HVAC Unit.

Hoy installed the HVAC Unit before the Board finished its investigation and made a final determination as to the form and nature of the conditions of the HVAC Unit's use. After consulting numerous counsel, the Board presented Hoy with an agreement (the "Agreement") to execute as a condition of the HVAC Unit's continued use. This Agreement would have required Hoy to employ licensed contractors for HVAC Unit installation, maintenance, and repair; comply with noise requirements; maintain the system in good repair; indemnify and defend the Association against any claim arising from the HVAC Unit's operation; and agree that these duties and obligations would bind future owners of Hoy's unit.

Despite his earlier representations that he would agree to the Board's conditions, Hoy refused to sign the Agreement. The impetus behind his

refusal was apparently the fact that Hoy did not wish to agree to anything that would be recorded against his condominium and bind future owners.

The Association warned Hoy that it would have to remove the HVAC Unit from Common and Limited Common Elements unless Hoy agreed to sign the Agreement. In response, Hoy filed a lawsuit against the Association claiming that the Board breached its duty of care under RCW 64.34.308 and the Association should be estopped from removing the HVAC Unit because the Association did not tell Hoy it would require him to execute an agreement containing a covenant running with the land, even though Hoy knew that the HVAC Unit's use would be subject to conditions the Association had not yet determined.

Hoy's claims, however, must fail because he cannot show that the Association breached any duty owed to him, that the Association somehow acted in bad faith, or that he suffered damages resulting from the Association's alleged breach. Even if, as Hoy contends, the Association's actions should be reviewed under a "reasonableness" standard separate and distinct from RCW 64.34.308(1), Hoy nevertheless fails to establish that the Board's action offends that standard such that the Association is liable to Hoy for damages.

II. ISSUES PRESENTED FOR REVIEW

A. Is the decision of the Court of Appeals in conflict with a published decision of the Court of Appeals? (No).

B. Should this Court grant review to consider adopting a new standard of liability for Board actions where (a) RCW 64.34.308(1) and the business judgment rule already provide a standard, (b) Hoy both raised the issue, and later abandoned it, for the first time on appeal, and (c) Hoy has failed to establish why this Court should abandon the current standard? (No).

C. Should this Court reverse the Court of Appeals where the Association's rules do not create two classes of owners? (No.)

III. STATEMENT OF THE CASE

A. The Parties.

The Association was created on April 9, 2007.[1] It is a Washington non-profit business comprised of 70 condominium units located at 400 Washington Avenue in Bremerton, Washington (the "Property").[2] It is governed in part by covenants contained in its Condominium Declaration, which is recorded under Kitsap County Recorder's File Number 200704090180, with amendments thereto (the "Declaration").[3] Hoy is the owner of Unit 107 (the "Unit") at the Property.[4]

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[1] Appendix A, CP 171, Declaration of Tim Sheppard in Support of Defendant's Motion for Summary Judgment (hereinafter, "Sheppard Decl."), Exhibit A, Declaration, pg. 1.
[2] *Id*., CP 227-29.
[3] *Id*., CP 171.
[4] Appendix I, CP 312, May 15, 2017 Declaration of Terry Hoy in Support of Motion for Preliminary Injunction (hereinafter, "Hoy Decl."), ¶2.

B. The Dispute: Hoy's HVAC Unit.

In June 2014, Hoy requested that the Board approve his request to install an HVAC Unit through the wall of his Unit and on to the deck.[5] The Board initially denied Hoy's request because of concerns about water drainage from the condenser, and the possible vibration and noise disturbances to adjoining owners.[6] Hoy resubmitted his request the very next month.[7] Over the next several months, the Board engaged in a lengthy, arduous process of hiring acoustical engineers, interviewing homeowners, inspecting proposed units, and reviewing published material to determine a procedure by which the Association could approve Hoy's or any other owner-installed HVAC Unit.[8]

Throughout this process Hoy made it clear to the Board that, if the Board allowed Hoy to install the HVAC Unit, Hoy would agree to conditions the Board imposed.[9] During this time, not only did Hoy become

