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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY  DEPUTY

Case Number 47651-7-II

IN THE COURT OF APPEALS IN AND FOR THE  
STATE OF WASHINGTON  
DIVISION II

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NORTH OAKES MANOR CONDOMINIUM  
ASSOCIATION, Appellant

v.

GEORGE AND HEATHER RANKOS, Respondents

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON COUNTY OF PIERCE

The Honorable Elizabeth Martin,  
Presiding at the Trial Court

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RESPONDENT'S BRIEF

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ORIGINAL

Attorney for Respondents:

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## TABLE OF AUTHORITIES

### Washington Case Law

*State v. Garcia*, 179 Wn.2d 828, 846, 318 P.3d 266 (2014)

*Cho v. City of Seattle*, 185 Wn. App. 10, 15, 341 P.3d 309 (2014) review denied, 183 Wn.2d. 1007 (2015).

*Keck v. Collins*, 181 Wash. App. 67, 325 P.3d 306 (2014)

*Washburn v. City of Fed. Way*, 178 Wash. 2d 732, 310 P.3d 1275 (2013)

*In re Marriage of Wixom*, 182 Wash. App. 881, 902, 332 P.3d 1063 (2014))

*In re Marriage of Wixom*, Slip Op. 30851-1-111, 2015 \_\_\_\_ Wash. App. \_\_\_\_, (Oct. 22, 2015)

### **I. There was no error.**

The trial court did not err in dismissing the Plaintiff's case.

The trial court determined that Jeff Graham was properly removed on January 24, 2015 because there were sufficient members present, including the entire board, which was a quorum, and thus there was no requirement of notice, and most importantly, because she determined that Appellant's counsel had an actual non-waivable conflict.

This case is duplicative of a separate ongoing case under Pierce County Cause No. 14-2-06599-5, and is a waste of judicial resources.

### **II. Issues On Review**

- I. Did the trial Court err in denying Plaintiff's motion asking the Court to determine that Jeff Graham remained President of the North Oakes Manor Condominium Association after January 24, 2015? No.
- II. Did the trial Court err in finding that five out of five owners who were present and entitled to vote at a meeting of the Unit Owners, which included the Board, removed Jeff Graham from the Board of Directors on January 24, 2015? No.
- III. Did the trial court advise Mr. Mills that he could not represent the North Oakes Manor Homeowner's Association because he had been fired, and that he has a non-waivable conflict by continuing to litigate against a former client and simultaneously on behalf of an entity that has fired him? Yes.

### **III. Statement of the Case**

This is the second lawsuit arising out of Jeff Graham's failed "hostile takeover" of the North Oakes Manor Condominium Association. C.P.128. The relief requested in this complaint was the same as the relief requested in 14-2-06599-5, with the notable addition of a frivolous claim for attorney fees arising out of a District Court action. C.P. 9.

Plaintiff/Appellant asked the trial court to determine as a matter of law that Jeff Graham is the president of the North Oakes Manor Condominium Association Board. C.P. 84. Judge Martin declined to make that finding, instead finding that Graham had been validly removed on January 24, 2015. C.P. 170.

The question of whether John Stratford Mills could represent Plaintiff/Appellant North Oakes Manor Condominium Homeowner's Association after Mr. Mills was fired by the Board was the real subject of the argument before Judge Martin.

### **IV. Argument**

#### **STANDARD OF REVIEW**

## SUMMARY JUDGMENT

“A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons.” (quoting *State v. Lamb*, 175 Wn.2d 121, 127, 285 P.3d 27 (2012)).

*State v. Garcia*, 179 Wash. 2d 828, 318 P.3d 266 (2014)

The party seeking summary judgment must demonstrate the absence of a genuine issue of material fact, and the moving party is entitled to summary judgment only when there is a “complete failure of proof concerning an essential element of the nonmoving party's case [which] necessarily renders all other facts immaterial.” (quoting *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)).

*Cho v. City of Seattle*, 185 Wn. App. 10, 15, 341 P.3d 309 (2014) review denied, 183 Wn.2d. 1007 (2015).

The material fact that restrained Judge Martin from granting Appellant the summary determination he wanted was that the membership present and entitled to vote at the January 24 meeting voted to remove Mr. Graham, and also voted to fire Mr. Mills. C.P. 245, 248.

