

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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KEN S. CHENG and FREDA HO,  
Petitioners

vs.

BENTWOOD HISTORIC CONDOMINIUM ASSOCIATION,  
Respondent.

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CORRECTED  
APPLICATION FOR EXTENSION OF TIME  
TO FILE WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT

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Mary Catherine Baur, Esquire  
United States Supreme Court Bar No. 252020  
Counsel of Record for Petitioners  
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**APPLICATION TO JUSTICE SAMUEL A. ALITO, Jr., THIRD CIRCUIT,  
TO EXTEND TIME TO FILE  
PETITION FOR CERTIORARI**

**JURISDICTIONAL STATEMENT**

The Order of the Pennsylvania Supreme Court was entered on May 11, 2026. Reconsideration was not requested. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

**RELIEF SOUGHT**

Ken S. Cheng and Freda Ho, Petitioners, requests that Justice Alito, Justice for the Third Circuit, extend the time for filing a Petition for Writ of Certiorari to the United States Supreme Court in the matter of Bentwood Historic Condominium Association v. Ken S. Cheng and Freda Ho, Pennsylvania Supreme Court No. 438 EAL 2025, for a period of 60 days, or October 8, 2026 as the Court cannot grant more than sixty (60) days.

## **GROUNDNS FOR RELIEF**

### **Judgments Below**

1. An arbitration award was issued on November 17, 2022. (Exhibit "A") It did not award the attorney fee requested by Respondent's counsel. Respondent's counsel appealed the award on the last day of the appeal period. The appeal was suppose to allow a trial de novo however the trial court limited the trial evidence of Petitioners to that presented at the arbitration and in one instance took the word of Respondent's counsel over the Petitioners as to evidence presented and that evidence that was excluded was highly prejudicial to Respondent.
2. Common Pleas Court trial ended on August 8, 2024. A decision was not issued until December 17, 2024. (Exhibit "B") A separate decision was issued with regard to Respondent Counsel's attorney fees on December 19, 2024. (Exhibit "C")
3. Despite the long delay from the end of trial to the date of the court's decision, the court refused to entertain a post trial motion by Petitioners which basically demonstrated fraud on the part of Respondent's counsel and had the filing removed from the docket. (Exhibit "D")
4. Petitioners filed an appeal to the Commonwealth Court. (Exhibit "E")
5. Petitioners filed a Pa.R. App. Pro 1925 Statement. (Exhibit "F")

6. The Common Pleas Court issued another Decision in response to Petitioners' Pa.R.App. Pro. 1925 Statement. (Exhibit "G")
7. The Commonwealth Court of Pennsylvania, No. 23 C.D. 2025, dismissed the appeal on October 1, 2025 when Petitioners' counsel requested an extension of time to file the Brief and Reproduced Record. (Exhibit "H") (Exhibit "I")
8. Petitioners filed with the Pa. Supreme Court, docket number 438 EAL 2025, for an Allowance to file an Appeal which was denied on May 11, 2026. (Exhibit "J")
9. The Court ignored the Petitioners' claim concerning The Fair Debt Collection Practices Act, 15 U.S.C. Sections 1692, et seq. and chose instead to only enforce the PA statute 68 Pa.C.S.A. Section 3302, et seq.

### **Reasons Why Relief From Time Limit Needed**

10. Under Supreme Court Rule 13.1, time for filing of a Petition for Writ of Certiorari in this matter expired on Sunday, August 9, 2026.
11. Petitioner requests a 60 day extension of time which would bring the filing deadline to October 8, 2026.
12. Petitioner's counsel, Mary Catherine Baur, Esquire, was diagnosed with two forms of cancer, had 2 strokes and had surgery for 2 PAVMs after trial. Petitioners' counsel's most recent PET SCAN shows no sign of lymphoma as of June 25, 2026. On July 18, 2026 Petitioners' Counsel suffered from a severe asthma attack

resulting in bronchitis and pneumonia. Petitioners' counsel is allergic to penicillin and has a diminished immune system response due to the chemotherapy used to successfully treat the lymphoma. Barring relapse, Petitioners' counsel feels capable of preparing an acceptable Writ of Certiorari on behalf of Petitioners.

13. In an abundance of caution, Petitioner's counsel, Mary Catherine Baur, Esquire, requests a sixty (60) day extension of time to file the Writ of Certiorari on behalf of Petitioners by October 8, 2026.

14. Counsel has represented the Petitioners pro bono from the beginning.

#### **Persuasive Grounds for Certiorari in This Case**

15. Petitioners believe there is a federal question and that Petitioners' Constitutional Rights are being trampled because the Fair Debt Collection Practices Act is being ignored.

16. Petitioners believe this case deserves review.

**WHEREFORE**, in the interests of justice, Petitioners request this extension of time in order to present federal and Constitutional claims that were ignored by the Commonwealth of Pennsylvania.

Dated: 8-31-2026

*Mary Catherine Baur, Esquire*  
Mary Catherine Baur, Esquire  
700 Mollbore Terrace  
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[mbaur@sisna.com](mailto:mbaur@sisna.com)  
(215) 285-9484  
Attorney of Record for Petitioners

## EXHIBIT "A"

First Judicial District of Pennsylvania  
Philadelphia Court of Common Pleas

Brentwood Historic Condominium Association January Term 2022 02004  
(Month) (Year) (No.)

Association

1010 Race Street

Philadelphia, Pa. 19107

Arbitration

AWFFP: Brentwood Historic Condominium Association Vs Cheng  
action)



22010200400015

+1)

Versus  
Ken S. Cheng  
and Freda Ho

16 Hathaway Court

Marlton NJ 08053

☒ Contract C

☐ Delay Damages (Legal Rate = 6%)

☐ Assessment of Damages negligence

☒ Other Counter claim

Report and Award of Arbitrators

And Now, this 17<sup>th</sup> day of November, Year 2022, we the undersigned arbitrators having been duly appointed and sworn, make the following award:

We find in favor of Brentwood in the amount of \$18,994.97.  
We find in favor of Ken Cheng & Freda Ho as  
to their counterclaim, in the amount of \$28,800.00  
based upon 18 months lost rent at \$1,600/month. The  
net award in favor of Ken Cheng & Freda Ho is  
\$9,805.03

Please name the parties if there are more than one plaintiff and/or defendant. Please address all counterclaims and cross claims. Please complete percentage of negligence on reverse side if applicable.

Marta Sierra-Epperson

Chairperson

Edward Berger

Arbitrator

[Signature]

Arbitrator

Marta Sierra-Epperson 117 W. Upsal St. Phila 19119

Ed Berger Please Print Name, Address and I.D. No. 67575

34116 1760 Market St Suite 408 Phila Pa 19103

Please Print Name, Address and I.D. No.

John Bacarnacion 1601 Market St. Suite 1046 Phila PA 19146 #87

Please Print Name, Address and I.D. No.

List Attorneys of Record and Unrepresented Parties Who:

Appeared at the hearing:

Matthew C. Collins, Esq

Mary Catherine Baur, Esq

Did Not Appear at the Hearing:

## Questions to be Answered by the Arbitrators in Negligence Cases

### Instructions:

Taking the combined negligence that was a substantial factor in bringing about any or all of the plaintiff's injuries, damage or losses as 100%, answer the following questions and state in percentages the causal negligence attributed to each party you have found causally negligent.

Do you find that any defendant or additional defendant was negligent?

If so, state the name of the party and percentage of negligence attributable to that party.

|       |         |
|-------|---------|
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |

Do you find that any plaintiff was negligent?

If so, state the name of the party and percentage of negligence attributable to that party.

|       |         |
|-------|---------|
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |
| _____ | _____ % |

Total 100%

### Notice of Entry of Award

And Now, this \_\_\_\_\_ day of \_\_\_\_\_, Year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_, the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

DOCKETED  
ARBITRATION

NOV 17 2022

(Arbitration compensation to be paid on appeal \$225.00)

S. PRESSLEY

Prothonotary

By: \_\_\_\_\_

Separate Appeals must be filed with the Prothonotary pursuant to P.A. R. Civ.P.No.1308, and the requisite fees paid, if two or more cases are consolidated for Trial and/or Discovery purposes. Only those cases which are appealed will be scheduled for a *de novo* hearing. Awards in cases not appealed will become final upon expiration of the appeal time.

**EXHIBIT "B"**

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

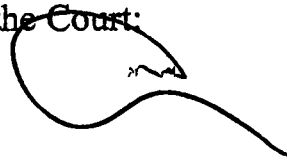
|                             |   |                    |
|-----------------------------|---|--------------------|
| Bentwood Historic           | : | January Term, 2022 |
| Condominium Association     | : |                    |
| Plaintiff                   | : | No.: 02004         |
|                             | : |                    |
| vs.                         | : |                    |
|                             | : |                    |
| Ken S. Cheng, <i>et al.</i> | : |                    |
| Defendants                  | : |                    |

ORDER

AND NOW, this 17 day of December, 2024, the Court finds as follows:

1. The court finds in favor of Plaintiff on its claim for assessments, special assessments, late fees and interest in the amount of \$14,608.15 to be paid by Defendants.
2. The court finds in favor of Defendants and against Plaintiff for the loss of rent and diminution in value of Unit PHK and awards Defendants \$51,400 to be paid by Plaintiff.
3. With respect to Plaintiff's claim for attorneys fees and costs, the Court will issue a decision and order upon consideration of Plaintiff's post-trial motion and any response thereto.

