No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

George Berka
_____ — PETITIONER
(Your Name)

VS.

Wedgewood Manor H.O.A.
_____ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

_____

_____

☒ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

George Berka
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, George Berka, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$ 3,100	$	$ 3,100	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child Support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	$ 3,100	$	$ 3,100	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

4. How much cash do you and your spouse have? $ $1,900
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
Del-One CU	Checking	$ $9,400	$
Fidelity	401(k)	$ $89,000	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home
Value $81,000

☒ Other real estate
Value $195,000

☒ Motor Vehicle #1
Year, make & model '02 Saab 9-3
Value $1,500

☐ Motor Vehicle #2
Year, make & model
Value

☐ Other assets
Description
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	$	$
	$	$
	$	$

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
~~Rent or home-mortgage payment~~ (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☒ No Is property insurance included? ☐ Yes ☒ No	$ 500	$
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 475	$
Home maintenance (repairs and upkeep)	$ 325	$
Food	$ 389	$
Clothing	$ 115	$
Laundry and dry-cleaning	$ 75	$
Medical and dental expenses	$ 200	$

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 100	$
Recreation, entertainment, newspapers, magazines, etc.	$ 50	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 62	$
Life	$	$
Health	$ 96	$
Motor Vehicle	$ 92	$
Other: _____	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$	$
Installment payments		
Motor Vehicle	$	$
Credit card(s)	$	$
Department store(s)	$	$
Other: _____	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify): _____	$	$
Total monthly expenses:	$ 2,479	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much?

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been adversely affected by the Covid-19 pandemic, and the resulting eviction moratorium enacted in my state, which allowed tenants to remain in their homes even when did not pay rent. Landlords were not permitted to evict them, and yet were still expected to meet their financial obligations, such as utilities and taxes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 21st, 2023

George Barker

(Signature)

IN THE

Supreme Court of the United States

George Berka,
Petitioner,
v.

Wedgewood Manor Homeowners' Association,
Respondent.

On a Petition for a Writ of Certiorari
To the Washington State Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Appearances:

For the Petitioner:
George Berka,
57 Concord St.
Waterbury, CT 06710
(203) 206-2529

For the Respondent:
Gregory L. Eklund,
Counsel for the Plaintiff
1008 S. Yakima Ave.
Tacoma, WA 98405

June 26th, 2023

QUESTIONS PRESENTED

1. Should the value of a judgment be a determining factor in deciding "reasonable" attorney fees, in addition to the "lodestar method"?
2. Are the Defendant's circumstances in this matter sufficiently serious to merit a new trial?

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TABLE OF AUTHORITIES

1. Court of Appeals of the State of Washington, "Final Letter of Disposal Concerning Petitioner's Objection to Mazzeo Attorney Fees", Issued: 04-03-2023.
2. Petitioner's Objection to Mazzeo Attorney Fees for State Supreme Court Review, Filed 01-06-2023, Disposed: 04-03-2023.
3. #101181-4, Supreme Court for the State of Washington, "Petition for Review", Filed: 08-17-2022, Disposed: 12-07-2022.
4. #827464, Court of Appeals of the State of Washington, "Appeal", Filed: 06-07-2021, Disposed: 08-02-2022.
5. #20-2-10785-9, King County Superior Court, "Wedgewood Manor Homeowner's Association v. George Berka", Filed: 07-01-2020, Disposed: 06-04-2021.

INTRODUCTION

This case pertains to a claim for back dues and special assessments that Plaintiff Wedgewood Manor Homeowners' Association brought against Defendant George Berka. The Defendant had ceased paying his dues and special assessments based on his belief that they were excessive, and that the Association was spending the homeowners' monies too liberally, and was thus not properly meeting its fiduciary duty. The Association prevailed in its claim at both the Trial Court, State Appellate, and State Supreme Court levels. Therefore, this Court's jurisdiction is hereby invoked under 28 U.S.C. § 1254 (1).

OPINIONS BELOW

The opinions of the Washington State Supreme Court (#101181-4), the Washington State Court of Appeals (#827464), and the King County Superior Court (#20-2-10785-9) in this matter are listed in the Appendix.

JURISDICTION

The Washington State Courts have entered their notice of final disposal on or about April 3rd, 2023; (see p. A2 in Appendix). Therefore, this Court's jurisdiction is hereby invoked under 28 U.S.C. § 1254 (1).

STATEMENT OF THE CASE

For several years, the Wedgewood Manor Homeowners' Association had been gradually increasing its dues and charging the owners "special assessments" for repairs of the

pluming at the Wedgewood condominium complex, located in Sea-Tac, Washington State. While Defendant and apartment owner George Berka appreciates the need to conduct plumbing repairs when necessary, he believes that the repairs could have been conducted in a more cost-effective manner. Specifically, he believes that the "trenchless plumbing repair method" (p. A37) could have been much cheaper than actually excavating portions of the plumbing. As a result of this disagreement, the Defendant ceased paying is dues and special assessments, and the Association filed its Complaint # 20-2-10785-9-KNT, on or about July 1st, 2020, in the King County Superior Court. To this Complaint, the Defendant had filed his Answer on or about October 7th, 2020 and, on about March 31st, 2021, the Defendant had also filed his request to postpone his trial due to the Covid-19 pandemic. His request was denied. Then, on or about May 20th, 2021, the Defendant had subsequently filed his request to inspect the Plaintiff's plumbing repair project, and this request was also denied. Judgment in the matter was awarded for the Plaintiff on June 4th, 2021, and an appeal immediately followed, which was decided on or about August 2nd, 2022. The Defendant now asks this Supreme Court to weigh in on (2) main issues: (1), whether the Plaintiff's attorney fees were indeed "reasonable" and, most importantly, whether the value of the original judgment should have been taken into consideration when determining these fees, in addition to the "lodestar method". Also, (2), the Defendant asks whether his personal circumstances regarding this matter and the Covid-19 pandemic are sufficient to grant him a new trial. The Defendant's argument now follows.

At 102% of the Judgment, the Attorney's Fees Are Indeed Exorbitant.

At the top of p. 12 in its Opinion, the State Appellate Court had cited the "lodestar method" as the means of "properly determining" an attorney's fee award based on the attorney's hourly rate and his hours expended. However, this method has one significant flaw: it fails to take into account the "overall value of the case", or the amount of the final judgment. As shown on p. A36, typical attorney's fees generally range from 25% to 33% of the judgment award, with 40% being the maximum rate, and 55% generally being considered exorbitant. Hence, for a judgment award of $18,222, reasonable attorney's fees may be considered $4,555 to $6,013, with a maximum of $7,288. The Association is now seeking fees of $8,547 plus $10,120, or $18,667. This fee is now 102% of the original judgment award, *or almost twice the figure that is generally considered exorbitant!* Indeed, an attorney's fee greater than the original judgment award is staggering and should shock the conscience of this Court. Forcing the Defendant to pay an attorney's fee that is greater than the original judgment award would indeed be a gross injustice. To prevent such injustices, the attorney's fee award should be capped at a reasonable value, such as 33% of the judgment award, regardless of the outcome of the "lodestar method", and regardless of how many hours the attorney had expended on the matter, or what his rate was. Otherwise, we end up with situations such as this, where parties are forced to pay disproportionately high attorney fees relative to the face value of the judgment award.

The Appeals Process Should Be Unencumbered for All.

Every party involved in a legal matter should be entitled to a free and unencumbered right to an appeal. Forcing someone to pay $10,120 for the opposing party's attorney fee would grossly undermine this important right. Therefore, the Defendant asks this Court to help safeguard future appellants' rights to appeals by not straddling him with these high and unjust fees.

The Defendant Requests an Oral Argument.

Since the Defendant was not given an oral argument in this appeal, he was denied the important opportunity to verbally present his case. Since a verbal argument can serve to influence the justices just as much as the written pleadings, the opportunity to present a verbal argument should be part of every appeal in the interest of justice and, it actually is the "standard" in many courts. Therefore, the Defendant hereby requests an oral argument.

The Defendant's Illness Compromised his Ability to Defend Himself.

A significant issue in this matter is the impact of the Covid-19 pandemic on the Defendant's ability to effectively defend himself. This issue shall be discussed in greater detail below. In late December of 2020, the Defendant had contracted Covid-19. In the months that followed, he found it difficult to breathe normally. The Defendant was examined by his primary care physician, who in turn referred him to a pulmonary specialist, who examined him on March 15th, 2021. The pulmonary specialist's report is shown on p. A27. The Defendant's difficulty to breathe had adversely impacted his

daily life, including his ability to provide timely responses in this matter, to adhere to the case schedule, and to travel. Covid-19 vaccines were still not widely available in the Defendant's area at that time. It was also due to his symptoms that the Defendant had requested to have his trial postponed on March 31st, 2021, that he had missed his March 22nd, 2021 deadline to do so, and that he had also missed his deadline to request a jury trial. This is also why, on May 20th, 2021, the Defendant had requested a continuance of (3) months to obtain additional discovery, i.e., to inspect the Association's plumbing repair project. If he had the opportunity to inspect the plumbing repair project, and to show alternative and less expensive repair methods, (such as the "trenchless" pipe repair method), the Defendant believes that he may have had a reasonable chance to convince a jury that the Association was indeed spending excessive monies on the project.

A "Trenchless Pipe Repair" May Have Been Significantly Cheaper and Would Have Been the "Applicable Authority".

On top on p. 5 in its Opinion, the Appellate Court stated that "Berka does not cite any applicable authority in support of his claim", i.e., that the Association breached its fiduciary duty by not adequately managing the money received through the assessments imposed upon the condominium owners. To support his claim, the Defendant was ready to present to the jury an alternate means of repairing faulty pipes, known as a "trenchless pipe repair" (p. A37). In this type of repair, a liner impregnated with epoxy resin is inserted into the faulty pipe, inflated via a long tube called a "bladder", and allowed to cure. After the liner cures, the bladder is withdrawn,

leaving behind a repaired, waterproof pipe. Repairs of this type can last for up to 50 years. The Association stated that their plumbing repair project may run as high as $7.5 million. The tooling for this type of repair may be rented for a little as $950 per day. With this method, one can see how considerable funds could have potentially been saved on these pipes. Also, in his "Amended Answer" to the Complaint, (dated : 07-Oct-20), the Defendant had indicated that, "it may well be possible to clean out at least some of the clogged pipes with an auger bit on a long, steel cable, powered by an electric rotary tool..." (p. A25). Selecting these types of repair can make a considerable difference in reducing the overall cost of the plumbing repair project. If the Association had been thinking along these lines, instead of leaving the work solely and entirely to expensive contractors, one can quickly see how this $7.5 million figure may have been substantially reduced. This is what the Defendant meant by the Association's "failure to be a responsible fiduciary". This is also why the Defendant is still requesting an in-person retrial before a jury at the trial court level. It is also appropriate to mention that the Defendant is a licensed aircraft mechanic. He has been trained in aircraft plumbing repairs, and has experience in general plumbing repairs and boiler installations, which should also grant him the "authority" and qualification to recommend alternate plumbing repairs to the Association.

The "Trenchless Pipe Repair Method" Would Have Been the Issue of Material Fact.

The same is true for the Appellate Court's finding in Section IV on the bottom of p. 8 of its Opinion, regarding the Defendant's motion to obtain additional discovery. In this

finding, the Appellate Court stated that the Defendant "did not explain that the information that he sought would raise an issue of material fact to preclude summary judgment". However, upon closer examination, one can see that this information *is indeed contained in the motion.* In his Motion, the Defendant had asked to inspect "the *entire* proposed Wedgewood plumbing repair construction site, including, but not limited to, the locations of all valves, pipes, fittings, assemblies, and manifolds to be replaced, along with the locations, sizes, and depths, of any proposed excavations." He also asked to "be permitted to take detailed photographs and notes of the proposed work, and to make sketches, so that he could consult with his own contractor, and obtain his own, independent estimate." With this information in hand, he would have been able to prepare his own estimate using the "trenchless pipe repair method", (described above). Also, he could have developed an estimate to clean out several sections of the water pipes with the "drill bit on the cable method", in lieu of the replacement of these pipes. With these alternate repair methods, the Defendant believes that he may have potentially lowered the Association's repair costs for these items considerably. The Defendant believes this to be the "issue of material fact sufficient to preclude summary judgment" that the Appellate Court was referring to. The whole point was to show that the Association had breached its fiduciary duty by neglecting to investigate these cheaper [and potentially significantly cheaper] alternatives to their existing plumbing repair scheme. This is because the Association had failed to sufficiently exercise its "duty of care" by failing to research other repair options enough to make an "informed decision". This is contrary to the "typical standard" that HOA directors are generally held to, and to RCW 24.06.153.

The Defendant *Did Contest* the Association's Charges.

At the top on p. 6 in its Opinion, the Appellate Court concluded that, "Nor does [Berka] contest that the Association was entitled to impose these [$18,222.14] charges..." This conclusion is not correct, as the Defendant did dispute these charges. On p. 3 of his "Amended Answer", the Defendant denied owing $14,089.76, plus interest, costs, and attorney's fees, supposedly due to the Plaintiff, (3.1 thru 3.3, p. A24).

The Defendant's "Fiduciary Duty Claim" Should Still Apply.

