

No. 80480-0  
[Consolidated with Nos. 80584-9 (*Blakeley*) & 81083-4 (*Leschi*)]

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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SATOMI OWNERS ASSOCIATION,

Respondent,

v.

SATOMI, LLC,

Petitioner,

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**SUPPLEMENTAL BRIEF OF  
PETITIONER SATOMI, LLC**

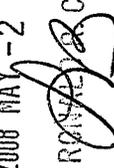
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## I. INTRODUCTION

These three consolidated cases distill down to the same question of federal Constitutional law: Can Congress regulate real estate sales contracts in our country? If the answer is “yes,” then the Federal Arbitration Act preempts the anti-arbitration provision of the Washington State Condominium Act in these cases.

The decisions below must be reversed because they depart from binding United States Supreme Court precedent establishing the broad scope of our federal Constitution’s Interstate Commerce Clause, and the correspondingly wide range of local contracts subject to the Federal Arbitration Act. They also depart from this Court’s precedent confirming the wide range of local contracts subject to the Federal Arbitration Act. And they lead to an absurd result – a wasteful, two-track process where some claims are resolved in binding arbitration, and the Condominium Act claim, based on the same facts, winds its way through the courts.

## II. THE ISSUE THIS COURT ACCEPTED FOR REVIEW

The Petition in this case presented a single issue for review:

ISSUE PRESENTED FOR REVIEW: Did the Court of Appeals err in holding that the [Washington Condominium Act] provision for judicial enforcement of statutory

condominium warranties is not preempted by the [Federal Arbitration Act].<sup>1</sup>

This Court granted that Petition for Review.<sup>2</sup>

### III. STATEMENT OF THE CASE

#### A. Condominium Construction Plays A Significant Role In Our Economy.

Condominium construction and sales are a significant part of the residential construction and sales industry in our country. Over the past three decades condominiums, have represented about one fifth of new multifamily construction nationwide.<sup>3</sup>

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<sup>1</sup> *Satomi, LLC's Petition For Review filed July 11, 2007 at page 2. As the Master Builders Association's simultaneously-filed Amicus Brief put it: The majority opinion "presents a single, straightforward legal question for review: Is the anti-arbitration provision of the Washington State Condominium Act (RCW 64.34.100(2)) preempted by the Federal Arbitration Act (9 U.S.C. §2)?" Brief In Support Of Petition For Review (Filed By The Amicus Below, Master Builders Association Of King And Snohomish Counties) at page 2, filed the same day as Petitioner's Petition (July 11, 2007).*

<sup>2</sup> *This Court's April 2, 2008 Order in Satomi Case No. 80480-0 ("IT IS ORDERED: That the Petition for Review is granted and shall be consolidated with Supreme Court Nos. 80584-9, Blakeley Commons Condominium v. Blakeley Commons LLC, et al. and 81083-4, The Pier at Leschi Condominium Owners Association v. Leschi Corporation").*

<sup>3</sup> *Master Builders Association's July 11, 2007 Brief In Support Of Petition For Review in this Satomi appeal at page 2 (citing U.S. Department of Housing and Urban Development data).*

Condominiums represent about 40% of that construction in Washington,<sup>4</sup> and result in literally billions of dollars of residential sales in our State every year.<sup>5</sup>

By its very nature, our country's condominium construction and sales industry depends upon interstate commerce. For example, over 70% of the materials used by the defendant developer in the Satomi condominium project were manufactured outside of Washington and shipped in interstate commerce.<sup>6</sup> The condominium projects in the other two consolidated cases likewise had substantial involvement in interstate commerce.<sup>7</sup>

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<sup>4</sup> *Master Builders Association's July 11, 2007 Brief In Support Of Petition For Review in this Satomi appeal at pages 2-3 (citing U.S. Department of Housing and Urban Development data).*

<sup>5</sup> *For example, 7,828 condominium units were sold in Washington in just the first six months of last year, with an average list price of \$260,000 – which calculates to over \$2 billion of business. Master Builders Association's July 11, 2007 Brief In Support Of Petition For Review in this Satomi appeal at Appendix Exhibit D, page 35 (citing Northwest Multiple Listing Service data).*

<sup>6</sup> CP 135-137.

