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AUG 12 2024

Superior Court of WA
Charles G. Rhodes

HC20

24-2-00100-23
ORGSJ 28
Order Granting Summary Judgment
17228320



PRESENTATION DATE: AUGUST 12, 2024
HEARING TIME: 3:30 P.M.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF MASON

BETTY WIDING,

Plaintiff,

vs.

LAKE CUSHMAN MAINTENANCE CO., a
Washington Non-Profit Corporation,

Defendant.

NO. 24-2-00100-23

~~PROPOSED~~ ORDER GRANTING
DEFENDANT LAKE CUSHMAN
MAINTENANCE CO.'S MOTION FOR
SUMMARY JUDGMENT; DENYING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT; and RULINGS ON CROSS
MOTIONS TO STRIKE

Clerk's Action Required

This matter came before the Court with oral argument on May 24, 2024, on Defendant's Lake Cushman Maintenance Co.'s and Plaintiff's Cross Motions for Summary Judgment and Cross Motions to Strike certain evidence. The court has heard the argument of the parties and reviewed the following documents:

1. Defendant Lake Cushman Maintenance Co.'s Motion for Summary Judgment;
2. Declaration of Theresa Torgesen;
3. Declaration of Dawn Lower in Support of Defendant Lake Cushman Maintenance Co.'s Motion for Summary Judgment and attached exhibits;

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1 4. Declaration of Mary B. Reiten in Support of Defendant Lake Cushman
2 Maintenance Co.'s Motion for Summary Judgment and attached exhibits;

3 5. Plaintiff Widing's Motion to Strike and Memorandum in Opposition to
4 Defendant's Counter Motion for Summary Judgment;

5 6. Lake Cushman Maintenance Company's Reply in Support of Motion for Summary
6 Judgment and Response to Motion to Strike;

7 7. Declaration of Dawn Lower in Support of Reply to Motion for Summary Judgment;

8 8. Plaintiff's Motion for Summary Judgment;

9 9. Plaintiff's Exhibits 1-14;

10 10. Lake Cushman Maintenance Company's Opposition to Plaintiff's Motion for
11 Summary Judgment;

12 11. Declaration of Ray Menard in Support of Defendant's Opposition to Plaintiff's
13 Motion for Summary Judgment and attached exhibits;

14 12. Declaration of Mary B. Reiten in Support of Defendant's Opposition to Plaintiff's
15 Motion for Summary Judgment and attached exhibits;

16 13. Plaintiff Widing's Reply in Support of Plaintiff's Motion for Summary Judgment and
17 Motion to Strike Additional Evidence.

18 The Court makes the following ORDERS on the parties' Motions to Strike:

19 The Court GRANTS IN PART AND DENIES IN PART Plaintiff's Motion to Strike certain
20 pleadings offered by Defendant as follows:

21 1. Exhibit 2 to Declaration of Mary B. Reiten dated April 22, 2024: DENIED.

22 2. Declaration of Theresa Torgesen: GRANTED.

1 3. Exhibit 3 to the Declaration of Dawn Lower dated April 17, 2024: DENIED. The
2 exhibit will be considered for the limited purpose of establishing that the members of Defendant
3 were provided notice of the Board of Directors' intent on how it was going to conduct its budget
4 process and vote of the membership.

5 4. Exhibit 6 to the Declaration of Dawn Lower dated April 17, 2024: GRANTED.

6 5. Exhibit 9 to the Declaration of Dawn Lower dated April 17, 2024: DENIED. This
7 exhibit will be considered for the limited purpose of establishing that the members of Defendant
8 were provided notice of the Board of Directors' intent on how it was going to conduct it budget
9 process and vote of the membership.

10 6. Exhibit 10 to the Declaration of Dawn Lower dated April 17, 2024: GRANTED.

11 7. Exhibit 11 to the Declaration of Dawn Lower dated April 17, 2024: GRANTED.

