

63875-1

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§

NO. 63975-1-I

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

GLORIA HOLCOMB, a single person,

Appellant,

v.

TAREE COMMUNITY ASSOCIATION, a Washington nonprofit
corporation, Acting through its Architectural Control Committee; and
MORRIS MOSER, Chairman of the Association's Architectural Control
Committee,

Respondents.

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Gloria Holcomb was put in a horrible position by the Architectural Control Committee (“ACC”) of the Taree Association. She spent at least \$50,000 on design and permitting for her dream retirement home. The Taree Covenants were ambiguous as to application of the height limitation applicable to her residence. Rather than clarifying the height limitation, the ACC and its chairman, Mr. Moser, demurred. Ms. Holcomb and her architect then pursued the only reasonable path left – to design a structure that would meet the height limitation regardless of interpretation.

On May 11, 2006, Ms. Holcomb’s architect, Mr. Brachvogel, met with at least three members of the five-member ACC onsite with a revised set of plans that depicted all of the relevant information that would ultimately be disclosed on the plans he submitted to Kitsap County for building permit approval. Those three members in fact approved the design. Mr. Brachvogel confirmed this approval in a letter sent the next day. Despite its argument that the ACC had not approved the design, the ACC did not take issue with Mr. Brachvogel’s letter or otherwise indicate its disapproval of Ms. Holcomb’s plans until thirty-five days after May 11, 2006, well outside of the Taree Covenants’ requirement that the ACC act within thirty days of submittal of drawings or the drawings would be deemed approved.

When she received the ACC's revocation, Ms. Holcomb understandably took exception. From at least May 11 to June 19, 2005, when she received the ACC's letter, she and Mr. Brachvogel had proceeded in reliance on the May 11 approval to prepare expensive construction drawings, including structural and electrical drawings. They and the ACC knew that the process of preparing construction drawings was expensive, and it was important to obtain the ACC's approval on a critical issue like height *before* incurring that expense. When the ACC objected, Ms. Holcomb's lender would not close her construction loan until the dispute was resolved.

The trial court properly found that the ACC had approved Ms. Holcomb's design, either explicitly or tacitly by failing to act within thirty days. The trial court therefore implicitly held that many of the arguments made by the ACC here – that its informal, unadopted “procedure” required submission of a permit set, or that the ACC could only approve at a meeting of all of its members – were meritless.

The trial court inexplicably held that Ms. Holcomb “chose” not to build and, as a consequence, the ACC's acts were not the legal cause of her claimed damages. There is absolutely no evidence that Ms. Holcomb “chose” not to build. The respondents here flippantly argue that all Ms. Holcomb had to do was tender a permit set of drawings; however, the

evidence does not support that claim. Two of three members of the ACC speculated that the ACC “might” have approved them; the third to testify was not asked. Given that the permit set disclosed the same information as the plans submitted and approved on May 11, there was simply no reason to infer that the ACC would have acted any more reasonably just because it had received a permit set.

Ms. Holcomb could not defy the ACC and attempt construction, as her construction lender would not close and if she were proved wrong the ACC could have compelled her to demolish anything constructed. She did the only things she could reasonably do. She tried, through counsel, to get the matter resolved. She tried to get the Association’s president to get involved and offered to pay for a neutral architect to demonstrate that the drawings provided to the ACC in fact demonstrated compliance with the height limitation. The Association and ACC refused, only grudgingly approving Ms. Holcomb’s design in December 2006, after she had lost her construction season and her financing.

The Association and its officers, including Mr. Moser, may be held liable for breach of the Taree Covenants if they acted unreasonably. Their actions in this case were clearly unreasonable, and this Court should reverse and remand for entry of judgment in favor of Ms. Holcomb.

II. FACTUAL COUNTER-STATEMENT

A. Ms. Holcomb's Failure to Submit Permit Plans Did Not Cause Her Damages.

Respondents' principal argument is that Ms. Holcomb caused her own damages by failing or refusing to provide a "permit set" of drawings at or about the time she submitted them to Kitsap County, stating as a fact that the ACC would have approved Ms. Holcomb's design in June 2006 with such drawings in hand. First, that argument vastly overstates the proof. When invited to speculate as to what the ACC would have done had it received the permit set in June 2006, Chairman Moser, who was closest to the issue, could only testify that the ACC "very well could have" approved them. RP 290. None of the ACC members testified what information was provided on the permit set that did not appear on the May 11 set. Mr. Wodtke testified that he "thought" that he would have voted to approve based upon the permit set, but identified no particular information supplied by the permit set that was not on the May 11 set. RP 306-07. Mr. Middlehoven did not testify whether he would have approved based upon the permit set.

