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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SATOMI OWNERS ASSOCIATION, a Washington Non-Profit
Corporation,

Respondent

v.

SATOMI, LLC, a Washington Limited Liability Company,

Petitioner.

SATOMI OWNERS ASSOCIATION'S
ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent is Satomi Owners Association, a Washington nonprofit corporation, whose members are the current owners of the 85 units at the Satomi Condominiums in Bellevue, Washington (“Association”).

II. COURT OF APPEALS DECISION

Petitioner Satomi, LLC seeks review of the Court of Appeals’ June 11, 2007 decision in *Satomi Owners Association v. Satomi, LLC*, No. 56265-7-I, published at --- Wn. App. ---, 159 P.3d 460 (2007). By this Answer, and in accordance with RAP 13.4(d), if review is accepted, Respondent Association seeks further review of the portion of the Court of Appeals’ decision in which the majority held that the Association was bound by the arbitration clauses signed by only some of its members.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err in holding that the Washington Condominium Act’s (“WCA”) provision for judicial enforcement of statutory condominium warranties is not preempted by the Federal Arbitration Act (“FAA”)?

2. Did the Court of Appeals err in holding that the Association was bound by contracts entered into by only some of its members?

IV. STATEMENT OF THE CASE

Satomi Condominiums is an 85-unit condominium complex located in Bellevue, Washington. Clerk’s Papers (“CP”) 4, 11. On February 10, 2005, the Association filed its “Complaint for Damages to

Condominium” alleging breach of the implied and express warranties of the WCA (RCW 64.34 *et seq.*), breach of the implied warranty of habitability, and violation of the Consumer Protection Act. CP 3-9. Petitioner Satomi, LLC was the developer and condominium declarant of Satomi Condominiums (“Declarant”). CP 3, 11. Declarant demanded arbitration in its Answer of March 24, 2005, referencing an arbitration clause in a Warranty Addendum signed by the original purchasers of units. CP 1413-14, 1434-48. Upon the Association’s Motion, the Trial Court quashed the demand. CP 143-44. The motion to reconsider was denied and Declarant appealed. CP 1389-99.

Oral argument was heard in the Court of Appeals on June 5, 2006.¹ The parties agreed to settle on December 5, 2006 and all signed a settlement agreement, the purpose of which was to “forever settle and resolve the disputes, claims and controversies between and among the Parties to this Agreement.”² To date, all settlement funds have been delivered by Satomi, LLC and its insurers and the amounts distributed to the Association.³ Thus, if this Court accepts review, its ruling will have no impact on the parties to this appeal.

¹ *Supplemental Motion to Terminate Review*, p. 1 (attached hereto as Appendix A).

² *Id.*, pp. 7-8; *Declaration of Marlyn K. Hawkins in Support of Supplemental Motion to Terminate Review*, ¶4, Ex. A (Settlement Agreement and Release) (declaration and all exhibits attached hereto as Appendix B); *Declaration of Dean E. Martin in Support of Answer to Petition for Review* (attached hereto as Appendix C), ¶2.

³ Appendix C, ¶3.

V. ARGUMENT

A. Review is Not Warranted Under RAP 13.4.

Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court *only if* the Court of Appeals decision is in conflict with a decision of the Supreme Court or of another Court of Appeals decision, if it involves a significant question of law under the State or Federal Constitutions, or if it involves an issue of substantial public interest.

The Court of Appeals decision here does not conflict with any other Court of Appeals' or this Court's decisions. In fact, it is consistent with its decision in *Marina Cove Condominium Owners Ass'n v. Isabella States*, 109 Wn. App. 230, 236, 34 P.3d 870 (2001). Petitioner cannot point to any case in actual conflict with this decision except to say that it is generally in conflict with decisions in which the Court has stated a general policy favoring arbitration. But those decisions are not actually in conflict with the present one; the analysis is entirely consistent with the present case, but the outcomes differ based on the facts presented. *See Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004) (Washington's Law Against Discrimination did not require judicial forum and therefore, conscionable portions of agreement to arbitration were enforceable); *Garmo v. Dean, Witter, Reynolds, Inc.*, 101 Wn.2d 585, 681 P.2d 253 (1984) (arbitration clauses in brokerage agreements already determined by Supreme Court to sufficiently affect interstate commerce); *Allison v. Medicab Intern., Inc.*, 92 Wn.2d 199, 597 P.2d 380 (1979) (arbitration clause in franchise agreement demonstrated sufficient interstate commerce

connections to apply FAA). Moreover, the latter two cases applying the FAA predate *Citizen's Bank v. Alafabco*,⁴ in which the Supreme Court clarified that the proper FAA analysis is to focus upon whether the contract containing the arbitration clause evidences interstate commerce.

Moreover, the issue in the present case is not whether, as a matter of law, the FAA preempts the WCA in every case. The outcome necessarily depends upon the specific facts presented; whether the particular contract containing the arbitration clause evidences interstate commerce. Thus, the Court's ruling would be limited to cases in which the facts were virtually identical.

Finally, there is a substantial public interest in rejecting review of this case because the parties have settled. For reasons stated in the Associations' *Supplemental Motion to Terminate Review* filed with the Court of Appeals⁵ the case was moot, even before the Court of Appeals ruled. Since the general rule is that moot cases should be dismissed, this Court is not compelled to hear a moot case even if the factors contained in RAP 13.4 are met. Regardless of the potential outcome of the appeal, where the parties have voluntarily settled their dispute and have agreed to discontinue all claims among them, it would be a miscarriage of justice to continue to further consider the now extinguished controversy. Thus, review should be denied.

⁴ *Citizen's Bank v. Alafabco*, 539 U.S. 52, 56-57, 123 S. Ct. 2037, 156 L. Ed. 2d 46 (2003).

⁵ Appendix A, p. 14.

B. Review Should Not Be Accepted Because the Court of Appeals Correctly Held that the Warranty Addendum Did Not Evidence Interstate Commerce.

The Court of Appeals correctly held that the FAA only operates to compel arbitration where the contract containing the arbitration clause affects interstate commerce. The Court of Appeals' holding was based not on a pure issue of law, but on the facts presented. Independent of its prior holding in *Marina Cove Condominium Owners Ass'n v. Isabella States*, 109 Wn. App. 230, 236, 34 P.3d 870 (2001), the Court held that, the warranty addendum here simply does not evidence interstate commerce.

1. The Court of Appeals Correctly Acknowledged that the Federal Arbitration Act Requires Proof that the Contract Containing the Arbitration Clause Affects Interstate Commerce.

