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SUPREME COURT
STATE OF WASHINGTON
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No. 102739-7
No. 82407-4

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; 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.

REPLY TO THE ASSOCIATION'S ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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INTRODUCTION

This case is before this Court because a collection attorney (Oman), with the approval of a condominium association and its property manager (CWD), unlawfully terminated the utilities to Steichen's unit in the dead of winter when Steichen's homeowner account had a ***$30,458.20 credit***.

In 2017, the Association obtained a loan for owners who elected to make monthly payments instead of paying their special assessment allocations in full. CP 3295-99. On June 1, 2017, CWD started imposing monthly special assessment financing charges. CP 1446, 1449-1452, 7292.[1]

According to the Association:

> Because [Steichen] did not follow through on his stated intention to pay his share in one lump sum, ***he was set up on the installment plan*** (CP 6298) and the first installment payment of *$382.89* came due on June 1, 2017.

Br. at 13-14 (emphasis added).

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[1] On May 31, 2017, Steichen's account had a zero balance. CP 8866.

The first time Steichen, who was residing out state, heard about the special assessment was after it had been approved. CP 360-66. Board President Buck contacted Steichen when Buck learned that he needed to send the lending Bank owners' special assessment checks. *Id.*; CP 7268-69; *see* CP 360, 363, 422, 486, 524-550, 3324, 6485, 6487, 7283. Finally informed of the special assessment, Steichen advised Buck that he wanted to pay his allocation, $49,620, *in full*; he did not want to finance it through the Association's loan. CP 7284. Because Steichen had not received any notice of the assessment, he told Buck he needed time to make the payment. CP 7283-89, 7399.

On November 6, 2017, unbeknownst to Steichen, his homeowner account had an outstanding balance of $2,696.68 due to $382.89 special assessment and related charges. CP 360, 3278, 7513.[2] On November 7th, Oman demanded that Steichen pay $12,434.66. CP 2887-89.

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[2] CWD did not provide Steichen notice of the charges. CP 360.

On December 4th, collection attorney Oman recommended, and the Board approved, terminating the utilities to Steichen's unit if he failed to respond by Oman's demand deadline. CP 1043, 2887, 7684, 8755. Oman *then* drafted a collection policy that included a utility termination provision. *See* CP 7489, 7705.

To avoid foreclosure, on December 11th, Steichen proposed to pay what he thought was his *outstanding* special assessment obligation, $49,620, in installments. CP 6415; *see* CP 3276-78, 7254. On December 29th, Steichen brought his homeowner's account current. CP6465, 6951-52, 6968. "Buck explained [to other owners] that the … Board took steps to recover a small delinquency [from Steichen] and a payment plan was *established* and *fulfilled*." CP 7531 (emphasis added).

On April 3rd, because Steichen was in "active legal collection" with a $31,633.41 account credit, Oman "updated" the collection policy, adding:

> An account becomes delinquent when a monthly Assessment is not paid in full by the 15th of the month or when a Special Assessment is not paid by its due date.

CP 512, 7709; *see* CP 1069, 7468-69, 7473, 7486. Oman's new provision is a blatant attempt to circumvent express statutory provisions and the Declaration, which precluded Respondents' baseless collection demands. RCW 64.34.020(3); RCW 64.34.364(17)(b),(18)(a); CP 1768.

A condominium owner does *not* owe assessments when his account has a credit (positive) balance. It is axiomatic that an account with a credit balance is not delinquent. An account is delinquent when the charges are greater than the payments. Buck and Oman ignored this elementary principle (and Steichen's

account credit) because they wanted to force Steichen out. CP 1068, 7539, 7709.[3]

On May 25th, when Steichen was current on the payment plan for what he thought was his *outstanding* special assessment obligation and had a $26,314.75 account credit, Oman demanded that Steichen pay $29,297.48. CP 2897-98, 6425, 6686, 6951-52, 6968, 7871. Finding the parties' unlawful conduct facetious, CWD remarked to Selvakumar: "At *this point* you can report that [Oman is] *actively* working legal collection with [Steichen]. ***That is true at this point***. ☺" CP 7775, 7762, 8154 (smiley face original; emphasis added).

