IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
Case No.: 97603-1

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE
Case No. 773682 I

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U.S. BANK NATIONAL ASSOCIATION, *Interpleader Plaintiff*;
v.
BELLEVUE PARK HOMEOWNERS ASSOCIATION,
*Interpleader-Defendant; Cross-Claim Plaintiff, Respondent*;

ABOLFAZAL HOSSEINZADEH, in both his individual capacity and alleged representative capacity as director of Bellevue Park Homeowners Association,
*Interpleader Cross-Claim Defendant, Appellant*;

ADRIAN TEAGUE, in both his individual capacity as director of Bellevue Park Homeowners Association,
*Interpleader Defendant.*

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DEFENDANT TEAGUE, in his capacity as a director of Bellevue Park Homeowners Association, *Third-Party Plaintiff*;

v.

WELLS FARGO, N.A., *Third-Party Defendant.*

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# PETTION FOR REVIEW

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LINDSAY HART, LLP
Jay W. Beattie, WSBA #37160
1300 SW Fifth Avenue, Suite 3400
Portland, Oregon 97201-5640
PH: 503-226-7677
Attorneys for Petitioner
Abolfazal Hosseinzadeh

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## A. IDENTITY OF MOVING PARTY

Petitioner Abolfazal Hosseinzadeh ("Hosseinzadeh" or "Petitioner") seeks review by this Court of the Court of Appeals' opinion identified in Part B.

## B. COURT OF APPEALS' DECISION

Petitioner seeks review of the unpublished opinion of the Washington Court of Appeals, Division I, filed on July 1, 2019, No. 77368-2-1, affirming the Superior Court's summary judgment in favor of Respondent. A copy of the opinion is in the Appendix at App. 1. The Court of Appeals denied Petitioner's motion for reconsideration on July 31, 2019. Appendix at App. 17.

## C. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err in considering *sua sponte* the defense of "waiver" and then determining based on *disputed facts* that Hosseinzadeh "effectively waived" his right to proper notice of the "special homeowners meeting" on January 31, 2017 by attending the "special meeting" in person?

2. Did the Court of Appeals err in determining that under the Nonprofit Corporation Act, RCW Ch. 24.03, a group of condominium owners could call and conduct a "special homeowners meeting" without the

involvement of the Association's Board of Directors as expressly required by the Association's Bylaws and the Condominium Declaration?

3. Did the Court of Appeals err in failing to review all the declarations made by the trial court in its summary judgment order and final judgment that were properly assigned as error?

4. Did the trial court lack jurisdiction to declare the actions taken by the Association's Board of Directors on or after January 7, 2017 and prior to January 31, 2017 to be "invalid" because the Association failed to join all necessary parties in its declaratory judgment action?

## D. STATEMENT OF THE CASE[1]

The Bellevue Park Homeowners Association ("Association") is a Washington nonprofit corporation organized for the purpose of operating Bellevue Park, a condominium located in Bellevue, Washington. CP 465, 838.

In early January 2017, the five-member Board of the Association had dwindled to three duly elected Directors: Adrian Teague, Abolfazal Hosseinzadeh and Xaio Cai. At the same time, the diminished Board was confronted with an array of issues, including damage to the Condominium building caused by water intrusion during a roof repair (CP 204, 430, 199),

[1] *See also* Statement of the Case, Appellant's Brief ("App. Br.") at pp. 5-11.

the impending resignation of the Association's property management company (CP 72) and vacancies on the Board which was operating without a President and Vice President. CP 195, 199, 416.

Teague disagreed with Hosseinzadeh and Cai on how to deal with the issues facing the Association (*see e.g.* CP 413, 783), but rather than engaging with his fellow Directors and working to resolve their differences, Teague simply abandoned his duties as a Director. CP 416-417. He boycotted Board meetings (CP 368-369, 404-405) and organized a group of dissident homeowners to depose the existing Board and to install a new board. CP 783. Teague rallied support from the homeowners by circulating a false narrative of Board "dysfunction," including false statements that Hosseinzadeh was conducting "invalid" Board meetings and engaging in conduct "tantamount to criminal activity." CP 1044-1046.

While Teague was agitating for the ouster of the existing Board, Hosseinzadeh and Cai continued conducting the business of the Association. At a meeting on January 7, 2017, Hosseinzadeh and Cai elected a fourth member, Zheng Tang, and the new quorum elected Hosseinzadeh as President. CP 229. The reconstituted Board then began addressing the numerous issues confronting the Association, including the management of the "construction defect" claim against the roofing contractor, the selection of a new property manager, and the scheduling of

a homeowners meeting to discuss, among other things, the cost of the necessary building repairs. CP 229, 233.

Meanwhile, on January 31, 2017, Teague and his confederates held a "special homeowners meeting" for the announced purpose of removing "Xioa [sic] and Ab" from the Board and electing a new board. CP 786, 789-804. At the same time and location as the "special homeowners meeting," the Board held an "open Board meeting" to discuss the issues affecting the Association. CP 396, 924-925. The open Board meeting was commenced before the "special homeowners meeting," which was then moved to a different room in the same building. CP 406, 1119. Hosseinzadeh and Cai remained in their room with a number of owners and did not attend the "special homeowners meeting." CP 406, 396.

At the "special homeowners meeting," a group of owners purportedly removed the existing Board and installed a new board that later elected Teague as President. CP 40. After the "special homeowners meeting," there were two putative boards with conflicting communications being sent to companies with whom the Association did business, including U.S. Bank. U.S. Bank filed an interpleader action seeking a determination of which board had control over the Association's bank accounts. CP 1-9.

The "Teague board," acting on behalf of the Association,[2] answered the interpleader action and asserted a crossclaim against Hosseinzadeh seeking a declaration that they were the duly elected board of the Association. CP 112.

