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COURT OF APPEALS
DIVISION I
SEATTLE, WA

NO. 71903-3-I
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

LAKELAND HOMEOWNERS ASSOCIATION, a Washington
non-profit corporation,

Appellant,

v.

ALAN WHITE and ERIKA WHITE, husband and wife,

Respondent/Cross Appellant.

REPLY BRIEF OF RESPONDENT/CROSS APPELLANT

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REPLY BRIEF OF RESPONDENT/CROSS APPELLANT

I. LAKELAND DOES NOT COMMENT ON THE MAIN THRUST OF THE WHITES' CROSS-APPEAL, THAT THE TRIAL COURT, ITSELF, HAD RECOGNIZED THAT IT HAD ERRONEOUSLY PARTIALLY GRANTED LAKELAND'S MOTION FOR SUMMARY JUDGMENT.

As stated on p. 40 of the Brief of Respondent/Cross-Appellant, on 5-9-13, the Trial Court ruled:

Plaintiff is the prevailing party. Alternative claims became moot upon the Court's ruling for the Plaintiff.

CP 413 (emphasis added.) This ruling by the Trial Court came after it had partially granted Lakeland's Motion for Summary Judgment, in response to the Whites' Motion to Vacate the Award of Attorney's fees to Lakeland, which occurred on 5-13-14. CP 417.

Further evidencing the Trial Court's mistake is that its award of attorney's fees to Lakeland, albeit subsequently vacated, was for \$24,774.98, CP 414-15, the amount to the penny that the Whites had requested, CP 312 (Lakeland had requested \$27,004.18, CP 408, 369-408).

That the Trial Court recognized its mistake in partially granting Lakeland's Summary Judgment Motion should, therefore, be clear.

**II. AN ISSUE OF FACT EXISTS AS TO THE EXTENT OF
REA BLAKE'S AGENCY.**

Substantively, the main thrust of Lakeland's response on cross-appeal is its claim that Rea Blake did not speak for Lakeland, but only for Carrara. But the evidence is undisputed that Rea Blake worked for Pinnacle, and that Pinnacle was the property manager for both the Lakeland master association and the Carrara Homeowners Association. CP 31. Furthermore, Lakeland advertised on its website that "Pinnacle, an American Management Services Company," was the "Property Management contact" for both "Lakeland HOA" and for "Carrara." CP 31. Since Rea Blake worked for Pinnacle, by Lakeland's own website she certainly appeared to be an agent for both Lakeland and Carrara.

After the fact, Rea Blake has claimed that she only spoke for the Carrara Homeowners Association. But given Lakeland's publication and the fact that the Carrara Homeowners Association was identified as a sub-association of Lakeland and expressly subject to Lakeland's Declaration, how were the Whites to know, as Rea Blake now claims, that she only spoke for Carrara?

Lakeland misstates the record when it argues in its brief that

the Whites' either knew or should have known that Rea Blake only spoke for the Carrara Homeowners Association. When the Whites were purchasing their condominium, the only person they spoke with who represented any homeowners association was Rea Blake, who worked for Pinnacle Management. Pinnacle Management represented both Lakeland and Carrara, and there is nothing in record to suggest that Rea Blake had advised the Whites that she only represented or spoke for Carrara.

Furthermore, Lakeland's argument that the Whites knew or should have known of a fundamental difference between the Lakeland and Carrara Homeowners Associations is based on Lakeland's argument that there is a discrepancy between the two Declarations. However, the Whites have explained in great detail in their Brief of Respondent that there is no discrepancy between the two declarations. The Lakeland Homeowners Association Declaration restricts rentals of single-family homes, but because Carrara consists entirely of condominiums, that restriction does not apply to the Carrara condominiums. Hence, there is no discrepancy.

Thus, at best for Lakeland, an issue of fact exists as to whether Rea Blake had apparent authority to speak for Lakeland.

III. AN ISSUE OF FACT EXISTS AS TO WHETHER LAKELAND HAD ABANDONED THE RENTAL RESTRICTION.

Lakeland's assertion that it continually and consistently enforced the rental restriction is without documentary support. In answers to interrogatories, Lakeland submitted a list of its efforts to enforce the rental restriction, claiming it had no records prior to 2008. CP 50-53. Furthermore, the information Lakeland did submit showed that the earliest alleged violation was in May 2013, (365 days from when the answers were submitted, CP 53,) which was two months after the Whites had purchased their condominium in March 2013. CP 27. Since the rental restriction had been in effect since 1995 and Lakeland has no record of enforcement prior to May 2013, prior to the Whites' purchase of their condominium there had been no substantial enforcement of the one year rental restriction by Lakeland.

IV. CONCLUSION.

In the event the Court of Appeals reverses the Trial Court's Summary Judgment ruling in favor of the Whites, this Court should also reverse/vacate the partial Summary Judgment Order in favor of Lakeland.

DATED this 24th day of OCTOBER, 2014.

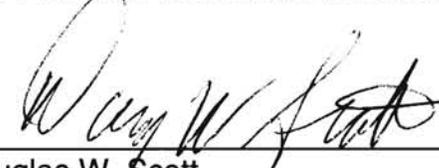
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on this day a copy of the Reply Brief of Respondent/Cross Appellant was sent to Daniel Zimberoff, Attorney for Appellant by E - M a i l t r a n s m i s s i o n t o danzimberoff@barkermartin.com and to Aleena Hodges by E-Mail transmission to ahodges@barkermartin.com



Ingrid C. Vermehren

Dated: OCTOBER 24th, 2014, at Bellevue, Washington