<sup>7</sup> *See, e.g., Brief Of Petitioner Blakeley Commons, LLC in Wash. Supreme Court Case No. 80584-9 at pages 3-4 (75% of construction materials from outside of Washington, 30 condominium units bought by buyers from outside of Washington, and purchasers secured loans from out-of-State entities); Brief Of Appellant Leschi Corp. in Wash. Supreme Court Case No. 81083-4/Court of Appeals Case No. 59821-0-1 at pages 3-12 (sale contracts specified out-of-State materials and fixtures, easements to out-of-State entities, units bought and used for investment by residents of other States).*

**B. Virtually All Condominium Sales Contracts Include A Binding Arbitration Clause.**

The sales contracts for virtually all condominiums sold in our State include a binding arbitration clause.<sup>8</sup>

For example, the Satomi sales contract's Warranty Addendum includes an arbitration clause that provides for binding AAA arbitration as to any claim "under this Warranty or any other claimed warranty relating to the Unit or Common Elements."<sup>9</sup>

The condominium sales contracts in the other two consolidated cases included similar arbitration clauses.<sup>10</sup>

**C. The Trial Court Rulings Below Refused To Enforce Those Common Arbitration Clauses.**

The Satomi condominium owners sued the condominium seller in King County Superior Court for breach of the warranties covered by the

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<sup>8</sup> *Master Builders Association's July 11, 2007 Brief In Support Of Petition For Review in this Satomi appeal at page 3 (citing Declaration Of Leslie Williams).*

<sup>9</sup> *CP 170. The Warranty Addendum warranted that the condominium units and common elements are "free from defective materials and have been constructed in accordance with applicable law, in accordance with sound engineering and construction standards, and in a workmanlike manner" – a contractual warranty that overlaps with the statutory warranty under the Washington Condominium Act. CP 167.*

<sup>10</sup> *Brief Of Petitioner Blakeley Commons, LLC in Wash. Supreme Court Case No. 80584-9 at page 5; Brief Of Appellant Leschi Corp. in Wash. Supreme Court Case No. 81083-4/Court of Appeals Case No. 59821-0-I, at pages 13-16.*

above arbitration clause.<sup>11</sup> That suit seeks damages for alleged defects in the condominium's construction and in the previously-noted construction materials that had traveled in interstate commerce.<sup>12</sup>

The trial court quashed the seller's demand for binding arbitration, holding that the State Condominium Act's anti-arbitration provision (RCW 64.34.100(2)) rendered the sales contracts' arbitration clause unenforceable as to the Condominium Act claim.<sup>13</sup>

The Satomi seller filed a timely appeal in the Court of Appeals.<sup>14</sup> The Master Builders Association of King and Snohomish Counties was admitted as an *amicus* party in that Court of Appeals proceeding because its 4,100 members have a substantial interest in the enforceability of arbitration clauses in condominium contracts in our State.<sup>15</sup>

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<sup>11</sup> *More specifically, they sued through their owners association for breach of the written warranty under the condominium contract, the statutory warranty under the Washington Condominium Act, and the overlapping implied habitability warranty under Washington common law. CP 3-9.*

<sup>12</sup> *CP 3-9. For example, the Satomi Complaint alleges defects in "siding and trim," and it is undisputed that the siding came from California. CP 4, 101.*

<sup>13</sup> *CP 143-44.*

<sup>14</sup> *CP 1389-93, 1396-99.*

<sup>15</sup> *The amicus Master Builders Association of King and Snohomish Counties is the largest such home builders association in the United States, consisting of more than 4,100 professional home builders, architects, remodelers, suppliers, manufacturers, and sales and marketing professionals. See Master Builders Association's July 11, 2007 Brief In Support Of Petition For Review at page 1; see also [www.mba-ks.com](http://www.mba-ks.com).*

