Supreme Court No. 90636-0

Court of Appeals No. 70329-3-I

SUPREME COURT
OF THE STATE OF WASHINGTON

SUDDEN VALLEY COMMUNITY ASSOCIATION,
a Washington Non-Profit Corporation,

Respondent,

v.

CURT CASEY; DAVE SCOTT; AND BARBARA VOLKOV,

Petitioners.

AMENDED BRIEF OF AMICUS CURIAE LAKE JANE ESTATES

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I. IDENTITY AND INTEREST OF AMICUS

Amicus curiae Lake Jane Estates ("the Association") is the homeowners association for the residential subdivision of Lake Jane Estates in the City of Bonney Lake. The subdivision, which currently has 443 residential lots, was created in 1959 through the Debra Jane Lake Plat. The subdivision is situated around a lake, and it contains many amenities for the benefit of its members, including parks; a swimming pool; softball fields; tennis courts; and lake access, including a dock and boat ramp.

The Association, formerly known as the T&J Maintenance Company, was established by the owners and developers of the Debra Jane Lake Plat at the same time they recorded the Debra Jane Lake Plat. As set forth in the plat restrictions on the Debra Jane Lake Plat and Association's Bylaws, the Association's Board of Trustees has full power to exercise the business and affairs of the Association. Among other things, the Board is responsible for improving and maintaining all of the common area improvements and ensuring that the plat restrictions and Bylaws are enforced. The Board adopts annual budgets to pay for this work and imposes and collects annual assessments from the membership in accordance with these budgets.

The Bylaws set forth the process by which the Association imposes assessments. Article VI, Section 5 gives the Board of Trustees the authority to "charge and/or assess the several parcels of land and owners thereof as hereinbefore more particularly set forth." Article IX requires a vote on assessments by membership at the Annual Meeting:

> The members are liable for payment of charges or assessments as may be from time to time be fixed and levied by these Bylaws and subject to the Articles and Bylaws. The amount of such charges and assessments levied upon a member shall be fixed annually by a majority of the members present at the Annual Meeting . . . .

In accordance with the Bylaws, before each annual meeting the Board of Trustees sends to members the proposed annual budget, which includes the proposed annual assessment based on the budget. But due to Bylaws requirements relating to quorum[1] and meeting date[2] the Association has not had a quorum at an annual meeting since 2003. Before 2003, the Association did not have a quorum from at least 1998 – possibly before – through 2002.

Due to the inability to obtain a quorum at annual meetings, the level of annual assessments remained stagnant at $190 per member per year from at least 1995 through 2001. In 2002, after becoming aware of the provisions of RCW ch. 64.38, the Board of Trustees

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[1] The Association's Bylaws require a quorum of 25 percent –or 111 members – before business can be transacted at an annual meeting.

[2] The Bylaws require that the Association's annual meetings be scheduled on the last Sunday of July.

implemented the budget ratification process set forth in RCW 64.38.025(3). As in the past, the Board circulated the budget with the resulting proposed level of assessment along with the notice of the annual meeting. But, unlike in the past, if a majority of the total membership did not object to the proposed budget by vote or proxy, the new budget, including the related assessments, was implemented.

Adopting the process set forth in RCW 64.38.025(3) to ratify the budget and the related assessments has allowed the Association to levy annual assessments that are sufficient for the Board to fulfill its duty to repair and maintain the many amenities of Lake Jane Estates for the benefit of its members. After some moderate increases between 2002 and 2008, the annual assessment – based on ratified budgets – has been maintained at $351 since 2009. Notably, the assessment rate in 2003 – the last time there was a quorum at the Association's annual meeting – was $215, or only 61% of today's level.

In sum, RCW 64.38.025(3) has been critical to the Association's ability to raise sufficient funds to maintain the multiple facilities for which it is responsible and which its members enjoy. The Court of Appeals' decision in this matter jeopardizes the Association's ability to continue to levy appropriate assessments and calls into question the legality of the last 12 years of its assessments.

II. ARGUMENT

This dispute centers on the scope and meaning of the budget ratification provision of Washington's Homeowners Association Act, RCW 64.38.025:

> (3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

The Court of Appeals held that this statute is unconnected to assessments and, therefore, provisions in the Sudden Valley Community Association's bylaws relating to approval of assessments were unaffected by this statute.[3] The end result of the Court of Appeals decision is that homeowners associations throughout Washington are statutorily required to have their budgets ratified by their membership, but they are not allowed to implement the ratified budgets absent

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[3] *Casey v. Sudden Valley Community Ass'n*, __ Wn. App. __, 329 P. 3d 919 (2014).

compliance with whatever assessment-approval process is set forth in their specific governing documents.

