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DIVISION ONE

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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CPI POOL II FUNDING, LLC, a Washington limited liability company,

Appellant,

v.

LONGWELL ARBORS, LLC, a Washington limited liability company;
LONGWELL COMPANY, a Washington limited liability company; and
STANLEY XU and NANLING CHEN, husband and wife, individually
and the marital community comprised thereof,

Respondents.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL.....	3
A. Assignments of Error.....	3
B. Statement of Issues.....	4
III. STATEMENT OF CASE.....	5
A. In 2010, Longwell Brought Financial Accounting Claims Against CPI.....	5
B. Longwell and CPI Agreed to Arbitrate all Financial Accounting Claims.....	6
C. In 2013, CPI Brought Financial Accounting Claims Against Longwell.....	8
D. As Longwell’s Claims Were Subject to the Arbitration Agreement, CPI Moved to Compel Arbitration.....	9
IV. ARGUMENT.....	11
A. Standard of Review.....	11
B. In the Presence of an Arbitration Agreement, Washington Courts Apply a “Strong Presumption” in Favor of Arbitration.....	12
C. The Arbitration Agreement Can Fairly Be Said to Cover Longwell’s Claims Here—Therefore, They Should Be Sent to Arbitration.....	14
D. In Denying CPI’s Motion, The Trial Court Improperly Interpreted the Arbitration Agreement, Requiring Reversal.....	19
E. In the Interests of Judicial Economy, This Case Should be Arbitrated.....	22
V. CONCLUSION.....	23

TABLE OF AUTHORITIES

CASES

<i>Davis v. Gen. Dynamics Land Sys.</i> , 152 Wn. App. 715, 718, 217 P.3d 1191 (2009).....	15
<i>Hanson v. Shinn</i> , 87 Wn. App. 538, 545, 943 P.2d 324 (1997).....	13
<i>Kamaya Co., Ltd. v. Am. Prop. Consultants, Ltd.</i> , 91 Wn. App. 703, 713, 959 P.2d 1140 (1998).....	11, 13, 14, 15, 16, 18
<i>King County v. Boeing Co.</i> , 18 Wn. App. 595, 602, 570 P.2d 713 (1977).....	23
<i>Local Union No. 77, Int'l Bhd. of Elec. Workers v. Pub. Util. Dist. No. 1</i> , 40 Wn. App. 61, 65, 696 P.2d 1264 (1985).....	16
<i>Meat Cutters v. Rosauer's Super Markets, Inc.</i> , 29 Wn. App. 150, 154, 627 P.2d 1330 (1981). 1, 11, 12, 15, 16, 18, 20, 21	
<i>ML Park Place v. Hedreen</i> , 71 Wn. App. 727, 739, 862 P.2d 602 (1993).....	1, 11, 12, 14, 18, 19
<i>Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.</i> , 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (U.S.N.C. 1983)....	13
<i>Munsey v. Walla Walla College</i> , 80 Wn. App. 92, 95, 906 P.2d 988 (1995).....	23
<i>Optimer Int'l, Inc. v. RP Bellevue LLC</i> , 151 Wn. App. 954, 960-961, 214 P.3d 954 (2009).....	12
<i>Perez v. Mid-Century Ins. Co.</i> , 85 Wn. App. 760, 765, 934 P.2d 731 (1997).....	22
<i>Thorgaard Plumbing & Heating Co. v. County of King</i> , 71 Wn.2d 126, 131, 426 P.2d 828 (1967).....	23
<i>Verbeek Properties, LLC v. GreenCo Env'tl., Inc.</i> , 159 Wn. App. 82, 87, 246 P.3d 205 (2010).....	13, 14, 19, 24
<i>W.A. Botting Plumbing & Heating v. Constructors-Pamco</i> , 47 Wn. App. 681, 683, 736 P.2d 1100 (1987).....	13, 22

STATUTES

RCW 7.04A.070(1).....	15
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I. INTRODUCTION

The sole issue in this appeal is arbitrability—*i.e.*, whether the trial court erred in denying the motion to compel arbitration and *interpreting* the parties’ arbitration agreement instead of transferring it—and *all issues of interpretation*—to arbitration. Under well-established Washington law and the parties’ express language in their agreement, the trial court erred and should be reversed.¹