The FAA provides:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction. . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. In contrast to the multiple Civil Rights cases relied upon by Appellant in the Court of Appeals,⁶ the analysis is not whether the business affects interstate commerce, but is much more focused: whether

⁶ The Commerce Clause cases cited by Petitioner in its Court of Appeals briefs focused upon whether the various businesses or "operations of public accommodations" affect interstate commerce for the purpose of determining whether federal anti-discrimination law applies. The key difference between these and the FAA cases is that in order for the FAA to apply, *the contract containing the arbitration clause* must evidence a transaction affecting interstate commerce, whereas the Civil Rights cases require only that the *business* sought to be regulated affects interstate commerce.

the contract containing the arbitration clause affects interstate commerce.

2. *The Court of Appeals Correctly Held that the Warranty Addendum Here Does Not Affect Interstate Commerce.*

To compel arbitration under the FAA, Appellant “must make a threshold showing that a written agreement to arbitrate exists and that *the contract at issue* involves interstate commerce.” *Walters v. A.A.A. Waterproofing, Inc.*, 120 Wn. App. 354, 392, 85 P.3d 389 (2004) (emphasis added).

Here, the “contract at issue” containing the arbitration clause is the Warranty Addendum. Thus, Petitioner had the burden of proving that the Warranty Addendum, not simply the business of constructing condominiums, involves interstate commerce. The Court of Appeals clarified this distinction:

Where the issue is federal regulation of the business itself – for example, enforcement of the rights of employees to nondiscriminatory and healthy workplaces – the “transaction” involves the internal operation of the business, and its use of materials shipped in interstate commerce is enough to characterize that business as affecting commerce for the purposes of the FAA.⁴⁶ . . . Where the issue is a private dispute, however, the analysis must identify the transaction involving interstate commerce.

Satomi, 159 P.3d at 468.

Here, the terms of the contract do not evidence interstate commerce. Because the legal focus is upon the contract containing the arbitration clause, it is necessarily fact-based and not a pure question of

law. Here, the specific contract, the warranty addendum, represented “a garden variety Washington real estate deal” involving all Washington parties. *Id.* at 467. Moreover, “real property law has historically been the law of each state” and the warranties in question here specifically derive from state law. *Id.* Thus, there is simply no interstate connection that would justify compelling arbitration under the FAA.

The mere assertion that some *or even all* of the parts of the condominium were shipped in interstate commerce does not mean that the Warranty Addendum evidences a transaction that involves interstate commerce. As the Court of Appeals stated:

The origin of the materials is irrelevant to the warranty, and the giving of the warranty is not a transaction involving commerce, because in the aggregate or otherwise, it does not represent a general practice subject to federal control.

Id.

While the Court of Appeals did not rely upon *Marina Cove* because of its reliance on the now obsolete “substantially affecting interstate commerce” test,⁷ the Court ultimately reached the same conclusion as *Marina Cove*, applying the more liberal “involving interstate commerce” test enumerated in *Citizen’s Bank*. On practically identical relevant facts as these here, the Court in *Marina Cove* stated:

⁷ While the Court acknowledged the apparent application of *Marina Cove*, the Court of Appeals decided to “revisit” the issue because of the questionable continuing validity of that case *Marina Cove*, given its reliance upon the “substantial affects” test for interstate commerce subsequently called into question by *Citizen’s Bank v. Alafabco*, 539 U.S. 52, 58, 123 S.Ct. 2037, 126 L.Ed.2d 46 (2003).

The contract at issue is a limited warranty offered by a Washington corporation on condominium units located within the state, whose owners all reside in Washington. The only connection to other states involves one buyer, who moved to Washington from another state, and another buyer, who transferred funds from an out-of-state bank account for use as a down payment on one unit purchased. That negligible contact with other states does not constitute a substantial effect on interstate commerce. The FAA does not apply.

Marina Cove, at 243-44. (emphasis added). Thus, even under the more liberal analysis, the result is the same. The Warranty Addendum does not evidence interstate commerce.

3. *The Condominium Warranty Addendum Does Not Generally Affect Interstate Commerce in the Aggregate.*

Lastly, arbitration can be compelled under the FAA if the subject matter of the relevant contract generally affects interstate commerce. *See Service Corp. Int'l v. Fulmer*, 883 So.2d 621, 629 (Ala. 2003). But, as the Court of Appeals correctly held, the Warranty Addendum does not qualify.

In the seminal Supreme Court FAA case, *Citizen's Bank v. Alafabco*, an appeal from the Alabama Supreme Court, the Court held that a dispute arising out of a debt-restructuring contract containing an arbitration clause was arbitrable under the FAA because the subject of the contract in dispute – debt restructuring – was “in the aggregate” an economic activity subject to federal control. The Court further held that the subject matter of the contract must bear on interstate commerce in a

“substantial way.” *Id.* at 57. In support of its finding that the debt-restructuring agreement affected interstate commerce, the Court cited Alafabco’s business and obtainment of loans throughout the southeastern United States, the fact that the debt-restructuring agreement was secured by out-of-state inventory, and finally, the “magnitude of the impact on interstate commerce caused by the particular economic transactions in which the parties were engaged . . .” *Id.* at 57-58.

As the Court of Appeals held, the Warranty Addendum in this case simply does not share the same attributes as the massive debt-restructuring agreement in *Citizen’s Bank*:

[T]hese transactions have none of the earmarks of an economic activity that in the aggregate would represent a general practice subject to federal control. The Company offers no authority holding that local real estate transactions represent such a practice, or that warranties required by state law for state condominium projects represent such a practice, or that local regulation of real estate transactions can constitute an economic activity that in the aggregate would represent a general practice subject to federal control.

Satomi, at 467-68. Thus, even under the broad interpretation of the FAA in *Citizens’ Bank*, the Warranty Addendum fails to evidence a transaction involving interstate commerce.

C. If Review is Accepted, the Court Should Review the Court of Appeals' Error in Holding that the Association was Bound by Contracts Entered into by Only Some of its Members.

The Court of Appeals incorrectly stated the record when it held that “[t]he Association acknowledges that all original owners signed the warranty addendum.” *Satomi*, 159 P.3d at 463. In fact, the Association never acknowledged this, but disputed the fact that all of the original owners signed. Moreover, *Satomi*, LLC failed to produce evidence that all original owners signed. CP 163. The Court then ignored all principals of agency law and summarily held that the Association was bound because the original purchasers were required to bind subsequent purchasers. *Satomi*, 159 P.3d at 463.

