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STATE OF WASHINGTON
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No. 40426-5-II
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

John J Hadaller, Appellant

v.

Mayfield Cove Homeowners Association, Respondents

APPELLANT'S REPLY BRIEF

Filed By ;

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Mossyrock, Wa. 98564

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INTRODUCTION

The record confirms the majority of “the Association’s” response is inaccurate, in fact their statement of facts in their background is substantially a twist of applying the Amended Covenants issue facts with Water system facts, also water system # 1 facts are plead in an attempt to support findings upon water system #2. The “Association” pleads **developer, declarant,** owner John J. Hadaller (Hadaller) is merely a “Rogue member” this is obviously to obfuscate the true facts as will be clarified, making this reply brief necessary. They are attempting to confuse this court with the same technique used upon the Trial Court. They cannot dispute the CCR’s definition of how the votes and lots are defined and assigned to each owner, their claim of the number of votes that may be cast is still an improper application of the provisions.

The “Association” attempts to twist Hadaller’s issue for appeal of the Trial Court’s findings on the Amended Covenants contract. Their “Veto Power” intent, argument is incorrect and is a self serving attempt to brainwash this Court into confusion away from its real intent.

II . TAKEOVER OF THE ASSOCIATION AND VOTE (Re;error #1)

A decision on whether the “Association” was in fact properly voted into control of Mayfield Cove Estates Homeowners Association (HOA)

from the developer hinges upon the interpretation of the definition of a “lot” as defined in the original governing documents, which are the CCR”s.(Ex 3,20) or according to statute and respected relevant authority. The “Association” does not dispute that. Hadaller, is the declarant who created the HOA.(Ex 3,20 Pg1¶2 &Pg 14) (Id 37)(Pg B2 Appdx of Brief) At time of the vote Hadaller had sold six lots/votes and held 3 or 4 lots/votes. He now has two lots developed to sell and two more to develop for sale and his home. He disagrees with Respondents argument regarding tally of votes. (RP12/11/09 Pg. 3 L.22 –Pg.5L 20) (Red lots on Id.37). The “Association” attempts to rewrite the CCR’s provisions regarding the vote. Hadaller, @ ¶2 of Pg. 28 of his opening brief, set out those provisions he drafted into the CCR’s in 2003.The “Association” argument (in their statement of facts Pg. 15) has no merit. Their argument attempting to obfuscate Hadaller’s testimony, which actually further confirms declarant Hadaller’s position, (RP. 12/10/09 Vol 3., Pg.23 L. 23- Pg. 24 L. 3) into one that improperly states “*Hadaller admitted that the Association approved the proper number of votes*”. Similar obfuscation was repeated in their statement “ *Hadaller specifically admitted that there were only four lots on Plat 010 and four lots on Plat 017 for a total of eight voting lots, and that he was developing two new lots "in the future."* (RP 12/10/09 Pg.20,L.21- Pg.21,L.3 & Pg 24,LL 19-20) The

“Association” is attempting to sell a twisting of Hadaller’s testimony regarding how many water connections were being used for each water system into a provision for votes. They can point to no provision in the original governing document regarding a correlation between water system connections and voting provisions because there are none. (d) The “Association” wrongly argue that Hadaller’s testimony regarding the water system connections @ (12/10/09 Pg. 3 L.22-Pg. 5, L.1) states Hadaller admits lot 110-16 & 110- 22 Virginia Lee were not valid lots because they were “ not actually divided into two lots”¹ it was still at least one lot as in Hadaller’s opening brief. The “Association” has shown no facts that credibly dispute Hadaller’s declaration of CCR’s which provide at Article I Section 5. A lot is defined as “...any plat² of land, which has been assigned a tax parcel number, shown upon exhibit A and described above”.. (e.) The “Association” attempts to claim that tax parcel # 28767-11 (104 Virginia Lee Lane) which was leased with un- matured option, did not provide Hadaller a vote. That statement is an obvious direct conflict of Article II. Section 3 of the CCR’s (Ex 3 & 20 Pg. 4) Suffice it to say, Hadaller had that vote. Accordingly, the developer/ declarant,

¹ This lot is identified on the CCRs as Parcel Number 28767-12 and is in dispute by the Association as a legal lot. Hadaller argued in the January 26, 2009 show cause hearing that, as the developer he owned four lots/ votes.(C.P 3 L. 1-8 & L. 19-22) Restatement of Property r(\$6.19) refers this issue to the **UCIOA**, which addresses it (see foot note #8.)

