46094-7-II

Consolidated with 47074-8-II

SUPREME COURT

OF THE STATE OF WASHINGTON

JOHN J. HADALLER

An individual, Appellant (plaintiff)

V

.MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION, a Washington non-profit corporation, DAVID A. and SHERREY LOWE, individually and the marital community thereof; RANDY FUCHS An individual; CLIFFORD and SHEILAH SCHLOSSER, individually and the marital community thereof : and MAURICE and CHERYL C. GREER, individually and the marital community thereof

Respondents (defendants)

APPELLANT'S PETITION FOR REVIEW

John J. Hadaller

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Appellant Pro Se

TABLE OF CONTENTS

TABLE OF CASES

TABLE OF CONSTITUTIONAL CITATIONS

TABLE OF STATUTES

TABLE OF RULES

1. INTRODUCTION AND IDENTITY OF PETITIONER

Petitioner John J. Hadaller (Hadaller) seeks review of the decision designated in part II of this partition.

This lawsuit arises from the control of development of a lakefront parcel of land originally owned and under development by Hadaller, prior to Defendant Fuchs and Lowe's purchase of lots in that development. They forced a homeowners association (HOA) over the development and (mis)used the provisions of the HOA statutes (RCW 64.38) to defraud Hadaller of his investments in that development (his retirement plan) and even his home.

This review is in regards to his home, and the core issue for review of a first impression of the law that chips further away at constitutional rights, is that the Court erroneously found that the notice provision of RCW 6.13.080(6) regarding homesteads was not violated by the HOA. Thus the HOA did not have to provide Hadaller with his constitutionally protected right of a homestead and notice. Division II of the Appellate Court first impression review held that RCW 6.13 provides no requirement of notice to a homeowner preexisting before the HOA was imposed over the home, Thus he/she may ignorantly lose their homestead right for squabbling with the HOA. RCW 6.13.080(6)[1] was enacted in 1988 to protect HOA's from legitimate loss and requires notice to

[1]It was codified as RCW 6.13.00(5) at that time

owners of their potential to lose their homestead so as to provide a homeowner to decide whether the risk of opposing a HOA is worth pursuing. A holding on this issue from this Court would affect thousands of Washington HOA members and clarify the argument of whether the HOA has clear responsibility to provide "meaningful notice" as the legislature obviously intended.

A review and holding by this Court is also called for because County and city planning jurisdictions are increasingly forcing developers to assign the costs for ongoing maintenance of roads, water systems and other common areas to the buyers instead of public provisions as was the case in the mid 1900's. HOA's are now the widely used governments that control new development and appears to be increasing in the future. Div. II's holding encourages fraud, in fact Hadaller was defrauded of over $800,000, this Court has a responsibility to make a holding of the law that discourages more unethical manipulation of the HOA laws for profit such as the record will show occurred here.

II. COURT OF APPEALS DECISION

Hadaller seeks review of the unpublished decision filed on January 24, 2017, by Division II of the Court of Appeals, confirming the Superior Courts judgment.

III. ISSUES PRESENTED FOR REVIEW

1. The Legislature denied the first draft of SHB 1329 which amended RCW 6.13.080(6)[2] because it did not give meaningful notice to prospective new owners under HOA government that they were derogating their homestead right. The bill passed only after the notice provision was added to it. Did the lower Courts error by finding/holding no meaningful notice is owed to preexisting homeowners when a new HOA is forced over the home?
2. The decisions made below prevented Hadaller from his constitutionally mandated homestead exemption, by not entitling him to a meaningful notice of sacrificing it to a HOA. Those fundamental rights effect tens of thousands of Washington homeowners under HOA rule. Should this Court accept discretionary review under RAP 13.4 (b) (3)& (4)?

IV. STATEMENT OF THE CASE

A. Parties

Plaintiff/Petitioner John J. Hadaller (Hadaller) is an individual who owned twelve of the eighteen Mayfield

[2] It was codified as RCW 6.13.080(5) at that time See Legislative history in appendix pages 4-8 of Appellants Opening Brief from appellate Court.

lakefront acres he had installed roads, water systems, and utilities upon. He had a first right of refusal on the other six care parcel(Lot 2), which was sandwiched between his two six acre parcels (Lots 1 and 3) he developed.

Defendants Clifford and Sheliah Schlosser and Maurice and Cheryl Greer. Are the first two owners of the first two ½ acre lots Hadaller sold to them. Their lots were burdened by an easement at the water front which accessed the six acre segregation survey lot 2, that easement prohibited subdivision by code. The dominant (lot 2) property was owned by a third party who had promised sale of it to Hadaller only, it was the big prize in this plot because it had a potential of $750,000 of smaller lots.

Defendant Randy Fuchs, HOA co-creator/ secretary, is an excavation contractor/land developer who bought a home in the development from Hadaller upon agreeing to and signing a covenant stating only Hadaller could add said lot 2 to the private road (Virginia Lee Lane) Hadaller built. A year later Fuchs began to buy (the by then substantially developed) lot 2 from the owner, whom was under contract to sell it Hadaller for less than Fuchs offered. When Fuchs came to the legal conclusion lot 2 had no easement for subdivision he quit the sale.

