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No. 54477-6-II

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

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AVERA LEE DEHLS,

Appellant,

vs.

KIONA PARK ESTATES,

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR LEWIS COUNTY

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RESPONDENT'S BRIEF

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Tacoma, Washington 98402  
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## **I. INTRODUCTION**

This is an appeal from a lawsuit filed by Kiona Park Estates (the “Association”) against Avera Lee Dehls for failure to pay dues and assessments to the Association from 2002 to the present. CP 1-8. The Court entered Judgment in the Association’s favor for the entirety of the period requested. Dehls now appeals, arguing that the court erred with respect to the applicable statute of limitations.

## **II. STATEMENT OF THE CASE**

### **A. The History of the Association**

Plaintiff Kiona Park Estates (the “Association”) is a duly licensed Washington non-profit corporation which conducts its business in Lewis County, Washington. The Association was set up, among other reasons, to collect dues and assessments from its membership and to enforce its governing documents in that certain development in Lewis County, Washington, known as Kiona Park Estates.

The governing documents for the Association are the Declaration of Protective Covenants and Easements for Kiona Park Estates, originally recorded under Lewis County Auditor’s Number 891087. CP 52. The tract owners subsequently filed a Restated Declaration on September 26, 1986 under Auditor’s Number 949885. *Id.* After proper notice, the Association

subsequently amended the Restated Declaration by Declarations of Amendment recorded under Auditor's Numbers 3149066 on October 4, 2002; 3269387 on December 27, 2006; 3311760 on August 15, 2008; 3382742 on August 2, 2012; and 3467592 on June 27, 2017. *Id.* The governing documents of the Association, as amended, shall collectively be referred to as the "Declaration".

The Association's authority to assess dues is found under Articles C and D of the Declaration, as amended. Article C(7), of the 1986 Restated Declaration provides in pertinent part as follows:

7. Road Maintenance and Improvement after December 31, 1984.

a) All owners of parcels shall pay the cost of all construction maintenance or repair on such easement equally, regardless of the parcel size or the amount of property owned within the area of real property described in Exhibit B.

...

c) Once an obligation for construction, maintenance or repair is determined, such obligation shall be binding on each owner, his personal representatives, successors or assigns, to the same extent as any other debt of that owner and such debt shall also be considered a lien against the property of such owner within the area described in Exhibit B, and proceeded against as a lien for improving property. Any lien so levied shall carry interest at twelve percent (12%) per annum on the unpaid balance.

CP 69. Article D of the 1986 Restated Declaration allows for formation of a Community Association. It provides in pertinent part as follows:

1. Purpose of Community Association. At any time after seller has sold one-half of the real property, or before if seller shall agree in writing, the owners may form a Community Association, which may have, among other things, for its purposes, the maintenance and development of roads, utilities systems and other common facilities, the enforcement of liens, covenants, restrictions and easements existing upon or created for the benefit of the parcels of real property, and the fostering of acquaintanceship and friendship among the owners.

...

3. Dues and Assessments/Covenants. The Articles or equivalent document of the Community Association may provide for dues and assessments to finance the Association, if dues and assessments are provided for, the Articles shall provide that delinquent dues and assessments shall constitute a lien upon the parcel(s) of real property owned by the delinquent member of the Association. Upon recording, the Articles or equivalent document will be considered protective covenants having the same force and effect as the other provisions herein, and shall be binding upon all record owners.

CP 70-71.

Article C(7) of the Restated Declaration was subsequently amended under Auditor's Number 3149066 on October 4, 2002, and reads in pertinent part as follows:

1) The lot owners envision that certain improvements may be made to the real property which is intended for common use of all lot owners. These improvements may include, but are not limited to, entrance signs, landscaping and road repair and development. Said improvements shall be collectively referred to as "Common Amenities."

It shall be the obligations of the owners of the lots to contribute their agreed upon share to maintain the common amenities.

Said costs shall be paid by an annual assessment against each member. The amount of the assessment shall be set by two-thirds (2/3) cost of the lot owners. The decision to make repairs or improvements shall be made by the Board of Trustees of the Community Association.

