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No. 59821-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

THE PIER AT LESCHI CONDOMINIUM ASSOCIATION, LLC,

Respondent/Plaintiff,

v.

LESCHI CORP.,

Appellant/Defendant.

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BRIEF OF [PROPOSED] *AMICUS* BLAKELEY VILLAGE, LLC IN SUPPORT OF APPELLANT

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I. INTRODUCTION AND *AMICUS* IDENTITY AND INTEREST

Blakeley Village, LLC is the developer of Blakeley Commons, a condominium project in Seattle, Washington. Blakeley Village is currently defending an action brought by the Blakeley Commons Homeowners Association, for breach of warranty of construction and materials. That case is now on appeal, and Blakeley Village's petition for direct review by the Washington Supreme Court is pending, Supreme Court No. 80584-9. The issue on appeal is the same as in this *Leschi Corp.* appeal: whether the Federal Arbitration Act, 9 U.S.C. § 2, ("FAA") preempts the Washington Condominium Act, RCW 64.34, ("WCA") and requires courts to enforce written agreements to arbitrate warranty claims in condominium purchase and sale agreements, at least where the transaction has a nexus with interstate commerce that goes beyond, than the use of construction materials from out-of-State. Because these cases are so similar and this appeal will be heard first, Blakeley Village has a great interest in the outcome of this appeal.

More such cases are likely to follow these two if this Court does not repudiate or limit its opinion in *Satomi Owners Ass'n v. Satomi LLC,* 139 Wn. App. 175, 156 P.3d 460 (2007). In *Satomi*, a 2-1 majority of this Court held that where the only nexus with interstate commerce was that out-of-State materials were used to build the condominiums, the

Commerce Clause did not reach and the FAA did not apply. The trial courts in both the *Leschi* case and the *Blakeley* case erred in reaching the same conclusion even though there was a much stronger connection between the agreements to arbitrate and interstate commerce than in *Satomi*.

II. STATEMENT OF THE CASE

Blakeley Commons adopts the statement of the case in the brief of appellant Leschi Corp. and adds that there is one further interstate commerce aspect of the Leschi purchases not expressly noted therein:

Under Washington statute, the individual unit owners collectively own the common areas and common structural elements of the buildings.[1] As set forth in Leschi Corp.'s opening brief, the Moores, who lived in Virginia, purchased two units for investment purposes and did not move into Washington. These out-of-State residents thereby became co-owners of the common elements with the unit owners who were Washington residents.

III. ARGUMENT

A. Standard of Review

Appeal of a trial court order denying arbitration is as of right.[2]

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[1] RCW 64.34.224(1).

[2] *Stein v. Geonerco, Inc.*, 105 Wn. App. 41, 44, 17 P.3d 1266 (2001).

Review is *de novo*.[3] The trial court's determination of whether a statute is preempted by federal law is also reviewed *de novo*.[4]

B. The Federal Arbitration Act Applies To All Contracts, Such As The Leschi Agreements, That In The Aggregate Represent Economic Practices Rationally Subject To Federal Control.

The FAA provides that a "written provision in any...contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction...shall be valid, irrevocable, and enforceable."[5] The FAA embodies a strong policy of substantive federal law in favor of arbitration: "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration," whether the issues concern the text of the contract or state contract law.[6] As used in the FAA, the phrase, "involving commerce," is a term of art that "signal[s] the broadest possible exercise of Congress' Commerce Clause power."[7] Therefore, the FAA requires that arbitration agreements be enforced "within the full reach of the Commerce Clause."[8]

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[3] *Satomi*, 139 Wn. App. at 178.

[4] *Robertson v. State Liquor Control Bd.*, 102 Wn. App. 848, 853, 10 P.3d 1079 (2000).

[5] 9 U.S.C. § 2.

[6] *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24; *Intern. Ass'n. of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 51, 42 P.3d 1265 (2002).

[7] *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003).

[8] *Id.* (quoting *Perry v. Thomas*, 482 U.S. 483, 490 (1987)).

