No. 99017-4

SUPREME COURT
OF THE STATE OF WASHINGTON

SHAMIM MOHANDESSI; JOSEPH GRACE, individually as residential owners and derivatively on behalf of 2200 RESIDENTIAL ASSOCIATION, a Washington non-profit corporation, and derivatively on behalf of 2200 CONDOMINIUM ASSOCIATION, a Washington non- profit corporation,

Petitioners,

v.

URBAN VENTURE, LLC, a Washington limited liability company; VULCAN, INC., a Washington corporation; 2200 CONDOMINIUM ASSOCIATION, a Washington non-profit corporation; 2200 RESIDENTIAL ASSOCIATION, a Washington non-profit corporation; GARY ZAK, an individual; BRIAN CROWE, an individual; BRANDON MORGAN, an individual; and JOHN DOES 1-15, individuals or entities,

Respondents.

RESIDENTIAL ASSOCIATION'S ANSWER TO PETITION FOR REVIEW

SMITH GOODFRIEND, P.S.

By: Catherine W. Smith
WSBA No. 9542
Ian C. Cairns
WSBA No. 43210

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Attorneys for Respondent
2200 Residential Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES AND REGULATIONS

OTHER AUTHORITIES

A. Introduction.

Respondent 2200 Residential Association ("the RA") governs the 2200 Residential condominium, part of the 2200 Westlake mixed-use development in South Lake Union, through a democratically-elected board of directors. The petitioners, Joseph Grace and Shamim Mohandessi, own residential units in the condominium. Consistent with well-established Washington law, the Court of Appeals correctly held that petitioners could not assert derivative claims on behalf of the RA as a means of pursuing what they could not win in five failed elections to serve on the RA Board of Directors—the right to manage the RA, including the decision whether to bring or participate in litigation and the authority to settle claims for construction defects throughout the condominium. This Court should deny review and award the RA its attorney fees incurred in preparing this answer.

B. Restatement of Issues Presented for Review.

1. The Washington Nonprofit Corporation Act, RCW ch. 24.03, "carefully delineates when actions may be brought on behalf of the corporation." *Lundberg ex rel. Orient Found. v. Coleman*, 115 Wn. App. 172, 177, 60 P.3d 595 (2002), *rev. denied*, 150 Wn.2d 1010 (2003). Did the Court of Appeals correctly hold petitioners lacked

standing to bring derivative claims seeking relief on behalf of the RA against third parties because the WNCA does not authorize such claims?

2. Both the Condominium Act, RCW 64.34.304(1)(d), and the RA declaration give the RA the authority to "[i]nstitute, defend, or intervene in litigation . . . in its own name on behalf of itself or two or more unit owners on matters affecting the condominium." Did the Court of Appeals correctly reject petitioners' contention the RA did not have the authority to execute a settlement with the other respondents on behalf of RA members?

C. Restatement of the Case.

The Respondents. 2200 Residential is a 259-unit residential condominium in South Lake Union, part of the 2200 Westlake mixed-used development constructed by Vulcan, Inc., and its affiliate Urban Ventures LLC in 2006. (CP 4476–78, 10045, 10117)[1] 2200 Residential is a "condominium within a condominium," one of four "units" within a condominium encompassing all of 2200 Westlake. (Op. 3) In addition to the "Residential Unit," there is a "Commercial Unit" (retail shops), "Hotel Unit" (the Pan Pacific

[1] This Restatement of the Case is supported by citation to the Court of Appeals Opinion, cited as "Op.," and the Clerk's Papers.

