Supreme Court No. 1040270

COA No. 857240-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN E. COLLINS, Jr.,
a/k/a JAKE E. COLLINS, Jr.,

Petitioner,

v.

VILLA MARINA ASSOCIATION OF APARTMENT OWNERS,

Respondent.

PETITION FOR REVIEW

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I. INTRODUCTION

In this action, Petitioner seeks this Court's review of the Court of Appeals' decision issued on January 27, 2025. (1st Div.) (857240-0-I), on direct appeal of the King County Superior Court's Order Granting Plaintiff's Motion for Summary Judgment, entered on August 1, 2023, following hearing on July 28, 2023.

Appellant therein, John E. Collins, Jr. a/k/a Jake E. Collins, Jr., is referred herein as "Petitioner." Appellee therein, Villa Marina Association of Apartment Owners, is referred herein as "Respondent." The record below is referenced as CP#1_ (record of July 19, 2023), or as CP#2_ (record of July 28, 2023), followed by page and where relevant, line numbers.

The appeal for which review is requested is actually the second time this case came before the Court of Appeals. Initially appealed in Appellate Case No. 81865-1-I, on an Order from King County Superior Court Granting Reconsideration of the Plaintiff's Motion for Summary Judgment which had originally been denied by the trial court. Also under appeal therein, were the trial court's; Findings of Fact and Conclusions of Law re: Awarding Attorney's Fees; Order Appointing Custodial Receiver, and Order Granting Plaintiffs Motion for Supplemental Judgment.

The case originally began as a lawsuit brought by the Respondent, to collect homeowner association dues and fees which were allegedly owed by the Petitioner and to foreclose upon his condominium unit.

The trial court after initially entering and order denying the summary judgment motion, later reversed the denial upon reconsideration, ordered appointment of a

receiver, and granted summary judgment to the Respondent.

Following the briefing and hearing, and upon consideration, the Court of Appelas, while affirming the order appointing the receiver, nonetheless reversed the trial court's order granting summary judgment and also set aside and vacated the order and supplemental judgment which awarded the Respondent its attorney fees. The Court of Appeals then and remanded the case to the trial court, for such further proceedings as might be appropriate.

The problem however, is that by that point, there were actually no further proceedings for the trial court to consider; the controversy having been mooted by the sale of the Petitioner's condominium unit, approximately six months prior to the Court of Appeals' decision. Therefore, since the claims for foreclosure and for appointment of a receiver were no longer relevant, and all of the existing liens and encumbrances - including specifically, Respondent's cost and fees - were satisfied in full from the proceeds of the sale the parties were therefore essentially even.

Significantly, it should be noted that the Respondent did not seek reconsideration or review of the Court of Appeals decision; instead, it simply decided to ignore it completely. Within two weeks after the entry of the Court of Appeals decision being entered into the records of the lower court (April 27, 2022). The Respondent simply continued the litigation in the lower court, by filing a herein, notwithstanding the Court of Appeal's mandate, and the absence of any real property upon which to foreclose or over which to appoint a receiver, or any assessments or fines allegedly still due to the Respondent at that time.

II. IDENTITY OF THE PETITIONER

John E. Collins, Jr., Petitioner, seeks review of the decision issued below.

III. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals' published decision issued on January 27, 2025. (1st Div.) (857240-0-I).

IV. ISSUES PRESENTED FOR REVIEW

1. This Court reviews *de novo* an order granting summary judgment and performs the same inquiry as the trial court. *Owen v. Burlington N. & Santa Fe R.R.*, 153 Wn.2d 780, 787 (2005). "Summary judgment is available only if the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Bogle and Gates, PLLC v. Holly Mountain Re*s., 108 Wn. App. 557, 560 (2001).

2. Whether the Court of Appeals and the trial court erred in not finding that the original appeal decision reversing and remanding the case, coupled with the sale of the Petitioner's condominium, effectively mooted all areas of contention, making the Respondent's continuing actions in the trial court improper and unwarranted.

V. STATEMENT OF THE CASE

Petitioner acquired his condominium unit, the subject of the case in the lower court, in 1995, as a part of the Villa Marina Association of Apartment Owners. Although he had been in previous litigation with the Respondent, that matter was resolved in 2016, when he paid the Respondent, through their counsel, the sum of

$12,010.00.. As a result of the resolution, the Respondent refused to discourse about the payment details, which had lead up to the demand payment of $12,010.00.