But just because the original owners agreed to bind subsequent owners does not mean that they did so. In fact, no such evidence exists in the record. If the original owners failed to bind subsequent purchasers, then *Satomi*, LLC may have an action against those purchasers, but its remedy is not to enforce against subsequent purchasers arbitration clauses to which they never agreed. This would violate the FAA’s fundamental principal that to compel arbitration under the FAA, the party seeking arbitration “must make a threshold showing that a written agreement to arbitrate exists . . .” *Walters*, 120 Wn. App. at 392 (2004).

The Court of Appeals then blurred the issues of standing and agency and held that because the Association’s *standing* to bring the action was derivative, that it is therefore bound by some of the members’ contracts. *Satomi* at 463. Even if the standing is derivative and “the

Association stands in the shoes of the individual unit owners,”⁸ the consequence is that the Association would be subject to defense available against the owners. But compelling arbitration is not a defense to any claim; it is a contractual clause that must be analyzed separately from the issue of standing to sue. Even if the Association’s claims are derivative, many of the owners have a right to judicial enforcement of their WCA claims absent a contrary agreement to arbitrate. Thus, those owners cannot be compelled to arbitrate. As the Court of Appeals held in *Powel v. Sphere Drake*, 97 Wn. App. 890, 898, 988 P.2d 12 (1999), “. . . despite the strong policy in favor of arbitration, parties to a dispute will generally not be compelled to arbitrate unless they have agreed to do so.”

The law of agency – not the law of standing to sue – governs whether the Association is bound to the agreements of some of its members. “A person who is not a party to an agreement to arbitrate may be bound to such an agreement only by ordinary principles of contract and agency.” *Powell v. Sphere Drake Ins. P.L.C.*, 97 Wn. App. 890, 892, 988 P.2d 12 (1999) (citing *Thomson-CSF, S.A. v. Am. Arbitration Ass’n*, 64 F.3d 773, 776 (2d Cir. 1995)); see also *Cariaga v. Local No. 1184 Laborers Int’l Union of N. Am.*, 154 F.3d 1072, 1074 (9th Cir. 1998) (“Because arbitration is matter of contract, a party will not be required to submit to arbitration unless that party has agreed to do so.”); *Beach Air Conditioning & Heating Inc. v. Sheet Metal Workers Int’l Ass’n Local*

⁸ *Id.* at 464.

102, 55 F.3d 474, 476 (9th Cir. 1995) (because arbitration is a matter of contract, a party “cannot be required to submit to arbitration any dispute which he has not agreed to so submit.”)

Under the Court of Appeals’ analysis, the Association would be bound to any agreement entered into by any one of its members despite the lack of any agency relationship with the Association. Thus, if this Court accepts review of this case, this portion of the Court of Appeals’ decision should be reversed to correct the erroneous statement of the record and to delineate the difference between standing and binding persons to contracts to which they did not assent.

VI. CONCLUSION

This Court should not accept review of this case. The Court of Appeals’ opinion is not in conflict with any other opinions, and because of the factual nature of the inquiry, will provide little guidance on whether the FAA preempts WCA claims in general, even though the issues appear to involve the interpretation of the Constitution. Moreover, the Court of Appeals’ primary holdings are sound and should be undisturbed.

If this Court chooses to accept review, however, then the Association requests that this Court review the Court of Appeals’ holding insofar as it binds the Association to contracts entered into by only some of its members, thus imposing arbitration upon those who are guaranteed judicial review of claims and who never contractually agreed to waive that right.

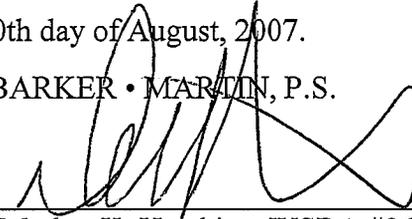
Respectfully submitted this 10th day of August, 2007.

BARKER • MARTIN, P.S.

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Dean Martin, WSBA #21970
Attorneys for Respondent Satomi
Owners Association

Respectfully submitted this 10th day of August, 2007.

BARKER • MARTIN, P.S.

A handwritten signature in black ink, appearing to read 'Marlyn K. Hawkins', written over a horizontal line.

Marlyn K. Hawkins, WSBA #26639

Dean Martin, WSBA #21970

Attorneys for Respondent Satomi

Owners Association

Appendix A

No. 56265-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SATOMI OWNERS ASSOCIATION, a Washington Non-Profit
Corporation,

Respondent

vs.

SATOMI, LLC, a Washington Limited Liability Company,

Appellant.

**RESPONDENT SATOMI OWNERS ASSOCIATION'S
SUPPLMENTAL MOTION TO TERMINATE REVIEW**

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I. IDENTITY OF MOVING PARTIES

Respondent Satomi Owners Association is a Washington non-profit corporation with its primary place of business in King County, Washington (hereinafter, the "Association"). Appellant is Satomi, LLC, a Washington limited liability company with its primary place of business in King County, Washington (hereinafter, "Satomi").

II. RELIEF SOUGHT AND GROUNDS FOR RELIEF

A. The Parties have Voluntarily Settled All Claims Among Them.

Satomi timely filed notices of appeal seeking review by this Court of two King County Superior Court orders relating to arbitration. The parties filed a Joint Motion for Finding of Appealability as a Matter of Right on July 6, 2005. This Court granted the motion on July 11, 2005. Briefing was timely submitted and this Court heard oral arguments on June 5, 2006. To date, this Court has not yet entered a ruling, nor has an opinion been issued.

Subsequently, the parties participated in mediation.¹ On December 5, 2006, the parties reached settlement in this matter.² The language of final settlement agreement, entitled "Settlement Agreement and Release"

¹ Declaration of Marlyn K. Hawkins in Support of Supplemental Motion to Terminate Review, ("Hawkins Decl."), ¶ 2.