² Blacks defines “plat” as “A small piece of land”

Hadaller, cast 3 or 4 valid votes on Dec. 30, 2008, either developer's, amount defeated the, "association," vote to adopt the new by-laws or elect the officers. Hadaller's developer control of the Association, as the CCR's provide and all documents and funds should be returned to the original governing body, until Hadaller sells a total of nine lots³, or eight lots⁴ and two years of no sales or development activity in the plat. Presently he has sold seven. See(UCIOA§105-(4) Comment #4) & (Restat 3d Prop.§ 6.19)

The Court improperly, erred, by reading into RCW 64.38, which has no provision to address turning over the HOA from developer to owner control. But the bill introduced in the Senate to establish authority to rule on these presented issues, S .B. 6054, (Brief Appdx .Pg A,51⁵) gathered from Restatement (Third)of Property, (Restat. 3d Prop.) which gathered from the Uniform Common Interest Ownership Act (UCIOA). Relevant to the first issue here, is the proposed greatly needed Wash. law drafts a procedure to turnover of the HOA, defining a standard of when and how that should be done. In that authority the declarant may retain the authority to place and replace the officers and the board of directors and veto any of their actions until 75% of the lots have been sold. Once that occurs the

³ If The Court Consider's Section 2-105 (b) ¶4 of the UCIOA & Restatement of Law-property §6.19 which counts all developer future proposed lots.

⁴ If the Court considers existing lots only.

⁵ The Wash. Homeowner Association Act Committee Final Report and House bill 6054 is submitted as a secondary authority for informational purposes only. Per RAP 10.4 (c)

Association may elect officers and board members but one board member must be an officer of or the developer. See *Hill v. Cole*, 248 N.J. Super. 677,591 A2d 1036 (1991) **After** that point they begin to obtain authority to change the covenants and by-laws with an express amount of 67% of favorable votes, as is suggested in Wash.'s "Homeowner Association Act Committee Final Report" R.11⁶ (pg. A,10 of Opening Brief Appdx.) See:*Alexander v. Fairway Villas, Inc.*, 719 A.2d 103 (Me.1998) *Breakers of Fort Walton Beach Condominiums, Inc. v. Atlantic Beach Management, Inc.*, 552 So.2d 274 (Fla.Dist.Ct.App.1989) .Hadaller had / has not sold 75% of his lots⁷.

Alternately, **IF** the "Association's" argument of,"*that bill has not been passed into law and should not be considered for deciding the issues in this case*", nor the Restat. 3d Prop. or UCIOA, then we are bound under the Lewis County Code 16.10.230 which is the present statute that addresses the issue. LCC16.10.230 Alteration of Subdivision- Procedure: [relevantly states]

‘.....If the short subdivision is subject to restrictive covenants or easements which were filed at the time of short subdivision approval, and the application

⁶ Note in Comments of R-11, the attorneys that drafted the Homeowners Association Act acknowledges that presently if the governing documents are silent on the issue 100% of the owners must approve a change in the declarations.

⁷ Prospective buyers cannot get away quick enough when they learn of the HOA dispute pending.

for an alteration would result in a change to these covenants or easements, the application shall contain an agreement signed by all parties subject to the covenants or easements providing that the parties agree to terminate or alter the relevant covenants or easements to accomplish the purpose of the ...

The “Association has not, and cannot, deny Hadaller’s assertion that the new adopted by-laws(Ex21) .(RP 1/26/09 Pg. 29 L. 6-16)(CP 136 - 139) and their July 3, 2006 version of amended CCR’s(Ex 26) can be ratified without causing a substantial change to the original CCR’s (Ex3.). John J. Hadaller, declarant, presently has 2 lots developed and for sale. On May 17, 2012 development rules will allow two more lots. Water system #2 is anxiously awaiting those. Hadaller has five lots subject to the “Associations” improperly imposed, unexpected and unwanted regulation. Those lots are still the declarant’s, who has not yet earned his profit⁸from his large investment. As the developer Hadaller opposed (CP 2 ¶2,)(CP4 L.1-4) (RP 1/26/09 Pg.28 L.17- Pg. 29L.16) the “association”, takeover and adoption of the new by-laws and election of officers and subsequent.(

⁸ RCW 64.38 and Wa. cases are void of provision, Restatement of the law §6.19 (2) recognizes the developers interest and notes it made its statements according to the (UCIOA) Sect.3-103 (d), Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, and except as provided in Section 2-123(g) (Master Planned Communities), a period of declarant control terminates no later than the earlier of: (i) [60] days after conveyance of [75] percent of the units that may be created to unit owners other than a declarant; (ii) [2] years after all declarants have ceased to offer units for sale in the ordinary course of business; (iii) [2] years after any right to add new units was last exercised; or (iv) the day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights the UCIOA may be found in it’s entirety with comments @ <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ucioa94.htm>

