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SUPREME COURT
STATE OF WASHINGTON
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NO. 90879-6

SUPREME COURT OF THE STATE OF WASHINGTON
[Court of Appeals No. 70013-8-1]

FILMORE LLLP,
a Washington limited liability limited partnership,

Respondents,

vs.

UNIT OWNERS ASSOCIATION OF CENTRE POINTE
CONDOMINIUM,

Petitioner.

RESPONDENT FILMORE, LLLP'S ANSWER TO AMICUS
CURIAE MEMORANDUM OF BARCLAY COURT OWNERS
ASSOCIATION AND COMMUNITY ASSOCIATIONS INSTITUTE

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 ORIGINAL

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RCW 64.34.216(3) ----- 2

I. IDENTITY OF RESPONDING PARTY

The respondent is Filmore LLLP (Filmore). Filmore is the plaintiff in the Trial Court and was the Respondent before the Court of Appeals.

II. STATEMENT OF CASE

Respondent Filmore, LLLP adopts and incorporates the Statement of Facts as set forth in Respondent Filmore, LLLP's Response to Petition for Review.

III. ARGUMENT

1. CAI Brief Raises no Error of Law

CAI's theories and arguments have been briefed, responded to and rejected by the Court of Appeals.

2. Declarant Has Power to Define "Uses" in its Declaration

In order for the WCA to settle a conflict or inconsistency within a condominium declaration, there must first be an inconsistency. CAI's argument fails because no inconsistency exists. The WCA establishes the minimum requirements of a Declaration. That includes the obligation of the declarant to specifically define the uses to which a unit is restricted. RCW 64.34.216(1)(n). CAI's position violates this specific code by asserting that a "use" must be limited

to that implicit delineation between residential and non-residential use only.

The WCA specifically provides the Declarant the authority to include additional provisions—RCW 64.34.216(3). The Official Comments to that section further specifies that:

...other matters may also be included in a declaration if the declarant or lender feel they are appropriate to the particular project.¹

The comment references that such authority includes restricting the power of the Homeowner's Association. This is exactly what the Centre Pointe Declarant did: defined leasing as a use so that the Associations power to restrict such use is limited by requiring a supermajority vote.

Appellant and CAI's position violates the WCA and the Official Comments by asserting the Declarant could not include any definition of use other than the broad residential vs. non-residential distinction. No ability for a Declarant to limit a project to no-time sharing, no smoking, no pets, no children, and no leasing (or allowed leasing). This violates the freedom the legislature provided to the

¹ Official Comment 11 to RCW 64.34.216.

Declarant to define their projects to meet the demands of GMA and the market place.

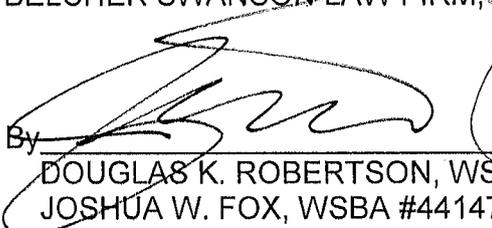
Lastly, just because language within a declaration “nearly” mirrors the WCA, it does not mean that the declarant desired or intended for the entire declaration to mimic the entire WCA. Such conclusion is absurd and contrary to the legislature’s intent.

IV. CONCLUSION

This Court is respectfully requested to affirm the Decision and remand for entry of an award of attorney’s fees on behalf of Filmore.

Respectfully submitted this 22 day of May 2015.

BELCHER SWANSON LAW FIRM, P.L.L.C.

By 

DOUGLAS K. ROBERTSON, WSBA #16421

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of May 2015, I caused to be served via Email and via U.S. Mail postage prepaid the foregoing Respondent Filmore, LLLP's Answer to *Amicus Curiae* Supplemental Memorandum of Community Associations Institute on the following parties at the following addresses:

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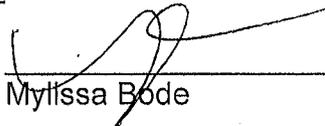
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Please find attached Respondent Filmore, LLLP's Answer to Amicus Curiae Memorandum of Barclay Court Owners Association and Community Associations Institute being filed by Douglas K. Robertson and Joshua W. Fox. Thank you.

Sincerely,

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