The Court of Appeals' interpretation of RCW 64.38.025(3) runs afoul of the Washington's rules of statutory construction and the statute's legislative history. It also makes no sense.

When interpreting statutory language, certain principles of statutory construction apply: (1) a statute that is clear on its face is not subject to judicial interpretation; (2) an ambiguity will be deemed to exist if the statute is subject to more than one reasonable interpretation; (3) if a statute is subject to interpretation, it will be construed in the manner that best fulfills the legislative purpose and intent; and (4) in determining the legislative purpose and intent the court may look beyond the language of the Act to legislative history.[4] A court should not interpret a statute in a way that renders any portion of it meaningless or superfluous.[5]

Here, RCW 64.38.025(3) establishes a ratification process for homeowners' association budgets. And assessments are necessarily

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[4] *In re Marriage of Kovacs*, 121 Wn.2d 795, 804, 854 P.2d 629 (1993); *Biggs v. Vail*, 119 Wn.2d 129, 134, 830 P.2d 350 (1992); *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 184-85, 829 P.2d 1061 (1992).

[5] *Burton v. Twin Commander Aircraft LLC*, 171 Wn. 2d 204, 254 P.3d 778 (2011); *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989); *Johnson v. Recreational Equipment, Inc.*, 159 Wn. App. 939, 247 P.3d 18 (2011), *review denied*, 172 Wn. 2d 1007, 259 P.3d 1108 (2011); *Woo v. Fireman's Fund Ins. Co.*, 150 Wn. App. 158, 208 P.3d 557 (2009).

part of the budgets of homeowners' associations, as they provide the funds or "revenue" set forth in the budgets. Therefore, by ratifying (or not) budgets, homeowners' association members are necessarily ratifying (or not) the level of assessments. Hence, under the plain language of RCW 64.38.025(3), assessments are ratified along with the rest of the budget.

Although not necessary given RCW 64.38.025(3)'s plain language, other provisions within RCW ch. 64.38 also demonstrate the link between budgets and assessments. For example, the "purpose" provision of RCW ch. 64.38 expressly links the imposition of assessments to the adoption and amendment of budgets:

> Unless otherwise provided in the governing documents, an association may:
>
> . . . .
>
> (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners . . . .[6]

More notably, RCW 64.38.025(4) – the provision directly following the budget-ratification provision at issue – requires that assessments be set forth in the budget:

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[6] RCW 64.38.020.

> (4) **As part of the summary of the budget** provided to all owners, the board of directors shall disclose to the owners:
>
> (a) The **current amount of regular assessments** budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;
>
> (b) **If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;**
>
> . . . .

Why would the legislature require the inclusion of the assessment numbers in the budget if assessments are not to be ratified along with the remainder of the budget? Such a position makes no sense. Unfortunately, it is the position adopted by the Court of Appeals.

The direct connection between the budget and assessments is particularly apparent from RCW 64.38.035(3), which sets forth the requirements for the notice for the annual meeting:

> . . . [T]he notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda . . . including . . . any budget **or changes in the previously approved budget that result in a change in assessment obligation . . .**"

If the Court of Appeals' reasoning was correct, a change in an association's budget could not result in a change in the assessment

obligation since, in the Court of Appeals' view, the imposition of assessments is separate process. Plainly, this reasoning is directly contrary to RCW 64.38.035(3), which recognizes that a change in the budget can result in a change in the level of assessment.

Overall, multiple provisions in RCW ch. 64.38 demonstrate that its drafters believed that there was a direct connection between the budgets that were subject to the ratification provisions of RCW 64.38.025(3) and annual assessments imposed on members. To the extent the Court finds that some ambiguity exists, RCW 64.38.025(3) must be construed in the manner that best fulfills the legislative purpose and intent. The stated purpose of the statute is to "provide consistent laws regarding the formation and legal administration of homeowners' associations."[7] Yet under the Court of Appeals' analysis, homeowners' associations would be subject to a single, statutorily-required budget ratification process but could have wildly different processes for implementing assessments, as they would be subject only to what was stated in the relevant governing documents. Plainly, that runs contrary to the statute's purpose of consistency.