Lot owners shall receive an annual statement for dues. The lot owners shall make full remittance within thirty (30) days. Upon failure to remit as required, the Board may contract for the services of an attorney to seek enforcement of this agreement. The prevailing party shall be entitled to attorney fees in any such action. Any dues that remain unpaid for a period of ninety days shall become a lien against the defaulting lot owner's property enforceable as any other real estate lien in the State of Washington.

All unpaid dues shall bear twelve (12) percent per annum interest after thirty (30) days until paid.

CP 84-85. Article D in the 2002 Amendment was simply changed to reflect that the Association was formed and is known as Kiona Park Estates Association. CP 85-86.

The 2006 Amendment, recorded under Auditor's Number 3269387 on August 15, 2006, changed the numbering of section C(7)(1) to section C(2)(a), but the content was otherwise unchanged. CP 97-98. In 2008, the Association amended Section C(2)(a)'s fourth paragraph to read as follows<sup>1</sup>:

Lot owners shall receive an annual statement for dues. The lot owners shall make full remittance within thirty (30) days. *The Board will review non-payment of dues on an individual basis.* Upon failure to remit as required, the Board may contract for the services of an attorney to seek enforcement of this agreement. The prevailing party shall be entitled to attorney fees in any such action. Any dues that remain

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<sup>1</sup> Only new language in the section is italicized.

unpaid for a period of ninety days shall become a lien against the defaulting lot owner's property enforceable as any other real estate lien in the State of Washington.

CP 114-115. In 2012, the Association amended Section C(2)(a) to allow for interest to be compounded monthly at 12% per annum, and removed that portion of paragraph 4 referencing unpaid dues becoming a lien. CP 123.

Pursuant to the Authority outlined under Article C of the Declaration, as amended, Kiona Park Estates Association filed its Articles of Incorporation with the Secretary of State in 2001. CP 133-139. The Articles outlined the purposes of the corporation as for the "adoption, amendment and enforcement of liens, covenants, restrictions and easements. . ." and for the "establishment of dues and assessments to finance the corporation..." amongst other things. CP 133. Further, under the Articles, delinquent dues and assessments were to constitute a lien, consistent with the provisions of the Declaration. *Id.* Bylaws adopted in 2001 and amended in 2017 also support the Association's right and ability to assess an owner for dues, and take action to collect against that owner in the form of a lien or collection. CP 191-213.

**B. Dehl's Ownership**

Avera Lee Dehls<sup>2</sup> ("Dehls") and Jacqueline Dehls are the owners of the real property within Kiona Park Estates that is subject to the Declaration,

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<sup>2</sup> Due to the similarity in names, Avera Lee Dehls will be referred to by "Dehls" and Jacqueline Dehls will be referred to by her first name. No disrespect is intended.

as amended, commonly known as 138 Shelton Road, White Pass, Washington 98377, and legally described as follows:

The north half of the northeast quarter of the southwest quarter of the southwest quarter, Section 24, Township 12 North, Range 6 East, W.M., Lewis County, Washington, being designated as Tract 22 of Kiona Park Estates according to Amended Survey filed July 26, 1985 in volume 6, pages 243 through 246, records of Lewis County, Washington, Auditor's File No. 936400. Together with a non-exclusive easement for roadway and public utility purposes herein described as Tract "A", as described on segregation survey recorded July 26, 1985 in volume 6 of surveys, pages 243 through 246, records of Lewis County, Washington.

TAX PARCEL NO.: 031294002022

Dehls and Jacqueline initially acquired the property via statutory warranty deed from Jeff Shelton recorded under Lewis County Auditor's No. 8906251 on July 24, 1989. CP 25-26.

The sale of the property from Mr. Shelton to the Dehls was secured with a Deed of Trust granted by the Dehls in favor of Mr. Shelton, recorded under Lewis County Auditor's No. 8906252 on July 24, 1989. CP 28-30. Because the Deed of Trust had not been reconveyed, Mr. Shelton remained as having an interest in the real property, and thus was named as a Defendant in the suit. CP 1-8. Mr. Shelton renounced his interest in the property. CP 32. Mr. Shelton's interest was later eliminated by entry of the Judgment in this matter. CP 225-230.

