

Washington State Case Law on Homeowners' Associations

2006

Allchin v. Normandy on the Heights Homeowners' Ass'n, 2006 Wash. App. LEXIS 588 (Wash. Ct. App. 2006)

Procedural Posture: Appellant homeowner challenged a decision of the Superior Court of Pierce County (Washington) in which a jury found that respondents, the architectural control committee, the lot owner, and the committee members, acted reasonably and in good faith when it approved a house design that the homeowner alleged interfered with her views.

Overview: There were nine lots in the subdivision. All nine lot owners were on the committee. The court affirmed, and held that the trial court properly denied the homeowner's motion to strike respondents' jury demand because three of the homeowner's four requests involved legal, not equitable issues. The homeowner sought equitable relief against the lot owner only. The homeowner's motion to amend her complaint a little more than a month before trial was properly denied because although the homeowner claimed that she had never questioned the legitimacy of the committee, there was evidence that she had investigated its legitimacy previously. The trial court properly denied the homeowner's proposed jury instructions because language from the protective covenants did not state law. Finally, evidence supported the jury's finding that the committee acted in good faith in that the committee reviewed the homeowner's photos; it studied the plans and walked the property; it requested that the lot owner re-submit official plans and the lot owner made alterations and had the designer answer questions; and the committee sought legal advice.

Outcome: The court affirmed the decision of the trial court.

Canterwood Homeowners' Ass'n v. Hill Design & Constr., Inc., 2006 Wash. App. LEXIS 1289 (Wash. Ct. App. 2006)

Procedural Posture: Appellant homeowners' association (association) sought judicial review of the superior's court's grant of summary judgment in favor of appellee builder. The association sued the builder to recover fines levied for covenants, conditions, and restrictions violations and to enjoin it from further construction. The builder countersued alleging that the architectural control committee (committee) was improperly constituted and its actions void.

Overview: The builder moved for summary judgment on the association's claims maintaining that under Wash. Rev. Code § 24.03.115 and the Diehl case, the committee's actions were void because it did not include two members of the board. The superior court agreed. The record did not establish that the committee was improperly constituted. The record did not establish that the association's board designated and appointed the committee. The only reference to the committee was in the association's covenants, conditions, and restrictions (CC&Rs), which the association's membership amended. The builder had to prove that committee fell within the scope of § 24.03.115 before the Diehl case applied. Viewing the record and its omissions in the light most favorable to the association, the builder had not shown that the acts it challenged were taken by a committee required to comply with § 24.03.115. The association requested attorney fees

and costs pursuant to Wash. R. App. P. 18.1 and a provision of the amended CC&Rs. The section of CC&Rs referred to home owners, and the builder was not sued in that capacity. **Outcome:** The decision of the superior court was reversed, and the case was remanded. The association's requested for attorney fees and costs was denied.

Chipman v. Chelan County, 2006 Wash. App. LEXIS 11 (Wash. Ct. App. 2006)

* Affirmed by unpublished opinion er Kurtz, J., concurred in by Sweeney, A.C.J, and Schultheis, J.

Corta Madera Homeowners' Ass'n v. USF Ins. Co., 2006 Wash. App. LEXIS 580 (Wash. Ct. App. 2006)

Procedural Posture: Appellant insurer challenged a decision from the Superior Court of King County (Washington), which denied its motion to vacate a default judgment under Wash. Super. Ct. Civ. R. 60(e), entered judgment against it in an insurance dispute with appellee homeowners' association, and denied a motion for further discovery. A cross-appeal was filed on the interest rate applied to the judgment.

Overview: The insurer failed to appoint defense counsel in a construction dispute, and its insureds filed a declaratory action. A default judgment was entered, which stated that the insurer was liable for any settlement entered into by the insureds. After a settlement was reached, the insureds assigned their claims against the insurer to the association. The insured's motion to vacate the default judgment was denied, as was its request for further discovery. The insurer then sought review. In affirming, the appellate court determined that the insurer's attempt to secure counsel in the case was not sufficient because the attorney contacted by the insurer had a conflict of interest, and there was no attempt to resolve the issue. As such, it failed to establish a prima facie defense, which was an element of the motion to vacate the default judgment. Moreover, the insurer was not entitled to further discovery because it did not rebut the reasonableness of the settlement agreement. The insurer had notice of and was present at the reasonableness hearing. Finally, because this was a tort action based on bad faith, the interest rate was properly set under Wash. Rev. Code § 48.01.030.

Outcome: The decision was affirmed.

Fowler v. Loucks, 2006 Wash. App. LEXIS 1156 (Wash. Ct. App. 2006)

Procedural Posture: Appellants, property owners, sought review of the decision of the trial court (Washington), which granted summary judgment in favor of respondents, property owners, and found valid amendments made to the Declaration of Restrictions, Easements, Covenants, and Conditions (CC&Rs) affecting their subdivision.

Overview: Appellants appealed a grant of summary judgment in favor of respondents concerning CC&Rs that affected their subdivision. The court held that the amendment procedure was value but it did subsequently reverse the judgment. Without defining the acceptable level of change that would be consistent with general plans of development, the amendment at issue was not consistent with the general plan of development at issue. Taking away an individual lot owner's power to enforce the covenants and requiring 75 percent of the lot or plot owners to join in writing before any enforcement was inconsistent with the protections under the general plan of the development. The new enforcement provision was a major change that created a supermajority hurdle and restricted the rights of the individual lot or plot owners to enforce the CC&Rs.

Consequently, the amendment to the enforcement provision was invalid, and the trial court erred in granting summary judgment in favor of respondents.

Outcome: The court reversed and remanded the judgment.

Nelson v. Shorewood Hills Homeowners' Ass'n, 157 Wn.2d 1004 (Wash. 2006)

Procedural Posture: Plaintiffs' homeowners filed suit in the Superior Court of King County (Washington) against defendant homeowners' association for damages stemming from an eroding ravine. The association sued third-party defendants (city and a college) for contribution, claiming that they trespassed by water and that the city breached a statutory duty to maintain the ravine. The court found in favor of the third-party defendants. The association appealed.

Overview: The association argued, inter alia, that the college's parking lot, etc. collected, channeled, and thrust water onto the association's land in a manner or quantity different than what would occur naturally. The court of appeals disagreed. To establish that the city and the college altered the natural flow of water, the association produced a declaration and three-page report from an expert opining that, in its natural state, surface water percolated into the ground before reaching the ravine because the land was forested. But the fact that the water would have percolated into the ground did not show that the city and the college collected and channeled the water. The expert's report indicated that some of the water reached the ravine, but it did not establish that the college altered the natural flow. Although a parking lot might serve as a mechanism to channel, collect, and thrust water onto the property of another, the association did not produce evidence that the college's parking lot did that. It only showed that surface water drained off of the college's property and into a ditch that ran downhill.

Outcome: The judgment was affirmed

2005

Breakwater Homeowners' Ass'n v. State Farm Fire & Ca., 153 Wn.2d 1026 (Wash. 2005)

Procedural Posture: On partial summary judgment, Superior Court of King County (Washington) concluded that respondent homeowners' association proved wind-driven rain was a covered peril under an insurance policy issued by appellant insurer. But the jury later decided that wind-driven rain was not the proximate cause of the homeowners' association's loss. Nevertheless, the trial court awarded attorney fees to the homeowners' association. The insurer appealed.

Overview: The homeowners' association argued that the insured only needed to win on the question of what coverage existed under the insurance contract, rather than having to reach the question of "whether benefits were payable," to receive attorney fees. The insurer responded that the question "what coverage existed" had to include a consideration of whether wind-driven rain was the efficient proximate cause of the loss. In *Olympic Steamship Company, Inc. v. Centennial Insurance Company*, the Washington Supreme Court held that a trial court could grant reasonable attorney fees, where the insurer compelled the insured to assume the burden of legal action to obtain the full benefit of his insurance contract. However, in the instant action, the appellate court held that, to recover attorney fees under *Olympic Steamship*, an insured had to do more than merely prove a specific peril was covered. The insured also had to prove the insured was

entitled to the benefits of coverage. Because the homeowners' association failed to prove wind-driven rain was the efficient proximate cause of the loss and did not prove it was entitled to the benefits of coverage, attorney fees were not properly awarded.

Outcome: The judgment of the trial court was reversed. The homeowners' association's request for attorney fees on appeal was denied.

Hoechlin v. Urbuha, 2005 Wash. App. LEXIS 850 (Wash. Ct. App. 2005)

Procedural Posture: Plaintiffs, a husband and a wife, sued defendant handwriting analyst for malicious prosecution, abuse of process, defamation, outrage, and civil rights violations under 42 U.S.C.S. § 1983. Plaintiffs appealed a summary judgment that the Superior Court of Grays Harbor County (Washington) entered in favor of the analyst. The analyst appealed the denial of her request for attorney fees under the anti-SLAPP statute, Wash. Rev. Code § 4.24.510 (1999).