Private party/ HOA co creator/HOA attorney, David Lowe

(Lowe) and wife Sherry purchased three of the four lots, Hadaller had developing at the time Fuchs attempted to jump Hadaller's claim, shortly after completion of them. Lowe arrived unsolicited and bought 3 lots, with a large real estate contract[3], in three hours contemplation in October,2007.

Mayfield Cove Estates Homeowners Association was contemplated by Hadaller when he was forced to make the roads and water systems privately owned and maintained by code. A maintenance fee and structure for collection of it were required before approval for construction was granted. Hadaller provided for a homeowners association but did not incorporate one. It was his intent to manage the CCR's as the secretary until all his lots sold, then expected to have a cooperation of all future owners to finish the covenant as they deemed fit.

FACTUAL BACKGROUND

This begins when ..... Appellant John J. Hadaller (Hadaller) bought two of three six acre plots of land (segregation survey lots 1 and 3) and obtained a first right of refusal to the third (segregation survey lot 2)[4], in January 2002,from the Fortman Trust (Fortman). Shortly thereafter it was rezoned to allow for ½ acre lots. Although the land fronts approximately 1,100 feet on

[3] Which he later substantially erased with his attorney fee awards
[4] CP323¶1 Ex 3

Mayfield Lake, in Lewis County, only about 300 feet of it is not a high(80'+-) virtual cliff to the water. Hadaller chose the parcel that contained that 300 feet of lower bank that is practical to access to a dock and nearest to an area where a very nice swim beach exists to ultimately build his home which his homestead is part of.

But before moving on to that parcel in 2005[5], he first moved onto segregation lot 1 in May 2002 and short platted it into four lots . He recorded CCR's to maintain the road, water system and provide for dock maintenance. He recorded that first plat in September 2003[6]. He sold lot 1 (101 Virginia Lee Lane)to Clifford and Sheliah Schlosser (Schlosser)in October 2003[7]. He sold lot 2 (105 Virginia Lee Lane)to to Maurice and Cheryl Greer (Greer) in July 2004[8].

Hadaller lived on what became lot 3 (106 Virginia Lee Lane) from May 2002 until he moved to what became his present homestead land, in January 2005, which was and still is 135 Virginia Lee Lane[9] living there from January 2005[10] until the Sheriff ejected him in March 2016. It is part of segregation lot 3.

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[5] EX 17 Pg12 Ex 40 (Note date and address)
[6] CP 323 ¶2 & Ex 4 & the relative CCR's were rerecorded in 2007 on a second plat and in the record at EX 12 see Pg 4
[7] CP 324 ¶7
[8] CP 324 ¶8
[9] Ex 40 note address and date
[10] Ex 40 Ex17

Back to the first plat, Hadaller retained lot 4 (104 Virginia Lee Lane) improving it with a residence and leasing it to Dean and Pam Rockwood[11] (Rockwood) Hadaller structured it that way and retained fee title to the lot at the time because the lot contained most of the first 100 feet of the road, he built, that accesses the plats and crosses segregation lot 2. After Hadaller was successful in platting, Fortman reneged on selling segregation lot 2 for the agreed price and was shopping around for as much as he could get in years 2003-2008, Hadaller had a right to match any price. The agreed price of $66,333 in 2002 ballooned to $250,000 when it sold to Lowe with Hadaller's improvements in 2008[12]. Fortman's Segregation lot 2 did not reserve an easement that allowed for subdivision. Only Hadaller had the right to add it to his road, which was part of the original sale structure in 2002. The reserved easement to Segregation lot 2 and 3's would only support a single family homesite, by code. It burdened the Schlosser's and Greer's prime building sites and Hadaller orally promised the Schlosser's and Greer's he would move it when he purchased segregation lot 2 and that agreement became consideration for and part of a written covenant that amended the CCR's in 2006[13].

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[11] CP325 ¶12 CP 402
[12] CP 326 ¶16
[13] Ex 12 Pg 11-13

In September 2005 Hadaller sold lot 3 of the first plat (106 V.L) to land developer Randy Fuchs[14], which was done only under an agreement to Amend the CCR's to protect Hadaller's developers' interest[15]. The amendment was recorded in August 2006[16] (Commonly known as the 2006 Amended Covenants), A year later, after Hadaller built the roads and utilities[17], Fuchs attempted to overtake Hadaller's development rights by offering to buy segregation lot 2 from Fortman for $200,000. Once Fuchs discovered the easement restrictions the lot was clouded with, he quit the sale. Fortman refused a purchase offer from Hadaller. Instead Fuchs bought a five acre sub-dividable parcel contiguous on the east site of Mayfield Cove Estates subdivision .

January 2005 Hadaller moved his residence (homestead) on to segregation survey lot 3 which became 135 Virginia Lee Lane Mossyrock Wa[18].

Two years after moving his homestead onto segregation lot 3, Hadaller recorded his second short plat and relative CCR's in April and May 2007[19]. He created four lots retaining the 3.42 acres which held his home and contains the only usable lake front in the

[14] CP 324 ¶9
[15] CP 649 -652 Cp 646-648
[16] Ex 12 pg. 11-13
[17] CP 326 ¶16
[18] Ex 40 (note date and address) Cp 323 ¶1
[19] Ex 12 Ex 6 and 5 (Exhibit 5 and 6 were filed backwards of their description)

area and is known as lot 4 of short plat 05-00017 and 135 Virginia Lee lane. That 3.42 acres provided for platting off 2 more waterfront lots with dock rights after May17, 2012. The plat also recorded three other ½ acre lots in May 2007.