After their purchase of the property, Jacqueline and Dehls later divorced. CP 11. A Deed of Trust was subsequently recorded under Lewis County Auditor's No. 3106161 on January 17, 2001. CP 34-35. Jacqueline did not transfer or quit claim her interest to Dehls, and she remained on title as a legal owner of the property. Her interest was eliminated as well following entry of the Judgment in this matter. CP 225-230.

Beginning in January, 2002, Dehls' lot became delinquent in assessments. CP 43-50. As the Association determined its annual budget every year, it would send annual statements to the owners based upon that budget. CP 171. In Dehls' case, the annual statement included the prior years' unpaid amounts, with the exception of the 2018 and 2019 statements. CP 171-172; 216-224. Based upon Dehls' unpaid account, the Association caused to be recorded a lien under Lewis County Auditor's No. 3484290 on May 21, 2018. CP 20; 37-39. In addition, the Association had filed two prior liens against the property by former counsel. CP 44.

**C. Procedural History**

Based upon Dehls' chronic failure to pay dues, the Association filed its Complaint for damages and foreclosure of its lien in Lewis County Superior Court on November 15, 2018. CP 1-8. The Association subsequently brought a Motion for Summary Judgment, scheduled for hearing on July 19, 2019. CP 9-18. Dehls opposed the motion on two bases:

that the Association had no authority to collect dues; and that the statute of limitations limits the dues owed by the Association to 6 years under RCW 4.16.040, comparing an Association's dues to a deed of trust foreclosure on an installment contract. CP 144-149. Notably, Dehls did not dispute that he hadn't paid any dues.

The Court orally ruled in the Association's favor at the hearing on July 19, 2019. VRP 16-17. The Court determined that in reading the totality of the Association's governing documents, the Association had authority to assess dues. VRP 16:9-12. The court further found compelling that the Legislature had not specified a Statute of Limitations for a homeowner's association under RCW 64.38, unlike the Condominium Act and the Washington Common Interest Ownership Act. VRP 16:13-23. The court likened the accrual of debt to an open account under RCW 4.16.150. VRP 16:25. The court stated as follows:

I find it compelling that over all these years, that Mr. Dehls never formally disputed or sought to address the assessment of dues. Each statement that was sent out contains a different balance or running balance forward and so the past debts become a current debt.

VRP 17:1-5.

Following issuance of its oral opinion, the Court entered a Judgment and Order Granting Summary Judgment on August 21, 2019, encompassing

the years 2002 to 2019. CP 225-230. Dehls subsequently filed a Motion for Reconsideration, arguing that the applicable statute of limitations is six years under RCW 64.90.485(9) and RCW 4.12.040. CP 232-235. The Court denied Dehls' Motion. CP 251. Dehls timely appealed, solely arguing that a portion of Plaintiff's damages are time barred under the statute of limitations. Dehls does not argue that the Association lacked authority to impose dues and assessment, nor does he argue that the Association lacked authority to foreclose its liens. Rather, in focusing on the applicable statute of limitations, Dehls argues about the amount of the judgment.

### **III. ARGUMENT**

#### **A. Standard of Review**

Where, as here, the facts are undisputed and the only issues are questions of law, the standard of review is de novo. *Shafer v. Bd. of Trustees of Sandy Hook Yacht Club Estates, Inc.*, 76 Wn.App. 267, 273, 883 P.2d 1387 (1994). Further, on review of an Order for Summary Judgment, the court performs the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). As specifically stated in *Kruse v. Hemp*, in reviewing a summary judgment order, an appellate

court evaluates the matter de novo, performing the same inquiry as the trial court. *Kruse*, at 722.

On an appeal, the appellate court must engage in the same inquiry as the trial court, “. . . construing the facts and reasonable inferences therefrom in the manner most favorable to the nonmoving party to ascertain whether there is a genuine issue of material fact.” *Dumont v. City of Seattle*, 148 Wn.App. 850, 860-861, 200 P.3d 764 (2009) (citing to *Sellested v. Wash. Mut. Sav. Bank*, 69 Wn.App. 852, 857, 851 P.2d 716 (1993)). The Court of Appeals may affirm the court’s disposition of a motion for summary judgment on any ground supported by the record. *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 753 n. 9, 310 P.3d 1275 (2013).