Thus, in *Citizens Bank v. Alafabco, Inc.*, the United States Supreme Court held that the FAA applied to a contract with a much slighter interstate-commerce nexus than the Leschi contracts. There, a local bank sought to compel arbitration under its debt-restructuring contract with a construction company in the same State.[9] The Alabama Supreme Court denied arbitration, but the United States Supreme Court reversed because the State court had used the wrong test.[10] The State court had wrongly asked whether "the individual...transactions, taken alone," substantially affect interstate commerce.[11] Instead, as in any other issue regarding the scope of the Commerce Clause, the proper test is whether "in the aggregate, the economic activity in question would represent 'a general practice...subject to federal control.'"[12] A general practice is subject to federal control if it merely "bear[s] on interstate commerce in a substantial way."[13]

Using the proper test, the Federal Arbitration Act applied because of three facts: First, even though this particular transaction was intrastate, it was closely related to transactions that were not, in that the original

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[9] 539 U.S. at 54.

[10] *Id.* at 56-57.

[11] *Id.* at 56.

[12] *Id.* at 57 (quoting *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948)) (ellipsis in original).

[13] *Id.*

loans had been used for out-of-State projects.[14] Second, the debt was secured in part by construction materials that originated out of State.[15] Third, in the aggregate, commercial lending was self-evidently a national business.[16] Notably, the Court did not require the party seeking arbitration to prove that commercial lending was part of interstate commerce.

Here, similarly, the Leschi contracts and transactions depended on and were interconnected with out-of-State financing transactions and easements. Part of the subject property secured out-of-State loans and was owned collectively by residents of different States. And in the aggregate, home construction and sales is a national business.

The facts of another recent United States Supreme Court decision on this issue are also instructive. In *Allied-Bruce Terminix Cos., Inc. v. Dobson*, homeowners brought an action against their local exterminator franchise for breach of a termite-extermination contract.[17] Although it is difficult to imagine a more quintessentially 'local' contract than a bug-killing service plan for a single household, the United States Supreme Court held that neither the parties' intention nor any reasonable expectations they could have had were relevant – only the contract's

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[14] *Id.*

[15] *Id.*

[16] *Id.* at 58.

[17] *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 268 (1995).

actual, undisputed, interstate nexus was what mattered.[18] Significantly, that nexus consisted of two facts: (1) the contract's guarantor was an out-of-State entity, and (2) the pesticides and construction materials the defendant had used to kill bugs and repair the house were manufactured outside the State (even though they were used inside the State).[19]

Similarly here, the unit purchases included a right to use Leschi's dock, the lease for which was guaranteed by an out-of-State entity; and the contract specifies the use of brand-name fixtures and materials, that are manufactured out-of-State.

C. Real Estate Sales And Construction Involve Commerce As Required By The Federal Arbitration Act.

1. Residential Real Estate Construction And Sale Is Activity Within Congress's Regulatory Powers Under the Commerce Clause.

Leschi Corp. brought forth ample proof of the interstate nexus between the contracts here and interstate commerce. But based on the holding of *Citizens Bank*, such specific proof was not even necessary because the contracts were part of an economic activity that, in the aggregate, represents a general practice subject to federal control – namely, residential real estate sales.

Courts, including our own Supreme Court, have recognized that

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[18] *Id.* at 281

[19] *Id.*

Congress may regulate the real estate industry and preempt contrary State law. In *Washington Mfd. Housing Ass'n v. Pub. Util. Dist. No. 3 of Mason County*, 124 Wn.2d 381, 385, 878 P.2d 1213 (1994), the Court reasoned that "[i]t is clear state laws establishing stricter construction...standards are federally preempted" by the National Manufactured Housing Safety Standards Act (42 U.S.C. § 5403). The United States Supreme Court similarly reversed the dismissal of an antitrust action against local real estate brokers because "whatever stimulates or retards the volume of residential sales, or has an impact on the purchase price, affects the demand for financing and title insurance" – which are activities in interstate commerce. *McLain v. Real Estate Bd. of New Orleans*, 444 U.S. 232, 246 (1980).