Overview: The analyst, who was hired by plaintiffs' neighbors, concluded that plaintiff wife had forged product order cards. A forensic document examiner for the state crime laboratory reviewed the analyst's opinion letter and concluded that the wife could not be identified as the signer of the cards. In response to a request by the county prosecutor, the analyst provided the prosecutor with suspected forgeries that were not reviewed by the state crime laboratory. The wife was charged with forgery, the analyst told plaintiffs that she could not testify to the wife's guilt beyond a reasonable doubt, and the charges were dismissed. In the action that plaintiffs brought against the analyst, the court on appeal ruled that the analyst was absolutely immune from suit arising out of her opinions and prospective testimony in the criminal case. The court held that the analyst was entitled to immunity under Wash. Rev. Code § 4.24.510 (1999), if she acted in good faith when she communicated information to the prosecutor; because there was some evidence that the analyst acted in reckless disregard for the wife's rights, summary judgment was not warranted on the analyst's claim for attorney fees.

Outcome: The court affirmed the summary judgment holding that the analyst was immune from suit. The court reversed the trial court's judgment that the anti-SLAPP statute did not apply to the analyst and remanded the matter for trial on whether the analyst acted in good faith when she opined that the wife forged product orders.

Hughes v. Alderbrook Golf & Yacht Club, 2005 Wash. App. LEXIS 2409 (Wash. Ct. App. 2005)

Procedural Posture: Plaintiff homeowners sued defendant homeowners' association, seeking a declaration that they did not owe maintenance dues under certain original covenants or amendments to those covenants effected in 2002. The Mason County Superior Court, Washington, denied the homeowners' motion for summary judgment and entered summary judgment against the homeowners. The homeowners appealed.

Overview: The homeowners conceded that they owed dues up to the effective date of the 2002 amended covenants. But they maintained that both trial judges who heard this issue found substantial factual questions remained regarding the 2002 amendment and that the declaratory judgment action should have proceeded to trial. The appellate court concluded that the trial court's written order was inconsistent within itself. The trial court granted the association fees and dues, but it did not specifically rule on the validity of the 2002 amendments. Its award of post-2002 fees assumed that the 2002 amendments were

valid and that they applied to the homeowners. The trial court's first dismissal with prejudice of the declaratory action was consistent with this, suggesting that it was deciding all issues on the merits. But the trial court then, on reconsideration, dismissed the homeowners' claims without prejudice. This ruling could not be reconciled with any notion that the trial court was deciding the homeowners' claims on their merits. Finally, underlying all this was the trial court's oral ruling that it was not deciding the validity of the 2002 amendments because issues of material fact existed.

Outcome: The trial court's ruling was vacated in part, and the case was remanded for further proceedings. Specifically, the appellate court vacated the award of fees and dues accruing after the 2002 amendments.

Johnson v. LaRue, 2005 Wash. App. LEXIS 242 (Wash. Ct. App. 2005)

Procedural Posture: Defendants, neighbors in an adjoining subdivision, appealed an order of the Superior Court of Snohomish County (Washington) that granted partial summary judgment to plaintiff homeowners in their action for trespass, waste, nuisance, ejectment, and injunction against the neighbors due to the neighbors' disputed use of a 65-foot wide non-exclusive easement across the homeowners' lot. Part of the easement was paved and used as a private road.

Overview: The unpaved portion of the easement area was in dispute. The trial court ordered the neighbors to remove all improvements and driveways they had put on the homeowners' property except for one neighbor's original driveway, and decreed that the neighbors had no right to use the homeowners' property beyond any right they had to use the private road. The neighbors admitted that there were no recorded instruments that specifically stated that their lots were to benefit from the easement but they claimed they had the right to the "full use" over the "full easement" reserved under a recorded survey and that the subdivision developer reserved control over the use of the easement area to the homeowners' association. The court held that the homeowners, not the association, owned the land on which the easement was located, and noted that the owner of a servient estate had the right to use his land for any purpose not inconsistent with its ultimate use for reserved easement purposes. The court held that the neighbors failed to produce any evidence to establish that they had greater rights than the homeowners to landscape, use, and otherwise manage the unpaved portion of the easement area.

Outcome: The court affirmed the trial court order that granted the homeowners' partial summary judgment and remanded the case for further consistent proceedings.

Nelson v. Fife, 2005 Wash. App. LEXIS 1960 (Wash. Ct. App. 2005)

Procedural Posture: Respondent property owners sued appellant neighbors for violating the CC&Rs. The neighbors counterclaimed for declaratory relief. The Superior Court of King County (Washington) denied the neighbors' summary judgment motion and granted summary judgment to the owners. It denied the neighbors' motion to amend their answer to add the affirmative offense of abandonment. The neighbors appealed.

Overview: The owners alleged that trees on the neighbors' lot grew to heights that partially blocked their views, in violation of the CC&Rs. The appellate court held that the owners were properly granted summary judgment. That the review board encouraged the planting of trees did not create a genuine issue of material fact as to whether the neighbors' trees were approved in the CC&Rs. The doctrine of laches was inapplicable as

there is no evidence of unreasonable delay by the owners. As there was no evidence that the owners intended to mislead the neighbors, the affirmative defense of acquiescence failed. Therefore, to allow amendment of the pleadings to add the substantially identical defense of abandonment would have been futile. The neighbors had constructive notice that a design review criterion (DRC) requiring view protection could be enacted because the original recorded DRCs so provided. They were properly ordered to cut down the trees; as they made no attempt to comply with the covenants, they could not be considered innocent parties, and the doctrine of balancing equities therefore did not apply. Awards of attorney fees below and on appeal were mandated by a fee provision in the CC&Rs.

Outcome: The appellate court affirmed the summary judgment and the order denying the motion to amend and awarded the owners attorney fees on appeal.

Nelson v. Shorewood Hills Homeowners' Ass'n, 2005 Wash. App. LEXIS 1573 (Wash. Ct. App. 2005)

Procedural Posture: Plaintiffs' homeowners filed suit in the Superior Court of King County (Washington) against defendant homeowners' association for damages stemming from an eroding ravine. The association sued third-party defendants (city and a college) for contribution, claiming that they trespassed by water and that the city breached a statutory duty to maintain the ravine. The court found in favor of the third-party defendants. The association appealed.

Overview: The association argued, inter alia, that the college's parking lot, etc. collected, channeled, and thrust water onto the association's land in a manner or quantity different than what would occur naturally. The court of appeals disagreed. To establish that the city and the college altered the natural flow of water, the association produced a declaration and 3-page report from an expert opining that, in its natural state, surface water percolated into the ground before reaching the ravine because the land was forested. But the fact that the water would have percolated into the ground did not show that the city and the college collected and channeled the water. The expert's report indicated that some of the water reached the ravine, but it did not establish that the college altered the natural flow. Although a parking lot might serve as a mechanism to channel, collect, and thrust water onto the property of another, the association did not produce evidence that the college's parking lot did that. It only showed that surface water drained off of the college's property and into a ditch that ran downhill.

Outcome: The judgment was affirmed.

Satsop Valley Homeowners' Ass'n v. Northwest Rock, Inc., 126 Wn. App. 536 (Wash. Ct. App. 2005)

Procedural Posture: The Superior Court of Thurston County (Washington) granted judgment in favor of respondent homeowners' association by finding that collateral estoppel applied, reversing a decision of the county board of adjustment allowing appellant company to expand its 7-acre gravel pit into a 30.5 acre surface excavation mine. The company and appellant county sought review; the association cross-appealed.

Overview: The company and the county argued that the trial court erred in applying collateral estoppel, based on the first case, to preclude expansion. They asserted that collateral estoppel did not apply because a later change in the law affected their rights.

The appellate court noted that in the first case, the trial court ruled that it was an error of law for the board to conclude that the use could be expanded to 30 acres and disallowed the mine expansion. The issues in both cases were identical. The company and the county fully litigated their issues in the first case. They did not seek review. Where parties failed to appeal, a subsequent change in law could have no effect on the conclusiveness of an earlier case. The trial court properly imposed the collateral estoppel bar. The county administrator improperly applied Grays Harbor, Wash., County Code § 17.60.160 to the company's conditional use permit expansion issue. The company had to submit a permit application and proceed through the procedures; likewise, the county had to be required to follow the same procedure of public notice and a hearing before approving or denying the expansion of gravel mining operations.

Outcome: The judgment was affirmed.

2004

Driftwood Point Maint. Co. v. Terhune, 2004 Wash. App. LEXIS 196 (Wash. Ct. App. 2004)

Procedural Posture: Respondent, homeowners' association, sought injunctive relief against appellants, property owners, to stop them from building a 2,000-square-foot garage on their property prior to building a house. The Superior Court of Pierce County (Washington) found that the owners had violated the association's covenants, conditions and restrictions (CC&Rs), and awarded attorney fees to the association. The owners appealed.

Overview: The owners purchased property located in a residential neighborhood subject to the association's bylaws, articles of incorporation, and CC&Rs. The restrictive covenant on the property required a single family residence be built on the property. The owners proceeded with building a garage prior to building the house. At the time of trial, both the garage and house were complete, and the only issue at trial was the award of attorney fees. The appellate court ruled that substantial evidence did not support the trial court's findings that the primary purpose of the garage was not for residential purposes, or that the owners violated the applicable CC&Rs. The award of attorney fees was inappropriate, as the association was not a prevailing party, Wash. Rev. Code § 64.38.050. There was no evidence that the owners planned for anything other than a single-family residence. The applicable CC&Rs did not restrict the owner in the size of the garage to be built or in the sequence of construction, and did not restrict the use of the garage such that recreational vehicles could not be stored inside.

Outcome: The award of attorney fees was vacated.

