

FILED
SUPREME COURT
STATE OF WASHINGTON
10/24/2019 10:12 AM
BY SUSAN L. CARLSON
CLERK

No. 97618-0
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SPINNAKER RIDGE COMMUNITY ASSOCIATION, INC.,
Plaintiff/Respondent,

v.

CHRISTOPHER and SUZANNE GUEST,
Defendants/Petitioners.

CHRISTOPHER and SUZANNE GUEST,
Third Party Plaintiffs/Petitioners,

v.

DAVID LANGE and KAREN LANGE; JOHN FARRINGTON and
JEAN FARRINGTON; and WALLACE "BOB" TIRMAN and
VALERIE TIRMAN,
Third Party Defendants/Respondents

RESPONDENTS' JOINT ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners' Suzanne and Christopher Guest are lot owners in the Spinnaker Ridge community in Gig Harbor, Washington. For almost a decade, they have instigated litigation over a backyard deck and filed several prolonged appeals including the one at issue. *See also, Guest v. Lange*, 194 Wn. App. 1031(2016), *rev. denied*, 197 Wn.2d 1007, 386 P.3d 1081 (2017); *Guest v. Lange*, 195 Wn. App. 330, 381 P.3d 130 (2016) *rev. denied*, 187 Wn.2d 1011 (2017); *Guest v. Lange*, 8 Wn. App. 2d 1062, 2019 WL 2004235 (May 7, 2019).¹

The Petition at issue here involves Division II's decision terminating the litigation over a section of the Guests' deck constructed in contravention of the community's restrictive covenants: *Spinnaker Ridge Community Association v. Guest*, 2012 WL 2185113 (Wash. Ct. App. May 21, 2019). In the unpublished decision, Division II affirmed the trial court's entry of judgment in favor of the Spinnaker Ridge Community Association as well as the Third Party Defendants the Guests had sued. The Guests now seek to have further review by this Court. However, the Petition they have filed is demonstrably deficient in setting forth any appropriate basis why this Court should accept review. At best the Petition is an incoherent list of manufactured issues based largely upon

¹ This matter is currently before this Court on a Petition for Review, No. 97468-3.

allegations outside the record and unsupported by argument or case authority, only few of which bear resemblance to the issue the Guests presented to the Court of Appeals: whether the trial court had subject matter jurisdiction over the action. The Guest Petition should be denied.

II. IDENTITY OF THE RESPONDING PARTIES

Respondents herein are the Spinnaker Ridge Community Association (SRCA), as Plaintiff and Counterclaim Defendant, as well as the Third Party Defendants, David and Karen Lange, John and Jean Farrington, and Bob and Valerie Tirman.

III. STATEMENT OF THE CASE

Spinnaker Ridge is a planned unit development in Gig Harbor, Washington. In May 2014, the Spinnaker Ridge Community Association (SRCA) commenced a lawsuit against lot owners Suzanne and Christopher Guest to enjoin them from building in violation of the community's Covenants, Conditions, and Restrictions (CC&Rs) a controversial section of their deck that had not been approved by the Architectural Control Committee (ACC) charged with the responsibility of approving exterior changes to homes within the Spinnaker Ridge community. CP 1-5. The section of the deck was controversial because the Guests sought to tightly abut and wrap the existing deck of their neighbor, Respondents David and Karen Lange (Lange), who the Guests

were suing at the time over a section of the Langes' deck which rested in part on an easement burdening a portion of the Guests' property. *See Guest v. Lange*, 194 Wn. App. 1031(2016), *rev. denied*, 197 Wn.2d 1007, 386 P.3d 1081 (2017).