² Hawkins Decl., ¶ 2.

was approved by all counsel for Appellant and its Insurer on January 11, 2007. The Settlement Agreement and Release. ("Agreement") is attached as Exhibit A to the Declaration of Marlyn K. Hawkins, counsel for Respondent Association. The Settlement Agreement provides, in pertinent part:

The purpose of this Agreement is to forever settle and resolve the disputes, claims and controversies between and among the Parties to this Agreement, arising out of or relating to the Satomi Condominiums.³

It continues, "The Association and Satomi, LLC wish to settle and resolve the disputes, claims and controversies between them arising out of or relating to the Condominium, subject to the terms and conditions hereinafter set forth."⁴ These recitals are explicitly "incorporated by reference herein and made a part" of the Agreement.⁵ Under the paragraph entitled "Settlement and Release," the parties agreed: "In consideration of the actions, forbearances, and mutual promises of the Parties contained herein, the sufficiency of which are hereby acknowledged, the Parties agree to settle and resolve the Claims by and between them."⁶

³ *Id.*, ¶ 4, *Ex. A at p.1.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

The Settlement Agreement was executed by Respondent and provided to counsel for Appellant on January 15, 2007,⁷ entitling Appellant to file this motion to terminate review pursuant to the terms of that Agreement.⁸ The Parties also agreed upon language of a Stipulation of Dismissal of the superior court action, which was executed by Respondent and provided to Appellant under the terms of the Agreement.⁹ Appellant Satomi, LLC and its Insurer also executed the Agreement, which was provided to Respondent on January 31, 2007.¹⁰ Respondent has not filed the Stipulation and Order of Dismissal of the superior court action, however.¹¹

In its original Motion to Terminate Review, the Association indicated that Appellant would not oppose the Motion. Based on the language of the Settlement Agreement and Release, this is what the Association believed at the time of filing the original Motion.¹² Frankly, it was simply unfathomable to Association's counsel that complete and final settlement and release of claims pursuant to the Agreement between the parties would not terminate both the superior court matter and this

⁷ *Id.* at ¶ 4, Ex. A

⁸ *Id.* at p. ____.

⁹ *Id.* at ¶ 5.

¹⁰ *Id.* at ¶ 6.

¹¹ *Id.* at ¶ 5.

¹² *Id.* at ¶ 7.

appeal.¹³ In addition, Appellant has made a substantial partial payment of its settlement obligations, which has been received by counsel and distributed to the client.¹⁴

Despite plenty of opportunities to do so during the negotiation of the language of the Settlement Agreement and Release, Respondent never indicated its apparent intent to withhold filing of the stipulation to dismiss the superior court case or to oppose termination of this appeal.¹⁵ All that remains to carryout the Agreement is for Respondent to complete the ministerial tasks of filing the Stipulation and Order of Dismissal in the superior court, terminating this appeal and continuing its payments per the Agreement.

At this time, Appellant is contemplating a separate superior court action to enforce the Settlement Agreement. In the interim, however, the Association is asking this Court to enforce the Agreement in the interests of justice by declining to exercise its discretion to extend this appeal despite its moot character.

After the original Motion to Terminate was filed, the Association received notice from Appellant Satomi, LLC that it would, in fact, be

¹³ *Id.*

¹⁴ *Id.* at ¶ 8.

¹⁵ *Id.* at ¶ 8.

opposing the termination of this appeal. In an e-mail, counsel “demanded” retraction of the statement that they would not be opposing termination.¹⁶ The email indicated that the Settlement Agreement was “carefully crafted” by them to allow them to oppose termination of the appeal, despite never having mentioned their intent to do so and despite the clear language of the Agreement settling all claims.¹⁷ Appellant’s Notice of Intent to Oppose the original Motion to Terminate followed, noting that its brief would not be filed until February 1, 2007. Despite Appellants’ counsel’s email demand that the Association immediately revise its Motion, in light of the fact that it learned for the first time that the Motion was going to be opposed (not only by Appellant, but by proposed amicus), the Association began preparation of this Supplemental Motion.

The Association was also served notice that *proposed* amicus Blakely Village, LLC intended to oppose the appeal, but could not file its brief until February 1. Proposed amicus Master Builders Association (“MBA”) simply filed a brief in opposition with a subjoined motion to be granted amicus status. Notably, these proposed amici are represented by all of the same attorneys that represented Appellant Satomi, LLC in this

¹⁶ *Id.* at ¶ 10, Ex. B.

¹⁷ *Id.*

matter, belying their personal, rather than public policy interests in the issue.

B. The Proposed Amicus Briefs Should Not be Considered by This Court.

1. Proposed Amici Have no Standing to Object to Termination.

While the Rules of Appellate Procedure do not explicitly address the standing of amicus curiae to file or oppose motions, it is clear that an amicus curiae brief may be heard on the merits only if permission is obtained from the court as provided in RAP 10.6.¹⁸ Proposed amicus must move the Court to be accepted as amicus, which may be granted only if the parties agree or the brief assists the appellate court.¹⁹ Moreover, such proposed amicus must provide their briefs 30 days prior to oral argument.

RAP 10.2(f) provides:

A brief of amicus curiae not requested by the appellate court should be received by the appellate court and counsel of record for the parties and any other amicus curiae not later than 30 days before oral argument or consideration on the merits, unless the court sets a later date or allows a later date upon a showing of particular justification by the applicant.

Even when accepted, amicus curiae are to limit their arguments to “the

¹⁸ *RAP 10.1(e)*.

¹⁹ *RAP 10.6(a) & (b)*.

issues of concern of amicus” and “avoid repetition of matters in other briefs.”²⁰

Here, where neither proposed amicus moved the court prior to oral argument in this matter, the Court should not consider their arguments or objections to the Association’s Motion to Terminate Review over eight months after argument on the merits. Such practice is not only impliedly prohibited by the Rules, but is fundamentally unfair to Respondent, who expected no opposition to its Motion to Terminate Review.

**2. Condominium Declarant Blakely Village, LLC
Does Not Qualify as Amicus and Has No
Standing to Object to Termination because it
Could have Appealed and Consolidated Under
RAP 3.3(b).**

The fact that counsel for Respondent in this case agreed to stay another of his client’s cases pending the outcome of this appeal does not qualify it as amicus because its position is not helpful to the court in determining the merits of the appeal. Nor should the Court give any weight to its request to extend review of this case in order to further its own case when the parties in interest have voluntarily settled.

If those parties wished to have a say in the pendency of this appeal, they could have brought their own appeal and consolidated under RAP 3.3(b) to protect their interests. Having chosen to proceed as they

²⁰ *RAP 10.3(e)*.

have, they cannot be heard to object to the termination of this appeal where the actual parties settled almost two months ago, have executed a Settlement Agreement and Stipulation and Order to Dismiss the superior court case; and where Appellant has made partial payment of settlement amounts.

It is simply unprecedented that the actual parties in interest, after mutual settlement and release of claims, should be saddled with continued briefing and the costs and fees engendered thereby, in order to benefit a completely unrelated party who neither intervened, timely appeared as amicus, nor appealed its own case to be consolidated with the present appeal.

3. Proposed Amici's Interests in the Case are Not Broad, but Personal.

It is notable that both so-called proposed amici in this case are represented by the same three counsel that represented Satomi, LLC. Thomas Ahearne, counsel for the Master Builders' Association, represented Satomi, LLC as insurance coverage counsel.²¹ Joel Salmi and Stellman Kehnell both represented Satomi, LLC in the superior court action and before this Court.²² As demonstrated by the motion of

²¹ *Hawkins Decl.*, ¶ 8.