On the bottom of p. 6 of its Opinion, the Appellate Court stated that the Defendant's claim of breach of fiduciary duty under RCW 11.98.071 should be discounted because this statute "only applies to trusts" and the Association "is not a trust". The Defendant had meant to use RCW 11.98.071 mainly as a reference, and therefore asks the Court to not hold him to it strictly. There are numerous other examples of and publications pertaining to the fiduciary duties of homeowners' associations (p. A38-A40). Generally speaking, the most common duties expected of homeowners' association board members are those of "care and loyalty". As such, the duty of care requires that HOA board members make "informed decisions" regarding HOA matters (p. A38-A40). This duty to make informed decisions certainly includes the duty to familiarize oneself with alternate methods of plumbing repair if one ultimately makes decisions regarding a $7.5 million repair project. This is especially true if these alternate repair methods may potentially save the Association tens or of thousands of dollars or more. In Washington State, RCW 24.06.153, "Duties of Director or Officer – Standards – Liability", may also be applicable. It states that such an officer shall act, "(a), In good faith, (b), With the

care an ordinary prudent person in a like position would exercise, and (c), in a manner in the best interest of the corporation". These standards are certainly applicable to the Wedgewood Association's decisions as well. For this reason, the Defendant had ask this Court for some leeway on this issue, and asks that his "fiduciary duty argument" be allowed to still stand, since it is central to this case. If this argument is allowed to stand, the Defendant believes that he will indeed be able to "establish a genuine issue of material fact", which should overturn the Plaintiff's summary judgment, and grant the Defendant a new trial, crucially before a jury. This "issue of material fact" will center around the fact that the "trenchless pipe repair method" (p. A37) may be significantly simpler and cheaper than the repair methods of excavation and replacement that the Association is currently using. Also, if the repairs had already been completed, the Association should not be allowed to use this fact to have the Defendant's appeal dismissed as "moot". This is because, when the Defendant was seeking to convince the Association to consider other methods in the trial court, the issue was certainly not moot. While it may be too late to save money on this repair now if the money has already been spent and the repair is done, the Defendant should still not be forced to pay for it.

The Defendant Seeks an In-Person Jury Trial Because There Is No Good Substitute for It.

In Section III on p. 7 of its Opinion, the Appellate Court stated that the Defendant was not entitled to an extension of his trial date because the trial court granted the Association's motion for summary judgment, and because the Defendant's motion was

not timely filed. The Court continued that an untimely motion such as this is generally only granted under "extraordinary circumstances", to prevent a "substantial injustice". The Court then also stated that the Defendant's "physical presence was not required for the case to proceed to trial", and that if the case had proceeded to trial, the Defendant would have requested for the trial to be conducted "in the same manner". This assumption is not true. The Defendant would have sought, and is still seeking, an in-person hearing before an in-person jury. This is because, when consulting with an attorney, the Defendant was told that video teleconference hearings are generally considered a poor substitute for in-person hearings. This, in turn, is because of the degree of communication needed, of the "fidelity" of the process, and for certain subtle, yet important interactions between the defendant and the jurors, such as body language, etc., that a video teleconference hearing, or even a hearing behind a glass, is simply no substitute for a live, in-person hearing. This is why, if a party specifically requests an in-person hearing, it should be granted. The Defendant had intended to request just such a hearing, but was unable to do so in a sufficiently timely manner due to his illness, as described earlier. The symptoms that the Defendant was experiencing at the time are believed to constitute the "extraordinary circumstances" necessary to qualify him for a new trial to prevent a "substantial injustice".

STATUTORY PROVISIONS INVOLVED

Since the Washington State Supreme Court had entered its final disposal notice on or about April 3rd, 2023, this Court's jurisdiction is hereby invoked under 28 U.S.C. § 1254 (1).

REASON FOR GRANTING THE PETITION

The Petitioner believes that the U.S. Supreme Court should grant this petition for review for the following reason: Pursuant to Washington State RAP 13.4(b)(4), this matter is of a significant public importance because it calls into question the value of the original judgment when determining attorney fees. When issuing its Opinion, the State Appellate Court cited the "lodestar method", which is based only on the attorney's hourly rate and hours devoted to the effort. However, the Defendant maintains that the value of the original judgment should also be considered when determining the attorney fees, in addition to the two above metrics. Specifically, and especially for smaller judgments of less than, say, $30,000, the attorney fees should be capped at 33% of the value of the judgment, regardless of the results of lodestar method. This would benefit the public by preserving one's all-important right to an appeal. Otherwise, as this matter shows, this right is currently compromised by the fact that the losing party is forced to pay unreasonably high attorney fees for the winning party.

CONCLUSION

The Defendant was unable to acceptably meet the trial court's case schedule and several deadlines because he was sick with Covid-19, and his ability to breathe normally had been adversely affected as a result. The Defendant believes that he had a sufficiently compelling argument that would have been the "issue of material fact", mentioned by the Appellate Court, as well as a valid defense, with which he may well have been able to convince a jury. This would have been the proposal of the "trenchless pipe repair method", in lieu of the more expensive excavation and replacement of the

pipes, which the Association had used. However, he was not able to present his proposal in a timely manner due to his illness. To prepare his proposal, the Defendant had requested the opportunity and additional time to inspect the Association's plumbing repair project, but his request was denied. The Defendant believes this denial to be improper, as it stripped him of an important opportunity to prepare his defense.

Fiduciary claims are typically based on violations of the "duty of care and loyalty", which are broad and general terms, and are widely accepted. The Defendant did mention these terms in his fiduciary claim against the Association. The Defendant's fiduciary claim against the Association should therefore be allowed to stand, and should not be stricken simply because he cited an improper reference (RCW 11.98.071) for it. The Defendant still believes that the Association breached its broad fiduciary duty of care and loyalty by failing to adequately familiarize itself with alternate pipe repair methods before selecting its contractor and repair method. The Defendant should therefore be given the opportunity to present this argument to a jury.

The Defendant still seeks an in-person jury trial, and not a remote video teleconference hearing, simply because an in-person trial is deemed to be of higher quality and delivers, for lack of a better term, a "greater degree of justice". His request for an in-person jury trial should thus be granted still.

The total, $18,667 attorney fee that the Association is now seeking from the Defendant is now greater than the face value of the original judgment award! At this value, this fee would definitely qualify as exorbitant, and should thus be stricken on the grounds of being unreasonable. For reference, a "reasonable" attorney fee is generally regarded as 25% to 33% of the judgment award, which, in this case, should be no more than about

$6,000. The "lodestar method" referenced by the State Appellate Court is unjust because its use frequently results in excessive attorney fees. Also, it is unjust to force the Defendant to pay the other party's attorney fees in an appeal, as this obstructs one's ability to receive a fair appeal. In light of the above, the Petitioner hereby requests the U.S. Supreme Court to grant his Petition for Review.

Respectfully Submitted

George Berka

BY George R.I

George Berka,
Defendant / Petitioner

June 26th, 2023

CERTIFICATION

This is to certify that on or about June 26th, 2023, I caused to be served a copy of the foregoing, via electronic mail, to the Plaintiff's counsel,

Gregory L. Eklund
1008 Yakima Ave, Suite #100
Tacoma, WA 98405
eklundlaw@comcast.net

George Berka

George R.I

George Berka

APPENDIX

PETITION FOR CERTIORARI

George Berka,
Petitioner,
v.
Wedgewood Manor Homeowners' Association,
Respondent.

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1. **Washington State Appellate Court's Letter of Final Disposal:**

FILED
4/3/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

WEDGEWOOD MANOR HOMEOWNERS ASSOCIATION, a nonprofit corporation,	No. 82746-4-I
Respondent,	MANDATE
v.	King County
GEORGE BERKA JR.,	Superior Court No. 20-2-10785-9
Appellant.	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on July 18, 2022 became the decision terminating review in the above case on April 3, 2023. An order denying a motion for reconsideration was entered on August 2, 2022. An order denying a petition for review was entered in the Supreme Court on December 7, 2022. An order denying a motion to modify was entered in the Supreme Court on March 8, 2023. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Pursuant to a Commissioner's ruling entered on August 1, 2022, attorney fees and costs in the amount of $10,185.24 are to be awarded against judgment debtor GEORGE BERKA JR. in favor of judgment creditor WEDGEWOOD MANOR HOMEOWNER ASSOCIATION.

Pursuant to a Supreme Court Clerk's ruling entered on January 5, 2023, attorney fees and expenses in the amount of $5,792.00 are to be awarded against judgment debtor GEORGE BERKA JR. in favor of judgment creditor WEDGEWOOD MANOR HOMEOWNERS ASSOCIATION.

c: George Berka Jr.
Gregory Lee Eklund
Hon. Elizabeth J. Berns

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 3rd day of April, 2023.

LEA ENNIS
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

2. **Defendant's Objection to Mazzeo Attorney Fees for State Supreme Court Review**

IN THE

Supreme Court of the State of Washington

George Berka,
Petitioner,

v.

Wedgewood Manor Homeowners' Association,
Respondent.

On a Petition for Review to
The Court of Appeals, Division I

OBJECTION TO MAZZEO ATTORNEY'S FEES

Appearances:

For the Petitioner:
George Berka,
57 Concord St.
Waterbury, CT 06710
(203) 206-2529

For the Respondent:
Gregory L. Eklund,
Counsel for the Plaintiff
1008 S. Yakima Ave.
Tacoma, WA 98405

January 6th, 2023

OBJECTION TO MAZZEO ATTORNEY'S FEES

The Petitioner hereby objects to the request for $5,792.00 in attorney's fees made by Attorney Drew Mazzeo on or about December 12th, 2022, on the grounds that it is excessive, and that it hinders the Petitioner's right to an unobstructed judicial review. Petitioners should have the right to a reasonable judicial review without fear of being straddled by high attorney fees for the other side.

BY George Berka

George Berka,
Defendant / Petitioner

January 6th, 2023

CERTIFICATION

This is to certify that on January 6th, 2023, I caused to be served a copy of the foregoing, via electronic mail, to the Plaintiff's counsel,

Gregory L. Eklund
1008 Yakima Ave, Suite #100
Tacoma, WA 98405
eklundlaw@comcast.net

George Berka
George Berka

3. **Washington State Supreme Court's Order # 101181-4**

FILED
SUPREME COURT
STATE OF WASHINGTON
12/7/2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

WEDGEWOOD MANOR HOMEOWNERS ASSOCIATION, Respondent, v. GEORGE BERKA JR., Petitioner.	)	No. 101181-4 **ORDER** Court of Appeals No. 82746-4-I

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu, and Whitener, considered at its December 6, 2022, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied and the Respondent's request for attorney fees for filing an answer to the petition for review is granted. The Respondent is awarded reasonable attorney fees and expenses pursuant to RAP 18.1(j). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), the Respondent should file an affidavit with the Clerk of the Washington State Supreme Court.

DATED at Olympia, Washington, this 7th day of December, 2022.

For the Court

González C.J.
CHIEF JUSTICE

4. **Washington State Appellate Court's Opinion in Appeal # 827464**

FILED
7/18/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WEDGEWOOD MANOR HOMEOWNERS ASSOCIATION, a nonprofit corporation, Respondent, v.	DIVISION ONE No. 82746-4-I UNPUBLISHED OPINION

DWYER, J. — George Berka Jr. appeals from the trial court's order granting the motion for summary judgment filed by the Wedgewood Manor Homeowners Association (the Association) and awarding the Association attorney fees and costs. Berka asserts that the trial court erred by granting the summary judgment motion because, according to Berka, genuine issues of material fact exist as to whether the Association breached its fiduciary duty under RCW 11.98.071[1] by not adequately managing the money received through certain assessments. Additionally, Berka contends that the trial court erred by denying both his motion to continue the trial date and his motion seeking a continuance to obtain additional discovery. Finally, Berka asserts that the trial court erred in awarding the Association attorney fees and costs. Because Berka fails to establish an entitlement to relief on any of his claims, we affirm.

I

Berka owns a condominium located at a condominium complex managed by the Association. On July 1, 2020, the Association filed a complaint against Berka. In this complaint, the Association asserted that Berka failed to pay certain assessments and other charges that were required to be paid pursuant to the Declaration and Covenants, Conditions, Restrictions and Reservations (the Declaration) applicable to the condominium complex. The Association also requested that, "in the event Defendant does not satisfy the judgment in this action promptly upon its entry, the lien of the Judgment [may] be foreclosed." Additionally, the Association requested an award of attorney fees and costs pursuant to the Declaration.

On October 12, 2020, Berka filed an amended answer to the complaint. In this answer, Berka stated that he "admits . . . that he has not paid the requested dues and special assessments in full lately." However, Berka asserted that he should be personally exempt from paying these assessments because, in essence, he believed that the Association did not frugally manage the condominium complex.

On March 31, 2021, Berka filed a motion seeking to continue the trial date one year from a date in June 2021 to June 28, 2022. In support of this motion, Berka averred that, as a result of the COVID-19 pandemic, he did not feel safe traveling in an airplane from his residence in Connecticut to Washington. On April 12, the Association filed a response to Berka's motion to continue. In this response, the Association asserted that Berka's motion was untimely because

[1] This statute regards the circumstances under which a trustee may delegate its duties over the management of a trust.

the order setting the case schedule contained a deadline of March 22, 2021 to request a change to the trial date. On April 20, the trial court entered an order denying Berka's motion.

On May 4, 2021, the Association filed a motion for summary judgment. In support of this motion, the Association filed various documents, including a copy of the Declaration and a declaration of the president of the board of the Association. In his declaration, which was supported with several attachments, the president of the board stated that Berka's "unpaid assessments, fees and costs total[led] $18[,]222.14." The Association also requested an award of attorney fees and costs pursuant to section 13.11 of the Declaration.