In their Answer to the Complaint, the Guests counterclaimed against the SRCA seeking indemnity and damages for alleged breaches of fiduciary duties and violations of the CC&Rs and the Washington Homeowners' Association Act. CP 398-436. The Guests also joined current and former Board members the Langes, Farringtons and Tirmans as Third Party Defendants alleging breaches of their fiduciary duties as officers and directors of the SRCA. *Id.*

After two years of litigation, the trial court found in favor of the SRCA on summary judgment. In ruling on that motion, the court specifically found that the SRCA had standing to sue and that the Guests were bound by the CC&Rs. CP 4907-4911. On May 6, 2016, the court issued an injunction requiring the Guests to take down the unapproved section of their deck and entered judgment in favor of the SRCA. CP 4934-4936, 4948-4952. The trial court also dismissed on summary judgment the Guests' counterclaims and third party claims at the same time. CP 4944-4946, 4958-4962. On June 3, 2016, the trial court awarded the SRCA and the Third Party Defendants their attorneys' fees and costs

incurred in the suit and entered money judgments against the Guests. CP 4968-4970, 4789-4797.

On June 6, 2016, the Guests filed the first of 11 Notices of Appeal taking issue not only with the final judgments but most of the orders entered by the trial judge. CP 4846-4997. The Guests filed 10 more Notices of Appeal after filing several post-judgment motions and motions for reconsideration, including an appeal of the Pierce County Clerk's creation of a judgment docket, all of which were consolidated into the subject appeal. CP 5363-5365, 5552-5565, 5949-5955, 6324-6333, 6516-6525, 6741-6749, 7047-7056, 7234-7247, 7739-7752, 7769-7778.

During the course of their appeal, the Guests endeavored to delay the proceeding with multiple motions to extend the time for filing their opening brief and motions to modify commissioner rulings the Guests deemed adverse. As the Court of Appeals noted, when the Guests ultimately filed an opening brief, they explicitly limited the issues on appeal to one: whether the trial court had subject matter jurisdiction over the SRCA's Complaint. In the unpublished decision, Division II held that the trial court clearly did and affirmed the judgments entered below.

The Guests now submit to this Court twenty-one "issues" including "any related and associated issues" for review loosely categorized into nine vague classifications 1) jurisdiction; 2) standing; 3)

clean hands; 4) stipulations; 5) witness tampering; 6) CR 54(b); 7) association membership; 8) definition of SRCA; and 9) intervening rights. However, only the first issue presented for review addresses the central issue the Guests asked the Court of Appeals to decide: whether the trial court had subject matter jurisdiction over the SRCA's Complaint. All else is a tortuous hodgepodge of convoluted and often incoherent statements without citation to the record, legal authority, or reasoned argument for why this Court should accept review.

IV. ARGUMENT

A. THIS COURT ACCEPTS REVIEW ONLY UNDER LIMITED CIRCUMSTANCES

This Court accepts review only when the Court of Appeal's decision is 1) in conflict with a decision of the Supreme Court; 2) in conflict with another decision of the Court of Appeals; 3) presents a significant question of constitutional law; or 4) involves an issue of substantial public interest. RAP 13.4(b)(1)-(4). Thus, acceptance of a petition for review depends on whether the petitioner can demonstrate the presence of any one of these considerations. RAP 13.4(b).

Here, the Guests have made no serious effort to comply with the Rules of Appellate Procedure. They make no reference to the grounds required for review under RAP 13.4(b), let alone advise the Court upon

which one they rely. Indeed, their only nod to the requirements contained in RAP 13.4 is attaching a copy of the rule to their Appendix on page 379 out of 423 total pages of their Petition.

Their Petition omits tables, a Statement of the Case with references to the record, Argument, and a Conclusion. *See* RAP 13.4(c). Instead, the Guests direct the Court to find information for itself by hunting through an improperly constructed voluminous Appendix, which further lacks little guidance as to what can be found within. *See* RAP 13.4(c)(9) limiting the Appendix to the Court of Appeals decision, the order on reconsideration of the decision, and copies of statutes and constitutional provisions. In the end, this deficient and haphazardly prepared Petition fails to demonstrate a basis for Supreme Court review.²

B. THE DECISION OF THE COURT OF APPEALS THAT THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION IS CONSISTENT WITH LONGSTANDING WASHINGTON PRECEDENT.