By the Court:



John R. Padova, Jr. Judge

**RECEIVED**

**DEC 17 2024**

**Court of Common Pleas  
Complex Litigation Center**

WSFPP-Bentwood Historic Condominium Association Vs Cheng [JNS]



22010200400095

**Court of Common Pleas**

**DEC 17 2024**

**J.M. STEWART  
Complex Litigation Center**

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

|                             |   |                    |
|-----------------------------|---|--------------------|
| Bentwood Historic           | : | January Term, 2022 |
| Condominium Association     | : |                    |
| Plaintiff                   | : | No.: 02004         |
|                             | : |                    |
| vs.                         | : |                    |
|                             | : |                    |
| Ken S. Cheng, <i>et al.</i> | : |                    |
| Defendants                  | : |                    |

I. Findings of Fact for Plaintiff's Case in Chief

1. This action arises from Plaintiff's, Bentwood Historic Condominium Association (Association), claim for unpaid assessments, charges and expenses related to Unit PHK (Unit) of the Bentwood Historic Condominium (the Condominium).

2. Defendants brought a counterclaim against Plaintiff for breach of contract alleging that Plaintiff failed to perform necessary repairs to the Unit and for the removal of their roof-top deck.

3. The Court held a bench trial from August 6, 2024 through August 8, 2024.

4. The Court heard testimony of Michele Giannakopoulos (Giannakopoulos), who is employed by FirstService Residential (FirstService) as a property manager. N.T. 8/6/24 at 36.

5. The Association is a Pennsylvania non-profit corporation created pursuant to the Pennsylvania Uniform Condominium Act, 68 Pa.C.S. §3101, *et. seq.* (Act), with a business address of 1010 Race Street, Philadelphia, PA 19107.

6. Defendants are Freda Ho (Ho) and Ken S. Cheng (Cheng) (collectively Defendants), husband and wife. N.T. 8/8/24 at 6.

7. Ho is a Certified Public Accountant (CPA) and is a controller of Risk Management Associates who focuses on credit and market risk. Cheng is a physical therapist. N.T. Ho, 8/8/24 at 5-6.

8. The Association is comprised of the owners of residential units in the Condominium.

9. The Condominium was established by the Declaration of Condominium of

Bentwood Historic Condominium ("Declaration") recorded at Deed Book 0499 Page 179. Exhibit P-1.

10. Unit owners within the condominium are subject to the Declaration and its provisions and covenants. Exhibit P-1.

11. Defendants purchased the Unit on or about December 1, 2017 for \$180,000. N.T. 8/6/24 at 46-47; Exhibit P-2.

12. The Deed to the Unit expressly states that the Unit is subject to the provisions of the Act and the Declaration. Exhibit P-2.

13. The Declaration provides that the Condominium as well as Plaintiff are subject to the Act. Exhibit P-1, Article I, Section 1.1.

14. The Declaration provides that:

All common expense and limited expenses and assessments made in order to meet the requirements of the association's annual budget shall be deemed to be adopted and assessed on a monthly basis (rather than on an annual basis payable in monthly installments) and shall be due and payable in advance of the first day of each month. Special assessments shall be due and payable in one or more monthly payments, in advance, of the first day of each month as determined by the Executive Board.

N.T. Giannakopoulos, 8/6/24 at 42-43; Exhibit P-1, Section 9.1, Monthly Payments.

15. The Declaration provides that "The Association shall have a lien on each unit for any unpaid assessments for general common expenses and/or limited expenses, together with interest thereof, owed by the unit owner of such unit" and "a unit owner shall be personally liable to the association for unpaid assessments which are made during the period that the unit is owned by such unit owner." Exhibit P-1, Section 9.4. Association's Lien, N.T. Giannakopoulos, 8/6/24 at 43.

16. Section 9.4 of the Declaration provides that:

Reasonable attorney's fees incurred by the association incident to the collection of any such assessments or the enforcement of such lien together with the sums advanced or paid by the association in order to preserve and protect its lien shall be payable by unit owner upon demand shall be secured by such lien. Id.

17. The Declaration provides that "all Common Elements shall be maintained and repaired by the Association in accordance with the provisions of §3307(a) of the Act, except where expressly set forth to the contrary herein." Exhibit P-1, Section 2.5.1.

18. The Declaration includes the roof as a General Common Element. Id. Section 3.1.a.

19. Assessments are the sole source of revenue used to fund the Association's operations. N.T. Giannakopoulos, 8/6/24 at 39.

20. Unit owners are required to pay assessments and special assessments in an amount determined by their unit's percent interest or square footage within the Condominium. Id. at 39-40, 59-60.

21. The Association's board develops an annual budget which encompasses the operating expenses of the Association. Id. at 42-43.

22. Once the budget is approved, a letter is sent to unit owners (Annual Budget Letter) outlining the operating budget and each unit-owner's responsibility based off of the percentage interest of their unit. Id. at 40.

23. The Annual Budget Letter provides two options to pay the assessment. It specifies the amount due and provides an option to pay via Lockbox or through a third-party vendor, ClickPay which accepts automated clearing house (ACH) payments. Id. at 40.

24. Unit owners are given advance notice of the amount of the monthly assessment. Id. at 41.

25. Defendants' obligation to pay assessments began 30 days after they purchased the Unit. Id. at 47; Exhibit P-1, Section 9.4.

26. FirstService maintains an account ledger for the assessments for every unit located within the Condominium. N.T. Giannakopoulos, 8/6/24 at 37, 56.

27. FirstService provides 24/7 customer service for unit owners to ask questions about assessments. Id. at 41.

28. The Association, through FirstService, has a standardized procedure for pursuing unpaid assessments. Id. at 49.

29. When a unit owner fails to pay an assessment, the FirstService accounting department sends a late fee notice to that owner which starts the delinquency process. Id.

30. Because FirstService is not a debt collector as defined by the Fair Debt Collection Practices Act,<sup>1</sup> the Association hired CCS Collections (CCS) and an attorney to handle account information once the unit goes into collection. N.T. Giannakopoulos, 8/7/24 at 6.

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<sup>1</sup> 15 U.S.C. §§ 1692-1692p.

31. After a unit owner is 30 days delinquent, CCS sends a demand letter to the unit owner. N.T. Giannakopoulos, 8/6/24 at 49-50.

32. If necessary, CCS will send two subsequent demand letters, after which the collection process is turned over to the Association's attorney. Id.

33. After the first demand letter is sent, the unit owner no longer has access to their account and the unit owner must contact the collection agency for inquiries relating to their account. N.T. Giannakopoulos 8/7/24 at 5-6.

34. The unit owners can obtain the balance due to the Association and bring their account current by contacting CCS or the attorney for the Association who contacts the Association to obtain an updated account history. Id. at 6-7.

35. The standard procedures were followed in this instance as it concerns Defendants' account. N.T. Giannakopoulos, 8/6/24 at 50.

36. Defendants had regularly paid their assessments after purchasing the Unit. Id. at 47.

37. Defendants stopped paying the assessments sometime in 2020. Id.

38. Prior to August 2020, FirstService sent Defendants a late statement indicating that there was an accrued balance of unpaid assessments. Id. at 51-52.

39. On August 4, 2020, CCS sent a letter to Defendants to pay the outstanding balance of \$10,332.93 as of the date of the letter. Id. at 50-51; Exhibit P-3.

40. The CCS letter notified Defendants that a fee of \$50.50 was assessed to their account for the commencement of the Association's collection efforts. Id. at 50-51; Exhibit P-3.

41. CCS also notified Defendants that if an additional demand letter was required, Defendants' account would be assessed an additional fee of \$79.55. Id.

42. On September 2, 2020, CCS sent a second demand letter to Defendants requesting that they pay the outstanding balance due on their account in the amount of \$11,550.60. Id. at 52-53; Exhibit P-4.

43. The second demand letter notified Defendants that the \$79.55 fee was assessed to their account for the additional collection efforts. Id. at 52-53; Exhibit P-4.

44. CCS also notified Defendants that an additional \$150 would be assessed if the Association was required to obtain the services of an attorney to collect the unpaid assessments. Id. at 53; Exhibit P-4.

45. Defendants did not respond to either demand letter and their account was sent to the Association's attorney to proceed with collection. Id. at 54.

46. By letter dated November 22, 2021, the Association's attorney, Horn Williamson, LLC, sent Defendants an additional demand letter requesting that they pay the outstanding balance as of the date of the letter of \$19,660.21. Id. at 54-55; Exhibit P-5.

47. Exhibit P-5 provides that the balance due included attorney's fees in the amount of \$150 and that interest, late charges and other charges may continue to accrue. Id. at 55; Exhibit P-5.

48. On September 16, 2019, FirstService sent a notice to all unit owners as to completed capital projects, capital projects in progress and necessary projects including the replacement of the Condominium's roof (Roof Replacement)(collectively "Capital Projects"). N.T. Giannakopoulos, 8/6/24 at 59-62; Exhibit P-7.

49. The notice provided information to unit owners regarding the need to fund the Capital Projects. Exhibit P-7.

50. The Capital Projects were required by O&S Associates, the structural engineers hired by the Association. N.T. Giannakopoulos, 8/6/24 at 59-60.

51. The only way to fund the Capital Projects of the Condominium, such as a replacement roof, is to issue a special assessment to all unit owners. N.T. Giannakopoulos, 8/6/24 at 107; Exhibit P-12.

52. Defendants were provided with advance notice of special assessments relating to the Capital Projects by letter and at open session meetings with unit owners. N.T. Giannakopoulos, 8/6/24 at 60-61.

53. The September 16, 2019 letter stated the following concerning the Roof Replacement:

As we look further into 2020, we will also be undertaking the very necessary and important project of replacing the roof. All owners should have received a Special Assessment notice by U.S. Mail. The breakdown of amounts owed in each phase by unit will be attached at the end of this letter. This project will ultimately benefit every member of the community and will put our properties on a path to higher appreciation.