Judge Costello ruled that the ACC either approved Ms. Holcomb's plans on May 11, 2006, or was deemed to have approved them by its failure to reject those plans in writing within thirty days, as required by the

Taree Covenants. CP 631. As addressed in Ms. Holcomb's opening brief, that ruling was supported by the facts and the law. AB 27-28. Implicit in that ruling was Judge Costello's rejection of respondents' argument here – that the “procedures” allegedly adopted by the ACC excused the ACC's compliance with the Taree Covenants until Ms. Holcomb submitted a “permit set” of her drawings. In short, Judge Costello implicitly held that the ACC had no right to demand a permit set before the 30-day clock began ticking. Had Judge Costello believed the “procedures” were enforceable, he could have simply entered judgment in favor of respondents on the basis that Ms. Holcomb did not submit a “permit set.”

There is no evidence that the Association itself ever adopted the “procedures” at issue and that the Taree Covenants were never amended to adopt them. RP 36; RP 208. There is also no evidence that Ms. Holcomb saw the “procedures” until after the ACC had granted its approval on May 11. RP 35-36.

The “procedures” were unworkable even if enforceable (a point Ms. Holcomb does not concede). This fact is amply demonstrated in this case. As noted in Ms. Holcomb's opening brief, AB 9-10, the Taree Covenants were ambiguous when they addressed the height limitation at issue here. Paragraph 12 of the Taree Covenants limited the height of a structure to seventeen feet, with the height measured from “ground level at

the base of said dwelling or structure,” but did not identify precisely which part of the structure is its “base.” Ex. 1.

From the outset, Ms. Holcomb and Mr. Brachvogel sought clarification from the ACC and Mr. Moser, RP 28-33; 134, asking that he clarify whether the base of the proposed structure was the sub-floor, the garage floor elevation, the top of the foundation, or some other point at the base of the structure. *Id.* Mr. Moser replied on each occasion that the ACC could not, and would not, give a definite interpretation, acknowledging that the covenant condition was “ambiguous.”¹ RP 32-33.

Without guidance on the height issue, it made no sense for Mr. Brachvogel to complete the detailed drawings required for building permit approval – a process Mr. Moser understood was “expensive.” *See* RP 232. Mr. Brachvogel testified that he could not proceed with structural and other drawings required for permit approval until he had received approval from the ACC. RP 150. Construction documents would eat up approximately 70% of the architectural fee in this case, RP 167, so it was important to make sure that the ACC approved before incurring that expense. Mr. Moser acknowledged that ACC denial would cause an

¹ Rather, by insisting on the use of a “story pole,” the ACC apparently believed it could defer to the uphill owners on the question whether Ms. Holcomb’s home met the 17-foot limitation or not. Nowhere do the Taree Covenants grant this power to other owners. Ms. Holcomb had not agreed to a story pole, and was concerned about liability for people coming onto her property without permission. Consequently, she demanded that the ACC remove the pole.

owner to have to amend its filing with the County, RP 211, a process involving further delay and expense.

Faced with these facts, Ms. Holcomb and Mr. Brachvogel proceeded in the only fashion that made sense. Mr. Brachvogel prepared a set of preliminary design plans for ACC review on or around April 6 or 7, 2006. RP 29. When Mr. Moser continued to demur on the height issue, Mr. Brachvogel revised the building plans to depict the base of the structure at the first floor to match the existing grade. RP 37-38; 145-46. As a result, the seventeen-foot height requirement of the Taree Covenants was met whether it was measured from the “base of the structure” or from the pre-existing, rough grade of the land. RP 37-38; 135. There is no dispute that this design met the Taree Covenants.²

After exhausting further attempts to get guidance from Mr. Moser, Mr. Brachvogel presented revised drawings to the ACC onsite on May 11, 2006. The facts surrounding that meeting have been discussed at length in Ms. Holcomb’s opening brief and will not be repeated here.³ AB 11-12.

Suffice to say, Judge Costello believed that plans meeting the

² Oddly, respondents argue that Ms. Holcomb should have applied for a “variance” to permit her to build, despite the fact that no variance was necessary if she met the height limitation imposed by the Taree Covenants – a fact that she demonstrated time and again. The ACC ultimately approved with no variance.

