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SUPREME COURT  
STATE OF WASHINGTON  
3/6/2024 4:26 PM  
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SUPREME COURT  
OF THE  
STATE OF WASHINGTON

Case No. 102739-7

Court of Appeals Case No. 82407-4-I

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RANDALL R. STEICHEN,

Petitioner,

v.

1223 SPRING STREET OWNERS ASSOC, *et al.*

Respondents.

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RESPONDENT CWD  
GROUP'S ANSWER TO  
RANDALL R. STEICHEN'S  
PETITION FOR REVIEW,  
AND APPENDIX

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## **I. PARTY'S IDENTITY**

CWD Group submits this answer to Randall Steichen's petition for review of the Court of Appeals' unpublished opinion ("Opinion").<sup>1</sup>

## **II. ISSUES FOR REVIEW**

Not all issues in Steichen's petition concern CWD.<sup>2</sup> His listed issues also inaccurately reflect what he addresses.<sup>3</sup>

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<sup>1</sup> Petition for Review, No. 82407-4-I (Wash. App. Jan. 19, 2024) ("Petition"); Unpublished Opinion, No. 82407-4-I (Wash. App. Oct. 23, 2023) ("Opinion"). There is a Motion to Allow Filing of Corrected Petition for Review, No. 102739-7 (Wash. Feb. 5, 2024). Absent this Court granting that motion as of this time, CWD addresses the first-filed Petition. If this Court permits the "corrected" petition, then CWD requests the opportunity to answer it.

<sup>2</sup> Issue no. 7 regards an order denying Steichen's partial summary judgment motion against other Respondents. Petition at pp. 2, 11–12; Opinion at p. 26; CP 1653, 13045–46. Issue nos. 1, 2, and 3 regard a summary judgment on another Respondent's counterclaim and judgment for the same. *Id.* at pp. 1, 6–15; Opinion at pp. 8–16. That said, this filing includes argument responsive to issue nos. 1 and 2.

<sup>3</sup> Petition at pp. 6–30.



Accordingly, CWD gives this description of the issues that Steichen tries to raise regarding CWD:

**Petition's Issue No. 9:** An appellate court can refuse consideration of untimely and insufficiently developed arguments. Steichen made such arguments. For instance, in contesting the dismissal of four liability theories, he failed to brief their elements in his amended opening brief. In his reply, he made new assertions. *Did the Court of Appeals wrongly refuse consideration of the arguments of Steichen that it did?*

**Petition's Issue No. 7:** A party seeking a judge's disqualification must timely make that request and give sufficient evidence of actual or potential bias. Steichen moved to disqualify the Superior Court judge long after events that indicated to Steichen the alleged bias. He lacked sufficient evidence. He raised speculation. *Did the Court of Appeals wrongly affirm the denial of Steichen's request to disqualify the judge?*

**Petition's Issue No. 6:** A reduction or lack of damages can be considered for a conversion claim, otherwise a plaintiff can wrongly get a windfall. The Court of Appeals affirmed the dismissal of a conversion claim regarding three alleged \$382.89 debits from Steichen's bank account. The affirmance followed from undisputed facts and a lack of a credible dispute that the money was accounted to Steichen's account and, thus, to what he owed. *Did the Court of Appeals wrongly affirm the conversion claim's dismissal in considering the lack of damages?* Also, an appellate court may affirm on any basis supported by the record. It, however, should not sua sponte reach an issue separate and distinct from the questions presented and unnecessary to resolve them—like a new fact-dependent theory not litigated at the trial court. A conversion claim may not proceed where a plaintiff consented to the interference. Authority on consent was raised to the Court of Appeals. Consent was pertinent to the alleged conversion and theories argued at the trial court. *Did the Court of Appeals*

*wrongly reach and resolve the issue of consent in affirming the conversion claim's dismissal?*

**Petition's Issue Nos. 4 & 5:** RCW 64.34.455 in the Condominium Act permits attorney fees to a prevailing party, including defendants. It applies to condominiums created before July 1, 1990, including this one, unless there are inconsistent provisions in its declaration or bylaws. When the losing party knows a basis for fees and requests them, then the prevailing party's omission of the same request does not bar them from later seeking the fees. CWD pleaded a request for fees. Steichen pleaded a request for fees that invoked RCW 64.34.455. The Court of Appeals observed that Steichen violated the Act and declaration in failing to timely pay assessments. Steichen blamed CWD and others and sued them for alleged violations of the Act and the governing documents of the 1223 Spring Street Owners Association ("Association"). CWD prevailed after being adversely affected. Absent raising an inconsistent provision in a declaration or bylaw, Steichen

relied on the Association’s inadmissible assertion about RCW 64.34.455’s applicability. *Did the Court of Appeals wrongly affirm the attorney-fee award and award fees on appeal under RCW 64.34.455?*

### **III. STATEMENT OF THE CASE**

#### **A. Steichen failed on his claims at the trial court.**

This lawsuit started in 2018.<sup>4</sup> It evolved from a row between the Association and a unit owner, Steichen, about assessments—including a special assessment—and payments of amounts owed by Steichen.<sup>5</sup>

Steichen sued nine defendants, alleging wrongdoings regarding the Association’s institution of the special assessment, and by the Association and others to get Steichen to

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<sup>4</sup> CP 3177.

<sup>5</sup> *See, e.g.*, CP 3725–33, 6439–6440.

pay what he owed.<sup>6</sup> The defendants included the property management company: CWD.<sup>7</sup>

The Superior Court dismissed the claims against CWD in response to its dispositive motions, including a conversion claim regarding allegations of three \$382.89 debits from Steichen's bank account.<sup>8</sup>

As his lawsuit dwindled, Steichen unsuccessfully moved to disqualify the judge.<sup>9</sup> He also refused to participate in what he called a "sham" trial with remaining defendants.<sup>10</sup>

The lawsuit was less efficient than it could have been. Steichen sued nine defendants and asserted 13 claims.<sup>11</sup> He

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<sup>6</sup> CP 1–127.