In early October 2007 David Lowe called Hadaller out of the blue. He had no advertising of the lots for sale. David Lowe came and bought all three ½ acre lots that day in a matter of hours of discussion with a substantial real estate contract [20] An appearance of friendship was portrayed by Lowe over the winter of 2007 and 2008.

In May 2008 The Lowes (mis)represented an arrangement with Hadaller to get him to not enjoin the sale when they bought segregation survey lot 2 from Fortman. When they reneged on the plan, that got Hadaller to not exercise his right of refusal, Hadaller became protective of the use of road and utilities he built across it to serve twelve home sites worth potentially $750,000. Hadaller relied entirely on the 2006 Amended Covenant to protect his investments into the roads and utilities. [21]

Without notice to Hadaller in the summer of 2008,

[20] [CP 325 ¶11] [CP 325- 326 ¶14] [CP 245 ¶93] [CP 346¶95]
[21] CP 326¶16

Lowe secretly orchestrated drafting and filing new by-laws and articles of incorporation, to incorporate a HOA, filing them with the secretary of State on September 3, 2008[22].

The first notice to Hadaller of Lowes actions was a December 12, 2008 letter Lowe sent to Hadaller of a pending meeting to install that newly incorporated HOA, Lowe and Fuchs created to overtake the subdivision. That meeting was held on December 30, 2008. It was attended by Lowe, Fuchs, Schlosser, and Hadaller which is all of the owners but the Greer's, they voted in proxy. All but Hadaller voted to adopt the articles of incorporation and by-laws, officially creating and incorporating the HOA for the first time.[23] Offices were officially established for the first time and elected. Voting; David Lowe as president, Randy Fuchs as secretary, Cheryl Greer as treasurer, Clifford Schlosser and Maury Greer were voted as board members. The new officers traded the easement to Lowes segregation lot 2 off of Schlosser's and Greer's waterfront portion of their lots and placed it on Virginia Lee Lane, recording it that day.[24] Hadaller opposed it all[25].

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[22] [Ex 19 Pg 1]
[23] [CP 325 ¶ 14] [Ex 19]
[24] CP 326-329 [Ex 19] CP
[25] [Ex 19]

Randy Fuchs filed a declaration falsely stating Hadaller forged Fuchs' signature to the 2006 Amended Covenant[29]. Hadaller submitted declarations from two eyewitnesses that personally watched Fuchs sign the document[30]. Hadaller counterclaimed for quiet title to challenge the easement trades and declaratory judgment of the 2006 Amended Covenant. At the show cause hearing the HOA argued that Hadaller's CCR's were deficient in the way they were not supported by articles of incorporation, identification of officers or means of electing officers. They argued that Hadaller in essence had not set up a valid homeowners association and the other owners desired to have by-laws defining the means of electing officers and managing a valid homeowners association.[31] They argued the CCR's were an interim deficient set of CCR's at best. The Court agreed with the HOA, found the new HOA was duly formed and in power and ordered Hadaller to turn over the original documents[32].

Hadaller quickly arranged (risking contempt) to have the 2006 amended covenant examined, then filed a report by a forensic document examiner confirming Fuchs' signature to be genuine[33].

On April 3, 2009 the Court dismissed Hadaller's

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[29] CP 626-630
[30] Cp 646- 652
[31] RP 01/29/2009 Pg 5 L. 12 – Pg 14 L. 21
[32] RP 01/29/2009 Pg 45 L. 15 – Pg 46 L. 18
[33] CP 631-652

counterclaims from the HOA suit for these quiet title issues without prejudice so they could be filed in what became this suit[34]

On June 26, 2009 this suit was filed for declaratory judgment/quiet title asking the Court to confirm the 2006 amended covenants prevented anyone but Hadaller the right to add additional property to the roads he had built. Also to void the easement to segregation lot 2, (it was amended in 2010 to include confirmation of an easement across the Schlosser's and Greer's lot to benefit Hadaller's segregation survey lot 3[35])

In December 2009 a trial was held in co-case 09-2-0052-1 to determine the ownership of the water system #2. Although the issue of the 2006 amended Covenant was pled in this in this case the Association raised it by surprise while Hadaller's fact and expert witnesses where unavailable, the court voided the covenant and ultimately Lowe obtained $144,000 from the judgment from Hadaller's foreclosed lots after transferring them from the HOA to personal ownership in 2012[36].

A five day Trial was held in April-May 2011, the Court found in favor of the defendants. Attorney fees were awarded and a

[34] CP126 L. 6- Cp 127 L10
[35] Ex 19 CP 286 ¶3.11 CP 289
[36] CP 45

judgment was entered in favor of the Defendants on June 10, 2011.[37]

On December 26, 2012 the HOA sent Hadaller a notice, which was the first time they noticed him of this, that his homestead exemption provided under RCW 6.13 was excepted to their judgment lien by operation of RCW 6.13.080(6). The HOA has admitted this fact and not contested it [38]

In January 2013 the bulk of Hadaller's personal property, valued at over $80,000, including the vender's interest in the Schlosser REK was sold by sheriff sale[39]. Mostly purchased by David Lowe, who paid for it with a tiny part of the judgments awards.