12 8. Exhibit 12 to the Declaration of Dawn Lower dated April 17, 2024: GRANTED ^{in part.}
13 *Denied only to the extent of memorializing the Board vote adopting the proposed*
14 *budget 2024.*

9. Exhibit 1 to the Declaration of Raymond Menard dated May 9, 2024: GRANTED.

14 10. Exhibit 1 to the Declaration of Mary Reiten dated May 9, 2024: GRANTED.

15 The Court GRANTS IN PART AND DENIES IN PART Defendant's Motion to Strike certain
16 pleadings offered by Plaintiff as follows:

17 1. Exhibit 1 to Plaintiff's Motion for Summary Judgment: DENIED IN PART AND
18 GRANTED IN PART. Betty Widing's declaration will be considered for the limited purpose of Ms.
19 Widing's expectations regarding the assessment limitations, based upon the governing
20 documents of Defendant; a calculation of the 2024 budget assessments in comparison to the
21 prior assessments; and information relevant to the historical operations of Defendant. The Court
22 GRANTS Defendant's motion to strike the last two sentences of the fourth full paragraph of page

1 two based on hearsay and the last full paragraph of page two through the end of page three
2 based on relevance.

3 2. Exhibit 2 to Plaintiff's Motion for Summary Judgment: DENIED IN PART AND
4 GRANTED IN PART. Robert Grandaw's declaration will be considered for the limited purpose of
5 Mr. Grandaw's expectations regarding the assessment limitations, based on the governing
6 documents of Defendant as well as the amount of increase in his assessments. All other portions
7 of the Declaration are stricken.

8 3. Exhibit 3 to Plaintiff's Motion for Summary Judgment: DENIED. Bob Carley's
9 declaration will be considered for the limited purpose of Mr. Carley's expectations regarding the
10 assessment limitations, based on the governing documents of Defendant.

11 4. Exhibit 4 to Plaintiff's Motion for Summary Judgment: DENIED. Don G. Thompson's
12 declaration will be considered for the limited purpose of Mr. Thompson's expectations regarding
13 the assessment limitations, based on the governing documents of Defendant.

14 5. Exhibit 5 to Plaintiff's Motion for Summary Judgment: DENIED. Douglas Whitby's
15 declaration will be considered for the limited purpose of Mr. Whitby's expectations regarding the
16 assessment limitations, based on the governing documents of Defendant.

17 6. Exhibit 6 to Plaintiff's Motion for Summary Judgment: DENIED. Penelope A. Wells'
18 declaration will be considered for the limited purpose of Ms. Wells' expectations regarding the
19 assessment limitations, based on the governing documents of Defendant.

20 7. Exhibit 7 to Plaintiff's Motion for Summary Judgment: GRANTED.

21 8. Exhibit 8 to Plaintiff's Motion for Summary Judgment: DENIED IN PART AND
22 GRANTED IN PART. Dave Emmons' declaration will be considered for the limited purpose of Mr.

1 Emmons' expectations regarding the assessment limitations, based on the governing documents
2 of Defendant and a calculation of the 2024 budget assessments in comparison to the prior
3 assessments. All other portions of the Declaration are stricken.

4 9. Exhibit 9 to Plaintiff's Motion for Summary Judgment: DENIED IN PART AND
5 GRANTED IN PART. Lori Zommerman's declaration will be considered for the limited purpose of
6 Ms. Zimmerman's expectations regarding the assessment limitations, based on the governing
7 documents of Defendant and a calculation of the 2024 budget assessments in comparison to the
8 prior assessments. All other portions of the Declaration are stricken.

9 10. Exhibit 10 to Plaintiff's Motion for Summary Judgment: DENIED IN PART AND
10 GRANTED IN PART. Malia Wales' declaration will be considered for the limited purpose of Ms.
11 Wales' expectations regarding the assessment limitations, based on the governing documents of
12 Defendant and a calculation of the 2024 budget assessments in comparison to the prior
13 assessments. All other portions of the Declaration are stricken.

14 11. Exhibit 11 to Plaintiff's Motion for Summary Judgment: GRANTED.

