75130-1

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No. 75130-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

BELLEVUE PARK HOMEOWNERS ASSOCIATION

Appellant

v.

AKRAM HOSSEINZADEH

Respondent

BELLEVUE PARK HOMEOWNERS ASSOCIATION'S REPLY BRIEF

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I. REPLY TO RESPONDENT'S STATEMENT OF THE CASE

Respondent Akram Hosseinzadeh's Response Brief contains numerous misstatements of fact, uncited statements, and unsupported statements (some of which cite to clerk's papers having nothing to do with the statement). Her statement of the case falls so far short of constituting a "fair statement of the facts" as required by RAP 10.3(a)(5) that the Association feels compelled to highlight and correct some of the more egregious instances of Hosseinzadeh's failure to meet the standard of this Court.

A. Facts Regarding Satellite Dish

Hosseinzadeh states that her family was subjected to harassment and discriminatory treatment by other owners in Bellevue Park after installing the satellite dish in 2001. Resp. Br. at 3. Hosseinzadeh cites to CP 297 for this assertion. Nothing in CP 297, or anywhere else in the record, supports this statement. Except for the complaints filed in 2001 and 2012 with the Washington State Human Rights Commission (the "HRC") in which no discrimination was found (CP 313-318, 92-99), Hosseinzadeh never complained to the Association about any discrimination until the Association's attorneys received her Response to the Association's Motion for Summary Judgment filed in this lawsuit on August 25, 2015. CP 42-49, 370.

Concerning her family's 2001 complaint with the HRC, Hosseinzadeh alleges that the Association "agreed to enter the [2002 Pre-Finding Settlement Agreement] because it was facing a potential $10,000.00 fine." Resp. Br. at 3. Hosseinzadeh does not cite to the record to support this statement. The record does not support this statement. On the contrary, the 2002 Pre-Finding Settlement Agreement specifically states that it did not constitute an admission of wrongdoing or a determination by the HRC that discrimination had occurred. CP 314.

Hosseinzadeh claims the satellite dish was never reinstalled after the 2002 Pre-Finding Settlement Agreement was reached. Resp. Br. at 3. She does not cite to the record. This statement is false. The satellite dish was in place from 2001 to 2012, at which time it was removed by the Association's property manager because its cables and wires were run through the downspout and contributed to flooding in the Association's courtyard. CP 376-77. Id. The Association reinstalled the satellite dish when it was contacted by Hosseinzadeh's brother. Id.

Hosseinzadeh claims that the 2012 complaint filed with the HRC was terminated without a finding. Resp. Br. at 4. Hosseinzadeh does not cite to the record. This statement is false. After an investigation, the HRC specifically found that the evidence did not show any discrimination by the Association. CP 377.

The Response Brief is rife with similarly incorrect statements without support from the record. These statements are too numerous for the Association to address in its Reply. Regardless, the satellite dish issue is a red herring – it involves alleged actions that occurred between five and 16 years ago, were fully investigated by the HRC in both 2002 and 2012, and no discrimination was found to have occurred. CP 314, 377.

B. Facts Regarding Special Assessments

Hosseinzadeh claims that "the Association attempted to bill the Hosseinzadehs for the removal [of the satellite dish] and of course, the costs of removing it were included in the costs reimbursement demanded through the special assessment." Resp. Br. at 5. Hosseinzadeh cites CP 420 to support this statement. Nowhere in CP 420 is this addressed. This is another incorrect statement. In fact, the record demonstrates the opposite. The 2012 special assessment was imposed (against all owners) to fund the final phase of the remediation project to fix the Association's storm water drainage system and was assessed to all owners. CP 133, 370. The 2014-2015 special assessment was imposed (against all owners) to pay for the installation of a fire alarm notification system required by the Bellevue City Code and Bellevue Fire Department. CP 137-40.

Hosseinzadeh claims there is no evidence in the record to support the Association's claim that she was the only owner to not pay the 2012 or

2014-2015 special assessments. Resp. Br. at 1. This statement is incorrect. The record shows that all of the 78 other owners paid the 2012 special assessment. CP 354. The record also shows that all but two owners paid the 2014-15 special assessment in full. Id. One was Hosseinzadeh, who had not paid any of the 2014-15 special assessment installments. Id. The other owner who did not pay in full had paid the entire special assessment with the exception of $175.02 as of the date the Association filed its motion for summary judgment. Id.

Hosseinzadeh claims that the fact that the Association sued two other owners for nonpayment contradicts the Association's claim that all owners paid the special assessments. Resp. Br. at 1. This is not correct because the two other owners that were sued satisfied the judgments that were entered against them. CP 89, 371. By satisfying the judgments, they paid their share of the special assessments. Id.