CP 37 ¶ 11)⁹ amendment of the covenants, with his 3 or 4 lots/votes. See: *Meresse v. Stelma* 100 Wash. App. 857, 999 P.2d 1267. In comparing the Courts holdings in *Meresse* to the instant case the *Meresse* Court considered facts of: (a) an access road crossing Meresse's property had been used by him for years was voted, by the five other owners, to be moved slightly in Meresse's disadvantage, that moved the road out of the original declared easement slightly. Meresse filed a declaratory judgment suit, the Court held that five owners could not impose unexpected and unwanted burden upon one to pay and suffer the disadvantage of the long established condition (road placement). Very comparatively, in the instant case, the "Association," representing six¹⁰ of the nine or ten¹¹ votes available, voted to move an easement 260 feet north, incorporate the HOA, elect officers and a board of directors giving them power extraneous to the original CCR's, over the long established un-wanting 33 1/3%-40% of member(s), i.e. the new proposed by-laws @ article V. (CP572) create a new unexpected burden extra to the original governing documents. It allows board members to make up and enforce rules regarding how they

⁹ Sandy Mackey is the attorney who guided Lewis County's Growth Management Plan. He suggested and drafted the "Amended covenant document"

¹⁰ Declarant's were the opposing

¹¹ Hadaller legally had four votes, he previously provided for those in the declaration and filed for a short plat prior to subdivide Parcel # 28767-12 there will be a total of 12 lots. Thus the Association must be turned over when 9 lots are sold, only six had been sold at time of vote now seven have been sold.

determine behavior and property should be in the community. (See: CP 136 -139). Those by-laws and the new amended covenants were the fancy of four owners with six votes attempting to unreasonably burden the remainder of what will eventually be a majority of remaining lots. July 3, 2009 the original CCR's were amended by the "Association" to include those several amendments not allowed under the CCR's.

See: *Ebel v. Fairwood Park II Homeowners' Ass'n* 136 Wash.App. 787, 150 P.3d 1163 "In order for an amendment to a covenant to be valid, it must be adopted according to the procedures set up in the covenants and it must be consistent with the general plan of the development, but an amendment may not create a new covenant that has no relation to the existing covenants".

Comparing *Ebel* to one example, of many violated covenants in the instant case: the facts in *Ebel* are, the majority (more than 75%) of the owners ratified a creation of a HOA. Six years later, after they acted on the board, paid assessments made rulings with the provisions of the HOA the same individuals claimed the HOA was not properly formed and the one relevant provision in the CCR's which were amended, was an amendment that was extraneous to the original CCR's. The *Ebel* Court held, relevant here, the amendment to the CCR's that changed the ability from providing each individual owner to bring an action, to a requirement a majority of the owners are required agree to bring same action was a substantial enough change to be an amended Covenant. Likewise, in the instant case, the change to the original CCR's provision for special assessment from

only being possible for capital improvements to road, water systems, and dock by 75% vote. To being able to be brought for any purpose at all with a simple majority of the “Association”, is in fact an amendment that creates another covenant. Which makes their action subject to 75%, yes vote and/or developer approval. Also the provision to impose attorney fees in the original CCR’s are limited to collection of the allowed assessments in that document.(Ex 3 Art III Sect.2,3 &4) By expanding the allowed assessments it also creates another covenant that is boundless. The new 2009 amended covenants allow the board to impose actions that cause and result in attorney fees to the owners, with a mere agreement between the officers¹² and/or board. (Ex 26 Art 6.7) The new amended covenant of 2009 overly burdens the lots with a covenant to not have specific items from within view of a community road way (EX 3 Art. IV section 5 (i))¹³ to within the view from the roadway, another lot, or the water system (Ex 26 Art.4.7.2) Those are new covenants and those new covenants touch and concern the land and impose an extreme burden on the land that was not expected nor wanted by Hadaller and according to the Court holdings

¹² Lowe “President” and Fuchs “Secretary”

¹³ Hadaller placed the pump houses and his construction storage yard on his property. Pump house #1 views the backyard of the two lots he has for sale and prevents sale of those lots. Due to that prejudicial language regarding David Lowe’s control by his opinion what may or may not be set in their backyard in view of nothing but a pumphouse. That provision and Art 6.7 was intentionally drafted to provide him a venue of steady attorney fees. A suit is already pending with a claim of his for collection of the fruits of his handiwork.

in both *Ebel* and *Meresse* the 2009 amended covenant and by-laws should be nullified and the original CCR's replaced as the governing document of Mayfield Cove Estates, until 75% of owner's agree to the change.

III. JOHN J. HADALLER CREATED WATER SYSTEM #2 OWNERSHIP IN HIS OWN NAME AND DID NOT DEDICATE IT, NOR PASS TITLE TO IT IN ANY OTHER WAY TO ANYONE. (Re: error #2)

"An appellate court reviews a document's purported ambiguity de novo as a question of law. . In re 1934 Deed to Camp Kilworth 149 Wash.App. 82, 201 P.3d 416 Wash.App. Div. 2,2009.

