

FILED
Court of Appeals
Division II
State of Washington
9/6/2018 11:07 AM

No. 51616-1-II

COURT OF APPEALS, DIV. II
OF THE STATE OF WASHINGTON

North Oakes Manor Condominium Association,
Appellant,

v.

2nd Half LLC, Jeffrey Alan Graham, Stephen Roy Dawson, and
John Stafford Mills and Julie M. Mills,
Respondents.

REPLY BRIEF OF APPELLANT

Attorney for North Oakes Manor Condominium Association:

Douglas A. Schafer (WSBA No. 8652)
Schafer Law Firm
1202 S. Tyler St.
Tacoma, WA 98401-1134
(253) 431-5156
schafer@pobox.com

TABLE OF CONTENTS

INTRODUCTION..... 1

ARGUMENT..... 3

1. The bare statutory phrase *as trustee* does not create an express trust but simply recognizes a party’s duty of loyalty to others, as a resulting or constructive trust.. . . . 3

2. Mills wrongly asserts that following the termination of the condominium the Association neither possessed nor managed any assets... 8

3. Mills wrongly asserts that the Termination Agreement requires that any action regarding the trust assets (or corporate assets) be authorized by 80% vote of the owners.... . 12

4. In the Response Brief, Mills makes a number of false or wholly unsupported factual assertions.. . . . 16

CONCLUSION. 18

TABLE OF AUTHORITIES

Cases

Diel v. Beekman, 7 Wn.App. 139, 499 P.2d 37 (1972)..... 7

Greenspan v. LADT, LLC, 191 Cal.App.4th 486, 512, 121 Cal.Rptr.3d 118 (2010)..... 11

In re Heilman, 241 B.R. 137 (Bkrcty.D.Md. 1999)..... 7

In re Holmes, 117 B.R. 848 (Bkrcty.D.Md. 1990)..... 6

Statutes

RCW 11.106.010..... 8

RCW 11.98.009.....	8
RCW 24.03.095.....	13
RCW 24.03.220.....	13
RCW 24.03.225.....	14
RCW 24.03.230.....	14
RCW 24.03.300.....	15
RCW 25.04.210(1).....	4
RCW 25.05.165(2).....	4
RCW 25.10.441(1).....	4
RCW 25.15.038(2).....	5
RCW 64.34.268.....	1
RCW 64.34.300.....	2, 10, 13
RCW 64.34.308.....	13
RCW 64.34.364(12).....	17

Other Authorities

Nat’l Conf. of Comm. on Uniform State Laws, Uniform Limited Liability Company Act (2006), comment to Sec. 409(b)(1).....	6
Nat’l Conf. of Comm. on Uniform State Laws, Uniform Limited Partnership Act (2001), comment to Sec. 409(b)(1).	6
Nat’l Conf. of Comm. on Uniform State Laws, Uniform Partnership Act (1997), comment to Sec. 409(b)(1).....	6

INTRODUCTION

This Reply Brief is by the appellant, North Oakes Manor Condominium Association, a Washington nonprofit corporation (hereafter “the **Association**” or **NOMCA**), replying to the Joint Response Brief of Defendants Mills & Dawson, filed August 7, 2018 (hereafter **Response Brief**). This brief will use the same acronyms as the Brief of Appellant: **WCA**—RCW Chapter 64.34, Washington Condominium Act. **WNCA**— RCW Chapter 24.03, Washington Nonprofit Corporation Act.

It is noted that respondent **2nd Half LLC**, the former owner of two of the eight condo units in the project managed by the Association, has not filed a responsive brief. Counsel Mills filed a notice of withdrawal as counsel for 2nd Half and for Jeff Graham on July 20, 2018. 2nd Half had filed a notice of cross appeal of the trial court’s denial of its motion for attorney fees, but 2nd Half apparently has abandoned that.

The Response Brief is solely by defendant-respondent Mills, against whom the Association asserts a claim for wrongfully taking its funds that he held in his IOLTA account (CP 107 ¶30), and defendant-respondent Dawson, against whom the Association asserts as claim of liability as a joint venturer with Graham and 2nd Half (CP 101 ¶17, 110 ¶40).