<sup>7</sup> *Id.*

<sup>8</sup> CP 7198–7202, 8817–8820, 8544–8545 10597–10603.

<sup>9</sup> CP 10604–10657, 12867–12876.

<sup>10</sup> CP 10660.

<sup>11</sup> CP 1–127.

filed motion after motion.<sup>12</sup> And there were roughly 60 orders and 17 hearings.<sup>13</sup>

**B. Steichen failed at the Court of Appeals.**

Steichen appealed. The appellate docket opened in March 2021. After numerous extensions,<sup>14</sup> Steichen did not file an opening brief until roughly 17 months later.<sup>15</sup> Meantime, he engaged in an unusual amount of motion practice,<sup>16</sup> and generated a record with over 13,000 pages of clerk’s papers.<sup>17</sup>

Later, Steichen filed an overlength, 128-page amended opening brief.<sup>18</sup> It was difficult to follow. In his assignments

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<sup>12</sup> *See, e.g.*, CP 12877.

<sup>13</sup> Opinion at p. 7.

<sup>14</sup> *See, e.g.*, Letter, No. 82407-4-I (Wash. App. May 4, 2022).

<sup>15</sup> Opening Brief, No. 82407-4-I (Wash. App. Aug. 12, 2022).

<sup>16</sup> *See* Letter, No. 82407-4-I (Wash. App. Jun. 28, 2022).

<sup>17</sup> CP 13583.

<sup>18</sup> Amended Opening Brief, No. 82407-4-I (Wash. App. Aug. 31, 2022) (“AOB”).

of error, for example, he tried contesting roughly twenty or more orders in asserting that the Superior Court “erred in summarily dismissing [his] claims” and “erred in denying [his] motions for review and reconsideration.”<sup>19</sup> He did not address all that with cogent argument, law, or citations to relevant parts of the record.<sup>20</sup> He also had deficient record citations.

After the Respondents filed their briefs, and after he left the Respondents to toil with his citations, Steichen moved “to file a corrected, amended opening brief to correct [his] citations ....”<sup>21</sup> The court allowed Steichen to file a list of proper citations.<sup>22</sup> He gave a list of not less than 30 corrections.<sup>23</sup>

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<sup>19</sup> AOB at pp. 6–7.

<sup>20</sup> *See, e.g.* Opinion at pp. 7–8.

<sup>21</sup> Motion for Extension of Time to File Reply and Miscellaneous Relief at p. 5, No. 82407-4-I (Wash. App. Jan. 6, 2023).

<sup>22</sup> Letter, No. 82407-4-I (Wash. App. Jan. 10, 2023).

<sup>23</sup> Appendix, No. 82407-4-I (Wash. App. Apr. 14, 2023).

After oral argument, the Court of Appeals issued its unpublished Opinion affirming the Superior Court.

#### **IV. ARGUMENT**

There are four criteria for review under RAP 13.4(b). They do not include error correction. Instead, they include: a conflict with appellate court decisions; a significant constitutional question; or an “issue of substantial public importance that should be determined” by this Court,<sup>24</sup> like matters regarding public safety,<sup>25</sup> broadly affecting the judiciary,<sup>26</sup> or raising issues known to be pending in other cases for which resolution will avoid unnecessary confusion.<sup>27</sup>

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<sup>24</sup> RAP 13.4(b).

<sup>25</sup> *See, e.g., Matter of Arnold*, 189 Wn.2d 1023, 1023, 408 P.3d 1091 (2017).

<sup>26</sup> *See id.*

<sup>27</sup> *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413 (2016).



To trigger RAP 13.4(b), a petitioner must include sufficient rationale.<sup>28</sup> A lack of argument or conclusory assertions do not suffice.<sup>29</sup>

Absent triggering RAP 13.4(b), Steichen tries to revive his protracted 5-year lawsuit about his personal disputes with his insufficient and untimely arguments. This Court should deny review.

**A. This Court should deny review of Steichen’s issue(s) regarding the Court of Appeals’ refusal to consider his insufficiently briefed and untimely arguments.**

**1. The Court of Appeals rightly refused to consider some of Steichen’s arguments.**

In seeking review of the Courts of Appeals’ refusal to consider some of his arguments, Steichen does not trigger RAP

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<sup>28</sup> See RAP 13.4(c)(7).

<sup>29</sup> See *In re Det. of A.S.*, 138 Wn.2d 898, 922 n.10, 982 P.2d 1156 (1999). Cf. *Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413, 416 (1996).

13.4(b). He failed to timely present and sufficiently develop some of his arguments. And the Court rightly refused to consider them.

Appellate courts can refuse consideration of a party's: new arguments in a reply<sup>30</sup>; and insufficiently developed arguments, like those giving passing treatment of an issue,<sup>31</sup> lacking reasoned argument,<sup>32</sup> or lacking cited authority.<sup>33</sup> In doing so, it is not that the court denies due process. Rather, that party waives what they did not timely and sufficiently argue.<sup>34</sup>

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<sup>30</sup> See, e.g., *Dickson v. U.S. Fid. & Guar. Co.*, 77 Wn.2d 785, 787, 466 P.2d 515 (1970).

<sup>31</sup> *Palmer*, 81 Wn. App. at 153.

<sup>32</sup> *Winter v. Dep't of Soc. & Health Servs. on behalf of Winter*, 12 Wn. App. 2d 815, 835, 460 P.3d 667 (2020), review denied, 196 Wn.2d 1025, 476 P.3d 565 (2020).

<sup>33</sup> *Id.* See also RAP 10.3(a)(6).

<sup>34</sup> See, e.g., *State v. Harris*, 164 Wn. App. 377, 389 n. 7, 263 P.3d 1276 (2011); *Ives v. Ramsden*, 142 Wn. App. 369, 396, 174 P.3d 1231 (2008).

