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SUPREME COURT
STATE OF WASHINGTON
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No. 89533-3

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SUPREME COURT
OF THE STATE OF WASHINGTON

CRYSTAL RIDGE HOMEOWNERS ASSOCIATION, a Washington
nonprofit corporation, etc., et al.

Plaintiffs/Respondents,

vs.

CITY OF BOTHELL, a municipal corporation,

Defendant/Appellant.

CITY'S SECOND MOTION TO STRIKE – MOVING TO STRIKE
EXHIBIT B TO RESPONDENTS' ANSWER TO CITY'S FIRST
MOTION TO STRIKE AND OTHER INADMISSIBLE EVIDENCE

Stephanie E. Croll, WSBA No. 18005
Keating, Bucklin & McCormack, Inc., P.S.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175
Attorneys for Defendant/Appellant
City of Bothell

Joseph N. Beck, WSBA No. 28789
City Attorney for City of Bothell
18306 101st Avenue NE
Bothell, WA 08011-3499
City Attorney, Defendant/Appellant
City of Bothell

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I. IDENTITY OF MOVING PARTY

This motion is brought by the City of Bothell, Appellant and Defendant below.

II. RELIEF SOUGHT

The City is moving to strike certain portions of the *Respondents' Answer to City of Bothell's Motion to Strike Portions of Respondents' Supplemental Brief and New Document Attached as an Exhibit to Respondents' Brief ("Respondents' Answer")*.

Specifically, the City is requesting that the Court strike the following two inadmissible portions of *Respondents' Answer*: (1) the last two sentences of footnote 5; and (2) proposed **Exhibit B**.

III. LEGAL ARGUMENT

A. Footnote 5 of Respondents' Answer Should be Stricken

In their answer to the City's first motion to strike, Plaintiffs submitted a brief containing a footnote full of additional new hearsay that is not supported by the record and should also be stricken. Plaintiffs' want the Court to believe that the interceptor pipe at issue here is draining leaking "municipal flows" from upslope of the Crystal Ridge subdivision. But the City has proven there is actually no support for that contention in the record and filed a motion to strike. In their answer, in a desperate attempt to persuade the Court, Plaintiffs' counsel slightly overstepped her

bounds and testified in a footnote of the brief, implying that all of the stormlines in the area must be municipal, because there is no evidence in the record that they aren't. *See, Respondents' Answer, footnote 5*, where counsel states: **"There is no evidence in the record that area stormlines and maintenance were anything but municipal."** Nor is there any evidence in the record that area stormlines (upslope of Crystal Ridge in 1987) were anything other than private lines or county lines. The record is silent in this regard. Counsels' comments to the contrary are pure speculation. To the extent this comment implies the stormlines were municipal, the City respectfully requests that it be stricken.

Plaintiffs' Counsel then completely oversteps her bounds in the next sentence of footnote 5, where she goes on to baldly make the following unsupported assertion: **"Waterlines are under pressure and almost never privately owned."** *Id.* This is a flagrant attempt by Plaintiffs' counsel to testify in the briefing, as an expert witness, to facts that are not in the record. There is no evidence in the record with regard to waterlines at all, much less whether or not they are under pressure, and/or whether or not they are privately owned. There is certainly no evidence in the record to suggest that waterlines upslope of Crystal Ridge in 1987 were owned by the City of Bothell. If anything, they were likely owned by the Water District. In any event, this statement from Plaintiffs'

briefing is wholly unsupported by the record, is not common knowledge, is clearly the subject of expert testimony and, respectfully, should be stricken.

B. Exhibit B to Respondents' Answer Should be Stricken

The document attached as **Exhibit B** to *Respondents' Answer* is an egregious violation of the Rules of Appellate Procedure and the Rules of Evidence. It is a violation of RAP 9.11 and RAP 9.12. It is also a violation of, *inter alia*, ER's 402, 403, 407, 701, 702, 703, 802, 904, and 1002.

Exhibit B is a copy of Plaintiffs' briefing for their Motion to Publish, filed with Division I, which was denied. Even if Plaintiffs' counsel subsequently claims she meant only to submit a portion of **Exhibit B**, *i.e.*, that portion cited in her brief ("pp. 2-3 citing Bothell Code 15.16.010 H"), that is NOT what she did – what she did was submit the entire brief. Furthermore, even the portion cited to is an improper supplementation of the record and should be stricken.

The City does not wish to waste the Court's time and resources with further discussion, as the inadmissibility of **Exhibit B**, which is full of unsworn statements, hearsay, and summary legal conclusions, is blatantly inadmissible. It should not be considered for any purpose in this Court's *de novo* review of the certified record on the cross-motions for summary judgment. *See*, CP 97-100 (Order on Summary Judgment) and CP 56-65 (Order allowing Plaintiffs to supplement the record).

IV. CONCLUSION

Plaintiffs have done it again. In response to a motion to strike, they submitted *additional* new and inadmissible evidence to the Court. The City respectfully requests that the Court strike that new inadmissible evidence.

Respectfully submitted this 9th day of May, 2014.

KEATING, BUCKLIN &
MCCORMACK, INC., P.S.

By: Stephanie E. Croll
Stephanie E. Croll, WSBA #18005
Attorneys for Defendant/Appellant
City of Bothell

CITY OF BOTHELL

By: Joseph N. Beck ^{E. Croll}
Joseph N. Beck, WSBA #28789
City Attorney, Defendant/ Appellant
City of Bothell

DECLARATION OF SERVICE

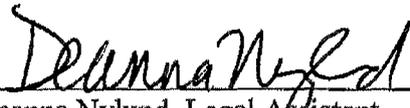
I declare that on May 9, 2014, a true and correct copy of the foregoing document was sent to the following parties of record via method indicated:

Attorneys for Plaintiffs/ Respondents

Karen A. Willie
kwillie@tmdwlaw.com
Terrell Marshall Daudt & Willie PLLC
936 N 34th St Ste 400
Seattle, WA 98103-8869
Ph: (206) 816-6603
Fx: (206) 350-3528

- E-mail
- United States Mail
- Legal Messenger
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DATED this 9th day of May, 2014.



Deanna Nylund, Legal Assistant

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, May 09, 2014 12:32 PM
To: 'Deanna Nylund'
Cc: kwillie@tmdwlaw.com; Joe Beck (joe.beck@ci.bothell.wa.us); Stephanie E. Croll
Subject: RE: Crystal Ridge Homeowners Association v. City of Bothell - No. 89533-3

Rec'd 5-9-14

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From: Deanna Nylund [mailto:DNylund@kbmlawyers.com]
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To: OFFICE RECEPTIONIST, CLERK
Cc: kwillie@tmdwlaw.com; Joe Beck (joe.beck@ci.bothell.wa.us); Stephanie E. Croll
Subject: Crystal Ridge Homeowners Association v. City of Bothell - No. 89533-3

The attached is being sent to you on behalf of Stephanie Croll. Hard copies will follow to all counsel of records via U.S. Mail.

Regards,

Deanna Nylund
Legal Assistant
Keating Bucklin & McCormack, Inc., P.S.
800 5th Avenue, Suite 4141
Seattle, WA 98104
(206) 623.8861
Fax (206) 223.9423
DNylund@kbmlawyers.com

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