

COURT OF APPEALS
DIVISION II

No. 35610-4-II-II

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IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY _____
DEFENDANT

IN RE: PRAIRIE PARK HOMEOWNERS ASSOCIATION,

IRISH McCAMMANT,

Appellant,

And

MARY MURPHY, CHUCK BRUMFIELD, HAZEL FERGUSON,
MARK BACHMAN, PAT MURPHY and CARLA MURPHY,

Respondents.

APPEAL FROM THE SUPERIOR COURT OF THURSTON COUNTY
THE HONORABLE CHRIS WICKHAM, PRESIDING

BRIEF OF RESPONDENTS

CHRISTOPHER M. CONSTANTINE
WSBA 11650
Attorney for Respondents

P. O. Box 7125
Tacoma, Wa. 98406-0125
(253) 752-7850

pm 6-18-07

I. TABLE OF CONTENTS

I.	TABLE OF CONTENTS.....	i
II.	TABLE OF AUTHORITIES	ii
III.	ASSIGNMENTS OF ERROR	1
IV.	STATEMENT OF THE CASE.....	2
	PROCEDURAL HISTORY.....	8
V.	ARGUMENT	9
A.	STANDARDS OF REVIEW	9
B.	THE TRIAL COURT CORRECTLY ENTERED SUMMARY JUDGMENT FOR RESPONDENTS.....	11
C.	APPELLANT HAS WAIVED ANY ERROR REGARDING THE TRIAL COURT’S ORDER DENYING APPELLANT’S MOTION FOR RECONSIDERATION.	16
D.	RESPONDENTS REQUEST AN AWARD OF COSTS AND REASONABLE ATTORNEY FEES.	18
VI.	CONCLUSION.....	19
VIII.	APPENDICES	20
IX.	CERTIFICATE OF MAILING	21

II. TABLE OF AUTHORITIES

Washington Cases

<i>Amende v. Pierce County</i> , 70 Wn.2d 391, 423 P.2d 634 (1967)	12
<i>Anderson and Middleton Lumber Company v. Quinalt Indian Nation</i> , 130 Wn.2d 862, 878 n.55, 929 P.2d 379 (1996).....	12
<i>Bercier v. Kiga</i> , 127 Wn. App. 809, 824, 103 P. 3d 232, <i>rev. denied</i> , 155 Wn, 2d 1015, 124 P.3d 304 (2005).....	11, 15
<i>Clark v. Falling</i> , 92 Wn. App. 805, 965 P. 2d 644 (1998)	16
<i>Eugster v. City of Spokane</i> , 121 Wn. App. 799, 811, 91 P.3d 117, <i>review denied</i> , 16` Wn. 2d 1027, 94 P.3d 959 (2004).....	18
<i>Harding v. Will</i> ; <i>O'Kelley v. Sali</i> , 67 Wn.2d 296, 298, 407 P.2d 467 (1965).....	12
<i>Hemisphere Loggers, Inc. v. Everett Plywood Corp.</i> , 7 Wn. App. 232, 234-35, 499 P.2d 85 (1972)	14
<i>JDFJ Corp v. International Raceway</i> , 97 Wn. App. 1, 7, 970 P.2d 343 (1999).....	18
<i>Kelley v. Powell</i> , 55 Wn. App. 143, 148, 775 P.2d 995 (1989).....	13
<i>Lilly v. Lynch</i> , 88 Wn. App. 306, 312, 945 P.2d 727 (1997)	10, 16, 17
<i>Mannington Carpets, Inc. v. Hazelrigg</i> , 94 Wn. App. 899, 910 n. 33, 973 P. 2d 1103, <i>rev. denied</i> , 139 Wn. 2d 1003, 989 P. 2d 1141 (1999).....	16
<i>Mike's Painting v. Carter Welsh, Inc.</i> , 95 Wn. App. 64, 68, 975 P.2d 532 (1999).....	19
<i>Morris v. McNichol</i> , 83 Wn.2d 491, 494, 519 P.2d 7 (1974)	10
<i>O'Kelley v. Sali</i> , 67 Wn.2d 296, 298, 407 P.2d 467 (1965).....	12
<i>Paradise Orchards General partnership v. Fearing</i> , 122 Wn. App. 507, 517, 104 P. 3d 372 (2004).....	16
<i>Peters v. Vinatieri</i> , 102 Wn. App. 655.....	15
<i>Riss v. Angel</i> , 131 Wn.2d 612, 633, 934 P.2d 669 (1997)	19
<i>Singleton v Frost</i> , 108 Wn. 2d 723, 727-29, 742 P. 2d 1214 (1987)..	13, 19
<i>Telford v. Thurston County Board of Commissioners</i> , 95 Wn. App. 149, 166, 974 P. 2d 886 (1999).....	16, 17
<i>Turner v. Gunderson</i> , 60 Wn. App. 696, 807 P.2d 370 (1991)	14
<i>Vaughn v Vaughn</i> , 23 Wn. App. 527, 531, 597 P.2d 932 (1979);	18
<i>Wallace Real Estate Investment, Inc. v. Groves</i> , 124 Wn. 2d 881, 898-99, 881 P.2d 1010 (1994).....	14
<i>Wilcox v. Lexington Eye Institute</i> , 130 Wn. App. 234, 241, 122 P.3d 729, 732, <i>rev. denied</i> , 157 Wash.2d 1022, 142 P.3d 609 (2006).....	18
<i>Wilson Court Limited Partnership v. Tony Maroni's, Inc.</i> , 134 Wn. 2d 692, 698, 952 P. 2d 590 (1998).....	10