The condominium owners' claims and trial court arbitration rulings in the two cases consolidated with this *Satomi* matter are similar.<sup>16</sup>

**D. The Court Of Appeals' 2-1 Decision In *Satomi* Refused To Enforce The Arbitration Clauses.**

The Court of Appeals' decision is published at 139 Wn.App. 175, 156 P.3d 460 (2007).

The dissenting opinion concluded that binding arbitration clauses in condominium contracts are enforceable because the anti-arbitration provision in the Washington State Condominium Act is preempted by the Federal Arbitration Act. *Satomi*, 139 Wn.App. at 191.

The majority opinion acknowledged that the Federal Arbitration Act guarantees Americans the freedom of contract to enter into binding arbitration clauses, and that this federal Act preempts contrary State law pursuant to the Supremacy Clause of our federal Constitution.<sup>17</sup> It also acknowledged that the Federal Arbitration Act extends to "the broadest permissible exercise of Congress' Commerce Clause Power," which "may be exercised in individual cases without showing any specific effect upon

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<sup>16</sup> See, e.g., *Brief Of Petitioner Blakeley Commons, LLC in Wash. Supreme Court Case No. 80584-9 at pages 6-7; Brief Of Appellant Leschi Corp. in Wash. Supreme Court Case No. 81083-4/Court of Appeals Case No. 59821-0-I at page 19-20.*

<sup>17</sup> *Satomi*, 139 Wn.App. at 182; see also U.S. Const., Art. VI, cl. 2 (the Supremacy Clause).

interstate commerce if in the aggregate the economic activity would represent a general practice ... subject to federal control.”<sup>18</sup>

The majority opinion nonetheless held that the State Condominium Act’s anti-arbitration provision (instead of the Federal Arbitration Act’s pro-arbitration mandate) governs the enforceability of a contract clause requiring arbitration of a Condominium Act claim.<sup>19</sup> The majority opinion accordingly imposed a duplicative, two-track procedure for condominium claims in our State – holding that an arbitration clause is not enforceable with respect a claim for breach of the Condominium Act’s statutory warranty, but is enforceable with respect to claims for breach of the parallel contractual warranties and the State common law warranty of habitability.<sup>20</sup>

#### IV. ARGUMENT

The majority opinion below must be reversed for at least three reasons.

*First*, the majority opinion’s necessary premise is that the Interstate Commerce Clause of our federal Constitution (Article I, §8,

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<sup>18</sup> *Satomi*, 139 Wn.App. at 183 (quoting *Citizens Bank v. Alafabco*, 539 U.S. 52, 56-57 (2003)) (underline added, italics omitted).

<sup>19</sup> *Satomi*, 139 Wn.App. at 188.

<sup>20</sup> *Satomi*, 139 Wn.App. at 187.

cl. 3) does not allow Congress to regulate residential condominium contracts. That conclusion is wrong as a matter of Constitutional law.

*Second*, the majority's decision conflicts with this Court's decisions holding that the Federal Arbitration Act "clearly preempts any state law to the contrary."<sup>21</sup> This Court's precedents must be followed.

*Third*, even if Washington courts *could* ignore the federal law mandating enforcement of arbitration clauses, it makes no sense to do so here. The lower court's ruling robs buyers and sellers of the right to enter into enforceable arbitration agreements that ensure a single, speedy, and efficient dispute resolution process, and creates instead a duplicative, two-track process of court litigation for the statutory warranty claim and simultaneous binding arbitration for the corresponding contract warranty and common law claims. That inefficient, two-track scheme adds to the burdens of our already overburdened courts.