In the current case, which was filed on August 7, 2020, the Petitioner alleged accounting irregularities. After initially having its summary judgment motion denied and - upon motion for reconsideration, granted - Petitioner appealed, raising issues of res judicata and the starting point of the accounting. The parties issues were pled and argued extensively, and on October 4, 2021, the Court of Appeals decided in favor of the Petitioner, set aside the orders granting summary judgment and awarding fees and costs, and remanded the case back to the lower court.

However, instead of abiding by the Court of Appeals' decision, the Respondent apparently make the calculated decision to simply ignore it, as though it never existed.

Petitioner, believing during the pendency of the first appeal, that his only viable opportunity of concluding the matter, was to simply sell the property at issue, which occurred on April 29, 2019. Out of the proceeds therefrom Petitioner paid over the Respondent, their demand of $3,176.73 in fees and costs at closing. It was reasonable and logical to therefore assume that the matter was closed. However, almost immediately following the filing of the Court of Appeals decision in the records of the trial court, the Respondent - instead of doing the reasonable and morally correct thing by returning the fees and costs to the Petitioner - simply made the decision to continue litigating the decisions made by this Court, back down in the trial court, where it their counsel then generated approximately $200,000 in additional

attorney fees, without even returning the $3,176.73 of Petitioner's money, which they now had illegal possession of.

Petitioner reasonably posited to the trial court - and later to the Court of Appeals - that the Respondent had used and continues to utilize improper - and quite frankly, fraudulent - accounting , by falsely alleging that Petitioner still owed for legal fees and other assessments. All this, without providing any supporting accounting, documentation, or reasonable explanation.

Respondent failed to pay to Petitioner the sums that were legally owed to him, leading Petitioner to reasonably question whether he had ever been financially obligated to the Respondent. This position was backed up by his own forensic accounting.

Simply put, following the Court of Appeals original decision, Petitioner naturally assumed that the matter was concluded; the Respondent had been paid its claimed lien against the property in full, the summary judgment order had been either set aside by this Court or mooted by the sale of the property, and the Respondent's judgment for attorney fees had been set aside. Of singular importance here, is that - despite being legally entitled to seek refund of the $3,176.73, Petitioner did not do so, prior to the Respondent's moves to continue litigation in the lower court, despite the absence of any property to foreclose upon or appoint a receiver over, or any assessments or fines allegedly due by Petitioner at that time.

Petitioner therefore filed a motion to enforce the Court of Appeals' orders on May 20, 2022, however exactly one week later, the Respondent filed yet another

summary judgment motion; its third overall in the instant case. The trial court denied that summary judgment motion on June 24, 2022, and five days later, on June 29, 2022, the Respondent filed yet another motion for reconsideration of its summary judgment motion, which the trial court denied on July 13, 2022.

On August 8, 2022, the Respondent, with no apparently legitimate reason to do so, but in an apparent and obvious effort to further drag the case out - and, of course, run up additional attorney fees - filed a Motion for Clarification on Summary Judgment in the trial court. That motion was denied on August 19, 2022, however the trial court also inexplicably denied Petitioner's Motion to Enforce the Court of Appeals mandate, without explaining the rationale therefore.

After almost a year of continuing interrelated filings, most of which concerned the Respondent's ever-increasing demands for attorney fee awards (supposedly all in preparation for the eventual trial date) the Respondent, on June 26, 2023, filed its fourth Motion for Summary Judgment, its fourth. Without explanation, the trial court granted that Motion, and the resulting orders and judgments, after having been improperly affirmed by the Court of Appeals, are at issue herein.

VI. ARGUMENT FOR GRANTING REVIEW

The decision conflicts with the Court of Appeals' previous decision; additionally it raises significant questions of law under both the U.S. and Washington constitutions; and it involves significant issues of public interest that should be determined by this Court. All of the RAP 13.4(b) criteria for discretionary review are met in this case.

It simply can not be permitted for a litigant - or even the trial court - even if there is serious disagreement with the Court of Appeals' decision, to be free to disregard those decisions; however, that appears to be what occurred in this case.

Compounded with the trail court's decision to neglect the doctrine of the "law of the case", and the mandate rule, is the Court of Appeals uncomprehensible allowance of this neglect. While it is true that the Court of Appeals itself may set aside, modify, and/or amend its prior decisions of the lower courts, that discretion is not unlimited. "Upon the retrial, the parties and the trial court [are] all bound by the law as made by the decision on the first appeal. On appeal therefrom, the parties and this court are bound by that decision unless and until authoritatively overruled." *Baxter v.Ford Motor Co*.. 179 Wash. 123, 127, 35 P.2d 1090 (1934).

