

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2012 JAN 11 P 12:31

BY RONALD R. CARPENTER

*b/h*  
No. 86870-1

(Chelan County Superior Court Cause No. 11-2-00678-1)

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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ROSS WILKINSON and CINDY WILKINSON; MONTE KARNES and  
KIMBERLY KARNES; DAVID BETHEL and JEANIE BETHEL;  
DARRELL MCLEAN; JIM PAULUS and KATHY PAULUS; JOE HARGIS  
and LINDA HARGIS; DANIEL MACINDOE and ISIARA MACINDOE;  
TED TREPANIER and RUBY AKINS-TREPANIER,

Respondents,

vs.

CHIWAHA COMMUNITIES ASSOCIATION,  
a Washington Non-Profit corporation,

Appellant.

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RESPONDENTS' ANSWER TO  
APPELLANT'S STATEMENT OF GROUNDS  
FOR DIRECT REVIEW

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Attorney for Respondents

## **I. INTRODUCTION**

The Respondents have structured their Answer (and their opposition to Direct Review) in accordance with the paragraph headings required by RAP 4.2(c). As can be gleaned from this Answer, it is the position of the Respondents that the Appellant's request for direct review is without merit.

## **II. RESPONDENTS' ANSWER TO APPELLANT'S STATEMENT OF GROUNDS FOR DIRECT REVIEW.**

### **1. Nature of the Case:**

By the following statement, the Appellant has inaccurately characterized the nature of this case:

This case involves restrictions on commercial activities in the covenants of a single family residential subdivision and the ability of a homeowners association, elected by its members, to preserve the single family residential character of the subdivision.<sup>1</sup>

To the contrary, this case involves an attempt by the Appellant, through a majority of its members, to improperly impose restrictions on a minority of its members' use of their own residential properties by arbitrarily classifying what is otherwise an allowed and permitted residential use conforming to the subdivision's general plan of development (i.e. the renting of their vacation properties for periods of less than 30 days) as a prohibited commercial use.

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1. Between 1964 and 1968, Pope and Talbot, Inc. developed the Plat of Chiwawa River Pines (located near Leavenworth) in six separate phases. Each phase was encumbered by what is hereinafter referred to as the "Pope and Talbot Covenants." Except as associated with phase 2, the Pope and Talbot Covenants were all the same and, in pertinent part, provided as follows:

Land Use. Lots shall be utilized solely for single family residential use consisting of single residential dwelling and such out-buildings (garage, no more than one guest cottage, patio structure), as consistent with permanent or recreational residence . . . .

Nuisances or Offensive Use. No nuisance or offensive noise shall be conducted or suffered as to lots subject hereto, nor shall any lot be utilized for industrial or commercial use. . . .<sup>2</sup>

2. The preamble to the Pope and Talbot Covenants expressly stated that the purpose of the Covenants was to establish a "general plan for the development, improvement, maintenance and protection" for the real property contained in each particular phase.

3. In 1988, some 20 plus years following the creation of each of the six phases, the phases were consolidated under a single set of Covenants. While the above provisions were continued word for word into the 1988

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The Covenants contained no definitions of the terms or phrases set forth under the Land Use or Nuisance paragraphs.

RESPONDENTS' ANSWER - 2

Covenants, the 1988 Covenants also included the following additional provision:

6. Trash Disposal.

. . . .No sign of any kind shall be displayed to the public view on any lot, tract or subdivision thereof in the plat, except one sign of not more than 3 feet square giving the names of the occupants of the lot, tract, or approved subdivision thereof, **and one sign of not more than six square feet advertising the property for sale or rent.** (Emphasis supplied.)

4. In 1992, the consolidated 1988 Covenants were again amended. Again, however, the Covenant language described in paragraphs 1 and 3 above remained unchanged.

5. In 2008 and in accordance with the amendment procedures historically set forth in the Covenants, the members of the Association, by a majority vote, banned residential rentals of less than six months by classifying or defining same as a prohibited commercial use. That Amendment was challenged by the Respondents (a group of homeowners who rented their vacation home properties for periods of less than six months and, more often, for periods of less than 30 days) who argued that the 2008 Amendment was inconsistent with the general plan of development of Chiwawa River Pines which itself allowed, as the sole permitted use, residential rentals of any duration, and, therefore, was invalid without the

unanimous approval of all of Appellant's members.<sup>3</sup> The trial court agreed and voided the 2008 Amendment prohibiting rentals of less than six months. But the trial court then proceeded to re-write the Amendment to prohibit residential rentals of less than 30 days. That ruling was overturned on an appeal that was filed by the plaintiffs in that action based upon a determination by the Court of Appeals that the trial court did not have authority to rewrite the 2008 Amendment.<sup>4</sup> (See the unpublished opinion of the Court of Appeals attached hereto as Appendix 1.)

6. Thereafter, the Appellant, by another majority vote, passed what is hereinafter referred to as "the 2011 Amendment" which, this time, classified rentals of less than 30 days as a prohibited commercial use. However, before having passed the 2011 Amendment, the Appellant made it clear to the Respondents that it believed that the Pope and Talbot Covenants, as well as the 1988 and 1992 Covenants, each prohibited rentals of less than 30 days.

7. A second Complaint was then filed by the Respondents seeking a

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Chelan County Cause Number 09-2-00896-0.

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The Appellant herein did not appeal the trial court's ruling voiding the 2008 Amendment prohibiting rentals of less than six months.

RESPONDENTS' ANSWER - 4

declaration that the general plan of development of Chiwawa River Pines<sup>5</sup> allowed, not prohibited, residential rentals of less than 30 days. The Respondents also sought to void the 2011 Amendment. The Appellants counterclaimed seeking the contrary relief. The Appellants also sought a declaration that the Respondents were renting their properties to other than “single families” allegedly in violation of the Covenants. The relief sought by each is set forth in a comparative matrix attached hereto as Appendix 2.

## **2. Trial Court Decision:**

Consistent with the relief requested by the parties in their respective pleadings per Appendix 2, the specific issues that were presented to the trial court on Summary Judgment were as follows:

1. Whether or not the “Pope and Talbot Covenants,” the 1988 Covenants and the 1992 Covenants prohibited residential rentals of less than 30 days.<sup>6</sup>
2. Whether the rental practices of the Respondents violated the “single family” use restrictions set forth in the Covenants.<sup>7</sup>

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Which was epitomized by the Pope and Talbot Covenants as well as the 1988 and 1992 Covenants.

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Both Motions for Summary Judgment sought an answer to this issue.

7

Only the Appellant’s Motion for Summary Judgment sought an answer to this issue.