Hotel), and "Food Store Unit" (a Whole Foods grocery store). (CP 10105; Op. 3) These four units form "2200, a condominium," governed by the 2200 Condominium Association, a nonprofit corporation, the Master Association (the "MA"). (Op. 3) Each of the units of 2200 Westlake, including the RA, chooses one member to serve on the MA board of directors. (CP 10066 (§§ 7.2, 7.3.1), 10069 (§ 8.2.1), 10128 (§ 13.4.18), 10132 (§ 15.2))

Like the MA, the RA is a nonprofit corporation. (Op. 4) Pursuant to its recorded condominium declaration, the RA is administered by a five-member board of directors elected by a majority of the 259 residential unit owners. (CP 9468, 10126, 10132)

The Petitioners. Petitioner Grace first bought a residential unit at 2200 Residential in 2006, and purchased a second unit in 2015, after commencing this litigation. (Op. 6) Petitioner Mohandessi, an attorney, purchased a residential unit at 2200 Residential in 2010. (Op. 6)

Grace has been in conflict with the RA since April 2007, when he lost his first election to be an RA director. (Op. 6; CP 9468) Grace ran in three more director elections, losing each time; Mohandessi likewise lost his bid for a seat on the board of directors in 2011. (CP 13405–06, 13425, 13432)

After losing his first election in 2007, Grace stopped paying RA dues, prompting the RA to sue him. (Op. 6) In response, Grace alleged the RA breached fiduciary duties, committed fraud, trespass, conversion, and that every director election since the RA's inception was "fraudulent and invalid." (Op. 6; CP 943–35) The Court of Appeals affirmed the dismissal of all of Grace's counterclaims and defenses in an unpublished 2016 decision. *See 2200 Residential Ass'n v. Grace*, 195 Wn. App. 1011, 2016 WL 3982901 (2016).

Procedural History. Undeterred, Grace—later joined by Mohandessi—filed this lawsuit against the RA, Urban Venture, Vulcan, the MA, and directors of the MA and RA. (Op. 6–7) Petitioners alleged the division of common element expenses among the four condominium units unfairly burdened the residential unit and sought a declaratory judgment that a 2012 settlement among the RA, the MA, Urban Venture, and Vulcan resolving construction defect claims was "void and unenforceable as collusive, fraudulent, and against public policy." (Op. 4, 6–7; CP 5–11, 8619)[2] Petitioners

[2] In the settlement, the RA had released its claims in exchange for $26,000,000 from Urban Venture; $22,880,000 was dedicated to remediation and the rest ($3.12 million), was for the RA to use as it saw fit. (CP 12584)

brought their claims as individuals, as well as derivatively on behalf of the RA and "double derivatively" on behalf of the MA. (Op. 7)

In February 2016, the trial court dismissed or limited petitioners' direct claims against the RA. (CP 199–200) In September 2016, the trial court dismissed petitioners' derivative claims asserted on behalf of the RA and MA. (CP 2634) The trial court granted petitioners a continuance to perform additional discovery on their remaining claims against the RA and its directors (CP 2634–36), and then required petitioners to identify the specific budget or common element expense allocations that the RA had improperly approved. (CP 3011–16) Rather than provide the ordered discovery, petitioners voluntarily dismissed their claims. (CP 3041–42) The trial court then dismissed petitioners' claim challenging the settlement because there was "no evidence of fraud, collusion or undue influence" (RP 460) and dismissed petitioners' other remaining claims as time barred. (Op. 9; CP 8630)[3]

[3] As part of its ruling, the trial court stated that the common expense liability allocation in the MA declaration "does not comply with RCW 64.34.224(1)" because it "did not state the formula or method used to establish the allocation of common expenses." (CP 8630) The Court of Appeals recognized that, the trial court having correctly dismissed all of petitioners' claims on standing and statute of limitations grounds, it did not need to address this statement because it was dicta. (Op. 9 n.4)

Having prevailed on all of petitioners' claims, the RA sought its attorney fees under the Condominium Act, RCW 64.34.455, which provides that the "court, in an appropriate case, may award reasonable attorney's fees to the prevailing party." The trial court declined to award the RA its fees under the Condominium Act (Op. 9), and instead awarded less than 20% of the RA's incurred fees ($74,245 of the $380,862 requested) based on a prevailing party fee provision in the settlement petitioners sought to overturn. (Op. 9; CP 19416)