The Association then filed a motion for summary judgment seeking declaratory relief, including declarations that the "special homeowners meeting" on January 31, 2017 was properly noticed and effective to remove the existing Board, and additionally, that the meeting of the Board on January 7, 2017 was "invalid to elect Zheng Tang as a director," and that "the actions taken by the Board [] on or after January 7, 2017 were invalid." CP 157.

Hosseinzadeh opposed the motion for summary judgment on numerous grounds. CP 364-387. As relevant here, Hosseinzadeh argued that the owners lacked authority under the Association Bylaws and Condominium Declarations to call a "special homeowners meeting," *viz.* a special meeting of the members, without the involvement of the existing Board or its President and that there were genuine issues of material fact

[2] Hosseinzadeh does not accept that the Teague board is the duly elected Board of Directors of the Association but, for the sake of simplicity, he will refer to them as the "Association."

regarding the sufficiency of the notice for the special meeting. *See* App. Br. at pp. 28-39.

The trial court granted summary judgment and issued separate "orders" incorporating *verbatim* the declarations requested by the Association. CP 1061-1062. Hosseinzadeh appealed to the Court of Appeals assigning as error all of the declarations made by the trial court. App. Br. at pp. 3-4. The Court of Appeals affirmed the summary judgment in its entirety. App. 1.

## E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review should be granted for two reasons. First, this appeal raises novel issues of substantial public interest relating to the governance of nonprofit corporations and the proper interpretation of the Washington Nonprofit Corporation Act, RCW 24.03.075, which specifies who may call special meetings of the members. RAP 13.4(b)(4). Second, the decision of the Court of Appeals conflicts with numerous decisions of this Court as set forth below, including those decisions prohibiting appellate courts from resolving factual disputes on appeal from a granted summary judgment. RAP 13.4(b)(1).

**1. Court of Appeals erred in raising *sua sponte* the issue of "waiver" as an alternative basis for affirming the summary judgment and in deciding the waiver issue based on disputed facts. The disposition of the waiver issue conflicts with RAP 12.1(b) and the decision of this Court. RAP 13.4(b)(1).**

Hosseinzadeh produced evidence in the trial court that neither he nor his fellow board member, Xaio Cai, were provided with adequate notice of the "special homeowners meeting" on January 31, 2017. CP 405, 420-21. The Court of Appeals correctly assumed that this evidence was sufficient to create a genuine issue of material fact precluding summary judgment on the notice issue (Opinion at p. 12), but instead of reversing the summary judgment, the Court proceeded to act as an advocate for the Association and raised *sua sponte* the defense of "waiver" as an alternative basis for affirmance. The Court of Appeals raised the waiver issue and then incorrectly decided based on *disputed* facts that Hosseinzadeh "effectively waived" the notice required under the Association's Bylaws by appearing at the special meeting on January 31, 2017. *Id.*

That conclusion was legally and factually wrong, and the way in which the Court of Appeals raised and decided the waiver issue clearly conflicts with the decisions of this Court. RAP 13.4(b)(1). Significantly, this Court has stated repeatedly that an appellate court may affirm a grant of summary judgment on an issue not decided by the trial court only if the

record is sufficiently developed to "fairly consider the ground" (RAP 2.5(a)) and only if the issue is supported by the record and is within the pleadings and proof. *Plein v. Lackey*, 149 Wn.2d 214, 222, 67 P.3d 1061 (2003); *Int'l Bhd. of Elec. Workers v. TRIG Elec. Constr. Co.*, 142 Wn.2d 431, 435, 13 P.3d 622 (2000). Generally, the parties should be given an opportunity "to present written argument on [an] issue raised by the [appellate] court." RAP 12.1(b). *State v. Aho*, 137 Wn.2d 736, 741, 975 P.2d 512 (1999) (Generally this Court will request additional briefing on issues raised by the court *sua sponte*).

The Association did not argue in its brief that Hosseinzadeh waived the written notice requirement by attending the special meeting on January 31, 2017. The Association argued only that:

> Even if notice was improper (it was not) more than 78% of unit owner votes were present at the meeting and did not object. CP 777-778. Consequently, even if notice was improper, unless a unit owner's appearance was for the purpose of objecting to the notice, his or her attendance was deemed a waiver of notice and the meeting could proceed. See CP 890.[3]

[3]The referenced exhibits show that Hosseinzadeh was not present at the meeting in person or by proxy.

Res. Br. at p. 26. That argument is wrong,[4] and more importantly, it was not the same argument raised *sua sponte* by the Court of Appeals as an alternative basis for affirming the grant of summary judgment.

The Court of Appeals raised an entirely different argument that Hosseinzadeh *personally* "waived notice" by attending the special meeting on January 31, 2017. Opinion at p. 12. The Court did not call for additional briefing or give Hosseinzadeh an opportunity to address the specific waiver issue it had raised. Indeed, the Court plowed ahead and erroneously decided the waiver issue in favor of the Association based on *disputed facts*.[5] *See Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959); *Allen v. State*, 118 Wn.2d 753, 760, 826 P.2d 200 (1992) (When presented with a mixed question of law and fact, the factual issues can be decided as a matter of law if only one reasonable conclusion can be drawn).

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[4] *See e.g. Lycette v. Green River Gorge,* 21 Wn. 2d 859, 864, 153 P.2d 873 (1944) (meeting of directors: "even a special meeting held in the absence of some of the directors, and without any notice to them, is illegal, and the action at such a meeting, although by a majority of the directors, is invalid unless subsequently ratified.") Waiver by a majority of owners does not waive the right to notice by the minority. *See e.g.* CP 890 (Bylaw waiver provision).

[5] Waiver is a mixed question of law and fact. *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 440-41, 191 P.3d 879 (2008). "'Whether facts on which a claim of waiver is based have been proved, is a question for the trier of the facts, but whether those facts, if proved, amount to a waiver is a question of law.'" *Id.* at 441 (*quoting Advantor Capital Corp. v. Yeary*, 136 F.3d 1259, 1267 (10th Cir. 1998)). When an issue involves a mixed question of law and fact but the facts are not disputed, the issue is a question of law for the court to resolve. *Brundridge*, 164 Wn.2d at 441.