At the outset and as the Court of Appeals noted in its opinion, the Guests specifically limited their appeal to subject matter jurisdiction. The Guests argued as they do in Issue 1 of their Petition that the trial court did not have subject matter jurisdiction over the SRCA's Complaint because they had obtained a building permit for the construction of their deck, and as their argument goes, the SRCA's only remedy was therefore under

² The Guests' Petition was also filed late. *See* Guests Motion for an Extension of Time and Respondents' Answer thereto.

Land Use Petition Act (LUPA). The Guests claim LUPA divested the trial court of jurisdiction to enforce restrictive covenants and enter an injunction. However, the Court of Appeals decision that the trial court had subject matter jurisdiction is firmly rooted in and consistent with longstanding Washington law beginning with the State Constitution which places few constraints on Superior Court Jurisdiction.³

1. The Superior Court Has Subject Matter Jurisdiction Over Cases Involving Restrictive Covenants.

Section 4 of Article IV of the Washington State Constitution expressly grants the Superior Court original jurisdiction “in all cases at law which involve the title or possession of real property” and “in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively is some other court”. Const. Art. IV, §6. Further, the Superior Courts also have concurrent jurisdiction with the district courts in cases in equity. *Id.* Importantly, the critical concept in determining whether a court has subject matter jurisdiction is the type of controversy. *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 209, 258 P.3d 70 (2011). If an action is within the category of controversies a court has the authority to decide, subject matter jurisdiction exists. *Marley v. Dep’t of Labor &*

³ The Guests’ second issue in their Petition asks “Did the Court of Appeals err” by not acknowledging that the Guests instead of the Respondents were the prevailing parties presumably on the basis of their building permit. An issue over which party should have prevailed in the lawsuit, however, is nonsensical when the Guests claim the trial court lacked subject matter jurisdiction over the action.

Indus., 125 Wn.2d 533, 542-43, 886 P.2d 189 (1994), *superseded by statute on other grounds*; *Pruczinski v. Ashby*, 185 Wn.2d 492, 499, 374 P.3d 102 (2016).

The SRCA filed suit against the Guests to enjoin them from building a noncompliant deck under restrictive covenants that required the Guests to obtain ACC approval. At the outset, the Superior Court has jurisdiction to hear cases involving restrictive covenants; it also has jurisdiction to issue injunctions. Chap. 7.40. RCW; *See also, Wimberly v. Caravello*, 136 Wn. App. 327, 149 P.3d 402 (2006) (holding the court had subject matter jurisdiction in an action for an injunction for violation of restrictive covenants.). Clearly, it had jurisdiction to determine the tort based claims the Guests asserted for breach of fiduciary duty against Respondents, and the Guests have not specifically argued that it didn't.

As the Court of Appeals correctly determined, the SRCA's lawsuit was not a review of land use decision made by a governing body subject to LUPA. *See* RCW 36.70C.010-.030; *Chelan County v. Nykreim*, 146 Wn.2d 904, 916, 52 P.3d 1 (2002). The type of controversy had nothing to do with whether the City of Gig Harbor lacked authority to issue, or violated its code when issuing the Guests a building permit for their deck. Claims that do not depend on the validity of the land use decision are not barred by LUPA. *Asche v. Bloomquist*, 132 Wn. App. 784, 800, 133 P.3d

475 (2006); *See e.g., Woods View II, LLC v. Kitsap County*, 188 Wn. App. 1, 352 P.3d 807 (2015) (holding action seeking damages against county for delay in rendering permits not barred by LUPA).

The Court of Appeals decision is further consistent with the *City of Union Gap v. Printing Press Properties, LLC*, 2 Wn. App.2d 201, 409 P.3d 239 (2018). *City of Union Gap* involved a development agreement that granted Union Gap the prerogative to deny direct access to an arterial it constructed. *Id.* at 203. Printing Press Properties (PPP), an owner of commercial property abutting the arterial and a party to the development agreement, desired access to the arterial. *Id.* at 204. Because PPP's property was within the City limits of Yakima, it sought and obtained excavation and engineering permits from the City of Yakima to construct access. *Id.* at 217. Union Gap, however, objected to the construction and sued PPP in superior court alleging breach of the development agreement and seeking an injunction to preclude the construction. *Id.* Like the *Guests*, PPP argued that Union Gap failed to appeal the permits under LUPA, and thus, LUPA barred Union Gap's suit. *Id.* at 219. The court agreed that the issuance of the permits constituted land use decisions under LUPA. *Id.* However, Union Gap was not challenging the issuance of the permits, and because its claims arose independently (i.e., from the

development agreement) and did not arise from the land use decision that resulted in the permits, LUPA did not control the case. *Id.* at 221-222.