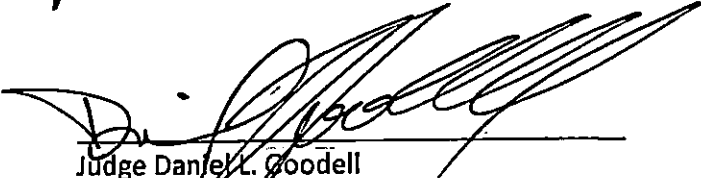
15 Being fully advised in the premises and considering only admissible evidence as set forth
16 above, the Court HEREBY GRANTS Defendant's Motion for Summary Judgment and DENIES
17 Plaintiff's Motion for Summary Judgment. Plaintiff Betty Widing's complaint is DISMISSED WITH
18 PREJUDICE.

19 A copy of the Court's "Memorandum re: Cross Motions to Strike and for Summary
20 Judgment" is attached hereto as Exhibit 1 and is made a part of this Order as if fully set forth
21 herein.

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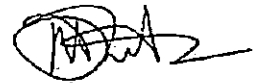
IT IS SO ORDERED.

Dated this 12th day of August 2024.



Judge Danjel L. Goodell
Superior Court Judge

Presented by:
PERYEA SILVER TAYLOR



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EXHIBIT 1

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JUL 02 2024

Superior Court of WA
Charles G. Rhodes
H13

Superior Court of Washington, County of Mason

Betty Widing,
Plaintiff,
vs
Lake Cushman Maintenance Company,
Defendant.

No. 24-2-00100-23
MEMORANDUM RE: CROSS MOTIONS
TO STRIKE AND FOR SUMMARY
JUDGMENT

24-2-00100-23
CTD 2E
Courts Decision
16993981



THIS MATTER having come before the Court on cross motions for summary judgment and cross motions to strike certain pleadings. The Court having reviewed the records and file and having heard argument, provides the following Memorandum:

I. CROSS MOTIONS TO STRIKE

A. Plaintiff's Motion. The Plaintiff provided a motion to strike certain pleadings offered by Defendant. The Court addresses each of the requests as follows:

1. Exhibit 2 to Declaration of Mary Reiten dated April 22, 2024. Motion is denied, the source is appropriate, limited to the two selections highlighted by Defendant, namely Senator Peterson's and Mr. McCarthy's testimonies. They are relevant for legislative history, purportedly giving insight on the genesis of the proposed legislation through a supporting senator and the chair of the non-legislative drafting committee.

2. Declaration of Theresa Torgesen. Motion is granted. This is a declaration of a member of the non-legislative committee that drafted the proposed legislation and was involved in the process. However, the Declaration does not provide an appropriate legislative history.

3. Exhibit 3 to the Declaration of Dawn Lower dated April 17, 2024. Motion is denied. The Minutes of the Board of Directors Meeting of October 26, 2023, will be considered for the limited purpose of establishing that the members of Defendant were provided notice of the Board of Directors intent on how it was going to conduct its budget process and vote of the membership.

4. Exhibit 6 to the Declaration of Dawn Lower dated April 17, 2024. Motion is granted. This is a budget and reserve assessment explanation and does not provide legislative history or information to the members on the board's intention to follow the procedures set forth in RCW 64.90.525.

5. Exhibit 9 to the Declaration of Dawn Lower dated April 17, 2024. Motion is denied. The letter to the members by the Board of Directors, undated, but apparently created prior to September 29, 2023, is appropriate and will be considered for the limited purpose of establishing that the members of Defendant were provided notice of the Board of Directors intent on how it was going to conduct its budget process and vote of the membership.

6. Exhibit 10 to the Declaration of Dawn Lower dated April 17, 2024. Motion is granted. This is an article sent to Defendant's members regarding the effects of assessments being maintained at a low value and does not provide appropriate legislative history or information to the members on the board's intention to follow the procedures set forth in RCW 64.90.525.

7. Exhibit 11 to the Declaration of Dawn Lower dated April 17, 2024. Motion is granted. This is a power point shared at a board meeting and does not provide legislative history or information to the members on the board's intention to follow the procedures set forth in RCW 64.90.525.