²² *Id.*

condominium declarant Blakeley Village, LLC, what they truly seek is an advisory opinion for which their clients do not have to pay to litigate. Under these circumstances, neither the MBA nor Blakely Village, LLC are legitimate amicus curiae and their objections to the Motion to Terminate should be disregarded.

C. The Review Should Be Terminated Because it is Moot.

~~“The appellate court will, on motion of a party, dismiss review of a~~
case . . . (2) if the application for review is frivolous, *moot*, or solely for the purpose of delay”²³ A case is moot if a court can no longer provide effective relief. *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004); *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). “A moot case is one in which seeks to determine an abstract question which does not rest upon existing facts or rights.” *State v. G.A.H.*, 133 Wn. App. 567, 572, 137 P.3d 66 (2006) (quoting *Hansen v. W. Cosast Wholesale Drug Co.*, 47 Wn.2d 825, 827, 289 P.2d 718 (1955)). The general rule is that cases involving only moot questions or abstract propositions should be dismissed. *In re Detention of T.A.H.-L*, 123 Wn. App. 172, 176, 97 P.3d 767 (2004); *State v. G.A.H.*, 133 Wn. App. at 573; *City of Seattle v. Johnson*, 58 Wn. App. 64, 66-67, 791 P.2d 266 (1990).

²³ *RAP 18.9(c)*.

Here, there is no doubt that the appeal is moot because the parties in interest, Respondent Satomi Owners Association and Appellant Satomi, LLC, have settled and released all claims, with only administrative functions to be performed to dismiss the superior court case and terminate this appeal. This Court can no longer provide the basis of relief sought by Appellant, ~~which was enforcement of a specific contractual arbitration~~ clause. Because the parties have settled, no ruling given by this Court can require arbitration as between these parties. Thus, the appeal is moot and should be dismissed.

The fact that the parties have voluntarily settled distinguishes this case from the host of cases raised by proposed amicus Master Builders Association ("MBA") in which the appeal became moot by sheer passage of time or subsequent change in law. The implication, if not the explicit purpose, of a settlement and release of claims is to terminate all cases, claims and controversies between the parties. Thus, there can be no dispute that the case is moot and that the parties chose to moot this appeal by their actions in fully settling the disputes between them.

D. The Public Interest Exception Should Not Be Exercised in this Case.

1. Discretion to Continue a Moot Appeal Should Not be Exercised Because the Association is Substantially Prejudiced by Respondent's Breach of the Settlement Agreement.

When it chooses to do so, this Court has the discretion to decide a moot case under very specific guidelines discussed in the next section. However, since the general rule is that moot cases should be dismissed, a Court is not compelled to hear a moot case even if such factors are met. Regardless of the potential outcome of the appeal, where the parties have voluntarily settled their dispute and have agreed to discontinue all claims among them, it would be a miscarriage of justice to continue to consider the now extinguished controversy.

Knowing that the present appeal cannot affect either the rights of Respondent Satomi Owners Association or Appellant Satomi, LLC, Appellant's counsel believed it "carefully crafted" the settlement documents to allow them to extend the appeal despite specific language regarding settlement of all claims among them and without disclosing their intent to keep the appeal alive to potentially benefit other clients.²⁴ The Court should not sanction such an abuse of the settlement process.

²⁴ See *Hawkins Decl.*, ¶ ____, *Ex. B.*

Second, as distinguished from all cases in which review was extended under the public interest exception, failure to terminate review here would result in severe prejudice to one of the parties – Respondent Satomi Owners Association and its members.

A condominium association has duties of disclosure to potential buyers of condominiums, including the duty to disclose “[a] statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant.”²⁵ Since the superior court case is stayed pending termination of this appeal, the Association must continue to disclose the existence of this lawsuit *despite full settlement thereof*. This often has the effect of deterring re-sales of condominium units.²⁶ Moreover, many lending institutions will not offer mortgages or refinances of existing mortgages to buyers or owners of condominiums currently involved in litigation.²⁷

Second, having fully settled the matter and accepted partial payment, Appellant Satomi Owners Association, as the client, has no further interest in defending this appeal on the merits, yet its counsel is

²⁵ RCW 64.34.425(k).

²⁶ *Hawkins Decl.*, ¶ 9.

²⁷ *Id.*

pressed into service in order to have the case dismissed. Appellant is confident that the outcome of this appeal will be to affirm the superior court. Should that occur, there is nothing to prevent Respondent from further appealing the issue to the Supreme Court and further pressing counsel for Respondent Association into service when its client is completely disinterested in the merits of the case, and further extending the pendency of the superior court matter.

For these reasons alone, the Court should follow the general rule and terminate the moot appeal in the interests of justice, thus enforcing the Settlement Agreement and Release. Exercising its discretion to extend consideration would reward Respondent for its breach of the terms of the Settlement Agreement and Release.

2. The *Sorenson* Factors do Not Support Continued Review.

Under rare circumstances, the court of appeals may exercise its discretion to continue to consider a moot case where it presents issues of continuing and substantial public interest. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972). The *Sorenson* court clarified: "This exception to the general rule obtains only where the real merits of the controversy are unsettled and a continuing question of great public importance exists." *Id.* at 558. The criteria for determining whether a

moot case should be revised under the "public interest exception" have morphed some over the years, but are still commonly known as the *Sorenson* factors. The decisions refer to three crucial factors, but often include two other factors, for a total of five criteria to be considered. The first "determinative" factors include: 1) whether the issue is of a public or private nature; 2) whether authoritative determination is desirable to provide future guidance to public officers; and 3) whether the issue is likely to recur. *Horner*, 151 Wn.2d at 892; *Sorenson*, 80 Wn.2d at 558. The other factors include the likelihood that the issue escapes review because of necessarily short-lived controversy and the quality of the advocacy in the moot case. *Horner*, 151 Wn.2d at 892; *G.A.H.*, 133 Wn. App. 574.

In *Hart v. DSHS*, 111 Wn.2d 445, 450, 759 P.2d 1206 (1988), the Supreme Court cautioned that strict application of the factors criteria is urged "to ensure that an actual benefit to the public interest in reviewing a moot case outweighs the harm from an essentially advisory opinion." Thus, the Court recognized the dangers inherent in issuing advisory opinions where unwarranted.

- a. **Because the Dispute is Contractual and Limited to its Facts, it is a Private Dispute, there is No Need for Authoritative Determination and the Exact Issue is Not Likely to Recur.**

The “public nature” and “necessity for authoritative determination” factors include consideration of whether a ruling in the case would have widespread effect or whether it would be limited to the facts of the case.