Exhibit P-7, p. 1-2.

54. The September 16, 2019 letter established the due dates for the assessments which were spread out over time to assist unit owners in making payments. N.T. Giannakopoulos, 8/6/24 at 60-63; Exhibit P-7.

55. There were meetings with the board and unit owners to discuss the need

for the Roof Replacement and notice to all unit owners of the assessments. Spreading out the assessment payments was also addressed especially due to Covid. Id. at 61.

56. Defendants were notified that their first payment related to the Capital Projects was due on or before February 1, 2020, in the amount \$5,317.74. Id. at 64; Exhibit P-7.

57. The Association entered into contracts with Jottan Incorporated (Jottan) and O&S Associates as engineers to conduct the Roof Replacement. Id. at 80; Exhibit P-12.

58. The Roof Replacement project began in September 2020 and the Association instructed Jottan to prioritize the area of the roof located above Defendants' Unit. N.T. Giannakopoulos, 8/8/24 at 77.

59. The roof above the Unit was replaced in October 2020. N.T. Giannakopoulos, 8/8/24 at 77-78.

60. The Roof Replacement project required the removal of all of the Condominium's rooftop decks, including Defendants' deck. N.T. Lam, 8/7/24 at 69.

61. Defendants' deck has not been replaced. N.T. Lam, 8/7/24 at 69-70.

62. As of August 6, 2024, at 7:37 a.m., Defendant's ledger detailed an unpaid balance in the amount of \$76,391.63 which includes attorney's fees up to that date and did not reflect attorney's fees incurred at trial. N.T. Giannakopoulos, 8/6/24 at 57-58; Exhibit P-6.

63. Defendants have not paid any of the special assessments to the Association even though Giannakopoulos provided Defendants with an explanation for the special assessments. N.T. Ho, 8/8/24 at 21-22.

64. Ho testified that they did not pay any special assessments due to the leaks in their unit and because the Association was taking too long to address the leaks. N.T. Ho, 8/8/24 at 21-22.

65. Defendants did not assert any errors or inconsistencies in the account ledger setting forth the amount of their unpaid assessments and related fees and charges.

66. Defendants did not identify any provision of the Declaration that permits them to withhold payment of assessments. N.T. Ho, 8/8/24 at 22.

67. Defendants are not contesting that the special assessments are due and owing. N.T. Admission of Counsel for Defendants, 8/8/24 at 121.

68. Exhibit P-15 itemizes the amounts owed on Defendants' account detailing the balance owed through August 6, 2024. N.T. Giannakopoulos, 8/7/24 at 27; Exhibit P-15.

69. Excluding the Association's amount for attorney's fees and costs, Exhibit P-15 sets forth the Association's damages through August 6, 2024, as follows:

|                                |                                  |
|--------------------------------|----------------------------------|
| Assessment/Special Assessments | \$48,166.92                      |
| Late fees and interest         | \$4,443.34                       |
| CCS                            | \$280.05                         |
| Payments                       | <u>(\$38,282.16)<sup>2</sup></u> |
| Total damages:                 | \$14,608.15                      |

Id.

70. The Court finds the testimony of Giannakopoulos to be credible to establish the amounts Defendants owe to Plaintiff.

71. The Association is also seeking legal fees and costs and filed a post-trial fee petition. The fee petition regarding the assessment of attorney's fees and costs and any response thereto shall be addressed subsequent to the filing of this decision.

## II. Conclusions of Law for Plaintiff's Case in Chief

1. The Act is a statute that governs all condominiums created within this Commonwealth after the effective date of the Act.

2. Defendants, as owners of the Unit, are subject to the provisions of the Act and the Association's governing documents, including the Declaration. Exhibits P-1 & P-2.

3. Section 3302(a)(2) of the Act authorizes a condominium association to "[a]dopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners," and Section 3302(a)(11) permits an association to "[i]mpose charges for late payment of assessments."

4. The Act authorizes a condominium association to "collect assessments for common expenses from unit owners..." 68 Pa. C.S.A. § 3302(a)(2).

5. Section 3302(a)(11) of the Act permits an association to "[i]mpose charges for late payment of assessments."

6. Section 9.1 of the Declaration similarly provides that "common expense and limited expenses and assessments...shall be deemed to be adopted and assessed

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<sup>2</sup> Giannakopoulos testified that this was a "credit of the payments made." N.T. 8/7/24 at 27.

on a monthly basis...and shall be due and payable in advance of the first day of each month. Special assessments shall be due and payable in one or more monthly payments, in advance, of the first day of each month as determined by the executive board.”

7. Section 3315(a) of the Act, provides that an “association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owners from the time the assessment or fine becomes due.”

8. The Uniform Condominium Act does not “allow owners of condominium units to withhold assessments where [they] believe that their condominium association is not performing its obligations properly.” Rivers Edge, *supra* at 201. *See also Logans’ Reserve Homeowners’ Ass’n v. McCabe*, 152 A.3d 1094, 1101-1102 (Pa. Commw. Ct. 2017) (“As a matter of law, the [defendants] were required to pay the Association’s assessments regardless of any alleged inadequacies in the Association’s performance.”)

9. Unit owners do not have a right to withhold assessments regardless of any claimed inadequacy of the association. *See Rivers Edge Condo. Ass’n v. Rere, Inc.*, 390 Pa. Super. 196, 568 A.2d 261 (1990); *see also Logans’ Reserve Homeowners’ Ass’n v. McCabe*, 152 A.3d 1094 (Pa. Commw. Ct. 2017).

10. A unit owner has no justification to withhold assessment payments when the association fails to maintain the common elements. *See Rivers Edge Condominium Ass’n v. Rere, Inc.*, 568 A.2d 261, 263 (Pa. Super. Ct. 1990) (“We find it significant that nothing in Pennsylvania’s Uniform Condominium Act supports the type of self-help action undertaken by the appellant...Had the Legislature intended to allow owners of condominium units to withhold assessments where owners believe that their condominium association is not performing its obligations properly, we believe the Legislature would have explicitly so provided.”) *See Logans’ Reserve Homeowners’ Ass’n v. McCabe*, 152 A.3d 1094, 1101-1102 (Pa. Commw. Ct. 2017) (“[a]s a matter of law, the [defendants] were required to pay the Association’s assessments regardless of any alleged inadequacies in the Association’s performance.”) *See also Lake Wynonah Prop. Owners Ass’n v. Seisler*, 202 A.3d 916, Footnote 2 (Pa. Commw. Ct. 2019)(unreported opinion) (“Even if there was evidence that the Association mismanaged the community, the Seislars still would not have established a genuine issue of material fact to prevent entry of summary judgment”).

11. Any inadequacies in an association’s performance “would not relieve the [condominium owners] of their obligation to pay their assessments, the question of whether the Association breached them does not involve a material fact.” Lake Wynonah Prop. Owners Ass’n v. Seisler, 202 A.3d 916, 1102. (Pa. Commw. Ct.

2019).

12. Section 3315(a) of the Act states that “reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner...are enforceable as assessments under this section.”

13. “A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney’s fees for the prevailing party.” 68 Pa.C.S. § 3315(f) (“Lien for Assessments”).

14. The Declaration provides that Defendants are responsible to pay the Association’s attorney’s fees incurred in its efforts to collect assessments that Defendants have failed to pay. Exhibit P-1, Section 9.4.

15. Reasonable attorney’s fees need not be proportionate to unpaid assessments. “The Association’s right to collect attorney fees is crystal clear and unequivocally established in...the Declaration and Section 3315 of the Act, and we thus reject Appellant’s plea that the Association was bound to accept something less than the full sum to which it was entitled.” Mountain View Condominium Association v. Bomersbach, 734 A.2d 468, 471 (Pa.Comm. Ct. 1999) (The expenditure of \$46,548.64 in attorney’s fees was not unreasonable to recover \$1,200 in outstanding condo association fees because of the nature of the litigation.) *See also* Arches Condo. Ass’n v. Robinson, 131 A.3d 122, 125 (Pa. Commw. Ct. 2015) (upheld a trial court’s ruling in favor of a condominium association which “awarded the Association \$27,355.68, \$26,206.68 of which was for attorney’s fees related to the Association’s action to collect unpaid condominium (condo) fees and assessments.”)

16. Defendants’ decision to withhold and refuse to pay their assessment obligations was a material breach of the terms the Act and the Declaration.

17. Plaintiff is awarded \$14,608.15 for unpaid assessments, late fees and interest due.

18. Reasonable attorney’s fees and costs shall be addressed pursuant to Plaintiff’s post-trial petition and any response thereto.

### III. Findings of Fact on Defendants’ Counterclaim

1. When Defendants purchased the Unit in December 2017, it included a rooftop-deck. N.T. Ho, 8/7/24 at 80. Exhibit D-9.

2. The property listing materials that Defendants reviewed prior to purchase

included a rooftop deck as part of the Unit. Id.

3. Ho testified that she and Cheng purchased the Unit, in part, because of the deck attached to the Unit. N.T. Ho, 8/7/24 at 80.

4. A member of the Association's board, Benjamin Lam, testified that the deck was part of Defendants' Unit since at least 2010. N.T. Lam, 8/7/24 at 70-72, 74-75.

5. After Defendants purchased the Unit, they did not immediately reside in it but planned to hold it as an investment and use it as their retirement home in Chinatown. N.T. Ho, 8/7/24 at 80.

