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SUPREME COURT OF THE STATE OF WASHINGTON
No. 97603-1

COURT OF APPEALS FOR THE STATE OF WASHINGTON,
DIVISION I
No. 77368-2-1

U.S. BANK NATIONAL ASSOCIATION,
Interpleader Plaintiff,

v.

BELLEVUE PARK HOMEOWNERS ASSOCIATION,
Interpleader-Defendant, Cross-Claim Plaintiff, Respondent,

ABOLFAZAL HOSSEINZADEH,
Interpleader Defendant, Cross-Claim Defendant, Appellant,

ADRIAN TEAGUE,
Interpleader Defendant, Cross-Claim Plaintiff.

**RESPONDENT BELLEVUE PARK HOMEOWNERS
ASSOCIATION'S ANSWER TO PETITION FOR REVIEW**

HELSELL FETTERMAN LLP

1001 Fourth Ave., Ste. 4200
Seattle, Washington 98154
Phone: (206) 292-1144
Fax: (206) 340-0902

Andrew J. Kinstler
WSBA No. 12703
akinstler@helsell.com

Debra M. Akhbari
WSBA No. 47500
dakhbari@helsell.com

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I. IDENTITY OF ANSWERING PARTY

Bellevue Park Homeowners Association (the “Association”) was an interpleader-defendant and cross-claim plaintiff in the trial court and Respondent in the Court of Appeals.

II. INTRODUCTION

This case involves a dispute over whether unit owners at the Bellevue Park Condominium properly removed and then replaced members of the Bellevue Park Homeowners Association Board of Directors at a special meeting. This issue is so narrow that neither Washington nor any other jurisdiction has ever addressed it. There is no split between Washington’s appellate courts nor does the decision conflict with any Supreme Court case. Instead, in an unpublished decision, the Court of Appeals (Division I) correctly held that members of the Association had authority under the Association’s governing documents and the Washington Nonprofit Corporations Act to call a special meeting to remove and replace members of the Board and that members who attended the special meeting without objection waived any deficiencies to notice.

Appellant Abolfazl Hosseinzadeh filed a motion for reconsideration with the Court of Appeals which was denied. Hosseinzadeh did not move to have the Court of Appeals’ decision

published. He now seeks review by this Court.

III. COUNTERSTATEMENT OF ISSUES PRESENTED

The issues raised by Hosseinzadeh in his petition for review do not meet the criteria set forth under RAP 13.4 and do not properly identify the legal issues addressed by the Court of Appeals. Properly stated, the issues before this Court are as follows:

1. Did the Court of Appeals correctly hold members of the Bellevue Park Homeowners Association waived notice of a special meeting when they appeared at the meeting, did not object to notice, and participated at the meeting?

2. Did the Court of Appeals correctly hold that members of the Bellevue Park Homeowners Association had authority to call and hold a special meeting in order to remove and replace members of the Board when (a) the Board did not have a president at the time; (b) more than the required number of unit owners demanded a special meeting; (c) the secretary of the Board, together with Association members, mailed notice of the special meeting to all unit owners in accordance with the Association's governing documents, and (d) a quorum of unit owners was present and voted at the meeting?

3. Did the Court of Appeals need to reach all issues addressed by the trial court when the Court of Appeals found the January 31, 2017 special meeting of unit owners was dispositive of all issues?

4. Did Hosseinzadeh waive the theory that the trial court lacked jurisdiction to grant the Association declaratory relief when Hosseinzadeh invited the error and failed to raise the argument in the trial court or before the Court of Appeals?

IV. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

The Bellevue Park Condominium is a two-story, 79-unit residential condominium complex in Bellevue, Washington. CP 221. Unit owners (also known as homeowners and members) at Bellevue Park form the Bellevue Park Homeowners Association. CP 878.

The Association is governed by a set of restrictive covenants (Declaration), articles of incorporation (Articles), bylaws (Bylaws), and Washington state laws, including the Horizontal Property Regimes Act (ch. 64.32 RCW), the Washington Condominium Act

(ch. 64.34 RCW)¹, and to some extent, the Washington Nonprofit Corporations Act (NCA). CP 464.

In accordance with the Association’s Declaration and Bylaws (collectively, the “governing documents”), homeowners elect the members of the five-person board of directors (Board) at the Association’s annual meeting. CP 890. Although the Association has the sole authority to elect the five Board members (Directors), it is the Board’s duty to elect the Association’s four corporate officers: president, vice president, secretary, and treasurer. CP 842.