“The public interest exception has not been used in statutory or regulatory cases that are limited on their facts.” *Hart v. Dept. of Social and Health Svcs.*, 111 Wn.2d 445, 759 P.2d 1206 (1988); *see also Horner*, 151 Wn.2d at 892 (“This issue is of a public nature because . . . the Court of Appeals opinion was not limited to the *Horner* facts, but contained an interpretation of the statute.”); *Hart*, 111 Wn.2d at 451 (issue “was limited to the facts of the present case and takes this case out of the public interest exception.”) Similarly, “[d]ecisions of moot cases with limited fact situations provide little guidance to other public officials.” *Hart*, 111 Wn.2d at 451. The fact-specific nature of the case also implies that the exact issue is not likely to recur.

Proposed amicus MBA overgeneralizes the issue on appeal as “the applicability of the Federal Arbitration Act to arbitration provisions in Washington condominium sales contracts.” But before the Court can make a determination on that issue, the Court must find that condominium

associations are bound by contracts entered into by only some of its members. See *Brief of Respondent's Satomi Owners Association* ("*Respondent's Brief*") at pp 23-34. The Court must also find that the contract at issue evidences sufficient connections with interstate commerce for federal law to apply. *Id. at pp. 5-21*. This determination is made on a case-by-case basis. *Id. at pp. 7-8*. This threshold determination is necessarily fact-specific and dilutes the applicability of any ruling of this Court to future cases. The Court will recall that Appellant argued vociferously that the present case was distinguishable from *Marina Cove* based on the specific facts presented.²⁸

In terms of subject matter, cases in which review has been accepted appear to have two things in common, they involve interpretation of statutes and relate to issues implicating fundamental liberties such as detention of the accused or removal of children from the home. See *Horner*, 151 Wn.2d 884 (propriety of removing children from home under Washington's Child Relocation Act); *Westerman*, 125 Wn.2d 277, 892 P.2d 1067 (1995) (holding those accused of domestic violence without bail); *Hart v. Dept. of Social and Health Svcs.*, 111 Wn.2d 445, 759 P.2d 1206 (1988) (relating to due process); *Diamond v. Cross*, 99 Wn.2d 373, 662 P.2d 828 (1983) (regarding detention of disabled persons). Whether a

²⁸ *Opening Brief of Appellant Satomi, LLC at 20-22.*

specific contract term in a contract between a condominium declarant and unit purchaser is enforceable as against a condominium owners association is simply not such an issue of public import. *Mendez v. Palm Harbor Homes*²⁹ is inapposite because it related specifically to the interpretation of a Washington statute relating to mobile homes. Here, the Court is not simply being asked to interpret state law, but to determine whether the facts in this specific case (whether this particular condominium has sufficient connections with interstate commerce) make it subject to federal law. Again, such a determination is fact-specific and would not dispose of similar suits. Thus, this factor weighs in favor of discontinuing the appeal.

b. There is No Indication that Public Officers Need Authoritative Guidance on this Issue.

The “need for authoritative guidance to public officers” factor further weighs against continuing review because no public officers other than the courts are charged with interpretation of this issue. This is in marked contrast to cases in which review was continued to give guidance to administrative agencies. This factor also includes an analysis of whether there are inconsistent applications of a statute by lower courts. *Horner*, 151 Wn.2d at 893. Here, there is no evidence before this Court

²⁹ 111 Wn. App. 446, 45 P.3d 594 (2002).

that the superior courts are inconsistently applying the law. In fact, though proposed amicus MBA "estimates" that many other condominium declarations use "similar" arbitration provisions, it provides this court with no evidence that some courts are enforcing such provisions while others are not.

Moreover, the legislature recently enacted Chapter 64.55 RCW, ~~providing for alternate dispute resolution including arbitration for~~ construction defect actions such as this one. In addition, the Condo Act was amended to affirm that its terms were enforceable by judicial proceeding, except for the provisions of the new scheme under Chapter 64.55 RCW.

Except as otherwise provided in RCW 64.55.100 through 64.55.160 or chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding. The arbitration proceedings provided for in RCW 64.55.100 through 64.55.160 shall be considered judicial proceedings for the purposes of this chapter.

RCW 64.34.100(2). Such an undertaking represents the state's clear and consistent position that construction defects are not otherwise subject to contractual arbitration clauses. Thus, this factor supports termination of review.

c. The Controversy is Not Short Lived as to Evade Review.

Finally, the Court essentially considers whether an issue is so short-lived that it will always become moot before the appellate court can hear the issue. In such cases, review may be appropriate. Here, there is nothing about this controversy that has been short-lived. The case is not moot because of the mere passage of time, but because the parties voluntarily settled all claims among them. Thus, this factor does not support extending review.

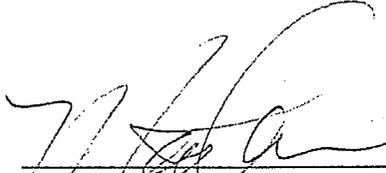
In conclusion, if the court chose to consider exercising its discretion to extend review, it cannot do so because the *Sorenson* factors do not support continued review. The appeal should be terminated.

E. Conclusion

Respondent Satomi Owners Association moves this Court to terminate review of this appeal. The appeal should be terminated because it was mooted by voluntary settlement between the parties. Moreover, the Court should decline to exercise its discretion to retain the appeal because doing so would not be in the interests of justice; it would reward Appellant's breach of the Settlement Agreement. Finally, even if the court wished to consider extension of the appeal under the *Sorenson* factors, those factors do not indicate that the appeal is of such public importance that review should be extended. Thus, the appeal should be terminated.

RESPECTFULLY SUBMITTED this 16th day of February, 2007.

BARKER · MARTIN, P.S.

A handwritten signature in dark ink, appearing to read 'Dean Martin', written over a horizontal line.

Dean Martin, WSBA # 21970

Marlyn K. Hawkins, WSBA # 26639

Attorneys for Respondent Satomi Owners
Association

Appendix B

No. 56265-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SATOMI OWNERS ASSOCIATION, a Washington Non-Profit
Corporation,

Respondent

vs.

SATOMI, LLC, a Washington Limited Liability Company,

Appellant.