Statutes

RCW 4.84.330 13, 19

Rules

CR 15(b)..... 11, 12
CR 54(c)..... 12
CR 56 (a), (c), (e):..... 9
CR 59(a)..... 17
CR 59(b)..... 16, 17
RAP 10.3..... 11, 15, 16
RAP 10.3 (a) (6)..... 11
RAP 14.2..... 18
RAP 18.1 (a), (b)..... 18
Thurston County Local Rule 59..... 17

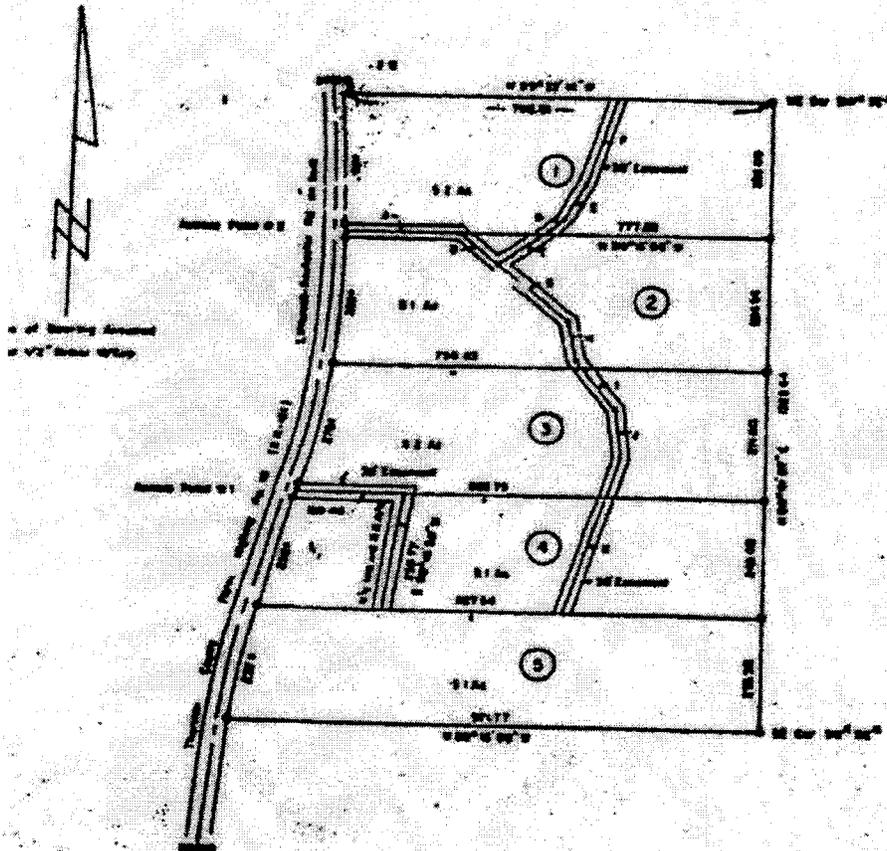
III. ASSIGNMENTS OF ERROR

- 1 The trial court properly granted summary judgment for respondents.
2. The trial court properly awarded attorney fees to respondents.
3. The trial court properly denied appellant's motion for reconsideration.

IV. STATEMENT OF THE CASE

On October 11, 1982, the plat of Large Lot Subdivision 138, known as Prairie Park East, was filed for record in the Thurston County Auditor's Office, consisting of five lots, under Auditor's No. 8210110069, at Volume 1, Pages 516 through 522, Book of Plats, Thurston County Washington. CP 93.