Interpretation of unambiguous contract is question of law. Mayer v. Pierce County Medical Bureau, Inc. 80 Wash.App. 416, 909 P.2d 1323 Wash.App. Div.

The "Association's" response confirms Hadaller's ownership of Mayfield Cove Estates Water system #2. The reason for the December 10, 2009 trial was to confirm ownership of water system #2. Hadallers position is, it is to remain in Hadaller's ownership until he connects it to two future lots the system was designed to serve, he has available to develop after May 17, 2012, **Then** he will dedicate it. The water system appeal is not based on the evidence not at trial. It is made on the assertion evidence at trial, pretrial hearings and reconsideration, proves Hadaller owns water system #2. The Court was confused by the "Association."

(a) All documents referred to in the "Association's" response, that create or confirm ownership, refer to water system #1 only and have nothing to do with **ownership** of Water system #2¹⁴. The Association

¹⁴ As per the opening brief Pg.15 16 and Hadaller's declarations

raised two documents that are part of System #2, in their wanting attempt, to confuse this Court they indicate ownership. First was a *Water Facilities Inventory* form completed by Sue Kennedy, of Lewis County Environmental Health, she inadvertently completed that in the “Associations name’ without referring to the “Owners Statement of Accuracy” in her file, which created the system #2 in Hadaller’s name, (re:opening brief). The mistaken water facilities inventory form was corrected by Hadaller after he recovered from a serious accident and was in critical care those weeks, she was covering for him in her good faith attempt to help, he was not aware of her action until this issue arose. As her declaration (C.P 392-393) states he had the authority to correct that and he did so. The other document referred to by the Association, they attempt to claim show they own system #2, is a copy of a management contract completed by Nicole Cramer of Pacific water systems. In her good faith effort to help she completed the satellite management contract, without consulting Hadaller, stating both the Association and Hadaller as owner. Her declaration (CP.395-396) confirms her actions. Neither of those two documents convey title or even have standing to show intent to create title in either name, they cannot even create ambiguity to title.

Citing: *Mayer v. Pierce County Medical Bureau, Inc.* 80 Wash.App. 416, 909 P.2d 1323 Wash.App. Div. 2., *Ambiguity will not be read into contract where it can be reasonably avoided*

Not one other document exists with anyone other than John Hadaller as owner of System #2. Hadaller's intent of ownership was established at the time of creation of the system in the engineers design report (CP 280, 297-311) (CP 381- 385) which is submitted to Lewis Cty. Enviro. Health Spc, Sue Kennedy, for approval and records.

System #2 is real property, any conveyance must be by deed.

The "Association's" argument the CCR's (Ex20 Pg. 16) confirm they own system #2 has no merit. "

A court will not read ambiguities into an instrument" Citing In re 1934 Deed to Camp Kilworth 149 Wash.App. 82, 201 P.3d 416 Wash.App. Div. 2,2009. Citing: Mayer v. Pierce County Medical Bureau, Inc. 80 Wash.App. 416, 909 P.2d 1323 Wash.App. Div. 2,Contract provision is not ambiguous merely because parties suggest opposing meanings

The CCR's document is unambiguous, it clearly states the "Association" has management authority. The ownership is clearly stated on page 16 as John J, Hadaller owns the system #2. No language in the CCR's states the "Association" owns water system #2. Hadaller recorded the declaration of CCR's then served as secretary and performed all management responsibilities From 2003-2009 and expected to do so until all lots were sold¹⁵ then turn it over in an intelligent manner. Even if the CCR's document and Hadaller's management prematurely separated,

¹⁵ Thus all connections Hadaller paid to create were used by final user.

the document did not become ambiguous. It affirmatively states (EX 20 P. 16) John Hadaller retains the ownership of system #2 and the Association secretary manages it. (CP 20 P. 14) Hadaller, before trial, offered to work, as the owner of system #2, with the Association and Pacific Water Systems as managers, but the “Association refused, causing that trial.¹⁶

(b) 100% of testimony of all witnesses is directly related to **only** water system #1. The only relevant witness regarding water system #2 could be the Lowes they did not testify, they have no evidence they or the Association own System #2. The Trial Court was confused into its finding.

See: Perrin v. Derbyshire Scenic Acres Water Corp. 63 Wash.2d 716, 388 P.2d 949.... *The Supreme Court, Rosellini, J., held that bare oral promise did not give plaintiffs additional **water rights** in view of statutes providing that every conveyance of realty **or any interest therein**, and every contract creating or evidencing any encumbrances on realty **shall be by deed....**”,*

In the instant case the deeds regarding water from system #2 are shown to this Court in the opening brief and were not disputed.¹⁷ the deeds and title reports (CP 203-2111) show ownership of water system #2 was expressly reserved by Hadaller and only supply of water is obligated to lots 1-4 of short plat 05-00017.