In May 2013 Hadaller's last two speculative lots were sold under the HOA suit judgment. They were appraised at $72,000 each or $144,000 total.[40] Six days after the foreclosure sale the "HOA" quit claimed them directly to David and Sherry Lowe. [41] which they still own.

On January 9, 2014 the sheriff sold Hadaller's residence.

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[37] CP 514-517
[38] CP 411, 412 (last Paragraph)
[39] CP 518 L. 24-26
[40] [Ex 368]
[41] CP 45

Redemption and or supersedeas was financially beyond Hadaller's means, so on March10, 2016 the Sheriff delivered the deed for Hadaller's residence to David Lowe, in the name of the HOA.

On March 25, 2016 The Sheriff ejected Hadaller against his will from his home at 135 Virginia Lee Lane, Mossyrock, Wa.

The Lowes are now using it for their weekend/summer home.

On January 24, 2017 Division II affirmed the trial Courts ruling that Hadaller is not entitled to notice or homestead.

VI. ARGUMENT

A. This Court should accept this review, per the provisions in RAP 13.4(b)(3)&(4), of this constitutional issue that effects a large share of Washington homeowners

HOA government actions are subject to constitutional provisions and restrictions. *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.Fla. 1989),That is because their strong governing hand can be enforced in the courts just as state and county governments are. Which is precisely what has happened in this case. Public interest is involved here because HOA membership is increasing rapidly.

In order for RCW 6.13.080(6) to be constitutional it must comply with due process of meaningful notice and be evenly applied to all citizens in the class it governs. U.S.C.A.Const.

Amend. V & XIV, Washington Const. Art1§3&12, *Burr v. Chase*, 157 Wash. 393(1930) *Condo. Ass'n v. Apartment Sales Corp.*, 144 Wn.2d 570 (2001)

"Notice. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust Co.,* 339 U.S. 306, 314 (1950) "The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest". *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970) . Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it. *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) ;U.S.C.A.Const. Amend. 14.Washington Const. Art1§12 *Robinson v. Hanrahan*, 409 U.S. 38 (1974) ; *Greene v. Lindsey*, 456 U.S. 444 (1982) .

RCW 6.13.080(6) was enacted by the legislature with a clause that requires notice…meaningful notice[42]. The *Armstrong Id* Court described meaningful notice to be a notice that is provided in a timely manner so that the person receiving it may

[42] See Legislative History in Opening brief from below appendix Pgs 4-8

follow appropriate action. In this case, contrarily, Hadaller was methodically, systematically groomed by a homeowner association president, who is a lawyer with over $800,000 to gain (Lowe). Lowe set up the HOA over Hadaller's land against Hadaller's objection to the radical new amendments in the CCR's The HOA did not grant Hadaller a notice within 30 days that opposing the HOA actions will result in loss of Hadaller's homestead rights. It is admitted by the HOA they failed to give that required notice until December 26, 2012.

Beginning on December 30, 2008, the HOA officers ratified themselves into power and recorded themselves private easements across Hadaller's fee owned land against his objection. The HOA, and officers for their own private interest, to take Hadaller's lakefront land, began their court action January 12, 2009 scheduling multiple hearings, for fictitious reasons, methodically defeating Hadaller's financial ability to hire an attorney by December 2009. They then ran up over $120,000 in attorney fees between the time they took control and the time they complied with the notice provision, on December 26, 2012. By that time Hadaller's financial ability and credit (which was 35 years of perfect credit, he held a performance bond line for his construction Co. up to 2010) was destroyed. He was forced into either self representation or literally give up his material life to them. In order to avoid foreclosure and comply

with the judgment by the December 26, 2012 notice date. He had to pay the HOA nearly $130,000.00 which was unattainable by then. Even if it would have been, the HOA had their radical, new amended covenants in place to create more judgments if it was required.

The December 26, 2012 notice was not meaningful, it did not provide Hadaller with a constitutional due notice to not risk his homestead exemption, which is also a fundamental right per Washington Const. Art.XIX§1, *Armstrong Id*

The Div.II Court held that RCW 6.13.080(6) states that only new members, ones buying into an existing HOA, must receive a notice they are agreeing to sacrifice their homestead to the HOA. Div II's decision erroneously states RCW 6.13.080(6) provides no due process meaningful notice obligation to the unfortunate homeowner that has a HOA government involuntarily forced over his preexisting home. Therefore RCW 6.13.080(6) derogates the unfortunate homeowner's homestead without a right to the constitutionally required due process of meaningful notice. That uneven notice treats citizens in the same class unevenly.

RCW 6.13.080(6) applies to a class of people with a homestead that is governed by HOA law, Hadaller was in that class. It would be unconstitutional and a strain to argue the

legislature only mandated certain HOA members (only the new buyers) have that due process right while the homeowners imposed upon with a new government have no right to notice. In

order for RCW 6.13.080(6) to be constitutional, it must apply evenly to each member of said class by evenly providing a meaningful notice, per due process, to each class member. Therefore it is not constitutional for Division II to decide that Hadaller and any other future class members (that owns a pre HOA controlled home), are subjected to RCW 6.13.080(6) without meaningful notice when a homeowners association forms over it. U.S.C.A.Const. Amend. V & XIV, Washington's Art.I§12. In fact, the legislative history of the law[43] shows the legislature expressly denied the first draft because it had no notice provision. After the bill sponsors drafted notice in it, it was enacted. It is far from constitutional to deny notice protection to the portion of the class that is owed it most. That is the members who were comfortably and ignorantly in the belief they have a homestead exemption even when a new HOA obtains control of their property, as has happened to Hadaller in this case. The law, itself ,if evenly applied to all class members, is constitutional. But it wasn't hence the decision below is either in error or the law is unconstitutional. This Court has a responsibility to correct the