The purpose of the "law of he case" doctrine is intended to afford a measure of finality to litigated issues. *Grvnberg Exploration Corp. v. Puckett*, 682 N.W.2d 317, 322 [(S.D. 2004)]; that finality was denied in the matter herein. The trail court's unwillingness to abide by the decision of the Court of Appeals threatens the uniformity of precedent law and fails to effect the appropriate and methodical establishment of justice. Most critically, it denies an end to litigation.

The doctrine of the law of the case is most commonly applied to prevent reconsideration of questions of law, which have, on the first appeal, been presented and decided, and were necessary to the disposition of that appeal. *Buob v. Feenaughty Machinery Co*., 4 Wn. 2d 276, 103 P. 2d 325 (1940)

Likewise, the mandate rule is a critical element of the law of the case doctrine,

and the anticipation is that a lower court is required to comply, and will comply strictly, with the decisions and orders set down by the Court of Appeals. The record in the trial court reflects that the Petitioner by motion, made a good faith effort to require the trial court to enforce the orders of the Court of Appeals.

VII. CONCLUSION

Based upon the foregoing, it is clear that this court should reverse the decision of the Court of Appeals and of the superior court and once again remand this case to the trial court to proceed to trial.

Once the statutory analyses and the case law analyses are reviewed, it is abundantly clear that there was insufficient basis for the trial court to have denied the Petitioner's motion to enforce the mandate of the Court of Appeals, and that all other errors stem from this fundamental error. It is therefore clear that the Petitioner is entitled to an order reversing and remanding this case.

Petitioner therefore respectfully requests that the Court of Appeals' decision be reversed and sent aside, that the matter be remanded back to the Court of Appeals for reconsideration, or in the alternative, that the trial court's order of summary judgment be reversed, and the matter remanded back to the superior court for trial.

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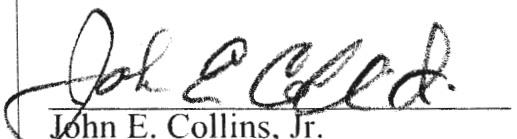
Respectfully submitted,



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VILLA MARINA ASSOCIATION OF APARTMENT OWNERS, a Washington Non-Profit Corporation, Respondent, v. JOHN E. COLLINS, JR. a/k/a JAKE E. COLLINS, JR., an individual and JANE or JOHN DOE COLLINS, an individual, and the marital or quasi-marital community comprised thereof, Appellants.	No. 85724-0-I DIVISION ONE UNPUBLISHED OPINION

COBURN, J. — John Collins appeals the trial court's decisions granting summary judgment and awarding attorney fees to Villa Marina Association of Apartment Owners. Finding no error, we affirm.

FACTS

This is Collins's second appeal from the underlying lawsuit. The facts are drawn in part from our opinion in Collins's first appeal. See Villa Marina Ass'n of Apt. Owners v. Collins (Collins I), No. 81865-1-I (Wash. Ct. App. Oct. 4, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/818651.pdf.[1]

[1] We cite to this unpublished opinion under GR 14.1(c) as necessary for a reasoned decision.

In December 2016, the Association sued Collins, who owned unit 173 of the Villa Marina Condominium, for delinquent assessments. Collins I, slip op. at 2. Collins made a $12,006.86 payment to the Association to settle that lawsuit (Settlement Payment), and on March 2, 2017, the trial court entered the parties' stipulation to dismiss the 2016 lawsuit with prejudice. Collins I, slip op. at 2.

In December 2019, the Association filed the instant lawsuit against Collins, alleging that he was again delinquent on assessments. Collins I, slip op. at 2. In July 2020, the trial court granted summary judgment to the Association and entered judgment for $44,092.27, the amount—including attorney fees—the Association requested at summary judgment. Collins I, slip op. at 7. The court later entered a supplemental judgment for another $11,415.35 in attorney fees and costs. Collins I, slip op. at 7.