In early December 2016, members of the Board were appellant Abolfazl Hosseinzadeh, Martin Yamamoto, Xiao Cai, and Adrian Teague. CP 221, 783. Importantly, of the four Directors, only two held officer positions: Teague as secretary, and Yamamoto as treasurer. CP 783.

By late 2016, several unit owners were concerned about the Board’s management of the Association’s affairs, including Hosseinzadeh’s position on the Board due to his involvement in ongoing litigation with the Association. CP 783. On December 27,

¹ The Articles contain a scrivener’s error, referring to the Washington Condominium Act as ch. 64.32 RCW. See CP 464. The Horizontal Property Regimes Act is codified under ch. 64.32 RCW, while the Washington Condominium Act is codified under ch. 64.34 RCW.

2016, in hopes of calling fellow owners to action, concerned unit owners sent a letter to all members of the Association. CP 783-784. The letter informed members that if they were unhappy with the current management by the Board then they could call for a special meeting to remove and replace members of the Board. CP 783-784. Board Secretary Teague was one of the concerned unit owners and provided a first-hand account of the Board's inability to function. CP 783-784. At the time the homeowners called the meeting the Association did not have a Board president. CP 783.

Under the Association's governing documents, the total voting power of all owners is equal to 100 votes. CP 838. The total voting power allocated to each unit is equal to the percentage of undivided interest in the common areas and facilities related to that unit under the Declaration. CP 839. In order for the membership to call a special meeting, owners having 51 or more votes must request such a meeting. CP 839, 890.

In response to the letter, 63.5 percent of the unit owners, representing more than the 51 required votes, responded that they wanted to call a special meeting of the Association to remove and replace the Board. CP 775. Given the complete dysfunction of the Board, as well as no president having been appointed by the Board,

the unit owners requesting a special meeting sent their responses to the Association's property management company and/or board secretary Teague. CP 786-835.

After receiving an overwhelming response, on January 13, 2017, Teague and other unit owners mailed a notice of special meeting of unit owners. CP 776. The notice stated that the special meeting would take place at 7:00 pm on January 31, 2017 at the Bellevue City Hall, located at 450 110th Ave, NE, Bellevue, Washington. CP 776, 910. The notice also contained an agenda for the meeting as well as a proxy, to be filled-out and submitted if the member could not attend the meeting. CP 910-911. Hosseinzadeh admits to receiving the notice. CP 395.

In response to the special meeting of unit owners, Hosseinzadeh sent out his own notice, calling for an open meeting of the board and the Association on the same date, at the same time, and in the same location as the special meeting called by unit owners. CP 421, 777, 924.

On the evening of January 31, 78.8% of unit owners appeared at Bellevue City Hall either in person or by proxy. CP 777-778, 932-945. Hosseinzadeh was also present although he contends that his attendance was to attend the open board meeting

he had scheduled for the same date, time, and place. CP 421, 777, 924. Hosseinzadeh did not raise an objection to notice at the meeting. *See, e.g.,* CP 396-97 (Declaration of Abolfazl Hosseinzadeh).

Of those in attendance, 69.09% of the unit owners voted to remove the current Board, and 67.95% voted to elect a new Board consisting of Adrian Teague, Marlene Newman, Mark Middlesworth, Jeni Gonzalez, and Dave Jensen to the Board. CP 779, 947-1000.

On February 1, 2017—the day after the election—Hosseinzadeh sent an email to U.S. Bank alleging that he was a member of the Board. CP 6, 11-14, 17.² On February 2, Gonzalez contacted U.S. Bank on behalf of the Association to ensure Hosseinzadeh could not access Association funds held in U.S. Bank accounts. CP 6. However, due to conflicting information as to who had access to Board funds, U.S. Bank froze the account. *See* CP 3-9.

² In fact, for several months after the January 31 election Hosseinzadeh held himself out as president of the new Board and attempted to interfere with business of the Association and the properly elected Board. CP 11-12, 397-98.

B. Procedural Background

On March 23, 2017, U.S. Bank filed an interpleader complaint arising from U.S. Bank's uncertainty as to who had lawful authority to instruct U.S. Bank with respect to Association bank accounts. CP 3-48. The Association, acting through the new Board, answered the complaint and cross-claimed against Hosseinzadeh for declaratory and injunctive relief with respect to the proper composition of the Board. CP 103-113.

On May 11, 2017 Hosseinzadeh answered the Association's cross-claim. CP 1012-1031. In that same pleading, Hosseinzadeh sought almost identical declaratory relief related to the composition of the Board and actions taken by him prior to January 31. CP 1012-1031. He also asserted a cross claim for libel against Teague. CP 1012-1031.