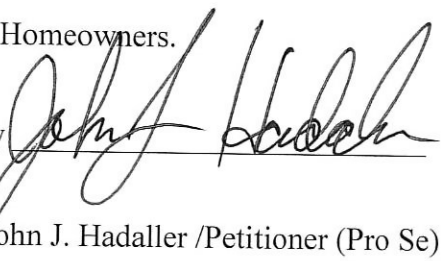
[43] See appendix Pg 4-8 of Appellants opening Brief, legislative history of RCW 6.13.080 (1988)

error by granting review and considering a holding Hadaller was also entitled to a meaningful notice and did not receive that, or alternately the law, as it applied to him per Div.II, is unconstitutional for lack of meaningful notice. Thus Hadaller's fundamental homestead right was in full force and the HOA must pay him it for it.

IV. **CONCLUSION**

RAP 13.4 (b) (3) provides for Supreme Court review is possible if a constitutional law is at issue. In this case two of Hadaller's constitutional rights are at issue, his due process of meaningful notice under U.S.C.A.Const. Amend.XIV and his homestead protection under Washington Const. ArtXIX§1.

Additionally RAP 13.4(b)(4) provides the authority for this Court to accept review because the law at issue effects a substantial number of Washington homeowners, there is several thousand, and rapidly growing, they too are risk of losing their homestead and there exists no caselaw at this moment because this is an issue of first impression analyzing the relately new law This Court should accept review and an analysis should be made instructive for both HOA's and Homeowners.

Submitted February 23, 2017 by 

John J. Hadaller /Petitioner (Pro Se)

Filed
Washington State
Court of Appeals
Division Two

January 24, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN J. HADALLER, an individual, Appellant, v. DAVID A. and SHERRY LOWE, individually and the marital community thereof; RANDY FUCHS, an individual; CLIFFORD L. and SHEILAH SCHLOSSER, individually and the marital community thereof; MAURICE L. and CHERYL C. GREER, individually and the marital community thereof; MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION, a non-profit corporation, Respondents, LEWIS COUNTY TITLE COMPANY, a Washington corporation; Defendants.	No. 46094-7-II Consolidated with No. 47074-8-II UNPUBLISHED OPINION

WORSWICK, J. — This is the second time we have addressed issues in a contentious relationship between John J. Hadaller and Mayfield Cove Estates Homeowners Association.[1] In a prior appeal, we affirmed a declaratory judgment in favor of the Association and awarded attorney fees and costs against Hadaller. After remand, Hadaller refused to comply with the judgment, and the HOA proceeded to foreclose a lien on his property.

[1] Hadaller has filed a number of appeals in related litigation. *See Mayfield Cove Estates Homeowners Ass'n v. Hadaller*, noted at 166 Wn. App. 1036, 2012 WL 628206; *Rockwood v. Hadaller*, noted at 168 Wn. App. 1003, 2012 WL 1655946; *Hadaller v. Lowe*, noted at 175 Wn. App. 1062, 2013 WL 3963733.

Hadaller now appeals the trial court's 2011 attorney fee award, February 2014 decree of foreclosure and order of sale, and December 2014 supplemental judgment in favor of the Association. Hadaller argues (1) the trial court misinterpreted RCW 6.13.080(6) by concluding that his homestead was subject to the Association's lien because (a) he did not receive proper notice from the Association and (b) the covenant permitting the lien was in place after he acquired title, (2) the trial court failed to make a record sufficient to permit meaningful appellate review of its 2011 attorney fee award, and (3) we should review our earlier decision in *Mayfield Cove Estates Homeowners Ass'n v. Hadaller*, noted at 166 Wn. App. 1036, 2012 WL 628206. We decline Hadaller's invitation to revisit our earlier decision, and we affirm the trial court in all respects.

FACTS

On January 10, 2002, John J. Hadaller obtained title to property in Lewis County. In 2003, Hadaller developed the property into residential lots and recorded a "Declaration of Covenants, Conditions, Restrictions, Road Maintenance Agreement, Water System" for the lots. 3 Suppl. Clerk's Papers (CP) at 323. Hadaller named the development Mayfield Cove Estates. Between 2003 and 2007, Hadaller sold a number of the lots, and the Mayfield Cove Estates Homeowners Association incorporated on September 3, 2008, and began assessing annual fees.

Beginning in 2008, Hadaller refused to pay the Association's annual assessments. On July 3, 2009, the Association held its annual meeting and voted to adopt amended CCRs (2009 CCRs). The 2009 CCRs provided for special assessments in addition to the Association's annual assessments and created a continuing lien against properties for unpaid assessments, costs, and attorney fees. Further, the 2009 CCRs permitted the Association "to enforce, by any proceeding

at law or in equity, all restrictions, conditions, covenants, reservations, assessments, [and] liens . . . imposed by the provisions of these CCRs" and entitled the prevailing party to reasonable costs and attorney fees in any action brought under the CCRs. 3 Suppl. CP at 399.