6. Plaintiff knew that some unit owners in the Condominium had rented out units to tenants and the occupancy of the Condominium was approximately half rentals. N.T. Lam, 8/7/24 at 75-76.

7. Defendants entered into a residential lease dated May 15, 2018, to rent the Unit to Laura A. Ness and Jared M. Ridinger. Exhibit D-15.

8. The monthly rental rate under the lease was \$1,600. N.T. Ho, 8/7/24 at 100; Exhibit D-15.

9. The lease term was for one year and ended on May 15, 2019. Upon expiration, the lease automatically renewed to a month-to-month lease. N.T. Ho, 8/8/24 at 29-30; Exhibit D-15. ¶5.

10. The tenants began occupancy in the Unit in June 2018 and paid the monthly rent of \$1,600. N.T. Ho, 8/7/24 at 99.

11. Sometime in 2018, Defendants experienced leaking from the ceiling in the Unit (the First Leak) and put the Association on notice of the leaks in November 2018. N.T. Ho, 8/7/24 at 102; N.T. 8/8/24 at 54.

12. The First Leak was in the loft area of the Unit. N.T. Ho, 8/7/24 at 102.

13. In response, in November 2018, Giannakopoulos contacted Atlantic Roofing to inspect the roof and to recommend repairs. N.T. Giannakopoulos, 8/6/24 at 71; Exhibit P-10.

14. Atlantic Roofing stated that it "investigated three leak areas...found 1 hole and 1 open seam on metal edge...found 2 open patches in a ponding area...[and] found missing mortar on outside wall in brick joints." Id. at 72; Exhibit P-10.

15. Atlantic Roofing concluded that three areas were the cause of the leak into the Unit and purportedly made repairs to those three areas. Id.

16. Exhibit P-10 consists of two invoices from Atlantic Roofing which were paid by the Association relating to leak investigation and roof repairs conducted at

the Condominium (dated 12/20/2018 and 2/5/2019). Id.

17. The repairs that Atlantic Roofing performed in February 2019 did not completely resolve the leaks in the Unit and Ho contacted Giannakopoulos. Id. at 73.

18. In early 2019, the tenants directly notified Giannakopoulos of a second leak which appeared in the stairwell area of the Unit (the Second Leak). N.T. Ho, 8/7/24 at 102.

19. In April 2019, Ho inspected the Unit in person and observed the leak and damage in the Unit above the loft area. N.T. Ho, 8/7/24 at 106-107.

20. The leak continued into 2020 causing the Unit to have ongoing damage and disruption to the Tenants' occupancy. N.T., Ho, 8/8/24 at 57.

21. The damage from the leaks affected the entire first floor of the Unit. N.T. Ho, 8/8/24 at 57.

22. The ongoing leaks and damage to the Unit limited the habitability and tenant's living area and Defendants reduced the tenants' rent to \$800 per month (half of the monthly \$1,600 rent) beginning January 2020. N.T. Ho, 8/8/24 at 57.

23. The tenants paid the reduced monthly rent of \$800 from January 2020 through July 2020. Id.

24. In August 2020, due to the damage caused by the leaks and uninhabitability of the Unit, the tenant vacated the Unit and stopped paying rent to Defendants. N.T. 8/7/24 at 127; 8/8/24 at 26-27.

25. The leaks affecting the Unit were completely fixed in June 2021. N.T. Ho, 8/8/24 at 55-56.

26. The Court finds Ho's testimony credible regarding the date when the leaks were completely fixed.

27. Defendants presented credible testimony from Bruno Petrillo, Jr. (Petrillo), a certified real estate appraiser who is licensed in Pennsylvania, to provide an appraisal of the value of the Unit with and without the deck. N.T. 8/7/24 at 35, 37-38.

28. Petrillo prepared an appraisal of the Unit dated December 2, 2021 ("Appraisal"). Id. at 37-38; Exhibit D-12.

29. Petrillo testified that the value of the Unit with the deck was \$225,000 and without the deck it was valued at \$200,000 reflecting a diminution in market value of the Unit in the amount of \$25,000. Id.

#### IV. Conclusions of Law for Defendants' Counterclaim

1. The relationship between a condominium association and its unit owners is contractual. *See generally Falini v. Brinton Square Condo. Ass'n*, No. 676 C.D. 2015, 2016 WL 392681 (Pa. Commw. Ct. Feb. 1, 2016) and *Condo. Ass'n Ct. of Old Swedes v. Stein-O'Brien*, 973 A.2d 475 (Pa. Commw. Ct. 2009); *Wrenfield Homeowners Ass'n, Inc. v. DeYoung*, 410 Pa. Super. 621, 628, 600 A.2d 960, 963 (1991).<sup>3</sup>

2. The Act imposes a duty on a condominium association to maintain and repair the common elements of the condominium. "Except to the extent provided by the declaration or section 3312(d) (relating to insurance), the association is responsible for maintenance, repair and replacement of the common elements [of the condominium] and each unit owner is responsible for maintenance, repair and replacement of his unit." 68 Pa. C. S. A. § 3307.

3. Similarly, the Declaration imposes a duty of the Association to maintain and repair the Common Elements. Exhibit P-1, Section 2.5.1.

4. A cause of action for breach of contract accrues when "there is an existing right to sue forthwith on the breach of contract." *Kowalski v. TOA PA V, L.P.*, 2019 PA Super 93, 206 A.3d 1148, 1158 (2019) *citing Leedom v. Spano*, 436 Pa. Super. 18, 647 A.2d 221, 226 (1994). ("[T]he contractual breach ...accrued ...when TOA first refused to replace the existing pipes or install parallel pipes upon its notification that Mr. Hoffman's pipes were overwhelmed.")

5. Any damages purportedly flowing from a breach of contract must be proved with reasonable certainty. *Newman Dev. Group of Pottstown, LLC v. Genuardi's Family Mkt.*, 98 A. 3d 645, 661 (Pa Super 2002); *see also Viso v. Werner*, 369 A.2d 1185, 187 (Pa 1977).

6. "Consequential damages can be appropriate in a breach of contract case." *Condo. Ass'n Ct. of Old Swedes v. Stein-O'Brien*, 973 A.2d 475, 483 (Pa. Commw. Ct. 2009).

7. The Court finds that the damages to the Unit were the result of leaks in the roof which is a General Common Element as defined in the Declaration. Exhibit P-

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<sup>3</sup> Plaintiff asserts that a declaration of condominium does not constitute a contract between the Association and Defendants. Plaintiff's Proposed Findings of Fact and Conclusions of Law Following Bench Trial. 8/29/24, ¶¶163-167. In support, Plaintiff cites *MetroClub Condo. Ass'n v. 201-59 N. Eighth St. Assocs., L.P.*, 2012 PA Super 122, 47 A.3d 137 (2012). To the contrary, *MetroClub* held that the declaration of condominium was in fact "a contract between the homeowners and their nonprofit homeowner's association, [*but*] not between the developer or a declarant forming the community and the association." *Id* at 144 (emphasis added).

1, Section 3.1.a.

8. The Court finds that the Association's failure to adequately remedy the leaks was a breach of the obligations under the Declaration and the Act to maintain the common areas.

9. On August 6, 2024, the Court granted Plaintiff's Motion in Limine and precluded Defendants from introducing evidence of repair costs. N.T. 8/6/24 at 8-11.

10. Defendants also seek recovery for the loss of rental income caused by the roof leaks.

11. "Where the consequential damages are 'foreseeable' and were contemplated by 'the parties at the time they made the contract,' they will be awarded in order to put the victim of the contract breach in the same position as if there had been performance, not breach." Condo. Ass'n Ct. of Old Swedes v. Stein-O'Brien, 973 A.2d 475, 483 (Pa. Commw. Ct. 2009).

12. The Court finds that the loss of rental income was foreseeable at the time the parties made the contract.

13. The Court finds that Defendants' cause of action accrued when the roof leaks began in 2018.

14. Defendants filed their counterclaim on February 13, 2022.

15. The limitations period for a breach of contract claim is four years. 42 Pa. C. S. A. § 5525.

16. Defendants have filed their counterclaim within the statute of limitations.

17. The court finds that Defendants have sustained their burden to demonstrate a loss of rent as a result of the Association's breach of its duties set forth in the Declaration.

18. The Court finds that the monthly fair rental value of the Unit was \$1,600.

19. Defendants are awarded loss of rental income of:

a) \$5,600 (\$800 (half of \$1,600 monthly rent) from January 2020 through July 2020, and

b) \$20,800 (\$1,600 times 13 months' rent).<sup>4</sup>

20. Defendants are awarded \$25,000 for the diminution of value to the unit

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<sup>4</sup> The Court finds an award of 13 months in rent reasonable considering Defendants did not receive rent since August 2020, the leaks were not completely fixed until June 2021 and time is allotted to repair the damage from the leaks and rent the Unit..

due to Plaintiff's removal of the deck.

21. The total damages awarded to Defendants is \$51,400.

An appropriate order follows.

By the Court:

Dated: December 17, 2024

  
\_\_\_\_\_  
John R. Padova Jr., J.

