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No. 63912-9-I

COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

TERRY TERRACE APARTMENTS, LLC, a Washington limited liability company,

APPELLANT,

v.

TERRY TERRACE CONDOMINIUM OWNERS ASSOCIATION, a Washington non-profit corporation, VERA FELIX, JOY & GARRETT BENDER, PETER ONG LIM, JUSTIN R. IRISH, GEORGE M. ABEYTA, CARY R. PERRY, KURT KLINGMAN, VICTORIA DIAZ & MICHAEL EASTON, AARON J. MUNN, AAMER HYDRIE & HABIBUDDIN SALONE, LAWRENCE LADUKE, JAMES AND MADELINE HANDZLIK, ALAN BULLER, DEREK SWANSON, AMINEE SCHANTZ, TORGER OAAS, ROLDAN V. DIN, VINCENT LIPE, ROMAN LOPEZ JR. & SUMMAR GOTHARD-LOPEZ, ANN M. GOTHARD, REBECCA DEXTER, JEFFREY T. GILBERT, RHIANNON HOPKINS, HARVINDER & ARADH CHOWDHARY,

RESPONDENTS.

APPELLANT'S REPLY BRIEF TO TERRY TERRACE CONDOMINIUM OWNERS ASSOCIATION'S AND THE UNIT OWNERS' RESPONDENT'S BRIEFS

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I. INTRODUCTION

Terry Terrace Condominium Owners Association (hereinafter “Association”) and the Unit Owners, through their briefing, implicitly, if not clearly recognized the error the trial court made by awarding the Association the Verizon Lease proceeds pursuant to RCW 64.34.312. The Association has devoted an overwhelming percentage of its briefing to other provisions of the Washington Condominium Act (hereinafter “WCA”) and arguments which were properly rejected by the trial court.

Terry Apartments joins in Brief of Cross-Respondent Seattle SMSA LTD. PTP d/b/a Verizon Wireless (hereinafter “Verizon Wireless’ Brief”) with respect to the Respondents failure to properly perfect the appeal and the inapplicability of RCW 64.34.320 and RCW 64.34.348 to the Verizon Lease. However, Terry Apartments provides certain supplementation to Verizon’s arguments in this brief.

Section II will address the procedural defects in the Respondents position. In short, issues regarding RCW 64.34.320 and RCW 64.34.348 not only were improperly raised through cross-appeal as noted by Verizon Wireless, but also are barred by the law of the case doctrine. Further, the Respondents have improperly raised other issues, such as unjust

enrichment and conversion, on appeal. Finally, Subsection II(C) addresses the Unit Owners incorrect claim that the scope of review is “fatally vague.”

If the Court decides to address termination of the Verizon Lease pursuant to RCW 64.34.320 and RCW 64.34.348, Section III will address the substantive issues. While Verizon Wireless has briefed many of the substantive arguments, Terry Apartments supplements those arguments by adding that Terry Apartments did not reserve declarant control, the rooftop is not a “recreational area” or “facility” as defined by RCW 64.34.320 and the Official Comments to RCW 64.34.320 support the argument that the Verizon Lease is not invalid under the WCA.

Verizon Wireless’ Brief did not address the inapplicability of RCW 64.34.312 to the Verizon Lease. As a result, Section IV(A) will address that ownership interests are not created by RCW 64.34.312, the fundamental proposition of the Association. Indeed, that section of the WCA is purely administrative.

Moreover, Subsection IV(B) will address that Terry Apartments properly relied upon the Declarations of James C. Middlebrooks for the legislative history of the WCA. Further, the Court should not consider

these arguments because the Association has improperly raised their objection to the use of the Declarations for the first time on appeal.