Appellate Court Decision. The Court of Appeals affirmed the trial court in a June 29, 2020, decision.[4] The Court of Appeals held that petitioners' claims were time barred (Op. 9–14)[5] and that they could not bring derivative claims on behalf of the RA and MA because the Washington Nonprofit Corporation Act ("WNCA"), RCW ch. 24.03, "does not authorize members to bring derivative actions on behalf of the nonprofit corporation." (Op. 15) The Court of Appeals

[4] The Court of Appeals issued its June 2020 decision after granting the respondents' motions for reconsideration of a March 2020 opinion that would have reinstated petitioners' claims only against the MA, and denying Grace and Mohandessi's motion for reconsideration. As the RA had pointed out in its motion for reconsideration, reinstating petitioners' claims against the MA would have wrongly continued to embroil the RA in litigation with the petitioners.

[5] Because this portion of the opinion did not address any claims against the RA, the RA does not address it in this answer.

also rejected petitioners' argument that because 2200 Residential unit owners did not vote on the settlement they were "not bound by [its] terms." (Op. 20)

D. Argument Why Review Should be Denied.

1. Neither the common law nor the Washington Nonprofit Corporation Act (WNCA) give petitioners standing to bring derivative claims.

Petitioners' arguments that this Court should grant review because they are entitled to assert claims on behalf of the RA and the MA misread both the common law and the WNCA, which sets forth two limited circumstances—neither of which apply here—when a member can seek relief on behalf of a nonprofit. The Court of Appeals decision is consistent with well-established Washington law and does not warrant review under RAP 13.4(b).

The WNCA, originally enacted in 1967, governs all aspects of nonprofit corporations, including incorporation, permissible purposes, and dissolution. *See, e.g.*, RCW 24.03.015, .020, .025, .220–276. Nonprofit corporations are managed by a board of directors elected or appointed according to articles of incorporation or bylaws. RCW 24.03.095, .100. In contrast to for-profit corporations, which have shareholders under the Washington Business Corporation Act ("WBCA"), RCW 23B.01.400(36),

nonprofit corporations "have one or more classes of members or may have no members." RCW 24.03.065(1).

The WBCA expressly authorizes shareholders of for-profit corporations to bring derivative actions on behalf of the corporation. RCW 23B.07.400. "In a derivative suit, a stockholder asserts rights or remedies belonging to the corporation for the corporation's benefit." *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 147, 744 P.2d 1032 (1987), *as amended* 750 P.2d 254 (1988). The WNCA, in contrast, does not grant members a general right to seek judicial relief on behalf of a nonprofit corporation. Instead, the WNCA authorizes members to seek judicial relief in only two circumstances: (1) a "representative suit" against an officer or director "for exceeding their authority," or (2) in order to seek dissolution of the nonprofit because it cannot effectively govern itself, including where directors are acting "in a manner that is illegal, oppressive, or fraudulent" or where "assets are being misapplied or wasted." RCW 24.03.040, .266(1).

The Court of Appeals rejected petitioners' argument that nonprofit members could have derivative standing under the WNCA in *Lundberg v. Coleman*, 115 Wn. App. 172, 60 P.3d 595 (2002), a decision from which this Court denied review at 150 Wn.2d 1010 (2003). Relying on the WNCA's "plain and unambiguous" language,

Lundberg held the Legislature intended to limit derivative lawsuits to the narrow circumstances enumerated in the WNCA, because it "carefully delineates when actions may be brought on behalf of the corporation." 115 Wn. App. at 177.