The Brief of Appellant included within its appendix the full text of RCW 64.34.268. The key parts of its most relevant subsections, (4) and (6), are here reprinted for convenient reference:

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. [Final two sentences omitted as not here relevant.]

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. [Final sentence omitted as not here relevant.]

Not previously reprinted, but relevant is RCW 64.34.300:

Unit owners' association—Organization. A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control.

And the relevant paragraph 2 of the Termination Agreement, appearing in full at CP 118-25, 146-53, and 349-56, is reprinted here for convenience:

2. Procedure. RCW 64.34.268 prescribes the procedure for terminating a condominium and selling the former units and common elements of the condominium. Consistent with that statute, effective upon the recording of this Termination Agreement, title to the NOM Real Property will vest in North Oakes Manor Condominium Association, a Washington nonprofit corporation (hereafter “NOM Association”), as trustee for the holders of all interests in the units. Thereafter, NOM Association will have all powers necessary and appropriate to effect the sale of the NOM Real Property upon the minimum terms described herein, and shall do so free of any liens claimed by it. The escrow agent closing the sale shall pay from the proceeds the amounts due to the holders of mortgages, deeds of trust, and real estate contracts on individual units, judgments and property taxes that constitute liens, and customary closing costs. The remaining proceeds of the sale and all other assets of NOM Association will be held by it as trustee for its creditors and the unit owners. Pursuant to a payment and disbursement plan that is agreed to by the unit owners to which at least eighty percent of the votes in NOM Association are allocated, NOM Association shall pay its creditors and disburse its remaining assets to the unit owners as their interests may appear, after which it shall dissolve.

ARGUMENT

- 1. The bare statutory phrase *as trustee* does not create an express trust but simply recognizes a party’s duty of loyalty to others, as a resulting or constructive trust.**

Throughout the Response Brief, Mills asserts, without authority, that the phrase *as trustee* in the second sentence of RCW 64.34.268(4) and the first sentence of its subsection (6) compels the legal conclusion that the

Association became trustee of an express trust that is governed by trust law rather than by the WCA and the WNCA. That conclusion does not follow, because the phrase *as trustee* appears in other statutes that plainly are not recognized as establishing express trusts. For example, the phrase is used to describe a partner's duty of loyalty to a general partnership in the Revised Uniform Partnership Act. RCW 25.05.165(2) states:

A partner's duty of loyalty to the partnership and the other partners is limited to the following:
(a) To account to the partnership and hold *as trustee* for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

The prior Uniform Partnership Act also used the phrase *as trustee* to describe a partner's duty of loyalty. Former RCW 25.04.210(1) stated:

Every partner must account to the partnership for any benefit, and hold *as trustee* for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

The Uniform Limited Partnership Act also uses the phrase *as trustee* and substantially similar language to describe a general partner's duty of loyalty. RCW 25.10.441(1) states:

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:
(a) To account to the limited partnership and hold *as trustee* for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited

partnership property, including the appropriation of a limited partnership opportunity;

And the Washington Limited Liability Company Act, patterned after the Uniform Limited Liability Company Act, also uses the phrase *as trustee* and substantially similar language to describe a manager's duty of loyalty to the company. RCW 25.15.038(2) states:

- (2) The duty of loyalty is limited to the following:
 - (a) To account to the limited liability company and hold *as trustee* for it any property, profit, or benefit derived by such manager or member in the conduct and winding up of the limited liability company's activities or derived from a use by such manager or member of limited liability company property, including the appropriation of a limited liability company opportunity;

No case has ever suggested that the phrase *as trustee* in the statutes describing a partnership partner's or an LLC manager's duty of loyalty creates an express trust. In fact, the identical official comments to section 409(b)(1) of Uniform Partnership Act, section 409(b)(1) of the Uniform Limited Partnership Act, and section 409(b)(1) of the Uniform Limited Liability Company Act—each uniform act being the source of Washington's above-quoted duty of loyalty provisions—explains that the phrase *hold as trustee* is **not intended to create an express trust**. It reads (identically in each of those three uniform acts):

The phrase "hold as trustee" dates back to UPA (1914) § 21 and reflects the availability of disgorgement remedies, such as a constructive trust. In contrast to an actual trustee, a person subject to this duty does not: (i) face the special obstacles to

consent characteristic of trust law; or (ii) enjoy protection for decisions taken in reliance on the governing instrument and other sources of information.