In its apparent haste to conclude the appeal in favor of the Association, the Court of Appeals ignored the abundant record evidence *proving* that Hosseinzadeh did *not* attend the special meeting but rather attended an open Board meeting scheduled at the same location. CP 245; CP 421-422; CP 777, CP 925. When Teague asked who was present for the special homeowners meeting, "everyone raised their hands except Hosseinzadeh and his group." CP 778. Those who were present for the special homeowners meeting moved to a different room. CP 245; CP 778.

The minutes of the "special homeowners meeting" (CP 86) show that the meeting was convened and conducted in "Room [1]E-118 of Bellevue City Hall" (*id.*) whereas the open Board meeting was held in Room 1E-108. CP 244-245, 929. Moreover, prior to the special homeowners meeting, Hosseinzadeh *did* object to the special meeting of the Association. He wrote to Teague and objected to the special meeting specifically because it "was not called properly." CP 924-925.

Viewing all the facts in the light most favorable to Hosseinzadeh,[6] the record does not establish *as a matter of law* that Hosseinzadeh waived the written notice of the "special homeowners meeting" required by the Association's Bylaws. CP 890. The Court of Appeals clearly erred in

[6] As this court must. *See e.g. SentinelC3, Inc. v. Hunt*, 181 Wn. 2d 127, 140, 331 P.3d 40, 46 (2014).

raising the waiver defense *sua sponte* and then deciding that issue against Hosseinzadeh based on disputed facts.

**2. Court of Appeals erred in determining that under the Nonprofit Corporation Act, RCW Ch. 24.03, a group of owners may call a special meeting of the Association without the involvement of the existing Board and its President. That error presents an issue of substantial public interest and a novel issue of law that should be determined by this Court. RAP 13.4(b)(4).**

The Court of Appeals correctly observed that the Bylaws and Declaration specifically provide that special meetings of the Association may or must be called by the Board President. Opinion at p. 10. Nonetheless, the Court concluded that the Bylaws and Declaration did not *prohibit* the owners from calling a special meeting and that the Nonprofit Corporations Act ("NCA"), RCW 24.03.075, *specifically allowed* the owners to call such a meeting. The NCA states in part:

> "Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by other officers or persons or number or proportion of members as provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting."

(Emphasis added).

There are no reported Washington cases – or reported cases anywhere – holding that RCW 24.03.075 (or similar statute[7]) allows a percentage of the members to call a meeting of the members absent a provision in the bylaws or articles of incorporation granting them that authority. The plain language of the statute provides that members may call a special meeting if they are authorized to do so under the bylaws or articles of incorporation, and then it provides a default percentage who may call a meeting if none is specified. The statute does not give members an absolute right to call special meetings equivalent to the rights given to the president and the board of directors.

If the legislature had intended to give the members an absolute right to call a special meeting, then members would have been included in the first sentence of the statute along with the president and board of directors. Instead, members were included in the second sentence of the statute describing those persons who *may* call a special meeting *if authorized by the bylaws or articles of incorporation.* Under the doctrine of *expressio*

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[7] The relevant portion of RCW 24.03.075 is identical to Section 13 of the ABA Model Nonprofit Corporation Act (1964). It is notable that the ABA amended the Model Act in 1987 to insert a provision allowing members with "five percent of the voting power" to *demand* a special meeting of the corporation. If the demand was not met, the 1987 Model Act included certain self-help remedies. *See* ABA Model Nonprofit Corporation Act (1987) §§ 7.02, 7.03. Under both the 1964 and 1987 Model Acts, the board has primary responsibility for calling special meetings of the members, and the later Act contains an enforcement mechanism in the event the board fails to call a meeting.

*unius est exclusio alterius*, the presumption is that the list of persons who have a *right* to call a meeting is exclusive and does not include members or persons who *may be* authorized to call a special meeting under the bylaws or articles of incorporation. *See Washington State Republican Party v. Washington State Pub. Disclosure Comm'n*, 141 Wn. 2d 245, 280, 4 P.3d 808 (2000); *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn. 2d 9, 17-18, 978 P.2d 481 (1999) (both stating rule of *expressio unius est exclusio alterius*).

Moreover, the default provision in the last sentence of the statute does not come into play here because the Bylaws and Declarations do "fix" the number of members who may call a meeting – and that number is *zero*. The Bylaws and Declarations provide that the owners having 51 or more votes may request a meeting in writing and that the President shall call a meeting if so requested. CP 890. However, no number of owners acting alone may call a special meeting of the Association.[8]

The Court of Appeals also erred in holding that the authority to call a special meeting of the Association without the involvement of the Board or the Board President could be construed into the Declaration in order to

[8] Like the 1987 ABA Model Nonprofit Corporation Act, the provisions in the Bylaws and Declaration require Board involvement in the calling of special meetings of the Association. This requirement fosters communication between disaffected owners and their elected Board Members and maintains the functioning of the Board.

give effect to the "collective interest of the property owners." Opinion at p. 9 (*citing Riss v. Angel*, 131 Wn.2d 612, 623-24, 934 P.2d 669 (1997). *Riss* involved the interpretation of a restrictive covenant and does not apply to condominium declarations or association bylaws which are subject to other rules of construction prescribed by this Court.

When interpreting a condominium declaration, the same principles apply as when interpreting a deed. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 531, 243 P.3d 1283 (2010). The court must determine the declarant's intent, which it "discern[s] from the face of the declaration," giving due consideration to the language of the declaration as a whole. *Id.*, 169 Wn.2d at 526 (internal citation omitted).

