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SUPREME COURT OF THE STATE OF WASHINGTON

No. 70013-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

FILMORE LLP, a Washington limited liability limited partnership,

Respondents,

v.

UNIT OWNERS ASSOCIATION OF CENTER POINTE
CONDOMINIUM,

Petitioner.

Filed
Washington State Supreme Court

MAY 13 2015

Ronald R. Carpenter
Clerk

AMICUS CURIAE SUPPLEMENTAL BRIEF ON BEHALF OF
COMMUNITY ASSOCIATIONS INSTITUTE

BARKER • MARTIN, P. S.
Daniel Zimberoff, WSBA No. 25552
719 2nd Avenue, Suite 1200
Seattle, WA 98104
(206) 381-9806
Attorneys for *Amicus* Community
Associations Institute



ORIGINAL

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I. INTRODUCTION

The Court of Appeals' decision likely upsets hundreds of rental restriction declaration amendments that have been passed by condominium associations in the state of Washington over the past few decades. Moreover, if Respondent Filmore LLLP's argument that "use" should be interpreted under canons of contract law instead of statutory interpretation, when the operative language of the Centre Pointe Declaration mirrors that of RCW 64.34.264(4), then interpreting the vast majority of the state's condominium association declarations would be thrust into a state of ambiguity, confusion and upheaval.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE* COMMUNITY ASSOCIATIONS INSTITUTE

Community Associations Institute ("CAI") is an organization dedicated to providing information, education and resources to community association members and managers. CAI's more than 33,000 members, located in 60 state chapters, include homeowners, professional managers, community management firms, and other professionals and companies that provide products and services to community associations. CAI is by far the largest organization serving the over 60 million owners who live within community associations in the United States. The Washington state chapter of CAI is the second largest chapter in the country serving over 9,900 community associations within the state. All of its members either live within a Washington community association or work in the

industry. Therefore, CAI's members are directly impacted by any decision that dictates the percentage of owners that must approve a condominium association's declaration amendment.

III. STATEMENT OF THE CASE

Amicus CAI adopts and incorporates the Statement of Facts as set forth in Petitioner's Supplemental Brief.

IV. AUTHORITY AND ARGUMENT

A. **Language in Declarations That is Identical to Statutory Language Should be Interpreted Consistent with the Statutes.**

Under RCW 64.34.216, a condominium declaration must contain 22 separate categories of information. One of these categories is RCW 64.34.216(1)(n), which expressly states: "[a]ny restrictions in the declaration on use, occupancy, or alienation of the units[.]" Purportedly to ease drafting of a declaration, or simply to ensure the declaration comports with the law, many drafters incorporate express language from the Washington Condominium Act ("WCA") directly into condominium declarations.

One of the more common sections of declarations that drafters mirror language of the WCA is in defining and describing any restrictions on "use, occupancy, or alienation of the units," as required under RCW 64.34.216(1)(n). Other common areas of duplication include authority of associations under RCW 64.34.304, preparation and

ratification of budgets under RCW 64.34.308(3), insurance requirements under RCW 64.34.352, lien and assessment rights under RCW 64.34.364, as well as several others portions of the WCA. In short, while the amount of statutory language incorporated into declarations varies from document to document, almost every condominium declaration drafted and recorded in Washington since adoption of the WCA probably incorporates at least some express language directly from the statute.

Here, the drafter of the Declaration for Centre Point Condominium appears as have followed industry custom by incorporating statutory language into the Declaration in several areas. Section 10.2 “Meeting of Association to Approve Budget,” tracks RCW 64.34.308(3). Sections 10.16 through 10.19 pertaining to liens and assessments, draw express language from RCW 64.34.364. Most relevant to the instant appeal is Section 17.3 pertaining to restrictions on use of a Unit, which mirrors the language of RCW 64.34.264(4).

As highlighted by Centre Pointe in its Supplemental Brief at pages 15-16, the Court of Appeals found that Section 17.3 of the Declaration tracked the text of RCW 64.34.264(4). The court further found that “construction of a paragraph of a declaration is guided by the meaning of the corresponding statute.” *Filmore LLLP v. Centre Pointe Condominium*, 183 Wn. App. 328, 347, 33 P.3d 498 (2014) (quoting *Lake v. Woodcreek*

Homeowners Ass'n. 169 Wn.2d 516, 530–31, 243 P.3d 1283 (2010)).
Amicus CAI relies upon the argument and case law cited in Section D of Petitioner's Supplemental Brief to counter Respondent's contention that interpreting the definition of "use" under Section 17.3 of Centre Pointe's Declaration should be made under the four corners of the Declaration instead of pursuant to statutory construction of the WCA.

B. Conflicts Between a Condominium Declaration and the Washington Condominium Act are Settled in Favor of the Statute.

In the event a condominium declaration is inconsistent with the WCA, the WCA controls. *See* RCW 64.34.208(3) ("In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.") In drafting and passing the WCA, the legislature established a hierarchy of authority, with the statute superseding a declaration, which trumps the bylaws. Emphasizing or relying upon contract interpretation over statutory construction of the WCA vitiates the legislative intent as expressed in RCW 64.34.208(3).

With respect to Centre Pointe's specific Declaration, under Section 19.2:

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other

provision hereof, *if the remainder complies with the Condominium Act* and furthers the common plan of this Condominium.

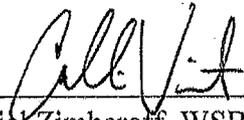
(Emphasis added.) CP 70. Thus, by the express language of the document, the Declaration accedes control of interpreting validity and enforceability of its provisions to the WCA.

B. CONCLUSION

Allowing a litigant in a dispute involving a condominium declaration to rely upon ordinary contract interpretation without regard to statutory construction and case law interpreting language that mirrors the WCA would result in confusion and disparate results for the practitioners who draft such documents and the tens of thousands of Washington State condominium homeowners and related parties who have to rely on the declarations. For the foregoing reasons, the Court of Appeals' ruling should be reversed.

Respectfully submitted this 27th day of April, 2015.

BARKER MARTIN, P.S.

 WSBA No. 44277
for Daniel Zimberoff, WSBA No. 25552
dzimberoff@barkermartin.com
Attorney for *Amicus Curiae*
Community Association Institute
Washington State Chapter