Moreover, Subsections IV(C)-(D) will address that Terry Apartments' claims are not barred on equitable grounds and that its waiver and estoppel claims are dispositive. Subsection IV(E) Terry Apartments will establish that Terry Apartments' third-party claims should be remanded back to the trial court in the event that it is unsuccessful in the remaining portions of the appeal. Genuine issues of material fact exist (1) whether the Unit Owners accepted the terms of their Purchase and Sale Agreements, which included the Verizon Lease; (2) whether the Purchase and Sale Agreements between the Unit Owners and Terry Apartments should be reformed; and (3) whether the Unit Owners have been unjustly enriched by obtaining the Verizon Lease despite already having received a reduction in the purchase price by virtue of the Verizon Lease.

Finally, Section V will address the trial court's error in awarding attorney's fees and costs to the Respondents.

**II. THE ARGUMENTS REGARDING RCW 64.34.320 & .348
ARE NOT PROPERLY BEFORE THIS COURT**

**A. The Association Waived Its Right To Appeal The
Decisions Regarding RCW 64.34.320 & .348.**

As noted, Terry Apartments joins in arguments made by Verizon Wireless that the Association was required to file a cross-appeal. See Verizon Wireless' Brief, pp. 12-16. As noted by Verizon Wireless, the Association failed to cross-appeal the trial court's decision regarding RCW 64.34.320 and RCW 64.34.348. Accordingly, it cannot seek reversal of those decisions which determined that the Verizon Lease was valid pursuant to the WCA.

Moreover, since the Association failed to file a cross-appeal of the trial court's decisions regarding RCW 64.34.320 and RCW 64.34.348, the law of the case doctrine prohibits review of these decisions. See Sunland Investments, Inc. v. Graham, 54 Wn. App. 361, 364, 773 P.2d 873 (1989); Herrington v. Hawthorne, 111 Wn. App. 824, 840, 47 P.3d 567 (2002) (citing Sunland, 54 Wn. App. at 364) amended on recon. 53 P.3d 1019 rev. denied 148 Wn.2d 1025 (2003).

For example, in Sunland, the trial court determined that the respondent tortiously interfered with a real estate sale. 54 Wn. App. at

363-364. On appeal, the respondent asserted that it did not commit a tort. Id. However, it did not file a cross-appeal of the trial court's decision. Id. The appellate court determined that since the respondent failed to cross-appeal, "the judgment fixes the law of the case as to them." Id.

Likewise, the unjust enrichment and conversion claims should not be considered by the Court. The Association raised its unjust enrichment and conversion claims at Summary Judgment, but the trial court declined to grant judgment in its favor on these issues. CP 131-148; CP 1030-1036.

B. The Association Improperly Raised New Theories On Appeal.

On Summary Judgment, the Association did not argue that the Verizon Lease constituted a "recreational area" pursuant to RCW 64.34.320. Also, the Association did not argue that the Verizon Lease must be transferred to it to allow Verizon Wireless access to the roof (as the Association is in control of the condominium). See Association's Brief, pp. 42-43.

Additionally, there was no argument at the trial court that the Association did not have the means by which to control Verizon Wireless, as the tenant, unless it obtains the Verizon Lease. See Association's Brief,

p. 43. Accordingly, the Court should not consider any of these arguments because the Court can only consider “evidence and issues called to the attention of the trial court.” See RAP 9.12; see also RAP 2.5(a); Deacy v. College Life Ins. Co. of America, 25 Wn. App. 419, 425, 607 P.2d 1239 (1980) (citation omitted).

C. The Scope Of Review Is Sufficiently Established By Terry Apartments’ Opening Brief.

The Unit Owners incorrectly argue that the scope of review is “fatally vague.”¹ See Unit Owners’ Brief, pp. 12-13. Terry Apartments was not required to assign error to every single ground upon which the trial court granted Summary Judgment. See Versuslaw, Inc. v. Stoel Rives, LLP, 127 Wn. App. 309, 324, 111 P.3d 866 (2005) rev. denied 156 Wn.2d 1008 (2006). Indeed, Terry Apartments’ assignment of error to the Orders on Summary Judgment and for attorney’s fees and costs, in total, is sufficient to establish the scope of review. Id.