Notably, the court in *Union Gap* compared the case before it to one involving restrictive covenants. The court reasoned that if a restrictive covenant prohibited the harboring of large commercial animals, for example, the fact that a resident obtained a permit to do just that, would not prevent a neighbor who did not appeal the issuance of the permit from suing for a violation of the restrictive covenant. *Id.* at 222.

Additionally, the Court of Appeals decision is consistent with *Fawn Lake Maintenance Commission v. Abers*, 149 Wn. App. 318, 326-327, 202 P.3d 1019 (2009) holding that one cannot unilaterally alter restrictive covenants that run with their land by obtaining a building permit from the City.

In *Fawn Lake*, the Abers purchased two separate but contiguous lots in a recreational property subdivision in Mason County. At the time, the lots were subject to a set of restrictive covenants providing that assessments would be levied against each residential lot. *Id.* at 321. Years later the Abers combined their two lots under a Mason County declaration of parcel combination. While Mason County thereafter only taxed on the basis of one lot, the homeowners' association (FLMC) objected to the Abers' attempt to similarly limit their homeowner assessments to one lot

as well. *Id.* at 322. FLMC filed a declaratory action asking the court to determine whether dues must be paid on one or two lots given the Mason County declaration. The trial court sided with the association, and Division II affirmed holding that homeowners could not “unilaterally modify their contract with FLMC through an arrangement with a third party; in this case, Mason County.” *Id.* at 326. Although the Abers combined their lots for tax and building convenience, the Court held that their agreement with Mason County did not modify their obligations under the Fawn Lake covenants. *Id.*

Likewise, the Guests here cannot unilaterally alter their obligations under the CC&Rs to obtain the approval of the Architectural Control Committee before commencing construction of an exterior deck by virtue of obtaining a building permit from the City of Gig Harbor. The decision of the City to grant a building permit does not trump or modify the covenants that run with their land.

In short, the Appellate Court’s decision is wholly consistent with Washington precedent. It does not conflict with an opinion of another Appellate Court or an opinion of this Court, nor have the Guests made any attempt to show that it has in their Petition. Where no case law is provided, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none. *DeHeer v.*

Seattle Post-Intelligencer, 60 Wn. 2d 122, 126, 372 P.2d 193, 195 (1962).⁴

Further, that jurisdiction exists in the Superior Court for a homeowners association to enforce its restrictive covenants does not raise a significant constitutional question or otherwise invoke a matter of substantial public interest.

2. New Issues Alleging Judicial Recusal Do Not Merit Review as They Do Not Raise Questions of Subject Matter Jurisdiction and No Judge Was Recused.

The Guests issues 3 and 4 raise for the first time under the category of a “Lack of Jurisdiction” a question relating to recusal of the trial court judges. While the precise issue the Guests are attempting to raise is unclear, purportedly they are maintaining that Judge Ronald Culpepper and Judge Gretchen Leanderson lacked subject matter jurisdiction to make rulings adverse to the Guests because they were either recused or disqualified at the time those rulings were made. However, the Guests have cited nothing in the record to support their representation that Judge Culpepper or Judge Leanderson were recused or disqualified. When allegations of fact are not supported by proper reference to the record, they are not considered by the Court. *Northlake Marine Works, Inc.*, 70 Wn.

⁴ The Guests are critical of the Court of Appeals at pg 3 of their Petition and claim that the Court must not have reviewed their Statement of Additional Authorities given the Court’s rejection of their LUPA argument. However, the additional authorities the Guests provided the Court (see Guest APP E) either do not address the issue they appealed or otherwise are not supportive of their position.

