

FILED
January 25, 2016
Court of Appeals
Division I
State of Washington
Case No. 72651-0-I

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

JOSEPH GRACE,

Appellant,

v.

2200 RESIDENTIAL ASSOCIATION,

Respondent.

APPELLANT GRACE'S OPENING BRIEF

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INTRODUCTION

This case is the culmination of Appellant Joseph Grace's long-term efforts to hold the developer of his condominium complex to the requirements of its contractual obligations, to prevent the developer, Urban Ventures and its subsequent and affiliated entities, from continuing to foist its operational costs onto the shoulders of the member of the homeowners' association and to make the developer adhere to the requirements of the relevant statutes.

This case involves Urban Ventures, who built a complex which includes residential condominiums and commercial units, as well as common areas that are to be used by the residents and the commercial tenants. The commercial units were owned by the developer and its affiliated entities and rented out to various business tenants. The residential units were sold to buyers, such as Mr. Grace, and the 2200 Residential Association was created in order to represent the interests of those residents. The residents were required to share the expenses for the common areas with the developer and its affiliated entities as the owners of the commercial units, and there was a 2200 Master Association created to represent these entities. However, from the beginning of the sales process and the creation of the 2200 Residential Association and the 2200 Master Association, problems have arisen from the manner in which the

developer has “stacked the deck” with the Residential Association Board from the time that the complex was first completed in order to compel the residential owners to pay more than their fair share of the fees associated with maintaining the common areas. This was designed from the outset to benefit the developer, to the detriment of the residential condominium owners and it was accomplished by way of the populating of the Residential Association Board by the developer and its related entities, including Vulcan, which occupies much of the commercial space.

Mr. Grace began complaining about the manner in which the Board was charging residential condominium owners shortly after he purchased his unit in 2007, and he has been trying to put a stop to it ever since. He has, at various times, refused to pay the amounts demanded of him by the Association as a result of his disputes about the amounts that he owed. The Association filed its first case against him in 2008, which was eventually dismissed after he paid the amounts demanded, and the court ignored his protests about the arrangements.

In 2011, the Residential Association filed another case against him and Mr. Grace again tried to get the Court to deal with many of the same issues and the continued manipulation of the Residential Association and its Board in favor of the developer and against the interests of the residential condominium owners. Mr. Grace continued to advocate for the

Residential Association Board to adhere to its duties, even though it had been packed with those who were working only for the interests of the commercial entities. The Residential Association Board continued to take actions that were in contravention of the requirements of the Association Rules and the requirements of the statute, and it filed another lawsuit in 2013 against Mr. Grace.

The two cases, the 2011 case and the 2013 case, which were consolidated into one case by the trial court. Mr. Grace filed a case in 2008 which had previously been dismissed, wherein he was trying to get the courts to consider his position as regards the activities of Urban Ventures, the developer who built the project and its conflict of interest with the interests of the residential condominium unit owners. None of the trial courts have been interested in evaluating the merits of his arguments and instead, have treated him as a nuisance, just as the developer intended, so that it may be free to use funds paid by condominium owners to cover expenses that it is contractually required to pay for the benefit of its tenants and the common areas.

These were Mr. Grace's assertions made in defense of his non-payment of the amounts demanded by the Residential Association, as well as his challenges to the process used to collect from him. Mr. Grace, representing himself most of the time, was somewhat inarticulate about his

defenses and did tend to be somewhat rambling about his allegations, but he did point out discrepancies between the requirements of the various association agreements and the requirements of the law.

STANDARD ON REVIEW

Conclusions of law, such as those related to an award of attorneys' fees and costs, are reviewed *de novo*. *Crystal China and Gold Ltd. v. Factoria Center Investments, Inc.*, 93 Wn.App. 606, 610, 969 P.2d 1093 (1999); *American Nursery Products, Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 222, 797 P.2d 477 (1990); *Martin v. Seattle*, 111 Wn.2d 727, 733, 765 P.2d 257 (1988); and *Persing, Dyckman & Toynebee, Inc. v. George Schofield Co., Inc.*, 25 Wn.App. 580, 582, 612 P.2d 2 (1980); *Skamania County v. Columbia River Gorge Commission*, 144 Wn.2d 30, 42, 26 P.3d 241 (2001). Here, the record reflects that there were genuine issues of material fact borne out by Mr. Grace's testimony regarding whether the Residential Association had the requisite legal authority to assess any amounts to Mr. Grace and others in the Residential Association based upon the problems outlined in his Declarations, especially as regards the manner in which there were allocations to the common areas in disproportionate shares to the residents. Thus, summary judgment should have been denied.