Even more specifically, a Federal Court of Appeals has held that "the commercial transaction of purchasing a home...fits well within the broad definition of economic activity," and allows Congress to regulate under the Commerce Clause. *Groome Resources Ltd., LLC v. Parish of Jefferson*, 234 F.3d 192, 205 (5th Cir. 2000) (rejecting challenge to Fair Housing Amendment Act); *see also Jones v. Gale*, 405 F. Supp. 2d 1066, 1077-78 (D. Neb. 2005) ("a number of courts have also recognized that the sale of real estate is activity affecting interstate commerce"). As these cases demonstrate, Congress has freely and constitutionally regulated

many aspects of the real estate industry, including but not limited to financing, disclosures, and safety standards.[20]

Indeed, Congress has specifically regulated the rights of condominium owners and their associations against developers, in the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. § 3601 *et seq.*[21] Congress expressly found in that statute that the federal government regulates "the cooperative and condominium housing markets" through various laws, and that "the creation of many condominiums and cooperatives is undertaken by entities operating on an interstate basis." 15 U.S.C. § 3601(a)(4). The only court to address the constitutionality of that Act has accordingly agreed that it is a valid exercise of Congress's Commerce Clause powers because "[t]here is a rational basis for Congress's finding that [certain lease terms] might interfere with the interstate sale of condominiums" – and are therefore within interstate commerce. *Bay Colony Condo. Owners Ass'n v. Origer*, 586 F. Supp. 30, 33 (N.D. Ill. 1984).

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[20] *See also, e.g.*, Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*; Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; both of which directly affected the Leschi transactions.

[21] *See* 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).

2. General Commerce Clause Precedent Determines The Scope Of The Federal Arbitration Act.

There is no relevant distinction between the scope of Congress's power to regulate real estate transactions in general and its power to regulate real estate transactions by requiring enforcement of arbitration agreements. Indeed, *Citizens Bank* discussed three seminal Commerce Clause cases to explain what kind of general practice is subject to federal control for FAA purposes.[22] The first, *Katzenbach v. McClung*, held that the Civil Rights Act applies to a neighborhood barbecue restaurant because discriminatory practices could affect the volume of raw materials it buys – some of which travels in interstate commerce.[23] The second, *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, similarly held that the Sherman Act applies to in-state price-fixing of beets – based on the aggregated effects on national beet prices.[24] Lastly, *Wickard v. Filburn* upheld a federal law that restrained a farmer from growing wheat for his own personal consumption – because growing wheat at home could mean less purchase of wheat from another State.[25] As these cases show, purely intrastate economic activity is generally within the scope of the

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[22] 529 U.S. at 57-58.

[23] *Katzenbach v. McClung*, 379 U.S. 294, 300 (1964).

[24] *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948).

[25] *Wickard v. Filburn*, 317 U.S. 111, 128-29 (1942).

Commerce Clause, and thus of the FAA.[26]

Moreover, when the Supreme Court recently reaffirmed the sweeping scope and language of *Wickard*, in *Gonzales v. Raich*, it also confirmed that the record need not establish to a certainty that some local, *de minimis* economic activity would have in the aggregate a substantial effect on interstate commerce.[27] The Court held that Congress may regulate the seemingly "local" activity if there is merely a "rational basis" for believing there would be an aggregate effect on interstate commerce.[28] This extremely low interstate commerce threshold is met in this case.

The widespread agreement that Congress may regulate residential real estate transactions follows naturally from the interstate commerce principles set forth in *Wickard*, *Katzenbach*, *Mandeville Island Farms*, and *Raich*. Congress and the courts have recognized that the national real estate market does not consist of hermetically sealed separate State markets. As the record here confirms, condominium unit purchasers, insurers, contractors, and mortgage lenders come from other States and even other nations. Like the local beet sales in *Mandeville Island Farms*, the local restaurant meals in *Katzenbach*, or the home-grown crops for home consumption in *Wickard* and *Raich*, real estate transactions that

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[26] *Citizens Bank*, 539 U.S. at 58.

[27] *Gonzales v. Raich*, 545 U.S. 1, 16, 22, 125 (2005).

[28] *Id.* at 22.

superficially seem "local" have, in the aggregate, a substantial impact upon the national real estate, construction, development, insurance, and financing markets, and the movement of purchasers, goods, and funds across State borders.

D. The Federal Arbitration Act Applies To The Leschi Purchase and Sale Agreements And Warranty Addendums.

Applying these well established, black letter principles of Commerce Clause jurisprudence, the Leschi contracts are well within the scope of Congress's Commerce Clause power (and therefore of the Federal Arbitration Act), for at least three reasons.