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[5] Appendix H, CP 308, May 26, 2017 Declaration of Richard Symms ("Symms Decl."), ¶3.
[6] Appendix H, CP 308, Symms Decl., ¶3.
[7] Appendix G, CP 303, May 30, 2017 Declaration of Tim Sheppard (hereinafter, "May 30 Sheppard Decl."), Exhibit C, July 18, 2014 meeting minutes.
[8] *See* Appendix F, CP 273-74, Declaration of Dale Lindamood ("Lindamood Decl."), ¶¶8-11; Appendix B, CP 250, Woutat Decl., ¶¶4-6; Appendix H, CP 308-09, Symms Decl., ¶¶4-7; Appendix C, CP 252-53, Johnson Decl., ¶¶3-4; Appendix D, CP 255-56, Declaration of Roberta Cooper ("Cooper Decl."), ¶¶3-5.
[9]Appendix F, CP 272, Lindamood Decl., ¶¶5-6; *See also,* Appendix D, CP 255, Cooper Decl., ¶3; Appendix H, CP 310, Symms Decl., ¶¶11, 13; Appendix B, CP 250, Woutat Decl., ¶5.

a member of the Board, but he also started installation of his HVAC Unit without the Board's permission.[10]

At the June 2015 Board meeting, Hoy proposed that the Board come up with a "Memorandum of Understanding," which would be an agreement between Hoy and the Association setting forth conditions and terms of the HVAC Unit's use.[11] The actual title and content of the agreement was to be determined by the Board at a later date.[12] The Board voted in favor of allowing Hoy to retain the HVAC Unit (that he had started without permission) based on Hoy's repeated promises that he would sign "any document" the Board proposed.[13]

Over the next several months, the Board, including Hoy, debated the form and contents of necessary documents any homeowner, including Hoy, must execute to be granted permission to privately install an HVAC unit through Common Elements and onto Limited Common Elements.[14] Ultimately, the Board took versions of a Memorandum of Understanding and the Agreement to legal counsel who informed the Board that the

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[10] Appendix F, CP 272, Lindamood Decl., ¶7; Appendix H, CP 309, Symms Decl., ¶8.
[11] Appendix C, CP 252-53, Johnson Decl., ¶¶3-4.
[12] Appendix G, CP 305-06, May Sheppard Decl., Exhibit D, July 2015 Board Meeting; Appendix D, CP 256, Cooper Decl., ¶5.
[13] Appendix D, CP 256, Cooper Decl., ¶6; Appendix C, CP 253, Johnson Decl., ¶4.
[14] Appendix F, CP 253, Lindamood Decl., ¶9.

Agreement more fully protected the Association.[15] The Board sought a second opinion, from a second attorney, who concurred that an agreement containing a covenant would better protect the Association.[16]

In 2016, the Agreement was presented to Hoy for signature, but Hoy refused to sign it.[17] When it became clear that, despite Hoy's prior assurances, Hoy would only sign a document that met his sole understanding of his responsibilities and which met his definition of a "Memorandum of Understanding," the Board moved forward with a hearing on whether Hoy was in violation of the Association's governing documents. Several weeks after the hearing the Board continued to attempt to negotiate a resolution with Hoy and presented a Memorandum of Understanding that contained the Agreement language. Hoy rejected this document.[18]

The Board ultimately concluded Hoy's refusal to agree to the required covenant and hold harmless terms or, alternatively, to remove the HVAC Unit from the Common and Limited Common Elements, left him in violation of the Association's governing documents. Accordingly, the

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[15] *Id.*
[16] *Id.*
[17] *Id.*, CP 274, at ¶11.
[18] Appendix E, CP 258, 260-64, Declaration of John Burleigh (hereinafter, "Burleigh Decl."), ¶2, Exhibit A, Proposed Memorandum of Understanding.