³ The claim that Mr. Brachvogel admitted the May 11 drawings were not “final” also flies in the face of the facts – confirmed by Mr. Brachvogel in a letter the next day – that Mr. Brachvogel would only submit additional drawings if he made material changes to them. As Mr. Brachvogel testified, the permit sets contained no material changes from the May 11 set.

requirements of the Taree Covenants were in fact submitted on May 11, and the ACC either explicitly approved them or waived its right to object. There is certainly substantial evidence supporting a finding that the ACC approved these plans “in fact.” Through the testimony of Ms. Holcomb and Mr. Brachvogel, the consent of three out of five of the ACC members was obtained – representing both a quorum and a majority of the members. Most damning, the ACC simply cannot adequately explain its failure to respond to Mr. Brachvogel’s May 12 letter confirming his understanding that approval had been given.

It is nonsense to argue that Ms. Holcomb could have mitigated her damages by simply providing a permit set. First, as noted above, Mr. Moser candidly admitted uncertainty as to whether the ACC would have approved based on the permit set. Second, as Mr. Brachvogel testified (the only architect to testify), the information provided on the plans on May 11 clearly indicated that the proposed structure met the seventeen-foot height limitation because the residence would preserve the existing grade. RP 142-46. Specifically, the drawing depicted (and Mr. Brachvogel confirmed) that the back (uphill) wall of the structure would be placed at existing grade, as demonstrated by the topographical lines. RP 145-46. Although it is true that certain numbers were missing from the drawing, and the ACC makes much of this fact, Mr. Brachvogel testified

without contradiction that the topographical lines on the drawing communicated exactly the data required for the ACC to determine compliance with the height requirement. RP 147.

As Mr. Brachvogel further testified, the information provided in the May 11 approved plans was the same as that provided in the permit set. Although the permit set contained additional information useful to contractors to determine how to bid, this additional information did not in any way change the design from that approved on May 11. RP 156-57. The topographical information on the May 11 set approved by the ACC was carried into the permit set. *Id.* That information allowed the ACC to determine both the existing grade and the height of Ms. Holcomb's retirement residence. *Id.* The permit set was identical in all material respects to the design approved on May 11:

Q. Was there anything in the permit set that changed the elevation of the structure?

A. No.

Q. So in terms of the design of the building, did it change at any time from May 11th, through first the approval by the county and the permit set of drawings?

A. Not in a respect that would affect the height.

Q. In what respect did it change?

A. We may have moved a window around, you know. We adjusted trim packages, things of that nature.

Q. So nothing that would affect height or set-back?

A. Correct.

RP 159; *see also* RP 157-58. Legends that appeared on the permit set indicating facts relevant to height were also set out in the May 11 set. RP 158-59.

In short, there was no information on the permit set that was not supplied in the May 11 set, which Judge Costello found the ACC had either approved in fact, or had waived its right to disapprove. To insist that Ms. Holcomb's failure to provide a "permit set" was the cause of her harm is simply nonsense.

To deflect criticism from their own actions, respondents cast aspersions on Ms. Holcomb and Mr. Brachvogel – calling Mr. Brachvogel "unresponsive" when he failed in Mr. Moser's eyes to address allegedly problematic GIS data. However, as Mr. Brachvogel testified, the GIS data was fundamentally irrelevant because the drawings conclusively established that Ms. Holcomb's design met the 17-foot height limit. RP 154-55. Respondents attack Ms. Holcomb for allegedly threatening litigation, but the ACC claims it did not approve Ms. Holcomb's design until December 2006 – after this lawsuit was filed, and after serious delay by the ACC while Ms. Holcomb and Mr. Brachvogel sought guidance to

interpret the Taree Covenants' height restriction.⁴

The argument also flies in the face of Ms. Holcomb's repeated efforts to reach agreement with the ACC. Those efforts have been described in detail in Ms. Holcomb's opening brief, AB 14-18, and included pre-litigation efforts by her attorney and Ms. Holcomb's approach to Mr. Maloney, the Association president, with a set of plans and Ms. Holcomb's offer to pay for another architect to review them to prove to the ACC that those plans provided all information the ACC needed. RP 53. She did not demand that Mr. Maloney "approve" them. RP 53-54. As noted, Mr. Maloney rebuffed her and told her that it was "in the hands of the lawyers." RP 54. In light of this response, to suggest that Ms. Holcomb should have "stuck around" and handed the permit set to Mr. Moser makes no sense.

