

FILED
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NO. 1027397
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,
Petitioner,

vs.

1223 SPRING STREET OWNERS ASSOCIATION, a Washington non-profit corporation; CWD GROUP, a Washington corporation; VALARIE FARRIS OMAN, a citizen of the State of Washington; CONDOMINIUM LAW GROUP, PLLC, a Washington professional limited liability company; DAVID BUCK, a citizen of the State of Washington; DANA REID, a citizen of the State of Washington; JEREMY SPARROW, a citizen of the State of Washington; ROBERT MOORE, a citizen of the State of Washington; CATHERINE RAMSDEN, a citizen of the State of Washington,
Respondents.

APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Ken Schubert, Judge

ANSWER TO PETITION FOR REVIEW OF RESPONDENTS
1223 SPRING STREET OWNERS ASSOCIATION, BUCK, REID,
SPARROW, MOORE, AND RAMSDEN

REED McCLURE
By Marilee C. Erickson
WSBA #16144
Christopher J. Nye WSBA #29690
Attorneys for Respondents 1223
Spring Street Owners Association,
Buck, Reid, Sparrow, Moore, and
Ramsden
1215 Fourth Avenue, Suite 1700
Seattle, WA 98161-1087
(206) 292-4900

PERYEA SILVER TAYLOR
BY Mary B. Reiten
WSBA #41863
Attorneys for Counterclaimant
Respondent 1223 Spring
Street Owners Association
1200 Fifth Avenue, Suite 1550
Seattle, WA 98101
(206) 403-1933

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I. NATURE OF THE CASE

This case involves a challenge by a condominium owner to the efforts to collect unpaid assessments. The owner sued the condominium association board, individual board members, the condo's management company, and the attorney and law firm hired to collect the debt. The superior court granted summary judgments dismissing the owner's claims against the association. The superior court awarded attorney fees to all defendants. And the superior court granted relief to the association on its counterclaim and awarded attorney fees on the counterclaim. The condo owner appealed. Division I of the Court of Appeals affirmed the superior court. The condo owner now asks this Court to accept review.

Respondents 1223 Spring Street Owners Association ("Association") as defendant and counterclaimant and Respondents Buck, Reid, Sparrow, Moore, and Ramsden submit this Answer to Petition for review. These Respondents ask this Court to deny review.

II. STATEMENT OF THE CASE

The Association Respondents adopt the statement of facts and procedure in Division I's unpublished decision. *Steichen v. 1223 Spring St. Owners Ass'n*, 2023 Wash. App. LEXIS 1993, at *1-8 (Wash. App. Oct. 23, 2023).

The declaration governing 1223 Spring Street Condominium Association requires unit owners to pay regular monthly assessments for common expenses. CP 215-23. Regular assessments fund common expenses incurred during the year; special assessments fund specific projects. CP 215.

Condo owner Randall Steichen's ("Steichen") regular monthly assessment was \$1,927.44 for 2018; \$2,005.48 for 2019, and \$2,066.40 for 2020. CP 199-200. When the Association sought summary judgment on its counterclaim for regular assessments, Steichen owed \$52,188.06 in past due regular assessments for 2018, 2019, and 2020. CP 195-200.

The Association moved for summary judgment on its counterclaim in August 2020. CP 186-94. Steichen opposed the

motion, but his entire factual summary focused on the special assessment he contested, not regular assessments. CP 323-52. Steichen never raised a hearsay objection to the ledgers attached to the Association's motion. CP 323-57.

Following summary judgment on its counterclaim, the Association sought attorney fees and costs. CP 615-628, 629-36. The superior court, after conducting a thorough review of the time sheets of Association counsel, awarded \$28,650. CP 8809-15. In January 2021, believing trial would drag on, the Association moved for CR 54(b) certification of these orders. CP 637-55. The trial court granted CR 54(b) certification. CP 10357-66. Because no judgment form in compliance with RCW 4.64.030 had been submitted, the judgment was not entered in January 2021.