App. at 513, citing *Lewis v. City of Mercer Island*, 63 Wn. App. 29, 32, 817 P.2d 408 ,(1991), *rev. denied*, 117 Wn.2d 1024 (1991).

Further, recusal or disqualification do not affect subject matter jurisdiction, and the Guests fail to cite any legal authority that they do. Recusal and disqualification involve the appearance of fairness doctrine. *Skagit Cry. v. Waldal*, 163 Wn, App. 284, 287, 261 P.3d 164 (2011). That doctrine "seeks to ensure public confidence by preventing a biased or potentially interested judge from ruling on a case." *Id.* As set forth above, what determines whether a court has subject matter jurisdiction is the *type of controversy*. *Bour v. Johnson*, 80 Wn. App. 643, 647, 910 P.2d 548 (1996)("subject matter jurisdiction is the authority to hear and determine the class of action to which a case belongs, not the authority to grant the relief requested, or the correctness of the decision."). If the type of controversy is within the superior court's subject matter jurisdiction, "then all other defects or errors go to something other than subject matter jurisdiction." *Marley v. Dept. of Labor & Indus.*, 125 Wn.2d at 539. (citation omitted). Here, the type of controversy is within the trial court's subject matter jurisdiction. Under *Marley*, any issue of recusal or disqualification goes to something else.

Lastly, because the Guests' issues of recusal and disqualification do not pertain to subject matter jurisdiction, they cannot be raised in the

Supreme Court for the first time, as the Guests attempt to do here. RAP 2.5(a)(3); *See also, Washburn v. Beatt Equip. Co.*, 120 Wn. 2d 246, 840 P.2d 860 (1992); *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991). *Club Envy of Spokane, LLC v. Ridpath Tower Condo. Ass'n*, 184 Wash. App. 593, 605, 337 P.3d 1131, 1136 (2014)(“Because an appearance of fairness claim is not a “constitutional” claim pursuant to RAP 2.5(a)(3), we will generally not consider it for the first time on appeal.”). In short, these new “issues” the Guests claim are jurisdictional are not jurisdictional at all, and they provide no basis for review.

C. REVIEW SHOULD NOT BE GRANTED ON ANY OTHER ISSUE BECAUSE THE GUESTS FAIL TO CITE TO THE RECORD, RELY ON EVIDENCE THAT IS NOT PART OF THE RECORD, ATTEMPT TO RAISE NEW ISSUES, AND PROVIDE NO LEGAL AUTHORITY OR REASONED ARGUMENTS.

The Guests’ Petition lacks all indicia of a serious effort to seek Supreme Court review.⁵ The Guests rely in part on mostly incomprehensible issues as a disjointed and disorganized factual recitation. Yet, contrary to RAP 13.4(c)(6) requiring references to the record, the Guests provide no citation whatsoever for their factual statements. When factual assertions are not supported by proper reference

⁵ As an example of the ludicrous nature of the Guests’ issues, Issue No. 7 asserts that the Third Party Defendants lacked standing in the case, when it was the Guests’ themselves who brought claims against them in their Third Party Complaint. CP 398-346.

to the record, the statements do not warrant consideration and they should be stricken or otherwise wholly disregarded. *Sherry v. Fin. Indem. Co.*, 160 Wn. 2d 611, 615, 160 P.3d 31, 33 (2007)(requiring that factual statements be supported by proper references to the record); *Brummett v. Wash.'s Lottery*, 171 Wn. App. 664, 681, 288 P.3d 48 (2012); *Hirata v. Evergreen State Ltd. P 'ship No. 5*, 124 Wn. App. 631, 637 n.4, 103 P.3d 812 (2004); *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wn. App. 491, 513, 857 P.2d 283 (1993); *See also*, RAP 10.3(a)(5) (“References to the record must be included for each factual statement.”).

