No. 94189-1

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN J. HADALLER, an individual,

Petitioner

v.

MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION,
a Washington nonprofit corporation, et al.

Respondents.

ANSWER OF RESPONDENT MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION

PETITION FROM COURT OF APPEALS NO. 46094-7-II

APPEAL FROM LEWIS COUNTY SUPERIOR COURT CASE NO. 09-2-934-0, THE HONORABLE JUDGE RICHARD L. BROSEY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. INTRODUCTION

Petitioner John J. Hadaller ("Hadaller") has a long history of false statements, abusing the judicial process, delay and obfuscation. (Ex. 67, p. 10) Contrary to his representation to this Court, Hadaller has been the litigation instigator—not the victim—in repeated, frivolous lawsuits over the last eight years against Respondent Mayfield Cove Estates Homeowners Association ("the Association"), consisting of his former neighbors and fellow homeowner association members. (CP 354-57) Hadaller has been responsible for five lawsuits and a dozen appellate proceedings leading to this, his last and hopefully final appeal. He has been found "intransigent" (Ex. 67, p. 21) by the trial court, sanctioned multiple times and repeatedly held in contempt of court (Ex. 16, pp. 25-27) (affirmed on appeal), leading the trial court to label his actions "legalized terrorism" (CP 356) and to enjoin him from bringing further lawsuits absent leave of court. Hadaller is a pariah to the neighborhood, homeowner association members and now to the good people of Lewis County and the state who must deal with his continued baseless litigation tactics.

Hadaller's latest appeal is more of the same. Hadaller spends the majority of his submissions regurgitating his view of the five lawsuits, two bench trials and dozens of motions together with multiple appeals1—all of

1 Hadaller has filed a number of appeals in related litigation. *See Mayfield Cove Estates Homeowners Ass'n v. Hadaller*, 166 Wn. App. 1036, 2012 WL 628206; *Rockwood v. Hadaller*, 168 Wn. App. 1003, 2012 WL 1655946; *Hadaller v. Lowe*, 175 Wn. App. 1062, 2013 WL 3963733.

which he lost after full and fair opportunity to present his case. Hadaller engages in unprofessional name-calling and dilatory actions.[2] Yet virtually all of it is irrelevant.

Hadaller is improperly attempting to reopen and relitigate proceeding pertaining to multiple hearings, trials and appeals that are finally concluded. The June 10, 2011 Findings of Fact and Conclusions of Law and Judgment in this case (CP 322-370) is final and all appellate review was terminated by this Court per the March 14, 2012 mandate entered in Case No. 41818-5-II. Likewise, the December 30, 2009 Findings of Fact and Conclusions of Law and Judgment in Case No. 09-2-52-1 between the Association and Hadaller (Ex. 13) is final and all appellate review was terminated by this Court per the December 11, 2012 mandate entered in Case No. 40426-5-II. Accordingly, the papers filed, trial transcripts and exhibits and oral arguments leading up to the findings, conclusion and judgment in these cases are wholly irrelevant to these proceeding.

In a well-reasoned decision, the Court of Appeals affirmed in all respects the ruling of the trial court, concluding that the trial court did not (1) misinterpret RCW 6.13.080(6) by concluding that Hadaller's homestead was subject to the Association's lien; or (2) fail to make a record sufficient

2 The Association does not dignify Hadaller's repeated baseless *ad hominen* attacks against it and its counsel, other than to state for the record that none of Hadaller's attacks or factual assertions are justified or correct whatsoever. In particular, Hadaller accuses Respondents and their counsel of "fraud" and "unethical" behavior without any factual or legal basis, let alone any understanding of the gravity of the accusations. Hadaller's unsubstantiated accusations go beyond a mere lack of civility to violate CR 11, and should be severely sanctioned.

to permit meaningful appellate review of its 2011 attorney fee award. The Court of Appeals also declined Hadaller's invitation to revisit its earlier decision in *Mayfield Cove Estates Homeowners Ass'n v. Hadaller*, 166 Wn. App. 1036, 2012 WL 628206.

Because Hadaller fails to meet the threshold requirement of RAP 13.4(b), the Association urges the Court to DENY Hadaller's petition.