First, because the transactions themselves occurred between citizens of different States. *See Old Coach Development Corp., Inc. v. Tanzman*, 887 F.2d 1227, 1232 (3rd Cir. 1989) (interstate sale of land is activity protected by the Commerce Clause); *Jones*, 405 F. Supp. 2d at 1078 (D. Neb. 2005) (same). Several units were bought by out-of-State residents, at least one of whom planned to remain out of State and rent to a State resident. Because the common elements expressly covered by the warranties are owned by <u>all</u> of the unit owners as "undivided interests" under Washington statute,[29] the out-of-State and in-State purchasers entered into a joint ownership relationship. As in *Allied-Bruce*, a

[29] RCW 64.34.224(1).

transaction between citizens of different States by definition involves interstate commerce.

Second, these contracts involve interstate commerce because nine buyers used out-of-State mortgage lenders, who secured their loans with a considerable fraction of the Leschi project – including those collectively-held common areas and elements.[30] In *Citizens Bank*, the underlying loans were secured by materials that merely originated out-of-State; here, the securitization itself crosses State lines. Just so, the South Carolina Supreme Court held that the FAA applies to a home-equity loan between homeowners and a builder, residents of South Carolina, because the builder assigned the loan to a Delaware bank.[31] The Leschi purchase and sale contracts are also intertwined with other interstate contracts, including easements to out-of-State cable and broadband providers and the lease of the appurtenant docks, the performance bond for which is held out-of-State.[32]

Third, the Federal Arbitration Act applies here because the contracts warranty the condominium's construction materials at issue in this case – and most of those materials moved in interstate commerce. As

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[30] *See* RCW 64.34.224(5) (common elements not subject to encumbrance except as part of encumbrance of unit).

[31] *Munoz v. Green Tree Fin. Corp.*, 542 S.E.2d 360, 364 (S.C. 2001).

[32] *See Allied-Bruce*, 513 U.S. at 281 (out-of-State guarantor provides requisite interstate nexus).

in *Allied-Bruce*, the use of out-of-State construction materials "involves" interstate commerce.[33] Several jurisdictions have held that the Federal Arbitration Act applies to a home construction, warranty, or sales contract because some construction materials traveled across State lines. In addition to *Shepard v. Edward Mackay Ents., Inc.*, 148 Cal.App.4th 1092, 1100-1101, 56 Cal.Rptr.3d 326 (2007), discussed in Leschi Corp.'s initial brief at 34-36, the Alabama Supreme Court held that the Federal Arbitration Act applied to a home remodeling contract because some materials used were from out of State, and the Georgia Court of Appeals held that the FAA applied to a home construction warranty: "[h]ome construction generally involves interstate commerce, because most building materials pass in interstate commerce."[34]

E. Because The Federal Arbitration Act Applies, It Preempts The Washington Condominium Act As To The Leschi Contracts.

As the United States Supreme Court has held, the purpose of the FAA was to assure that when parties agree to arbitrate, "their expectations would not be undermined...by state courts *or legislatures*."[35]

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[33] *See also Katzenbach*, 379 U.S. at 300 (use of raw materials from out of State makes restaurant's treatment of its in-State customers a matter for Commerce Clause regulation).

[34] *McKay Building v. Juliano*, 949 So.2d 882, 886 (Ala. 2006); *Wise v. Tidal Constr. Co.*, 583 S.E.2d 466, 473 (Ga. App. 2003).

[35] *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984) (emphasis added) (quoting *Metro Industrial Painting Corp. v. Terminal Construction Corp.*,

The FAA does more than favor arbitration – it "withdrew the power of the states to require a judicial forum" for disputes covered by a written arbitration agreement.[36] The Supreme Court of the United States has repeatedly held that the FAA preempts any State statute that targets the enforcement of arbitration agreements.[37] The Court set forth the rule bluntly and without qualification: "state courts cannot apply state statutes that invalidate arbitration agreements."[38]

The condominium Association here relies on the WCA's provisions that "[a]ny right or obligation declared by this chapter is enforceable by judicial proceeding" and "provisions of this chapter may not be varied by agreement, and rights created by this chapter may not be waived."[39] The United States Supreme Court has held, however, that the FAA preempts a State statute with parallel language – namely, the provision in Cal. Corp. Code § 31512 that any agreement "purporting to

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287 F.2d 382, 387 (2nd Cir. 1961) (Lumbard, Chief Judge, concurring)) (ellipsis in original).

