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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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46094-7-II

COURT OF APPEALS

DIVISION II

OF THE STATE OF WASHINGTON

JOHN J. HADALLER

An individual, Appellant (plaintiff)

V

.MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION, a Washington non-profit corporation, DAVID A. and SHERREY LOWE, individually and the marital community thereof; RANDY FUCHS An individual; CLIFFORD and SHEILAH SCHLOSSER, individually and the marital community thereof : and MAURICE and CHERYL C. GREER, individually and the marital community thereof

Respondents (defendants)

APPELLANTS REPLY BRIEF

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SECONDARY AUTHORITIES

Majorie Dick Rombauer Wa. Prac.13
Vol 28 §7.22 [FN 7]

Appellate John J. Hadaller reply's to the "Association's"
response:

Reply to the Associations introduction:

The accusations in the "Association's" introduction are untrue, unfounded nor supported by any factual evidence beyond one sided opinions. The truth of the accusations was avoided from review by the "Association's" sly tact in their referenced appellate case, which is not in at bar in this review but it was tactfully placed in the record for just that irrelevant slanderous purpose they are using it for.

Although Hadaller filed this suit it was the Association's actions which caused it. This suit was filed in 2009 because:

- (a) The Lowes unilaterally filed an easement over Hadaller's fee owned land against Hadaller's objections (As evidenced in opening brief Pg 10 FN 26)(Pg 11 FN 27)
- (b) Fuchs denied his signature on the 2006 Amended Covenant (As evidenced in Opening Brief @ Pg 11-12 FN 28, 29 and 32)
- (c) The complaint was amended when the Greer's and Schlosser's later claimed their lot was not encumbered by an easement benefiting Hadaller's segregation survey lot 3.

The Association's brief submitted no evidence that Hadaller is a "pariah" or "terrorist" it is only their unsupported opinion no facts have ever been found that can support their self serving diatribe¹. The Court should disregard it. Indeed to the contrary, the evidence does support Hadaller had at least a viable claim, for filing this suit which was very far from frivolous. In deciding to file the complaint Hadaller substantially relied upon the Courts decision in *MKKI Inc. v. Kruger* Oct. 2006 M.K.K.I., Inc. v. Krueger 135 Wn. App. 647 @655 ¶26 when he attempted to defend his easement, which the Trial Court erred as a matter of law by finding it was unreserved from the Greer's/Schlosser's sale of lots 1 and 2 of SP 03-00010. Evidence proving merits of the complaint in regards to that easement, which resulted in the "frivolous" suit and "terrorism" diatribe, are in the record² in the real estate contract sold to the Greer's showing Hadaller did notice them of his easement reservation prior to sale and was demonstrated by Lowe's unilateral recording of an easement across Hadaller's fee owned land on December 30, 2009. The appeal of the merits of that issue was tactfully avoided by the "Association" by their referenced March 14, 2012 mandate which the

¹ Hadaller has a long history of contributing to and participating in youth sports, the Mossyrock schools and fire department, which can be documented if it makes a difference.

² Ex. 9 Pg 6 (see 2nd and last bulleted point notes) Ex 5 Ex3 Ex 2

“Association” touts, which came about only because Hadaller was unable to timely pay for transfer of the record because of the “Association’s” tact in execution on his assets reserved for that appeal.

Reply To the “Association’s” Statement of Issues:

The “Association” is a master at obfuscating any issue when it is confronted with valid issue they legally cannot defend. Here their attempt to spin Appellants issues which are substantially errors of law into a abuse of discretion of fact finding should be easily seen and disregarded.

Re: (a) Hadaller admits the appeal on the merits was tactfully lost in this quiet title suit and is not asking this court to find error in granting the decree of foreclosure itself. Hadaller is asking review of whether the Trial Court erred by law in not providing Hadaller his homestead exemption in the decree or avoiding the decree by reviewing the legal mechanics of RCW 6.13.080 (6) and whether the meaningful notice was provided in voiding that homestead per precedence.