The legislative history is also informative. The House Bill Report states under "testimony for" that "[t]he boards of directors of some

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[7] RCW 64.38.005.

homeowners' associations currently do not provide members notice of their actions **and imposition of assessments.** The board needs to be accountable to the members . . ."[8] The actual testimony in support of the 1995 legislation is also replete with concerns about the imposition of assessments by homeowners associations. For example, then Secretary of State Ralph Munro, a major proponent of the legislation, testified that the legislation was needed to prevent abuse of the power to assess by subsets of homeowners:

> [The legislation] outlines the association's powers; it sets standards for the board of directors for the regular and the special budget processes; it call for an annual budget approval; it calls for a mechanism for budget adjustments; it calls for pre-set published agendas and advance notice to the membership of meetings; it says that the board meetings shall be open; executive session votes are taken in open public meeting; and talks about assessments. Now, what does all that mean? What that means is that 25 families move into a neighborhood; they're all part of the homeowners' association. One faction gets ahold of the association, **and they start to discuss a new assessment;** a new item. Perhaps they're going to build a big swimming pool. They have ahold of the association. The other members want to come in and debate it. The other members show up at the meeting - first off, if there is a meeting notice, which often times there isn't - they show up at the meeting. They are told this meeting is closed. In the closed meeting, the majority faction votes for the swimming pool. **Then they tell the other people you owe so much.** Maybe it's $8,000 per family; maybe it's $10,000 per family. People say we can't afford that; there's no way

[8] House Bill Report ESHB 1471 (1995).

> we can afford that. They go back and they find that they have no recourse. Then in certain circumstances, which has happened on numerous occasions, these people are told – and they're often times elderly people – that they will have a lien placed on their property to pay for this item, this particular improvement, whatever it happens to be. No open meeting; no recourse; no way to deal with it. Hire a lawyer. So what this proposed law which we discussed last year and again we discussed this year does is set some basic rules. And we've worked hard to reach agreement with the various groups and associations on this and in defense of lots of little folks around this State, I hope you will support it.[9]

The only process set forth in RCW ch. 64.38 that provides for protection against the inequitable imposition of assessments is the RCW 64.25.030(3) provision regarding ratification of the budget. And that is only true if Petitioners' view is upheld and the Court of Appeals' analysis rejected. Otherwise, homeowners' associations will only answer to whatever their governing documents state regarding assessments, and the problems discussed by Secretary Munro and others that the legislature sought to address will remain.

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[9] Testimony Regarding House Bill 1471 at Legislative Hearing (1995) (Emphasis added). The audio of the 1995 testimony in support of the RCW 64.38 legislation is available at: http://www.digitalarchives.wa.gov/Record/View/A6DB40B6C55F75E877B354ED31385784. Secretary Munro's testimony starts at minute 45:19.

Finally, courts must avoid interpreting statutes and contracts in ways that lead to absurd results.[10] Here, the Court of Appeals interpretation would render RCW 64.38.025(3) effectively a nullity, as the statutory budget ratification process is trumped by the assessment provisions of the governing documents of the thousands of homeowners' associations in Washington State. This outcome is not logical or consistent with the statute.

III. CONCLUSION

While the Association was not part of the proceedings that lead to the Court of Appeals decision and therefore not privy to what may have led the Court of Appeals to render the decision it did, it is apparent to the Association that the decision is unequivocally contrary to the words and intent of RCW ch. 64.38. It is also apparent to the Association that the decision may have extremely adverse effects on its ability to fulfill its obligations to its members due to its historical struggles at obtaining a quorum to conduct business at annual meetings, and it doubts it is the only homeowners' association in this position. For the reasons set forth above, the Association requests that this Court accept review of this matter and reverse the Court of Appeals decision.

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[10] *Hartford Fire Ins. Co. v. Columbia State Bank*, __ Wn. App. __, 334 P.3d 87, 92 (2014); *Forest Mktg. Enters., Inc. v. Dep't of Natural Res.*, 125 Wn. App. 126, 132, 104 P.3d 40 (2005).

Dated this 10th day of December 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine L. Scheall, declare under the penalty of perjury of the laws of the State of Washington that on December 11, 2014, I caused the Amended Brief of Amicus Curiae Lake Jane Estates to be served via email, pursuant to the parties' mutual consent for service by email and first-class mail, as follows:

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Attached for filing in the above case is the **Amended Brief of Amicus Curiae Lake Jane Estates.**

Thank you.

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