The governing documents of a corporation are interpreted in accordance with accepted rules of contract interpretation. *Langan v. Valicopters, Inc.*, 88 Wn.2d 855, 859, 567 P.2d 218 (1977) (bylaws); *Walden Inv. Grp. v. Pier 67, Inc.*, 29 Wn. App. 28, 30-31, 627 P.2d 129 (1981) (articles of incorporation). And the primary rule of contract construction is that unambiguous language should be enforced as written. *McDonald v. State Farm Fire & Cas. Co.,* 119 Wn.2d 724, 733, 837 P.2d 1000 (1992) ("If the language is clear and unambiguous, the court must enforce the contract as written; it may not modify the contract or create ambiguity where none exists.")

Here, the Declaration and the Bylaws are clear and unambiguous: owners with 51% of the voting power may demand a special meeting of the Association, but that meeting must be called by the President. Declaration Section 6.09; CR 839. Indeed, the Declaration specifically states that the President "shall preside over both [the Board's] meetings and those of the Association" (Declaration Section 7.07. CR 842), a requirement that is mirrored in the Bylaws. Bylaw Article IV (4); CR 895. The Declaration and Bylaws prescribe an orderly process for calling and conducting meetings of the Association *by the Board.* That process promotes the exchange of information between the owners and their elected Board members. Nothing in the Declaration or Bylaws – construed as a whole – allows the owners to call a special meeting of the Association without the involvement of their Board and its President.

**3. Court of Appeals erred in failing to review all declarations of the trial court that were assigned as error. The failure to review all declarations assigned as error conflicts with RAP 2.4(a) and the decisions of this Court. RAP 13.4(b)(1).**

The trial court granted summary judgment for declaratory relief and issued six separate declarations or "orders." CP 1061. Hosseinzadeh assigned error to each declaration, but the Court of Appeals only reviewed four, leaving two declarations unreviewed: (1) the declaration that the special meeting of the Board on January 7, 2017 was invalid and failed to

elect Zheng Tang as a director, and (2) the declaration that the actions taken by the Board including Tang on or after January 7, 2017 were invalid – including the election of Hosseinzadeh as President. CP 1061.

Each declaration amounts to a "final judgment or decree" (RCW 7.24.010), and the failure to review each declaration violates the letter of RAP 2.4 and this Court's case law permitting an appellate court to refrain from deciding an issue assigned as error under *limited* circumstances. *Jenkins v. Dep't of Soc. & Health Servs.,* 160 Wn.2d 287, 291, 157 P.3d 388 (2007) (where issue decided is dispositive, it is "unnecessary to reach or decide any other issues"). *In re Welfare of A.B.*, 168 Wn. 2d 908, 925, 232 P.3d 1104, 1112 (2010) (court may decline to hear issue that will have no "impact" on outcome).

Affirming the trial court's determination that the special meeting of the Association on January 31, 2017 was "properly called" and effective to remove the existing Board (Opinion at p. 14-15) *did not* dispose of the entirely unrelated declaration that the actions taken by the Board on and after January 7, 2017 were "invalid." CP 1061.[9] The declaration that the

[9] And if the issue was dispositive of the unreviewed declarations, then the unreviewed declarations amounted to nothing more than "advisory opinions" and should be reversed on that basis. *See e.g. Walker v. Munro*, 124 Wn. 2d 402, 405, 879 P.2d 920 (1994) (a court will enter a declaratory judgment only for a justiciable controversy. To enter a declaratory judgment for a nonjusticiable controversy would be to render an advisory opinion.)

Board did not validly elect Hosseinzadeh President is based on different facts and is independently significant. Indeed, that declaration is central to the trial court's fee award – and may even have a preclusive effect in other litigation. The Court of Appeals should have decided whether the trial court erred in granting summary judgment declaring that the actions of the Board on or after January 7, 2017 were "invalid."

Significantly, the trial court awarded fees against Hosseinzadeh under RCW 64.34 and the Declarations, Section 13.01 (CP 869) for simply following the Declaration and Bylaws, working with Cai to fill Board vacancies and in conducting the business of the Association. *See* App. Br. at pp. 13-27. The trial court, however, concluded that Hosseinzadeh should be financially punished for "attempting to form an invalid board" and then taking action to manage the Association before the special meeting of the Association on January 31, 2017.[10] CP 1229. The fee award was based largely, if not entirely, on the unreviewed declaration that "the actions taken by the Board of Directors . . . on and after January 7, 2017 are invalid," including the election of Hosseinzadeh as President. If those declarations are reversed – as they should be – the fee award would fall as well. *See e.g.*

[10] Oddly, the trial court does not indicate who was supposed to be managing the Association for the approximately one month between Teague's boycott and the "special meeting of the association."

*Plese-Graham, LLC v. Loshbaugh*, 164 Wn. App. 530, 548, 269 P.3d 1038 (2011); *Home Realty Lynnwood, Inc. v. Walsh*, 146 Wn. App. 231, 242, 189 P.3d 253 (2008) (reversal of summary judgment renders "determination of the prevailing party . . . premature" for purposes of contractual attorney fee).

**4. The trial court and the Court of Appeals lacked jurisdiction to declare that the meeting of the Board on January 7, 2017 was invalid and failed to elect Zheng Tang as a director, and that the actions taken by the Board including Zheng Tang on or after January 7, 2017 were invalid because the Association did not join all necessary parties.**

Both the trial court and the Court of Appeals lacked jurisdiction to declare that the actions taken by the Board after January 7, 2017 were "invalid" because the Association failed to join all parties who might be affected by the declaration, including (among many others) the remaining Board members, Xiao Cai and Zhen Tang, the Association's new manager, Kevin Mason, CPA (CP 233-234), and the unit owners who paid dues or assessments to the allegedly "invalid" Board or its management company. *See* RCW 7.24.110.

Under the Uniform Declaratory Judgment Act, RCW 7.24.110, a party seeking a declaratory judgment must join "all persons . . . who have or claim any interest which would be affected by the declaration." A party is necessary if it is one "whose ability to protect its interest in the subject matter of the litigation would be impeded by a judgment in the current

case." *Branson v. Port of Seattle*, 152 Wn. 2d 862, 866, 101 P.3d 67 (2004) (court dismissed *sua sponte* constitutional challenge to statute allowing municipality to charge concession fee to rental car companies because plaintiff failed to join rental car companies affected by statute); *N.W. Animal Rights Network v. State*, 158 Wn. App. 237, 242 P.3d 891 (2010) (dismissing challenge to exemption from animal cruelty statute because plaintiff failed to join persons who would be affected by elimination of exemption).