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STATEMENT OF ISSUES

1. Should summary judgment have been denied until such time as the Court was able to make a determination as to whether the Board of the Residential Association was operating in compliance with the governing documents and the requirements of the Condominium Act?

FACTUAL STATEMENT

The history of this litigation is a bit complex because it involved two lawsuits which were consolidated after the first case had been open for several years. Below is a timeline of the most pertinent dates in both cases with designations by each case number from the King County

Superior Court:

TIMELINE OF THE TWO CASES

11-2-09161-9 SEA

3/8/11	Complaint filed against for failure to pay dues
8/3/11	Answer with affirmative defenses was filed
8/23/11	An Answer and Counter-Claims were filed by Defendant.
10/26/11	A Reply to the Counter-Claims was filed by the Association.
3/26/12	Association filed a Motion for Partial Summary Judgment along with supporting documentation.
4/16/12	Defendant filed an Opposition to the MSJ along with your Grace Declaration.
4/23/12	Reply filed by Association.

4/27/12 Hearing was held on the MSJ in front of Suzanne Barnett. Order entered in favor of the Association finding Grace to be liable for the outstanding assessments in the amount of \$15,151.06, plus interest and attorneys' fees.

5/12-6/12 Motion practice to move the trial date, which was granted.

6/26/12 Motion Directing Joinder of other defendants to Counter-Claims.

7/2/12 Motion for Judgment was filed by Association.

7/11/12 Defendant's Opposition and supporting documentation were filed to the Motion Directing Joinder and to the entry of the Judgment.

7/12/12 Reply filed by the Association to both Oppositions.

7/16/12 Judgment in favor of Association entered on the dollar amount above plus interest and attorneys' fees and costs. This Order was entered by Judge Inveen.

7/16/12 Order Denying Motion to Compel Joinder, which included factual findings that:

(1) Grace failed to join 2200 Condominium and Urban Venture to the lawsuit.

(2) Grace alleges wrongdoing against these entities.

(3) Grace's allegations against various entities related to their unlawful use of the property;

(4) Other Grace allegations regarding property management and charges and keeping residents uninformed.

(5) Grace refused to pay assessments and dues after making these allegations in 2007.

However, the Court found that joinder was not necessary for Grace, but Plaintiff could properly join other entities if it complied with the Civil Rules.

This Order was also signed by Judge Inveen.

1/10/13 Affidavit of Garnishment issued to Grace

5/7/14 Satisfaction of Judgment was filed.

5/7/14 Association filed a Motion to Dismiss.

5/16/14 Defendant filed Declarations on this date but did not respond to the Motion.

5/19/14 Mr. Keane withdrew as counsel for Defendant.

5/23/14 Motion was continued.

7/16/14 Response to the Motion filed by Grace pro se.

7/30/14 Order entered denying the Motion to Dismiss by Judge North because of unresolved counter-claims.

10/19/14 Notice of Appeal filed by Grace (docketed in the 2011 case instead of the 2013 case)

12/1/14 Order Consolidating Cases for Trial under Judge Rogoff.

13-2-40725-6

12/3/13 Complaint filed by Association against Grace for more unpaid dues. CP 1-7.

1/2/14 Answer filed by Grace. CP 8.

3/17/14 Motion for Partial Summary Judgment filed. CP 11-53.

5/6/14 Satisfaction of Judgment filed but later retracted because it was filed in the wrong case. CP 54-55

5/6/14 Motion to Dismiss filed by Association. CP 56-57.

5/13/14 Answer to Complaint filed by Grace. CP 59-73.

5/13/14 Response to Motion to Dismiss/MSJ. CP 74-93.

5/16/14 Reply filed by Association. CP 94-116.