II. RESPONSE TO ISSUES PRESENTED FOR REVIEW

Hadaller raised three issue on appeal to the Court of Appeals:

(1) the trial court misinterpreted RCW 6.13.080(6) by concluding that his homestead was subject to the Association's lien because (a) he did not receive proper notice from the Association and (b) the covenant permitting the lien was in place after he acquired title;

(2) the trial court failed to make a record sufficient to permit meaningful appellate review of its 2011 attorney fee award; and

(3) the Court of Appeals should review its earlier decision in *Mayfield Cove Estates Homeowners Ass'n v. Hadaller*, 166 Wn. App. 1036, 2012 WL 628206.

In his petition, Hadaller seeks review of only the first of these issues, abandoning his right to challenge the Court of Appeal's decision on the second and third issues. *See Arnold v. Retirement Systems*, 128 Wn.2d 765, 772 (Wash. 1996). Accordingly, the sole issue raised by Hadaller on appeal is as follows:

Should Hadaller's petition on the issue of whether he received proper notice under RCW 6.13.080(6) that his homestead was subject to the

Association's lien be DENIED under RAP 13.4(b) where (1) the Court of Appeals applied the correct legal standard; (2) the decision does not conflict with the decision of the Court or another division; (3) the issue does not present a significant question of constitutional interest; and (4) the issue is not of substantial public interest?

III. STATEMENT OF THE CASE

The general and procedural facts, along with references to the record, are set forth in detail in the Association's brief to the Court of Appeals, pp. 4-10. Facts relevant to sole issues presented by Hadaller for review are set forth below, as necessary.

IV. AUTHORITY AND ARGUMENT

Pursuant to RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

1. If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
2. If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
3. If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
4. If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

In violation of RAP 13.4(c)(5), Hadaller utterly fails to articulate how the issue identified in his petition meet any of these requirements. Such failure mandates DENIAL of Hadaller's petition without any review of the

underlying merits. But even was such a review to be justified under RAP 13.4(b), Hadaller fails to identify any trial court or Court of Appeals error in their respective decisions.

Hadaller's sole argument in his petition is that trial court and Court of Appeals misinterpreted and improperly applied RCW 6.13.080(6) in concluding that his homestead was subject to the Association's lien because (a) he did not receive proper notice from the Association and (b) the covenant permitting the lien was in place after he acquired title. Hadaller's petition is without basis.

A. THE NOTICE PROVISION OF RCW 6.13.080(6) WAS PROPERTY MET

Hadaller is simply wrong that the trial court "disregarded the intent and effect of the notice provision in RCW 6.13.080(6) or the Court of Appeals erred in degradation of Hadaller's homestead rights by misreading the statute in finding that the Association properly met the notice provision prior to foreclosure. To the contrary, both lower courts correctly held that the statutory language of RCW 6.13.080(6) is unambiguous and properly applied it to the undisputed facts of this case.

RCW 6.13.080(6) provides that the homestead exemption is not available against an execution or forced sale:

> On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall

> not apply. An association has complied with this notice requirement by mailing the notice, by first-class mail, to the address of the owner's lot or unit. **The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure.** The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. **Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection**

The relevant sections misunderstood by Hadaller are highlighted above, namely, that the required notice "**shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure."** In other words, the Association has an obligation to notify a new owner within 30 days OR any other owner prior to initiation of a foreclosure. This is the notice requirement—not, as Hadaller contends, that application of RCW 6.13.080(6) for associations is foreclosed as to any debts prior to the notice. It is only in the situation where an association fails to (1) notify a new owner within 30 days OR (2) any other owner prior to initiation of a foreclosure, that the last highlighted provision is triggered. In such a case, application of RCW 6.13.080(6) "**affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection**." In other words, if an association commences action without giving the required notice (either a new owner

within 30 days OR any other owner prior to initiation of a foreclosure), it can only pursue outside of the homestead protection debts (i.e., assessments that come due, interest, attorney's fees, costs, etc.) that accumulate from the date of the notice.

Here, there is no dispute that Hadaller is not a new owner. To the contrary, Hadaller acquired title to his property before the Association formed and incorporated. Moreover, Hadaller admits to receiving the Association's December 26, 2012 notice not later than December 29, 2012—well before the foreclosure action was commenced by the Association more than a year later on February 18, 2014. Thus, the statutory notice was clearly met and the trial court properly concluded that the homestead exemption was not available to Hadaller for the debts to the Association secured by the CCR lien.