B. Ms. Holcomb's Intent to Build.

Respondents suggest that Ms. Holcomb had no intention to build; consequently, they argue that they are not liable for any of her damages. This argument flies in the face of uncontested facts. First, although Ms. Holcomb purchased her lot in 2003, speculating that she might one day

⁴ They also attack Ms. Holcomb for not providing a permit set on June 7, 2006, the date the drawings were filed with the County. As the respondents well know, Ms. Holcomb (as confirmed by Mr. Brachvogel's May 12 letter) understood that she had ACC approval. She did not receive the ACC's letter of June 15 until June 19. RP 42-43. She responded June 28, 2006.

build upon it, by spring of 2006, her intentions to build were clear.⁵ She testified without contradiction that she had incurred considerable expense in obtaining permits and a workable design. Those costs included \$37,000 in architectural fees alone and another \$3,000 in septic design fees. RP 59. She had obtained permits at a cost of over \$5,000. RP 60. She had obtained a preliminary commitment for a construction loan, and was working with a contractor to determine cost. RP 56-57. Her intentions were not speculative.

Second, Ms. Holcomb did not list the property for sale until after this dispute arose. She took the precaution of having the property posted by John L. Scott, her employer, as “sold” so that as construction began she and her contractor would not be pestered by people coming onto the property believing it might be for sale.⁶ RP 124-25. After this dispute arose, she in fact listed the property for sale in the event the dispute could not be resolved in a timely fashion.

In short, there is no substantial evidence that Ms. Holcomb intended to do anything but build her retirement house until the ACC threw up the roadblocks that prevented her from proceeding. As of trial, she had not sold her house. And the delays caused by the ACC had caused

⁵ When Ms. Holcomb purchased the lot, she already owned and lived on the lot next door. By 2006, she had sold her house and was living in a rental house. RP 62.

⁶ Mr. Middlehoven did not testify that he spoke with a “realtor” at John L. Scott, as claimed by respondents; instead, he simply spoke to the employee putting up the sign.

her to be unable to build. The ACC's actions are clearly a legal cause of Ms. Holcomb's damages.

III. ARGUMENT

A. **The Trial Court Erred in Ruling that Ms. Holcomb Chose Not to Construct.**

As Ms. Holcomb argued in her opening brief, the trial court's finding that she had "chosen" not to construct, and therefore that respondents' actions were not a legal cause of her damages, is unsupported by the facts and at law. AB 38-43. Put simply, the evidence and argument presented at trial was that the ACC's revocation of its approval prevented Ms. Holcomb from constructing until December 2006, and by that time Ms. Holcomb had lost her opportunity to construct because of limitations on her permits. Ms. Holcomb's lender testified on reconsideration that in fact her construction loan would not have closed until the dispute with the ACC had been resolved. CP 650-52.

The respondents argue that Ms. Holcomb's failure to submit permit drawings for ACC approval (after she had already obtained approval on May 11) was a "choice" she made that was the legal cause of her damages. As noted above, however, that argument finds no support in the facts. First, there is no evidence that the ACC would have acted any more favorably on Ms. Holcomb's request had it received the permit set. Mr.

Moser testified only that the ACC “very well could have” approved them. RP 290. Mr. Wodtke testified that he “thought” that he would have voted to approve, but did not identify any information on the permit set that was not already on the May 11 set. RP 306-07. Mr. Middlehoven did not testify on the subject. Second, Mr. Brachvogel testified that on all relevant issues the May 11 and permit sets provided exactly the same information, and that both sets contained information from which it was clear that the height limitation was met. If the ACC could not figure out whether to approve based on the May 11 set, it would not have been able to approve based on the permit set.

Factually, the proved cause of Ms. Holcomb’s damages was the ACC’s revocation of its May 11 acceptance. There is simply no basis for the trial court to expect Ms. Holcomb to defy the ACC, particularly when her lender would not fund without ACC approval.

B. Substantial Evidence Does Not Support the Trial Court’s Ruling that Ms. Holcomb Chose Not to Construct.

Mr. Middlehoven’s testimony that Ms. Holcomb listed the property for sale in May 2006 does not establish that Ms. Holcomb “chose not to construct.” First, the posting of a lot for sale does not prove an intent not to build. Second, Ms. Holcomb clearly testified that she wanted to post the lot as “sold” to prevent passersby from interfering with the work of her

contractor. Third, subsequent to May 2006, undisputed acts by Ms. Holcomb negate any possible inference from this claim. In particular, on June 7, 2006, she submitted plans to Kitsap County, and pursued her application through to issuance of a building permit.