The failure to include an affected party, *i.e.*, an essential party, in the action for declaratory judgment relates directly to the jurisdiction of the trial court. *See Leonard v. Seattle*, 81 Wn.2d 479, 481, 483, 503 P.2d 741 (1972); *Northwest Greyhound Kennel Ass'n v. State*, 8 Wn. App. 314, 319, 506 P.2d 878 (1973). Arguments relating to the jurisdiction of the trial court can be considered for the first time on appeal. *See State ex rel. Gunning v. Odell,* 58 Wn.2d 275, 277, 362 P.2d 254 (1961), *modified on other grounds, State ex rel. Gunning v. Odell*, 60 Wn.2d 895, 371 P.2d 632 (1962); *State v. Davis*, 41 Wn.2d 535, 538, 250 P.2d 548 (1952).

As indicated above, any declaration that the Board comprising Hosseinzadeh, Cai and Tang was not "valid," subjects all three putative Board members to damages and fees under the Declarations, Article 13.01. CP 869; *see e.g.* CP 229-242 (minutes of Board documenting meetings after

January 7, 2019). Contracts entered by the allegedly invalid Board are also invalid, as are payments by owners. Persons clearly affected by the declaration were not joined as parties, and accordingly, this Court must vacate the underlying judgment to the extent it purports to declare the validity or invalidity of the Board prior to the alleged election of a new board on January 31, 2017.

## F. CONCLUSION

This Court should grant review, reverse the Court of Appeals and the trial court for the reasons set forth in Petitioner's brief below (and any supplemental briefing) and remand this case to the trial court for further proceedings.

Dated this 30th day of August, 2019

LINDSAY HART, LLP

By: _____

Jay W. Beattie, WSBA # 37160
1300 SW Fifth Ave., Suite 3400
Portland, Oregon 97201-5640
PH: 503/226-7677
jbeattie@lindsayhart.com
*Attorneys for Petitioner*
*Abolfazal Hosseinzadeh*

# APPENDIX

FILED
7/1/2019
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State of Washington

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

U.S. BANK NATIONAL ASSOCIATION,

Interpleader Plaintiff,

v.

BELLEVUE PARK HOMEOWNERS ASSOCIATION,

Respondent,

ABOLFAZL HOSSEINZADEH, in both his individual capacity and alleged representative capacity as director of Bellevue Park Homeowners Association,

Appellant,

and ADRIAN TEAGUE, in both his individual capacity and alleged representative capacity as director of Bellevue Park Homeowners Association,

Interpleader Defendant.

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BELLEVUE PARK HOMEOWNERS ASSOCIATION

Third Party Plaintiff,

v.

No. 77368-2-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: July 1, 2019

WELLS FARGO, N.A., )
)
Third Party Defendant. )
)

LEACH, J. — Abolfazl Hosseinzadeh appeals the superior court's summary judgment decision in favor of the Bellevue Park Homeowners Association (HOA). Hosseinzadeh challenges actions by the HOA members that vacated the board of directors and elected a new board. Because the members had authority to call a special meeting, attendees waived notice, more than a quorum attended, and Hosseinzadeh did not provide any evidence that participants failed to follow proper procedures, we affirm.

FACTS

Bellevue Park Condominium is a two-story 79-unit condominium in Bellevue, Washington. The HOA, made up of unit owners, governs its affairs. The association started on March 22, 1979, as an unincorporated association. It incorporated in 1994 under the Nonprofit Corporation Act (Nonprofit Act)[1] and the Horizontal Property Regimes Act.[2] The HOA is governed by Washington state law, restrictive covenants (declaration), articles of incorporation, and bylaws.[3] The articles provide for the election of a five-person board of directors by the HOA members. The board elects the HOA officers.

[1] Ch. 24.03 RCW.
[2] Ch. 64.32 RCW.
[3] The HOA adopted its original bylaws in 1984 and declaration in 1979.

By December 2016, the HOA had serious organizational problems. It had no president or vice-president. It had four board directors, Abolfazl Hosseinzadeh, Xiao Cai, Martin Yamamoto, and Adrian Teague, with Yamamoto, the treasurer, scheduled to leave the board in January. Its property management firm had tendered its resignation, effective January 7, 2017. The condominium buildings had suffered storm damage during a roofing repair, causing the HOA to start a lawsuit against its contractor. And one of the remaining board members, Hosseinzadeh, was involved in pending litigation with the HOA.

In December 2016, the HOA secretary, Teague, sent a letter to the members asking them to sign a request for a special meeting "per Article 2 Section 3 of the Bylaws." Teague included a form that stated the purpose of the meeting was "to remove Xion [Cai] and Ab [Hosseinzadeh] from the board and appoint new board members." He later sent out an amended form that said the purpose of the meeting was "to replace the board of directors with new board members." According to Teague, 63.5 percent of the unit owners, representing more than the required 51 votes, responded and requested a special meeting.

Yamamoto, as planned, resigned on January 3, 2017. On January 13, 2017, in response to the requests for a special meeting, Teague and other HOA members sent the membership a notice of a special meeting to take place on

January 31, 2017.[4] The described agenda included "removal of all current board members . . . nominat[ion of] new board members . . . election of new board members."

Hosseinzadeh and Cai called a board meeting for January 7, 2017. On January 7, 2017, Hosseinzadeh and Cai attended the meeting in person. Zheng Tang attended by phone and waived notice. Hosseinzadeh and Cai "appointed [Tang] to the board." Hosseinzadeh, Cai, and Tang appointed Cai as secretary, Hosseinzadeh as president, and Tang as treasurer.[5] They then made several decisions, including hiring a new certified public accountant and appointing Cai as a point of contact for the law firm they intended to use in litigation.