5/22/14 Recusal of Judge Inveen.

5/22/14 Reassigned to Judge Rogoff.

5/23/14 Summary judgment hearing held. CP 117.

5/27/14 Order Granting Partial Summary Judgment to Association.
CP 118-120.

6/23/14 Notice of Appeal of May 27, 2014 Order CP 123-126.

9/4/14 Motion filed by Plaintiff for Judgment. CP 128-137.

9/15/14 Motion to Continue filed by Grace. CP 140-144.

9/18/14 Appeal voluntarily dismissed by Grace. CP 145-146.

9/18/14 Response filed by Plaintiff to Motion to Continue. CP 147-
148.

10/9/14 Judgment entered by Judge Rogoff following a hearing. CP
150-152.

10/20/14 Motion for Reconsideration including Declaration of
Grace. CP 153-165.

10/29/14 Notice of Appeal filed by Grace.

11/12/14 Motion to Consolidate filed by Plaintiff. CP 166-171.

11/12/14 Order entered denying Grace's Motion for Reconsideration.
CP 220-221.

11/17/14 Motion for Summary Judgment filed by Plaintiff with
supporting documentation. CP 222-237.

12/1/14 Order Consolidating for Trial the 2013 case with the 2011
case. CP 292-293.

12/18/14 Declaration filed by Mr. Housh. CP 294-310.

12/18/14 Response filed by Grace. CP 311-329.

12/19/14 Response filed by Grace. CP 330-334.

12/19/14 Hearing on Motion for Summary Judgment held. Summary judgment granted and Order entered that date. CP 336-338.

While the timeline for the documents in an appeals case is not always relevant, it matters here because it gives a bit of a context to how this case played out. There were numerous stops and starts, and Mr. Grace satisfied some of the judgments that were entered, only to have new claims thrown at him by the Residential Association for additional amounts owed. But at no time does it ever appear that any of the judges hearing these cases ever really considered Mr. Grace's arguments that the Residential Association did not have the ability to act because of its violations of the requirements of its own governing documents and/or because of its violations of the requirements of the Condominium Act. RCW 64.34, *et seq.*

Mr. Grace dismissed his first filed appeal apparently based upon questions raised by the Court as to timeliness, payment of fees and other matters. CP 153-165. There was another hearing on October 9, 2014 which finalized the terms of the Judgment and it was after that hearing that Mr. Grace filed a new appeal on his own, and inadvertently left in the Judgment date of May 23, 2014, rather than the subsequent hearing date of October 9, 2014. *Id.* The language contained in the Judgment, which

indicated that assessments would continue to accrue *pendent lite*, just as all of the previously entered Orders and Judgments had made clear. This matters not just because the assessments would continue to accrue, but during the pendency of both cases – 2011 and 2013 – the Association continued to ask for and obtain multiple orders and judgments. The Association was in a constant stream of requesting and obtaining relief in the form of orders and judgments relating solely to the assessments owed and the attorneys’ fees and costs. *See*, Timeline created above.

A great deal of Mr. Grace’s defenses to the demand for payment of Residential Association dues related to the impropriety of the actions of the Master Association and Urban Ventures, the developer, who built the building and the management company that managed the Residential Association, as well as the commercial tenants. While Mr. Grace incorrectly attempted to pursue counter-claims related to these defenses in the 2011 case, he also raised these matters as a defense to the claims being made against him, and he should have had the ability to have a trial on those issues and his defenses instead of the granting of an order of summary judgment. CP 153-165.

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ARGUMENT

1. **Mr. Grace raised genuine issues of material fact in defense of the amounts being claimed by the Residential Association and he should have been afforded an opportunity to a trial of those issues.**

Mr. Grace did provide the Court with information, some documentation and argument about the improprieties in which he alleged the 2200 Residential Association was engaged in connection with its dues and fees assessments. While he incorrectly pointed to the language in the Homeowners' Association statute (RCW 64.38, *et seq.*) as governing the actions of the Residential Association Board, rather than the Condominium Association statute (RCW 64.34, *et seq.*, the process is essentially the same.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer.