Hadaller filed a lawsuit against the Association and the homeowners in the Association for, among other things, declaratory judgment, quiet title, and nuisance. The Association filed counterclaims for conversion, breach of contract, misrepresentation, and violation of the 2009 CCRs. In June 2011, following a bench trial, the trial court ruled in favor of the Association and awarded the Association attorney fees and costs for overdue special and annual assessments. The trial court entered findings of fact and conclusions of law in support of its award.

Hadaller continued to refuse to pay the Association's special and annual assessments. On December 26, 2012, the Association notified Hadaller that nonpayment of his assessments could result in foreclosure of the Association's lien, as provided in RCW 6.13.080(6),[2] and that the homestead exemption in RCW 6.13.070[3] would not apply to the foreclosure action. On February 19, 2014, the Association filed a motion with the trial court to enter a decree of foreclosure and

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[2] RCW 6.13.080(6) states:

> In order for an association to be exempt [from the homestead exception] under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. . . . The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure.

[3] "Except as provided in RCW 6.13.080, the homestead is exempt from . . . forced sale for the debts of the owner." RCW 6.13.070(1).

order of sale against Hadaller's property and to supplement its 2011 award of unpaid assessments and attorney fees.

At the hearing on the Association's motion, Hadaller argued that the Association failed to give him proper notice of foreclosure under RCW 6.13.080(6) because he was a "new owner" under the statute and did not receive notice within 30 days of acquiring title to his property. The trial court disagreed and, on February 28, entered a decree of foreclosure and order of sale.

Hadaller filed a number of motions for reconsideration, arguing that he did not receive proper notice under RCW 6.13.080(6) and that the trial court erred in awarding attorney fees to the Association in its 2011 judgment because the trial court did not itemize which fees were awarded to each individual homeowner in the Association. The trial court denied Hadaller's motions, stating they were untimely and that it would not revisit its 2011 judgment. At a later hearing, the trial court granted the Association's motion for supplemental judgment and ordered Hadaller to pay supplemental attorney fees. Hadaller appeals the February 28 decree of foreclosure and order of sale and the December 19 supplemental judgment and order of attorney fees.

ANALYSIS

I. STATUTORY INTERPRETATION

Hadaller argues the trial court misinterpreted RCW 6.13.080(6) by concluding that his homestead was subject to the Association's lien because (a) he did not receive proper notice from the Association and (b) the covenant permitting the lien was in place after he acquired title. We disagree.

We review interpretation of a statute de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). When engaging in statutory interpretation, we endeavor to determine and give effect to the legislature's intent. 179 Wn.2d at 762. In determining the legislature's intent, we must first examine the statute's plain language and ordinary meaning. 179 Wn.2d at 762. Legislative definitions included in the statute are controlling, but in the absence of a statutory definition, we give the term its plain and ordinary meaning as defined in the dictionary. *American Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004). In addition, we consider the specific text of the relevant provision, the context of the entire statute, related provisions, and the statutory scheme as a whole when analyzing a statute's plain language. *Lowy v. PeaceHealth*, 174 Wn.2d 769, 779, 280 P.3d 1078 (2012).

If there is more than one reasonable interpretation of the plain language, the statute is ambiguous. *Jametsky*, 179 Wn.2d at 762. When a statute is ambiguous, we resolve ambiguity by engaging in statutory construction and considering other indications of legislative intent. 179 Wn.2d at 762. However, if the statute is unambiguous, we apply the statute's plain meaning as an expression of legislative intent without considering other sources. 179 Wn.2d at 762.

A "homestead consists of real or personal property that the owner uses as a residence." RCW 6.13.010(1). Notwithstanding RCW 6.13.080, a homestead is "exempt from . . . forced sale for the debts of the owner." RCW 6.13.070(1). Accordingly, the homestead exemption is not available against a forced sale for debts specified in RCW 6.13.080.

RCW 6.13.080 provides statutory exceptions from homestead protection for certain kinds of debt, which include exceptions for debts secured by mechanic's liens, mortgages on the property, child support orders, or debts owed for taxes. Under one exception, a homeowners'

association is not subject to the homestead exemption when "the association . . . [has] provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection . . . shall not apply." RCW 6.13.080(6). To qualify under this exception, a homeowners' association must give notice "within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure." RCW 6.13.080(6). "Failure to give the notice specified in [RCW 6.13.080(6)] affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under [RCW 6.13.080(6)]." RCW 6.13.080(6).

Looking to the statutory scheme, chapter 6.13 RCW defines an "owner" as "a purchaser under a deed of trust, mortgage, or real estate contract." RCW 6.13.010(2). An association "learns of a new owner" for purposes of RCW 6.13.080(6) when it has "actual knowledge of the identity of a homeowner acquiring title." RCW 6.13.080(6).

Hadaller obtained title to his property on January 10, 2002. The Association formed in 2003, and all homeowners except Hadaller voted to incorporate the Association on September 3, 2008. On July 3, 2009, the Association voted to adopt the 2009 CCRs. The 2009 CCRs included a provision allowing the Association to levy special assessments in addition to annual assessments.

Following the trial court's order that the Association was entitled to collect annual and special assessments from Hadaller, the Association mailed Hadaller notice that nonpayment may lead to foreclosure to satisfy the Association's lien. Hadaller received this notice on December 29, 2012, and the Association commenced its foreclosure action on February 19, 2014.