Nat'l Conf. of Comm. on Uniform State Laws, Uniform Partnership Act (1997), comment to Sec. 409(b)(1); Nat'l Conf. of Comm. on Uniform State Laws, Uniform Limited Partnership Act (2001), comment to Sec. 409(b)(1); Nat'l Conf. of Comm. on Uniform State Laws, Uniform Limited Liability Company Act (2006), comment to Sec. 409(b)(1).

A different body of law that addresses the distinction between an express trust and a mere duty of loyalty imposed by fiduciary or trust language is bankruptcy law. A bankruptcy debtor's obligations as trustee of an express trust are not dischargeable in bankruptcy, but debts arising from other fiduciary-like relationships are dischargeable. Bankruptcy cases hold, because an express trust requires a settlor's intention and a trustee's agreement to create a trust, that a statute alone cannot create an express trust. In *In re Holmes*, 117 B.R. 848 (Bkrtcy.D.Md. 1990), the court addressed a state statute providing that money paid by an owner to a contractor for labor or materials supplied by subcontractors is held in trust by the contractor as a trustee for the subcontractors. The court stated, at 853:

A statutory trust is a legislative creation and is therefore not an express trust in the absence of an intention by the parties to create a fiduciary agreement between themselves. A statutory trust cannot be a technical trust in the absence of the execution of a formal trust agreement between the parties. In this regard, there is

no perceivable difference, for bankruptcy purposes, between a trust implied in law by a court and one enacted in law by a legislature.

The intention of the state legislature is irrelevant to the creation of an express trust. Because the creation of an express trust depends upon the intention of the parties, an express trust can never be created by statute alone.

In *In re Heilman*, 241 B.R. 137 (Bkrcty.D.Md. 1999), the judge exhaustively addressed the distinctions between express trusts and trusts imposed by a court or a law. The judge wrote, at 161-62:

Only the parties themselves can create a fiduciary relationship in fact. A statute may recognize that relationship and impose additional burdens upon it, including criminal liability for its abuse. A statute may even purport to convert a breach of contract into a breach of a trust *ex maleficio*, but these are in the nature of constructive or resulting trusts, arising by operation of law, and therefore distinguishable from express or technical trusts for purposes of nondischargeability of debt in bankruptcy.

Statutory trusts are not express or technical trusts. Trusts created by statute are quasi-trusts, constructive trusts and/or resulting trusts, because they are created in law, regardless of the intentions of the parties. A statute alone cannot, in the absence of the parties' expressed intention, create an express or technical trust. A State statute cannot convert a purely commercial debtor-creditor relationship into something more for purposes of denying a debtor a discharge of the debt.

Washington case law also recognizes the difference between an express trust—intentionally created by parties—and a resulting or constructive trust created by operation of law. In *Diel v. Beekman*, 7 Wn.App. 139, 499 P.2d 37 (1972), the court stated, at 145, “An express trust is intentionally created between the parties of the trust agreement

while a resulting trust is a trust that results from the facts and circumstances of a situation by implication of law.” The Association was not a party to the Termination Agreement, nor did it intentionally create an express trust or accept the trusteeship of one. CP 349-56.

Both the Washington Trust Act, RCW Ch. 11.98, and the Trustees’ Accounting Act, RCW Ch. 11.106, apply to express trusts but both Acts expressly “do[] not apply to resulting trusts, constructive trusts, .. liquidation trusts....” RCW 11.98.009, 11.106.010. The phrase *as trustee* in RCW 64.34.268 simply created in the Association a fiduciary-like duty of loyalty to its creditors and former unit owners, but that duty was in the nature of a resulting trust, constructive trust, or liquidation trust. No express trust was created.

2. Mills wrongly asserts that following the termination of the condominium the Association neither possessed nor managed any assets.