**B. The Association’s Authority Arises from Its Governing Documents**

Dehls’ opening brief states that the Association’s authority arises from its governing documents. Appellant’s Brief, p. 18. The Association does not disagree with this statement. Indeed, when interpreting an Association’s governing documents and authority, the Declaration, articles of incorporation, by-laws, and covenants are “correlated documents” that are construed together. *Rodruck v. Sand Point Maint. Comm’n*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956); *Lake Limerick Country Club v. Hunt Manufactured Homes, Inc.*, 120 Wn.App. 246, 249, 84 P.3d 295 (2004). A

homeowner's association's authority is considered in light of the CC&Rs in combination with all governing documents, deeds, articles of incorporation, and bylaws. *Roats v. Blakely Island Maint. Comm'n, Inc*, 169 Wn. App. 263, 274, 279 P.3d 943 (2012). Authority is also gathered from RCW 64.38.20.

Dehls acknowledges that when he first became delinquent in 2002, the Association had the authority to impose a lien, or pursue the assessment as a delinquent debt. Dehls hints that the Association's powers of enforcement were still limited, although his argument on this point is not explained.

It is evident, however, that the governing documents authorize the Association to impose and collect annual assessments, which shall become a lien against the property if unpaid. Not only did the Association file several liens against Dehls' property, it also ultimately filed suit against Dehls to collect the unpaid amounts and foreclose its lien. Dehls cites no authority providing that the Association was without power to file its liens or maintain its suit against Dehls in Lewis County Superior Court.

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**C. The Association's Governing Documents are Covenants Running with the Land and Interpreted under Contract Law**

Dehls next argues that the Association's governing documents constitute a contract and are interpreted in accordance with contract law. Dehls' argument is only partially correct.

Dehls is certainly correct that the Association's governing documents are interpreted in accordance with contract law. Indeed, it is well established in Washington that a Court turns to principles of contract interpretation to interpret the terms of the Declaration or other governing documents relating to real estate developments. *Roats, supra*, at 273-75; *Jensen v. Lake Jane Estates*, 165 Wn. App. 100, 105, 267 P.3d 435 (2011); *Dave Johnson v. Wright*, 167 Wn. App. 758, 769, 275 P.3d 339 (2012). The purpose of contract interpretation is to determine the parties' intent. *Roats*, at 274. The "context rule" is applied to determine intent. *Berg v. Hudesman*, 115 Wn.2d 657, 666-69, 801 P.2d 222 (1990). This rule applies even when the provision at issue is unambiguous. *Roats*, 169 Wn. App. at 274.

The context rule "allows a court, while viewing the contract as a whole, to consider extrinsic evidence, such as the circumstances leading to the execution of the contract, the subsequent conduct of the parties and the reasonableness of the parties' respective interpretations." *Id.* (quoting

*Shafer v. Bd. Of Trs. Of Sandy Hook Yacht Club Estates, Inc.*, 76 Wn. App. 267, 275, 883 P.2d 1387 (1994)). While the language generally must be given its ordinary, usual language and popular meaning, the documents must be read in a manner where reasonable interpretation prevails. “Where one construction would make a contract unreasonable, and another, equally consistent with its language, would make it reasonable, the latter more rational construction must prevail.” *Better Fin. Solutions, Inc. v. Transtech Elec., Inc.*, 112 Wn. App. 697, 712 n. 40, 51 P.3d 108 (2002).

Dehls is incorrect, however, in his assertion that the Declaration is in itself a contract. *Roats*, supra, simply provides that the governing documents of a corporation are *interpreted* in accordance with accepted rules of contract interpretation. *Roats* at 273-274. Nowhere does that case stand for the proposition that the Declaration is actually a contract between the parties. Rather, the governing documents, and most particularly the Declaration, constitute a running covenant that touches and concerns the land, and are binding on successors thereto. See *Rodruck v. Sand Point Maint. Comm'n*, at 575-576. Restrictive covenants are enforceable promises relating to the use of land. *Halme v. Walsh*, 192 Wn.App. 893, 906, 370 P.2d 42 (2016).