8. Exhibit 1 to the Declaration of Raymond Menard dated May 9, 2024. Motion is granted. This a Reserve Study prepared for Defendant on July 14, 2023, and does not provide legislative history or information to the members on the board's intention to follow the procedures set forth in RCW 64.90.525.

9. Exhibit 1 to the Declaration of Mary Reiten dated May 9, 2024. Motion is granted. This is a response by Defendant to Plaintiff's Interrogatory question number 5 and

relates to various comments by Defendant's members related to the 2024 budget process and does not provide appropriate legislative history or information to the members on the board's intention to follow the procedures set forth in RCW 64.90.525.

B. Defendant's Motion. The Defendant brought a motion to exclude the first eleven Declarations offered by Plaintiff in support of its motion for Summary Judgment. While most of the Declarations are cumulative in nature, the Court will consider some of the following Declarations to the limited extent identified below:

1. Exhibit 1 to Plaintiff's Motion for Summary Judgment. Motion is denied in part and granted in part. This is the Declaration of Betty Widing dated April 4, 2024, the Plaintiff and a member of Defendant. The Declaration will be considered for the limited purpose of: the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant; a calculation of the 2024 budget assessments in comparison to the prior assessments; and information relevant to the historical operations of Defendant. The Court grants Defendant's motion to strike the last two sentences of the fourth full paragraph of page two based upon hearsay and the last full paragraph of page two, through the end of page three based upon relevance.

2. Exhibit 2 to Plaintiff's Motion for Summary Judgment. Motion is denied in part and granted in part. This is the Declaration of Robert Grandaw dated February 15, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant as well as the amount of increase in his assessments. All other portions of the Declaration are stricken, including comments by third parties and criticisms of the budget.

3. Exhibit 3 to Plaintiff's Motion for Summary Judgment. Motion is denied. This is the Declaration of Bob Carley dated March 16, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant.

4. Exhibit 4 to Plaintiff's Motion for Summary Judgment. Motion is denied. This is the Declaration of Don G. Thompson dated March 18, 2024, a member of Defendant. The

Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant.

5. Exhibit 5 to Plaintiff's Motion for Summary Judgment. Motion is denied. This is the Declaration of Douglas Whitby dated March 16, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant.

6. Exhibit 6 to Plaintiff's Motion for Summary Judgment. Motion is denied. This is the Declaration of Penelope A. Wells dated January 25, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant.

7. Exhibit 7 to Plaintiff's Motion for Summary Judgment. Motion is granted. This is the Declaration of Bernardo Ignagni dated February 14, 2024, a member of Defendant. The Declaration is critical of the items covered in the budget and provides an opinion on the amount of the assessments.

8. Exhibit 8 to Plaintiff's Motion for Summary Judgment. Motion is denied in part and granted in part. This is the Declaration of Dave Emmons dated February 15, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant and a calculation of the 2024 budget assessments in comparison to the prior assessments. All other portions of the Declaration are stricken, including comments by third parties and criticisms of the budget.

9. Exhibit 9 to Plaintiff's Motion for Summary Judgment. Motion is denied in part and granted in part. This is the Declaration of Lori Zimmerman dated February 17, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant, and a calculation of the 2024 budget assessments in comparison to the prior assessments. All other portions of the Declaration are stricken, including criticisms of the budget.

10. **Exhibit 10 to Plaintiff's Motion for Summary Judgment.** Motion is denied in part and granted in part. This is the Declaration of Malia Wales dated February 14, 2024, a member of Defendant. The Declaration will be considered for the limited purpose of the Declarant's expectations regarding the assessment limitations, based upon the governing documents of Defendant, and a calculation of the 2024 budget assessments in comparison to the prior assessments. All other portions of the Declaration are stricken, including comments by third parties and criticisms of the budget.

