

NO. 72651-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

JOSEPH GRACE,

Appellant,

v.

2200 RESIDENTIAL ASSOCIATION,

Respondent.

**RESPONDENT 2200 RESIDENTIAL ASSOCIATION'S
RESPONSIVE BRIEF TO
APPELLANT'S OPENING BRIEF**

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I. INTRODUCTION

Respondent 2200 Residential Association (“Residential Association”) asks this Court to affirm the decision(s) below and to dismiss the appeal of Appellant Joseph Grace.

Mr. Grace’s opening brief is mere gobbledygook. Not only does it fail to identify any assignments of error, as required by RAP 10.3(4), but it is entirely unclear what remedy Mr. Grace seeks from this Court. Further, Mr. Grace’s three-page argument section fails to provide any relevant legal analysis or legal authority relating to potential issues on appeal. The Residential Association has suffered undue prejudice as it spent excessive amounts of time in responding to Mr. Grace’s opening brief because it was forced to review the entire record on appeal and presume which issues have been raised by Mr. Grace. For these reasons alone, Mr. Grace’s appeal should be dismissed in its entirety and attorney fees should be awarded to the Residential Association.

If the Court considers Mr. Grace’s appeal and, assuming Mr. Grace timely files a reply brief, the Residential Association reserves its right to file a surreply brief in order to properly respond to Mr. Grace’s appeal.

II. ASSIGNMENTS OF ERROR

According to his Notice of Appeal, Mr. Grace seeks review of seven orders granting motions for summary judgment and a motion to

dismiss entered by various trial courts in two separate lawsuits on separate dates. However, Mr. Grace failed to identify a single Assignment of Error in his opening brief. Rather, Mr. Grace merely provides a vague statement of issue relating to summary judgment, without properly identifying any specific summary judgment order. As briefed below, Mr. Grace's failure to properly identify any Assignments of Error should be fatal to his appeal.

If the Court considers Mr. Grace's appeal notwithstanding his failure to identify any assignments of error, then the Residential Association provides the following list of issues it presumes have been raised by this appeal. Whether some of these issues have actually been raised by this appeal is uncertain in the briefing submitted by Mr. Grace.

1. Whether Mr. Grace's appeal should be dismissed in its entirety because he failed to identify a single Assignment of Error in his opening brief, as required by Rule of Appellate Procedure ("RAP") 10.3.
2. Whether Mr. Grace's appeal of the "2012 Orders" should be dismissed because he failed 1) to provide this Court with an adequate record in the clerk's papers, pursuant to RAP 9.6; 2) to identify any assignments of error relating to the 2012 Orders, pursuant to RAP 10.3; and 3) to address any

relevant facts or authority to support an appeal of the 2012 Orders.

3. Whether the trial court properly granted the Residential Association's summary judgment motions because there were no genuine issues of material fact.
4. Whether the Residential Association's attorneys' fees for costs incurred in defending this appeal should be awarded for Mr. Grace's failure to abide by the Washington Rules of Appellate Procedure and because such fees are clearly authorized and warranted by statute and the Condominium Declaration for 2200 Residential.

III. STATEMENT OF THE CASE

Appellant Joseph Grace is the owner of a residential condominium unit at a large mixed-use commercial and residential condominium complex, 2200 Condominium, located in Seattle, Washington. CP 223. 2200 Condominium, the overall condominium complex, is made up of four units: the Residential Unit, the Commercial Unit, the Food Unit, and the Hotel Unit. *Id.* The Residential Unit consists of numerous residential units whose owners are part of Respondent 2200 Residential Association ("Residential Association"), a Washington nonprofit Corporation, which is managed by a Board of Directors. *Id.* 2200 Condominium, the overall

condominium complex, is also a Washington nonprofit Corporation, managed by a Board of Directors (referred herein as the “Master Association”). *Id.* The Residential Unit has a percentage ownership interest in the common elements of 2200 Condominium and is obligated to pay a percentage of the common expenses of 2200 Condominium. *Id.*

The Residential Association filed two separate lawsuits in 2011 and 2013 against Mr. Grace, for collection of unpaid condominium assessments owed in connection with Mr. Grace’s ownership of his residential condominium unit.¹ Mr. Grace asserted counter-claims, as well as numerous affirmative defenses, in both cases.