Board notified Hoy that it intended to move forward with its right to remove the HVAC Unit pursuant to its authority in Declaration.[19]

Hoy filed this lawsuit on or about May 16, 2017. Hoy claimed the Board breached its duty of care to Hoy by approving Hoy's installation of the HVAC Unit without requiring Hoy to execute a covenant, and by then threatening to remove the HVAC Unit unless Hoy executed such a covenant.[20] Moreover, Hoy claimed that, under the facts of this case, the Association should be estopped from removing the HVAC Unit.[21]

On December 15, 2017, the Association filed its motion for summary judgment.[22] The trial court granted the Association's motion in full on January 29, 2018.[23] Plaintiff then appealed the trial court's ruling to Division One of the Washington State Court of Appeals.[24] On July 1, 2019, Division One issued its opinion affirming the trial court in favor of the Association on all issues.[25] On September 4, 2019, Hoy filed his Amended Petition with this Court seeking further review of what are essentially the same issues presented

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[19] Appendix F, CP 274-75, 277-78, Lindamood Decl., ¶14, Exhibit A, April 19, 2017 Email to Hoy.
[20] CP 4, Hoy's Complaint, ¶4.3.
[21] CP 4, Hoy's Complaint, ¶¶5.2-5.6.
[22] *See* Dkt. #25, The 400 Condominium Association's Motion For Summary Judgment.
[23] *See* Dkt. #22, Court's Decision.
[24] *See* Declaration of Seth Chastain (hereinafter, "Chastain Decl."), ¶2, Exhibit A.
[25] *Hoy v. 400 Condo. Ass'n*, No. 79666-6-I, 2019 WL 2750186 (Wash. Ct. App. July 1, 2019).

from a slightly different perspective and clothed as issues of law rather than law and fact.

Specifically, Hoy contends that Division One's decision in favor of the Association conflicts with other published Court of Appeals decisions and that the Association' proposed Agreement is manifestly unreasonable because it subjects some owners to unfair and inconsistent treatment. This Court should decline Hoy's invitation to review these issues as there is no question that the Board acted well within its broad grant of authority to impose rules relating to HVAC units in common and limited common areas and the Board's creation and application of these rules was not unreasonable nor were they applied in a manner that discriminates only against some home owners.

IV. ARGUMENT

A. There is no conflict between Court of Appeals decisions

Hoy bases much of his contention that the Court of Appeals erred on the allegation that application of the business judgment rule is limited to scenarios that involve individual liability of association board members.

The foundation of Hoy's argument is that the Court of Appeals decision in *Shorewood W. Condo. Ass'n v. Sadri* stands for the proposition that the Board's action with regard to the HVAC Unit dispute should be subject to a reasonableness standard of review and that the business judgment rule applies only in situations wherein a party seeks to impose

liability against a board member in his or her individual capacity. Hoy misinterprets the law on which he relies. Nothing in the *Sadri* opinion establishes what Hoy contends. *Sadri* involved a dispute over the content of a condominium association's rule that restricted its members from leasing their units.[26] Owners became frustrated after the condominium association adopted a bylaw amendment restricting leasing only to those units already leased.[27] The Sadris leased their unit despite the amended bylaw restrictions and the association filed suit seeking a declaratory judgment establishing that it had authority to adopt the leasing restrictions.[28]

The court began its analysis by acknowledging that Washington had yet to adopt a standard to review condominium rulemaking.[29] It then examined different standards used by other jurisdictions before concluding ultimately that the best approach would be one that tests the rules adopted by a governing body for reasonableness.[30] Hoy argues that Division One erred by applying the business judgment rule rather than the "reasonableness" standard in *Sadri*.