Goodenough v. Hidden Hills Homeowner's Ass'n, 2004 Wash. App. LEXIS 676 (Wash. Ct. App. 2004)

Procedural Posture: Appellant homeowner sought review of the decision of the Superior Court of Pierce County (Washington), which granted summary judgment in favor of respondent homeowners' association (association) in the homeowner's action involving the association's restrictive covenants.

Overview: The homeowner appealed the summary judgment dismissal of his complaint against the association and the trial court's award of fees to the association. He argued that summary judgment was improper, because the association failed to enforce the

restrictive covenants, and that the association improperly revised those covenants and improperly adopted the bylaws, which were, therefore, invalid. The court disagreed and affirmed, stating that 11 out of 12 homeowners at the meeting approved the amendment. There were relatively few changes made to the initial covenants and the amendment at issue merely clarified a conflicting provision regarding the proper storage of RVs and trailers. That clarification was not a major change requiring unanimous approval of the homeowners. The homeowner argued that one of the homeowners who signed the document was behind in his dues and, therefore, his signature was invalid. However, the court stated that the record did not establish that the other homeowner was not current in his dues. Further, the homeowner could not attempt to enforce a covenant that he expressly agreed to waive. The court concluded that the bylaws were properly adopted.

Outcome: The judgment was affirmed.

Hardy v. Fairwood Greens Homeowners' Ass'n, Inc., 2004 Wash. App. LEXIS 335 (Wash. Ct. App. 2004)

Procedural Posture: Appellant property owner sought review of an order granting respondent homeowners' association's motion for summary judgment in the owner's action seeking a declaratory judgment and injunctive relief. The owner contended that the Superior Court of King County (Washington) erred when it concluded that the association did not exceed its authority under its governing documents or the Homeowners' Association Act, Wash. Rev. Code ch. 64.38.

Overview: The owner contended that the association exceeded the authority granted to it in its declaration when it adopted amended bylaws and created rules concerning recreational and other vehicles and aesthetics. The owner contended that the association improperly relied on the broad grant of authority in Wash. Rev. Code § 64.38.020 and failed to comply with the limiting language in the articles of incorporation. On appeal, the court held that the association could rely on the broad grant of authority in § 64.38.020 to support the adoption of rules and regulations. The court stated the focus of its inquiry was whether the rules conflicted with the governing documents. The court concluded that summary judgment in favor of the association was proper, with one exception. The one exception involved the regulation pertaining to recreational vehicles. This regulation was in conflict with the declaration, as the declaration only prohibited vehicles in excess of 6,000 pounds to be parked on a residential lot, while the regulation prohibited all recreational vehicles, regardless of size. The court also held that the association was entitled to attorney fees as the substantially prevailing party.

Outcome: The court affirmed in part and reversed in part, concluding that the trial court properly granted the association's motion for summary judgment with one exception. The court held that one regulation regarding recreational vehicles was in conflict with the governing documents.

Lake Limerick Country Club v. Hunt Mfg. Homes, Inc., 120 Wn. App. 246 (Wash. Ct. App. 2004)

Procedural Posture: Appellee homeowners' association was owed a substantial amount of dues on a lot before appellant purchaser acquired the lot. He did not pay the outstanding dues or those accruing after the purchase. The association sued for the dues. The Superior Court of Mason County (Washington) entered judgment against the lot for

the total amount of dues and against the purchaser personally for the dues that had accrued after the sale. The purchaser appealed.

Overview: The purchaser claimed that homeowners' dues should not have been charged against the lot because the obligation to pay them did not "run with the land." He also claimed that he should not have been held personally liable for such dues because he never contracted to pay them. Finally, he claimed that the trial court awarded an amount of dues that was "unconscionable" and an amount of attorney fees that was not reasonable. The primary questions on appeal were: (1) whether a declaration of restrictions was enforceable against the land it described; and (2) whether a declaration of restrictions, when "correlated" with the articles and bylaws of a homeowners' association, could render a member of the association personally liable for dues accruing during his membership. The trial court answered yes to both questions, and so did the appellate court. Although the record did not support an implied in fact contract, it did support an implied in law contract. The purchaser acquired property that carried with it the right to enjoy certain common facilities. Even if the purchaser elected not to exercise that right, he was benefited because its property was worth more as a result.

Outcome: The judgment of the trial court was affirmed.

Pelican Point Cmty. Ass'n v. Dexter, 2004 Wash. App. LEXIS 314 (Wash. Ct. App. 2004)

Procedural Posture: A 1996 survey revealed appellee lot owners had encroached on and developed a strip of land rightfully belonging to appellant homeowners' association. The association filed a suit against the owners in 2001 seeking quiet title to an easement to maintain and use a road across several lots owned by the owners. The Superior Court for Grant County (Washington) held that the owners had acquired title by adverse possession. The association appealed.

Overview: The issue was whether the trial court erred in concluding the owners had acquired title to the disputed strip of land through adverse possession. The trial court properly held that the owners' use of the disputed strip was the same as an owner of the same type of property would have made and constituted actual possession. The association had had actual or constructive notice of the owners' adverse use of the disputed strip since 1982, because the disputed strip did not exist in its present state prior to the filling and leveling directed by the owners. The evidence presented provided proof of the actual and uninterrupted element of adverse possession being met by the owners, because the association was aware the property, including the disputed strip, was being maintained by the owners from 1982 to 1993 when construction on their residence commenced. The hostile possession element was proven, as it was clear that the owners did not seek permission from the association or its predecessors to use or develop the disputed strip. The owners showed exclusive possession by not having left either their property or the disputed strip in their original, unimproved states after purchase.

Outcome: The judgment of the trial court was affirmed.

Sammamish Pointe Homeowners' Ass'n v. Sammamish Pointe L.L.C., 150 Wn.2d 1025 (Wash. 2004)

Procedural Posture: Petitioners, developers, as assignees of the homeowners' association's claims against defendants, several out-of state companies, challenged the judgment of the Superior Court of King County (Washington) orally denying its motion

to amend the summons served on defendants, Wash. Super. Ct. Civ. R. 4(h), granting defendants' motion to dismiss, and awarding defendants' attorney fees under the long-arm statute.

Overview: The homeowners' association originally caused a summons and complaint to be personally served on each defendant. Each summons required defendants to appear and answer the complaint within 20 days, instead of 60 days, as required by Washington's long-arm statute, Wash. Rev. Code § 4.28.180. Defendants argued that Wash. Super. Ct. Civ. R. 4(h) did not allow amendment of a defective summons served on a nonresident, as the rule did not generally apply to out-of-state service, Wash. Rev. Code § 4.28.180. The appellate court found no reason why the rule should be construed to permit amendment of process when it was served within the state, but not when it was served outside the State of Washington. In either situation, defendants were protected by their right to make a showing of prejudice. The appellate court ruled that the trial court erred in concluding that a misstatement of the proper return period was a defect that necessarily invalidated service. Where defendants appeared and answered and did not show prejudice caused by the inaccurate information, the summons could be amended, and the trial court should have denied the motion to dismiss.

Outcome: The judgment in favor of defendants and the corresponding award of attorney fees under the long-arm statute were reversed.

Weber v. P&D Dev., Inc., 2004 Wash. App. LEXIS 1475 (Wash. Ct. App. 2004)

Procedural Posture: Defendants, a developer, its shareholder, a mining company, and a homeowner's association, appealed partial summary judgment granted to plaintiff homeowners by the Superior Court of Thurston County (Washington) declaring a covenant amendment invalid, an order of joint and several liability for the homeowners' attorney fees, and presented other procedural issues. The homeowners appealed the amount of attorney fees awarded.

Overview: Defendants had sought to amend the restrictive covenants to allow mining, a use not reasonably consistent with the residential development plan. The trial court held that a vote of less than all the owners was invalid as a matter of law. The appellate court affirmed and held: (1) a failure to strike portions of one homeowner's affidavit and an attached letter challenged as unsworn hearsay was a harmless error as the trial court had not relied on the letter and summary judgment was granted as a matter of law; (2) there was no showing of prejudice by the association that may have resulted from not ruling on a motion for a change of venue under Wash. Rev. Code § 36.01.050; (3) denying a continuance to conduct discovery under Wash. Super. Ct. Civ. R. 56(f) was not error as no facts could have altered the conclusion that mining was incompatible as a matter of law with the residential use covenant; and (4) the awarding fees was proper, but the basis for holding the shareholder individually liable was unclear; an analysis as to piercing the corporate veil was needed. The fees had to be recalculated using the lodestar method.

Outcome: The trial court's judgment was affirmed in part. The grant of partial summary judgment was affirmed, but the case was remanded for the entry of findings on the award of attorney fees and on the shareholder's liability for those fees.

Weeden v. Point No Point View Estates Homeowners' Ass'n, 2004 Wash. App. LEXIS 28 (Wash. Ct. App. 2004)

Procedural Posture: The Superior Court of Kitsap County (Washington) granted summary judgment in favor of respondent homeowners' association and individual lot owners in appellant homeowner's action against respondents for causing damage to his property by failing to comply with development requirements regarding storm water drainage, or use due care in constructing the subdivision. The homeowner appealed.