3. Whether or not the Appellant had the power to establish residential rental regulations over the Plaintiffs' use of their vacation homes, including limitations on internet rental advertising and/or frequency of rentals or number of guests/lodgers.<sup>8</sup>
4. Whether or not the 2011 Amendment was enforceable.<sup>9</sup>

The trial court granted the Respondents' Motion for Summary Judgment on the issues raised by paragraphs 1 and 4 described above and denied the Appellant's corresponding Motion on the same issues. In so doing the trial court stated as follows:

In this case, the Court understands that the folks who developed Chiwawa River Pines – I understand that was Pope & Talbot – they entered protective covenants. And in my mind, after reading those and reading counsel's comments about those, those covenants clearly contemplated that those folks who owned property and residences in this development, no matter the phase, could rent that property. I think that is not disputable here.

And so my conclusion is that the general plan of development, whether it be the efforts of Pope & Talbot . . . . but certainly since then and continuing up to at least 2008, rentals were not prohibited in the development. . . . (Page 5, lines 16-25; page 6, lines 1-5)

\* \* \* \*

I think here for a number of years, since the original plan of development or the covenants that were adopted by first Pope &

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Only the Appellant's Motion for Summary Judgment sought an answer to this issue.

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Both Motions for Summary Judgment sought an answer to this issue.

Talbot and then by the homeowners' associations later on, that all contemplated that there could be rentals. There were no limitations on those rentals. And so after looking at the cases, believing there really aren't any facts that are in dispute, particularly when one reads the Ross case, which I know Ms. Lam believes is not specifically applicable but which I believe certainly gives the Court some direction whether we're talking about single family uses or we're talking about commercial or business uses,<sup>10</sup> I'm going to grant the plaintiffs' motion for summary judgment and deny the defendant's motion. (Page 7, lines 22-25; page 8, lines 1-9.)<sup>11</sup>

In fact, the trial court's interpretation of the Covenants as allowing rentals of any duration was entirely consistent with the view expressed by the Court of Appeals when it discussed the meaning of the Covenants:

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In an effort to distinguish the facts in *Ross* from the facts of this case, the Appellant has characterized the *Ross* decision as a case that involved "minimal short term rental of property." (See page 9 of Appellant's Request for Direct Review.) However, the *Ross* opinion (review denied) did not contain any language that indicated that the frequency of the rental of the property was a factor to the court in reaching its holdings. Specifically, and to the contrary, the *Ross* court held that the use of a property as a "vacation rental" is no different from the use that an owner makes of his own property "as a residence, or the use made by a long-term tenant." Therefore, rental frequency and/or rental duration are both non-starters. In addition, and in any event, in this case, the Respondents' themselves each experience different rental frequencies making it arbitrary at the very least to come up with a "frequency based" standard that would result in one owner's vacation rental use be classified as a "residential" use while another would be classified a "commercial" use.

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The entire text of the trial court's oral decision is attached hereto as Appendix 3.

RESPONDENTS' ANSWER - 7

The 1988 Covenants also contained a sign restriction under the section entitled “Trash Disposal.” Except for this sign restriction, the 1988 Covenants are silent as to the rental of residential property. The sign restriction clearly assumes that rentals were allowed in the community.<sup>12</sup>

\* \* \* \*

The issue on appeal is limited to whether the court erred by rewriting the 2008 Amendment. If named homeowners are successful, the covenants will contain no restriction on the length of rentals.<sup>13</sup>

#### 4. Grounds for Direct Review.

The Appellant has cited RAP 4.2(a)(3) as one ground supporting direct review:

(3) *Conflicting Decisions*. A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

The Appellant’s argument is that a decision of the Court of Appeals that was relied on by the trial court (to wit: *Ross v Bennett*, 148 Wash. App. 40 (2008) review denied, 166 Wn.2d 1012 (2009) (rental to third parties for vacation purposes) is in conflict with (or cannot be “squared with”) other decisions of the Supreme Court (to wit: *Main Farms v. Worthington*, 121 Wn.2d 810 (1993) (adult family home); *Metzer v. Wojdyla*, 121 Wn.2d 445 (1994) (licensed child day-care); and the Court of Appeals case of *Hagaman v.*

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Page 2 of Appendix 1 attached hereto.

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Page 3 of Appendix 1 attached hereto.

RESPONDENTS’ ANSWER - 8

*Worth*, 56 Wash. App. 91 (1989) (elderly foster care)). However, even if such a conflict did exist, a conflict between a decision of the Court of Appeals and a decision of the Supreme Court, is not a ground for direct review under (a)(3); rather only conflicts among Court of Appeals' decisions or inconsistencies among Supreme Court decisions. In any event, as addressed by the court in *Ross*, there is no conflict between its holding and any of the three cases cited by the Appellant:

Ross and Schwartzberg acknowledge that the CPE Covenant permits a homeowner to rent his or her property for use as a residence. But, they contend that a critical distinction exists between a homeowner renting a home for long term use as a residence and as short-term vacation rental business used to generate income.

Ross and Schwartzberg argue that the term “residential” or “residence purposes” in a restrictive covenant prohibits any business use. *Metzner v. Wojdyla*, 125 Wash.2d 445, 886 P.2d 154 (1944) (operation of licensed child daycare facility violated covenants restricting use of property to residential purposes only); *Mains Farm Homeowners Ass’n v. Worthington*, 121 Wash.2d 810, 854 P.2d 1072 (1993) (for profit adult family home violated covenant stating “lots ... shall be used for single family residential purposes only due to the commercial nature of the use); *Hagemann v. Worth*, 56 Wash.App. 85, 91, 782 P.2d 1072 (1989) (defendant was enjoined from operating a business providing foster care to elderly people on property when restrictive covenant prohibited “business, industry or commercial enterprise of any kind or nature”). **The cases cited by Ross and Schwartzberg do not compel this court to conclude that a vacation rental is a business use. Bennett proposes a rental of the property that is identical to his own use of the property, as a residence, or the use made by a long-term tenant. The owner’s receipt of rental income either from short or long-term rentals, in**

**no way detracts or changes the residential characteristics of the use by the tenant.**<sup>14</sup> (Emphasis provided.)

The Appellant goes on to further attempt to justify its application for a direct review by citing 4.2(a)(4) which states as follows:

(4) *Public Issues*. A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

In justification of the application of that provision, the Appellant states as follows:

This is an issue that will re-surface across Washington as other homeowners associations confront efforts by certain owners to disrupt non-commercial, single family residential subdivisions by allowing transient rentals advertised on the Internet. Direct review is appropriate under RAP 4.2(a)(4).