This position is bolstered by the Division I of the Court of Appeals recent decision in *Mohandessi v. Urban Venture*, 468 P.3d 622 (2020).

Therein, Mohandessi brought an action against his residential condominium association for breach of contract, amongst other claims. *Id.* at 626. In affirming dismissal of the breach of contract claims by the trial court, Division I stated as follows:

A contract is a promise or set of promises for the breach of which gives a remedy, or the performance of which the law in some way recognizes as a duty. Restatement (Second) of Contracts § 1 (1981); accord *Washington Fed'n of State Emps., AFL-CIO, Council 28, AFSCME v. State*, 101 Wn.2d 536, 549, 682 P.2d 869 (1984). **In contrast, condominium declarations are not promises between parties, but are recorded real property instruments.** *Bellevue Pac. Ctr. Condo. Owners Ass'n v. Bellevue Pac. Tower Condo. Ass'n*, 124 Wash. App. 178, 188, 100 P.3d 832 (2004). Condominium owners are not bound to declarations under the same rules as parties to a contract. Rather, owners have the power to amend a declaration by vote. See RCW 64.32.090(13); RCW 64.34.264(1).

*Id.* at 633 (emphasis added).

Here, the Association does not disagree with Dehls insofar as he implies that interpretation of the Covenants and other governing documents grant the Association the right to make annual assessments for the common maintenance of the properties bound by the documents. Those assessments are billed annually and cumulatively in the event an owner fails to pay prior years. It is further accurate that the Association has a right to enforce the covenants and the failure to pay assessments by filing a lien, bringing suit, or both. That is what the Association ultimately did. Dehls does not dispute

that the Association had authority to do so. Dehls is incorrect, however in his assertion that the Declaration and other governing documents constitutes a written contract between the parties. Instead, it is a promise relating to the use of land, in the form of a recorded restrictive covenant.

**D. The Trial Court Did Not Err in Its Application of the Statute of Limitations.**

**i. RCW 4.16.020**

At summary Judgment, Dehls argued that the applicable statute of limitations was six years under RCW 4.16.040. The Association countered, arguing the applicable statute was treated either as an open account under RCW 4.16.150 or ten years under RCW 4.16.020, to recover an interest in land. Dehls now argues that any reliance on RCW 4.16.020 is incorrect, as an encumbrance such as a lien does not constitute a recoverable interest in real property. RCW 4.16.020 provides that an action for the recovery of real property or for the recovery of possession thereof must be commenced within 10 years. Defendant's argument is once again misplaced.

Defendant cites to *Ensberg v. Nelson*, 178 Wn.App. 879, 320 P.3d 97 (2013) in support of his argument that RCW 4.16.020 is inapplicable. He argues that although covenants and liens are an encumbrance, they do not convey an interest. Simply stated, the case is not on point. Nowhere does the case refer or cite to what the applicable statute of limitations is to

recover or foreclose an association lien. Further, the case does not provide that an association lien or covenant is not an interest in real property. Rather, the case provides that due to the facts particular to that case, a judgment rendered against the homeowner's association did not constitute an encumbrance against the individual owners' property located within the association. The court stated, "[t]here is no dispute that Ensberg, the owner of the Property, was not a judgment debtor in the judgment against the HOA. There is no dispute that, at the time he conveyed the Property to the Nelsons, there was no lien on the Property as a result of the judgment against the HOA." *Id.* at 887. Because the judgment against the association was not a judgment against Ensberg, it did not attach as an encumbrance to his property.

Dehls' citation to *Federal Intermediate Credit Bank of Spokane v. O/S Sablefish*, 111 Wn.2d 219758 P.2d 494 (1988) is equally inapplicable. The case notably did not address any applicable statute of limitations. Instead, it dealt with the effect of an unrecorded judgment lien on real property, which had subsequently been sold to a third party who claimed the lien did not attach to property they purchased from the judgment debtor. The purchasers argued that the judgment lien was a conveyance that had to be recorded in order to be effective. *Id.* at 226. The court rejected their

argument that a judgment lien was a conveyance, since it did not confer a transfer of title or estate. *Id.* Instead, the court determined as follows:

A judgment lien does not create any right of property or interest in the lands upon which it is a lien. It gives the right to foreclosure, either by execution or independent suit, which, when done, will relate back so as to exclude adverse interests subsequent to the fixing of the lien.