**DECLARATION OF MARLYN HAWKINS IN SUPPORT OF
SUPPLEMENTAL MOTION TO TERMINATE REVIEW**

Dean Martin, WSBA # 21970
Marlyn K. Hawkins, WSBA # 26639
Attorneys for Respondent Satomi
Owners Association

BARKER • MARTIN, P.S.
720 Seventh Avenue, Suite 300
Seattle, WA 98104
Telephone: 206-381-9806

I, MARLYN K. HAWKINS, declare:

1. I am over the age of eighteen, an attorney for Respondent Satomi Owners Association, and otherwise competent to be a witness herein. I have personal knowledge of the information contained herein.

2. The parties in this matter participated in mediation on October 24, 2006 and reached a settlement on December 5, 2006.

3. The final language of the settlement agreement was approved by all counsel for Appellant and its Insurer on January 11, 2007.

4. Attached hereto as **Exhibit A** is a true and correct copy of the final, executed settlement agreement ("Settlement Agreement and Release"). The parties to the settlement agreement were Satomi Owners Association; Satomi, LLC; and the Insurance Company of the State of Pennsylvania (its "insurer"). This document was executed by Respondent and provided to counsel for Appellant on January 15, 2007.

5. The parties agreed upon the language of a Stipulation of Dismissal of the superior court action, which was executed by the Respondent and provided to the Appellant under the terms of the Settlement Agreement and Release. Respondent has not yet filed this document.

6. Appellant Satomi, LLC and its Insurer executed the Settlement Agreement and Release and provided it to Respondent on January 31, 2007.

7. Based on the language of the Settlement Agreement and Release, I believed that Appellant would not and could not oppose Respondent's Motion to Terminate Review. Instead, I believed that

complete and final settlement and release of claims pursuant to the Settlement Agreement and Release would necessarily terminate both the superior court matter and this appeal.

8. As of this date, Appellant has paid a substantial portion of its settlement obligations. This money was received by our office and has been distributed to the client.

9. Despite plenty of opportunities to do so during the negotiation of the language of the Settlement Agreement and Release, Respondent never indicated its apparent intent to withhold filing of the stipulation to dismiss the superior court case or to oppose termination of this appeal.

10. In an email, counsel for Appellant "demanded" retraction of the statement that they would not be opposing termination. Attached as **Exhibit B** is a true and correct copy of this email.

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

Executed this 1st day of February, 2007 in Seattle, Washington.

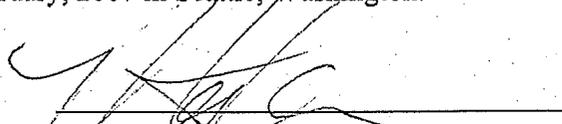

Marlyn Hawkins

Exhibit A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the following "Parties":

- A. SATOMI CONDOMINIUM OWNERS ASSOCIATION, a Washington non-profit corporation ("Association");
- B. SATOMI, LLC, a Washington Limited Liability Company;
- C. INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA ("ISOP"), a Pennsylvania corporation, which provided insurance to Satomi, LLC under policy number 4201-3067.

I. RECITALS

A. The purpose of this Agreement is to forever settle and resolve the disputes, claims, and controversies between and among the Parties to this Agreement, arising out of or relating to the Satomi Condominiums ("Condominium") located in Bellevue, Washington.

B. The Association has asserted claims against Satomi, LLC in King County Superior Court Cause No. 05-2-05610-3 SEA ("the Lawsuit"); the Parties also have an appeal pending before the Court of Appeals, Division I, Cause No. 56265-7-1.

C. The Association and Satomi, LLC wish to settle and resolve the disputes, claims, and controversies between them arising out of or relating to the Condominium, subject to the terms and conditions hereinafter set forth.

II. AGREEMENT

NOW, THEREFORE, in consideration of the actions, forbearances, and mutual promises of the Parties contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

The foregoing recitals are incorporated by reference herein and made a part hereof.

1. Definitions

"Claims" means any and all claims, known or unknown, relating to or arising from the design, development, construction, or sale of condominium units or common elements or limited common elements at the Condominium that the Association asserted or could have asserted at any time pursuant to its authority under RCW 64.34.304(1)(d).

"Insurer" means ISOP, which insured Satomi, LLC under policy number 4201-3067.

2. Settlement and Release

In consideration of the actions, forbearances, and mutual promises of the Parties contained herein, the sufficiency of which are hereby acknowledged, the Parties agree to settle and resolve the Claims by and between them as follows:

2.1 For and in consideration of payment by or on behalf of Satomi, LLC to the Association of \$6,500,000.00, as more specifically described in Section 3 below, the Association releases Satomi, LLC, together with all of its respective members, owners, officers and directors and affiliated and successor companies as well as their respective marital communities, employees, agents, attorneys, insurers, heirs, and assigns from all liability, claims, demands, or damages arising out of the Claims.

2.2 Satomi, LLC shall indemnify and hold harmless the Association for any and all claims arising out of Satomi, LLC's pursuit of claims against its designers, subcontractors and suppliers, or any other third party involving the Condominium, but only if Satomi LLC initiates such a claim and none of its insurers benefit from such a claim. Satomi LLC shall have no obligation to indemnify or hold harmless the Association where such a claim is pursued by an insurer in the name of Satomi LLC.

2.3 Insurer, but only to the extent insurer participates in any such claims or claims a right to proceeds in any such claims, shall indemnify and hold harmless the Association for any and all claims arising out of Satomi, LLC's pursuit of claims against its designers, subcontractors and suppliers, or any other third party involving the Condominium.

3. Settlement Funds

Payment to the Association shall be made payable by wire transfer or other such means so that the funds are available on the Payment Due Date in the chart below.

Wire transfers shall be made to the following:

The Commerce Bank of Washington
601 Union Street, Suite 3600
Seattle, WA 98101

Account Name: Barker Martin, P.S. Attorneys At Law, Trust Account
Account Number: 002006618
Routing Number: 125008013

Check payments shall be made out to "Barker Martin P.S. Trust Account Tax ID # 16-171287-5, in trust for Satomi Condominium Owners Association" and shall be received in advance of the Payment Due Date below so that funds are available on the Payment Due Date.

Payments shall be made in the following amounts:

Payment From	Amount	Payment Due Date:
Clarendon Insurance Company	\$4,884,903.01	Dec. 20, 2006
ISOP	\$538,365.66	Feb. 15, 2007
ISOP	\$538,365.66	April 15, 2007
ISOP	\$538,365.67	June 15, 2007
TOTAL SETTLEMENT AMOUNT	\$6,500,000	

3.1 The settlement funds provided by the Clarendon Insurance Company, as referenced in paragraph 3, above, have been received by counsel for the Association, and shall be held in trust by counsel for the Association until the Stipulation and Order for Dismissal in the Superior Court matter, referenced in paragraph 4, below, has been executed by counsel for the Association and provided to counsel for Satomi, LLC.