Overview: Respondents argued they were exempt from liability under the common enemy doctrine and the due care exception to the doctrine did not apply. The appellate court found there was a material issue of fact as to whether the horse trails were a required element of the development storm water control drainage requirements, and whether the association was bound to comply with the drainage requirements. The homeowner did not present evidence to support his assertion that the individual lot owners were liable for his property damage. The evidence did not support liability based on their membership in the association. Because respondents did not contest their duty to the homeowner, the appellate court presumed that the association and individual lot owners had a duty to the homeowner under the due care exception to the common enemy doctrine. The homeowner failed to present evidence of breach as to the individual lot owners. There was an issue of material fact as to whether any of the association's negligence with respect to a lot proximately caused damage to the homeowner's property. But the homeowner did not present evidence that the actions of any individual lot owner caused his damage.

Outcome: The grant of summary judgment in favor of the homeowners' association was reversed and remanded for a trial on the merits; summary judgment in favor of the individual lot owners was affirmed.

2003

Brunhaver v. Roche, 150 Wn.2d 1023 (Wash. 2003)

Procedural Posture: Appellant owners challenged a decision from the Superior Court of King County (Washington), which denied a motion to vacate a judgment entered in favor of respondent neighbors in a quiet title action. The owners also challenged the decision to award attorney fees.

Overview: The parties were involved in a boundary dispute. The neighbors instituted a quiet title action against the owners. After judgment was entered in favor of the neighbors, the owners filed a motion to vacate the judgment under Wash. Super. Ct. Civ. R. 60(b)(4). Specifically, the owners contended that the neighbors' counsel engaged in fraud, misrepresentation, and misconduct. After the trial court denied the motion and awarded attorney fees, the owners sought review. In affirming, the court determined that the trial court did not abuse its discretion by denying the motion. The owners were required to file their Rule 60(b)(4) motion within a reasonable time. The court noted that the owners' motion was not filed until four years after the judgment was entered. Moreover, it was filed two years after the owners discovered evidence that should have been given to them during discovery. Even if the motion was filed in time, there was no evidence to support the owners' claim. Finally, the court held that the trial court properly awarded attorney fees to the neighbors under Wash. Rev. Code § 4.84.185, because the owners' motion was frivolous.

Outcome: The decision to deny the owners' motion to vacate the judgment was affirmed. The decision to award attorney fees was also affirmed.

Day v. Santorsola, 118 Wn. App. 746 (Wash. Ct. App. 2003)

Procedural Posture: Plaintiffs' homeowners filed suit in the Superior Court of King County (Washington) against defendant subdivision committee alleging breach of contract and breach of fiduciary duty for rejecting the owners building plans due to height restrictions in the community's restrictive covenants. The court entered judgment in favor of the owners and awarded them attorney fees. The committee appealed.

Overview: The committee argued, inter alia, that the trial court erred by finding that the committee's rejection of the owners' proposed plans was unreasonable and in bad faith. The court of appeals disagreed. The owner testified that no member of the committee ever told him that the committee actually measured the heights of a neighbor's house and compared those heights to the height of the proposed house. The owners' architect informed the committee by letter that the proposed house needed to have a 98-foot main floor elevation in order to provide drainage. The trial court found that the committee failed to respond to that information and continued to complain that the proposed house was too high. The committee approved plans for another house that was a two-story house with a daylight basement, and it approved plans for a house that had a loft over the kitchen and was three levels high. But, when it subsequently considered the owners' plans, the committee determined that a daylight basement constituted a story. That evidence supported the trial court's findings that the committee's decision to disapprove the original plans was unreasonable and not made in good faith.

Outcome: The imposition of height and roof pitch limitations was reversed and the case was remanded for the entry of a judgment allowing the owners to construct a house pursuant to either their revised plans or their compromise plans. The case was also remanded for the entry of findings of fact and conclusions of law setting forth the way in which the trial court determined the award of attorney fees. The judgment was otherwise affirmed.

Homeowners' Ass'n v. Sammamish Pointe, 116 Wn. App. 117 (Wash. Ct. App. 2003)

Procedural Posture: Petitioners, developers, as assignees of the homeowners' association's claims against defendants, several out-of state companies, challenged the judgment of the Superior Court of King County (Washington) orally denying its motion to amend the summons served on defendants, Wash. Super. Ct. Civ. R. 4(h), granting defendants' motion to dismiss, and awarding defendants' attorney fees under the long-arm statute.

Overview: The homeowners' association originally caused a summons and complaint to be personally served on each defendant. Each summons required defendants to appear and answer the complaint within 20 days, instead of 60 days, as required by Washington's long-arm statute, Wash. Rev. Code § 4.28.180. Defendants argued that Wash. Super. Ct. Civ. R. 4(h) did not allow amendment of a defective summons served on a nonresident, as the rule did not generally apply to out-of-state service, Wash. Rev. Code § 4.28.180. The appellate court found no reason why the rule should be construed to permit amendment of process when it was served within the state, but not when it was served outside the State of Washington. In either situation, defendants were protected by their right to make a showing of prejudice. The appellate court ruled that the trial court erred in concluding that a misstatement of the proper return period was a defect that necessarily invalidated service. Where defendants appeared and answered and did not show prejudice

caused by the inaccurate information, the summons could be amended, and the trial court should have denied the motion to dismiss.

Outcome: The judgment in favor of defendants and the corresponding award of attorney fees under the long-arm statute were reversed.

Lake Jane Estates Homeowners' Ass'n v. City of Bonney Lake, 2003 Wash. App. LEXIS 1319 (Wash. Ct. App. 2003)

Procedural Posture: Appellant homeowners' association (association) sought review of the decision of a Washington trial court, which granted summary judgment in favor of respondents, two homeowners, in an action to enforce a covenant against subdividing lots without association approval.

Overview: The association appealed a summary judgment dismissal of its action against two homeowners to enforce its covenant against subdividing lots without association approval. The trial court granted summary judgment, as the two homeowners had already received city approval of their proposed subdivisions, and the two owners presented evidence that the association allowed earlier subdivisions without association approval. The court reversed and remanded for trial, however, stating that it agreed with the association that the city's approval did not preclude its action against the two homeowners, and issues of material fact existed as to whether the association abandoned its subdivision covenant. The city's approval was merely one step in the subdivision process. Other steps included the actual physical division and sale of the subdivided lots. Further, a reasonable fact-finder could conclude that the association had not abandoned the subdividing covenant.

Outcome: The court reversed and remanded for trial.

Narrows Homeowners' Ass'n v. Szukala, 2003 Wash. App. LEXIS 3074 (Wash. Ct. App. 2003)

Procedural Posture: Appellant homeowner installed vinyl siding on his house that had not been approved by appellee homeowners' association, as required by the association's CC&Rs. The association brought an action for injunctive relief. The Superior Court of Pierce County (Washington) granted the association's motion for summary judgment and ordered the homeowner to replace the siding. The homeowner appealed.

Overview: The homeowner was not excused from complying with the strict requirements of the CC&Rs, because the homeowners' association failed to provide him with the documents and other material he requested. Nothing in the language of Wash. Rev. Code § 64.38.045(2) or the CC&Rs required the homeowners' association to provide the requested materials. Further, the homeowner conceded that he failed to comply with the consent to construct or remodel requirement of the CC&Rs. Additionally, the trial court did not err in finding that the association was entitled to injunctive relief. Because the homeowner was not without knowledge or warning that his conduct violated the CC&Rs, the homeowner was not entitled to a balancing of the equities prior to the imposition of an injunction. Because the homeowners' association was the prevailing party on appeal, the court concluded that an award of reasonable attorney fees and costs on appeal was proper under Wash. R. App. P. 18.1.

Outcome: The judgment of the trial court was affirmed.

Smith v. Dugalla Cmty., Inc., 2003 Wash. App. LEXIS 2687 (Wash. Ct. App. 2003)

Procedural Posture: The Superior Court of Island County (Washington) granted summary judgment in favor of respondent homeowners' association. Petitioner, a homeowner, appealed.

Overview: When the association imposed certain fees, the homeowner brought this declaratory judgment action. Both parties moved for summary judgment. The trial court granted the association's motion, denied the homeowner's, and awarded the association attorney fees. The appellate court concluded that the 2000 amendments to the bylaws were valid and did not amend the covenants. The homeowner cited no persuasive authority to support his argument that the association's actions in creating the power to lien were improper. Notice for the special meeting in March 2002 was legally sufficient under Wash. Rev. Code § 64.38.035 and the association's bylaws. In sum, the notice of the special meeting was sufficient, past practice was irrelevant, and the homeowner's argument that under Wash. Rev. Code § 64.38.025(3) that the board failed to have the membership ratify the budget was unpersuasive. There was no abuse of discretion in the award of reasonable attorney fees to the association under Wash. Rev. Code § 64.38.050, and as the prevailing party on appeal, the association was entitled to an award of reasonable fees and costs under Wash. R. App. P. 18.1.

Outcome: The judgment was affirmed.

2002

Campbell v. McClelland, 2002 Wash. App. LEXIS 1372 (Wash. Ct. App. 2002)

Procedural Posture: Appellant homeowners' association sued appellee homeowners in the Superior Court of Pierce County (Washington) to enforce a restrictive covenant and compel the removal of a two-story garage the homeowners built. The trial court required removal, but denied the homeowners' association request for damages and attorney fees. Both parties appealed.