Following *Lundberg*, the Court of Appeals in this case correctly held that petitioners did not have standing to assert derivative claims on behalf of the RA or the MA. Petitioners' arguments to the contrary begin from the faulty premise that the common law gave nonprofit members derivative standing. But none of the cases petitioners cite for this proposition involved nonprofits. A shareholder brought suit on behalf of a for-profit corporation in *Donlin v. Murphy*, 174 Wn. App. 288, 290–91, ¶ 1, 300 P.3d 424 (2013); this Court rejected bondholders' attempt to sue through a bond trustee in *Haberman,* 109 Wn.2d at 148–49 (both Pet. 12).

As petitioners themselves argue, "[t]he common law has always recognized a *shareholder's* 'equitable right to sue derivatively' based on a proprietary interest." (Pet. 12, quoting *Haberman*, 109 Wn.2d at 149 (emphasis added)) But nonprofit members are—by definition—not "shareholders," because nonprofits are prohibited from "hav[ing] or issu[ing] shares of stock," RCW 24.03.030(1), the sole method of holding a "proprietary interest" in a corporation. *See*

RCW 23B.01.400(37) ("'Shares' means the units into which the proprietary interests in a corporation are divided.").

Petitioners ignore this fundamental distinction between for-profit and nonprofit corporations. They simply assume—without citing any authority—that the same common law principles apply to both, even though Washington law since its earliest days has distinguished between the two. *See* Laws of 1907, ch. 134, §§ 1–2 (providing for the incorporation of nonprofit corporations that "shall have no capital stock" nor "shares therein . . . issued").

Even had the common law previously authorized derivative claims on behalf of nonprofits (it did not), petitioners are wrong that "nothing in the WNCA or WBCA suggests the Legislature intended to abrogate the common law of derivative standing with respect to nonprofit corporations." (Pet. 12) As *Lundberg* explained, the plain language of the WNCA evinces a "clear" legislative intent to bar derivative suits by nonprofit members, because it provides only two instances in which a member may seek relief on behalf of nonprofit corporations. 115 Wn. App. at 177; *see also State v. Ortega*, 177 Wn.2d 116, 124, ¶ 12, 297 P.3d 57 (2013) ("to express or include one thing implies the exclusion of the other") (quoted source omitted).

Three canons of statutory construction confirm the Legislature's intent to proscribe derivative suits by nonprofit members. First, as this Court recently stressed, "[w]here certain statutory language is used in one instance, and different language in another, there is a difference in legislative intent." *Ronald Wastewater Dist. v. Olympic View Water & Sewer Dist.*, 196 Wn.2d 353, 365, ¶ 25, 474 P.3d 547, 555 (2020) (internal quotation omitted). The Legislature "explicitly grant[ed] to shareholders the right to bring derivative actions on behalf of [for-profit] corporations," but did not extend that right to members of nonprofit corporations. *Lundberg,* 115 Wn. App. at 177.

Second, when "the legislature fails to adopt [a model act] provision, our courts conclude that the legislature intended to reject the provision." *Lundberg,* 115 Wn. App. at 177–78. The Legislature has never adopted the provision of the Revised Model Nonprofit Corporation Act that "expressly grants to members . . . standing to bring derivative suits." *Lundberg*, 115 Wn. App. at 178 (citing Revised Model Nonprofit Corporation Act § 6.30 (1987)).

Third, despite amending the statute multiple times, the Legislature has never amended the WNCA to authorize derivative standing in the 18 years since *Lundberg* was decided. *See State v.*

Ervin, 169 Wn.2d 815, 826, ¶ 19, 239 P.3d 354 (2010) (Legislature's failure to amend a statute in response to judicial interpretation demonstrates "legislative acquiescence in the . . . interpretation"). There is thus, contrary to petitioners' contention, ample "evidence of a[] legislative intent to disallow derivative suits." (Pet. 15)

Finally, petitioners assert that the Legislature could not have intended to abrogate their purported common law standing because "there is no indication that the Legislature explicitly considered—and rejected—derivative provisions with respect to the WNCA" (Pet. 15), but when the Legislature first enacted the WNCA it authorized members to bring "a representative suit[] against the officers or directors of the corporation for exceeding their authority." *See* Laws of 1967, ch. 235, § 9 (now RCW 24.03.040). The Legislature thus clearly knew how to authorize "representative suits," but made a deliberate choice to limit when nonprofit members could bring them.