On May 14, 2021, Berka filed a response to the summary judgment motion. In this response, Berka did not contest that he failed to pay the assessments and other charges in question. Instead, Berka claimed that (1) the cost of a plumbing repair project at the condominium complex may be excessive, (2) the Association has not explained why the front gate of the condominium complex had not been operational for 21 years, (3) the assessments imposed by the Association should be reduced, (4) the Association violated its fiduciary duty as a result of the manner in which it spent money received from the assessments, and (5) the award of attorney fees requested by the Association was unreasonable.

Subsequently, on May 20, 2021, Berka filed a motion wherein he requested a continuance to obtain additional discovery. In particular, Berka sought an opportunity to personally inspect the proposed plumbing repairs at the

Wedgewood Manor condominium complex "within the next three (3) calendar months." In response to this motion, the Association asserted that this request was untimely because the order setting the case schedule contained a discovery cut-off date of May 10, 2021. On June 2, the trial court entered an order denying Berka's request for a continuance to obtain additional discovery.

On June 4, 2021, the trial court heard the Association's motion for summary judgment via a video teleconference. During the hearing, the trial court expressed its intent to grant the motion. In so doing, the trial court reasoned that "Mr. Berka does not dispute that he has not paid" the assessments and other charges in question. Additionally, the trial court expressed that the Association was entitled to an award of attorney fees and costs pursuant to the Declaration.

That same day, the trial court entered a written order granting the motion for summary judgment and awarding the Association attorney fees and costs. In this order, the trial court explained that, "[s]hould the Defendant George Berka, Jr. fail to satisfy the monetary portion of this judgment within sixty (60) days of its entry, the Plaintiff's lien filed against Defendant George Berka, Jr[.]'s Wedgewood Manor Homeowners Association's property . . . may be foreclosed."

Berka appeals.

II

Berka asserts that the trial court erred by granting the Association's motion for summary judgment. This is so, Berka avers, because the Association breached its fiduciary duty under RCW 11.98.071 by not adequately managing the money received through the assessments imposed on condominium

owners.[2] However, Berka does not cite to any applicable authority in support of this claim. Additionally, Berka does not dispute that he failed to pay the assessments and other charges in question. Accordingly, the trial court properly granted the motion.

We review an order granting summary judgment de novo, performing the same inquiry as the trial court. Nichols v. Peterson Nw., Inc., 197 Wn. App. 491, 498, 389 P.3d 617 (2016). In so doing, we draw "all inferences in favor of the nonmoving party." U.S. Oil & Ref. Co. v. Lee & Eastes Tank Lines, Inc., 104 Wn. App. 823, 830, 16 P.3d 1278 (2001). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c).

In support of its motion for summary judgment, the Association filed various documents, including a copy of the Declaration and a declaration of the president of the board of the Association. The Declaration authorizes the board of the Association to impose assessments and other charges on condominium owners at the Wedgewood Manor condominium complex.[3] Additionally, the declaration of the president of the board provided that Berka's "unpaid assessments, fees and costs total[led] $18[,]222.14." Berka does not contest that the unpaid assessments and other charges amounted to $18,222.14. Nor does he contest that the Association was entitled to impose these charges pursuant to the Declaration. For these reasons alone, the trial court did not err by granting the Association's motion for summary judgment.

Nevertheless, Berka asserts that he should be personally exempt from paying these charges because the Association breached its fiduciary duty under RCW 11.98.071. However, this statute regards the circumstances under which a trustee may delegate its duties over the management of a trust. RCW 11.98.071. Because the Association does not manage a trust, this statute does not apply to the Association. Therefore, Berka fails to establish a genuine issue of material

fact as to whether he was required to pay the assessments and other charges in question.[4]

Accordingly, the trial court properly granted the motion for summary judgment.

III

Berka next asserts that the trial court erred by denying his motion to continue the trial date. We disagree.

[2] The Association contends that we should not review this argument because Berka did not include a section devoted to assignments of error in his opening brief. This is a requirement imposed by the rules of appellate procedure. Riley v. Iron Gate Self Storage, 198 Wn. App. 692, 713, 395 P.3d 1059 (2017); RAP 10.3(a)(4). However, we have the discretion to "waive or alter the provisions of any of these rules in order to serve the ends of justice." RAP 1.2(c). Here, Berka devotes a section of his brief to challenging the trial court's summary judgment ruling, asserting that he is entitled to appellate relief pursuant to RCW 11.98.071. This is sufficient to call our attention to the grant of summary judgment. Additionally, because the Association requests an award of attorney fees on appeal, we analyze the merits of the trial court's summary judgment ruling to determine whether the Association is entitled to such an award.

[3] The Declaration provides, in pertinent part:

"The decision to grant a continuance is at the discretion of the trial court and its decision will be upheld absent an abuse of discretion." Harris v. Drake, 152 Wn.2d 480, 493, 99 P.3d 872 (2004). "A trial court abuses its discretion if its decision is manifestly unreasonable, exercised on untenable grounds, or is arbitrary." Harris, 152 Wn.2d at 493.

Berka contends that the trial court erred by denying his motion to continue the trial date one year from a date in June 2021 to June 28, 2022. For at least two reasons, however, Berka is not entitled to appellate relief on this claim. First, because the trial court granted the Association's motion for summary judgment, the lawsuit did not go to trial. As such, Berka was not prejudiced by the trial court's ruling.

13.8 Lien Indebtedness. Each monthly assessment and each special assessment shall be joint and several personal debts and obligations of the owner or owners and contract purchasers of apartments for which the same are assessed as of the time the assessment is made and shall be collectible as such. In the event an owner or owners are more than 60 days delinquent in the payment of any assessment, the Board may elect to declare the entire year's assessments immediately due and payable. The Board may assess a late charge for any month in which assessments are not paid and may assess a charge for any check returned for non-sufficient funds, which shall be in addition to any interest due. Such charges shall be as established by resolution of the Board. The amount of any assessment, whether regular or special, assessed to any apartment and the owner and/or purchaser of any apartment, plus interest at the rate of 12% per annum, late charges, bad check charges, and costs, including reasonable attorney fees, shall be a lien upon such apartment, the appurtenant limited common area and the exclusive use thereof. The said lien for payment of such assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except that such priority shall be limited as provided in RCW 64.32.200(2) . . .

. . . .

Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosure or waiving the lien securing the same.

Second, Berka's motion was not timely filed. Indeed, Berka filed his motion on March 31, 2021, which was after the March 22, 2021 deadline to request a change to the trial date. The King County Local Civil Rules limit the circumstances under which a late motion to continue the trial date may be granted. In particular, Local Civil Rule 40(e)(2) provides: "If a motion to change the trial date is made after the Final Date to Change Trial Date, as established by the Case Schedule, the motion will not be granted except under extraordinary circumstances where there is no alternative means of preventing a substantial injustice.". Berka asserts that the trial date should have been continued by one year because, as a result of the COVID-19 pandemic, he did not feel safe traveling in an airplane from his residence in Connecticut to Washington. However, Berka's physical presence was not required for the case to proceed to trial. Indeed, the trial court herein heard the motion for summary judgment via a video teleconference. Had the case proceeded to trial, Berka could have requested that the trial be conducted in the same manner. Therefore, Berka did not establish that a continuance was necessary to prevent a substantial injustice.[5]

Accordingly, Berka fails to establish an entitlement to relief on this claim.

IV

Berka also contends that the trial court erred by denying his motion requesting a continuance to obtain additional discovery. Berka filed this motion

[4] Berka also raises various complaints with regard to whether the Association mismanaged the money received through the assessments in dispute. For example, Berka claims that he is aware of a homeowners association in California that charges property owners less money per year than does the Association. Additionally, Berka contends that, based on his experience as a licensed aircraft mechanic, the Association might be able to expend less money on plumbing repairs. However, none of these complaints regard whether Berka was required to pay the balance of $18,222.14. Accordingly, Berka fails to establish a genuine issue of material fact as to whether he was required to pay this balance.

after the discovery cut-off date and after the Association moved for summary judgment. Additionally, in his motion, Berka did not explain how the information that he sought would raise an issue of material fact to preclude summary judgment. Accordingly, the trial court did not err by denying Berka's motion.

A trial court has the discretion to continue a motion for summary judgment in the following circumstances:

> CR 56(f) permits a trial court to continue a summary judgment motion when the party seeking a continuance offers a good reason for the delay in obtaining the discovery. In addition, the party must provide an affidavit stating what evidence the party seeks and how it will raise an issue of material fact to preclude summary judgment.

Durand v. HIMC Corp., 151 Wn. App. 818, 828, 214 P.3d 189 (2009).

On May 4, 2021, the Association filed a motion for summary judgment. Over two weeks later, on May 20, Berka filed a motion requesting a continuance to obtain additional discovery. In particular, Berka requested "the opportunity to personally and fully inspect, within the next three (3) calendar months, the *entire* proposed Wedgewood plumbing repair construction site." On June 2, the trial court denied Berka's motion.

The trial court did not err by so doing. Indeed, Berka's motion was untimely because he filed the motion both after the Association moved for summary judgment and after the May 10, 2021 discovery cut-off date. Despite the tardiness of this motion, Berka did not provide the trial court with an affidavit

[5] In his opening brief, Berka also asserts that "the pandemic would have considerably complicated the Defendant's live (in person) hearing before a jury." Br. of Appellant at 5. However, the record does not contain a formal request for a jury trial from either Berka or the Association. Accordingly, Berka's assertion is without merit.

explaining how the evidence sought would establish a genuine issue of material fact to preclude summary judgment. See Durand, 151 Wn. App. at 828. In any event, the evidence sought by Berka had nothing to do with whether he was

required to pay any assessments or other charges. As such, it would not have raised a genuine issue of material fact on the Association's claim.[6]

Accordingly, the trial court properly denied this motion.

V

Finally, Berka asserts that the trial court erred by awarding the Association attorney fees and costs. However, the Association was entitled to an award of attorney fees and costs pursuant to the Declaration. Additionally, Berka fails to demonstrate that the award of attorney fees was unreasonable. Accordingly, the trial court did not err by entering this award.

When reviewing an award of attorney fees, we first review de novo whether a legal basis exists for the award. Pierce v. Bill & Melinda Gates Found., 15 Wn. App. 2d 419, 446-47, 475 P.3d 1011 (2020), review denied, 197 Wn.2d 1006 (2021). We then "apply an abuse of discretion standard to a decision to award or deny attorney fees and the reasonableness of any such attorney fee award." Pierce, 15 Wn. App. 2d at 447.

The trial court awarded attorney fees and costs to the Association pursuant to section 13.11 of the Declaration, which provides:

> The Declarant, manager, or Board on behalf of the Association may initiate [an] action to foreclose the lien of any assessment. In any action to foreclose a lien against any apartment for nonpayment of delinquent assessments, any judgment rendered against the owners of such apartment in favor of the Association shall include a

> reasonable sum for attorney fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action, in addition to taxable costs permitted by law.

Whether a contractual provision authorizes an award of attorney fees is a question of law reviewed de novo. Kaintz v. PLG, Inc., 147 Wn. App. 782, 785-86, 197 P.3d 710 (2008). Under the plain language of section 13.11 of the Declaration, the Association is entitled to an award of attorney fees and costs "[i]n any action to foreclose a lien against any apartment for nonpayment of delinquent assessments." Additionally, such an award "shall include a reasonable sum for attorney fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action."

In its complaint, the Association requested that, "in the event Defendant does not satisfy the judgment in this action promptly upon its entry, the lien of the Judgment [may] be foreclosed." The Association prevailed on this request for relief. Indeed, in its order granting the motion for summary judgment, the trial court stated: "Should the Defendant George Berka, Jr. fail to satisfy the monetary portion of this judgment within sixty (60) days of its entry, the Plaintiff's lien filed against Defendant George Berka, Jr[.]'s Wedgewood Manor Homeowners Association's property . . . may be foreclosed." Because the Association prevailed in this action seeking the right to foreclose on its lien, the trial court properly ruled that the Association was entitled to an award of attorney fees and

[6] In this motion, Berka also requested "a four (4) month continuance for the trial or any upcoming hearings, so that he may conduct this evaluation, and attempt to obtain his own estimate." However, because no trial occurred, Berka was not prejudiced by the trial court's ruling denying his request. Furthermore, Berka filed this request on May 20, 2021, which was after the March 22, 2021 deadline to request a change to the trial date. Because the evidence sought by Berka had no bearing on whether he was required to pay any assessments or other charges, Berka did not establish that a four month continuance to the trial date was necessary to prevent a substantial injustice. See Local Civil Rule 40(e)(2).

costs under section 13.11 of the Declaration.

Furthermore, the award of attorney fees entered by the trial court was reasonable. We have explained that

> [o]ne established method of determining a reasonable attorney fee award is the lodestar method. Mahler v. Szucs, 135 Wn.2d 398, 433, 957 P.2d 632 (1998). Under this method, the trial court first examines the attorneys' billing records and determines the number of hours that were reasonably expended in pursuing the litigation. Mahler, 135 Wn.2d at 433-34. The total number of hours reasonably expended is then multiplied by the reasonable hourly rate of compensation resulting in the lodestar fee. Mahler, 135 Wn.2d at 434.

Baker v. Fireman's Fund Ins. Co., 5 Wn. App. 2d 604, 615, 428 P.3d 155 (2018).