4. Notice of Settlement and Dismissal of Claims

In consideration of the CR 2A Settlement Agreement previously executed by the parties, following execution of this Settlement Agreement by the Association and prior to the distribution of the Settlement Funds, the Association shall deliver to counsel for Satomi, LLC an executed Stipulation and Order of Dismissal in the Superior Court matter providing for the dismissal of all claims with prejudice amongst them and without costs or attorney fees to any of them. The Association may also, by filing a motion seeking dismissal of the appeal, then inform the Court of Appeals, Division 1, in Cause No. 56265-7-1, that the Parties have settled.

5. ISOP's Obligation to Make Payments to the Association

ISOP shall make payments to the Association as set forth in Section 3. The Association shall have a direct claim against ISOP for breach of its obligations to make payments under this Settlement Agreement, only if ISOP fails to make the payments on time as required under this agreement.

6. Joint Responsibility for Drafting

The preparation of this Agreement has been a joint effort of the Association, Satomi, LLC and its insurer and the resulting documents shall not be construed more severely against any one of the parties than against any other.

7. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors, or assigns.

8. No Waiver

Any failure by any Party to enforce any of the provisions of this Agreement or to require at any time performance by any other Party of any of the provisions hereof during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof and shall not be deemed a waiver of the rights of any Party hereinafter to enforce any and each such provision.

9. No Admission

The execution of this Agreement affects the settlement of Claims which are disputed, contested, and denied. The Parties understand and agree that nothing herein is intended to be, nor shall it be deemed or construed to be, an admission of liability by any other Party in any respect or to any extent whatsoever. This Agreement shall be inadmissible in accordance with the provisions of ER 408 in any other action or legal proceeding, except in an action to enforce the terms of this Agreement.

10. Authority to Sign

Each person signing this Agreement represents and warrants that he or she has the legal right, status and authority to enter into this Agreement on behalf of the entity for which he or she is signing.

11. Free and Voluntary Agreement

The Parties acknowledge that each has been fully advised by legal counsel concerning the language and legal effect of this Agreement and knowingly enters into this Agreement freely and without coercion of any kind.

12. Execution by Counterpart and Facsimile

The Parties agree that this Agreement may be executed separately or independently in any number of counterparts each of which together shall be deemed to have been executed simultaneously and for purposes of this Agreement. By signing this Agreement, the Parties acknowledge that they have the authority to sign the Agreement on behalf of themselves, or on behalf of the entities noted below. Signature of a facsimile copy of this Agreement, and transmission of a signature by facsimile, shall bind the signing Party to the same degree as delivery of a signed original. At the request of any Party, a Party having delivered a signature by facsimile shall promptly deliver an original signature as well.

13. Attorneys' Fees, Venue, Choice of Law

In the event any action is brought to enforce this Agreement, or for breach thereof, the substantially prevailing Party shall be entitled to recover its costs of such action, including reasonable attorneys' fees and costs. The exclusive venue for any such action shall be King County Superior Court, Washington. The Parties hereto consent to jurisdiction and venue, regardless of the place of execution and performance or the domicile of the Parties or the jurisdiction with the most significant contacts. The laws of the State of Washington shall govern this Agreement in all respects.

14. Entire Agreement

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof. This Agreement may not be modified except by a writing signed by the Party or Parties to be charged with such modification. None of the Parties is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, or based on agreements other than those contained in this Agreement.

15. Effective Date.

The effective date of this Agreement is December 6, 2006.

Satorni Condominium Owners Association

Satorni, LLC

Derek White

James E. DeFranco

By: DEREK WHITE

By: JAMES E. DEFranco

Its President

Its Executive Vice President

Insurance Company of the State of
Pennsylvania

Vicki F. Blach

By: VICKI F. BLACH

Its AVP, Claims - AEA DOMESTIC CLAIMS

Exhibit B

Dean Martin

From: Keehnel, Stellman [Stellman.Keehnel@dlapiper.com]
Sent: Thursday, January 18, 2007 4:51 PM
To: Dean Martin
Subject: Satomi



Satomi.pdf (109
KB)

Dean, your attached Respondent Satomi Owners Association's Motion to Terminate Review misrepresents to the Court of Appeals that: "Appellant will not oppose the Motion." Satomi LLC hereby demands that you immediately alert the Court of Appeals that you have misstated Satomi LLC's position.

Satomi LLC carefully crafted the final form of the settlement agreement to ensure that it preserved its right to oppose your anticipated motion to dismiss the appeal. Your misrepresentation to the Court of Appeals has no basis in the final form of the settlement agreement, was not authorized by Satomi LLC or its attorneys, and is just plain wrong.

Please confirm to me immediately that you are correcting your misstatement. Your error is a very serious matter. Do not make your situation worse by dragging your feet on correcting your misrepresentation.

Stellman Keehnel
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801
Cell: (206) 618-4836
Home: (206) 285-6858
email: stellman.keehnel@dlapiper.com
www.dlapiper.com

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

Appendix C

FILED
AUG 1 2007
CLERK OF SUPREME COURT
STATE OF WASHINGTON

Supreme Court No. 80480-0
Court of Appeals No. 56265-7-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SATOMI OWNERS ASSOCIATION, a Washington Non-Profit
Corporation,

Respondent

v.

SATOMI, LLC, a Washington Limited Liability Company,

Petitioner.

DECLARATION OF DEAN E. MARTIN IN SUPPORT OF ANSWER
TO PETITION FOR REVIEW

I, DEAN E. MARTIN, declare:

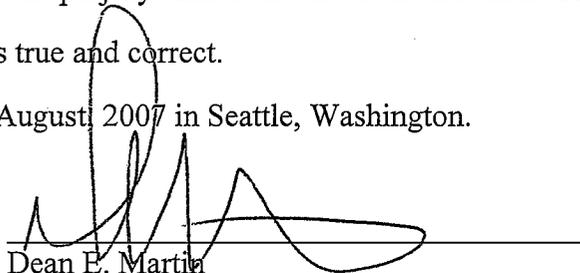
1. I am over the age of eighteen, an attorney for Respondent Satomi Owners Association, and otherwise competent to be a witness herein. I have personal knowledge of the information contained herein.

2. The parties agreed to settle on December 5, 2006 and all signed a settlement agreement, the purpose of which was to "forever settle and resolve the disputes, claims and controversies between and among the Parties to this Agreement."

3. To date, all settlement funds have been delivered by Satomi, LLC and its insurers and the amounts distributed to the Association.

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

Executed this 10th day of August, 2007 in Seattle, Washington.


Dean E. Martin