Even if the assignments of error provided in the Opening Brief fell short of the standard, the Court should still consider the merits of the review. See RAP 1.2(a); see also Viereck v. Fibreboard Corp., 81 Wn.

¹ This argument applies to the February 16, 2007, Order dismissing Terry Apartments’ third party claims against the Unit Owners. See Unit Owners’ Brief, pp. 12-13

App. 579, 582, 915 P.2d 581 (1996) rev. denied 130 Wn.2d 1009 (1996) (citing State v. Olson, 126 Wn.2d 315, 323 (1995)); National Federation of Retired Persons v. Ins. Com'r, State of Washington, 120 Wn.2d 101, 115-117, 838 P.2d 680 (1992).

In a case where the nature of the appeal is clear and the relevant issues are argued in the body of the brief and citations are supplied so that the court is not greatly inconvenienced and the respondent is not prejudiced, there is no compelling reason for the appellate court not to exercise its discretion to consider the merits of the case or issue.

See Viereck, 81 Wn. App. at 582-583.

Here, Terry Apartments' Opening Brief clearly sets forth its challenge to the trial court's decision to transfer the Verizon Lease and lease proceeds to the Association, the improper dismissal of the third-party indemnity claims and the award of attorney's fees and costs to the Respondents. See Terry Apartments' Opening Brief, pp. 3-8. Terry Apartments also supports its assignments of error and issues related thereto with argument, cites to the record and legal authority. See Terry Apartments' Opening Brief, pp. 18-51. Certainly, the Unit Owners and Association had no problem responding to the issues and arguments in the Opening Brief.

Additionally, since Terry Apartments provides cites to the record, legal authority and argument in support of its position, the Unit Owners' reliance on Greater Harbor 2000 is misplaced. See Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 280-281, 937 P.2d 1082 (1997) (citations omitted). In Greater Harbor 2000, the appellate court did not address the trial court's finding on appeal because the appellant failed to assign error to the finding **and** failed to provide any argument, record cites or authority in support of its position in its Opening Brief. See Greater Harbor 2000, 132 Wn.2d at 279-280 (emphasis added).

III. THE ASSOCIATION'S ARGUMENTS REGARDING RCW 64.34.320 & .348 AND UNCONSCIONABILITY WERE CORRECTLY DECIDED BY THE TRIAL COURT

A. RCW 64.34.320 Is Inapplicable Because Terry Apartments Did Not Reserve Declarant Control.

Even if considered, the Court should reject the Association's arguments regarding RCW 64.34.320. The plain language of RCW 64.34.320 requires that the challenged "contract" be executed during a period of "declarant control." See RCW 64.34.320 (citing RCW 64.34.308(6)). Contrary to the Association's arguments, Terry Apartments neither reserved, nor exercised "declarant control."

“Declarant control” is not mandatory, as the Association claims. If reserved at all, it must be expressly reserved in the Declaration. See RCW 64.34.308(4)-(5); see also Bellevue Pacific Cntr. v. Bellevue Pacific Tower Condominium Assoc., 124 Wn. App. 178, 185, 100 P.3d 832 (2004) rev. denied 155 Wn.2d 1007 (2005)(where the court noted that “declarant control” does not occur unless the condominium declaration provides for such control). Indeed, RCW 64.34.308(4) provides “[T]he declaration may provide for a period of declarant control...” (emphasis added).

Moreover, the WCA defines “declarant control” as an optional “right” to “appoint” “remove” or “veto” a board’s action. See RCW 64.34.020(15). Likewise, case law provides that “declarant control” occurs only when the declarant has the “unilateral ability... to appoint and remove [board] officers” and “veto association actions.” See Bellevue Pacific Cntr., 124 Wn. App. at 185.

Here, the Declaration did not provide for “declarant control.” CP 337-387. Accordingly, pursuant to the WCA, “declarant control” never existed. See RCW 64.34.308(4)-(5). Instead, the Association’s board of directors was passively formed after the conveyance of a certain

percentage of the condominium's units. See RCW 64.34.308(4)-(5). The Association may be formed in this manner without the need for a period of "declarant control." See RCW 64.34.308(4)-(5).