Collins paid these judgments in September 2020. He also appealed, and this court held that the Association failed to meet its initial burden to show the absence of a genuine issue of material fact as to the amount of Collins's alleged delinquency. Collins I, slip op. at 9. In particular, we observed that the Association "based its entitlement to judgment as a matter of law entirely on the premise that the…Settlement Payment 'zeroed out' the balance on Collins' account as of March 1, 2017," but the Association "point[ed] to no admissible evidence in the record establishing that the balance…was at least $12,006.86 before [Collins] made the Settlement Payment." Collins I, slip op. at 9. Accordingly, we reversed the trial court's order granting summary judgment,

vacated the trial court's fee award, and remanded for further proceedings.[2] Collins I, slip op. at 15.

On remand, the Association renewed its motion for summary judgment. In support, it provided a declaration from Paul Heneghan, a certified public accountant it had retained to "perform a detailed review of…Collins' assessment account and to determine the outstanding balance due as of March 1, 2017 and the present time." Meanwhile, Collins sold his condominium unit, and in April 2021, proceeds from the sale were applied toward the outstanding balance on Collins's assessment account. According to Heneghan, after those proceeds were applied, Collins's account had a credit balance of $351.80. Also, according to Heneghan, since Collins sold his unit, the Association's attorney fees and costs continued to accrue. And after the Association applied the $351.80 credit balance, his account had an outstanding balance of $25,224.46 as of November 6, 2022. Heneghan provided detailed ledgers to support his declaration. He also attested that he "determined the amount due and owing in accordance with generally accepted accounting principles" and that "[w]hen there was a discrepancy between the Association and Mr. Collins as to when a payment was received, [he] applied the payment on the earlier date, which was more favorable to Mr. Collins," and he "removed late fees and adjusted interest to reflect receipt of payment on the more favorable date."

Collins did not timely respond to the Association's motion, but he filed an untimely response on July 27, 2023, the day before the Association's motion was

[2] We also affirmed a trial court order appointing a receiver over Collins's unit. Collins I, slip op. at 15.

set for hearing. Collins also moved to continue the hearing. He represented that his attorney had withdrawn and he needed time to find new counsel, he also claimed that the discovery provided by the Association was "insufficient for [him] to respond to their…summary judgment motion."

The Association moved to strike Collins's late-filed response. It also opposed a continuance, pointing out that the matter had been pending since 2019 and this would be Collins's sixth change in counsel. The Association presented evidence that it had produced discovery, including its expert reports, relevant to its motion for summary judgment. It asserted that it would be substantially prejudiced by a further delay because "witnesses are being lost where members of the Board of Directors, and persons who made critical decisions during the period in question, have rotated off the Board," "[s]ome witnesses have sold their units and are no longer available to the [Association]," and "[a]nother witness that worked for [the Association] cannot recall events, at this point in time, specifically citing the passage of time."

The trial court denied Collins's continuance request, and on July 28, 2023, it held a hearing on the Association's motion for summary judgment and its motion to strike. At the outset, the court inquired why litigation had continued after Collins sold his unit, asking, "[W]asn't it mooted by the fact that he paid by the time of closing?" The Association's counsel explained that the Association was "defending the ledger balance still" because Collins was "still asserting that it's not correct and that he's owed money from the association." The trial court then asked Collins whether he was seeking a judgment or a court order telling

the Association to pay him back, and Collins responded, "Yes. Yes, …I am seeking a return of those mandated funds based on the fact that I never owed them money from day one," and he insisted that he "never owed anything from day one."

The trial court then asked the Association why it did not simply dismiss the lawsuit after the first appeal was resolved given that "at that point, …the association got everything that it would have gotten through a motion for summary judgment." The Association's counsel responded that because Collins had paid the earlier judgments and this court vacated those judgments on appeal, the Association was confirming the "righteousness" of the judgments because it did not want to return Collins's payments.

The trial court then asked Collins to confirm, again, that he "dispute[d] those payments, and…believe[d] that [he] should get them back," and Collins confirmed that his goal was "to get the lawsuit dismissed with prejudice and show that the money was never owed." The trial court responded, "Understood. So that, in my mind puts to rest that question." The court then heard argument from the parties, granted the Association's motion to strike Collins's response, and granted the Association's motion for summary judgment, determining there was "no material issue of fact as to [Collins's] assessment ledger balance as reconstructed by…Heneghan." The trial court also granted the Association's request for an award of attorney fees, and on September 15, 2023, it entered judgment in the Association's favor in the amount of $156,182.13, consisting solely of fees and costs. Collins appeals.