PRAIRIE PARK EAST



Each of the five lots in Prairie Park East has access to an easement road that runs from the highway through the subdivision. CP 93. Appellant, Irish McCammant (Irish), owns Lots 1 of Prairie Park East. CP 90. Respondents, Pat Murphy and Carla Murphy, own Lot 4. Respondents Chuck Brumfield and Hazel Ferguson own Lot 5. Respondent, Mary Murphy, owns Lot 3. Respondent, Mark Bachman, owns Lot 2. Irish and Respondents are members of the Prairie Park East Homeowners Association. CP 90.

On July 26, 1982, a Declaration of Easements, Restrictions and Covenants to Maintain Non-Platted Street for Prairie Park East (the Declaration) was executed by the Declarant, Partners Financial, Inc., as General Partner for Prairie Park Associates, a Washington limited partnership. CP 94-98. The Declaration was made with respect to the real property in the Plat of Prairie Park East. CP 94. The Declaration was recorded with the Thurston County Auditor on October 11, 1982, under Thurston Country Auditor's No. 8210110069. CP 94. The Declaration provides that the easement roads described in the Declaration were located "as built", regardless of whether they were located in accordance with the survey map of Prairie Park East. The Declaration provides that it touches and describes the real property in Prairie Park East, and shall run with the land and be binding upon the Declarant, its heirs, successors, and assigns, and be perpetual in nature. CP. 94.

The Declaration provides for an easement as follows:

1. That there shall be an easement for ingress, egress, and utility purposes referred to as "Access Point No. 1" situate at mile point 5.91 of the Little-Rock-Rochester Road (State Route 121) which shall serve as the access point for Lots 1, 2, 3, 4, and 5, as set forth in that certain survey map attached hereto and incorporated herein by reference as Exhibit B. The approach described herein has been improved by the Declarant to a standard of the State of Washington Department of Transportation Design Plate "B", with sufficient length of 12"-diameter culvert and 6" crushed surfacing top course; and ***it shall be the obligation of the aforesaid lot owners, their heirs successors, and assigns to maintain that easement in accordance with said standard, all as hereinafter set forth.*** (Emphasis added).¹

The Declaration further provides, in pertinent part, as follows:

2. Roadways constructed upon the easements hereinabove described shall be maintained by the lot owners, their heirs, successors and assigns. The Declarant is exempt from any such obligation or subsequent assessment for construction, maintenance, improvement, or repair.²...

4. In the event that any lot shall be divided into one or more additional lots, thereby increasing the number of users of the easements hereinabove set forth, the lot owner shall become liable for his pro rata share of the maintenance and repair obligations herein established.

¹ CP 94-95.

² CP 95.

5. The Declarant, its heirs, successors and assigns, hereby covenants that no lot, or any additional lot or lots to which the right of use of the easements hereinabove described is to be granted, shall be conveyed without reference to the covenants and conditions contained in this Declaration. Failure to transfer title any lot or lots affected hereby with reference to these covenants and restrictions shall not relieve the owner or owners of such lots of the obligations contained herein.

6. Upon the agreement of a majority of the lot owners affected by the easements hereinabove described or upon the easement roads becoming impassable to anyone individual lot owner maintenance and/or improvement may be performed and the cost thereof divided equally among the affected lot owners in accordance with paragraphs 7 and 8 below.

7. Upon approval of such a majority, or upon the affected easement roads becoming impassable to one or more lot owners not representing a majority, who shall have given written notice to other responsible lot owners, that majority or those individual lot owners comprising less than a majority whose access shall have become impassable, shall be entitled to contract for maintenance or improvement in any commercially reasonable fashion, and upon completion, each lot owner obligated to maintain that easement, regardless of whether or not he shall have agreed to the performance of such maintenance, shall pay his pro rata share of the total cost of maintenance or repair, as calculated on the number of lot owners obligated to maintain that easement road. For purposes of this agreement, the term pro rata shall refer only to the number

of lots and not to the proportional use a lot owner makes of a particular easement area for which he is responsible.

8. Failure of any lot owner to contribute to maintenance, improvement or repair within thirty (30) days from the date upon which said lot owner was notified or the cost thereof shall entitle the remaining lot owners to file a lien upon the property owned by the non-paying lot owner (excluding the Declarant.) for the pro rata amount of the road maintenance, improvement or repair costs attributable to the non-paying owner. Said lien shall be enforceable and foreclosed in the manner prescribed for labor and material liens within the State of Washington. In the event that the services of any attorney are required to enforce any right granted hereunder, then in add to monies owing for maintenance, there shall be assessed a reasonable attorney's fee, together with any taxable costs, and interest from the date said obligation became delinquent at the highest rate of Interest chargeable in the State of Washington on the date said obligation became delinquent, together with any other damages incurred by reason of said non-paying owner's failure to contribute. Such attorney's fees, interest, and other costs shall be assessable whether or not suit is actually instituted in order to shift, in all circumstances, the burden for failure to comply with these covenants to the non-complying land owner.
(Emphasis added).³

Over the years, use by Irish and Respondents of the easement road in Prairie Park East caused the surface of the easement road to deteriorate. CP

³ CP 95-96.