Further, the Guests rely on an Appendix containing documents of uncertain origin to supply what their Petition lacks. There are documents that on their face are unequivocally not part of the record⁶, and there is prior Guest motion briefing submitted in an entirely different Guest appeal.⁷ None of these documents provide a “direct and concise statement of the reason why review should be accepted under one or more of the tests” that must be established for Supreme Court review in this case. RAP 13.4(c)(7).

The pervasive failure to cite to the record underscores that the Guests’ factual statements are either not in the record or the record does not corroborate them. Issue No. 17 is a clear example. The Guests ask

⁶ See e.g., Guest APP C-135-159 attaching records obtained after appeal commenced.

⁷ See e.g., Guest APP C-24-42.

whether alleged witness tampering should result in a default judgment in the Guests' favor. However, if this were in fact an issue, the Guests never raised it to the trial court. At most, these allegations are found in their Appendix in an uncorroborated declaration by Mrs. Guest attached to a motion in another Guest appeal.⁸ The declaration is dated June 14, 2018 – two years after the Guests commenced this appeal. As a general rule, appellate courts do not consider issues raised for the first time on appeal. *State v. Gentry*, 183 Wash. 2d 749, 760, 356 P.3d 714, 720 (2015), *as amended* (Oct. 19, 2015). This Court routinely declines to accept new case theories which have not been raised in the lower courts. *See Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 37, 42 P.3d 1265 (2002).

The same appears to be the case with Issues 5 and 20. While the “issue” is practically undecipherable (indeed, Issue 20 is a run on sentence with a question mark posited at the end), the issue, if any, appears to relate to the Guests' interpretation of documents they obtained from the City of Gig Harbor in 2018.⁹ Aside from the fact that documents not part of the trial court record are improperly included in the Guests' Appendix, the Guests never sought to have new “evidence” considered under RAP

⁸ See Guest APP C-99-123.

⁹ See Guest APP C-135-159.

9.11(a).¹⁰ The “evidence” and the “issues” that may pertain to them cannot be considered now on a Petition for Review.¹¹

Further, the Guests appear to seek review of issues long decided in other litigation. For example, Issue 15, asks whether the Guests are “entitled to a full and completed Lange...indemnification...under the 1987 recorded...easement...”. This is again raised in Issue 21:“...Guests do not give any permission...to have any Lange constructed deck on any part...of the Guests’...property...”. All issues regarding this easement and the Langes’ deck was fully litigated and resolved in *Guest v. Lange*, 194 Wn. App. 1031(2016), *rev. denied*, 197 Wn.2d 1007, 386 P.3d 1081 (2017). The Guests cannot have that case reheard here.

Most significantly, the Guests fail to provide any reasoned arguments or citation to legal authority to support a basis that any issue they have raised merits review. Courts routinely reject consideration of all issues where the appellant fails to provide relevant argument and citation to legal authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (issues and arguments not supported by

¹⁰ It is unlikely that any request under RAP 9.11(a) would have been granted as the Guests would have had to satisfy six difficult criteria set forth in the rule. *Harbison v. Garden Valley Outfitters, Inc.*, 69 Wn. App. 590, 593-94, 849 P.2d 669 (1993)(Court of Appeals will not accept additional evidence on appeal unless all six criteria of RAP 9.11(a) are satisfied.).

¹¹ The Guests also postulate issues that are nonsensical. For example, the Guests ask as Issue 8: “Did State Farm insurance company have any standing in this case?” State Farm was notably never a party to the underlying litigation.

citation to legal authority need not be considered); *Washington v. Boeing Co.*, 105 Wn. App. 1, 18, 19 P.3d 1041 (2000) (court declined to review issue where appellant provided no relevant argument or citation to legal authority for the claim). And, a court may assume there is no legal authority to support a proposition when a party fails to cite to any authority. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d at 126.

These extraordinary failures to comply with the Rules of Appellate Procedure are fatal to the Guest Petition because if they demonstrate anything, they demonstrate that the Guests do not have a basis for this Court to accept review.