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## EXHIBIT "C"

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

|                             |   |                    |                           |
|-----------------------------|---|--------------------|---------------------------|
| Bentwood Historic           | : | January Term, 2022 |                           |
| Condominium Association     | : |                    |                           |
| Plaintiff                   | : | No.: 02004         | Court of Common Pleas     |
|                             | : |                    |                           |
| vs.                         | : |                    | DEC 20 2024               |
|                             | : |                    |                           |
| Ken S. Cheng, <i>et al.</i> | : | Control #24086419; | J.M. STEWART              |
| Defendants                  | : | Control # 24122846 | Complex Litigation Center |

ORDER

AND NOW, this 19 day of December, 2024, upon consideration of Plaintiff's Petition for Attorney's Fees and Legal Costs, Defendants' response thereto and Plaintiff's additional Motion to Strike (Control # 24122846), it is hereby ORDERED that:

1. Plaintiff's Motion to Strike Defendants' Nunc Pro Tunc Response to Plaintiff's Petition for Attorneys' Fees is DENIED.
2. The Court awards Plaintiff \$92,048.50 as reasonable attorney's fees and legal costs of \$4,711.10 for a total award of \$96,759.60 for collection of the assessments, special assessments and other charges due in this action.

By the Court:

ORDER-Bentwood Historic Condominium Association Vs Cheng [JNS]



22010200400097

  
John R. Padova, Jr. Judge

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

|                         |   |                    |
|-------------------------|---|--------------------|
| Bentwood Historic       | : | January Term, 2022 |
| Condominium Association | : |                    |
| Plaintiff               | : | No.: 02004         |
|                         | : |                    |
| vs.                     | : |                    |
|                         | : |                    |
| Ken S. Cheng, et al.    | : | Control #24086419  |
| Defendants              | : | Control # 24122846 |

DECISION

Before the Court is Plaintiff's Petition for Attorney's Fees and legal costs filed August 29, 2024. Defendants filed their response, nunc pro tunc, on December 2, 2024 and Plaintiff moves to strike Defendants' memorandum of law as untimely (Control # 24122846)<sup>1</sup>.

In its petition, Plaintiff asserts that it is due fees and costs under The Uniform Condominium Act, 68 Pa.C.S. § 3101, *et seq.* (Act), and pursuant to Declaration of Condominium Article IX, Section 9.4, in connection with this action to recover delinquent condominium assessments, fees and costs.

Condominium associations are entitled to an award of reasonable attorney's fees for the cost of collection of past due assessments or fines. The Act provides specifically that "reasonable costs and expenses of the association, including legal

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<sup>1</sup> This Court has the discretion to hear an untimely submission when it does not upset effective court procedure or prejudice the adverse party. Leffler, Inc. v. Hutter, 696 A.2d 157, 166 (Pa. Super. 2003).

fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section.”

68 Pa. C.S.A. § 3315(a). Section 3315 further provides that any “action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.” 68 Pa. C.S.A. § 3315(f). Moreover, the Declaration of Condominium provides that the “[r]easonable attorney’s fees incurred by the Association incident to the collection of any [unpaid] assessments ...shall be payable by the Unit Owner upon demand...” Exhibit P-1, 9.4, Association’s Lien. Plaintiff supplements its filing with itemized invoices for professional time and cost billing as well as affidavits in support of its petition, establishing the time expended and asserts that the rates of the professionals employed in collection of these fees were reasonable

Defendants argue that the Association failed to produce evidence that the roof that leaked had been timely repaired and that the Association had committed gross neglect in its maintenance of the Condominium and therefore they should not be required to pay attorney’s fees. While this Court has not specifically made a finding of gross neglect, it did find that the Association breached its duty to Defendants by allowing the leaks in the roof (a common area) to cause damage to the Defendant’s unit. Nonetheless, nothing excuses Defendants from failing to pay the assessments

and special assessments that were issued simply because of the condition of their unit. Defendants have offered no authority to justify this contention. Regardless of any breach of the Association's duty, unit owners are obligated to pay assessments in accordance with the agreement into which they entered when they purchase a condominium. A unit owner has no justification to withhold assessment payments when the association fails to maintain the common elements. Rivers Edge Condominium Ass'n v. Rere, Inc., 568 A.2d 261, 263 (Pa. Super. Ct. 1990).

Defendants contention that Plaintiff's fees are unreasonable in light of the amounts sought to be collected is not persuasive because prevailing Pennsylvania case law holds otherwise. In Mountain View Condo. Ass'n v. Bomersbach, 734 A.2d 468 (Pa. Commw. Ct. 1999), the Commonwealth Court rejected the argument that "the Association was bound to accept something less than the full sum to which it was entitled" when an award of attorney's fees was challenged. Similarly, in Arches Condo Ass'n v. Robinson, the Commonwealth Court upheld an award of \$27,355.68, of which \$26,206.68 was for attorney's fees related to the Association's efforts to collect unpaid condominium fees and assessments. Arches Condo. Ass'n v. Robinson, 131 A.3d 122, 125 (Pa. Commw. Ct. 2015). Citing *Mountain View*, the court reasoned that "a condo association is not required to compromise but may 'stand on principal ... to uphold the law' ... and is entitled to have its 'attorney's fees be covered' when it does so. Any holding to the contrary would cause chaos in

Condominium Associations whose compliant members would have to bear the cost of dealing with non-compliant members.” Arches Condo. Ass'n v. Robinson, 131 A.3d 122, 135 (Pa. Commw. Ct. 2015) (internal citations omitted).

In determining an award for attorney's fees, the court must apply the following standard:

The facts and factors to be taken into consideration in determining the fee or compensation payable to an attorney include: the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was “created” by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question.

In re Estate of LaRocca, 431 Pa. 542, 246 A.2d 337, 339 (1968); *see also* Estate of Murray v. Love, 411 Pa. Super. 618, 602 A.2d 366, 370 (1992).

Preliminarily, this Court notes that Defendant, in its response to Plaintiff's Petition, does not specifically take issue with the rate, amount of time, or descriptions of the work performed contained in the attorney's fees and costs invoices. Instead, Defendant argues generally that the fee requested is unreasonable as it is disproportionate to the relevant damages. As explained above, this argument is not persuasive in light of the prevailing case law. While the value of a judgment “should be considered in determining the reasonableness of attorney fees; it is not, however, the only factor.” Arches at 134. This follows logically too as the “same

amount of legal work is required to collect \$1,000 or \$50,000.” Id. at 136.

As the mere fact that the unpaid assessments awarded are significantly less than the Attorney’s fees sought does not alone cause those fees to be unreasonable, this Court considers the additional factors outlined in Larocca’s Trust Estate. The trial court’s discretion in determining a reasonable fee is well recognized and is, in part, based on its particular “knowledge of the rate of professional compensation usual at the time and place.” Larocca’s Trust Estate at 340. This Court finds that the rates charged by Plaintiff’s attorneys are reasonable and customary given their professional experience.<sup>2</sup> The highest rate, charged for Mr. Matthew Collins’ time, ranged between \$295 and \$305 per hour. Given Mr. Collins’ 25 years of practicing law, this rate is well within the bounds of a reasonable fee. Similarly, this court finds that all legal professionals representing Plaintiff used reasonable and competitive rates.

This Court finds that the fees and costs sought are commensurate with the work performed and the character of services rendered. The services rendered and time spent by Plaintiff’s counsel as set forth in the invoices are reflective of circumstances and procedural history of the underlying litigation. Plaintiff, through

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<sup>2</sup> This Court takes judicial notice of the billing rates provided by the Community Legal Services of Philadelphia (CLS) fee schedule. CLS’s fee schedule provides a range of hourly rates depending on an attorney’s experience. For example, attorney’s with under 2 years of experience have a corresponding rate of \$235-260, while the rate for attorney’s with more than 25 years of experience is \$735-\$850. None of the rates charged by the legal professionals representing the Association exceeded the rates suggested by the CLS fee schedule.

its attorney's engaged in discovery, filed a number of pretrial motions, arbitrated this case and subsequently prepared and tried this case to verdict. On their face the time entries and descriptions of services included in the invoices reasonably reflect the work required to litigate this case. This court did not appreciate any duplicative, unnecessary, or inflated time entries.

This Court also finds that the "ability of the client to pay a reasonable fee for the services rendered" also weighs in favor of finding the attorney's fees reasonable in the amount sought. Plaintiff's Board President and Manager both testified that they paid or intended to pay all invoices from their attorneys. *See* 8/6/2024 Trial Transcript, p. 68-70; 8/7/2024 Trial Transcript, p. 57. Mr. Collin's submitted in his affidavit that Plaintiff has paid all invoices as of August 2024. In this Court's view, the Plaintiff's willingness to pay its legal fees at the amounts invoiced, prior to any award of attorney's fees, is an indicator that the amounts are reasonable.

This Court finds that Plaintiff has met its burden to recover reasonable attorney's fees relating to Plaintiff's action. This Court further finds that the \$96,759.60 sought by Plaintiff is reasonable for attorney's fees and legal costs in this matter. An order consistent with this decision will issue.

By the Court:

Dated: December 19, 2024

  
\_\_\_\_\_  
John R. Padova, Jr. Judge

**EXHIBIT "D"**

**FILED**  
18 SEP 2024 05:00 pm  
**Civil Administration**  
D. KIM

|                                |   |                              |
|--------------------------------|---|------------------------------|
| <b>BENTWOOD HISTORIC</b>       | : | <b>COURT OF COMMON PLEAS</b> |
| <b>CONDOMINIUM ASSOCIATION</b> | : | <b>PHILADELPHIA COUNTY</b>   |
|                                | : |                              |
| Plaintiff,                     | : | <b>CIVIL ACTION</b>          |
| v.                             | : |                              |
|                                | : | January Term, 2022           |
| <b>KEN S. CHENG</b>            | : |                              |
| <b>FREDA HO</b>                | : | No. 22-01-02004              |
|                                | : |                              |
| Defendants                     | : |                              |

**ORDER**

AND NOW, on this 28<sup>th</sup> day of October, 2024, upon consideration of Plaintiff's Motion To Strike Defendants' Praeipce To Supplement / Attach Documents to Record, filed on September 3, 2024, From the Docket, and any response thereto, its hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**. The Prothonotary is hereby directed to remove Defendant's Praeipce To Supplement / Attached Documents To Record from the docket.