However, this case is a case that is resolved through an interpretation of the specific language of the Covenants at issue. That is, the “ordinary and common meaning of the words used”<sup>15</sup> either do or do not bar rentals of less than 30 days as a prohibited commercial use. To that end, there is no

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Besides, *Mains*, *Metzner* and *Hagaman*, each involved the owners providing continuing services to others that are living in the property at the same time as the owners for which they were occupancy compensated. A vacation renter like an owner using a property for his own residential purposes and like a long-term tenant, on the other hand, has exclusive occupancy of the premises during the rental period.

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*Hollis v. Garwall*, 137 Wn.2d 683, 695 (1999).

evidence that any other subdivision in Washington has the same set of covenants the meaning of which requires a “prompt and ultimate determination.” As observed by the trial court, historical rulings that provide a trial court with the law on issues of this nature are generally pretty fact specific:

And I have attempted to read every case that was, in my mind, important here.<sup>16</sup>

\* \* \*

Counsel disagree on what cases are important and what cases are not important in this instance, and I believe after reading the cases, that many of the cases are fairly fact specific as to the decisions reached by the Court of Appeals and the Supreme Court . . . .<sup>17</sup>

In addition, despite the Appellant’s efforts to distinguish their individual holdings, all three divisions of the Court of Appeals (as well as the Appellant in its Motion for Summary Judgment) acknowledge the rule that Amendments to restrictive covenants “must be reasonable and must be consistent with the general plan of development.”<sup>18</sup> And while the Appellant

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See page 3, lines 10-11 of Appendix 3.

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See page 4, lines 13-17 of Appendix 3.

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Division I, *Shafer v. Board of Trustees*, 76 Wash. App. 267, 273-4 (1994); Division II: *Meresse v. Stelma*, 100 Wash. App. 857, 865 (2000); Division

and its members have great governance flexibility, it is subject to the above rule - a rule that the trial court in this case took great care to apply.<sup>19</sup>

. . . but for the purposes of today's hearing, I'm going to start with the Meresse case. And for LuAnne, that's M-e-r-e-s-s-e. It is a 2000 case. And that case indicates that an express reservation of power authorizing less than 100 percent of property owners within a subdivision to adopt new restrictions respecting the use of privately owned property is valid, provided that such power is exercised in a reasonable manner consistent with the general plan of development.

The Court went on to note that in assessing what constitutes a reasonable manner consistent with the general plan of development, a court should look to the language of the covenants, their apparent import, and the surrounding facts. And then next the Court in this case indicated that the law would not subject a minority of landowners to an unlimited and unexpected restriction on the use of their land merely because the covenant agreement permitted a majority to make changes to the existing covenant. That was citing a Nebraska Supreme Court case.

And then the Court, citing a case entitled Lakeland Property Owners Association v. Larson, held that a deed's provision permitting changes in whole or in part to restrictive covenants upon majority vote clearly directs itself to changes of existing covenants, not the adding of new covenants which have no relation to existing ones.<sup>20</sup>

But the real problem with Appellant seeking direct review has to do with the fact that RAP 4.2 is only available if the decision that is sought to be

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III: *Ebel v. Fairwood*, 136 Wash. App. 787, 792-93 (2007).

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See pages 4-5 of the trial court's oral decision.

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Appendix 3, page 4, lines 17-25; page 5, lines 1-15.

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reviewed is “subject to review as provided in Title 2.” Title 2 requires the judgment to be “final.” The Order on Summary Judgment for which review is sought in this case is, in fact, only dispositive of a portion of the relief sought by the Appellant in its Counterclaim.

Specifically, the Appellant also sought relief as set forth in paragraphs 1.7 and 1.8 of its Counterclaim Prayer for Relief (see Appendix 2 attached hereto) which relief requests were also carried into its Motion for Summary Judgment. However, in denying Appellant’s Motion for Summary Judgment in its entirety, the trial court, as to paragraphs 1.7 and 1.8 of Appellant’s Counterclaim did not grant corresponding affirmative relief to the Respondents. In fact, in their Response to the Appellant’s Motion for Summary Judgment, the Respondents specifically noted that the meaning of the “single family” restriction was uncertain:

22. As to what constitutes a “single family” for the purpose of the application of the Covenants, the Defendant, as stated above, uses the dictionary definition of “family” but makes no effort to argue that it was the dictionary definition that the drafters had in mind when the Pope and Talbot Covenants were imposed. The Plaintiffs themselves have no knowledge regarding the specific intent of the drafters on that issue. But whatever intent the drafters had, the enforcement of the “single family” restriction applies to a full time owner’s use of his/her own property as much as it does to vacation rentals – therefore, the old adage of “be careful what you wish for”

comes to mind.<sup>21</sup> In any event, the issue is whether, for instance, a “single family” can share the residence with a friend?; whether a “single family” who brings their child can bring that child’s friend to play with?; whether two co-owners of a property can share occupancy of the property at the same time?; and etc; and etc; and etc.

23. One piece of extrinsic evidence that does exist that the Defendant has not chosen to provide the court is the zoning code definition for “family” that existed when the Pope and Talbot Covenants were first imposed:

16. Family. An individual, or two or more persons related by blood, marriage, adoption, or legal guardianship, living together in a dwelling unit in which meals or lodging may also be provided for not more than two additional persons excluding servants; or a group of not more than three unrelated persons living together in a dwelling unit.

Further, as to the ability to impose regulations regarding residential rentals of less than 30 days, the Respondents, in their Response, stated as follows:

19. The Defendant seeks the entry of an Order on Summary Judgment declaring that it has the authority to establish limitations on Plaintiffs’ internet rental advertising, frequency of rentals and the number of guests. (See page 2, lines 20-23 of Defendant’s Motion for Summary Judgment.) Yet the Defendant offers no argument in support of that position; nor does the Defendant offer any hint as to what the scope or specifics of the limitations would be. Therefore, the Plaintiffs have nothing to respond to until the Defendant provides

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See Exhibit 3 attached to the Declaration of Dennis Jordan in Opposition to Defendant’s Motion for Summary Judgment where the Defendant, in response to discovery requests, refused to address the meaning of the phrase “single family.”

some specifics on that issue.

### III. CONCLUSION

Most of the Appellant's argument in support of direct review is simply a recitation of its Motion for Summary Judgment argument which itself contains opinions and conclusions that are not supported by the Declaration evidence or by the law. But, bottom line, the judgment that the Appellant seeks direct review of is not a final order much less involving issues that are of such concern as to warrant direct review.

Respectfully submitted this 10<sup>TH</sup> day of January, 2012.