Consistent with Washington law, the Court of Appeals rightly refused to consider insufficiently developed and untimely arguments. For instance, it refused to consider insufficiently developed arguments in the amended opening brief, like: Steichen’s challenge to the dismissal of claims, where he failed to brief their elements<sup>35</sup>; his one-sentence challenges to denials of his reconsideration motions<sup>36</sup>; and his one-sentence contention that Respondents committed conversion by interfering with his property when his unit’s utilities were terminated.<sup>37</sup> Likewise, it need not have considered matters raised for the first time in his reply, like his

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<sup>35</sup> Opinion at pp. 7–8; AOB 39–40. *See Laymon v. Washington State Dep't of Nat. Res.*, 99 Wn. App. 518, 530, 994 P.2d 232 (2000) (declining review absent briefing of elements of claim).

<sup>36</sup> Opinion at pp. 24 n.10, 32 n. 15; AOB at pp. 66 n.55, 100 n.71.

<sup>37</sup> Opinion at p. 34 n.18; AOB at p. 117.

arguments about whether the judge intended to hold a jury trial, for Steichen’s failed effort to show judicial bias.<sup>38</sup>

Steichen disagrees, listing “issues” for which he objects to refused consideration.<sup>39</sup> But much like at the Court of Appeals, he gives inadequate rationale and invokes his *ipsi dixit*.<sup>40</sup>

Steichen also suggests that the issues could not be determined based on noncompliance with the rules.<sup>41</sup> He argues that RAP 10.7 required the Court of Appeals to allow him to “refile his brief or accept it ....”<sup>42</sup> But it could refuse to reach an issue where he violated the rules.<sup>43</sup> And RAP 10.7

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<sup>38</sup> Appellant’s Reply Brief at 49–56, No. 82407-4-I (Wash. App. Mar. 8, 2023) (“Reply”).

<sup>39</sup> Petition at p. 28 n.20.

<sup>40</sup> *Id.*

<sup>41</sup> Petition at p. 29 & n.21.

<sup>42</sup> *Id.*

<sup>43</sup> See, e.g., *Skagit Cnty. v. Skagit Hill Recycling, Inc.*, 162 Wn. App. 308, 320–21, 253 P.3d 1135 (2011).

gives an appellate court discretion, not a mandate, to accept a brief or order its correction.<sup>44</sup>

**2. Steichen’s “issue” about a “credit” implicates his failure to timely and sufficiently present his arguments.**

Steichen raises this “issue”: “Whether a condominium owner owes assessments when his account has a credit (positive) balance.”<sup>45</sup> That is not an issue triggering RAP 13.4(b). That is argument showing his view of the evidence.

Insomuch as this “issue” or another concern the Court of Appeals concluding that he failed to timely present his argument and object to an “inadmissible ledger,”<sup>46</sup> Steichen argues as though the law does not require him to timely object to evidence in support of summary judgment, citing cases

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<sup>44</sup> *In re Adoption of R.L.M.*, 138 Wn. App. 276, 283, 156 P.3d 940 (2007).

<sup>45</sup> Petition at p. 1.

<sup>46</sup> Opinion at pp. 13–14 & n.4.

against the consideration of inadmissible evidence.<sup>47</sup> Those cases, however, did not address a concern over a timely objection.<sup>48</sup> A party must timely object to evidence submitted in support of summary judgment,<sup>49</sup> and an appellate court need not consider arguments that the party did not make in response to a summary judgment motion.<sup>50</sup> Here, the Court of Appeals refused consideration of an argument that it observed as untimely and absent a timely objection.<sup>51</sup> That does not trigger RAP 13.4(b).

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<sup>47</sup> Petition at pp. 6–11. He also contends that CWD “condede[d] Harrison’s ledgers were ‘recently drafted.’” *Id.* at p. 7 n.6. But he relies on a part of CWD’s brief that regarded two (not all) ledgers, summarized Steichen’s assertions, and responded to them. Brief of Respondent CWD Group at p. 40, No. 82407-4-I (Wash. App. Dec. 9, 2022); CP 8841–8849.

<sup>48</sup> Petition at pp. 6–7.

<sup>49</sup> See *Bonneville v. Pierce Cnty.*, 148 Wn. App. 500, 509, 202 P.3d 309 (2008); ER 103(a)(1).

<sup>50</sup> See *Green v. Normandy Park*, 137 Wn. App. 665, 687, 151 P.3d 1038 (2007), *review denied*, 163 Wn.2d 1003, 180 P.3d 783 (2008). See also RAP 2.5(a).

<sup>51</sup> Opinion at pp. 13–14 & n.4.

As to parts of the record that belie his “credit” theory,<sup>52</sup> Steichen speculates that they constitute “fabricated” evidence,<sup>53</sup> echoing his allegations at the Court of Appeals.<sup>54</sup> He, however, made his allegations as though moving under CR 60(b)(4) at the Court of Appeals for relief from an order because of alleged misconduct, wrongly asking it to engage in fact finding.<sup>55</sup> He also failed to sufficiently develop his arguments for review.<sup>56</sup> He, for example, failed to explain how the “fabricated” evidence related to essential elements of a claim.<sup>57</sup> He, instead, made a passing reference to his claims.<sup>58</sup>

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<sup>52</sup> *See, e.g.*, CP 8529–30, 8841–49.

<sup>53</sup> Petition at p. 4.

<sup>54</sup> AOB at pp. 19–39.

<sup>55</sup> *See id.*

<sup>56</sup> *See Laymon*, 99 Wn. App. at 530. Opinion at pp. 7–8.

<sup>57</sup> *Id.*

<sup>58</sup> AOB at pp. 39–40.