The Association also argues that Terry Apartments exercised "declarant control" by allegedly forming the Association in February of 2002 through the filing of corporate documents. See Association's Brief, p. 5. Supposedly, the appointment of Wayne Knowles as the Director of the Board was an exercise of "declarant control." See Association's Brief, p. 22. There is no authority for the proposition that the Association was created in 2002, let alone that "declarant control" was established.

Ultimately, the Association is attempting to improperly characterize an insignificant action as proof certain of "declarant control." There simply is no support for its position in the WCA or case law. Indeed, the absence of "declarant control" is the primary reason RCW 64.34.320 does not apply. CP 673-676. The legislation was intended to protect associations from improper conduct by the declarant during a period of control. CP 673-676. If this "control period" does not exist, there is no need for the statutory protection under RCW 64.34.320. The Association and Unit Owners ignore this point.

B. The Verizon Lease Does Not Involve A Recreational Area Or Facility.

Terry Apartments supplements Verizon Wireless' arguments by noting that for the Association to be able to terminate the Verizon Lease pursuant to RCW 64.34.320, it must not only be executed during a period of "declarant control," but it must also involve certain types of condominium areas. The Association claims that the condominium's rooftop is one of these areas, namely a "recreational area" or "facility."

The Association's argument defies common sense. The Association incorrectly assumes that RCW 64.34.320 applies simply because the rooftop could conceivably be a "recreational area" or "facility." However, the analysis should focus on what the rooftop is and not what it could be.

In the instant situation, the rooftop houses a cell phone tower. The Association cannot (after the fact) decide a rooftop cell phone platform is a "recreational area" or "facility" for the convenience of falling within RCW 64.34.320. If the Association were allowed to do so, Terry Apartments' rights would be terminated based on mere speculation.

Moreover, the Official Comments to RCW 64.34.320 further demonstrate that RCW 64.34.320 is inapplicable to the Verizon Lease.

Given the terms of RCW 64.34.320 are not defined, it theoretically could be considered ambiguous. Accordingly, the Court may look to the statute's Official Comments to determine the legislative intent. See Kelsey Lane Homeowners Ass'n v. Kelsey Lane Co., 125 Wn. App. 227, 239-240, 103 P.3d 1256 (2005)(citations omitted).

The Official Comments emphasize that the statute has a limited application and does not apply to every conceivable contract or lease entered into by the declarant. Specifically, the Official Comments (Comments 1-2) provide:

RCW 64.34.320 provides for the termination of certain contracts and leases made during a period of declarant control... **a statutorily-sanctioned right of cancellation should not be applicable to all contracts or leases which a declarant may enter into in the course of developing a condominium project.** For example, a commercial tenant would not be willing to invest substantial amounts in equipment and other improvements for the operation of its business if the lease could unilaterally be cancelled by the association.

CP 673-676 (emphasis added).

IV. THE ASSOCIATION FAILED TO ESTABLISH THAT RCW 64.34.312 REQUIRED TERRY APARTMENTS TO TRANSFER THE VERIZON LEASE

A. RCW 64.34.312 Does Not Provide For The Transfer Of The Verizon Lease To The Association.

Terry Apartments' arguments regarding the inapplicability of RCW 64.34.312 to the Verizon Lease are set out more fully in its Opening Brief and will not be repeated here. However, Terry Apartments will address the Association's arguments which misinterpret RCW 64.34.312.

In short, RCW 64.34.312 does not create or explain ownership rights. The statute merely addresses the administration of the condominium transfer process for items whose ownership has already been identified and vested in the Association.

In fact, the plain language of RCW 64.34.312 exemplifies its purely administrative purpose. RCW 64.34.312(1)(p) provides:

[T]he declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant, including but not limited to...(p) [a]ny leases of common elements or areas and other leases to which the association is a party...