DENNIS JORDAN & ASSOCIATES,  
INC., P.S.

A handwritten signature in black ink, appearing to be 'Dennis Jordan', written over a horizontal line.

Dennis Jordan, WSBA #4904  
Attorney for Respondents

DECLARATION OF MAILING

I declare under the penalty of perjury of the laws of the State of Washington that a copy of the foregoing Respondent's Answer to Appellant's Statement of Grounds for Direct Review was on this day emailed and deposited in the U. S. mail by declarant in a properly stamped and addressed envelope addressed to:

Philip A. Talmadge  
Attorney at Law  
18010 Southcenter Parkway  
Tukwila, WA 98188

Yen B. Lam  
Attorney at Law  
6100 219<sup>th</sup> Street S.W., Suite 560  
Mountlake Terrace, WA 98043

Executed at Everett, Washington on this 10th day of January, 2012.

  
\_\_\_\_\_  
Barbara Olson

## **APPENDIX 1**

160 Wash.App. 1038

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED  
OPINION, SEE RCWA 2.06.040

Court of Appeals of Washington,  
Division 3.

Ross WILKINSON and Cindy Wilkinson;  
Monte Karnes and Kimberley Karnes;  
David Bethel and Jeanie Bethel; Darrell  
McLean; Jim Paulos and Kathy Paulos;  
Justin Hargis and Tabatha Hargis;  
Joe Hargis and Linda Hargis; Daniel  
MacIndoe and Isidra MacIndoe; and David  
Spicer and Martha Spicer, Appellants,

v.

CHIWAHA COMMUNITIES  
ASSOCIATION, a Washington Non-  
Profit Corporation, Respondent.

No. 28911-7-III. | March 24, 2011. |  
Reconsideration Granted May 26, 2011.

Appeal from Chelan Superior Court; Honorable Ted  
W. Small Jr., J.

#### Attorneys and Law Firms

Dennis W. Jordan, Attorney at Law, Everett, WA, for  
Appellants.

Yen B. Lam, Galvin Realty Law Group, Mountlake  
Terrace, WA, Philip Albert Talmadge, Talmadge/  
Fitzpatrick, Tukwila, WA, for Respondent.

#### Opinion

#### UNPUBLISHED OPINION

KULIK, C.J.

\*1 In 2008, a majority of the homeowners in Chiwawa River Pines voted to amend the community's covenants to prohibit rentals for a period of less than six months. A group of 17 named homeowners (named homeowners) filed this action, seeking a declaration invalidating the 2008 Amendment. The Chiwawa

Communities Association (CCA) counterclaimed, asking for declaratory and injunctive relief. Both parties moved for summary judgment. The trial court concluded that the 2008 Amendment was invalid. We agree. The court then rewrote the amendment to prohibit rentals of less than one month. The named homeowners challenge only the ruling prohibiting rentals of less than one month. They contend that the court lacked the authority to make this ruling and that the court's modification is invalid. We agree that the trial court cannot rewrite the invalid 2008 Amendment. Therefore, we reverse the prohibition on rentals of less than one month and grant summary judgment to the named homeowners.

#### FACTS

Chiwawa River Pines is a planned community located near Leavenworth, Washington. The community consists of 367 lots. Each of the named homeowners is the owner of at least one improved residential lot located within one of the six phases of the plat of Chiwawa River Pines.

The original developer of the six phases was Pope & Talbot, Inc. As each phase was developed, Pope & Talbot recorded a separate set of "Protective Restrictions and Covenants" (covenants). Clerk's Papers (CP) at 496. In 1988, a majority of the homeowners approved the consolidation of the six sets of covenants into one set covering all phases (1988 Covenants).

The 1988 Covenants restricted land use to single family residential use and prohibited nuisance, offensive use, and industrial and commercial use. The 1988 Covenants also expressly reserved the power of the majority of the property owners to adopt new restrictions. All owners of land automatically became members of the CCA, subject to all the obligations and duties set forth in the articles, bylaws, and any amendments.

The land use provision limited use to single family residential. The provision read:

Lots shall be utilized *solely for single family residential use consisting of single residential dwelling* and such out-buildings (garage, no more than one guest cottage, patio structure),

*as consistent with permanent or recreational residence.*

CP at 285 (emphasis added).

Nuisances or offensive uses were prohibited in the provision stating:

No nuisance or offensive use shall be conducted or suffered as to lots subject hereto, *nor shall any lot be utilized for industrial or commercial use.*

CP at 285 (emphasis added).

The 1988 Covenants also contained a sign restriction under the section entitled "Trash Disposal." CP at 286. Except for this sign restriction, the 1988 Covenants are silent as to the rental of residential property. The sign restriction clearly assumes that rentals were allowed in the community. The sign provision read:

*\*2 No sign of any kind shall be displayed to the public view on any lot, tract or subdivision thereof in the plat, except one sign of not more than 3 feet square giving the names of the occupants of the lot, tract, or approved subdivision thereof, and one sign of not more than 6 square feet advertising the property for sale or rent.*

CP at 286 (emphasis added).

The 1988 Covenants also contained a provision pertaining to the amendment of the covenants. This provision read:

These covenants shall run with the land and shall be binding until 1998 (ten years), at which time said covenants shall be automatically extended for successive periods of ten years, unless the majority of the then owners of lots within the plat agree, by majority vote, to change these protective restrictions and covenants in whole or in part.

CP at 287.

And the 1988 Covenants included a severability clause:

The provisions hereof are severable, and the invalidation of any part or parts hereof shall not thereby disqualify or invalidate the other provisions hereof which shall remain in full force and effect in accordance with their terms.

CP at 286.

*The 1991 Covenants.* The 1991 Covenants were adopted by a majority of the owners. The 1991 Covenants altered the 1988 Covenants to delete the words, "no more than one guest cottage." *Cf.* CP at 285, 520. No other changes of consequence were made at that time.

*2008 Amendment.* The board of trustees of CCA scheduled a meeting for September 27, 2008. At this meeting, members voted on whether to allow each of the following exceptions to the industrial or commercial use covenant: (1) long-term, low-impact, service-oriented businesses; (2) long-term residential rentals (duration longer than six months); and (3) short-term rentals (duration shorter than six months). A majority of the members voted to allow long-term residential rentals for a period of six months or more. Members also voted against allowing short-term rentals and voted against allowing long-term, low-impact, service-oriented businesses.