91. On September 29, 2004, a meeting of the Prairies Park East Homeowners Association was held. At that meeting, a majority of the lot owners in Prairie Park East voted to improve the easement road servicing their properties by asphaltting it. CP 91. The lot owners proposed to make the improvements to the road in the Spring of 2005, and that the anticipated cost of \$15,000 would be allocated among all of the lot owners in Prairie Park East, with each lot owner bearing responsibility for approximately \$3,100.00. CP 91.

Irish refused to pay all or any part of the cost of improving the easement road. CP 91. On November 1, the attorney for the lot owners in Prairie Park East sent Irish a letter in which they demanded that Irish pay her proportionate share of the cost of improving the easement road. CP 91-92, 99-100. Instead, on April 4, 2005, Irish filed this action for declaratory judgment. CP 3-11.

After the filing of this action, Respondents undertook to have the easement road improved. CP 92. Respondents have incurred \$1,674.16 in connection with their improvements to the easement road. CP 92, 101. Irish's share of the cost of paying the invoice of D. J. Blake's Construction was \$334.83. CP 92. Accrued interest amounted to \$45.14. CP 92. In addition, Respondents incurred attorney fees in the amount of \$1,650.00. CP 92.

PROCEDURAL HISTORY

Irish filed a complaint seeking, inter alia, a declaration that she was not compelled to contribute a pro-rata share for paving of the easement road. CP 6-7. Respondents filed an answer and counterclaim in which they sought dismissal of Irish's complaint, alleged Irish's refusal to pay her pro-rata share of the cost of improving the easement road, and sought a lien in the amount of her pro-rata share when it became known, and requested other and further relief. CP 12-14.

Irish filed a motion for summary judgment. CP 33-41. Respondents filed a cross-motion for summary judgment. CP 42-67. Respondents also filed a declaration of Pat Murphy in opposition to Irish's motion for summary judgment, and in support of respondents' cross-motion. CP 90-101. The only document filed by Irish in opposition to respondents' cross-motion was her declaration, filed less than 11 days prior to the October 13, 2006 hearing on summary judgment. CP 105-09. The trial court denied Irish's motion and granted respondents' cross-motion. CP 110-12. Irish sought reconsideration. CP 113-18. The trial court denied Irish's motion for reconsideration. CP 132-33. Irish filed a notice of appeal. CP 127-31.

V. ARGUMENT

A. STANDARDS OF REVIEW

Review in this case is governed by CR 56 (a), (c), (e):

(a). A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof....

(c) Motion and Proceedings. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....

e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by

affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

When reviewing order for summary judgment, the Court engages in same inquiry as trial court. *Wilson Court Limited Partnership v. Tony Maroni's, Inc.*, 134 Wn. 2d 692, 698, 952 P. 2d 590 (1998). Summary judgment is appropriate only if the pleadings, affidavits, depositions and admissions on file demonstrate the absence of any issues of material fact that that the moving party is entitled to judgment as a matter of law. *Ibid.* A material fact is one upon which the outcome at trial depends, in whole or in part. *Morris v. McNichol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974). The court considers the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Lilly v. Lynch*, 88 Wn. App. 306, 312, 945 P.2d 727 (1997) . Summary judgment is appropriate only if, from all the evidence, reasonable persons could reach but one conclusion. *Ibid.* If the moving party meets its burden of offering factual evidence showing that it is entitled to judgment as a matter of law, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine issue for trial. . But is the moving party does not sustain that burden, summary judgment should not be entered, irrespective of whether the nonmoving party has submitted affidavits or other materials. *Ibid.*

B. THE TRIAL COURT CORRECTLY ENTERED SUMMARY JUDGMENT FOR RESPONDENTS.

Paragraphs 3.1 through 3.6 of Irish's argument fail to cite to the record, and also fail to cite any authority in support thereof. Irish's arguments should therefore not be considered. RAP 10.3 (a) (6); *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P. 3d 232, *rev. denied*, 155 Wn, 2d 1015, 124 P.3d 304 (2005); *Peters v. Vinatieri*, 102 Wn. App. 641, 655, 9 P. 3d 909, *rev. denied*, 143 Wn. 2d 1022.

In paragraphs 3.2 and 3.3 of her brief, Irish argues that as the amount owed by Irish as her share of the road maintenance costs was not known at the time of the filing, respondents' counterclaim was not ripe.