Through the course of the cases, the Residential Association obtained three separate judgments against Mr. Grace for unpaid assessments, attorney fees and costs, and post-judgment interest. CP 118-120; 336-338. After entry of these judgments, the only issues left for determination were the counter-claims raised by Mr. Grace. The two cases were eventually consolidated into one action and a final order was issued on December 19, 2014, dismissing all of Mr. Grace’s counter-claims with prejudice and reserving for determination the award of attorneys’ fees and the calculation of unpaid assessments owed by Mr. Grace. CP 336-338.

¹ The two lawsuits were ultimately consolidated into one action, from which Mr. Grace’s appeal stems. CP 292-293.

Since June 2014, Mr. Grace has filed three separate appeals relating to various orders issued in both cases, including the instant appeal, which was filed on March 26, 2015.

A. 2011 Lawsuit (King County Superior Court Cause No. 11-2-09161-9 SEA)²

The following is a summary of the orders and judgments issued in the 2011 lawsuit (collectively referred herein as the “2012 Orders”), as identified in Mr. Grace’s March 26, 2015, Notice of Appeal:

- On April 27, 2012, the trial court entered an “Order Granting Partial Summary Judgment Against Defendant Grace” for unpaid assessments through March 15, 2012, attorney fees and costs, and post-judgment interest.
- On July 16, 2012, the trial court entered a “Judgment in Favor of Plaintiff Against Defendant Grace,” for unpaid condominium assessments owed through March 15, 2012, attorney fees and costs, and post-judgment interest.
- On July 16, 2012, the trial court entered an “Order Denying Plaintiff’s Motion for Partial Summary Judgment Against Defendant Grace.”
- On July 30, 2014, the trial court entered an “Order Denying Plaintiff’s Motion for Dismissal.”

B. 2013 Lawsuit and Consolidated Action (King County Superior Court Cause No. 13-2-40725-6 SEA)

On December 3, 2013, the Residential Association filed a second Complaint against Mr. Grace for collection of unpaid condominium

² Mr. Grace failed to designate for the record on appeal any documents – pleadings, motions, briefs, orders, etc. – relating to the 2011 lawsuit from the trial court file, including a copy of any of the “2012 Orders.” As such, the Association will not address the record relating to the 2011 lawsuit.

assessments owed in connection with Mr. Grace's ownership of his condominium unit, pursuant to the Condominium Declaration for 2200 Residential and the Washington State Condominium Act. CP 1-7. On January 2, 2014, Mr. Grace filed an Answer to the Residential Association's Complaint denying all of the Residential Association's claims. CP 8. On May 13, 2014, Mr. Grace filed a second Answer to the Residential Association's Complaint and asserted various defenses and counter-claims in defense of his non-payment of the assessments owed in connection with his ownership of his residential unit. CP 59-73.

On December 1, 2014, the trial court consolidated both the 2011 and 2013 cases into one action. CP 292-93. The only remaining substantive issues before the trial court in the consolidated action were Mr. Grace's counter-claims.

1. Mr. Grace's Counter-claims and Defenses

Mr. Grace's allegations in defense of his nonpayment of assessments, also generously considered by the Residential Association and trial courts as "counter-claims," were vague, confusing, and ultimately unsupported by any admissible evidence.

Mr. Grace's counter-claims and defenses primarily focused on the alleged improper actions by the Master Association and the alleged fraudulent initial sale of residential units by 2200 Condominium's

developer, Urban Ventures. Notably, neither the Master Association nor Urban Ventures were party to either the 2011 or 2013 lawsuits.

Mr. Grace alleged that “the initial sale of units at [the Residential Association] was (and is) a fraud,” thus, “the governing documents [are] effectively null and void.” CP 59. Mr. Grace further alleged that the Residential Association “is stillborn and innately dysfunctional (e.g. without legitimate governing documents or a legitimate board),” and the Residential Association owners have never held “a valid, legitimate meeting.” CP 60. Mr. Grace also challenged the Residential Association’s procedures relating to board meetings, elections, budgeting, levying, and collecting assessments. CP 75-76. However, aside from his own rambling statements in response motions and occasional declarations, Mr. Grace failed to provide any admissible evidence to support his defenses and counter-claims.

2. Motions for Summary Judgment

On May 27, 2014, the trial court entered an order granting the Residential Association’s Motion for Partial Summary Judgment against Mr. Grace, finding that Mr. Grace was liable to the Residential Association for unpaid assessments through March 11, 2014.³ CP 118-

³ Mr. Grace failed to designate the Association’s Motion for Summary judgment, which was granted by the trial court on May 27, 2014.