At the September meeting, a majority of the members approved amendments to paragraphs 4 and 5 of the 1991 Covenants. The 2008 Amendment prohibited short-term rentals, which were defined as rentals of less than six months. Paragraph 4 of the 1991 Covenants entitled "Land Use" was renumbered and amended in its entirety as follows:

Lots shall be utilized solely for single family residential use consisting of single residential dwelling and such out-buildings (garage, patio structure), as consistent with permanent or recreational residence. Lots shall not be utilized for industrial or commercial EXCEPT for the following:

(1) ***Long-term, low-impact service-oriented business:***

....

(2) ***Long-term residential rentals for a period of more than six (6) consecutive months:*** All residential rentals for a period of six (6) consecutive months or more shall be permitted, shall be in writing, subject to compliance with local zoning and permitting regulations, and subject to the Protective Covenants and By-laws.

**\*3 All residential rentals for a period of less than six (6) consecutive months shall not be permitted.**

CP at 524.

Paragraph 5 entitled "Nuisances or Offensive Use" was also renumbered and amended to read:

No nuisance or offensive use shall be conducted or suffered as to lots subject hereto, nor shall any lot be utilized for industrial or commercial use (except as authorized under section 4, "Land Use"[ ]).

CP at 524.

*Rentals.* Prior to the 2008 Amendment, increasing numbers of properties in the community were being used as rentals. Some properties were advertised on websites. CCA maintains that the named homeowners' short-term rentals ranged from 15 to 125 times per year and that their income from these rentals ranged from \$3,168 to \$33,481 and up.

*Board Action Against Rentals.* In 1987, the board was notified that an owner intended to rent his cabin on a day-to-day basis. In a letter dated July 6, 1987, this owner was advised that daily rentals would violate the land use, nuisance, and offensive use provisions of the covenants. The owner responded that he had no intention of renting his cabin on a daily basis.

In 1991, Gloria Fisk, then president of the board, asked an owner to remove her driveway sign advertising lodging because no businesses were allowed in the community under the protective covenants. The minutes of a special meeting of the board memorialized the fact that Ms. Fisk informed the board of the problem and that she would advise the owner that *lodging* was not allowed in the community.

*Action for Declaratory Judgment.* The board set January 1, 2009, as the original date for compliance with the 2008 Amendment on short-term rentals. The board extended the compliance date to July 1. The named homeowners then filed suit, seeking a declaratory judgment that the 2008 Amendment to the covenants was invalid. The CCA counterclaimed for declaratory and injunctive relief. The parties filed cross motions for summary judgment.

The trial court concluded<sup>1</sup> that: "The 2008 Amendment to the Protective Covenants is invalid and unenforceable for rentals of a period of more than one month." CP at 858. The trial court also determined that "[r]entals for a duration of less than one month violate the single-family residential use restriction and [the] prohibition against commercial use, nuisance, and offensive use in the 1988 and 1991 Amended Protective Covenants." CP at 858. As part of the order on summary judgment, named homeowners were ordered to immediately cease and desist from advertising, in print or on the Internet, and operating short-term rentals for less than one month.

In short, CCA wanted to limit rentals to those six months and over, but the trial court invalidated this provision and made a ruling prohibiting rentals of less than one month.

*Bond.* The trial court denied named homeowners' motion for reconsideration. Named homeowners then filed this appeal. Named homeowners also posted a cash bond of \$1,720 in an attempt to stay enforcement of the order. The trial court declared the bond void and reiterated the cease and desist order. Not all named homeowners complied with the order and several were found in contempt of court. Named homeowners then moved this court for a stay of the enforcement of the trial court's order. The commissioner granted the motion and, later, the trial court set the bond at \$36,920. Named homeowners posted the bond. CCA moved to modify the commissioner's ruling. The commissioner denied the motion. Named homeowners filed a motion asking for the bond to be reduced to \$1,720.

*\*4 Appeal.* Named homeowners agree with the portion of the trial court's decision invalidating the 2008 Amendment, which prohibited rentals of less than six months. But named homeowners challenge the trial court's decision prohibiting rentals of less than one month. Although the trial court invalidated the CCA-supported 2008 Amendment, CCA does not challenge that portion of the court's decision. While named homeowners challenge the ruling prohibiting rentals of less than one month, CCA agrees with this ruling.

## ANALYSIS

The issue on appeal is limited to whether the court erred by rewriting the 2008 Amendment to prohibit rentals of less than one month. If named homeowners are successful, the covenants will contain no restrictions on the length of rentals.

*Standard of Review.* Summary judgment is proper if the pleadings and supporting declarations show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). When reviewing a grant or denial of summary judgment, the reviewing court engages in the same standard as the trial court and conducts a de novo review. Davis v. Microsoft Corp., 149 Wash.2d 521, 530–31, 70 P.3d 126 (2003). Facts and reasonable inferences are construed in the light most favorable to the nonmoving party. Our Lady of Lourdes Hosp. v. Franklin County, 120 Wash.2d 439, 452, 842 P.2d 956 (1993).

*2008 Amendment.* After the approval of the 2008 Amendment, named homeowners filed an amended complaint for declaratory judgment against CCA in which they sought the following relief:

That the Court declare invalid and null and void the Protective Covenant recorded under Chelan County Auditor's File Number 2291058 that prevents the Plaintiffs from renting their tracts for short term rental purposes.

CP at 49. CCA's answer and counterclaim sought the opposite relief.

Both parties filed motions for summary judgment. CCA filed a motion for summary judgment stating:

[CCA] requests this Court enter an Order on Summary Judgment declaring that the 2008 amendment to the Chiwawa River Pines Protective Restrictions and Covenants is valid and enforceable against [named homeowners].

CP at 102.

In contrast, named homeowners' cross motion for summary judgment sought the opposite relief:

[Named homeowners] request that this Court enter an Order on Summary Judgment declaring that the 2008 AMENDMENT TO PROTECTIVE COVENANTS FOR ALL OF CHIWAWA RIVER PINES ... prohibiting short-term rentals of less than six consecutive months is invalid and unenforceable against the [named homeowners] and their successors and assigns as owners of the tracts/ lots.

CP at 443.

Here, both parties agreed on the material facts. And, as a result, one party was entitled to judgment as a matter of law. *See Citizens for Des Moines v. Petersen*, 125 Wash.App. 760, 772, 106 P.3d 290 (2005).

The single issue raised and litigated before the trial court was the validity of the 2008 Amendment. The trial court responded by invalidating the 2008 Amendment. The trial court then went beyond the requests of the parties and modified the amendment to prohibit rentals of less than one month. CCA, which previously sought to have the 2008 Amendment enforced, does not appeal the court's decision to invalidate the 2008 Amendment.