In support of the motion for summary judgment, the Association's attorney submitted billing records detailing the work that he expended on this case. The rate that he charged the Association amounted to $275 per hour. During the summary judgment hearing, the trial court applied the lodestar method and determined that the requested award of attorney fees of $8,547.47 was reasonable. The trial court did not abuse its discretion by entering this award.

Accordingly, Berka's assignment of error fails.

VI

The Association requests an award of attorney fees and costs on appeal pursuant to RAP 18.1 and section 13.11 of the Declaration.[7] Because the Association prevailed on appeal, it is entitled to an award of attorney fees pursuant to this section of the Declaration. Upon a proper application, a commissioner of our court will enter an appropriate order. See RAP 18.1.

Affirmed.

WE CONCUR:

[7] The Association also requests an award of attorney fees on appeal pursuant to RCW 64.34.455. Because this statute was not a basis on which the trial court awarded attorney fees, we decline to award fees on this basis.

5. Plaintiff's Proposed Order on Summary Judgment:

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

WEDGEWOOD MANOR HOMEOWNERS ASSOCIATION, a non-profit corporation, **Plaintiff,** **vs.** **BERKA, GEORGE JR.,** **Defendant.**	**No. 20-2-10785-9 KNT** **ORDER ON SUMMARY JUDGMENT** **(Proposed)**

JUDGMENT SUMMARY

1.	Judgment Creditor:	Wedgewood Manor Homeowners Association
2.	Judgment Debtors:	George Berka, Jr.
3.	Principal Judgment Amount:	$18,222.14
4.	Attorney's Fees	$7428.50
5.	Costs:	$ 401.49
6.	Principal Judgment Amount Shall Bear Interest at:	12% Per Annum
7.	Attorney's Fees, Costs and Other Recovery Amounts Shall Bear Interest at:	12% Per Annum
8.	Attorney for Judgment Creditor:	Gregory L. Eklund, Attorney At Law
9.	Total Amount of Judgment:	$26,052.13

THIS MATTER having come on for hearing in open Court before the undersigned Judge on the date indicated below, upon Motion of Plaintiff, by and through its attorney, Gregory L. Eklund, Attorney At Law

against Defendant George Berka, Jr., with supporting Declaration of Gordon Rowe and Affidavit of Gregory L. Eklund;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiff is awarded judgment against Defendant George Berka, Jr. for delinquent assessments, interest, and fees previously incurred for the period up through May 1, 2021 in the amount $18,222.14, plus Plaintiff's attorney's fees and costs in the amount of $7428.50 plus Process Service and King County Filing Fees in the amount of $401.49 for a total judgment of $26,052.13 plus interest thereon a the rate of 12% per anum from the date of judgment until paid;

2. Should the Defendant George Berka, Jr. fail to satisfy the monetary portion of this judgment within sixty (60) days of its entry, the Plaintiff's lien filed against Defendant George Berka, Jr's Wedgewood Manor Homeowners Association's property under King County Document Number **20190930001334** may be foreclosed, and

3. The Property sold by the Sheriff of King County, Washington, and the proceeds applied: (a) to the payment of the judgment in this action and such additional amounts as Plaintiff may pay for taxes, assessments, and/or insurance premiums upon the Property from the date of judgment, with interest thereon at the highest legal rate from the date of such payment until paid in full, and (b) to the payment of all costs and attorneys' fees incurred by the Plaintiff in connection with the sale, and

4. By such foreclosure and sale, the rights of the Defendant and all persons claiming by, through, or under them be adjudged inferior and subordinate to the Plaintiff's lien for unpaid dues and assessments established pursuant to the Declaration and be forever foreclosed, except only for the statutory right of redemption allowed by law, and

5. The Plaintiff is permitted to become a bidder and purchaser at the sale by the Sheriff and that the purchaser may be given immediate possession of the Property.

DONE IN OPEN COURT this __th day of June, 2021.

_____
Judge Elizabeth J. Berns

Presented by:
Gregory L. Eklund, Attorney At Law

_____/S/_____
Gregory L. Eklund, WSBA #27970
Attorney for Plaintiff

6. Defendant's Answer to Plaintiff's Complaint, # 20-2-10785-9-KNT

DOCKET NO.: 20-2-10785-9-KNT	:	SUPERIOR COURT
WEDGEWOOD MANOR HOMEOWNERS' ASSOCIATION	:	STATE OF WASHINGTON
	:	COUNTY OF KING
v.	:	
GEORGE BERKA	:	OCTOBER 07, 2020

AMENDED ANSWER

Defendant George Berka hereby files his Amended Answer to the Complaint filed by Plaintiff Wedgewood Manor Homeowners' Association on July 1st, 2020, as follows:

1. PARTIES:
   1.1. Not Applicable to the Defendant.
   1.2. The Defendant admits to owning "the Property" at 3425 S. 176th Street, #155, Sea-Tac, WA 98188, which is the subject of this action.
   1.3. The Defendant admits to not being in the military service of the United States of America.
   1.4. The Defendant admits that the property that forms the subject matter of this action is located in King County, Washington.

2. BACKGROUND FACTS:
   2.1. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.1, and therefore leaves the Plaintiff to its proof.
   2.2. The Defendant admits to being the legal owner of the property abbreviated legally as: WEDGEWOOD THE CONDOMINIUM PCT OF VALUE .568 Plat Block: BLD10 Plat Lot: Unit 155, and incorporated by reference ("the Property"). The common address of the Property is 3425 S. 176th Street, #155, Sea-Tac, WA 98188.
   2.3. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.3, and therefore, leaves the Plaintiff to its proof.
   2.4. The Defendant admits the allegation contained in Paragraph 2.4, i.e., that he has not paid the requested dues and special assessments in full lately. The reasons for this are outlined in his "Affirmative Defenses", beginning on Page (4).
   2.5. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.5, and therefore, leaves the Plaintiff to its proof.
   2.6. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.6, and therefore, leaves the Plaintiff to its proof.
   2.7. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.7, and therefore, leaves the Plaintiff to its proof.
   2.8. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.8, and therefore, leaves the Plaintiff to its proof.
   2.9. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.9, and therefore, leaves the Plaintiff to its proof.

2.10. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.10, and therefore, leaves the Plaintiff to its proof.

2.11. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.11, and therefore, leaves the Plaintiff to its proof.

2.12. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.12, and therefore, leaves the Plaintiff to its proof.

3. REPLY TO PLAINTIFF'S "PRAYER FOR RELIEF":

3.1. The Defendant denies that the amount of $14,089.76, plus interest, is due and payable.

3.2. The Defendant denies that any of the Plaintiff's attorney's fees are due and payable.

3.3. The Defendant denies that any of the Plaintiff's court costs are due and payable.

3.4. The Defendant denies that any other interest claimed by the Plaintiff is due and payable.

3.5. The Defendant objects to any form of foreclosure action sought by the Plaintiff in this matter.

3.6. The Defendant objects to the "Foreclosure of Defendant's Rights" sought by the Plaintiff in Paragraph 3.6.

3.7. The Defendant objects to the Plaintiff being given permission to "become the bidder and purchaser of the property" in any possible Sheriff Sale.

3.8. The Defendant objects to the Defendant being given any "other relief" that it seeks.

4. DEFENDANT'S AFFIRMATIVE DEFENSES:

4.1. **Background**: As of about July 1st, 2017, the Wedgewood Association of Apartment Owners, (hereafter known as the "Association"), has been assessing a monthly special assessment fee of or about $209.43 per unit to each condominium owner at the Wedgewood Manor Condominium Complex, (hereafter known as the "Complex").

4.2. The above special assessment fee is claimed to be for studies, evaluations, and repairs, which are claimed to be necessary for plumbing repairs at the Complex. The above special assessment fee may be in place for the next three to five years, and possibly longer.

4.3. As a good faith effort, the Defendant had paid this monthly special assessment fee for the first year.

4.4. In July of 2018, the above monthly special assessment fee had been renewed for another year.

4.5. The above special assessment fee is in addition to the regular monthly "dues" of or about $410.15, resulting in a total monthly payment of or about $619.58 per apartment.

4.6. The Association has hired contractors to evaluate the types of supposedly required plumbing repairs or replacements. The total cost of the plumbing repair project at the Complex may be higher than one million dollars, and may potentially be significantly higher.

4.7. The Association is essentially asking the apartment owners at the Complex to "foot the bill" for this project through the special assessments, which may exceed $209.43 per unit per month, and may last longer than the next (5) years.

4.8. The Defendant believes that the Board of Directors responsible for managing the Wedgewood Manor and making these types of financial decisions, (hereafter known as the "Board"), is, (a),

not managing the Complex in a sufficiently frugal manner in general, and is, (b), spending excessive monies on this plumbing repair project in particular, contrary to the provisions of RCW 64.34.308(1). The Defendant further believes that the Board could be, (c), repairing the plumbing and conducting general cleaning, landscaping, and maintenance activities at the Complex in a far more cost – effective manner. Next, the Defendant also believes that the Board is, (d), spending the apartment owners' monies at the Wedgewood Manor far too liberally, and is, (e), *generally failing in its all – important, fiduciary duty to properly safeguard the owners' funds and assets*. Finally, the Defendant believes that the regular, $410.15 monthly dues are excessive, and that the Complex can be sufficiently well managed for less than half that amount. The Defendant had approached the Board on numerous occasions in the past, and had suggested what he believed were economical, yet reasonable and effective solutions to the plumbing repair issue. He had also recommended strategies for conducting general cleaning, landscaping, and maintenance activities at the Complex in a more cost – effective manner as well. The Board had not acted on any of the Defendant's suggestions. Detailed copies of these suggestions are available upon request. Some of these suggestions consisted of covering the large roofs of the buildings with solar panels to help generate income to offset some of the maintenance expenses at the Wedgewood, (a suggestion that the Board acknowledged to have merit), and to enlist the help of willing apartment owners to perform cleaning and landscaping chores, painting, and basic repairs, in exchange for a reduction in their dues. As far as the plumbing project itself is concerned, the Defendant believes that it may well be possible to clean out at least some of the clogged pipes with an auger bit on a long, steel cable powered by an electric rotary tool, similar to a sewer snake. This could potentially reduce the overall cost of the project significantly. The Defendant also believes it possible to excavate and repair the most seriously damaged sections of pipe for far less than the Association is being quoted. The Defendant is a licensed aircraft mechanic who also performs his own plumbing and heating work on his other home, so he does have some knowledge about the issues involved here. Finally, the Defendant is also aware of another homeowners' association, the California Pines Association of Property Owners near Alturas, California, which charges its owners only $75 a year to manage a 16,000 acre wooded area, consisting of a section of an entire mountain! They stand as a shining example of what can be done with the right mindset, with a desire to "put the owners first", and with some proper fiscal management. If the California Pines Association can successfully manage such a large tract of land on so little, surely the Wedgewood Board can do better!

4.9. Even with these high fees, the Association has failed to maintain the Wedgewood Manor Complex to satisfactory standards. Two of its three swimming pools have been out of commission since the summer of 2019, long before the Covid-19 pandemic began. The gym has not been available since the fall of 2019 as well, and the electric front gate has not been operational since 1999, when the Defendant's father first purchased the apartment. The gate has been wide open for over 21 years. Without this front gate, security for the residents is compromised, since anyone can readily trespass onto the property. It is quite brazen of the Association to continue to demand such high dues, fees, and special assessments, while failing to make available these important amenities for the owners.

4.10. By charging the Defendant $410.15 in monthly dues, in addition to the special monthly assessment of $209.43, the Board of the Wedgewood Association is effectively causing him

irreparable harm and financial difficulty, and placing him in a position which may force him to lose his Apartment 155 there. Moreover, the Defendant believes that the assessment of these high fees is not even necessary in the first place, and that the Complex may be managed, maintained, and operated quite satisfactorily on much less.

4.11. **Nature of Relief Requested by the Defendant:** The Defendant hereby seeks to have his Unit 155 at the Complex exempted from these unfair and excessive future special assessments and fees. In addition, the Defendant also seeks to have his regular monthly dues payment for his unit permanently reduced from $410.15 per month, to a *fixed amount $210.00 per month* going forward, for as long as he owns said Unit 155, and to be absolved of any existing monies (arrearage, fees, and interest) the Association is seeking. The Defendant believes this $210 monthly amount to be more than sufficient to cover his share of the Wedgewood's operating expenses, if the Wedgewood is managed in a sufficiently frugal manner.

4.12. **Balancing of the Equities:** In cases such as these, the Court should exercise its discretion in favor of the party "most likely to be injured". In this case, the Defendant would likely be the "injured party", since he may be faced with the loss of his unit, if forced to continue to pay these high monthly fees. The Plaintiff, Wedgewood Manor, on the other hand, would "suffer" comparatively little harm, if it were ordered to reduce the Defendant's monthly fees on only one apartment out of many. Moreover, a decision in the Defendant's favor could also have positive consequences for the other apartment owners there, since it may prompt the Board to perhaps reconsider its current practices, and manage the Wedgewood in a more fiscally responsible manner, going forward.

4.13. **Summary:** In light of the above, the Plaintiff hereby requests this Court to exempt his Apartment 155 at the Wedgewood Manor Condominium Complex from any future special assessments, to permanently reduce his monthly dues payment for his Apartment to a fixed amount of $210 per month going forward, and to absolve him of any arrearage the Plaintiff claims he owes.