Overview: The homeowners' association's restrictive covenants did not provide for reasonable attorney fees for a prevailing party in litigation. On appeal, the homeowners' association argued the trial court erred by denying it damages and questioned whether the trial court erred by not awarding treble damages and reasonable attorney fees under Wash. Rev. Code § 4.24.630. The appellate court initially noted the trial court did not find competent evidence to support an award of damages, and the appellate court declined to reconsider the issue on appeal. The appellate court found Wash. Rev. Code § 4.24.630 dealt with a defendant who physically trespassed on a plaintiff's land and no such trespass occurred in the case. The appellate court held Wash. Rev. Code § 4.24.630 did not apply; therefore, the trial court did not err by refusing the homeowners' association's request for treble damages and attorney fees. The appellate court concluded it would not retreat from the American rule of attorney fees and disregarded the homeowners' association's contention it would not be made whole unless it received its attorney fees.

Outcome: The judgment of the trial court was affirmed.

Northview Terrace Ass'n v. Mueller, 2002 Wash. App. LEXIS 584 (Wash. Ct. App. 2002)

Procedural Posture: Plaintiff homeowners' association sought to foreclose on a lien, in part, for unpaid cable television charges. Defendant property owners counterclaimed, challenging the association's charges for tree removal and for insulation replacement. The

Pierce County Superior Court (Washington) ordered foreclosure of the lien and denied the counterclaim regarding the trees. It ruled in the owners' favor on their insulation claim. Both parties appealed.

Overview: The owners argued that the association lacked authority to charge them for the cable service. The instant court noted that the record contained no evidence of separate meters to measure cable television usage to the individual condominium units. The association had the authority to select a reasonable formula for allocating utility expenses to each unit. The owners did not show that the trial court erred in determining that a formula of equal allocation was reasonable. Further, evidence that television reception was poor in the area of the condominium complex supported the trial court's conclusion that cable service was a necessary and desirable utility. The trial court did not err in concluding that the association had the authority to allocate to each owner an equal share of the cable television cost. The trial court properly rejected the owners' counterclaim on the tree removal issue. However, the trial court erred in allowing the owners a \$170 offset for their contribution toward crawlspace insulation costs. The evidence showed that the insulation work was a necessary repair.

Outcome: The instant court affirmed the trial court's ruling on the cable fee and tree removal, but reversed its ruling on the insulation replacement. The association was entitled to its attorney fees and costs at trial and on appeal.

Tasso v. Sinclair Ass'n, 2002 Wash. App. LEXIS 2003 (Wash. Ct. App. 2002)

Procedural Posture: Plaintiffs, property owners, sued defendant, an association, in the Superior Court of Skagit County (Washington), claiming they were improperly prevented from using an airstrip on the island. The trial court rejected their claims and they appealed.

Overview: The property owners owned property on an island. They sued, claiming the association wrongfully interfered with their right to use the island's airstrip. They argued they were entitled to use the airstrip without abiding by the association's non-member use rules. Substantial evidence established the airstrip was, in fact, privately owned and maintained by the association and the property owners were not association members. The trial court properly dismissed their claim that their due process rights were violated when the county approved the rules and regulations for non-member use of the airstrip without holding a public hearing because they failed to exhaust their administrative remedies, and an administrative appeal could have provided the relief sought. They failed to meet their burden to prove actual losses suffered as a result of the association's conduct and were therefore not entitled to money damages to compensate them for their inability to use the airstrip. As the prevailing party on appeal, the association was entitled to attorney fees under Wash. Rev. Code § 4.84.370.

Outcome: The judgment was affirmed.

2001

Cecil v. Country Ridge Homeowners' Ass'n, 142 Wn.2d 1030 (Wash. 2001)

Procedural Posture: In a lawsuit involving the parties' differing interpretation of ambiguous residential height restrictions as set forth in the codes, conditions, and restrictions of respondent homeowners' association, appellants challenged two summary judgment dismissals entered at two different times by the Benton County Superior Court

(Washington) in favor of respondents, and appellants challenged denial of their cross-motions for summary judgment.

Overview: Appellants sued their neighbors, requesting trial court enjoin the neighbors from completing construction of their home due to an alleged violation of respondent homeowners' association's restrictive covenant regarding roof height. After that lawsuit was dismissed, appellants sued respondent association for failing to properly follow procedural and substantive requirements of its CC&Rs by approving the neighbors' house plan and allowing the home to be built with the alleged offending roof height. Appellants amended their complaint to add respondent city as a defendant, contending respondent city had assumed the duty of determining compliance with the CC&Rs and had negligently used an improper method of determining the height of the neighbors' roof. The court affirmed the entry of summary judgment in favor of respondents. Respondent city did not assume the duty of enforcing respondent association's CC&Rs, and respondent association's decision to defer roof height computation to respondent city's staff appeared to be a reasonable and good faith determination.

Outcome: Summary judgment was properly entered in favor of respondents, and appellants' cross-motions for summary judgment were properly denied; respondent city did not assume duty of enforcing respondent homeowners' association's codes, conditions, and restrictions, and respondent association's decision to defer roof height computation to respondent city's staff appeared to be a reasonable and good faith determination.

Iszley v. City of Renton, 142 Wn.2d 1030 (Wash. 2001)

*DECISION WITHOUT PUBLISHED OPINION

Panorama Village Homeowners' Ass'n v. Golden Rule Roofing, Inc., 142 Wn.2d 1018 (Wash. 2001)

Procedural Posture: Appellant roofing company sought review of a judgment from the Superior Court of King County (Washington), which awarded respondent homeowners' association a portion of the cost of replacing roofs installed by appellant, in respondent's suit alleging breach of a construction contract.

Overview: Respondent homeowners' association sued appellant roofing company, claiming that appellant breached its contract to install roofs on four of its buildings and to provide respondent with 10-year manufacturers' warranties. Respondent submitted unchallenged evidence indicating that it would be less expensive to replace the roofs than to attempt a labor-intensive repair, and that repair would not completely cure the defects or provide respondent with valid manufacturer warranties. The trial court ruled that the roofs were defective, that the roofing materials were not installed in accordance with the contract and manufacturers' specifications, and that appellant did not provide respondent with valid manufacturers' warranties. The trial court entered judgment for respondent and awarded it a portion of the cost of replacing the roofs. On appeal, appellant contended that the trial court erred in finding that it had breached its contracts with respondent and in awarding damages. The court concluded that the record supported the trial court's rulings, and affirmed, finding that the award of damages was not clearly disproportionate to respondent's loss.

Outcome: The court affirmed judgment for respondent on its breach of contract claim against appellant, and affirmed the award of damages established as a portion of the cost of replacing the roofs installed by appellant.

Standing Rock Homeowners' Ass'n v. Misich, 145 Wn.2d 1008 (Wash. 2001)

Procedural Posture: In a case involving a dispute over the installation and destruction of gates set across a road easement, appellant challenged a judgment of the Chelan County Superior Court (Washington) awarding respondent homeowner's association damages, injunctive relief, and attorney fees. Appellant also sought review of the trial court's decision denying his claim for a public road by prescription.

Overview: Respondent erected gates across the northern and southern ends of a nonpublic road running through its property. Property owners of a neighboring development, including appellant, removed and destroyed the gates. Appellant argued that the trial court erred in: (1) not declaring the portion of the road traversing respondent's property to be a public road by prescription under Wash. Rev. Code § 36.75.080; (2) concluding that respondent could maintain unlocked gates; (3) holding appellant liable for gate damage; and (4) awarding attorney fees to respondent. The instant court concluded that the trial court did not err in finding the road to be a nonpublic one. Because appellant had an express easement over the portion of the road traversing respondent's property, which was essentially undeveloped until the early 1990's, and because the gates first went up in 1993, his claim for a public road by prescription failed. The trial court did not err in deciding the gates could remain as a reasonable burden of appellant's easement or in finding appellant liable as a joint tortfeasor. Respondent, as the prevailing party at trial and on appeal, was entitled to attorney fees on appeal.

Outcome: Judgment was affirmed.

2000

Nisqually Pines Community Club v. Cupps, 2000 Wash. App. LEXIS 1788 (Wash. Ct. App. 2000)

Procedural Posture: Appellant challenged the Superior Court of Thurston County's (Washington) judgment in favor of respondent homeowners' association in a lien foreclosure action respondent filed against appellant.

Overview: Respondent homeowners' association sued appellant to foreclose its lien on her property for unpaid assessments and for fines for illegal burning. Appellant countersued for violations of bylaws; violations of Wash. Rev. Code § 24.03.160, .17; extortion; embezzlement; fraud; harassment; and trespass. The trial court entered judgment of \$1,700 in favor of respondent. Appellant did not contend that the amount she owed was erroneous, and the evidence was sufficient to support the court's finding. The bylaws did not require the foreclosure proceedings to be approved by the membership or preceded by a hearing. Appellant did not argue her claims of extortion, embezzlement, fraud, harassment, or trespass in her brief; thus the court would not consider them. Her remaining assertions concerned claims that were resolved in her favor, were outside the pleadings, or were unrelated to an assertion of damages.

Outcome: The court affirmed the judgment, holding that the trial court's ruling was supported by the evidence, and appellant did not properly assert or argue the majority of her claims; thus the court would not consider them on appeal.

1999

Alexander v. Beaverbrook Estates Home & Prop. Owners Ass'n, 1999 Wash. App. LEXIS 1765 (Wash. Ct. App. 1999)

Procedural Posture: Plaintiffs appealed an order for summary judgment from the Superior Court of Clark County (Washington) resolving claims for damages and declaratory and injunctive relief challenging defendant's authority to levy assessments and liens against homeowners for road maintenance costs.