120. Mr. Grace's counter-claims in the 2013 lawsuit against the Residential Association remained unresolved by the May 2014 Order.

On October 9, 2014, the trial court entered a judgment against Mr. Grace reflecting the terms set forth in the May 2014 Order. CP 150-52.

On November 17, 2014, the Residential Association filed a Motion for Summary Judgment for dismissal with prejudice of all of Mr. Grace's various counter-claims, the only substantive issue remaining before the court. CP 222-37. The primary basis for the Residential Association's summary judgment motion was Mr. Grace's failure to establish any admissible facts to support his counter-claims. *Id.*

On December 19, 2014, having reviewed all of the motion papers and supporting declarations and exhibits, the trial court entered its final order in the consolidated case entitled, "Order Granting Plaintiff's Motion for Summary Judgment Dismissal with Prejudice of All Claims of Defendant Joseph Grace." CP 336-38. The trial court properly dismissed all of Mr. Grace's counter-claims with prejudice in both the 2011 and 2013 cases. *Id.*

On January 20, 2015, the Residential Association moved for entry of judgment based on the December 2014 Final Order dismissing all of Mr. Grace's claims with prejudice, awarding the Residential Association

reasonable attorney fees, and awarding the Residential Association assessments due and owing and unpaid to January 2015. CP 351-60.

On February 24, 2015, the trial court entered a judgment against Mr. Grace reflecting the terms set forth in the December 2014 Order. CP 536-39.

On March 26, 2015, Mr. Grace filed the instant Notice of Appeal seeking review of the following orders and judgments in the 2013 lawsuit:

- May 27, 2014, Order - “Order Granting Partial Summary Judgment” for unpaid assessments owed through March 11, 2014, attorney fees and costs, and post-judgment interest.
- October 9, 2014, Judgment - “Judgment in Favor of Plaintiff Against Defendant Joseph Grace,” for unpaid assessments owed through March 11, 2014, and for assessments continuing to accrue *pendente lite*, attorney fees and costs, and post-judgment interest.
- February 24, 2015, Judgment - “Judgment in Favor of Plaintiff 2200 Residential Association Against Defendant Joseph Grace” for unpaid assessments through January 2015, attorney fees and costs, and post-judgment interest.

Notably, Mr. Grace failed to appeal the December 2014 Final Order.

IV. ARGUMENT

A. Mr. Grace Failed To Identify Any Assignments Of Error.

Mr. Grace's failure to identify a single Assignment of Error is fatal to his appeal. An appellant must provide a "separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error," or lose the right to challenge that part of the decision. RAP 10.3(a)(4) (requiring assignments of error); *See Nishikawa v. U.S. Eagle High, L.L.C.*, 138 Wn. App. 841, 853, 158 P.3d 1265 (2007) (court may refuse to address issue on the merits where appealing party failed to assign error to a particular trial court decision). The appellate rules allow for a little flexibility in regards to the requirement of RAP 10.3. RAP 1.2(a) provides that the appellate rules "will be liberally interpreted to promote justice and facilitate the decision of cases on the merits."

However, while "RAP 1.2(a) makes clear that a technical violation of the rules will not ordinarily bar appellate review," if the nature of the appellate challenge is not "perfectly clear," the Court may decline to consider the merits of the challenge. *State v. Olson*, 126 Wn.2d 315, 322, 893 P.2d 629 (1995) (citing *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 710, 592 P.2d 631 (1979)). The *Olson* court reasoned that:

[W]here the nature of the appeal is clear and the relevant issues are argued in the body of the brief and citations are supplied so that the court is not greatly inconvenienced and the respondent is not prejudiced, there is no compelling reason for the appellate court not to exercise its discretion to consider the merits of the case or issue.

Olson, 126 Wn.2d at 323.