Petitioners now assert that RCW 24.03.040 authorizes the claims they allege here, but this argument is not only new—and thus waived—it is diametrically opposed to their argument in the Court of Appeals and trial court that their claims were *not* authorized by RCW 24.03.040. (*See* App. Br. 35: "RCW 24.03.040 concerns *only* claims or defenses challenging a corporation's 'lack of capacity or power'—

i.e., a claim of ultra vires" and "in no way forecloses derivative standing for claims *other* than ultra vires, *such as the claims here*") (emphasis in original and added); CP 1144: petitioners' argument RCW 24.03.040 provides "extremely limited remedies")

Nor can CR 23.1 authorize petitioners' claims. (Pet. 14) As petitioners concede, CR 23.1 is "not a *source* of standing." (Pet. 14) (emphasis in original) Petitioners argue CR 23.1 must apply to "all manner of entities" (Pet. 14) because it refers to derivative suits by members of unincorporated associations, but members of unincorporated associations have a property interest in the association's assets. *See Newport Yacht Basin Ass'n of Condo. Owners v. Supreme Nw., Inc.*, 168 Wn. App. 56, 74, ¶ 33, 277 P.3d 18 (2012) ("property titled in the name of an unincorporated association belongs to its members"). The WNCA instead provides "membership rights in [the] corporation in accordance with the provisions of its articles of incorporation or bylaws." RCW 24.03.005(15).

Contrary to petitioners' contention that nonprofit directors will get a "free pass" to "breach their fiduciary duties, and harm their member's proprietary interests, with impunity" if members do not have derivative standing (Pet. 11, 15), the WNCA provides multiple remedies for director misfeasance, RCW 24.03.040(2) authorizes

members to bring "a representative suit" against directors "for exceeding their authority." RCW 24.03.266(1) allows members to seek dissolution if directors are acting "in a manner that is illegal, oppressive, or fraudulent" or "corporate assets are being misapplied or wasted." RCW 24.03.103(1) also authorizes removal of directors "with or without cause" by a two-thirds vote of members (as does RCW 64.34.308(8) of the Washington Condominium Act) and RCW 24.03.1031 authorizes judicial removal of a director who has "engaged in fraudulent or dishonest conduct with respect to the corporation" if "removal is in the best interest of the corporation." These statutory provisions provide ample oversight of nonprofit directors, but in no way suggest that in addition a nonprofit member can arrogate to himself the power to act on behalf of the nonprofit by bringing a derivative suit.

Far from addressing unremedied harm, petitioners' lawsuit is a naked attempt to flout the democratic will of the other 257 RA members, none of whom have joined their unwarranted 13-year crusade. The Legislature declined to give nonprofit members derivative standing to prevent the precise result petitioners seek here—the usurpation of nonprofit governance by a tiny fraction of its members. The Court of Appeals' well-reasoned decision recognizing that meets none of the criteria for continued review in this Court.

2. The RA had the authority to execute the settlement, and petitioners were bound by the prevailing party attorney fees provision in the settlement agreement they sought to overturn.

Both the Condominium Act, RCW 64.34.304(1)(d)–(e), and the RA declaration (CP 10127) give the RA the authority to "[i]nstitute, defend, or intervene in litigation . . . in its own name on behalf of itself or two or more unit owners on matters affecting the condominium" and to "[m]ake contracts and incur liabilities." The Court of Appeals correctly held that the democratically-elected RA Board of Directors acted well within its authority when it executed a settlement that provided for an award of "all . . . fees arising from the need to take action to enforce this Agreement . . . [to] the prevailing party" (CP 19416), and that having challenged the agreement petitioners could be bound by its terms.

