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Court of Appeals
Division II
State of Washington
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No. 49038-2-II

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

SPINNAKER RIDGE COMMUNITY ASSOCIATION, INC.,
Plaintiff/Respondent

v.

CHRISTOPHER AND SUZANNE GUEST
and their marital community.
Defendants/Petitioners.

CHRISTOPHER and SUZANNE GUEST
and their marital community,
Counterclaimants and Third Party Plaintiffs/Petitioners

v.

SPINNAKER RIDGE COMMUNITY ASSOCIATION, INC.,
DAVID LANGE and KAREN LANGE; JOHN FARRINGTON and
JEAN FARRINGTON; and WALLACE "BOB" TIRMAN and
VALERIE TIRMAN,
CounterDefendant, Third Party Defendants/Respondents

**APPELLANTS SUZANNE GUEST, GUEST
MARITAL COMMUNITY AND CHRISTOPHER GUEST'S
REPLY AND/OR SUPPLEMENTAL BRIEF
WITHOUT ANY GUEST WAIVER**

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Guest Marital Community
Christopher Guest
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The Guests appealed and assign error to any and all superior court orders, rulings, decisions, orders to pay, injunctions, judgments and/or any sanctions against the Guests in this case as null, void and unenforceable ab initio. The superior court below (and in the *Guest v. Lange* matter) could not exercise any of its general trial court jurisdiction or any of its general appellate court jurisdiction in this case over the Association Complaint ab initio under the Washington State Land Use Petition Act (“LUPA”) and chapter 36.70C RCWs as a legislative exception to the superior court’s Washington Constitution, Article IV, §6 general jurisdiction under the facts and the circumstances of this case.

The Association, the Langes or any of the Third Party Defendants did not and do not assert that they did not have any standing to appeal, dispute or challenge the now final City December 6, 2011 Lange and Lot 4 LUPA permit or any of its terms, provisions, conditions, mandates or stipulations by filing and serving a compliant LUPA Petition within 21 days after the City issued the Lange permit or within 21 days after the City issued its now final, not appealable and not challengeable December 3, 2013 Guest and Lot 5 deck removal – including Lange Lot 5 deck removal – and new Guest Lot 5 construction permit.

If the Association, the Association board, the Langes and/or any Third Party Defendant believed that they had any valid and/or any

enforceable Association CC&R that trumped the Lange permit mandate to remove all portions of the April 2011 Lange constructed deck “outside of the lot lines” of SR Lot 4, 6801 Main Sail Lane, and the December 3, 2013 City Guest and Lot 5, 6833 Main Sail Lane, deck removal including Lange deck constructed Lot 5 deck removal and the Guests’ new Lot 5 deck construction permit the Association, the Langes and any Third Party Defendant had to file and serve a RCW 36.70C compliant LUPA Petition within 21 days to preserve any appeal and challenge.

The Association, the Langes and the Third Party Defendants cite to authorities in the Association brief for the proposition that the Guests had to follow Association ‘Architectural Committee’ rules and regulations notwithstanding the Langes’ binding December 2011 permit stipulation that they would remove all portions of the Lange constructed deck on SR Lot 5, a binding stipulation that became final on or before December 31, 2011, a binding stipulation that could not be altered or put ‘on hold’ by any person, by any court or by the ‘Association’, the Association board, the Langes, the City or any Spinnaker Ridge Architectural Committee. Noteworthy is the fact that the December 5, 1985 Spinnaker Ridge Articles of Incorporation (also referred to below as its “charter”) and the Spinnaker Ridge Bylaws do not include any identification and/or provision for the existence of any

Spinnaker Ridge Architectural Committee as required by the corporation RCWs. CP 1797-1802.

In any and all events, the 'Association' charter explicitly and expressly in unambiguous and clear language and terms prohibits the Association from "conducting" or "carry[ing] on" any activities not permitted "to be conducted or carried on" by organizations exempt under Section 501c7 of the Internal Revenue Code 'as now stated or as may hereinafter be amended". CP 1798. *See below.* These words of prohibition limiting and restricting the Association's power and ability to conduct and to carry on activities referring to IRC 501c7 applicable to social and recreational clubs and not permitting any activities "not permitted to be conducted or carried on" by organizations exempt under Section 501c7 is a conduct, activity and action mandate and a contract between any and all Association members including all the Association board members. Under *Hearst Communications*, no matter how sympathetic a court may be towards the Association, the association board and its members and the Lot owners, a court cannot add words to a contract that do not exist or alter a contract to benefit one party over another, any court that has jurisdiction which the Guests contend the superior court did not in this case cannot change the contract which every person that it applies to has a federal

United States constitutional right and in Washington and Washington Constitutional right that no contract obligations will be impaired.