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[26] *Shorewood W. Condo. Ass'n v. Sadri*, 92 Wn. App. 752, 754, 966 P.2d 372 (1998) *rev'd on other grounds*, 140 Wn.2d 47, 992 P.2d 1008 (2000)).
[27] *Id*.
[28] *Id*.
[29] *Id.* at 756.
[30] *Id.*

As a threshold matter, this Court should decline to consider this issue because Hoy never pleaded this argument, and never briefed or argued it to the trial court. Instead, Hoy raised a version of this argument for the first time on appeal, relying on a series of cases from foreign jurisdictions that he now abandons in favor of a general invitation for this Court to depart from one settled standard of review to another.[31] Division One properly declined to consider the argument and this Court should likewise disregard Hoy's attempt to make an end-run around the Rules of Appellate Procedure.[32]

Notwithstanding Hoy's failure to preserve the issue for review, Hoy's argument is nevertheless unavailing, because *Sadri* involved an entirely different set of underlying circumstances and the relief requested was of a critically distinct nature. In *Sadri*, the dispute revolved around the *substance* of the rule at issue. There, the parties disagreed over whether it was permissible for the association to make a rule restricting owner's rights to lease their units.[33] The answer to that question depended on whether the association could show that the rule's substance satisfied the test for reasonableness.

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[31] *See* Brief of Appellant at 22-28.
[32] RAP 2.5(a)
[33] *Sadri*, 92 Wn. App. at 755.

Here, in contrast, Hoy never challenged the substance of any rule or whether the installation of the HVAC Unit was appropriate subject matter for the Board to regulate. Hoy did not contest, and still does not contest, the assertion that the Agreement's terms would, in fact, be best for the entire Association. Rather, Hoy took issue with the conduct of the Board itself, alleging that it violated duties of reasonable and ordinary care imposed on it by statute and that it failed to act in good faith by threatening to remove the HVAC Unit.[34] Critically, Hoy sought money damages for the alleged transgressions.[35]

Hoy is conflating the two separate standards of review intended to apply in two separate and distinct contexts. *Sadri*'s reasonableness standard would arguably only apply when analyzing a rule's validity. Hoy did not assert claims seeking to address the validity of any rule. He claimed that the Association breached a duty of care owed to him, owed him damages for doing so, and the Association should be estopped from carrying out its threat to remove his HVAC Unit. The court's analysis in *Sadri* is not applicable to the facts of the instant dispute and its reasonableness test has no bearing on the outcome here. Instead, the Board's threatened action falls squarely within the purview of RCW 64.34.308(1)–which itself requires

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[34] *See* Brief of Appellant at 12-19.
[35] CP 1-7.

that a board of directors act with reasonable care–and the business judgment rule, and Division One properly applied the same.

Alternatively, Hoy argues that it was error to apply the business judgment rule here because Hoy was not seeking to establish liability on the part of Board members individually.[36] In support of his argument, Hoy cites cases that involved application of the business judgment rule where parties were seeking to impose liability against individual board members.[37] However, simply because the business judgment rule has been (or potentially could be) applied as a defense to individual liability on the part of an association board member, Hoy cites no authority for the proposition that Washington courts may *only* apply the rule in that context. Indeed, one of the cases on which Hoy relies itself undermines Hoy's argument.

In *Schwarzmann v. Association of Apartment Owners of Bridgehaven*, Division One of the Court of Appeals examined the issue of personal liability of condominium board members as one of first impression at the time.[38] As part of its analysis, the *Schwarzmann* court considered whether the business judgment rule applies in the condominium association

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[36] *See* Amended Petition for Review at 5-7.
[37] *Id*.
[38] *Schwarzmann v. Association of Apartment Owners of Bridgehaven*, 33 Wn. App. 397, 401, 655 P.2d 1177 (1982).

context generally.[39] It cited earlier Washington cases explaining that directors and officers of corporations are typically not liable for judgments and decisions made during the course of business.[40] The court then acknowledged that these cases did not involve condominium associations, but that several decisions from foreign jurisdictions had applied the same principles to conduct of the board of directors of such corporations.[41] *Schwarzmann* also included citation to a Harvard Law Review article examining some jurisdictions' decision to treat condominium association rule-making as analogous to that of other corporate entities, by applying the business judgment rule to board action or inaction.[42] No individual liability was at issue in these cases.