Thus, dismissal of an appeal is appropriate where the appellant not only fails to identify assignments of error, but also fails to present any argument on the issue or provide any legal citation in regards to the issue because “the court is unable to properly consider the issue prior to the hearing and is given no information on which to decide the issue following the hearing.” *Olson*, 126 Wn.2d at 321. Further, in such a situation, the responding party is severely prejudiced because it is “unable to present argument on the issue or otherwise respond.” *Id.*

Here, Mr. Grace seeks review of seven orders granting motions for summary judgment and a motion to dismiss entered by various trial courts in two separate lawsuits on separate dates. However, Mr. Grace’s opening brief renders a complete response by the Residential Association virtually impossible because the alleged errors cannot be identified with complete certainty. Mr. Grace did not simply omit assignments of error. Rather, he entirely failed to adequately identify or argue any alleged errors of the trial court in his brief. Mr. Grace’s limited references to the factual record

consist of citations to the parties' pleadings, motions, and declarations in their entirety, forced the Residential Association to aimlessly review each document for potential issues. The Residential Association has spent an inordinate amount of time attempting to ascertain Mr. Grace's issues on appeal and reviewing the designated records by Mr. Grace in an effort to identify any potential assignments of error. The purpose of RAP 10.3(a)(4) is to prevent such prejudice to the responding party.

Moreover, Mr. Grace failed to provide any legal citations in support of any issues in his opening brief. The only legal citations in Mr. Grace's argument section are entirely irrelevant and unrelated to any alleged errors of the trial court. Mr. Grace even acknowledges in his opening brief that he failed to present the trial courts with any relevant case law regarding the application of the Condominium Act. Given this failure, the Residential Association is unable to present argument on the issue or otherwise respond.

The Residential Association is severely prejudiced as it does not understand and cannot fully respond to the arguments allegedly advanced by Mr. Grace in his opening brief; thus, this Court should dismiss Mr. Grace's appeal in its entirety. See *Olson*, 126 Wn.2d at 321.

B. Mr. Grace Failed To Provide An Adequate Record On Appeal.

Mr. Grace's appeal of the orders and judgments issued in the 2011 lawsuit (collectively referred herein as the "2012 Orders") should be dismissed because he failed to properly designate the necessary portions of the record of which he seeks review.

Under RAP 9.6(a), the appellant has the burden of "serv[ing] on all other parties and fil[ing] with the trial court clerk and the appellate court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court." RAP 9.6(b)(1)(d) provides that "[t]he clerk's papers shall include, at a minimum . . . any written order or ruling not attached to the notice of appeal, of which a party seeks review." (Emphasis added.)

If the party with the burden of designation fails to provide an adequate record on appeal to determine the basis for an order, the appellate court may decline to rule on the issue. *Cowlitz Stud Co. v. Clevenger*, 157 Wn.2d 569, 574, 141 P.3d 1 (2006); *State v. Scott*, 150 Wn. App. 281, 298, fn. 18, 207 P.3d 495 (2009) (finding that because the appealing party did not designate a document upon which it relied in its brief, the court would not consider either the party's allegation or the document itself).

While RAP 9.10 grants the appellate court the power to correct or supplement the record on appeal, it is not required to do so. *Heilman v. Wentworth*, 18 Wn. App. 751, 754, 571 P.2d 963 (1977) (“Although the present Rules of Appellate Procedure are more liberal for the purpose of correcting or supplementing a record, they do not impose upon this court a mandatory obligation to order preparation of the record substantiating a party's assignment of error.”). In *Heilman*, the Court determined that it would not supplement the record where the appellant failed to designate portions of the report of proceedings relevant to the issues presented and relied on by the appellant. *Id.* While the Court recognized that rules of appellate procedure are liberal for correcting or supplementing a record, the court is not obligated to do the same and it declined to search through an incomplete record in order to support appellant’s assignment of error. *Id.*

Here, Mr. Grace, as the party seeking review, had the burden of designating all necessary portions of the appellate record relevant to the issues presented and of which he seeks review. *Heilman*, 18 Wn. App. at 754. Because Mr. Grace failed to designate any of the 2012 Orders and related documents, this Court would need to aimlessly search through documents not submitted or designated by Mr. Grace.

Notably, Mr. Grace is represented by counsel, who is presumed to be familiar with the relevant rules and procedures governing appellate review in this Court. There is no sufficient reason why Mr. Grace should be excused from compliance with the relevant appellate rules and procedures.

In light of Mr. Grace's failure to provide an adequate record on appeal, the Court should decline to rule on all issues relating to the 2012 Orders.

C. The Trial Court Properly Granted The Residential Association's Summary Judgment Motions Because There Were No Genuine Issues Of Material Fact.