Respondents were not precluded from recovering from Irish road maintenance or improvement costs subsequently incurred by Prairie Park Homeowners Association. Under CR 15(b), “[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues....” The purpose of CR 15(b) is to “avoid the tyranny of formalism that was a

prominent characteristic of former practice" and to avoid multiple lawsuits arising from the same transaction. *Harding v. Will*; *O'Kelley v. Sali*, 67 Wn.2d 296, 298, 407 P.2d 467 (1965). Therefore, CR 15(b) is to be construed and applied liberally. *O'Kelley*, 67 Wn.2d at 298; *Amende v. Pierce County*, 70 Wn.2d 391, 423 P.2d 634 (1967); *Anderson and Middleton Lumber Company v. Quinalt Indian Nation*, 130 Wn.2d 862, 878 n.55, 929 P.2d 379 (1996).

Under CR 15(b), "*when the evidence, introduced with the express or implied consent of the parties, fairly raises compatible, though alternative, issues, the trial court is duty bound to adjudicate the issues so presented even though such issues may not have been directly raised by the pleadings.*" *O'Kelley*, 67 Wn. 2d at 298-99; *Harding v. Will*, 81 Wn. 2d at 137. Therefore, under CR 15(b) pleadings may, in the discretion of the trial court, be amended to conform to the evidence at the conclusion of a trial, indeed even after judgment. *Harding v. Will*, 81 Wn. 2d at 136. The trial court therefore did not err in granting the relief requested by respondents, even if it was not formally requested in respondents' counterclaim.

In addition, under CR 54(c) provides, in pertinent part, that "*every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his*

pleadings. (Emphasis added).” See also, *Kelley v. Powell*, 55 Wn. App. 143, 148, 775 P.2d 995 (1989). Thus, respondents were entitled to recover from Irish her pro-rata share of the cost of improvements to the easement road, whether or not respondents requested such relief in their counterclaim.

Irish argues that Washington follows the American Rule that a prevailing party generally does not recover its attorney fees, and attorney fees are properly awarded only if authorized by a statute, contract or rule of equity. Appellant’s Brief p. 6 at ¶¶ 3.6, 3.7. But Paragraph 8 explicitly authorizes an award of attorney fees to respondents. CP 96. Therefore, an award of such fees to respondents is mandatory. RCW 4.84.330; *Singleton v Frost*, 108 Wn. 2d 723, 727-29, 742 P. 2d 1214 (1987).

Irish argues that she had no liability to pay her pro-rata share of the road maintenance costs until the work had been performed, there had been a refusal to pay, and 30 days had passed. Appellant’s Brief p. 7 at ¶ 3.11. Irish fails to recognize that by refusing to pay her pro-rata share of the road maintenance, she repudiated the Declarations, thereby excusing any duty of performance by respondents. *Declaration of Pat Murphy in Opposition to Petitioner’s Motion for Summary Judgment* ¶ 7. (“Ms. McCammant has refused to pay all or any part of the cost of improving the easement road...”); CP 91-92. *Hemisphere Loggers, Inc. v. Everett*

Plywood Corp., 7 Wn. App. 232, 234-35, 499 P.2d 85 (1972); *Turner v. Gunderson*, 60 Wn. App. 696, 807 P.2d 370 (1991); *Wallace Real Estate Investment, Inc. v. Groves*, 124 Wn. 2d 881, 898-99, 881 P.2d 1010 (1994). Irish also fails to mention the letter of November 1, 2004 from respondents' attorney, Fred Gentry, to Irish, in which he urged Irish to cooperate with the road maintenance project, despite her earlier comments, and informed her that if she did not pay her pro-rata share, she would incur, in addition to her share, the reasonable attorney fees and costs in enforcing the covenants. CP 99-100.

Irish argues that respondents were not entitled to an award of attorney fees because under paragraph 8 of the Declarations, attorney fees may only be awarded in connection with filing and enforcement of a lien. Appellant's Brief p. 7 at ¶ 3.12. Irish's argument is unsupported by the language of paragraph 8, which provides, in pertinent part, that "[i]n the event that the services of any attorney are required to enforce any right granted hereunder, then in addition to monies owing for maintenance, there shall be assessed a reasonable attorney's fee, together with any taxable costs, ...Such attorney's fees, interest and other costs shall be assessable whether or not suit is actually instituted, in order to shift, in all circumstances, the burden for failure to comply with these covenants to the non-complying land owner." CP 96.

Irish claims that she did not know that her actual pro-rata share of the cost of the work amounted to \$334.83 until eleven days prior to entry of judgment. Appellant's Brief p. 8 at ¶ 3.13. Irish cannot claim surprise, as she failed to conduct any discovery in this case.