\*5 Consequently, the only issue on appeal is whether the court erred by rewriting the 2008 Amendment to prohibit rentals for periods of less than one month. Resolution of this issue is dispositive of this case.

The 1988 Covenants, and all following covenants, provided for the change of covenants by a majority vote. Here, the 2008 Amendment was adopted by majority vote and then challenged by named homeowners.

When construing a restrictive covenant, a court's primary task is to determine the drafter's intent. Wimberly v. Caravello, 136 Wash.App. 327, 336, 149 P.3d 402 (2006). The goal is to ascertain and give effect to those purposes intended by the covenants, while placing " 'special emphasis on arriving at an interpretation that protects the homeowners' collective interests.' " Riss v. Angel, 131 Wash.2d 612, 623–24, 934 P.2d 669 (1997) (quoting Lakes at Mercer Island Homeowners Ass'n v. Witrak, 61 Wash.App. 177, 181, 810 P.2d 27 (1991)). Basic rules of contract interpretation apply to the

review of covenants. *Wimberly*, 136 Wash.App. at 336, 149 P.3d 402. Courts “are ‘not at liberty, under the guise of construing the contract, to disregard contract language or revise the contract.’” *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wash.2d 824, 833, 991 P.2d 1126 (2000) (quoting *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 92 Wash.App. 214, 221, 963 P.2d 204 (1998)).

Here, the court was asked to determine the validity of the 2008 Amendment. The court answered this question, but then went on to fashion a new covenant. The court lacked the authority to do so.

Equally important, the purpose of the civil rules is to give notice to the other party of the relief sought. “CR 7(b)(1) requires that a motion ‘shall state with particularity the grounds therefor, and shall set forth the relief or order sought.’” *Pamelin Indus., Inc. v. Sheen-U.S.A., Inc.*, 95 Wash.2d 398, 402, 622 P.2d 1270 (1981). Here, the trial court went beyond the scope of relief requested and deprived the parties and others of notice that such relief would be granted. *See id.*; *Meresse v. Stelma*, 100 Wash.App. 857, 866, 999 P.2d 1267 (2000). In *Meresse*, the court determined

that an amendment to a covenant was invalid because “‘[t]he law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes to existing covenants.’” *Meresse*, 100 Wash.App. at 866, 999 P.2d 1267 (quoting *Boyles v. Hausmann*, 246 Neb. 181, 191, 517 N.W.2d 610 (1994)).

We reverse the trial court's ruling rewriting the 2008 Covenants to prohibit rentals of less than one month. Because named homeowners prevail here, the issue of the amount of the bond is moot.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR: BROWN and KORSMO, JJ.

Parallel Citations

162 Wash.App. 1005, 2011 WL 1048625 (Wash.App. Div. 3)

#### Footnotes

- 1 The trial court also entered findings of fact as part of its ruling. Findings of fact on summary judgment will not be considered by this court. *See Chelan County Sheriffs' Ass'n v. County of Chelan*, 109 Wash.2d 282, 294 n. 6, 745 P.2d 1 (1987).

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## **APPENDIX 2**

**APPENDIX 2**  
**Pleading Matrix**

Plaintiffs' (Respondents') Request for Relief per Amended Complaint	Defendant's (Appellant's) Request for Relief per its Counterclaim
<i><b>(1)(A): That the Plan of Development of Chiwawa River Pines allows residential rentals of any duration.</b></i> <sup>1</sup>	<i>1.2: Declaring that the general plan of development of Chiwawa River Pines does not allow rentals of less than one month or 30 continuous days.</i> <sup>2</sup>
<p><i><b>(1)(B) That the 1988 and 1992 Protective Covenants allows residential rentals of less than 30 days.</b></i></p> <p><i><b>(1)(C) That a prohibition on commercial uses of lots as expressed by the Protective Covenants above described does not include residential rentals of less than 30 days.</b></i></p>	<p><i>1.3 Declaring valid and enforceable the Protective Covenants dated April 23, 1988 and recorded on July 11, 1988 under Chelan County Auditor's File Number 8807110010.</i></p> <p><i>1.4 Declaring valid and enforceable the Protective Covenants dated September 28, 1991 and recorded on December 24, 1992 under Chelan County Auditor's File Number 9212240036.</i></p> <p><i>1.6 Declaring that the 1988 and 1992 Protective Covenants prohibit rentals of less than one month or 30 continuous days.</i></p> <p><i>1.10 Declaring that operating residential rentals of less than one month or 30 continuous days is a nuisance and/or offensive use.</i></p>

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Relief that was requested by the Respondents and by the Appellant as part of their Motions for Summary Judgment is in italics. If not in italics, that specific relief was not sought by that party in the Summary Judgment proceeding.

2

Bolded portions in the Respondent's column denotes the entry of Summary Judgment on that issue in favor of the Respondents. Summary Judgment on those issues in favor of the respondents terminated the corresponding relief request by the Appellant.

<p>(1)(D) That the Defendant HOA has no authority to bar residential rentals of the Plaintiff's vacation homes of less than 30 days without the consent of the Plaintiffs. Therefore, the 2011 Amendment is unenforceable.</p>	<p><i>1.5 Declaring valid and enforceable the Amendment to the Protective Covenants recorded on July 25, 2011 under Chelan County Auditor's File Number 2346266.</i></p> <p><i>1.6 Alternatively, declaring that the 2011 Amendment to the Protective Covenants prohibits rentals of less than one month or 30 continuous days.</i></p>
<p>(1)(E) That the Defendant HOA has no authority to establish unreasonable residential rental regulations of the Plaintiffs' vacation homes of less than 30 days without the consent of the Plaintiffs. Unreasonable regulations includes but is not limited to limitation on internet rental advertising or frequency of rental or number of rental guests staying in a unit.</p>	<p><b><i>1.7 Declaring that the Defendant has authority to establish reasonable residential rental regulations of the Plaintiffs' homes, including limitations on internet rental advertising and/or frequency of rentals or number of guests/lodgers.<sup>3</sup></i></b></p>
<p>(1)(F) That even if residential rentals of less than 30 days constitutes a prohibited commercial use, enforcement thereof has been legally abandoned.</p>	<p><b><i>1.9 Declaring that the enforcement of the prohibition of residential rentals of less one month or 30 continuous days has not been abandoned. Alternatively, declaring that the enactment of the 2011 Amendment makes the issue of abandonment moot.</i></b></p>
	<p><b><i>1.8 Declaring that the Plaintiffs are not renting to "single" families";</i></b></p>

Bolded relief requested as set forth in the Appellant's column denotes relief that was requested by the Appellant but denied by the trial court with no affirmative relief sought by or entered in favor of the Respondents on that issue.