In April 2021, the Association moved to enter judgment and submitted the appropriate judgment form. CP 12220-30, 12465-68. Steichen opposed the motion arguing that the superior court lacked jurisdiction. CP 12268. However, he did not

challenge the proposed judgment form, which included the right to foreclose on his unit – relief that the Association had sought in its counterclaim. CP 12266-69; CP 171-75. The superior court overruled Steichen’s objection to jurisdiction and entered judgment. *See* CP 12469-74.

III. ARGUMENT

A petition for review will be accepted only: (1) if the Court of Appeals decision conflicts with a Supreme Court decision; (2) the Court of Appeals decision conflicts with a published decision of the Court of Appeals; (3) a significant question of constitutional law is involved; or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b). Steichen’s Petition should be denied because he has not and cannot demonstrate that this case satisfies any RAP 13.4(b) requirement.

A. DIVISION I’S DECISION DOES NOT CONFLICT WITH ANY PUBLISHED WASHINGTON DECISIONS.

Nothing in Division I’s decision conflicts with any decision of this Court or any decision of a Court of Appeals.

1. Hearsay and Summary Judgment Rulings.

Steichen argues that Division I's decision conflicts with published appellate court decisions because Division I relied upon hearsay (Petition at 6), and refused to consider evidence called to the court's attention on the summary judgment motion. (Petition at 7-8) There is no conflict with any published appellate decision. Steichen did not raise and therefore waived any hearsay objection to the Harrison declaration. CP 323-57. And Steichen cannot demonstrate that the court did not consider materials on summary judgment. Although Steichen contends he presented evidence and argument on summary judgment that the CWD ledger showed a credit, the only record cites are general references to the ledger. (Petition at 8-9) CP 371 and 512-13 refer to exhibit 42 to Ms. Steichen's affidavit---a transaction report. CP 13104-05 is the summary judgment order on the Association's counterclaim. CP 751-53 and CP 944 are

Steichen's briefing on his motion for reconsideration.¹ *See* CP 323-57. Because Steichen failed to object, he waived his hearsay objection and the ledgers were admissible for the truth of the matter asserted. RAP 2.5(a). The purpose of issue preservation rules is to encourage efficient use of judicial resources by ensuring the trial court has the opportunity to correct any errors, thereby avoiding unnecessary appeals. *State v. Robinson*, 171 Wn.2d 292, 304-05, 253 P.3d 84 (2011). Steichen waived any objection to hearsay.

Division I's decision does not conflict with *Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d 207, 522 P.3d 80 (2022). The *Haley* court held a summary judgment order was error because the trial court had rejected plaintiff's declaration as self-serving.

¹ Steichen also argues that the ledgers show a credit. They do not. This argument is specious. *See* CP 198-200.

There is no conflict with *Goodwin v. Wright*, 100 Wn. App. 631, 648, 6 P.3d 1 (2000). When noting that a declaration called to the attention of the superior court was properly before it, the *Goodwin* court was addressing a motion to strike a part of an appellate brief. Nothing in *Goodwin* conflicts with Division I's decision here.

Similarly, nothing in *Tanner Elec. Co-op v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 675, 911 P.2d 1301 (1996) conflicts with Division I's decision. This Court's reference in *Tanner* to reconsideration motion materials was in the context that the reconsideration motion materials were properly part of this Court's appeal. Nothing in *Tanner* conflicts with Division I's decision here.

2. Counterclaim Judgment.

Steichen argues review should be granted because the trial court entered a "second" judgment in favor of the Association on April 23, 2021, which included the right to foreclose. (Petition at 12-14) Division I correctly rejected this argument holding that

the April 23, 2021, judgment was the only judgment in the case – not a “second” judgment. *Steichen*, 2023 Wash. App. LEXIS 1993 at *18. Further, *Steichen* was on notice that the Association was seeking foreclosure as a remedy. *Id.* at *18-19. The Court may refuse review on this issue as it does not meet any of the threshold requirements of RAP 13.4(b).

a. RCW 4.64.030 Prescribes the Form of Judgment.