Respondents Longwell Arbors, LLC; Longwell Company; Stanley Xu and Nanling Chen (collectively “Longwell”) and Appellant CPI Pool II Funding, LLC (“CPI”) are former business associates. From 2006 to 2011, they owned and managed the Arbors at Sunset apartment complex in Renton, Washington (“Arbors”). CP 3-4. Their business relationship deteriorated and in 2010 CPI filed suit against Longwell, alleging numerous wrongdoings: CPI’s claims concerned numerous financial accounting irregularities that occurred during Longwell’s management of Arbors. CP 175-206

In 2011, Longwell and CPI entered into a “CR 2(a) Stipulation,” in which they agreed to arbitrate all financial accounting claims arising between them. They agreed that the Hon. Terry Lukens (Ret.) at JAMS in

¹ See *e.g.*, *Meat Cutters v. Rosauer’s Super Markets, Inc.*, 29 Wn. App. 150, 154, 627 P.2d 1330 (1981); *ML Park Place v. Hedreen*, 71 Wn. App. 727, 739, 862 P.2d 602 (1993).

Seattle, Washington would serve as the Arbitrator. CP 208-212.

Additionally, *and importantly*, Longwell and CPI expressly agreed that any disputes regarding interpretation of the agreement (the CR 2(a) Stipulation) would be decided by the Hon. Terry Lukens in arbitration, not in Court. CP 211 at Paragraph 8.

CPI and Longwell arbitrated the claims before the Hon. Terry Lukens (Ret.). He found in favor of CPI and issued a Final Award against Longwell in excess of \$300,000. CP 214-216. Longwell has not paid the judgment and it remains outstanding as of the date of this appeal. CP 242.²

Two years later, on September 2013, Longwell filed new claims against CPI in King County Superior Court—these are the claims directly at issue in this appeal. This was the second litigation between the parties (whose business relationship had long since ended). CP 1-146. In this second litigation, Longwell alleged financial accounting irregularity claims *against CPI*. Longwell argued that *CPI* improperly inflated expenses, engaged in self-dealing, improper spending and accounting, and improperly manipulated net cash flow and/or net capital proceeds during its management of Arbors. *Id.*

In response to Longwell's litigation, CPI filed a motion to compel arbitration and stay the case. CP 159-171. CPI explained that the

² For further description of the earlier arbitration between Longwell and CPI, *see* discussion at Page 7 herein.

arbitration clause in the CR 2(a) Stipulation mandated that the case be transferred to the Arbitrator (the Hon. Judge Lukens (Ret.)). CPI explained that first, the CR 2(a) arbitration clause reasonably covered Longwell's claims and they should therefore be transferred to the Arbitrator (the Hon. Terry Lukens at JAMS); and second, if any dispute existing regarding the scope of the arbitration clause, per the parties' agreement and under Washington law, the Arbitrator must decide the issue, not the Court. *Id.* One day after the briefing closed, the trial court denied CPI's motion to compel arbitration and CPI appealed. CP 383-385. This appeal should be granted and the trial court reversed, as the trial court erred in denying CPI's motion to compel arbitration.

II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL

A. Assignments of Error.

Appellant assigns error to the trial court's denial of its motion to compel arbitration and stay litigation because:

- a. The arbitration clause can fairly be said to cover Longwell's claims; therefore, the Court's inquiry is at an end and all issues (including the scope of the arbitration clause) should be transferred to arbitration;

- b. Under Washington law, the trial court erred by improperly interpreting the arbitration clause and determining that it did not cover Longwell's claims;
- c. Under the parties' express agreement that the Arbitrator, not the Court, is to decide issues of contract interpretation, the trial court erred by improperly interpreting the arbitration clause and determining that it did not cover Longwell's claims; and finally,
- d. Consistent with the strong presumption and public policy in favor of arbitration, and in the interests of judicial economy, this dispute should be transferred to arbitration.

B. Statement of Issues

1. Can the Court say with "positive assurance" that the arbitration clause expressly excluded Longwell's claims? If not, as a matter of well-established Washington law, the claims (including issues of interpreting the scope of the arbitration clause) should be transferred to Arbitration.

