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SUPREME COURT
STATE OF WASHINGTON

No. 80480-0
Court of Appeals No. 56265-7-I

CLERK OF SUPREME COURT
STATE OF WASHINGTON DONALD R. CARPENTER
CLERK OF THE STATE OF WASHINGTON

SATOMI, LLC,

Petitioner,

v.

SATOMI OWNERS ASSOCIATION,

Respondent.

**AMICUS CURIAE BRIEF ON BEHALF OF
BLAKELEY VILLAGE, LLC
IN SUPPORT OF SATOMI, LLC'S PETITION FOR REVIEW**

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I. INTEREST OF PROPOSED *AMICUS CURIAE* BLAKELEY VILLAGE, LLC AND ISSUE OF CONCERN.

The issue presented by the petition for review filed by Satomi, LLC (“Satomi”) is immediately and directly critical to the interests of Blakeley Village, LLC (Blakeley) in a construction defect case now pending against Blakeley that presents the same issues (*Blakeley Commons Ass’n v. Blakeley Village, LLC* (incorrectly identified in the caption as “Blakeley Commons LLC”), (*Blakeley*) King County No. 06-2-03941; Supreme Court No. 80584-9). The pendency of the *Blakeley* case itself underscores the broad application of the Court of Appeals’ erroneous ruling in this case, 159 P.3d 460 (2007) (*Satomi*), as does the Court of Appeals’ proper insistence on deciding *Satomi* despite the settlement of the *Satomi* parties.

Blakeley has filed its own petition for direct review by this Court of the trial court’s decision in *Blakeley*, holding that *Satomi* controls the issue of whether the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, pre-empts the judicial enforcement provision of the Washington Condominium Act where most of the products and materials used to construct the condominium development traveled in interstate commerce.

The result of the Court of Appeals’ published decision is to create two separate litigation tracks to decide the construction defect claims at

issue in *Satomi* and *Blakeley*. One track is arbitration, pursuant to the contracts each buyer/homeowner signed with the developer. The other track is in court, where the claims held subject to the Washington Condominium Act must be decided. This two-track litigation is a disaster for the Washington building industry and the interests of Washington citizens generally, who wish to have affordable, high-quality housing available, and for Blakeley's interests in its lawsuit and as developer. This Court should grant permission for Blakeley to become an *amicus curiae* in this case

II. STATEMENT OF THE CASE.

To avoid repetition, Blakeley adopts the statement of facts contained in Satomi's Petition for Review.

III. THIS COURT SHOULD GRANT REVIEW OF THE COURT OF APPEALS' ERRONEOUS RULING THAT THE FEDERAL ARBITRATION ACT DOES NOT PRE-EMPT THE WASHINGTON CONDOMINIUM ACT'S JUDICIAL ENFORCEMENT PROVISIONS.

The substantial public interest in, and the need for this Court's review of *Satomi*, is evident from the pendency of the parallel *Blakeley* litigation. RAP 13.4(b)(4).

The majority in the Court of Appeals' decision in *Satomi* acknowledge that their ruling is based in significant part on the questionable precedent of *Marina Cove Condominium Owners' Ass'n v.*

Isabella Estates, 109 Wash.App. 230, 34 P.3d 870 (2001). The United States Supreme Court has reversed courts in other states that reached the same result as *Marina Cove*, and there is no reason to believe the Supreme Court would not have reached the same holding were *Marina Cove* before it for decision. See *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 683 (Montana); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 269 (Alabama); see also *Basura v. U.S. Home Corp.*, 98 Cal.App.4th 1205, 1212, review denied 2002 Cal. Lexis 6245 (2002).

Marina Cove and the state court decisions addressed by these cited cases share a restrictive reading of the test for whether activity concerns interstate commerce. That test does not require a showing that the activity at issue have a specific impact on interstate commerce; rather, activity must only involve interstate commerce in fact. The parties agree the activity has an impact; they disagree only about its scope. As discussed in detail in the other filed briefs, the Court of Appeals' resolution of this issue was erroneous, and requires reversal after review.

As discussed in the accompanying motion, Blakeley is the only proposed *amicus* that is a developer immediately affected by the erroneous *Satomi* decision. This Court should grant review of *Satomi* and give permission for Blakeley Village, LLC to appear as *amicus curiae* in the case, both on the issue of review and on the merits.

Dated this _____ day of September, 2007.

Respectfully submitted,

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