Petitioners argue they are not subject to the settlement because by executing the agreement the RA "unilaterally" bound RA members to "personal contractual obligations." (Pet. 16) But the RA did no such thing. The RA signed an agreement settling claims for construction defects, which was undoubtedly a "matter affecting the condominium." Petitioners do not—and cannot—argue otherwise, but claim they are not bound by the settlement because associations are powerless to settle claims outside of "*litigation or administrative*

proceedings." (Pet. 17 (emphasis in original)) But "the Washington Condominium Act does not prevent or limit the power of an owners' association from settling disputes," and thus it is "plainly wrong" to argue that a settlement executed by an association exercising its powers under RCW 64.34.304(1)(d)–(e) "cannot be enforced against the individual condominium unit owners that comprise the association." *Bellevue Pac. Ctr. Ltd. P'ship v. Bellevue Pac. Tower Condo. Owners Ass'n*, 171 Wn. App. 499, 505–06, ¶¶ 20–21, 287 P.3d 639 (2012).

As this Court has stressed, in a condominium "each owner, in exchange for the benefits of association with other owners, must give up a certain degree of freedom of choice which he [or she] might otherwise enjoy in separate, privately owned property." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 535, ¶ 35, 243 P.3d 1283 (2010) (quoted source omitted). Petitioners also overlook that associations may "[e]xercise any other powers necessary and proper for the governance and operation of the association." RCW 64.34.304(1)(t); *see also* RCW 24.03.035 (2), (8) (nonprofit's power to sue, defend, and make contracts and incur liabilities). The power to settle disputes short of litigation is undoubtedly a "necessary and proper" power given Washington's "long-standing policy favoring

settlements." *Bellevue Pac. Ctr.*, 171 Wn. App. at 507, ¶ 23. The absurd results petitioners' interpretation of RCW 64.34.304 would cause underscore that conclusion, requiring associations to waste time and resources filing a lawsuit even if they could have reasonably settled their dispute. *See Gronquist v. Dep't of Corr.*, ___ Wn.2d ___, 475 P.3d 497, 499 (2020) ("absurd results must be avoided" when interpreting a statute) (internal quotation omitted).

Petitioners' argument that allowing an association to settle claims outside of litigation denies unit owners "procedural safeguards" "such as notice and the opportunity to join or object" (Pet. 17), is a transparent reboot of their argument that individual unit owners can drive litigation choices that both the RA declaration and the Condominium Act leave to the RA Board of Directors. *See* RCW 64.34.308(1) (condominium board "shall act in all instances on behalf of the association"). The RA declaration specifies that only certain acts—not including settling claims or commencing litigation—require the RA Board of Directors to provide "notice and an opportunity to be heard" to unit owners. (*See* CP 10133; *see also* CP 10123 (requiring removal of pet), 10125 (entering into a unit), 10135 (imposing special assessments)) Petitioners assert the RA declaration required unit owners to approve any litigation (Pet. 18), but the provision they rely

on was repealed before the settlement was executed, replaced with a provision that does not require unit owner approval to commence litigation. (*See* CP 20357)[6]

Petitioners also ignore the doctrine of mutuality of remedy, which provides that when one party to a contract would be entitled to attorney fees if it prevails, the opposing party is likewise entitled to fees if it prevails. *See Mt. Hood Beverage Co. v. Constellation Brands, Inc.*, 149 Wn.2d 98, 120–22, 63 P.3d 779 (2003), *as amended* (Apr.