**BY THE COURT:**

 J.

ORDER-Bentwood Historic Condominium Association Vs Cheng [VMC]



22010200400086

DOCKETED  
COMPLEX LIT CENTER  
OCT 31 2024  
V. QUINTANA

ACTIVE\02561\0009\1234836.v1-9/18/24

Case ID: 220102004  
Control No.: 24093818

**EXHIBIT “E”**

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**COMMONWEALTH COURT OF PENNSYLVANIA**

Bentwood Historic : CCP: January TERM 2022  
Condominium Association, :  
Appellee, :  
v. :  
Ken S. Cheng and Freda Ho, h/w,: No. 02004  
Appellants. :

**NOTICE OF APPEAL**

**TO THE HONORABLE COURT:**

Notice is hereby given that Ken S. Cheng and Freda Ho,  
the Appellants above named and hereby appeal to the Commonwealth  
Court of Pennsylvania from the Order entered in this matter on the  
17th day of December 2024. (Exhibit "A")(Exhibit "B")

Respectfully submitted,

*Mary Catherine Baur, Esquire*

Mary Catherine Baur, Esquire  
Counsel for Appellants

Attorney I.D. No. 50492

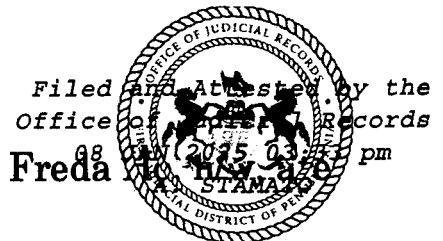
[mbaur@sisna.com](mailto:mbaur@sisna.com)

P O Box 2561

Philadelphia, PA 19147-0561

(215) 285-9484

Dated: January 8, 2025



## EXHIBIT "F"

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PA  
CIVIL ACTION**

**BENTWOOD HISTORIC CONDOMINIUM  
ASSOCIATION,**

**Plaintiff,**

**v.**

**KEN S. CHENG and  
FREDA HO, h/w,**

**Defendants.**

:  
:  
:  
:  
:  
:  
:  
:

No. 220102004

**DEFENDANTS' OBJECTIONS AND ISSUES TO BE PRESENTED ON APPEAL**

**TO THE HONORABLE COURT:**

Defendants present the following issues to be appealed.

1. Defendants object to any charge for attorney fees for Plaintiff's counsel.
2. Defendants specifically object to any charge for attorney fees for Plaintiff's counsel after the date of arbitration.
3. Defendants allege Judicial bias in excluding the most damaging piece of evidence, a video, that was presented at the arbitration, on Plaintiff's counsel's representation that he could not recall if it was presented at the arbitration.
4. Defendants allege Judicial bias in ruling on Plaintiff's Motions in Limine and then tailoring the trial to comply with his pre-trial ruling.
5. Defendants object to all rulings that excluded evidence presented at arbitration.
6. Defendants object to all changes in the testimony of Plaintiff's witness, Michele Giannakopoulos, from the arbitration.
7. Defendants object to the scheme deployed by Plaintiff and its agents to defraud a naïve young couple of their retirement asset.

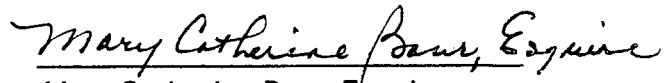
Filed and Attested by the  
Office of Judicial Records  
08 May 2025 03:50 pm



8. Defendants object to the court's failure to recognize or apply the U.S. Constitution, the Pennsylvania Constitution, the Pennsylvania Disciplinary Code and the Fair Debt Collection Practices Act (15 U.S.C. Section 1692, et seq.)
9. Defendants object to the Declaration as incomplete and void or voidable as against public policy and in direct violation of Defendants' constitutional rights.
10. Defendants object to the failure of the Judge to expand the record to include the amendments to the Declaration to avoid a miscarriage of justice.
11. Defendants object to the failure of the Judge to order the Defendants' deck to be reinstalled in compliance with their deed.
12. Defendants object to the failure of the Judge to order an audit of the Plaintiff's accounting of assessments and special assessments for Defendants' unit due to uninhabitability and loss of the deck.
13. Defendants object to the failure of the Judge to order the Plaintiff to pay for all damages to the unit caused by the various leaks that were, at all times, the responsibility of the Plaintiff.

Wherefore, Defendants will request recusal and a remand or a new trial on appeal.

Respectfully submitted,

  
Mary Catherine Baur, Esquire  
Attorney for Defendants

Dated: 1-7-2025

## EXHIBIT "G"

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

|                                           |   |                 |  |
|-------------------------------------------|---|-----------------|--|
| Bentwood Historic Condominium Association | : |                 |  |
|                                           | : |                 |  |
| Plaintiff/Appellee                        | : |                 |  |
| vs.                                       | : | No.: 220102004  |  |
|                                           | : |                 |  |
|                                           | : |                 |  |
| Ken S. Cheng, <i>et al</i>                | : | No.: 23 CD 2025 |  |
| Defendants/Appellants                     | : |                 |  |

JUDICIAL RECORDS  
1ST JUDICIAL DISTRICT PA  
2025 MAR -7 AM 11:51  
FILED

**1925(A) OPINION**

**I. Introduction and Procedural History**

The present matter arose from Appellee, Bentwood Historic Condominium Association's claim for unpaid assessments, charges and expenses related to a unit in the Bentwood Historic Condominium. Appellants, Ken S. Cheng and Freda Ho, brought a counterclaim for breach of contract alleging a failure to perform necessary repairs to the unit and for the removal of their rooftop deck. A bench trial was held from August 6, 2024 through August 8, 2024. On September 4, 2024, before this court rendered a decision, Appellants submitted a Post-trial Motion. That Motion was denied on September 25, 2024. On December 17, 2024, this Court entered an Order finding in favor of Plaintiff on its claim for assessments, special assessments, late fees and interest in the amount of \$14,608.15 and in favor of Defendants for the loss of rent and diminution in value of the unit in the amount of \$51,400. This Court also filed thorough Findings of Fact and Conclusions of Law explaining the reasons for its decision. The Findings of Fact and Conclusions of Law are incorporated in this Opinion and attached hereto.

Appellants have appealed the December 17, 2024 Order. This Court's December 19, 2024 Order awarding \$96,759.60 in attorney's fees and legal costs was attached to the Notice of Appeal as an exhibit, despite the notice not expressly indicating this Order was also being appealed. This Court filed a written Decision along with the December 19, 2024 Order outlining the reasons for

OPFLD-Bentwood Historic Condominium Association Vs Cheng [SYC]



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the award of attorney's fees. That Decision is also incorporated in this Opinion and attached hereto. On January 8, 2025, Appellant filed a Statement of Matters Complained on Appeal pursuant to Pa. R.C.P. 1925(b). In consideration of that Statement this Court supplements its December 17, 2024 Findings of Fact and Conclusions of Law and its December 19, 2024 Decision pursuant to Pa. R.C.P. 1925(a).

## **II. Facts**

*See* this Court's Findings of Fact and Conclusions of Law for a detailed summary of the facts presented at trial.

## **III. Discussion**

As a preliminary matter, the issues raised in Appellants' 1925(b) statement have been largely waived due to their failure to file an appropriate post-trial motion. "In a non-jury case, a party's right to file post-trial motions (and the court's authority to rule on such motions) only accrues after... the filing of the decision." Adams v. Erie Ins. Co., 238 A.3d 428, 433 (Pa. Super. 2020) (internal quotation marks omitted); Pa.R.C.P. No. 227.1(c)(2). "If an issue has not been raised in a post-trial motion, it is waived for appeal purposes." Matthew 2535 Properties, LLC v. Denithorne, 313 A.3d 223 (Pa. Super. 2024). "[T]he filing of a 1925(b) statement does not excuse the failure to file post-trial motions and does not revive or preserve issues that are waived for failure to file post-trial motions." Diamond Reo Truck Co. v. Mid-Pacific Industries, Inc., 806 A.2d 423, (Pa. Super. 2002). Here, Appellants filed a Post-trial Motion on August 29, 2024, before this Court issued its December 19, 2024 decision. As such, Plaintiff's right to file such motion had not yet accrued. Plaintiff filed no additional post-trial motion after the Court submitted its decision. In this Court's view, no proper post-trial motion was ever filed, and therefore, all issues pertaining to the December 19, 2024 decision were waived. Under Diamond Reo Truck Co., Appellant's 1925(b) Statement does not serve to revive these waived issues.

Under Pa. R.A.P. 1925(b)(4)(ii), a Statement of Matters Complained of on Appeal must "concisely identify each error that the appellant intends to assert with sufficient detail to identify

the issue to be raised for the judge.” An appellate court may find waiver if an Appellant’s 1925(b) statement is too vague. In Re A.B., 63 A.3d 345 (Pa. Super. 2013). “When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review.” Commonwealth v. Dowling, 778 A.2d 683, 686 (Pa. Super. 2001) (citation omitted). This Court finds that much of Appellants’ 1925(b) Statement is overly vague, hindering the review of issues and resulting in waiver. Specific instances of improper vagueness are identified below.

