

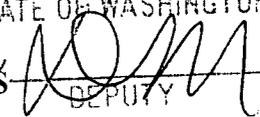
FILED
COURT OF APPEALS
DIVISION II

2015 OCT 29 PM 2: 27

NO. 47402-6-II

STATE OF WASHINGTON

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

BY 
DEPUTY

CLARK COUNTY SUPERIOR COURT NO. 13-2-00572-1

PARKER ESTATES HOMEOWNERS ASSOCIATION
A Washington non-profit corporation,
Appellant,

v.

WILLIAM PATTISON/LESLEY PATTISON,
Respondents,

v.

BLUESTONE & HOCKLEY REALTY, INC.
dba **BLUESTONE & HOCKLEY REAL ESTATE SERVICES,**
Appellant.

RESPONDENTS' ANSWER TO AMICUS CURIAE BRIEF

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I. Introduction

The Community Association Institute (herein “CAI”) effectively is asking the Court to rule that homeowners associations, as a general class, should be exempted from following their own Bylaws, CCRs and Washington Corporation law. CAI argues, without citation or supporting data, that many Washington homeowners associations fail to obtain requisite quorums and allege that if homeowner associations are not allowed to act outside the requirements of their governing documents, adverse consequences will result, while completely ignoring the reasons and purposes for these governing documents. Furthermore, CAI misinterprets the undisputed facts of this case.

II. Argument

A. CAI misstates the facts of this case.

(1) The Board is made up entirely of unsanctioned volunteers, not holdovers of properly elected officers and directors.

Throughout their brief, CAI implies that the Parker Estates Homeowners Association Board is made up of holdover elected officers and directors. CAI states, “...incumbent Board members often continue to serve for years because other members are unwilling to volunteer,” and

alleges that the statutes provide for “the continuation of board members.”

This misstates the facts of this case.

It is undisputed by all parties that since at least 2006 no quorum has ever been achieved by the association for the election of any officers or board members, nor has there been a quorum present at any annual membership meeting since at least 2006. (CP 111-117 & RP 67, ll. 17-20 & RP 69, ll. 1-12). Furthermore, it is undisputed by all parties that a steady stream of individuals have rotated in and out as directors and officers of Parker Estates Homeowners Association (herein “PEHA”) without ever being properly elected by the membership. (CP 118-121, CP 128) PEHA admits that the board is made up of volunteers, none of which have been elected. (RP 38, ll. 23-25, RP 69, ll. 8-24). Thus, these are not properly elected individuals who are holding over until a successor can be elected, but rather unsanctioned volunteers who have never been elected.

(2) The term of officers and directors end upon resignation or not being properly elected.

A non-profit corporation that fails to comply with its Bylaws and properly elect corporate governance cannot keep officers and directors in office indefinitely. *King County Dept. of Community and Human Services v. Northwest Defenders Ass’n*, 118 Wash.App. 117, 125, 75 P.3d 583 (2003). The record below conclusively establishes that officers and

directors were not properly elected or installed and consist of entirely unsanctioned volunteers. Furthermore, between May 30, 1997 and March 13, 2006, PEHA was an inactive corporation.

B. CAI is asking the court to rule that HOAs as a general class should be exempted from following their own Bylaws, CC&Rs and Washington Corporate Law.

CAI argues, without supporting data, that "...many non-profit corporations have difficulty recruiting and retaining individuals to serve on the Board." (Amicus Brief, Pg. 3). CAI then improperly tries to rely on a holdover rule, despite the fact that the PEHA pseudo Board is made up entirely of unsanctioned volunteers, none of whom have been properly elected. CAI's contention is also in direct violation of the Washington State Constitution, Article 1 § 12, Special Privileges and Immunities Prohibited, which provides as follows:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities upon the same terms shall not equally belong to all citizens.

Furthermore, Article 1 § 7, Invasion of Private Affairs or Home Prohibited, states in relevant part as follows: No person shall be disturbed in his private affairs, or his home invaded, without authority of law. Here, the Washington State Constitution provides more protection than even the Fourth Amendment of The United States Constitution.

While CAI alleges without citation that many homeowners associations would be unable to fulfill their obligations if they were required to comply with their governing documents, they ignore the reasons and protections provided by those governing documents.

Here, the pseudo board of PEHA, acting in concert with its for-profit management company, Bluestone & Hockley, placed a lien on Pattisons' house and filed a lawsuit in the name of the association against Pattisons. (CP 1-4 & CP 22, ll. 5-7). CAI ignores the dangers of a small group of unsanctioned volunteers, and a for-profit management company being allowed unfettered discretion to file liens on homeowners' houses and to foreclose on those homes without regard to compliance with their governing documents.