2. Did the trial court err in denying CPI's motion to compel arbitration by improperly interpreting the scope of the arbitration

agreement, instead of leaving issues of interpretation to the Arbitrator, not the Court?

III. STATEMENT OF CASE

A. In 2010, Longwell Brought Financial Accounting Claims Against CPI.

From 2006 to 2011, CPI and Longwell were involved in the Arbors at Sunset, LLC (“Arbors”) project, a large multi-unit apartment complex in Renton, Washington.³ The relationship between CP and Longwell eventually deteriorated: CPI discovered numerous financial irregularities in Arbors’ books from Longwell’s tenure as manager and on March 10, 2010, CPI filed suit against Longwell (the “2010 Litigation”). CP 175-206.

In the 2010 Litigation, CPI sought declaratory and injunctive relief plus damages against Longwell for numerous financial and accounting irregularities. *Id.* CPI alleged that Longwell had “misappropriated Company funds” and had failed to:

- “file and prepare accurate income tax returns;” CP 184 at Paragraph 37(ii);
- “prepare adequate monthly operating statements;” *id.*;

³ CPI and Longwell Arbors, LLC were members of Arbors: Longwell Company was the property management company, and Stanley Xu and his wife, Nanling Chen, owned and were members of the two Longwell entities (Longwell Arbors, LLC and Longwell Company). CP 177 at Paragraphs 10, 12.

- “provide Asset Manager with audited financial statements and tax returns;” *id.*;
- “correct known inaccuracies in the [Arbors] tax returns;” CP 188 at Paragraph 50;
- “maintain the books and records consistent with a uniform system of accounting determined by [] certified public accountants for the Company...[.]” *Id.* at Paragraph 52.

CPI also asserted numerous financial irregularities caused by Longwell: *e.g.*, “substantial and inexplicable deviation in payroll, utilities, concessions and other costs... substantial negative accounts receivable at one point.” CP 189 at Paragraph 54. While CPI’s financial accounting claims have already been adjudicated and are not *directly* at issue in this appeal, it is important to understand their nature in order to reasonably understand the parties’ arbitration agreement and its intended scope.

B. Longwell and CPI Agreed to Arbitrate All Financial Accounting Claims.

On August 3, 2011, the parties entered into a “CR 2(a) Stipulation” with a broad arbitration clause. CP 208-212. The parties agreed to transfer all financial accounting claims arising between them to arbitration before the Hon. Terry Lukens (Ret.) of JAMS; the parties provided that all financial and accounting irregularity claims:

shall be submitted to binding arbitration before the Hon. Terry Lukens (Ret.) of JAMS if they cannot be resolved between the parties. Examples of the Financial Accounting Claims are: problems in the manipulation of capital accounts; improper withdrawals or distributions; improper payments to any of the parties... capital account balances and alleged improper withdrawals.

CP 209 at Paragraph 4.

There was no time limitation to the parties' agreement to arbitrate the financial accounting claims—furthermore, it contained no express language limiting it to the 2010 Litigation only. *Id.*

CPI and Longwell agreed that all disputes regarding interpretation of the agreement (the CR 2(a) Stipulation)—including the scope of the arbitration clause—would be resolved by the Arbitrator (Hon. Terry Lukens (Ret.)), not the Court. They expressly agreed that:

[a]ny and all disputes concerning the interpretation or construction of this [agreement] and all disputes concerning the enforcement of this agreement shall be resolved by binding arbitration before the Hon. Terry Lukens (Ret.).

CP 211 at Paragraph 8.

Thereafter, the parties submitted CPI's financial accounting claims to arbitration. The Arbitrator heard the case, found in favor of CPI, and issued a Final Award against Longwell in the amount of \$317,968.63. CP

214-216. This Final Award was entered into, and confirmed by, the King County Superior Court on April 2, 2012. CP 218-224. Longwell has not paid the judgment and over \$300,000 remains outstanding to CPI as of the date of this appeal. CP 242.