As Mr. Grace's opening brief fails to identify a specific summary judgment order of which he seeks review in his appeal and instead merely asserts that "summary judgment should have been denied," the Residential Association can only presume that Mr. Grace truly intends to appeal all orders identified in his Notice of Appeal.

On appeal of summary judgment, the standard of review is *de novo*, with the court engaging in the same inquiry as the trial court.

Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

Summary judgment is proper if the record before the court establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.*; CR 56(c). "A material fact

is one upon which the outcome of the litigation depends.” *Carlton v. Black*, 153 Wn.2d 152, 160, 102 P.3d 796 (2004) (citing *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963)). When determining whether a genuine issue of material fact exists, the court must construe all facts and inferences in favor of the nonmoving party. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

The moving party bears the initial burden of showing the absence of an issue of material fact. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (citing *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975)). If the moving party shows that there is an absence of evidence to support the non-moving party’s case, the burden shifts to the non-moving party to make out a prima facie case concerning an essential element of the claim. *Young*, 112 Wn.2d at 225 n.1 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986)). “[T]he nonmoving party cannot rely on the allegations made in its pleadings.” *Young*, 112 Wn.2d at 225. CR 56(e) requires that the response, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” *Id.* Summary judgment is proper if the non-moving party, after the motion is made, fails to establish any facts that would support an essential element of its claim. *Young*, 112 Wn.2d at 225.

Here, Mr. Grace fails to identify any genuine issues of material fact in any of the summary judgment motions filed in the 2011 and 2013 lawsuits. Instead, Mr. Grace's opening brief vaguely asserts that he submitted "information, some documentation and argument" to support his flimsy allegations to the trial courts, which should have been "considered" at the time. Specifically, Mr. Grace's opening brief alleges that he advised the trial court that 1) he was not personally served with information about the Residential Association's board meetings as notices were not posted at his residence nor served on him by mail either at his residence or at his lawyer's office; and 2) there were "often" no quorums when meetings were held and decisions were made by the board.

However, the record on appeal reveals that Mr. Grace never produced any admissible evidence to the trial court to support these claims. For example, Mr. Grace alleged that the Residential Association failed to provide proper notice of the 2011 Residential Association Annual Meeting to Mr. Grace in violation of the Homeowners' Association Statute (RCW 64.38.035). CP 324. Notwithstanding Mr. Grace's erroneous citation to the Homeowners' Association Statute,⁴ as well as his attendance and participation at the 2011 Residential Association Annual

⁴ The applicable statute is the Condominium Association Statute (RCW 64.34, *et seq.*). See RCW 64.38.010(11).

Meeting,⁵ Mr. Grace's allegation of the Residential Association's failure to provide notice is baseless. Mr. Grace designated his attorney's office as his address of record for such notices from the Residential Association. CP 324. Mr. Grace alleged that his attorney never received notice of the 2011 Residential Association Annual Meeting; therefore, any actions that took place at the meeting, and all actions subsequent to the meeting, are invalid. *Id.* Yet, Mr. Grace failed to provide any evidence, such as a declaration from his attorney, of the alleged notice failure.

Mr. Grace's mere allegation that he failed to receive proper notice of the 2011 Residential Association Annual Meeting is insufficient to defeat a motion for summary judgment, as he failed to provide any affidavits setting forth specific facts showing that there were genuine issues for trial. See CR 56(e); *Young*, 112 Wn.2d at 225. Evidence submitted in opposition to summary judgment must be admissible. *Bernal v. Am. Honda Motor Co.*, 87 Wn.2d 406, 412, 553 P.2d 107 (1976). Unauthenticated or hearsay evidence does not suffice. See *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 506-07, 546 P.2d 75 (1976) (statements in affidavits based on hearsay evidence carry no weight at summary judgment).

⁵ CP 278-280.

Moreover, Mr. Grace never produced any admissible evidence establishing that the Residential Association has “no power or authority to act” or that there was any irregularity whatsoever in connection with board meetings, owner meetings, budgeting, budget approval procedures and the levy and collection of assessments. In its November 17, 2014, motion for summary judgment to dismiss Mr. Grace’s counter-claims, the Residential Association provided the trial court with admissible evidence establishing that, contrary to Mr. Grace’s assertion that the Residential Association never holds lawful meetings, Mr. Grace not only actively participated in the annual meeting of members, but regularly ran for election to the Board of Directors in 2007, 2008, 2010, and 2011.⁶ CP 238-280. Further, the Residential Association provided exhibits that evidence board meetings, owner meetings, budgeting, budget approval procedures, and the levy and collection of assessments for calendar years 2007 through 2012. *Id.*

As Mr. Grace failed to establish any admissible facts in support of his various claims and failed to identify any genuine issues of material fact in any of the summary judgment motions filed in the 2011 and 2013 lawsuits, the trial courts properly granted the Residential Association’s motions and Mr. Grace’s appeal should be dismissed in its entirety.