Re: (b) The “Association” attempts to spin Hadaller’s timely and properly appealed December 5, 2014 motion for supersedeas and declaratory decision of what attorney fees survived bankruptcy

and clarification of what fees were awarded to whom and for what, in to a motion for reconsideration of some unspecified issue they identify as “third” motion for reconsideration. In fact Hadaller was not asking the Court to reconsider what it had done, but to clarify what fees were awarded to whom, because the cost bill and conclusions of law are insufficient for the bankruptcy court and Hadaller to conclude what was owed to whom for what. On December 5, 2014, the Court stated they were all awarded to the “Association”, then on December 19, 2014 it stated the fees were not all to the association as is set forth in the opening brief but stopped short of justifying them. If any reconsideration proceeded it was in the change in the award of fees from the oral trial findings, the conclusions of law, and the cost bill. If they were all awarded to the HOA then it is a gross abuse of discretion, which is the only issue review by that standard in this appeal. (as per opening brief) That is the crux of this appeal in regards to the attorney fees. The “Association” improperly deemed it a reconsideration it was a declaratory judgment of what was owing to whom in the Trial Courts opinion after bankruptcy. In view of the Supreme Courts decision in *Mahler v. Scuz* 135 Wash. 2d. 398 the Trial Court erred as a matter of law in regards to its December 19, 2014 order which was foreclosed on Hadaller’s home, which brings this appeal.

Re (c) Un-obfuscating likewise, Hadaller did not ask for review of whether the Trial Court had grounds to award fees, but is asking this Court to force the trial court to properly to itemize the basis of what fees are awarded to whom for what and the amount properly due to each and then prepare for potential later appeal of that amounts if they are not justifiable in law. The Court must take care not to be suckered into the obfuscation set forth by the “Association”. And give an unrelated decision. *“There are, moreover, no disputed issues of material fact here, and so for that reason also our review is de novo”*.³

The “Association’s” argument that there is no basis for this Court to exercise RAP 2.5 (c) (2) insinuates the rule and basis for it has been repealed. Their argument is not supported by any authority, per RAP 10.3(b)(a) requirement, it is only their unsupported opinion to wish it to not be investigated. In fact, This Court just filed a decision holding that “[w]here no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”⁴ Decision just filed on (April 27,2016) This

³ *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 311, 884 P.2d 920 (1994)

⁴ See *PacifiCorp v. Washington Utilities and Transp. Com'n*, --- Case #46009–2–II (April 27,2016)

Court must disregard such unsupported argument and remand this issue back for Hadaller to be afforded a trial on the merits of Fuchs' signature, with a holding if a jury finds fact Fuchs signed the 2006 Amended Covenant it is valid.

**In Reply to the "Association's" response to Hadaller's
homestead issue:**

Correction of False statements

1. Hadaller is not appealing whether the Court should have granted a decree of foreclosure, he is appealing whether the Court correctly operated the laws controlling his homestead rights.
2. Hadaller did not "live free" since 2009. The Court properly found Hadaller refused to pay only the special assessment Hadaller objected to because they were for non capital improvement. His annual assessments were paid through the trial date.
3. Hadaller is not arguing his property was exempt from the HOA lien. The crux of the issue on appeal is that his homestead rights were not sacrificed due to lack of notice in RCW 6.13.080(6) and his ownership prior to the 2009 ratification of a special assessment for non capital improvement, prevents less of the fundamental right of his homestead rights. The HOA is a master of obfuscation the Court must read carefully.

4. The HOA argues Hadaller admits to derogating his homestead by acquiring title with knowledge of the covenants. (Respondents Brief Pg 18) The covenant Hadaller was referring to was the HOA's right to derogate a purchaser's homestead with RCW 6.13.00(6), which provides for a meaningful notice.