Certainly, the language of RCW 64.34.312(1) or (1)(p) does not create property rights. If the Legislature had intended to create a property right it would have used those words. Instead, for example, it uses the

language “held or controlled by the declarant,” which suggests a temporary bailment duty on part of the “declarant” over the property, rather than the transfer of ownership of a property interest to the Association.

Moreover, the Association’s broad argument that “all property” of the condominium must be vested in the Unit Owners overlooks an established principle of real property law. Owners of real property may encumber their parcels and that encumbrance may burden successive owners. See Stone v. Sexsmith, 28 Wn.2d 947, 951, 184 P.2d 567 (1947); see, e.g. Wilhelm v. Beyersdorf, 100 Wn. App. 836, 846, 999 P.2d 54 (2000). In such cases, the property rights passed to the successive owners do not comprise “all property” in so far as their interest is subject to a pre-existing encumbrance. In short, the Association’s response seeks to overturn basic elements of the “law of real property”, a result specifically rejected by the WCA. See RCW 64.34.070.

Finally, as noted in Terry Apartments’ Opening Brief, the plain language of RCW 64.34.312(1)(p) requires that the Association be a party to the Verizon Lease before it is entitled to the contract documents. In response, the Association argues that RCW 64.34.312 need not designate

leases of “common elements” to which the Association is a party because RCW 64.34.348 already provides that only the Association can lease “common elements.” See Association’s Brief, p. 19.

However, the legislature recognized that the Association may not be party to pre-existing encumbrances, which ultimately may end up encumbering a “common element.” See RCW 64.34.348(6). The statute’s plain language contemplates the co-existence and harmonization of the Association’s right to convey “common elements” and the preservation of valid pre-existing encumbrances.

As an example, property owners often grant easements over a portion of their property. Some time later, they may decide to convert the property into a condominium. As a result, the portion of the property subject to the easement subsequently falls under the umbrella of “common element encumbrance” which is not prohibited by the WCA. See RCW 64.34.348(6).

In other words, the association is not a party to the preexisting encumbrance of a “common element.” Certainly, RCW 64.34.348(6) provides for such a situation, stating “[a] conveyance or encumbrance of

common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances.”

B. Terry Apartments Properly Relied Upon The Middlebrooks Declarations.

The Association’s argument that Terry Apartments improperly relied on the Declarations of James C. Middlebrooks is unsupported. See Association’s Brief, pp. 15-16. While Middlebrooks is an attorney, Terry Apartments relied on his knowledge of the legislative history of the WCA, not his interpretation of the law. See Supplemental Declaration of James C. Middlebrooks at CP 891-895.

Indeed, Middlebrooks was involved with the drafting of the WCA and legislative comments. See Middlebrooks Suppl. Decl. at CP 891-895. Interestingly, the case upon which the Association relies does not address the use of attorney declarations. See Seven Gables v. MGM/UA Entm’t Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

Moreover, the Association makes the bald-face assertion, but fails to explain how Middlebrooks’ Declarations are speculative. See Association’s Brief, pp. 15-16. In fact, Middlebrooks’ Declarations are not based on speculation but rather his familiarity and experience with the legislative history of the WCA. See Declaration of James C.

Middlebrooks at CP 281-288; see also Middlebrooks Suppl. Decl. at 891-895.

Finally, Terry Apartments relied on the Middlebrooks Declarations at the trial court level. The Association did not dispute their use and thus, may not now request that the appellate court strike arguments which utilize the Middlebrooks Declarations. See RAP 2.5.

C. Given Notice Of The Verizon Lease Prior To The Unit Owners' Purchase Of Their Units, The Association Is Estopped From Attempting To Invalidate It.

The Association argued that the Unit Owners did not have sufficient notice of the Verizon Lease prior to purchase. As a result, they did not accept the Verizon Lease and waive their right of protest. However, as noted, the Unit Owners had actual and constructive knowledge of the Verizon Lease prior to purchasing their units. Indeed, the Unit Owners admit they had actual or constructive knowledge. See Unit Owner's Brief, p. 11.