RCW 64.34.332 (part of the Condominium Act). Mr. Grace maintained that he was not personally served with information about Board meetings, that notices were not posted at his residence, nor served on him by mail either at his residence or at his lawyer's office. CP 153-165. He also maintained that often there were no quorums when meetings were held and decisions were made by the Board, in spite of there being an explicit requirement for a quorum in the statute. *Id.* CP 59-73; 74-93; 140-144; 311-314; 340-349.

While Mr. Grace did not present the trial court with any relevant case law regarding the application of the Condominium Association Act, neither did the Plaintiff. The citation to *Panther Lake Ass'n v. Juergensen*, 76 Wn.App. 586 (1995) does confirm that property owners are not permitted to engage in "self-help" by withholding assessments, and Mr. Grace argued against the requirements of that decision, but there is really no other case law directly on point with the exception of *Bellevue Pacific Center Condo. Owners Ass'n v. Bellevue Pacific Tower Condo. Ass'n*. 124 Wn.App. 178, 100 P.3d 832 (2004).

The *Bellevue* case is one of the few cases that addresses the interplay between the requirements of a residential association and a masters association. However, the challenge in *Bellevue* related to the one partnership's ownership of more than one unit, which thereby provided

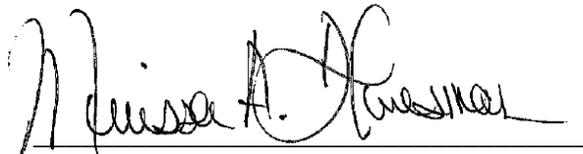
that partnership with an excessive control over all of the decisions made on behalf of the residential association. The Court in that case found that there was no prejudice to the other unit owners because the voting rights were allocated proportionately and there were no prohibitions in the governing documents nor in the statute for one person or business entity to own more than one unit. *Id.* at 180. Here, Mr. Grace made a different argument, and that was that the allocation of the voting rights were not evenly distributed among the units and that the Master Association was gaining an unfair advantage from the members of the Residential Association because the residents were being required by the Board – not the governing documents – to pay amounts that should have been paid by the commercial owners. CP 59-73; 74-93; 140-144; 311-314; 340-349. Although the Plaintiff in this case did not cite to the *Bellevue* case, it is not applicable to the analysis in which this Court should be engaged since Mr. Grace did not merely contend that one party or another owned more units whose participation in the association was equally allocated.

CONCLUSION

While Mr. Grace was confused in the manner in which he presented his arguments to the trial court, he did nevertheless raise genuine issues of material fact as to how and why the Residential Association was continuing to improperly assess amounts against him and

the other residential property owners. He should have been afforded an opportunity to try his case and present these defenses to a trier of fact.

Respectfully submitted this Monday, January 25, 2016.

A handwritten signature in black ink, appearing to read "Melissa A. Huelsman". The signature is written in a cursive style with a horizontal line underneath it.

Melissa A. Huelsman, WSBA # 30935
Attorney for Defendant Joseph Grace

CERTIFICATE OF SERVICE

I, Melissa A. Huelsman, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of the United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on January 25, 2016, I caused the foregoing document attached to this Certificate of Service plus any supporting documents, declarations and exhibits to be served upon the following individuals via the methods outlined below:

<p>Ronald G. Housh Law Offices of Ronald G. Housh, P.S. 1420 Fifth Avenue, Suite 3000 Seattle, WA 98101 ron@housh.org</p>	<p><input checked="" type="checkbox"/> Legal Messenger (next day) <input checked="" type="checkbox"/> Electronic Mail (same day) <input type="checkbox"/> Federal Express <input type="checkbox"/> Other: _____</p>
<p>Gordon & Rees Jeffrey Bilanko Steffanie Fain 701 Fifth Avenue, Suite 5100 Seattle, WA 98104-5017 jbilanko@gordonrees.com sfain@gordonrees.com</p>	<p><input checked="" type="checkbox"/> Legal Messenger (next day) <input checked="" type="checkbox"/> Electronic Mail (same day) <input type="checkbox"/> Federal Express <input type="checkbox"/> Other: _____</p>

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

Dated January 25, 2016, at Seattle, Washington.

/s/ Melissa A. Huelsman
 Melissa A. Huelsman