Respectfully Submitted

BY George Berka

George Berka,
Defendant

7. Defendant's Pulmonary Report:

BERKA, GEORGE (11/05/1971) #HF322695512 Encounter DOS: 03/15/2021

Patient:	BERKA, GEORGE (Male) 57 CONCORD STREET WATERBURY, CT 06710 (203)206-2529	**DOB:** **Race:** **Language:** **Ethnicity:**	11/05/1971 (49) Patient Declined English Patient Declined	**Encounter ID:** **Primary Ins:**	115456213 Emblem Health - Connecticare
Location:	Waterbury Pulmonary Associates 170 GRANDVIEW AVE Waterbury, CT, 06708-2525 (203)759-3666	**Provider:**	FERDINANDO URBANO, MD	**Referring:**	Czarsty, Craig

Subjective

Chief Complaint: Medical Necessity, Pulmonary Symptoms

History of Present Illness - Medical Necessity

Context

Reported: The patient presents for consultation for dyspnea., Recent COVID and persistent Dyspnea post covid; The consult is requested by Dr Czarsty..

History of Present Illness - Pulmonary Symptoms

Quality

Reported: dyspnea with heavy exertion.

Duration

Reported: Symptoms have been present for 2 months.

Timing

Reported: symptoms are intermittent, He went for a bike ride and was able to do so; awakened with symptoms never.

Context

Reported: The patient's chief complaint is shortness of breath on exertion.; There is no pulmonary history of asthma, There is no pulmonary history of COPD, There is no pulmonary history of pneumonia, There is no pulmonary history of recurrent pneumonia, There is no pulmonary history of bronchitis, There is no pulmonary history of recurrent bronchitis, There is no pulmonary history of smoking; There is no family history of asthma, There is no family history of COPD.

Modifying Factors

Reported: exertion is a trigger; symptoms are improved with rest.

Associated Signs and Symptoms

Reported: chest tightness, dyspnea; denies chest pain, denies hemoptysis.

Allergies

The patient has no known allergies.

Social Hx

Tobacco: Cigarettes (Never used tobacco)

Edu-Occupation : Education-Work history

Employment

This patient is retired. Self employed.

Household : Household

Marital/ Family Status

This patient is single, without children.

Household

This patient is living in a single family home.

Lives With

Friend.

Pets

This patient has a pet, which is 2 cats.

Medical Hx

The patient **reports** a history of COVID 19 Dec 2020.

Surgical Hx

The patient **reports** a history of nasal septoplasty.

Family Hx

Father: (Deceased) reports Prostate cancer.

Mother: (Deceased) reports CHF.

Review of Systems

Constitutional - Denied: Chills, Fever, Weight Loss, Decreased Appetite,

Eyes - Denied: Discharge, Visual Disturbance, Itchy eyes,

ENT

Mouth - Denied: Hoarseness,

Ears - Denied: Hearing Impairment,

Throat Neck - Denied: Sore Throat,

Respiratory - reported: Short of Breath, Chest Tightness,

Denied: Cough, Snoring, chest pain, Coughing Blood,

Cardiovascular - Denied: Chest Pain, Short of Breath - Lying Flat, Swelling of Legs,

Gastrointestinal - Denied: Difficulty Swallowing, Vomiting, Nausea, Diarrhea, Abdominal Pain,

Musculoskeletal - Denied: Back Pain, Weakness, Joint Pain,

Psychiatric - Denied: Anxiety, Depression,

Skin - Denied: Dryness, Itching,

Neurological - Denied: Dizziness, Numbness,

Endocrine - Denied: Hypoglycemia, Elevated glucoses,

Hematologic/Lymph - Denied: Bleeding Problems,

Genitourinary

Urinary - Denied: Blood In Urine, Hesitancy,

Objective

Vital Signs

Blood Pressure: 108/62 (Left Brachial, Sitting, Standard, Normal)

Pulse: 65 (Left Radial, REGULAR rhythm, Normal quality, Normal)

Pulse Ox: 98 % (RoomAir)

Temperature: 95 F (Temporal Artery, Normal)

Weight: 199 lb **Height:** 5' 7.5" **BMI Flag:** Obese (30.7)

Neck: 14.5 in

Physical Exam

Constitutional

The patient is awake, alert, well developed, well groomed and well nourished.

Eyes

The sclera is white and the conjunctiva pink, The eyelids are without lesions. Pupils are equally round and reactive to light and accommodations.

ENT

External inspection of the nose is without scars, lesions or masses. The nasal mucosa is pink and without discharge. The septum is midline. The turbinates are not enlarged. The buccal mucosa is pink; there is no cyanosis. No visible dental issues. The lips are normal color; there are no ulcers, masses or lesions. The mucosa of the oropharynx is moist. The tongue is midline. The pharynx is without exudates.

Neck

The neck is supple; the trachea is midline. The thyroid is not enlarged. The thyroid is not tender. There are no palpable masses in the neck. Examination of the jugular veins does not imply elevated right heart pressure.

Respiratory

The patient is relaxed and breathes without effort. The patient is not cyanotic and does not use the accessory muscles of respiration. The chest expands symmetrically upon inspiration. Upon palpation of the chest wall there is no tenderness or masses. The lungs are clear to percussion. There are no crackles, wheezes, rhonchi, stridor or pleural rubs.

Cardiovascular

The rate is normal. The rhythm is regular. S1 and S2 are normal. There are no murmurs, gallops or rubs. There is no pitting edema of the lower extremities. There are no changes consistent with arterial insufficiency. There are no varicosities or stasis changes.

Gastrointestinal

The abdomen is soft and nontender and non distended. Bowel sounds are normal. There are no palpable masses. There is no hepatosplenomegaly.

Lymphatics

Lymph node: There is no cervical or supraclavicular adenopathy.

Extremities

Inspection and palpation of digits and reveals no clubbing or cyanosis.

Dermatologic

The color and temperature are within normal limits. There is no eczema. There are no hives. There is no rash.

Neurologic

Muscle tone and strength is normal. There is no atrophy. The gait is normal. Sensory testing for pain and light touch is intact.

Psychiatric

The patient is oriented to person, place, and time. The patient's mood is neutral and the affect appropriate.

Assessment

Diagnosis

R0602 Shortness of breath

R0600 Dyspnea, unspecified

Z8616 Personal history of COVID-19

Plan

Procedures

99244 Office Consultation (1 UN) [25]

Follow-Up

Follow Up - Weight Only (As Needed) with URBANO, FERDINANDO

Care Plan

WPA : Discussion

Rendering Provider Signature

Signature

Patient:	BERKA, GEORGE (Male) 57 CONCORD STREET WATERBURY, CT 06710 (203)206-2529	**DOB:** **Race:** **Language:** **Ethnicity:**	11/05/1971 (49) Patient Declined English Patient Declined	**Encounter ID:** **Primary Ins:**	115458117 Emblem Health - Connecticare
Location:	Waterbury Pulmonary Associates 170 GRANDVIEW AVE Waterbury, CT, 06708-2525 (203)759-3666	**Provider:**	FERDINANDO URBANO, MD	**Referring:**	Czarsty, Craig

Subjective

Medication List

diclofenac ER 100 mg tablet,extended release 24 hr - TAKE ONE TABLET BY MOUTH EVERY DAY

Allergies

The patient has no known allergies.

Assessment

Diagnosis

R0600 Dyspnea, Unspecified
R0602 Shortness Of Breath
Z8616 Personal History Of Covid-19

Plan

Office Procedures

Enhanced Precautions During Public Health Emergency:

We are using enhanced precautions during this public health emergency. These include screening patients and staff, cleaning rooms and equipment, social distancing and wearing appropriate PPE.

Pulmonary Function Test (with box and bronchodilator)

SPIROMETRY

FVC is normal. FEV1 is normal. FEV1/FVC is normal. FEF 25-75 is normal. The response to nebulized bronchodilator is not significant.

LUNG VOLUMES

TLC is normal. VC is normal. FRC is normal. RV is normal.

DIFFUSING CAPACITY

The DLCO is normal.

IMPRESSION

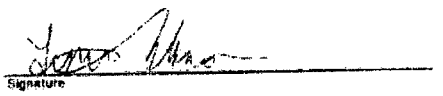
Procedures

99072 Addl Supl Matrl&staf Tm Phe (1 UN)
94060 B&a (1 UN)
94726 Volumes Box (1 UN)
94729 Dlco (1 UN)
A7003 Neb Set Up (1 UN)

BERKA, GEORGE (11/05/1971) #HF322695512 Encounter DOS: 03/15/2021

J7613 Albuterol Non-Comp Unit (1 UN)

Rendering Provider Signature



Signature

Waterbury Pulmonary Associates

170 Grandview Avenue
Waterbury, CT 06708
(203) 759-3666 / FAX (203) 759-3671

Predicted set: Knudson/Miller

Name: **George Berka**
ID: **HF322695512**
Age: 49 Sex: M Race: W
Referring Physician: Ferdinando Urbano, M.D.
Consulting: Ferdinando Urbano, M.D.
Physician Present: Ferdinando Urbano, M.D.
Primary Care: Craig Czarsty, M.D.

DOB: 05-Nov-71
Height: 67.5 in Weight: 199 lb
Smoker: N
Pack Years: N/A

Date Tested: **15-Mar-21**
TestTime: **1:59 PM**

Temp: 22°C
Pressure: 760mmHg
BTPS: 1.039

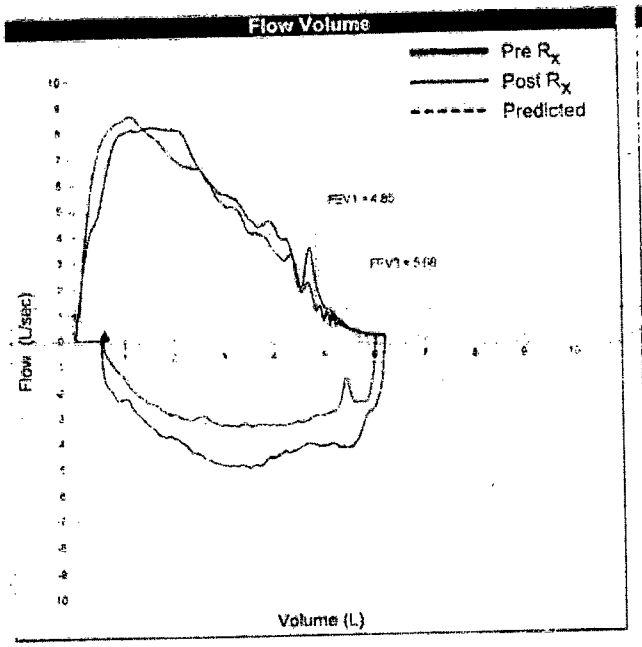
Clinical Technician: Jamie Sookram CRT
FeNO: 0 ppb

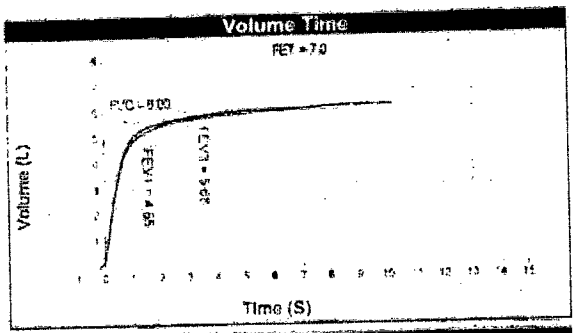
Legend | N = Normal | A = Abnormal | m = mild | M = Moderate | S = Severe

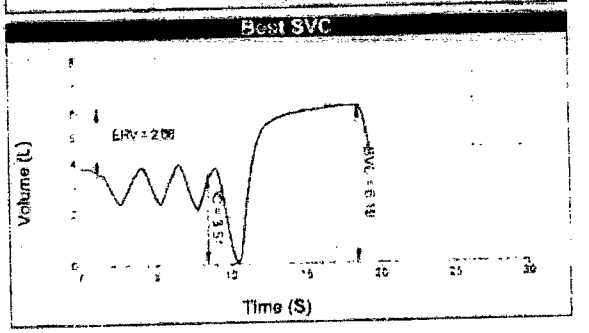
Spirometry at BTPS (ATS)		Pre Bronchodilator Actual	Predicted	% Pred	CI Range			Post Bronchodilator Actual	% Pred	% Change
FVC	L	**6.03**	4.53	133	3.31	5.75	N	**6.20**	136	3
FEV_1	L	**4.85**	3.38	143	2.47	4.29	N	**5.01**	148	3
FEV_1 / FVC	%	**80**	74	108	61	----	N	**81**	109	1
FEV_3	L	**5.68**	4.01	141	2.28	5.74		**5.78**	144	2
FEF_{25-75}	L/s	**4.80**	3.48	137	1.63	5.33		**4.93**	141	3
FEF_{25}	L/s	**7.98**	7.72	103	3.96	11.48		**8.20**	106	3
FEF_{50}	L/s	**5.16**	4.36	118	2.23	6.49		**5.54**	127	7
FEF_{75}	L/s	**1.94**	1.69	114	0.55	2.83		**2.95**	174	52
PEFR	L/s	**8.65**	8.37	103	4.48	12.26		**9.31**	111	8
FET	sec	**6.99**	----	----	----	----		**10.18**	----	46
FIVC	L	**5.69**	4.53	125	3.31	5.75		**5.61**	123	-1
PIFR	L/s	**3.41**	5.58	61	----	----		**5.00**	89	47
MVV	L/m	----	146.0	----	89.2	202.8		----	----	--