[3] Oman: Steichen is "a repeat offender" and "the best result a collection action can bring is a new owner who pays on time." CP 7364, 7369. After unlawfully terminating the utilities to Steichen's unit, Buck opined that Steichen would sell and, the Board wouldn't need to "move on to foreclosure." CP 7372-73, 7376.

Respondents deceived Steichen into thinking his account had an outstanding balance. Steichen therefore emailed Oman on August 13th:

> I agree to, and will immediately, pay the following:
>
> 1. All monthly HOA dues that are due and payable (… April, May, June, July, and August) ....[4]
>
> The remainder of the charges, which amazingly appear to total almost $25,000… are punitive in nature, duplicitous, and patently unreasonable….
>
> [A]fter I was made aware of the Special Assessment, I *did pay the entire assessment* amount as and when I agreed….
>
> I am prepared to litigate if necessary to prevent injustice.

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[4] Contrary to Respondents, this is clearly not an admission. Respondents colluded to deceive Steichen into paying charges that were never imposed. CP 513-521, 889, 893, 2897-98, 7758, 7839-40, 12161.

Steichen: "All I was provided by Attorney Farris Oman was a two-page summary spread sheet." CP 7836-37. Oman's hearsay ledger has $49,620 imposed on June 1, 2017. 2899.

CP 7797-99 (emphasis added); *see* CP 512, 514, 519-20, 889, 893, 2900, 12161. On August 14th, Steichen informed Buck/ Selvakumar: "I believe the HOA has an obligation to provide me with a detailed analysis and explanation of the bases for those charges." CP 7805-06. Later that day, Treasurer Selvakumar confessed the Association Board was "***in the weeds with the attorney and unit 500 over his dues***." CP 7758 (emphasis added).

On August 21st, Oman, sent Steichen a letter stating:

> The Board … *would* agree to waive $3K … the amount of interest that has *been added* to your balance due ***by acceleration of the Special Assessment*** – if you will agree to pay the *remaining balance due* by August 31, 2018.

CP 7839-40 (emphasis altered). Oman's assertion is patently false. As undeniably demonstrated by CWD's ledgers, the Board did not accelerate Steichen's special assessment obligation. CP 512-13, 1180-81, 6465, 6686.

Steichen agreed to, and paid, $49,620, which he believed was his outstanding special assessment obligation. To conceal

his substantial account credit and that CWD never charged Steichen $49,620, Oman deceptively informed Steichen that the Board *accelerated* his special assessment obligation.[5]

When a collection attorney colludes with a condominium association and property manager to deceive an owner into paying charges that were never imposed, the owner should have his day in court. That was not allowed.

REASONS TO ACCEPT REVIEW

1. The Association failed to cite authority and present argument showing entitlement to attorney fees as required by RAP 18.1.

The court of appeals erroneously awarded the Association attorney fees for review of its Counterclaim despite its failure to comply with the mandatory requirements of RAP 18.1. Contrary

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[5] Oman:

Security Deposit & Acceleration
- Only if in your Declaration.
- Cannot use both at the same time.

CP 3544. Acceleration is not in the Declaration. CP 1793-1801.

to the Association, its request for fees ***as defendant*** is not "broad enough to apply to both the defense of petitioner's claims and its claim as Counterclaimant." Answer, 8.

The Association requested fees, asserting: "The Association, ***as defendant***, is entitled to fees as a prevailing party under the Condominium Act." Resp. Br., 38-41 (emphasis added); CP 1219. Because the Association made the strategic choice to request fees as defendant, it did not demonstrate why it was entitled to fees for appellate review of its Counterclaim.[6]

The Association asserts that Steichen "takes issue with the fact that the argument for fees on the counterclaim does not follow the argument on the counterclaim, but rather precedes it." Answer, 7-8. However, the order of the arguments demonstrate that the Association's Counterclaim counsel did not request fees.