The Association went to great lengths under its prescribed powers to consider Hoy's request to install the HVAC Unit and determined that it would permit him to do so in exchange for his willingness to be subjected to conditions the Association deemed necessary. This is the type of decision making by corporate officers that directly fits with the spirit and purpose of the business judgment rule.

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[39] *Id*. at 401-402.
[40] *Id.*
[41] *Rywalt v. Writer Corp.,* 34 Colo.App. 334, 526 P.2d 316 (1974); *Papalexiou v. Tower West Condominium,*167 N.J.Super. 516, 401 A.2d 280 (1979).
[42] Comment, *Judicial Review of Condominium Rulemaking,* 94 Harv.L.Rev. 647, 663–66 (1981).

B. The Association's decisions were entirely reasonable

As stated, *supra*, Hoy contends that the Association's actions should be reviewed under a "reasonableness" standard and that the Association's adoption of a "rule" which, in his view, does not treat owners uniformly is manifestly unreasonable.[43] Hoy does not explain how review under this "reasonableness" standard would differ analytically from review under the standard Hoy's Complaint alleged the Association violated – RCW 64.34.308(1)'s duty of ordinary and reasonable care.[44] Nonetheless, even if this Court assumes without deciding that a reasonableness standard should be applied here, this Court should decline to grant review because the Association's actions unequivocally satisfied any test of reasonableness.

To satisfy this test for reasonableness, the governing body restricting some use must show that the use is "antagonistic to…the health, happiness and peace of mind of the individual unit owners." [45] Stated otherwise, a reasonable rule is one that is "reasonably related to the promotion of the health, happiness and peace of mind of the unit owners."[46]

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[43] Amended Petition for Review at 17.
[44] CP 6, Complaint, ¶4.3 ("The Board of Directors' threat that Mr. Hoy now execute a hold harmless and indemnification covenant or risk having his HVAC Unit removed constitutes a breach of its duty of ordinary and reasonable care, pursuant to RCW 64.34.308").
[45] *Sadri*, 92 Wn. App.. at 758 (quoting *Hidden Harbour Estates, Inc. v. Basso,* 393 So.2d 637, 639-40 (Fla. 4th Dist.Ct.App.1981)).
[46] *Id*.

Here, the Board had reasonable bases for its decision to condition Hoy's installation of the HVAC Unit on acceptance of the Agreement, and there is no evidence of bad faith. Hoy does not dispute that, when he installed the HVAC Unit, the Association was still determining the appropriate terms of its use. Rather than force Hoy to tear out the HVAC Unit while it investigated, the Association requested and received Hoy's promise that he would bind himself to terms the Board found appropriate once the Board finished its investigation.[47] The Board conducted a thorough investigation, talked with engineers, interviewed homeowners, reviewed written materials, consulted multiple attorneys, and determined that Hoy needed to execute an agreement containing a covenant so that the obligations and liabilities associated with the privately installed HVAC Unit ran with the land and bound future owners.[48]

Hoy refused to execute the Agreement, and so the Board had no choice but to tell Hoy that the Board would remove the HVAC Unit unless he complied. The Board's decisions are not indicative of bad faith. On the contrary, the Board tried to appease Hoy by allowing him the beneficial use the HVAC Unit before finalizing conditions of use. The Board then tried

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[47] Hoy disputes that he agreed to sign binding terms in any format other than a MOU. *See* Brief of Appellant at 18.
[48] *See, e.g.,* Appendix F, CP 273-74, Lindamood Decl., ¶¶8-11.

to impose conditions that would be in the best interests of all owners. It cannot be disputed that the Board's decision to ensure it had investigated all possible concerns associated with the install of an HVAC Unit of this nature and its decision to permit Hoy to have the HVAC Unit only in exchange for his promise to indemnify the Association from liability (and to ensure that future buyers did the same), were reasonably related to the promotion of health, happiness, and peace of mind of other unit owners.

C. Hoy was not treated differently than other similarly situated HVAC owners as there were no other similarly situated HVAC owners.