Ms. Holcomb's testimony that she "might" want to build "some-day," in context, is also not substantial evidence of a "choice" not to build. As she testified, when she purchased the lot at issue in 2003, she already owned and resided in a home next door. By the time this dispute with the ACC arose in 2006, she had expended significant funds on septic and architectural design, had a commitment for a construction loan, and was working with a contractor. It is well beyond the realm of permissible inferences to hold that her 2003 statement is a choice not to construct.

Finally, the facts simply do not support the respondents' claim that Ms. Holcomb would have obtained approval simply by tendering a copy of her permit set of drawings.

C. No "Credibility Determination" Is at Issue.

The trial court did not explicitly declare that it found Ms. Holcomb's testimony (or that of Mr. Brachvogel) to be "not credible." *Community Ass'n for Restoration of the Environment v. Department of Ecology*, 149 Wn. App. 830 ¶ 23, 205 P.3d 950 (2009) is therefore not

applicable; there, the trial court explicitly found one witness's testimony to be more credible than another's.

D. Ms. Holcomb Did Not Fail to Mitigate.

On appeal, respondents claim that Ms. Holcomb failed to mitigate her damages by failing or refusing to provide "final plans" to the ACC. To begin with, respondents did not advance this argument before the trial court, instead arguing that Ms. Holcomb failed to mitigate by not constructing after obtaining ACC approval in December 2006. More importantly, there is simply no factual support for the same flawed argument respondents have repeatedly made – that the ACC would have approved Ms. Holcomb's plans had it only received the "permit set." To the contrary, respondents could only speculate that they "might" have approved Ms. Holcomb's plans had they seen the permit set. Given Mr. Brachvogel's testimony that all of the material information was present on both sets, respondents simply could not bear their burden of proof on this affirmative defense.

Given the lack of evidence that supplying a "permit set" would not have resulted in ACC approval, Ms. Holcomb pursued the only mitigation she could. As noted in her opening brief, she attempted to persuade the ACC that it was wrong through her counsel and by approaching Mr. Maloney, even offering to pay for the services of a neutral architect to

demonstrate that the height limitation was met. Ultimately, she filed suit, which resulted in the meeting of December 2006 and grudging approval by the ACC. By that time, however, it was too late; there is no evidence that she could have constructed after that date.

Her other alternative was to defy the ACC and simply proceed with construction – to test the ACC’s mettle. However, for the reasons addressed in Ms. Holcomb’s opening brief, AB 40-43, that was simply unreasonable under the circumstances – and impossible factually, given that her lender would not close without a resolution of the dispute.

D. The Trial Court Erred in Denying Ms. Holcomb’s Motion for Reconsideration.

There is simply no substantial evidence that Ms. Holcomb “chose” not to construct. As respondents’ argument that the trial court properly denied reconsideration is based entirely on this finding, this Court should reverse. The “evidence” of Ms. Holcomb’s “choices” is both limited and indirect. It simply does not support the inference that she “chose” not to construct.

As noted previously, Ms. Holcomb and others testified without contradiction that Ms. Holcomb had invested a significant sum to build her retirement home – permit fees, design fees. She had sought and obtained a preliminary commitment for financing, and was working with a contractor

to secure a bid for labor and materials. The contrary “evidence” of her alleged ambivalence three years earlier simply does not support an inference that she “chose” not to construct. Given that she subsequently applied for and obtained a permit to construct, the contrary “evidence” of her posting the lot again does not raise a permissible inference. Finally, her failure or refusal to supply a permit set of drawings to the ACC does not support an inference of a “choice,” as there is no evidence that the ACC would have approved. After all, the permit drawings disclosed the same material information as disclosed on the May 11 set, and without the assistance of an architect the ACC was apparently incapable of understanding either.

Under the circumstances, explicit evidence of her lender’s refusal to fund was highly relevant and determinative. Ms. Holcomb did not “choose” not to construct; she was forced not to construct by the ACC’s revocation of its May 11 approval.

E. Taree’s Corporate Form Does Not Shield Mr. Moser.

Mr. Moser may be held liable despite the fact that Taree is a corporation for the simple reason that he participated in and approved of actions that harmed Ms. Holcomb *as a member of Taree*.