The CR 54(b) order obtained by the Association did not conform to RCW 4.64.030. It did not contain a judgment summary or any of the findings necessary for foreclosure (relief which the Association had sought in its complaint).

RCW 4.64.030 provides in pertinent part:

(3) ... The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. ...

(Emphasis added.)

For enforcement purposes, a judgment must be entered into the “execution docket” of the clerk’s office. RCW 4.64.030(3) provides that this cannot happen until it is in the

correct format. It is indexed to refer to each party against whom judgment is rendered and whose property is affected. *See* RCW 4.64.060. *See also Bank of Am., N.A. v. Owens*, 173 Wn.2d 40, 53-54, 266 P.3d 211 (2011) (explaining that the clerk may not enter and a judgment does not take effect for purposes of the execution docket until it is in the correct form). The Association sought relief in April 2021 because it realized it did not have an appropriate judgment on which to execute.

b. The April 23, 2021, Judgment Is an Enforcement Order.

Steichen complains, incorrectly, that because the April 23, 2021, Judgment contains provisions allowing the Association to foreclose on his unit, it is not a proper judgment. But RAP 7.2(c) permits a trial court to issue orders enforcing any of its decisions. Foreclosure is simply the enforcement of the monetary orders awarded earlier by the trial court. Foreclosure is a remedy based on the trial court's prior findings. Similar orders have been entered in other cases.

For example, in *In re Marriage of Burrill*, 113 Wn. App. 863, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003) while the matter was on appeal, the trial court awarded the husband damages because the wife had damaged the house. The appellate court reasoned that the award of damages was the enforcement of the decree awarding the house to the husband as it was presumed it would be turned over in a livable state, and not a ruling that changed any part of the orders on appeal. *Id.* at 873-74. *See also In re Irrevocable Trust of McKean*, 144 Wn. App. 333, 339-40, 183 P.3d 317 (2008) (holding that trial court had jurisdiction to appoint a trustee even though case was on appeal). Similar to these cases, whether the Association forecloses on Steichen's unit does not change the fact that he owes the Association just over \$80,000. Foreclosure is an enforcement mechanism and allowed under RAP 7.2.

c. Steichen Waived His Right to Challenge Foreclosure.

In opposing the Association's motion for entry of judgment, Steichen neglected to submit any briefing in

opposition to the inclusion of foreclosure as a remedy in the judgment. *See* CP 12266-12269. Thus Steichen waived his right to challenge the foreclosure language contained in the judgment. *See Magana v. Hyundai Motor Am.*, 123 Wn. App. 306, 314, 94 P.3d 987 (2004), as amended (Sept. 21, 2004), as amended (Feb. 23, 2005) (“A party may waive its right to challenge a ruling on appeal by failing to object below or by engaging in conduct that invites the ruling.”) The court need not address Steichen’s arguments regarding the merits of the foreclosure language in the judgment as he failed to raise them below. *Sourakli v. Kyriakos, Inc.*, 144 Wn. App. 501, 509, 182 P.3d 985 (2008), *rev. denied*, 165 Wn.2d 1017 (2009).

3. Attorney Fees Award.

Division I correctly affirmed the superior court’s attorney fee award based on RCW 64.34.455. (CP 12187-203) Although the Association was formed before Washington’s Condominium Act, the Act’s attorney fee provision (RCW 64.34.455) applies by the terms of RCW 64.34.010. RCW 64.34.455 allows for an

award of attorney fees to the “prevailing party.” *Eagle Point Condo Owners Ass’n v. Coy*, 102 Wn. App. 697, 706, 9 P.3d 898 (2000). The statute states:

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney’s fees to the prevailing party.