[36] *Id.* at 10.

[37] *Perry*, 482 U.S. at 491 (1987); *Southland Corp.*, 465 U.S. at 15-16.

[38] *Allied-Bruce*, 513 U.S. at 273.

[39] RCW 64.34.100(2), 64.34.030; *and see Marina Cove Condominium Owners Ass'n v. Isabella Estates*, 109 Wn. App. 230, 236-37, 34 P.3d 870 (2001) (right to judicial enforcement of WCA warranty claims is not waivable). Since this case began, the WCA has been amended to permit arbitration, but as review of the arbitrator's decision is *de novo*, the WCA still effectively nullifies an agreement to submit disputes to *binding* arbitration. *See* RCW 64.34.100(2) (2005); RCW 64.55.100(4) (2005).

bind any person ... to waive compliance with any provision of this law or any rule or order hereunder is void."[40] Again, in *Perry v. Thomas*, the Court held that the FAA preempted a State law that allowed employees to bring an action regardless of any arbitration agreement.[41] Under these clear precedents, the Federal Arbitration Act preempts the WCA as well.

F. The *Satomi* Decision Should Not Control This Case.

1. *Satomi* Does Not Control Because The Interstate Nexus In This Case Is Much Greater Than That In *Satomi.*

Whether *Satomi* was rightly decided or not, this case should have a different result because *Satomi* was expressly confined to a record that showed a much less strong nexus with interstate commerce than seen here.

The *Satomi* majority expressly limited its holding to the record before it. The very first sentence of the opinion defines the issue as whether the FAA preempts the WCA "*solely* because some construction materials came from outside Washington state."[42] The holding is given as "[w]e hold that *under the circumstances here*, the commerce clause does not reach so far, and the state statute controls."[43]

The *Satomi* majority based its reasoning on the sparseness of the record. Unlike Leschi Corp., the *Satomi* developer "relie[d] upon a single

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[40] *Southland Corp.*, 465 U.S. at 6, 16.

[41] *Perry*, 482 U.S. at 486, 491.

[42] *Satomi*, 139 Wn. App. at 178.

[43] *Id.* (emphasis added)

fact: that construction materials came from outside Washington state."[44] The majority distinguished *Basura v. U.S. Home Corp.*, 98 Cal.App.4th 1205, 120 Cal.Rptr.2d 328 (2002), yet another case holding that the FAA applies to a contract between homeowners and developer, on the ground that the use of interstate materials was not "the *only* interstate aspect of the case."[45] The *Satomi* majority emphasized that, unlike other contracts to which the Federal Arbitration Act applied (and unlike the Leschi contracts), the *Satomi* contracts all "involved a Washington company and Washington residents."[46] It refused to hold that "the use of materials from other states is, *by itself*," enough to trigger FAA protection.[47]

Satomi is at best a case in which the defendant simply failed to bring forward quite enough proof of the obvious to pass a very low interstate commerce threshold. The much fuller record in this *Leschi* case merits a different holding – for this case involves contracts by which Washington State residents became co-owners of property with out-of-State parties, contracts that were inextricably linked to interstate transactions, including securitization of that same property to out-of-State lenders, contracts that included warranties for materials which mostly

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[44] *Id.* at 188.

[45] *Id.* at 189 (emphasis added).

[46] *Id.* at 188.

[47] *Id.* (emphasis added).

traveled in interstate commerce, and contracts that reflect a general practice that is subject to regulation under Congress's Commerce Clause Power. On this record, the Federal Arbitration Act preempts the WCA judicial enforcement and anti-waiver provisions.

2. *Satomi* Was Wrongly Decided Because The Federal Arbitration Act Applies To Real Estate Transactions.