11. **Exhibit 11 to Plaintiff's Motion for Summary Judgment.** Motion is granted. This purports to be the Declaration of Marian Reed dated February 13, 2024, a member of Defendant. This appears to be a joint declaration of more than one person which is not an appropriate form to be considered by the Court. However, it further provides criticism of the Board's actions without regard to expectations or comparable assessment values.

II. CROSS MOTIONS FOR SUMMARY JUDGMENT

A. Overview. The Plaintiff brought a motion for Summary Judgment asking for seven points of relief related to the operation of the Defendant's governing documents in relation to RCW 64.90.080 and 64.90.525 and the Defendant's budget for 2024. The Defendant brought a motion for Summary Judgment asking for the Court to find that the assessment limitations provision set forth in Defendant's governing documents is superseded by RCW 64.90.080 and 64.90.525.

There are no genuine issues of material fact on the following:

1. The Defendant, Lake Cushman Maintenance Company was created in the State of Washington in 1966.
2. Members of Defendant are lessees of real property from the same lessor who are entitled to certain benefits and subject to certain obligations based upon their ownership interests as further defined in the Defendant's governing documents.
3. Plaintiff, Betty Widing, is a member of the Defendant by virtue of her leasehold interest in real property.
4. The Defendant's Articles of Incorporation, Article II (14) states as follows:

To fix, establish, levy, and collect annually such charges and/or assessments as may be necessary, the judgment of the board of trustees to carry out any or all of the purposes for which this corporation is formed, but not in excess of the maximum from time to time fixed by the By-Laws.

5. The Defendant's By-Laws, Article V (7) states as follows:

No Director or officer except the executive secretary and/or assistant secretary and/or assistant treasurer shall receive any salary or compensation from the corporation.

6. The Defendant's By-Laws, Article VIII (1) states as follows:

The Corporation is authorized to enter into contracts with lessees of the property described in Article II of the Articles of Incorporation for such charges and assessments as may from time to time be fixed by the Board of Directors and may make assessments against the lessees as may from time to time be fixed and levied by the Board of Directors.

7. The Defendant's By-Laws, Article VIII (2) states as follows:

Regular, annual maintenance fee charges shall be limited to an increase equal to not more than 5% without a vote of the members.

8. The Defendant's By-Laws, Article III (4) states as follows:

A minimum of 200 ballots returned from each district, within the allotted time, shall be required for a decision to be valid on a matter to be decided by the general membership;...the matter shall be adopted if approved by a simple majority of all valid ballots cast...

9. On November 11, 2023, the Board of Trustees adopted a proposed 2024 budget that included regular, annual maintenance fee charges in the form of assessments that were in excess of the assessments set forth in the budget adopted in 2023 by an amount greater than 5%.

10. On December 16, 2023, a ratification vote for the 2024 budget took place. Of the 2,370 total eligible votes, 1,377 votes were counted, with 440 voting in favor of the budget and 937 voting against the budget.

11. The Board of Trustees ratified the 2024 budget as proposed.

B. Analysis. Due to the cross motions for Summary Judgment brought by the parties, the Court is considering the application of RCW 64.90, et seq, to the above facts.

The parties agree that the Defendant is a Common Interest Community as defined by RCW 64.90.010(10).

There are several statutes set forth in RCW 64.90 et seq., that apply in this matter, with the pertinent provisions set forth below:

RCW 64.90.015 states, in part, as follows:

Except as expressly provided in this chapter, the effect of the provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived...

RCW 64.90.080(1) states, in part, as follows:

...[RCW] ... 64.90.525 and 64.90.545 apply... to a common interest community created in this state before July 1, 2018.

RCW 64.90.080(2) states, in part, as follows:

To protect the public interest, RCW ... 64.90.525 supersede[s] existing provisions of the governing documents of all plat communities and miscellaneous communities previously subject to chapter 64.38 RCW.

RCW 64.90.525(a) states, in part, as follows:

Within thirty days after adoption of any proposed budget for the common interest community, the board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget. Unless at that meeting the unit owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget and the assessments against the units included in the budget are ratified, whether or not a quorum is present.