Furthermore, between May 30, 1997 and March 13, 2006, PEHA was an inactive corporation and yet it hired Bluestone & Hockley in 2005, without any vote of the membership and signed a management agreement allowing Bluestone & Hockley to collect monies in the name of the association, including assessments, fines, penalties, lien foreclosures and exclusive banking and distribution rights to all collected HOA funds. (CP 128, ll. 8-9, RP 8, ll. 21-RP 9, ll. 2.) In *Hartstene Pointe*, the Court of Appeals explained the consequences of an association's failure to comply with its governing documents, and noted that it is not a challenge to the

authority of the corporation, but only to the method of exercising it. The Court noted that to prevent Diehl's challenge, the corporation would be free to disregard its own Bylaws and that the Corporate Articles and Bylaws would be largely meaningless. *Hartstene Pointe Maintenance Ass'n v. Diehl*, 95 Wash.App. 339, 345, 979 P.2d 854 (1999).

CAI alleges that certain statutory safeguards exist which would prevent the abuse of the associations' power. (Amicus Brief, Pg. 5.) Yet ironically, the alleged safeguards all provide for a majority vote of the membership, the exact event which CAI alleges, as a practical matter, will not occur. Thus by their own logic, any alleged safeguards would be ineffectual. It is important to note, that the Bylaws do not authorize the officers to establish the amount of, levy and collect assessments against property owners. That power was maintained by the association and membership as a whole. (CP 102). Despite this fact, and the fact that there is no properly elected board, Bluestone & Hockley and the pseudo Board passed a Financial Penalties Resolution, in violation of the CCRs which requires an affirmative vote of sixty-five percent (65%) to change or modify the CC&Rs, in May 2006 which included such items as a \$100.00 per day penalty for noise violations and \$15.00 a day penalty for uncorrected violations. (CP 178-180; CP 41) These actions further

underscore the danger of allowing a homeowners association and a for-profit management company to ignore the governing documents.

C. Other states have enacted additional safeguards for their citizens.

In addition to requiring compliance with their governing documents, other states have enacted additional statutory safeguards to protect homeowners from abusive homeowners associations. California law requires certain actions be met before a homeowners association can record a lien, commence foreclosure proceedings, and requires that the board make a formal decision on the lien recording and foreclosure. Cal.Civ.Code § 5673 and §5705. In Arizona, the law requires that certain standards are met before foreclosure proceedings can occur, including that the homeowners association board file suit and prevail on the merits prior to foreclosing on an homeowners association' lien. A.R.S. § 33-1807. CAI, on the other hand, alleges statutory safeguards in the State of Washington, yet its examples all require a majority vote of the homeowners, something which CAI alleges will not, as a practical matter, occur; thus making a nullity of the safeguards. The real protection for homeowners comes from requiring compliance with the governing documents and state law, not in allowing groups of volunteers to skirt the law.

III. Conclusion

Actions by a Board of Directors not properly installed in compliance with its governing documents and state law are invalid. Homeowners associations are generally empowered to take very significant actions, such as filing liens upon homes, foreclosing those liens, assessing dues and fines and other serious actions affecting the lives and the properties of the citizens of the State of Washington. As such, they should be required to follow their governing documents and state law.

Respectfully submitted this 28th day of October, 2015.

DUGGAN SCHLOTFELDT & WELCH PLLC



ALBERT F. SCHOTFELDT, WSBA# 19153
Of Attorneys for Respondents

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ALBERT F. SCHLOTFELDT, being first duly sworn upon oath, hereby deposes and says:

1. I am one of Respondents' attorneys, I am competent to testify herein, and I base the following on my own, personal knowledge.

2. On October 28, 2015, I caused true and correct copies of Respondents' Answer to Amicus Curiae Brief and this Affidavit of Service to be served on the following by depositing in the United States Mail, postage prepaid as shown:

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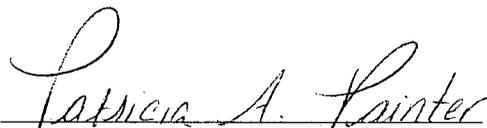
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SUBSCRIBED AND SWORN to before me this 28th day of October, 2015.



Notary Public in and for the State of
Washington, residing at Vancouver
Commission expires: June 15, 2019