C. In 2013, CPI Brought New Financial Accounting Claims Against Longwell.

On September 19, 2013, Longwell filed a new, second lawsuit against CPI in King County Superior Court (the “Current Litigation”). CP 1-146. Longwell’s allegations in the Current Litigation—like CPI’s claims in the 2010 Litigation—are substantially similar and involve the same transaction/occurrence. They concern financial accounting irregularities, similar to in the previous arbitration. *Id.* The only difference between the two lawsuits is the identity of the party asserting the claims—in the *2010 Litigation*, CPI asserted financial accounting claims against Longwell. In the *Current Litigation*, Longwell asserts financial accounting claims against *CPI*. Just as the 2010 Litigation was transferred to arbitration, the Current Litigation should likewise be transferred.

In the Current Litigation, Longwell alleges that CPI has misappropriated Company funds in its management of Arbors. Longwell alleges that CPI:

- “failed and refused to provide timely reports and other required information;” CP 6 at Paragraph 3.17;
- “repeatedly engaged in self-dealing and improper spending and accounting;” CP 5 at Paragraph 3.16;
- “artificially and improperly inflating... expenses;” *id.*;
- “minimizing or eliminating net cash flow and/or net capital proceeds;” *id.*

Longwell’s allegations mirror the financial accounting claims that were the subject of the 2010 Litigation and should likewise be transferred to the Arbitrator.

D. As Longwell’s Claims Were Subject to the Arbitration Agreement, CPI Moved to Compel Arbitration.

On October 16, 2013, CPI filed a motion to compel arbitration and stay litigation of Longwell’s claims in superior court. CP 159- 171. CPI argued that Longwell’s financial accounting claims were subject to arbitration under the arbitration clause in the parties’ CR 2(a) Stipulation. CP 167. CPI requested that the case be transferred to the Arbitrator (the Hon. Terry Lukens (Ret.)) and the trial court proceedings stayed. CP 170.

In its motion to compel, CPI explained that (1) the arbitration clause covered Longwell’s financial accounting claims and should therefore be transferred to the Arbitrator. CP 167-170. Alternatively, CPI

explained that, (2) if there was any dispute regarding the scope of the arbitration clause, the Arbitrator (*not the trial court*) is charged with interpreting the scope of the arbitration clause. *Id.* Accordingly, CPI requested that the trial court grant the motion and transfer Longwell's claims—and *any issues of interpretation of the arbitration clause*—to the Arbitrator (the Hon. Terry Lukens (Ret.)). The Arbitrator was familiar with the parties, the issues, and had decided the financial accounting claims at issue in the 2010 Litigation. *Id.* Consistent with the parties' agreement and Washington law, and in the interests of judicial economy, CPI requested that the trial court grant its motion to compel arbitration.

Briefing on CPI's motion to compel arbitration was closed on October 24, 2013. CP 225-226. The very next day, on October 25, 2013, the trial court denied CPI's motion to compel. CP 383-385. In doing so, it conducted an independent (and improper) interpretation of the scope of the arbitration clause and found that:

The CR 2A agreement in [the 2010 Litigation] did not refer "all" Financial Accounting Claims to arbitration; it only referred "the" Financial Accounting Claims between the parties to that lawsuit. It, on its face, does not cover [Longwell's] claims in this Lawsuit.

Accordingly, [CPI's] motion to compel is denied for this and other reasons set forth in [Longwell's] pleadings.

CP 384.

CPI promptly appealed the trial court denial of its motion to compel arbitration. CP 386-390.⁴

IV. ARGUMENT

A. Standard of review.

Questions of arbitrability, like all questions of law, are reviewed by the appellate court *de novo*. *Kamaya Co., Ltd. v. Am. Prop. Consultants, Ltd.*, 91 Wn. App. 703, 713, 959 P.2d 1140 (1998).

Under this Court's *de novo* review, it should grant CPI's appeal and reverse the trial court's order. *First of all*, as further described in Section IV.C below, despite the trial court's ruling to the contrary, the arbitration clause can fairly be said to cover Longwell's financial accounting claims. And, under Washington law, unless the Court can say with "positive assurance" that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute, it *must* transfer that dispute to arbitration. *See e.g., Meat Cutters*, 29 Wn. App. at 154 and *ML Park Place*, 71 Wn. App. at 739. *Secondly*, as further described in Section IV.D below, Washington law and the parties' express agreement that

⁴ Even after CPI filed its notice of appeal, Longwell threatened to continue litigation in the trial court. CPI was therefore forced to file a Motion to Stay Trial Court Proceedings in this Court. Longwell opposed CPI's motion and this Court asked for supplemental briefing, which CPI submitted. On February 2, 2014, this Court granted CPI's motion and entered the stay of the trial court proceedings during the pendency of this appeal.