Throughout the Response Brief, Mills asserts that following the termination of the condominium the Association did not own or have managerial authority over any assets. *e.g.*, Resp.Br. 26-27, 40-42. Such assertions are contrary to the express language of RCW 64.34.268. Under that statute, the termination of a condominium occurs upon the recording of a termination agreement signed by the owners holding eighty percent of its votes. Subsection (4) states, “If any real property in the condominium

is to be sold following termination, title to that real property, upon termination, vests in the association as trustee” and “Thereafter, the association has all powers necessary and appropriate to effect the sale.” So on July 26, 2017, when the Termination Agreement signed by the owners of seven units was recorded with the county auditor (CP 349), title to the condominium project’s real property vested in the Association, and it was empowered, as trustee and without direction from any former owners, to accept the buyer’s offer, to engage an escrow closing agent, to engage a title insurance company, to continue paying for utilities and insurance, and to address innumerable details that were necessary and appropriate to effect the sale that closed on September 25, 2018. CP 155-56. Nothing in RCW 64.34.268 suggests that the closing of the sale sixty days later, on September 25, 2008, divested the Association’s power and authority to hold and manage the proceeds of the sale and the Association’s other assets. Indeed, subsection (6) states, “Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee” How can Mills assert that the Association holds no assets after the sale when subsection (6) states that the Association holds the sale proceeds “together with the assets of the association”?

On September 28, 2017, the Association distributed a portion of the sale proceeds—but retained a material amount of the sale proceeds in

order to pursue its meritorious and material claims, those being its other significant assets. CP 173-76. Subsection (4) states, “Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination.” That sentence must be read consistent with the first sentence of subsection (6) to mean that until the sale proceeds *and the Association’s other assets* are distributed, it continues to exist with all its powers as before. Further support for the Association’s continued existence and powers is in RCW 64.34.300, that requires a condominium owners’ association to be organized as a corporation and states, “Following termination of the condominium, the membership of the association shall consist of all the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns.” Consistent with this reading of the statute, the Termination Agreement stated, “The remaining proceeds of the sale and all other assets of NOM Association will be held by it as trustee for its creditors and the unit owners. Pursuant to a payment and disbursement plan that is agreed to by the unit owners to which at least eighty percent of the votes in NOM Association are allocated, NOM Association shall pay its creditors and disburse its remaining assets to the unit owners as their interests may appear, after which it shall dissolve.” The references to “other assets of NOM Association” and to “its remaining assets” are consistent with the statutory

language and refute Mills' assertions (e.g., Resp.Br. 26) that the Association owned no assets following the termination.

Mills asserts that the Association owns no assets because “when the condominium was terminated and all real estate sold ... the sale proceeds and all other assets of the Association were transferred to an express trust” Resp.Br. 20. However, it is widely recognized common law that a trust is not a legal entity (unlike a corporation) that can own property, but a relationship in which an individual or legal entity as trustee holds property for one or more beneficiaries.

“The general rule that a trust is a relationship is universally recognized by U.S. cases and statutes, and is consistent with the prevailing norms of the entire common-law world. The fundamental nature of this relationship is that one person holds legal title for the benefit of another person. Thus, ‘in actuality, a trust is not a legal person which can own property or enter into contracts.... [I]t is the trustee or trustees who hold title to the assets that make up the trust estate and who enter into contracts necessary to the management of the estate, subject to fiduciary obligations to manage and use the assets for the benefit of the trust beneficiary.’ Moreover, because ‘[a] trust is not a legal entity, ‘ it ‘cannot sue or be sued, but rather legal proceedings are properly directed at the trustee.’” (Nenno & Sullivan, *Planning and Defending Domestic Asset-Protection Trusts, Planning Techniques for Large Estates* (Apr. 26–30, 2010) SRO34 ALI-ABA 1825, 1869–1870, fns. omitted.) “

Greenspan v. LADT, LLC, 191 Cal.App.4th 486, 512, 121 Cal.Rptr.3d 118 (2010).

3. Mills wrongly asserts that the Termination Agreement requires that any action regarding the trust assets (or corporate assets) be authorized by 80% vote of the owners.