Satomi was in error because, at the very least, there is a rational basis for finding that condominium sales are, in the aggregate, "a general practice...subject to federal control," so that the Federal Arbitration Act applies. *Citizens Bank*, 539 U.S. at 57; *and see Washington Mfd. Housing Ass'n*, 124 Wn.2d at 385 (Congress can preempt home construction standards); *McLain*, 444 U.S. at 246 (volume and price of residence sales has impact on interstate commerce); *Groome Resources*, 234 F.3d at 205 (Congress may regulate home purchases under the Commerce Clause); *Bay Colony Condo Owners Ass'n*, 586 F. Supp. at 33 (Condominium and Cooperative Abuse Relief Act is within Congress's Commerce Clause Power because of interstate purchases, financing, and development of condominium units). The *Satomi* majority should not have asked whether these particular transactions were interstate, but rather whether Congress had the power to regulate condominium sales contracts in general. The very existence of the national condominium development and sales market

shows that the *Satomi* majority's holding was error.

As Congress found in enacting the Condominium and Cooperative Abuse Relief Act, "the creation of many condominiums and cooperatives is undertaken by entities operating on an interstate basis." 15 U.S.C. §3601(a)(4).[48] It does not matter whether Leschi Corp. itself is an out-of-State entity, because Congress's Commerce Clause power "may be exercised in individual cases" through the Federal Arbitration Act "without showing any specific effect upon interstate commerce" of that particular case by itself. *Citizens Bank*, 539 U.S. at 56-57. As the United States Supreme Court recently reaffirmed, Congress need not legislate "with scientific exactitude," and "[t]hat the regulation ensnares some purely intrastate activity is of no moment."[49] The *Satomi* majority implicitly overruled Congress's finding that condominium development, as a general practice, has sufficient interstate impact to be subject to Commerce Clause regulation, even though a Congressional finding must be upheld so long as it has a mere "rational basis." *Raich*, 549 U.S. at 22.

The *Satomi* majority erred in other ways as well. It was simply incorrect, for example, when it stated that no other court had held that the use of construction materials from other States triggers the protections of

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[48] *See Raich*, 545 U.S. at 21 (Congressional findings in public record are appropriate proof of interstate ramifications of local commerce)

[49] *Raich*, 545 U.S. at 17, 22.

the Federal Arbitration Act.[50] It asserted that the transactions before it "ha[d] none of the earmarks" of economic activity subject in the aggregate to federal control,[51] but failed even to hint at what those "earmarks" might be, as would have been appropriate given the unbroken seven-decade history in the United States Supreme Court of upholding Congressional regulation under the Commerce Clause of virtually any and all economic activity.[52] Although *Citizens Bank* considered both the immediate transaction and the transactions that led up to it, the *Satomi* decision myopically characterized the transactions at issue as simply being "the giving of the warranty" rather than the sale of the condominium apartments and common elements, the development of the condominium project, or the intertwined financing and sale of real estate.[53]

In short, the 2-judge majority decision in *Satomi* was incorrectly reasoned and produced the type of result that other courts have held led Congress to enact the Federal Arbitration Act in the first place, in order to guard against "judicial hostility" toward arbitration. *Kamaya Co., Ltd. v. American Property Consultants, Ltd.*, 91 Wn. App. 703, 709, 959 P.2d

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[50] *See Shepard*, 148 Cal. App. 4th at 1100-01; *McKay Building*, 949 So.2d at 886; *Wise*, 583 S.E.2d at 469.

[51] *Satomi*, 139 Wn. App. at 188.

[52] *See Raich*, 549 U.S. at 35 (Scalia, J. concurring).

[53] *Compare Citizens Bank*, 539 U.S. at 57, *with Satomi*, 139 Wn. App. at 189.

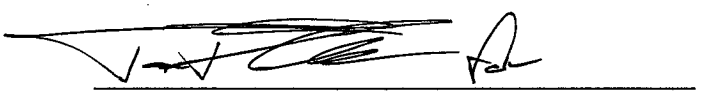
1140 (1998) (quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991)). It should not continue to guide this State's courts.

IV. CONCLUSION

Because the record shows that the transactions evidenced by the contracts here constitute economic activity that, in the aggregate, would represent a general practice subject to federal control under the Commerce Clause, *Amicus* respectfully joins in Leschi Corp.'s request that this Court reverse the Superior Court's order denying arbitration of this dispute.

RESPECTFULLY SUBMITTED this 10th day of December, 2007.

DLA Piper



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