Furthermore, contrary to the Association's argument, the Public Offering Statement incorporated by reference the Verizon Lease which was disclosed in the Declaration. CP 393-394. Also, the recorded "Memorandum of Building and Rooftop Lease Agreement" (hereinafter

“Memorandum”), discloses the term of the Verizon Lease and the term extensions. CP 304-308; 310-316.

In fact, analogizing the instant situation to cases dealing with bona fide purchasers, if a purchaser has constructive knowledge of the interest, prior to purchase, they take title to the property subject to that interest. See Miebach v. Colasurdo, 102 Wn.2d 170, 177, 685 P.2d 1074 (1984)(quotations omitted)(citation omitted); see also Wilhelm, 100 Wn. App. at 846 (citation omitted). Also, a purchaser has constructive knowledge of an interest in real property if it is recorded. See Wilhelm, 100 Wn. App. at 846 (citations omitted).

D. Terry Apartments’ Claims Are Not Barred On Equitable Grounds.

1. The Waiver And Estoppel Claims Are Proper.

Contrary to the Association’s and Unit Owners’ argument, Terry Apartments’ waiver and estoppel claims are not based upon the waiver of statutory rights. In short, they arise from the Purchase and Sale Agreements for the condominium units.

Even if statutory rights were considered, the Unit Owners waived their right to dispute the terms of the transaction. They failed to rescind the purchase within the prescribed time period. RCW 64.34.420 provides:

[A purchaser] shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement...

Moreover, contrary to the Association's and Unit Owners' claim, they are not waiving a statutory right. As noted, the trial court determined that the Association and Unit Owners do not have the right to invalidate the Verizon Lease pursuant to the WCA. CP 1030-1036. Accordingly, RCW 64.34.030 is inapplicable to the instant situation because it provides that "rights conferred by this chapter may not be waived" (emphasis added).

2. Terry Apartments Does Not Have Unclean Hands.

The Association and Unit Owners incorrectly argue that Terry Apartments has "unclean hands" because it failed to create a rooftop unit. There is no support for this argument.

'[U]nclean hands,' within the meaning of maxim of equity, is a figurative description of a class of suitors to whom a Court of Equity as a court of conscience will not even listen, because the conduct of such suitors is unconscionable, i.e. morally reprehensible as to known facts.

See J.L. Cooper & Co. v. Anchor Securities Co., 9 Wn.2d 45, 72, 113 P.2d 845 (1941).

Here, the Association and Unit Owners do not cite to any support for the argument that Terry Apartments was required to create a rooftop unit to validate the Verizon Lease. They simply assert that Terry Apartments' optional right to create a unit for itself establishes that Terry Apartments was required to create a unit to validate the Verizon Lease. See Unit Owner's Brief, p. 29; see also Association's Brief, pp. 40-41.

Terry Apartments actually had numerous lawful options by which to handle the Verizon Lease, including the one that was utilized. For example, they could have also created an easement in gross. In any event, Terry Apartments cannot be punished merely because it chose to exercise its legal rights in a manner not approved by the Respondents. Certainly, its actions were not "reprehensible."

E. There Is A Dispute Of Material Fact As To Terry Apartments' Third Party Claims.

For the most part, Terry Apartments relies on the arguments in its Opening Brief. See Terry Apartments' Opening Brief, pp. 42-47. Terry Apartments notes that it has not abandoned its breach of contract claim. In short, the Unit Owners do not have a right to pick and chose which parts

of the purchase transaction they accept.

Moreover, the Unit Owners main argument against Terry Apartments unjust enrichment claim appears to be that the Unit Owners did not know about the purchase price reduction given as a result of the Verizon Lease. However, it is not necessary that they “know,” but only that they “appreciate” the benefit conferred. See Dragt v. Dragt/DeTray, LLC, 139 Wn. App. 560, 576, 161 P.3d 473 (2007) (citation omitted).