The Association, both as defendant and counterclaimant, is entitled to fees as a prevailing party under the Condominium Act. *Eagle Point Condo*, 102 Wn. App. at 713. RCW 64.34.455’s fee-shifting provision acts to “punish frivolous litigation and to encourage meritorious litigation.” *Eagle Point Condo*, 102 Wn. App. at 713 (citing *Brand v. Dept. of Labor and Industries*, 139 Wn.2d 659, 667, 989 P.2d 1111 (2000)). Nothing in Division I’s decision conflicts with published decisions.

4. Refusal to Review Denial of Summary Judgment Motion.

Steichen’s Petition contains argument about the appealability of denial of a summary judgment. (Petition at 11-

12) The Petition does not explain which summary judgment was denied. Nor does the Petition even attempt to demonstrate how the issue meets any RAP 13.4(b) criteria for review.

5. Dismissal of Conversion Claim.

On the conversion issue, Steichen's Petition only discusses that claim against CWD. (Petition at 18-20) Division I declined to address any conversion claim against CLG and the Association because Steichen failed to brief the issue. 2023 Wash. App. LEXIS 1993, *40. Regardless, Division I's decision affirming the dismissal of the conversion claim does not conflict with any published appellate decision. Steichen contends that Division I did not follow certain legal standards, yet he does not explain how there is any conflict with published appellate decisions. Division I correctly concluded that Steichen, through his actions, consented to pay the special assessments. 2023 Wash. App. LEXIS 1993, *143.

6. Denial of Motion to Disqualify Judge.

On the disqualification issue, Division I's decision is consistent with Washington's published appellate decisions, and Steichen does not argue otherwise. (Petition at 21-27) Steichen cites *In re Dependency of A.N.G.*, 12 Wn. App. 2d 789, 459 P.3d 1099 (2020), which involved the termination of parent rights. The *A.N.G.* Court noted that parents have a fundamental liberty and privacy interest in the care and custody of their children which implicates both state and federal due process rights. 12 Wn. App. 2d. at 793 (citations omitted). The *A.N.G.* court applied the same test as Division I did in its decision---an objective test. The *A.N.G.* court reversed and remanded because the judge had acted as counsel in a prior matter terminating the parents' rights to other children, considered those prior orders in the later termination proceeding, and the parents were not advised of the judge's role as counsel in the prior termination proceeding. Steichen's case does not even begin to compare to the facts and circumstances or the rights at issue in *A.N.G.*

Division I correctly affirmed the superior court's order denying disqualification.

7. Refusal to Consider Issues Not Properly Briefed on Appeal.

Division I correctly struck portions of Steichen's reply brief and declined to consider issues that Steichen neither briefed nor supported with legal authority. (Petition at 27-30) 2023 Wash. App. LEXIS 1993, * 9, 11, 17, 20. The Rules of Appellate Procedure and abundant case law give the appellate courts broad authority to decline to consider issues not presented, not supported in the record on appeal, not supported by legal argument, and not supported by legal authority. RAP 10.3(a); RAP 10.7; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). This Court should deny the petition.

B. PETITIONER FAILS TO SHOW THAT THE PETITION INVOLVES A CONSTITUTIONAL ISSUE.

Steichen argues Division I's decision violated his due process rights. (Petition at 10,15, 20, 21, 26, 28-30) Due process requires notice and an opportunity to be heard. *Duskin v. Carlson*, 136 Wn.2d 550, 557, 965 P.2d 611 (1998), *citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). Steichen had ample notice and opportunities to be heard.

Steichen contends Division I's decision on attorney fees violated his due process rights. (Petition at 15-16) Division I correctly affirmed the superior court's attorney fee judgments and correctly awarded attorney fees on appeal. Steichen had ample notice and opportunity to be heard on the attorney fee issue. See e.g. CP 615-28, 629-63, 8573-89, 8590-92, 11180-88, 11244-45, 11256-314, 11882-96.