The Association did not and does not have any jurisdiction to administer or enforce any architectural covenants or CC&Rs with regard to any privately owned SR Lot or SR Lot residence under its charter, which under the Association charter, and the Washington State corporate statutes and laws control over any inconsistent Bylaw, Declaration and/or CC&Rs if any are valid and/or enforceable. *See below, Unconstitutional City Association.*

In any and all events, the Guests as a courtesy and without any waiver did provide the Association and the Architectural Committee with information regarding their December 3, 2013 City deck Lot 5 removal and Lot 5 deck construction permit and deck plan at a February 7, 2014 Architectural Committee meeting during which the Architectural Committee did 'in fact' approve the Guests' Lot 5 deck permitted plans, although the 'Association' did not have any power, ability or any right under its charter to attempt to control or regulate the exterior of any SR Lot or any SR residence or dwelling. Articles of Incorporation, Article IV, sections 4.13 and 4.24, CP 1798; CP 5439-5440. With regard to any 'Association' power, ability, right or jurisdiction to 'grant' any easements of any kind to any SR Lot owner on any other SR Lot, Article IV, section 4.5 and

Washington RCW 64.38 statutes prohibits the Association from doing so, limiting and restricting any 'Association' power, ability, jurisdiction or right to grant any easements for public utilities or other purposes only upon, over, and/or under any of the "common areas owned by the corporation" (underline emphasis added), which in reality is none.

After purchasing Lot 5 during the pendency of the Lange and *Spinnake Ridge* litigation, the Guests discovered that they and the Guest marital community were not and are not Association members in any event. CP 1800, Article VI, paragraph two: "If more than one person and/or entity holds the record fee interest in any lot, the multi-owners shall designate the person and/or entity with whom the membership shall rest and that designated person shall be the member entitled to vote as hereinafter provided". Even if the Association Articles are valid, see below, the Guests did not designate who "the membership shall rest".

I. UNCONSTITUTIONAL CITY ASSOCIATION

In 1985, all the evidence including evidence obtained by the Guests on appeal along with authorities that the Association, the Langes and the Third Party Defendants cited in their Response briefs by incorporation and that the Langes cited in their *Guest v. Lange* Appeal No. 50138-2-II Respondent's Brief indicates that the City mandated and required that a Spinnaker Ridge private 'Association' and private corporation be created

and incorporated under a different name that was created as an unconstitutional ab initio City agent, City arm and a City “enforcer” of the City and Pierce County’s duty and obligation to control and manage the drainage, water run off and flooding related to what is now known as the Spinnaker Ridge subdivision platted real property and property that the City, the government and/or that Pierce County owned and still owns.

The City of Gig Harbor (the “City”) required and mandated as a mandatory condition of any City approval of any Spinnaker Ridge Conditional Use Permit (“CUP”), preliminary plat and any final plat application that an Association exist. As part of its conditional approval of the Spinnaker Ridge development 58 Lot subdivision CUP, preliminary plat and final plat applications, the City required as a mandatory City approval condition without any state uniform subdivision act chapter 58.17 RCW authority or any City ordinance, rule or regulation supporting such a condition that the City must review the required Association Articles of Incorporation (also referred to below as the Association “charter”), Bylaws and Declaration and CC&Rs (covenants, conditions and restrictions) that the City required before the City would approve any Spinnaker Ridge final plat.