*Id.* at 226. Unlike the facts in *O/S Sablefish*, the Association's lien is not a judgment lien. However, like a judgment lien, it does give right to foreclosure. Similarly, a judgment lien also must be exercised within a ten-year period, under RCW 4.56.190.

Dehls makes no compelling argument that RCW 4.16.020 is inapplicable to foreclosure of the Association's lien. The court did not err to the extent it relied upon that statute in granting the Association's Motion for Summary Judgment.

**ii. RCW 4.16.040**

Dehls next reiterates the same argument made at summary judgment that the Association's claims are subject to a six-year statute of limitations. RCW 4.16.040 provides that an action on a written contract must be commenced within six years. Dehls misquotes the statute, instead indicating that an action upon a written *document* must be commenced within six years. This is notable, since the *Mohandessi* case makes it clear that the governing documents of an association are not, in fact, a contract.

Dehls cites no case law that applies the six-year statute of limitations under RCW 4.16.040 to a homeowner's association assessment or lien, instead focusing on cases that assign a six-year statute of limitations for nonpayment on an installment promissory note and deed of trust following default after maturity of the installment note. See *4518 S. 256<sup>th</sup>, LLC, v. Karen Gibbon, PS*, 195 Wn.App. 423, 382 P.3d 1 (2016); *Edmundson v. Bank of America*, 194 Wn.App. 920, 378 P.3d 272 (2016). An obligation to pay annual assessments required in a Declaration of Covenants binding real property is not an installment promissory note, and Dehls has not pointed to any case law attributing it as such.

Dehls further incorrectly cites to *Mohandessi* for the proposition that a cause of action for assessments accrues annually – each time the board passes a budget. The case did not address at all the statute of limitations for collection of annual assessments. Instead, the Plaintiff in that case argued that his cause of action against his association accrued annually since the association set a budget each year based upon a common expense liability allocation from the Declaration that purportedly violated the Condominium Act. *Mohandessi* at 629-630. The court rejected the Plaintiff's argument. *Id.* The court determined that since the common expense liability allocation was created in the Declaration recorded in 2006, any challenge to the common expense liability allocation accrued at the time units were sold to

owners. *Id.* The case, simply stated, does not provide that a cause of action on an Association's assessments accrues annually.

The Association is a homeowner's association, subject to the Homeowner's Association Act, RCW 64.38 et. seq. Unlike condominiums subject to RCW 64.34.364<sup>3</sup>, and Common Interest Communities established after July 1, 2018 under RCW 64.90.485<sup>4</sup>, the Homeowner's Association Act does not contain a statute of limitations for foreclosure of its liens. The legislature has had opportunity to amend RCW 64.38 to apply the statute of limitations identified in RCW 64.90.485, but has thus far not chosen to do so. Thus, it specifically does not apply.

Notwithstanding, assuming for a moment that a six-year statute of limitations does apply under RCW 4.16.040, that does not change the result. Mr. Dehls' obligation is continuing and ongoing, and was carried forward on his annual statements, with the exception of 2018 and 2019. CP 216-224. Thus, his statement for 2016 identified a balance owing of \$7,643.23 rather than a simple \$200 assessment for that year.

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<sup>3</sup> RCW 64.34.364(8) applies a three-year statute of limitations for collection of an assessment

<sup>4</sup> RCW 64.90.485(9) applies a six-year statute of limitations for collection of an assessment.

**iii. RCW 4.16.150**

Although Dehls compares the assessments to an installment contract subject to a six-year statute under RCW 4.16.040, the Association's ongoing assessments are more akin to an open account, subject to RCW 4.16.150. As such, the statute does not begin to run until after the last time an item was proved in the account, which was ongoing up through the time of suit. Thus, the statute of limitations does not bar the action under RCW 4.16.150, whether it be a three year statute, a six year statute, or a ten year statute.