Generally the "Association" failed to cite to a single authority for their argument per RAP10.3) It is their counsel's professional opinion of real property law. The HOA's counsel is in fact is a patent/ copyright attorney having no previous professional experience in HOA/ real property law.⁵

The association did not argue how RCW 6.13.080(6) applies to a new homeowners association imposed over an existing plat. Their argument does improperly imply that in the instance of when a new HOA is formed it is exempt from the notice requirement to its members. That would be a misuse of the law as enacted. A decision in favor of that would be against the obvious intent of the law. Which is designed to support collection of assessments, but only after the fundamental right of notice of potential loss of a fundamental right of homestead is meaningfully given. A decision that new HOA's are exempt from that notice requirement would set up a venue for abuse of RCW 64.38 just as is occurring in this

⁵ RP 05/10/2011 Pg. 248 L6- Pg 249 L.4

case. The Court should avoid likely further abuse of RCW 64.38 by mandating that new HOAs must provide notice to its members subjected to RCW 6.13.080(6) the same as a new owner has that right. It is not likely the legislatures intended to create a venue for sharp eyed lawyers to stealthily clean up on society with misuse of RCW 64.38.

The HOA's argument that a legal HOA existed prior to December 30, 2008 fails on two basis (a) collateral estoppels (a) and (b) this Courts holdings I *Walsh v. Hamre* as argued in the opening brief.

The HOA's argument in regards to creation of Hadaller's homestead only includes the facts that shade their desired opinion. The facts are that Hadaller owned the homestead property since January 2002 which was always his intended home from that date thus they have not carried their burden to prove the special assessment covenant the judgment and foreclosure was based upon preexisted his homestead. In Fact they arrived into power over Hadaller's objection in January 2009 from an argument that the homeowners association did not meet a legal standard to exist and they incorporated one which was imposed over the development. Now it is convenient to

obtain Hadaller's land by arguing that Hadaller had a good valid homeowners association. They are estopped.

The HOA's reliance on the findings of facts they cited in Ex. 13 ¶2 does not prove that The Court changed its January 26, 2009⁶ findings that the possibility of an HOA Hadaller provided for in the 2003 and 2007 CCR maintenance agreements did not actually create a HOA.

Ex. 13 ¶¶ 12-17 found that Hadaller provided a water system that was to be managed by a HOA. It does not find that Hadaller legally created a HOA. The HOA's response argument is in direct contradiction to their January 26, 2009 argument,⁷ where they argued the opposite to gain control of the development. Then they argued Hadaller's CCR's did not create a legal HOA. They are estopped from making their present argument. The 2003 or 2007 CCR's were never confirmed to have established a legal homeowners association.

*The doctrine of equitable estoppels or estoppels in pais is applied where justice forbids that one speak the truth in his own behalf.*⁸ For the doctrine to be applicable, there must be (1) acts, statements, or admissions inconsistent with a claim subsequently asserted, (2) action or change of position on the

⁶ RP 01/26,2009 Pg 45L.15-Pg 46 L. 12

⁷ RP 01/26/2009 Pg 5 L. 12 – Pg 18 L. 22

⁸ *Code v. London*, 27 Wn. (2d) 279, 178 P. (2d) 293 (1947).

part of the other party in reliance upon such acts, statements, or admissions, and (3) a resulting injustice to such other party, if the first party is allowed to contradict or repudiate his former acts, statements, or admissions.⁹

Acquiescence in the findings of a court is a ground for an equitable estoppels¹⁰.

The facts in this case are distinguishable with *Witzel Id.* There in the first proceeding Witzel pled there was no community property, Tena accepted Witzel's statement and accepted the mortgaged ranch and paid the debt off against it relying on Witzel's statement of no equity in community property, she accepted the findings to that effect, then years later attempted to claim an interest in the property that was previously underwater in mortgage. The courts found and held the doctrine of equitable estoppels or estoppels in pais prevented the later claim from succeeding.

The facts *in* this case are very parallel to *Witzel Id* here in 2009¹¹ the HOA argued Hadaller's CCR's were deficient to

⁹ *Kessinger v. Anderson*, 31 Wn. (2d) 157, 196 P. (2d) 289 (1948). *Witzel v. Tena* 48Wn. 2d 628 @ 632-633(1956) Citing *Hedgecock v. Mendel*, 146 Wash. 404, 263 Pac. 593 (1928); *Rushlight v. McLain*, 28 Wn. (2d) 189, 182 P. (2d) 62 (1947).