The primary issue before the Court is whether the provisions of RCW 64.90.525(a) supersede the provisions of the Defendant's Articles of Incorporation, Article II (14) and Defendant's By-Laws, Article VIII (2), and, if so, do the provisions of RCW 64.90.525(a) violate Plaintiff's constitutional right of contract.

1. Application of RCW 64.90.525(a) to Defendant's Governing Documents.

Both parties recognize the difference between a vote of the membership to adopt a budget with an increase in the assessment value over the 5% increase under Article VIII (2) versus a vote of the membership to reject a budget under RCW 64.90.525(a). The Defendant indicates in its argument that it believes the required vote under Article VIII (2) is a two-thirds majority. However, the Court agrees with Plaintiff's position that Article III (4) of Defendant's By-Laws

only requires a majority of those voting to approve a vote regarding an assessment increase under Article VIII (2). This also means that a majority of those voting could also reject such a proposed assessment. There is a difference between the statutory criteria under RCW 64.90.525(a) which requires the majority of the *total eligible votes* to reject the proposed budget and Article VIII (2) which requires the majority of *those who cast a vote* to reject any budget assessments over a certain value.

The present matter is a good example of the difference between the application of the voting requirements of Article VIII (2) and RCW 64.90.525(a). Some have calculated that two of the assessments included in the proposed 2024 budget were increases from the prior year assessments by 65.5% and 102%, well in excess of the 5% threshold. Utilizing the Statutory process under RCW 64.90.525(a), the Defendant would be considering the vote based upon a percentage of total eligible votes. Defendant has 2,370 eligible votes and 1,377 votes were cast.¹ 50% plus one vote, or 1,186 votes, under the statutory criteria would be the number of votes needed to reject the budget that included the above assessments.² Utilizing the By-Laws process under Article VIII (2), the Defendant would be considering the vote based upon a percentage of the total votes cast. 1,377 votes were cast, so 50% plus one vote, or 690 votes, under the By-Laws criteria would be the number of votes needed to reject the budgetary assessments.

A vote was taken pursuant to the statutory requirements, with 440 voting in favor of the budget and 937 voting against the budget. The Defendant applied the statutory criteria and the votes fell short of the necessary 1,186 rejection threshold and the proposed budget was approved. If, instead, the By-Laws criteria was applied, the negative votes would have exceeded the 690-rejection threshold and the assessments set forth in the proposed 2024 budget would have been rejected, thereby causing any proposed budget that included such assessments to be rejected. An

¹ The number of 2,370 "eligible votes" was set forth in the Declaration of Dawn Lower dated April 17, 2024. In Plaintiff's Declaration dated April 4, 2024, she indicates that there were 2,457 "full fee" voting lots. It is unclear whether the difference between the two numbers is based upon arrearages owing by some members under Defendant's By Laws, Article III (3), or other reasons. However, the 87-vote count difference is not material to this analysis. For the purposes of this discussion, the Court will adopt the number provided by Defendant and consider 2,370 eligible votes.

² The Declaration of Dawn Lower dated April 17, 2024, indicates that 1,385 votes were cast. It is unclear why this value is not equal to the sum of the votes counted. However, the 8-vote difference is also not material to this analysis and the Court will consider that 1,377 votes were cast.

analysis utilizing the By-Laws criteria would have caused a rejection of the proposed budget with only 39.5% of the total available votes in favor of the rejection.

Plaintiff argues that RCW 64.90.525(a) can be read in conjunction with Defendant's By-Laws, Article VIII (2). It appears that the Plaintiff asserts that the Board can follow Article VIII (2) and include assessments in a proposed budget in two circumstances, namely: 1) the value of the assessments portion of the budget are not more than 5% of the previous year's budget or 2) the assessments portion of the budget is more than 5% of the previous year's budget and a separate vote has occurred where the majority of the members voting approved of the assessments.

In other words, Plaintiff asserts that if a proposed budget has annual assessment increase(s) greater than 5%, the Board of Trustees would have to first obtain approval of the members of Defendant through an initial vote, and only upon an initial approval of the assessment increase(s) would a subsequent vote be held as prescribed by the process set forth in RCW 64.90.525(a).