On June 2, 2017 the Association moved for summary judgment on its claims for declaratory relief seeking determinations regarding the proper members of the Board and the validity of various acts. CP 147-169. Finding no genuine issue of material fact, the trial court granted the Association's motion. CP 1058-1063. The trial court also awarded the Association its attorney fees (CP 1062). Hosseinzadeh appealed the trial court's

grant of summary judgment to the Association. CP 1051-1086.

While the appeal was pending, although all claims against the Association had been resolved and judgments entered, Hosseinzadeh filed a motion in the trial court seeking to amend his complaint and add new claims against the Association. Appellate Court Dkt, 5-11-19. In response, the Association filed a motion with the Court of Appeals to restrict the trial court from allowing the amended complaint. Appellate Court Dkt, 5-11-19. The Commissioner granted the Association's motion. Appellate Court Dkt, 5-24-19. Hosseinzadeh then moved to modify the Commissioner's ruling. Appellate Court Dkt, 6-21-19. The motion to modify was denied.³ Appellate Court Dkt, 10-9-18.

On July 1, 2019, the Court of Appeals issued an unpublished decision affirming the trial court's grant of summary judgment in favor of the Association. Appendix A to Pet. for Review ("Opinion"). The Court of Appeals also awarded the Association costs and fees on appeal. Appellate Court Dkt, 6-1-19.

³ Although Hosseinzadeh was unsuccessful in adding new claims against the Association in the Superior Court action, Hosseinzadeh persisted. While the appeal was pending, Hosseinzadeh filed a new lawsuit in federal court asserting the same allegations and claims that he attempted to assert in his proposed the amended complaint. *See* 2:18-cv-01385-JCC (W.D. Wash). The federal case is currently in active litigation.

Hosseinzadeh moved for reconsideration of the decision. Appellate Court Dkt, 7-19-19. The Court of Appeals denied Hosseinzadeh's motion. Appellate Court Dkt, 7-31-19.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. This Case Does Not Fall Within the Narrow Criteria Required for this Court to Accept Review.

Under RAP 13.4(b), the Supreme Court may accept a petition for review in limited circumstances. These include:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b)(1)-(4).

Hosseinzadeh seeks review under two of the criteria, arguing that (1) this case involves an issue of substantial public interest that should be determined by the Supreme Court and (2) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court. This case falls far short of either requirement.

1. This case does not involve an issue of substantial public interest.

As articulated by this Court, “[a] decision that has the potential to affect a number of proceedings in the lower courts may warrant review as an issue of substantial public interest if review will avoid unnecessary litigation and confusion on a common issue.” *In re Flippo*, 185 Wn.2d 132, 414, 380 P.3d 413 (2016) (citing *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005)). Cases of substantial public interest often address circumstances arising with criminal defendants as well as family law matters. See, e.g., *In re Flippo*, 185 Wn.2d 132, 380 P.3d 413 (2016) (personal restraint petitions challenging legal financial obligations); *In re Adoption of TAW*, 184 Wn.2d 1040, 387 P.3d 636 (2016) (ruling granting review related to a case involving provisions of the Indian Child Welfare Act); and *State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005) (addressing ex parte communications between the prosecuting attorney’s office and the trial court). The present case does not rise to the level required for review for the following reasons. First, Hosseinzadeh seeks review of an unpublished decision. Because the decision is unpublished, it is not binding and has no precedential value. See GR 14.1(a). The Opinion is

therefore unlikely to impact future litigants in any meaningful way.

Additionally, Hosseinzadeh fails to cite any case law from this jurisdiction or any other jurisdiction to support his position. This demonstrates that this case does not present an issue frequently litigated or that has caused confusion in our courts. *See* Pet. for Review at 12; Opinion at 11. Instead, this case and the Court of Appeals decision addresses the very narrow situation where members of a condominium association, in accordance with the Association's governing documents and in collaboration with the Board secretary, called a meeting at a time when there was no Board president and then overwhelming voted to remove and replace members of the Board. This case does not involve an issue of substantial public interest.

2. The Court of Appeals decision does not conflict with any decision of the Supreme Court.

Hosseinzadeh alleges that the Court of Appeals raised the issue of notice sua sponte in an effort to "advocate" for the Association. Pet. for Review at 7. He argues that it was improper for the Court of Appeals to raise the issue of waiver because the parties did not have an opportunity to present argument on the issue. Pet. for Review at 8. Hosseinzadeh misrepresents the record

before the Court of Appeals and the basis of the Court's decision.