Hosseinzadeh states that she only owed the Association $170.62 when it filed its complaint. Resp. Br. at 6. This is not correct. She owed the 2012 special assessment of $333.48, three installments of the 2014-15 special assessment each in the amount of $170.62, five late fees in the total amount of $255.00, $29.42 in unpaid regular monthly assessments, a $1,596.33 security deposit, and $144.59 in interest at the time the complaint was filed. CP 2, 29; Opening Br. at 29. This totals $2,870.28

and does not include attorney fees or costs. Id. The statute of limitations to collect the 2012 assessment was set to run later in 2015. *See* RCW 64.34.364(8). Because Hosseinzadeh refused to pay, the Association had no choice but to proceed with the lawsuit or write off her balance.

II. REPLY ARGUMENT

A. Hosseinzadeh Does Not Cite to "Extraordinary Circumstances" Outside the Trial Court's Proceedings to Vacate the Judgment Under CR 60(b)(11).

1. Hosseinzadeh's Arguments Address the Merits of the Case and Not Extraneous Circumstances That Impacted the Trial Court Proceedings.

Hosseinzadeh raises the argument that default judgments are disfavored in lieu of resolving disputes on the merits. Resp. Br. at 10-11. While this is generally true, it has no bearing on this case. Hosseinzadeh immediately hired an attorney and contested the Association's claim for unpaid assessments at the beginning of the case. CP 7-15. The case was resolved on the merits when the Association prevailed on summary judgment. CP 200-03.

The issue before this Court is whether there were "extraordinary circumstances" that were "related to irregularities extraneous to the action of the court" that merit vacating a summary judgment under CR 60(b)(11). As outlined in the Association's brief, these typically include unusual situations involving factors unrelated to the proceedings and outside the

parties' control, such as a change in the law, unfitness of an attorney, or where there has been reliance on mistaken information. *See*, Opening Br. at 16-19. CR 60(b)(11) is intended for "extreme, unexpected situations." *In re Pet of Ward*, 125 Wn. App. 374, 379, 104 P.3d 751 (2005).

Hosseinzadeh fails to cite any extraneous and extraordinary circumstances that impacted the trial court proceedings. Hosseinzadeh simply characterizes the attitude of the Association's board of directors and its members as "extraordinary in its excess." Resp. Br. at 18. However, simply calling the Association's actions "extraordinary" does not mean that "extraordinary circumstances" exist for purposes of CR 60(b)(11). Furthermore, the characterization that the Association's actions were "extraordinary" is an example of Hosseinzadeh's using CR 60(b)(11) to argue the merits and substance of the underlying case – not to whether there are extraneous circumstances that warranted vacating the summary judgment under CR 60(b)(11).

2. Hosseinzadeh's Used CR 60(b) As a Substitute for an Appeal.

Hosseinzadeh argues that she "provided the [trial] Court with an argument that had not been properly considered and the important [sic] of the Court's previous entry of judgment." Resp. Br. at 13. She also claims that the trial court's entry of the summary judgment was "the result of a

denial of equal protection and fair treatment for the Hosseinzadehs." *Id.* at 15. Along those same lines, she claims that the ruling to vacate the summary judgment should be affirmed due to the "interests of fairness...." *Id.* at 19.

However, the trial court's alleged failure to "properly consider" Hosseinzadeh's argument or her belief that the summary judgment was "unfair" are not reasons vacate the judgment under CR 60(b), nor is the argument that the judgment denied her equal protection. In sum, the basis of her CR 60(b) motion was that the trial judge made a legal error determining there were no genuine issues of material fact and entering the summary judgment. Hosseinzadeh is not entitled to a second opportunity to convince the trial court that an issue of fact exists. Such an error is only correctible on appeal, which she timely filed under case number 74138-1, which is on hold pending the results of this appeal.

B. Hosseinzadeh Has a Duty to Pay Condominium Assessments Independent of Her Alleged Claim Against the Association.

State law and the recorded condominium Declaration are clear that owners are liable for assessments. *See*, RCW 64.34.364; Declaration Sections 9.01-08. CP 25-27. Furthermore, this Court has held that owners may not withhold payment of assessments as a remedy for dissatisfaction with their association or in protest. *Panther Lake Homeowners Ass'n v.*

Jeurgensen, 76 Wn. App. 586, 591, 887 P.2d 465 (1995). The public policy behind this legal principle is self-evident. Condominium associations are dependent on a reliable stream of assessment income in order to function. Owners who withhold assessments or attempt to seek offsets to their assessment liability only compound an association's problems and effectively shift their share of the association's expenses to the other owners. *Id.*

Furthermore, it is important to remember that Hosseinzadeh did not file a counterclaim or bring a separate lawsuit against the Association for discrimination. Instead, she has merely claimed that the special assessments (that she acknowledged that all owners had to pay) be offset based on her unsupported allegations of discrimination. And to the extent she had any claims, they would be barred by the statute of limitations.

C. The Summary Judgment for Unpaid Assessments Based on Non-Discriminatory Statutes and Covenants Did Not Deprive Hosseinzadeh of Equal Protection.