“A trial court abuses its discretion if its decision is manifestly unreasonable, is based on untenable grounds, or is made for untenable reasons. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; and it is based on untenable reasons if it is

based on an incorrect standard or the facts do not meet the requirements of the correct standard.”

*Keck v. Collins*, 181 Wash. App. 67, 325 P.3d 306 (2014)

An appellate court may affirm a trial court's disposition of a motion for summary judgment or judgment as a matter of law on any ground supported by the record.

*Washburn v. City of Fed. Way*, 178 Wash. 2d 732, 310 P.3d 1275 (2013)

## ISSUE ONE

***Did the trial court abuse its discretion when it denied Plaintiff's motion for summary judgment determination that Graham remained President of the North Oakes Manor Condominium Association Board of Directors and found instead that Graham was removed on January 24, 2015?***

Appellant's first argument is that this Court should disregard the plain language contained in RCW 64.34.308(8). This is inconsistent with the basic principles of statutory construction which require a Court to give effect to all the language, so as not to render any portion of the statute superfluous. Appellant's Opening Brief at p. 12.

Appellant then wants to re-argue what the statute says, arguing that the plain language of the statute is actually ambiguous. There is nothing ambiguous about the statute, and there was nothing improper about Judge Martin's decision.

## ISSUE TWO

*Did the trial court abuse its discretion when it found that “two thirds of the voting power of the Association were present and entitled to vote” on January 24, 2015?*

The January 24, 2015 meeting minutes demonstrate that the frustration of the membership with Mr. Graham and Mr. Mills had been the subject of meetings for several months. C.P. 260 at 15, C.P. 261 at 16. Mr. Graham had been looting the HOA bank accounts e.g. C.P. 196, C.P. 204, C.P. 260, 261 at line 23, and refusing to provide information to the Board or the membership. C.P. at 247.

There are eight units in the North Oakes Manor Condominium Association. In January of 2015, two of the units were owned by Mr. Graham, two were owned by the Rankos, one was owned by U.S. Bank, one was owned by Barbara Webster, one was owned by Sally Christensen, and one was owned by the Betournays. Opening brief at Page 4. The five persons present and entitled to vote at the January 2015 meeting were George Rankos, Heather Rankos, Barbara Webster, Sally Christensen and John Betournay. C.P. 246. The Bank was not present. Graham left. Five out of five is one hundred percent of the members present and entitled to vote, and that constitutes a unanimous vote, and a quorum.

Appellant’s next argument appears to be that Mr. Graham had no notice of this vote. The January meeting minutes state that a vote of no confidence in Mssrs. Graham and Mr. Mills was taken at the December 6, 2014 meeting. C.P. 251. Jeff Graham opined in December that matters had not been handled appropriately at the December meeting C.P. 261, lines 21-25. The Association did the meeting over, to be sure they were giving

Mr. Graham adequate notice. Graham clearly had notice of the Board and the member's intentions. C.P. 261, lines 15-19.

The meeting held January 24, 2015 was attended by six persons entitled to vote. Graham left the meeting. C.P. 247. Five of the five remaining members voted to remove Jeff Graham. As the entire membership present and entitled to vote, voted to remove Graham, he was removed by one-hundred percent of the quorum present and entitled to vote. C.P. 246.

All the members present (including the Board) voted to fire Mills. C.P. 248, 252.

#### **UNDERLYING ISSUE**

***Is Attorney Mills violating the Rules of Professional Conduct when he was fired by the North Oakes Manor Condominium Board of Directors and the Membership, and continues to assert he is representing the Association, and litigating against his former client?  
Yes.***

The rules for firing an attorney are much simpler than the bylaws regarding ousting a board member. There is no question that the Board and the Members fired Mr. Mills. C.P. 247, 248, 250, 252, 254. Even after having been fired, Mr. Mills continues to assert that he works for the Board. This Court should not condone or allow this flagrant abuse of the rules to continue.

Some conflicts are nonconsentable, meaning that the lawyer cannot properly ask for a waiver or provide representation on the basis of the client's consent. RPC 1.7 cmt. 14. RPC 1.7(b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. RPC 1.7 cmt. 23. It is axiomatic that an attorney cannot represent two clients whose interests are actually, as opposed to potentially,

conflicting. U.S. Fid. & Guar. Co. v. Louis A. Roser Co., 585 F.2d 932, 939 (8th Cir. 1978). If a lawyer accepts dual representation and the client's interests [1075] thereafter come into actual conflict, the lawyer must withdraw. In re Disciplinary Proceedings Against Carpenter, 160 Wn.2d 16, 28, 155 P.3d 937 (2007).

