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Supreme Court No: ~~80584-9~~

SUPREME COURT OF THE STATE OF WASHINGTON

BLAKELEY COMMONS CONDOMINIUM ASSOCIATION, LLC

Respondent,

v.

BLAKELEY COMMONS LLC

Petitioner

REPLY BRIEF TO BLAKELEY VILLAGE, LLC'S OPPOSITION TO
RESPONDENT'S MOTION TO SUPPLEMENT RECORD

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The Appellants briefing does not, nor could it, attack the veracity of the Declarations submitted by the Association. Instead, in a desperate attempt to keep the truth from the Court, the Appellants fill the record with multiple false and misleading facts and statements. The Court should reject the Appellant's last ditch effort to hide the truth from this Court and grant the Association's Motion to Supplement the Record.

A. The Association is not making any new arguments

The Appellants statement the "The Association Motion to Supplement the record is a belated attempt to.... make new arguments..." is patently false. The Association's reply brief clearly states,

3. *The Petitioner did not demonstrate that all original purchasers agreed to arbitration.*

The Petitioner has not, by its own admission, presented evidence that every original purchaser agreed to arbitration. In fact, Petitioner admits that at least three arbitration agreements "cannot be found." (CP 13-14). Under no circumstance should an arbitration agreement be presumed when it cannot be produced.

It is unbelievable how the Appellants can even try and argue that the Association did not previously raise the issue of unsigned Warranty Addendums in their briefing considering it was a subject

The Association was organized in 1954 and has since that time been engaged in a continuous effort to improve the quality of education in the State of California. It has done this by sponsoring various educational programs, including the development of the State Curriculum Framework, the State Assessment Program, and the State Board of Education. The Association has also been instrumental in the passage of various educational laws and regulations, and in the establishment of various educational institutions. The Association's primary concern is the improvement of the quality of education for all students in the State of California.

A. The Association is not a party to the lawsuit. The Association's interest in the lawsuit is purely as a matter of public policy. The Association is not a party to the lawsuit because it is not a party to the contract that is the subject of the lawsuit. The Association is not a party to the contract because it is not a party to the contract that is the subject of the lawsuit.

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heading in the Respondent's Reply Brief.

B. The Association meets the criteria enumerated in RAP 9.11

The Respondents entire argument is as unstable as a house of cards as it is based on the false premise that each and every owner signed the Warranty Addendum. Without considering the Declarations, the Court will issue a ruling based upon an incomplete and false record. Certainly this Court should consider all pertinent evidence before it prior to making its decision.

1. The fact not every homeowner signed the Warranty Addendum is absolutely necessary to fairly resolve this matter.

Without the fact six owners did not sign the Warranty Addendum the Appellants will continue to perpetuate the misleading assertion that every homeowner signed a Warranty Addendum and is, therefore, bound to arbitration. In other words, if the Declarations are not considered, the Court will issue a ruling based on the false premise that the Association is bound to the arbitration agreements because every member signed a Warranty Addendum. Clearly, the Court does not want to base its decisions

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on an inaccurate record, which makes it all the more imperative that the Court grant the Associations Motion to Supplement the Record.

To make matters worse, once again, the Appellant attempts to mislead the Court by stating, "Only the residential units at the project are at issue in the lawsuit." This is a totally untrue. The Washington Condominium Act ("WCA") provides protections for the owners of commercial and residential units at the Project, and the Association is seeking to recover damages for every unit owner.

2. The additional evidence will change the outcome of this matter

The Court did not previously rule that each owner signed a Warranty Addendum. In fact, the Appellant in this matter never requested the Court determine as a matter of law each and every owner signed a Warranty Addendum. Without asking the Court for such relief, it is unbelievable that the Appellant would attempt to read such an unfounded ruling into the Order. The Order speaks for itself. The Association respectfully requests that the Court read and determine how incongruous this argument by Appellant is with the existing order from the Court of Appeals.

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3. It is equitable to excuse the Association's failure to present the evidence at the trial Court.

As the Court is aware, the Blakeley Commons Condominium Association is a non-profit corporation created for the benefit of each and every individual owner at the Project. Although the Association is responsible for maintaining, repairing and replacing the limited common elements and common elements it did not itself purchase any of the units. Ownership of the units is vested in the individual unit owners who purchased their units from the developer and/or declarant. The Association was not a party to the transaction and therefore did not possess the Purchase and Sale Agreements when the appellants moved to compel arbitration.

In addition, the Association is pursuing claims under the WCA and, therefore, the Purchase and Sale Agreements were irrelevant for the most part. The Association was forced to rely on the truthfulness of Ms. Soldano due the stay of proceedings in the trial court. Without deposing Ms. Soldano the Association had no reason to believe the Appellant was deceiving it and the Court.

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4. It would be unfair to the parties and this Court, and justice would not be served, if the evidence is excluded.

This Motion was mandated by the Appellant's conduct in submitting a brief that mischaracterizes the record and facts of this matter. The Declaration attached to the brief does nothing more than the same. As mentioned previously, the Association did not produce the Purchase and Sale Agreements at the trial court level because it was relying on the veracity and character of the Appellants witness. It would be unfair to punish the Association for a situation created entirely by Appellants inaccurate representation of the facts of this case.

C. The Court should not allow any further briefing by the Appellant.

As discussed above, the Association did not proffer any additional arguments in its briefing. It is only seeking to correct the false record created by the Appellant. The Court should not reward the Appellants behavior by granting them a chance to correct the fatal factual flaw in their arguments.

Respectfully submitted this 10th day of September, 2008.

/s/

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/s/

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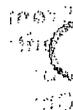
Please find attached the Respondents reply brief.

Sincerely,

TODD K. SKOGLUND | PARTNER

CASEY & SKOGLUND, PLLC

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