The City demanded and reserved the right to revise the Association Articles of Incorporation (charter), ByLaws and CC&Rs with City veto

rights as a condition precedent of any City final plat approval. The City's Association charter, Bylaws and CC&Rs mandatory final plat approval condition along with other evidence discovered by the Guests on appeal which will be part of a Guest RAP 9.11(a) Motion requesting the taking of additional evidence on review indicates and provides evidence that the Association, in fact, was mandated and created by the City as an unconstitutional City controlled private association and private corporation as a City agent, arm of the City and a City "enforcer" in the name of another to shift the City and/or Pierce County's duty and obligation to control and manage Gig Harbor and/or Pierce County drainage, water run off and flooding problems onto innocent and unsuspecting SR Lot purchasers. The Association cites to *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wn. App. 491, 857 P.2d 283 (1993) opinion at Association Brief page 11. Northlake asserted in that case that an agreement that the City of Seattle had entered into with a private company and a private corporation was unconstitutional and a direct violation of Wash. Const. , Article 8, section 7, prohibiting any county, city, town or other municipal corporation from giving any property or loaning any money or credit to or in aid of any individual, association, company or corporation except in circumstances that do not apply here, or to become directly or indirectly the owner of any stock in or bonds of any association, company or corporation, including any

ownership interest in a private association or corporation. *Northlake* at 507.

The City mandate that a Spinnaker Ridge association be created and that the City had review, revision and veto power over the Association Articles of Incorporation, Bylaws and the original Declaration and CC&Rs are indicia of City ownership and control of a private association and corporation, a violation of Washington Constitution Article 8, section 7, nullifying and voiding the Association ab inito.

II. THE ASSOCIATION, LANGES AND THIRD PARTY DEFENDANTS DO NOT DISPUTE THAT THE LANGE AND GUEST PERMITS ARE FINAL LUPA PERMITS PROVIDING GUESTS WITH CONSTITUTIONAL, STATUTORY, CONTRACT AND COMMON LAW PROPERTY RIGHT TO REMOVE THE LANGE CONSTRUCTED DECK FROM LOT 5

The Association, the Langes and the Third Party Defendants (at times referred to below for convenience and judicial economy collectively as the “Association”) did not and do not dispute, deny or challenge that the December 6, 2011 ‘after the Lange April 2011 deck construction fact’ City Lange and Lot 4, 6801 Main Sail Lane, conditional deck permit was and is a final LUPA land use decision that was and is governed by the LUPA statutes. The Association did not and does not dispute, deny or challenge that the Langes and the City stipulated to the December 6, 2011 permit

terms and mandates. The December 6, 2011, Lange and Lot 4 permit required, still requires and mandated that the Langes completely remove all portions of the deck that the Langes had constructed on the Guests' Lot 5 property in April 2011. It is undisputed that no one, including the Langes, appealed that permit or any of its terms, provisions, conditions or stipulations within 21 days after the City issued the permit as required by LUPA, RCW 36.70C.040(1), (2) and (3) (and/or (4) with 3 days added if the permit was mailed) by filing and serving a compliant LUPA Petition.

Also, it is undisputed that no one appealed the December 3, 2013 final LUPA City Guest Lot 5 6833 Main Sail Lane deck removal and new deck construction permit that permitted and allowed the Guests to remove the Lange constructed deck on Lot 5 and construct a new Guest deck in that exact location provided that the SR Lot 4 and SR Lot 5 absolutely straight linear northwest to southeast lot property boundary line mapped, surveyed and certified by the City on page 3 of the January 1986 recorded final SRD plat had not been changed, altered or adjusted. It is also undisputed that no superior court or any other court has altered the SR Lot 4/SR Lot 5 shared and common lot property line. It is also undisputed that no SR Lot 4/ Lot 5 boundary line adjustment document or any final boundary line land use decision has been recorded or made.

The Association does not assert (and neither do the Langes or the Third Party Defendants) that they did not have any standing to appeal either permit. In fact, as before the Association lawsuit was an attempt to 'appeal' both permits although ostensibly to 'enforce' its invalid 2007 CC&Rs in an attempt to bootstrap them using the Guests.

As evidenced by the January 31, 1986 recorded SRD final plat, even though the plat was improperly and ineffectively altered after it was recorded at 10:20:00 a.m. that day as Pierce County Auditor Document No. 8601310176 with a handwritten reference to the later filed and recorded original 'Association' Declaration and CC&Rs, and as evidenced also by John Farrington's *Spinnaker Ridge v. Guest* October 2015 Declaration, the original 'Association' January 31, 1986 recorded Declaration and CC&Rs were part of the City's January 1986 final land use decision approving, certifying and executing the recorded SRD final plat.

The original CC&Rs, and the January 1986 recorded SRD final plat, do not provide the Association or any other entity or person with any power or any authority to permit, allow or to grant any SR Lot owner, or any Lot, any patio or deck easement or any Lot owner right to construct any patio or deck crossing over any SR Lot property lines into, onto, over, on and/or upon any other SR Lot.