¹⁶ How else could Lowe and Fuchs sneak Hadallers “2006 amended covenant,” which guaranteed him to be the only developer on his road ,into court without the document examiner testifying?

¹⁷ They merely attempt to confuse the Court with misstatements of facts referring to system #1. Their motto.. “We look close, so you don’t have to” do look closely

The finding of the trial court that Hadaller demonstrated an obvious intent to dedicate system #2 to the “Association” is an error of law. The Conclusion of law is in error.(CP350 ¶6,7) There is no evidence of dedication to system #2 to base an argument to support that finding. Hadaller agreed to dedicate System No.1 after the last two connections were approved. He dedicated the easements for utilities as per LCC 16.10.480, required but only the easements, not the water system. The record is well documented neither party showed any evidence proving System #2 was dedicated, all evidence and testimony referred to in the response is exclusive to system #1. The Trial Court most likely was confused by just such “Association’s” obfuscations of the facts,

. **“One asserting that the public has acquired a right through dedication to use an area as a public street has the burden of establishing the essential elements”..... “Although the issue of an owner's intent to dedicate is a question of fact, **whether a common-law dedication has occurred is a legal issue**” *Sweeten v. Kauzlarich* 38 Wash.App. 163, 684 P.2d 789**

The “Association’s response argument that LCC 16.10 480 required Hadaller to dedicate the system is incomplete facts¹⁸. The relevant part of the same chapter, left out of their argument of LCC 16.10. 480 reads,....

” **The applicant may retain ownership of the system** or dedicate it to a responsible person, either of which shall operate and maintain the system ..”

¹⁸ Even the facts testified and argued regarding System #1 does not amount to dedication , except the express statement Hadaller agreed to dedicate system #1,only.

The pre-trial, trial and reconsideration evidence shows the applicant [Hadaller] consciously and legally retained ownership with **no intent** to dedicate Mayfield Cove Estates Water System #2.

IV. THE UNANIMUOUS AGREEMENT TO AMEND THE COVENANTS IN 2005 IS VALID AND DESERVES ITS DAY IN COURT (RE: Error #3)

The “Association” did **not** set forth substantial evidence at trial, Hadaller **did** object in a manner previously held sufficient by law. The “Associations, uncontroverted testimony” was **not** properly before the Court, nor did it present enough reason to nullify a document that had been acted upon and/or considered valid for over 3 years by all, but the Lowes. Virtually every statement the association refers to in the report of proceedings, regarding the Courts statements, should be carefully considered as being obfuscated. Each of the Courts statements in the preliminary hearings, the “Association” cites, actually confirm Hadaller’s argument when viewed in whole. In preliminary hearings the Court found the amended covenant and easement it was drafted to protect, issue was to be brought in a separate case. (RP 4/3/09 Pg 27 L.8-Pg28 L.10) (RP6/19/09 Pg. 3 L20 -22) (CP 432 -436)(CP1326 -1327 L.10) (CP319 - 329) The Association attempts to divert **the real intent of the amended covenant** from **protecting the original owners easement agreements** to a “Veto Power” instrument that is diabolical, even though it is within the

developer's zone of authority, allowable under Restat. 3d property §6.19 & S.B 6054. The CCR's are severable, allowing the intent of the contract to survive. See: *Sherwood & Roberts- Yakima, Inc. v. Cohan*, 2 Wash. App. 703, 469 P.2d 574 **The amended covenant is Schlosser, Greer's certainty of the easement removed from their lake front and declarant Hadaller's ability to recoup his investment in the plat.** Background facts set forth in Hadaller's opening brief (Pg,19-27) confirm: (a) all owners did agree to it, (b) the Lowes bought with notice. See: *Leighton v. Leonard* 22 Wn.App.857, 589 P.2d 279 (c) it has been in place and acted upon long enough to exist under doctrine of estoppels. It protected Hadaller's investment¹⁹ in platting S.P. # 05—00017 The Schlosser's and Greer's laid out their home sites under the assumption of the contract's existence for several years, Fuchs would not have been sold his temporary home, now rental, in the plat if this contract did not exist.(CP94) See *Johnson V. Mt Baker Park Pres. Church* 113 Wash 458, 194 P.536. Stoebuck *Law of Property*.§3.2 (e) Fuchs'/ Lowe's success at taking over the developing depend on destroying it one way or another.