Mills asserts that the Termination Agreement requires that any action regarding the trust assets (or corporate assets, if his express trust argument fails) be authorized by 80% vote of the owners. *e.g.*, Resp. Br. 17. More specifically, he asserts that the Association lacked authority, through litigation, to collect its claims and establish its liabilities unless authorized by an 80% vote of the former owners. *e.g.*, Resp. Br. 16–18. Nothing in RCW 64.34.268 or any other provision of the WCA or WNCA supports Mills’ assertions. His position rests solely on the last sentence of paragraph 2 of the Termination Agreement:

Pursuant to a payment and disbursement plan that is agreed to by the unit owners to which at least eighty percent of the votes in NOM Association are allocated, NOM Association shall pay its creditors and disburse its remaining assets to the unit owners as their interests may appear, after which it shall dissolve.

That sentence does not express any limitations on the corporate powers of the Association and its governing board prior to the time that its owners agree on, or a court orders, a “payment and disbursement plan” the execution of which results its final dissolution. But before there can be an owner-agreed or court-ordered plan, the Association must take preliminary steps to collect and determine the value of its non-cash assets

(namely, its claims against the defendants) and determine its liabilities (such as Mills' alleged claim against it). Those preliminary steps are the exclusive province of the Association's board, according to applicable law and its governing documents. Both the WCA and the WNCA provide that a condominium association's board of director shall manage its affairs. RCW 64.34.308; RCW 24.03.095. And the Association's governing documents each state, "The affairs of the Association shall be managed by a Board of Directors." Articles of Incorporation, Art. VII (CP 184); Bylaws Art. V, sec. 1 (CP 193); Declaration of Condominium, ¶ 8.3 (CP 226). Nothing in the WCA or the WNCA permits a group of non-director members/owners, even 80% of them, to limit the authority and responsibility of a board of directors to manage the corporation's assets and liabilities.

To interpret the Termination Agreement's phrase "*payment and disbursement plan*" it is relevant to consider the WNCA provisions (that govern the Association to the extent not inconsistent with the WCA, per RCW 64.34.300) providing for the dissolution of a nonprofit corporation, specifically the provisions providing for a "*plan of distribution.*"

RCW 24.03.220, titled "Voluntary dissolution" provides—
"A corporation may dissolve and wind up its affairs in the following manner: (1) ... A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at

such meeting or represented by proxy are entitled to cast. (2) ... Upon the adoption of such resolution by the members ... the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof ... and ***shall proceed to collect its assets*** and apply and distribute them as provided in this chapter.” [Emphasis added.]

RCW 24.03.225, titled “Distribution of assets” provides—
“The assets of a corporation in the process of dissolution shall be applied and distributed as follows: (1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor; ... (4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members ... (5) Any remaining assets may be distributed to such persons ... as may be specified in a ***plan of distribution*** adopted as provided in this chapter.” [Emphasis added.]

RCW 24.03.230, titled “Plan of distribution” provides—
“A plan providing for the distribution of assets ... shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner: (1) Where there are members having voting rights, the ***board of directors shall adopt a resolution recommending a plan of distribution*** and directing the submission thereof to a vote at a meeting of

members having voting rights ... Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.” [Emphasis added.]

RCW 24.03.300, titled “Survival of remedy after dissolution—Extension of duration of corporation” provides—
“The *dissolution of a corporation ... shall not take away or impair any remedy available to* or against *such corporation ...* for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.”

A reasonable application of these WNCA provision to a condominium termination pursuant to RCW 64.34.268 is to treat the condo owners’ execution of a termination agreement as equivalent to the members’ adoption of a resolution to dissolve the corporation. That begins the process of winding up the corporation, which involves the board collecting and establishing the value of all the corporation’s assets and its liabilities, by litigation if necessary. Once the value of all the distributable assets is established, the board shall adopt a resolution recommending a plan of distribution or, in this case, a plan of payment and disbursements.

If the corporation's members are then unable to agree upon such a plan, the board or a member may petition a court to adjudicate a fair and equitable plan to cause the final dissolution of the corporation.

4. In the Response Brief, Mills makes a number of false or wholly unsupported factual assertions.

Mills in the Response Brief makes a number of false or wholly unsupported factual assertions.