Overview: Plaintiff homeowners challenged defendant homeowners' association's authority to levy assessments and liens against subdivision owners to pay for road maintenance projects not specifically authorized in the declaration of covenants and restrictions. Summary judgment was granted to defendant. On appeal, the court affirmed the trial court's findings that under the terms of the declaration defendant could act as the road committee to perform road maintenance, that road maintenance would be construed broadly to include the installation of speed bumps, and defendant could enforce the maintenance provisions. The court reversed on whether defendant could levy liens because, using a strict construction of Wash. Rev. Code § 60.04.021, the road committee had no such right, and on whether defendant could charge attorney fees to homeowners because the attorney fees related to the collection of the maintenance assessments could be charged under the common benefit exception to the no-attorney-fees rule.

Outcome: Summary judgment affirmed in part and reversed in part because defendant homeowners' association could act as the committee to perform and enforce road maintenance, including assessments, however, defendant could not levy liens; defendant could charge homeowners for a portion of attorney fees for collecting road assessments.

Bates v. Holbrook, 137 Wn.2d 1031 (Wash. 1999)

Procedural Posture: Appellant, homeowners' association, challenged the order of the Superior Court of Pierce County (Washington) awarding attorney fees to respondent homeowner following its determination that the homeowners' association failed to enforce a restrictive covenant breached by another homeowner.

Overview: The trial court found authority for the award in the homeowners' association's articles of incorporation. The homeowners' association argued that the articles of incorporation did not include language allowing an award of attorney fees and costs of litigation. The appellate court held that the award was improper because: (1) the articles of incorporation was not a contract between the homeowners' association and the homeowner, and it did not provide for an award of fees to the prevailing party; (2) the amendment to the homeowners' association's bylaws was not in effect at the time the homeowner acted contrary to it, and the homeowner was not entitled to attorney fees under its terms; and (3) the homeowners' association did not violate Wash. Rev. Code § 64.38, and the homeowner was not entitled to attorney fees under Wash. Rev. Code § 64.38.050.

Outcome: The appellate court reversed the attorney fee award.

Gurrad v. Klipsun Waters Homeowner's Ass'n, Inc., 137 Wn.2d 1036 (Wash. 1999)

Procedural Posture: In an action against defendants, homeowner's association, committee, property owners, and developers, plaintiff landowners sought damages and a declaration that the property owners violated a protective covenant. The Superior Court

of Thurston County, Washington, denied the landowners' summary judgment motion, dismissed the claims against all defendants, and awarded attorney fees to all defendants. The landowners appealed.

Overview: The landowners claimed that, despite the committee's approval, the property owners violated the covenant by, inter alia, building both an attached garage and a detached garage on their property. The trial court found that the covenant was not violated; certain exculpatory clauses in the covenant in favor of the association, the committee, and the developers were unenforceable; and the association had no responsibility for enforcing the covenant. The landowners argued on appeal that their summary judgment motion should have been granted because the covenant was violated and that they had a right to attorney fees under the covenant as prevailing parties. The appellate court held that, although the association was a necessary party due to its authority to enforce the covenant, the exculpatory clauses were enforceable and made the association, the committee, and the developers immune. The two-garage scheme violated the covenant, but injunctive relief to remove it was not warranted absent a showing of damages. The claim for declaratory relief against the property owners was erroneously dismissed. The property owners owed attorney fees to the landowners, who, in turn, owed attorney fees to the other defendants.

Outcome: The appellate court reversed the trial court's dismissal of the claims against the property owners, granted declaratory relief as to the covenant violation, declined to award injunctive relief, affirmed the judgment in other respects except with regard to attorney fees, and remanded the case to the trial court to determine the award of attorney fees both as to trial and as to appeal in favor of all parties except the property owners.

Wingate Homeowners' Ass'n v. Marks, 1999 Wash. App. LEXIS 1615 (Wash. Ct. App. 1999)

Procedural Posture: Appellants challenged the Superior Court of Snohomish County's (Washington) grant of a permanent injunction that prohibited appellants from making any business use of their real property and improvements.

Overview: Knowing about recorded restrictive covenants, appellants purchased a lot in the subdivision of respondent. Despite a covenant restricting the property to single family residential purposes, appellants sought to create an accessory apartment in their home that they planned to rent out. Respondents sought an injunction prohibiting appellants from constructing, altering, or maintaining the building as anything other than a single-family residence. The permanent injunction prohibited appellants from making any business use of their real property and improvements. Appellants challenged the injunction, arguing that the restrictive covenant at issue had been habitually and substantially violated so that it was no longer enforceable. As found by the trial court, there had been only minor and immaterial violations of the covenant, involving a minority of the homes. The appellate court held that the covenant was enforceable, and appellants' proposed use of the apartment violated the covenant.

Outcome: The judgment was affirmed in part, because the restrictive covenant was enforceable against appellants where violations were minor and immaterial, and reversed in part, because the injunction's prohibition against appellant's ammunition business exceeded the court's authority.

1998

Phillips v. King County, 136 Wn.2d 946 (Wash. 1998)

Procedural Posture: Respondent landowners filed an inverse condemnation action against petitioner, county and respondent developer for damages caused by surface waters, which allegedly inundated their property. County and developer filed motions for summary judgment. The trial court granted the motions, dismissing landowners' claim. The Washington Court of Appeals reversed the grant of summary judgment. County sought review.

Overview: Developer filed a drainage plan, which would allow surface water to flow onto landowners' adjacent property. County approved the plan. County argued that it only acted to approve the development of private property. The county insisted that inverse condemnation was not proper because the development was entirely private. Landowners argued that county's liability was based on the fact that county required developer to deed all of the drainage facilities to county following final plat approval. The court held that county's approval of the private development did not give rise to liability in inverse condemnation because there was no public aspect to the transaction, which was necessary for a taking. The court also held that county's acceptance of the drainage system did not give rise to liability because landowners had alleged only design defects and not a failure of maintenance responsibilities. However, the court held that the court of appeals properly reversed the grant of summary judgment because landowners raised a material dispute of fact regarding whether or not the damage to their property was caused by developer's channeling of surface water onto their property.

Outcome: The court affirmed the judgment, which reversed the order granting summary judgment.

Western Airpark Ass'n v. Greeff, 1998 Wash. App. LEXIS 68 (Wash. Ct. App. 1998)

Procedural Posture: Appellant property owners brought suit against respondent homeowners' association alleging trespass. They contended that several easement agreements were void and unenforceable because they were obtained by fraud. The Superior Court of Thurston County (Washington) found the challenged agreements valid and enforceable and found that the property owners had committed actionable nuisance, defamation, and interference with business relationships.

Overview: On appeal, the property owners challenged the trial court's determination that the agreements were enforceable, the award of attorney fees to the homeowners' association, and summary judgment dismissing their claims. After review, this court concluded that the property owners failed to produce evidence of fraudulent inducement sufficient to withstand the homeowners' association's summary judgment motion and that the agreements provided for attorney fees to the prevailing party in an action to enforce the covenants. In addition, this court held that the trial court did not err by finding that the publications put up by the property owners were defamatory, not satirical and in finding there was insufficient evidence to show that the property owners' signature on the easements were forged.

Outcome: The superior court's judgment was affirmed.

1997

Riss v. Angel, 131 Wn.2d 612 (Wash. 1997)

Procedural Posture: After appellant homeowners' association members rejected appellee buyers' building plans based on a consent to construction covenant that was part of the subdivision rules, the buyers were awarded a trial court ruling that the action was unreasonable and arbitrary and that the members were jointly and severally liable for damages and fees. After the Court of Appeals (Washington) affirmed the trial court's order, the members appealed.

Overview: When homeowners' association members, successors to the original association, turned down the buyers' plans and imposed onerous restrictions on their use of the lot, the buyers sued. Both lower courts found for the buyers, and the members appealed. The court affirmed. While the general covenant gave the members broad discretion, that power had to be exercised reasonably and in good faith, and where both specific and general covenants applied, general covenants could not be used to impose standards inconsistent with those in the specific covenants. The court found that the members' decisional process, which relied on misleading photos and involved a slipshod investigation, was unreasonable. It rejected claims of error relating to evidence, rejected claims that the "business judgment rule" protected the members, held that the buyers were prevailing parties for purposes of fees, and upheld the award of delay damages. Finding that liability attached to members who did not appeal and to those who moved for dismissal from the appeal as well as members who participated in or ratified the arbitrary decision, the court remanded for factual determinations as to which members were liable.

Outcome: The court affirmed the ruling that the members' decision disapproving the buyers' plans was unreasonable and arbitrary, was made without adequate investigation, was based upon inaccurate information, and generally rendered the members liable for damages. The court remanded for a factual determination as to which of the members were appropriately held responsible for damages and fees.

Woodson v. Okanogan River Ranches Homeowners' Ass'n, 1997 Wash. App. LEXIS 1987 (Wash. Ct. App. 1997)

Procedural Posture: Appellants, homeowners' association and disbandment committee (association), challenged the judgment of the Superior Court of Okanogan County (Washington), which granted declaratory relief to respondent members of the association in the members' action to prevent the alienation of a common area.