¹⁰ *Witzel Id* Citing *In re Miller*, 26 Wn. (2d)202, 173 P. (2d) 538 (1946).

¹¹ RP 01/26/2009 Pg 5 L. 12 – Pg 18 L. 22 Pg 45L.15-Pg 46 L. 12

create a legal homeowners association. Because of that argument the “Association” was placed in control of the homeowners association by the courts January 26, 2009 findings. At that time Hadaller’s control of the development onto his roads he built was shifted to the Lowe’s. The “Association” set up a new government which subjected Hadaller and his land to unexpected burdens by allowing special assessments for other than capital improvements and stricter control of use of his land, giving the HOA a venue for judgments against Hadaller. That occurred only as a result of the HOA’s first statement that the 2003 and 2007 CCR’s were insufficient to create a legal homeowners association allowing for their new incorporated homeowners association to assume power. They have accepted their relief and Hadaller’s position as been changed by their first statement. Now for their convenience they plead that the 2003 and 2007 CCR’s did create a legal homeowners association¹². Those facts invoke the doctrine of equitable estoppels because (1) the “Association” obtained, accepted and used the relief obtained from their first statement. Hadaller’s position changed as a result of their first statement. (2) They now are attempting to contradict and repudiate their first statement to get additional relief. (3) If the

¹² Response Brief Pg 4-5 Pg 16- 17

Court accepts their argument Hadaller will suffer an injustice. This Court cannot accept their present argument that Hadaller created a legal homeowners association as fact, the trial Court never made such a contradictory finding and the cited findings the HOA refers to do not conclude he did.

The HOA was first legally formed on December 30, 2009 and at that time RCW 6.13.080(6) imposed a obligation of notice upon it in order to obtain the right to avoid a homestead. All HOA debts incurred up to the time¹³ the HOA complies with that notice provision are subject to the members(Hadaller's) homestead.(RCW 6.13.080(6))

In citing to Ex 13 ¶¶ 25-28 the HOA has admitted the homeowners association was first legally created on December 30, 2008. Then in citing to exhibit 17, Ex 13 Conclusion ¶5 and CP 323-325, 344 they admit they amended the CCR's to create an un contemplated burden of a covenant allowing special assessments for other than capital improvements on July 6, 2009. Which conforms to their January 26, 2009 argument and comports with this Courts recent holding in *Walsh v. Hamre* 192 Wash. App. 893 (2016) As previously stated in opening brief, because RCW 6.13.080 (6) is specific it benefits only Homeowners Associations, the effect of it, derogation of a homestead exemption, can only

¹³ December 26, 2012 CP 411 (final ¶)

begin in this case on December 30, 2008. At that date Hadaller's homestead was long established having priority and requiring adequate and meaningful notice to displace it¹⁴, which was not done until December 26, 2012, So the entire 2011 HOA judgment is subject to the homestead.¹⁵

Reply To HOA argument that all fees were awarded to them

The respondents false Claims:

(1)The Court did not conclude nine out of ten claims for which attorney fees were awarded implicated the Association, the referenced conclusions of law, the cost bill, nor oral findings after trial support that false argument.

The Court did not find the private party and HOA fees were intertwined and inseparable, the inseparable fees could only be related to the Schlosser's and Greer's because their issues are intertwined. The holdings in *Mahler Id* mandate the fees to be positively identified.