---

[6] The out-of-state cases cited by petitioners do not support their contention that a condominium association must obtain owner approval before it can settle claims affecting the condominium. (Pet. 17–18 & n.7) For example, *Candlewood Landing Condo. Ass'n, Inc. v. Town of New Milford*, 44 Conn. App. 107, 686 A.2d 1007, 1009 (1997), held that an association could appeal a tax assessment under Connecticut's identical version of RCW 64.34.304(1)(d) because—like the power to settle claims—the power to appeal is a necessary part of the power to litigate, and the statute "would be meaningless" without it. The other cases likewise recognize an association's power to represent its members. *See Beazer Homes Holding Corp. v. Dist. Ct.*, 128 Nev. 723, 291 P.3d 128, 134 (2012) ("common-interest community associations can bring suit . . . on a purely representative basis"); *Univ. Commons Riverside Home Owners Ass'n, Inc. v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 741 S.E.2d 613, 619–20 (2013) (Uniform Condominium Act "confers standing on the unit owners' association to assert claims on behalf of two or more unit owners"); *City of Middletown v. Meadows Assocs. of Middletown, Inc.*, 45 Conn. Supp. 261, 265, 711 A.2d 1, 3 (Super. Ct. 1998) (recognizing that association could provide a joint defense in tax lien foreclosure suit but requiring joinder of owners because tax statute only "permits liens against the record owners of the property"); *see also Accetta v. Brooks Towers Residences Condo. Ass'n, Inc.*, 2019 CO 11, ¶ 27, 434 P.3d 600, 605 (2019) ("[T]he Association can adequately represent the interests of the absent unit owners with respect to [the] claim . . . that the Declaration provision at issue is unlawful."); distinguishing *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Estates Owners Ass'n*, 214 P.3d 451 (Co. Ct. App. 2008) (cited at Pet. 17 n.7), *cert. granted in part*, 2009 WL 2714015 (2009).

30, 2003). Petitioners tried to derivatively assert rights belonging to the RA, including its right to recover attorney fees by invalidating the settlement. *See Mt. Hood*, 149 Wn.2d at 121 (party that successfully "argu[es] the contract is void is nevertheless entitled to fees pursuant to the contract"). Respondents—including the RA—therefore are entitled to a fee award. This result is not, as petitioners allege (Pet. 19), "self-dealing," but "a straightforward application of the equitable doctrine of mutuality of remedies." *Ryan & Wages, LLC v. Wages*, No. 68253-9-I, 2013 WL 1164786, at *1 (March 18, 2013) (affirming fee award against derivative plaintiffs based on failed contract claim) (unpublished case cited pursuant to GR 14.1).

It would be "extraordinarily inequitable" *not* to award a corporation the fees derivative plaintiffs forced it to incur when, as here, the plaintiffs "chose to sue on the contracts in an action on behalf of the corporation when the corporation would not bring suit itself." *Brusso v. Running Springs Country Club, Inc.*, 228 Cal. App.3d 92, 110, 278 Cal. Rptr. 758, 768 (Ct. App. 1991). That inequity is especially palpable here. The RA—like every other defendant—had "to take action to enforce [the] Agreement" (CP 19416), because petitioners tried to invalidate a meticulously negotiated, $26 million settlement that included $23 million to remediate construction

defects and another $3 million for the RA to use as it saw fit. Petitioners were subjected to a fee award for one reason—they attempted to invalidate the settlement against the democratic will of the other 257-unit owners. They have only themselves to blame for being subjected to the settlement agreement's fee clause.

E. Conclusion and Request for Fees.

This Court should deny review and award the RA its attorney's fees incurred in answering the petition pursuant to RAP 18.1(j).

Dated this 25th day of January, 2021.

SMITH GOODFRIEND, P.S.