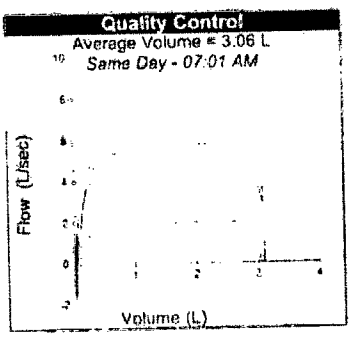
Lung Volumes (Box) (ATS)		Pre Bronchodilator Actual	Predicted	% Pred	CI Range			
TLC	L	**7.43**	6.40	116	4.94	7.86	N	
FRC	L	**3.93**	3.22	122	1.76	4.68	N	
IC	L	**3.50**	3.18	110	1.72	4.64		
ERV	L	**2.69**	1.35	199	----	2.81		
RV	L	**1.24**	1.87	66	1.11	2.63	N	
RV/TLC	%	17	29	58	20	----	A	m
VC	L	**6.19**	4.53	136	3.31	5.75		

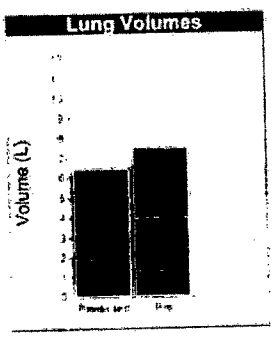
Diffusion (ATS)			Pre Bronchodilator Actual	Predicted	% Pred	CI Range		
VA [BTPS]		L	**7.88**	6.42	122	4.81	8.03	
DLCO	mL/min/mmHg		**30.61**	28.43	107	25.56	31.30	
DLCO [Hb]	mL/min/mmHg		**30.61**	28.43	107	25.56	31.30	N
DLCO/VA	mL/min/mmHg/L		**3.88**	4.96	78	----	----	N

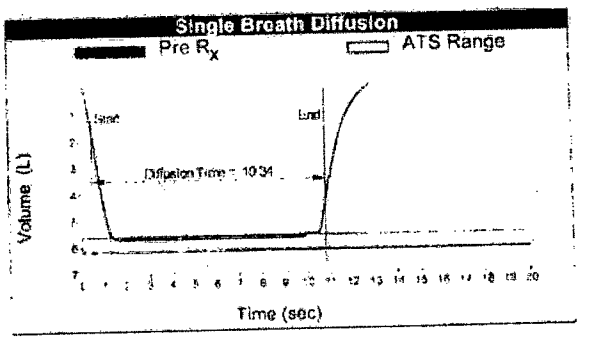












Data From Previous Tests

Asterisk (*) Denotes Post Bronchodilator Result

Test Dates	FVC L	FVC %Pred	Chg	FEV1 L	FEV1 %Pred	Chg	FEV1/FVC %	TLC L	TLC % Pred	DLCO Unc	DLCO % Pred	FeNO ppb	Hgt in	Wght lb
15-Mar-21	6.03	133		4.85	143		80	7.43	116	30.61	108	---	67.5	199

Technician Notes:

some variable efforts and multiple attempts
DLCO grade level = A
Albuterol UD given
NDC 0487950160
HR: pre 65, post 71; no adverse effects

Interpreting Physician: _____

8. Typical Attorney's Fees

TIMOTHY J. RYAN & ASSOCIATES
TRIAL LAWYERS

Personal Injury lawyers rarely charge an hourly rate but instead charge what is called a "contingency fee."

If you need a personal injury lawyer to represent you in California, it is very likely that you will be paying a "contingency fee" for his or her representation. This means that your legal professional's fee would be taken from the final settlement or verdict that you would receive for your claim.

If your attorney loses or is unable to obtain money on your behalf, he or she will not require any payment from you for their services.

1. "Contingency Fees" Affect on Settlements

In California, a common "contingency fee" percentage charged by an attorney would be 33.33% or one-third of the amount of the settlement obtained or verdict awarded to you by the court.

However, a legal professional's rate can range from 25% to 75%, depending upon a number of factors. These percentages often depend on your lawyer's experience, the laws of the state you live in, whether or not your case goes to trial, as well as the complexity of your case.

When you and your lawyer agree on the percentage of a "contingency fee," he or she will prepare the written agreement that both of you will need to sign.

After signing the retainer agreement, your lawyer will provide you with a signed copy which will include your agreed-upon rate.

2. Why Some Personal Injury Claims Make Attorneys Cost More

In most situations, personal injury lawyers will pay all costs and expenses needed to properly handle your case and then deduct them from your settlement or verdict amount.

While many attorneys will charge 33.33% for most of their clients, there are certain situations that can alter the amount that some attorneys will require for their services.

The following are common costs associated with these claims:

1. Police reports
2. Filing and postage
3. Investigator fees
4. Expert witness fees
5. Medical records fees
6. Trial exhibits and depositions fees

Thus, if your attorney covered costs and expenses needed to pursue your claim, his or her final rate percentage may be between 45% to 60% of your settlement or verdict.

Moreover, your case will be more costly if it has been settled after taking the case to trial. The longer it takes to settle your claim means the more expenses you will have to endure.

3. The Most an Attorney Should Take

An attorney's rate is often negotiated and, as mentioned above, will depend on the time your claim takes to settle—the complexity, and the costs and expenses associated with your claim.

In California, the typical maximum rate is 40% if your case was settled before going to trial. However, a lower fee percentage can be negotiated with some attorneys.

Every claim is different, and the "Contingency fee" percentage that your claim will require depends on many different factors, but anything more than 55% is usually exorbitant.

When negotiating a "contingency fee" with a personal injury attorney, it is essential to remember that the skills and the reputation of your lawyer are very important.

A more experienced and well-respected legal professional, who charges more than the standard rate, may be able to recover a higher settlement than a less experienced attorney who charges 33.33% for their services.

These cases do not have a set minimum or maximum settlement amount and the settlement amount depends on the extent and nature of your injuries such as the amount of time your injury is expected to last as well as the amount of economic damages you have endured.

If you are trying to figure out how much your claim is worth, we recommend that you speak with our Orange County personal injury lawyers for a free consultation.

Attorney Timothy J. Ryan has helped injury victims recover more than $1 billion since 1981 from his office at Beach and Warner in Huntington Beach, CA. He has a no-win, no-fee promise, very competitive fees, and there is no obligation to retain when taking advantage of your free consultation. Call (714) 908-9069 to get help now.

- Timothy J. Ryan

9. Description of Trenchless Pipe Repair

Barker & Sons Plumbing & Rooter

When you first discover that you need sewer pipe repairs, it's easy to get overwhelmed when you start to think about how extensive of a job it can be – your entire yard will need to be to be ripped apart, right? Not necessarily! There are ways to repair your pipes without digging up the beautiful landscape that you've worked so hard to maintain! With trenchless sewer pipe repair, you can restore the integrity of your sewer pipes without damaging your landscape, hardscape, driveway, sidewalk, and other structures around your home.

As a plumbing company that specializes in trenchless sewer pipe repair, we're here to ease your mind and let you know that repairing your sewer pipes isn't as difficult as you may think after all! Below, discover more about how this process works, and reasons why trenchless sewer repair is so appealing to many homeowners today.

How Trenchless Sewer Pipe Repair Works:

Barker & Sons Plumbing & Rooter uses a state-of-the-art "no dig" sewer relining system to clear and restore your broken Orange County sewer pipe.

1. **Initial pipe inspection:** The first step a professional plumber takes when repairing or replacing a damaged sewer pipe is to inspect the pipe using a small camera connected to a video monitor. An opening must be made in the pipe to insert the camera but this can be done by accessing the sewer line before it leaves the home or by digging a single small hole in the yard. The information relayed by the camera can be used to determine if the pipe is crushed, broken, clogged with tree roots or otherwise obstructed. Read more on the benefits of video camera sewer pipe inspections.
2. **Cleaning:** Prior to relining, the inside surface of the pipe may require cleaning or other preparation to ensure that the liner adheres properly. If the sewer line is found to be blocked by tree roots, a rotating blade can be inserted inside the pipe to cut the roots that extend inside. This is the simplest method of repairing a sewer pipe and is most effective if the vegetation that produced the roots has been removed.
3. **Pipe lining:** In many cases, a sewer pipe can be relined if the damage is not extensive. The liner, which is similar to a deflated fire hose, is coated in a special epoxy and placed inside the sewer line. A long tube, called a bladder, is inflated inside the liner, pressing it against the inside of the existing pipe. After the new

liner has cured and hardened, the bladder is removed and the sewer pipe is ready for use with a smooth, intact surface.

4. **Final inspection**: A post lining video inspection is performed to ensure that the repair meets exacting quality control standards. Once quality control is assured, the line is reconnected, the access hole is filled, and full service is returned to the property. The new relined pipe will now provide a minimum of 50 more years of service life.

If a pipe is too badly damaged to reline, it can be completely replaced using a method called pipe bursting. In this procedure, a cone-shaped bit is pulled through the old pipe. The bit destroys the existing pipe while a new pipe is laid in place just behind the bit. This method requires more time and effort than relining but is still far less invasive than digging a trench to replace a damaged pipe.

10. Typical Fiduciary Duties of HOA Board Members:

H•A
MANAGEMENT

FIDUCIARY RESPONSIBILITY OF HOA BOARD MEMBERS: WHY DO THEY EXIST IN COMMUNITIES?

Fiduciary duties commonly exist in the context of businesses and corporations. Corporate law mandates that since a corporation's board of directors is placed in a position of trust and authority, they have a fiduciary duty to the corporation and its stockholders.

How does this relate to the fiduciary duty of directors of homeowners associations? Do HOA board members have a fiduciary responsibility?

Most HOA communities have articles of incorporation in their governing documents, which establishes them as non-profit corporations. Even though they are non-profits and board members are volunteers, HOA communities also follow corporate law. This means that an HOA board of directors has a fiduciary duty to their association and its members.

WHAT ARE THE FIDUCIARY DUTIES OF HOA BOARD MEMBERS?

A fiduciary duty (or fiduciary responsibility of HOA board members) is defined as the obligation that a fiduciary owes to the beneficiary.

In this context of HOAs, the fiduciary is the board of directors and the beneficiary is the association (and its homeowners). Since fiduciaries are placed in a position of trust and authority — meaning they can act on behalf of the association — it is their legal duty to act in the best interests of their beneficiary, the HOA.

What are the fiduciary duties of a board member? The fiduciary duty of HOA board members has three components: duty of loyalty, duty of care, and duty to act within the scope of authority.

DUTY OF LOYALTY (DUTY OF GOOD FAITH)

Duty of loyalty requires HOA board members to act in good faith to promote the best interests of the entire association. HOA board fiduciary responsibility prevents board members from making decisions to further their personal interests. Board members must also avoid an HOA board of directors conflict of interest. This includes choosing a family-related vendor or voting on issues with a bias.

DUTY OF CARE

Duty of care requires HOA board members to make informed decisions regarding HOA matters. However, corporate law acknowledges that board members are constantly faced with countless decisions and it is impossible to thoroughly review information related to each decision. As such, the board of directors can rely on other people such as an HOA manager or staff to provide the information necessary to make a decision. However, the HOA board of directors is still responsible for making the final decision.

The duty of care board of directors is expected to uphold can apply to several situations, including imposing fines on homeowner violations. An HOA board member must first make sure that he/she is up-to-date on the association's rules and regulations. You can't simply fine a homeowner for doing something that you don't like. HOA boards must follow the protocol for fines, which is clearly outlined in the bylaws.

DUTY TO ACT WITHIN THE SCOPE OF AUTHORITY

In this third component, board members are required to only act within the scope of their authority. They cannot act or make decisions on matters that are outside the boundaries of their roles and HOA responsibilities to homeowners. HOA board members must read their governing documents to educate themselves on the limitations of their authority.

Board members must also know that governing documents do not supersede local, state, and federal laws. As such, a community that prohibits pets cannot refuse a homeowner with a disability who has a service animal. A board member who rejects the disability needs of the homeowner is acting outside the scope of authority because he/she is already violating the Fair Housing Act.

WHY MUST HOA BOARD MEMBERS UPHOLD THEIR FIDUCIARY DUTIES?

HOA fiduciary duty protects both the association and its board of directors. For associations, imposing fiduciary duties on the board of directors encourages them to act responsibly at all times. If they do not fulfill their fiduciary obligations to the association, they will be held accountable for their actions.

Meanwhile, the fiduciary duties of HOA board members also protect them from personal liabilities. For instance, a disgruntled homeowner can sue a board member for making bad decisions.

However, if the court can prove that their decision was in the best interest of the community — regardless of the bad outcome — the business judgment rule will not hold them personally liable. This empowers board members to serve their community without fear of losing their personal assets.

Most associations have an indemnification clause, which allows board members to reimburse legal expenses in case of a lawsuit. If you want to protect the finances of your association, think about purchasing directors & officers (D&O) insurance coverage.

HOW CAN BOARD MEMBERS FULFILL THEIR HOA FIDUCIARY DUTY?

Upholding your fiduciary duties is a mark of being a good HOA board member. Board members can fulfill their duty of loyalty by prioritizing the needs of the community. Keep in mind that as a homeowner yourself, the success or failure of the community will also affect you. As such, put aside your personal interests when dealing with HOA matters.