Irish argues that as respondents did not follow the proper procedure for obtaining reimbursement, no lien rights arose, and therefore respondents are not entitled to judgment. Appellant's Brief p. 8 at ¶ 3.14. Once again, Irish fails to support her argument with either citation to the record or authority. Irish's argument should therefore not be considered. RAP 10.3 (a) (6); *Bercier v. Kiga*, 127 Wn. App. 824; *Peters v. Vinatieri*, 102 Wn. App. 655. Irish fails to identify any language in the Declarations that makes a lien the exclusive remedy for a lot owner's failure to pay his pro-rata share of maintenance. Instead, Paragraph 8 provides that if an owner failure of a lot owner to contribute to maintenance within 30 days of being notified of the cost, "*shall entitle*" the remaining lot owners shall be entitled to file a lien on the property of the non-paying lot owner. CP 96. Nothing in Paragraph 8, or any other provision of the Declarations, requires respondents to file such a lien, as nothing in the Declaration indicates that filing a lien is the exclusive remedy available to respondents. The lien remedy in Paragraph 8 is therefore not an exclusive remedy.

Paradise Orchards General partnership v. Fearing, 122 Wn. App. 507, 517, 104 P. 3d 372 (2004).

C. APPELLANT HAS WAIVED ANY ERROR REGARDING THE TRIAL COURT’S ORDER DENYING APPELLANT’S MOTION FOR RECONSIDERATION.

Irish has failed to either assign error to, or to provide argument or authority against, the trial court’s order denying Irish’s motion for reconsideration. CP 122-23; APP. 2. Irish thereby waived any error regarding that order. RAP 10.3 (a) (4), (6); *Mannington Carpets, Inc. v. Hazelrigg*, 94 Wn. App. 899, 910 n. 33, 973 P. 2d 1103, *rev. denied*, 139 Wn. 2d 1003, 989 P. 2d 1141 (1999); *Clark v. Falling*, 92 Wn. App. 805, 965 P. 2d 644 (1998); *Lilly v. Linch*, 88 Wn. App. 320-21.

Alternatively, the trial court’s order denying Irish’s motion for reconsideration is reviewed for manifest abuse of discretion. *Telford v. Thurston County Board of Commissioners*, 95 Wn. App. 149, 166, 974 P. 2d 886 (1999); *Lilly v. Linch*, 88 Wn. App. 321. Discretion is abused only when the trial court’s decision rests on untenable grounds or untenable reasons. *Ibid.*

The trial court did not abuse its discretion. CR 59(b) provides, in pertinent part, that “[a] motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.” Petitioner’s motion for reconsideration failed to

comply with CR 59(b) by failing to identify any of the grounds for reconsideration listed in CR 59(a). CP 113-18. The trial court therefore properly denied Irish's motion for reconsideration on that ground alone.

Irish's motion for reconsideration was also governed by Thurston County Local Rule 59, which provides, in pertinent part as follows:

“[m]otions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.”

The trial court did not abuse its discretion in denying reconsideration. In response to respondents' motion for summary judgment, Irish filed only her untimely declaration. CP 105-109. Therein, Irish did not controvert any of the testimony of Pat Murphy offered in support of respondents' cross-motion for summary judgment. *Ibid.* Faced with Irish's failure to timely present evidence to controvert the testimony of Pat Murphy, the Court properly denied Irish's motion for reconsideration. *Telford v. Thurston County Board of Commissioners*, 95 Wn. App. 166; *Lilly v. Lynch*, 88 Wn. App. 321.

Irish's motion for reconsideration also advanced a number of arguments, none of which she had bothered to include in a timely written response to respondents' motion for summary judgment. CP 113-18.

Irish's motion for reconsideration was not a vehicle to advance newly hatched theories that should have been, but were not, raised in response to respondents' earlier motion for summary judgment. *Vaughn v Vaughn*, 23 Wn. App. 527, 531, 597 P.2d 932 (1979); *JDFJ Corp v. International Raceway*, 97 Wn. App. 1, 7, 970 P.2d 343 (1999); *Eugster v. City of Spokane*, 121 Wn. App. 799, 811, 91 P.3d 117, review denied, 16 Wn. 2d 1027, 94 P.3d 959 (2004); *Wilcox v. Lexington Eye Institute*, 130 Wn. App. 234, 241, 122 P.3d 729, 732, rev. denied, 157 Wash.2d 1022, 142 P.3d 609 (2006). Irish offered no reason why she did not, or could not, raise the arguments advanced in her motion for reconsideration in a proper response to respondents' motion for summary judgment. The trial court therefore properly rejected Irish's arguments. *Vaughn v Vaughn*, 23 Wn. App. 531; *JDFJ Corp v. International Raceway*, 97 Wn. App. 7; *Eugster v. City of Spokane*, 121 Wn. App. 811; *Wilcox v. Lexington Eye Institute*, 130 Wn. App. 241.