Hosseinzadeh does not address the Association's argument that *Shelley v. Kramer* is inapplicable. As detailed in its Opening Brief, *Shelley v. Kramer* is a 1940s case that involved the judicial enforcement of a private, facially discriminatory covenant that prohibited non-whites from purchasing property in a subdivision. 334 U.S. 1, 68 S. Ct. 836 (1948). Clearly, the covenant was discriminatory and the judicial enforcement of

same denied the plaintiff the ability to buy, use, enjoy, and sell real property based on race. It is not debatable that the judicial enforcement of the covenant was a denial of equal protection under the Fourteenth Amendment to the U.S. Constitution. *See*, Opening Br. at 27-28.

None of these same concerns are involved in this case. All condominium owners, regardless of race or ethnicity, are required to pay assessments so, in turn, the condominium association can pay its operating expenses and maintain property values. RCW 64.32.080; RCW 64.34.364(1)(b). The legislature gave condominium associations clear enforcement authority to collect unpaid assessments, including creating a lien against units that associations can foreclose both judicially and non-judicially. RCW 64.32.200; RCW 64.34.364(1), (9). Owners are also personally liable for unpaid assessments. RCW 64.34.364(12). The Association's Declaration has many of these same provisions. Declaration Sections 9.07; 9.08.4. (*See* CP 25-27.) Significantly, the Declaration imposed on the Association's board of directors a non-discretionary duty to enforce collection of unpaid assessments in any manner provided by law. Declaration Sections 9.01-02.

Unlike *Shelley*, the summary judgment did not deny Hosseinzadeh any fundamental rights or the ability to use, own, or enjoy her condominium unit. Rather, the summary judgment simply constituted

judicial enforcement of facially neutral statutes and covenants requiring all owners to pay assessments. Hosseinzadeh does not explain how she was denied equal protection when all owners at Bellevue Park were specially assessed in 2012 and 2014-15, and the Association also sued and obtained judgments against the other owners who failed to pay their share of the special assessments. CP 89; 101, 370-71.

Conspicuously absent is any explanation for the glaring contradiction of the position she has taken in this case. On the one hand, she argues that the summary judgment for unpaid assessments denied her equal protection. Yet, on the other hand, she admits that she has a duty to pay assessments as a condominium unit owner and that she did not pay them. CP 456; Resp. Br. at 5. These two positions cannot co-exist. If the Association cannot exercise its remedies under state law to collect from Hosseinzadeh, then she effectively has no duty to pay. Taking this to its logical conclusion, Hosseinzadeh's argument essentially requires the other owners at Bellevue Park to subsidize the ownership of her unit since the Association cannot do anything to enforce her obligation to pay. Hosseinzadeh does not seek equal protection; she seeks special protection not available to other owners. This is an untenable position and unfair to the 78 other owners at Bellevue Park.

In addition to *Shelley*, Hosseinzadeh relies on a string cite to three federal cases that involve questions of "mixed motive" sex discrimination in the workplace. Resp. Br. at 16. Those cases involved the interpretation of The Civil Rights Act of 1991 which provides that an unlawful employment practice is established when a complaining party demonstrates that sex was a motivating factor in any employment practice even if other factors also motivated the practice. *See, Desert Palace, Inc. v. Costa*, 539 U.S. 90, 90, 123 S.Ct. 2148, 156 L.Ed.2d 84 (2003); 42 U.S.C. § 2000e-2(m). Hosseinzadeh does not state how these cases are relevant or how they demonstrate the summary judgment for unpaid assessments denied her equal protection.

In addition to having nothing to do with sex discrimination in the employment context, those cases are also distinguishable because Hosseinzadeh was in breach of her legal obligation to the Association to pay assessments under state law and the Declaration. The Association exercised its lawful collection remedies, the same remedies it exercised against other owners, by obtaining a judgment. In contrast, the cases relied on by Hosseinzadeh involved employers allegedly engaged in unlawful conduct in violation of a specific federal statutes. They do not support her Fourteenth Amendment equal protection argument and have no relevance.

III. CONCLUSION

There are no extraneous, extraordinary circumstances cited, let alone any that would merit vacating a summary judgment order in a contested case. Hosseinzadeh used CR 60(b)(11) to get a second opportunity to argue to the trial court that issues of fact existed. This can only be done on appeal. Furthermore, if Hosseinzadeh believes she has claims against the Association for discrimination, they are separate from her obligation to pay assessments. She is not entitled to withhold payment of assessments or avoid liability for same.

Finally, the summary judgment order did not deprive Hosseinzadeh of equal protection. Rather, it merely constituted judicial enforcement of laws requiring all owners to pay their share of assessments that were uniformly applied to all Bellevue Park unit owners. The trial court abused its discretion, and its order vacating the summary judgment should be reversed.

Dated this 6th day of January, 2017.

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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 10TH day of January 2017, I caused a true and correct copy of Bellevue Park Homeowners Association's Reply Brief to be served on the following via the method indicated below:

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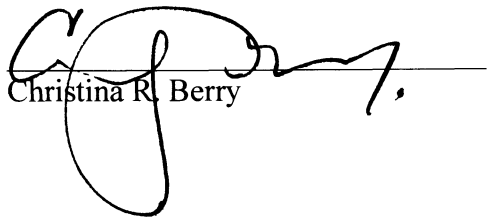

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