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[6] The Association's defense counsel evaluated counterclaim counsel's "portion of response brief and outline[d] necessary changes to same so court does not confuse HOA judgment on counterclaims with HOA judgment for attorney fees on dismissal of plaintiff's claims." Erickson Decl. (November 2, 2023) Ex. A at p. 97; *see id.* at p. 96.

Resp. Br., 22-23, 25-29, 42-59.[7]

"RAP 18.1(b) provides in pertinent part: 'The party must devote a section of its opening brief to the request for the fees or expenses.'" *Gourley v. Gourley*, 158 Wn.2d 460, 470, 145 P.3d 1185 (2006). "Argument and citation to authority are required." *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710, 952 P.2d 590 (1998). The Association utterly and fatally failed to comply with the plain language of RAP 18.1.

Division One committed obvious and probable error by failing to follow this Court's clear precedents and ignoring the plain language of RAP 18.1. It's decision substantially alters the status quo, limits Steichen's freedom to act, and affects his substantive rights. The decision will result in a judgment lien. This has an immediate affect outside of the courtroom. It is a

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[7] The Association's defense counsel analyzed counterclaim counsel's "brief sections pertaining to HOA counterclaims … to incorporate same into single brief." Erickson Decl. (November 2, 2023) Ex. A at p. 96; *see id*. at 96 (defense counsel merged "arguments on counterclaims.")

cloud on Steichen's title and affects his ability to sell his unit. Accordingly, the decision immediately changes Steichen's rights. Additionally, Steichen does not have a right to appellate review and the proceedings below have concluded. RAP 13.5(b)(1),(2).

Division One exceeded its authority in contravention of the clear language of the appellate rules. Its renegade action so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of revisory jurisdiction by the Supreme Court. RAP 13.3(a); RAP 13.5(b)(3). Without review, Steichen will suffer substantial, unfounded, and unjustifiable consequences.

2. The Association is not entitled to attorney fees pursuant to RCW 64.34.455, authority it failed to plead and adamantly maintained did not apply.

Division One violated Steichen's right to due process in awarding the Association attorney fees pursuant to RCW 64.34.455. The Association pleaded it was entitled to attorney fees pursuant to CR 11 and RCW 4.84.185—not the New Act.

CP 170-71. As Counterclaimant, the Association pleaded RCW 64.34.364(14). CP 172. "Expressio unius est exclusio alterius, i.e., expression of one thing is the exclusion of another." *State v. Sorenson*, 2 Wn. App. 97, 103, 466 P.2d 532 (1970).

The Association did not plead RCW 64.34.455 because the Association conceded it did not apply.

Potential for Attorney Fees

> Because the court has ruled that the Old Condo Act applies to the Association, the potential exposure to attorney fees should be limited. The Association has not adopted the attorney fee provisions of the New Condo Act in RCW 64.34.455 and, instead, adopted [CP 1836] … that provides, in a dispute, the parties are to bear their own attorney fees.

CP 1435 (emphasis original). "[T]he Association intended to continue to be governed by the Old Condo Act except where expressly stated otherwise [in the Declaration]." CP 1430.[8] This is an express admission that the Association is not entitled to fees pursuant to RCW 64.34.455.

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[8] RCW 64.34.445 is not set forth in the Declaration.

"Due process requires [the opposing party] 'to be advised, by the pleadings, of the issues he must be prepared to meet at the trial.'" *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 534 P.3d 339, 347, 2 Wash. 3d 36 (2023). "That includes the issue of attorney fees." *Id.* Because the Association did not plead RCW 64.34.455, the courts below deprived Steichen of due process.[9]

The Association erroneously relies upon *In re Estate of Kerr* where this Court harmonized attorney fee provisions by finding that a discretionary award of attorney fees pursuant to the general statute was appropriate. *In re Estate of Kerr*, 134 Wn.2d 328, 343, 949 P.2d 810 (1998). This Court found that the general and specific statutes did not conflict because the specific statute was *silent* on whether a personal representative who successfully defends a challenge is entitled to fees and awarding fees pursuant to the general provision filled the void and harmonized the statutes. *Id.* at 336.