Hoy claims that the Board treated him differently than other similarly situated HVAC owners as evidence that the Board was manifestly unreasonable.[49] Hoy argues the Association has purposely created two classes of owners, those who had an HVAC Unit installed during construction and those will seek to install an HVAC Unit afterward.[50] Hoy claims that there are "3 or 4" other HVAC units at the Association and that the Board did not require those owners to execute covenants as a condition of the HVAC units' use.[51] However, the fact that the other HVAC units are *original construction* HVAC units the developer installed on the Property's roof cannot be

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[49] Amended Petition for Review at 17.
[50] *Id*.
[51] *Id.*

ignored.[52] As fixtures or equipment that serve single units, original construction HVAC systems are Limited Common Elements under the governing documents.[53] These units are already subject to various rules, regulations, and ownership responsibilities.[54] Hoy's HVAC Unit, on the other hand, was the first private, add-on HVAC Unit at the Property since the Association's creation.[55] And Hoy recognized this before he installed the HVAC Unit:

> 6. As I understand it this will be the first add-on HAVAC for the 400 Condominiums. This will be this would be a great pilot to show case how to do this kind of project for other Condominiums in the 400 Condominiums. The installation is expected to take one day.

[56]

Hoy's unit was different from original construction units, and Hoy knew that his installation of the HVAC Unit would be the trial run of something the Association had never done before – permit an owner to privately install his or her own HVAC unit through and over Common and Limited Common Elements. Hoy's allegations that the Board did not apply rules uniformly does not amount to evidence of bad faith nor does it establish some kind of

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[52] Appendix B, CP 249-50, Woutat Decl., ¶¶3-4; Appendix I, CP 316, Hoy Decl., Exhibit 1, HVAC Proposal, ¶6; Appendix F, CP 271, 273-74, Lindamood Decl., ¶¶4, 8-10.
[53] CP 188, Declaration of Tim Sheppard in Support of MSJ, The 400 Declaration, Section 8.1; CP 230, Schedule C.
[54] *Id*., at CP 188, Section 10.8 ("Use of…Limited Common Elements shall be subject to the provisions of this Declaration and the rules and regulations of the Board.").
[55] *Id*.
[56] Appendix I, CP 316, Hoy Decl., Exhibit 1, HVAC Proposal, ¶6.

discriminatory treatment – he was the first owner to install a private HVAC Unit at the Association and the Association needed to determine the necessary conditions and restrictions accompanying any such installations that could involve varying types of HVAC units, installation methods, and installation contractors.

The Association only has to show that *a* reasonable basis exists for its decisions no matter what approach is used to evaluate them. If a board acted pursuant to its authority and there is a reason to believe the board's decision was made in good faith, that board must receive the protection of the business judgment rule, which would insulate it from any breach of duty of care claims. Because multiple good faith bases indisputably exist, Hoy's claims must be dismissed and there is no reason for this Court to grant further appellate review of Hoy's claims.

V. CONCLUSION

Hoy cannot establish that Division One erred by applying the business judgment rule on the facts of this dispute when the Associations actions are clearly of the type that are intended to be protected by the rule. Application of the business judgment rule is not limited to situations in which a party seeks to impose liability upon an individual member of a board of directors. Further, no Washington court had adopted a reasonableness standard for the kind of association conduct involved in this matter. Finally, even were a

reasonableness standard to be applied, the Association here easily satisfies such a test because each of its decisions were reasonably related to the promotion of the health, happiness, and peace of mind of the other unit owners. Accordingly, this court should decline Hoy's request for review.

DATED this 4th day of October 2019.

LEVY | VON BECK | COMSTOCK, P.S.

Seth E. Chastain, WSBA No. 43066
Attorney for The 400 Condominium Association

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing to the following individuals in the manner indicated:

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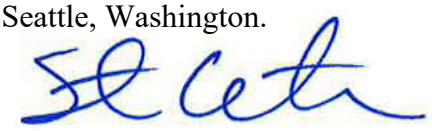
DATED this 4th day of October 2019, at Seattle, Washington.



Seth Chastain

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