As an aside, the statutory purpose of this exception to the homestead exemption when it comes to associations is compelling and likely made just for the present type of case involving Hadaller. Here you have a self-professed "litigious" individual that has spent the last eight years suing or otherwise disputing everything his fellow association members have done or tried to do, losing every frivolous legal battle, and in the process forcing the Association—at the expense of its other members—to incur huge attorney's fees and cost debts. In addition, Hadaller had defiantly refused, since new board and Association officers were elected, to pay the annual and special Association assessments, causing further financial strain on the other members. Hadaller lived for free on the property from 2009 until he

was evidence in 2016, refusing to pay for water, road maintenance, community insurance, or other Association benefits, thereby further burdening others. But Hadaller made himself judgment proof by maintaining huge mortgages against his property, making it virtually impossible for typical creditors to ever collect a dime of their judgments once the $125,000 homestead exemption was applied. In such situations, the Washington lawmakers found it compelling to carve out an exemption from the homestead exemption to allow governing community bodies such as the Association to force Hadaller to pay the debts he has burdened his fellow members with due to his actions. To find otherwise in this situation would only act to reward the very misbehavior the legislatures sought to curb with this statutory provision.

While not assigned as an error, Hadaller appears to further argue that the RCW 6.13.080(6) notice was somehow ineffective because the RCW 6.13.080(6) exception from the homestead exemption is strictly limited to "assessments"—defined by Hadaller not to include attorney's fees, costs or anything else under an association lien. In short, Hadaller seeks to limit application of the RCW 6.13.080(6) exception based on the use of the word "assessment" in one passage of the statute, namely, the passage requiring that the association provide the homeowner with "notice that nonpayment of the association's **assessment** may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply." Hadaller misunderstands the plain language of the statute and his reasoning is flawed.

RCW 6.13.080(6) provides, expressly, that the homestead exemption is not available against an execution or forced sale "[o]n debts secured by a condominium's or homeowner **association's lien**." (emphasis added) Accordingly, there is no question that the RCW 6.13.080(6) exception applies to everything considered part of the Association's lien. Hadaller cannot deny—and indeed has admitted—that the Association CCRs expressly create a continuing lien and personal obligation as to assessments, interest, costs and reasonable attorney's fees, and further grant the Association the right to enforce its lien via the present judicial foreclosure action. Indeed, Article III, Section 3.2 specifically and unequivocally includes not only assessments and interest, but also attorney's fees and costs as part of the lien:

> The annual and special assessments, together with interests, costs and reasonable attorney's fees, shall constitute a continuing lien on the property against which each such assessment, interest, costs and reasonable attorney's fees is applicable. (Ex. 17)

Article V, Section 5.1 confirms that the Association may enforce, "by any proceeding at law or in equity," all "restrictions, conditions, covenants, reservations, assessments, liens, penalties, interest and charges now or hereafter imposed by the provisions of these CCRs." (Id.) The trial court properly ruled, originally and by virtue of denial of Hadaller's multiple motions for reconsideration, that interest, costs and reasonable attorney's fees were secured by and considered part of the Association's lien.

What Hadaller fails to appreciate (or chooses to ignore) is that the passage he now focuses only is limited **only** to the notice required to be given by the association prior to foreclosure. Specifically, the statute requires **only** that the Association provide the homeowner with "notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply." In other words, associations are not required to provide notice that other amounts that may be secured under the lien as provided by the CCRs—e.g., penalties, interest, attorney's fees or costs—may result in foreclosure; only assessments. Far from limiting the scope of RCW 6.13.080(6) in the manner sought by Hadaller, the language in fact further supports the adequacy of the Association's December 2012 notice in this situation. Hadaller fails to show any abuse of discretion by the trial court or error by the Court of Appeals.