Hosseinzadeh's argument that the Court of Appeals raised the issue of notice sua sponte is disingenuous. Hosseinzadeh raised the issue of notice in his opening appellate brief (Court of Appeals Dkt, 5-23-18 at 32-35) to which the Association responded (Court of Appeals Dkt., 7-23-18 at 24-26). Additionally, the issue was raised and addressed in the trial court by both parties. *See* CP 159-161 (Association's Motion for Summary Judgment); CP 382-83 (Hosseinzadeh's Response to the Association's Motion for Summary Judgment). The Court of Appeals did not raise the issue of notice sua sponte.

Second, the Court of Appeals did not affirm the trial court based on notice. Rather, because both parties addressed the issue in the trial court and in their appellate briefs, the Court of Appeals addressed the issue very briefly but only with respect to whether attendance at the special meeting without objection waived notice. Opinion at 12-13.

Third, the Court of Appeals did not hold that written notice was adequate (although it was). Instead, the Court of Appeals decision very carefully and accurately states that those who appeared at the special meeting in person or by proxy, whose

attendance was not to challenge the validity of notice, thereby waived any deficiencies to notice. Opinion at 12-13. Hosseinzadeh's petition attempts to expand upon the Court of Appeals' decision in a way that is unsupported.

Further, Hosseinzadeh himself admits that he was present at the special meeting, stating the following in a sworn declaration:

“Believing that I was still the correct Board President, I scheduled an open Board meeting for January 31, 2017 to discuss urgent business at Bellevue City Hall, at the same time and place as the ‘special homeowners meeting.’”

CP 421 (bold added).

Hosseinzadeh's declaration concedes that he was present at the special meeting of unit owners and not for the purpose of objecting to notice. However, whether or not Hosseinzadeh himself waived notice (he did by attending the special meeting of unit owners and not objecting to notice) is irrelevant since a quorum of unit owners attended the meeting and then voted to remove and replace all members of the Board. The Court of Appeals correctly held that Hosseinzadeh's argument that notice was improper was without merit.

B. Hosseinzadeh May Not Raise for The First Time His Theory That the Trial Court Lacked Jurisdiction to Grant Declaratory Relief.

In his petition for review, Hosseinzadeh raises for the first time the theory that the trial court lacked jurisdiction to declare the January 7, 2017 meeting invalid. Pet. for Review at 18-20. Hosseinzadeh argues the Declaratory Judgment Act (DJA) required the Association to join all unit owners in the lawsuit in order to seek declaratory relief. *Id.* at 19-20. The Court should decline to address Hosseinzadeh's argument for the following three reasons. First, any error by the trial court was invited by Hosseinzadeh. Under the invited error doctrine, a party may not set up an error at trial and then complain of it on appeal. *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 723, 10 P.3d 380 (2000). The doctrine applies when a party takes affirmative and voluntary action that induces the trial court to take an action that party later challenges on appeal. *Id.* at 723-24.

In his answer to the Association's cross claim, Hosseinzadeh affirmatively sought declaratory relief, asking the trial court "to determine that on January 7, 2017, Board Member Tang was property appointed to the Board of Directors." CP 1025. Hosseinzadeh further sought declaratory relief in the trial court that

the actions taken by himself, Cai and Tang “constituted acts on behalf of the Board of Directors.” *Id.* Despite arguing that Cai, Tang and other unit owners were necessary parties, Hosseinzadeh did not name these individuals in *his* complaint. *See id.* The trial court decided these issues on summary judgment in favor of the Association and against Hosseinzadeh. Hosseinzadeh cannot now complain that the trial court lacked jurisdiction to address issues that he put forward just because he lost.

Second, Hosseinzadeh waived this theory because he failed to raise the issue in the trial court or the Court of Appeals. RAP 2.5(a); *Karlberg v. Otten*, 167 Wn. App. 522, 531, 280 P.3d 1123 (2012) (“A failure to preserve a claim of error by presenting it first to the trial court generally means the issue is waived.”) (citing *Bellevue Sch. Dist. No. 405 v. Lee*, 70 Wn.2d 947, 950, 425 P.2d 902 (1967)). “While an appellate court retains the discretion to consider an issue raised for the first time on appeal, such discretion is rarely exercised.” *Karlberg*, 167 Wn. App. at 531 (citing *Smith v. Shannon*, 100 Wn.2d 26, 38, 666 P.2d 351 (1983)). The Court should decline to exercise its discretion in this case since Hosseinzadeh had two prior opportunities to raise the issue and failed to do so.