At the hearing on the Association's motion for supplemental judgment and decree of foreclosure, the trial court determined Hadaller had received proper notice under RCW 6.13.080(6) because Hadaller was not a "new owner" under the statute. As a result, the court concluded that "[t]he only notice that the statute requires [the Association] to give [Hadaller] is before foreclosure. They have to give [him] notice that they are asserting that [his] assessments have not been paid and [he] need[s] to bring them current or they are going to foreclose." Verbatim Report of Proceedings (Feb. 28, 2014) at 22.

A. *Notice Requirement*

Hadaller argues that notice of the potential foreclosure was defective because he was a "new owner," and he urges us to hold that an existing homeowner must be considered a "new owner" under RCW 6.13.080(6) when a homeowners' association forms or incorporates. Thus, he argues that the Association was required to give him notice within 30 days of its incorporation. We disagree.

The plain language of RCW 6.13.080(6) requires that a homeowners' association give notice of its ability to foreclose on an association's lien within 30 days of learning of a new owner. A homeowners' association learns of a new owner when it has actual knowledge of the identity of an owner acquiring title. RCW 6.13.080(6). A related statute, RCW 6.13.010(2), provides that an "owner" includes a purchaser, like Hadaller, who acquires title by deed of trust. However, neither RCW 6.13.080 nor RCW 6.13.010 defines the term "new." *Webster's Dictionary* defines "new" as "having existed or having been made but a short time" and "recently manifested, recognized, or experienced." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1522 (2002). Thus, a homeowners' association must give a recent purchaser who

acquires title notice of its ability to foreclose within 30 days of obtaining actual knowledge of the recent purchaser's identity.

By its plain language, RCW 6.13.080(6) provides an alternative notice requirement. RCW 6.13.080(6) states that "in all cases the notice must be given prior to the initiation of a foreclosure." Accordingly, a homeowners' association must provide all homeowners, new and existing, with notice of its ability to foreclose on an association's lien before commencing a foreclosure action. Further, looking at the context of the entire statute, the provision in RCW 6.13.080(6) that states that failure to comply with the statute's notice requirements "affects an association's lien only for debts accrued up to the time an association complies with the notice provisions" implies that notice can also be given after initiating foreclosure proceedings.

Here, the statutory language of RCW 6.13.080(6) is unambiguous. RCW 6.13.080(6) requires that a homeowners' association give a new owner notice of its ability to foreclose within 30 days of learning of the new owner. The statute is clear that an existing homeowners' association learns of a new homeowner only *after* the homeowner acquires title. Moreover, a homeowners' association cannot provide notice within 30 days of learning of a new homeowner when the homeowner acquires title *before* the association forms or is incorporated. As a result, the statute provides that an association must provide notice to existing homeowners before initiating foreclosure proceedings.

Hadaller acquired title to his property before the Association formed and incorporated. As a result, Hadaller was not a "new owner," and RCW 6.13.080(6) required the Association to give Hadaller notice before it initiated foreclosure proceedings. Hadaller received notice from the Association approximately 13 months before it commenced this foreclosure action.

Therefore, the trial court did not misinterpret RCW 6.13.080(6) in determining that Hadaller received proper notice from the Association.

B. *Special Assessment Lien*

In addition, Hadaller argues that the term "acquiring title" in RCW 6.13.080(6) implies that when a homeowner association's covenant providing for a lien is adopted after a homestead is established, the homestead is exempt from foreclosure to satisfy that lien. Specifically, Hadaller argues that RCW 6.13.080(6) does not permit the Association to foreclose on the special assessment lien authorized by the 2009 CCRs because Hadaller established his homestead before the Association adopted the covenant providing for the lien. We disagree.

As discussed above, RCW 6.13.080(6) is plain and unambiguous. RCW 6.13.080(6) provides that the homestead exemption is not available against debts secured by a homeowner association's lien. A homeowners' association must provide proper notice for this exception to the homestead exemption to apply.

RCW 6.13.080(6) does not define the exceptions to the homestead exemption in terms of when the homestead was established or when the covenants providing for an association's lien went into effect. Reading the statute as a whole, it is clear that other debts exempted by RCW 6.13.080, such as a mechanic's lien or child support orders, may arise after a homestead is established. As a result, the statute anticipates that the exception to the homestead exemption will still apply to debts secured after a homeowner acquires title and establishes his homestead. Because RCW 6.13.080(6) does not define a homeowner association's debts in terms of when the homestead was established, it is reasonable to conclude that the statute permits a foreclosure action for all debts secured by the lien, before or after the homestead is established.

The Association provided proper notice to Hadaller, and the plain meaning of RCW 6.13.080(6) does not exempt a homestead established before an association adopts covenants providing for a lien. Accordingly, the homestead exemption is not available to Hadaller. Therefore, the trial court did not misinterpret RCW 6.13.080(6) when it determined that Hadaller's homestead was not exempt from the Association's foreclosure action to satisfy its lien for special assessments.

II. ATTORNEY FEES

Hadaller also argues the trial court erred by failing to make a record sufficient to permit meaningful appellate review of its 2011 attorney fee award because the court awarded fees to the Association and did not itemize which fees were awarded to the homeowners in the Association. We disagree.