## **APPENDIX 3**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CHELAN

ROSS WILKINSON and CINDY	)	
WILKINSON, et al.,	)	
	)	No. 11-2-00678-1
Plaintiffs,	)	
	)	Court's Oral Decision
vs.	)	
	)	
CHIWAWA COMMUNITIES ASSOCIATION,	)	
a Washington Non-Profit	)	
corporation,	)	
	)	
Defendant.	)	

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VERBATIM REPORT OF PROCEEDINGS

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BE IT REMEMBERED that on the 15th day of DECEMBER, 2011  
the above-entitled and numbered cause came on for hearing  
before the HONORABLE JOHN E. BRIDGES at the Chelan County Law  
& Justice Building, Wenatchee, Washington.

APPEARANCES

FOR THE PLAINTIFF:	Dennis Jordan Dennis Jordan & Associates 4218 Rucker Avenue Everett, WA 98203
FOR THE DEFENDANT:	Yen Lam Galvin Realty Law Group 6100-219th St. SW, Suite 560 Mountlake Terrace, WA 98043
REPORTED BY:	LuAnne Nelson Official Court Reporter P.O. Box 880 Wenatchee, WA 98807

**ORIGINAL**

1           THE COURT: Okay. The Court has before it cross-  
2 motions for summary judgment. This is the second go-around  
3 for the homeowners' association and, I think, the plaintiffs.  
4 And before I go through this, I, Ms. Lam, want to thank you.  
5 Mr. Jordan, I want to thank you. I don't know if you folks  
6 like each other very much. We've had some fairly heated  
7 telephone conferences about discovery and so on in this case.

8           MR. JORDAN: This case frustrates me, Your Honor.  
9 That's the bottom line.

10          THE COURT: But I will say this. I mean, I really  
11 appreciate all the work you've done and the quality of the  
12 work you've done and the efforts you've made, I think, to try  
13 to educate me about an area of the law that we don't deal  
14 with -- we don't deal with very often, although this issue,  
15 certainly we read about in the paper occasionally and perhaps  
16 more often now throughout Chelan County, at least. So I want  
17 to thank you folks and I hope you appreciate the  
18 professionalism of the other.

19          With respect to the parties involved in the case, I  
20 will say this. It's been requested that I put an end to this.  
21 Unfortunately, I can't put an end to this case no matter what  
22 my ruling is today, and I'm going to give one in a minute.  
23 It's not going to end this case. And I can appreciate the  
24 respective parties' arguments in this case and the positions  
25 they have taken actually. As Mr. Jordan noted, he has

1 recreational property. My wife and I own a shack. It is  
2 truly a shack that's recreational property, but we are not a  
3 member of a group like this group up at Chiwawa River Pines.  
4 But I know those people who live there full time certainly may  
5 not necessarily -- and I think have exhibited this, do not  
6 appreciate those folks who are there on a nightly or more  
7 basis that are otherwise known as transient rentals.

8 I've read all of the materials that have been submitted  
9 to me. They're voluminous. I only brought some things into  
10 the courtroom this afternoon. And I have attempted to read  
11 every case that was, in my mind, important here. And I will  
12 say that I'm not sure that I can glean a theme from those  
13 cases, although I'm sure our Court of Appeals and Supreme  
14 Court make every effort to help those of us that are trial  
15 court judges by passing on to us what the law is that should  
16 be applied to these kind of disputes and fact patterns. And  
17 I'm going to do the best I can to follow that law. I'm not  
18 here to make up any law.

19 I'm going to start with the unpublished opinion by  
20 Division Three when this case was appealed from Judge Small's  
21 decision. And, of course, this being an unpublished opinion,  
22 I'm not to follow it. There's really not much to follow. But  
23 I will say that there has been an argument about collateral  
24 estoppel and I'm not inclined to rule that anything Judge  
25 Small may have ruled, I guess last year, would collaterally

1 estop this Court, at least in my mind, from now addressing  
2 this issue. Further, of course, the Court of Appeals did not  
3 address the issue specifically that this Court could read as  
4 ending the dispute for all practical purposes.

5 Now we have a new amendment which I think was adopted  
6 just a couple months after the Court of Appeals rendered the  
7 decision, I believe in July of this year, which pretty much  
8 limited any transient rentals to more than 30 days. But I  
9 wanted counsel to note that I have read the Court of Appeals  
10 decision a couple different times actually -- I have it on the  
11 bench with me -- and expect that they will rule again in this  
12 particular case.

13 Counsel disagree on what cases are important and what  
14 cases are not important in this instance, and I believe after  
15 reading the cases, that many of the cases are fairly fact  
16 specific as to the decisions reached by our Court of Appeals  
17 and Supreme Court, but for purposes of today's hearing, I'm  
18 going to start with the Meresse case. And for LuAnne, that's  
19 M-e-r-e-s-s-e. It is a 2000 case. And that case indicates  
20 that an express reservation of power authorizing less than 100  
21 percent of property owners within a subdivision to adopt new  
22 restrictions respecting the use of privately owned property is  
23 valid, provided that such power is exercised in a reasonable  
24 manner consistent with the general plan of development.

25 The Court went on to note that in assessing what

1 constitutes a reasonable manner consistent with the general  
2 plan of development, a court should look to the language of  
3 the covenants, their apparent import, and the surrounding  
4 facts. And then next the Court in this case indicated that  
5 the law would not subject a minority of landowners to an  
6 unlimited and unexpected restriction on the use of their land  
7 merely because the covenant agreement permitted a majority to  
8 make changes to the existing covenant. That was citing a  
9 Nebraska Supreme Court case.

10           And then the Court, citing a case entitled Lakeland  
11 Property Owners Association v. Larson, held that a deed's  
12 provision permitting changes in whole or in part to  
13 restrictive covenants upon majority vote clearly directs  
14 itself to changes of existing covenants, not the adding of new  
15 covenants which have no relation to existing ones.

16           In this case, the Court understands that the folks who  
17 developed Chiwawa River Pines -- I understand that was Pope &  
18 Talbot -- they entered protective covenants. And in my mind,  
19 after reading those and reading counsel's comments about  
20 those, those covenants clearly contemplated that those folks  
21 who owned property and residences in this development, no  
22 matter the phase, could rent that property. I think that is  
23 not disputable here.

24           And so my conclusion is that the general plan of  
25 development, whether it be the efforts of Pope & Talbot -- Mr.