**B. This Court should deny review of Steichen’s issue(s) regarding his judicial-disqualification claim.**

Steichen’s complaints about his judicial-disqualification claim do not trigger RAP 13.4(b). He needlessly wants review of the Court of Appeals’ conclusion that he waived his claim,<sup>59</sup> as though this limited review. It did not. Despite the waiver, the Court of Appeals addressed his claim.<sup>60</sup>

A party may waive their right to disqualify a judge if not timely asserted.<sup>61</sup> The Superior Court rightly found a waiver based on Steichen moving to disqualify the judge in January 2021 because of alleged events in October 2020.<sup>62</sup> According to Steichen, he saw the judge’s bias earlier in May 2019,<sup>63</sup>

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<sup>59</sup> Petition at pp. 21–27.

<sup>60</sup> Opinion at pp. 38–43.

<sup>61</sup> *Williams & Mauseth Ins. Brokers, Inc. v. Chapple*, 11 Wn. App. 623, 626, 524 P.2d 431 (1974).

<sup>62</sup> CP 10654. *See also* CP 8908–8916.

<sup>63</sup> AOB 118; Opinion at p. 39.



approximately 19 months before his motion.<sup>64</sup> The Court of Appeals, then, rightly observed the waiver.

The Court of Appeals also reached a result consistent with Washington law in addressing the insufficient evidence.<sup>65</sup> One seeking disqualification must give sufficient evidence of actual or potential bias.<sup>66</sup> Lacking that, Steichen gave speculation. He, for example, speculated that the Superior Court intentionally failed to record part of a hearing during which the judge allegedly engaged in misconduct,<sup>67</sup> and that court personnel tried “cover[ing] up” the “misconduct.”<sup>68</sup> The

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<sup>64</sup> CP 8902–8916.

<sup>65</sup> Opinion at pp. 38–43.

<sup>66</sup> *Kok v. Tacoma Sch. Dist. No. 10*, 179 Wn. App. 10, 24, 317 P.3d 481 (2013).

<sup>67</sup> CP 8912–8915.

<sup>68</sup> CP 10119, 10121.

record, however, shows a reasonable explanation of what happened—not bias or misconduct.<sup>69</sup>

Ultimately, the Court of Appeals gave a thorough analysis of Steichen’s requests to disqualify that aligns with Washington law. That does not trigger RAP 13.4(b).

**C. This Court should deny review of Steichen’s issue(s) regarding the Court of Appeals’ affirmance of the dismissal of his conversion claim.**

**1. Steichen does not sufficiently address RAP 13.4(b)’s criteria.**

In raising the affirmance of the conversion claim’s dismissal, Steichen cites all criteria under RAP 13.4(b) absent cogent argument of how each is supposedly triggered. That, alone, warrants denying review.

He, for example, does not and cannot explain what issue of substantial public interest exists for RAP 13.4(b)(4). Unlike

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<sup>69</sup> CP 10350, 10629–10632, 12867–12876.

a matter of public safety or other cases that trigger RAP 13.4(b)(4), this case regards Steichen's personal dispute about his payments for amounts owed at one condominium.

Nor does he explain his position that the unpublished Opinion's treatment of the conversion claim conflicts with *Thrifty Supply Co. v. Deverian*.<sup>70</sup> He cannot do so. *Thrifty* does not concern conversion and, thus, the issues at hand.<sup>71</sup>

Like he did at the Court of Appeals, Steichen unsuccessfully tries to raise most everything under the sun without sufficient argument. He fails to trigger RAP 13.4(b) in doing so.

**2. The unpublished Opinion aligns with Washington law on damages for conversion.**

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<sup>70</sup> *Thrifty Supply Co. of Seattle v. Deverian Builders, Inc.*, 3 Wn. App. 425, 475 P.2d 905 (1970).

<sup>71</sup> *Id.*

Steichen fails to trigger RAP 13.4(b) in challenging the Court of Appeals' determination about the lack of damages for the conversion claim. It aligns with Washington law.

A defendant facing a conversion claim can contest the damages by showing the reduction or lack of damages, as indicated in *Rose v. Galbraith*.<sup>72</sup> There, where the converted property was to be sold and the proceeds were to apply to a debt that the plaintiff owed, *Rose* acknowledged that would reduce the plaintiff's financial liability—"enur[ing] to his benefit"—and that the defendant could show that in contesting the damages.<sup>73</sup> Rightly so. Disregarding a reduction or lack of damages may give a plaintiff a windfall, contrary to Washington law.<sup>74</sup>

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<sup>72</sup> See *Rose v. Galbraith Motor Co.*, 51 Wn.2d 31, 36–37, 314 P.2d 924 (1957).

<sup>73</sup> *Id.*

<sup>74</sup> See *Shoemaker ex rel. Guardian v. Ferrer*, 168 Wn.2d 193, 198, 225 P.3d 990 (2010).

Consistent with that, the Court of Appeals affirmed the conversion claim's dismissal.<sup>75</sup> Steichen alleged that CWD wrongfully debited \$382.89 from his bank account on three occasions for the special assessment.<sup>76</sup> Assuming that happened, the Court of Appeals observed a lack of damages.<sup>77</sup> There was no credible dispute that the money was accounted to Steichen's account and, thus, to what he owed.<sup>78</sup>

Challenging the affirmance, Steichen raises *W. Farm Serv., Inc. v. Olsen*, where a party did not cite Washington law or sufficient evidence for its theory that there "can be no conversion where there is a benefit to the owner."<sup>79</sup> Because that party could not take advantage of or win under that theory

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<sup>75</sup> Opinion at p. 37.

<sup>76</sup>*Id.*; CP 106.