**A. The Majority Decision in *Satomi* Must Be Reversed Because It Conflicts With United States Supreme Court Precedent Establishing The Broad Reach Of The Interstate Commerce Clause (And Thus Of The Federal Arbitration Act As Well).**

The Federal Arbitration Act makes a written arbitration provision "in any...contract evidencing a transaction involving commerce...valid,

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<sup>21</sup> *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 343-44, 103 P.3d 773 (2004).

irrevocable, and enforceable.” 9 U.S.C. §2. That federal statute embodies a strong policy of substantive federal law in favor of enforcing arbitration agreements.<sup>22</sup>

The United States Supreme Court has repeatedly held that the Federal Arbitration Act’s “involving commerce” phrase triggers “the broadest permissible exercise of Congress’ Commerce Clause power,” and thus requires enforcement “within the full reach of the Commerce Clause.”<sup>23</sup> Given the great breadth of the federal Constitution’s Interstate Commerce Clause, the U.S. Supreme Court has repeatedly rejected the notion that the Federal Arbitration Act applies only when the transaction at issue was multi-State or only when that transaction by itself had a substantial effect on interstate commerce.<sup>24</sup>

For example, the claims in *Allied-Bruce* were between an Alabama bug exterminator and an Alabama homeowner. The governing Alabama State statute prohibited arbitration. The bug exterminator invoked the

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<sup>22</sup> *Southland Corp. v. Keating*, 465 U.S. 1, 16 & n.11 (1984); *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Intern. Ass’n. of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 51, 42 P.3d 1265 (2002)

<sup>23</sup> *Citizens Bank v. Alafabco*, 539 U.S. 52, 56 (2003) (quoting *Perry v. Thomas*, 482 U.S. 483, 490 (1987)).

<sup>24</sup> *Citizens Bank*, 539 U.S. at 56 (2003); *Allied-Bruce Terminix v. Dobson*, 513 U.S. 265, 273-74 (1995); see also U.S. Const., Art. I, §8, cl. 3 (the Interstate Commerce Clause).

Federal Arbitration Act to demand arbitration under its contract with the homeowner. But the State court refused to compel arbitration, stating “the connection between the termite contract and interstate commerce was too slight” for the Federal Arbitration Act to apply.<sup>25</sup>

The U.S. Supreme Court reversed. Reiterating that the Federal Arbitration Act extends to the full limit of the federal Interstate Commerce Clause, the *Allied-Bruce* Court noted that the bug exterminator had used materials from outside of the State, and held the Federal Arbitration Act applied to the homeowner’s termite contract because it “involved” interstate commerce.<sup>26</sup>

Similarly, the loan dispute in *Citizens Bank* was between an Alabama bank and an Alabama construction company.<sup>27</sup> The State court denied the bank’s arbitration demand because the loan contract was not part of an interstate transaction or inextricably intertwined with out-of-State projects.<sup>28</sup>

The U.S. Supreme Court reversed because the State court had used the wrong test.<sup>29</sup> The State court had asked whether the loan transaction

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<sup>25</sup> *Allied-Bruce Terminix*, 513 U.S. at 269.

<sup>26</sup> *Allied-Bruce Terminix*, 513 U.S. at 282.

<sup>27</sup> *Citizens Bank*, 539 U.S. at 53.

<sup>28</sup> *Citizens Bank*, 539 U.S. at 56.

<sup>29</sup> *Citizens Bank*, 539 U.S. at 56-57.