D. THE GUESTS ARE NOT ENTITLED TO ATTORNEY FEES ON APPEAL.

The Guests ask for an award of attorney fees based upon RAP 18.1, RAP 18.9, RCW 64.38.050, a common fund theory, and equity. However, none of these bases entitled them to fees. RAP 18.1 does not provide a substantive legal basis for the recovery of fees. RAP 18.9 only provides a remedy for violation of the rules of appellate procedure. RCW 64.38.050 (Washington Homeowners' Act) authorizes the court to award fees but only to a party who prevails in proving a violation of the Act or successfully defends against a claim of a violation. While the Guests' asserted counterclaims and third party claims alleging violations of the

Washington Homeowners Act, those claims were dismissed as a matter of law. CP 8174-8178. As to the common interest fund, the theory authorizes attorney fees only when the litigants preserve or create a common fund for the benefit of others as well as themselves. *Bowles v. Washington Dep't of Ret. Sys.*, 121 Wn. 2d 52, 70–71, 847 P.2d 440, 449–50 (1993). The Guests have not shown the existence of a common fund or that they prevailed on any claim; in short, they have not shown, nor can they, any right to fees.

E. RESPONDENTS ARE ENTITLED TO ATTORNEY'S FEES IF THE PETITION IS DENIED.


Respondents were prevailing parties below. The SRCA was awarded fees on the basis of an attorneys' fees provision contained in the Covenants. CP 4938-4939; 4968-4970. Further, the Guests asserted counterclaims and third party claims alleging violations of the Washington Homeowners' Act, Chap 64.38.RCW. Respondents successfully defended against all of the Guests' claims and the trial court awarded them their fees under RCW 64.38.050. CP 4989-4997. When the Guests appealed and the trial court was affirmed, the Court of Appeals also awarded Respondents their fees under the CC&Rs and RCW 64.38.050. *Spinnaker Ridge Community Association v. Guest*, 2012 WL 2185113, at *5 (Wash. Ct. App. May 21, 2019). Should the Guests' Petition be denied,

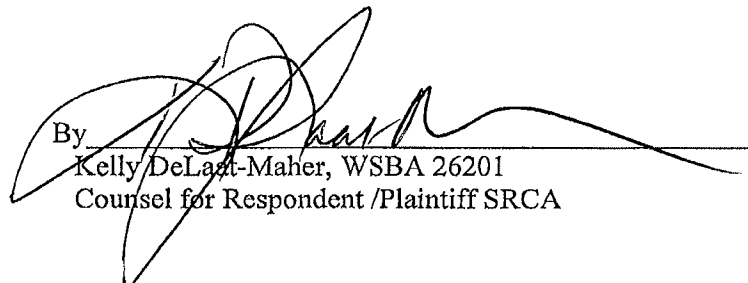
Respondents would therefore be entitled to fees on the same basis pursuant to RAP 18.1 as well.

V. CONCLUSION

The Guest Petition fails to show that review is warranted under RAP 13.4(b). Manufactured issues unsupported by the record and without reasoned argument to demonstrate that the Court of Appeals' decision conflicted with Washington law or otherwise presented a significant constitutional issue or an issue of substantial public interest (as opposed to the singular interest of the Guests) is an insufficient basis for this Court to consider review. Accordingly, the Guests' Petition for Review should be denied.

DATED and submitted this 23rd day of October, 2019.

By 
Sharon Ambrosia-Walt, WSBA 15212
Counsel for Respondents SCRA (as counterclaim defendant) and Third Party Defendants Lange, Farrington and Tirman

By 
Kelly DeLast-Maher, WSBA 26201
Counsel for Respondent /Plaintiff SRCA

DECLARATION OF SERVICE

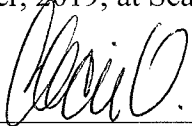
The undersigned certifies that under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be emailed, the attached document as follows:

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DATED this 24th day of October, 2019, at Seattle, Washington.



Alicia Ossenkop

WILSON SMITH COCHRAN & DICKERSON

October 24, 2019 - 10:12 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97618-0
Appellate Court Case Title: Spinnaker Ridge Community Assoc. v. Christopher Guest, et ux, et al.
Superior Court Case Number: 14-2-08865-1

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