Meanwhile, board members can uphold their duty of care by thoroughly understanding their duties and responsibilities — and by always trying to fulfill these obligations to the best of their ability. Board members should also understand their governing documents, especially CC&Rs, bylaws, and articles of incorporation. You can fulfill your duty to act by knowing the scope of your authority and obligations. Moreover, board members must also be up-to-date on local, state, and federal laws.

HOA BREACH OF FIDUCIARY DUTY

When a breach of fiduciary responsibility takes place, the HOA may find itself in legal trouble. Suing for HOA negligence, which may be interpreted as a breach of fiduciary duty, is a common thing. But, what are some examples of breaches you might encounter?

- Failure to enforce the governing documents
- Enforcing the governing documents inconsistently
- Failure to do their due diligence before making a decision, especially a financial one
- Breaking confidentiality
- Failure to maintain the reserve fund (in some states)
- Conflicts of interest

By far the best way to avoid a breach of fiduciary duty lawsuit is to approach your job as a board member with seriousness. Make sure to understand your governing documents and follow them to the letter. Fulfill the roles and responsibilities required of you. And always put the community's interests first.

FREQUENTLY ASKED QUESTIONS

WHAT ARE THE THREE FIDUCIARY DUTIES?

The three fiduciary duties board members of an HOA should uphold are the Duty of Care, the Duty of Loyalty, and the Duty to Act Within the Scope of Their Authority.

CAN YOU SUE AN HOA BOARD OF DIRECTORS?

Yes, homeowners can sue HOA for breach of fiduciary duty. This will usually require the homeowner to offer proof that a breach has taken place, though. Additionally, it is important to note that lawsuits cost money, and the HOA likely has D&O insurance to cover legal fees and damages.

CAN A BOARD MEMBER BE SUED INDIVIDUALLY?

Homeowners can name individual board members in their lawsuit against the HOA. That does not automatically mean, though, that the named party will become liable.

ARE HOA BOARD MEMBERS PERSONALLY LIABLE?

In most cases, board members are not personally liable for negligence or an error in judgment. Many state laws and governing documents also limit the personal liability of board members. But, when a board member has exhibited willful misconduct or made decisions or actions in bad faith, then a court may find them personally liable.

CAN I SUE MY HOA FOR NOT ENFORCING RULES?

Homeowners can sue their HOA for several reasons, and one of them is for failing to enforce rules. This is a breach of the fiduciary duty of the board of directors. Specifically, it is a breach of the duty of care. Keep in mind, though, that homeowners will need to provide proof for this claim. It is usually best for homeowners to first approach the HOA board about the issue before taking legal action.

CAN I SUE MY HOA FOR SELECTIVE ENFORCEMENT?

When homeowners feel like the HOA board is not enforcing the rules in a consistent or equal manner, they can sue the HOA for selective enforcement. Again, this will require proof on the homeowner's part.

TAKING PRIDE IN HOA BOARD OF DIRECTORS FIDUCIARY RESPONSIBILITY

Board members should not treat their fiduciary duties as a burden or something that they always have to worry about. Rather, treat the fiduciary responsibility of HOA board members as a reminder to always take care of your community. When homeowners see that their HOA board is acting responsibly, the more they can trust you with the community. Board members can also take pride in their service to the community. It is a rewarding feeling knowing you helped protect your community's value, which, in turn, enabled it to grow into a bigger and more successful homeowners association.

11. Other General Duties of HOA Board Members:

Fiduciary Duties of HOA Board Members

How to protect yourself and limit your liability when serving on the board of your homeowners' association.

By Beth Ross

The day-to-day business of most planned developments, such as managing finances and maintenance, is typically run by its homeowner association (HOA) board of directors (the "board"). If you live in a planned unit or common interest

development, serving on the board can be an important way to impact, and help maintain, the well-being of your community. However, to serve responsibly, and avoid potential legal liability, you'll need to know what your fiduciary obligations are as an HOA board member. Breach these, and you could face personal liability for your actions or errors.

HOA Board's Fiduciary Duties Under Corporate Law

The fiduciary duties of HOA board members mainly arise from state corporate law. Most HOAs are nonprofit corporations, typically formed by filing articles of incorporation in the state where the development is located. Recognizing that a corporation's board members serve in a position of trust, every state's corporation law imposes a fiduciary duty on the corporation's board of directors, requiring them to act in the best interest of the corporation.

Subject to some limitations, this fiduciary duty applies to HOAs even though they are typically nonprofit corporations, and even though HOA board members are usually volunteers.

A board member's fiduciary duties involve three basic components:

- the duty of care
- the duty of loyalty, and
- the duty to act within the scope of its authority.

HOA Board Members' Duty of Care

To meet the duty of care, an HOA board member must make informed decisions, which might require a bit of research before you act or vote on an HOA matter. For example, before fining a homeowner for a rule violation, you must familiarize yourself with the association's CC&Rs, and the details of the situation, such as by talking with the homeowner.

HOA board members must also act in a prudent and reasonable manner, basically using sound business judgment and avoiding arbitrary or capricious actions. For example, you can't issue a fine against a homeowner for painting a home red just because you don't like that color, if this is not a violation of association rules about house paint color.

HOA Board Members' Duty of Loyalty

The duty of loyalty requires that HOA board members act fairly, in good faith, in the interest of, and for the benefit of, the HOA as a whole, rather than making decisions based on any personal interest or gain.

HOA board members should also avoid acting where there is a conflict of interest. For example, a board member who is helping select landscapers for the property should not steer contracts for landscaping to family members. A board member who owns a purple house should not participate in a board vote on whether or not to allow pink and purple homes in the development.

Additionally, an HOA board member must protect members' confidentiality, and not divulge information provided in confidence. For example, if a home owner confides in a board member about his impending home foreclosure in order to arrange a payment plan for HOA dues, the board member should not disclose the information to a friend or neighbor

HOA Board Members' Duty to Act Within the Scope of Authority

This duty requires the HOA board to perform the duties it's obligated to carry out, but prohibits the board from making decisions or acting on matters without the authority to do so. The authority of an HOA comes from its obligations under

state laws, as well as the authority granted to it in the development's governing documents. (Find out What's in the Basic Governing Documents of a HOA.)

To ensure you meet your obligations as a board member, you must know what duties are required. Review your state law and HOA's governing documents, specifically the articles of incorporation and bylaws, and your development's CC&Rs to determine the HOA's obligations, and the extent of its authority.

For example, if the laws or governing documents do not grant your HOA board the authority to adopt new rules and regulations, any restrictions it adopts about house colors might be invalid.

HOA Board Member Protection from Personal Liability

Many HOA board members are understandably concerned about their personal liability for lawsuits. Unhappy homeowners can sue the HOA and the board members individually for any number of reasons; for example, if the HOA fails to properly maintain a common area, or discriminates when enforcing a rule.

The best protection against liability as an HOA Board member is to take what you do seriously. You can avoid a breach of fiduciary duty by fully informing yourself before making decisions, ensuring you have the authority to act, and always acting in the best interests of the HOA.

In addition, some forms of protection from personal liability are available from your state law, your development's governing documents, and/or your HOA's D&O insurance.

State Laws Limiting HOA Board Member Liability

Many states have laws that reduce the standard of care required, or limit the personal liability of a nonprofit corporation's board members.

For example, in Colorado, the articles of incorporation or bylaws of a nonprofit can contain limitations on the personal liability of its board members. (See C.R.S. §7-128-402 for details.) And in California, the board members of an HOA (if it's a nonprofit or a mutual benefit corporation) are not personally liable for any damage exceeding what's covered by the HOA's insurance. (See Cal. Corp. Code § 5047.5 for details.)

How HOA Governing Documents May Limit Board Liability

Your development's governing documents might also offer some protection. Typically an HOA's bylaws or the development's CC&Rs contain indemnification provisions, which require the HOA to reimburse its Board members for any expenses incurred in connection with their work on the Board (including expenses incurred defending any lawsuit).

These provisions, however, usually contain exclusions for a Board member's gross negligence or willful misconduct—for example, a Board member might be held liable for gross negligence if he or she blocks a vote to fix or remove a common area swing that's about to break, even when repeatedly warned by an expert of the likelihood that a child will get hurt on it.

HOA Insurance That Protects Board Members

Your HOA's insurance can also provide important liability protection for board members. General liability insurance is not enough, however. Liability insurance only protects the HOA itself from personal injury or property damage claims. Your HOA should have adequate Director's and Officer's (D&O) insurance, to protect board members in claims for the breach of a fiduciary duty.

12. Defendant's Motion for Reconsideration to the Appellate Court:

Note: All references cited in the below "Motion for Reconsideration" are available upon request.

DOCKET NO.: 827464	:	COURT OF APPEALS
WEDGEWOOD MANOR HOMEOWNERS' ASSOCIATION	:	STATE OF WASHINGTON
	:	DIVISION I
v.	:	
GEORGE BERKA	:	JULY 27, 2022

MOTION FOR RECONSIDERATION

Background:

On July 18th, 2022, the Court of Appeals had issued its Opinion in this matter, affirming the Trial Court's judgment for the Plaintiff. Along with this Opinion, the Court had also informed the Defendant that he may file a motion for reconsideration within 20 days pursuant to RAP 12.4(b). In accordance with this, the Defendant's Motion for Reconsideration now follows. The individual points in his Argument have been presented in the order of importance.

Argument:

1. **The Defendant's Illness Compromised his Ability to Defend Himself.** A significant issue in this matter is the impact of the Covid-19 pandemic on the Defendant's ability to effectively defend himself. This issue shall be discussed in greater detail below. In late December of 2020, the Defendant had contracted Covid-19. In the months that followed, he found it difficult to breathe normally. The Defendant was examined by his primary care physician, who in turn referred him to a pulmonary specialist, who examined him on March 15th, 2021. The pulmonary specialist's report is shown in Exhibit 1 on p. 10. The Defendant's difficulty to breathe had adversely impacted his daily life, including his ability to provide timely responses in this matter, to adhere to the case schedule, and to travel. Covid-19 vaccines were still not widely available in the Defendant's area at that time. It was also due to his symptoms that the Defendant had requested to have his trial postponed on March 31st, 2021, that he had missed his March 22nd, 2021 deadline to do so, and that he had also missed his deadline to request a jury

trial. This is also why, on May 20th, 2021, the Defendant had requested a continuance of (3) months to obtain additional discovery, i.e., to inspect the Association's plumbing repair project. If he had the opportunity to inspect the plumbing repair project, and to show alternative and less expensive repair methods, (such as the "trenchless" pipe repair method), the Defendant believes that he may have had a reasonable chance to convince a jury that the Association was indeed spending excessive monies on the project.

2. **A "Trenchless Pipe Repair" May Have Been Significantly Cheaper and Would Have Been the "Applicable Authority".** On top on p. 5 in its Opinion, this Court stated that "Berka does not cite any applicable authority in support of his claim", i.e., that the Association breached its fiduciary duty by not adequately managing the money received through the assessments imposed upon the condominium owners. To support his claim, the Defendant was ready to present to the jury an alternate means of repairing faulty pipes, known as a "trenchless pipe repair". In this type of repair, a liner impregnated with epoxy resin is inserted into the faulty pipe, inflated via a long tube called a "bladder", and allowed to cure. After the liner cures, the bladder is withdrawn, leaving behind a repaired, waterproof pipe. Repairs of this type can last for up to 50 years. (Additional details about this method are shown in Exhibits 7 thru 9, p. 9-13.) The Association stated that their plumbing repair project may run as high as $7.5 million. The tooling for this type of repair (shown in Exhibit 9) may be rented for a little as $950 per day. With this method, one can see how considerable funds could have potentially been saved on these pipes. Also, at the bottom of p. 5 in his "Amended Answer" to the Complaint, (dated : 07-Oct-20), the Defendant had indicated that, "it may well be possible to clean out at least some of the clogged pipes with an auger bit on a long, steel cable, powered by an electric rotary tool..." Selecting these types of repair can make a considerable difference in reducing the overall cost of the plumbing repair project. If the Association had been thinking along these lines, instead of leaving the work solely and entirely to expensive contractors, one can quickly see how this $7.5 million figure may have been substantially reduced. This is what the Defendant meant by the Association's "failure to be a responsible fiduciary". This is also why the Defendant is still requesting an in-person retrial before a jury at the trial court level. It is also appropriate to mention that the Defendant is a licensed aircraft mechanic. He has been trained in aircraft plumbing repairs, and has experience in general plumbing repairs and boiler

installations, which should also grant him the "authority" and qualification to recommend alternate plumbing repairs to the Association.

3. **The Defendant *Did Contest* the Association's Charges.** At the top on p. 6 in its Opinion, this Court concluded that, "Nor does [Berka] contest that the Association was entitled to impose these [$18,222.14] charges..." This conclusion is not correct, as the Defendant did dispute these charges. On p. 3 of his "Amended Answer", the Defendant denied owing $14,089.76, plus interest, costs, and attorney's fees, supposedly due to the Plaintiff, (3.1 thru 3.3).