Overview: The association was dissolved by majority vote and it began winding up its affairs by selling all of its common real property. The members, relying on an alleged restrictive covenant in the association's articles of incorporation, filed a petition for declaratory and injunctive relief to halt the sale of a common area. The trial court granted declaratory relief to the members. The association failed to timely appeal the trial court's order, but the trial court subsequently denied the association's motion to quit claim the common area to a fire protection district. The association appealed the denial of this motion. The court reversed, finding that the articles of incorporation did not prohibit the sale of the common area. The court reasoned that the provision relied upon by the members was not a restrictive covenant and that the members did not have a vested property right in the common area to prohibit the association from transferring it. The court remanded the case for a determination of whether the fire protection district was an

entity engaged in activities substantially similar to those of the association under Wash. Rev. Code § 24.03.225(3).

Outcome: The court reversed the trial court's judgment granting declaratory relief to the members in their action against the association to prevent the alienation of the common area and remanded the case.

1996

Timberlane Homeowners' Ass'n v. Brame, 129 Wn.2d 1004 (Wash. 1996)

*DECISION WITHOUT PUBLISHED OPINION

1994

Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1, 124 Wn.2d 816 (Wash. 1994)

Procedural Posture: Appellant construction company sought review of the decision of the Superior Court for King County (Washington), which held that economic loss rule did not allow a general contractor to recover purely economic damages in tort, and entered a judgment dismissing the architect, holding that the project inspector was not liable in tort for purely economic damages.

Overview: Appellant construction company settled with defendant school district, who assigned to appellant all claims relating to a breach of contract claim and on causes of action in tort. The trial court granted respondent architects' motion for partial summary judgment on the assigned breach of contract claim, and denied respondent inspector. The trial court dismissed respondent engineer and architect from the lawsuit and granted respondent inspectors' motion for partial summary judgment. On appeal, the court held that the economic loss rule did not allow a general contractor to recover purely economic damages from a design professional in tort, and limited appellant's recovery of economic damages to those damages recoverable in contract. The court reversed the trial court holding that the anti-assignment provision in the contract did not prohibit the assignment of a breach of contract cause of action. The court reversed the trial court's granting of partial summary judgment to respondent architect, and affirmed the denial of summary judgment to respondent inspector, finding that equitable estoppel and public policy did not forbid the assignment of a contract cause of action.

Outcome: The court affirmed the trial court's denial of summary judgment to respondent inspector, because under the economic loss rule a general contract could not recover in tort, and equitable estoppel and public policy did not forbid the assignment. The court reversed the trial court's granting of partial summary judgment to respondent architect, holding that the anti-assignment provision did not prohibit the assignment of a breach of contract claim.

Carlyon Beach Homeowners' Ass'n v. Duerr, 125 Wn.2d 1005 (Wash. 1994)

*DECISION WITHOUT PUBLISHED OPINION

Continental Place Condominium Homeowners' Ass'n v. Yokers, 125 Wn.2d 1012 (Wash. 1994)

*DECISION WITHOUT PUBLISHED OPINION

Mt. Park Homeowners' Ass'n v. Tydings, 125 Wn.2d 337 (Wash. 1994)

Procedural Posture: Plaintiff homeowners' association filed an action against defendant homeowners to enforce a restrictive covenant against having exterior antennas on homes in a planned community. The Court of Appeals (Washington) reversed a trial court decision that found the covenant to be abandoned and upheld its validity. The homeowners challenged the decision.

Overview: The homeowners maintained that the association did not uniformly enforce all of the restrictive covenants and that the selective enforcement of the prohibition on antennas was discriminatory and an unreasonable restraint on the use of property. The court affirmed the lower court's decision and held that the covenant had not been abandoned and was enforceable. The association had the right to enforce the restrictive covenants. The homeowners failed to prove abandonment because they did not show that prior violations of the covenant had so eroded the general plan as to make enforcement useless and inequitable. Further, the homeowners did not establish their abandonment defense by showing that other restrictive covenants had not been enforced. The association's regulations provided that the invalidation of any one of the restrictive covenants would not affect the other. Because the homeowners did not proffer any evidence of a failure to enforce the antenna covenant, abandonment was not proved.

Outcome: The court affirmed the decision of the lower court that reversed the grant of summary judgment to the homeowners.

Mountain Park Homeowners' Ass'n v. Tydings, 124 Wn.2d 1007 (Wash. 1994)

Procedural Posture: Appellant homeowners' association filed an action against respondent homeowners to compel compliance with a covenant against antennas. The association filed a motion for summary judgment. The association sought review of the order of the Superior Court for Pierce County (Washington), which granted summary judgment for the homeowners, entered an order of dismissal with prejudice, and denied the association's motion for reconsideration.

Overview: A planned community subdivision was governed by a declaration of covenants, conditions, and restrictions that included a covenant against antennas. A homeowners' association was responsible for enforcing the covenants. Two homeowners erected a satellite dish in their backyard. The homeowners refused to remove the dish. The court reversed the judgment of the trial court and remanded for further proceedings. The court held that: (1) when the developer was acting in the capacity of an owner, it was bound by the covenants to the same extent as other owners; (2) the covenant against antennas operated for the benefit of each lot; (3) the covenant against antennas constituted a covenant running with the land; (4) the covenant was intended to maintain a uniformity of appearance and to preserve and enhance property values and was not an unreasonable restraint on the use of property; (5) violations of other covenants were not relevant to whether the covenant against antennas was abandoned or not uniformly enforced; and (6) the association enforced other violations of the covenant and did not abandon or selectively enforce the covenant against antennas.

Outcome: The court reversed the order of the trial court granting summary judgment for the homeowners, dismissing with prejudice, and denying the association's motion for reconsideration. The court remanded to the trial court for further proceedings.

Metzner v. Wojdyla, 125 Wn.2d 445 (Wash. 1994)

Procedural Posture: Petitioner adjoining landowners appealed the decision of the Washington Court of Appeals, which reversed the judgment of the Superior Court for Whatcom County (Washington), which found that respondent entrepreneurs' operation of a day care in their home violated restrictive covenants applicable to the parties' residential subdivision.

Overview: The entrepreneurs' operation of a day care facility in their residence led the adjoining landowners to file suit for legal and equitable remedies. By summary judgment, the trial court accorded injunctive relief on the ground that the entrepreneurs' activities violated the subdivision restrictive covenant which stipulated that the dwellings therein were to be used only for residential purposes. The entrepreneurs' successful appeal moved the adjoining landowners to seek further review. The court held that Washington precedent established a bright line rule which prohibited any business or commercial use of realty subject to a residential use restriction. The language of restrictive covenants was to be given its ordinary and common use. So considered, it was apparent that residential was the antonym of business. The entrepreneurs' operations constituted a commercial agency operating under a state-issued license. It was irrelevant that the entrepreneurs' own children numbered among the complement for whom they cared. The entrepreneurs' request for attorney fees was denied.

Outcome: The court reversed the decision of the appellate court and affirmed the judgment of the trial court, affording legal and equitable relief to the adjoining landowners.

Pierce v. Northeast Lake Wash. Sewer & Water Dist., 123 Wn.2d 550 (Wash. 1994)

Procedural Posture: Petitioner property owners appealed the judgment of the Court of Appeals (Washington), which affirmed the award of summary judgment for respondent sewer and water district in the property owners' claim of inverse condemnation.

Overview: A sewer and water district, after obtaining the appropriate permits, constructed a water storage tank. While the tank was built entirely on the district's property, it was no more than 50 feet away from the property owners' home. The property owners filed a complaint for nuisance, trespass, negligence, and inverse condemnation; all claims except for the inverse condemnation claim were settled. The court held that the property owners failed to state a cause of action for inverse condemnation based upon a right to a view as there was no recognized right or property interest in a view absent an easement or other document. The property owners could not establish that their property had been taken or damaged under their loss of view theory, and the sewer and water district was in compliance with all legal requirements. As the storage tank constituted legal use, no compensation was due for the property owners' loss of view, reduction in the market value of the property, or loss of personal pleasure of the property.

Outcome: The court affirmed summary judgment for the sewer and water district.

1993

Mains Farm Homeowners' Ass'n v. Worthington, 121 Wn.2d 810 (Wash. 1993)

Procedural Posture: Defendant owner appealed the decision from the Court of Appeals (Washington) that affirmed the order from the trial court granting an injunction by summary judgment on behalf of plaintiff homeowners' association.

Overview: Plaintiff homeowners' association brought an action for an injunction to prevent defendant owner from operating an adult family home business in her residence on a residential lot in a certain plat. The trial court on summary judgment motion granted the injunction, which the appellate court affirmed. Defendant appealed, claiming the decision violated public policy pursuant to Wash. Rev. Code § 70.128.175(1). The court reviewed the record and affirmed the injunction. It found that defendant had purchased her residence aware of restrictive covenants that specified the lots were residence lots to be used for single family residential purposes only. Yet defendant maintained a for-profit enterprise in the residence caring for four adults. A business use was the antonym of residential purpose only, so that plaintiffs were entitled in equity to the injunction granted by the trial court. The statute did not show a legislative intent to declare a general public policy sufficient to override a contractual property right.

Outcome: The court affirmed the trial court and the appellate court.

1992

Mains Farm Homeowners' Ass'n v. Worthington, 119 Wn.2d 1001 (Wash. 1992)

Procedural Posture: Defendants, property owners, sought review of the judgment of the Superior Court for Clallam County (Washington) which denied their motion for summary judgment and granted summary judgment in favor of plaintiffs, homeowners' association, for an injunction preventing the property owners from operating a for-profit care facility for elderly adults.