Under *Hanna v. Margitan*, 193 Wash. App. 596, 373 P.3d 300 (2016), the City's 1986 final plat condition that no private easement could exist on any buildable SR Lot and that no construction of a SR Lot patio or deck could cross over any SR Lot property lot line onto another SR Lot controls.

III. THE ASSOCIATION, LANGES, AND THIRD PARTY DEFENDANT AND THEIR ATTORNEYS HAVE UNCLEAN HANDS AND CANNOT REACH THE JURISDICTION OF ANY COURT UNDER THE *J. L. COOPER & CO. v. ANCHOR SECURITIES CASE*

The Association, the Association board and its members, the Langes the Third Party Defendants and their attorneys have had "unclean hands" throughout this matter, case and litigation as evidenced at least in part by the July 21, 2011 "Second Thoughts" email authored by former Association board member and Association vice president to then Association President David Lange transmitted to the Langes and to the two Williamson spouse board members on that date, not produced to the Guests by any one until February 2, 2016 in the *Spinnaker Ridge* case, "unclean hands" in itself by the Langes, the Association and the Third Party Defendants.

Under the Washington Supreme Court stare decisis *J. L. Cooper & Co. v. Anchor Securities Co.*, 9 Wn, 2d 45 71-74, 113 P.2d 845 (1941) opinion, no Washington court has any jurisdiction to hear, entertain or rule on or provide any relief, any remedy or any recovery to the Association, the

Association board and its members, any Association member, the Langes, the Third Party Defendants or any of their attorneys. The Association, Lange and Third Party Defendants' briefs should be struck with prejudice and disregarded.

For over seven (7) years, the Association, the Langes, the Association board and its members, and other Association members in concert have persecuted, harassed, discriminated against and abused the Guests. The Guests are the innocent parties.

The Guests were innocent and unsuspecting Spinnaker Ridge Lot 5 purchasers in 2004. If any of the Spinnaker Ridge title defects, deficiencies and property problems had been disclosed to the Guests and the fact that the Spinnaker Ridge Association was a social and a recreational club, or that the Association had tried to run other Lot owners out of Spinnaker Ridge and had successfully tried to force and compel other Lot owners that the Association board did not like to move, the Guests never would have accepted what turned out to be the non-existent 'Coe Family Trust' and the non-existent 'co-trustees' offer to sell Lot 5 to the Guests

IV. NO GUEST WAIVER

This Reply and/or Supplemental Brief is filed without any Guest waiver subject to the Guests' RAP 9.11(a) Motion for direction of additional evidence on the merits of the case taken before a decision is made in this

matter and in the *Guest v. Lange* matter - both of which the Guests contend are not yet final CR 54(b) multi-party and multi-claim matters - that the Guests will be filing, the Guest RAP 12.9 Motions to Recall the January 2017 *Guest v Lange* mandate, and the February 2017 *Guest v. Lange et al.* 'Lis Pendens' mandate requesting modification of that mandate and underlying opinion. Some of the Guest Motions to Recall are and will be based on additional dispositive evidence that the Guests discovered on appeal and otherwise that the Guests will be filing, the Guests' motions to strike not only the Association and the Lange and Third Party Defendants' Responses but also the Lange Appeal No. 50138-2-II Respondent's Brief not only herein but also in separate motions to strike to be filed, and the Guests' motions to disqualify Gig Harbor attorney John Burleigh, the Smith Alling P.S. ("Smith") law firm and attorneys C. Tyler Shillito and Kelly DeLaat-Mayer, and the Wilson Smith Cochran Dickerson ("Wilson") law firm and Wilson attorneys John Fritts and "of counsel" attorney Sharon Ambrosia-Walt along with disgorgement.

The superior court had no power to alter and change the Guests RCW 7.78.070 'under color of title' Lot 5 deed or to issue any attorneys fees judgments against the Guests or issue any injunction.

Respectfully submitted on this 31st day of December, 2018.

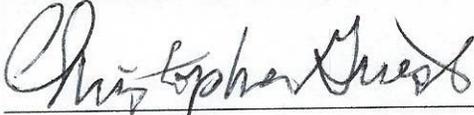
Respectfully submitted on this 31st day of December, 2018.



Suzanne Guest



Guest Marital Community



Christopher Guest

December 31, 2018 - 5:20 PM

Transmittal Information

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