Steichen cites *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 2 Wn.3d 36, 534 P.3d 339 (2023), for the proposition that due process requires a party to be advised by the pleadings of the

issues. In *Dalton*, unlike here, the appellate court awarded attorney fees on an entirely new theory neither pleaded nor raised at the trial court. Here all defendants/respondents sought attorney fees in their answers. CP 170-71, 2754, 5177. Moreover, RCW 64.34.455 as the basis for the attorney fee awards was extensively briefed at the superior court. CP 11180-88, 11245-52.² Division I's decision on attorney fees does not present a constitutional question.

Similarly, none of the other issues mentioned in Steichen's petition (summary judgment, conversion, disqualification, striking portions of reply brief, declining to consider issues not briefed or supported by argument or legal authority) present any constitutional question. For all of these issues, Steichen had

² Citing CP 1435, Steichen contends that the Association admitted that RCW 64.34.455 was not a basis for attorney fees. (Petition at 16 n.11) The Association made no such admission. The record reference is to the Association's mediation submission. RCW 7.07.030 specifically prohibits any reference to mediation materials.

more than ample notice and opportunity to be heard at the superior and the appellate courts. This Court should deny review.

C. NOTHING IN THIS CASE INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE.

Steichen suggests, but does not specifically argue, that his case involves an issue of substantial public importance which this Court should review. Steichen contends that Division I's decision will affect hundreds of thousands of Washington residents who are part of homeowner associations. (Petition at 10-11) Division I's decision is unpublished and involves a purely private dispute based on the unique facts and circumstances of the case. Nothing about the decision will affect other homeowner associations.

The Petition plainly does not concern an issue of substantial public interest that should be determined by this Court. A case must meet the following factors to qualify as a matter of public interest: (1) the public or private nature of the question presented; (2) the desirability of an authoritative

determination which will provide future guidance to public officers; and (3) the likelihood the question will reoccur. *Dep't of Ecology v. Adsit*, 103 Wn.2d 698, 705, 694 P.2d 1065 (1985); *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Cases that meet these criteria will almost always implicate constitutional principles or the validity of statutes or other legislative enactments. *In re Myers*, 105 Wn.2d 257, 714 P.2d 303 (1986); *Gen. Tel. Co. of the Northwest, Inc. v. City of Bothell*, 105 Wn.2d 579, 716 P.2d 879 (1986); *Adsit*, 103 Wn.2d at 705; *State ex rel. Chapman v. Superior Court*, 15 Wn.2d 637, 642-43, 131 P.2d 958 (1942). The Petition here does not present a question that is public in nature, does not impact the conduct of governmental officers, or does not pose a constitutional or statutory challenge.

In issuing the opinion in this case as an unpublished opinion, Division I determined that its decision has no precedential value. RCW 2.06.040; see also *State v. Fitzpatrick*, 5 Wn. App. 661, 669, 491 P.2d 262 (1971), *rev. denied*, 80

Wn.2d 1003 (1972) (legislature recognized that opinion without sufficient precedential value affecting common law should not be published). See also *State v. Sanchez*, 74 Wn. App. 763, 765, 875 P.2d 712 (1994) (unpublished status means decision has no precedential value), *rev. denied*, 125 Wn.2d 1022 (1995). The Petition should be denied.

D. ATTORNEY FEES AND EXPENSES SHOULD BE AWARDED UNDER RAP 18.1(j).

The superior court awarded the Association defendants and counterclaimant reasonable attorney fees and expenses. CP 8809-15 The Court of Appeals judges also awarded the Association respondents reasonable attorney fees and expenses on appeal. The appellate Commissioner issued an attorney fee ruling. The Court of Appeals panel denied petitioner's motion to modify the Commissioner's attorney fee ruling.