We review whether there is a legal basis for awarding attorney fees de novo. *Gander v. Yeager*, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012). A trial court may award attorney fees only where there is a basis in statute, contract, or recognized ground in equity. *Cmty. Ass'n Underwriters of America, Inc. v. Kalles*, 164 Wn. App. 30, 38, 259 P.3d 1154 (2011). When awarding attorney fees, the trial court must make a record sufficient to permit meaningful review by articulating the grounds for the award. *White v. Clark County*, 188 Wn. App. 622, 639, 354 P.3d 38 (2015), *review denied*, 185 Wn.2d 1009 (2016). Accordingly, the trial court must "supply findings of fact and conclusions of law sufficient to permit a reviewing court to determine why the trial court awarded the amount in question." *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 144, 331 P.3d 40 (2014). An award of attorney fees that is not supported by an adequate record will be remanded for entry of proper findings of fact and conclusions of law that

explain the basis for the award. *Berryman v. Metcalf*, 177 Wn. App. 644, 659, 312 P.3d 745 (2013).

Under RCW 64.38.020(4), a homeowners' association may "[i]nstitute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of two or more owners on matters affecting the homeowners' association." RCW 64.38.050 also permits an award of attorney fees to the prevailing party for a violation of the "Homeowner Association Act." Here, the 2009 CCRs permit the Association "to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, assessments, [and] liens . . . imposed by the provisions of these CCRs" and states that the Association is entitled to reasonable costs and attorney fees if it is the prevailing party in any action brought under the CCRs. 3 Suppl. CP at 399.

Following the 2011 bench trial, the Association filed a cost bill in support of an award of attorney fees. On June 10, 2011, the trial court entered its findings of fact and conclusions of law, awarding the Association attorney fees and costs. The court determined that the Association was the aggrieved, prevailing party and that attorney fees were authorized and appropriate under RCW 64.38.050 and the 2009 CCRs.

As an initial matter, the trial court did not err in awarding the Association attorney fees because the Association was entitled to the fees under the 2009 CCRs and RCW 65.38.050 as the prevailing party in the 2011 bench trial. In addition, the trial court made its findings of fact and conclusions of law explaining at length its basis for awarding the Association attorney fees. Accordingly, the trial court made a sufficient record of its award. Further, because the Association was permitted to defend the homeowners in the 2011 action under RCW

64.38.020(4), the homeowners were not individually entitled to attorney fees. Therefore, the trial court did not err in failing to itemize the fees awarded to the homeowners because the fees were awarded only to the Association.

III. LAW OF THE CASE DOCTRINE

Hadaller also argues that we should exercise our discretion under RAP 2.5(c)(2) to review our earlier decision in *Mayfield* because this court erred in determining that the Association's amended covenants were invalid and unenforceable under the statute of frauds. We decline to exercise our discretion to review this decision.

The law of the case doctrine is codified in RAP 2.5(c)(2). *Folsom v. County of Spokane*, 111 Wn.2d 256, 264, 759 P.2d 1196 (1988). Under RAP 2.5(c)(2), an appellate court may review an earlier appellate decision in the same case. Washington courts have interpreted RAP 2.5(c)(2) as permitting an appellate court to revisit a previous decision when (1) "the prior decision is clearly erroneous, and the erroneous decision would work a manifest injustice to one party"; and (2) "where there has been an intervening change in controlling precedent between trial and appeal." *Roberson v. Perez*, 156 Wn.2d 33, 42, 123 P.3d 844 (2005).

Hadaller contends that our decision in *Mayfield* results in a manifest injustice because it enables the Association to commit fraud against him. Despite this, Hadaller does not cite a controlling change in precedent, and he does not argue that our decision was clearly erroneous. Accordingly, the law of the case doctrine is not implicated under these circumstances. Therefore, we decline to exercise our discretion under RAP 2.5(c)(2) to review our earlier decision in *Mayfield*.

We affirm the trial court's 2011 attorney fee award, February 2014 decree of foreclosure and order of sale, and December 2014 supplemental judgment in favor of the Association.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Maxa, A.C.J.

Sutton, J.

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN J. HADALLER An individual, Plaintiff v. MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION, a Washington non-profit corporation, DAVID A.and SHERRY LOWE,individually and the Marital community thereof; RANDY FUCHS, An individual; CLIFFORD L. and SHEILAH SCHLOSSER,individually and the marital com-Munity thereof; and MAURICE L. and CHERYL C. GREER, individually and the Marital community thereof; LEWIS COUNTY TITLE COMPANY a Washington corporation Defendants	) COA No. 46094-7-II))) LCSC No. 09-2-934-0)))) DECLARATION OF SERVICE))))))

John J. Hadaller Declares as follows:

That I am now and all times here-in mentioned, was a citizen of the United States of America and a resident of the state of Washington over the age of eighteen (18) years, plaintiff/appellate to the above action and competent to be a witness therein.

That on the 23th day of February 2017 I served the following documents:

- *DECLARATION OF SERVICE*
- *PETITION FOR REVIEW*

On the following: by the indicated method of service.

To:

David A. Lowe
Black, Lowe & Graham pllc
701 5th Ave. STE 4800
Seattle,Wa. 98104-7009
[X] e.-Mail [ ] U.S. Mail [X] Personal service

The fore-going statements are made under the penalty of perjury under the laws of the state of Washington and are true and correct.
Signed this 23RD day of February, 2017.

John J. Hadaller