“taken alone” substantially affected interstate commerce.<sup>30</sup> The U.S. Supreme Court held that the proper test is instead whether, “in the aggregate, the economic activity in question would represent ‘a general practice...subject to federal control’” – and explained that a general practice is subject to federal control if it so much as “bear[s] on interstate commerce in a substantial way.”<sup>31</sup> The U.S. Supreme Court concluded in *Citizens Bank* that this intrastate loan dispute therefore fell within the Interstate Commerce Clause (and thus the Federal Arbitration Act), because (1) commercial lending, even on a purely local basis, affects interstate commerce in the aggregate; (2) the security for the loan included in-State goods that had come from out of State; and (3) the construction company did some out-of-State business.<sup>32</sup>

The cases cited in *Citizens Bank* confirm that giving the Federal Arbitration Act such broad application is squarely in line with established jurisprudence holding that “local” commercial activity is subject to federal regulation under the Interstate Commerce and Supremacy Clauses of our federal Constitution:

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<sup>30</sup> *Citizens Bank*, 539 U.S. at 56.

<sup>31</sup> *Citizens Bank*, 539 U.S. at 57 (quoting *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948)) (ellipsis in original, underline added).

<sup>32</sup> *Citizens Bank*, 539 U.S. at 57-58.

- *Katzenbach*: federal Civil Rights Act applies to a local neighborhood restaurant because discriminatory practices could affect the volume of raw materials it buys – some of which travel in interstate commerce.<sup>33</sup>
- *Mandeville Island Farms*: federal Sherman Act applies to price fixing in a local in-State beet market – because it could have aggregated effects on national beet prices.<sup>34</sup>
- *Wickard*: federal law can prevent local farmer from growing wheat for his own personal (in-State) consumption – because growing wheat at home could result in less wheat purchased from another State.<sup>35</sup>

*Citizens Bank*, 539 U.S. at 57-58 (citing above cases). The above Supreme Court cases confirm that there is no Constitutional basis for the *Satomi* majority's premise that condominium sales are a purely "local" activity hermetically sealed off from the Interstate Commerce Clause.<sup>36</sup>

This broad reach of the Interstate Commerce and Supremacy Clauses gives Congress the power to regulate the real estate industry and preempt contrary State laws. For example, this Court has held that "[i]t is clear state laws establishing stricter construction...standards are federally

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<sup>33</sup> *Katzenbach v. McClung*, 379 U.S. 294, 300 (1964).

<sup>34</sup> *Mandeville Island Farms*, 334 U.S. 219, 236 (1948).

<sup>35</sup> *Wickard v. Filburn*, 317 U.S. 111, 128-9 (1942).

<sup>36</sup> *Accord, Gonzales v. Raich*, 545 U.S. 1, 16, 22 (2005) (Congress may regulate seemingly local activity if there is merely a "rational basis" for believing there would be an aggregate effect on interstate commerce – the record need not establish to a certainty that the *de minimis* local economic activity would in the aggregate have a substantial effect on interstate commerce); *Usery v. Lacy*, 628 F.2d 1226, 1229 & n.2 (9<sup>th</sup> Cir. 1980) (local building owner who directs construction on his own building is subject to federal occupational safety regulations because local construction has an aggregate effect on our nation's interstate commerce, as well as because some materials used in the specific project at issue had traveled in interstate commerce). See also the *Blakely* Petitioner's Brief at 17-18 & 26-29 (Wash. Supreme Court No. 80584-9).

preempted” by the National Manufactured Housing Safety Standards Act (42 U.S.C. §5403).<sup>37</sup>

The federal courts similarly hold that “the commercial transaction of purchasing a home...fits well within the broad definition of economic activity” within Congress’s power to regulate under the Interstate Commerce Clause,<sup>38</sup> and that “a number of courts have also recognized that the sale of real estate is activity affecting interstate commerce.”<sup>39</sup>

Congress accordingly regulates many aspects of the real estate industry in our State, including financing, disclosures, and safety standards.<sup>40</sup> Indeed, Congress specifically regulates many rights of condominium owners and their associations against developers.<sup>41</sup> Congress has expressly acknowledged that the federal government heavily

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<sup>37</sup> *Washington Mfd. Housing Ass’n v. Pub. Util. Dist. No. 3 of Mason County*, 124 Wn.2d 381, 385, 878 P.2d 1213 (1994) (Congress can therefore preempt home construction standards).