*In re Marriage of Wixom*, 182 Wash. App. 881, 902, 332 P.3d 1063 (2014)

In this appeal, Mr. Mills asserts that he represents the Plaintiff and Appellant North Oakes Manor Homeowner's Association. However, it is undisputed that the North Oakes Manor Homeowner's Association voted to fire Mr. Mills at the January 24, 2015 meeting. C.P. 247, 248, 250, 252, 254. This is an actual, expressly prohibited conflict.

This conflict was in fact the subject of the hearing before Judge Martin, and was the basis of her ruling.

It is incomprehensible that Appellant's counsel would brief this appeal after having been advised to withdraw by Judge Martin.

If an attorney does not heed an admonition to withdraw, he injures his profession, demeans it in the eye of the public, does a disservice to this court, and runs the risk even of subverting the justice system. *Int'l Bus. Machs. Corp. v. Levin*, 579 F.2d 271, 283 (3d Cir. 1978); *Chou-Chen Chems., Inc.*, 31 B.R. at 852. To protect judicial integrity, this court must address conflicts of interest directly when they appear. *MacArthur v. Bank of N.Y.*, 524 F. Supp. 1205, 1209-10 (S.D.N.Y. 1981); *Chou-Chen Chems., Inc.*, 31 B.R. at 852.

*In re Marriage of Wixom*, 182 Wash. App. 881, 332 P.3d 1063 (2014)

It is appropriate for the Court of Appeals to address this issue. *Wixom*, at 905.

"[A]bout half of the practice of a decent lawyer is telling would-be clients that they are damned fools and should stop." *Watson v. Maier*, 64 Wn. App. 889, 891, 827 P.2d 311 (1992) (quoting *McCandless v. Great Atl. & Pac. Tea Co.*, 697 F.2d 198,201-02 (7th Cir.1983)). Sanctions, therefore, are appropriate for "lawyers who do not know when to stop." *Id.*

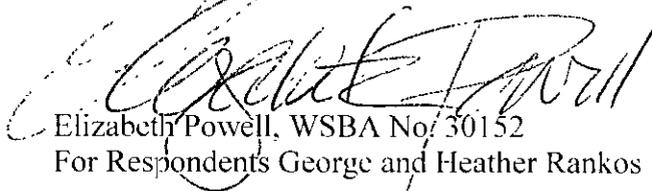
*In re Marriage of Wixom*, Slip Op. 30851-1-111, 2015 Wash. App. LEXIS 2547 (Wash. Ct. App. Oct. 22, 2015)

## V. CONCLUSION

This Court should affirm the decision of the trial court and consider sanctions for Appellant's counsel's conflict.

Respectfully submitted this 9<sup>th</sup> day of November, 2015.

*Elizabeth Powell/PS Inc*



Elizabeth Powell, WSBA No. 30152  
For Respondents George and Heather Rankos

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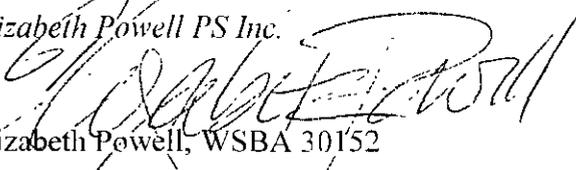
DECLARATION OF SERVICE OF  
RESPONDENT'S BRIEF

George and Heather Rankos, One Little  
Victory LLC, CEJ Properties, LLC, Over  
the Edge 1921, LLC, Barbara Webster,  
Miramar Condo LLC, Sally Christensen,  
CHUPIETAFA LLC, James L. and Judith  
Betournay,  
Defendants.

ORIGINAL

Elizabeth Powell, on oath states: I am the attorney of record for George and Heather Rankos and One Little Victory, LLC. On this day, I caused a true copy of the Respondent's brief, along with a copy of this declaration to be delivered by email and also by hand delivery to Mr. Mills at his address of record.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed at Tacoma, WA this 9<sup>th</sup> day of November, 2015.

Elizabeth Powell PS Inc.  
  
Elizabeth Powell, WSBA 30152  


DECLARATION OF SERVICE

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