Here, the Unit Owners certainly had an appreciation of the benefits conferred by the Verizon Lease. Again, it was disclosed to the Unit Owners that Terry Apartments would receive rental revenue and it reasonably follows that the Unit Owners would receive a benefit as a result (i.e. purchase price reduction). CP 304-397.

V. **THE RESPONDENTS ARE NOT ENTITLED TO THEIR ATTORNEY’S FEES AND COSTS**

The Association and the Unit Owners are not entitled to their attorney’s fees and costs. For the most part, Terry Apartments relies on its arguments set forth in its Opening Brief. See Terry Apartments’ Opening Brief, pp. 39-42; 47-49 However, it is important to note that the Association’s arguments fail to take into consideration that the attorney’s fees are not only awarded to the prevailing party, but also in an

“appropriate case.” See RCW 64.34.455. The Association failed to show how the instant situation is an “appropriate case,” but instead relied entirely on the prevailing party standard.

It is also noteworthy that the Unit Owners incorrectly assert that the indemnity nature of Terry Apartments’ claims against the Unit Owners was not revealed at the trial court level. It was set forth in the request for relief section of the Third Party Complaint and in Terry Apartments’ Summary Judgment briefing. CP 152-167; 713-728.

DATE this 12th day of March, 2010



Jordan M. Hecker WSBA #14374

Lindsey Truscott WSBA #35610

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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

TERRY TERRACE APARTMENTS,)
LLC, a Washington Limited)
Liability Company,)

Appellants,)

Vs.)

TERRY TERRACE CONDOMINIUM)
OWNERS ASSOCIATION, a)
Washington non-profit)
corporation,)

AND)

VERA FELIX, JOY & GARRETT)
BENDER, PETER ONG LIM,)
JUSTIN R. IRISH, GEORGE M.)
ABEYTA, CARY R. PETTY,)
KURT KLINGMAN, VICTORIA DIAZ)
& MICHAEL EASTON, AARON J.)
MUNN, AAMER HYDRIE &)
HABIBUDDIN SALONE, LAWRENCE)
LADUKE, JAMES AND MADELINE)
HANDZLIK, ALAN BULLER,)
DEREK SWANSON, AIMEE SCHANTZ,)
TORGER OAAS, ROLDAN V. DIN,)
VINCENT LIPE, ROMAN LOPEZ JR.)
& SUMMER GOTHARD-LOPEZ,)
ANN M. GOTHARD, REBECCA)
DEXTER, JEFFREY T. GILBERT,)
RHIANNON HOPKINS, HARVINDER)
& ARADH CHOWDHARY,)

Respondents.)

NO. 63912-9-I

DECLARATION OF
SERVICE

1 I, Leslie Kay Peppard, hereby certify under
2 penalty of perjury under the laws of the State of
3 Washington that on March 12, 2010, I caused to be
4 filed with the Court, via ABC Legal Messengers
5 Incorporated, the originals of the following
6 documents:

- 7 1. Appellant's Reply Brief To Terry
8 Terrace Condominium Owners Association's
9 and The Unit Owners' Respondent's Briefs;
10 and
- 11 2. Declaration of Service.

12 and served copies of the above-named documents
13 upon:

14 Dean Martin
15 Inge Fordham
16 BARKER MARTIN
17 719 - 2nd Avenue, Suite 1200
18 Seattle, WA 98104

19 Attorney for Terry Terrace Condominium Owners
20 Association

- 21 [] Via telecopier
22 [] Via U.S. Mail
23 [X] Via ABC Legal Messengers
24 [] Via Hand delivery

25 Michael J. Corl
26 Rhys M. Farren
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13 Seattle, WA 98104

14 Via telecopier
15 Via U.S. Mail
16 Via ABC Legal Messengers
17 Via Hand delivery

18 Third-Party Defendants Pro Se

19 SIGNED in Seattle, Washington, this 12th day of
20 March, 2010.

21 
22 Leslie Kay Peppard