The cases cited by respondents for the proposition that Ms. Holcomb must argue piercing of the corporate veil or allege a tort are all

irrelevant, as each involved a claim by someone *outside of the corporation* against a corporate officer or shareholder. For example, in *Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 698, 934 P.2d 715 (1997), the plaintiff was an insurance company suing for unpaid premiums. In *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 404, 645 P.2d 689 (1982), the plaintiff was an unrelated individual suing for products liability. In *Grayson v. Nordic Constr. Co.*, 92 Wn.2d 548, 549-50, 599 P.2d 1271 (1979), the plaintiff was a homeowner suing a construction company and its officers for faulty repair. In *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, ___, 489 P.2d 923 (1971), the plaintiffs were purchasers of property seeking to compel performance by and to recover damages from a developer and its officers.

Officers and directors of a nonprofit corporation may in fact be held liable for claims asserted by members. *See, e.g., Schwieckart v. Powers*, 613 N.E.2d 403, 410 (Ill. App. 1993) (nonprofit corporation's officers and directors owe fiduciary duties to members and may be held individually liable); *see also* RCW 24.03.127 (imposing duty on nonprofit corporation's directors). For the reasons addressed in Ms. Holcomb's opening brief, AB 32-36, none of the exceptions argued by respondents below applies, and Mr. Moser should be held individually liable.

F. This Court Should Remand for Entry of Judgment.

Respondents argue that even if this Court agrees with Ms. Holcomb, it would be improper to remand for judgment. Instead, respondents argue, this Court should remand for additional findings or conclusions concerning whether (1) the ACC had authority to require final plans before it would vote on approval and before the 30-day clock would begin running; (2) the ACC could approve Ms. Holcomb's request to construct without voting at an ACC meeting; and (3) the ACC (and Moser) acted reasonably and in good faith.

The trial court has already determined at least the first two of these issues against respondents. In its decision, the trial court found:

1. The Plaintiff's plans were submitted and considered by the ACC, and either were agreed to by the ACC or there was no decision made in writing, within 30 days, which was required by the protective covenants of the Plat of Taree.
2. The Plaintiff had the approval of the ACC by June 12, 2006.

CP 631. Before it could find that "Plaintiff had the approval of the ACC by June 12, 2006," the trial court must necessarily have found that the plans submitted by Ms. Holcomb on May 11 were sufficient both for the ACC to give its approval and for the 30-day clock to begin running.

The respondents presented no evidence that the ACC was constrained by any rule, bylaw, covenant, or regulation not act outside of a

“meeting” or that approvals could not be given orally; they simply cite to past practice. In the absence of such evidence, there is simply no reason to remand for further fact-finding on this issue.

Finally, respondents misrepresent the holding of *Riss v. Angel*, 131 Wn.2d 612, 627, 934 P.2d 669 (1997). They claim that an association may be held liable only when it acts “unreasonably **and** without good faith when applying the covenants.” RB 36. However, as the *Riss* Court made clear, “[r]egardless of the good or bad faith of the homeowners, however, a decision under a consent to construction covenant must be reasonable.” *Riss*, 131 Wn.2d at 627. Respondents’ actions were manifestly **unreasonable** in first approving Ms. Holcomb’s design on May 11, then revoking that approval thirty-five days later, in violation of the Taree Covenants.

This Court should remand for entry of judgment, not for further fact-finding.

IV. CONCLUSION

For the foregoing reasons, this Court should reverse the judgment entered in favor of defendants and direct the trial court to enter judgment in favor of Ms. Holcomb in an amount to be determined in further proceedings consistent with this Court's order of remand.

RESPECTFULLY SUBMITTED this 5th day of August, 2009.

Davis Wright Tremaine LLP
Attorneys for Appellant

By 
Alan S. Middleton, WSBA No. 18118

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date I caused the foregoing document to be served via U.S.

Mail on the following attorneys:

Charles K. Wiggins
Shelby R. Frost Lemmel
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DATED this 5th day of August, 2009.



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Re: *Holcomb v. Taree Community Ass'n*, Case No. 63975-1-I

Dear Clerk:

Enclosed are an original and one copy of Appellant's Reply Brief in the above appeal.

Very truly yours,

Davis Wright Tremaine LLP

Alan S. Middleton

Encs.

cc: Client (w/enc.)
Charles K. Wiggins and Shelby R. Frost Lemmel (w/enc.)

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