Finally, the Court of Appeals did not specifically address these issues because it affirmed the trial court on other grounds. An appellate court may “affirm the trial court on any grounds established by the pleadings and support by the record.” *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 766, 58 P.3d 276 (2002) (citing *Mountain Park Homeowners Ass’n v. Tydings*, 125 Wn.2d 337, 344, 883 P.2d 1383 (1994)). In this case, the trial court determined the January 31, 2017 special meeting was effective in removing and replacing all members of the Board. The Court of Appeals affirmed the trial court on this issue. Opinion 13-15. The validity of the January 31 special meeting is dispositive of the entire appeal and the Court of Appeals did not need to reach any other issue.

C. The Association Requests an Award of Attorney Fees and Costs for Responding to this Petition.

Pursuant to RAP 18.1(b), if applicable law grants a party the right to recover reasonable attorney fees or costs on review before the Court of Appeals or Supreme Court, then the party must devote a section of its opening brief to such a request. This requirement is mandatory. *Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 705, 915 P.2d 1146 (1996).

Generally, attorney fees will not be awarded unless authorized by contract, statute, or recognized ground of equity. *Kaintz v. PLG, Inc.*, 147 Wn. App. 782, 785, 197 P.3d 710 (2008) (citing *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 106 Wn.2d 826, 849–50, 726 P.2d 8 (1986)).

Section 13.01 of the Declaration allows the Association to recover its attorney’s fees and costs. The Declaration reads in relevant part as follows:

Each owner shall comply strictly with the provisions of this Declaration, the Bylaws, and the administrative rules and regulations made pursuant thereto a Failure to comply shall be grounds for an action to recover sums due for damages . . . maintainable by the Board of Directors on behalf of the owners Failure to comply shall also entitled the Board of Directors to collect all attorneys’ fees incurred by it by reason of such failure, irrespective of whether any suit or other judicial proceeding is commenced, and if suit is brought because of such failure, all costs of suit may be recovered in addition to attorneys’ fees.

CP 869.

Additionally, the Association may recover its fees under

RCW 64.34.455, which states:

If a . . . person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate

case, may award reasonable attorney's fees to the prevailing party.

Both the trial court and Court of Appeals awarded the Association its cost and fees because Hosseinzadeh violated a number of governing document provisions, namely representing to Bank of America that he was a member of the Board after the January 31, 2017 special meeting. CP 11-12, 397-98. The Association respectfully requests this Court award it costs and fees for responding to the petition for review.

VI. CONCLUSION

As set forth above, this case does not raise an issue of substantial public importance nor does it conflict with any decision of this Court. For these reasons, the Association respectfully requests that this Court decline review of the Court of Appeals decision and award the Association all fees and costs for answering the petition for review.

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RESPECTFULLY submitted this 30th day of September, 2019.

HELSELL FETTERMAN LLP

By s/ Debra Akhbari

Andrew J. Kinstler, WSBA No. 12703

akinstler@helsell.com

Debra M. Akhbari, WSBA No. 47500

dakhbari@helsell.com

1001 4th Avenue, Suite 4200

Seattle, WA 98154

Ph: 206-292-1144

*Attorneys for Respondent Bellevue Park
Homeowners Association*

DECLARATION OF SERVICE

The undersigned, hereby declares under penalty of perjury, that on the 30th day of September, 2019, she caused to be served a true and correct copy of the foregoing pleading on the following counsel of record:

Jay W. Beattie Lindsay Hart LLP 1300 SW Fifth Ave., Ste. 3400 Portland, OR 97201-5640	<i>Via Court E-Service and/or Email</i> jbeattie@lindsayhart.com cweeks@lindsayhart.com
David J. Lenci Advocates Law Group PLLC 22525 SE 64 th Pl., Ste. 200 Issaquah, WA 98027-5307	<i>Via Court E-Service and/or Email</i> dlenci@advocateslg.com
Igor Valodimorovich Stadnik Keesal, Young & Logan 1301 Fifth Ave., Ste. 3100 Seattle, WA 98101-2649	<i>Via Court E-Service and/or Email</i> igor.stadnik@kyl.com hillary.poole@kyl.com

DATED September 30, 2019, at Seattle, Washington.

s/Aimeé L. Muul

Aimeé L. Muul, Legal Secretary

HELSELL FETTERMAN LLP

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