¹⁴ *Boudreaux Civic Ass'n v. Cox*, (1994, no writ), *Brooks v. Northglen Ass'n*, 141 S.W.3d 158 @170 [14] 47 Tex. Sup. Ct. J. 719(2004), *Dickson v. Kates* 132 Wash. App 724 @Pg.735¶25 133P 3d 498 (2006), *Inwood North Homeowners ass. v. Harris* 736 S.W. 2d 632 @ 633 -637, *Meresse v. Stelma*,100 Wash.App. 857 @864 999 P.2d 1267 (2000), *Wilkinson v. Chiwawa Communities Ass'n*, 180 Wash.2d 241@ 250 [5] 327 P.3d 614 (2014)

¹⁵ Majorie Dick Rombauer Wa. Prac. Vol 28 §7.22 [FN 7]

Regardless of the fact the HOA was refused use of RCW 64.38.020 for a basis for fees by the trial Court,¹⁶ they responded with a heavy argument to the contrary or that this court should find that the (a) contract transfer dispute between the Lowe's, Rockwood (who was not in the HOA nor a party in this suit) (b) the dock building contract between Lowe and Hadaller, (c) the easement dispute on the south side of the Greer's Schlosser's lots not governed by the CCR's nor any responsibility of the HOA and (d) and Fuch's fence encroachment into Hadaller's easement is a lawful basis for the HOA to litigate at its expense and recoup fees from Hadaller for doing so. The Court made no conclusion of law that support their argument.¹⁷ In fact the Trial Court specifically refused to allow RCW 64.38.020. Which provides:

Unless otherwise provided in the governing documents, an association may:
(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, **but not on behalf of owners involved in disputes that are not the responsibility of the association;**

The HOA's response fails to show how it is the HOA's responsibility to litigate its president's (Lowe) and Secretary (Fuchs) directors (Schlosser and Greer) private disputes that

¹⁶ RP 05/10/2011 Pg 43 L. 6-25 (see Pg 17 Opening Brief)

¹⁷ CP 367-369

complies with the law¹⁸. They cannot because the HOA has no responsibility to do so. Which is obviously why the Trial Court refused to use RCW 64.38.020 (4) and this Court must follow suit.¹⁹

There is no reported Washington cases instructing the Court on analyzing when a HOA may invoke the statute to litigate on behalf of its members. However *Windham At Carmel Mtn. Ranch Association v. Superior Court*, 135 Cal. Rptr. 2d 834, 109 Cal. App. 4th 1162 (2003) is instructive by analyzing California's very similar statute. In *Windham Id* the court concluded a HOA need to be a real party in interest. In regards to the HOA's counter-claim for collection of special assessments, their dismissed pump house electric meter, their unsuccessful claim of damage from Hadaller's storage yard they are a real party interest under CR 17 and *Windham Id*. Hadaller is not appealing that portion of fees.(what ever that is) Those authorities instruct that in order for the HOA to defend for each claimed issue they would need to show a contractual standing in ownership or maintenance obligation. None of that was shown nor pled until the response brief was filed. In regards to each of the claims raised by the parties, other than the fore mentioned authorized HOA claims, they

¹⁸ RAP 10.3 *DeHeer v. Seattle Post-Intelligencer*, 60 Wash.2d 122 @125, 372 P.2d 193(1962)

¹⁹ *Town of Ruston v. City of Tacoma*, 90 Wash.App. 75, 82, 951 P.2d 805 (1998)

would not have standing to sue or defend from Hadaller under CR 17. The “Association’s” Answer and counterclaims identifies only the private parties as defendants and counter plaintiff’s none of these private party issues were noticed to be litigated by the HOA, if they had an objection would have occurred at the Trial Court level. It is too late to raise it at this stage.

The HOA’s response that the CCR’s provide for attorney fees is not opposed what is apposed is for what the fees may be provided for. In this case The HOA wrongly argue the attorney fee provision in the CCR’s for collection of assessments also provides for attorney fees to settle contractual and quiet title issues on easements between individuals not governed by the CCR’s and even contractual relations between non HOA members (the Rockwood’s at the time) the Lowes and Hadaller. The fact is there is no provision in the CCR’s to litigate for members that right would have to come from RCW 64.38.020(4), which is admitted to have been denied use of by the Trial Court and should be done the same here.