<sup>38</sup> *Groome Resources Ltd., LLC v. Parish of Jefferson*, 234 F.3d 192, 205 (5th Cir. 2000) (Congress can regulate home purchases under the Interstate Commerce Clause).

<sup>39</sup> *Jones v. Gale*, 405 F.Supp.2d 1066, 1077-78 (D. Neb. 2005); see also *McLain v. Real Estate Bd. of New Orleans*, 444 U.S. 232, 246 (1980) (volume and price of residence sales impacts interstate commerce).

<sup>40</sup> E.g., *Real Estate Settlement Procedures Act*, 12 U.S.C. § 2601 et seq.; *Fair Housing Act*, 42 U.S.C. § 3601 et seq.

<sup>41</sup> *The Condominium and Cooperative Abuse Relief Act of 1980*, 15 U.S.C. §3601 et seq. See, e.g., 15 U.S.C. § 3607 (owners or association may terminate self-dealing management contract with developer); 15 U.S.C. § 3608 (certain auxiliary condominium facility leases are voidable).

regulates “the cooperative and condominium housing markets,”<sup>42</sup> and case law confirms that federal legislation regulating certain condominium lease terms is a valid exercise of Congress’s powers under the Interstate Commerce Clause because “[t]here is a rational basis for Congress’s finding that [certain lease terms] might interfere with the interstate sale of condominiums.”<sup>43</sup>

Consistent with the Interstate Commerce Clause’s broad reach over real estate, courts across our country hold that the Federal Arbitration Act applies to disputes arising from home construction and sales. For example, the California homeowner in *Shepard* sued his California developer for breach of implied warranties and related claims based on alleged construction defects.<sup>44</sup> Relying on a California State statute similar to the anti-arbitration provision in the Washington Condominium Act here, the California trial court denied the developer’s arbitration demand.<sup>45</sup> The appellate court reversed. It held that even though the parties were from the same State, did not use interstate advertising, and did not use contractors from another State, the use of building materials

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<sup>42</sup> 15 U.S.C. § 3601(a)(4).

<sup>43</sup> *Bay Colony Condo. Owners Ass’n v. Origer*, 586 F. Supp. 30, 33 (N.D. Ill. 1984).

<sup>44</sup> *Shepard v. Edward Mackay Ents., Inc.*, 148 Cal.App.4th 1092, 56 Cal.Rptr.3d 326 (2007).

<sup>45</sup> *Shepard*, 148 Cal.App.4th at 1095-96.

from out of State placed their transaction within the scope of the Interstate Commerce Clause – and thus the Federal Arbitration Act applied to preempt the State statute’s anti-arbitration provision.<sup>46</sup>

Other courts agree with this broad application of the Federal Arbitration Act to contracts relating to real estate.<sup>47</sup>

The United States Supreme Court has held that Congress enacted the Federal Arbitration Act to assure that when parties agree to arbitrate, “their expectations would not be undermined...by state courts *or legislatures*.”<sup>48</sup> This federal statute does more than simply “favor” arbitration. It “withdrew the power of the states to require a judicial forum” for disputes covered by a written arbitration agreement.<sup>49</sup> The

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<sup>46</sup> *Shepard*, 148 Cal.App.4th at 1100-01.

<sup>47</sup> E.g., *McKay Building v. Juliano*, 949 So.2d 882, 886 (Ala. 2006) (Federal Arbitration Act applies to home kitchen remodeling contract where the only interstate activity was that some materials used for that remodel were from out of State); *Wise v. Tidal Constr. Co.*, 583 S.E.2d 466, 469 (Ga. App. 2003) (Federal Arbitration Act applies to home construction warranty because most building materials pass in interstate commerce); *Elizabeth Homes, L.L.C. v. Gantt*, 882 So.2d 313, 316-17 (Ala. 2003) (Federal Arbitration Act applies to in-State home construction contract between State residents); *Lost Creek Mun. Util. Dist. v. Travis Indus. Painter, Inc.*, 827 S.W.2d 103, 105 (Tex. App. 1992) (Federal Arbitration Act applies to contract to paint reservoir because paint was manufactured out of State and surety was located out of State).