B. HADALLER'S HOMESTEAD RIGHTS ARE NOT SUPERIOR TO THE ASSOCIATION'S CCR LIEN

Hadaller argues that there could be no Association lien subject to RCW 6.13.080(6) that could apply to him and that his homestead rights are superior because (1) he moved into his residence (homestead) onto Segregation Survey Lot 3 in January 2005, and the CCRs that he drafted were not recorded until two years later in May 2007; (Hadaller Brief, pp. 7-8) and (2) there was no Association until it was incorporated as a nonprofit entity with the State of Washington on September 3, 2008 ("Hadaller did not 'acquire title' subject to a HOA nor did a legal HOA exist when he

established his homestead in 2005"). (Id. pp. 9, 25) Hadaller is being disingenuous with the Court, not to mention factually inaccurate.

In or about 2003, Hadaller created the unincorporated Mayfield Cover Estates Homeowners Association and prepared CCRs for the Association properties. Hadaller recorded these CCRs against **all** Association properties on or about August 8, 2003 under Auditor's File No. 3174355. He specifically established the Mayfield Cove Estates Homeowners Association at that time. While it was unincorporated until the other Association members incorporated it in September 2008, it was still a legal entity, created by Hadaller, governing the Association properties. This was confirmed by the trial court (and affirmed on appeal) in Cause No. 09-2-52-1.

And with respect to the Association properties, the CCRs Hadaller prepared and recorded in 2003 specifically included Segregation Survey Lot 3, Assessor's Tax Parcel No. 28767-001-005, which is the property Hadaller admits he moved onto in January 2005 to establish his homestead. As further confirmed by the Statutory Warranty Deed (Fulfillment) recorded August 20, 2002 under Auditor's File No. 3145909, this was property Hadaller owned prior to and at the time he recording the CCRs that he now admits attaches to and runs with the subject Association Property.

While it is true that Hadaller re-recorded the CCRs on April 13, 2007 under Auditor's File No. 3277586, that did not change the fact that both the Association and the CCRs running with the property in question existed and were recorded, respectively, prior to the date Hadaller created his

homestead in January 2005. Indeed, the cases Hadaller cites in his brief confirm that the CCRs he recorded in 2003 cannot be displaced or superseded by a subsequent homestead.

The Association was duly incorporated as a Washington nonprofit association on September 3, 2008, which action was ratified by its members as of December 30, 2008 and confirmed by the trial court after trial in Cause No. 09-2-52-1. The Association subsequently amended the CCRs as recorded July 6, 2009 under Auditor's File No. 3329633. The amended CCRs were specifically confirmed to be valid and enforceable and to constitute the governing documents of the Association by the trial court in Cause No. 09-2-52-1 and again in the underlying case.

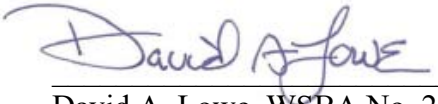
Of all the people in the world that would know about the CCR assessments, the continuing Association lien for failure to pay, and the risk of attorney's fees and costs being including in any action by the Association to enforce the CCR lien, it would be Hadaller—the creator of the Association, drafter and recorder of the CCRs and person at the time responsible for enforcement of the same. The Association agrees with Hadaller on this point: "First in position first in right." Unfortunately for Hadaller, it cannot be credibly disputed that, contrary to his assertions on appeal, he formed the Association and recorded the CCRs he drafted against the property at issue on Segregation Survey Lot 3 in 2003, prior to the January 2005 date he admits he created his homestead. To quote his own words, "[a]quiring title with notice of the covenants [is] the key factor in derogating the constitutionally protected homestead." (Hadaller Court of

Appeals Brief, p., 34) Accordingly, there can be no error or abuse of discretion in the trial court or the Court of Appeals application of RCW 6.13.080(6) in this case.

V. CONCLUSION

It is finally time for Hadaller's long history of false statements, abusing the judicial process, delay and obfuscation to end. Hadaller cannot reopen and relitigate proceeding pertaining to multiple hearings, trials and appeals that are finally concluded. And Hadaller has failed to establish that the trial court abused its discretion or that the Court of Appeals erred in this case. Accordingly, the Association, on behalf of each of its members, respectfully urges the Court to confirm the trial court's and Court of Appeal's actions by DENYING Hadaller's petition.

RESPECTFULLY SUBMITTED this 27th day of March, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2017, a true copy of the foregoing was served via email only (no current mailing address having been provided), as follows:

John J. Hadaller
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s/David A. Lowe