4. **The Defendant's "Fiduciary Duty Claim" Should Still Apply.** On the bottom of p. 6, the Court stated that the Defendant's claim of breach of fiduciary duty under RCW 11.98.071 should be discounted because this statute "only applies to trusts" and the Association "is not a trust". The Defendant had meant to use RCW 11.98.071 mainly as a reference, and therefore asks the Court to not hold him to it strictly. There are numerous other examples of and publications pertaining to the fiduciary duties of homeowners' associations (see Exhibits 2 & 3, p. 1-6). Generally speaking, the most common duties expected of homeowners' association board members are those of "care and loyalty". As such, the duty of care requires that HOA board members make "informed decisions" regarding HOA matters (see Exhibit 2, bottom of p. 1). This duty to make informed decisions certainly includes the duty to familiarize oneself with alternate methods of plumbing repair if one ultimately makes decisions regarding a $7.5 million repair project. This is especially true if these alternate repair methods may potentially save the Association tens or of thousands of dollars or more. In Washington State, RCW 24.06.153, "Duties of Director or Officer – Standards – Liability", (Exhibit 4, p. 6) may also be applicable. It states that such an officer shall act, "(a), In good faith, (b), With the care an ordinary prudent person in a like position would exercise, and (c), in a manner in the best interest of the corporation". These standards are certainly applicable to the Wedgewood Association's decisions as well. For this reason, the Defendant asks the Court for some leeway on this issue, and asks that his "fiduciary duty argument" be allowed to still stand, since it is central to this case. If this argument is allowed to stand, the Defendant believes that he will indeed be able to "establish a genuine issue of material fact", which should overturn the Plaintiff's summary judgment, and grant the Defendant a new trial, crucially before a jury. This "issue of material

fact" will center around the fact that the "trenchless pipe repair method" may be significantly simpler and cheaper than the repair methods of excavation and replacement that the Association is currently using. Also, if the repairs had already been completed, the Association should not be allowed to use this fact to have the Defendant's appeal dismissed as "moot". This is because, when the Defendant was seeking to convince the Association to consider other methods in the trial court, the issue was certainly not moot. While it may be too late to save money on this repair now if the money has already been spent and the repair is done, the Defendant should still not be forced to pay for it.

5. **The Defendant Seeks an In-Person Jury Trial Because There Is No Good Substitute for It.** In Section III on p. 7 of its Opinion, this Court stated that the Defendant was not entitled to an extension of his trial date because the trial court granted the Association's motion for summary judgment, and because the Defendant's motion was not timely filed. The Court continued that an untimely motion such as this is generally only granted under "extraordinary circumstances", to prevent a "substantial injustice". The Court then also stated that the Defendant's "physical presence was not required for the case to proceed to trial", and that if the case had proceeded to trial, the Defendant would have requested for the trial to be conducted "in the same manner". This assumption is not true. The Defendant would have sought, and is still seeking, an in-person hearing before an in-person jury. This is because, when consulting with an attorney, the Defendant was told that video teleconference hearings are generally considered a poor substitute for in-person hearings. This, in turn, is because of the degree of communication needed, of the "fidelity" of the process, and for certain subtle, yet important interactions between the defendant and the jurors, such as body language, etc., that a video teleconference hearing, or even a hearing behind a glass, is simply no substitute for a live, in-person hearing. This is why, if a party specifically requests an in-person hearing, it should be granted. The Defendant had intended to request just such a hearing, but was unable to do so in a sufficiently timely manner due to his illness, as described on p. 1. The symptoms that the Defendant was experiencing at the time are believed to constitute the "extraordinary circumstances" necessary to qualify him for a new trial to prevent a "substantial injustice".

6. **The "Trenchless Pipe Repair Method" Would Have Been the Issue of Material Fact.** The same is true for the Court's finding in Section IV on the bottom of p. 8, regarding the Defendant's motion to obtain additional discovery. In this finding, the Court stated that the Defendant "did not explain that the information that he sought would raise an issue of material fact to preclude summary judgment". However, upon closer examination, one can see that this information *is indeed contained in the motion.* In his Motion, the Defendant had asked to inspect "the *entire* proposed Wedgewood plumbing repair construction site, including, but not limited to, the locations of all valves, pipes, fittings, assemblies, and manifolds to be replaced, along with the locations, sizes, and depths, of any proposed excavations." He also asked to "be permitted to take detailed photographs and notes of the proposed work, and to make sketches, so that he could consult with his own contractor, and obtain his own, independent estimate." With this information in hand, he would have been able to prepare his own estimate using the "trenchless pipe repair method", (described in Item (2) above). Also, he would have developed an estimate to clean out several sections of the water pipes with the "drill bit on the cable method", (also described in Item (2), in lieu of the replacement of these pipes. With these alternate repair methods, the Defendant believes that he may have potentially lowered the Association's repair costs for these items considerably. The Defendant believes this to be the "issue of material fact sufficient to preclude summary judgment" that the Court is referring to. The whole point was to show that the Association had breached its fiduciary duty by neglecting to investigate these cheaper [and potentially significantly cheaper] alternatives to their existing plumbing repair scheme. This is because the Association had failed to sufficiently exercise its "duty of care" by failing to research other repair options enough to make an "informed decision". This is contrary to the "typical standard" that HOA directors are generally held to, and to RCW 24.06.153, as described in Item (4), above. In any event, even if this point was initially seen as being insufficiently explained, the Defendant hopes that he has now clarified it sufficiently to earn himself a reconsideration.

7. **At 102% of the Judgment, the Attorney's Fees Are Indeed Exorbitant.** Finally, the issue of the attorney's fees needs to be raised again. At the top of p. 12, the Court had cited the "lodestar method" as the means of "properly determining" an attorney's fee award based on the attorney's hourly rate and his hours expended. However, this method has one significant flaw:

it fails to take into account the "overall value of the case", or the amount of the final judgment. As shown in Exhibit 5 on p. 6, typical attorney's fees generally range from 25% to 33% of the judgment award, with 40% being the maximum rate, and 55% generally being considered exorbitant. Hence, for a judgment award of $18,222, reasonable attorney's fees may be considered $4,555 to $6,013, with a maximum of $7,288. The Association is now seeking fees of $8,547 plus $10,120, or $18,667. This fee is now 102% of the original judgment award, *or almost twice the figure that is generally considered exorbitant!* Indeed, an attorney's fee greater than the original judgment award is staggering and should shock the conscience of this Court. Forcing the Defendant to pay an attorney's fee that is greater than the original judgment award would indeed be a gross injustice. To prevent such injustices, the attorney's fee award should be capped at a reasonable value, such as 33% of the judgment award, regardless of the outcome of the "lodestar method", and regardless of how many hours the attorney had expended on the matter, or what his rate was. Otherwise, we end up with situations such as this, where parties are forced to pay disproportionately high attorney fees relative to the face value of the judgment award.

8. **No One Forced the Association to Hire an Attorney.** Relative to Item "7" above, the "American Rule" and its importance also deserves to be mentioned again. As explained in Exhibit 6 on p. 8, "The rule was established to ensure no one would be hesitant to file a legitimate court case due to the fear of having to pay for legal fees on both sides." The Association, after all, chose to hire an attorney to represent them in this matter. No one forced them to hire this attorney, and they did so entirely out of their own free will. They could well have represented themselves, just as the Defendant has done. Had they represented themselves, they would not have incurred these high attorney's fees. For this simple reason, *they should be responsible for their own fees.* This was exactly the rationale behind the American Rule, and we have a case here that is definitely on point. The issue of the Association's Declaration, as it relates to the attorney's fees, is worthy of consideration here as well. Just because the language of the Declaration attempts to hold the individual apartment owners responsible for the Association's attorney fees in the event of a dispute, this does not mean that the wording of the Declaration should be taken as "gospel". Nor is it *required* to be taken as "gospel"; judges have *discretion* in enforcing it. It is important that the Declaration be taken only as a general

guide, and that each case is evaluated individually on its merits. Here we have a case where the attorney's fees have reached an exorbitant value, having exceeded even the original judgment award itself! In cases such as this, the Court should first and foremost seek to uphold the interest of justice, and not allow the Declaration to be treated as a "license for abuses". In Exhibit 6 on p. 9, it states that the judge has discretion in enforcing the American Rule, even if it involves a contract, and that the rule is usually sidestepped only as a form of punishment on the losing party. Here, the Defendant asks the Court to use its discretion to *honor* the American Rule, since the matter was filed in good faith, with the Defendant believing in the validity of his case.

9. **The Appeals Process Should Be Unencumbered for All.** Every party involved in a legal matter should be entitled to a free and unencumbered right to an appeal. Forcing someone to pay $10,120 for the opposing party's attorney fee would grossly undermine this important right. Therefore, the Defendant asks this Court to help safeguard future appellants' rights to appeals by not straddling him with these high and unjust fees.

10. **The Defendant is Self-Represented.** The courts are generally "solicitous of [self-represented] litigants" and "construe the rules of practice liberally in favor of the [self-represented] party". The courts adhere to this rule to "ensure that [self-represented] litigants receive a full and fair opportunity to be heard, regardless of their lack of legal education and experience". Along these lines, the Defendant asks this Court to be mindful of this when evaluating his circumstances, and how they pertain to this case. He also asks this Court to consider this fact when deciding if he should receive another opportunity for a re-trial, or if he should or should not be straddled with the opposing party's attorney fees, even after devoting the time and effort that he did to being his own attorney.

11. **The Defendant Requests an Oral Argument.** Since the Defendant was not given an oral argument in this appeal, he was denied the important opportunity to verbally present his case. Since a verbal argument can serve to influence the justices just as much as the written pleadings, the opportunity to present a verbal argument should be part of every appeal in the

interest of justice, and, is actually "standard" in many courts. Therefore, the Defendant hereby requests an oral argument.

12. Although he still believes that he has a valid case, the Defendant would also like to finally "put this matter behind him". Therefore, the Defendant is interested in an "Alternate Dispute Resolution", and is willing to settle this matter with the Association for a reasonable sum. One option the Defendant would consider would be an even, "50/50" split of the judgment award, including a *reasonable* (25%) attorney's fee. Hence, the Defendant would be willing to settle this matter with the Association for $11k total, which would be half of $22k, or the Association's $18k judgment, plus an attorney's fee of $4k. Given everything that has transpired in this matter, such as the impact of the Defendant's illness on his ability to defend himself, the Defendant asks this Court to weigh in on a reasonable and just settlement option between the parties.

13. Despite the fact that he considers this to be a high figure, The Defendant has nevertheless been paying the Association its $495 per month in dues over the past several months.

Conclusion:

The Defendant was unable to acceptably meet the trial court's case schedule and several deadlines because he was sick with Covid-19, and his ability to breathe normally had been adversely affected as a result. The Defendant believes that he had a sufficiently compelling argument that would have been the "issue of material fact", mentioned by this Court, as well as a valid defense, with which he may well have been able to convince a jury. This would have been the proposal of the "trenchless pipe repair method", in lieu of the more expensive excavation and replacement of the pipes, which the Association had used. However, he was not able to present his proposal in a timely manner due to his illness. To prepare his proposal, the Defendant had requested the opportunity and additional time to inspect the Association's plumbing repair project, but his request was denied. The Defendant believes this denial to be improper, as it stripped him of an important opportunity to prepare his defense. Fiduciary claims are typically based on violations of the "duty of care and loyalty", which are broad and general terms, and are widely accepted. The Defendant did mention these terms in his fiduciary

claim against the Association. The Defendant's fiduciary claim against the Association should therefore be allowed to stand, and should not be stricken simply because he cited an improper reference (RCW 11.98.071) for it. The Defendant still believes that the Association breached its broad fiduciary duty of care and loyalty by failing to adequately familiarize itself with alternate pipe repair methods before selecting its contractor and repair method. The Defendant should therefore be given the opportunity to present this argument to a jury.

The Defendant still seeks an in-person jury trial, and not a remote video teleconference hearing, simply because an in-person trial is deemed to be of higher quality and delivers, for lack of a better term, a "greater degree of justice". His request for an in-person jury trial should thus be granted still.

The total, $18,667 attorney fee that the Association is now seeking from the Defendant is now greater than the face value of the original judgment award! At this value, this fee would definitely qualify as exorbitant, and should thus be stricken on the grounds of being unreasonable. For reference, a "reasonable" attorney fee is generally regarded as 25% to 33% of the judgment award, which, in this case, should be no more than about $6,000. The "lodestar method" referenced by this Court is unjust because its use frequently results in excessive attorney fees. Also, it is unjust to force the Defendant to pay the other party's attorney fees in an appeal, as this obstructs one's ability to receive a fair appeal.

Respectfully Submitted

BY George Berka

George Berka,
Defendant / Appellant

DOCKET NO.:_____	:	SUPREME COURT OF THE UNITED STATES
WEDGEWOOD MANOR HOMEOWNERS ASSOCIATION	:	OFFICE OF THE CLERK
v.	:	
BERKA, GEORGE	:	JULY 07, 2023

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the document contains 3,686 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the following is true and correct.

Executed on July 7th, 2023

George Berka

George Berka,
Petitioner

DOCKET NO.:_____	:	SUPREME COURT OF THE
	:	UNITED STATES
WEDGEWOOD MANOR	:	
HOMEOWNERS ASSOCIATION	:	OFFICE OF THE CLERK
v.	:	
	:	
BERKA, GEORGE	:	JULY 07, 2023

AFFIDAVIT OF SERVICE

I, George Berka, hereby certify that on July 7th, 2023, I caused to be a copy of the Petition and Appendix for the above – captioned matter, to the following party, via the United States Postal Service, postage prepaid, and / or via electronic mail:

Gregory L. Eklund,
Counsel for the Plaintiff
1008 S. Yakima Ave.
Tacoma, WA 98405

I declare under penalty of perjury that the following is true and correct.

Executed on July 7th, 2023

George Berka,
Petitioner