The Association is entitled to attorneys' fees under Section 11.9 of the Association's Declaration, RCW 64.34.455, and RCW 64.34.364(14) as the prevailing party in an action to collect past due assessments. CP 6328. For the same reasons, the

Association is entitled to its attorney fees for answering the Petition for review under RAP 18.1(j). This Court should deny the petition and pursuant to RAP 18.1(j) award the Association respondents reasonable attorney fees and expenses for having to respond to the petition.

E. SHOULD THIS COURT ACCEPT PETITIONER'S CORRECTED PETITION FOR REVIEW, THE ASSOCIATION RESPONDENTS REQUEST PERMISSION TO PROVIDE AN ANSWER TO THE CORRECTED PETITION FOR REVIEW.

The Petition for Review and Appendix in this case were filed on January 19, 2024. On February 5, 2024, petitioner filed a motion to allow filing of the Corrected Petition for Review and on February 6, 2024, filed a Corrected Petition for Review and Appendix. Respondents CLG, CWD Group, and the Association respondents objected to the motion and the Corrected Petition for Review. On February 9, 2024, this Court issued a ruling that petitioner's motion to allow filing of the Corrected Petition for Review would be considered at the same time as the Court considers the pending Petition for Review. This Court's case information indicates that consideration of the pending Petition

for Review is set for May 7, 2024, after the deadline for filing this Answer to Petition for Review which is March 6, 2024. Should the Court accept the Corrected Petition for Review and Appendix for filing, the Association respondents request permission to provide an Answer to the Corrected Petition for Review.

IV. CONCLUSION

There is no conflict between Division I's decision and any other published appellate decision. There is no constitutional issue. There is no issue of substantial public interest requiring this Court's review.

This case has not met any of the criteria of RAP 13.4(b). The petition should be denied.

CERTIFICATE OF COMPLIANCE

I certify that the Answer to Petition for Review contains 3,492 words.

Dated this 6th day of March 2024.

REED McCLURE

By *Marilee C. Erickson*

Marilee C. Erickson

WSBA #16144

Christopher J. Nye

WSBA #29690

Attorneys for Respondents 1223

Spring Street Owners

Association, Buck, Reid,

Sparrow, Moore, & Ramsden

PERYEA SILVER TAYLOR

By/s/ *Mary B. Reiten*

Mary B. Reiten WSBA #33623

Stephan O. Fjelstad

WSBA #17147

Attorneys for Counterclaimant

Respondent 1223 Spring Street

Owners Association

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2024, a copy of the foregoing Answer to Petition for Review was served on the following below via the Washington State Appellate Court's Electronic Filing Portal:

Ashley H. Steichen
2565 Dexter Ave. N., Suite 301
Seattle, WA 98109
ashleysteichen@gmail.com

Marc Rosenberg
Lee-Smart PS, Inc.
701 Pike Street, Suite 1800
Seattle, WA 98101-3929
mr@leesmart.com

Owen R. Mooney
Matthew R. Wojcik
Bullivant Houser Bailey, PC
925 Fourth Avenue, Suite 3800
Seattle, WA 98104-1157
owen.mooney@bullivant.com
matt.wojcik@bullivant.com

Mary B. Reiten
Stephan O. Fjelstad
Peryea Silver Taylor
1200 Fifth Avenue, Suite 1550
Seattle, WA 98101
mreiten@pstlawyers.com
sfjelstad@pstlawyers.com

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

Dated this 6th day of March, 2024, at Seattle, Washington.

/s/ Angelina de Caracena
Angelina de Caracena

063250.000006/1683969

REED MCCLURE

March 06, 2024 - 4:00 PM

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- genevieve.schmidt@bullivant.com
- marison.zafra@leahyps.com
- matt.wojcik@bullivant.com
- mclifton@rmlaw.com
- mr@leesmart.com
- mreiten@pstlawyers.com
- mvs@leesmart.com
- nacole.dijulio@bullivant.com
- nmorrow@foum.law
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