“[a]ny and all disputes concerning the interpretation or construction... shall be resolved by binding arbitration before the Hon. Terry Lukens (Ret.),” dictate that the case be transferred to arbitration. CP 211 at Paragraph 8. At the very least, it should be transferred to arbitration so that CPI may properly raise its argument concerning the scope of the arbitration agreement and allow the Arbitrator, *not the Court*, to interpret the agreement and issue an opinion on the scope. This result is mandated by Washington law and the parties’ express agreement. *See, e.g., Meat Cutters*, 29 Wn. App. at 154; *ML Park Place*, 71 Wn. App. at 739; CP 211 at Paragraph 8. *Third*, as further described in Section IV.E below, the strong presumption and public policy in favor of arbitration in Washington, and the interests of judicial economy and preservation of the parties’ resources, also dictate that this case be transferred to arbitration.

B. In the Presence of an Arbitration Agreement, Washington Courts Apply a “Strong Presumption” in Favor of Arbitration.

Washington’s Uniform Arbitration Act, chapter 7.04A RCW, governs agreements to arbitrate in this state. *Optimer Int’l, Inc. v. RP Bellevue LLC*, 151 Wn. App. 954, 960-961, 214 P.3d 954 (2009). Under the statute, this Court “shall” order the parties to arbitrate unless it “finds that there is no enforceable agreement to arbitrate.” RCW 7.04A.070(1).

In determining arbitrability, Washington Courts apply a “strong presumption” in favor of arbitration. *Verbeek Properties, LLC v. GreenCo Envtl., Inc.*, 159 Wn. App. 82, 87, 246 P.3d 205 (2010). Arbitration is a “preferred means of settling disputes without litigation” in this state. *Hanson v. Shinn*, 87 Wn. App. 538, 545, 943 P.2d 324 (1997). In fact, some courts have described the presumption in favor of arbitration as “inexorable.” See *W.A. Botting Plumbing & Heating v. Constructors-Pamco*, 47 Wn. App. 681, 683, 736 P.2d 1100 (1987) (emphasis added); *Kamaya Co., Ltd.*, 91 Wn. App. at 713-17.⁵

Accordingly, if the scope of an arbitration clause is debatable or reasonably in doubt, the Court is to construe the clause in favor of arbitration. *Kamaya Co., Ltd.*, 91 Wn. App. at 714. All inferences should be drawn in favor of arbitration. *Id.* Generally, in the presence of an arbitration agreement between the parties, any dispute will be arbitrable, unless it can be said with confidence, *i.e.* with “*positive assurance*,” that the arbitration agreement cannot be interpreted to cover the dispute. *Id.*

“Courts must *indulge every presumption in favor of arbitration*, [including] the construction of the contract language itself.” *Verbeek*, 159

⁵ This strong presumption in favor of arbitration also exists under federal law. See, e.g., *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (U.S.N.C. 1983) (applying federal law, not directly applicable here) (“as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration”).

Wn. App. at 87 (emphasis added). Washington law is clear and consistent on this point—arbitration is strongly favored:

Absent an express provision excluding a particular type of dispute, *only the most forceful evidence of a purpose to exclude a claim from arbitration can prevail.*

ML Park Place, 71 Wn. App. at 739. Absent an express provision excluding a particular type of dispute, only the most forceful evidence of a purpose to exclude a claim from arbitration can prevail—*i.e.*, unless the Court can say “with positive assurance” that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute, under Washington law it *must* transfer that dispute to arbitration. *Id.*

C. The Arbitration Agreement Can Fairly Be Said to Cover Longwell’s Claims—Therefore, They Should Be Transferred to Arbitration.

In determining arbitrability of a dispute, the Court “must indulge *every presumption in favor of arbitration*, [including] the construction of the contract language itself.” *Verbeek*, 159 Wn. App. at 87 (emphasis added). When a valid and enforceable arbitration agreement exists (as it does here), if the scope of the agreement is debatable, or reasonably in doubt, the Court *must* construe the agreement in favor of arbitration.