At page 2, he states "It's undisputed that within 24 hours after the sale was completed, the Rankos-board disbursed all the net sale proceeds. CP 172-73." The cited clerk's papers pages do not support the 24-hour assertion or the all-the-net-sale-proceeds assertion. The Association retained a material portion of the sale proceeds to pursue collection of its other assets. There is no "Rankos-board," just a duly elected board of directors of the Association.

At page 7, Mills states, "As specified by the termination statute, post-termination, the Association owns no assets." He offers no support for this false factual claim.

At page 9, Mills states, "2nd Half signed to end the litigation. Other owners made an economic decision to trade the uncertainty and expense of a lawsuit against 2nd Half, which if totally successful might have returned \$10,000 per unit, (CP 428-29, 109) for the sure doubling of their unit's

value by selling as an apartment building.” Mills does not know, nor does the record show, that the owners other than 2nd Half were intending to trade-off the Association’s claims against 2nd Half and its associates. To the contrary the record indicates that they intended to pursue the Association’s claims. CP 98-110 (Complaint filed October 18, 2017) And Mills’ doubling-in-value assertion is wholly false and unsupported.

At page 17, Mills states, “That Termination Agreement contract requires that any plan or action regarding trust assets be authorized by 80% vote of the owners. But the document states no such requirement.

At page 21, Mills states, “[T]he owners agreed to sell the condominium free and clear of all lien claims, including any claim on 2nd Half’s units for unpaid dues. CP 350.” While the cited page of the Termination Agreement stated that the Association would convey the property “free of any liens claimed by it,” the Association’s directors were quite aware that RCW 64.34.364(12) expressly provides that in addition to delinquent assessments being statutory liens on condo units, the delinquent owners of condo units have personal liability for their delinquent assessments. CP 3-4 ¶10, ¶13, ¶15; 169.

At page 36, Mills states, “All the owners knew when they signed to double their money that they were essentially settling or waiving claims against 2nd Half in order to double the value of their units.” Mills does not know, nor does the record show, that the owners other than 2nd Half were

intending to settle or waive the Association's claims against 2nd Half and its associates. To the contrary the record indicates that they intended to pursue the Association's claims. CP 98-110 (Complaint filed October 18, 2017) And the record does not support Mills' bald assertion that the owners' action to sell the condo project "doubled the value of their units."

CONCLUSION

The trial court erred by failing to recognize and apply applicable provisions of WCA and of WNCA, failing to correctly interpret the Termination Agreement, failed to apply equitable principles and liberal remedies as WCA required, and failing to appoint a receiver for 2nd Half's units as to which the Association was entitled. The orders appealed from should be vacated.

Respectfully submitted this 6th day of September, 2018.

/s/ Douglas A. Schafer
Douglas A. Schafer, Attorney for Appellant
North Oakes Manor Condominium Association
(WSBA No. 8652)

Proof of Service

I certify that I served a copy of this Answer on the following parties by email or first class USPS mail, as indicated:

John S. Mills (attorney for 2nd Half LLC, and for he and his spouse)
jmills@jmills.pro

Gary N. Johnston (attorney for Stephen R. Dawson)
garyjohnston@comcast.net

Jeffrey A. Graham and 2nd Half LLC (non-participating pro se parties)
523 North D Street
Tacoma, WA 98403

Date: September 6, 2018 /s/ Douglas A. Schafer

Douglas A. Schafer, Attorney for Appellant
North Oakes Manor Condominium Association
(WSBA No. 8652)

SCHAFFER LAW FIRM

September 06, 2018 - 11:07 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51616-1
Appellate Court Case Title: North Oakes Manor, App/Cross/Resp v. 2nd Half LLC et al., Res/Cross-App
Superior Court Case Number: 17-2-05339-8

The following documents have been uploaded:

- 516161_Briefs_20180906110553D2732991_8335.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was ReplyBriefToFile.pdf

A copy of the uploaded files will be sent to:

- garyjohnston@comcast.net

Comments:

Sender Name: Douglas Schafer - Email: schaffer@pobox.com
Address:
1202 S TYLER ST
TACOMA, WA, 98405-1134
Phone: 253-431-5156

Note: The Filing Id is 20180906110553D2732991