<sup>48</sup> *Southland Corp.*, 465 U.S. at 13 (ellipsis in original; emphasis added).

<sup>49</sup> *Southland Corp.*, 465 U.S. at 10. The U.S. Supreme Court has therefore recently confirmed that the Federal Arbitration Act even preempts a State statute that simply alters aspects of the arbitration

United States Supreme Court has therefore repeatedly held that the Federal Arbitration Act preempts any State statute that targets the enforcement of arbitration agreements.<sup>50</sup> And the U.S. Supreme Court has reaffirmed that holding, bluntly and without qualification: “state courts cannot apply state statutes that invalidate arbitration agreements.”<sup>51</sup>

This Court must reverse the majority opinion in *Satomi* because it conflicts with U.S. Supreme Court precedents establishing the broad scope of the Interstate Commerce Clause and preemptive effect of the Federal Arbitration Act Congress enacted under that clause. The majority opinion in *Satomi* is simply wrong as a matter of federal Constitutional law.

**B. The Majority Decision in *Satomi* Must Be Reversed Because This Court’s Decisions Agree That The Federal Arbitration Act Preempts State Laws Such As The One Here.**

This Court has held that the Federal Arbitration Act embodies “a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary,” and has held that the Federal Arbitration Act “clearly preempts” any contrary State laws.<sup>52</sup>

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*procedure provided for in a contract’s arbitration agreement. Preston v. Ferrer, 128 S.Ct. 978, 988-89 (2008).*

<sup>50</sup> *Perry*, 482 U.S. at 486, 491 (Federal Arbitration Act preempts State law that allows employees to bring action regardless of any arbitration agreement); *Southland Corp.*, 465 U.S. at 15-16.

<sup>51</sup> *Allied-Bruce*, 513 U.S. at 273.

<sup>52</sup> *Adler*, 153 Wn.2d at 341, 343-44.

This Court has therefore held that the Federal Arbitration Act preempts the judicial forum provisions in Washington statutes relating to employment discrimination claims,<sup>53</sup> consumer protection and securities claims,<sup>54</sup> and franchise agreement claims.<sup>55</sup>

Like those other Washington statutes, the judicial forum provision in the Washington statute here purports to exempt a class of claims from binding arbitration agreements.<sup>56</sup> That sort of “state legislative attempt[] to undercut the enforceability of arbitration agreements” is precisely what the Federal Arbitration Act was enacted to prevent.<sup>57</sup> Congress enacted that Act to overcome “the old common law hostility toward arbitration, and the failure of state arbitration statutes to mandate enforcement of arbitration agreements.”<sup>58</sup> The Washington statute’s anti-arbitration provision (and the *Satomi* majority’s enforcement of it) perpetuate that

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<sup>53</sup> *Adler*, 153 Wn.2d at 344.

<sup>54</sup> *Garmo v. Dean, Witter, Reynolds*, 101 Wn.2d 585, 590 & n.2, 681 P.2d 253 (1984).

<sup>55</sup> *Allison v. Medicab Intern.*, 92 Wn.2d 199, 203-04, 597 P.2d 380 (1979).

<sup>56</sup> When this case was filed, RCW 64.34.100(2) made condominium warranties enforceable solely by judicial proceeding. That statute was subsequently amended to allow the option of a preliminary non-binding arbitration before proceeding *de novo* to a guaranteed judicial forum – but the statute (and the Court of Appeals’ majority opinion in *Satomi*) still prohibit parties from enforcing arbitration clauses that require binding arbitration without that *de novo* judicial forum. RCW 64.34.100(2).

<sup>57</sup> *Southland Corp.*, 465 U.S. at 16.