1 Jordan argues that those gentlemen, ladies or gentlemen, I  
2 don't know who they were, should have been cognizant of the  
3 Chelan Code at that particular time, but certainly since then  
4 and continuing up to at least 2008, rentals were not  
5 prohibited in the development. Now, I understand that there  
6 were some efforts made to perhaps restrict those by the  
7 homeowners' association. But in my mind, that's not -- that's  
8 not what I'm going to be looking at.

9           There was an older case, and I don't think counsel  
10 cited it, but it was referenced in one of the cases I read. I  
11 was interested because it was a case out of our neighboring  
12 county, Douglas County, involving the Wenatchee Golf and  
13 Country Club. And in that case, and I'm not going to go  
14 through the facts, the Court held that restrictions are in  
15 derogation of the common law right to use land for all lawful  
16 purposes and will not be extended by implication to include a  
17 use not clearly expressed and that doubts must be resolved in  
18 favor of the free use of land. And as counsel have pointed  
19 out to me, that kind of language has appeared in any number of  
20 cases that have been given to the Court.

21           The Court in Douglas County -- it's actually Burton v.  
22 Douglas County -- also noted that in interpreting restrictive  
23 covenants, the instrument in which they are contained must be  
24 considered in its entirety and surrounding circumstances are  
25 to be taken into consideration when the meaning is doubtful.

1 I asked Mr. Jordan about the case which was the Mercer Island  
2 case. It's the Lakes at Mercer Island Homeowners Association  
3 v. Witrak, W-i-t-r-a-k, and the Court in that case made some  
4 comments about -- and I'm paraphrasing -- the public good,  
5 that being the public good as it related to the homeowners.  
6 And I was curious as to whether or not that kind of theory  
7 could be transferred to a case like I'm faced with this  
8 afternoon. The Lakes at Mercer Island Homeowners Association  
9 case, however, involved a homeowner who, after having been  
10 denied the right to add onto their house, then planted 30-foot  
11 tall trees and there was no specific prohibition against the  
12 height of landscaping but there was a prohibition on the  
13 height of fences that homeowners could construct between  
14 common boundary lines. And the Court in the Lakes at Mercer  
15 Island case equated trees to fences and it was the language  
16 that I asked Mr. Jordan about that the Court used to find that  
17 the Court was well within the law to make that kind of a  
18 determination when looking at whether or not a covenant could  
19 be enforced even though the covenant did not specifically  
20 relate to landscaping.

21 I don't think that's the situation that we have here.  
22 I think here for a number of years, since the original plan of  
23 development or the covenants that were adopted by first Pope &  
24 Talbot and then by the homeowners' associations later on, that  
25 all contemplated that there could be rentals. There were no

1 limitations on those rentals. And so after looking at the  
2 cases, believing there really aren't any facts that are in  
3 dispute, particularly when one reads the Ross case, which I  
4 know Ms. Lam believes is not specifically applicable but which  
5 I believe certainly gives the Court some direction whether  
6 we're talking about single family uses or we're talking about  
7 commercial or business uses, I'm going to grant the  
8 plaintiffs' motion for summary judgment and deny the  
9 defendant's motion.

10 MR. JORDAN: Thank you, Your Honor.

11 THE COURT: Counsel, one thing I did note in reading  
12 the Division Three opinion from your last visit with them,  
13 footnote one, Judge Kulik noted that findings are not going to  
14 be considered.

15 MR. JORDAN: I understand that, Your Honor.

16 THE COURT: No findings.

17 MR. JORDAN: That's no findings.

18 THE COURT: I want a simple order.

19 MR. JORDAN: I can prepare a simple order, Your Honor.  
20 I can just write it in. I brought an order with me and I can  
21 write it in if you've got five minutes or so.

22 THE COURT: I do, and I'll let you and Ms. Lam work  
23 together on that. With respect to the motions to strike, I'm  
24 going to grant the motions, except I should be more specific.  
25 I'm going to grant the motion to strike the 2007 survey. I'm

1 going to grant the motion to strike as it relates to the  
2 declaration of Ms. Simpson. I'm sorry, I'm overruling that  
3 motion as it relates to Ms. Simpson.

4 MR. JORDAN: You're allowing the declaration, Your  
5 Honor?

6 THE COURT: Yes. And I'm allowing the declaration as  
7 it relates to Mr. David Johnston. I'm going to grant the  
8 motion as it relates to the second declaration of Ms. Fisk.  
9 I'm granting the motion as it relates to the declaration of  
10 Ms. Judy Van Eyk, I believe, E-y-k. I'm going to grant the  
11 motion as it relates to the declaration of Mr. James Padden.

12 MR. JORDAN: Pad --

13 THE COURT: P-a-d-d-e-n. I think that addresses  
14 most --

15 MR. JORDAN: I would prefer -- because I don't really  
16 have an order for that -- that I just draft up an order when I  
17 get back on Monday and send that over. It seems to me we can  
18 do that by a separate order.

19 THE COURT: I think so. So, folks, let Cindy know when  
20 you're ready for me to come back in.

21 MS. LAM: Your Honor, can I just ask you one thing for  
22 the record. I understand you went through the analysis of the  
23 cases in terms of the restrictions on rentals, but in terms of  
24 our -- our request for the Court to find them in violation  
25 because of the single -- violation of rent just in terms --

1 regardless of frequency, the renting to single families. I  
2 don't know if I --

3 THE COURT: I'm not sure, Ms. Lam, I understand what  
4 you're asking me to clarify.

5 MS. LAM: I believe counsel had said that that would  
6 probably need trial and I don't know if that was -- that there  
7 are just not enough undisputed facts in terms to make that  
8 ruling or --

9 THE COURT: In my mind, there are no facts that are  
10 disputed with respect to that issue that would change my mind  
11 about granting the motion for summary judgment. We're off the  
12 record.

13 (End of proceedings)

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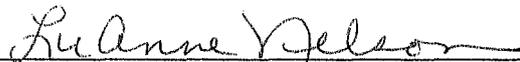
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1 STATE OF WASHINGTON )  
 2 County of Chelan ) : SS

3 I, LuAnne Nelson, a Certified Shorthand Reporter, and  
 4 official reporter for Chelan County Superior Court, do hereby  
 5 certify:

6 That the foregoing Verbatim Report of Proceedings was  
 7 reported at the time and place therein stated and thereafter  
 8 transcribed under my direction and that such transcription is  
 9 a true, complete and correct record of the proceedings.

10 I further certify that I am not interested in the  
 11 outcome of said action, nor connected with, nor related to any  
 12 of the parties in said action or their respective counsel.

13  
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 15 Official Court Reporter  
 16 CSR No. 299-06 NE-LS-OL-M464C7  
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