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HOA Mini Report

A quarterly newsletter providing legal news and analysis of interest to homeowners associations in Eastern Washington. Please contact me at nick@gnbergh.com with any comments or suggestions. If you would prefer not to receive this newsletter, please let me know. Back issues of the HOA Mini Report are available at my website.

Life is good - Spring has sprung, tax day has passed! As always, I have a favor to ask. Postage for this newsletter is expensive and handling is time consuming. If you provide me with your email address, I will send future issues to you by email, rather than by US mail. I will not share your email address with others.

Case Law – The Year (so far) in Review. After relatively few HOA cases were decided by Washington courts in 2017, the 2018 court year appears to be off to a strong start. None of the cases are groundbreaking, but overall show that courts will defer to associations if they follow their governing documents and act reasonably.

- *Pritchett v. Picnic Point HOA.* Mr. Pritchart wanted to raise his roof by seven feet. The HOA rejected the proposed plans because it would impair the view from another home. The covenants for the development prohibited construction that would "obstruct the Puget Sound or Park view of any other parcel." The trial court sided with Mr. Pritchart, finding the prohibition on obstruction ambiguous, because there was no objective standard to determine whether a view was obstructed. The court of appeals reversed, finding the prohibition clear and unambiguous, and that any obstruction of existing views, no matter how minimal, was prohibited. The court reasoned that any decision allowing minor obstruction could, over time, gradually reduce views and frustrate the intent of the covenants to protect existing views.

- *Brewer v. Lake Easton HOA.* Lake Easton Estates is a 51 lot development, served by nine private wells. Each well is jointly owned by the owners of lots served by the well. Various recorded documents provided that the owners of each well are responsible for maintenance of their well. An HOA was later formed to manage the wells on behalf of the owners, and collect assessments to cover maintenance costs. The Brewers purchased one of the lots with a well on it, but did not read the various documents concerning the wells. For eight years, Brewers paid assessments to the HOA. When Brewers applied for a permit to build a shop, the county denied approval because the building would encroach on the 100 foot protected space surrounding the well, in violation of the various agreements and state law. Brewers stopped paying assessments and filed suit against the HOA, claiming that because the HOA did not own the well on their property, the HOA had no authority to manage it, and in addition, that the HOA has not managed the wells properly, particularly because eight of the nine wells in the development had encroachments into the wells' protected space, increasing the risk of contamination. No evidence of contamination was found in any of the wells.

  The court of appeals affirmed the trial court's dismissal of the complaint. The court found that the HOA was in fact a proper homeowners association, as defined by statute, because it was a legal entity, the members of which were owners of residential property, that under the governing documents were obligated to pay for expenses associated with commonly owned property (the wells). The Court also found that Brewers had no rights to challenge the HOA's authority because they had paid assessments for years, without objection, and because the authority of the HOA was set forth in the recorded governing documents, which Brewers were aware of but did not read. Finally, the court found that the HOA was authorized to manage the wells pursuant to the terms of the various governing documents. The court also found that the Brewer's claim that the wells were mismanaged also failed, because they did not produce any evidence of actual contamination or loss of value resulting from the encroachments.

- *Shangri-La Community Club, Inc. v. Struck.* Shangri-La is an HOA that operates a water system to serve the development. The declaration requires each owner to pay an annual water assessment, even if they use no water. Strucks paid for 10 years, and then stopped paying because they did not have water service to one of their two lots. Strucks requested water service to their second lot, but the HOA did not provide service for several years. The HOA filed a lien for unpaid assessments, and filed suit to collect. The HOA also shut off water service to Strucks' second lot. The trial court found for the HOA and the court of appeals affirmed. The court rejected Strucks' argument that they should not pay for water they didn't receive, because Strucks failed to provide any legal argument on this point. The court upheld the validity of the HOA's bylaw amendments that allowed the HOA to shut off water if assessments were not paid, finding that the bylaws were properly amended in accordance with the procedures contained in the declaration. The court agreed Strucks should not be awarded damages for loss of use of the second lot while water was not available, because Strucks failed to provide adequate proof to support the value of loss of use. Strucks also challenged the HOA's authority to charge assessments, because there was no evidence in the record that the amount had been approved by the members, as required by the declaration. The court rejected this argument, based on the treasurer's testimony as to the amount of assessments, and the fact that most members paid the amounts billed, without objection.

- *Estate of Wheat v. Fairwood Park HOA.* Fairwood Park is located near a municipal golf course. Mr. Wheat frequently used a private road in the development to travel between the golf course and his home outside the development. Both ends of the road were gated, but the gates were not locked and one of the gates was usually open. The arms of the open gate were not secured, and one day, one of the arms was partially closed. Mr. Wheat struck the end of the arm with his golf cart and sustained fatal injuries. The court of appeals affirmed the trial court's rejection of Wheat's claims that the HOA was negligent. The court ruled that because Wheat was probably a trespasser, the HOA was not responsible because it did not act with reckless disregard for Wheat's safety and had no way to realize, to a high degree of probability, that the unsecured gate would cause injury. The court went on to determine, that even if Wheat was a licensee with permission to be on the road, that the HOA was not liable for his injury. The HOA would be liable to Wheat as a licensee only if (i) it knew the unsecured gate posed an unreasonable risk and the risk was not obvious, (ii) it failed to take reasonable steps to make the gate safe, and (iii) Wheat did not know of the risk posed by the unsecured gate. Because Wheat knew about the obviously unsecured gate, and because the risk of injury was remote (the accident would not have occurred if the gate had been slightly less, or slightly more open), his claims could not be sustained.

This newsletter is not a substitute for legal advice. Legal counsel should be consulted for advice applicable to your particular situation.

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