D. RESPONDENTS REQUEST AN AWARD OF COSTS AND REASONABLE ATTORNEY FEES.

Pursuant to RAP 14.2 and RAP 18.1 (a), (b), respondents request an award of cost and attorney fees in the event they prevail on appeal. Paragraph 8 of the Declaration provides for an award of attorney fees and costs. CP 96. An award of attorney fees to respondents in the event that

they prevail on appeal is therefore mandatory. RCW 4.84.330; *Singleton v. Frost*, 108 Wn.2d 723, 728-29, 742 P.2d 1224 (1987).

The “*prevailing party*” is one who receives an affirmative judgment in his or her favor. *Mike’s Painting v. Carter Welsh, Inc.*, 95 Wn. App. 64, 68, 975 P.2d 532 (1999); *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669 (1997). A defendant who defends maybe a prevailing party. *Mike’s Painting v. Carter Welsh, Inc.*, 95 Wn. App. 68. In the event that the trial court’s judgment is affirmed, respondents will be the “*prevailing party*” and are therefore entitled to recover costs and attorney’s fees in responding to the motion. Respondents will timely submit a cost bill and attorney fee affidavit in the event that they prevail on appeal.

VI. CONCLUSION

In light of the foregoing arguments and authorities, the trial court’s order granting summary judgment for respondents and the order denying appellant’s motion for reconsideration should be affirmed. Respondents should be awarded costs and reasonable attorney fees on appeal. .

Respectfully submitted,



Christopher M. Constantine WSBA 11650
Attorney for Respondents

VIII. APPENDICES

1. Order Granting Summary Judgment for Respondents.
2. Order Denying Petitioner's Motion for Reconsideration

APPENDIX 1

'06 OCT 13 A11 :20

BETTY J. GOULD CLERK

BY 3 DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

PRAIRIE PARK EAST HOMEOWNERS
ASSOCIATION, IRISH McCAMMANT,
Petitioner,

vs.

MARY MURPHY, CHUCK BRUMFIELD,
HAZEL FERGUSON, MARK BACHMAN,
PAT MURPHY, and CARLA MURPHY,
Respondents.

) Case No.: 05-2-00667-3
)
) ORDER GRANTING SUMMARY
) JUDGMENT FOR RESPONDENTS
)
) Clerk's Action Required

SUMMARY OF JUDGMENT

Pursuant to RCW 4.64.030, the following information should be entered in the Clerk's
Execution Docket:

1. Judgment Creditors: MARY MURPHY, CHUCK BRUMFIELD, HAZEL FERGUSON,
MARK BACHMAN, PAT MURPHY, and CARLA MURPHY
2. Judgment Creditor's Attorney: C. M. CONSTANTINE
3. Judgment Debtor: IRISH McCAMMANT
4. Amount of Judgment: \$334.83
5. Amount of Interest Owed to Date of Judgment: \$45.14
6. Total of Taxable Costs and Attorney Fees: \$1,650.00

ORDER GRANTING SUMMARY JUDGMENT
FOR RESPONDENTS - 1

06-9-00977-3

CHRISTOPHER M. CONSTANTINE

Attorney at Law
P. O. Box 7125
Tacoma, Wa. 98406-0125

5 0 9 7 7 (253) 752-7850; (253) 383-3544 (fax)

1 WHEREAS, this matter having come on for hearing on Respondents' motion for an order
2 granting summary judgment on Petitioner's complaint for declaratory relief and on Respondents'
3 counterclaim, and

4 WHEREAS, the court having considered the arguments of counsel for Respondents, C.
5 M. Constantine, and the arguments of counsel for Petitioner, Larry D. Stout, and the Court
6 having considered the following:

- 7 1. Complaint for Declaratory Judgment
- 8 2. Respondents' Answer and Counterclaim
- 9 3. Respondents' Cross-Motion for Summary Judgment
- 10 4. Declaration of Pat Murphy in Opposition to Petitioner's Motion for
11 Summary Judgment and in Support of Respondents' Motion for Summary
12 Judgment
- 13 5. Respondents' Reply to Petitioner's Response to Respondents' Motion for
14 Summary Judgment
- 15 6. _____
- 16 7. _____

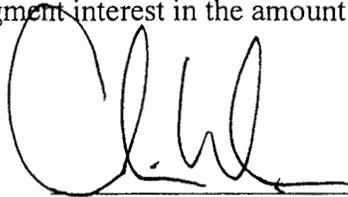
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18 AND WHEREAS, the court being otherwise fully advised in this matter,