It is anticipated that a vote for an assessment increase under Article VIII (2) would need to include a full proposed budget, including the intended expenditures. This would be appropriate to justify the need for an assessment increase. If approved, then the Board of Trustees would be required to hold a second vote on the same budget as required by RCW 64.90.525(a) for ratification.

Plaintiff's approach would create a two-vote process. Given that the first vote could in essence reject the proposed budget before a vote could be held pursuant to the statute, the provisions of Article VIII (2) would, in essence, usurp the provisions of the statute. The two-vote process is not consistent with the plain meaning of RCW 64.90.525 which requires a single vote for "any proposed budget". Requiring the board to adopt a two-step voting process with different voting standards is contrary to the statutory scheme. This would circumvent the requirements and protections of the statute.

Plaintiff further contends that the Article VIII (2) vote would only be a vote on assessments, not expenditures, so it would not be contrary to the provisions of RCW 64.90.525, because the vote that considers both the assessments and expenditures would only occur after the

members would approve an assessment increase that is over 5%. This argument fails for two reasons. First, it is difficult to understand how a request for an assessment increase could be justified without identifying the needed expenditures. Secondly, RCW 64.90.525 requires both the assessments, and the expenditures to be included in the same vote. Separating out a vote for assessments only is contrary to the plain meaning of the statute.

Plaintiff further contends that RCW 64.90.525, by its terms, does not prohibit caps on annual increases and does not address the content, substance or structure of association budgets. However, Article VIII (2) does not provide a cap on assessments, it only provides an additional voting requirement for certain assessments that are to be included in proposed budgets.

Plaintiff also contends that ignoring the requirements of Article VIII (2) would allow a board to propose and adopt any budget it wishes in total disregard of all the content and structure imposed by governing documents. The Plaintiff provided several examples of how the statutory procedure would allow for a rogue board to violate various provisions of the governing documents by including nonconforming provisions in a proposed budget. None of the examples given by the Plaintiff referred to any governing provision that would be violated. However, in Defendant's response, it addressed one of the allegations, namely Plaintiff's assertion that the board could *"approve and fund handsome salaries for themselves notwithstanding provisions of the governing documents that prohibit such compensation."* The Defendant pointed out that this would be contrary to the provisions of the Defendant's By-Laws, Article V (7), which precludes any salaries for board members. There is a clear distinction between the provisions of Article VIII (2) and Article V (7) of the By-Laws. Article VIII (2) provides for a voting process to be followed in order to approve certain proposed assessments; Article V (7) precludes the board from performing an act. Article V (7) does not allow for board salaries upon a vote of the members, it is an enforceable ban set forth in Defendant's governing documents.

Both Defendant's By-Laws, Article VIII (2) and RCW 64.90.525 provide substantive provisions regarding the approval and rejections of budgets. The provisions are conflicting and, based upon RCW 64.90.080 (2), the statutory language supersedes the language set forth in Article VIII (2), and the statutory language prevails.

2. Plaintiff's Constitutional Right to Contract. Plaintiff asserts that if the Court concludes that the provisions of RCW 64.90.525 do supersede Article VIII (2) of Defendant's

By-Laws, then the statute is an unconstitutional impairment of the members' contract with Defendant. The Plaintiff must prove the unconstitutionality of the statute beyond a reasonable doubt.

Article I, Section 23 of the Washington Constitution states:

No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

The governing documents of Defendant are contracts with its members. The provisions of RCW 64.90.525 are contrary to the governing documents of the Defendant, namely Article VIII (2) of the By-Laws, and arguably impair the contractual rights of the members, including the Plaintiff.

Several members of Defendant have declared that they have relied on the governing documents of the Defendant and the historical approach by board members of the Defendant who have followed the governing documents and limited assessment increases over the years. This reliance is amplified by the significant increases in the member's assessments that are set forth in Defendant's 2024 budget. For the purposes of this summary judgment motion, the Court will consider this reliance on the governing documents, specifically Article II (14) of Defendant's Articles of Incorporation and Article VIII (2) of Defendant's By-Laws, in the light most favorable to the Plaintiff as the responding party to the Defendant's motion.