Overview: The property owners operated a care facility for elderly adults in their home. Restrictive covenants governed the subdivision where the home was located permitting single family residential use only. The property owners received compensation from the residents for the care. The homeowners' association filed a complaint seeking to enjoin the operation of the adult foster care facility in the home. On cross-motions for summary judgment, the trial court granted the injunction. On appeal, the court affirmed the summary grant of the injunction. The court held that the property owners' use of the home was a business use inconsistent with residential purposes because a substantial entrepreneurial purpose was at the core of their efforts. The court further held that enforcement of the covenant did not violate public policy or statutory law because the restrictions were reasonable and reasonably exercised, and the legislature did not restrict the right of private homeowners to adopt covenants forbidding certain uses of land in residential areas.

Outcome: The court affirmed the judgment denying summary judgment in favor of the property owners and granting summary judgment and an injunction in favor of the homeowners' association.

1991

Hutchins v. 1001 Fourth Ave. Assocs., 116 Wn.2d 217 (Wash. 1991)

Procedural Posture: Plaintiffs, injured passerby and wife, sought review of an order of the Superior Court for King County (Washington), which granted defendant occupiers of land's motion for summary judgment dismissing plaintiffs' negligence and loss of consortium claims.

Overview: After he was assaulted while walking pass their property, plaintiff injured passerby filed a negligence suit against defendant occupiers of land, and plaintiff wife

sought damages for her loss of consortium. The lower court granted defendants' motion for summary judgment dismissing both claims. On appeal, the court affirmed the lower court's order, holding that, generally, defendants did not have a duty to protect plaintiff injured passerby from the criminal acts that occurred on defendants' land. The court further held that there was no evidence presented of any special relationship between the parties which would have excepted defendants from that general rule. The court also found that plaintiffs had failed to present any evidence of defendants' notice of any risks of criminal activity on the land. Finally, the court held that the construction and design of defendants' land was not of the sort which brought about an especial temptation and opportunity for criminal misconduct, which gave rise to their duty to take precautions against it.

Outcome: The court affirmed an order of the lower court, which granted defendant occupiers of land's motion for summary judgment dismissing plaintiffs', injured passerby and wife, negligence and loss of consortium claims. Defendants did not have a duty to protect plaintiff injured passerby from the criminal acts that occurred on defendants' land.

Lakes at Mercer Island Homeowners' Ass'n v. Witrak, 117 Wn.2d 1013 (Wash. 1991)

*DECISION WITHOUT PUBLISHED OPINION

1989

Lake Arrowhead Cmty. Club v. Looney, 112 Wn.2d 288 (Wash. 1989)

Procedural Posture: Petitioner community club sought review of a decision of the Court of Appeals (Washington), which held that a tax sale extinguished a restrictive covenant that required respondent landowners to pay assessments for the maintenance of the neighborhood's facilities. The appeals court had reversed a trial court decision that granted summary judgment for petitioner.

Overview: Respondent landowners purchased property at a tax sale. When they failed to pay assessments to petitioner community club for the maintenance of the neighborhood's facilities, petitioner filed a lawsuit against them. The trial court granted summary judgment for petitioner, but the appellate court reversed. Petitioner sought review and the court reversed. The court found that, generally, a purchaser who acquired title at a tax foreclosure sale took title clear of all prior encumbrances. As an exception to the rule, the court said, Wash. Rev. Code § 84.64.460 protected recorded appurtenant easements from extinguishment. The court recognized that restrictive covenants running with the land fell within that exception and were not extinguished. The court found that the covenant for the payment of the assessments met most of the elements of a covenant running with the land in that it "touched and concerned" the land, horizontal privity was present, and the original parties intended the covenant to have bound successors in interest. The court could not, however, determine whether the vertical privity requirement had been met. The court remanded for a determination of vertical privity.

Outcome: The court reversed the decision of the appellate court that a tax sale extinguished a restrictive covenant requiring respondent landowners to pay assessments to petitioner community club for maintenance of the neighborhood's facilities. The court held that a covenant running with the land fell under the rule that protected recorded appurtenant easements from extinguishment and remanded for a determination of whether the covenant was appurtenant.

1986

Olympia v. Palzer, 107 Wn.2d 225 (Wash. 1986)

Procedural Posture: Petitioner developer challenged an order of the court of appeals (Washington), which affirmed a judgment that held that the county's tax foreclosure sale of the property that the developer purchased from the persons who bought the property at the tax sale did not extinguish the restrictive covenants that limited the manner in which that land could have been used.

Overview: The court of appeals affirmed a judgment that held that the restrictive covenant on the land that the developer bought from the persons who bought it at the county's tax foreclosure sale bound the developer. The court affirmed that judgment on appeal. The court found that the enactment of Wash. Rev. Code § 84.64.460 aligned the state with the several states that held that selling real property for the payment of delinquent taxes did not extinguish easements in the property. The court also held that § 84.64.460 applied to the tax sale even though it dealt with a restrictive covenant because the restrictive covenant that governed the use of the land in the planned unit development (PUD) in which the purchase was made was the same as a negative easement. It curtailed the rights of the owner of the servient tenement in favor of the owners of the dominant tenements. The court further determined that allowing the tax foreclosure sale to extinguish the restrictive covenant would have defeated the PUD's planned character and the homeowner's reasonable expectations.

Outcome: The court affirmed a judgment that affirmed a judgment that the tax foreclosure sale at which the developer's predecessors-in-interest bought the land that was at issue did not distinguish a restrictive covenant to which the land was subject.

1981

Rodruck v. San Point Maint. Com., 48 Wn.2d 565 (Wash. 1956)

Procedural Posture: Plaintiff homeowners sought review of a Superior Court for King County (Washington) judgment that found against the homeowners on their complaint that the ways had become public by prescription, that defendant homeowners' association's (association) corporate reorganization was void, and that the restrictive covenants for assessments did not run with the land. The superior court found for the association on its cross-claim for unpaid assessments.

Overview: The homeowners filed a complaint against the association seeking an order declaring the association's corporate reorganization void, declaring that the corporation had no power to levy assessments, and an adjudication declaring that the streets in the area were public. The homeowners disputed their liability to pay assessments levied by the association for improvements to the streets. The homeowners contended that the superior court erred in finding that the streets within the area were private ways; in dismissing the homeowners' actions and in granting judgments against them for assessments; and in finding that the association was duly organized under the laws of the state. The court affirmed the judgments of the trial court, finding that the homeowners failed to prove that the streets had become public ways by prescription and that the purposes of the association as originally incorporated, which included the maintenance and improvement of streets and sidewalks, were lawful, and the corporate reorganization was valid. The court also concluded that the homeowners were liable for the assessments levied by the association because the improvements to the streets "ran" with the land.

Outcome: The court affirmed the judgments of the superior court in favor of the association that dismissed the homeowners' complaint, finding that the private ways had not become public streets through prescription, that the corporate reorganization of the association was not invalid, and that the restrictive covenants requiring the payment of assessments for improvements of the ways was binding on the homeowners because it "ran" with the land.

1954

Mt. Baker Park Club v. Colcock, 45 Wn.2d 467 (Wash. 1954)

Procedural Posture: Defendant property owners appealed from a judgment of the Superior Court for King County (Washington) in favor of the plaintiff homeowners' association in their action to enforce a restrictive covenant in a deed.

Overview: The property owners built a garage, the front of which was three feet from the property line of the street. Members of the restriction committee of the homeowner's association advised them before any concrete was poured that the garage was in violation of the building restriction and requested that work be discontinued. The property owners knew from their years in the area that their property was subject to a twenty-five-foot setback building restriction. A meeting between the parties did not resolve the issue. A trial court found in favor of the association. On appeal, the court affirmed and held that the restrictive covenant, which prohibited the erection of any building within the prohibited area, was valid and had not been waived or abandoned by the association. The court further found that the association was not guilty of laches because their delay in filing suit was the result of trying to procure the property owners' compliance with the covenant by means other than litigation. The court agreed that other garages built in the area did not create any substantial modification of the restriction plan and did not show an intent to abandon the restrictive covenant.

Outcome: The court affirmed judgment in favor of the homeowner's association.

1922

Birge v. Cunningham, 118 Wash. 458 (Wash. 1922)

Procedural Posture: Defendant purchaser of property appealed the judgment of the Superior Court for Yakima County (Washington), which found in favor of plaintiff property owners in their action to quiet title to the real property.

Overview: The purchaser claimed title to the property by virtue of a sale of the property for the delinquent assessment due the irrigation district. The owners brought the action to quiet title to the property. The trial court found for the owners. The court affirmed. The property became delinquent on the district's assessments for 1916. On the expiration of the period of redemption, the purchaser applied to the treasurer for deeds to the property. The application was refused because a landowners' association had redeemed the property for the owners within the statutory period. The purchaser refused the redemption money and brought an action against the county treasurer to compel the issuance of the deeds. The court found that the redemption was effective. The association was formed to look after the individual interest of the large number of property owners within the district. The association was not trying to appropriate any benefits to themselves; they were only looking out for the personal interests of others for whom they were acting.

Moreover, once the owner was aware of the redemption by the association, the owner reimbursed the association.

Outcome: The court affirmed.