On January 31, 2017, 78.84 percent of the members appeared in person or by proxy at the member meeting, 69.09 percent of members voted to remove the current board directors, and 67.95 percent elected Adrian Teague, Marlene Newman, Mark Middlesworth, Jeni Gonzalez, and Dave Jensen to the board. The following day, the board elected Teague as president, Middlesworth as vice-president, Newman as treasurer, Jensen as secretary, and Gonzalez as member at large.

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[4] The notice included an agenda and a proxy for members unable to attend the meeting.

[5] "All board members appointed Xiao as sectary [sic] of the board. . . . All board members appointed Ab as president of the board. . . . All board members appointed Zheng as treasury [sic] of board."

In January 2017, U.S. Bank National Association received conflicting instructions for release of funds in the HOA accounts. As a result, it placed a hold on those funds. On February 1, 2017, Hosseinzadeh sent U.S. Bank an e-mail with a copy of the HOA's online registration with the Washington secretary of state attached. That form identified the HOA board as Hosseinzadeh, Cai, and Tang.[6] On February 2, 2017, Gonzales, acting as a member of the newly elected board, contacted U.S. Bank to gain access to the HOA accounts and to deny Hosseinzadeh access.

In March 2017, U.S. Bank filed an interpleader lawsuit asking the court to determine the respective rights of Hosseinzadeh, Teague, and the HOA to funds in the HOA's accounts held by U.S. Bank and to discharge it from all liability in connection with those funds. In April 2017, the HOA and Teague, in his representative capacity, answered the interpleader complaint and cross claimed against Hosseinzadeh for declaratory and injunctive relief. The HOA also joined Wells Fargo N.A. as a third-party defendant and asked the court to enjoin the Hosseinzadeh board from accessing the HOA's Wells Fargo accounts. In May 2017, Hosseinzadeh answered the HOA's cross claim. He also asked for declaratory relief and asserted a libel claim against Teague in his representative and personal capacity.

[6] It did not include Adrian Teague's name.

The HOA filed a summary judgment motion asking the court determine the proper membership of the board of directors and the validity of various board and membership actions. Teague filed a summary judgment motion asking the court to dismiss the claims against him. On August 15, 2017, the superior court granted summary judgment to the HOA and denied Teague's request. It held,

> [The] homeowners of the [HOA] properly called the January 31, 2017 special homeowners meeting to remove and replace all existing members of the Board of Directors;
>
> . . . [T]he [HOA's] January 31, 2017 special homeowners meeting was effective to remove existing Board directors and replace them with new Directors to create the current Board of Directors comprised of Adrian Teague, Mark Middlesworth, Marlene Newman, Dave Jensen, and Jeni Gonzalez;
>
> . . . [T]he current Board of Directors comprised of Adrian Teague, Mark Middlesworth, Marlene Newman, Dave Jensen, and Jeni Gonzalez has been the only Board with authority to act on the [HOA]'s behalf since January 31, 2017;
>
> . . . [T]he actions of those acting without authority from the current Board of Directors comprised of Adrian Teague, Mark Middlesworth, Marlene Newman, Dave Jensen, and Jeni Gonzalez after January 31, 2017 are invalid;
>
> . . . [T]he special meeting of the Board of Directors on January 7, 2017 was invalid and failed to elect Zheng Tang as a director; and
>
> . . . [T]he actions taken by the Board of Directors purportedly consisting of Zhen Tang on and after January 7, 2017 are invalid;
>
> . . . [T]he [HOA] comprised of current directors Adrian Teague, Mark Middlesworth, Marlene Newman, Dave Jensen, and Jeni Gonzalez is the only valid and duly authorized Board of Directors of the [HOA]. . . .

It later awarded attorney fees and costs to the HOA.[7]

Hosseinzadeh filed a notice of appeal. Since the summary judgment did not dispose of his claims against Teague and make the necessary findings under CR 54(b), it was not appealable as of right. Hosseinzadeh did not file a motion for discretionary review. On November 8, 2017, the superior court entered final orders disposing of the HOA's involvement in the suit and found no just reason for delay under CR 54(b). Hosseinzadeh then filed an amended notice of appeal, and this court allowed his appeal to proceed.

## STANDARD OF REVIEW

This court reviews an order on summary judgment de novo.[8] We consider all facts and reasonable inferences in the light most favorable to the nonmoving party.[9] Summary judgment is proper only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[10]

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[7] On September 19, 2017, the court issued its findings, conclusions, and order on the HOA's motion for fees and costs. On September 28, 2017, it granted in part the HOA's supplemental motion for fees and costs. On November 8, 2017, the court entered final judgment and final supplemental judgment against Hosseinzadeh.

[8] CR 56(c); Sabey v. Howard Johnson & Co., 101 Wn. App. 575, 581-82, 5 P.3d 730 (2000).

[9] CR 56(c); Sabey, 101 Wn. App. at 581-82.

[10] CR 56(c); Sabey, 101 Wn. App. at 581-82.

This court reviews a lower court's application of a statute de novo since it is a question of law.[11] Because a condominium declaration is like a deed, our review presents both questions of fact and law.[12] And the contract rules of interpretation apply to a deed.[13] We review the declarant's intent as a question of fact.[14] We review the declaration's legal consequences de novo because they are questions of law.[15]

ANALYSIS

The HOA asks us to dismiss this appeal because Hosseinzadeh did not assign error to the superior court final judgments that were appealable as a matter of right. But Hosseinzadeh included the appealable order with his amended notice of appeal. And he assigned error to the superior court's conclusions of law on summary judgment.[16] This court reviews summary judgment orders de novo and reviews conclusions of law that are assigned error "or clearly disclosed in the associated issue pertaining thereto."[17] We decline to dismiss this appeal.

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[11] Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 525-26, 243 P.3d 1283 (2010).

[12] Lake, 169 Wn.2d at 526.