Notwithstanding issues of waiver this Court addresses each issue asserted in Appellants’ 1925(b) Statement as follows:

1. *“Defendants object to any charge for attorney fees for Plaintiff’s counsel.”*

In this Court’s view, Appellants’ issues specific to the award of attorney’s fees were not waived by their failure to file a post-trial motion. “Courts have construed an award of counsel fees as ancillary to the underlying claims.” Jacoby v. Jacoby, 276 A.3d 207 (Pa. Super. 2022). “An order allowing counsel fees is a final, appealable order.” In re Roos’ Estate, 451 A.2d 255, 255 n.1 (Pa. Super. 1982). This Court’s December 19, 2024 Order awarding counsel fees was an appealable final order separate from its December 17, 2024 decision. Accordingly, the absence of an appropriate post-trial motion does not result in waiver specifically for Appellants’ issues regarding the award of attorney fees, unlike their other issues on appeal.

As it relates to the merits of Appellants’ objection to the award of attorneys’ fees, this issue was addressed at length in this Court’s December 19, 2024 Decision attached hereto such that “the reasons for the order... already appear of record” pursuant to 210 Pa.R.A.P. 1925(a)(1).

2. *“Defendants specifically object to any charge for attorney fees for Plaintiff’s counsel after the date of arbitration.”*

This issue is addressed by this Court in its December 19, 2024 Decision such that “the reasons for the order... already appear of record” pursuant to 210 Pa.R.A.P. 1925(a)(1).

3. *“Defendants allege Judicial bias in excluding the most damaging piece of evidence a video, that was presented at the arbitration, on Plaintiff’s counsel’s representation that he could not recall if it was presented at the arbitration.”*

This Court explained its reasoning for precluding the referenced video at trial such that “the reasons for the order... already appear of record.” pursuant to 210 Pa.R.A.P. 1925(a)(1). *See* N.T. 8/8/2024 at 69 & 70. By way of further explanation, the January 10, 2023 Case Management Order provided that “a list of all exhibits the party intends to offer into evidence must be included in the pretrial settlement conference memoranda submitted by counsel... Counsel should expect exhibits not listed to be precluded at trial.” The relevant video was not included in Appellant’s exhibit list as required by the Case Management Order and the video was precluded on that basis.

4. *“Defendants allege Judicial bias in ruling on Plaintiff’s Motions in Limine and then tailoring the trial to comply with his pre-trial ruling.”*

This Court finds this purported issue to be vague as written such that it hinders meaningful review. While this Court cannot discern the specific judicial error alleged, two motions in limine were decided in this matter.

This Court granted in part and denied in part Appellee’s Motion to Preclude Testimony or Evidence at Trial Relating to Litigation Costs and Expense and the Cost to Repair the Unit. This Court ordered that Appellants were precluded from presenting testimony or evidence relating to any costs to repair the unit. This Court heard oral argument on this motion, following which the Court explained its decision trial such that “the reasons for the order... already appear of record.” pursuant to 210 Pa.R.A.P. 1925(a)(1). *See* N.T. 8/6/24 at 6-10.

“The purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits.” Clark v. Hoerner, 525 A.2d 377, 382 (Pa. Super. 1987). Evidence regarding repair costs were precluded because no cost estimate, or any testimony or evidence regarding repair costs, was ever provided to Appellee and the same was not presented at the prior

arbitration. This Court found that because Appellant had not identified evidence of a cost estimate during the discovery period, or at any time before trial, presenting such evidence would cause an unfair surprise to Appellee as they had no opportunity to investigate the same.

This Court also granted Appellee's Motion in Limine to Preclude Evidence Relating to the Cost to Replace the Deck. This Court Ordered that Appellant was precluded from presenting "the Precision Deck and Remodeling report." This Court explained this decision after hearing the parties' arguments such that "the reasons for the order... already appear of record." pursuant to 210 Pa.R.A.P. 1925(a)(1). *See* N.T. 8/6/24 at 18. Again, Appellant had not provided the report to Appellee during discovery and did not identify it as an exhibit as required by the Case Management Order. Appellants did not provide Appellee with the report until the first day of trial. *Id.* Accordingly, this report was precluded as it was not timely provided to Appellee.

5. *"Defendants object to all rulings that excluded evidence presented at arbitration."*

This Court finds this purported issue to be vague as written such that it hinders meaningful review. Appellant has not specified what rulings are being referred to or what particular evidence was excluded. Accordingly, Appellant has failed to identify an error "with sufficient detail to identify the issue to be raised for the judge." Pa. R.A.P. 1925(b)(4)(ii). This issue is impermissibly vague and is therefore waived. *See In Re A.B.*, 63 A.3d 345 (Pa. Super. 2013).

6. *"Defendants object to all changes in the testimony of Plaintiff's witness, Michele Giannakopoulos, from the arbitration."*

An appellant must object on the record at the time the trial court makes its evidentiary ruling in order to preserve the issue for appeal. Pa. R.E. 103(a)(1); Pa. R.A.P. 302(a). From this Court's review of Ms. Giannakopoulos' testimony, Appellant made no objection pertaining Ms. Giannakopoulos' trial testimony being inconsistent with her testimony at the prior arbitration. Consequently, no evidentiary ruling relevant to this claimed issue was made during Ms. Giannakopoulos' testimony. Therefore, Appellant failed to preserve this issue due to the

failure to raise an objection at trial or on the record. Further, this Court made no ruling related to this issue such that there can be no appealable error. This Court also notes that had Ms. Giannakopoulos given testimony inconsistent with her prior testimony at arbitration that would be a proper subject for impeachment on cross examination, rather than the basis of an objection.

7. *“Defendants object to the scheme deployed by Plaintiff and its agents to defraud a naïve young couple of their retirement asset.”*

In this Court’s view, the Appellant fails to identify a judicial error and instead primarily challenges the Appellee’s underlying conduct in this matter. This Court is unable to discern any specific appealable ruling or decision referenced by the Appellant at Number 7 of the 1925(b) Statement.

8. *“Defendants object to the court’s failure to recognize or apply the U.S. Constitution, the Pennsylvania Constitution, the Pennsylvania Disciplinary Code and the Fair Debt Collection Practices Act (15 U.S.C. Section 1692, et seq.)”*

Again, this Court finds this issue to be impermissibly vague as written. Appellant’s broad reference to the entirety of the U.S. Constitution, the Pennsylvania Constitution, the Pennsylvania Disciplinary Code, and the Fair Debt Collection Practices Act leaves this Court “guess[ing] what issues an appellant is appealing.” Dowling, at 686. As it relates to the Fair Debt Collection Practices Act, this Court notes that Appellant did not raise any legal theory under the FDCPA at trial or in any pleadings.

9. *“Defendants object to the Declaration as incomplete and void or voidable as against public policy and in direct violation of Defendants’ constitutional rights.”*

Under Pa. R.E. 106 “If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part--or any other writing or recorded statement--that in fairness ought to be considered at the same time.” “The purpose of Pa.R.E. 106 is to give the adverse party an opportunity to correct a misleading impression

that may be created by the use of a part of a writing or recorded statement that may be taken out of context.” Pa. R.E. 106, Comment. As it relates to Appellants’ issue with the completeness of the Declaration of Condominium, this Court notes that at the time the Declaration was admitted Appellants made no objection regarding its completeness. Appellants did not at any other time during trial establish that the Declaration was incomplete by offering amendments. Pa. R.E. 106 does not put the obligation on the Court to ensure a document’s completeness, but instead gives the adverse party an opportunity to correct incompleteness. At trial, Appellant failed to utilize this opportunity or otherwise show that the Declaration offered was incomplete.

As it relates to Appellants’ claim that the Declaration is “void or voidable as against public policy and in direct violation of Defendants’ constitutional rights,” this Court notes that Defendant did not raise any argument relating to any constitutional provisions at trial and this contention is waived.

10. *“Defendants object to the failure of the Judge to expand the record to include the amendments to the Declaration to avoid a miscarriage of justice.”*

As explained above, Appellant failed to offer the purported amendments pursuant to Pa. R.E. 106 at the time the Declaration was moved into evidence. From this Court’s review of the trial transcript, Appellant did not attempt to enter amendments to the Declaration into evidence at any time. These amendments were also not identified in Appellants’ Exhibit List.

11. *“Defendants object to the failure of the Judge to order the Defendants’ deck to be reinstalled in compliance with their deed.”*

This issue is addressed by this Court in its Findings of Fact and Conclusions of Law such that “the reasons for the order... already appear of record” pursuant to 210 Pa. R.A.P. 1925(a)(1). This Court awarded Appellant \$25,000 from the diminution of value to the unit due to the removal of the deck and explained why these are appropriate damages. See Findings of Fact and Conclusions of Law at 11-14.

12. *"Defendants object to the failure of the Judge to order an audit of the Plaintiff's accounting of assessments and special assessments for Defendants' unit due to uninhabitability and loss of the deck."*

This issue is addressed by this Court in its Findings of Fact and Conclusions of Law such that "the reasons for the order... already appear of record" pursuant to 210 Pa. R.A.P. 1925(a)(1). This Court found Ms. Giannakopoulos' testimony to be credible to establish the amounts Appellants owed to Appellee including the assessments and special assessments. *See* Findings of Fact and Conclusions of Law at 6-7. As there was credible testimony as to the amounts of assessments and special assessments owed, no audit was necessary. To the extent that Appellant challenges the credibility of Ms. Giannakopoulos' testimony this Court notes that "the weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." Commonwealth v. Johnson, 542 Pa. 384, 394, 668 A.2d 97, 101 (1995).

13. *"Defendants object to the failure of the Judge to order the Plaintiff to pay for all damages to the unit caused by the various leaks that were, at all times, the responsibility of the Plaintiff."*

This Court's award of damages is explained in detail in its Fact and Conclusions of Law such that "the reasons for the order... already appear of record" pursuant to 210 Pa. R.A.P. 1925(a)(1). *See* Findings of Fact and Conclusions of Law at 12-14.