<sup>77</sup> Opinion at p. 37

<sup>78</sup> *See id.*

<sup>79</sup> *W. Farm Serv., Inc. v. Olsen*, 151 Wn.2d 645, 653, 90 P.3d 1053 (2004).

without enough evidence for it, there was no need for *Olsen* to accept or reject the theory as a matter of law.<sup>80</sup> *Olsen*'s comment that "[n]o Washington case has adopted" that party's "approach"<sup>81</sup> was dicta that a court need not follow.<sup>82</sup>

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<sup>80</sup> See *Henningsen v. Worldcom, Inc.*, 102 Wn. App. 828, 843, 9 P.3d 948 (2000) ("[W]e need not adopt *Faragher* ... because ... WorldCom could not take advantage of the affirmative defense under *Faragher*.); *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 387, 745 P.2d 37 (1987) ("[W]e need not decide whether to adopt § 172 because ... even under th[at] standard ... [his] reliance was unjustified.").

<sup>81</sup> *Olsen*, 151 Wn.2d at 653.

<sup>82</sup> See *State v. Fuller*, 185 Wn.2d 30, 41 & n.6, 367 P.3d 1057 (2016); *Bauer v. State Emp. Sec. Dep't*, 126 Wn. App. 468, 475 n.3, 108 P.3d 1240 (2005) (citing *DCR, Inc. v. Pierce Cnty.*, 92 Wn. App. 660, 683 n. 16, 964 P.2d 380 (1998)). As to authority that where a decision "rests" on multiple "grounds" then "none can be ... obiter dictum," *Messersmith v. Town of Rockford*, 529 P.3d 427 (Wash. App. 2023) (quoting *State v. White*, 135 Wn.2d 761, 767 n.3, 958 P.2d 982 (1998)), that should not apply to *Olsen* where it commented on law as to the party's legal theory but, absent enough evidence for the theory, the party could not prevail under it and there was no need to accept or reject it as a matter of law.

Before *Olsen* and after *Rose*, a “‘benefits’ rule” was considered in *McKernan v. Aasheim* in resolving a different issue: whether parents could recover damages against a doctor for a child born after a failed sterilization operation.<sup>83</sup>

*McKernan* reasoned that the rule could not apply because it was impossible to calculate whether the emotional benefits of the child outweighed damages that could not be established with reasonable certainty, and because parents “would be obliged to prove their child was more trouble than it was worth.”<sup>84</sup> That reasoning does not apply to cases like *Rose* or this one, where what is at issue is not a child and can be reasonably calculated.

That is, the unpublished Opinion aligns with Washington law. Steichen, however, overlooks its rationale and RAP 13.4(b) in further disputing it by contesting the admissibility of “ledgers” and arguing that admissible evidence prevented the

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<sup>83</sup> *McKernan v. Aasheim*, 102 Wn.2d 411, 687 P.2d 850 (1984).

<sup>84</sup> *Id.* at 419–20.

affirmance.<sup>85</sup> His assertions regard purported errors for supposed correction, not RAP 13.4(b).<sup>86</sup> Moreover, the affirmance followed from undisputed facts, like that Steichen fell behind on his monthly dues,<sup>87</sup> and the absence of a credible dispute that the money was accounted to Steichen's account and, thus, to what he owed.

**3. The Court of Appeals permissibly addressed consent for the conversion claim.**

Steichen disputes the Court of Appeals' discussion of his consent to the payments for his conversion claim.<sup>88</sup> But in

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<sup>85</sup> Petition at p. 20. Inasmuch Steichen's arguments implicate issue nos. 1 and 2 in the Petition, CWD's arguments are responsive to them.

<sup>86</sup> Also, CWD employee's declaration showed that: CWD maintains financial ledgers; that this employee, in charge of accounts receivable, prepared them; and that their content was true and accurate. CP 8841-42. They were admissible. *See* RCW 5.45.020.

<sup>87</sup> Opinion at pp. 6, 37.

<sup>88</sup> Petition at pp. 18-20.



doing so, he fails to show a conflict with an appellate court decision, an issue of substantial public interest, or a constitutional issue warranting review.

An appellate court can affirm on any basis supported by the record.<sup>89</sup> It may also reach an un-briefed issue if needed to resolve a case.<sup>90</sup> But it should not reach an issue sua sponte “if it is separate and distinct from the questions presented and unnecessary to resolve th[em]”—like a new fact-dependent theory not litigated at the trial court—as shown in *Dalton M v. North Cascade*.<sup>91</sup>

In raising *Dalton*, Steichen asserts that the Court of Appeals deprived him of “due process” in addressing a “defense” that “no party raised” about his “consent” to special

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<sup>89</sup> *Bavand v. OneWest Bank*, 196 Wn. App. 813, 825, 385 P.3d 233 (2016).

<sup>90</sup> *Matter of Dependency of LS*, 200 Wn. App. 680, 687, 402 P.3d 937 (2017).

<sup>91</sup> *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 2 Wn.3d 36, 40, 56, 534 P.3d 339 (2023).

assessment payments.<sup>92</sup> He does not and cannot explain why this case is like *Dalton*. In addressing consent, the Court of Appeals addressed an item pertinent to the conversion claim and theories raised to the Superior Court,<sup>93</sup> as well as authority in the appellate briefing.<sup>94</sup> Whereas Steichen unduly focuses on one “Authorization Agreement” out of context from other facts,<sup>95</sup> the Court gave a more comprehensive consideration of circumstances.<sup>96</sup>

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<sup>92</sup> Petition at pp. 18–20.

<sup>93</sup> *See, e.g.*, CP 7029 (“[A]ll challenged payments were willingly made prior to this date ....”).

<sup>94</sup> Brief of Respondents Oman and Condominium Law Group, PLLC, at pp. 64, No. 82407-4-I (Wash. App. Dec. 9, 2022).

<sup>95</sup> Petition at p. 19 & n.13. CP 8563.

<sup>96</sup> Opinion at p. 35–37.