¹⁹ Since the opening brief was filed Hadaller spent over a week tallying his expenses for the upcoming co-pending trials. The accurate substantiated and delivered in discovery amount is \$388,619.00 .The \$224,000 figure was used conservatively because he is carrying that much debt on his home mortgage from his plat construction and legal work caused by Fuchs and Lowes actions. That investment occurred 2004-2007 .

The “substantial evidence” referred to by defendant’s response in their argument this document had a fair trial amounted to:

(a) Testimony by Cheryl Greer, was led, by the Court, to frame a finding the contract was misrepresented. (RP 12/10/09 Pg. 31 L.23-Pg 33 L.13)

A finding of misrepresentation from Mrs. Greer’s testimony is an abuse of discretion of the court. To reach the threshold of finding misrepresentation it would have to be proven by clear, convincing, evidence. The element of misrepresentation the “Association” cannot prove is concealment of the misrepresented fact. Mrs. Greer testified: she is the accountant for Citrus Comm. College in California, she read the document and she signed it.

“Whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs”.
National Bank of Washington v. Equity Investors 81 Wash.2d 886, 506 P.2d 20 WASH 1973.

Where is the concealment? How could a reasonable mind find a threshold of concealment to support the threshold for misrepresentation?

Elements of misrepresentation include misrepresentation of an existing fact, and proof must be clear, cogent and convincing; however, if promise is made for purpose of deceiving and with no intention of performing, it is actionable. *Sprague v. Sumitomo Forestry Co., Ltd.* 104 Wash.2d 751, 709 P.2d 1200 Wash., 1985.

Relevant evidence, avoided from it’s day in Court, by the surprise, includes several e-mail communications between Greer and Hadaller of Oct. 2005 – Jan. 2006 that show an obvious manifested intent they

understood and liked the 2005 covenants.

Generally, a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents. *National Bank of Washington v. Equity Investors* 81 Wash.2d 886, 506 P.2d 20 WASH 1973.

(c) The trial Court abused its discretion when it allowed the finding (CP 339 ¶17) Fuchs Testimony of, he did not sign the document, was sufficient evidence to enter written findings (CP 339 ¶17, 350¶4). The Court knew Fuchs had substantial personal gain by lying, and the Court was aware(RP4/3/09 Pg10 L10-12) a forensic document examiner was ready to testify Fuchs signature on the document is valid(CP234-248), two witnesses had filed declarations, swearing they saw him sign it(CP 249-254 , 252-255), which was part of a co-pending case. (RP4/3/09 Pg27 L15-Pg.28 L10) A conclusion of law (CP 350 ¶4) should not be made from mere testimony of a party with an obvious known huge interest in the outcome if the Court is aware of substantial evidence to the contrary. It should not be “substantial evidence” sufficient to prevent the amended covenants a fair trial on the merits. The finding (CP339 #17) and conclusion of law (CP350 #4) the Court entered has no tenable grounds which support them and amount to an abuse of discretion.

(c) Hadaller **did timely object** to the Court’s trying of this issue and stated: **the issue was not properly before the Court in this suit, was**

pled in the quiet title suit, which equals requesting a continuance.

Review of sufficiency of an objection is a question of law: the standard of review should be de novo. Hadaller's opening brief set forth the argument regarding his own objection to the document being raised at trial and stated it was pending trial in another suit.(PR 12/10/09 Vol. 3 Pg.36 L6-Pg 37 L10) the record shows Hadaller timely objected, both in writing ²⁰ (RP 12/30.09 Pg2 L. 13 –L 21, Pg. 13 L.14 -16 Pg. 29 L. 12-13) and orally,(RP 12/30/09 Pg 15 L. 21 -Pg.21 L.5-25) to the "Association's " proposed findings and conclusions of law. There was no opportunity or need to object prior, the Court made no oral findings regarding the amended covenants, (RP 12/11/09 Vol 2 Pg.23 L.6-Pg 38 L.25) it stated in its oral findings he ordered the trial specifically for the water system. (RP 12/11/09 Vol 2 Pg.25 L.3-5) the first oral finding made by the Court was after Hadaller's objection on December 30, 2009 just prior to entering the written findings. So, Hadaller had no need to object, until he received a copy of the proposed findings and conclusions of law.²¹ Hadaller filed his motion for a partial new trial and

²⁰ Hadaller served the "Association" and the Court on December 28, 2009 a written objection in a "Motion for Court to Accept Additional Testimony" the court acknowledges receipt and consideration but refused to hear it. Hadaller's assistant inadvertently failed to file a copy of it with the Clerk