19 THE COURT FINDS that there is no triable issue of material fact on Respondents'
20 Counterclaim, and

21 THE COURT CONCLUDES, as a matter of law, Respondents are entitled to summary
22 judgment on their Counterclaim,
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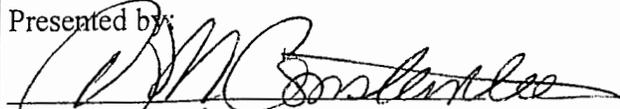
1 THE COURT ORDERS that Respondents' Motion for Summary Judgment is granted,
2 that Petitioner's Complaint for Declaratory Relief is dismissed, with prejudice, and that
3 Respondents are entitled to judgment against Petitioner in the amount of \$334.83 on
4 Respondents' counterclaim, plus prejudgment interest in the amount of \$45.14, and attorney fees
5 in the amount of \$1,650.00.

6 Dated: October 13, 2006



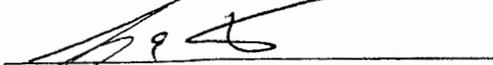
Chris Wickham, Judge

7 Presented by:



8 C. M. Constantine
9 WSBA 11650
10 Attorney for Respondents

11 Approved as to form; notice of presentation waived:



12 Larry D. Stout
13 WSBA 17065
14 Attorney for Petitioner

APPENDIX 2

FILED
JAN 12 2007
SUPERIOR COURT
BENJAMIN G. GILLO
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

PRAIRIE PARK EAST HOMEOWNERS
ASSOCIATION, IRISH McCAMMANT,
Petitioner,

vs.

MARY MURPHY, CHUCK BRUMFIELD,
HAZEL FERGUSON, MARK BACHMAN,
PAT MURPHY, and CARLA MURPHY,
Respondents.

) Case No.: 05-2-00667-3
)
) ORDER DENYING PETITIONER'S
) MOTION FOR RECONSIDERATION
) Clerk's Action Required
)
)
)
)
)
)

WHEREAS, this matter having come on for hearing on Petitioner's motion for reconsideration of the Court's order granting Respondents' motion for summary judgment, and

WHEREAS, the Court having considered Petitioner's motion, Respondents' response, the arguments of counsel for Petitioner, Larry D. Stout, and the arguments of counsel for Respondents, C. M. Constantine, and the Court being otherwise fully advised in this matter,

THE COURT ORDERS that Petitioner's motion for reconsideration is denied.

Dated: January 12 2007

CHRIS WICKHAM

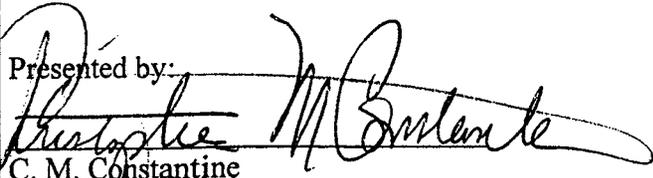
Chris Wickham, Judge

ORDER DENYING PETITIONER'S
MOTION FOR RECONSIDERATION - 1

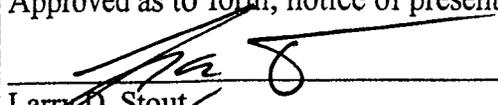
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COPY

1 Presented by:

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3 C. M. Constantine
4 WSBA 11650
Attorney for Respondents

5 Approved as to form; notice of presentation waived:

6 
7 Larry D. Stout
8 WSBA 17065
Attorney for Petitioner

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25 ORDER DENYING PETITIONER'S
MOTION FOR RECONSIDERATION - 2

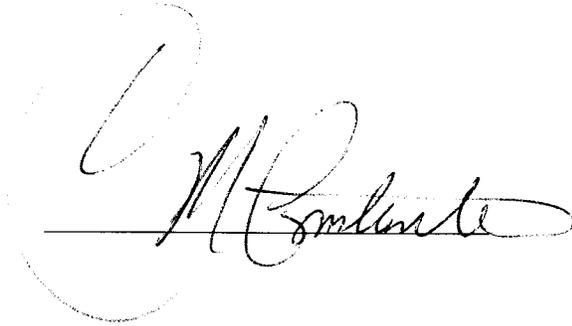
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IX. CERTIFICATE OF MAILING

The undersigned does hereby declare that on June 18, 2007, the undersigned served upon Appellant a copy of Respondents' Brief filed in the above-entitled case by depositing it into the United States mail, first-class postage addressed to the following persons:

Larry D. Stout
Attorney at Law
3025 Limited Lane NW
Olympia, Wa. 98502

Dated: June 18, 2007

A large, handwritten signature in cursive script, appearing to read "L. D. Stout", is written over a horizontal line. The signature is enclosed within a faint, circular outline.

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
07 JUN 19 PM 1:34
STATE OF WASHINGTON
BY KS
DEPUTY