RCW 4.16.150 provides that an action to recover a balance due on a mutual open and current account is deemed to accrue from the time of the last item proved in the account on either side, so long as no longer than a year has elapsed between any series of items or demands. In this case, the Association sends statements to Association members on an annual basis, including any accrued balance, thus meeting the requirement that no longer than a year elapses between demands. Indeed, the Association provided record to the trial court that in some years, statements were sent more than once in a given year. CP 216-224. Further, the Declaration provides that the Board is to review non-payment on an individual basis. CP 114. Finally, the Association continued to provide services to Dehls in the form of common area maintenance benefiting his property, and billing him for

such, even after the lawsuit was filed. Thus, the Association is well within the statute of limitations under RCW 4.16.150.

“A cause of action on an open account accrues at the time of entry of the last item in the account.” *Wilson’s Estate v. Livingston*, 8 Wn.App. 519, 526. 507 P.2d 902 (1973). In that case, two corporations made cash advances to the decedent and her deceased husband, who were shareholders in the companies. *Id.* The companies carried the accounts as overdrafts in their books as open, live and current; and the accounts were reviewed from time to time by the shareholders of the companies. *Id.* The court determined that RCW 4.16.150 applied, even though no payments had been made for a period exceeding seven (7) years. *Id.*

Similarly, here the Association carried Mr. Dehls’ account on its books, and continued to do since his ownership interest continued with the Association up until the time the Association filed suit. Each year, the Association would add the prior year’s balance forward to the total owed, in addition to the budgeted assessment. With Dehls’ ownership interest in the Association, he received benefits in the form of the Association’s maintenance of the common areas that accompany and are necessary for enjoyment of his real property. In turn, the Association charged his account for the dues and assessments necessary for his share of the financial obligation for those common areas. In this way, Dehls’ debt to the

Association can be considered an open account under RCW 4.16.150. The trial court did not err in its determination and application of that statute, and its ruling should stand.

**E. The Association is Entitled to Fees.**

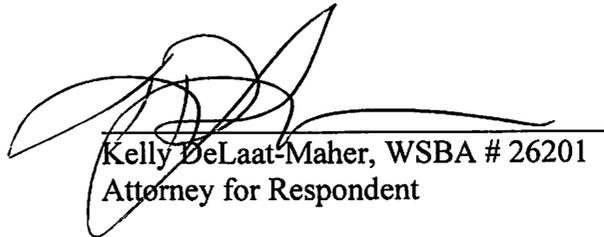
The Association was awarded its attorney's fees pursuant to the Article C, paragraph A, and Article D, paragraph 3 of the Declaration, and the Articles of Incorporation. In the event that the Association is the prevailing party on appeal, it is entitled to fees pursuant to RAP 18.1.

**IV. CONCLUSION**

The trial court did not err in its entry of judgment against Dehls. Based upon the foregoing, this court should affirm the court's judgment and application of the statute of limitations. Further, the Association requests attorney's fees and costs on appeal.

DATED this 4th day of September, 2020 in Tacoma, Washington.

SMITH ALLING, P.S.



Kelly DeLaat-Maher, WSBA # 26201  
Attorney for Respondent

## CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2020, I served a true and correct copy of the foregoing upon the parties and/or counsel below, via the methods noted below, properly addressed as follows:

|                            |                                     |                         |
|----------------------------|-------------------------------------|-------------------------|
| Attorneys for Appellant:   | <input type="checkbox"/>            | Hand Delivered          |
| Christi C. Goeller         | <input checked="" type="checkbox"/> | U.S. Mail (first-class, |
| Goldstein Law Office, PLLC |                                     | postage prepaid)        |
| 1800 Cooper Point Road SW  | <input type="checkbox"/>            | Overnight Mail          |
| Olympia, WA 98502          | <input type="checkbox"/>            | Facsimile               |
| <u>christi@jaglaw.net</u>  | <input checked="" type="checkbox"/> | Email                   |
|                            | <input type="checkbox"/>            | ABC Legal Messengers    |

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

DATED this 4th day of September, 2020, at Tacoma, Washington.

/s/ Teri Parr

Teri Parr

**SMITH ALLING, P.S.**

**September 04, 2020 - 10:20 AM**

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**Appellate Court Case Title:** Kiona Park Estates, Respondent v. Avera Lee Dehls, Appellant  
**Superior Court Case Number:** 18-2-01287-1

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