⁶ Mr. Grace’s attendance at the board meetings is noted by his unit number: W506.

D. The Court Should Award The Residential Association's Attorneys' Fees For Costs Incurred In Defending This Appeal.

Pursuant to 1) RAP 18.9, which allows the appellate court to order a party or counsel who fails to comply with the appellate rules to pay terms or compensatory damages; 2) RAP 18.1, which allows a party to recover appellate attorney fees and expenses if allowed by statute; and 3) the Condominium Declaration for 2200 Residential, the Residential Association hereby requests its attorney fees and expenses incurred on appeal. See RAP 18.1(b).

1. The Residential Association Is Entitled To Attorney Fees And Costs Pursuant To RAP 18.9(a).

Mr. Grace has repeatedly failed to comply with the Washington Rules of Appellate Procedure, beginning with repeated delays in filing his opening brief. Mr. Grace's opening brief was originally due on December 3, 2015. On that date, Mr. Grace filed a Motion to Extend Briefing Deadline to December 10, 2015. Despite a notation ruling granting the Mr. Grace's motion to extend, Mr. Grace failed to file his opening brief until nearly two months later, on January 26, 2015, and only after a motion to dismiss his rights had been filed by this Court. Mr. Grace's delay imposed undue burdens on the Residential Association and forced it to seek its own extension of the briefing deadline.

Further, Mr. Grace's failure to abide by RAP 10.3(a)(4) and RAP 9.6 have required the Residential Association to spend an inordinate amount of time dissecting Mr. Grace's opening brief and record on appeal to ascertain possible assignments of error in order to form a response. Because Mr. Grace failed to identify any assignments of error, the Residential Association was forced to speculate as to the issues presented in this appeal. Additionally, Mr. Grace failed to properly provide an adequate record on appeal relating to the 2012 Orders.

As such, the instant appeal should be dismissed, and Mr. Grace should be ordered to pay the Residential Association's attorneys' fees and expenses incurred in defending this appeal.

2. The Residential Association Is Entitled To Attorney Fees And Costs Pursuant To RAP 18.1 And The Washington Condominium Act.

The Washington Condominium Act grants the Residential Association the right to recover reasonable attorney fees and expenses incurred if the Residential Association prevails on appeal in connection with the collection of Mr. Grace's delinquent assessments. The Washington Condominium Act provides as follows:

The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be

entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

RCW 64.34.364(14). The Act further provides:

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party.

RCW 64.34.455.

Here, it appears that Mr. Grace brings this appeal to challenge the trial courts' rulings on the Residential Association's claims for unpaid assessments under RCW 64.34.364. Thus, an award of attorney fees to the Residential Association, if it prevails on appeal, is clearly authorized and warranted by statute.

3. The Residential Association Is Entitled To Attorney Fees And Costs Pursuant To The Condominium Declaration For 2200 Residential

Pursuant to the Condominium Declaration for 2200 Residential, the Residential Association is entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment relating to the collection of delinquent assessments. See CP 36. As such, an award of costs and attorney fees to the Residential Association, if it prevails on appeal, is appropriate.

V. CONCLUSION

For all of the reasons set forth above, the Residential Association respectfully requests that this Court to affirm the trial courts' decision(s) and to dismiss the appeal of Mr. Grace. If the Court considers Mr. Grace's appeal, the Residential Association reserves its right to file a surreply brief in order to properly respond to Mr. Grace's appeal.

DATED this 30th day of March, 2016.

GORDON & REES, LLP



Jeffrey E. Bilanko, WSBA No. 38829

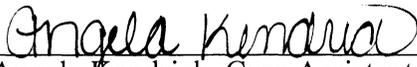
Steffanie M. Fain, WSBA No. 42973

CERTIFICATE OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on this ___ day of March, 2016, I caused a true and correct copy of the foregoing document to be served as indicated:

Melissa Ann Huelsman
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