By: */s/ Catherine W. Smith*
Catherine W. Smith
WSBA No. 9542
Ian C. Cairns
WSBA No. 43210

Attorneys for Respondent
2200 Residential Association

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 25, 2021, I arranged for service of the foregoing Residential Association's Answer to Petition for Review, to the Court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-File
Jeffrey Bilanko Carroll, Biddle, & Bilanko, PLLP 801 Second Ave., Ste 800 Seattle, WA 98104 jbilanko@cbblegal.com shosey@cbblegal.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Seth E. Chastain Claire W. Boren LEVY | VON BECK | COMSTOCK | P.S. 1200 Fifth Avenue, Suite 1850 Seattle WA 98101 sechastain@levy-law.com claire@levy-law.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail

Gregory J. Hollon Mathew J. Campos Daniel M. Weiskopf Claire Martirosian Theresa M. DeMonte McNaul Ebel Nawrot & Helgren 600 University Street, Ste 2700 Seattle, WA 98101-4151 ghollon@mcnaul.com mcampos@mcnaul.com DWeiskopf@mcnaul.com cmartirosian@mcnaul.com tdemonte@mcnaul.com lnelson@mcnaul.com kwalker@mcnaul.com tdo@mcnaul.com chickman@mcnaul.com mlock@mcnaul.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail
Hozaifa Y. Cassubhai Bailey Duquette 500 Union St Ste 800 Seattle, WA 98101-4051 hozaifa@baileyduquette.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail
John C. Dippold Stanley J. Terry Michael B. King Parker R. Keehn Jason W. Anderson Carney Badley Spellman, P.S. 701 Fifth Ave., Ste 3600 Seattle WA 98104-7010 dippoldj@carneylaw.com terry@carneylaw.com king@carneylaw.com keehn@carneylaw.com anderson@carneylaw.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail

Lawrence A. Costich Milton A. Reimers Jennifer Campbell Molly Henry Schwabe Williamson & Wyatt, P.C. 1420 Fifth Ave., Ste 3400 Seattle WA 98101 lcostich@schwabe.com mreimers@schwabe.com jcampbell@schwabe.com mhenry@schwabe.com AppellateAssistants@schwabe.com fretonio@schwabe.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Allison Nicole Peryea Stephan O. Fjelstad Leahy Fjelstad Peryea 901 5th Ave Ste 820 Seattle, WA 98164-1005 allison.peryea@leahyps.com stephanfjelstad@leahyps.com marison.zafra@leahyps.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail

DATED at Seattle, Washington this 25th day of January, 2021.

/s/ Andrienne E. Pilapil
Andrienne E. Pilapil

SMITH GOODFRIEND, PS

January 25, 2021 - 1:32 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99017-4
Appellate Court Case Title:	Shamim Mohandessi and Joseph Grace v. Urban Venture, LLC, et al.

The following documents have been uploaded:

- 990174_Answer_Reply_20210125132900SC903040_2207.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2021 01 25 RA Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- AppellateAssistants@schwabe.com
- DWeiskopf@mcnaul.com
- anderson@carneylaw.com
- aperyea@pstlawyers.com
- chickman@mcnaul.com
- claire@levy-law.com
- cmartirosian@mcnaul.com
- dippoldj@carneylaw.com
- fretonio@schwabe.com
- ghollon@mcnaul.com
- hozaifa@baileyduquette.com
- ian@washingtonappeals.com
- jbilanko@cbblegal.com
- jcampbell@schwabe.com
- jleonard@mcnaul.com
- keehn@carneylaw.com
- king@carneylaw.com
- kwalker@mcnaul.com
- lcostich@schwabe.com
- lnelson@mcnaul.com
- marison.zafra@leahyps.com
- mcampos@mcnaul.com
- mhenry@schwabe.com
- mlock@mcnaul.com
- mreimers@schwabe.com
- ron@housh.org
- sechastain@levy-law.com
- sfjelstad@pstlawyers.com
- shosey@cbblegal.com
- tdemonte@mcnaul.com
- tdo@mcnaul.com
- terry@carneylaw.com

Comments:

Sender Name: Andrienne Pilapil - Email: andrienne@washingtonappeals.com
Filing on Behalf of: Catherine Wright Smith - Email: cate@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

Address:
1619 8th Avenue N
Seattle, WA, 98109
Phone: (206) 624-0974

Note: The Filing Id is 20210125132900SC903040