**D. This Court should deny review of Steichen’s issue(s) regarding the attorney-fee awards under RCW 64.34.455.**

**1. Steichen cannot trigger RAP 13.4(b) with untimely arguments about alleged failures to request fees in pleadings under RCW 64.34.455.**

A party should not raise an argument for the first time in their reconsideration motion.<sup>97</sup> Nor should they do that in their petition.<sup>98</sup>

Steichen tries to trigger RAP 13.4(b)(3) for constitutional questions, and possibly RAP 13.4(b)(2) for a conflict with a decision of this Court, by belatedly arguing a violation of his “right to Due Process” because “Respondents failed to plead

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<sup>97</sup> See *Nostrand v. Little*, 58 Wn.2d 111, 120, 361 P.2d 551 (1961) (reflecting “rule that it will not consider questions presented ... for the first time in a petition for rehearing.”).

<sup>98</sup> See, e.g., *Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 861 n.20, 383 P.3d 492 (2016).

entitlement to fees” under RCW 64.34.455.<sup>99</sup> But he failed to make this argument in his briefing at the Court of Appeals.<sup>100</sup> He raised it in his reconsideration motion.<sup>101</sup> That was too late where he had sufficient opportunity to make his arguments in his overlength briefing.

Moreover, the unpublished Opinion does not conflict with the law or show a due process violation. When the losing party knows a basis for attorney fees and requests them, then the prevailing party’s omission of the same request does not bar them from later seeking their fees.<sup>102</sup> CWD sought fees in its

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<sup>99</sup> Petition at pp. 15–16.

<sup>100</sup> AOB at pp. 63–66 ; Reply at p. 41.

<sup>101</sup> Motion for Reconsideration at pp. 31–32, No. 82407-4-I (Wash. App. Nov. 13, 2023).

<sup>102</sup> See *Kathryn Learner Fam. Tr. v. Wilson*, 183 Wn. App. 494, 501, 333 P.3d 552 (2014) (“[W]here the nonprevailing party actually knows the basis for a contractual fee award and requests fees, the failure of the prevailing party to explicitly make such a request does not bar that party from later requesting contractual attorney fees.”).

pleading.<sup>103</sup> Steichen pleaded “attorney’s fees pursuant to ... the New (or Old) [Condominium] Act,”<sup>104</sup> thereby invoking RCW 64.34.455 under which Respondents got their fees. Steichen cannot dispute that with his untimely arguments.

**2. Steichen has not shown a substantial issue of public interest or any other criteria in RAP 13.4(b).**

Steichen fails to trigger RAP 13.4(b) with his complaints about the attorney fees that do not regard a matter of public interest or the other criteria for review. His complaints are fueled by his reliance on inapposite cases and case-specific circumstances, like the pleadings or remarks of other parties.

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<sup>103</sup> CP 2754.

<sup>104</sup> CP 126.

The Washington Condominium Act includes RCW 64.34.455, which permits attorney fees to a prevailing party, including a defendant<sup>105</sup>:

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.<sup>106</sup>

This applies “to all condominiums created ... before July 1, 1990,”<sup>107</sup> including this one.<sup>108</sup> Steichen did not show otherwise under “inconsistent provisions of the declaration” or “bylaws.”<sup>109</sup>

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<sup>105</sup> *Eagle Point Condo. Owners Ass'n v. Coy*, 102 Wn. App. 697, 706, 9 P.3d 898 (2000).

<sup>106</sup> RCW 64.34.455.

<sup>107</sup> RCW 64.34.010(1).

<sup>108</sup> CP 1755.

<sup>109</sup> RCW 64.34.010(1). Opinion at p. 23.

Here, the Court of Appeals rightly affirmed the attorney-  
fees award and awarded fees under RCW 64.34.455.<sup>110</sup> It  
observed that Steichen violated the “WCA and the Declaration”  
in failing to timely pay assessments.<sup>111</sup> Blaming others,  
Steichen sued the Respondents for alleged violations of the  
Condominium Act and the Association’s governing  
documents.<sup>112</sup> Entitling it to fees at the trial and appellate  
courts, CWD prevailed at those courts after being adversely  
affected by Steichen’s conduct.<sup>113</sup>

Steichen claims, however, that the unpublished Opinion  
“contravenes”: (a) *Eagle Point Condo. Owners Ass’n v. Coy*,  
102 Wn. App. 697, 9 P.3d 898 (2000); and (b) *Sixty-01 Ass’n of  
Apartment Owners v. Parsons*, 178 Wn. App. 228, 314 P.3d

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<sup>110</sup> Opinion at pp. 22–24; CP 12172–85.

<sup>111</sup> Opinion at p. 24; CP 2998–99, 6602–05.

<sup>112</sup> *See, e.g.*, CP 92–105, 119–20. Opinion at p. 24.

<sup>113</sup> CP 12172–12186, 10602.

1121 (2013), *aff'd*, 181 Wn.2d 316, 335 P.3d 933 (2014). He is wrong. *Sixty-01* addressed fees under a different statute.<sup>114</sup>

And the section of *Eagle Point* that Steichen raises addressed different circumstances: a defendant that did not prevail against all claims and unsuccessfully argued for a proportionality approach for determining a prevailing party.<sup>115</sup>

Steichen also claims that fees could not be awarded because he had a “credit.”<sup>116</sup> But the record belies his “credit” theory,<sup>117</sup> and he cannot avoid that with insufficient argument and speculation about “fabricated” evidence.<sup>118</sup>

Also, Steichen focuses on the term “claim” in RCW 64.34.445,<sup>119</sup> wrongly suggesting that a Respondent who did

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<sup>114</sup> *Sixty-01*, 178 Wn. App. at 234.

<sup>115</sup> *Eagle Point*, 102 Wn. App. at 710–14.

<sup>116</sup> Petition at pp. 3, 17.

<sup>117</sup> *See, e.g.*, CP 8529–30, 8841–49.

<sup>118</sup> Petition at p. 4; Opinion at 7–8.