Kamaya Co., Ltd., 91 Wn. App. at 714.

When presented with a motion to compel arbitration, the trial court's inquiry is narrow and precise—the only proper inquiry is whether the trial court can “fairly say that the parties’ arbitration agreement covers the dispute....” *Davis v. Gen. Dynamics Land Sys.*, 152 Wn. App. 715, 718, 217 P.3d 1191 (2009). If it can, the case should be transferred to arbitration. *Id.*

The trial court is to resolve any doubt concerning the scope of an arbitration agreement in favor of coverage. *Kamaya Co., Ltd.*, 91 Wn. App. at 714. Stated another way, “[i]f the dispute can fairly be said to involve an interpretation of the agreement,” the Court’s inquiry ends and even the interpretation of the arbitration agreement is left to the arbitrator. *Meat Cutters*, 29 Wn. App. at 154. As explained by the Court:

In an action to compel arbitration, the threshold question of arbitrability is for the court... The sole inquiry is whether the parties bound themselves to arbitrate the particular dispute. *If the dispute can fairly be said to involve an interpretation of the agreement, the inquiry is at an end and the proper interpretation is for the arbitrator.*

Id. (emphasis added).

A contractual dispute is arbitrable unless it can be said “with positive assurance” that the arbitration clause is not susceptible of an

interpretation that covers the asserted dispute. *Kamaya Co., Ltd.*, 91 Wn. App. at 714.

Finally, absent an express provision excluding a particular type of dispute, “only the most forceful evidence of a purpose to exclude a claim from arbitration can prevail.” *ML Park Place*, 71 Wn. App. at 739 (quoting *Local Union No. 77, Int’l Bhd. of Elec. Workers v. Pub. Util. Dist. No. 1*, 40 Wn. App. 61, 65, 696 P.2d 1264 (1985)).

With regard to Longwell’s claims here, since it can “fairly” be said that CPI and Longwell’s arbitration agreement covers the claims, the trial court erred in interpreting the agreement otherwise and denying CPI’s motion to compel arbitration. *See Meat Cutters*, 29 Wn. App. at 154. All doubts concerning the scope of the CR 2(a) Stipulation’s arbitration clause must be resolved in favor of arbitration. The Court cannot say with “positive assurance” that that the arbitration clause in the CR 2(a) Stipulation is not susceptible of an interpretation that covers the asserted dispute. *Kamaya Co., Ltd.*, 91 Wn. App. at 714. Therefore, the trial court’s denial of CPI’s motion to compel must be reversed and Longwell’s claims transferred to arbitration.

The arbitration agreement provides that financial accounting claims arising between the parties (*e.g.* disputes arising out of or relating to financial accounting and alleged improprieties) are to be resolved by

arbitration. CP 209 at Paragraph 4. The arbitration agreement includes the following examples of financial accounting claims that must be arbitrated:

- (1) “problems in the manipulation of capital accounts”;
- (2) “improper [account] withdrawals or distributions”;
- (3) “improper payments to any of the parties”;
and,
- (4) “capital account balances and alleged improper withdrawals.”

Id.

Longwell’s claims “fairly” fall within this scope: Longwell’s Complaint alleges that CPI was involved in “self-dealing,” “improper spending and accounting,” “improperly inflating [expenses],” and failing “to provide timely [financial] reports.” CP 5 at Paragraph 3.16, CP 6 at Paragraph 3.17. Longwell’s claims concern alleged problems in the manipulation of Arbors’ capital accounts, improper withdrawals/spending, and proper financial reporting practices. These are the exact same issues the parties arbitrated in the 2010 Litigation. CP 175-206.

The parties entered into an arbitration agreement to arbitrate all financial accounting claims arising between them—Longwell’s financial accounting claims alleged in the Current Litigation can “fairly” be said to be covered by that arbitration agreement. *See Meat Cutters*, 29 Wn. App.

at 154. This is not a heavy burden. The Court need not argue that the arbitration agreement covers this dispute to reverse the trial court—it need only hold that, as a matter of law, the agreement could reasonably be interpreted to encompass Longwell’s claims. All doubts are to be resolved in favor of arbitration and the trial court erred in denying CPI’s motion.