[13] Pelly v. Panasyuk, 2 Wn. App. 2d 848, 864, 413 P.3d 619 (2018).

[14] Lake, 169 Wn.2d at 526.

[15] Lake, 169 Wn.2d at 526.

[16] The "uncontested findings" that the HOA contends are verities on appeal are not findings of fact. They are instead reiteration of the superior court's conclusions of law.

[17] RAP 10.3(g).

The HOA Properly Elected the Board on January 31, 2017

Hosseinzadeh challenges the validity of the actions taken by the members at the January 31, 2017, special meeting. He claims that the members did not have authority to call the special meeting, that the meeting was improperly noticed, and that it was not conducted with proper procedure.

Our goal when we interpret a condominium declaration is to identify and give effect to its intent.[18] If the declaration language is ambiguous, we look to evidence of the surrounding circumstances to identify its purpose.[19] In construing an ambiguous provision, we seek to realize the collective interest of the property owners.[20] And we "afford great deference to an organization's interpretation of its Bylaws and will invalidate an interpretation only if it is arbitrary and unreasonable."[21]

Consistent with this approach, the HOA's bylaws direct that they should be liberally construed "to effectuate the purpose of creating a uniform plan for the [condominium's] development and operation." They also direct that "the current

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[18] Riss v. Angel, 131 Wn.2d 612, 623, 934 P.2d 669 (1997). This case concerns restrictive covenants governing a residential subdivision rather than a condominium declaration. However, contract rules of construction and interpretation apply equally to both types of instruments.

[19] Riss, 131 Wn.2d at 623.

[20] Riss, 131 Wn.2d at 623-24. (quoting Lakes at Mercer Island Homeowners Ass'n v. Witrak, 61 Wn. App. 177, 181, 810 P.2d 27 (1991)).

[21] Parker Estates Homeowners Ass'n v. Pattison, 198 Wn. App. 16, 28, 391 P.3d 481 (2016).

available edition of Roberts Rules of Order, Revised," be used to resolve disputes about parliamentary procedures.

i. Authority

Hosseinzadeh asserts that the bylaws and declaration allow only the president to call a special meeting, who may call the meeting only at the request of a board majority or the written request of a majority of homeowners.

The declaration states that a "special meeting of the [HOA] may be called by the President on the vote of a majority of the Board of Directors or at the written request of the owners having fifty-one (51.0) or more votes." The bylaws state, "It shall be the duty of the President to call a special meeting of the [HOA] when so directed by resolution of a majority of the Board . . . , or upon the written request of owners or their designated representatives having fifty-one (51.0) or more votes." So both governing documents impose an affirmative duty on the president to call a special meeting when so directed by the board or owners. But neither document states that these are the exclusive ways to call a special meeting. And they do not prohibit the members from calling a special meeting.

The declaration provision discussing removal of a director states, "Any director may be removed and a successor elected for the unexpired portion of his term by a majority of the owners present at a special meeting called for such purpose." This provision should be read in the context of and consistent with the

governing statutory provisions in the Nonprofit Act. The Nonprofit Act states, in relevant part,

> Special meetings of the members may also be called by other officers or persons or number or proportion of members as provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting.[22]

Hosseinzadeh claims that this section provides for the members to call a meeting only when the bylaws confer that right. He contends that this section's language, when read in the context of the two proceeding paragraphs, requires his interpretation. But neither of the two preceding paragraphs identify who has authority to call the meeting.[23] And no provision in the articles, the bylaws, or the declaration fixes "the number or proportion of members entitled to call a meeting." So the Nonprofit Act provides that "a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting."[24] Hosseinzadeh has not cited any Washington law that precludes the majority of members from calling a meeting.[25]

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[22] RCW 24.03.075.

[23] They instead identify permissible location and timing of meetings. RCW 24.03.075.

[24] RCW 24.03.075.

[25] He cites to an unreported case in Delaware and to an Arkansas decision to support his claim. The Washington cases he includes provide that a nonprofit corporation's meetings must comply with its bylaws or the proceedings are void. But they do not shed light on whether or not the president had to call

In response to Teague's December 2016 letter, more than half of the unit owners replied in writing requesting a special homeowners meeting.[26] This comfortably exceeds the one-twentieth of votes needed to call a special meeting under the Nonprofit Act.

ii. Notice

Hosseinzadeh contends that genuine issues of material fact exist about service of the notice of the special homeowners. But he, Cai, and more than 51 percent of the other members of the HOA attended the meeting and effectively waived notice.

The bylaws state that notice of any HOA meeting "may be waived in writing at any time and is waived by actual attendance at such meeting, unless such appearance be limited expressly to object to the legality of the meeting."

Hosseinzadeh does not dispute that 78.84 percent of the members, including him, appeared in person or by proxy at the January 31, 2017, meeting. He does not contend he or any other member expressly objected to the legality of the meeting. The minutes of the meeting do not include a record of anyone

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the meeting. E. Lake Water Ass'n v. Rogers, 52 Wn. App. 425, 426, 761 P.2d 627 (1988) (citing State Bank v. Wilbur Mission Church, 44 Wn.2d 80, 91-93, 265 P.2d 821 (1954)).

[26] While the actual percentage supporting a special meeting differs, Hosseinzadeh does not suggest it was less than a majority.

objecting to the legality of the meeting, so the attendees waived notice of attendance. We need not address the propriety of notice further.

iii. Parliamentary Procedure

Hosseinzadeh asserts that the special homeowners meeting did not effectively remove and replace the board because it did not follow the applicable procedural rules and was fundamentally unfair. He claims that the president had to preside over the meeting.

The governing documents allow for action at a members meeting if there is a quorum, "the presence, in person or by proxy, of owners having fifty-one (51.0) or more votes." The bylaws also state, in the section identifying the duties of officers, that the president "shall preside at all meetings of the [HOA]." The bylaws and declaration only require that a quorum be present for the action at a meeting by majority to be valid. While the president has the duty to preside at a meeting, no provision in the bylaws or declaration makes a meeting or action taken at it invalid if a president does not preside. Hosseinzadeh has not cited any persuasive authority to support his position. We decline his invitation to void the democratic action by a super majority of the HOA members for this reason under the circumstances of this case.