DISCUSSION

Denial of Continuance

Collins assigns error to the trial court's denial of his request to continue the hearing on the Association's motion for summary judgment. As Collins acknowledges, "we review rulings on requests for continuance for abuse of discretion." Pastor v. 713 SW 353rd Pl., 21 Wn. App. 2d 415, 429 n.4, 506 P.3d 658 (2022). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

Collins points out that he requested a continuance so that he could retain new counsel, and he accuses the trial court of "refus[ing] to delay the proceedings." But he does not argue, much less show with citations to relevant authority or meaningful analysis, that the trial court's decision lacked a tenable basis. Accordingly, he fails to demonstrate that the trial court erred by denying his continuance request. Cf. Cook v. Brateng, 158 Wn. App. 777, 794, 262 P.3d 1228 (2010) ("Appellate courts need not consider arguments that are unsupported by pertinent authority, references to the record, or meaningful analysis.").

Summary Judgment

Collins next argues that the trial court erred by granting summary judgment. We disagree.

We review summary judgments de novo, construing all facts and inferences in favor of the nonmoving party. Strauss v. Premera Blue Cross, 194

Wn.2d 296, 300, 449 P.3d 640 (2019). However, we "will consider only evidence and issues called to the attention of the trial court." RAP 9.12.

Summary judgment is appropriate when "'there is no genuine issue as to any material fact and…the moving party is entitled to a judgment as a matter of law.'" Strauss, 194 Wn.2d at 300 (alteration in original) (internal quotation marks omitted) (quoting Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008)); CR 56(c). "'After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact.'" Michael v. Mosquera-Lacy, 165 Wn.2d 595, 601, 200 P.3d 695 (2009) (quoting Meyer v. Univ. of Wash., 105 Wn.2d 847, 852, 719 P.2d 98 (1986)).

Here, the Association presented adequate affidavits, including Heneghan's expert declaration, establishing the amount of Collins's delinquency. Collins, whose untimely response was stricken and not considered by the trial court,[3] did not present any competent evidence to establish a genuine issue of material fact in this regard. Thus, the trial court did not err by granting summary judgment in the Association's favor.

Collins disagrees and argues that the trial court violated the law of the case doctrine and this court's mandate in Collins I by entertaining the Association's renewed summary judgment motion rather than proceeding to trial. Collins is incorrect. Although we held in Collins I that summary judgment was

[3] Collins does not argue much less establish that the trial court erred by striking his response.

improper based on the evidence presented at the time, nothing in our opinion precluded the Association from renewing its motion with additional evidence.

Collins also contends that because he sold his unit and satisfied all assessments and liens, it was improper for the Association to continue litigating and accruing attorney fees.[4] He points out that the Association's lawsuit sought the remedy of foreclosure, and he claims that the laws governing foreclosures "do not support the imposition of attorney fees in a foreclosure case, which continue and accrue for years after the subject property has been disposed of." But Collins cites no authority to support this proposition. And as the trial court took pains to confirm, Collins insisted he never owed the Association anything and was entitled to a refund of what he had paid once this court vacated the earlier summary judgment order. Accordingly, there remained a live dispute about the amount of Collins's delinquency. Indeed, Collins *continues to assert* in his briefs before this court that a trial is necessary. He fails to show that, under these circumstances, it was improper for the Association to continue litigating or for the trial court to rule on the Association's renewed motion for summary judgment.

Fees on Appeal

As a final matter, the Association requests an award of fees on appeal. "A party is entitled to attorney fees on appeal if a contract, statute, or recognized ground of equity permits recovery of attorney fees…and the party is the substantially prevailing party." Hwang v. McMahill, 103 Wn. App. 945, 954, 15

[4] Collins does not challenge the trial court's determination that the amount of fees incurred by the Association was reasonable.

P.3d 172 (2000). The Association is the substantially prevailing party on appeal. It contends that it is entitled to fees under RCW 64.34.364(14), which provides that "[t]he association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments," and "[i]n addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment." The Association also argues it is entitled to fees under its governing documents, which provides for an award of fees reasonably incurred in the Association's "preparation for or…prosecution of" any action "to foreclose a lien against any apartment for nonpayment of delinquent assessments." Collins does not argue otherwise in his reply. We grant the Association's request for an award of attorney fees on appeal, subject to its compliance with RAP 18.1.

We affirm.

Colum, J.

WE CONCUR:

Brennan, J

Hazelrigg, ACJ