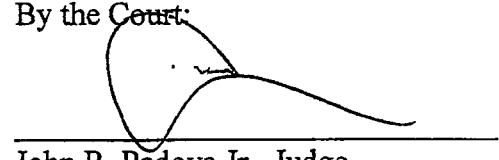
#### **IV. Conclusion**

The issues Appellants have complained of on appeal, excluding those relating to the award of attorneys' fees and costs, were waived due to appellants' failure to file a timely post-trial motion after this Court's decision as required by Pa.R.C.P. No. 227.1. Additional instances of waiver, as identified above, are present due to vagueness in the 1925(b) Statement and Appellants failure to preserve issues through objections at trial. Even setting aside Appellants' waiver, the present appeal lacks merit for the reasons stated above, as well as the analysis in this Court's December

17, 2024 Findings of Fact and Conclusions of Law and its December 19, 2024 Decision. Accordingly, this Court recommends that Appellants' appeal be dismissed, and this Court's Orders dated December 17, 2024 and December 19, 2024 should be affirmed.

By the Court:

Date: March 7, 2025



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John R. Padova Jr., Judge

## EXHIBIT "H"

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bentwood Historic Condominium  
Association

v.

Ken S. Cheng and Freda Ho, h/w,  
Appellants

:  
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:  
:  
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:  
:

No. 23 C.D. 2025

**ORDER**

NOW, July 24, 2025, upon review of the above-captioned matter, the Court notes that Ken S. Cheng and Freda Ho's (h/w) (Appellants) are appealing from an order of the Court of Common Pleas of Philadelphia County (trial court), dated December 17, 2024, that entered a non-jury verdict in favor of Appellee Bentwood Historic Condominium Association on its claim for assessments, special assessments, late fees, and interest and in favor of Appellants for the loss of rent and diminution of value of their condominium unit. The docket reflects that Appellants did not file post-trial motions within 10 days of the trial court's decision. *See* Pa.R.Civ.P. 227.1 (stating that post-trial motions shall be filed within 10 days **after** the decision in a non-jury trial); *see also Hysong v. Lewicki*, 931 A.2d 63, 66 (Pa. Cmwlth. 2007) ("Pa.R.Civ.P. 227.1 requires parties to file post-trial motions in order to preserve issues for appeal. If an issue has not been raised in a post-trial motion, it is waived for appeal purposes.") (internal quotations and citations omitted); and *Adams v. Erie Ins. Co.*, 238 A.3d 428, 433 n.4 (Pa. Super. 2020) (noting that post-trial motions filed before entry of judgment are premature and not timely).

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Accordingly, the parties shall address whether Appellants preserved any issues on appeal in their principal briefs on the merits or by appropriate motion.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

EXHIBIT "I"

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                                            |   |                  |
|--------------------------------------------|---|------------------|
| Bentwood Historic Condominium Association, | : |                  |
|                                            | : |                  |
|                                            | : |                  |
| v.                                         | : |                  |
|                                            | : |                  |
| Ken S. Cheng and Freda Ho, h/w,            | : |                  |
| Appellants                                 | : | No. 23 C.D. 2025 |

**MEMORANDUM AND ORDER**

NOW, October 1, 2025, upon consideration of Bentwood Historic Condominium Association’s (Appellee) July 24, 2025 “Application to Dismiss for Lack of Jurisdiction and Failure to File a Brief” (Application to Dismiss), to which no answer has been filed, the Application to Dismiss is GRANTED, and the appeal is DISMISSED. Appellants’ September 12, 2025 “Second Application for Extension of Time to File Appellants’ Brief and Reproduced Record” is DISMISSED AS MOOT.

In the Application to Dismiss,<sup>1</sup> Appellee informs that Ken S. Cheng and Freda Ho, h/w (Appellants) appeal from the December 17, 2024 order of the Court of Common Pleas of Philadelphia County (trial court) that entered a non-jury verdict in favor of Appellee on its claim for assessments, special assessments, late fees, and interest and in favor of Appellants for the loss of rent and diminution of value of their condominium unit. Appellee further informs that Appellants also seek to appeal

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<sup>1</sup> By Memorandum and Order of July 24, 2025, this Court observed that Appellants Ken S. Cheng and Freda Ho, h/w, did not file post-trial motions within 10 days of the trial court’s decision. The Court thus directed the parties to address whether Appellants preserved any issues on appeal in their principal briefs on the merits or by appropriate motion. Appellee filed the Application to Dismiss the same day.

the trial court's December 20, 2024 order that awarded Appellee \$96,759.60 in attorneys' fees and costs. Appellee points out that at the time the notice of appeal was filed on January 8, 2025, there was no appealable judgment, and that on or about July 3, 2025, Appellee filed a Praecipe to Enter Judgment on Court's Order with the trial court. Appl. to Dismiss ¶ 5 & Ex. 2. Appellee highlights that an appeal to this Court can only lie from judgments entered subsequent to the trial court's disposition of post-trial motions, not from an order denying post-trial motions. Appl. to Dismiss ¶¶ 4, 6-8, 10. For these reasons, as well as Appellants' apparent failure to file their brief and the reproduced record by the due date indicated in the Court's briefing schedule, Appellee requests that the Court dismiss the appeal. *Id.* ¶¶ 11-16.

Although this Court may entertain the merits of an appeal where judgment is entered on the docket after the filing of a notice of appeal, *see Johnston the Florist, Inc. v. Tedco Constr. Corp.*, 657 A.2d 511 (Pa. Super. 1995) (Superior Court entertained merits of appeal where judgment was entered on docket after filing of the notice of appeal); *G.V. Homes, Inc. v. Frempong* (Pa. Super., No. 1236 EDA 2021, filed Sept. 21, 2022) (stating that where notice of appeal is filed prior to entry of a final judgment, appellate jurisdiction was perfected by entry of judgment on the docket),<sup>2</sup> an additional procedural defect exists in this case that precludes this Court's review of the merits. Specifically, the Court's review of the online docket entries and the Original Record for this case reveals that Appellants failed to file post-trial motions within 10 days of the trial court's December 20, 2024

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<sup>2</sup> Although Superior Court decisions are not binding on the Commonwealth Court, they offer persuasive authority on analogous issues. *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018). In addition, Pennsylvania Rule of Appellate Procedure 126(b)(1) authorizes the citation to Superior Court unreported opinions issued after May 1, 2019, for their persuasive value. Pa. R.A.P. 126(b)(1).

determination.<sup>3</sup> See Pa.R.Civ.P. 227.1 (stating that post-trial motions shall be filed within 10 days after the decision in a non-jury trial); *see also Hysong v. Lewicki*, 931 A.2d 63, 66 (Pa. Cmwlth. 2007) (“Pa.R.Civ.P. 227.1 requires parties to file post-trial motions in order to preserve issues for appeal. If an issue has not been raised in a post-trial motion, it is waived for appeal purposes.”) (internal quotations and citations omitted); and *Adams v. Erie Ins. Co.*, 238 A.3d 428, 433 n.4 (Pa. Super. 2020) (noting that post-trial motions filed before entry of judgment are premature and not timely). In its Rule 1925(a) Opinion issued on March 7, 2025, the trial court similarly observed that Appellants filed a post-trial motion on August 29, 2024, **prior to** the court’s issuance of its December 20, 2024 decision, and that no proper post-trial motion was ever filed thereafter. This, according to the trial court, results in the waiver of all issues on appeal. See Pa.R.A.P. 1925(a) Op. at 1-3, 8-9.

The Court agrees that Appellants have waived all issues on appeal based on their failure to file post-trial motions. Accordingly, dismissal of this appeal is appropriate. See *Sahutsky v. H.H. Knoebel Sons*, 782 A.2d 996, 1001 (Pa. 2001) (dismissal appropriate for failure to preserve any issues on appeal).



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ANNE E. COVEY, Judge

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<sup>3</sup> The trial court’s December 17, 2024 order was not final and appealable, because the issue of attorneys’ fees and costs remained outstanding. See Trial Ct. Ord. dated 12/17/2024.

EXHIBIT "J"

**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

BENTWOOD HISTORIC CONDOMINIUM  
ASSOCIATION,

Respondent

v.

KEN S. CHENG AND FREDA HO, H/W,,

Petitioners

: No. 438 EAL 2025

:  
:  
:  
: Petition for Allowance of Appeal  
: from the Order of the  
: Commonwealth Court

**ORDER**

**PER CURIAM**

**AND NOW**, this 11th day of May, 2026, the Petition for Allowance of Appeal is  
**DENIED.**

APGEN-Bentwood Historic Condominium Association Vs Cheng [MVR]



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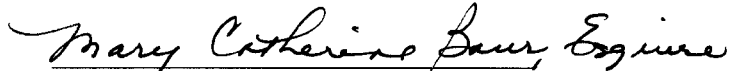
A True Copy Darian Holland  
As Of 05/11/2026

Attest: Darian Holland  
Chief Clerk  
Supreme Court of Pennsylvania

## VERIFICATION

I, Mary Catherine Baur, Esquire, counsel for Petitioners Ken S. Cheng and Freda Ho, h/w, certify under penalty of perjury that, to the best of my knowledge, information, and belief, the allegations set forth in this Correctd Application to Extend Time to File Petition for Certiorari, are true and correct and that this application to Extend Time to File Petition for Certiorari is not interposed for delay or other improper purposes.

Dated: 8-31-2026

  
Mary Catherine Baur, Esquire  
Counsel of Record for Petitioners  
Ken S. Cheng and Freda Ho, h/w