In addition to citing to no contractual obligation to defend for the private party issues the HOA, The HOA failed to cite any authority that even if they had shown implication of right to defend, *“Where no authorities are cited in support of a*

*proposition, Supreme Court is not required to search out authorities, but may assume that counsel, after diligent search, has found none”.*²⁰

Reply to respondents argument on RAP 2.5

Respondents false statements: The Trial Court did not allow the testimony of the forensic document examiner’s analysis nor two eyewitnesses to Fuchs signature, the issue was raised by surprise in co-pending suit, that is not “every opportunity” The decision was made on only Fuch’s false testimony and the fact the covenant was not acknowledged by a notary.

The respondents argument implies RAP 2.5 has been repealed. It hasn’t it has a purpose (as stated in opening brief) and this issue is it.

Reply to Attorney Fees request

Attorney fees are not usually provided on issue of first impression,²¹ they should not be considered in this case either. The two cases cited by Respondents in support of fees does not analyze when fees are to be awarded on appeal, they analyze the event of

²⁰ RAP 10.3(b) (a) See *DeHeer v. Seattle Post-Intelligencer*, 60 Wash.2d 122 @125, 372 P.2d 193(1962)

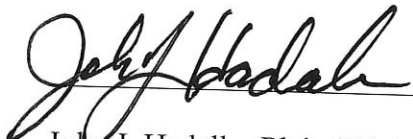
²¹ *Granville Condominium Homeowners Ass’n v. Kuehner*, 177 Wash.App. 543 312 P.3d 702 (2013) *Cary v. Allstate Ins. Co.*, 130 Wash.2d 335 922 P.2d 1335 (1996)

when an appellant appeals from an award of fees which was untimely to raise the merits of the case by that time. The “Association” should not be granted attorney fees.

Conclusion

The “Association” and HOA cited no authority or sufficient evidence to deny the relief Hadaller asks for in this appeal. The Court should grant Hadaller the requested relief argued above and in his opening brief.

Respectfully submitted on July 29, 2016



John J. Hadaller Plaintiff/ Appellant

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 STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

JOHN J. HADALLER)	COA No. 46094-7-II
An individual,)	
)	Plaintiff
v.)	LCSC No. 09-2-934-0
)	
MAYFIELD COVE ESTATES)	
HOMEOWNERS ASSOCIATION, a)	
Washington non-profit corporation,)	DAVID
A. and SHERRY LOWE, individually and the)	DECLARATION OF SERVICE
Marital community thereof; RANDY FUCHS,)	
An individual; CLIFFORD L. and SHEILAH)	
SCHLOSSER, individually and the marital com-)	
munity thereof; and MAURICE L. and)	
CHERYL C. GREER, individually and the)	
Marital community thereof; LEWIS COUNTY)	
TITLE COMPANY a Washington corporation)	
Defendants)	

John J. Hadaller Declares as follows:

That I am now and all times here-in mentioned, was a citizen of the United States of America and a resident of the state of Washington over the age of eighteen (18) years, plaintiff/appellate to the above action and competent to be a witness therein.

That on the 29th day of July 2016 I served the following documents:

- *DECLARATION OF SERVICE*
- *MOTION TO SUPPLEMENT RECORD WITH JANUARY 26, 2009 REPORT OF PROCEEDINGS*

- *6th SUPPLEMENTAL DESIGNATION OF CLERKS PAPERS*
- *APPELLANTS REPLY BRIEF*

On the following: by the indicated method of service.

To:

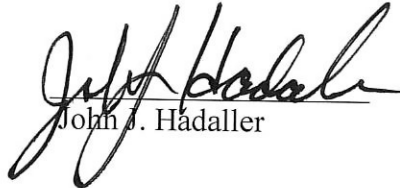
David A. Lowe
Black, Lowe & Graham pllc
701 5th Ave. STE 4800
Seattle, Wa. 98104-7009

e.-Mail U.S. Mail

Personal service

The fore-going statements are made under the penalty of perjury under the laws of the state of Washington and are true and correct.

Signed this 29TH day of July 2016 at Port Angeles, Wa.


John J. Hadaller