This Court should grant CPI’s appeal, reverse the trial court, and transfer Longwell’s claims to arbitration. *See Kamaya Co., Ltd.*, 91 Wn. App. at 714 (“a contractual dispute is arbitrable unless it can be said ‘with positive assurance’ that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute”); *ML Park Place*, 71 Wn. App. at 739 (“Absent an express provision excluding a particular type of dispute, only the most forceful evidence of a purpose to exclude a claim from arbitration can prevail”).

Since it can fairly be said that CPI and Longwell’s arbitration agreement covers the claims alleged here, this case should be transferred to arbitration. If Longwell still contests the scope of the arbitration agreement and contends that the claims in the Current Litigation are not covered, Longwell may request that the Arbitrator—*who is the proper decision-maker to interpret and decide the scope of the arbitration agreement*—decide the issue. Then, if the Arbitrator finds that the claims are indeed not covered by the arbitration agreement, the Arbitrator may

transfer the case back to the trial court. *Only then* will the trial court properly have jurisdiction over this dispute.

There exists no express language in the arbitration clause limiting it in time or to 2011 applying it only to the claims arising in the 2010 Litigation; indeed, there is no evidence that the arbitration clause should be so limited. “[O]nly the most forceful evidence of the parties’ intention of so limiting the arbitration clause can defeat CPI’s motion to compel.” *ML Park Place*, 71 Wn. App. at 739.

Instead, it is wholly reasonable that the parties intended that all disputes concerning financial accounting irregularities—including those alleged in the 2010 Litigation and thereafter—would be decided in arbitration, by the agreed-upon Arbitrator (Hon. Terry Lukens (Ret.)). This makes sense from a business perspective as the parties made this agreement. Arbitration is often the fastest, most efficient means of resolving business disputes. Further, it makes sense as the Arbitrator is already familiar with the background facts, issues, and parties.

Under well-established Washington law, this Court must construe every presumption in favor of arbitration, including interpretation of the arbitration agreement itself. *Verbeek*, 159 Wn. App. at 87. Accordingly, the trial court’s ruling should be reversed and Longwell’s financial

accounting claims transferred to arbitration before the Hon. Terry Lukens (Ret.) of JAMS.

D. In Denying CPI's Motion, The Trial Court Improperly Interpreted the Arbitration Agreement, Requiring Reversal.

Under Washington law, questions regarding interpretation—*i.e.*, questions on *the scope* of an arbitration clause—are to be determined in arbitration, not by the court. *Meat Cutters*, 29 Wn. App. at 154. This is particularly so when the parties have agreed to submit questions of contract interpretation to arbitration—as is the case here. See CP 211 at Paragraph 8. For example, when the parties expressly provide that interpretation is for the arbitrator, the function of the Court is “very limited” and narrowly “confined.” *Id.*

In *Meat Cutters*, a case with similar facts, the Washington Court of Appeals reversed a trial court's decision because the trial court engaged in improper interpretation of the scope of the arbitration clause. 29 Wn. App. at 160. There, a dispute arose between a union employee and his employer when the employer implemented a policy disallowing beards at work. *Id.* at 152. The union sought arbitration of the dispute under the arbitration clause in the collective bargaining agreement. *Id.* The union argued that the arbitration clause could fairly be said to cover the dispute because the collective bargaining agreement generally dictated the terms

of the employee/employer relationship. *Id.* at 153. Furthermore—just as is the case here—the agreement contained a clause indicating that any dispute “over the interpretation of this Agreement,” shall be subject to arbitration. *Id.* at 155. In spite of the parties’ clear language to the contrary, the trial court declined to transfer the dispute to arbitration. *Id.* at 152-53.

Interpreting the terms of the agreement, the trial court found that, because the agreement did not contain an express provision indicating it applied specifically to a dispute concerning appearance standards, the dispute was not subject to arbitration. *Id.* The union disagreed and appealed. *Id.* at 153.

On appeal, the union argued that the trial court had acted improperly by interpreting the scope of the arbitration clause. *Id.* The Washington Court of Appeals agreed. It held that the interpretation of whether the appearance code dispute was properly within the scope of the arbitration clause required an interpretation of the agreement. *Id.* at 157-58. Therefore, the arbitrator, not the trial court, was to decide the issue. *Id.* at 162. The Court explained:

whether the appearance code is within Rosauer’s management discretion requires interpretation of the contract. [It] requires interpretation; therefore, the dispute is subject to arbitration.