<sup>58</sup> *Southland Corp.*, 465 U.S. at 14.

outlawed anti-arbitration hostility. This Court must reverse the majority decision in *Satomi* because it contradicts this Court's precedents upholding and enforcing the broad reach of the Federal Arbitration Act in preempting Washington statutes that limit arbitration agreements.

**C. The Majority Decision in *Satomi* Must Be Reversed Because, Even If This Court *Could* Ignore Federal Law Mandating The Enforcement Of Arbitration Clauses, It Makes No Sense To Do So Here.**

Binding arbitration has many advantages over court litigation – for its final resolution is quicker and cheaper, its procedures are simpler and more flexible, and it is less disruptive of ongoing relationships.<sup>59</sup> It therefore is not surprising that nearly all sales contracts entered into by Washington condominium buyers and sellers include arbitration agreements similar to the one here. *Supra*, Part III.B of this Supplemental Brief.

The reliable enforcement of such arbitration agreements is even more important because of the significant role that the construction and sale of condominiums plays in our Nation's economy, as well as in the economy of our State. *Supra*, Part III.A of this Supplemental Brief.

The *Satomi* majority opinion, however, prohibits the unified and efficient arbitration of condominium buyers claims – imposing instead an

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<sup>59</sup> *Allied-Bruce, 513 U.S. at 280.*

inconsistent and duplicative two-track procedure of court litigation for Condominium Act warranty claims coupled with simultaneous binding arbitration of the parallel contractual warranty claims and overlapping common law warranty of habitability claims. That defeats the fundamental purpose of binding arbitration agreements in the first place.

This Court should reverse the majority decision in *Satomi* because, even if this Court *could* ignore federal law mandating the enforcement of arbitration clauses, it makes no sense to ignore that federal mandate here.

## V. CONCLUSION

The residential construction and sales industry is a key component of our Nation's economy, with condominium construction and sales playing a major role. Virtually all condominium sales contracts in our State include a binding arbitration clause. And the Federal Arbitration Act requires those clauses to be enforced.

The *Satomi* majority nonetheless held that the Washington State Condominium Act renders those arbitration clauses unenforceable with respect to a State statutory warranty claim.

This Court must reverse that decision for at least three reasons.

*First*, the *Satomi* majority's decision is Constitutionally incorrect. The federal Constitution's Interstate Commerce and Supremacy Clauses

mandate that the Federal Arbitration Act preempts the Washington State statute here.

*Second*, the *Satomi* majority's decision conflicts with this Court's precedents holding that the Federal Arbitration Act preempts the anti-arbitration provisions in Washington State statutes.

And *third*, even if this Court *could* ignore federal law mandating the enforcement of arbitration clauses, it makes no sense to do that here.

The Petitioner accordingly requests that this Court reverse the decision below with respect to the Federal Arbitration Act, and that this Court hold instead that the Federal Arbitration Act preempts the Washington Condominium Act's anti-arbitration provision.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of May, 2008.

DLA Piper US LLP

 Jon Ahearn #14844 AL

Stellman Keehnel, WSBA#9309  
Kit Roth, WSBA#33059  
Attorneys for Petitioner

**FILED AS ATTACHMENT  
TO E-MAIL**

**DECLARATION OF SERVICE**

I, Dorothy Oklatir, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on May 2, 2008, a true and correct copy of the **SUPPLEMENTAL BRIEF OF PETITIONER SATOMI, LLC** with this **DECLARATION OF SERVICE** was served upon:

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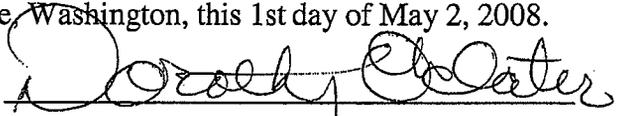
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I hereby certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington, this 1st day of May 2, 2008.

  
Dorothy Oklatir