<sup>119</sup> Petition at p. 16 & n.12.



not assert cause of action cannot recover fees. The caselaw shows otherwise.<sup>120</sup>

Finally, Steichen argues the Association conceded that it had not adopted RCW 64.34.455.<sup>121</sup> But that regards a mediation statement that cannot be considered.<sup>122</sup>

**E. This Court should award CWD its fees.**

If the appellate court awarded fees to a prevailing party and this Court denies the opposing party's petition, the former may get reasonable attorney fees for answering it.<sup>123</sup>

CWD requests attorney fees for answering the Petition. The Court of Appeals awarded CWD its fees under RCW 63.34.455.<sup>124</sup> Rightly so, as explained above. Thus, CWD should now get its fees for answering the Petition.

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<sup>120</sup> *Eagle Point*, 102 Wn. App. at 706.

<sup>121</sup> Petition at p. 16 n.11.

<sup>122</sup> CP 1435, 11910. RCW 5.60.070; ER 408.

<sup>123</sup> RAP 18.1(j).

<sup>124</sup> Opinion at p. 43.

## **V. CONCLUSION**

In trying to continue his protracted 5-year suit, Steichen fails to trigger RAP 13.4(b). The Court should deny review.

DATED: March 6, 2024

**Certificate of Compliance:** Pursuant to RAP 18.17, I certify that this Answer contains 4,989 words, exclusive of words contained in any appendices, title sheet, table of contents, table of authorities, this certificate of compliance, certificate of service, signature block, and pictorial images.

BULLIVANT HOUSER BAILEY PC

By s/ Owen R. Mooney \_\_\_\_\_  
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Attorneys for Respondent CWD Group

**CERTIFICATE OF SERVICE**

On the date set forth below, I caused to be served Respondent CWD Group’s Answer to Randall R. Steichen’s Petition for Review, and Appendix, to which this is attached, via appellate court email filing and service system, on the following persons:

Ashley Steichen	ashleysteichen@gmail.com
Christopher Nye	cnye@rmlaw.com
Marilee C. Erickson	merickson@rmlaw.com
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Stephan O. Fjelstad	sfjelstad@pstlawyers.com

Dated: March 6, 2024

/s/ Owen R. Mooney  
\_\_\_\_\_  
Owen R. Mooney, WSBA #45779

**Index to Appendix**  
**Certain Filings at Court of Appeals Cited to in Respondent CWD Group’s Answer to**  
**Randall R. Steichen’s Petition for Review**

Letter, No. 82407-4-I (Wash. App. May 4, 2022).....APP 1

Letter, No. 82407-4-I (Wash. App. Jun. 28, 2022).....APP 3

Excerpts of Motion for Extension of Time to File Reply and Miscellaneous Relief,  
No. 82407-4-I (Wash. App. Jan. 6, 2023) .....APP 5

Letter, No. 82407-4-I (Wash. App. Jan. 10, 2023).....APP 7

Appendix, No. 82407-4-I (Wash. App. Apr. 14, 2023).....APP 9

Excerpts of Motion for Reconsideration,  
No. 82407-4-I (Wash. App. Nov. 13, 2023).....APP 24

LEA ENNIS  
Court Administrator/Clerk

*The Court of Appeals  
of the  
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May 4, 2022

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Case #: 824074  
1223 Spring Street Owners Assoc, et al., Respondents v. Randall Steichen, Appellant

Page 2 of 2  
May 4, 2022  
Case #: 824074

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on May 3, 2022, regarding Appellant's Motion for Extension of Time to File Brief:

Appellant Steichen has filed a motion to extend time to file appellant's opening brief to June 27, 2022 based in part on not receiving notice from this court indicating when the brief was due. Respondent CLG filed a response objecting to the extension and requesting sanctions if the brief is not filed immediately. Appellant filed a reply to respondent CLG's response.

This case was initiated over a year ago and the opening brief has yet to be filed. The court provides briefing timelines at filing based on RAP 10.2 but does not send notices to parties when these due dates have changed based on other events that determine the deadlines. When parties miss these deadlines, the court will send a reminder which in this case was sent nearly three weeks ago on April 13, 2022.

The motion is granted in part. Appellant's opening brief shall be filed no later than May 31, 2022. Further extensions should not be anticipated absent a showing of good cause.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

jh

LEA ENNIS  
Court Administrator/Clerk

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of the  
State of Washington*

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June 28, 2022

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Case #: 824074

1223 Spring Street Owners Assoc, et al., Respondents v. Randall Steichen, Appellant  
King County Superior Court No. 18-2-57978-3

Page 2 of 2  
June 28, 2022  
Case #: 824074

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on June 28, 2022, regarding Appellant's Motion for Extension of Time to File Brief:

This appeal has been pending in this Court for well over a year since March 2021. Appellant Randall Steichen's opening brief was originally due on March 4, 2022 and remains overdue, despite an extension granted to May 31, 2022. By granting an extension, the clerk of this Court stated that no further extension should be granted absent a showing of good cause. Steichen did not file his opening brief by May 31, 2022. Instead, he filed a motion to modify the clerk's ruling that granted an extension until May 31, 2022. Then, about a month later, on June 27, 2022, he filed a motion for extension until July 12, 2022. He argues an extension is warranted to allow his counsel sufficient time to draft a brief due to "the number and complexity of the issues." Respondents Valerie Oman and Condominium Law Group, PLLC filed an objection and a motion to dismiss. Respondents point out that Steichen has delayed filing the record and, instead of filing his brief, has filed a number of motions in this Court, including a motion to vacate a judgment and a motion to modify a ruling denying that motion.

An extension is granted one last time without any sanctions. Steichen shall file his opening brief by July 12, 2022. If he fails to do so, sanctions will be imposed against him without further notice of this Court, including dismissal.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

jh



COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Appellant,

vs.

1223 SPRING STREET OWNERS  
ASSOCIATION, a Washington  
non-profit corporation; CWD  
GROUP, a Washington corporation;  
VALERIE 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.

No. 82407-4

MOTION FOR EXTENSION  
OF TIME TO FILE REPLY  
BRIEF AND MISCELLANEOUS  
RELIEF

Appellant, Randall R. Steichen, moves the Court for the  
relief set forth below.