Hosseinzadeh also claims that the members did not follow proper parliamentary procedure at the special meeting. Specifically, he asserts that the

record includes no evidence of a second for the motion to terminate all appointed board members and that no discussion of the motion occurred.

But Hosseinzadeh does not support his assertion with evidence. Instead, he cites to the absence in the minutes of the meeting of any record of a motion second. He also points to the statement by Cai in her declaration that "[n]o discussion was allowed." But a failure to record a motion second in the minutes does not prove no second was made. And Cai's statement is conclusory. A conclusory statement of fact is insufficient to defeat a summary judgment motion.[27] Without contrary evidence, Hosseinzadeh's argument that the meeting violated the rules of order fails.

We conclude that the superior court did not err in deciding that the January 31, 2017, meeting was effective to remove the existing board directors. The superior court did not err in deciding that the board elected on that date is the only board with authority to act on behalf of the HOA since the January 31, 2017, meeting. Finally, it did not err in concluding that actions by others acting without authority from this board after January 31, 2017, are invalid.

Hosseinzadeh also challenges the court's conclusion that the January 7, 2017, special board meeting failed to elect Tang as a director and that the Hosseinzadeh board did not have authority after that meeting. Because we

[27] CR 56(e); Overton v. Consol. Ins. Co., 145 Wn.2d 417, 430-31, 38 P.3d 322 (2002).

affirm the trial court's decision that the board was removed and replaced on January 31, 2017, we need not reach this issue.

Attorney Fees

The HOA requests attorney fees and costs as authorized by RAP 18.1 and the declaration. The declaration requires each owner to "comply strictly with the provisions of th[e] Declaration, the Bylaws, and [applicable] rules and regulations." If an owner fails to comply, it

> entitle[s] 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 failures all costs of suit may be recovered in addition to attorneys' fees.

On February 1, 2017, Hosseinzadeh represented to U.S. Bank that he, Cai, and Tang made up the board and had authority to act on the HOA's behalf. Because Hosseinzadeh violated the declaration and the bylaws by holding himself out as a person to act with authority after the HOA elected a new board on January 31, 2017, we award HOA attorney fees on appeal, subject to its compliance with RAP 18.1(d).

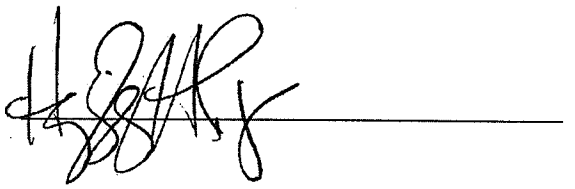
CONCLUSION

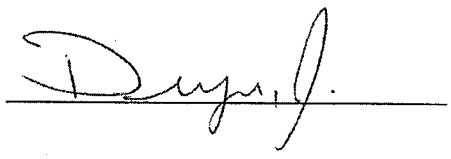
We affirm. The superior court did not err in concluding that the January 31, 2017, meeting was proper and that members at that meeting removed the existing board and elected a new board comprised of Adrian Teague, Mark

Middlesworth, Marlene Newman, Dave Jensen, and Jeni Gonzalez. Also, the superior court did not err in concluding that only this board had authority to act on behalf of the HOA after its election on January 31, 2017, and that actions by others acting without authority conferred by this board are invalid.

Leach, J.

WE CONCUR:





FILED
7/31/2019
Court of Appeals
Division I
State of Washington

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

U.S. BANK NATIONAL ASSOCIATION,

Interpleader Plaintiff,

v.

BELLEVUE PARK HOMEOWNERS ASSOCIATION,

Respondent,

ABOLFAZL HOSSEINZADEH, in both his individual capacity and alleged representative capacity as director of Bellevue Park Homeowners Association,

Appellant,

and ADRIAN TEAGUE, in both his individual capacity and alleged representative capacity as director of Bellevue Park Homeowners Association,

Interpleader Defendant.

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BELLEVUE PARK HOMEOWNERS ASSOCIATION

Third Party Plaintiff,

v.

WELLS FARGO, N.A.,

No. 77368-2-I

ORDER DENYING MOTION FOR RECONSIDERATION

Third Party Defendant. )
_____ )

The appellant, Abolfazl Hosseinzadeh, having filed a motion for reconsideration herein, and the hearing panel having considered the motion and respondent Bellevue Park Homeowners Association's response thereto and having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

Leach, J.
Judge

## CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington, that on the below date, I caused to be filed with Division One of the Court of Appeals of the State of Washington, and arranged for service via Court Eservice and/or E-Mail of true and correct copies of the foregoing **PETITION FOR REVIEW** on the following persons at the following addresses:

Andrew J. Kinstler
Debra M. Akhbari
Helsell Fetterman, LLP
1001 Fourth Ave., Suite 4200
Seattle, WA 98154
akinstler@helsell.com
dakhbari@helsell.com

Attorneys for Respondent
Bellevue Park Homeowners Association

David J. Lenci
Advocates Law Group, PLLC
2448 76th Ave., SE, Suite 100
Mercer Island, WA 98040
dlenci@advocateslg.com

Attorneys for Appellant
Abolfazal Hosseinzadeh

Igor V. Stadnik
Keesal, Young & Logan
1301 Fifth Ave., Suite 3100
Seattle, WA 98101
igor.stadnik@kyl.com

Attorneys for Third-Party Defendant
Wells Fargo Bank, N.A.

DATED at Portland, Oregon this 30th day of August, 2019.

LINDSAY HART, LLP

By: _____
Jay W. Beattie, WSBA # 37160
jbeattie@lindsayhart.com
*Attorneys for Appellant Abolfazal Hosseinzadeh*

**August 30, 2019 - 12:54 PM**

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