²¹ Hadaller dismissed his attorney on the 18 of December 2009, the findings and conclusions of law was sent to the attorney. Hadaller, pro se, brought the objection

reconsideration on January 11, 2010 which argued that the document was at issue in another case and was raised by surprise in this case. ((RP 437-438 , 450-452) . The procedure may not have been pretty, but it did conform to CR 59 in preserving the issue for appeal. See; *Douglas v. State of Ala.* 380 U.S. 415, 85 S.Ct. 1074 U.S.Ala. 1965.[Holding:]

“In determining the sufficiency of objections we have applied the general principle that an objection which is ample and timely to bring the alleged federal error to the attention of the trial court and enable it to take appropriate corrective action is sufficient to serve legitimate state interests, and therefore sufficient to preserve the claim for review here. Davis v. Wechsler, 263 U.S. 22, 24, 44 S.Ct. 13, 14, 68 L.Ed. 143; Love v. Griffith, 266 U.S. 32, 33-34, 45 S.Ct. 12, 69 L.Ed. 157. ”

Also See: *Twigg v. Norton Co.* C.A.4 (Md.)January 29, 1990894 F.2d 672

Holding: “Railroad's motion for mistrial was sufficient to preserve for appeal issue of whether district court should have granted new trial in Federal Employers' Liability Act action when worker's testimony at trial presented different theory of liability from that presented in deposition. Federal Employers' Liability Act, § 1 et seq., 45 U.S.C.A. § 51 et seq”.

In *Twigg*, testimony was made at trial by Twigg inconsistent with deposition testimony, raising a new theory of negligence not previously pled. After the findings were entered B&O moved for a new trial under the theory he was prejudiced by that surprise. Which was denied. B & O appealed. The Appellate Court made an appropriate holding:

“The district court, in denying B & O's motions, found import in the

immediately after receiving and finding the proposed conclusion the amend covenant was to be deemed in valid.

fact that, after Twigg's testimony, no motion for a continuance was made. B & O did, however, make a timely motion for a mistrial. We believe such objection to be satisfactory to preserve this issue for appeal. Here, by moving for a mistrial, counsel for B & O served notice on the court and to opposing counsel that he found the testimony of Twigg to be prejudicial to its case. While some jurisdictions have held that a motion for continuance is a prerequisite to obtaining a new trial on the ground of unfair surprise **such a rule is not ironclad**. See *Conway v. Chemical Leaman Tank Lines, Inc.*, 687 F.2d 108, 113 (5th Cir.1982)”

Although normally moving for a continuance would be an appropriate action, in the instant case, a co-pending case between the parties was/is still pending with the amended covenant issue **central to the complaint**. Because of the previous findings of the Court in preliminary hearings and the lack of raising the issue of the validity of the document in the pretrial meeting or trial briefs. Hadaller was justified to rely that he should not have had his document examiner and witnesses present. The fact the Court did not make an oral finding relating to standing of the document did not present either a need or opportunity to object. The need to object came upon the service of the proposed findings which in fact did get a timely objection prior to entering the findings. The Court then had the option and should have simply found that the amended covenant should receive a fair trial on the merits in the quiet title suit waiting with it as Hadaller's central issue of the complaint **which indeed did exist**. Because the Court allowed findings and conclusion of law to be entered, under his

objection, that were not established by the merits but instead by surprise, Hadaller was prejudiced, the “Amended Covenants” should have their day in court with all merits considered Hadaller should have a new trial.

On December 3, 2010 the “Association” brought a summary judgment against the validity of the document pleading res-judicata in the quiet title suit. That motion was granted, further prejudicing Hadaller’s investment the document is designed to protect. If it had a fair trial it would be proven to be a legally valid instrument. Was a sufficient objection made?

V. ATTORNEY FEES (Re; Error #4)

Hadaller paid two attorneys to resist the “Association’s” takeover prior to becoming pro se for lack of funds. He is imposed with a judgment to pay the “Association’s” fees and expenses. The Court awarded statutory fees under RCW 64.38.050. The total is over \$100,000.00. Hadaller argued against that (RP 12/30/09 Pg. 22 L. 1-13 Pg 45 L.1-4) (CP 447-448) based on the theory this is not an appropriate case RCW 64.38.050 should provide fees to the “Association’s” actions. Each member of the “Association” has great monetary gain separate from a cause of the entire present and future community that is an aside from the front of the position they claim. In the entire proceeding there was not a single reference to a material lack of care or service from Hadaller’s original

HOA. (RP 12/11/09Vol.2 Pg29.L.23-Pg 30 L.2) All the actions taken were for (a) Greers and Schlossers diabolical plan to remove an easement that benefits lots two and three of survey. Lowe, Fuchs and his silent partner in "Duke Properties" have large sub-dividable parcels that will benefit from the easements they are ripping from Hadaller's rightful and equitable clutches. The obvious legislative intent of RCW 64.38.050 is created to defend existing homeowners Associations in their usual process of their affairs. This is not "an appropriate case" the legislator had in mind.