Resolution of this grievance requires an interpretation of the agreement. 'Interpretation' of the agreement was expressly made subject of arbitration.

Id. at 157 and 159. The Court transferred the dispute—including the disagreement concerning the scope of the arbitration clause—to arbitration. *Id.*

Similarly, here, the parties provided that “[a]ny and all disputes concerning the interpretation of... this Agreement... shall be resolved by binding arbitration before the Hon. Terry Lukens (Ret.)” CP 211 at Paragraph 8. Accordingly, the trial court erred in interpreting the arbitration agreement and finding that it did not cover the financial accounting claims at issue in the Current Litigation.

E. In the Interests of Judicial Economy, This Case Should Be Arbitrated.

In addition to the “inexorable presumption” in favor of arbitration under Washington law, *Botting*, 47 Wn. App. at 683, there exists “a strong public policy in Washington favoring arbitration of disputes.” *Perez v. Mid-Century Ins. Co.*, 85 Wn. App. 760, 765, 934 P.2d 731 (1997). Public policy favors arbitration because arbitration “eases court congestion, provides an expeditious method of resolving disputes and is

generally less expensive than litigation.” *Munsey v. Walla Walla College*, 80 Wn. App. 92, 95, 906 P.2d 988 (1995).

Arbitration is a contractual remedy, freely bargained for, that provides extrajudicial means for resolving disputes. *Thorgaard Plumbing & Heating Co. v. County of King*, 71 Wn.2d 126, 131, 426 P.2d 828 (1967); *King County v. Boeing Co.*, 18 Wn. App. 595, 602, 570 P.2d 713 (1977). In addition to often being the preferred method of resolving business disputes—as arbitration is generally more expeditious and less costly—public policy favors arbitration as it eases Court congestion, provides an efficient method of resolving disputes, and is generally less expensive than litigation. *Munsey v. Walla Walla College*, 80 Wn. App. 92, 94–95, 906 P.2d 988 (1995).

CPI and Longwell entered into an agreement under which they provided that all financial accounting disputes should be decided in arbitration. The Hon. Terry Lukens (Ret.) has already been engaged to this end. With regard to the 2010 Litigation, he has heard testimony and argument by the parties relating to the exact same types of claims, the same subject matter (the Arbors apartment complex), and the same business relationship at issue here. He decided the financial accounting claims in the 2010 Litigation, is familiar with the issues, facts, and the parties before the Court. Consistent with the parties’ agreement, in the

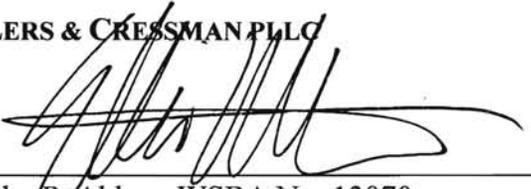
interests of judicial economy and under Washington's clear policy of favoring arbitration, the Arbitrator should also decide the claims alleged by Longwell in this case. *Verbeek*, 159 Wn. App. at 87.

V. CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's denial of CPI's motion to compel arbitration. The arbitration clause can fairly be said to cover Longwell's claims; therefore, the Court's inquiry is at an end and all issues (including any disputes regarding the scope of the arbitration clause) should be transferred to arbitration.

RESPECTFULLY SUBMITTED this 27th day of February, 2014.

AHLERS & CRESSMAN PLLC

By: 

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Funding, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused to be served in the manner noted below, a copy of the document to which this certificate is attached, on the following:

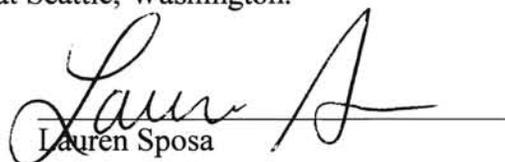
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Attorneys for Respondents

- Via Facsimile
- Via U.S. Mail
- Via Email
- Via Legal Messenger

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed February 27, 2014 at Seattle, Washington.


Lauren Sposa