The legislature contemplated the potential interactions between the governing documents of an existing organization like Defendant and the statutory provisions. In RCW 64.90.015 the legislature recognized prospective actions that may be taken by an organization and precluded an organization from contracting around the provisions of the statutes. Further, the legislature made it clear by the provisions of RCW 64.90.080(2) that any contrary provisions in an existing organization's governing documents would be superseded by the terms of the statute.

It is notable that the legislature used language that invoked its police powers. RCW 64.90.080(2) requires that the statutory provisions supersede the existing provisions of an organization's governing documents. It indicated that the purpose of the statute was "[t]o protect the public interest...".

RCW 64.90.080(1) provides that only two of the over 100 statutes included in the Washington Uniform Common Interest Ownership Act are mandatory for organizations existing prior to July 1, 2018, namely RCW 64.90.525 and 64.90.545. Both statutes focus on the financial viability of common interest communities. One applies to the ratification of budgets and the other applies to reserve studies. The only portion of the provision currently before the court is the application of RCW 64.90.525, the ratification of proposed budgets.

There is a connection between the expressed desire of the legislature to protect the public interest and its decision to enact the two statutes that focus on the financial viability of existing organizations such as the Defendant. This connection is consistent with Defendant's assertion that the reason for the RCW 64.90.525 voting criteria is to prevent a minority of an organization's members from limiting its financial viability. While this can be gleaned from the language set forth in the various statutes, it is further bolstered by the testimony of Senator Peterson and Mr. McCarthy as cited by the Defendant.

The Court concludes that the legislature invoked its police power to protect the public interest in maintaining the financial viability of common interest communities.

The Court recognizes that many of the Defendant's members have relied upon the limitations set forth in Article VIII (2) to limit the financial hardships that they may suffer due to potential and significant increases in their assessments. The Court further recognizes that the provisions of RCW 64.90.525 may require a greater number of Defendant's members to oppose an assessment increase. However, the Court concludes that RCW 64.90.525 does not substantially impair the contractual relationship between the Defendant and Plaintiff. The difference between the statutory criteria and the By-Laws criteria (RCW 64.90.525 and Article VIII (2)) is the pool of votes to be included in the calculation that determines the majority vote. The Statute does not impair, diminish or limit a member's ability to cast a vote. Each member is still allotted the same voting rights. A vote following the statutory criteria set forth in RCW 64.90.525 may very well reject a proposed budget that includes increases in annual assessments that exceed the previous year's annual assessments, whether the increase is less than or greater than 5%.

The Plaintiff has not met its burden of showing that the impact of RCW 64.90.525 which supersedes Article II (14) of Defendants Articles of Incorporation and Article VIII (2) of Defendant's By-Laws is unconstitutional beyond a reasonable doubt.

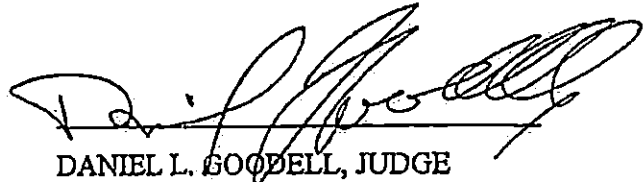
C. Conclusion.

1. Plaintiff's Motion. Plaintiff's Motion for Summary Judgment is Denied.

2. Defendant's Motion. Defendant's Motion for Summary Judgment is granted. RCW 64.90.525 supersedes the provisions in Article II (14) of Defendants Articles of Incorporation and Article VIII (2) of Defendant's By-Laws. Plaintiff's Complaint will be dismissed.

NOTE: This Memorandum is not a judgment, order, or other decision under CR 59(b). A party is required to prepare an appropriate order to finalize this memorandum at the appropriate time.

DATED this 2nd of July, 2024.


DANIEL L. GOODELL, JUDGE