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[9] The Association failed to address this.

Here, the statutes are in conflict because the specific statute, RCW 64.34.364(14), mandates attorney fees "incurred in connection with the collection of delinquent assessments [including if the Association] prevails on appeal." "Statutes must be construed so no word, clause or sentence is superfluous, void or insignificant." *Jordan v. O'Brien*, 79 Wn.2d 406, 410, 486 P.2d 290, 292 (1971). "We have repeatedly stated that statutes must be read in their entirety, not in a piecemeal fashion." *Vaughn v. Chung*, 119 Wn.2d 273, 282, 830 P.2d 668 (1992). "Each provision must be construed so that each part is given effect with every other part or section." *Publishers Forest Products Co. v. State*, 81 Wn.2d 814, 816, 505 P.2d 453 (1973).

The Association seizes upon whether a suit is filed in its attempt to harmonize the fee provisions. Answer, 10. This construction is nonsensical. RCW 64.34.364(14) explicitly mandates fees in these circumstances and awarding the Association fees pursuant to RCW 64.34.455 renders RCW 64.34.364(14) wholly superfluous.

In violation of *Dalton*, clear statutory language, and due process, Division One committed clear error by awarding the Association attorney fees pursuant to authority that it did not plead, and adamantly maintained did not apply. Again, Division One's decision results in a judgment lien that affects Steichen's substantive rights. Steichen does not have a right to appellate review and proceedings below have concluded. RAP 13.5(b)(1),(2).

Division One exceeded its authority in contravention of Steichen's right to due process and starkly departed from the accepted and usual course of judicial proceedings. RAP 13.5(b)(3). This Court should accept review.

CONCLUSION

If ever there were a case demonstrating a ***dire*** need for judicial reform, this is it. When they found out that they had a judge who was on their side and willing to give them whatever they wanted no matter what, the defense lawyers in this case grossly misrepresented the evidence and the applicable law with

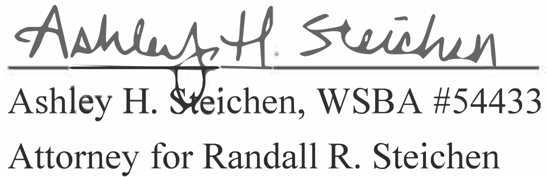
abject impunity. For reasons that defy belief and clearly violate the scared oath of judicial office, the trial judge was overtly biased and willingly issued erroneous rulings that had absolutely no basis in law or fact.

As demonstrated in Steichen's briefs and motion papers, the result was a veritable train wreck—an abhorrent miscarriage of justice. While these words may read like a John Grisham novel and sound too egregious to be true, these unjust actions actually occurred—and a careful examination of the record will ***conclusively*** demonstrate to this Court the injustice that occurred. If this Court does not inject itself to clean up the veritable debacle that happened and the intolerable injustice that has been foisted upon Steichen, as well as to take action to demonstrate to rogue lawyers and judges (that do in fact exist) that such conduct will not be tolerated, the Rule of Law is lost and no longer has a place in the State of Washington. Steichen respectively urges this Court to look into this matter and accept review.

This Reply contains 2,499 words, excluding words that are exempt from the word count requirement and complies with Rule of Appellate Procedure 18.17.

DATED this 11th day of April 2024.

Respectfully submitted:



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DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on April 11, 2024, I filed a true and correct copy of the foregoing document with the Washington State Appellate Court's Portal. The Court will notify counsel of record of the filing at the following email addresses:

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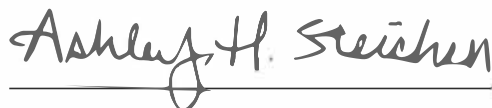

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