Alternately, The original Mayfield Cove Estates Homeowners Association established by declaration of John Hadaller is indeed in standing for an award of statutory fees. If the Court finds the water system #2 is owned by John J. Hadaller the award of fees regarding costs for the trial, the preliminary hearings after the decisions transferring the books and records and this appeal should be reversed.

And /or, if this Court finds the Association is still rightfully within the developers control or that the "Association " simply did not have the votes to carry the December 30, 2008 takeover attempt by the "Association" then the fees and costs awarded for those hearings should also be reversed.

VI. CONCLUSION

John J. Hadaller was/is in the midst of developing land he owns. He is

the “developer.” The present RCW 64.38 has no provision for the Court to base its decision, regarding how or when the HOA turnover must occur, the Court erroneously made findings that is contrary to contract law and well established authority, the proposed RCW 64.38 is modeled from and will provide when S.B.6054 is enacted. When Hadaller was attacked, on January 26, 2009 Hadaller pled the facts of his development from the seat of his pants like the hillbilly he evolved from. That good faith argument turns out to be parallel with the, cited, authorities that guides most Courts. Hopefully that is cognizant from the briefs. The question boils down to, should a finding based on no law or authority trump an argument supported by well used treatises? Hadaller respectfully requests this Court to review the facts and hold that the owners that became the “association” had no legal or contractual authority to overthrow the developers existing rights on December 30, 2008. The Court should hold the “Association,” its by-laws and Amended Covenants of 2009 have no standing in Mayfield Cove Estates, until Hadaller sells 75% or more of his proposed lots, then may be placed according to the Restat. 3d Prop. §6.19

The ownership of Water System #2 has been shown to be created

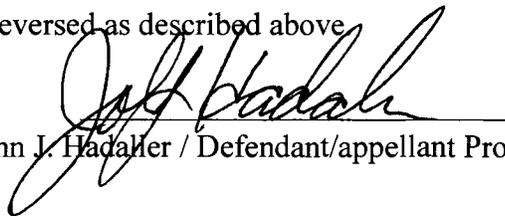
and retained in John J. Hadaller. This Court should hold that: (a) Hadaller is the owner. He is existing secretary of the homeowners Association²², until he adds his two last lots to the system and has sold 9 lots.

Alternately, if the Court does not hold Hadaller has HOA control rights, the water system #2 is still owned by him and should be managed by the "Association"/satelite management agency under Hadaller's ownership. Hadaller should have access to his own pump house, which he is presently locked out of, to inspect and confirm compliance with statute.

The "Amended Covenant" document was cheated from a fair trial. Hadaller has no objection to severing the provision granting him 100% and replace it with 75% of the lots sold language which is drafted into the authorities, This Court should find that (a.) Hadaller did preserve his right to appeal in the above described actions. (b) The amended Covenants did not have a fair trial on the merits (c) The issue with the validity of the Amended Covenants should be remanded back to the trial Court for a fair trial in either this or the co-pending quiet title case.

The attorney fees should be reversed as described above.

Respectfully submitted this
25th day of April 2011 By: John J. Hadaller / Defendant/appellant Pro Se



²² If the Court holds the vote failed to replace his original governing authority in the December 30, 2008 vote.

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN J. HADALLER) Court of Appeals No. 40426-5-
 Appellant,) Lewis County No. 09-2-00052-
 v.)
 MAYFIELD COVE) DECLARATION OF SERVICE
 ESTATES HOMEOWNER'S)
 ASSOCIATION)
 Respondent)

11 MAR 29 PM 12:00
 STATE OF WASHINGTON
 BY *[Signature]*
 DEPUTY

Clarence Hadaller, Declares as follows;

That I am now and all times here-in mentioned, was a citizen of the United States of America and a resident of the state of Washington over the age of eighteen (18) years, and not a party to the above action and competent to be a witness therein.

That on the 25 day of ^{March} ~~April~~ 2011 I served the following documents:

- DECLARATION OF SERVICE
- APPELLANTS REPLY BRIEF
- ~~MOTION TO FILE OVER LENGTH BRIEF~~ *[Signature]*

On the following, by the indicated method of service.

To:

David A. Lowe

Black, Lowe & Graham pllc

701 5th Ave. STE 4800

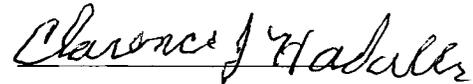
Seattle, Wa. 98104-7009

e.-Mail U.S. Mail

Personal service

The fore-going statements are made under the penalty of perjury under the laws of the state of Washington and are true and correct.

Signed this 25TH day of ~~April~~ ^{March C FH} at Mossyrock, Wa.



Clarence Hadaller