Steichen's reply briefing time spanned the holiday season when undersigned counsel had family and other seasonal commitments. In addition, an extension is warranted because undersigned counsel has other professional and personal commitments that cannot be avoided.<sup>2</sup>

Additionally, this Court should allow Mr. Steichen to file a corrected, amended opening brief to correct citations to the Clerk's papers and Report of Proceedings. This will aid the Court in reviewing the issues and arguments Steichen raises. Steichen only seeks to provide correct citations and will not amend the brief in any other way.

Finally, this Court should allow Steichen's reply brief to exceed the word limitation imposed by RAP 18.17 and impose a 16,000-word limit because the Respondents filed three separate briefs raising distinct issues that require meaningful responses. In the alternative, Steichen requests that this Court allow

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<sup>2</sup> The Association and CWD Group do not oppose the extension. Undersigned counsel did not ask CLG to do the same.

LEA ENNIS  
Court Administrator/Clerk

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of the  
State of Washington*

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January 10, 2023

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Case #: 824074

1223 Spring Street Owners Assoc, et al., Respondents v. Randall Steichen, Appellant  
King County Superior Court 18-2-57978-3

Page 2 of 2  
January 10, 2023  
Case #: 824074

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on January 10, 2023, regarding Appellant's Motion for Extension of Time to File Reply Brief and Miscellaneous Relief:

Appellant Randall Steichen has filed a motion to extend time to file his reply to April 7, 2023; to file a "corrected" opening brief; and for permission to file an overlength reply of 16,000 words. Respondents have filed certain responses and objections. Steichen's requests are unreasonable in the context of this appeal. The time for filing the reply is hereby extended to February 21, 2023. Further extensions should not be anticipated. Steichen should file a single reply of no more than 10,000 words. To the extent his completed reply exceeds 10,000 words, he may file a motion for permission to file an overlength reply, along with the proposed reply, supported by an explanation of compelling circumstances requiring the additional words. The request to file an amended opening brief is denied as untimely, but Steichen may choose to file a list identifying erroneous citations from his opening brief and supplying proper citations that the panel may choose whether or not to consider when addressing the merits of the appeal.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

jh

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Appellant,

vs.

1223 SPRING STREET OWNERS  
ASSOCIATION, a Washington  
non-profit corporation; CWD  
GROUP, a Washington  
corporation; VALERIE 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.

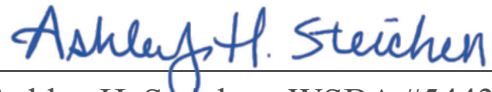
No. 82407-4

APPENDIX

Appellant, Randall R. Steichen, submits the attached  
Appendix, which contains a list of corrected citations as

authorized by Commissioner Koh's January 10, 2023 notation ruling. Steichen also provides the table of contents and table of authorities for his reply brief.

DATED this 14<sup>th</sup> day of April 2023.



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Attorney for Randall R. Steichen

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9	<u>See</u> CP 6686; 12042	<u>See</u> CP 6686, 12041, 12069, 12087, 12093-97
19	CP 809, 8849	CP 909, 8849
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<sup>1</sup> The Appendix is to Steichen’s motion to supplement the record with additional evidence, which Steichen filed on March 14, 2023.

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**ASHLEY H. STEICHEN**

**April 14, 2023 - 2:32 PM**

**Transmittal Information**

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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

RANDALL R. STEICHEN,

Appellant,

vs.

1223 SPRING STREET OWNERS  
ASSOCIATION, a Washington  
non-profit corporation; CWD  
GROUP, a Washington  
corporation; VALERIE 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.

No. 82407-4

MOTION FOR  
RECONSIDERATION

Appellant, Randall R. Steichen, requests that this Court  
reconsider its decision.

Association did not incur fees “in connection with the collection of a *delinquent Owner’s account*.”

“Courts will not revise a clear and unambiguous agreement or contract for parties or impose obligations that the parties did not assume for themselves.” Condon v. Condon, 177 Wn.2d 150, 163, 298 P.3d 86 (2013). “A covenant is strictly construed against one who claims the benefit of the restriction.” Parry v. Hewitt, 68 Wn. App. 664, 668, 847 P.2d 483 (1992). This Court must vacate the fee award.

*9. This Court erred in affirming fees pursuant to RCW 64.34.455.*

Awarding Respondents fees pursuant to RCW 64.34.455 violates due process. Respondents failed to plead entitlement to fees pursuant to RCW 64.34.455. The Association sought fees under “CR 11 and RCW 4.84.185.” CP 170-71. Neither CLG nor CWD pleaded any authority. CP 5177.

“Due process requires a [party] to be advised, by the pleadings, of the issues he must be prepared to meet at the trial.

That includes the issue of attorney fees.” Dalton M, LLC v. N. Cascade Tr. Servs., Inc., 534 P.3d 339, 347 (2023)(citations and quotation marks omitted). “The requirement that a party plead attorney fees provides the opposing party not only with a meaningful opportunity to meet the merits of the pleader’s claim, but also a chance to make an informed decision to undergo the risks of litigation.” Id. The Respondents are not entitled to fees.

Further, according to the Association, it did “not adopted the attorney fee provisions of the New Condo Act found in RCW 64.34.455 and, instead ... parties are to bear their own attorney fees.” CP 1435; see CP 1711, 1755, 2877, 2938-39, 6169, 10191, 11285. This is an express admission that the Respondents were not entitled to fees.

This Court found: “[Steichen] violated provisions of the WCA and the Declaration by not paying his regular monthly dues.” Op., 24. That is patently false. CWD’s ledgers that this Court must consider bely the court’s finding. CP 512-13.

# BULLIVANT HOUSER BAILEY

March 06, 2024 - 4:26 PM

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Respondent CWD Group's Answer to Randall R. Steichen's Petition for Review, and Appendix

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